



# Towards Human Rights and Prosperity for All

Kariuki Muigua

# Towards Human Rights and Prosperity for All

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## **Towards Human Rights and Prosperity for All**

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## Dedication

This work is  
Dedicated to the idea  
That Human Rights  
Should be respected  
and upheld  
at all time  
And that Human dignity  
is something  
we should guard  
and ensure  
Always  
Dedicated to the idea  
that achieving  
Prosperity for all  
is possible

This book is dedicated  
to those who have  
Suffered in the quest  
to fight for Human Rights  
Environmental Rights  
And Justice for All

Dedicated to those who  
have lost their lives  
As they defended  
Human Rights  
And the respect for  
Rule of Law

To those Environmental defenders  
whose lives have been extinguished  
In the quest for  
A Clean & Healthy  
Environment

And a green tomorrow

To those who defend

Mother Earth

And resist

degradation

pollution

and destruction

of the Environment.

Dedicated to the idea

that Human beings

Are part of biodiversity

And the Rights of

the environment

must be upheld

as well.

This book is

Dedicated to those who believe

We must all take action

To achieve Sustainable

Development

Achieve Justice for all

And leave no one

behind

Dedicated to those who

Clamor for

Environmental Justice

Energy Justice

Environmental Security

And to those

who

nurture peace and

prosperity

To the Bold

who stand for what is

xiii

Right and just  
And to the principled  
who walk their talk

This work is dedicated  
To those who are  
committed  
To eradicating Poverty  
Ending Hunger  
and Ensuring  
Food security  
for all

Dedicated to those  
who seek to ensure  
Access to Justice  
for all

And to those  
who work to strengthen  
Human Rights  
And fundamental Freedoms.

Dedicated to those  
who uphold gender, Equity  
Equality  
And human rights  
of all gender

Dedicated to those  
who dedicated time and  
effort  
To combat climate  
change  
And ensure prosperity  
for Today  
and Tomorrow

To the peacemakers

And to those who  
maintain peace

This work is dedicated  
to those  
who respect all cultures  
And  
traditional

Indigenous  
knowledge  
And to those who  
abhor and  
condemn  
Racism and  
discrimination  
on any basis.

To those who  
know the true  
meaning  
of sustainable  
development.

Dedicated to the idea  
that Human  
Rights  
shall be upheld  
in science,  
Technology  
and  
Innovation

This book is dedicated  
to the orphan  
the  
underprivileged

the poor  
Who rise up every morning  
with the firm belief  
that tomorrow  
when the sun comes

up

Their world will  
warm up  
And their dreams  
will  
come true.

Dedicated to those who  
believe  
that ultimately  
we become the sum  
total

of our  
dreams

And that we should  
Dream big  
dreams

Dreams that  
scare us

Dreams that  
dim this force  
of the

Fear of  
failure  
and the  
fear  
of success.

Dedicated to the idea  
that in spite of all  
the  
challenges

Thorny paths



Rain and bad  
weather

It is still possible  
to walk  
Towards Human Rights  
And  
Prosperity for  
All.

## Author's Note

This book is a collection of papers covering Environmental Governance, Access to Justice, Conflict Management, Climate Change, Human Rights and Rule of Law under the theme 'Towards Human Rights and Prosperity for All.'

Human rights include: the right to life; liberty; freedom from slavery and torture; freedom of expression; the right to education;<sup>1</sup> right to a clean and healthy environment.<sup>2</sup>

The Universal Declaration of Human Rights affirms the dignity of equal and inalienable rights of all human beings as the foundation of freedom, justice and peace in the world.

Regrettably, Human rights have not always been respected. The world is full of poverty and injustice.

Sustainable Development as envisaged in the Sustainable Development Goals<sup>3</sup> is yet to be fully attained.

There is thus need to continually reflect on the theme of Human Rights and prosperity for all and critically examine where we are at the moment and how the situation can be improved for a better future.

The papers in this book delve into discussions on the said theme: They include Achieving Sustainability for a green Tomorrow; Towards Human Rights and prosperity for all; Eliminating Racism for Peace, Harmony and Prosperity; Mobilizing the youth for climate change; Enhancing Environmentalism for Green Growth; Realising the Human Right to Water and Sanitation; Promoting Environmental Rule of Law in Africa; Prospects and Challenges; Appraising the Role of Culture in Sustainable Development.

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<sup>1</sup> Universal Declaration of Human Rights – 10<sup>th</sup> Dec 1948 217 A (III)

<sup>2</sup> UN Human Right to a Clean and Healthy Environment UNDOC UN/RES/76/300 28<sup>th</sup> July 2022

<sup>3</sup> UN General Assembly. Transforming our world: The 2030 Agenda for Sustainable Development 21<sup>st</sup> October 2015 A/RES/70/1

The book is aimed at researchers, students and academics who have an interest in working towards Human Rights and Prosperity for All.

**Hon. Prof. Kariuki Muigua PhD; Ch.Arb; OGW**  
**Professor of Environmental Law and Conflict Management.**

## Acknowledgements

I am grateful to my creator. He has placed me on this beautiful planet.

I aim to share knowledge and make a contribution towards upholding human rights and realising a green tomorrow.

I appreciate those who have inspired me, encouraged me and brought out the good in me.

There have been sunny and rainy days. You stayed on, even when the weather was bleak.

I acknowledge my worldwide audience. They keep me energized. To the Environment and human rights defenders. I say, keep going.

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Thank you for keeping hope alive and for making me believe that the sun will soon warm a new prosperous day.

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KM & 9 others v Attorney General & 7 others, Petition No. 1 of 2016 (2020) eKLR.

Save Lamu & 5 others v National Environmental Management Authority (NEMA) & Another, Tribunal Appeal No. NET 196 of 2016, (2019) eKLR.

Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others., (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022)



## **List of Abbreviations**

ADR-Alternative Dispute Resolution

AfCFTA - African Continental Free Trade Area

AI - Artificial Intelligence

AJS - Alternative Justice Systems

CEN-SAD - the Community of Sahel-Saharan States

CIJ - Customary and Informal Justice Systems

CSR-Corporate social responsibility

EAC - the East African Community

EAC-East African Community

ECCAS - the Economic Community of Central African States

ECOWAS - the Economic Community of West African States

ESG - Environmental, Social, and Governance

FAO- United Nations Food and Agriculture Organization.

GDP-Gross Domestic Product.

HDI - Human Development Index

*ICESCR -International Covenant on Economic, Social and Cultural Rights*

IGAD - the Intergovernmental Authority on Development

IMO - International Maritime Organization

MEAs - Multilateral Environmental Agreements

MNCs -Multinational Corporations

NDC-Nationally Determined Contribution.

NET-National Environment Tribunal

NGOs-Non-Governmental Organizations

OECD-Organisation for Economic Co-operation and Development.

PWYP - Publish What You Pay

RECs - Regional Economic Communities

SADC-Southern African Development Community

SDGs-Sustainable Development Goals  
STI - Science, Technology and Innovation  
TDRMs - Traditional Dispute Resolution Mechanisms  
TEK -Traditional Ecological Knowledge  
UDHR -Universal Declaration of Human Rights  
UHC - Universal Health Coverage  
UMA - the COMESA - Common Market for Eastern and Southern Africa  
UNCTAD - United Nations Trade and Development  
UNDP-United Nations Development Programme  
UNEA-United Nations Environmental Assembly.  
UNESCO-United Nations Educational, Scientific and Cultural Organization  
UNFCCC - United Nations Framework Convention on Climate Change  
UNGA - United Nations General Assembly  
UN-United Nations  
WHO-World Health Organization.  
WTO -World Trade Organization  
YCC - Presidency Youth Climate Champion

## *Towards Human rights and Prosperity for all*

### **Towards Human Rights and Prosperity for All**

#### ***Abstract***

*This paper examines the need to safeguard and protect human rights at all levels. The paper argues that upholding human rights is fundamental for peace, development, and prosperity. It conceptualizes the idea of human rights and explores its fundamental elements. In addition, the paper examines the progress made towards protecting human rights at the global, regional, and national levels. It also discusses some of the key challenges facing the realization of human rights. Further, the paper proposes interventions towards protecting human rights for peace and prosperity for all.*

#### **1.0 Introduction**

Protecting and safeguarding human rights is a core ideal towards peace and prosperity<sup>1</sup>. It has been correctly noted that human rights cement the bond between individuals and promote peaceful coexistence among individuals, communities, and nations, thereby making societies and the entire world more resilient<sup>2</sup>. Respect for human rights within states is a prerequisite to lasting peace and prosperity at all levels<sup>3</sup>.

The *2030 Agenda for Sustainable Development*<sup>4</sup> recognizes the role of human rights in fostering peace and prosperity. It envisages a world of universal respect for human rights and human dignity, the rule of law,

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<sup>1</sup> International Peace Institute., 'Human Rights and Sustaining Peace' Available at [https://www.ipinst.org/wp-content/uploads/2017/12/1712\\_Human-Rights-and-Sustaining-Peace.pdf](https://www.ipinst.org/wp-content/uploads/2017/12/1712_Human-Rights-and-Sustaining-Peace.pdf) (Accessed on 26/09/2024)

<sup>2</sup> Ibid

<sup>3</sup> United States Department of State., 'Human Rights and Democracy as Pillars of Stability and Prosperity and Strengthening Democracy in the EU Neighborhood' Available at <https://www.state.gov/human-rights-and-democracy-as-pillars-of-stability-and-prosperity-and-strengthening-democracy-in-the-eu-neighborhood/> (Accessed on 26/09/2024)

<sup>4</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>

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justice, equality and non-discrimination; 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>5</sup>. Human rights are a necessary foundation for a peaceful, prosperous and sustainable world<sup>6</sup>. Safeguarding human rights is therefore integral in the Sustainable Development agenda.

This paper examines the need to safeguard and protect human rights at all levels. The paper argues that upholding human rights is fundamental for peace, development, and prosperity. It conceptualizes the idea of human rights and explores its fundamental elements. In addition, the paper examines the progress made towards protecting human rights at the global, regional, and national levels. It also discusses some of the key challenges facing the realization of human rights. Further, the paper proposes interventions towards protecting human rights for peace and prosperity for all.

### **2.0 Human Rights: Definition and Principles**

Human rights are a set of principles that are concerned with equality and fairness<sup>7</sup>. They recognise our freedom to make choices about our lives and to develop our potential as human beings<sup>8</sup>. Human rights can also be described as standards that recognize and protect the dignity of all human beings<sup>9</sup>. Human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any

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<sup>5</sup> Ibid

<sup>6</sup> United Nations Development Programme., 'Human Rights for Sustainable Development' Available at <https://www.undp.org/rolhr/publications/human-rights-sustainable-development> (Accessed on 26/09/2024)

<sup>7</sup> Australian Human Rights Commission., 'An Introduction to Human Rights' Available at <https://humanrights.gov.au/our-work/education/introduction-human-rights> (Accessed on 27/09/2024)

<sup>8</sup> Ibid

<sup>9</sup> UNICEF., 'What are Human Rights?' Available at <https://www.unicef.org/child-rightsconvention/what-are-human-rights> (Accessed on 27/09/2024)

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other status<sup>10</sup>. It has been noted that human rights are inherent to all human beings by virtue of existence and are not granted by any state<sup>11</sup>. Human rights range from the most fundamental including the right to life to those that make life worth living, such as the rights to food, shelter, education, work, health, and liberty<sup>12</sup>.

Human rights permeate virtually all aspects of life. They include *civil and political rights*<sup>13</sup>. These entail a person's rights to take part in the civil and political life of their community and state without discrimination or oppression<sup>14</sup>. This classification covers rights and freedoms such as the right to vote, the right to privacy, freedom of speech and expression, and freedom from torture, slavery, inhumane and degrading treatment<sup>15</sup>. Human rights also include *economic, social, and cultural rights*<sup>16</sup>. This category entails a person's rights to prosper and grow and to take part in social and cultural activities in their communities and states<sup>17</sup>. These rights include the rights to adequate food, to water and sanitation, to adequate housing, to education, to health, to social security, to take part in cultural life, and the rights to work<sup>18</sup>. In addition, human rights also

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<sup>10</sup> United Nations., 'Human Rights' Available at <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>. (Accessed on 27/09/2024)

<sup>11</sup> Office of the United Nations High Commissioner for Human Rights., 'What are Human Rights' Available at <https://www.ohchr.org/en/what-are-human-rights> (Accessed on 27/09/2024)

<sup>12</sup> Ibid

<sup>13</sup> Australian Human Rights Commission., 'An Introduction to Human Rights' Op Cit

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Available at <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Economic%20social%20and%20cultural%20rights,and%20sanitation%2C%20and%20to%20work>. (Accessed on 27/09/2024)

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include *group or collective rights*<sup>19</sup>. A group right is a right held by a group as a collective unit rather than by its members individually<sup>20</sup>. Group rights arise out of the acknowledgement that some groups have been historically disadvantaged and marginalized and consequently need greater protection of their rights and freedoms<sup>21</sup>. They include the right of indigenous communities to ancestral lands<sup>22</sup>.

The idea of human rights is anchored by several key principles. The principle of *universality and inalienability* means that every person is equally entitled to human rights and that such rights cannot be taken away except in specific and defined situations in accordance with due process<sup>23</sup>. The principle of *indivisibility and interdependence* means that all categories of human rights are mutually reinforcing and one set of rights cannot be fully enjoyed without the other. In addition, the principle of *equality and non-discrimination* cuts across all human rights and states that all human beings are equally entitled to human rights and that no person should suffer discrimination on the basis of factors such race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status in realizing their rights<sup>24</sup>. Further, the principle of *participation and inclusion* means that all human beings have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being

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<sup>19</sup> Group Rights., Available at <https://plato.stanford.edu/entries/rights-group/> (Accessed on 27/09/2024)

<sup>20</sup> Ibid

<sup>21</sup> Australian Human Rights Commission., 'An Introduction to Human Rights' Op Cit

<sup>22</sup> Ibid

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights., 'What are Human Rights' Op Cit

<sup>24</sup> United Nations Population Fund., 'Human Rights Principles' Available at <https://www.unfpa.org/resources/human-rights-principles#:~:text=Human%20rights%20are%20universal%20and,religious%2C%20cultural%20or%20ethnic%20background.> (Accessed on 27/09/2024)

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towards realizing their rights and freedoms<sup>25</sup>(Empasis added). It envisages the participation of every person including communities, civil society, the private sector, minorities, women, young people, and indigenous peoples towards realizing human rights at all levels<sup>26</sup>.

States have a primary duty to respect, protect, and fulfil human rights<sup>27</sup>. It has been noted that states have a primary obligation to respect and protect the human rights of all persons on their territory or under their jurisdiction, without discrimination<sup>28</sup>. Therefore, the responsibility for protecting individuals' human rights lies in the positive (vertical) obligations of the state<sup>29</sup>. However, there is an increasing recognition that non-state actors are in a position to greatly affect individuals' enjoyment of their human rights<sup>30</sup>. For example, non-state entities carrying out public functions, having control over an area of territory or being in a position to direct states in the adoption and implementation of certain domestic laws and policies can greatly influence the enjoyment of human rights and freedoms<sup>31</sup>. In addition, some individuals may also be in a position of relative power over (for example) other family members, employees, or members of a different social class, placing them in a position to more easily affect another individual's rights<sup>32</sup>. As a result, the idea of horizontal application of

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<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> International Organization for Migration., 'State Sovereignty and Human Rights' Available at <https://emm.iom.int/handbooks/human-rights-migrants-overview/state-sovereignty-and-human-rights#:~:text=Concerning%20human%20rights%2C%20States%20have,migrants%2C%20regardless%20of%20their%20status>. (Accessed on 27/09/2024)

<sup>28</sup> Ibid

<sup>29</sup> Lane. L., 'A Comparative Analysis of the General Comments and Jurisprudence of Selected United Nations Human Rights Treaty Monitoring Bodies' *European Journal of Comparative Law and Governance*., Available at <https://brill.com/view/journals/ejcl/ejcl-overview.xml> (Accessed on 27/09/2024)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

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human rights has emerged<sup>33</sup>. This concept therefore governs the application of human rights in the private sphere<sup>34</sup>. It has been described as an important safeguard in the protection of human rights especially socio-economic rights since most these rights are violated by private entities<sup>35</sup>.

The need to protect human rights has been set out in various legal instruments at the global, regional, and national levels. At the global level, the *Charter of the United Nations*<sup>36</sup> urges the international community to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion<sup>37</sup>. It also urges all states to embrace international cooperation in the economic, social, cultural, educational, and health fields in order to enhance realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion<sup>38</sup>. The *Universal Declaration of Human Rights (UDHR)*<sup>39</sup> is a key instrument in safeguarding human rights. The UDHR represents the universal recognition that human rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every person is born free and equal in dignity and rights<sup>40</sup>. The UDHR stipulates fundamental human rights and freedoms to be universally protected and common standards for achievement of

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<sup>33</sup> Ibid

<sup>34</sup> The East African Centre for Human Rights., 'A compendium on economic and social rights cases under the Constitution of Kenya, 2010' available at [https://eachrights.or.ke/wp-content/uploads/2020/07/A\\_Compendium\\_On\\_Economic\\_And\\_Social\\_Rights\\_Cases\\_Under\\_The\\_Constitution\\_Of\\_Kenya\\_2010.pdf](https://eachrights.or.ke/wp-content/uploads/2020/07/A_Compendium_On_Economic_And_Social_Rights_Cases_Under_The_Constitution_Of_Kenya_2010.pdf) (Accessed on 27/09/2024)

<sup>35</sup> Ibid

<sup>36</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>37</sup> Ibid, article 1 (3)

<sup>38</sup> Ibid, article 13 (1) (b)

<sup>39</sup> United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

<sup>40</sup> Ibid



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these rights for all people in every nation<sup>41</sup>. It notes that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world<sup>42</sup>.

Since its adoption, the UDHR has inspired a rich body of legally binding international and regional human rights treaties. These include the *International Covenant on Civil and Political Rights (ICCPR)*<sup>43</sup> which was adopted in order to foster the realization of civil and political rights all over the world and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>44</sup> was adopted in order to enhance the protection and fulfillment of economic, social and cultural rights. It has been noted that the UDHR together with the ICCPR and the ICESCR alongside their protocols form the International Bill of Human Rights<sup>45</sup>.

At a regional level, the *African Charter on Human and Peoples' Rights*<sup>46</sup> was adopted towards promoting and protecting human rights and fundamental freedoms for the people of Africa. The Charter is designed to reflect the history, values, traditions, and development of Africa<sup>47</sup>. The Charter combines African values with international norms by not only promoting internationally recognized individual rights, but also by proclaiming collective rights and individual duties in the African context<sup>48</sup>. The Charter urges African countries to recognize human rights and freedoms and adopt legislative among other measures

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<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> United Nations General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966

<sup>44</sup> United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966

<sup>45</sup> United Nations., 'Human Rights' Op Cit

<sup>46</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("*Banjul Charter*"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981

<sup>47</sup> Ibid

<sup>48</sup> Ibid

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towards actualizing them<sup>49</sup>. It further sets out that every citizen in Africa is entitled to the enjoyment of human rights and freedoms without distinction of any kind including race, sex, language, religion, ethnic group, national and social origin, political or any other opinion, birth or any other status<sup>50</sup>. Implementing the African Charter on Human and People's Rights is therefore vital towards safeguarding human rights for all the people of Africa for peace and prosperity.

Protecting human rights is also a fundamental ideal in Kenya. The *Constitution of Kenya*<sup>51</sup> recognizes the aspirations of all Kenyans for a government based on the essential values of *human rights*, equality, freedom, democracy, social justice and the rule of law<sup>52</sup>. Chapter four of the Constitution contains the Bill of Rights which stipulates fundamental rights and freedoms which all Kenyans are entitled to. The Constitution further stipulates that the Bill of Rights applies to all and binds all state organs and all persons<sup>53</sup>. It is imperative to give effect to the Bill of Rights in Kenya towards human rights and prosperity for all.

However, despite measures being put in place to recognize human rights at global, regional, and national levels, it has been noted that human rights violations are still prevalent throughout the world<sup>54</sup>. Human rights violations can either be intentionally perpetrated by states or come as a result of the state failing to prevent the violation<sup>55</sup>. For example, civil and political rights are often violated through genocide,

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<sup>49</sup> Ibid, article 1

<sup>50</sup> Ibid, article 2

<sup>51</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>52</sup> Ibid, Preamble

<sup>53</sup> Ibid, article 20 (1)

<sup>54</sup> United Nations., 'The Foundation of International Human Rights Law' Available at <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> (Accessed on 27/09/2024)

<sup>55</sup> What are Human Rights Violations? Available at <https://www.humanrightscareers.com/issues/what-are-human-rights-violations/> (Accessed on 27/09/2024)

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torture, and arbitrary arrest<sup>56</sup>. These violations especially happen during times of war and conflicts. In addition, conflict can also trigger violations of the right to freedom of expression and the right of peaceful assembly<sup>57</sup>. Economic, cultural, and social rights are also often violated through mechanisms such as forcible eviction of people from their homes hindering the right to adequate housing, contamination of drinking water affecting the right to health and clean water and sanitation, failure to ensure a wage sufficient for a decent living affecting the right to work, denying citizens access to information and services related to their sexual and reproductive health undermining the right to health, and segregating children with disabilities from mainstream schools affecting the right to education<sup>58</sup>.

Further economic crises including global recessions push countries to the brink where governments are unable to provide adequate health, education, water and sanitation services, social protection, and other human rights to its citizens, which impacts women and girls and other vulnerable and marginalised communities the most<sup>59</sup>. In addition, it has been noted that most global, regional, and national economic and political systems do not adequately integrate human rights obligations and standards into budgetary and investment decisions therefore hindering effective realization of human rights<sup>60</sup>.

There is need to address these among other challenges towards human right and prosperity for all.

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<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Op Cit

<sup>59</sup> Office of the United Nations High Commissioner for Human Rights., 'Building Economies that Place People's Human Rights at the Center' Available at <https://www.ohchr.org/en/stories/2023/04/building-economies-place-peoples-human-rights-center> (Accessed n 27/09/2024)

<sup>60</sup> Ibid

### **3.0 Towards Human Rights and Prosperity for All**

Fostering human rights is an integral agenda towards peace and prosperity<sup>61</sup>. It has been opined that safeguarding human rights is vital towards achieving peace, security, and development by not only containing the immediate consequences of conflict but also by preventing the outbreak of violence by addressing the root causes of conflict<sup>62</sup>. Violation of human rights and lack of accountability and prosecution for such violations are often drivers of conflict and insecurity<sup>63</sup>. Upholding human rights is therefore vital in preventing destabilization of societies through conflicts and wars<sup>64</sup>. Human rights are therefore intrinsically linked to building and sustaining peace, security, and stability<sup>65</sup>. For example, in conflict situations, upholding human rights can facilitate ceasefire and peace agreement negotiations<sup>66</sup>. Further, it has been noted that once conflict breaks out, respect for international human rights and humanitarian law can diminish the damaging impact of conflict and foster trust between belligerents – whether state or non-State actors<sup>67</sup>. The UDHR, acknowledges that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world<sup>68</sup>.

It is therefore imperative to uphold human rights towards peace and prosperity. Peace is an essential element of development and prosperity.

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<sup>61</sup> International Peace Institute., 'Human Rights and Sustaining Peace' Op Cit

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Office of the United Nations High Commissioner for Human Rights., 'The Future of Human Rights and Peace and Security' Available at <https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/HR75-high-level-event-Peace-Security-Think-Piece.pdf> (Accessed on 28/09/2024)

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). Op Cit

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The 2030 Agenda for Sustainable Development recognizes that there can be no Sustainable Development without peace<sup>69</sup>. The United Nations notes that peace is an enabler of development, in as much as it is a key outcome of global development efforts<sup>70</sup>. Upholding human rights therefore creates a suitable environment for peace towards development and prosperity.

In addition, realising human rights especially socio-economic and cultural rights can enhance the right of all human beings to development towards prosperity<sup>71</sup>. Progress towards socio-economic rights including the right to food, the right to adequate housing, the right to education, the right to health, and the right to water and sanitation is vital for human well-being towards development and prosperity<sup>72</sup>. It has been noted that socio-economic rights provide protection for the dignity, freedom and well-being of all persons by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions among other social goods<sup>73</sup>. Actualizing socio-economic rights is key towards realizing the Sustainable Development agenda towards prosperity for all<sup>74</sup>. The 2030 Agenda for Sustainable Development and its Sustainable Development Goals is

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<sup>69</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>70</sup> United Nations., 'Peace for Prosperity and Sustainable Development' Available at <https://www.un.org/en/desa/peace-prosperity-and-sustainable-development> (Accessed on 28/09/2024)

<sup>71</sup> United Nations., 'Human Rights Enhancing Economy' Available at <https://libraryresources.unog.ch/c.php?g=714166&p=5167185> (Accessed on 28/09/2024)

<sup>72</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Op Cit

<sup>73</sup> Ahmed. D., Bulmer. E., 'Social and Economic Rights' Available at <https://www.idea.int/sites/default/files/publications/social-and-economic-rights-primer.pdf> (Accessed on 28/09/2024)

<sup>74</sup> Muigua. K., 'Actualising Socio-Economic Rights for Sustainable Development in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2019/02/Actualising-Socio-Economic-Rights-for-Sustainable-Development-in-Kenya-Kariuki-Muigua-9-February-2019.pdf> (Accessed on 28/09/2024)

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anchored in the advancement of socio-economic rights including food security, good health and well-being, quality education, and clean water and sanitation<sup>75</sup>. Actualizing socio-economic rights can therefore accelerate progress towards Sustainable Development and prosperity for all.

It is therefore necessary to foster human rights towards prosperity for all. This requires states to ensure that all citizens are protected from discrimination, torture, slavery, arbitrary detention, among other forms of oppression<sup>76</sup>. Additionally, it includes the promotion of the right to education, healthcare, work, and participation in cultural and political life<sup>77</sup>. Further, in order to fulfill economic, social, and cultural rights, states are encouraged to undertake measures towards progressive realisation of these rights<sup>78</sup>. It has been noted that regardless of the availability of resources, states have an immediate obligation to take appropriate steps to ensure continuous and sustained improvement in the enjoyment of social, economic, and cultural rights over time<sup>79</sup>. These measures include enhancing access to employment, empowering citizens through access to quality education, realizing the right to health including through Universal Health Coverage (UHC), and ensuring all citizens have access to clean water and sanitation services<sup>80</sup>. Further, while taking positive measures towards actualizing these rights, states

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<sup>75</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>76</sup> Upholding Human Rights: Safeguarding Dignity and Freedom of Speech., Available at <https://defyhatenow.org/upholding-human-rights-safeguarding-dignity-and-freedom-of-speech/#:~:text=The%20mandate%20of%20human%20rights%20encompasses%20the%20protection%20of%20individuals,in%20cultural%20and%20political%20life.>

(Accessed on 28/09/2024)

<sup>77</sup> Ibid

<sup>78</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Op Cit

<sup>79</sup> Ibid

<sup>80</sup> Muigua. K., 'Actualising Socio-Economic Rights for Sustainable Development in Kenya' Op Cit

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are also obligated to refrain from taking actions that could undermine the achievement of social, economic, and cultural rights such as forcibly evicting people from their homes therefore hindering the right to adequate housing<sup>81</sup>.

Courts are also key in safeguarding all categories of human rights. It has been noted that the judiciary has a fundamental role in developing our understanding of human rights, in affording remedies in cases of human rights violations, and in providing decisions which can lead to systematic legal, policy, and institutional change to prevent future violations<sup>82</sup>. Though legal systems and judicial practices vary across countries and regions, the role of the courts in enforcement of human rights is fundamental<sup>83</sup>. It is therefore imperative for courts to safeguard human rights and continue shaping the human rights discourse at national, regional, and global levels.

In addition to states, individuals also have a duty to play towards upholding human rights for prosperity<sup>84</sup>. It has been noted that citizens have a negative duty to avoid infringing upon the rights of others and a positive duty to form social movements that actively support and lobby for human rights<sup>85</sup>. Citizens have been urged to work closely with the state in actualising human rights including socio-economic rights by

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<sup>81</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> Office of the United Nations High Commissioner for Human Rights., 'Guide for the Judiciary on Applying a Human Rights-Based Approach to Health' Available at <https://www.ohchr.org/sites/default/files/JudiciaryGuide.pdf> (Accessed on 28/09/2024)

<sup>84</sup> Responsibility for Human Rights., Available at <https://books.openedition.org/obp/3068?lang=en> (Accessed on 28/09/2024)

<sup>85</sup> Ibid

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cultivating their skills through education and training towards improving the quality of their lives<sup>86</sup>.

### **4.0 Conclusion**

Protecting human rights is a core ideal towards peace and prosperity<sup>87</sup>. Human rights are intrinsically linked to building and sustaining peace, security, and stability<sup>88</sup>. In addition, actualising socio-economic and cultural rights can enhance the right of all human beings to development towards prosperity<sup>89</sup>. Despite the recognition of human rights at global, regional, and national levels, human rights violations are still prevalent undermining human well-being, development, and prosperity<sup>90</sup>. It is therefore imperative to accelerate progress towards human rights and prosperity for all. It is necessary for states to uphold, protect, and fulfill human rights through measures such as progressive realisation of social, economic, and cultural rights<sup>91</sup>. Courts also have a key role to play in developing our understanding on human rights and ensuring access to remedies in cases of human rights violations<sup>92</sup>. Citizens also have a duty to play towards achieving human rights<sup>93</sup>.

Protecting human rights is therefore a goal that requires involvement of all stakeholders including states, courts, and citizens. It is imperative for

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<sup>86</sup> Muigua. K., 'Actualising Socio-Economic Rights for Sustainable Development in Kenya' Op Cit

<sup>87</sup> International Peace Institute., 'Human Rights and Sustaining Peace' Op Cit

<sup>88</sup> Office of the United Nations High Commissioner for Human Rights., 'The Future of Human Rights and Peace and Security' Op Cit

<sup>89</sup> United Nations., 'Human Rights Enhancing Economy' Op Cit

<sup>90</sup> United Nations., 'The Foundation of International Human Rights Law' Op Cit

<sup>91</sup> Muigua. K., 'Actualising Socio-Economic Rights for Sustainable Development in Kenya' Op Cit

<sup>92</sup> Office of the United Nations High Commissioner for Human Rights., 'Economic, Social, and Cultural Rights' Op Cit

<sup>93</sup> Muigua. K., 'Actualising Socio-Economic Rights for Sustainable Development in Kenya' Op Cit



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all stakeholders to play their role towards human rights and prosperity for all.

## **Eliminating Racism for Peace, Harmony, And Prosperity**

### **Abstract**

*Racism and other forms of intolerance including anti-Semitism and xenophobia continue to plague all countries. These problems not only persist, but they are also continually assuming new forms perpetuating injustices and inequalities. Racism is a major threat to global peace, harmony, and prosperity. Combating racism is therefore a universal ideal towards peace, harmony, and prosperity. Eliminating racism is also fundamental as a matter of respect for human rights. This paper critically discusses the need to eliminate racism in all countries. It argues that racism and other forms of intolerance are a major threat to global peace, harmony, and prosperity. The paper defines racism and examines its causes and effects. The paper further explores the progress made towards eliminating racism and challenges thereof. In addition, the paper suggests ideas towards eliminating racism for peace, harmony, and prosperity.*

### **1.0 Introduction**

Racism is a serious problem that continues to plague humanity. Millions of people all over the world face racism, racial discrimination, anti-Semitism, xenophobia and other related forms of intolerance<sup>1</sup>. The United Nations notes that racism, xenophobia, and intolerance are problems prevalent in all societies<sup>2</sup>. Further, these problems not only persist, but they are also continually assuming new forms perpetuating injustices and inequalities<sup>3</sup>.

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<sup>1</sup> United Nations Development Programme., 'End Racism: Build Peace' Available at <https://www.undp.org/ghana/blog/end-racism-build-peace> (Accessed on 13/08/2024)

<sup>2</sup> United Nations., 'Fight Racism' Available at <https://www.un.org/en/fight-racism> (Accessed on 13/08/2024)

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights., 'Special Rapporteur on Contemporary Forms of Racism' Available at <https://www.ohchr.org/en/special-procedures/sr-racism> (Accessed on 13/08/2024)

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Racism is a major threat to global peace, harmony, and prosperity<sup>4</sup>. Eliminating racism is therefore a universal ideal. It has been pointed out that no country can claim to be free of racism, racism is a global concern, and tackling it requires a universal effort<sup>5</sup>. Combating racism is fundamental as a matter of respect for human rights<sup>6</sup>. It is also key in fostering peace, harmony, and prosperity<sup>7</sup>.

This paper critically discusses the need to eliminate racism in all countries. It argues that racism and other forms of intolerance are a major threat to global peace, harmony, and prosperity. The paper defines racism and examines its causes and effects. The paper further explores the progress made towards eliminating racism and challenges thereof. In addition, the paper suggests ideas towards eliminating racism for peace, harmony, and prosperity.

### **2.0 Racism: Definition, Causes, and Effects**

According to the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>8</sup>, racism refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Racism has also been described as the process by which systems and policies, actions and attitudes create inequitable opportunities and outcomes for people based on

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<sup>4</sup> United Nations., 'Fight Racism' Op Cit

<sup>5</sup> Ibid

<sup>6</sup> European External Action Services., 'Elimination of Racism: A Global and Common Fight' Available at [https://www.eeas.europa.eu/eeas/elimination-racism-global-and-common-fight\\_en](https://www.eeas.europa.eu/eeas/elimination-racism-global-and-common-fight_en) (Accessed on 13/08/2024)

<sup>7</sup> Ibid

<sup>8</sup> United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.

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race<sup>9</sup>. It can also be understood as the oppression and marginalisation of individuals based on the colour of their skin, ethnicity, nationality, and citizenship<sup>10</sup>. It is a form of prejudice, hatred, or discrimination against a person because of their skin colour and/or ethnicity and it largely affects individuals from Black, Asian and Minority ethnic backgrounds as well as individuals from mixed-heritage backgrounds<sup>11</sup>.

It has been noted that racism is more than just prejudice in thought or action<sup>12</sup>. Racism occurs when this prejudice – whether individual or institutional – is accompanied by the power to discriminate against, oppress or limit the rights of others<sup>13</sup>. It has been noted that racism can be overt (for example through racial slurs) and/or covert in the form of microaggressions or subtle acts of exclusion and systematic racism<sup>14</sup>. The *Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*<sup>15</sup> recognizes that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status. In addition, the *Declaration on Race and Racial Prejudice*<sup>16</sup>, adopted and

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<sup>9</sup> Australian Human Rights Commission., ‘What is Racism?’ Available at <https://humanrights.gov.au/our-work/race-discrimination/what-racism> (Accessed on 13/08/2024)

<sup>10</sup> What is Racism?., Available at <https://reportandsupport.ed.ac.uk/pages/what-is-racism> (Accessed on 13/08/2024)

<sup>11</sup> Ibid

<sup>12</sup> Australian Human Rights Commission., ‘What is Racism?’ Op Cit

<sup>13</sup> Ibid

<sup>14</sup> What is Racism?., Op Cit

<sup>15</sup> World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration., Available at [https://www.un.org/en/durbanreview2009/pdf/DDPA\\_full\\_text.pdf](https://www.un.org/en/durbanreview2009/pdf/DDPA_full_text.pdf) (Accessed on 13/08/2024)

<sup>16</sup> Declaration on Race and Racial Prejudice., Available at <https://www.un.org/en/genocideprevention/documents/atrocity->

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proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twentieth session, on 27 November 1978, notes that racism includes racist ideologies, prejudices, attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable<sup>17</sup>. It further notes that racism is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts<sup>18</sup>.

It has been noted that racism is historically linked with inequalities in power and is reinforced by economic and social differences between individuals and groups<sup>19</sup>. Slavery and the slave trade including the transatlantic slave trade is major source and manifestation of racism, racial discrimination, xenophobia and related intolerance whereby Africans and people of African descent, Asians and people of Asian descent and Indigenous Peoples were victims of slavery and continue to be victims of its consequences<sup>20</sup>. The impact of slavery and the transatlantic slave trade was so profound and deep-seated and sustained over several generations<sup>21</sup>. According to the United Nations, the transatlantic slave trade shaped race relations and the development of racism as a philosophy for social organization, where most societies where it has touched are now structured in such a way that people of African descent are considered the most marginalised people, and the

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[crimes/Doc.11\\_declaration%20on%20race%20and%20racial%20prejudice.pdf](#)

(Accessed on 13/08/2024)

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration., Op Cit

<sup>21</sup> United Nations., 'Unravelling the Legacies of Slavery' Available at <https://news.un.org/en/story/2024/04/1148166> (Accessed on 13/08/2024)

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descendants of the enslaved people still continue to suffer racism especially in North and South America and the Caribbean Islands <sup>22</sup>.

Further, colonialism has led to racism, racial discrimination, xenophobia and related intolerance especially against Africans, people of African descent, people of Asian descent and Indigenous Peoples<sup>23</sup>. It has been noted that there is an intrinsic link between colonialism and contemporary forms of racism, racial discrimination, xenophobia and intolerance faced by people of African descent and Indigenous Peoples<sup>24</sup>. One of the legacies of colonialism is a world where race and ethnicity determine, for many people, whether or not they enjoy fundamental human rights<sup>25</sup>. Further, it has been noted that colonialism had severe impacts on Indigenous Peoples resulting in systemic racism, poverty, economic inequity, violence, overincarceration, poor health, dispossession of traditional lands and territories, criminalization of indigenous human rights defenders, loss of language and culture, and violence and discrimination against women and girls<sup>26</sup>.

Racism has been described as a serious threat to human security<sup>27</sup>. Persistent stereotyping, prejudice expressed in discriminatory actions by a majority group towards minority groups as a result of racism can degenerate into mutual distrust a situation that could spiral into conflicts<sup>28</sup>. Racism also affects the well-being of individuals. For example, it can result in denial of employment opportunities as well as

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<sup>22</sup> Ibid

<sup>23</sup> World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration., Op Cit

<sup>24</sup> Office of the United Nations High Commissioner for Human Rights., 'Racism, Discrimination are Legacies of Colonialism' Available at <https://www.ohchr.org/en/get-involved/stories/racismdiscrimination-are-legacies-colonialism> (Accessed on 13/08/2024)

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> United Nations Development Programme., 'End Racism: Build Peace' Op Cit

<sup>28</sup> Ibid

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limited access to essential services such as health care and education<sup>29</sup>. It has been noted that racial discrimination and the legacies of slavery and colonialism continue to persist today, destroying lives and curtailing opportunities, preventing billions of people from enjoying their full human rights and freedoms<sup>30</sup>.

It has been noted that racism and other forms of intolerance curtail efforts towards building just, inclusive, and peaceful societies<sup>31</sup>. Racism contributes to and worsens conflicts<sup>32</sup>. The marginalization, perceived injustice and exclusion which arises as a result of racism could be used by violent extremists' groups to recruit, radicalize, and perpetuate violence<sup>33</sup>. Racism further deepens social and economic inequalities, dismantling social security nets<sup>34</sup>. Eliminating racism is therefore crucial for peace, harmony, and prosperity.

### **3.0 Eliminating Racism for Peace, Harmony, and Prosperity: Progress and Setbacks**

It has been noted that lasting peace goes hand-in-hand with equality at all levels, built upon a universal recognition of and respect for the inherent dignity of every human being<sup>35</sup>. However, racism, related discrimination, injustice and violence curtail all efforts towards building just, inclusive and peaceful societies<sup>36</sup>. It has been noted that racism, racial discrimination, xenophobia, and related intolerance are often

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<sup>29</sup> Ibid

<sup>30</sup> United Nations., 'Humanity, not Racism' Available at <https://www.un.org/en/observances/end-racism-day> (Accessed on 13/08/2024)

<sup>31</sup> The Geneva Centre for Human Rights Advancement and Global Dialogue., 'Building Peace-Ending Racism' Available at [https://gchragd.org/wp-content/uploads/2022/10/Publication-21-Sept.-panel\\_.pdf](https://gchragd.org/wp-content/uploads/2022/10/Publication-21-Sept.-panel_.pdf) (Accessed on 13/08/2024)

<sup>32</sup> Ibid

<sup>33</sup> United Nations Development Programme., 'End Racism: Build Peace' Op Cit

<sup>34</sup> The Geneva Centre for Human Rights Advancement and Global Dialogue., 'Building Peace-Ending Racism' Op Cit

<sup>35</sup> Ibid

<sup>36</sup> Ibid

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among the root causes of internal and international conflicts, due to the marginalization, discrimination, and sometimes even dehumanization that they foster within societies and between populations groups<sup>37</sup>. Eliminating racism is therefore key in fostering peace, harmony, and prosperity.

The International Convention on the Elimination of all forms of Racial Discrimination commits all State parties to eliminate all forms of racial discrimination<sup>38</sup>. The Convention recognizes that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination<sup>39</sup>. It further acknowledges the impacts of racism on peace, harmony, and prosperity. According to the Convention, discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State<sup>40</sup>. The Convention urges all state parties to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination<sup>41</sup>. The Convention also urges state parties to take necessary social, economic, cultural and other special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human

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<sup>37</sup> Ibid

<sup>38</sup> United Nations General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.

<sup>39</sup> Ibid, Preamble

<sup>40</sup> Ibid

<sup>41</sup> Ibid



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rights and fundamental freedoms<sup>42</sup>. Further, the Convention requires all states to ensure that every person enjoys fundamental rights and freedoms without distinction as to race<sup>43</sup>. In addition, it requires state parties to assure everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate their human rights and fundamental freedoms<sup>44</sup>.

The International Convention on the Elimination of all forms of Racial Discrimination is therefore a key legal document geared towards combating racism. It is imperative to implement this Convention in order to eliminate racism for peace, harmony, and prosperity.

The *Durban Declaration and Programme of Action*<sup>45</sup> is the United Nation's blueprint to combat racism, racial discrimination, xenophobia and related intolerance globally. The Durban Declaration affirms the principles of equality and non-discrimination set out in the Universal Declaration of Human Rights and encourages respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>46</sup>. According to the Durban Declaration, all human beings are born free, equal in dignity and rights and have the potential to contribute constructively to the development and well-being of their societies<sup>47</sup>. It further states that any doctrine of racial superiority is scientifically false, morally condemnable, socially unjust and dangerous, and must thus be rejected along with

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<sup>42</sup> Ibid, article 2 (2)

<sup>43</sup> Ibid, article 5

<sup>44</sup> Ibid, article 6

<sup>45</sup> Durban Declaration and Programme of Action., Available at [https://www.ohchr.org/sites/default/files/Documents/Publications/Durban\\_text\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf) (Accessed on 13/08/2024)

<sup>46</sup> Ibid, Preamble

<sup>47</sup> Ibid

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theories which attempt to determine the existence of separate human races<sup>48</sup>. The Durban Declaration also notes that racism, racial discrimination, xenophobia and related intolerance may be aggravated by, inter alia, inequitable distribution of wealth, marginalization and social exclusion<sup>49</sup>. It therefore urges all countries to combat these inequalities in order to eliminate racism.

According to the Durban Declaration, people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights; it asserts that they should be treated with fairness and respect for their dignity and should not suffer discrimination of any kind<sup>50</sup>. In addition, it notes that in many parts of the world, Asians and people of Asian descent face barriers as a result of social biases and discrimination prevailing in public and private institutions and urges states to eliminate all forms of racism, racial discrimination, xenophobia and related intolerance faced by Asians and people of Asian descent<sup>51</sup>. According to the Durban Declaration, inequitable political, economic, cultural and social conditions can breed and foster racism, racial discrimination, xenophobia and related intolerance<sup>52</sup>. In order to eliminate racism, it urges all countries to ensure genuine equality of opportunity for all, in all spheres<sup>53</sup>. The Durban Declaration also urges states to implement the International Convention on the Elimination of All Forms of Racial Discrimination in order to promote equality and non-discrimination in the world<sup>54</sup>. Fundamentally, the Durban Declaration acknowledges that the provision of effective remedies, recourse, redress, and compensatory

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<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Durban Declaration and Programme of Action., Op Cit

<sup>54</sup> Ibid

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and other measures at the national, regional and international levels is key in addressing some of the historical injustices causes by racism<sup>55</sup>.

The Programme of Action sets out practical measures towards eliminating racism. These measures include participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of their countries; ensuring adequate investments in health-care systems, education, public health, electricity, drinking water and environmental control, as well as other affirmative or positive action initiatives, in communities of primarily African descent; embracing capacity-building programmes intended for Africans and people of African descent in the Americas and around the world; enhancing financial support for Africans and people of African descent; ensuring access to education and new technologies for Africans and people of African descent. The Programme of Action also recognizes and sets out measures towards eliminating racism and discrimination against Indigenous Peoples, migrants, ad refugees.

The Durban Declaration and Programme of Action is therefore key in enhancing global, regional, and national efforts towards eliminating racism. It sets out concrete actions towards eliminating racism including investments in health systems, education, housing, electricity, drinking water and environmental control measures and promoting equal opportunities in employment; ensuring access to education and to new technologies, in particular to women and children; and inclusion of the history and contribution of Africans and people of African descent in the education curriculum<sup>56</sup>. The Durban Declaration and Programme of Action has been described as a fundamental development in human

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<sup>55</sup> Ibid

<sup>56</sup> Ibid

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rights<sup>57</sup>. It offers a holistic vision on racism and other forms of intolerance and proposes practical measures, not just for member states, but for civil society towards eliminating these challenges<sup>58</sup>. Implementing the Durban Declaration and Programme of Action is thus vital towards eliminating racism for peace, harmony, and prosperity.

The Declaration on Race and Racial Prejudice adopted by UNESCO also sets out the need to eliminate racism<sup>59</sup>. It notes that states have a primary responsibility of eliminating racism and ensuring that human rights and fundamental freedoms are enjoyed by every person on an entirely equal footing and in dignity<sup>60</sup>. The Declaration encourages states to embrace legal, political, economic and social measures towards eliminating racism and ensuring equality in dignity and rights among individuals<sup>61</sup>.

Eliminating racism is thus a global ideal. It is fundamental as a matter of respect for human rights<sup>62</sup>. According to the *Universal Declaration of Human Rights*<sup>63</sup>, everyone is entitled to all rights and freedoms without distinction of any kind, such as *race*, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>64</sup>. Despite the global ideal of eliminating racism, this problem is still prevalent throughout the world. Millions of people continue to be the victims of varied forms of racism, racial

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<sup>57</sup> United Nations., 'Durban Declaration and Programme of Action' Available at <https://www.un.org/en/fight-racism/background/durban-declaration-and-programme-of-action> (Accessed on 13/08/2024)

<sup>58</sup> Ibid

<sup>59</sup> Declaration on Race and Racial Prejudice., Op Cit

<sup>60</sup> Ibid, article 6

<sup>61</sup> Ibid, article 7

<sup>62</sup> European External Action Services., 'Elimination of Racism: A Global and Common Fight' Op Cit

<sup>63</sup> United Nations General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948

<sup>64</sup> Ibid, article 2

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discrimination, anti-Semitism, xenophobia and related intolerance<sup>65</sup>. Racism is a problem which curtail efforts towards building just, inclusive, and peaceful societies<sup>66</sup>. It contributes to and worsens conflicts<sup>67</sup>. It is therefore imperative to eliminate racism for peace, harmony, and prosperity.

### **4.0 Conclusion**

Eliminating racism is necessary for peace, harmony, and prosperity. It has been correctly noted that peace is more than the absence of war; it also involves all human beings living together with our differences – of sex, *race*, language, religion or culture – while furthering universal respect for justice and human rights on which such coexistence depends<sup>68</sup>. Eliminating racism is therefore fundamental towards peace, harmony, and prosperity.

It is necessary for all countries to implement the legal, political, social, and economic measures set out in the *International Convention on the Elimination of all forms of Racial Discrimination*<sup>69</sup> and the *Durban Declaration and Programme of Action*<sup>70</sup> in order to combat racism. These measures include implementing non-discriminatory laws and policies at all levels; ensuring the participation of all people and communities in the political, social, and economic spheres on the basis of equality and non-discrimination; and ensuring adequate investments in services such as health-care systems, education, public health, electricity, drinking

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<sup>65</sup> Office of the United Nations High Commissioner for Human Rights., ‘Special Rapporteur on Contemporary Forms of Racism’ Op Cit

<sup>66</sup> The Geneva Centre for Human Rights Advancement and Global Dialogue., ‘Building Peace-Ending Racism’ Op Cit

<sup>67</sup> Ibid

<sup>68</sup>United Nations Educational, Scientific, and Cultural Organization., ‘Fight Against Racism & Discrimination’ Available at <https://www.unesco.org/en/no-racism-no-discrimination> (Accessed on 14/08/2024)

<sup>69</sup> International Convention on the Elimination of All Forms of Racial Discrimination, United Nations., Op Cit

<sup>70</sup> Durban Declaration and Programme of Action., Op Cit

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water and environmental control, as well as other affirmative or positive action initiatives, in communities that have endured racism including people of African descent<sup>71</sup>.

Economic empowerment is also a key tool towards eliminating racism especially for people of African descent<sup>72</sup>. Racism is a significant barrier that hinders the ability of people of African descent to access resources and opportunities that would empower them socially and economically<sup>73</sup>. According to the United Nations Human Rights Council, systemic racism and global economic structures and financial mechanisms affect the economic and financial empowerment of people of African descent<sup>74</sup>. It notes that the land, labour, intellectual property, innovation and reproductive rights of people of African descent have been consistently commodified as sites of exploitation since the transatlantic trade and trafficking in enslaved Africans<sup>75</sup>. Further, the United Nations Human Rights Council notes that historically, and today, people of African descent have been considered objects of economic leverage, rather than agents of economic innovation, and have thus been exploited<sup>76</sup>. It is therefore necessary to foster economic empowerment for people of African descent by ensuring equity and equality in economic access and opportunities<sup>77</sup>.

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<sup>71</sup> Ibid

<sup>72</sup> Office of the United Nations High Commissioner for Human Rights., 'Social Capital and the Economic Empowerment of People of African Descent' Available at <https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/session32/statements/sefa-awaworyi-churchill-wgepad.pdf> (Accessed on 14/08/2024)

<sup>73</sup> Ibid

<sup>74</sup> United Nations General Assembly., 'Economic Empowerment of People of African Descent: Report of the Working Group of Experts on People of African Descent' A/HRC/54/67., Available at <https://documents.un.org/doc/undoc/gen/g23/134/27/pdf/g2313427.pdf> (Accessed on 14/08/2024)

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid

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Reparatory justice is also vital in addressing the legacies of slavery and colonialism and their role in perpetuating racism and injustices<sup>78</sup>. It has been noted that reparatory justice is at the heart of both racial justice for people of African descent and global Sustainable Development<sup>79</sup>. From a human rights perspective, reparatory justice is key in rectifying and transforming systemic and structural injustices that were established by past injustices and crimes against humanity<sup>80</sup>. Reparations are meant to acknowledge and repair the causes and consequences of human rights violations and inequality in societies dealing with racial injustice and legacies of colonization<sup>81</sup>. It is therefore necessary to promote justice for people of African descent through reparations in order to address injustices and racism perpetuated by the legacies of slavery and colonialism<sup>82</sup>.

Finally, it is vital to embrace tolerance and respect for diversity at all levels<sup>83</sup>. Eliminating racism requires every person to promote a culture of tolerance, mutual understanding, and respect for diversity<sup>84</sup>. Further, teaching values of diversity at an early age is fundamental in preventing racial prejudices, discriminatory attitudes and behaviors that are learned<sup>85</sup>.

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<sup>78</sup> McEachrane. M., 'Reparatory Justice and Sustainable Development: A Way Forward?' Available at [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forum\\_s/forum-african-descent/sessions/session1/statements/2023-01-23/Michael-McEachrane-Reparatory-Justice.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forum_s/forum-african-descent/sessions/session1/statements/2023-01-23/Michael-McEachrane-Reparatory-Justice.pdf) (Accessed on 14/08/2024)

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> International Center for Transitional Justice., 'Reparations' Available at <https://www.ictj.org/reparations#:~:text=It%20is%20important%20to%20remember,%2C%20health%20care%2C%20or%20education> (Accessed on 14/08/2024)

<sup>82</sup> Muigua. K., 'Promoting Justice for People of African Descent through Reparations' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Promoting-Justice-for-People-of-African-Descent-through-Reparations.pdf> (Accessed on 14/08/2024)

<sup>83</sup> United Nations Development Programme., 'End Racism: Build Peace' Op Cit

<sup>84</sup> Ibid

<sup>85</sup> Ibid

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The fight against racism has been described as everyone's fight<sup>86</sup>. Every person has a part to play in building a world beyond racism<sup>87</sup>. It is therefore necessary for humanity to join hands and eliminate racism for peace, harmony, and prosperity.

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<sup>86</sup> United Nations., 'Humanity, not Racism' Op Cit

<sup>87</sup> Ibid



## **Integrating Environmental Governance in Africa for Sustainable Development**

### ***Abstract***

*Sustainable Development is a key priority for Africa. The continent has an ideal environment for development as a result of rapid population growth, urbanization, and increased consumer demands. The continent is also endowed with natural resources both renewable and non-renewables which can unlock development. However, Sustainable Development remains an elusive reality for Africa. The quest towards Sustainable Development in Africa is hindered by several factors including environmental challenges such as environmental degradation, unsustainable exploitation of Africa's natural resources, deforestation, climate change, loss of biodiversity, and pollution. Embracing sound environmental governance is therefore key for Sustainable Development in Africa. This paper critically explores the need to integrate environmental governance in Africa. The paper posits that integrating environmental governance in Africa is necessary for Sustainable Development. The paper conceptualizes the idea of environmental governance. In addition, it also examines the progress made towards strengthening environmental governance in Africa and challenges thereof. The paper further offers proposals towards integrating environmental governance in Africa for Sustainable Development.*

### **1.0 Introduction**

Sustainability has been embraced as a multifaceted global vision for development<sup>1</sup>. It has been pointed out that sustainability is a multidimensional model of development which limits economic growth and other human activities to the capacity of nature for self-regeneration, places the improvement of the human condition (including social and human development) as its primary goal, and places environmental conservation at the core of any economic, political,

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<sup>1</sup> Nieto. C. C., & Neotropica. F., 'Toward a Holistic Approach to the Ideal of Sustainability' *Phil & Tech*, 2:2 Winter 1997

legal, social, educational, scientific and cultural strategy<sup>2</sup>. Sustainability envisages the integration of environmental health, social equity and economic vitality in order to create thriving, healthy, diverse and resilient communities for present and future generations<sup>3</sup>. Achieving sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>4</sup>.

In order to achieve sustainability, it has become imperative for all countries to embrace Sustainable Development as the most viable development blueprint<sup>5</sup>. Sustainable Development offers a pathway to sustainability by fostering development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>6</sup>. It aims to achieve the ideal of sustainability by promoting environmental protection and conservation, economic development and social progress<sup>7</sup>. At the global level, Sustainable Development has been adopted as the vision towards sustainability as enshrined under the United Nation's *2030 Agenda for Sustainable Development*<sup>8</sup>. The Agenda envisions attainment of the ideal

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<sup>2</sup> Ibid

<sup>3</sup> What is Sustainability?., Available at <https://www.sustain.ucla.edu/what-is-sustainability/> (Accessed on 09/08/2024)

<sup>4</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 09/08/2024)

<sup>5</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) *Integrated Reporting*. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 09/08/2024)

<sup>6</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>7</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

<sup>8</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 09/08/2024)

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of sustainability through 17 Sustainable Development Goals (SDGs) which aims to achieve social, economic and environmental facets of sustainability<sup>9</sup>.

Sustainable Development is a key priority for Africa. Sustainability is crucial for Africa's long term prosperity and stability<sup>10</sup>. The continent's rapid population growth, urbanization, and increased consumer demands, presents a viable environment for socio-economic growth and development<sup>11</sup>. Further, Africa is rich in natural resources ranging from arable land, water, oil, natural gas, minerals, forests and wildlife, and renewable sources of energy including solar and wind energy<sup>12</sup>. If properly leveraged, these resources responsibly can accelerate development in the continent<sup>13</sup>.

Achieving Sustainable Development however remains an elusive reality for Africa. The continent faces numerous challenges including poor governance, conflicts, poverty, high burden of diseases, and too much emphasis on primary goods which hinder the quest towards Sustainable Development<sup>14</sup>. In addition, environmental challenges including environmental degradation, unsustainable exploitation of Africa's natural resources, deforestation, climate change, loss of biodiversity,

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<sup>9</sup> Ibid

<sup>10</sup> Sustainable Development: Balancing Profitability and Environmental Sustainability in Africa., Available at <https://www.tonyelumelufoundation.org/research-publications/sustainable-development-balancing-profitability-and-environmental-sustainability-in-africa> (Accessed on 09/08/2024)

<sup>11</sup> Ibid

<sup>12</sup> United Nations Environment Programme., 'Our work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa#:~:text=Africa%20is%20home%20to%20some,of%20its%20chromium%20and%20platinum.> (Accessed on 09/08/2024)

<sup>13</sup> Ibid

<sup>14</sup> International Environmental Law Research Centre., 'Challenges to Sustainability in Africa' Available at <https://www.ielrc.org/content/n1101.pdf> (Accessed on 09/08/2024)

and pollution are a major threat to Sustainable Development in Africa<sup>15</sup>. In order to effectively address these challenges and promote Sustainable Development, it has become necessary to integrate environmental governance in Africa<sup>16</sup>.

This paper critically explores the need to integrate environmental governance in Africa. The paper posits that integrating environmental governance in Africa is necessary for Sustainable Development. The paper conceptualizes the idea of environmental governance. In addition, it also examines the progress made towards strengthening environmental governance in Africa and challenges thereof. The paper further offers proposals towards integrating environmental governance in Africa for Sustainable Development.

## **2.0 Conceptualizing Environmental Governance**

Governance generally refers to the institutions, structures, and processes that determine who makes decisions, how and for whom decisions are made, whether, how and what actions are taken and by whom and to what effect<sup>17</sup>. Governance has also been defined as the exercise of political and administrative authority at all levels to manage a country's affairs<sup>18</sup>. It entails the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their

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<sup>15</sup> Nguyen. L., '5 Biggest Environmental Issues In Africa In 2023.' Available at <https://earth.org/environmental-issues-in-africa/> (Accessed on 09/08/2024)

<sup>16</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2024/01/Embracing-Sound-Environmental-Governance-in-Africa-1.pdf> (Accessed on 09/08/2024)

<sup>17</sup> Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Available at <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12600> (Accessed on 09/08/2024)

<sup>18</sup> United Nations., 'Governance and Development' Available at [https://www.un.org/millenniumgoals/pdf/Think%20Pieces/7\\_governance.pdf](https://www.un.org/millenniumgoals/pdf/Think%20Pieces/7_governance.pdf) (Accessed on 09/08/2024)

differences<sup>19</sup>. Governance has been identified as one of the most important factors for ensuring effective environmental management and conservation actions<sup>20</sup>.

Environmental governance has been described as the whole range of rules, practices and institutions related to management of the environment in its different forms including conservation, protection, and exploitation of natural resources<sup>21</sup>. It includes policy, rules and norms that govern human behavior and it also addresses who makes environmental decisions, how decisions are made and carried out, the scientific information needed for decision-making and how the public and major stakeholders can participate in the environmental decision-making process<sup>22</sup>. Environmental governance can also be understood as a process that links and harmonizes policies, institutions, procedures, tools and information related to the environment to allow all participants including the public and private sectors, Non-Governmental Organisations (NGOs), and local communities to protect the environment and natural resources, manage environmental and natural resource conflicts, seek points of consensus, make fundamental decisions, and be accountable for their actions related to the environment<sup>23</sup>. Environmental governance aims to manage individual behaviors or collective actions in pursuance of public environmental

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<sup>19</sup> Ibid

<sup>20</sup> Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

<sup>21</sup> Haque. M., 'Environmental Governance.' Available at [https://www.researchgate.net/publication/318166768\\_Environmental\\_Governance](https://www.researchgate.net/publication/318166768_Environmental_Governance) (Accessed on 09/08/2024)

<sup>22</sup> United Nations Environment Programme., 'Environmental Governance' Available at <https://www.unep.org/regions/west-asia/regional-initiatives/environmental-governance> (Accessed on 09/08/2024)

<sup>23</sup> Haque. M., 'Environmental Governance.' Available at [https://www.researchgate.net/publication/318166768\\_Environmental\\_Governance](https://www.researchgate.net/publication/318166768_Environmental_Governance) (Accessed on 09/08/2024)

goods and related societal outcomes<sup>24</sup>. It also seeks to ensure that rules, policies and processes related to the environment lead to environmentally and socially sustainable outcomes<sup>25</sup>.

The need for sound environmental governance is a key priority at the global, regional, and national levels. It has been observed that the global community faces environmental challenges such as biodiversity loss, pollution and climate change<sup>26</sup>. In addition, environmental governance systems are strained, with marginalized groups often excluded from environmental decision-making<sup>27</sup>. Further, it has been noted that environmental human rights defenders are facing restrictions on freedom of speech, association, and the freedom of information among other entitlements necessary to enhance their role in safeguarding the environment<sup>28</sup>. These shortcomings in the global, regional, national, and local systems of environmental governance are worsening the triple planetary crisis of biodiversity loss and environmental degradation, pollution, and climate change<sup>29</sup>. In light of these challenges, it is imperative to pursue sound environmental governance at all levels.

Sound environmental governance can be an engine for Sustainable Development as well as a platform for peace and justice<sup>30</sup>. It can also lead to a healthy and prosperous planet for both humanity and nature

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<sup>24</sup> Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

<sup>25</sup> Ibid

<sup>26</sup> United Nations Development Programme., 'Environmental Governance: Bolstering Inclusive and Effective Governance Systems that Champion Environmental Justice and Sustainability' Available at <https://www.undp.org/nature/our-work-areas/environmental-governance> (Accessed on 09/08/2024)

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Glenwood Publishers Limited, 2020

for the benefit of present and future generations<sup>31</sup>. Sound environmental governance maintains and improves the ability of environmental systems to function and to produce ecosystem services through the persistence of species, habitats or biodiversity<sup>32</sup>. Sound environmental governance is effective, equitable, responsive, and robust<sup>33</sup>. It is necessary to embrace sound environmental governance in Africa for Sustainable Development.

### **3.0 Environmental Governance in Africa: Opportunities and Challenges**

Environmental governance is a key priority for Africa. It has been pointed out that Africa has a lot to gain in pulling together and harnessing its vast natural resources to finance its development agenda towards greater prosperity; and it must also ensure that future growth and exploitation of natural resources is results-oriented, climate resilient and sustainable<sup>34</sup>. Africa is rich in natural resources ranging from arable land, water, oil, natural gas, minerals, forests and wildlife<sup>35</sup>. The continent holds a huge proportion of the world's natural resources including both renewables and non-renewables resources<sup>36</sup>. It is further estimated that over 70 per cent of people living in sub-Saharan Africa depend on forests and woodlands for their livelihoods<sup>37</sup>. Leveraging the continent's vast natural resources is key for sustainable growth and sound environmental conservation<sup>38</sup>.

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<sup>31</sup> United Nations Environment Programme., 'Environmental Governance' Op Cit

<sup>32</sup> Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

<sup>33</sup> Ibid

<sup>34</sup> United Nations Environment Programme., 'Our work in Africa' Op Cit

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Ibid

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The need for sound environmental governance in Africa is set out in African Union's *Agenda 2063*<sup>39</sup>. The Agenda seeks to foster environmentally sustainable and climate resilient economies and communities in Africa through sustainable management of the continent's natural resources, conservation of Africa's biodiversity and ecosystems, embracing sustainable consumption and production patterns in Africa, fostering water security in the continent, enhancing climate resilience in Africa, and embracing renewable energy<sup>40</sup>. It acknowledges that Africa's natural resources play a vital role for vast segments of Africa's population who depend on the continent's biodiversity, forests and land for their livelihoods directly or indirectly<sup>41</sup>. In addition, Agenda 2063 acknowledges that natural resources also make a direct contribution to economic development in Africa through tourism, agriculture, logging and other activities<sup>42</sup>. In order to achieve the ideal of sound environmental governance in Africa, Agenda 2063 urges countries to fully conserve and sustainably use Africa's biodiversity, including its forests, wild life, wetlands (lakes and rivers), genetic resources, aquatic life, and coastal and marine ecosystems, including trans-boundary natural resources<sup>43</sup>. Further, it requires the continent to put in place functioning institutions, regulations, systems and processes to govern the management and exploitation of its natural resources including transboundary resources<sup>44</sup>.

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<sup>39</sup> African Union., 'Agenda 2063: The Africa we Want' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 10/08/2024)

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ibid



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The *African Convention on the Conservation of Nature and Natural Resources*<sup>45</sup> also sets out the need for effective environmental governance in Africa. The Convention affirms that the conservation of the global environment is a common concern of human kind as a whole, and the conservation of the African environment is a primary concern of all Africans<sup>46</sup>. The Convention seeks to: enhance environmental protection; foster the conservation and sustainable use of natural resources; and harmonize and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes in Africa<sup>47</sup>. It also acknowledges the need to foster procedural rights in order to attain sound environmental governance in Africa. To this end, the Convention urges all states to ensure timely and appropriate dissemination of environmental information; access of the public to environmental information; participation of the public in decision-making with a potentially significant environmental impacts; and access to justice in matters related to protection of environment and natural resources<sup>48</sup>. It also urges African countries to embrace the role of local communities and indigenous knowledge in environmental governance<sup>49</sup>.

Embracing sound environmental governance is thus crucial for Africa. Sound environmental governance has been identified as a key driver for the achievement of the Sustainable Development agenda<sup>50</sup>. According to the United Nations Environment Programme (UNEP), the undivided

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<sup>45</sup> African Union., 'African Convention on the Conservation of Nature and Natural Resources' Available at [https://au.int/sites/default/files/treaties/41550-treaty-Charter\\_ConservationNature\\_NaturalResources.pdf](https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf) (Accessed on 10/08/2024)

<sup>46</sup> Ibid

<sup>47</sup> Ibid, article II

<sup>48</sup> Ibid, article XVI

<sup>49</sup> Ibid, article XVII

<sup>50</sup> United Nations Environment Programme., 'Environmental Rights and Governance Overview' Available at <https://www.unep.org/explore-topics/environmental-governance/about-environmental-governance/environmental-governance> (Accessed on 10/08/2024)

nature of the environment and its inextricable links with the social and economic dimensions of Sustainable Development relies on good decision making processes, effective institutions, policies, laws, standards and norms<sup>51</sup>.

However, the ideal of sound environmental governance in Africa is yet to be realized. It has been noted that the current state of environmental governance in Africa is influenced by a range of challenges, including limited resources, weak institutions, and the lack of political will to prioritize environmental conservation<sup>52</sup>. Further, it has been observed that environmental governance in Africa has not been as successful as in other regions such as Europe or North America due to lack of effective coordination<sup>53</sup>. The shortcomings in environmental governance in Africa are contributing to challenges such as poverty, climate change, loss of biodiversity, water scarcity, environmental degradation, inequitable distribution of natural resources, loss of arable land, food insecurity, and coastal degradation and wetlands intrusion<sup>54</sup>. In light of these challenges, it is imperative to integrate environmental governance in Africa for Sustainable Development.

#### **4.0 Conclusion**

Integrating environmental governance in Africa is key to achieving the Sustainable Development agenda. Integrating environmental governance involves promoting a sectoral and cross-sectoral balance between social development, sustained economic growth and the

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<sup>51</sup> Ibid

<sup>52</sup> Tsiotery. M., & Zafimahova. C., 'Environmental Governance in The Division of Roles International Institutions and Government Institutions in African Countries' *Journal of Management and Administration Provision*, Volume 2, No. 2 , (2022), pp 58-64

<sup>53</sup> Environmental Governance in Africa., Available at <https://www.connect4climate.org/learn/article/environmental-governance-in-africa> (Accessed on 10/08/2024)

<sup>54</sup> Ibid

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sustainable management of natural resources and ecosystems<sup>55</sup>. By integrating environmental governance, it is possible to foster a coordinated decision making on the environment and accelerate progress towards the Sustainable Development agenda<sup>56</sup>. Integrating environmental governance entails the use of environmental sustainability as an entry point to support the balanced integration of the social, economic and environmental dimensions of Sustainable Development<sup>57</sup>. It also involves engagement of all stakeholders including women, youth and Indigenous Peoples and local communities, including through their participation in environmental decision making<sup>58</sup>.

In order to integrate environmental governance in Africa, it is imperative to improve environmental governance systems<sup>59</sup>. It is vital for all countries to strengthen environmental rule of law by enhancing their legal, policy, and institutional frameworks on environmental governance<sup>60</sup>. It is also necessary to ensure implementation and enforcement of environmental laws and policies<sup>61</sup>. Further, it is imperative for governments to strengthen their capacities to integrate

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<sup>55</sup> United Nations Environment Programme., 'Integrated Approach to Environmental Sustainability in Development Planning' Available at <https://www.unep.org/regions/latin-america-and-caribbean/regional-initiatives/strengthening-environmental-governance-1> (Accessed on 10/08/2024)

<sup>56</sup> United Nations Environment Programme., 'Integrate Environmental Sustainability into the Sustainable Development Goals' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/supporting-2030-agenda/integrate> (Accessed on 10/08/2024)

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> South African Judiciary., 'State of Environment in Africa-Governance' Available at <https://www.judiciary.org.za/images/unep-colloquium/Robert-Wabunoha.pdf> (Accessed on 10/08/2024)

<sup>60</sup> Ibid

<sup>61</sup> Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability.' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-forSustainability-.pdf> (Accessed on 10/08/2024)

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environmental sustainability in sectoral and cross-sectoral planning processes<sup>62</sup>. This is vital in achieving a balance between social development, sustained economic growth and the sustainable management of natural resources and ecosystems in Africa towards Sustainable Development<sup>63</sup>.

In addition, it is imperative to ensure that environmental governance in Africa adheres to the values and principles of good governance including transparency, accountability, public participation in decision-making, and access to information<sup>64</sup>. These values are pertinent in implementing and enforcing substantive environmental law since they ensure that citizens are aware and involved in decision-making processes and have the ability to effectively advocate for stronger environmental protection<sup>65</sup>. African countries should therefore embrace the involvement of all stakeholders including women, youth and Indigenous Peoples and local communities, including through their participation in environmental decision making and access to information in environmental matters in order to achieve sound environmental governance<sup>66</sup>.

Access to justice is also an essential element of safeguarding environmental rule of law, protecting the environment, fostering Sustainable Development, human health and well-being<sup>67</sup>. Access to

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<sup>62</sup> United Nations Environment Programme., 'Integrated Approach to Environmental Sustainability in Development Planning' Op Cit

<sup>63</sup> Ibid

<sup>64</sup> Feris. L., 'The Role of Good Environmental Governance in the Sustainable Development of South Africa' Available at [https://www.researchgate.net/publication/317798291\\_The\\_Role\\_of\\_Good\\_Environmental\\_Governance\\_in\\_the\\_Sustainable\\_Development\\_of\\_South\\_Africa](https://www.researchgate.net/publication/317798291_The_Role_of_Good_Environmental_Governance_in_the_Sustainable_Development_of_South_Africa) (Accessed on 10/08/2024)

<sup>65</sup> Ibid

<sup>66</sup> United Nations Environment Programme., 'Integrate Environmental Sustainability into the Sustainable Development Goals' Op Cit

<sup>67</sup> United Nations Economic Commission for Europe., 'Enhancing Access to Justice to Tackle Climate Change and Pollution and Protect Biodiversity' Available at

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justice has become a key pillar in ensuring sound environmental governance with members of the public increasingly seeking access to justice to reduce exposure to pollution, ensure climate action, and address environmental impacts of economic activities<sup>68</sup>. The *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*<sup>69</sup> urges all countries to ensure effective access to justice in environmental matters. Effective access to judicial and administrative remedies is therefore a key pillar towards integrating environmental governance in Africa<sup>70</sup>. It is therefore necessary to enhance access to justice in environmental matters in order to integrate environmental governance in Africa.

Integrating environmental governance in Africa for Sustainable Development is a goal that needs to be pursued by all countries in the continent for posterity.

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<https://unece.org/climate-change/news/enhancing-access-justice-tackle-climate-change-and-pollution-and-protect> (Accessed on 10/08/2024)

<sup>68</sup> Ibid

<sup>69</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Available at <https://unece.org/DAM/env/pp/documents/cep43e.pdf> (Accessed on 10/08/2024)

<sup>70</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Op Cit

## **Fulfilling The Rights of All Indigenous Peoples for Posterity**

### **Abstract**

*Indigenous Peoples play a key role in the Sustainable Development agenda. Their indigenous practices, traditional knowledge and ways of life are fundamental for sound environmental governance and combating climate change. Despite the key role they play in the Sustainable Development agenda, Indigenous Peoples have for many years experienced inequality and exclusion threatening their cultural survival and vital knowledge systems. It has therefore become necessary to fulfill the rights of all Indigenous Peoples for Sustainable Development. This paper critically discusses the need to fulfill the rights of all Indigenous Peoples. The paper asserts that fulfilling the rights of all Indigenous Peoples is key in fostering Sustainable Development. The paper critically examines the role of Indigenous Peoples in the Sustainable Development agenda. It further explores the progress made towards fulfilling the rights of Indigenous Peoples while also highlighting some of the human rights violations being experienced by Indigenous Peoples. The paper also proposes measures towards fulfilling the rights of all Indigenous Peoples for posterity.*

### **1.0 Introduction**

Indigenous Peoples have been identified as distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced<sup>1</sup>. Indigenous Peoples have also been defined as people who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories<sup>2</sup>. In addition, Indigenous Peoples have also been

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<sup>1</sup> World Bank Group., 'Indigenous Peoples' Available at <https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=Indigenous%20Peoples%20are%20distinct%20social,which%20they%20have%20been%20displaced> (Accessed on 11/08/2024)

<sup>2</sup> The Rights of Indigenous Peoples., Available at <http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html> (Accessed on 11/08/2024)

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described as those having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, and consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them<sup>3</sup>. It has been noted that Indigenous Peoples currently form non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories and ethnic identity, as the basis of their continued existence in accordance with their own cultural patterns, social institutions and legal systems<sup>4</sup>.

According to the United Nations, the most appropriate approach is to identify, rather than define Indigenous Peoples<sup>5</sup>. This approach is based on the fundamental criterion of self-identification as underlined in a number of global and regional human rights instruments<sup>6</sup>. The United Nations sets out the criteria for identifying Indigenous Peoples based on certain factors including self-identification as Indigenous Peoples at the individual level and accepted by the community as their member; historical continuity with pre-colonial and/or pre-settler societies; distinct economic, social, or political systems; strong link to territories and surrounding natural resources; distinct language, culture and beliefs; and the resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities<sup>7</sup>. It has also been noted that the land and natural resources on which Indigenous Peoples depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being<sup>8</sup>. Indigenous Peoples also subscribe to their customary leaders and

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<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> United Nations., 'Who are Indigenous Peoples?' Available at [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) (Accessed on 11/08/2024)

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> World Bank Group., 'Indigenous Peoples' Op Cit

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organizations for governance with these institutions being distinct or separate from those of the mainstream society or culture<sup>9</sup>. Another key feature of Indigenous Peoples is that they still maintain a language distinct from the official language or languages of the country or region in which they reside<sup>10</sup>.

Indigenous Peoples play a key role in the Sustainable Development agenda<sup>11</sup>. They are at the heart of environmental conservation efforts throughout the world since conserving biodiversity relies on the knowledge, innovations and practices of those who live in direct contact with nature<sup>12</sup>. Indigenous Peoples have been identified as crucial agents of change, whose livelihood practices, traditional knowledge and ways of life are fundamental for sound environmental governance, combating climate change and realizing the ambitious vision of the United Nation's 2030 Agenda for Sustainable Development<sup>13</sup>.

Despite their key role in the Sustainable Development agenda, the rights of Indigenous Peoples are often violated<sup>14</sup>. Indigenous Peoples have for many years experienced inequality and exclusion threatening their cultural survival and vital knowledge systems<sup>15</sup>. In light of these challenges, it is imperative to fulfill the rights of all Indigenous Peoples for posterity.

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<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental\\_rule\\_of\\_law\\_progress.pdf?sequence=3](https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3) (Accessed on 11/08/2024)

<sup>12</sup> Ibid

<sup>13</sup> International Labour Organization., 'Sustainable Development Goals: Indigenous Peoples in Focus' Available at [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_emp/@ifp\\_skills/documents/publication/wcms\\_503715.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_503715.pdf) (Accessed on 11/08/2024)

<sup>14</sup> World Bank Group., 'Indigenous Peoples' Op Cit

<sup>15</sup> Ibid



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This paper critically discusses the need to fulfill the rights of all Indigenous Peoples. The paper asserts that fulfilling the rights of all Indigenous Peoples is key in fostering Sustainable Development. The paper critically examines the role of Indigenous Peoples in the Sustainable Development agenda. It further explores the progress made towards fulfilling the rights of Indigenous Peoples while also highlighting some of the human rights violations being experienced by Indigenous Peoples. The paper also proposes measures towards fulfilling the rights of all Indigenous Peoples for posterity.

### **2.0 The Role of Indigenous Peoples in Sustainable Development**

Indigenous Peoples are key in conserving biodiversity due to their indigenous knowledge, innovations and practices and being in direct contact with nature<sup>16</sup>. It has been pointed out that while indigenous peoples make up less than 5 per cent of the world's total population, they wield enormous influence over the well-being of the natural resources on which all humanity depends<sup>17</sup>. Indigenous Peoples apply traditional methods of land management and food production in areas such as farming, fishing, pastoralism, and forest conservation which have evolved over centuries and which have often proven their sustainability and resilience in the face of global environmental challenges<sup>18</sup>. It has been noted that Indigenous Peoples' knowledge systems and languages contribute directly to biological and cultural diversity, poverty eradication, conflict management, food security and ecosystem health, and serve as the foundation of the resilience of

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<sup>16</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

<sup>17</sup> International Institute for Sustainable Development., 'No Sustainable Development without Indigenous Peoples' Available at <https://sdg.iisd.org/commentary/guest-articles/no-sustainable-development-without-indigenous-peoples/> (Accessed on 11/08/2024)

<sup>18</sup> Ibid

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indigenous communities to the impact of climate change among other environmental challenges<sup>19</sup>.

Indigenous Peoples are custodians of indigenous knowledge including Traditional Ecological Knowledge (TEK) which is fundamental in fostering Sustainable Development<sup>20</sup>. Indigenous Peoples offer alternative knowledge and perspectives based on their own locally developed practices in relation to the use of natural resources<sup>21</sup>. Indigenous knowledge has been defined as the local knowledge that is unique to a culture or society<sup>22</sup>.

TEK has been defined as knowledge and practices passed from generation to generation informed by cultural memories, sensitivity to change, and values that include reciprocity<sup>23</sup>. It has been noted that TEK is inseparable from a culture's spiritual and social fabric, offering irreplaceable ecocultural knowledge that can be thousands of years old and incorporates values, such as kinship with nature and reciprocity which can help conserve biodiversity and restore ecosystems<sup>24</sup>. TEK has also been identified as the on-going accumulation of knowledge, practice and belief about relationships between humanity and nature in a specific ecosystem that is acquired by Indigenous Peoples over long periods of time through direct contact with the environment<sup>25</sup>. TEK is often handed down among generations and is utilized for sustaining

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<sup>19</sup> Ibid

<sup>20</sup> Muigua. K., 'Revisiting the Place of Indigenous Knowledge in the Sustainable Development Agenda' Available at <https://kmco.co.ke/wp-content/uploads/2020/09/Revisiting-the-Place-of-Indigenous-Knowledge-in-the-Sustainable-Development-Agenda-Kariuki-Muigua-September-2020.pdf> (Accessed on 11/08/2024)

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Traditional Ecological Knowledge Hub., 'What is TEK?' Available at <https://tek.forestry.oregonstate.edu/what-tek> (Accessed on 11/08/2024)

<sup>24</sup> Ibid

<sup>25</sup> Indigenous Knowledge and Traditional Ecological Knowledge., Available at <https://www.nps.gov/subjects/tek/description.htm> (Accessed on 11/08/2024)

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livelihoods and conserving the environment<sup>26</sup>. It includes the relationships between people, plants, animals, natural phenomena, landscapes, and timing of events for activities including farming, hunting and gathering, fishing, and forestry<sup>27</sup>.

Indigenous Peoples play a key role in fostering Sustainable Development through TEK among other indigenous knowledge systems and practices<sup>28</sup>. The United Nations Environment Programme (UNEP) recognizes the importance of Indigenous Peoples' participation as well as the valuable inputs that these holders of indigenous knowledge - gained through trans-generational experiences, observations, and transmission - can contribute to sustainable management and development of ecosystems<sup>29</sup>. For example, it has been pointed out that forests managed by Indigenous Peoples and local communities are at least as effective at maintaining forest cover as those under stricter and more formal protection regimes<sup>30</sup>. Further, in Africa, indigenous knowledge systems such as using animal dung as manure, sighting of the new moon before planting, rain-making rituals, and planting of trees to serve as shades have played a key role conserving the environment and enhancing the resilience of communities in the wake of environmental threats such as Climate Change and its impacts including drought and water scarcity<sup>31</sup>. Communities in Africa have for

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Muigua. K., 'Revisiting the Place of Indigenous Knowledge in the Sustainable Development Agenda' Op Cit

<sup>29</sup> United Nations Environment Programme., 'Indigenous peoples and their Communities' Available at <https://www.unep.org/civil-society-engagement/major-groups-modalities/major-group-categories/indigenous-peoples-and> (Accessed on 11/08/2024)

<sup>30</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

<sup>31</sup> Egeruoh-Adindu. I., 'Leveraging Indigenous Knowledge for Effective Environmental Governance in West Africa.' Available at [https://www.scirp.org/journal/paperinformation?paperid=121949#:~:text=Indigenous%20knowledge%](https://www.scirp.org/journal/paperinformation?paperid=121949#:~:text=Indigenous%20knowledge%20)

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many centuries utilized TEK to address environmental issues such as water scarcity, water pollution, land pollution, soil erosion, protection of forests, curbing overfishing, deforestation, and management of other natural resources<sup>32</sup>.

Indigenous Peoples therefore play a key role in the Sustainable Development agenda. For many centuries, Indigenous Peoples all over the globe have utilized traditional knowledge of their local environment not only to sustain themselves but also to maintain their cultural identity<sup>33</sup>. In addition, their awareness of traditional food sources and the fundamental connection between food systems and healthy landscapes can help to promote diets that are diverse and sustainable<sup>34</sup>. Indigenous knowledge can offer valuable responses to climate change, food insecurity, water scarcity, and health concerns among other key issues under the Sustainable Development Agenda<sup>35</sup>. Indigenous knowledge offers tremendous opportunities in areas such as land management, soil and water conservation, protecting forests and wetlands, and scientific, technological and medical research<sup>36</sup>. On this basis, it has been argued that there can be no Sustainable Development without Indigenous Peoples<sup>37</sup>.

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[20systems%20such%20as,effective%20in%20promoting%20environmental%20sustainability](#) (Accessed on 11/08/2024)

<sup>32</sup> Ibid

<sup>33</sup> Sinthumule. N., 'Traditional Ecological Knowledge and its Role in Biodiversity Conservation: A Systematic Review', *Frontiers in Environmental Science*, Volume 11 (2023)

<sup>34</sup> International Institute for Sustainable Development., 'No Sustainable Development without Indigenous Peoples' Op Cit

<sup>35</sup> United Nations., 'Traditional Knowledge - An Answer to the Most Pressing Global Problems?' Available at <https://www.un.org/development/desa/en/news/social/permanent-forum-on-indigenous-issues-2019.html> (Accessed on 11/08/2024)

<sup>36</sup> Ibid

<sup>37</sup> International Institute for Sustainable Development., 'No Sustainable Development without Indigenous Peoples' Op Cit

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The role of Indigenous Peoples in Sustainable Development is recognized under the *Rio Declaration on Environment and Development*<sup>38</sup>. The Declaration acknowledges that Indigenous Peoples and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices<sup>39</sup>. The Rio Declaration urges all countries to recognize and duly support the identity, culture and interests of Indigenous Peoples and enable their effective participation in the achievement of Sustainable Development<sup>40</sup>.

Indigenous Peoples are therefore crucial agents in the quest towards Sustainable Development. It is therefore important to fulfill the rights of all Indigenous Peoples for posterity.

### **3.0 Protecting the Rights of Indigenous Peoples: Challenges and Prospects**

Indigenous peoples all over the world continue to face a range of human rights abuses. It has been noted that implementation of the rights of Indigenous Peoples is an ideal that is far from being realized<sup>41</sup>. The most common human rights challenges for Indigenous Peoples stem from pressures on their lands, territories and resources as a result of activities associated with development and the extraction of natural resources<sup>42</sup>. Further, their cultures continue to be threatened, and the protection and promotion of their human rights is yet to be realized<sup>43</sup>.

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<sup>38</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)

<sup>39</sup> Ibid, principle 22

<sup>40</sup> Ibid

<sup>41</sup> The Office of the United Nations High Commissioner for Human Rights., 'Indigenous Peoples and the United Nations Human Rights System' Available at <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf> (Accessed on 12.08/2024)

<sup>42</sup> Ibid

<sup>43</sup> Ibid

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In addition, it has also been noted that Indigenous Peoples often have much in common with other neglected segments of societies<sup>44</sup>. For example, Indigenous Peoples often face challenges such as lack of political representation and participation, economic marginalization and poverty, lack of access to social services and discrimination<sup>45</sup>. Further, Indigenous Peoples continue to suffer from high levels of land insecurity, social dislocation and violence while defending their traditional lands<sup>46</sup>. It is also estimated that Indigenous Peoples make up 15 per cent of the world's poorest people<sup>47</sup>.

Indigenous Peoples all over the world share a common history of injustices<sup>48</sup>. Such injustices include murder, torture, and enslavement<sup>49</sup>. Indigenous Peoples have also been denied the right to participate in governing processes<sup>50</sup>. Further, historical injustices including conquest and colonization have attempted to steal the dignity and identity of Indigenous Peoples, as well as the fundamental right of self-determination<sup>51</sup>.

Another key human right challenge being experienced by Indigenous Peoples is lack of quality education<sup>52</sup>. It has been noted that in most countries, the approach towards education for Indigenous Peoples is not only inappropriate, but it also threatens their very existence<sup>53</sup>. For

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<sup>44</sup> United Nations., 'Who are Indigenous Peoples?' Op Cit

<sup>45</sup> Ibid

<sup>46</sup> International Institute for Sustainable Development., 'No Sustainable Development without Indigenous Peoples' Op Cit

<sup>47</sup> Ibid

<sup>48</sup> The Rights of Indigenous Peoples., Op Cit

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> World Economic Forum., 'Indigenous Peoples have a Right to Quality Education: But so far, we have failed them' Available at <https://www.weforum.org/agenda/2016/08/indigenous-people-have-a-right-to-quality-education-but-so-far-we-ve-failed-them/> (Accessed on 12/08/2024)

<sup>53</sup> Ibid

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example, education policies and systems have often been used as a means to systemically discriminate against Indigenous Peoples, assimilate them (and at times “civilize” them) into the broader society, therefore destroying their culture, languages, identity and rights, and displacing them of their lands, territories and natural resources<sup>54</sup>. It is therefore imperative to embrace the participation of Indigenous Peoples in education systems, policies and curricula in order to fulfill their rights<sup>55</sup>.

Indigenous Peoples all over the world are therefore experiencing several human right abuses. Indigenous Peoples often lack formal recognition over their lands, territories and natural resources; receive little public investments in basic services such as health, education, water and sanitation, and infrastructure; and face multiple barriers to participate fully in the formal economy, enjoy access to justice, and participate in political processes and decision making<sup>56</sup>. It has been noted that this legacy of inequality and exclusion has made Indigenous Peoples all over the world more vulnerable to the impacts of climate change and natural hazards<sup>57</sup>. In light of these challenges, it has become increasingly necessary to fulfill the rights of all indigenous peoples for posterity.

There has been progress towards recognizing the rights of all Indigenous Peoples through global and regional human rights instruments. At the global level, the *International Covenant on Civil and Political Rights (ICCPR)*<sup>58</sup>, recognizes the right of all peoples to self-determination. The ICCPR notes that by virtue of the right to self-determination, all peoples shall freely determine their political status

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> World Bank Group., ‘Indigenous Peoples’ Op Cit

<sup>57</sup> Ibid

<sup>58</sup> International Covenant on Civil and Political Rights., UNTS, Vol 999, p. 171, 16 December 1966,

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and freely pursue their economic, social and cultural development<sup>59</sup>. This right is also enshrined under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>60</sup> which also provides that all peoples have the right of self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development<sup>61</sup>. The right to self-determination is a fundamental right for all Indigenous Peoples<sup>62</sup>. Self-determination has been described as an ongoing process of ensuring that peoples are able to make decisions about matters that affect their lives<sup>63</sup>. It includes the right of all peoples to freely determine their political status, and economic, social and cultural development<sup>64</sup>. In addition, the outcomes of self-determining processes must correspond to the free and voluntary choice of the people concerned<sup>65</sup>. It is therefore necessary to implement the ICCPR and the ICESCR in order to fulfill the right of all Indigenous Peoples to self-determination.

*The United Nations Declaration on the Rights of Indigenous Peoples*<sup>66</sup> further recognizes the urgent need to respect and promote the inherent rights of Indigenous Peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and

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<sup>59</sup> Ibid, article 1

<sup>60</sup> International Covenant on Economic, Social and Cultural Rights., UNTS, Vol 993, p. 3, 16, December 1966,

<sup>61</sup> Ibid, article 1

<sup>62</sup> Australian Human Rights Commission., 'Self-Determination and Indigenous Peoples' Available at <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous> (Accessed on 12/08/2024)

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> The United Nations Declaration on the Rights of Indigenous Peoples., Available at [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) (Accessed on 12/08/2024)



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resources<sup>67</sup>. The Declaration also recognizes that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment and natural resources<sup>68</sup>. The Declaration stipulates that all Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law<sup>69</sup>. The Declaration also recognizes that Indigenous Peoples are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity<sup>70</sup>. It also stipulates the right of Indigenous Peoples to self-determination<sup>71</sup>. By virtue of the right to self-determination, Indigenous Peoples shall freely determine their political status and freely pursue their economic, social and cultural development<sup>72</sup>.

The United Nations Declaration on the Rights of Indigenous Peoples sets out a broad range of core human rights and freedoms that all Indigenous Peoples are entitled to. These include: the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions<sup>73</sup>; the right to a nationality<sup>74</sup>; the rights to life, physical and mental integrity, liberty and security of person<sup>75</sup>; the right not to be subjected to forced assimilation or destruction of their culture<sup>76</sup>; the right

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<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ibid, article 1

<sup>70</sup> Ibid, article 2

<sup>71</sup> Ibid, article 3

<sup>72</sup> Ibid

<sup>73</sup> Ibid, article 5

<sup>74</sup> Ibid, article 6

<sup>75</sup> Ibid, article 7

<sup>76</sup> Ibid, article 8

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not be forcibly removed from their lands or territories<sup>77</sup>; the right of all Indigenous Peoples to practise and revitalize their cultural traditions and customs<sup>78</sup>; the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures<sup>79</sup>; the right of Indigenous Peoples to establish and control their educational systems and institutions<sup>80</sup>; and the right to participate in decision making processes<sup>81</sup>.

The United Nations Declaration on the Rights of Indigenous Peoples therefore provides a global framework for advancing the rights of all Indigenous Peoples. It captures fundamental rights and freedoms of Indigenous Peoples and provides crucial guidance towards fulfilling these rights and freedoms. It is imperative to implement this Declaration in order to fulfill the rights of all Indigenous Peoples.

Fulfilling the rights of Indigenous Peoples is also a key priority in Africa. The continent has a large population of Indigenous Peoples mostly nomadic and semi-nomadic pastoralists and hunter-gatherers<sup>82</sup>. It has been noted that Indigenous Peoples in Africa are faced with multiple challenges, including the dispossession of their lands, territories and resources, forced assimilation into the way of life of the dominant groups, marginalization, poverty and illiteracy. The *African Charter on Human and Peoples' Rights*<sup>83</sup> provides a framework for fulfilling the rights of Indigenous Peoples' in Africa. It sets out fundamental rights for all

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<sup>77</sup> Ibid, article 10

<sup>78</sup> Ibid, article 11

<sup>79</sup> Ibid, article 13

<sup>80</sup> Ibid, article 14

<sup>81</sup> Ibid, article 18

<sup>82</sup> United Nations., 'Indigenous Peoples in the African Region' Available at [https://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet\\_Africa\\_%20UNPFII-12.pdf](https://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet_Africa_%20UNPFII-12.pdf) (Accessed on 12/08/2024)

<sup>83</sup> African Union., 'African Charter on Human and Peoples' Rights' Available at [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) (Accessed on 12/08/2024)

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peoples in Africa including the right to equality, the right to dignity, protection against discrimination, right to self-determination, and the promotion of cultural development and identity<sup>84</sup>. It is important to implement these rights in order to fulfill the rights of all Indigenous Peoples in Africa.

The African Commission on Human and Peoples' Rights is also a key institution in promoting the rights of Indigenous Peoples in Africa. In one of its landmark decisions, the Commission found that the eviction of the Endorois, an Indigenous Community in Kenya, from their ancestral land around Lake Bogoria to establish a game reserve violated their rights to culture, property, religion, and the right of access to natural resources and development<sup>85</sup>. The Commission called for the recognition of ownership of ancestral land by the Endorois community and its restitution to the community<sup>86</sup>. It also upheld the right of Indigenous Peoples in Africa to utilize natural resources including ancestral land for development<sup>87</sup>. This decision is vital in fulfilling the rights of all Indigenous Peoples in Africa to property, to culture, to the free disposition of natural resources, and to development<sup>88</sup>.

Despite the foregoing efforts, the rights of Indigenous Peoples continue to be threatened at national, regional, and global levels. It has been noted that the aspirations of the United Nations Declaration on the Rights of Indigenous Peoples are far from being universally fulfilled<sup>89</sup>. Indigenous

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<sup>84</sup> Ibid

<sup>85</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010,

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> Claridge. L., 'Landmark Ruling Provides Major Victory to Kenya's Indigenous Endorois.' Available at <https://www.refworld.org/pdfid/4ca571e42.pdf> (Accessed on 12/08/2024)

<sup>89</sup> The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions., Available at

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Peoples in many parts of the world continue to be systematically discriminated and silenced with their rights being violated. It is therefore necessary to fulfill the rights of all Indigenous Peoples for posterity.

### **4.0 Conclusion**

It is vital to fulfill the rights of all Indigenous Peoples for posterity. Indigenous Peoples play a fundamental role in fostering Sustainable Development. They have been described as crucial agents of change, whose livelihood practices, traditional knowledge and ways of life are fundamental for sound environmental governance, combating climate change and realizing the ambitious vision of the United Nation's 2030 Agenda for Sustainable Development<sup>90</sup>. Indigenous Peoples are custodians of indigenous knowledge including TEK which plays a prominent role in environmental conservation and addressing environmental challenges including climate change, water scarcity, water pollution, land pollution, soil erosion, overfishing, and deforestation<sup>91</sup>. Despite their key role in fostering Sustainable Development, Indigenous Peoples all over the world share a common history of injustices and human rights abuses<sup>92</sup>. It is therefore necessary to fulfill the rights of all Indigenous Peoples for posterity.

In order to actualize this goal, it is imperative to improve security of land tenure for Indigenous Peoples<sup>93</sup>. It has been pointed out that much of the land occupied by Indigenous Peoples is under customary ownership, yet governments in most countries recognize only a fraction of this land

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<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf> (Accessed on 12/08/2024)

<sup>90</sup> International Labour Organization., 'Sustainable Development Goals: Indigenous Peoples in Focus' Op Cit

<sup>91</sup> Egeruoh-Adindu. I., 'Leveraging Indigenous Knowledge for Effective Environmental Governance in West Africa.' Op Cit

<sup>92</sup> The Rights of Indigenous Peoples., Op Cit

<sup>93</sup> World Bank Group., 'Indigenous Peoples' Op Cit

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as formally or legally belonging to Indigenous Peoples<sup>94</sup>. In addition, even in cases where Indigenous territories and lands are recognized, protection of boundaries or use and exploitation of natural resources is often inadequate<sup>95</sup>. It is therefore necessary for all countries to recognize and uphold land rights of all Indigenous Peoples. This includes upholding the principle of Free, Prior and Informed Consent of Indigenous Peoples in instances where development and relocation is necessary and ensuring just and fair compensation and, where possible, with the option of returning to their ancestral lands<sup>96</sup>.

Further, there is need to embrace the participation of Indigenous Peoples in governance<sup>97</sup>. It has been observed that Indigenous Peoples have often been denied the right to participate in governing processes<sup>98</sup>. This often results in laws and policies that are detrimental to their economic, social, cultural, and spiritual well-being further undermining achievement of their fundamental rights and freedoms<sup>99</sup>. A lack of mechanisms that ensure inclusive, participatory and representative decision-making at all levels by Indigenous Peoples is contributing to the perpetuation of injustices and human rights violations<sup>100</sup>. The United Nations Declaration on the Rights of Indigenous Peoples acknowledges that Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions<sup>101</sup>. The participation of Indigenous Peoples in governance is

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<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> The United Nations Declaration on the Rights of Indigenous Peoples., Article 10

<sup>97</sup> Ibid

<sup>98</sup> The Rights of Indigenous Peoples., Op Cit

<sup>99</sup> Ibid

<sup>100</sup> International Labour Organization., 'Sustainable Development Goals: Indigenous Peoples in Focus' Op Cit

<sup>101</sup> The United Nations Declaration on the Rights of Indigenous Peoples., article 18

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vital in fulfilling their right to self-determination by ensuring that they are able to freely determine their political status and economic, social and cultural development<sup>102</sup>. It is therefore imperative to give Indigenous Peoples a voice in governance in order to effectively fulfill their rights including the right to self-determination.

The right to quality education is also a key priority for Indigenous Peoples<sup>103</sup>. Actualizing the right to education for Indigenous Peoples is vital in ensuring the preservation of indigenous knowledge, sound environmental conservation through TEK, and ensuring that indigenous knowledge is passed down to future generations for posterity<sup>104</sup>. Despite the importance of the right to education for Indigenous Peoples, it has been noted that education systems, policies, and curricula in most countries threatening the existence of Indigenous Peoples by being discriminatory, and seeking to assimilate them into the broader society<sup>105</sup>. This approach towards education threatens the culture, languages, identity and rights of Indigenous Peoples<sup>106</sup>. It is therefore imperative to foster the right to quality education for all Indigenous Peoples. In order to achieve this goal, education systems, policies, and curricula should be aligned to the needs of Indigenous Peoples by being well-resourced, culturally sensitive, and in conformity to their learning needs, languages, priorities and aspirations, and delivered through culturally appropriate teaching strategies, and in culturally appropriate forums<sup>107</sup>.

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<sup>102</sup> Australian Human Rights Commission., 'Self-Determination and Indigenous Peoples' Op Cit

<sup>103</sup> United Nations., 'Indigenous Peoples' Right to Education' Available at <https://www.un.org/es/events/indigenousday/pdf/Backgrounder%20Indigenous%20Day%202016.pdf> (Accessed on 12/08/2024)

<sup>104</sup> Ibid

<sup>105</sup> World Economic Forum., 'Indigenous Peoples have a Right to Quality Education: But so far, we have failed them' Op Cit

<sup>106</sup> Ibid

<sup>107</sup> Ibid

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It is also necessary to preserve indigenous knowledge including TEK<sup>108</sup>. It is important for governments to support cultural preservation through investing in efforts to preserve and transmit indigenous knowledge to future generations<sup>109</sup>. This is essential in ensuring that indigenous knowledge is not lost and can be passed to future generations for utilization in ecological conservation among other areas<sup>110</sup>. The United Nations notes that indigenous and traditional knowledge is at the core of the identity, culture, languages, heritage and livelihoods of Indigenous Peoples and its transmission from one generation to the next must be protected, preserved and encouraged<sup>111</sup>. Governments should therefore invest in preserving and transmission of indigenous knowledge through strengthening indigenous education and documenting oral traditions and cultural practices in order to effectively fulfill the rights of all Indigenous Peoples now and in the future<sup>112</sup>. Fulfilling the rights of all Indigenous Peoples for posterity is a key agenda in the quest towards Sustainable Development. It is therefore necessary for all countries to realize this goal.

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<sup>108</sup> Latief. A., 'Harnessing Indigenous Knowledge for Climate Change Resilience in Africa' Available at [https://www.linkedin.com/pulse/harnessing-indigenous-knowledge-climate-change-africa-aatifahlatief/?utm\\_source=share&utm\\_medium=member\\_android&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/harnessing-indigenous-knowledge-climate-change-africa-aatifahlatief/?utm_source=share&utm_medium=member_android&utm_campaign=share_via) (Accessed on 12/08/2024)

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> United Nations., 'Indigenous People's Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session' Available at <https://press.un.org/en/2019/hr5431.doc.htm> (Accessed on 12/08/2024)

<sup>112</sup> Ibid

## **Fostering Dialogue, Justice and Peace in Africa for Sustainability**

### **Abstract**

*The United Nation's 2030 Agenda for Sustainable Development recognizes the role of dialogue, justice, and peace in the quest towards Sustainable Development. Sustainable Development Goal 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. Fostering dialogue, justice and peace at all levels is therefore necessary for Sustainable Development towards the ideal of sustainability. This paper examines the need to foster dialogue, justice and peace in Africa. The paper argues that enhancing dialogue, justice and peace in Africa is necessary for sustainability. The paper explores the progress made towards harnessing dialogue, justice and peace in Africa. It also interrogates obstacles towards effective dialogue, justice and peace in Africa. Further, the paper proposes interventions towards fostering dialogue, justice and peace in Africa for sustainability.*

### **1.0 Introduction**

Achieving sustainability has become a clarion call at all levels including at the global, regional, and national contexts. The need for sustainability is driven by environmental challenges being experienced at global, regional, and national levels such as climate change, pollution, and loss of biodiversity, social challenges including poverty, increasing disparity between societies and the tensions brought by social inequalities, together with economic problems being experienced especially in developing countries<sup>1</sup>. Achieving sustainability entails creating and maintaining the conditions under which humanity and nature can

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<sup>1</sup> Giovannoni, E., & Fabietti, G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 25/09/2024)



coexist in productive harmony to support present and future generations<sup>2</sup>.

The concept of Sustainable Development offers a pathway towards sustainability. It seeks to foster development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>3</sup>. Sustainable Development aims at realising the ideal of sustainability through an integrated approach that takes into account environmental conservation, social equity, and economic progress<sup>4</sup>.

The United Nation's *2030 Agenda for Sustainable Development*<sup>5</sup> sets out the global blueprint towards sustainability. The Agenda envisages attainment of the ideal of sustainability through 17 Sustainable Development Goals (SDGs) which take into account the social, economic and environmental facets of Sustainable Development<sup>6</sup>. The 2030 Agenda acknowledges that peace and justice are at the core of Sustainable Development<sup>7</sup>. It seeks to foster peaceful, just and inclusive societies that are free from fear and violence<sup>8</sup>. According to the Agenda, there can be no Sustainable Development without peace and no peace

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<sup>2</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 25/09/2024)

<sup>3</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>4</sup> Muigua. K., 'Nurturing Our Environment for Sustainable Development' Glenwood Publishers Limited, 2016

<sup>5</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 25/09/2024)

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

without Sustainable Development<sup>9</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>10</sup>. The 2030 Agenda for Sustainable Development further acknowledges the role of dialogue and international and regional cooperation towards Sustainable Development<sup>11</sup>. Fostering dialogue, justice and peace at all levels is therefore a prerequisite for Sustainable Development towards the ideal of sustainability.

This paper examines the need to foster dialogue, justice and peace in Africa. The paper argues that enhancing dialogue, justice and peace in Africa is necessary for sustainability. The paper explores the progress made towards harnessing dialogue, justice and peace in Africa. It also interrogates obstacles towards effective dialogue, justice and peace in Africa. Further, the paper proposes interventions towards fostering dialogue, justice and peace in Africa for sustainability.

## **2.0 The Need for Dialogue, Justice and Peace in Africa**

Dialogue has been described as a conversation in which people speak openly and listen respectfully and attentively<sup>12</sup>. It is designed to build understanding, cooperation and positive relationships<sup>13</sup>. According to the United Nations, dialogues bring together a diversity of stakeholders, including voices that are seldom heard, and provide an opportunity for participants to debate, collaborate, and take action towards a better

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<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> United Nations Development Programme., 'Community Dialogue for Sustainable Peace' Available at [https://www.undp.org/sites/g/files/zskgke326/files/migration/tz/UNDP-DIALOGUE-BOOKLET\\_English-Version.pdf](https://www.undp.org/sites/g/files/zskgke326/files/migration/tz/UNDP-DIALOGUE-BOOKLET_English-Version.pdf) (Accessed on 25/09/2024)

<sup>13</sup> Ibid

future<sup>14</sup>. Effective dialogue is based on the principles of inclusiveness, joint ownership, empathy, and long term and sustainable solutions<sup>15</sup>.

Justice is a central moral concept that focuses on fair and impartial decision making procedures, where all persons and groups are treated equally, and where burdens and benefits are assigned equally<sup>16</sup>. Justice can be attained in various forms including *distributive justice* which involves fair division of resources in the society<sup>17</sup>; *retributive justice* which focuses on punishing crimes<sup>18</sup>; *procedural justice* that focuses on fair and impartial decision making procedures<sup>19</sup>; and *restorative justice* whose aim is to repair harm to victims of crimes and rehabilitate offenders<sup>20</sup>.

Peace refers to a state of harmony, tranquility, cooperation, alliance, well-being, and agreement among individuals, groups, and nations<sup>21</sup>. According to the United Nations, peace is not only the absence of conflict, but also an ideal that requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation<sup>22</sup>. Peace can therefore be categorized into positive peace that entails attitudes, institutions and

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<sup>14</sup> United Nations., 'Food Systems Summit Dialogues' Available at <https://www.un.org/en/food-systems-summit/dialogues> (Accessed on 25/09/2024)

<sup>15</sup> United Nations Development Programme., 'Community Dialogue for Sustainable Peace' Op Cit

<sup>16</sup> Pogge. T., 'Justice: Philosophical Aspects' *International Encyclopedia of the Social & Behavioral Sciences.*, 2<sup>nd</sup> Edition, 2015

<sup>17</sup> Maiese. M., & Burgess. H., 'Types of Justice' Available at [https://www.beyondintractability.org/essay/types\\_of\\_justice](https://www.beyondintractability.org/essay/types_of_justice) (25/09/2024)

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>22</sup> United Nations., 'Cultivating a Culture of Peace' Available at <https://www.un.org/en/observances/international-day-peace> (Accessed on 25/09/2024)

structures, that when strengthened, lead to peaceful societies and negative peace which entails the absence of violence and conflicts<sup>23</sup>.

Dialogue, justice, and peace are key ideals in the quest towards sustainability. Effective dialogue creates space for governments and stakeholders at all levels to achieve consensus towards the SDGs<sup>24</sup>. It has been noted that promoting the participation of all stakeholders in national strategies intended to deliver on the 2030 Agenda for Sustainable Development, is key for attaining the SDGs<sup>25</sup>. Effective dialogue processes are necessary in fostering participatory governance towards actualizing the Sustainable Development agenda<sup>26</sup>. For sustainability to be realized, there is need for public participation and policymaking that involves the civil society, a process often referred to as participatory governance<sup>27</sup>. SDG 16 recognizes the role of dialogue in sustainability and seeks to ensure responsive, inclusive, participatory, and representative decision-making at all levels<sup>28</sup>. It also seeks to broaden and strengthen the participation of developing countries in the institutions of global governance<sup>29</sup>. Dialogue is therefore key for sustainability. Achieving sustainability requires balancing economic, social and environmental objectives and striking compromises among

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<sup>23</sup> Herath. O., 'A critical analysis of Positive and Negative Peace.' Available at <http://repository.kln.ac.lk/bitstream/handle/123456789/12056/journal1%20%281%29.104-107.pdf?sequence=1&isAllowed=y> (Accessed on 25/09/2024)

<sup>24</sup> Sustainable Development Goals Dialogue., Available at <https://sustainabledevelopment.un.org/content/documents/15682SustainableDevelopmentGoals.pdf> (Accessed on 25/09/2024)

<sup>25</sup> International Labour Organization., 'Social Dialogue and the Sustainable Development Goals: An Essential Synergy for Human-Centred Development and Recovery' <https://www.ilo.org/publications/social-dialogue-and-sustainable-development-goals-essential-synergy-human> (Accessed on 25/09/2024)

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>29</sup> Ibid

different stakeholders<sup>30</sup>. Effective dialogue provides arrangements for negotiations and can therefore help in finding compromises to deliver on Sustainable Development, especially in case where reforms are needed<sup>31</sup>.

Justice is also a key ingredient in the Sustainable Development agenda. It has been argued that inclusivity, equity, equality and justice are at the core of the Sustainable Development paradigm, driving our collective efforts to correct harmful imbalances in economic growth, to remedy the miseries of lives lived in extreme poverty, and to ensure that the environment and natural resources are preserved for future generations<sup>32</sup>. Further, it has been noted that social justice is an underlying principle for peaceful and prosperous coexistence within and among nations<sup>33</sup>. The idea of social justice permeates each SDG, insisting that the Sustainable Development agenda cannot be met without meeting the needs of the most vulnerable and marginalized populations<sup>34</sup>. Promoting social justice is therefore a key step towards actualizing the Sustainable Development agenda. Justice is key in preventing and responding to conflict, crisis and fragility, for strengthening the rule of law, and for realising the transformative

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<sup>30</sup> European Commission., 'Sustainability and Governance: The Role of Social Dialogue' Available at [https://www.google.com/search?q=dialogue+and+sustainability&oq=d&gs\\_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg7MgYIARBFgDsyBggCEEUYOTIQCAMQABiDARixAxiABBiKBTIGCAQORRg8MgYIBRBFGDwyBggGEEUYPDIGCAcQRRg80gEIMTMyNmowajeoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=dialogue+and+sustainability&oq=d&gs_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg7MgYIARBFgDsyBggCEEUYOTIQCAMQABiDARixAxiABBiKBTIGCAQORRg8MgYIBRBFGDwyBggGEEUYPDIGCAcQRRg80gEIMTMyNmowajeoAgCwAgA&sourceid=chrome&ie=UTF-8) (Accessed on 25/09/2024)

<sup>31</sup> Ibid

<sup>32</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 25/09/2024)

<sup>33</sup> Social Justice., Available at <https://sdgresources.relx.com/social-justice-0> (Accessed on 25/09/2024)

<sup>34</sup> Ibid

ambition of the 2030 Agenda for Sustainable Development<sup>35</sup>. In addition, equal access to justice is essential for protecting the rights of all individuals, resolving disputes, and ensuring that vulnerable populations are not marginalized or mistreated towards inclusive growth<sup>36</sup>. Promoting justice at all levels is therefore vital for sustainability.

Achieving peace is also crucial for sustainability. The 2030 Agenda for Sustainable Development notes that there can be no Sustainable Development without peace and no peace without Sustainable Development<sup>37</sup>. The United Nations correctly notes that peace is a fundamental precondition for social and economic development<sup>38</sup>. Without peace, societies are often plagued by conflict, violence, and instability, which can hinder progress and result in the loss of lives and resources<sup>39</sup>. Sustaining peace shifts actors away from structural violence and towards collaborative solutions for development and sustainability<sup>40</sup>.

Fostering dialogue, justice, and peace is therefore important in the quest towards sustainability in Africa. It has been noted that Africa can only achieve the Sustainable Development agenda if it fosters a culture of

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<sup>35</sup> United Nations Development Programme., 'The Global Programme for Strengthening the Rule of Law, Human Rights, Justice and Security for Sustainable Peace and Development' Available at [https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP%20GP\\_%20Justice.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP%20GP_%20Justice.pdf) (Accessed on 25/09/2024)

<sup>36</sup> United Nations., 'Goal 16: Peace, Justice, and Strong Institutions' Available at <https://www.un.org/sustainabledevelopment/peace-justice/> (Accessed on 25/09/2024)

<sup>37</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>38</sup> United Nations., 'Goal 16: Peace, Justice, and Strong Institutions' Op Cit

<sup>39</sup> Ibid

<sup>40</sup> Stockholm International Peace Research Institute., 'Sustaining Peace and Sustainable Development in Dangerous Places' Available at <https://www.sipri.org/yearbook/2017/06> (Accessed on 25/09/2024)

peace, justice, and dialogue<sup>41</sup>. For example, national and regional dialogues in Africa hold the promise of adding critical momentum in the drive to transform conflict inclusively towards creating ideal conditions for development<sup>42</sup>. National and regional dialogues can strengthen peacebuilding efforts in conflict prone regions in Africa towards development<sup>43</sup>.

However, the ideals of dialogue, justice, and peace in Africa often face several obstacles. For example, Africa continues to face protracted conflicts and longstanding disputes which undermine peace, security, and sustainability<sup>44</sup>. The prevalence of conflicts and wars has been a major hindrance in the quest towards Sustainable Development in Africa<sup>45</sup>. The ideal of social justice in Africa is also yet to be realized as evidenced by unequal distribution of wealth, resources, and opportunities<sup>46</sup>. Further, the poor, vulnerable, and marginalized groups and individuals often face challenges in accessing justice stemming from challenges in formal justice systems including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal

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<sup>41</sup> Glatz. C., 'Interreligious Dialogue Needed to Encourage Peace in Africa, Experts Say' Available at <https://news.diocesetucson.org/news/interreligious-dialogue-needed-to-encourage-peace-in-africa-experts-say> (Accessed on 25/09/2024)

<sup>42</sup> Murray. E., & Stigant. S., 'National Dialogues in Peacebuilding and Transitions: Creativity and Adaptive Thinking' Available at <https://www.usip.org/publications/2021/06/national-dialogues-peacebuilding-and-transitions-creativity-and-adaptive> (Accessed on 25/09/2024)

<sup>43</sup> Ibid

<sup>44</sup> United Nations., 'Global Issues: Africa' Available at <https://www.un.org/en/global-issues/africa> (Accessed on 25/09/2024)

<sup>45</sup> United Nations., 'Promotion of Durable Peace and Sustainable Development in Africa.' Available at [https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875\\_osaa\\_sg\\_report\\_web\\_new.pdf](https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875_osaa_sg_report_web_new.pdf) (Accessed on 25/09/2024)

<sup>46</sup> Development Bank of Southern Africa., 'How the Public and Private Sectors can Promote Social Justice across Africa' Available at <https://www.dbsa.org/article/how-public-and-private-sectors-can-promote-social-justice-across-africa> (Accessed on 25/09/2024)

courts, backlog of cases in courts and lack of legal knowhow<sup>47</sup>. Limited access to justice in Africa has been identified as a root cause of underdevelopment, social unrest, and conflict<sup>48</sup>. Therefore, expanding access to justice for all and especially vulnerable groups including marginalized communities, women, the youth, and the poor is paramount for a peaceful and prosperous continent<sup>49</sup>.

It is therefore imperative to foster dialogue, justice and peace in Africa for sustainability.

### **3.0 Fostering Dialogue, Justice and Peace in Africa**

It is necessary to enhance dialogue, justice and peace in Africa. The 2030 Agenda for Sustainable Development acknowledges that promoting dialogue, justice and peace is vital in the quest towards sustainability<sup>50</sup>. Africa should therefore foster dialogue, justice and peace in order to realize its development goals. In order to achieve these goals, there is need to build strong partnership and dialogue between governments, civil society, and private sector; and promotion of a culture of respect, compromise, consensus, and tolerance in order to mitigate conflict, promote political stability and security, and harness the creative energies of the African people towards sustainability<sup>51</sup>. National and

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<sup>47</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>48</sup> World Bank Group., 'Voices of the Vulnerable : Promoting Access to Justice in Sub-Saharan Africa' Available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099652512182368546/idu0554b44400c3f6048880a3610feff2110a06f> (Accessed on 25/09/2024)

<sup>49</sup> Ibid

<sup>50</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>51</sup> International Peace Institute., 'Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity' Available at [https://www.ipinst.org/wp-content/uploads/publications/ipi\\_epub\\_peace\\_justiceafrica2.pdf](https://www.ipinst.org/wp-content/uploads/publications/ipi_epub_peace_justiceafrica2.pdf) (Accessed on 26/09/2024)



regional dialogue can enhance the search for meaningful peace and justice in Africa<sup>52</sup>. Effective dialogue can ensure the active participation of all stakeholders including the civil society and the private sector therefore ensuring a broad and inclusive influence on political, economic, environmental and social decisions<sup>53</sup>. It is therefore necessary to foster effective dialogue in Africa which takes into account the meaningful participation of all stakeholders including governments, the civil society, and the private sector in order to improve the quality of political, social, environmental, and economic outcomes towards sustainability.

Fostering justice is also key in the quest towards sustainability in Africa. In order to realize this goal, it is necessary for governments to embrace sound planning and equitable resource allocation to key sectors of economies including education, health, energy and agriculture<sup>54</sup>. This will strengthen efforts towards tackling poverty towards social justice in Africa<sup>55</sup>. It is also necessary to empower the youth, women, persons with disabilities and other marginalized individuals and groups through access to employment, access to finance, capacity building among other initiatives in order to address inequalities and foster social justice<sup>56</sup>. It has been noted that social justice entails placing the rights of all people at the heart of economic, social and environmental policies<sup>57</sup>. Achieving social justice therefore requires African countries to tackle challenges

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<sup>52</sup> Ibid

<sup>53</sup> IPHRD Africa., 'Promoting Peace, Human Rights and Sustainable Development in Africa' Available at <https://iphirdafrica.org/> (Accessed on 26/09/2024)

<sup>54</sup> Muigua. K., 'Sustainable Development Goals and Social Justice in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2021/02/Sustainable-Development-Goals-SDGs-and-Social-Justice-in-Kenya-Kariuki-Muigua-February-2021.pdf> (Accessed on 26/09/2024)

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> International Labour Organization., 'The Social Justice Challenge for African Youth' Available at <https://voices.ilo.org/podcast/social-justice-challenge-for-african-youth> (Accessed on 26/09/2024)

such as poverty, exclusion, inequality, unemployment, and lack of social protection that are still prevalent throughout the continent<sup>58</sup>. It also requires African countries to establish effective, accountable and inclusive institutions at all levels that will protect human rights, foster transparency, and ensure fair and equal participation by all stakeholders towards sustainability<sup>59</sup>.

It is also imperative to enhance access to justice in Africa<sup>60</sup>. Access to justice for all citizens is a cornerstone of democracy, good governance, and effective and equitable development<sup>61</sup>. Access to justice involves the ability of all citizens to seek and obtain remedies and prevent the abuse of their rights and freedoms and obtain remedies when such rights and freedoms are abused<sup>62</sup>. However, access to justice remains an elusive reality for many citizens in Africa due to challenges such as backlog of cases in courts, high litigation fees, complexity of legal processes, and high incidences of corruption<sup>63</sup>. It is necessary to address these challenges in order to enhance access to justice in Africa. The ideal of access to justice in Africa can also be realized by utilizing Alternative Dispute Resolution (ADR) mechanisms including negotiation, mediation, arbitration, and Traditional Dispute Resolution Mechanisms<sup>64</sup>. These processes contain certain attributes which include informality, flexibility, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost effective management of disputes

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<sup>58</sup> Ibid

<sup>59</sup> IPHRD Africa., 'Promoting Peace, Human Rights and Sustainable Development in Africa' Op Cit

<sup>60</sup> Logan. C., 'Ambitious SDG Goal Confronts Challenging Realities: Access to Justice is still Elusive for Many Africans' Available at [https://afrobarometer.org/wp-content/uploads/migrated/files/publications/Policy%20papers/ab\\_r6\\_policypaper\\_no39\\_access\\_to\\_justice\\_in\\_africa\\_eng.pdf](https://afrobarometer.org/wp-content/uploads/migrated/files/publications/Policy%20papers/ab_r6_policypaper_no39_access_to_justice_in_africa_eng.pdf) (Accessed on 26/09/2024)

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice.' Glenwood Publishers Limited, 2015

that makes them viable in enhancing access to justice and addressing challenges in formal court processes<sup>65</sup>. In addition, ADR mechanisms have been utilized in conflict management in Africa for many centuries and as a result, there is a conducive environment for harnessing these techniques in enhancing access to justice<sup>66</sup>. It is therefore imperative to utilize ADR mechanisms in order to actualize access to justice in Africa.

Finally, there is need to foster peace in Africa. The prevalence of inter and intra state conflicts and wars is a major hindrance to peace, stability, security, and development in Africa<sup>67</sup>. According to the United Nations, effective peacekeeping and conflict resolution in Africa face challenges due to the complex nature of conflicts, historical grievances, and the presence of non-state actors<sup>68</sup>. Sustaining peace in Africa therefore requires addressing root causes of conflicts and fostering inclusive dialogue involving all stakeholders<sup>69</sup>. Diplomacy and regional dialogue can play a key role in fostering peace in Africa by tackling fragility brought about by wars and conflicts and strengthening regional and continental integration in Africa towards Sustainable Development<sup>70</sup>. Peace-keeping through initiatives such as the United Nations peace-keeping operations and Africa Union led peace operations are also vital in especially in war torn and volatile regions in the continent towards maintaining peace, facilitating political dialogue, and supporting post-conflict reconstruction for development<sup>71</sup>.

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<sup>65</sup> Ibid

<sup>66</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

<sup>67</sup> Olaosebikan. A., 'Conflicts in Africa: Meaning, Causes, Impact and Solution.' *African Research Review.*, Volume 4, No. 4 (2010)

<sup>68</sup> United Nations., 'Global Issues: Africa' Op Cit

<sup>69</sup> Ibid

<sup>70</sup> Pillai. V., & De. Corral. M., 'Tackling Fragility and Promoting Integration in the Horn of Africa through Development diplomacy' Available at <https://blogs.worldbank.org/en/nasikiliza/tackling-fragility-andpromoting-integration-horn-africa-through-development-diplomacy> (Accessed on 26/09/2024)

<sup>71</sup> United Nations., 'Peace, Dignity, and Equality on a Healthy Planet' Available at <https://www.un.org/en/global-issues/africa> (Accessed on 26/09/2024)

#### **4.0 Conclusion**

Dialogue justice and peace are important in the quest towards sustainability. 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>72</sup>. Effective dialogue creates space for governments and stakeholders including the civil society and the private sector at all levels to achieve consensus towards the SDGs<sup>73</sup>. In addition, social justice is a fundamental principle for peaceful and prosperous coexistence within and among nations towards Sustainable Development<sup>74</sup>. Access to justice is also pivotal in protecting the rights of all persons and resolving disputes therefore creating suitable conditions for peace and prosperity<sup>75</sup>. Fostering peace is also vital for sustainability by shifting individuals and groups from structural violence towards collaborative solutions for development<sup>76</sup>. It is therefore imperative to foster dialogue, justice, and peace in Africa for sustainability. In order to achieve this ideal, it is necessary to embrace effective dialogue processes at national and regional levels by involving all stakeholders including governments, the civil society, and the private sector<sup>77</sup>; promote social justice by tackling challenges such as poverty, exclusion, inequality, unemployment, and lack of social protection<sup>78</sup>; promote access to justice for all citizens including through ADR processes<sup>79</sup>; and build long-lasting and sustainable peace by addressing

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<sup>72</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>73</sup> Sustainable Development Goals Dialogue., Op Cit

<sup>74</sup> Social Justice., Op Cit

<sup>75</sup> United Nations., 'Goal 16: Peace, Justice, and Strong Institutions' Op Cit

<sup>76</sup> Stockholm International Peace Research Institute., 'Sustaining Peace and Sustainable Development in Dangerous Places' Op Cit

<sup>77</sup> International Peace Institute., 'Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity' Op Cit

<sup>78</sup> International Labour Organization., 'The Social Justice Challenge for African Youth' Op Cit

<sup>79</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice.' Op Cit

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root causes of conflicts and fostering inclusive dialogue involving all stakeholders<sup>80</sup>.

Fostering dialogue, justice and peace in Africa is necessary and possible towards sustainability.

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<sup>80</sup> United Nations., 'Global Issues: Africa' Op Cit

## **Enhancing Access to Finance for Sustainable Development in Africa**

### *Abstract*

*This paper critically discusses the need to enhance access to finance for Sustainable Development in Africa. The paper posits that access to finance is crucial in realizing Sustainable Development in Africa. It discusses the role of finance in fostering Sustainable Development. The paper examines the landscape of finance for Sustainable Development in Africa. The paper argues that Africa faces several challenges in accessing finance for Sustainable Development. In addition, the paper suggests reforms towards closing the financing gap and enhancing access to finance for Sustainable Development in Africa.*

### **1.0 Introduction**

Finance is a vital resource for development. It has been noted that well-functioning financial systems are a key component of a modern economy, facilitating the exchange of goods and services, mobilizing savings, allocating scarce resources, mitigating market imperfections, and helping to diversify risks<sup>1</sup>. Access to finance is also critical in reducing poverty and inequality by ensuring that the poor and vulnerable groups have financial resources to cater for their needs, facilitating risk management by reducing their vulnerability to shocks, and increasing investment and productivity that result in higher income generation<sup>2</sup>. Resilient, transparent and efficient financial systems and capital markets contribute to financial stability, job growth and poverty

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<sup>1</sup> Beddies. C., 'The Financial System and Growth.' Available at <https://www.elibrary.imf.org/display/book/9781589064515/ch04.xml> (Accessed on 08/10/2024)

<sup>2</sup> World Bank Group., 'Financial Development' Available at <https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/financial-development> (Accessed on 08/10/2024)

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alleviation<sup>3</sup>. Finance is therefore at the heart of development, driving economic growth and social progress.

Access to finance is critical in fostering Sustainable Development. Financial resources are crucial in promoting investments in areas such as food security, water and sanitation, quality education, health, renewable energy, productive employment, and infrastructure towards attaining the Sustainable Development Goals (SDGs)<sup>4</sup>. Finance is also crucial in combating climate change which is a major global ideal towards Sustainable Development<sup>5</sup>. For example, finance is needed for climate mitigation since large-scale investments are required to significantly reduce greenhouse gas emissions<sup>6</sup>. In addition, finance is also important for climate adaptation since significant financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate<sup>7</sup>. Access to finance is therefore pivotal in achieving Sustainable Development through investments in the SDGs.

The United Nations *2030 Agenda for Sustainable Development*<sup>8</sup> identifies finance as among the means of implementation of the Agenda alongside technology, capacity building, trade, and global partnerships. It acknowledges that mobilising finance at national, regional, and global

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<sup>3</sup> Beddies. C., 'The Financial System and Growth.' Op Cit

<sup>4</sup> United Nations., 'Financing for Sustainable Development' Available at <https://www.un.org/sustainabledevelopment/financing-for-development/> (Accessed on 08/10/2024)

<sup>5</sup> United Nations Climate Change., 'What is Climate Finance?' Available at <https://unfccc.int/topics/introduction-to-climate-finance> (Accessed on 08/10/2024)

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</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 08/10/2024)

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levels is vital in enhancing investments in the SDG<sup>9</sup>s. The Agenda urges all countries to strengthen domestic resource mobilization for Sustainable Development while also calling upon developed countries to enhance financial support to developing countries in order to strengthen their capacity for Sustainable Development<sup>10</sup>.

Further, the *Addis Ababa Action Agenda*<sup>11</sup> sets out a global framework for financing Sustainable Development that aligns all financial flows, policies and international agreements with economic, social and environmental priorities. According to the Action Agenda, strengthening public policies, regulatory frameworks and finance at all levels, unlocking the transformative potential of people and the private sector, and incentivizing changes in financing as well as consumption and production patterns are key measures towards supporting Sustainable Development initiatives<sup>12</sup>. The Action Agenda sets out specific action areas towards accessing finance for Sustainable Development including domestic public resources; domestic and international private business and finance; international development cooperation; international trade; debt and debt sustainability; improving global economic governance; and science, technology, innovation, and capacity building<sup>13</sup>. The Addis Ababa Action Agenda therefore serves as a blueprint for actions by governments, international organizations, businesses and civil society to increase the financial resources available and align financing flows and policies with economic, social, and environmental targets towards actualizing the

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<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Addis Ababa Action Agenda., Available at [https://sustainabledevelopment.un.org/content/documents/2051AAAA\\_Outcome.pdf](https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf) (Accessed on 08/10/2024)

<sup>12</sup> Ibid

<sup>13</sup> Ibid



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Sustainable Development agenda<sup>14</sup>. It is therefore necessary to implement the commitments of this Action Agenda in order to enhance access to finance for Sustainable Development.

It has been noted that access to finance for development remains a major challenge on the international agenda, yet financing is paramount for achieving the SDGs<sup>15</sup>. A weak global economy, rising geopolitical tensions and the climate crisis are among the factors that are making it more difficult to finance the SDGs<sup>16</sup>. In addition, it has been noted that most developing countries suffer from severe debt problems therefore facing challenges in financing the SDGs<sup>17</sup>. Consequently, there exists a big financing gap that needs to be closed in order to achieve the SDGs globally, regionally, and at national levels<sup>18</sup>. Enhancing access to finance is therefore an urgent priority towards realizing the Sustainable Development agenda.

This paper critically discusses the need to enhance access to finance for Sustainable Development in Africa. The paper posits that access to finance is crucial in realizing Sustainable Development in Africa. It discusses the role of finance in fostering Sustainable Development. The paper examines the landscape of finance for Sustainable Development in Africa. The paper argues that Africa faces several challenges in accessing finance for Sustainable Development. In addition, the paper

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<sup>14</sup> Ibid

<sup>15</sup> African Development Bank Group., 'Financing Sustainable Development' Available at [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/2%20Briefing%20notes\\_Financing%20Sustainable%20Development%20in%20Africa\\_080612%20\(2\).pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/2%20Briefing%20notes_Financing%20Sustainable%20Development%20in%20Africa_080612%20(2).pdf) (Accessed on 08/10/2024)

<sup>16</sup> United Nations., 'Financing for Sustainable Development' Op Cit

<sup>17</sup> Ibid

<sup>18</sup> United Nations Economic Commission for Africa., 'Effective Financial Markets, Key to Sustainable Development in Africa' Available at <https://www.uneca.org/stories/effective-financial-markets%2C-key-to-sustainable-development-in-africa> (Accessed on 08/10/2024)

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suggests reforms towards closing the financing gap and enhancing access to finance for Sustainable Development in Africa.

### **2.0 Access to Finance for Sustainable Development in Africa: Promises and Challenges**

Accessing finance is vital in realizing Africa's Sustainable Development objectives<sup>19</sup>. For example, finance is essential for Africa to meet its climate goals<sup>20</sup>. It is estimated that from 2020 to 2030, the amount of funding required for African countries' to implement their Nationally Determined Contributions (NDCs) is approximately \$2.8 trillion, representing more than 93 percent of Africa's Gross Domestic Product (GDP)<sup>21</sup>. Achieving this target requires access to finance from domestic public resources, international public sources, and both domestic and international private sectors<sup>22</sup>. It has been noted that realising Sustainable Development in Africa is largely anchored on the continent's ability to adapt effectively to the impacts of climate change, which are increasing in frequency and intensity<sup>23</sup>. Enhancing access to finance is therefore vital towards strengthening climate action and fostering Sustainable Development in Africa.

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<sup>19</sup> United Nations Development Programme., 'Sustainable Finance Hub' Available at [https://sdgfinance.undp.org/where-we-work/africa#:~:text=UNDP%20Africa%20Sustainable%20Finance%20Hub,National%20Financing%20Frameworks%20\(INFF\)](https://sdgfinance.undp.org/where-we-work/africa#:~:text=UNDP%20Africa%20Sustainable%20Finance%20Hub,National%20Financing%20Frameworks%20(INFF).). (Accessed on 08/10/2024)

<sup>20</sup> Kone. T., 'For Africa to meet its Climate Goals, Finance is Essential' Available at <https://climatepromise.undp.org/news-and-stories/africa-meet-its-climate-goals-finance-essential> (Accessed on 08/10/2024)

<sup>21</sup> Ibid

<sup>22</sup> Guzman. S et al., 'Climate Finance Needs of African Countries' Available at <https://www.climatepolicyinitiative.org/publication/climate-finance-needs-of-african-countries/> (Accessed on 08/10/2024)

<sup>23</sup> Financing Adaptation in Africa: The Key to Sustainable Development?., Available at <https://saiia.org.za/research/financing-adaptation-in-africa-the-key-to-sustainable-development/> (Accessed on 08/10/2024)

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Further, it has been noted that in order to achieve Sustainable Development in Africa, it is necessary to mobilize financial resources for green growth<sup>24</sup>. The concept of green growth is anchored in the ideal of Sustainable Development and provides a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner<sup>25</sup>. It entails fostering economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which human well-being depends on<sup>26</sup>. Fostering green growth in Africa involves addressing existing and emerging development challenges without locking into pathways that deplete Africa's natural capital and leave economies and livelihoods more vulnerable to climate change and other environmental, social and economic risks<sup>27</sup>. This requires huge financial investments which will generate additional economic growth and jobs, as well as life-sustaining goods and services such as food, access to safe water and sanitation, and energy<sup>28</sup>. The priority for green growth in Africa is sustaining rapid growth and poverty alleviation while avoiding costly environmental damage<sup>29</sup>. Achieving green growth in Africa is an ideal that requires the continent to capitalize on sustainable agriculture, the

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<sup>24</sup> African Union., 'Mobilizing Investments for Green Growth' Available at <https://au.int/en/pressreleases/20240221/mobilizing-investments-green-growth> (Accessed on 08/10/2024)

<sup>25</sup> African Development Bank Group., 'Green Growth' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/green-growth-initiative/background> (Accessed on 08/10/2024)

<sup>26</sup> Organisation for Economic Cooperation and Development ., 'Towards Green Growth' Available at <http://dx.doi.org/10.1787/9789264111318-en> (Accessed on 08/10/2024)

<sup>27</sup> African Development Bank Group., 'Green Growth' Op Cit

<sup>28</sup> African Development Bank Group., 'Transitioning the African Continent toward Green Growth' Available at [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Introductory\\_guide\\_to\\_understanding\\_AfDB\\_Green\\_Growth\\_Framework.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Introductory_guide_to_understanding_AfDB_Green_Growth_Framework.pdf) (Accessed on 08/10/2024)

<sup>29</sup> Ibid

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blue economy and ecotourism, renewable energy which is abundant throughout the continent, circularity and sustainable waste management, and sustainable trade opportunities under the African Continental Free Trade Area (AfCFTA)<sup>30</sup>. Enhancing access to finance in Africa is therefore necessary in order to promote green growth towards achieving Sustainable Development.

In addition, it is estimated that the cost of transport and service infrastructure required to enable the implementation of the AfCFTA is approximately \$500 billion<sup>31</sup>. Implementing the AfCFTA requires access to finance to enable infrastructure development and trade facilitation including roads, railways, seaports as well customs support system and other trade facilitation measures and institutions<sup>32</sup>. It also requires access to finance to enable provision of trainings, trade promotion, activities dealing with supply side constraints or market expansion, and related support towards the private sector, focusing on Micro, Small and Medium Enterprises (MSMEs) and women enterprises. Further executing the AfCFTA requires standards development laboratory construction, the provision of trainings on standards and related capacities<sup>33</sup>. The successful implementation of the AfCFTA is expected to boost Intra-African trade leading to the creation of more decent jobs,

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<sup>30</sup> United Nations Environment Programme., 'Africa's Green Business Opportunities are Abundant, UNEP Study Shows' Available at <https://www.unep.org/news-and-stories/press-release/africas-green-business-opportunities-are-abundant-unep-study-shows> (Accessed on 08/10/2024)

<sup>31</sup> United Nations Economic Commission for Africa., 'Effective Financial Markets, Key to Sustainable Development in Africa' Available at <https://www.uneca.org/stories/effective-financial-markets%2C-key-to-sustainable-development-in-africa> (Accessed on 08/10/2024)

<sup>32</sup> United Nations Economic Commission for Africa., 'AfCFTA Implementation Strategies' Available at <https://repository.uneca.org/bitstream/handle/10855/50098/b12041920.pdf?sequence=5&isAllowed=y> (Accessed on 08/10/2024)

<sup>33</sup> Ibid

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strengthening efforts towards eradicating poverty in Africa, improving welfare and ensuring better quality of life for all citizenry, and promoting Sustainable Development<sup>34</sup>. Access to finance is therefore vital in order to implement the AfCFTA and enhance Sustainable Development in Africa.

Achieving Sustainable Development in Africa therefore requires huge financial and technical resources. Africa Union's *Agenda 2063*<sup>35</sup> acknowledges the need to enhance access for Sustainable Development in Africa. It seeks to mobilise African resources to finance and accelerate its transformation, integration, peace, security, infrastructure, industrialization, democratic governance and strengthen continental institutions<sup>36</sup>. Enhancing access to finance is therefore vital for Sustainable Development in Africa through investments in areas such as agriculture, education, energy, infrastructure and climate change mitigation and adaptation<sup>37</sup>.

However, access to finance remains a challenge in Africa hindering progress towards achieving the SDGs. Many countries in Africa lack access to affordable finance or are in debt distress<sup>38</sup>. The average public

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<sup>34</sup> United Nations., 'AU Summit 2023: Powering Trade through AfCFTA' Available at <https://www.un.org/africarenewal/magazine/february-2023/au-summit-2023-powering-trade-through-afcfta> (Accessed on 02/05/2024)

<sup>35</sup> Africa Union., 'Agenda 2063: The Africa we Want.' Available at [https://www.adeanet.org/en/system/files/resources/01\\_agenda2063\\_popular\\_version\\_engs.pdf](https://www.adeanet.org/en/system/files/resources/01_agenda2063_popular_version_engs.pdf) (Accessed on 08/10/2024)

<sup>36</sup> Ibid

<sup>37</sup> The World Bank., 'Financing Africa: Through the Crisis and Beyond.' Available at <https://www.worldbank.org/en/programs/africa-regional-studies/publication/financing-africathrough-the-crisis-and-beyond> (Accessed on 08/10/2024)

<sup>38</sup> UN Trade and Development., 'Financing for Sustainable Development Report 2024' Available at <https://unctad.org/publication/financing-sustainable-development-report-2024> (Accessed on 08/10/2024)

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debt in Africa is around 65% of GDP with some countries having higher debt levels<sup>39</sup>. Further, many countries in Africa are in or are at high risk of debt distress<sup>40</sup>. It has been noted that developing countries pay nearly as twice as much on average in interest on their total sovereign debt stock as developed countries contributing to the debt crisis and hindering access to finance for Sustainable Development<sup>41</sup>. Africa has been identified as the poorest region in the world and receives the highest volume of aid relative to other regions; therefore some countries remain vulnerable to sharp fluctuations in aid flows due to their dependency<sup>42</sup>. In addition, the continent faces several barriers in accessing finance for Sustainable Development including ineffective policies and legal frameworks, low provision of finance for Sustainable Development in national budgets, inadequate capacity to develop sustainable finance products and services, and limited stakeholder engagement, including from the private sector<sup>43</sup>.

It has been noted that Africa has made some progress in financing its development through domestic resources in recent years<sup>44</sup>. However, this funding is inadequate to close a widening financing gap that needs to be closed in order to actualize the Sustainable Development agenda<sup>45</sup>.

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<sup>39</sup> World Economic Forum., 'Tackling Public Debt in African Countries' Available at <https://www.weforum.org/agenda/2024/08/how-to-finance-africas-future-economic-development/> (Accessed on 08/10/2024)

<sup>40</sup> Ibid

<sup>41</sup> UN Trade and Development., 'Financing for Sustainable Development Report 2024' Op Cit

<sup>42</sup> African Development Bank Group., 'Financing Sustainable Development' Op Cit

<sup>43</sup> Dia. A., 'How Africa can Improve Mobilization of Climate Finance for Sustainable Development?' Available at <https://www.undp.org/africa/blog/how-africa-can-improve-mobilization-climate-finance-sustainable-development> (Accessed on 08/10/2024)

<sup>44</sup> World Economic Forum., 'How to Finance Africa's Future Economic Development' Available at <https://www.weforum.org/agenda/2024/08/how-to-finance-africas-future-economic-development/> (Accessed on 08/10/2024)

<sup>45</sup> Ibid

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This has resulted in slow progress towards actualizing the SDGs in Africa<sup>46</sup>. In light of these challenges, there have been calls for accelerated efforts to ensure that Africa achieves the SDGs by the 2030 deadline<sup>47</sup>. Enhancing access to finance is therefore key in fostering Sustainable Development in Africa.

### **3.0 Enhancing Access to Finance for Sustainable Development in Africa**

There is need to strengthen financing for Sustainable Development in Africa. Achieving this goal requires African countries to embrace the ideal of sustainable financing and its elements<sup>48</sup>. Sustainable finance is a progressive approach towards finance that aims to align financial systems and investments with the Sustainable Development agenda and its SDGs<sup>49</sup>. This concept diverges from conventional approaches towards finance which only focus on profits and considers Environmental, Social, and Governance (ESG) factors as integral in financial decision-making<sup>50</sup>. Sustainable finance therefore seeks to ensure that financial decision making takes into account long-term environmental sustainability and social responsibility<sup>51</sup>. It integrates

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<sup>46</sup> United Nations Development Programme., '2023 Africa Sustainable Development Report' Available at <https://www.undp.org/africa/publications/2023-africa-sustainable-development-report> (Accessed on 08/10/2024)

<sup>47</sup> Ibid

<sup>48</sup> Muigua. K., 'Enhancing Sustainable Finance in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Enhancing-Sustainable-Finance-in-Africa-1.pdf> (Accessed on 09/10/2024)

<sup>49</sup> Sustainable Finance Explained: Concepts, Advantages, and Practical Implementations., Available at <https://il.boell.org/en/2024/03/09/sustainable-finance-explained-concepts-advantages-and-practical-implementations#:~:text=Sustainable%20finance%20plays%20a%20pivotal,and%20fostering%20inclusive%20economic%20development> (Accessed on 09/10/2024)

<sup>50</sup> Ibid

<sup>51</sup> Ibid

### *Enhancing Access to Finance for Sustainable Development in Africa*

ESG tenets into financial decision making including lending and investments therefore ensuring long term sustainability<sup>52</sup>.

According to the United Nations Environment Programme (UNEP), the purpose of sustainable financing or green financing is to increase level of financial flows (from banking, micro-credit, insurance and investment) from the public, private and not-for-profit sectors to Sustainable Development initiatives<sup>53</sup>. It further notes that a key part of sustainable finance is to better manage environmental and social risks, take up opportunities that bring both a decent rate of return and environmental benefit and deliver greater accountability<sup>54</sup>. Sustainable finance can be achieved in Africa through changes in regulatory and policy frameworks on finance towards harmonizing public financial incentives, increasing green financing from the public and private sectors, aligning the public sector financing decision-making with the environmental dimension of the SDGs, increasing investment in clean and green technologies, financing for sustainable natural resource-based green economies and climate smart blue economy, and embracing the use of green bonds among other initiatives<sup>55</sup>. Sustainable financing is therefore a priority towards enhancing access to finance for Sustainable Development in Africa.

There is also need to unlock climate finance in Africa<sup>56</sup>. While the continent has contributed negligibly to climate change, it stands out

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<sup>52</sup> Bakken. R., 'What is Sustainable Finance and Why Is It Important?' Available at <https://extension.harvard.edu/blog/what-is-sustainable-finance-and-why-is-it-important/> (Accessed on 09/10/2024)

<sup>53</sup> United Nations Environment Programme., 'Green Financing' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-financing> (Accessed on 09/10/2024)

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Kone. T., 'For Africa to meet its Climate Goals, Finance is Essential' Op Cit



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disproportionately as the most vulnerable region in the world<sup>57</sup>. This vulnerability is driven by the prevailing low levels of socioeconomic growth in the continent<sup>58</sup>. Climate change represents a key challenge towards achieving the SDGs in Africa. The continent faces exponential collateral damage as a result of climate change posing systemic risks to its economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo its modest development gains and slip it into higher levels of extreme poverty<sup>59</sup>. Confronting climate change is therefore vital towards achieving Sustainable Development in Africa. Access to finance is key towards strengthening climate action. Finance is needed for climate mitigation since large-scale investments are required to significantly reduce greenhouse gas emissions<sup>60</sup>. Further, finance is also important for climate adaptation since significant financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate<sup>61</sup>. It is therefore necessary to unlock climate finance for Sustainable Development in Africa. Climate finance entails local and global financing of public and private investment that seeks to support mitigation of and adaptation to climate change<sup>62</sup>.

The current landscape of climate finance in Africa is inadequate. For example, African governments have pledged \$ 264 Billion in domestic public resources to combat climate change a figure that falls short of the

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<sup>57</sup> United Nations Environment Programme., 'Responding to Climate Change.' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 09/10/2024)

<sup>58</sup> Ibid

<sup>59</sup> African Development Bank Group., 'Climate Change in Africa' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 09/10/2024)

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Hong. H., Karolyi. G. A., & Scheinkman. J.A., 'Climate Finance.' *Review of Financial Studies*, Volume 33, Issue 3 (2020)

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estimated \$ 2.8 trillion required to implement Africa's NDCs between 2020 and 2030<sup>63</sup>. Further, developed countries have failed to deliver on an agreed climate finance target of \$100 billion annually by 2020<sup>64</sup>. This has resulted in inadequacy, imbalance and unpredictability of climate finance flows to developing countries affecting climate change mitigation and adaptation efforts<sup>65</sup>. The debt crisis in Africa is also hindering access to climate finance by affecting investor confidence and the ability of African countries to access international markets<sup>66</sup>. It is imperative to address these challenges in order to enhance access to climate finance for Sustainable Development in Africa. For African countries to unlock climate finance, it is necessary to treat climate change as a development issue and systematically address it in their development strategies and policies in order to promote low carbon development, resource use efficiency and resilience building<sup>67</sup>; upscale public funding and attract private sector climate-resilient investments through an improved policy and regulatory environment<sup>68</sup>; utilize and enhance access to carbon markets and energy financing including investments in renewable sources of energy in order to lower carbon

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<sup>63</sup> Magoma. C., 'A Huge Financing Gap for Climate Action with Public Debt Sustainability Risks Looms in East Africa beyond COP27.' Available at <https://www.acepis.org/a-huge-financing-gap-for-climate-action-with-public-debt-sustainability-risks-looms-in-east-africa-beyond-cop27/> (Accessed on 09/10/2024)

<sup>64</sup> Kone. T., 'For Africa to meet its Climate Goals, Finance is Essential.' Op Cit

<sup>65</sup> United Nations., 'Accessing Climate Finance: Challenges and opportunities for Small Island Developing States.' Available at [https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/accessing\\_climate\\_finance\\_challenges\\_sids\\_report.pdf](https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/accessing_climate_finance_challenges_sids_report.pdf) (Accessed on 09/10/2024)

<sup>66</sup> Agyir. K., 'African Countries Must Act Strategically to Unlock Climate Finance in the Face of a Debt Crisis.' Available at <https://blogs.lse.ac.uk/africaatlse/2023/06/15/african-countries-must-act-strategically-to-unlock-climate-finance-in-the-face-of-a-debt-crisis/> (Accessed on 09/10/2024)

<sup>67</sup> Dia. A., 'How Africa can Improve Mobilization of Climate Finance for Sustainable Development?' Op Cit

<sup>68</sup> Ibid

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emissions<sup>69</sup>; and harness the capacity of the private sector to unlock climate finance through climate investments in the form of green bonds and green loans<sup>70</sup>. It is also vital for developed countries to deliver on their green climate finance target of \$100 billion annually by 2020 in order to enhance access to climate finance in developing countries for Sustainable Development<sup>71</sup>.

Financial inclusion is also vital towards enhancing access to finance for Sustainable Development in Africa<sup>72</sup>. Financial inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs, including transactions, payments, savings, credit and insurance, delivered in a responsible and sustainable way<sup>73</sup>. Financial inclusion is a key enabler of the SDGs<sup>74</sup>. It is vital in reducing extreme poverty and boosting shared prosperity<sup>75</sup>. In addition, financial inclusion models can support overall economic growth and the achievement of broader development goals<sup>76</sup>. For example, it has been pointed out that M-pesa, a mobile money transfer platform in Kenya, has enhanced financial inclusion strengthening poverty reduction efforts and improving the well-being for many

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<sup>69</sup> United Nations Development Programme., 'Sustainable Finance Hub' Op Cit

<sup>70</sup> Muigua. K., 'Enhancing Sustainable Finance in Africa' Op Cit

<sup>71</sup> Kone. T., 'For Africa to meet its Climate Goals, Finance is Essential.' Op Cit

<sup>72</sup> World Bank Group., 'Financial Inclusion in Sub-Saharan Africa—Overview' Available at

<https://www.worldbank.org/en/publication/globalindex/brief/financial-inclusion-in-sub-saharan-africa-overview> (Accessed on 09/10/2024)

<sup>73</sup> World Bank Group., 'Financial Inclusion' Available at <https://www.worldbank.org/en/topic/financialinclusion/overview> (Accessed on 09/10/2024)

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> United Nations Capital Development Fund., 'Financial Inclusion and the SDGs' Available at <https://www.unCDF.org/financial-inclusion-and-the-sdgs?ref=hackernoon.com> (Accessed on 09/10/2024)

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Kenyans including those in rural areas<sup>77</sup>. It is therefore necessary to enhance financial inclusion in Africa through approaches such as embracing mobile money platforms, digital payments, and fostering equal access to banking services based on gender, income, education, and age<sup>78</sup>. Broadening financial inclusion is important in ensuring that individuals and businesses have access to finance for investments and consumption therefore spurring growth towards achieving Sustainable Development<sup>79</sup>.

Increasing the representation of African countries in global economic-decision making processes is also key in enhancing access to finance for the continent's growth and prosperity<sup>80</sup>. Africa has for many years been sidelined from the global economic-decision making processes<sup>81</sup>. This has affected the continent's ability to access to finance for Sustainable Development and contributed to the debt crisis in Africa through unfavourable capital and credit terms<sup>82</sup>. As a result, it is necessary to ensure fairer representation for Africa in global fora and multilateral financial institutions<sup>83</sup>. The 2030 Agenda for Sustainable Development advocates for broadening and strengthening the voice and participation of developing countries including African countries in international economic decision making, norm setting, and global economic

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<sup>77</sup> Ibid

<sup>78</sup> World Bank Group., 'Financial Inclusion in Sub-Saharan Africa – Overview' Op Cit

<sup>79</sup> United Nations Capital Development Fund., 'Financial Inclusion and the SDGs' Op Cit

<sup>80</sup> World Economic Forum., 'How to Finance Africa's Future Economic Development' Op Cit

<sup>81</sup> Carving out Africa's Role in the Emerging Global Order., Available at <https://ecdpm.org/work/carving-out-africas-role-emerging-global-order> (Accessed on 09/10/2024)

<sup>82</sup> Ibid

<sup>83</sup> Ibid

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governance<sup>84</sup>. As a result, there is need to reform the global financial architecture including the International Monetary Fund (IMF) and the World Bank in order to strengthen the African voice on the global stage<sup>85</sup>. This includes ensuring an additional chair for Africa at the IMF to ensure its timely and effective response, increasing access to liquidity and bolstering the global financial safety net, ensuring favourable loan terms for African countries, and scaling up both concessional and non-concessional financing for Africa from the World Bank<sup>86</sup>. Strengthening the voice of Africa in global economic decision making is therefore vital in enhancing access to finance for Sustainable Development in the continent.

Finally, it is vital to tackle illicit financial flows in order to enhance access to finance for Sustainable Development in Africa<sup>87</sup>. The 2030 Agenda for Sustainable Development acknowledges that illicit financial flows are a huge impediment in the quest towards Sustainable Development<sup>88</sup>. This problem is prevalent in Africa. It is estimated that Africa loses nearly \$195 billion annually of its natural capital through illicit financial flows

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<sup>84</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>85</sup> United Nations Economic Commission for Africa., 'African Ministers discuss comprehensive reform proposals for the IMF and the World Bank at the 2023 Annual Meetings' Available at <https://www.uneca.org/stories/african-ministers-discuss-comprehensive-reform-proposals-for-the-imf-and-the-world-bank-at> (Accessed on 09/10/2024)

<sup>86</sup> Ibid

<sup>87</sup> United Nations Conference on Trade and Development., 'Tackling Illicit Financial Flows for Sustainable Development in Africa' Available at [https://unctad.org/system/files/official-document/aldcafrica2020\\_en.pdf](https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf) (Accessed on 09/10/2024)

<sup>88</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

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among other factors<sup>89</sup>. Illicit financial flows are inhibiting African development by draining foreign exchange, reducing domestic resources, stifling trade and macroeconomic stability and worsening poverty and inequality<sup>90</sup>. Further, illicit financial flows rob Africa and its people of their prospects, undermining transparency and accountability and eroding trust in African institutions<sup>91</sup>. Tackling illicit financial flows is therefore key in ensuring availability of finance for Sustainable Development in Africa. It is therefore necessary to combat illicit financial flows in Africa by strengthening the fight against corruption and money laundering, fostering financial transparency and accountability, strengthening regulatory and institutional frameworks, devoting resources to recover stolen assets, and embracing regional and global cooperation to enhance the fight against illicit financial flows across borders<sup>92</sup>.

#### **4.0 Conclusion**

Access to finance is vital in fostering Sustainable Development. Financial resources are crucial in promoting investments in areas such as food security, water and sanitation, quality education, health, renewable energy, climate change mitigation and adaptation, productive employment, and infrastructure towards attaining the SDGs<sup>93</sup>. Access to finance for Sustainable Development in Africa remains a challenge in light of factors such as the debt crisis in the continent, ineffective policies and legal frameworks, low provision of

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<sup>89</sup> United Nations Environment Programme., 'Our Work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa#:~:text=The%20largest%20reserves%20of%20cobalt,internal%20renewable%20fresh%20water%20source>. (Accessed on 09/10/2024)

<sup>90</sup> United Nations Conference on Trade and Development., 'Tackling Illicit Financial Flows for Sustainable Development in Africa' Op Cit

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> United Nations., 'Financing for Sustainable Development' Op Cit

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finance for Sustainable Development in national budgets, inadequate capacity to develop sustainable finance products and services, and limited stakeholder engagement, including from the private sector<sup>94</sup>. Limited access to finance is hindering progress towards the SDGs in Africa. In order to enhance access to finance for Sustainable Development in Africa, it is imperative to: embrace sustainable finance<sup>95</sup>; unlock climate finance<sup>96</sup>; foster financial inclusion<sup>97</sup>; increase the representation of African countries in global economic-decision making processes<sup>98</sup>; and tackle illicit financial flows<sup>99</sup>.

Enhancing access to finance for Sustainable Development in Africa is possible. There is need to fast-track this ideal for prosperity in Africa.

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<sup>94</sup> Dia. A., 'How Africa can Improve Mobilization of Climate Finance for Sustainable Development?' Op Cit

<sup>95</sup> Muigua. K., 'Enhancing Sustainable Finance in Africa' Op Cit

<sup>96</sup> Kone. T., 'For Africa to meet its Climate Goals, Finance is Essential' Op Cit

<sup>97</sup> World Bank Group., 'Financial Inclusion in Sub-Saharan Africa – Overview' Op Cit

<sup>98</sup> World Economic Forum., 'How to Finance Africa's Future Economic Development' Op Cit

<sup>99</sup> United Nations Conference on Trade and Development., 'Tackling Illicit Financial Flows for Sustainable Development in Africa' Op Cit

## **Restoring Our Environment for A Sustainable Future**

### ***Abstract***

*The environment plays a fundamental role in ensuring a sustainable future for both present and future generations. It provides all resources vital for human health and well-being including clean air, food, water, and energy. The environment is also the foundation upon which all economic and social development is built. However, the environment is being increasingly threatened by human activities as evidenced by environmental challenges such as land degradation, climate change, and loss of biodiversity. In light of these problems, it has become necessary to restore the environment for a sustainable future. This paper critically examines the need to restore our environment. The paper argues that restoring our environment is vital in the face of environmental problems including environmental and land degradation, climate change, and loss of biodiversity. It further posits that restoring our environment is key in ensuring a sustainable future for both present and future generations. The paper offers suggestions towards restoring our environment for a sustainable future.*

### **1.0 Introduction**

Achieving a sustainable future is a universal ideal. The United Nations 2030 Agenda for Sustainable Development<sup>1</sup> envisions a sustainable future where all human beings can fulfill their potential in dignity and equality and in a healthy environment; where the planet is protected from degradation including through sustainable consumption and production, sustainably managing its natural resources and tackling climate change so that it can support the needs of the present and future generations; and where every person can enjoy a prosperous and fulfilling life in harmony with nature<sup>2</sup>. Further, Africa Union's Agenda

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<sup>1</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 16/08/2024)

<sup>2</sup> Ibid



## *Restoring Our Environment for a Sustainable Future*

2063<sup>3</sup> sets out the vision of a prosperous Africa, based on inclusive growth and Sustainable Development.

The environment plays a fundamental role in ensuring a sustainable future. The environment is the foundation upon which all economic and social development is built<sup>4</sup>. Further, a healthy environment provides the resources necessary for human life and well-being now and in the future such as clean air, water, energy, fertile soil necessary for food production, and a stable climate<sup>5</sup>. The environment also supports vital economic activities including agriculture, tourism, mining, fishing, energy production among others<sup>6</sup>. The environment is therefore key for human health and well-being for both present and future generations.

Despite its fundamental importance, the environment has come under increased pressure due to human activities. The planet is facing mounting problems including environmental challenges such as climate change, pollution, and loss of biodiversity<sup>7</sup>. According to the United Nations Environment Programme (UNEP), environmental degradation is prevalent throughout the world as evidenced by the depletion of natural resources; the destruction of ecosystems and the extinction of

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<sup>3</sup> African Union., 'Agenda 2063: The Africa we Want' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 16/08/2024)

<sup>4</sup> European Environment Agency., 'Caring for the Environment is Caring for Ourselves' Available at <https://www.eea.europa.eu/en/newsroom/editorial/editorial-caring-for-the-environment#:~:text=It%20gives%20us%20clean%20air,harm%20our%20own%20well%20being.> (Accessed on 16/08/2024)

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at [https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad\\_source=1&gclid=CjwKCAjw8fu1BhBsEiwAwDrjNpnEaH-kukuSuWFrGfYmh6JT5U0XcTOwG5xM9DY18zsMP2Z9R1RgBoC7qoQAvD\\_BwE](https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad_source=1&gclid=CjwKCAjw8fu1BhBsEiwAwDrjNpnEaH-kukuSuWFrGfYmh6JT5U0XcTOwG5xM9DY18zsMP2Z9R1RgBoC7qoQAvD_BwE) (Accessed on 16/08/2024)

wildlife and biodiversity<sup>8</sup>. Further, it has been noted that as of today, almost a quarter of the world's total land area has been degraded<sup>9</sup>. Land degradation creates enormous problems not only for the billions of people who directly depend on agriculture, but it has far-reaching impacts affecting every single person on this planet today<sup>10</sup>. In light of these problems, it is necessary to restore the environment for a sustainable future.

This paper critically examines the need to restore our environment. The paper argues that restoring our environment is vital in the face of environmental problems including environmental and land degradation, climate change, and loss of biodiversity. It further posits that restoring our environment is key in ensuring a sustainable future for both present and future generations. The paper offers suggestions towards restoring our environment for a sustainable future.

## **2.0 Restoring Our Environment: Progress and Challenges**

Restoring the environment entails assisting in the recovery of ecosystems and landscapes that have been degraded or destroyed, as well as conserving the ecosystems and landscapes that are still intact<sup>11</sup>. This process involves revitalizing degraded ecosystems to their original state, promoting biodiversity, and enhancing ecosystem

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<sup>8</sup> United Nations Environment Programme., 'Environmental Damage' Available at <https://leap.unep.org/en/knowledge/glossary/environmental-damage> (Accessed on 16/08/2024)

<sup>9</sup> United Nations Environment Programme., 'Land Degradation' Available at <https://www.unep.org/gef/focal-areas/land-degradation#:~:text=As%20of%20today%2C%20almost%20a,person%20on%20this%20planet%20today>. (Accessed on 16/08/2024)

<sup>10</sup> Ibid

<sup>11</sup> United Nations Environment Programme., 'What is Ecosystem Restoration' Available at <https://www.decadeonrestoration.org/what-ecosystem-restoration> (Accessed on 17/08/2024)

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services<sup>12</sup>. It aims to recreate, initiate, or accelerate the recovery of an ecosystem that has been disturbed by environmental changes that alter ecosystem structure and function. Common disturbances to ecosystems include logging, damming rivers, intense grazing, hurricanes, floods, and wild fires<sup>13</sup>.

Restoring the environment is a vital process in recovering the ecological functionality and enhancing human well-being in deforested and degraded landscapes and ecosystems<sup>14</sup>. It has been noted that healthier ecosystems, with richer biodiversity, yield greater benefits such as more fertile soils, bigger yields of timber and fish, and larger stores of greenhouse gases<sup>15</sup>. The environment is crucial to human well-being providing people with clean air, water, food, building materials and a host of other essential ecosystem services<sup>16</sup>. It also provides the planet with benefits like climate protection and biodiversity conservation<sup>17</sup>. Restoring the environment therefore offers benefits for both humanity and nature. It has been pointed out that the healthier our ecosystems are, the healthier the planet - and its people<sup>18</sup>.

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<sup>12</sup> Ecosystem Restoration for Climate Change Mitigation., Available at <https://tracex.tech.com/ecosystem-restoration-for-climate-change-mitigation/> (Accessed on 11/08/2024)

<sup>13</sup> Vaughn, K. J., et al., 'Restoration Ecology' *Nature Education Knowledge* (2010), Volume 3(10):66

<sup>14</sup> Food and Agriculture Organization., 'The Key Role of Forest and Landscape Restoration in Climate Action.' Available at <https://www.fao.org/documents/card/en/c/cc2510en> (Accessed on 17/08/2024)

<sup>15</sup> United Nations Environment Programme., 'What is Ecosystem Restoration' Op Cit

<sup>16</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Available at <https://www.unep.org/news-and-stories/story/beginners-guide-ecosystem-restoration> (Accessed on 17/08/2024)

<sup>17</sup> Ibid

<sup>18</sup> United Nations Environment Programme., 'Preventing, Halting and Reversing Loss of Nature' Available at <https://www.decadeonrestoration.org/> (Accessed on 17/08/2024)

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Ecosystem restoration has been identified as one of the most important tools for delivering nature-based solutions for food insecurity, climate change mitigation and adaptation, and biodiversity loss<sup>19</sup>. Restoring the environment not only returns ecosystems to a healthy state, but also increases the amount of carbon sequestered, improves biodiversity and the quality of soil and water in the ecosystem, and provides economic benefits for communities that depend on such ecosystems<sup>20</sup>. For example, restoring farmlands can rebuild carbon stores in soils, making them more fertile enabling countries to feed their growing populations<sup>21</sup>. The restoration of farmland also creates habitats for wildlife<sup>22</sup>. In addition, restoring forests helps restore critical habitats for biodiversity, create jobs and income and is an effective nature-based solution to climate change<sup>23</sup>. Restoring forest ecosystems has been identified as not only a cost-effective way to mitigate climate change, but also a key process that provides numerous socio-economic benefits to local communities and the wider society<sup>24</sup>. Restoring coastal ecosystems including coral reefs, mangroves and seagrasses is key in ensuring that oceans can continue to support billions of livelihoods globally<sup>25</sup>.

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<sup>19</sup> United Nations Environment Programme., 'Ecosystem Restoration for People, Nature and Climate' Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/36251/ERPNC.pdf> (Accessed on 17/08/2024)

<sup>20</sup> World Economic Forum., 'What are Natural Climate Solutions?' Available at <https://www.weforum.org/agenda/2021/09/what-are-natural-climate-solutions-ncsalliance/#:~:text=NCS%20are%20actions%20that%20avoid,forest%20conservation%2C%20restoration%20and%20managemen> (Accessed on 17/08/2024)

<sup>21</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>22</sup> Ibid

<sup>23</sup> Greenpop., 'Forest Restoration' Available at <https://greenpop.org/forest-restoration/> (Accessed on 17/08/2024)

<sup>24</sup> International Union for Conservation of Nature., 'Restoring Forest Ecosystems Provides Multiple Benefits to Society' Available at <https://www.iucn.org/news/europe/201905/restoring-forest-ecosystemsprovides-multiple-benefits-society> (Accessed on 17/08/2024)

<sup>25</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

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Restoring the environment is therefore key in ensuring the health and well-being of humanity and nature. It has been noted that natural ecosystems play a significant role in reducing the risk of natural disasters such as floods, droughts, landslides and other extreme events<sup>26</sup>. Restoring natural ecosystems therefore represents an investment in people and livelihoods<sup>27</sup>. It is also key in conserving biodiversity. Conserving biodiversity is vital in maintaining ecosystems and increasing their productivity<sup>28</sup>. As a result, restoring the environment enhances the conservation of biodiversity which is vital for Sustainable Development and human well-being including food security, nutrition, access to water and health<sup>29</sup>.

Restoring the environment is therefore vital in fostering the Sustainable Development agenda<sup>30</sup>. It has been argued that by enhancing the capacity of nature to cater to human needs and by fostering a symbiotic relationship between man and environment, ecosystem restoration directly and indirectly influences the attainment of the Sustainable Development Goals (SDGs)<sup>31</sup>. One of the key goals under the 2030 Agenda for Sustainable Development is ensuring the conservation, *restoration*, and sustainable use of terrestrial and inland freshwater ecosystems and their services in particular forests, wetlands, mountains and drylands<sup>32</sup>. Further, the targets of SDG 15 include the implementation of sustainable management of all types of forests, halting deforestation, restoring degraded forests and substantially

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<sup>26</sup> Fernandez-Miranda. E., '10 Critical Actions for the Sustainable Restoration of an Ecosystem' Available at <https://dendra.io/blog/10-critical-actions-for-the-sustainable-restoration-of-an-ecosystem/> (Accessed on 17/08/2024)

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> SDG Resource Centre., 'Ecosystem Restoration' Available at <https://sdgresources.relx.com/ecosystemrestoration-0> (Accessed on 17/08/2024)

<sup>31</sup> Ibid

<sup>32</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., SDG 15.1

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increasing afforestation and reforestation globally<sup>33</sup>; and combating desertification, restoring degraded land and soil including land affected by desertification, drought and floods, and striving to achieve a land degradation neutral world<sup>34</sup>. It has been noted that restoring the environment can have positive synergies with economic and climate goals, including the SDGs<sup>35</sup>.

There is an urgent need to restore the environment for a sustainable future. It has been noted that land degradation and desertification are among the most significant challenges facing the planet today<sup>36</sup>. The impacts of land degradation include food shortages, volatility and increases in food prices caused as a result of declines in the productivity of croplands; heightened impacts of climate change globally caused by the release of carbon and nitrous oxide from degrading land; and the threat of social instability from the forced migration<sup>37</sup>. In addition to land, other key ecosystems are also being degraded. For example, forests are being threatened by a wide range of pressures, including deforestation, logging, land-use change and invasive alien species, as well as severe droughts and wildfires that are worsened by climate change<sup>38</sup>. According to UNEP, the planet is losing approximately 4.7 million hectares of tropical forest every year<sup>39</sup>. It further notes that many remaining forests are degraded because of logging, firewood cutting, pollution and invasive pests<sup>40</sup>. In addition, freshwater ecosystems are

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<sup>33</sup> Ibid, SDG 15.2

<sup>34</sup> Ibid, SDG 15.3

<sup>35</sup> International Science Council., 'Restoring the World's Ecosystems for a Brighter Future' Available at <https://council.science/blog/restoring-the-worlds-ecosystems-for-a-brighter-future/> (Accessed on 17/08/2024)

<sup>36</sup> United Nations Environment Programme., 'Land Degradation' Op Cit

<sup>37</sup> Ibid

<sup>38</sup> International Union for Conservation of Nature., 'Restoring Forest Ecosystems Provides Multiple Benefits to Society' Op Cit

<sup>39</sup> United Nations Environment Programme., 'Forests' Available at <https://www.decadeonrestoration.org/types-ecosystem-restoration/forests> (Accessed on 17/08/2024)

<sup>40</sup> Ibid

being degraded by pollution, overfishing and infrastructure development as well as the extraction of large amounts of water for irrigation, industry and homes<sup>41</sup>. Further grasslands and savannahs are being degraded through overgrazing, conversion to agricultural uses and invasion by alien species<sup>42</sup>. Marine ecosystems are under assault from pollution, climate change and overexploitation<sup>43</sup>. UNEP points out that coastal and marine environments are negatively impacted by factors such as physical alteration and destruction of habitats from forestry, aquaculture, overfishing, destructive fishing, mining, dredging and dumping as well as pollution including sediments, excess nutrient flows from agriculture and other sources, plastics, as well as untreated wastewater<sup>44</sup>. Further, it has been noted that peatlands and their massive stores of carbon and water are being drained and converted for agriculture and degraded by fire, overgrazing, pollution and peat extraction<sup>45</sup>.

In light of these challenges, it is imperative to restore the environment for a sustainable future. The *United Nations Decade on Ecosystem Restoration*<sup>46</sup> embraces the urgent need to restore the environment for a sustainable future. It aims to prevent, halt and reverse the degradation of ecosystems on every continent and in every ocean<sup>47</sup>. The United Nations Decade on Ecosystem Restoration represents a rallying call for the protection and revival of ecosystems all around the world, for the

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<sup>41</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> United Nations Environment Programme., 'Ecosystem Degradation & Pollution' Available at <https://www.unep.org/topics/ocean-seas-and-coasts/ecosystem-degradation-pollution> (Accessed on 17/08/2024)

<sup>45</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>46</sup> United Nations Decade on Ecosystem Restoration., Available at <https://www.decadeonrestoration.org/> (Accessed on 17/08/2024)

<sup>47</sup> Ibid

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benefit of humanity and nature<sup>48</sup>. This programme runs from 2021 through 2030, which is also the deadline for the global SDGs<sup>49</sup>. Implementing the United Nations Decade on Ecosystem Restoration can help the world achieve the SDGs by tackling poverty, combating climate change, halting and reversing the degradation of ecosystems and preventing a mass extinction of biodiversity<sup>50</sup>.

It is therefore imperative to restore our environment for a sustainable future.

### **3.0 Towards Restoring Our Environment for a Sustainable Future**

Restoring the environment is key in ensuring a sustainable future for both humanity and nature. Ecosystem restoration provides solutions to key global challenges including climate change, biodiversity loss, food insecurity among others<sup>51</sup>. UNEP identifies ecosystem restoration as one of the most important tools for delivering nature-based solutions for food insecurity, climate change mitigation and adaptation, and biodiversity loss<sup>52</sup>. Restoring the environment is key to the prosperity and well-being of people and nature<sup>53</sup>. It has been noted that vibrant ecosystems provide essential benefits including food, water, and health that our growing population needs today and will need in the future<sup>54</sup>.

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<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Wu. X., 'Adapting Ecosystem Restoration for Sustainable Development in a Changing World' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9867968/> (Accessed on 17/08/2024)

<sup>52</sup> United Nations Environment Programme., 'Ecosystem Restoration for People, Nature and Climate' Op Cit

<sup>53</sup> United Nations Environment Programme., 'Ecosystem Restoration for People, Nature and Climate' Available at <https://www.unep.org/interactive/ecosystem-restoration-people-nature-climate/en/index.php#:~:text=We%20must%20restore%20ecosystems%20to,ecosystems%20and%20their%20carbon%20stores> (Accessed on 17/08/2024)

<sup>54</sup> Ibid



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According to UNEP, ecosystem restoration is needed on a large scale in order to achieve the Sustainable Development agenda<sup>55</sup>. It has been noted that over-exploitation of natural resources is embedded in economies and governance systems, and the resulting degradation is undermining hard-won development gains and threatening the well-being of present and future generations<sup>56</sup>. It has been noted that most ecosystems be they terrestrial, marine or coastal, are in need of protection and restoration<sup>57</sup>. The restoration agenda is fundamentally intertwined with tackling climate change and achieving the SDGs. Restoring the environment by preventing, halting and reversing degradation is needed to achieve global climate goals by 2030, while restoration through agroforestry alone has the potential to increase food security for over 1.3 billion people globally<sup>58</sup>.

In order to restore damage and degraded farmlands, it is imperative to embrace measures such as reducing tillage, using more natural fertilizer and pest control, and growing more diverse crops, including trees<sup>59</sup>. It has been noted that land restoration practices such as reforestation, soil conservation, and the protection of natural processes are key in enhancing biodiversity, restoring crucial ecosystem services, and mitigating the impacts of climate change<sup>60</sup>. Further, restoring forest

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<sup>55</sup> United Nations Environment Programme., 'Ecosystem Restoration for People, Nature and Climate' Op Cit

<sup>56</sup> Ibid

<sup>57</sup> United Nations Environment Programme., '10 years to Boost Ecosystem Restoration for People and Planet' Available at <https://www.unep-wcmc.org/en/news/10-years-to-boost-ecosystem-restoration-for-people-and-planet> (Accessed on 17/08/2024)

<sup>58</sup> United Nations Environment Programme World Conservation Monitoring Centre., 'Ecosystem Restoration Key to Future of People and Planet, New Report' Available at <https://www.unep-wcmc.org/en/news/ecosystem-restoration-key-to-future-of-people-and-planet-new-report> (Accessed on 17/08/2024)

<sup>59</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>60</sup> United Nations University's Institute for Environment and Human Security., 'Land Restoration: 5 Key Elements of Reviving Our Earth' Available at

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ecosystem requires approaches such as reforestation, assisted natural regeneration, agroforestry, and afforestation<sup>61</sup>. These approaches involve different techniques, such as planting new trees, removing invasive species, or reintroducing native plants and animals in a forest ecosystem<sup>62</sup>. The *Bonn Challenge*<sup>63</sup> is a global goal that seeks to restore 350 million hectares of the world's degraded and deforested lands by 2030. In addition, the *African Forest Landscape Restoration Initiative*<sup>64</sup> aims to contribute to the Bonn Challenge and African Union's Agenda 2063 through its target of restoring 100 million hectares of land across Africa by 2030. Meeting these ambitious global and regional targets is vital in restoring forests for sustainability. It has been noted that restoring forest ecosystems helps to conserve biodiversity, mitigate climate change, and support sustainable livelihoods for local communities<sup>65</sup>.

Further, there is need to halt pollution, reduce and treat waste, manage the demand for water and fish, and revive vegetation above and below the surface in order to restore freshwater ecosystems such as rivers and lakes<sup>66</sup>. Rivers and lakes have been identified as among the most degraded ecosystems in the world, with fish populations, many of which are vital for local, national, and global food security, pushed to

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<https://unu.edu/ehs/series/land-restoration-5-key-elements-reviving-our-earth#:~:text=Land%20restoration%20refers%20to%20the,and%20mitigate%20climate%20change%20impacts>. (Accessed on 17/08/2024)

<sup>61</sup> Muigua. K., 'Restoring Landscapes and Ecosystems for Climate Mitigation' Available at <https://kmco.co.ke/wp-content/uploads/2024/02/Restoring-Landscapes-and-Ecosystems-for-ClimateMitigation.pdf> (Accessed on 17/08/2024)

<sup>62</sup> Ibid

<sup>63</sup> The Bonn Challenge., Available at <https://www.bonnchallenge.org/> (Accessed on 17/08/2024)

<sup>64</sup> African Forest Landscape Restoration Initiative., Available at <https://afr100.org/> (Accessed on 17/08/2024)

<sup>65</sup> Muigua. K., 'Restoring Landscapes and Ecosystems for Climate Mitigation' Op Cit

<sup>66</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

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the brink<sup>67</sup>. Healthy freshwater ecosystems are central to water and food security, while also tackling the climate and nature crises, and driving Sustainable Development<sup>68</sup>. Restoring rivers and lakes is thus crucial in ensuring a sustainable future. For marine ecosystems, it is crucial to restore degraded habitats, such as coral reefs and mangroves, and rehabilitate injured or sick marine animals<sup>69</sup>. It is also necessary to promote sustainable fishing practices in seas and oceans, establish marine protected areas, and curb marine pollution in order to restore marine ecosystems<sup>70</sup>. Restoration of marine ecosystems is an important strategy for mitigating climate change, bolstering biodiversity, and sustaining blue economies<sup>71</sup>.

Grasslands and savannahs can be restored by clearing woody vegetation and re-seeding native grasses<sup>72</sup>. In addition, lost plants and animals can be re-introduced and protected until they are established in these ecosystems<sup>73</sup>. It has further been pointed out that controlled wildfires remove most of the overgrown, non-native, and weedy plant species within a grassland ecosystem making space for younger native grasses<sup>74</sup>. In addition, nature-based solutions including increased forest cover can conserve soil, safeguard water flows and guard against natural disasters

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<sup>67</sup> United Nations Environment Programme., 'Largest River and Wetland Restoration Initiative in History Launched at UN Water Conference' Available at <https://www.unep.org/news-and-stories/press-release/largest-river-and-wetland-restoration-initiative-history-launched-un> (Accessed on 17/08/2024)

<sup>68</sup> Ibid

<sup>69</sup> Colson. D., 'Marine Conservation Strategies Aimed Toward Healthy Oceans' Available at <https://www.transformationholdings.com/environment/marine-conservation-strategies-aimed-towardhealthy-oceans/> (Accessed on 17/08/2024)

<sup>70</sup> Ibid

<sup>71</sup> Fuchs. G., 'Marine and Coastal Ecosystem Restoration' Available at <https://www.ecologic.eu/sites/default/files/presentation/2023/Fuchs-23-Marine-and-coastalecosystem.pdf> (Accessed on 17/08/2024)

<sup>72</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>73</sup> Ibid

<sup>74</sup> Grassland Management - Restoring Iconic Landscapes and Species., Available at <https://www.nps.gov/articles/grasslandrestoration.htm> (Accessed on 17/08/2024)

such as avalanches, landslides and floods therefore protecting mountain ecosystems and livelihoods<sup>75</sup>.

#### **4.0 Conclusion**

Restoring the environment is a vital process in recovering the ecological functionality and enhancing human well-being in deforested and degraded landscapes and ecosystems<sup>76</sup>. It is a key process that fosters Sustainable Development by enhancing the capacity of nature to cater to human needs and by fostering a symbiotic relationship between man and environment<sup>77</sup>. Ecosystem restoration is one of the most important tools for delivering nature-based solutions for food insecurity, climate change mitigation and adaptation, and biodiversity loss<sup>78</sup>. Restoring the environment is an urgent concern in wake of environmental degradation as evidenced by land degradation, desertification, deforestation, loss of biodiversity, and the degradation of key ecosystems including rivers, lakes, mountains, grasslands, and marine ecosystems<sup>79</sup>. The *United Nations Decade on Ecosystem Restoration*<sup>80</sup> sets out the global agenda on restoring the environment. It is therefore imperative to restore all vital ecosystems including farmlands, forests, rivers and lakes, grasslands and savannah, mountains, peatlands, and marine ecosystems for sustainability. It is also vital to embrace indigenous knowledge in restoring the environment which has been

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<sup>75</sup> United Nations Environment Programme., 'Mountains' Available at <https://www.decadeonrestoration.org/types-ecosystem-restoration/mountains#:~:text=Restoring%20mountain%20ecosystems%20means%20considering,as%20avalanches%2C%20landslides%20and%20floods.> (Accessed on 17/08/2024)

<sup>76</sup> Food and Agriculture Organization., 'The Key Role of Forest and Landscape Restoration in Climate Action.' Op Cit

<sup>77</sup> SDG Resource Centre., 'Ecosystem Restoration' Op Cit

<sup>78</sup> United Nations Environment Programme., 'Ecosystem Restoration for People, Nature and Climate' Op Cit

<sup>79</sup> United Nations Environment Programme., 'A Beginner's Guide to Ecosystem Restoration' Op Cit

<sup>80</sup> United Nations Decade on Ecosystem Restoration., Op Cit

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identified as an important resource in keeping the use of natural resources sustainable<sup>81</sup>.

Restoring our environment for a sustainable future is therefore possible and achievable. We should pursue this ideal in order to create harmony between humanity and nature for posterity.

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<sup>81</sup> United Nations Environment Programme., 'Mountains' Op Cit

## **Realising The Human Right to Water and Sanitation**

### ***Abstract***

*This paper critically explores the human right to water and sanitation. The paper argues that access to safe, affordable and reliable drinking water and sanitation services are basic human rights that are indispensable for Sustainable Development and human well-being. The paper tracks the progress made towards realising the human right to water and sanitation at the global, regional, and national levels. It further examines the challenges facing the attainment of the human right to water and sanitation. In addition, the paper provides recommendations towards realising the human right to water and sanitation.*

### **1.0 Introduction**

Water is at the core of Sustainable Development and is a vital resource for socio-economic development, energy and food production, healthy ecosystems and for human survival<sup>1</sup>. It has been pointed out that by managing water sustainably, it is possible to better manage our production of food and energy and contribute to decent work and economic growth.<sup>2</sup> In addition, water is also at the heart of adaptation to climate change, serving as the crucial link between society and the environment<sup>3</sup>. Protecting and restoring ecosystems such as mangroves and wetlands is a key approach in reducing greenhouse gas emissions, while also benefitting nature and wildlife, as well as economies and societies since these ecosystems can act as a buffer to extreme events, such as floods and droughts, therefore protecting humanity from

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<sup>1</sup> United Nations., 'Water' Available at <https://www.un.org/en/global-issues/water#:~:text=The%20UN%20and%20Water,human%2C%20commercial%20and%20agricultural%20needs> (Accessed on 28/08/2024)

<sup>2</sup> United Nations., 'Goal 6: Clean Water and Sanitation' Available at <https://www.un.org/sustainabledevelopment/water-and-sanitation/> (Accessed on 28/08/2024)

<sup>3</sup> United Nations., 'Water' Op Cit



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management of water and sanitation for all<sup>12</sup>. In order to realise the human right to water and sanitation, SDG 6 seeks to: achieve universal and equitable access to safe and affordable drinking water for all; achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations; improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally; substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity; implement integrated water resources management at all levels, including through transboundary cooperation as appropriate; support and strengthen the participation of local communities in improving water and sanitation management; and protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes<sup>13</sup>. Achieving the targets of SDG 6 is therefore key in realising the human right to water and sanitation.

This paper critically explores the human right to water and sanitation. The paper argues that access to safe, affordable and reliable drinking water and sanitation services are basic human rights that are indispensable for Sustainable Development and human well-being. The paper tracks the progress made towards realising the human right to water and sanitation at the global, regional, and national levels. It further examines the challenges facing the attainment of the human right to water and sanitation. In addition, the paper provides recommendations towards realising the human right to water and sanitation.

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<sup>12</sup> Ibid

<sup>13</sup> Ibid



## **2.0 The Human Right to Water and Sanitation**

Access to safe, affordable and reliable drinking water and sanitation services are fundamental human rights<sup>14</sup>. The human right to water and sanitation is indispensable to sustaining healthy livelihoods and maintaining people's dignity<sup>15</sup>. This right is also essential for eradicating poverty, building peaceful and prosperous societies and nations, and ensuring that 'no one is left behind' on the road towards Sustainable Development<sup>16</sup>. According to the United Nations, safe, affordable and reliable drinking water and adequate sanitation are crucial for poverty reduction and Sustainable Development<sup>17</sup>.

It has been argued that there is need to embrace water and sanitation as two separate human rights<sup>18</sup>. For example, when water and sanitation are mentioned together, the importance of sanitation is downgraded because of the political and cultural preference given to the right to water<sup>19</sup>. Delimiting the human rights to water and sanitation as separate and distinct allows stakeholders including governments and the civil society to create standards specifically for the human right to sanitation and for its realisation<sup>20</sup>. Further, distinguishing between these two rights also makes it easier for states

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<sup>14</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Available at <https://www.ohchr.org/en/water-and-sanitation> (Accessed on 28/08/2024)

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> United Nations., 'The Human Right to Water and Sanitation' Available at [https://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_media\\_brief.pdf](https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf) (Accessed on 28/08/2024)

<sup>18</sup> United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation., 'Realising the Human Rights to water and Sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque' Available at [https://www.pseau.org/outils/ouvrages/ohchr\\_realizing\\_the\\_human\\_rights\\_to\\_water\\_and\\_sanitation\\_a\\_handbook\\_2014.pdf](https://www.pseau.org/outils/ouvrages/ohchr_realizing_the_human_rights_to_water_and_sanitation_a_handbook_2014.pdf) (Accessed on 28/08/2024)

<sup>19</sup> Ibid

<sup>20</sup> Ibid

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and other stakeholders to understand their distinct responsibilities, obligations and roles implicit in the realisation of each of the rights<sup>21</sup>.

Water and sanitation should therefore be embraced as two distinct rights in order to ensure their realisation. The human right to water entitles everyone to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use<sup>22</sup>. On the other hand, the human right to sanitation entitles everyone to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity<sup>23</sup>.

The human rights to water and sanitation are anchored by several key principles. These include: availability; accessibility; affordability; quality and safety; and acceptability<sup>24</sup>. On accessibility, it has been noted that everyone has the right to water and sanitation services that are physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution<sup>25</sup>. However, it is imperative to note that physical presence is not the same as accessibility<sup>26</sup>. Water or sanitation services that are too expensive, unreliable, unhygienic, unsafely located, unadapted for

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<sup>21</sup> Ibid

<sup>22</sup> United Nations., 'Human Rights to Water and Sanitation' Available at <https://www.unwater.org/water-facts/human-rights-water-and-sanitation#:~:text=Water%20and%20sanitation%20are%20critical%20to%20achieving%20the%20SDGs.&text=A%20society%20can%20only%20achieve,rights%20to%20water%20and%20sanitation> (Accessed on 28/08/2024)

<sup>23</sup> Ibid

<sup>24</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>25</sup> United Nations., 'The Human Right to Water and Sanitation' Available at [https://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml#:~:text=The%20human%20right%20to%20water%20and%20sanitation&text=On%2028%20July%202010%2C%20through,realisation%20of%20all%20human%20rights](https://www.un.org/waterforlifedecade/human_right_to_water.shtml#:~:text=The%20human%20right%20to%20water%20and%20sanitation&text=On%2028%20July%202010%2C%20through,realisation%20of%20all%20human%20rights) (Accessed on 28/08/2024)

<sup>26</sup> United Nations., 'Human Rights to Water and Sanitation' Op Cit

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less able groups or children, or non gender-segregated, in the case of toilets and washing facilities do not meet the threshold of accessibility even if they physically accessible<sup>27</sup>. It is also vital to ensure that such services are affordable, in quality and safe conditions, acceptable, and able to meet the needs of diverse groups including children, women, and persons with disabilities in order to fully realise the human rights to water and sanitation<sup>28</sup>.

The human right to water and sanitation has been recognized at the global level. The Committee on Economic, Social and Cultural Rights adopted *General Comment No. 15 on the Right to Water*<sup>29</sup>. General Comment No. 15 recognizes that the human right to water is indispensable for leading a life in human dignity and that it is a prerequisite for the realization of other human rights<sup>30</sup>. It also acknowledges that the human right to water entitles everyone to sufficient, safe, quality, acceptable, physically accessible and affordable water for personal and domestic uses<sup>31</sup>. In addition, it notes that an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements<sup>32</sup>. This document further points out that the right to water contains both freedoms and entitlements. The freedoms under right to water include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> United Nations, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20 January 2003 (Contained in Document E/C.12/2002/11)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

### *Realising the Human Right to Water and Sanitation*

contamination of water supplies<sup>33</sup>. On the other hand, entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water<sup>34</sup>. General Comment No. 15 also sets out the importance of ensuring that the right to water is enjoyed without discrimination and equally between men and women<sup>35</sup>.

The United Nations General Assembly has also adopted a *Resolution*<sup>36</sup> that explicitly recognises the human right to water and sanitation. The Resolution acknowledges the importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights<sup>37</sup>. It notes that the right to safe and clean drinking water and sanitation is a key human right that is essential for the full enjoyment of life and all human rights<sup>38</sup>. In order to realise this right, the Resolution by the United Nations General Assembly calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all<sup>39</sup>.

The African Commission on Human and Peoples' Rights has also issued *Guidelines on the Right to Water in Africa*<sup>40</sup>. The Guidelines note that the

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> United Nations General Assembly., 'The Human Right to Water and Sanitation' A/RES/64/292

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Available at <https://achpr.au.int/en/node/904#:~:text=Thus%20the%20realisation%20of%20the,realise%20the%20right%20to%20health> (Accessed on 29/08/2024)

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human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses<sup>41</sup>. In addition, the Guidelines state that under no circumstances may an individual be deprived of the minimum essential amount of water for basic human needs and survival<sup>42</sup>. They require water to be treated first and foremost as a social and cultural good, not as an economic good<sup>43</sup>. The Guidelines note that states have an obligation to respect, protect, promote and fulfil the right to water<sup>44</sup>. They urge states to take deliberate, concrete and targeted steps to move as expeditiously and effectively as possible towards the goal of full realisation of the right to water, using the maximum available resources<sup>45</sup>. In addition, the Guidelines require African states to ensure a non-discriminatory participation to all stakeholders in the water sector, as well as equal access to water and water facilities and services<sup>46</sup>. In particular, they require states to take positive measures to ensure that vulnerable and marginalized groups and groups with special needs, including cultural, spiritual and religious needs, participate in the water sector and have access to water<sup>47</sup>. Further, in order to realise the right to water and sanitation in Africa, the Guidelines require states to adopt a rights-based approach to water management that takes into account community-based water management, access to information, public participation, and sustainability<sup>48</sup>. Implementing these Guidelines is key in realising the human right to water and sanitation in Africa.

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<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

### *Realising the Human Right to Water and Sanitation*

At a national level, the *Constitution of Kenya*<sup>49</sup> enshrines the right of every person to clean and safe water in adequate quantities to reasonable standards of sanitation<sup>50</sup>. Further, the *Water Act*<sup>51</sup> provides for the regulation, management and development of water resources and water and sewerage services towards fostering the right to water in Kenya. The Act notes that every person in Kenya has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in article 43 of the Constitution of Kenya<sup>52</sup>.

The right to water and sanitation has therefore been recognized at the global, regional, and national levels. However, despite its recognition, it has been noted that globally, billions of people lack access to safe, adequate, and readily available water at home, and safely managed sanitation services<sup>53</sup>. This problem is especially prevalent in Sub-Saharan Africa which has the largest number of water-stressed countries than any other place on the planet<sup>54</sup>. In addition, the negative effects of overuse and pollution of water resources and other development activities in Africa are threatening the rights of present and future generations, the realisation of which depends on equitable access to water<sup>55</sup>. Lack of access to adequate sanitation has been identified as the primary cause of water contamination and diseases linked to water<sup>56</sup>. WHO notes that inadequate sanitation is a major cause of disease worldwide and improving sanitation is known to have a significant beneficial

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<sup>49</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>50</sup> Ibid, article 43

<sup>51</sup> Water Act., Cap 372, Government Printer, Nairobi

<sup>52</sup> Ibid, S 63

<sup>53</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>54</sup> African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Op Cit

<sup>55</sup> Ibid

<sup>56</sup> United Nations General Assembly., 'The Human Right to Water and Sanitation' Op Cit

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impact on health both in households and across communities<sup>57</sup>. Lack of adequate sanitation services results in challenges such as open defecation which has devastating impacts for public health<sup>58</sup>. Exposed faecal matter contaminates food, water and the environment, and can spread serious diseases, such as cholera<sup>59</sup>. It also undermines individual dignity and safety<sup>60</sup>. It is therefore evident that despite progress, significant challenges still remain for the achievement of the human right to water and sanitation and in addressing huge inequalities between and within countries in accessing basic water and sanitation services. It is imperative to address these challenges in order to realise the human right to water and sanitation.

### **3.0 Realising the Human Right to Water and Sanitation**

It is imperative to realise the human right to water and sanitation. In order to achieve this goal, water should be regarded not just as a natural resource to be managed and used, but as a fundamental human right to which all people are entitled without discrimination<sup>61</sup>. Access to safe water and sanitation for all is essential for eradicating poverty, building peaceful and prosperous societies, and fostering an inclusive path towards Sustainable Development<sup>62</sup>.

Realising the human right to water and sanitation requires states to work towards achieving universal access to water and sanitation for all, without any discrimination, while prioritizing those most in need<sup>63</sup>. It is therefore important for states to enhance investments in water and

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<sup>57</sup> World Health Organization., 'Overview (Sanitation)' Op Cit

<sup>58</sup> UNICEF., 'Sanitation' Op Cit

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>62</sup> UN-Habitat., 'Water and Sanitation' Available at <https://unhabitat.org/topic/water-and-sanitation> (Accessed on 30/08/2024)

<sup>63</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

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sanitation services for all<sup>64</sup>. This is key in ensuring universal access to safe and affordable drinking water<sup>65</sup>. Providing safe sanitation for the world's most vulnerable communities in rural and urban areas, and during emergencies is also important in tackling the problem of open defecation which has devastating impacts on public health<sup>66</sup>. States have also been urged to foster progressive realization of the right to water and sanitation in light of different capabilities<sup>67</sup>.

Ensuring equality and non-discrimination is vital in realising the human right to water and sanitation<sup>68</sup>. The principle of equality and non-discrimination require states to eliminate inequalities in access to water and sanitation<sup>69</sup>. States should therefore ensure progressive allocation of funding for the highly disadvantaged and vulnerable groups, with the aim of making up for long-standing marginalization of these groups<sup>70</sup>.

Sound governance of water resources is also vital in realising the human right to water and sanitation<sup>71</sup>. Competition in water uses and over access to water resources are key challenges in realising the right to water especially in the context of shared water resources<sup>72</sup>. These factors often contribute to pollution, overexploitation, conflicts, and water scarcity therefore undermining efforts towards achieving the human right to water<sup>73</sup>. The *Dublin Statement* that was adopted during *the International*

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<sup>64</sup> United Nations., 'Goal 6: Clean Water and Sanitation' Op Cit

<sup>65</sup> Ibid

<sup>66</sup> UNICEF., 'Sanitation' Op Cit

<sup>67</sup> Kenya National Commission on Human Rights., 'Framework for Monitoring Realization of the Rights to Water and Sanitation in Kenya' Available at <https://www.knchr.org/Portals/0/EcosocReports/PHE-Framework.pdf> (Accessed on 30/08/2024)

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Op Cit

<sup>72</sup> Ibid

<sup>73</sup> Ibid



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*Conference on Water and the Environment (Dublin Conference)*<sup>74</sup> identifies key principles for sound water governance which include participatory approaches involving users, planners and policy-makers at all levels<sup>75</sup>; the role of women in the provision, management and safeguarding of water<sup>76</sup>; the basic right of all human beings to have access to clean water and sanitation at an affordable price<sup>77</sup>; and effective management of water resources that takes a holistic approach, linking social and economic development with protection of natural ecosystems<sup>78</sup>. States should therefore embrace a participatory approach towards governance of water and sanitation services that takes into account the role of women, youth and indigenous communities<sup>79</sup>. States should also enhance access to information on water and sanitation in order to effectively realise these rights<sup>80</sup>. It has been noted that information empowers people to pursue their rights to water and sanitation<sup>81</sup>. Protecting and restoring water-related ecosystems is also essential for sound water governance towards realising the human right to water and sanitation<sup>82</sup>.

### **4.0 Conclusion**

Access to safe, affordable and reliable drinking water and sanitation services are fundamental human rights that are key in fostering

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<sup>74</sup> International Conference on Water and the Environment: 26-31 January 1992, Dublin, Ireland., Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/30961/ICWE.pdf?sequence=1&isAllowed=y> (Accessed on 30/08/2024)

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Kenya National Commission on Human Rights., 'Framework for Monitoring Realization of the Rights to Water and Sanitation in Kenya' Op Cit

<sup>81</sup> Ibid

<sup>82</sup> United Nations Development Programme., 'Goal 6: Clean Water and Sanitation' Available at <https://www.undp.org/sustainable-development-goals/clean-water-and-sanitation> (Accessed on 30/08/2024)

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Sustainable Development<sup>83</sup>. The human right to water and sanitation is key in sustaining healthy livelihoods and maintaining people's dignity<sup>84</sup>. The human right to water and sanitation entitles every person to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity<sup>85</sup>. The human right to water and sanitation has been recognized at the global, regional, and national levels. However, despite its recognition, billions of people all over the world lack access to safe, adequate, and readily available water at home, and safely managed sanitation services<sup>86</sup>.

Realising the human right to water and sanitation is therefore an urgent priority for development. In order to achieve this right, it is imperative for states to: enhance investments in water and sanitation services for all<sup>87</sup>; prioritise the needs of disadvantaged groups in order to ensure equality and non-discrimination<sup>88</sup>; ensure access to information and participation by all stakeholders including women, youth, and indigenous communities in the governance of water and sanitation services<sup>89</sup>; and protect and restore water-related ecosystems<sup>90</sup>.

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<sup>83</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>84</sup> Ibid

<sup>85</sup> United Nations., 'Human Rights to Water and Sanitation' Op Cit

<sup>86</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>87</sup> United Nations., 'Goal 6: Clean Water and Sanitation' Op Cit

<sup>88</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

<sup>89</sup> International Conference on Water and the Environment: 26-31 January 1992, Dublin, Ireland., Op Cit

<sup>90</sup> United Nations Development Programme., 'Goal 6: Clean Water and Sanitation' Op Cit

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It is therefore important for all states to work towards realising the human right to water and sanitation for development.

## **Enhancing Environmentalism for Green Growth**

### **Abstract**

*The concept of environmentalism seeks to achieve harmony between humanity and nature. It stresses that humanity is integral to nature and that nature is vital for human survival hence the need to embrace a symbiotic relationship between the two. Environmentalism seeks to ensure that nature is conserved and protected in order to sustain both the present and future generations. This paper critically examines the need to enhance environmentalism for green growth. The paper posits that fostering green growth is a pertinent ideal in light of the Sustainable Development agenda. The paper defines green growth and critically discusses its elements. It further posits that fostering environmentalism is a key strategy towards green growth. The paper suggests approaches towards enhancing environmentalism for green growth.*

### **1.0 Introduction**

The concept of environmentalism focuses on restoring a symbiotic relationship between humanity and nature which is an ideal that requires fundamental alterations in human behaviour and in the characteristics of social life<sup>1</sup>. It has been noted that the relationship between human beings and nature has been untenable therefore threatening the integrity and viability of nature and human well-being<sup>2</sup>. According to the United Nations Environment Programme (UNEP), environmental problems facing the planet including the triple planetary crisis of climate change, biodiversity loss, and pollution have heightened the importance of forging a new relationship between people and the planet towards achieving sustainability<sup>3</sup>.

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<sup>1</sup> Choucri. N., 'Environmentalism' Available at <https://dspace.mit.edu/bitstream/handle/1721.1/141579/%5BChoucri%5D%201993%20Environmentalism.pdf?sequence=1&isAllowed=y> (Accessed on 19/08/2024)

<sup>2</sup> Ibid

<sup>3</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at

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Environmentalism stresses that humanity is integral to nature and that nature is vital for human survival hence the need to embrace a harmonious relationship between the two<sup>4</sup>. It focuses on reassessment of humanity's relationship with nature in order to enhance environmental conservation and minimize human impacts on the environment<sup>5</sup>. Environmentalism advocates for the adoption of political, economic, and social policies that enhance environmental protection<sup>6</sup>. It also focuses on the preservation, restoration, and improvement of the natural environment<sup>7</sup>. This concept seeks to ensure that nature is conserved and protected in order to sustain both the present and future generations<sup>8</sup>.

This paper critically examines the need to enhance environmentalism for green growth. The paper posits that fostering green growth is a pertinent ideal in light of the Sustainable Development agenda. The paper defines green growth and critically discusses its elements. It further posits that fostering environmentalism is a key strategy towards green growth. The paper suggests approaches towards enhancing environmentalism for green growth.

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<https://www.unep.org/newsandstories/speech/tripleplanetary-crisis-forging-new-relationship-between-people-and-earth> (Accessed on 19/08/2024)

<sup>4</sup> Choucri, N., 'Environmentalism' Op Cit

<sup>5</sup> Environmentalism., Available at <https://www.britannica.com/topic/environmentalism> (Accessed on 19/08/2024)

<sup>6</sup> Ibid

<sup>7</sup> Environmentalism., Available at <https://www.merriam-webster.com/dictionary/environmentalism> (Accessed on 19/08/2024)

<sup>8</sup> Song, W., & Cao, H., 'Historical Evolution and Reflections on Harmony between Man and Nature' Available at <https://www.scirp.org/journal/paperinformation?paperid=120602#:~:text=Harmony%20between%20man%20and%20nature%20means%20that%20man%20needs%20to,to%20preserve%20nature%20while%20developing> (Accessed on 19/08/2024)

## **2.0 Green Growth**

The idea of green growth aims to foster economic growth that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities<sup>9</sup>. Green growth has also been defined as promoting economic growth and development, while ensuring that natural assets continue to provide the resources and environmental services on which human well-being relies<sup>10</sup>. Green growth is therefore growth that is environmentally sustainable<sup>11</sup>. It is a development model that seeks to deliver economic growth that is both environmentally sustainable and socially inclusive<sup>12</sup>. This concept seeks opportunities for economic growth that are low-carbon and climate resilient, combat pollution, maintain healthy and productive ecosystems, and create green jobs while reducing poverty and enhancing social inclusion<sup>13</sup>.

According to the World Bank, green growth is efficient in its use of natural resources, clean in that it minimizes pollution and environmental impacts, and resilient since it accounts for natural hazards and the role of environmental management in preventing physical hazards and

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<sup>9</sup> United Nations Economic Commission for Africa., 'Enabling Measures for an Inclusive Green Economy in Africa' Available at [https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA\\_Enabling%20measures%20for%20an%20inclusive%20green%20economy%20in%20Africa.pdf](https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA_Enabling%20measures%20for%20an%20inclusive%20green%20economy%20in%20Africa.pdf) (Accessed on 19/08/2024)

<sup>10</sup> Organisation for Economic Cooperation and Development., 'Towards Green Growth' Available at <https://www.oecd-ilibrary.org/docserver/9789264111318-sum-en.pdf?expires=1724073546&id=id&accname=guest&checksum=E34A1AF0D5BEFA1932CC992346CAD933> (Accessed on 19/08/2024)

<sup>11</sup> World Bank Group., 'Inclusive Green Growth' Available at <https://documents1.worldbank.org/curated/en/129971468157532224/pdf/793260BR10v20R00Box037737400Public0.pdf> (Accessed on 19/08/2024)

<sup>12</sup> Global Green Growth Institute., 'Accelerating the Transition to a New Model of Growth' Available at [https://gggi.org/wp-content/uploads/2018/02/17078\\_GGGI\\_Strategic\\_Plan-2015\\_v13\\_JM\\_HOMEPRINT.pdf](https://gggi.org/wp-content/uploads/2018/02/17078_GGGI_Strategic_Plan-2015_v13_JM_HOMEPRINT.pdf) (Accessed on 19/08/2024)

<sup>13</sup> Ibid

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excessive commodity price volatility<sup>14</sup>. The United Nations Environment Programme further notes that green growth is low carbon, resource efficient and socially inclusive<sup>15</sup>. Green growth ensures that growth in employment and income are driven by public and private investment into such economic activities, infrastructure and assets that allow reduced carbon emissions and pollution, enhanced energy and resource efficiency, and prevention of the loss of biodiversity and ecosystem services<sup>16</sup>.

It has been noted that green growth is centred on mutually reinforcing aspects of economic, social and environmental development<sup>17</sup>. Green growth takes into account the full value of natural capital as a factor of production and its role in economic growth<sup>18</sup>. This concept focuses on cost-effective ways of addressing environmental challenges to affect a transition towards new patterns of growth that will avoid crossing critical local, regional and global environmental thresholds<sup>19</sup>. Green growth is therefore concerned with the interrelated system of economic production and consumption activities, policies and instruments, and institutions determining how scarce resources are allocated to meet economic, social and environmental objectives<sup>20</sup>.

Green growth is at the heart of Sustainable Development. The idea of Sustainable Development seeks to promote development that meets the needs of the present without compromising the ability of future

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<sup>14</sup> World Bank Group., 'Inclusive Green Growth' Op Cit

<sup>15</sup> United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy> (Accessed on 19/08/2024)

<sup>16</sup> Ibid

<sup>17</sup> Organisation for Economic Cooperation and Development., 'Towards Green Growth' Op Cit

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> United Nations Economic Commission for Africa., 'Enabling Measures for an Inclusive Green Economy in Africa' Op Cit

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generations to meet their own needs<sup>21</sup>. In order to achieve this goal, Sustainable Development focuses on promoting environmental conservation, economic development and social progress<sup>22</sup>. It has been argued that Sustainable Development is the overarching principle underpinned by green growth initiatives to enhance environmental sustainability, while achieving higher economic growth and increasing the resilience of communities and nations against climate change and other environmental disasters<sup>23</sup>. Green growth therefore builds on the broad ideal of Sustainable Development and provides a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner<sup>24</sup>. It emphasizes the importance of economic growth for development and poverty eradication, together with the importance of environmental sustainability and social inclusion, for sustenance of growth and the achievement of Sustainable Development<sup>25</sup>. Promoting green growth is therefore key in achieving Sustainable Development. To this end, it has been noted that green growth can be used as an efficient strategy to support the implementation of the United Nation's 2030 Agenda for Sustainable Development since it turns the trade-off between the three dimensions of sustainable development (economic, social, and

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<sup>21</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>22</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' International Sustainable Development Law., Vol 1

<sup>23</sup> Enhancing Environmental Sustainability through Green Growth., Available at <https://www.ekonomi.gov.my/sites/default/files/2020-08/18.%20Chapter%2014%20Enhancing%20Environmental%20Sustainability%20through%20Green%20Growth.pdf> (Accessed on 19/08/2024)

<sup>24</sup> African Development Bank Group., 'Green Growth' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/green-growth-initiative/background> (Accessed on 19/08/2024)

<sup>25</sup> Global Green Growth Institute., 'Accelerating the Transition to a New Model of Growth' Op Cit



environmental) into a synergy<sup>26</sup>. Green growth has been described as an essential ingredient for any Sustainable Development strategy that delivers win-win outcomes for society in the sense that it seeks to protect the environment while accelerating the pace of economic growth and social equity<sup>27</sup>. It is therefore imperative to foster green growth for Sustainable Development.

### **3.0 Environmentalism as a Driver for Green Growth**

Environmentalism particularly focuses on achieving the ideal of a clean, safe, healthy, and sustainable environment<sup>28</sup>. It has been pointed out that all people have the right to a clean, healthy and sustainable environment<sup>29</sup>. Since human rights and the environment are interdependent, a clean, healthy and sustainable environment has been described as necessary for the full enjoyment of a wide range of human rights including the rights to life, health, food, water and sanitation and development, among others<sup>30</sup>. Similarly, the enjoyment of all human rights, including the rights to information, public participation and access to justice, is vital in protecting the environment<sup>31</sup>. It has been

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<sup>26</sup> United Nations Economic and Social Commission for Asia and the Pacific., 'Green Growth' Available at <https://www.unescap.org/our-work/environment-development/sustainability-transitions/green-growth> (Accessed on 19/08/2024)

<sup>27</sup> Chuku. C., & Ajayi. V., 'Growing Green: Enablers and Barriers for Africa' Available at [https://www.afdb.org/sites/default/files/documents/publications/wps\\_no\\_363\\_growing\\_green\\_in\\_africa\\_barriers\\_and\\_enablers.pdf](https://www.afdb.org/sites/default/files/documents/publications/wps_no_363_growing_green_in_africa_barriers_and_enablers.pdf) (Accessed on 19/08/2024)

<sup>28</sup> Muigua. K., 'Enhancing Environmentalism For Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2024/07/Enhancing-Environmentalism-for-Sustainability.pdf> (Accessed on 20/08/2024)

<sup>29</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> (Accessed on 20/08/2024)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

argued that without a clean, safe, and healthy environment, human beings are unable to fulfil their aspirations<sup>32</sup>.

In recent years, the recognition of the links between human rights and the environment has greatly increased<sup>33</sup>. For example, the number and scope of international and domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment are growing rapidly<sup>34</sup>. For example, it is estimated that over 150 countries have binding legal obligations to respect, protect and fulfil the right to a clean, safe, healthy environment and sustainable environment<sup>35</sup>. In addition, environmental rights are recognized in a number of international and regional human rights treaties, national constitutions, laws, and legal precedents<sup>36</sup>. At the global level, the right to a clean, healthy, and sustainable environment has been recognized by the United Nations General Assembly as a fundamental human right that is vital for the enjoyment of all other human rights<sup>37</sup>. The Resolution by the United Nations General Assembly urges all states to adopt policies for the enjoyment of the right to a clean, healthy and sustainable environment as appropriate, including with respect to biodiversity and ecosystems<sup>38</sup>.

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<sup>32</sup> Office of the United Nations High Commissioner for Human Rights., 'About Human Rights and the Environment' <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rightsand-environment> (Accessed on 20/08/2024)

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> United Nations Environment Programme., 'Advancing the Right to a Healthy Environment' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancingright-healthy-environment> (Accessed on 20/08/2024)

<sup>36</sup> Ibid

<sup>37</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment: Resolution Adopted by the Human Rights Council on 8 October 2021' A/HRC/RES/48/13

<sup>38</sup> Ibid

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The recognition of the right to a clean, healthy, and sustainable environment has been hailed as key in reducing environmental injustices; closing protection gaps and empowering all people, especially those in vulnerable situations, including environmental human rights defenders, children, youth, women, and Indigenous Peoples; and accelerating the implementation of environmental and human rights obligations and commitments in all countries<sup>39</sup>. The recognition of the human right to a clean, healthy, and sustainable environment is also key in improving the quality of life for people all over the world<sup>40</sup>. It demonstrates the global acceptance of the right to a clean, healthy and sustainable environment as a human right and could stimulate global efforts towards attaining this right and strengthening environmental governance<sup>41</sup>.

Environmentalism has played a key role in fostering green growth by advocating for the preservation, restoration, and improvement of the natural environment<sup>42</sup>. It focuses on fostering harmony between humanity and nature for Sustainable Development<sup>43</sup>. Environmentalism has been integral in fostering the right to a clean, healthy, and sustainable environment through promoting environmental sustainability, strengthening environmental governance, utilizing litigation as a tool for safeguarding environmental rights and fostering environmental justice, and promoting environmental ethics<sup>44</sup>.

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<sup>39</sup> International Institute for Sustainable Development., 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' Available at <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/> (Accessed on 20/08/2024)

<sup>40</sup> Ibid

<sup>41</sup> Muigua. K., 'Realizing the Right to a Clean, Healthy and Sustainable Environment.' Available at <http://kmco.co.ke/wp-content/uploads/2023/06/Realizing-the-Right-to-a-Clean-HealthyandSustainable-Environment.pdf> (Accessed on 20/08/2024)

<sup>42</sup> Muigua. K., 'Enhancing Environmentalism For Sustainability' Op Cit

<sup>43</sup> International Union for Conservation of Nature., 'In the Spirit of Nature, Everything is Connected' Available at <https://www.iucn.org/news/europe/201801/spirit-nature-everything-connected> (Accessed on 20/08/2024)

<sup>44</sup> Ibid

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The concept of environmentalism is therefore fundamental in promoting green growth. Green growth focuses on the sectors of the economy that are integral in achieving environmental sustainability. Such areas include renewable energy, sustainable transport and infrastructure, energy-efficient building, clean and green technologies, sustainable waste management, sustainable agriculture and forest management, sustainable tourism, and sustainable fishing<sup>45</sup>. Green growth focuses on altering production and consumption patterns through approaches that reduce pollution, improve energy and resource efficiency, minimize greenhouse gas emissions, and avoid or reverse the degradation of the environment and natural resources<sup>46</sup>. This idea emphasizes that economic growth is of central importance for development and poverty eradication and that achieving environmental sustainability and social inclusion are equally important and necessary to ensure that economic development is sustainable over the long term<sup>47</sup>.

Environmentalism is key in promoting green growth by advocating for complementarity between environmental protection and economic growth<sup>48</sup>. It has been pointed out that the recognition of interdependence between environmental conservation and economic growth rather than the trade-offs between economic growth and environmental protection has made the concept of green growth increasingly attractive to policymakers over the traditional environmental protectionist approaches that conservatively seek to protect the environment at the expense of the much-desired economic

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<sup>45</sup> Kasztelan. A., 'Green Growth, Green Economy and Sustainable Development: Terminological and Relational Discourse' *Prague Economic Papers* (2017), 26(4):487-499

<sup>46</sup> Green Growth in Kenya: Engaging the Private Sector., Available at [https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/GG\\_in\\_kenya\\_engagin\\_g\\_the\\_private\\_sector\\_DANIDA.pdf](https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/GG_in_kenya_engagin_g_the_private_sector_DANIDA.pdf) (Accessed on 20/08/2024)

<sup>47</sup> Global Green Growth Institute., 'Green Growth in Action: Attaining Green Cities' Available at [https://gggi.org/wp-content/uploads/2020/11/Green-Growth-in-Action-Attaining-GreenCities\\_reduced-size.pdf](https://gggi.org/wp-content/uploads/2020/11/Green-Growth-in-Action-Attaining-GreenCities_reduced-size.pdf) (Accessed on 20/08/2024)

<sup>48</sup> Chuku. C., & Ajayi. V., 'Growing Green: Enablers and Barriers for Africa' Op Cit

growth especially in developing countries<sup>49</sup>. Environmentalism can advance green growth by advocating for environmentally sustainable economic growth<sup>50</sup>.

A clean, healthy, and sustainable environment has been recognized as essential for supporting economic activities and human well-being in the long-term<sup>51</sup>. It has been noted that achieving a “win-win” situation in respect of economic growth and environmental protection has become a common goal for Sustainable Development in all countries around the world<sup>52</sup>. Healthy ecosystems increase all the economic returns from the activities they support<sup>53</sup>. Further, cleaner air, water, and oceans enable people to lead healthy and productive lives for posterity<sup>54</sup>. In addition, cleaner production standards spur innovation, and industry and the development of clean technologies that provide jobs and support sustainable growth<sup>55</sup>. By embracing environmentalism, countries can enhance green growth through low-emission development strategies in areas such as renewable energies, climate-smart agriculture, sustainable transport, and lower-carbon cities<sup>56</sup>.

The relationship between a clean, healthy, and sustainable environment and economic development is acknowledged under the *Rio Declaration*

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<sup>49</sup> Ibid

<sup>50</sup> United Nations Economic and Social Commission for Asia and the Pacific., ‘Green Growth’ Op Cit

<sup>51</sup> Organisation for Economic Co-operation and Development., ‘Economic Policies to Foster Green Growth’ Available at <https://www.oecd.org/en/topics/sub-issues/economic-policies-to-foster-green-growth.html> (Accessed on 20/08/2024)

<sup>52</sup> Yang. Z., Gao. W., & Li. J., ‘Can Economic Growth and Environmental Protection Achieve a “Win-Win” Situation? Empirical Evidence from China’ *Int J Environ Res Public Health*. 2022 Aug; 19(16): 9851

<sup>53</sup> The World Bank Group., ‘Toward a Clean, Green, Resilient World for All’ Available at <https://www.worldbank.org/en/topic/environment/publication/environment-strategy-toward-clean-green-resilient-world> (Accessed on 20/08/2024)

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

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on *Environment and Development*<sup>57</sup>. The Declaration stipulates that in order to achieve Sustainable Development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it<sup>58</sup>. It further states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations<sup>59</sup>. In addition, the Rio Declaration acknowledges that human beings are at the centre of concerns for Sustainable Development and are entitled to a healthy and productive life in harmony with nature<sup>60</sup>. The Rio Declaration therefore envisages the nexus between environmentalism and green growth by advocating for harmony between economic growth and environmental protection.

The role of environmentalism in green growth was also upheld during the *United Nations Conference on Sustainable Development (Rio+20)*<sup>61</sup>. Governments agreed at Rio+20 to frame green growth as an important tool for Sustainable Development; one that is inclusive and can drive economic growth, employment, and poverty eradication, whilst maintaining the healthy functioning of the Earth's ecosystems<sup>62</sup>. The Rio+20 outcome document acknowledges that green economy can contribute to eradicating poverty as well as sustained economic growth, enhancing social inclusion, improving human welfare and creating opportunities for employment and decent work for all, while fostering

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<sup>57</sup> United Nations General Assembly., Rio Declaration on Environment and Development., A/CONF.151/26 (Vol. I), Available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf) (Accessed on 20/08/2024)

<sup>58</sup> Ibid, Principle 4

<sup>59</sup> Ibid, Principle 3

<sup>60</sup> Ibid, Principle 1

<sup>61</sup> United Nations., United Nations Conference on Sustainable Development (Rio+20), A/CONF.216/L.1., Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/13662/N1238164.pdf?sequence=1&%3Bis+Allowed> (Accessed on 20/08/2024)

<sup>62</sup> Ibid

environmental conservation<sup>63</sup>. It urges all countries to promote sustained and inclusive economic growth, social development and environmental protection for the benefit of humanity and nature<sup>64</sup>.

Environmentalism is therefore key in promoting green growth. This concept advocates for complementarity between environmental protection and economic growth<sup>65</sup>. However, it has been noted that most economic development and growth strategies in most countries encourage rapid accumulation of physical, financial and human capital resulting in environmental degradation and depletion of natural resources<sup>66</sup>. By depleting the world's stock of natural wealth – often irreversibly – this pattern of development and growth has detrimental impacts on the well-being of current and future generations<sup>67</sup>. It is therefore imperative to enhance environmentalism for green growth.

#### **4.0 Conclusion**

Green growth is vital in fostering Sustainable Development. This concept harmonizes economic growth with environmental sustainability, while improving the eco-efficiency of economic growth and enhancing the synergies between the environment and economy<sup>68</sup>. Green growth is a model that provides both direct and indirect benefits which support poverty reduction, improve productivity and quality of life through more inclusive economic

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<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Chuku. C., & Ajayi. V., 'Growing Green: Enablers and Barriers for Africa' Op Cit

<sup>66</sup> United Nations Environment Programme., 'Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication' Available at [https://sustainabledevelopment.un.org/content/documents/126GER\\_synthesis\\_en.pdf](https://sustainabledevelopment.un.org/content/documents/126GER_synthesis_en.pdf) (Accessed on 20/08/2024)

<sup>67</sup> Ibid

<sup>68</sup> United Nations., 'Green Growth' Available at <https://sustainabledevelopment.un.org/index.php?menu=1447> (Accessed on 20/08/2024)

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growth, efficient and sustainable use of resources and food security<sup>69</sup>. According to UNEP, green growth does not replace Sustainable Development, but creates a new focus on the economy, investment, capital and infrastructure, employment and skills and positive social and environmental outcomes<sup>70</sup>. Green growth builds on the broad concept of Sustainable Development by providing a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner<sup>71</sup>.

Enhancing environmentalism is vital for green growth. The concept of environmentalism focuses on the preservation, restoration, and improvement of the natural environment<sup>72</sup>. Environmentalism aims at restoring harmony between humanity and nature for sustainability<sup>73</sup>. Environmentalism can enhance green growth by fostering complementarity between environmental protection and economic growth<sup>74</sup>. In order to enhance environmentalism for green growth, it is imperative to address existing and emerging development challenges without degrading the environment and depleting natural resources therefore leaving economies and livelihoods more vulnerable to climate change and other environmental, social and economic risks<sup>75</sup>. Fostering environmental sustainability and strengthening environmental governance are key priorities in enhancing environmentalism for green growth. Environmental sustainability is a key priority towards conserving the environment while fostering economic growth and social

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<sup>69</sup> Food and Agriculture Organization of the United Nations., 'Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future' Available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC164896/> (Accessed on 20/08/2024)

<sup>70</sup> United Nations Environment Programme., 'Green Economy' Op Cit

<sup>71</sup> African Development Bank Group., 'Green Growth' Op Cit

<sup>72</sup> Environmentalism., Op Cit

<sup>73</sup> Choucri. N., 'Environmentalism' Op Cit

<sup>74</sup> Chuku. C., & Ajayi. V., 'Growing Green: Enablers and Barriers for Africa' Op Cit

<sup>75</sup> African Development Bank Group., 'Green Growth' Op Cit



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progress<sup>76</sup>. Sound environmental governance is also crucial in safeguarding the environment and realizing human rights including the right to a clean, healthy, and sustainable environment which is crucial for economic growth<sup>77</sup>. It is imperative for all countries to embrace environmentalism for green growth by leveraging on areas such as renewable energy, sustainable agriculture, sustainable infrastructure, sustainable tourism, green industrialization, sustainable forestry, and the blue economy<sup>78</sup>.

Environmentalism and green growth are therefore ideals that can be pursued simultaneously for Sustainable Development. It is thus imperative to enhance environmentalism for green growth towards restoring harmony between people and the planet.

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<sup>76</sup> Muigua. K., 'Enhancing Environmentalism For Sustainability' Op Cit

<sup>77</sup> Ibid

<sup>78</sup> Muigua. K., 'Green Growth: Examining the Status of the Concept Globally and within East Africa' Available at <http://kmco.co.ke/wp-content/uploads/2024/08/Green-Growth-Examining-the-Status-of-the-Concept-Globally-and-within-East-Africa-1.pdf> (Accessed on 20/08/2024)

## **Addressing The Impact of Climate Change on Vulnerable Communities**

### **Abstract**

*Climate change is an undesirable phenomenon that undermines the ability of all countries to achieve Sustainable Development. Taking urgent and transformative action on climate change is therefore necessary for sustainability. However, in responding to climate change, it is imperative to note that it impacts people, communities, and nations differently, unevenly and disproportionately. Addressing the impact of climate change on vulnerable communities is therefore key for effective climate action and achieving the ideal of climate justice. This paper critically examines the impact of climate change on vulnerable communities. The paper asserts that the effects of climate change are being felt unevenly with some people, communities, and nations being adversely impacted. It argues that addressing the impacts of climate change on vulnerable communities is necessary to achieve climate justice for development. The paper suggests approaches towards addressing the impact of climate change on vulnerable communities towards sustainability.*

### **1.0 Introduction**

The United Nations 2030 Agenda for Sustainable Development<sup>1</sup> acknowledges that climate change is one of the greatest challenges of our time whose adverse impacts undermine the ability of all countries to realise Sustainable Development. It has been noted that climate change is hindering the realisation of the Sustainable Development agenda across the world by affecting the sustainability of the planet's ecosystems, the stability of the global economy and the future of humankind<sup>2</sup>. Its impacts including intense droughts, water scarcity,

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<sup>1</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>

<sup>2</sup> Climate Change., 'Meaning, Definition, Causes, Examples and Consequences.' Available at <https://youmatter.world/en/definition/climate-change-meaning-definition-causes-and-consequences/> (Accessed on 31/08/2024)

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severe wild fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed all over the world undermining sustainability<sup>3</sup>. Further, it has been noted that as climate change accelerates, its impacts worsen existing social, economic, and environmental challenges in many contexts, which can contribute to insecurity at local, national, regional, and global levels<sup>4</sup>. Security concerns linked to climate change include impacts on food, water and energy supplies, increased competition over natural resources, loss of livelihoods, climate-related disasters, and forced migration and displacement<sup>5</sup>.

Climate change therefore has significant implications on energy, food and water security as well as health and safety for countries and people around the world<sup>6</sup>. In light of these concerns, responding to climate change has become an urgent priority at all levels. The United Nations notes that if left unchecked, climate change will undo a lot of the development progress made over the past years and will also provoke mass migrations that will lead to instability and wars<sup>7</sup>. Urgent and transformative action on climate change is therefore key if the Sustainable Development agenda is to be achieved by all countries<sup>8</sup>.

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<sup>3</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 31/08/2024)

<sup>4</sup> United Nations Environment Programme., 'Climate Change and Security Risks' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climate-change/climate-change-and-security-risks#:~:text=Key%20to%20building%20resilience%2C%20the,to%20climate%2Drelated%20security%20risks> (Accessed on 31/08/2024)

<sup>5</sup> Ibid

<sup>6</sup> United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/europe/regional-initiatives/responding-climate-change> (Accessed on 31/08/2024)

<sup>7</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 31/08/2024)

<sup>8</sup> Ibid

Sustainable Development Goal 13 calls upon all countries to take urgent actions towards combating climate change and its impacts<sup>9</sup>.

Climate change impacts people, communities, and nations differently, unevenly and disproportionately<sup>10</sup>. Addressing the impact of climate change on vulnerable communities is therefore key for effective climate action and achieving the ideal of climate justice<sup>11</sup>.

This paper critically examines the impact of climate change on vulnerable communities. The paper asserts that the effects of climate change are being felt unevenly with some people, communities, and nations being adversely impacted. It argues that addressing the impacts of climate change on vulnerable communities is necessary to achieve climate justice for development. The paper suggests approaches towards addressing the impact of climate change on vulnerable communities towards sustainability.

## **2.0 The Impact of Climate Change on Vulnerable Communities**

Climate change brings enormous injustices since it affects everyone, but not equally<sup>12</sup>. It has been noted that people and communities who have contributed least to climate change are being affected by it the most, and are likely to be less able to protect themselves from its impacts<sup>13</sup>. While climate change is global, the poor are disproportionately vulnerable to

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<sup>9</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>10</sup> Sultana. F., 'Critical Climate Justice' Available at <https://www.farhanasultana.com/wpcontent/uploads/Sultana-Critical-climate-justice.pdf> (Accessed on 31/08/2024)

<sup>11</sup> Ibid

<sup>12</sup> Oxfam., 'Climate Justice.' Available at <https://www.oxfam.org.au/what-we-do/climate-justice/> (Accessed on 31/08/2024)

<sup>13</sup> Ibid

### *Addressing The Impact of Climate Change on Vulnerable Communities*

its effects<sup>14</sup>. This is because they lack the resources to afford goods and services they need to buffer themselves and recover from the effects of climate change<sup>15</sup>.

It has been noted that people and communities in developing nations in places such as Africa, Asia, the Caribbean Islands and the Pacific Islands which due to an unfortunate mixture of economic and geographic vulnerability, continue to shoulder the brunt of the Climate change; while Africa has contributed negligibly to climate change, with just about two to three percent of global greenhouse gas emissions, it stands out disproportionately as the most vulnerable region in the world<sup>16</sup>. This vulnerability is driven by the prevailing low levels of socioeconomic growth in Africa<sup>17</sup>. Climate change is posing systemic risks to Africa affecting economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo the continent's modest development gains and slip into higher levels of extreme poverty<sup>18</sup>. In addition, it has been noted that increases in global temperature, sea level rise, ocean acidification and other impacts of climate change are seriously affecting coastal communities and low-lying coastal countries, including many least developed countries and small island developing states<sup>19</sup>. Despite their little contribution to climate change, sea level rise, increasing temperatures and frequency and intensity of tropical cyclones, and storm surges are some of the climate change impacts facing island nations, some of which are in low-

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<sup>14</sup> United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 31/08/2024)

<sup>15</sup> Ibid

<sup>16</sup> United Nations Environment Programme., 'Responding to Climate Change' Op Cit

<sup>17</sup> Ibid

<sup>18</sup> African Development Bank Group., 'Climate Change in Africa' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 31/08/2024)

<sup>19</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

lying areas of just 5 meters above sea level at the highest point making them more vulnerable to these impacts<sup>20</sup>.

In addition, it has been pointed out that since every person has different capabilities to survive and is impacted by the climate crisis differently, climate change especially affects children, young people, women, the elderly, indigenous peoples, and persons with disabilities disproportionately<sup>21</sup>. For example, children are more susceptible to the effects of climate change than adults, with immediate and lifelong impacts on their physical and mental health<sup>22</sup>. The effects of climate change such as food insecurity, water scarcity, conflicts, and forced migration are more detrimental to the growth and well-being of the younger generation<sup>23</sup>. Further, although climate change is predominantly caused by the current generation of adults, its worst consequences will occur during the lifetimes of today's children and young people<sup>24</sup>. The impacts of climate change such as heatwaves, droughts, water scarcity, food insecurity, and wildfires are expected to become more severe with time therefore exposing young generation to increased risks in the future<sup>25</sup>.

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<sup>20</sup> Bafana. B., 'Climate Change is No 'Future Scenario' for Pacific Island Nations; Climate Change is 'Real' Available at <https://reliefweb.int/report/world/climate-change-no-future-scenario-pacific-islandnations-climate-change-real> (Accessed on 31/08/2024)

<sup>21</sup> United Nations Development Programme., 'Rising Up: How Youth are Leading the Charge for Climate Justice' Available at <https://www.undp.org/blog/rising-how-youth-are-leading-charge-climate-justice> (Accessed on 31/08/2024)

<sup>22</sup> Sanson. A., Van Hoorn. J., & Burke. S., 'Responding to the Impacts of the Climate Crisis on Children and Youth' Available at <https://doi.org/10.1111/cdep.12342> (Accessed on 31/08/2024)

<sup>23</sup> Ibid

<sup>24</sup> Sanson. A., & Bellemo. M., 'Children and Youth in the Climate Crisis' *BJPsych Bull.* 2021 Aug; 45(4): 205- 209

<sup>25</sup> Chow. D., 'Triple Jeopardy: Children Face Dark Future of Climate Disasters' Available at <https://www.nbcnews.com/science/environment/triple-jeopardy-children-face-dark-future-climatedisasters-rcna2304> (Accessed on 31/08/2024)

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Climate change also disproportionately affects women<sup>26</sup>. It is estimated that the majority of people displaced by climate change are women or girls facing heightened risks of poverty, violence or unintended pregnancies as they migrate to safer locations<sup>27</sup>. Further, in Africa, many women rely primarily on climate-sensitive livelihoods, such as small-scale farming<sup>28</sup>. This makes them highly exposed to the impacts of extreme weather events such as recurring droughts and floods which damage crops and kill livestock upon which their livelihoods depend<sup>29</sup>. Further, since women in Africa among other regions depend more heavily on natural resources like water and firewood, they may need to travel further to access them when they become scarce due to climate change exposing them to many risks including insecurity<sup>30</sup>. In addition, gender inequalities within communities may leave women more vulnerable to the immediate aftermath of natural disasters occasioned by climate change, or excluded from the decision-making table when disaster risk reduction solutions and other climate change responses are designed and implemented<sup>31</sup>.

Persons with disabilities are also at risk of being disproportionately affected by climate change due to difficulty in accessing vital resources in case of food insecurity and water scarcity and difficulties in responding to emergencies in case of disasters associated with climate

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<sup>26</sup> World Economic Forum., 'Climate Change Impacts Women More. We must Legislate to Protect their Health' Available at <https://www.weforum.org/agenda/2024/01/women-health-climate-change/#:~:text=A%20report%20launched%20at%20COP28,to%20leave%20their%20homes%20worldwide>. (Accessed on 31/08/2024)

<sup>27</sup> Ibid

<sup>28</sup> United Nations Development Programme., 'Women are Key for the Future of Climate Action in Africa' Available at <https://climatepromise.undp.org/news-and-stories/women-are-key-future-climate-actionafrica> (Accessed on 31/08/2024)

<sup>29</sup> Ibid

<sup>30</sup> Pearse. R., 'Gender and Climate Change.' *WIRES Climate Change*, 2016

<sup>31</sup> Ibid

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change especially floods<sup>32</sup>. Persons with disabilities are often among those most adversely affected in emergency situations, sustaining disproportionately higher rates of morbidity and mortality, and at the same time being among those least able to have access to emergency support<sup>33</sup>. In addition, the elderly are more vulnerable to extreme weather events due to weakening immune systems<sup>34</sup>. The elderly are at the risk of respiratory illnesses as a result of climate change<sup>35</sup>. Climate change may increase outdoor air pollutants, such as ground-level ozone and particulate matter in wildfire smoke and dust from droughts<sup>36</sup>. Air pollution can increase the risk of heart attacks for older adults, especially those who are diabetic or obese<sup>37</sup>. In addition, older adults are at risk of both physical and mental health problems if they must evacuate during an extreme event such as flooding from heavy rains, hurricanes, and coastal storms<sup>38</sup>.

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<sup>32</sup> Almomani. S., 'Climate Justice for People with Disabilities.' Available at <https://www.worldforgottenchildren.org/blog/climate-justice-for-people-with-disabilities/154> (Accessed on 31/08/2024)

<sup>33</sup> Office of the United Nations High Commissioner for Human Rights., 'The Impact of Climate Change on the Rights of Persons with Disabilities' Available at <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-persons-disabilities> (Accessed on 31/08/2024)

<sup>34</sup> Kriebel-Gasparro. A., 'Climate Change: Effects on the Older Adult' *The Journal for Nurse Practitioners*. Volume 18, Issue 4, April 2022, pp 372-376

<sup>35</sup> United States Environmental Protection Agency., 'Climate Change and the Health of Older Adults' Available at <https://www.epa.gov/climateimpacts/climate-change-and-health-older-adults#:~:text=Climate%20change%20may%20increase%20outdoor,smoke%20and%20dust%20from%20droughts.&text=Air%20pollution%20can%20increase%20the,who%20are%20diabetic%20or%20obese.&text=It%20can%20worsen%20conditions%20like%20asthma%20and%20COPD.> (Accessed on 31/08/2024)

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Sarkar. S. M et al., 'Climate Change and Aging Health in Developing Countries' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10448126/> (Accessed on 31/08/2024)



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Indigenous peoples are also among those who are highly vulnerable to climate change<sup>39</sup>. According to the United Nations, Indigenous peoples are among the first to face the direct consequences of climate change, due to their dependence upon, and close relationship, with the environment and natural resources<sup>40</sup>. Indigenous communities have special connection to the natural environment<sup>41</sup>. However, climate change is threatening natural resources and ecosystems that are essential to indigenous people's livelihoods, food sources, and cultural practices<sup>42</sup>. In addition, it has been noted that many indigenous populations lack reliable infrastructure and therefore experience challenges in accessing essential services, such as transportation, drinking water, sanitation, disaster response, and health care<sup>43</sup>. This limits their capacity to plan for and respond to climate-related threats<sup>44</sup>. Climate change is also worsening the difficulties already faced by indigenous communities including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment<sup>45</sup>.

Climate change is therefore disproportionately impacting certain individuals, communities, and nations especially developing countries, small island nations, the youth, women, the elderly, persons with disabilities, and indigenous peoples. It is imperative to address the impact of climate change on these groups in order to achieve climate justice and foster sustainability.

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<sup>39</sup> United Nations., 'The Effects of Climate Change on Indigenous Peoples' Available at <https://www.un.org/development/desa/indigenouspeoples/climate-change.html> (Accessed on 31/08/2024)

<sup>40</sup> Ibid

<sup>41</sup> United States Environmental Protection Agency., 'Climate Change and the Health of Indigenous Populations' Available at <https://www.epa.gov/climateimpacts/climate-change-and-health-indigenous-populations> (Accessed on 31/08/2024)

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> United Nations., 'The Effects of Climate Change on Indigenous Peoples' Op Cit

### **3.0 Addressing the Impact of Climate Change on Vulnerable Communities**

Climate change is affecting every person on the planet. However, some people are more vulnerable to the impact of climate change owing to factors including geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability<sup>46</sup>. Poor people, people in developing countries and small island nations, the youth, women, the elderly, persons with disabilities, and indigenous peoples may experience heightened exposure and vulnerability to climate-induced human rights harms<sup>47</sup>. It is imperative to address the impact of climate change on vulnerable communities in order to foster sustainability.

In order to address the impact of climate change on vulnerable communities, there is need to foster climate justice<sup>48</sup>. Climate justice is an ideal that connects the climate crisis to the social, racial and environmental issues in which it is deeply entangled<sup>49</sup>. It recognizes the disproportionate impacts of climate change on the people and places least responsible for the problem<sup>50</sup>. Climate justice acknowledges the unequal historical responsibility that countries and communities bear in

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<sup>46</sup> Office of the United Nations High Commissioner for Human Rights., 'The Impact of Climate Change on the Rights of People in Vulnerable Situations' Available at <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-people-vulnerable-situations> (Accessed on 01/09/2024)

<sup>47</sup> Ibid

<sup>48</sup> Muigua. K., 'Fostering Climate Justice for Sustainable Development' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Fostering-Climate-Justice-for-Sustainable-Development.pdf> (Accessed on 01/09/2024)

<sup>49</sup> University of California Center for Climate Justice., 'What is Climate Justice?' Available at <https://centerclimatejustice.universityofcalifornia.edu/what-is-climate-justice/#:~:text=Climate%20justice%20connects%20the%20climate,least%20responsible%20for%20the%20problem.> (Accessed on 01/09/2024)

<sup>50</sup> Ibid

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relation to the climate crisis<sup>51</sup>. This concepts suggests that the countries, industries, businesses, and people that have become wealthy from emitting large amounts of greenhouse gases have a responsibility to help those affected by climate change, particularly the most vulnerable countries and communities, who often are the ones that have contributed the least to the crisis<sup>52</sup>. Climate justice therefore entails putting equity, inclusivity and human rights at the core of decision-making and action on climate change<sup>53</sup>.

Through Climate Justice, it is possible to achieve the meaningful inclusion and participation of persons in vulnerable situations within disaster risk management and climate-related decision-making at the local, national, regional and global levels<sup>54</sup>. This concept is key in ensuring equity, non-discrimination, equal participation, transparency, fairness, accountability and access to justice for vulnerable communities in relation to the adverse impacts of climate change<sup>55</sup>. Climate justice is also an important aspect of just transition toward a sustainable future<sup>56</sup>. It is therefore necessary to embrace climate justice at all levels in order to tackle climate change through processes that are participatory, accessible, fair and inclusive<sup>57</sup>. Ensuring access to climate information and participation in decision making processes by vulnerable persons and communities including the poor, the youth, women, the elderly,

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<sup>51</sup> United Nations Development Programme., 'Climate Change is a Matter of Justice – Here's Why' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 01/09/2024)

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Office of the United Nations High Commissioner for Human Rights., 'The Impact of Climate Change on the Rights of People in Vulnerable Situations' Op Cit

<sup>55</sup> United Nations Environment Programme., 'UN Resolution Billed as a Turning Point in Climate Justice' Available <https://www.unep.org/cep/news/story/un-resolution-billed-turning-point-climate-justice> (Accessed on 01/09/2024)

<sup>56</sup> United Nations Development Programme., 'Climate Change is a Matter of Justice – Here's Why' Op Cit

<sup>57</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' *Alternative Law Journal* (47) 3 pp 199-203

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persons with disabilities, and indigenous peoples is key in achieving climate justice<sup>58</sup>.

It is also necessary to enhance climate finance in order to address the impact of climate change on vulnerable people and communities<sup>59</sup>. Climate finance refers to local, national or transnational financing drawn from public, private and alternative sources of financing that seeks to support mitigation and adaptation actions that will address climate change<sup>60</sup>. Climate finance therefore entails all financial flows towards addressing the causes and consequences of climate change<sup>61</sup>. Climate finance is needed for mitigation since large-scale investments are required to significantly reduce greenhouse gas emissions<sup>62</sup>. It is also equally important for adaptation since significant financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate<sup>63</sup>.

The global climate change framework including the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement call for financial assistance from parties with more financial resources to those that are less endowed and more vulnerable<sup>64</sup>. It has been pointed out that in accordance with the principle of '*common but differentiated responsibility and respective capabilities*' set out in the UNFCCC, developed country Parties are to

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<sup>58</sup> Muigua. K., 'Fostering Climate Justice for Sustainable Development' Op Cit

<sup>59</sup> International Rescue Committee., 'Why is Climate Finance so Important?' Available at <https://www.rescue.org/article/why-climate-finance-so-important> (Accessed on 01/09/2024)

<sup>60</sup> United Nations Climate Change., 'Introduction to Climate Finance' Available at <https://unfccc.int/topics/introduction-to-climate-finance> (Accessed on 01/09/2024)

<sup>61</sup> United Nations Environment Programme., 'Climate Finance' Available at <https://www.unep.org/topics/climate-action/climate-finance#:~:text=Climate%20finance%20refers%20to%20all,and%20consequences%20of%20climate%20change>. (Accessed on 01/09/2024)

<sup>62</sup> United Nations Climate Change., 'Introduction to Climate Finance' Op Cit

<sup>63</sup> Ibid

<sup>64</sup> Ibid

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provide financial resources to assist developing country Parties in implementing the objectives of the UNFCCC<sup>65</sup>. Climate financing serves as a critical pathway to invest in the climate adaptation and resilience efforts for vulnerable people and communities<sup>66</sup>. Without adequate climate action, these communities become increasingly vulnerable to climate shocks like floods and droughts<sup>67</sup>. It is therefore imperative for developed countries to enhance financial support to developing countries in order to address the impact of climate change on vulnerable communities.

Operationalising the Loss and Damage Fund is also vital in unlocking climate finance in order to address the impact of climate change on vulnerable communities<sup>68</sup>. The Loss and Damage Fund was established at COP 27 and sets out new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change, in responding to loss and damage associated with climate change<sup>69</sup>. This fund is crucial in helping vulnerable nations and communities to address the impact of climate change including extreme weather events and slow onset events such as sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity

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<sup>65</sup> Ibid

<sup>66</sup> International Rescue Committee., 'Why is Climate Finance so Important?' Available at <https://www.rescue.org/article/why-climate-finance-so-important> (Accessed on 01/09/2024)

<sup>67</sup> Ibid

<sup>68</sup> Muigua. K., 'Climate Finance beyond COP 28: Operationalizing the Loss and Damage Fund' Available at <https://kmco.co.ke/wp-content/uploads/2023/12/Climate-Finance-Beyond-COP-28-Operationalizing-the-Loss-and-Damage-Fund.pdf> (Accessed on 01/09/2024)

<sup>69</sup> UNFCCC., 'Decision -/CP.27 -/CMA.4: Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage.' Available at [https://unfccc.int/sites/default/files/resource/cma4\\_auv\\_8f.pdf](https://unfccc.int/sites/default/files/resource/cma4_auv_8f.pdf) (Accessed on 01/09/2024)

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and desertification<sup>70</sup>. At COP 28, parties of the UNFCCC reached an agreement on the operationalization of the Loss and Damage Fund<sup>71</sup>. It is imperative to ensure that the COP 28 decision is implemented in order to ensure funding towards addressing the impact of climate change on vulnerable communities.

Finally, it is imperative for all countries to take urgent action and confront climate change<sup>72</sup>. Countries should strengthen climate action by reducing greenhouse gas emissions through pursuing sustainable practices including renewable energy, climate-resilient agriculture, and sustainable transport and infrastructure<sup>73</sup>. Further, climate action should be designed towards building the resilience of vulnerable communities to adapt to the effects of climate change, such as improving infrastructure and providing access to resources like water and food<sup>74</sup>. Empowering vulnerable people and communities to take action on climate change can be an effective way to build their resilience and reduce vulnerability<sup>75</sup>. This entails providing education and training on climate change, as well as involving community members in the development of strategies and policies on climate change<sup>76</sup>.

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<sup>70</sup> United Nations Climate Change., 'Loss and Damage.' Available at <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/introduction#loss-and-damage> (Accessed on 01/09/2024)

<sup>71</sup> United Nations Climate Change., 'Operationalization of the New Funding Arrangements, including a Fund, for Responding to Loss and Damage referred to in Paragraphs 2-3 of Decisions 2/CP.27 and 2/CMA.4.' Available at <https://unfccc.int/documents/636558> (Accessed on 01/09/2024)

<sup>72</sup> Muigua. K., 'Taking Urgent Action to Combat Climate Change' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Taking-Urgent-Action-to-Combat-Climate-Change.pdf> (Accessed on 01/09/2024)

<sup>73</sup> Ibid

<sup>74</sup> Impacts of Climate Change on Vulnerable Communities., Available at <https://billionbricks.org/blog/impacts-of-climate-change-on-vulnerable-communities/> (Accessed on 01/09/2024)

<sup>75</sup> Ibid

<sup>76</sup> Ibid

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In tackling climate change, it is also imperative to adopt a holistic approach that takes into account the impact of climate change on vulnerable people and communities<sup>77</sup>. For example, it has been noted that children and pregnant women, older adults, certain occupational groups, persons with disabilities, and persons with chronic medical conditions are more vulnerable to health stressors, such as extreme heat, floods, poor air quality, and other climate-related events<sup>78</sup>. Therefore, a holistic approach to address the effects of climate change on human health starts with an understanding of people who are at increased risk<sup>79</sup>. It is therefore vital to undertake vulnerability assessments that examine the intersection of environmental and social impacts of climate change in order to improve adaptation and resilience and reduce the health impacts from climate change on vulnerable people and communities<sup>80</sup>. Addressing the impact of climate change on vulnerable communities therefore requires a holistic approach towards confronting climate change.

### **4.0 Conclusion**

The climate crisis is deeply intertwined with global patterns of inequality<sup>81</sup>. The poorest and most vulnerable people bear the brunt of climate change impacts yet contribute the least to the crisis<sup>82</sup>. Millions of vulnerable people and communities including poor people, people in developing countries and small island nations, the youth, women, the elderly, persons with disabilities, and indigenous peoples face

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<sup>77</sup> National Institute of Environmental Health Sciences., 'People who are Vulnerable to Climate Change' Available at [https://www.niehs.nih.gov/research/programs/climatechange/health\\_impacts/vulnerable\\_people](https://www.niehs.nih.gov/research/programs/climatechange/health_impacts/vulnerable_people) (Accessed on 01/09/2024)

<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> World Bank Group., 'Social Dimensions of Climate Change' Available at <https://www.worldbank.org/en/topic/social-dimensions-of-climate-change> (Accessed on 01/09/2024)

<sup>82</sup> Ibid

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disproportionate challenges due to climate change in terms of extreme events, health effects, food, water, and livelihood security, migration and forced displacement, loss of cultural identity, and other related risks<sup>83</sup>. This vulnerability is caused by a combination of factors including their geographical locations; their age, financial, socio-economic, cultural, and gender status; and their access to resources, services, decision-making power, and justice<sup>84</sup>. Addressing the impacts of climate change on vulnerable communities is key in achieving a just transition toward a sustainable future<sup>85</sup>. In order to achieve this goal, it is vital to foster climate justice<sup>86</sup>; achieve the meaningful inclusion and participation of persons in vulnerable situations within disaster risk management and climate-related decision-making at the local, national, regional and global levels<sup>87</sup>; unlock climate finance including operationalising the Loss and Damage Fund<sup>88</sup>; and confront climate change through holistic approaches that build the resilience of vulnerable people and communities<sup>89</sup>.

Addressing the impacts of Climate Change on vulnerable communities is key towards ensuring just transition to a sustainable future.

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<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> United Nations Development Programme., 'Climate Change is a Matter of Justice - Here's Why' Op Cit

<sup>86</sup> Muigua. K., 'Fostering Climate Justice for Sustainable Development' Op Cit

<sup>87</sup> Office of the United Nations High Commissioner for Human Rights., 'The Impact of Climate Change on the Rights of People in Vulnerable Situations' Op Cit

<sup>88</sup> Muigua. K., 'Climate Finance beyond COP 28: Operationalizing the Loss and Damage Fund' Op Cit

<sup>89</sup> Impacts of Climate Change on Vulnerable Communities., Op Cit



## **Resolving Climate Change Conflicts Globally Through Mediation**

### **Abstract**

*Climate change is a major threat to development both globally and in Africa. The United Nations 2030 Agenda for Sustainable Development acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development. Climate change is also causing and fueling conflicts at all levels. These conflicts hinder effective climate action and the achievement of climate goals at the global, regional, and national levels. Effective management of climate change conflicts is therefore needed in order to strengthen the response towards climate change and deliver climate justice. This paper critically explores the need to resolve climate change conflicts globally through mediation. The paper posits that mediation is a suitable mechanism for effective management of climate change conflicts globally. The paper examines the nature and causes of climate change conflicts globally. It also analyses the key features of mediation that makes it an ideal process for effective management of climate change conflicts globally. The paper further examines some of the challenges in utilizing mediation in resolving climate change conflicts globally. It also proposes measures towards harnessing mediation for appropriate management of climate change conflicts globally.*

### **1.0 Introduction**

The world is facing a growing and daunting threat to global peace and stability in the form of climate change<sup>1</sup>. It has been noted that climate change is no longer an abstract concern or a threat far off in the future<sup>2</sup>. Climate change is a real and present danger to the lives of billions of people today and to everyone on the planet in the foreseeable future<sup>3</sup>. It

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<sup>1</sup> Grzybowski. A., & Hunnie. C., 'Mediating Peace with Climate Change' Available at <https://ecopeaceme.org/wp-content/uploads/2022/03/mediating-peace-with-climate-change.pdf> (Accessed on 22/08/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

has been described as the most defining challenge of our time<sup>4</sup>. Climate change is a major global concern that is affecting both developed and developing countries in their efforts towards Sustainable Development<sup>5</sup>.

The impacts of climate change are being witnessed all over the world. These effects include intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity<sup>6</sup>. Climate change is also being manifested in Africa. Despite having the lowest greenhouse gas emissions, Africa faces exponential collateral damage as a result of climate change, posing systemic risks to its economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo its modest development gains and slip into higher levels of extreme poverty<sup>7</sup>. Africa stands out disproportionately as the most vulnerable region in the world<sup>8</sup>. Climate change is having a devastating impact on the African continent creating food insecurity, stressing water resources, affecting human health, displacing populations and impeding socio-economic development<sup>9</sup>.

Climate change is therefore a threat to development both globally and in Africa. It is directly contributing to humanitarian emergencies from heatwaves, wildfires, floods, tropical storms and hurricanes which are

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<sup>4</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 22/08/2024)

<sup>5</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>6</sup> United Nations., 'What is Climate Change?' Op Cit

<sup>7</sup> African Development Bank Group., 'Climate Change in Africa' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 22/08/2024)

<sup>8</sup> United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 22/08/2024)

<sup>9</sup> Rao. V., & Yadav. P., 'Confronting Climate Change in Africa.' Available at <https://knowledge.insead.edu/responsibility/confronting-climate-change-africa> (Accessed on 22/08/2024)

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increasing in scale, frequency and intensity<sup>10</sup>. It has been noted that if left unchecked, climate change will undo a lot of the development progress made over the past years and will also provoke mass migrations that will lead to instability and wars<sup>11</sup>.

Climate change is also causing and fueling conflicts at all levels<sup>12</sup>. The environmental effects of climate change, especially the depletion of natural resources creates conditions that increase the risk of violent conflict<sup>13</sup>. Climate change conflicts affect the achievement of climate goals at levels<sup>14</sup>. Effective management of climate change conflicts is thus crucial in strengthening the response towards climate change and delivering climate justice<sup>15</sup>.

This paper critically explores the need to resolve climate change conflicts globally through mediation. The paper posits that mediation is a suitable mechanism for effective management of climate change conflicts globally. The paper examines the nature and causes of climate change conflicts globally. It also analyses the key features of mediation that makes it an ideal process for effective management of climate change conflicts globally. The paper further examines some of the challenges in

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<sup>10</sup> World Health Organization., 'Climate Change' Available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (Accessed on 22/08/2024)

<sup>11</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 22/08/2024)

<sup>12</sup> International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at [https://www.iisd.org/system/files/publications/climate\\_change\\_conflict\\_kenya.pdf](https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf) (Accessed on 22/08/2024)

<sup>13</sup> Ibid

<sup>14</sup> United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Available at <https://www.unep.org/news-and-stories/pressrelease/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (Accessed on 22/08/2024)

<sup>15</sup> Ibid

utilizing mediation in resolving climate change conflicts globally. It also proposes measures towards harnessing mediation for appropriate management of climate change conflicts globally.

## **2.0 Climate Change and Conflicts**

It has been pointed out that the adverse effects of climate change and environmental degradation extend far beyond the environmental realm and increasingly shape human activity by causing and worsening conflicts at the global, regional, national, and local levels<sup>16</sup>. For example, rising temperatures, more severe and frequent extreme weather events, and erratic rainfall patterns cause or exacerbate volatile food prices, insecure livelihoods, and large-scale displacement therefore posing the risk of conflicts<sup>17</sup>. In addition, sea level rise is an existential threat especially for small island states and raises questions regarding maritime boundaries and national identity<sup>18</sup>. The effects of climate change can therefore worsen existing fault lines and vulnerabilities, thereby fueling violence, insecurity, and conflicts<sup>19</sup>.

The environmental effects of climate change, especially the depletion of natural resources, create conditions that increase the risk of violent conflict<sup>20</sup>. These impacts including water scarcity, crop failure, food insecurity, migration, and displacement of populations increase the risk of conflict and violence<sup>21</sup>. Climate change has also been identified as a

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<sup>16</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNote-TheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 22/08/2024)

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Op Cit

<sup>21</sup> Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

threat multiplier which can increase human security issues such as food and water scarcity while also leading to (violent) conflicts in climate-vulnerable regions and countries<sup>22</sup>. For example, it has been observed that severe and prolonged drought due to climate change has had a devastating impact upon natural resources, especially pasture and water, in northern Kenya among other arid and semi-arid regions of the world<sup>23</sup>. The resulting scarcity of natural resources especially water and pasture fuels competition over these resources resulting in an increased threat of violent conflict as a result of the impacts of climate change<sup>24</sup>. It has been pointed out that in many of the countries that are most vulnerable to climate change, fragility and conflict have weakened coping mechanisms especially for people and communities who are dependent on natural resources<sup>25</sup>.

Climate change contributes to increased conflict, but along indirect pathways<sup>26</sup>. There are a variety of context factors including socioeconomic conditions, governance, and political factors that interact and play a key role in translating climate change into conflict risks<sup>27</sup>. For example, it has been noted that the quality of governance and strength of institutions are frequently key determinants of how and to what extent climate change affects peace and conflict<sup>28</sup>. The risk of climate change conflicts is most acute in those countries or regions which combine environmental fragility – be it low-lying land vulnerable to

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<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>26</sup> United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate#:~:text=The%20evidence%20is%20clear%20that,climate%20change%20into%20conflict%20risks>. (Accessed on 22/08/2024)

<sup>27</sup> Ibid

<sup>28</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

flooding or arid land vulnerable to drought – with fragile governance and security systems<sup>29</sup>. For instance, in water-stressed regions with existing tensions between groups or states over a water source, the impacts of climate change on water resources might increase tensions, particularly in the absence of strong institutional capacity a situation that could spiral into conflicts<sup>30</sup>. The impacts of climate change are particularly destabilizing in already fragile and disadvantaged regions and communities, such as least developed countries, small island developing states and dryland regions therefore increasing the likelihood of conflicts in such settings<sup>31</sup>. In addition, communities that are dependent on agriculture and coastal livelihoods are disproportionately affected due to climate change, and some indigenous communities also face higher risk when the natural world that underpins local livelihoods deteriorates<sup>32</sup>. The risk of conflicts in these settings is therefore high.

Due to its economic impacts, climate change can also affect the ability of governments to provide essential services<sup>33</sup>. The impacts of climate change disrupts the natural, economic and social systems upon which humanity depends on<sup>34</sup>. This disruption affects global food security, damage infrastructure and jobs, and harm human health<sup>35</sup>. Climate change therefore has wide-ranging and serious impacts that represent huge economic and social risks<sup>36</sup>. It has been noted that these factors increase the potential for conflict, political upheaval and mass

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<sup>29</sup> International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Op Cit

<sup>30</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>31</sup> Grzybowski. A., & Hunnie. C., 'Mediating Peace with Climate Change' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>34</sup> What are the Impacts of Climate Change?., Available at <https://www.imperial.ac.uk/grantham/publications/climate-change-faqs/what-are-the-impacts-of-climate-change/>. (Accessed on 22/08/2024)

<sup>35</sup> Ibid

<sup>36</sup> Ibid

displacement<sup>37</sup>. The inability of governments to meet their social contracts/obligations, to provide the most essential services to citizens as a result of the economic and social impacts of climate change could lead to the emergence of non-state actors such as militant groups as has been witnessed in several parts of the world thus fueling conflicts, insecurity, and instability<sup>38</sup>.

It is therefore evident that climate change is no longer merely environmental in nature but it also has a direct impact on people, their livelihood and sustenance. There is a definite link between climate change and conflict since climate change compounds existing risk factors such as scarcity of natural resources and rise in geo-political tensions over their sharing of such resources<sup>39</sup>. Further, since climate change concerns are not restricted to any one nation or continent, there is a huge risk of conflicts spiraling beyond national borders<sup>40</sup>. Natural disasters such as drought, floods or earthquakes often result major migratory movement of climate refugees into the territories of other states resulting in major political and diplomatic concerns globally<sup>41</sup>. Climate change is therefore shaping and reshaping relations between and within countries and communities<sup>42</sup>. It increases the likelihood of conflicts and violence, for instance by fueling transboundary or community tensions over diminishing water supplies<sup>43</sup>.

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<sup>37</sup> Ibid

<sup>38</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>39</sup> Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Available at <https://thac.or.th/conflicts-with-mediation/> (Accessed on 22/08/2024)

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> European Institute for Peace., 'Making Peace with the Climate: Conflict Resolution in a Climate - Changing World' Available at <https://www.eip.org/publication/making-peace-with-the-climate-conflict-resolution-in-a-climate-changing-world/> (Accessed on 22/08/2024)

<sup>43</sup> Ibid

Climate change conflicts are a major threat to global, regional, and national peace and security<sup>44</sup>. For example, climate change amplifies the risk of violent conflict in Africa threatening peace, security, and stability<sup>45</sup>. Growing competition over natural resources due to climate change is increasing tensions in Africa which is a continent that is experiencing some of the world's most protracted conflicts<sup>46</sup>. Effective management of climate change conflicts is thus crucial in strengthening the response towards climate change and delivering climate justice<sup>47</sup>.

### **3.0 Utilizing Mediation to Resolve Climate Change Disputes Globally: Prospects and Challenges**

Mediation is among the processes that are referred to as Alternative Dispute Resolution (ADR)<sup>48</sup>. These are a set of processes that are applied to manage disputes without resort to adversarial litigation<sup>49</sup>. ADR techniques may be linked to but function outside formal court litigation processes<sup>50</sup>. They are viewed as ideal in enhancing access to justice due to their advantages which include privacy, confidentiality, flexibility, informality, efficiency, party autonomy and the ability to foster expeditious and cost effective management of disputes<sup>51</sup>. In addition, ADR techniques allow parties to come up with creative and collaborative solutions than those available in traditional litigation

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<sup>44</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>45</sup> Stockholm Environment Institute., 'Climate Change Amplifies the Risks for Violent Conflicts in Africa' Available at <https://www.sei.org/perspectives/climate-change-amplifies-risks-violent-conflicts-africa/> (Accessed on 22/08/2024)

<sup>46</sup> Ibid

<sup>47</sup> United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Op Cit

<sup>48</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>49</sup> Ibid

<sup>50</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>51</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit



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therefore fostering efficient management of disputes<sup>52</sup>. The role of ADR techniques in managing conflicts globally is recognized under the *Charter of the United Nations*<sup>53</sup>. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration*, judicial settlement, resort to regional agencies or arrangements, or *other peaceful means* of their own choice (Emphasis added)<sup>54</sup>.

The United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>55</sup>. Mediation has also been defined as an informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of their dispute, based on the parties' respective interests<sup>56</sup>. Mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock<sup>57</sup>. Parties therefore involve a third party known as a mediator to assist them continue with the negotiations and ultimately break the deadlock<sup>58</sup>. Mediation can therefore be understood as negotiation with the assistance of a neutral third party<sup>59</sup>. A mediator cannot impose a solution upon the parties but rather facilitates communication, promotes understanding, focuses the

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<sup>52</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 23/08/2024)

<sup>53</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>54</sup> Ibid, article 33 (1)

<sup>55</sup> United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 23/08/2024)

<sup>56</sup> World Intellectual Property Organization., 'Guide to WIPO Mediation' Available at <https://tind.wipo.int/record/29081?v=pdf> (Accessed on 23/08/2024)

<sup>57</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

<sup>58</sup> Ibid

<sup>59</sup> Knaster. A., 'Resolving Conflicts Over Climate Change Solutions: Making the Case for Mediation' *Pepperdine Dispute Resolution Law Journal*, Volume 10, No. 3 (2010)

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parties on their interests, and uses creative problem solving to enable the parties to reach their own mutual acceptable agreement<sup>60</sup>.

Mediation is an ideal processes in resolving climate change conflicts globally<sup>61</sup>. The attributes of mediation including informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost- effective management of disputes makes it an ideal process for resolving a wide range of disputes including those concerning climate change<sup>62</sup>. Mediation also has the ability to preserve relationships and provides parties with a wide range of solutions than those available through litigation<sup>63</sup>. Due to its attributes, mediation offers a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding<sup>64</sup>. Collaboration is a key approach towards managing conflicts which allows competing or opposing stakeholder groups to work together to reach an agreement over issues in dispute<sup>65</sup>. Collaboration has been identified as a powerful approach towards conflict resolution built on cooperation, open communication, and finding win-win outcomes<sup>66</sup>. According to the

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<sup>60</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit

<sup>61</sup> United Nations Department of Political and Peacebuilding Affairs, 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>62</sup> Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf> (Accessed on 23/08/2024)

<sup>63</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

<sup>64</sup> Unlocking Collaboration: The Power of Mediation., Available at <https://www.linkedin.com/pulse/unlocking-collaboration-power-mediation-jharna-jagtiani-g7kxc/> (Accessed on 23/08/2024)

<sup>65</sup> Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 23/08/2024)

<sup>66</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%2>

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United Nations, the premise of mediation is that in the right environment, conflict parties can improve their relationships and move towards cooperation<sup>67</sup>.

In climate change conflicts, mediation can enable parties to move from a position of conflict towards collaboration<sup>68</sup>. For example, since populations in conflict-affected contexts tend to rely on natural resources for their livelihoods, the impact of climate shocks on natural resources is often a compelling issue that could trigger competition and conflicts over scarce resources<sup>69</sup>. In such contexts, mediation is a useful entry point in peace processes<sup>70</sup>. Mediation can enhance collaboration by fostering the engagement of local parties and communities, while offering options for integrating their voices and expertise in the climate change discourse<sup>71</sup>. By focusing on collaboration and cooperation, mediation enables the integration of women, youth and marginalized groups, who face particular climate risks and Indigenous peoples, whose expertise can help identify key issues, priorities, and solutions in climate change conflicts<sup>72</sup>.

Mediation is also key in resolving climate change conflicts globally by strengthening climate diplomacy<sup>73</sup>. The idea of climate diplomacy has been described as the interface between national interest debates and

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[0of%20the%20strategies,their%20underlying%20needs%20and%20intereests.](#)  
(Accessed on 23/08/2024)

<sup>67</sup> United Nations., 'Guidance for Effective Mediation' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation\\_UNDPA2012%28english%29\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf) (Accessed on 23/08/2024)

<sup>68</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

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international cooperation on climate action<sup>74</sup>. Climate diplomacy ensures the accurate assessment of other countries' interests and intentions, and finds the space for agreement on climate change issues<sup>75</sup>. Climate diplomacy involves the use of diplomatic channels and strategies to address global climate change and its impact on international relations<sup>76</sup>. It involves negotiating and implementing climate related policies, treaties, and agreements at the regional and international level, as well as cooperation between countries and other stakeholders to reduce greenhouse gas emissions, adapt to the impacts of climate change, and promote Sustainable Development<sup>77</sup>. Mediation can enhance climate diplomacy and the management of climate change conflicts globally by enabling diplomats from different countries to negotiate and come up with common positions and solutions on climate change<sup>78</sup>. This approach is not only vital in confronting climate change but it can also enable countries to build and strengthen Inter-State relations<sup>79</sup>. In climate change conflicts involving two states, mediation is key in promoting mutual cooperation among the nations where the party states are directly involved in resolving the issues, through their representatives or diplomats negotiating for the benefits of the public at large<sup>80</sup>.

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<sup>74</sup> UUDA-NEPAD., 'Climate Diplomacy in Africa' Available at <https://www.nepad.org/climate/publication/climate-diplomacy-africa> (Accessed on 23/08/2024)

<sup>75</sup> Ibid

<sup>76</sup> Dimitrov. R., 'Climate Diplomacy' Available at [https://www.researchgate.net/profile/RadoslavDimitrov-4/publication/322404819\\_Climate\\_diplomacy/links/5c89597b299bf14e7e7acf9c/Climatediplomacy.pdf](https://www.researchgate.net/profile/RadoslavDimitrov-4/publication/322404819_Climate_diplomacy/links/5c89597b299bf14e7e7acf9c/Climatediplomacy.pdf) (Accessed on 23/08/2024)

<sup>77</sup> Ibid

<sup>78</sup> Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

<sup>79</sup> Ibid

<sup>80</sup> Ibid

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The transnational applicability of mediation also makes it suitable in resolving climate change conflicts globally<sup>81</sup>. In transboundary conflicts, mediation is ideal in promoting diplomacy across borders and initiating cooperation and strengthening of relations between nations<sup>82</sup>. For example, at international level, mediation has enabled the states of Israel and Jordan to enter into peace agreement on water-sharing as well as mutual protection of water quality through measures such as establishment of joint institutional bodies<sup>83</sup>.

Mediation is therefore an ideal mechanism in resolving climate change conflicts globally. However, this suitability may be limited in certain circumstances. For example, win-win solutions are not always possible, especially in situations of absolute resource scarcity such as water due to the adverse impacts of climate change<sup>84</sup>. Enforcement of outcomes may also be difficult especially in the cross border context<sup>85</sup>. It is therefore necessary to effectively harness mediation in order to enhance its role in resolving climate change conflicts globally.

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<sup>81</sup> Muigua. K., 'Utilizing Alternative Dispute Resolution in Climate Change Disputes' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Utilizing-Alternative-Dispute-Resolution-in-Climate-Change-Disputes.pdf> (Accessed on 23/08/2024)

<sup>82</sup> Girinarayanan. I., 'Can Climate Change Disputes be Resolved through Mediation?' Available at <https://www.voicesofyouth.org/blog/can-climate-change-disputes-be-resolved-through-mediation> (Accessed on 23/08/2024)

<sup>83</sup> Climate Diplomacy., 'Jordan and Israel: Tensions and Water Cooperation in the Middle-East' Available at <https://climate-diplomacy.org/case-studies/jordan-and-israel-tensions-and-water-cooperation-middle-east> (Accessed on 23/08/2024)

<sup>84</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDP\\_AUNEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDP_AUNEP2015_0.pdf) (Accessed on 23/08/2024)

<sup>85</sup> Ibid

#### **4.0 Conclusion**

The impacts of climate change on conflict demands urgent and creative actions for effective conflict management<sup>86</sup>. Violent storms, severe droughts, biodiversity loss and environmental degradation are displacing millions of people all over the world and intensifying competition over scarce natural resources<sup>87</sup>. This in turn fuels violence and threatens the effectiveness and sustainability of peacemaking efforts globally<sup>88</sup>.

Mediation is a suitable approach in resolving climate change conflicts globally. It has been noted that mediation processes respond to the specificity of the conflict by taking into account the causes and dynamics of the conflict, the positions, interests and coherence of the parties, the needs of the broader society, as well as the regional and international environments<sup>89</sup>. Mediation can enhance collaboration and cooperation in the management of climate change conflicts<sup>90</sup>. It is suitable in fostering the participation of all stakeholders including women, youth, marginalized groups, and Indigenous peoples in conflict resolution<sup>91</sup>. In the local contexts, mediation enables stakeholders to focus on localized, tangible effects of climate change therefore ensuring effective conflict management<sup>92</sup>. Further, in the global context, mediation is key in promoting diplomacy, initiating cooperation and strengthening of

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<sup>86</sup> Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Available at <https://climate-diplomacy.org/magazine/conflict/four-climate-frontiers-how-mediators-can-make-peace-and-help-protect-planet> (Accessed on 23/08/2024)

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> United Nations., 'Guidance for Effective Mediation' Op Cit

<sup>90</sup> Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Op Cit

<sup>91</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>92</sup> Ibid

### *Resolving Climate Change Conflicts Globally Through Mediation*

relations between nations<sup>93</sup>. It is therefore imperative to effectively harness mediation in order to effectively resolve climate change conflicts globally.

In order to effectively harness mediation to resolve climate change conflicts globally, it is imperative to build the capacity of mediators on climate change issues<sup>94</sup>. It is also necessary to increase the familiarity of parties to conflicts on climate-related concerns, for example by raising their awareness of climate projections and environmental impact in advance of a negotiation process<sup>95</sup>. In addition, it is vital for parties to embrace collaborative outcomes in climate change conflicts ranging from environment and climate-sensitive peace agreements to cooperation on addressing the impact of climate change or environmental degradation in order to effectively manage such conflicts through mediation<sup>96</sup>. At the global stage, it is imperative to embrace climate diplomacy in order to seek solutions to climate change concerns including conflicts through diplomatic mediation<sup>97</sup>. In the context of shared resources, it is imperative for countries to establish joint institutions in order to effectively harness the power of mediation in addressing conflicts through cooperation<sup>98</sup>.

Resolving climate change conflicts globally through mediation is thus viable and achievable.

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<sup>93</sup> Girinarayanan. I., 'Can Climate Change Disputes be Resolved through Mediation?' Op Cit

<sup>94</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

<sup>95</sup> Ibid

<sup>96</sup> Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Op Cit

<sup>97</sup> Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

<sup>98</sup> Climate Diplomacy., 'Jordan and Israel: Tensions and Water Cooperation in the Middle-East'

## **Safeguarding Human Rights in Science, Technology and Innovation**

### ***Abstract***

*Science, Technology and Innovation (STI) plays an important role in the Sustainable Development agenda. It is essential in enhancing economic, social and environmental development, the three pillars of Sustainable Development. However, STI also raises profound concerns regarding its potential impact on human rights. Safeguarding human rights in STI is therefore necessary towards Sustainable Development and human well-being. This paper critically examines the need to foster human rights in STI. The paper argues that despite the key role that STI plays in promoting Sustainable Development, it has potential adverse impacts on human rights. The paper discusses some of the human rights concerns in STI. It also proposes interventions towards navigating the human rights concerns in STI for Sustainable Development.*

### **1.0 Introduction**

Science, Technology and Innovation (STI) is revolutionizing human life across the economic, social, political, cultural, and environmental spheres<sup>1</sup>. In the economic sphere, progress in STI is enhancing economic productivity and inducing dynamic transformation of economies, increasing growth rates and the number of decent jobs while reducing fossil-based energy consumption<sup>2</sup>. STI has been identified as key driver and enabler for ensuring economic growth and improving well-being<sup>3</sup>.

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<sup>1</sup> The Impact of Technology on Human Rights and Freedoms., Available at <https://aithor.com/essay-examples/the-impact-of-technology-on-human-rights-and-freedoms-2> (Accessed on 07/10/2024)

<sup>2</sup> United Nations Committee for Development Policy., 'Science, Technology and Innovation for Sustainable Development.' Available at <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2013-3.pdf> (Accessed on 07/10/2024)

<sup>3</sup> United Nations Economic Commission for Africa., 'Africa's Sustainable Growth Hinges on Science, Technology, and Innovation' Available at <https://www.uneca.org/eca-events/stories/africas-sustainable-growth-hinges-science-technology-and->



## *Safeguarding Human Rights in Science, Technology and Innovation*

In the political arena, STI has become a key pillar defining how governments respond to global issues. STI is a tool that is being increasingly embraced by states to gain competitive edge, while strengthening their global diplomacy influence<sup>4</sup>. STI is also streamlining political processes by strengthening governance frameworks, and enhancing the participation of citizens in political processes through measures such as electronic voting and online voter registration<sup>5</sup>. It has been noted that technology enables greater citizen participation in governance, fosters freedom of expression, and facilitates the coordination of democratic movements through various social media platforms<sup>6</sup>. In addition, progress in STI is vital in fostering social progress, improving human well-being, and eradicating poverty<sup>7</sup>. Further, STI has emerged as an appropriate tool for strengthening environmental governance and addressing environmental problems such as pollution, climate change and biodiversity loss<sup>8</sup>.

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[innovation#:~:text=During%20a%20session%20on%20STI,change%2C%20and%20safeguarding%20the%20environment.](#) (Accessed on 07/10/2024)

<sup>4</sup> Chumba. C., & Rotich. G., 'Science, Technology, Innovation and Kenya's Diplomacy: "The Nexus"' *International Journal of Political Science.*, Volume 9, Issue 2., 2023, pp 22-27

<sup>5</sup> International Institute for Democracy and Electoral Assistance., 'Information, Communication, and Technology in Electoral Processes' Available at <https://www.idea.int/theme/information-communication-and-technology-electoral-processes> (Accessed on 07/10/2024)

<sup>6</sup> Investor Alliance for Human Rights., 'Technology and Human Rights' Available at <https://investorsforhumanrights.org/information-and-communication-technologies-ict->

[engagement#:~:text=Issues%20at%20the%20intersection%20of,to%20as%20digital%20Rights%20risks](#) (Accessed on 07/10/2024)

<sup>7</sup> Republic of Kenya., 'Science, Technology and Innovations Ecosystem In Kenya' Available at <https://www.planning.go.ke/wp-content/uploads/2022/02/SCIENCE-TECHNOLOGY-AND-INNOVATIONS-ECOSYSTEM-IN-KENYA-1-compressed.pdf> (Accessed on 07/10/2024)

<sup>8</sup> Organisation for Economic Co-operation and Development., 'Science, Technology and Innovation' Available at <https://www.oecd.org/en/topics/policy-areas/science-technology-and-innovation.html> (Accessed on 07/10/2024)

STI therefore plays a crucial role in fostering Sustainable Development. It is essential in enhancing economic, social and environmental development, the three pillars of Sustainable Development<sup>9</sup>. The United Nations *2030 Agenda for Sustainable Development*<sup>10</sup> recognizes the role of science, technology and innovation in achieving the Sustainable Development Goals (SDGs) by fostering food security; promoting good health and well-being; fostering access to affordable and clean energy; building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation and combating climate change. STI therefore plays a key role in achieving the SDGs particularly in targets that concern human well-being, such as health, clean water and sanitation, climate change, clean energy, decent work, and responsible production, among others<sup>11</sup>. Harnessing STI is therefore a key initiative towards actualizing the Sustainable Development agenda.

Despite enhancing progress towards Sustainable Development and fostering human well-being and convenience, STI also raises profound concerns regarding its potential impact on human rights<sup>12</sup>. It has been noted that the delicate balance between STI and safeguarding human rights remains a critical challenge that requires global attention and

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<sup>9</sup> United Nations Educational, Scientific and Cultural Organization., 'Science, Technology and Innovation Policy' Available at <https://www.unesco.org/en/science-technology-and-innovation> (Accessed on 07/10/2024)

<sup>10</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 07/10/2024)

<sup>11</sup> United Nations Industrial Development Organization., 'Science, Technology, and Innovation' Available at [https://www.unido.org/topics/science-technology-and-innovation#:~:text=Science%2C%20Technology%20and%20Innovation%20\(STI,and%20responsible%20production%2C%20among%20others.](https://www.unido.org/topics/science-technology-and-innovation#:~:text=Science%2C%20Technology%20and%20Innovation%20(STI,and%20responsible%20production%2C%20among%20others.) (Accessed on 07/10/2024)

<sup>12</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Available at <https://haki africa.or.ke/2023/03/09/the-intersection-of-technology-and-human-rights-navigating-challenges-and-ensuring-protections/#:~:text=The%20delicate%20balance%20between%20technological,access%20to%20information%20and%20opportunities> (Accessed on 07/10/2024)

proactive measures<sup>13</sup>. Safeguarding human rights in STI is therefore necessary towards Sustainable Development and human well-being.

This paper critically examines the need to safeguard human rights in STI. The paper argues that despite the key role that STI plays in promoting Sustainable Development, it has potential adverse impacts on human rights. The paper discusses some of the human rights concerns in STI. It also proposes interventions towards navigating the human rights concerns in STI for Sustainable Development.

## **2.0 Human Rights Concerns in Science, Technology and Innovation**

STI offers numerous benefits in advancing human rights. For example, STI has made it possible to develop essential drugs and improve health and medical care therefore enhancing the human right to health<sup>14</sup>. STI is also enhancing food security and realization of the right to food through sustainable agricultural methods and raising agricultural productivity<sup>15</sup>. For example, new and existing technologies are making it possible to combat biotic and abiotic stresses, raise crop and livestock productivity, improve soil fertility and ensure water availability therefore increasing the amount of food produced<sup>16</sup>. Further, storage, refrigeration, transport and agro-processing innovations are ensuring food accessibility<sup>17</sup>. In addition, science is making it possible to produce high-nutrient staple

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<sup>13</sup> Ibid

<sup>14</sup> United Nations Committee for Development Policy., 'Science, Technology and Innovation for Sustainable Development.' Available at <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2013-3.pdf> (Accessed on 07/10/2024)

<sup>15</sup> Ibid

<sup>16</sup> United Nations Conference on Trade and Development., 'The Role of Science, Technology and Innovation in Ensuring Food Security By 2030' Available at [https://unctad.org/system/files/official-document/dtlstict2017d5\\_en.pdf](https://unctad.org/system/files/official-document/dtlstict2017d5_en.pdf) (Accessed on 07/10/2024)

<sup>17</sup> Ibid

crops towards combating malnutrition, and improving food utilization and use<sup>18</sup>. STI is therefore key in realizing the human right to food.

Further, STI is enhancing the uptake of renewable sources of energy towards realizing the human right to energy<sup>19</sup>. Progress in STI has been made it possible to harness renewable sources of energy such as solar, and wind energy through technologies such as wind and solar photovoltaic panels, and solar thermal technology<sup>20</sup>. Renewable energy is integral in enhancing the human right to energy by promoting universal access to affordable, reliable and sustainable, and modern energy services<sup>21</sup>. SDG 7 urges all countries to embrace renewable sources of energy in order to realize the human right to energy<sup>22</sup>. STI plays a crucial role towards achieving this goal.

STI is also advancing the human right to a clean, healthy, and sustainable environment by strengthening environmental governance<sup>23</sup>; enhancing the development of environmental- friendly and green technologies<sup>24</sup>; and reducing energy consumption, minimizing pollution and greenhouse gas emissions towards tackling climate change and pollution among other environmental challenges<sup>25</sup>. STI is also enhancing environmental monitoring through Artificial Intelligence (AI) therefore

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<sup>18</sup> Ibid

<sup>19</sup> United Nations Conference on Trade and Development, 'The Role of Science, Technology and Innovation in Promoting Renewable Energy By 2030' Available at [https://unctad.org/system/files/official-document/dtlstict2019d2\\_en.pdf](https://unctad.org/system/files/official-document/dtlstict2019d2_en.pdf) (Accessed on 07/10/2024)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>23</sup> Shabir. M et al., 'The Role of Innovation in Environmental-Related Technologies and Institutional Quality to Drive Environmental Sustainability' Available at <https://www.frontiersin.org/journals/environmental-science/articles/10.3389/fenvs.2023.1174827/full> (Accessed on 07/10/2024)

<sup>24</sup> Ibid

<sup>25</sup> Ibid

boosting efforts towards conserving biodiversity<sup>26</sup>. STI is therefore a critical tool towards realizing the human right to a clean, healthy, and sustainable environment.

Further, it has been noted that use of satellite data can monitor the flow of displaced populations<sup>27</sup>; AI can assist with image recognition to gather data on rights abuses<sup>28</sup>; and the use of forensic technology can reconstruct crime scenes in order to hold perpetrators of human rights accountable<sup>29</sup>. STI is therefore key in advancing human rights.

Despite its potential benefits in promoting human rights, several human rights concerns arise in STI. A key human right concern is the increasing digital divide within and among countries<sup>30</sup>. It has been noted that STI is perpetuating disparities in access to information and opportunities<sup>31</sup>. For example, in many parts of the world, the poor and marginalized communities face significant barriers to accessing and utilizing technology, worsening existing inequalities<sup>32</sup>. It has been argued that these digital divides have the potential to significantly amplify existing global inequalities and lead to conditions where conflict is more likely<sup>33</sup>. Achieving most of the SDGs requires embracing STI including

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<sup>26</sup> Technology and the Environment: A Battle between Harm and Benefit., Available at <https://www.telefonica.com/en/communication-room/blog/technology-environment-a-battle-between-harm-benefit/> (Accessed on 07/10/2024)

<sup>27</sup> Technology & Human Rights., Available at <https://www.hks.harvard.edu/centers/carr/programs/technology-human-rights> (Accessed on 07/10/2024)

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Digital Disruption of Human Rights., Available at <https://www.hrw.org/news/2016/03/25/digital-disruption-human-rights#:~:text=One%20traditional%20human%20rights%20concern,technology%2C%20rather%20than%20technology%20itself> (Accessed on 07/10/2024)

expanding access to information and communication technology infrastructure in all countries<sup>34</sup>. Bridging the digital divide is therefore an urgent priority towards safeguarding human rights and promoting Sustainable Development.

Further, the increasing use of AI and automation is disrupting the global job market and significantly impacting the right to fair and decent work<sup>35</sup>. It has been noted that AI is currently meeting or exceeding human performance in a significant number of domains and could potentially replace human labour in a number of sectors<sup>36</sup>. Therefore, if not effectively harnessed, technology including AI can result in massive job loss due to automation thus affecting the human right to fair and decent work<sup>37</sup>. Further, use of AI algorithms for automated decision making can potentially lead to discrimination and bias<sup>38</sup>. It has been noted that the biggest sources of risk for data-related discrimination are inadequate data availability and biased or error-ridden data<sup>39</sup>. For example, in hiring practices, algorithms mimic human decision-making, which can be based on bias, a situation that could result in discrimination against particular individuals or groups<sup>40</sup>. Addressing algorithm biases is therefore integral in safeguarding human rights.

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<sup>34</sup> Ibid

<sup>35</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Available at <https://www.weforum.org/agenda/2017/12/how-are-today-s-biggest-tech-trends-affecting-human-rights/> (Accessed on 07/10/2024)

<sup>36</sup> Ibid

<sup>37</sup> International Labour Organization., 'Artificial Intelligence' Available at <https://www.ilo.org/artificial-intelligence> (Accessed on 07/10/2024)

<sup>38</sup> Society for Computers & Law., 'Human Rights and Technology: The Harms Behind the Hype?' Available at <https://www.scl.org/13067-human-rights-and-technology-the-harms-behind-the-hype/> (Accessed on 07/10/2024)

<sup>39</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Op Cit

<sup>40</sup> Ibid

Another key human right concern in STI is privacy<sup>41</sup>. Cases of data breaches, surveillance, and unauthorized data exploitation continue to threaten individuals' fundamental rights to privacy and freedom of expression<sup>42</sup>. Further, instances of cyber repression through mass surveillance, censorship, and social media monitoring by governments are curtailing the freedom of expression in some countries<sup>43</sup>. It has been noted that governments in some states are using technology as a tool for surveillance and censorship to crack down upon critics therefore curtailing individuals' rights to express their opinions and access information freely without fear of reprisal or restriction<sup>44</sup>. In some instances, governments often shut down the internet suppressing elections, slowing economies and limiting free speech therefore violating fundamental human rights and freedoms including the freedom of expression<sup>45</sup>.

Scientific discoveries in medicine have also raised human rights concerns in instances such as those involving non-consensual medical treatment and experimentation<sup>46</sup>. Such practices infringe the human rights to dignity, integrity, self-determination, privacy, and confidentiality<sup>47</sup>.

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<sup>41</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Op Cit

<sup>42</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>43</sup> Digital Disruption of Human Rights., Op Cit

<sup>44</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>45</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Op Cit

<sup>46</sup> Office of the United Nations High Commissioner for Human Rights., 'About the Right to Health and Human Rights' Available at <https://www.ohchr.org/en/special-procedures/sr-health/about-right-health-and-human-rights> (Accessed on 07/10/2024)

<sup>47</sup> Aceves. W., 'Interrogation or Experimentation? Assessing Non-Consensual Human Experimentation During the War on Terror' Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1536&context=djcil> (Accessed on 07/10/2024)

It is therefore evident that the use of STI can potentially violate human rights. In order to address this concern, it is necessary to safeguard human rights in STI.

### **3.0 Safeguarding Human Rights in STI**

It is imperative to embrace a human right- based approach to STI. Human rights standards are set out in several instruments at the international, regional, and domestic levels. At the global level, human rights are set out in key instruments including the *Universal Declaration of Human Rights*<sup>48</sup>, the *International Covenant on Civil and Political Rights*<sup>49</sup>, and the *International Covenant on Economic, Social and Cultural Rights*<sup>50</sup>. At a regional level, the *African Charter on Human and Peoples' Rights*<sup>51</sup> was adopted towards promoting and protecting human rights and fundamental freedoms for the people of Africa. Human rights have also been upheld at national levels with countries setting out elaborate human standards under their Constitutions. For example, the *Constitution of Kenya*<sup>52</sup> recognizes the aspirations of all Kenyans for a government based on the essential values of *human rights, equality, freedom, democracy, social justice and the rule of law*<sup>53</sup>. Chapter four of the Constitution of Kenya contains the Bill of Rights which stipulates fundamental rights and freedoms which all Kenyans are entitled to. Human rights at the global, regional, and national levels are anchored in several key principles including *universality and inalienability*<sup>54</sup>;

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<sup>48</sup> United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

<sup>49</sup> United Nations General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966

<sup>50</sup> United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966

<sup>51</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("*Banjul Charter*"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981

<sup>52</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>53</sup> Ibid, Preamble

<sup>54</sup> Office of the United Nations High Commissioner for Human Rights., 'What are Human Rights' Available at <https://www.ohchr.org/en/what-are-human-rights> (Accessed on 07/10/2024)



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*indivisibility and interdependence*<sup>55</sup>; *equality and non-discrimination*<sup>56</sup>; and *participation and inclusion*<sup>57</sup> (*Emphasis added*). It has been noted that a human rights approach builds human rights into all aspects of law, policy development, institutional frameworks and decision making<sup>58</sup>.

A human rights –based approach to STI is critical in safeguarding human rights while fostering progress in STI for Sustainable Development<sup>59</sup>. This approach seeks to ensure that all progress in STI takes into account human rights and well-being. It places both a moral and ethical duty on STI to protect and uphold human rights<sup>60</sup>. Realizing a human rights-based approach to STI requires both the state and private entities to ensure participation in decision making by all stakeholders affected by STI<sup>61</sup>. It has been noted that this right requires states to ensure access to the benefits of STI and its applications, including scientific knowledge, by everyone, without discrimination<sup>62</sup>; opportunities for all to contribute to the scientific enterprise and the freedoms indispensable for scientific research<sup>63</sup>; participation of all individuals and communities in decision-making and the related right

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<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Australian Human Rights Commission., ‘Human Rights and Technology’ Available at

[https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_rights\\_tech\\_2021\\_final\\_report\\_10.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_rights_tech_2021_final_report_10.pdf) (Accessed on 07/10/2024)

<sup>59</sup> Karim. R., Newaz. M., & Chowdhury. R., ‘Human Rights-Based Approach to Science, Technology and Development: A Legal Analysis’ Available at [https://researchmgt.monash.edu/ws/portalfiles/portal/353668609/345081130\\_oa.pdf](https://researchmgt.monash.edu/ws/portalfiles/portal/353668609/345081130_oa.pdf) (Accessed on 07/10/2024)

<sup>60</sup> Ibid

<sup>61</sup> Australian Human Rights Commission., ‘Human Rights and Technology’ Op Cit

<sup>62</sup> Office of the United Nations High Commissioner for Human Rights., ‘The Right to Access to and Participate in Science’ Available at <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/right-access-and-participate-science> (Accessed on 07/10/2024)

<sup>63</sup> Ibid

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to information<sup>64</sup>; and an enabling environment fostering the conservation, development and diffusion of STI<sup>65</sup>. Fostering the participation of all stakeholders including the civil society in the development and use of STI is key in ensuring that STI produces long-lasting and positive results anchored in human rights and which ensure benefits for all humanity<sup>66</sup>.

It is also imperative to safeguard the right to privacy in STI<sup>67</sup>. There are concerns about the potential impact of STI on individual privacy, including through harmful surveillance and collecting personal data and information<sup>68</sup>. It is therefore necessary to ensure that the right to privacy is protected in STI. States should therefore establish comprehensive data protection laws that prioritize individuals' privacy and ensure strict enforcement to prevent data breaches and infringement of the right to privacy<sup>69</sup>. A human rights-based approach also requires states to ensure effective monitoring of compliance with human rights standards by government and non-state actors, and mechanisms to enforce rights including the right to privacy<sup>70</sup>. States should therefore be proactive in ensuring strict enforcement of the right to privacy in STI<sup>71</sup>.

A human rights-based approach also requires STI to be inclusive and accessible to all people regardless of economic, social and physical

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<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Australian Human Rights Commission., 'Human Rights and Technology' Op Cit

<sup>68</sup> Ibid

<sup>69</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>70</sup> Australian Human Rights Commission., 'Human Rights and Technology' Op Cit

<sup>71</sup> Ibid

status<sup>72</sup>. Bridging the digital divide in STI within and among countries is therefore necessary in order to safeguard human rights in STI<sup>73</sup>. States should therefore empower individuals and communities to understand the impact of STI on their lives and have knowledge of, and access to STI as appropriate<sup>74</sup>. Education and training on STI including scientific processes and applications, and the use of technology is key in bridging the digital divide and ensuring inclusivity and accessibility of STI for all<sup>75</sup>. Promoting digital literacy programs to bridge the digital divide and empower marginalized individuals and communities with essential technological skills and knowledge is an urgent priority towards safeguarding human rights in STI<sup>76</sup>.

The 2030 Agenda for Sustainable Development also recognizes the importance of capacity building towards ensuring accessibility and inclusivity in STI especially for developing countries<sup>77</sup>. It advocates for enhanced North-South, South-South, and triangular regional and international cooperation on access to STI<sup>78</sup>. In addition, it also calls upon developed countries to enhance the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries in order to strengthen their capacity on STI<sup>79</sup>. Fostering international and regional cooperation on STI and enhancing technology development and transfer to developing countries is therefore key in promoting accessibility, inclusivity, and participation in

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<sup>72</sup> Ochom. J., 'The Case For A Human Rights-Based Approach To Technology' Available at <https://www.humanrightspulse.com/mastercontentblog/the-case-for-a-human-rights-based-approach-to-technology> (Accessed on 07/10/2024)

<sup>73</sup> Ibid

<sup>74</sup> Australian Human Rights Commission., 'Human Rights and Technology' Op Cit

<sup>75</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Op Cit

<sup>76</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>77</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>78</sup> Ibid

<sup>79</sup> Ibid

STI for all. There is also need to embrace a human rights approach to technology development and transfer that takes into account the socio-economic and political contexts of developing countries and which ensures that dissemination of technology to developing countries is not done with the intend to infringe upon human rights including the right to privacy<sup>80</sup>.

In addition, it is imperative to ensure that the development and deployment of STI including AI technologies is based on fairness, non-discrimination, accountability, and transparency<sup>81</sup>. Addressing the concern of algorithmic bias is crucial in addressing data-related discrimination in hiring practices a situation that can potentially impact the right to work<sup>82</sup>. There is also need for labour protection by ensuring that AI is utilised to complement human labour when certain tasks are automated in order to avoid redundancies<sup>83</sup>. Further, it has been noted that as AI transforms occupations, a workforce equipped with necessary skills in machine learning, data science, and AI ethics is crucial for harnessing its potential and safeguarding the right to work<sup>84</sup>.

Finally, upholding internet freedom and preventing digital censorship is also key in safeguarding individuals' rights to access information and freedom of expression<sup>85</sup>. The idea of internet freedom recognizes that human rights and fundamental freedoms must be protected both online

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<sup>80</sup> Kipkemboi. B., & Kabira. N., 'A Human Rights Approach to Technology Transfer' 2020 *Journalofcmsd* Volume 4(5))

<sup>81</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>82</sup> World Economic Forum., 'How are Today's Biggest Tech Trends Affecting our Human Rights?' Op Cit

<sup>83</sup> International Labour Organization., 'Artificial Intelligence' Op Cit

<sup>84</sup> Ibid

<sup>85</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

and offline<sup>86</sup>. It urges states to ensure the right of access to information via online platforms, freedom of expression including through social media platforms, and freedom from internet censorship<sup>87</sup>. States should therefore promote internet freedom in order to safeguard human rights in STI.

#### **4.0 Conclusion**

STI is integral in promoting economic, social and environmental development, the three pillars of Sustainable Development<sup>88</sup>. Progress in STI is key in achieving the SDGs including targets on health, clean water and sanitation, climate change, clean energy, decent work, and responsible production, among others<sup>89</sup>. However, STI is also raising several human rights challenges including an increasing digital divide within and among countries, disruption of the right to work through automation, infringement the right to privacy, and cyber repressions which hinder freedom of expression<sup>90</sup>. It is therefore vital to safeguard human rights by embracing a human rights-based approach to STI. Achieving this ideal requires both state and non-state actors to ensure participation in decision making by all stakeholders affected by STI<sup>91</sup>; safeguard the right to privacy in STI<sup>92</sup>; ensure inclusivity and accessibility of STI to all people regardless of economic, social and physical status through measures such as capacity building and technology development and transfer<sup>93</sup>; promote fairness, non-

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<sup>86</sup> Internet Freedom and Technology and Human Rights., Available at <https://www.state.gov/internet-freedom-and-technology-and-human-rights/> (Accessed on 07/10/2024)

<sup>87</sup> Ibid

<sup>88</sup> United Nations Educational, Scientific and Cultural Organization., 'Science, Technology and Innovation Policy' Op Cit

<sup>89</sup> United Nations Industrial Development Organization., 'Science, Technology, and Innovation' Op Cit

<sup>90</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>91</sup> Australian Human Rights Commission., 'Human Rights and Technology' Op Cit

<sup>92</sup> Ibid

<sup>93</sup> Ochom. J., 'The Case For A Human Rights-Based Approach To Technology' Op Cit

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discrimination, accountability, and transparency in the deployment of STI<sup>94</sup>; and uphold internet freedom<sup>95</sup>.

Safeguarding human rights in science, technology and innovation is crucial towards unlocking the potential of STI as a driver of Sustainable Development while ensuring human well-being and prosperity.

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<sup>94</sup> The Intersection of Technology and Human Rights: Navigating Challenges and Ensuring Protections., Op Cit

<sup>95</sup> Ibid

## **Appraising The Role of Culture in Sustainable Development**

### **Abstract**

*This paper appraises the role of culture in Sustainable Development. The paper argues that culture plays a crucial role in the Sustainable Development agenda. It critically discusses ways through which culture fosters Sustainable Development. Further, the paper examines the progress made towards fostering culture in Sustainable Development and challenges thereof. It also suggests interventions towards placing culture in the Sustainable Development discourse.*

### **1.0 Introduction**

Culture is a term that connotes several meanings. It can be understood as the general process of intellectual, spiritual or aesthetic development<sup>1</sup>; a particular way of life, whether of people, period or group<sup>2</sup>; as works and intellectual artistic activity<sup>3</sup>. In anthropological and sociological perspectives culture is often understood as a way of life, attitudes, practices and fundamental beliefs that exist in a particular society<sup>4</sup>. In this context, culture is expressed in the values and customs of societies, which evolve as they are transmitted from one generation to another<sup>5</sup>. Culture can therefore be described as a set of attitudes, values, beliefs, and behavior shared by a group of people, but different for each individual, communicated from one generation to the next<sup>6</sup>.

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<sup>1</sup> Dessein. J et al., 'Culture In, for and as Sustainable Development' Available at [https://www.researchgate.net/publication/277267409\\_Culture\\_in\\_for\\_and\\_as\\_Sustainable\\_Development\\_Conclusions\\_of\\_COST\\_Action\\_IS\\_1007\\_Investigating\\_Cultural\\_Sustainability](https://www.researchgate.net/publication/277267409_Culture_in_for_and_as_Sustainable_Development_Conclusions_of_COST_Action_IS_1007_Investigating_Cultural_Sustainability) (Accessed on 09/10/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Parameswara. A., 'Exploring the Approaches of Culture on Sustainable Development' *South East Asia Journal of Contemporary Business, Economics and Law.*, Volume 21, issue 5 (2020)

<sup>5</sup> Ibid

<sup>6</sup> Spencer-Oatey. H., 'What is Culture?.' Available at [https://warwick.ac.uk/fac/soc/al/globalpadrip/openhouse/interculturalskills\\_old](https://warwick.ac.uk/fac/soc/al/globalpadrip/openhouse/interculturalskills_old)

It has been noted that development is inseparable from culture<sup>7</sup>. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) notes that culture enriches our lives in countless ways and helps build inclusive, innovative and resilient communities<sup>8</sup>. Culture is who we are and what shapes our identity<sup>9</sup>. Therefore no development can be sustainable without embracing culture<sup>10</sup>. It has been noted that integrating culture at the heart of development policies constitutes an essential investment in the world's future and a pre-condition to successful development and globalization processes that take into account the principles of cultural diversity<sup>11</sup>. Culture is therefore key in fostering Sustainable Development.

This paper appraises the role of culture in Sustainable Development. The paper argues that culture plays a crucial role in the Sustainable Development agenda. It critically discusses ways through which culture fosters Sustainable Development. Further, the paper examines the progress made towards fostering culture in Sustainable Development and challenges thereof. It also suggests interventions towards placing culture in the Sustainable Development discourse.

## **2.0 Examining the Role of Culture in Sustainable Development**

The ideal of Sustainable Development involves fostering development that meets the needs of the present generations without compromising

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[/core concept compilations/global pad - what is culture.pdf](#) (Accessed on 09/10/2024)

<sup>7</sup> United Nations., 'World Day for Cultural Diversity for Dialogue and Development' Available at <https://www.un.org/en/observances/cultural-diversity-day/background> (Accessed on 09/10/2024)

<sup>8</sup> United Nations Educational, Scientific, and Cultural Organization., 'Culture' Available at <https://www.unesco.org/en/culture> (Accessed on 09/10/2024)

<sup>9</sup> United Nations., 'World Day for Cultural Diversity for Dialogue and Development' Op Cit

<sup>10</sup> Ibid

<sup>11</sup> Ibid



the ability of future generations to meet their own needs<sup>12</sup>. It is a guiding principle that focuses on sustaining the planet's natural resources and its ecosystems in line with human development<sup>13</sup>. Achieving this ideal requires an integrated approach to development that takes into consideration environmental concerns along with economic and social development<sup>14</sup>. Sustainable Development therefore seeks to harmonise three core elements: economic growth, social inclusion and environmental protection in order to achieve a holistic approach towards development for the benefit of present and future generations<sup>15</sup>. This concept has been embraced as the global blueprint for development as captured under the United Nation's *2030 Agenda for Sustainable Development*<sup>16</sup> and its Sustainable Development Goals (SDGs).

Culture is fundamental in achieving Sustainable Development. Culture has been described not only as an instrument but a necessary foundation for meeting the overall aims of sustainability<sup>17</sup>. It covers all other aspects of sustainability and is therefore an overarching concern of Sustainable Development<sup>18</sup>. It has been noted that development is understood to be a cultural process<sup>19</sup>. Therefore, embracing a culturally embedded paradigm towards development is necessary in meeting the ideal of

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<sup>12</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>13</sup> Sustainable Development: Challenges and Opportunities., Available at <https://www.plasticcollective.co/sustainable-development-challenges-and-opportunities/> (Accessed on 10/10/2024)

<sup>14</sup> United Nations., 'Sustainability' Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 10/10/2024)

<sup>15</sup> What is Sustainable Development?., Available at <https://www.eeb.gov.hk/en/susdev/sd/index.htm> (Accessed on 05/10/2024)

<sup>16</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 10/10/2024)

<sup>17</sup> Parameswara. A., 'Exploring the Approaches of Culture on Sustainable Development' Op Cit

<sup>18</sup> Ibid

<sup>19</sup> Ibid

sustainability<sup>20</sup>. Further, since culture is made by individuals within societies whilst simultaneously also shaping their lives and existence, it can be the way to balance competing or conflicting demands through communication to give human and social meaning to Sustainable Development<sup>21</sup>. It has been noted that culture and heritage can be positioned to create the conditions for local understanding and application of Sustainable Development targets<sup>22</sup>. Culture can help humanity to renegotiate relationships with self, others, and the planet, ultimately increasing the capacity for positive change in societies towards Sustainable Development<sup>23</sup>.

Culture can connect the various dimensions of sustainability towards a common ecological, social, and economic approach towards Sustainable Development<sup>24</sup>. Achieving sustainability implies making connections between people and the natural world they inhabit and use<sup>25</sup>. It involves establishing harmony between humanity and nature<sup>26</sup>. It has been noted that culture represents and creates wider relations between humanity and nature towards sustainability<sup>27</sup>. For example, culture explains how the environment and natural resources are appreciated by a particular society<sup>28</sup>. It therefore plays a crucial role towards the economic

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<sup>20</sup> Ibid

<sup>21</sup> Dessein. J et al., 'Culture In, for and as Sustainable Development' Op Cit

<sup>22</sup> Thomas. I., 'The Potential of Culture and Heritage for Sustainable Development' Available at <https://www.britishcouncil.org/voices-magazine/potential-culture-and-heritage-sustainable-development> (Accessed on 10/10/2024)

<sup>23</sup> Ibid

<sup>24</sup> Dessein. J et al., 'Culture In, for and as Sustainable Development' Op Cit

<sup>25</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 10/10/2024)

<sup>26</sup> Ibid

<sup>27</sup> Dessein. J et al., 'Culture In, for and as Sustainable Development' Op Cit

<sup>28</sup> Cetiner. B., & Yenilmez. M., 'The Role of Culture in Environmental Sustainability' Available at [https://www.researchgate.net/publication/356570889\\_The\\_role\\_of\\_Culture\\_in\\_Environmental\\_Sustainability](https://www.researchgate.net/publication/356570889_The_role_of_Culture_in_Environmental_Sustainability) (Accessed on 10/10/2024)

advancement of societies including through sustainable utilization of natural resources<sup>29</sup>.

In addition, culture has also shaped environmental conservation efforts all over the world for many centuries towards realizing the ideal of Sustainable Development. For example, indigenous peoples who live in direct contact with nature have been at the heart of environmental conservation efforts throughout the world through their cultural knowledge, innovation and practices<sup>30</sup>. Indigenous Peoples have been identified as crucial agents of change, whose culture including livelihood practices, traditional knowledge and ways of life are fundamental for sound environmental governance, combating climate change and realizing the ambitious vision of the United Nation's 2030 Agenda for Sustainable Development<sup>31</sup>. Further, African communities have for many centuries utilized their cultural practices including indigenous scientific knowledge for effective environmental governance<sup>32</sup>. Indigenous communities in Africa have developed deep and sophisticated indigenous knowledge systems based on their observations and interactions with the environment over generations which have enabled them to harness ecosystem services to support their livelihoods and survive socioecological changes including climate change<sup>33</sup>. These cultural practices and knowledge systems have been transmitted from generation to generation, enhancing environmental

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<sup>29</sup> Ibid

<sup>30</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental\\_rule\\_of\\_law\\_progress.pdf?sequence=3](https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3) (Accessed on 10/10/2024)

<sup>31</sup> International Labour Organization., 'Sustainable Development Goals: Indigenous Peoples in Focus' Available at [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_emp/@ifp\\_skills/documents/publication/wcms\\_503715.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_503715.pdf) (Accessed on 10/10/2024)

<sup>32</sup> Zougmore. R., Segnon. A., & Thornton. P., 'Harnessing Indigenous Knowledge and Practices for Effective Adaptation in the Sahel' Available at <https://doi.org/10.1016/j.cosust.2023.101389> (Accessed on 10/10/2024)

<sup>33</sup> Ibid

conservation in Africa for many centuries<sup>34</sup>. Culture including indigenous knowledge systems is therefore key in strengthening environmental conservation towards Sustainable Development.

It is therefore evident that culture can both be a driver and enabler of Sustainable Development. Culture can drive economic growth and social progress by alleviating poverty<sup>35</sup>. For instance, cultural heritage, cultural and creative industries, sustainable cultural tourism, and cultural infrastructure can serve as strategic tools for revenue generation especially in developing countries due to their rich cultural heritage and substantial labour force<sup>36</sup>. It has been noted that many cities use cultural heritage and cultural events and institutions to improve their image, stimulate urban development, and attract visitors as well as investments for growth and development<sup>37</sup>. Cultural tourism has been identified as one of the largest and fastest-growing global tourism markets<sup>38</sup>. Culture and creative industries are increasingly being utilized to promote destinations and enhance their competitiveness and attractiveness<sup>39</sup>. In addition, culture also shapes lifestyles, individual behaviour, consumption patterns, values related to environmental conservation, and our interaction with the natural environment<sup>40</sup>. Local and indigenous knowledge systems and environmental management practices have for many centuries provided valuable insight and practical tools for tackling ecological challenges, conserving

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<sup>34</sup> Ibid

<sup>35</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Available at [https://www.un.org/millenniumgoals/pdf/Think%20Pieces/2\\_culture.pdf](https://www.un.org/millenniumgoals/pdf/Think%20Pieces/2_culture.pdf) (Accessed on 10/10/2024)

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> United Nations Educational, Scientific, and Cultural Organization., 'Sustainable Tourism' Available at <https://whc.unesco.org/en/tourism/> (Accessed on 10/10/2024)

<sup>39</sup> Ibid

<sup>40</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Op Cit

biodiversity, reducing land degradation, and mitigating the effects of climate change<sup>41</sup>.

According to UNESCO, the world's cultural and natural heritage is pivotal in the quest towards Sustainable Development<sup>42</sup>. It notes that through a variety of goods and services and as a storehouse of knowledge, well protected cultural and natural heritage may contribute directly to alleviating poverty and inequalities by providing basic goods and services, such as security and health, through shelter, access to clean air, water, food and other key resources<sup>43</sup>. Further, preserving natural resources, including outstanding sites containing some of the richest combinations of terrestrial and marine biodiversity towards safeguarding the world's cultural and natural heritage plays a key contribution to environmental sustainability<sup>44</sup>.

Culture is therefore key in promoting Sustainable Development. It has been noted that development approaches that are responsive to culture and the unique needs of a place and community, and advance a human-centred approach to development anchored in culture, are most effective, and likely to yield sustainable, inclusive and equitable outcomes<sup>45</sup>. According to UNESCO, no development can be sustainable without a strong cultural component<sup>46</sup>. It further points out that only a human-centred approach to development based on mutual respect and open dialogue among cultures can lead to lasting peace<sup>47</sup>.

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<sup>41</sup> Ibid

<sup>42</sup> United Nations Educational, Scientific, and Cultural Organization., 'World Heritage and Sustainable Development' Available at <https://whc.unesco.org/en/sustainabledevelopment/> (Accessed on 10/10/2024)

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Op Cit

<sup>46</sup> United Nations Educational, Scientific, and Cultural Organization., 'Culture' Op Cit

<sup>47</sup> Ibid

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The role of culture towards Sustainable Development is recognized under the 2030 Agenda for Sustainable Development<sup>48</sup>. The Agenda acknowledges the natural and cultural diversity of the world and affirms that all cultures and civilizations can contribute to, and are crucial enablers of Sustainable Development<sup>49</sup>. Culture is reflected across many of the targets of the SDGs including those of sustainable cities, decent work, climate action, gender equality, innovation, reduced inequalities, and peaceful and inclusive societies<sup>50</sup>. It has been noted that achieving these targets requires cultural shifts, which are an essential aspect of the fulfilment, in dignity and equality, of the potential of all human beings<sup>51</sup>.

African Union's *Agenda 2063*<sup>52</sup> also acknowledges the role of culture in promoting Sustainable Development in Africa. Aspiration 5 of the Agenda envisions a continent with a strong cultural identity, common heritage, shared values and ethics<sup>53</sup>. In order to achieve this ideal, Agenda 2063 advocates for inculcating the spirit of Pan Africanism; tapping Africa's rich heritage and culture to ensure that the creative arts are major contributors to Africa's growth and transformation; and restoring and preserving Africa's cultural heritage<sup>54</sup>. Harnessing Africa's rich heritage and culture is therefore important in realising the aspirations of Agenda 2063 and fostering Sustainable Development in the continent.

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<sup>48</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, Op Cit

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> A Culture Goal is Essential for Our Common Future., Available at [https://culture2030goal.net/sites/default/files/2023-02/culture2030goal\\_Culture%20Goal%20-%20ENG.pdf](https://culture2030goal.net/sites/default/files/2023-02/culture2030goal_Culture%20Goal%20-%20ENG.pdf) (Accessed on 10/10/2024)

<sup>52</sup> African Union., 'Agenda 2063: The Africa we Want' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 10/10/2024)

<sup>53</sup> Ibid

<sup>54</sup> Ibid

At a national level, the *Constitution of Kenya*<sup>55</sup> recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation<sup>56</sup>. The Constitution urges the state to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage<sup>57</sup>. It also requires the state to recognise the role of science and indigenous technologies in the development of the nation<sup>58</sup>. Promoting culture in Kenya is therefore a key priority towards Sustainable Development.

Culture is thus vital in the quest towards Sustainable Development. However, it has been noted that culture is often ignored and not fully incorporated into development policies<sup>59</sup>. Further, some aspects of culture including traditional and indigenous knowledge and practices are deemed inferior and ‘uncodified’ and technologies are regarded as ‘unscientific’ and are therefore yet to be fully embraced in the Sustainable Development discourse<sup>60</sup>. It is imperative to address these challenges and fully embrace the role of culture in Sustainable Development since no development can be sustainable without including culture.

### **3.0 Embracing Culture in Sustainable Development**

It is imperative to entrench the role of culture in Sustainable Development. According to the United Nations, putting culture at the heart of development policy constitutes an essential investment in the

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<sup>55</sup> Constitution of Kenya, 2010., Government Printer, Nairobi

<sup>56</sup> Ibid, article 11 (1)

<sup>57</sup> Ibid, article 11 (2) (a)

<sup>58</sup> Ibid, article 11 (2) (b)

<sup>59</sup> United Nations., ‘World Day for Cultural Diversity for Dialogue and Development’ Op Cit

<sup>60</sup> The African Manifesto for Science, Technology and Innovation., Available at [https://atpsnet.org/wp-content/uploads/2017/05/the\\_african\\_manifesto\\_for\\_sti.pdf](https://atpsnet.org/wp-content/uploads/2017/05/the_african_manifesto_for_sti.pdf) (Accessed on 10/10/2024)

world's future and a pre-condition to successful globalization processes that take into account the principles of cultural diversity<sup>61</sup>. As a result, there is need to integrate the principles of cultural diversity and the values of cultural pluralism into all public policies, mechanisms and practices for Sustainable Development particularly through public/private partnerships<sup>62</sup>. At a global level, it has been suggested that culture should be embraced in commitments, goals and targets adopted towards sustainability including through processes under the auspices of the United Nations<sup>63</sup>. Placing culture at the heart of development policies at the global, regional, and national levels is a key approach towards ensuring a human-centred, inclusive and equitable development<sup>64</sup>.

Safeguarding the world's cultural and natural heritage is also vital towards promoting the role of culture in Sustainable Development<sup>65</sup>. According to the *Convention Concerning the Protection of the World Cultural and Natural Heritage*<sup>66</sup>, World Heritage entails cultural and natural heritage. Cultural heritage includes monuments; architectural works; archeological sites; inscriptions, cave dwellings and buildings that are of outstanding value from the point of view of history, art and science<sup>67</sup>. Natural heritage on the other hand includes natural features consisting of physical and biological formations; geological and

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<sup>61</sup> United Nations., 'World Day for Cultural Diversity for Dialogue and Development' Op Cit

<sup>62</sup> Ibid

<sup>63</sup> A Culture Goal is Essential for Our Common Future., Op Cit

<sup>64</sup> United Nations Educational, Scientific, and Cultural Organization., 'Culture: at the Heart of Sustainable Development Goals' Available at <https://courier.unesco.org/en/articles/culture-heart-sustainable-development-goals#:~:text=Culture%20has%20a%20crucial%20role,its%20formal%20introduction%20in%202015> (Accessed on 10/10/2024)

<sup>65</sup> Ibid

<sup>66</sup> United Nations Educational, Scientific, and Cultural Organisation., 'The Convention Concerning the Protection of the World Cultural and Natural Heritage' available at <https://whc.unesco.org/archive/convention-en.pdf> (Accessed on 10/10/2024)

<sup>67</sup> Ibid



physiographical formations and natural sites of outstanding value from the point of view of science, conservation or natural beauty<sup>68</sup>. According to UNESCO, protecting and safeguarding the world's cultural and natural heritage and supporting creativity and dynamic cultural sectors are fundamental to addressing global challenges including climate change, poverty, inequality, the digital divide, and conflicts<sup>69</sup>. Protecting the world's cultural and natural heritage can drive Sustainable Development by boosting local, national, and regional economies through sustainable tourism practices, and fostering cultural resilience and cohesion<sup>70</sup>. States have a duty to safeguard the world's cultural and natural heritage under the *Convention Concerning the Protection of the World Cultural and Natural Heritage* through identification, protection, conservation, presentation and transmission to future generations of both cultural and natural heritage<sup>71</sup>. States should therefore enhance efforts towards conserving both cultural and natural heritage including through embracing Heritage Impact Assessment in development activities, fostering digital preservation of cultural heritage, and embracing sustainable tourism practices<sup>72</sup>.

There is also need to embrace and protect local and indigenous knowledge systems including Traditional Ecological Knowledge<sup>73</sup>. This knowledge comprises of a body of observations, oral and written

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<sup>68</sup> Ibid

<sup>69</sup> United Nations Educational, Scientific, and Cultural Organization., 'Culture' Op Cit

<sup>70</sup> Island Innovation., 'SDG 11: What Safeguarding Natural and Cultural Heritage Means for Island Communities' Available at <https://islandinnovation.co/articles/sdg-11-what-safeguarding-natural-and-cultural-heritage-means-for-island-communities/> (Accessed on 10/10/2024)

<sup>71</sup>Convention Concerning the Protection of the World Cultural and Natural Heritage , article 4

<sup>72</sup> Muigua. K., 'Safeguarding Africa's Cultural and Natural Heritage for Development' Available at <https://kmco.co.ke/articles-publications/safeguarding-africas-cultural-and-natural-heritage-for-development-x/> (Accessed on 10/10/2024)

<sup>73</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Op Cit

knowledge, innovations, practices, and beliefs developed by indigenous peoples and communities through interaction and experience with the natural environment<sup>74</sup>. Traditional Ecological Knowledge which is gained through trans-generational experiences, observations, and transmission is vital in enhancing environmental conservation towards sustainability<sup>75</sup>. It has been at the heart of environmental conservation efforts by indigenous peoples and communities all over the world including in Africa. Traditional Ecological Knowledge in Africa is embedded in the cultural orientations of various indigenous and local groups in the continent<sup>76</sup>. It plays a crucial role in sustainable management of natural resources, biodiversity conservation, and overall community well-being while also supporting economic activities<sup>77</sup>. As result, it has been noted that preserving and strengthening indigenous practices, which contribute to sustainable environmental management and provide leadership in combating climate change, nature and biodiversity loss, and pollution and waste is vital for Sustainable Development<sup>78</sup>. It is therefore necessary to embrace, strengthen, and preserve local and indigenous knowledge systems including Traditional

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<sup>74</sup> Indigenous Knowledge and Traditional Ecological Knowledge., Available at <https://www.nps.gov/subjects/tek/description.htm> (Accessed on 10/10/2024)

<sup>75</sup> United Nations Environment Programme., 'Indigenous Peoples and their Communities' Available at <https://www.unep.org/civil-society-engagement/major-groups-modalities/major-group-categories/indigenous-peoples-and#:~:text=UNEP%20recognizes%20the%20importance%20of,sustainable%20ecosystem%20management%20and%20development>. (Accessed on 10/10/2024)

<sup>76</sup> TEK Perspectives to Environmental Stewardship in Africa., Available at [https://theCSRarena.com/tek-perspectives-to-environmental-stewardship-in-africa/#:~:text=Traditional%20Ecological%20Knowledge%20\(TEK\),-Traditional%20Ecological%20Knowledge&text=Africa's%20Traditional%20Ecological%20Knowledge%20is,various%20indigenous%20and%20local%20groups](https://theCSRarena.com/tek-perspectives-to-environmental-stewardship-in-africa/#:~:text=Traditional%20Ecological%20Knowledge%20(TEK),-Traditional%20Ecological%20Knowledge&text=Africa's%20Traditional%20Ecological%20Knowledge%20is,various%20indigenous%20and%20local%20groups). (Accessed on 10/10/2024)

<sup>77</sup> Ibid

<sup>78</sup> United Nations Environment Programme., 'Tapping into Indigenous Knowledge to Protect Nature' Available at <https://www.unep.org/news-and-stories/story/tapping-indigenous-knowledge-protect-nature> (Accessed on 10/10/2024)

Ecological Knowledge in order to effectively utilise culture for Sustainable Development.

Promoting cultural exchange is also key towards strengthening the role of culture in Sustainable Development<sup>79</sup>. Cultural exchange involves the sharing of ideas, values, traditions, and other aspects of culture among people from different cultures<sup>80</sup>. It has also been defined as the international sharing and reception of cultural products, leading to the export of meaning beyond national borders and the transformation of cultural interpretations<sup>81</sup>. According to the United Nations, equitable exchange and dialogue among civilizations, cultures and peoples, based on mutual understanding and respect and the equal dignity of all cultures is fundamental in fostering social cohesion, reconciliation among peoples and peace among nations creating suitable conditions for achieving Sustainable Development<sup>82</sup>. It is therefore imperative to strengthen cultural exchange programmes at national, regional and global levels in order to foster peace and harmony for Sustainable Development.

#### **4.0 Conclusion**

Culture is both a driver and enabler of Sustainable Development<sup>83</sup>. It can foster the economic, social, and environmental dimensions of Sustainable Development by generating revenue through cultural heritage, eradicating poverty, and fostering effective environmental

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<sup>79</sup> What is Cultural Exchange and How to Experience it?., Available at <https://www.worldpackers.com/articles/cultural-exchange> (Accessed on 10/10/2024)

<sup>80</sup> Ibid

<sup>81</sup> Cultural Exchange., Available at <https://www.sciencedirect.com/topics/social-sciences/cultural-exchange> (Accessed on 10/10/2024)

<sup>82</sup> United Nations., 'World Day for Cultural Diversity for Dialogue and Development' Op Cit

<sup>83</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Op Cit

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conservation through Traditional Ecological Knowledge<sup>84</sup>. However, culture is often ignored and not fully incorporated into development policies<sup>85</sup>, and some aspects of culture including Traditional Ecological Knowledge sidelined in favour of modern scientific practices<sup>86</sup>. It is therefore necessary to embrace culture in Sustainable Development by placing culture at the heart of development policies at the global, regional, and national levels<sup>87</sup>; safeguarding the world's cultural and natural heritage<sup>88</sup>; fostering and protecting local and indigenous knowledge systems including Traditional Ecological Knowledge<sup>89</sup>; and promoting cultural exchange<sup>90</sup>.

Harnessing, embracing and safeguarding culture is necessary in order to achieve Sustainable Development.

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<sup>84</sup> Ibid

<sup>85</sup> United Nations., 'World Day for Cultural Diversity for Dialogue and Development' Op Cit

<sup>86</sup> The African Manifesto for Science, Technology and Innovation., Op Cit

<sup>87</sup> United Nations Educational, Scientific, and Cultural Organization., 'Culture: at the Heart of Sustainable Development Goals' Op Cit

<sup>88</sup> Ibid

<sup>89</sup> United Nations., 'Culture: A Driver and an Enabler of Sustainable Development' Op Cit

<sup>90</sup> What is Cultural Exchange and How to Experience it?., Op Cit

## **Securing Lasting Peace Through Appropriate Dispute Resolution-A Reflection**

### ***Abstract***

*Securing lasting peace is a global ideal. The United Nations notes that peace and development are indivisible. Peace is at the heart of the United Nation's 2030 Agenda for Sustainable Development which recognizes that there can be no Sustainable Development without peace and no peace without Sustainable Development. As a result, Sustainable Development Goal (SDG) 16 aims to achieve peaceful and inclusive societies for Sustainable Development, foster access to justice for all and build effective, accountable and inclusive institutions at all levels. This paper critically reflects on the need to secure lasting peace through Appropriate Dispute Resolution. The paper posits that Alternative Dispute Resolution (ADR) processes are appropriate in fostering lasting peace for development. The paper critically examines the concept of ADR and asserts that these processes are 'Appropriate' and not 'Alternative' in securing lasting peace. It explores some of the setbacks towards achieving peace and suggests ways through which ADR processes can be effectively utilized to secure lasting peace for Sustainable Development.*

### **1.0 Introduction**

Peace is a fundamental human ideal. It has been noted that the absence of violent conflict and the presence of respect and understanding between people and communities are the two characteristics that define peace<sup>1</sup>. In addition negotiation, compromise, and cooperation among individual and groups with different interests and viewpoints are frequently necessary to bring about peace<sup>2</sup>. The concept of peace is therefore associated with the ideals of harmony, tranquility,

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<sup>1</sup> Mustafa. G et al., 'Peace: A Conceptual Understanding' Available at [https://www.researchgate.net/publication/370062968\\_Peace\\_A\\_Conceptual\\_Understanding](https://www.researchgate.net/publication/370062968_Peace_A_Conceptual_Understanding) (Accessed on 24/08/2024)

<sup>2</sup> Ibid

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cooperation, alliance, well-being, and agreement<sup>3</sup>. At its core, peace encompasses far more than just the absence of violence or conflict<sup>4</sup>. It is a state of harmony in which individuals and communities coexist in respect and understanding<sup>5</sup>. Peace therefore envisages not only the absence of war but also the presence of positive elements, such as justice, harmony, equality, and compassion<sup>6</sup>.

According to the United Nations, peace and development are indivisible<sup>7</sup>. It notes that peace cannot be sustainable without development, and lasting peace is essential for the preservation of development gains all over the world<sup>8</sup>. Securing lasting peace is therefore vital in fostering Sustainable Development throughout the world. Achieving peace on a global scale is a complex endeavor that requires understanding, cooperation, and concerted efforts from individuals, communities, governments, and organizations all over the world<sup>9</sup>.

The *United Nations 2030 Agenda for Sustainable Development*<sup>10</sup> recognizes the need to secure lasting peace for development. According to the

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<sup>3</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>4</sup> Gray Group International., 'Understanding Peace: A Comprehensive Guide to Achieving Global Harmony' Available at <https://www.graygroupintl.com/blog/peace> (Accessed on 24/08/2024)

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> United Nations., 'Sustainability, Peace, Security 'best guarantee against instability' Guterres to Security Council' Available at <https://www.un.org/africarenewal/news/sustainability-peace-security-%E2%80%98best-guarantee-against-instability%E2%80%99-guterres-security-council> (Accessed on 24/08/2024)

<sup>8</sup> Ibid

<sup>9</sup> Gray Group International., 'Understanding Peace: A Comprehensive Guide to Achieving Global Harmony' Op Cit

<sup>10</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at

Agenda, there can be no Sustainable Development without peace and no peace without Sustainable Development<sup>11</sup>. The 2030 Agenda for Sustainable Development seeks to foster peaceful, just and inclusive societies which are free from fear and violence<sup>12</sup>. SDG 16 aims to achieve peaceful and inclusive societies for Sustainable Development, foster access to justice for all and build effective, accountable and inclusive institutions at all levels which are all prerequisites for securing lasting peace<sup>13</sup>. The 2030 Agenda for Sustainable Development therefore recognizes not only that peace and security are prerequisites for achieving Sustainable Development, but also that Sustainable Development provides the pathway to peaceful societies<sup>14</sup>.

This paper critically reflects on the need to secure lasting peace through Appropriate Dispute Resolution. The paper posits that ADR processes are appropriate in fostering lasting peace for development. The paper critically examines the concept of ADR and asserts that these processes are 'Appropriate' and not 'Alternative' in securing lasting peace. It explores some of the setbacks towards achieving peace and suggests ways through which ADR processes can be effectively utilized to secure lasting peace for Sustainable Development.

## **2.0 Defining Appropriate Dispute Resolution**

ADR has been defined as a spectrum of less costly and more expeditious alternatives to litigation, where a neutral party assists the disputing parties in reaching resolution<sup>15</sup>. However, in some ADR processes such as negotiation, parties meet to identify and discuss the issues at hand so

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<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 24/08/2024)

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 24/08/2024)

as to arrive at a mutually acceptable solution without the help of a third party<sup>16</sup>. ADR has also been defined as a set of processes that are applied to manage disputes without resort to adversarial litigation<sup>17</sup>. It covers various processes including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>18</sup>. It has been noted that ADR techniques may be linked to but function outside formal court litigation processes<sup>19</sup>.

It has been argued that the use of the term 'Alternative' to describe ADR mechanisms is misleading since it may be understood to imply that these mechanisms are second-best to litigation which is not the case<sup>20</sup>. In many contexts, ADR techniques are considered as 'Appropriate' and not 'Alternative' in conflict management<sup>21</sup>. For example, conflict management amongst African societies has since time immemorial taken the form of informal negotiation, mediation, reconciliation and arbitration<sup>22</sup>. These processes fitted comfortably within traditional concepts of African justice, particularly its core values of reconciliation and restorative justice<sup>23</sup>. They were therefore considered 'Appropriate'

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<sup>16</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>20</sup> P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52

<sup>21</sup> Ibid

<sup>22</sup> Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successeschallengesand-opportunities-1.pdf> (Accessed on 24/08/2024)

<sup>23</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.'



and not 'Alternative' and were the first point of call in conflict management among African societies<sup>24</sup>.

ADR processes contain certain attributes which makes them 'Appropriate' in conflict management. These features include informality, flexibility, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost- effective management of disputes<sup>25</sup>. ADR processes also allow for more creative and collaborative solutions than that of traditional litigation<sup>26</sup>. In addition, some ADR techniques such as negotiation and mediation have the ability to preserve and even enhance the relationship of parties to a conflict and are therefore suitable and 'Appropriate' in managing conflicts<sup>27</sup>.

Due to their appropriateness, ADR processes are being embraced for effective management of conflicts globally. The *Charter of the United Nations*<sup>28</sup> sets out the legal framework for utilizing ADR processes at the global stage. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means* of their own choice (Emphasis added)<sup>29</sup>.

ADR processes are therefore 'Appropriate' and not 'Alternative' in conflict management. It is imperative to embrace Appropriate Dispute Resolution in order to secure lasting peace for development.

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<sup>24</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>25</sup> Ibid

<sup>26</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Op Cit

<sup>27</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>28</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>29</sup> Ibid, article 33 (1)

### **3.0 Securing Lasting Peace through Appropriate Dispute Resolution: Opportunities and Challenges**

ADR techniques play a fundamental role in enhancing sustainable peace and strengthening peace building efforts<sup>30</sup>. These processes are not only vital in 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 processes<sup>31</sup>. It has been noted that in order to effectively address conflicts and secure lasting peace, it is essential to delve into the root causes that give rise to them<sup>32</sup>. In addition, it has been observed that conflicts are not isolated incidents but are often deeply rooted in underlying factors and dynamics<sup>33</sup>. Therefore, by understanding such root causes, it is possible to develop sustainable solutions that address the fundamental issues at play<sup>34</sup>.

For example, it has been argued that securing lasting peace in Africa requires root causes of conflicts to be addressed beyond traditional responses<sup>35</sup>. For many decades, a significant number of countries in the continent have been characterized by internal conflicts, intra and inter-state wars, and political instability threatening peace, security, and stability<sup>36</sup>. As a result of these conflicts, it has become more challenging

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<sup>30</sup> Muigua. K., 'Towards Effective Peacebuilding and Conflict Management in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2021/05/Towards-Peacebuilding-and-Conflict-Managementin-Kenya.docx-Kariuiki-Muigua-MAY-2021x.pdf> (Accessed on 25/08/2024)

<sup>31</sup> Ibid

<sup>32</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at [https://www.researchgate.net/publication/372289839\\_Peace\\_Studies\\_Conflict\\_Resolution\\_and\\_Mediation\\_Strategies](https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies) (Accessed on 25/08/2024)

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> United Nations., 'Root Causes of Conflicts in Africa Must Be Addressed beyond Traditional Response, Special Adviser Tells Security Council Debate on Silencing Guns.' Available at <https://press.un.org/en/2023/sc15249.doc.htm> (Accessed on 25/08/2024)

<sup>36</sup> Olaosebikan. A., 'Conflicts in Africa: Meaning, Causes, Impact and Solution.' *African Research Review.*, Volume 4, No. 4 (2010)

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to secure lasting peace in Africa, with protracted and recurring conflict more difficult to prevent or resolve, often because their underlying causes are not well understood or addressed<sup>37</sup>.

Therefore, addressing the internal and external root causes of conflicts in Africa beyond the traditional response, which only tackled their symptoms, would create the capacities that help African countries overcome the peace and security challenges they face, which have deep historical roots<sup>38</sup>. ADR processes are ideal in meeting these objectives and securing lasting peace.

Mediation addresses the root causes of conflict resulting in mutually satisfying and long-lasting outcomes therefore creating a suitable environment for peace by eliminating the likelihood of conflicts reemerging in future<sup>39</sup>. It also has the potential to preserve and at times even enhance the relationship of parties to a conflict making it an ideal process in promoting lasting peace<sup>40</sup>. In addition, it has been noted that mediation can lead to more sustainable and long-lasting resolutions compared to imposed solutions<sup>41</sup>. By involving all parties in the decision-making process, mediation helps create a sense of ownership and commitment to the agreed-upon outcomes<sup>42</sup>. Mediation is therefore a suitable process in securing lasting peace by providing a structured and neutral platform for dialogue and negotiation<sup>43</sup>. By enabling

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<sup>37</sup> United Nations., 'Promotion of Durable Peace and Sustainable Development in Africa.' Available at [https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875\\_osaa\\_sg\\_report\\_web\\_new.pdf](https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875_osaa_sg_report_web_new.pdf) (Accessed on 25/08/2024)

<sup>38</sup> United Nations., 'Root Causes of Conflicts in Africa Must Be Addressed beyond Traditional Response, Special Adviser Tells Security Council Debate on Silencing Guns.' Op Cit

<sup>39</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

<sup>40</sup> Ibid

<sup>41</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Op Cit

<sup>42</sup> Ibid

<sup>43</sup> Ibid

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constructive communication among parties, mediation helps parties to better understand each other's perspectives, find common ground, and work towards mutually acceptable solutions<sup>44</sup>.

Mediation has often been utilized by the United Nations in peacebuilding efforts<sup>45</sup>. The United Nations has played a crucial role in helping to mediate inter- and intra-State conflicts at all stages: before they escalate into armed conflict, after the outbreak of violence, and during implementation of peace agreements<sup>46</sup>. In addition, the Secretary-General of the United Nations and his representatives carry out good offices and mediation efforts at the request of parties to disputes, on the Secretary General's initiative, or in response to a request from the Security Council or the General Assembly of the United Nations<sup>47</sup>. Through the use of mediation among other Appropriate Dispute Resolution processes, the United Nations continues to play a prominent role in peacemaking, working increasingly in partnership with regional organizations in order to bring ongoing conflicts to an end, and to prevent new crises from emerging or escalating in order to secure lasting peace throughout the world<sup>48</sup>. The Charter of the United Nations identifies mediation as an important means for the peaceful settlement of disputes and conflicts, and it has proven to be an effective instrument to address both inter-State and intra-State conflict<sup>49</sup>. For example, the African Union led mediation was instrumental in restoring peace and stability following the post-election violence in Kenya in 2007-2008<sup>50</sup>.

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<sup>44</sup> Ibid

<sup>45</sup> United Nations., 'Prevention and Mediation' Available at <https://dppa.un.org/en/prevention-and-mediation> (Accessed on 25/08/2024)

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> United Nations., 'Guidance for Effective Mediation' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation\\_UNDPA2012%28english%29\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf) (Accessed on 25/08/2024)

<sup>50</sup> Kofi Annan Foundation., 'Back from the Brink: the 2008 mediation process and reforms in Kenya' Available at

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The successful mediation efforts led by the former Secretary-General of the United Nations, Kofi Annan, led to the signing of the National Accord and the formation of the Grand Coalition Government in Kenya<sup>51</sup>.

Negotiation is also an ideal process in securing lasting peace. Negotiation is an informal process that involves parties to a conflict meeting to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party<sup>52</sup>. It is one of the most fundamental methods of managing conflicts which offers parties maximum control over the process and outcome<sup>53</sup>. It has been argued that conflict management in most contexts is anchored on the ability of people to negotiate<sup>54</sup>. The success of peacebuilding efforts not only depends on the effective negotiation of peace agreements, but essentially also on how negotiations fare during the practical implementation of peacebuilding policies on the ground<sup>55</sup>. Peacebuilding is therefore a constant negotiation process<sup>56</sup>. Negotiations do not stop after the conclusion of a peace agreement; peacebuilding goals and practice continue to be negotiated at every step of policymaking<sup>57</sup>. Negotiations have been identified as central part of the daily business of United Nations peacebuilding operations<sup>58</sup>. It is therefore necessary to embrace negotiation in order to secure lasting peace.

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<https://www.kofiannanfoundation.org/publication/back-from-the-brink-the-2008-mediation-process-and-reforms-in-kenya/> (Accessed on 25/08/2024)

<sup>51</sup> Ibid

<sup>52</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> German Institute of Development and Sustainability., 'Negotiating the Implementation of Peacebuilding: A Challenge for the Transition to Peace and Democracy' Available at [https://www.idos-research.de/uploads/media/BP\\_10.2017.pdf](https://www.idos-research.de/uploads/media/BP_10.2017.pdf) (Accessed on 25/08/2024)

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

Arbitration has also made a difference and contributed to peaceful resolution of conflicts<sup>59</sup>. It has been noted that arbitration has largely succeeded in peacefully resolving international disputes<sup>60</sup>. For instance, in violent conflicts involving land boundary disputes, political and military tensions may run so high that the parties to the dispute are unable to resolve their differences themselves<sup>61</sup>. In such cases, even when parties have concluded a cease-fire agreement to halt hostilities, the delimitation of a boundary can prove to be too sensitive and too technical to be settled through bilateral dispute settlement techniques, such as negotiation or mediation<sup>62</sup>. Therefore, international arbitration is often the most suitable process wherein an arbitrator makes a final and binding decision on the issues in dispute<sup>63</sup>. However, it has been cautioned that arbitration may not be suitable in ending political disputes<sup>64</sup>. For example, the *Abyei arbitration*<sup>65</sup>, which concerned Sudan's highly political and emotive situation of the delimitation of the country's oil-rich Abyei region only proved successful for a short period of time with the dispute escalating later especially after the independence of South Sudan<sup>66</sup>. In political disputes, it is therefore necessary to embrace other Appropriate Dispute Resolution mechanisms such as mediation and diplomacy<sup>67</sup>. Further, it has been noted that successful peace process

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<sup>59</sup> Franke. U., Magnusson. A., Dahlquist. J., 'Arbitrating for Peace: How Arbitration Made A Difference' *Kluwer Law International.*, 2016

<sup>60</sup> Ibid

<sup>61</sup> Duijzentkunst. B., & Dawkins. S., 'Arbitrary Peace? Consent Management in International Arbitration' *European Journal of International Law.*, Volume 26, Issue 1, (2015)

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Permanent Court of Arbitration., 'The Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration)' Available at <https://pca-cpa.org/en/cases/92/> (Accessed on 25/08/2024)

<sup>66</sup> Ibid

<sup>67</sup> Miles. W., & Mallett. D., 'The Abyei Arbitration and the Use of Arbitration to Resolve Inter-state and Intra-state Conflicts' *Journal of International Dispute Settlement.*, Volume 1, Issue , (2010)

depends on the consent of the parties and therefore is imperative to ensure that consent is obtained in order to secure lasting peace through arbitration<sup>68</sup>.

ADR techniques are also suitable in securing lasting peace by fostering the participation and inclusion of all stakeholders in peace building efforts<sup>69</sup>. It has been noted that embracing the participation of a broad range of parties including civil society and women's groups in peace initiatives can mitigate the risks of conflict and instability and increase the effectiveness of peacebuilding initiatives<sup>70</sup>. Further, it has been argued that the recognition of gender is crucial in conflict resolution processes and peace building<sup>71</sup>. Gender-sensitive approaches towards conflict management acknowledge that men, women, and marginalized groups experience conflicts differently and have distinct needs, experiences, and contributions to make in peacebuilding efforts<sup>72</sup>. Therefore, by considering gender dynamics, these approaches strive to ensure equality and social justice in conflict resolution and peace initiatives<sup>73</sup>. According to the United Nations, the inclusion, particularly gender-equality, is foundational to building sustainable peace<sup>74</sup>. It further points out that gender inclusivity and ensuring the full and active participation of women and young people in conflict resolution processes is necessary for achieving durable peace<sup>75</sup>. ADR processes

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<sup>68</sup> Duijzentkunst. B., & Dawkins. S., 'Arbitrary Peace? Consent Management in International Arbitration' Op Cit

<sup>69</sup> Fuentes-Julio. C., & Ibrahim. R., 'A Human Rights Approach to Conflict Resolution' Available at <https://www.ethicsandinternationalaffairs.org/journal/a-human-rights-approach-to-conflict-resolution> (Accessed on 25/08/2024)

<sup>70</sup>Ibid

<sup>71</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Op Cit

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> United Nations., 'Addressing Root Causes of Conflict Vital for Sustaining Peace as COVID-19 Reverses Peacebuilding Gains, Facilitates Intolerance, Speakers Warn Security Council' Available at <https://press.un.org/en/2021/sc14659.doc.htm> (Accessed on 25/08/2024)

<sup>75</sup> Ibid

such as negotiation and mediation are ideal in enhancing participation and inclusivity in conflict management and are therefore key in securing lasting peace<sup>76</sup>.

It is therefore possible to secure lasting peace through Appropriate Dispute Resolution. ADR is a practical tool to foster peacebuilding and conflict resolution at the interpersonal, community, national, regional, and global levels<sup>77</sup>. However, these processes are often underutilized in peacebuilding efforts<sup>78</sup>. It is therefore vital to secure lasting peace through Appropriate Dispute Resolution for prosperity.

#### **4.0 Conclusion**

Securing lasting peace is a global ideal. The United Nations 2030 Agenda for Sustainable Development recognizes not only that peace and security are prerequisites for achieving Sustainable Development, but also that Sustainable Development provides the pathway to peaceful societies<sup>79</sup>. Peace entails more than the absence of violence and conflicts<sup>80</sup>. This notion of negative peace is an incomplete picture and leads to many misconceptions of how peace can be attained<sup>81</sup>. As a result, it is imperative to embrace new approaches to peacebuilding and development; ones that extend beyond security and create the conditions necessary to restructure our societies so that they have the capacity to adapt and modify to our constantly changing

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<sup>76</sup> Muigua. K., 'Building Peace in Africa through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Building-Peace-in-Africa-through-Alternative-Dispute-Resolution-.pdf> (Accessed on 25/08/2024)

<sup>77</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>78</sup> Ibid

<sup>79</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1. Op Cit

<sup>80</sup> Vision of Humanity., 'Here's Why we Need a New Definition of Peace' Available at <https://www.visionofhumanity.org/why-we-need-a-new-definition-of-peace/#:~:text=Without%20peace%2C%20it%20will%20not,to%20changes%20in%20their%20environments> (Accessed on 25/08/2024)

<sup>81</sup> Ibid



environments<sup>82</sup>. Peace therefore envisages the presence of positive elements, such as justice, harmony, equality, and compassion<sup>83</sup>.

Securing lasting peace is key for development and human well-being. It has been noted that countries that enjoy peace and stability are among the best performers in terms of the Human Development Index (HDI), a summary measure of human development that takes into account: a long and healthy life, being knowledgeable and having a decent standard of living<sup>84</sup>. Without peace and stability, it is impossible to achieve progress at any level<sup>85</sup>. Wars and conflicts disrupt economies, displace communities, and exacerbate poverty and inequalities<sup>86</sup>. Therefore, in order to make progress towards peace and achieve development, meaningful actions must be taken at every level of society, to build a world not only free of conflicts and wars but also a world where justice, equality, and human rights are upheld<sup>87</sup>.

ADR techniques are ideal in securing lasting peace. Processes such as mediation and negotiation are suitable in securing lasting peace by addressing the root causes of conflicts, enhancing collaboration, and ensuring participation and inclusivity in conflict management<sup>88</sup>. In some contexts, arbitration is ideal in peacefully resolving international

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<sup>82</sup> Ibid

<sup>83</sup> Gray Group International., 'Understanding Peace: A Comprehensive Guide to Achieving Global Harmony' Op Cit

<sup>84</sup> United Nations Development Programme., 'Sustainable Peace for Sustainable Development - A Global Challenge that Calls for Collective Action' Available at <https://www.undp.org/rwanda/blog/sustainable-peace-sustainable-development-global-challenge-calls-collective-action> (Accessed on 25/08/2024)

<sup>85</sup> Ibid

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> United Nations., 'Root Causes of Conflicts in Africa Must Be Addressed beyond Traditional Response, Special Adviser Tells Security Council Debate on Silencing Guns.' Op Cit

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disputes<sup>89</sup>. ADR techniques have been identified as valuable for stabilization and statebuilding efforts towards securing lasting peace<sup>90</sup>. These processes are being increasingly embraced in peacebuilding efforts at both the global level through initiatives by the United Nations and on a regional level through the African Union Mediation and Dialogue Initiative<sup>91</sup>. It is therefore necessary to embrace these techniques in order to secure lasting peace through Appropriate Dispute Resolution.

ADR processes should be embraced as ‘Appropriate’ and not ‘Alternative’ since they are key in securing lasting peace by allowing parties to come up with collaborative approaches, addressing the root causes of conflicts for durable peace, and ensuring the participation of all stakeholders including women, youth, and Indigenous Peoples in conflict management<sup>92</sup>. It is also pertinent for states to bolster their legal, policy, institutional, and human capacity in ADR in order to bolster the role of these processes in peacebuilding<sup>93</sup>.

Securing lasting peace through Appropriate Dispute Resolution is therefore necessary and feasible. It is imperative to pursue this agenda all over the world for development and posterity.

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<sup>89</sup> Duijzentkunst. B., & Dawkins. S., ‘Arbitrary Peace? Consent Management in International Arbitration’ Op Cit

<sup>90</sup> Uwazie. E., ‘Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.’ Op Cit

<sup>91</sup> African Union., ‘Mediation and Dialogue’ Available at <https://au.int/en/directorates/mediation-and-dialogue> (Accessed on 25/08/2024)

<sup>92</sup> Saaida. M., ‘Peace Studies: Conflict Resolution and Mediation Strategies’ Op Cit

<sup>93</sup> Muigua. K., ‘Building Peace in Africa through Alternative Dispute Resolution’ Op Cit

## **Reorganizing Multilateral Trade Mechanisms for Sustainability**

### **Abstract**

*This paper critically examines the need to reorganize multilateral trade mechanisms for sustainability. The paper posits that multilateral trade mechanisms are key drivers of Sustainable Development. It explores the idea of multilateral trade mechanisms. The paper further discusses the salient features and advantages of multilateral trade mechanisms that drive the Sustainable Development agenda globally and regionally. It also highlights some of the weaknesses in the current framework of multilateral trade mechanisms. In addition, the paper proposes measures towards reorganizing multilateral trade mechanisms for sustainability.*

### **1.0 Introduction**

Trade refers to an exchange, voluntary in nature, between two parties in requirement of each other's resources being goods and services<sup>1</sup>. It involves the transfer or exchange of goods and services for money or money's worth<sup>2</sup>. Trade is vital for Sustainable Development. It is a key driver for growth that creates jobs, reduces poverty and increases economic opportunities<sup>3</sup>.

The United Nation's 2030 Agenda for Sustainable Development recognizes international trade as an engine for inclusive economic growth and poverty reduction, and an important means to achieve the Sustainable Development Goals (SDGs)<sup>4</sup>. In order to enhance the role of

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<sup>1</sup> What is Trade., Available at <https://economictimes.indiatimes.com/definition/trade> (Accessed on 16/10/2024)

<sup>2</sup> What is Trade? Meaning and Nature., Available at <https://bgc.ac.in/pdf/study-material/trade.pdf> (Accessed on 16/10/2024)

<sup>3</sup> World Bank Group., 'Trade' Available at <https://www.worldbank.org/en/topic/trade> (Accessed on 16/10/2024)

<sup>4</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 16/10/2024)

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trade in the Sustainable Development discourse, the 2030 Agenda seeks to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization (WTO); enhance meaningful trade liberalization; provide trade-related capacity building for developing countries; and foster regional economic integration and interconnectivity<sup>5</sup>. SDG 17 sets out several targets towards strengthening trade as a means of implementing the Sustainable Development agenda<sup>6</sup>.

International trade is therefore a key driver of Sustainable Development. It enables countries to achieve a more efficient allocation of scarce resources towards sustainability<sup>7</sup>. International trade also makes it easier for developing to access environmental goods, services and technologies for Sustainable Development<sup>8</sup>. In addition, trade has been identified as an important part of the solution to climate crisis and other environmental problems, despite the fact that it can also contribute to greenhouse gas emissions and other pollutants in the absence of appropriate environmental policies<sup>9</sup>. For example, international trade has direct benefits on the environment by improving efficiency, increasing the scale and diffusion of environmental technology, as well as indirect benefits on the environment by improving incomes and living standards which in the long-term result in better environmental

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Available at [https://www.wto.org/english/res\\_e/publications\\_e/brochure\\_rio\\_20\\_e.pdf](https://www.wto.org/english/res_e/publications_e/brochure_rio_20_e.pdf) (Accessed on 16/10/2024)

<sup>8</sup> Ibid

<sup>9</sup> World Trade Organization., 'Re-Globalization to Promote Environmental Sustainability' Available at [https://www.wto.org/english/res\\_e/booksp\\_e/wtr23\\_e/wtr23\\_ch5\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_ch5_e.pdf) (Accessed on 16/10/2024)

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standards<sup>10</sup>. International trade further plays a key role in climate action by driving technological innovation and dissemination of low carbon technologies<sup>11</sup>. It is vital in accelerating a global just transition to a low-carbon economies<sup>12</sup>. According to the United Nations Trade and Development (UNCTAD), trade-related measures can help drive both climate and Sustainable Development actions across the globe<sup>13</sup>. In light of the key role of trade in sustainability, it has been pointed out that there is need to strengthen the multilateral trading systems for Sustainable Development<sup>14</sup>.

This paper critically examines the need to reorganize multilateral trade mechanisms for sustainability. The paper posits that multilateral trade mechanisms are key drivers of Sustainable Development. It explores the idea of multilateral trade mechanisms. The paper further discusses the salient features and advantages of multilateral trade mechanisms that drive the Sustainable Development agenda globally and regionally. It also highlights some of the weaknesses in the current framework of multilateral trade mechanisms. In addition, the paper proposes measures towards reorganizing multilateral trade mechanisms for sustainability.

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<sup>10</sup> Ibid

<sup>11</sup> Meyer-Ohlendorf. N., & Gerstetter. C., 'Trade and Climate Change: Triggers or Barriers for Climate Friendly Technology Transfer and Development?' Available at [https://www.ecologic.eu/sites/default/files/publication/2015/meyer-ohlendorf\\_gerstetter-09-trade-and-climate-change\\_0.pdf](https://www.ecologic.eu/sites/default/files/publication/2015/meyer-ohlendorf_gerstetter-09-trade-and-climate-change_0.pdf) (Accessed on 16/10/2024)

<sup>12</sup> Caribbean News Global., 'COP 28: UNCTAD and Partners to Advance Pro-Development Climate Goals.' Available at <https://caribbeannewsglobal.com/cop-28-unctad-and-partners-to-advance-pro-development-climate-goals/> (Accessed on 16/10/2024)

<sup>13</sup> Ibid

<sup>14</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

## **2.0 Multilateral Trade Mechanisms: Opportunities and Challenges**

According to the United Nations, multilateralism is both a method of cooperation and a form of organization of the international system<sup>15</sup>. It is based on several principles such as consultation, inclusion and solidarity<sup>16</sup>. The idea of multilateralism is determined by collectively developed rules that ensure sustainable and effective cooperation among nations<sup>17</sup>. Multilateralism therefore refers to a situation in which different countries collaborate with the main aim of achieving solutions for common problems facing them<sup>18</sup>. It is premised on collaboration and cooperation among several countries to achieve common objectives, involving continuous negotiation and dialogue between member states of an international or regional organization with the aim of finding consensual solutions to global challenges<sup>19</sup>.

It has been correctly noted that global challenges facing the planet including climate change, migration, poverty, inequalities among nations, and opportunities and risks of new technologies can only be addressed through mutual international and regional cooperation in the form of multilateralism<sup>20</sup>. As a result, multilateralism is vital and best suited to providing solutions to issues that have a universal application such as human rights, transboundary problems including climate

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<sup>15</sup> United Nations., 'The Virtues of Multilateralism and Diplomacy' Available at <https://www.un.org/en/observances/multilateralism-for-peace-day> (Accessed on 16/10/2024)

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Karlsson-Vinkhuyzen. S., & Dahl. A., 'Building Effective Multilateralism for the Environment' Available at [https://iefworld.org/fl/Policybrief\\_KarlssonVinkhuyzen\\_Dahl.pdf](https://iefworld.org/fl/Policybrief_KarlssonVinkhuyzen_Dahl.pdf) (Accessed on 16/10/2024)

<sup>19</sup> Ibid

<sup>20</sup> Ivanov. I., 'What Are the Core Benefits of Multilateralism at the Present Stage?' Available at <https://russiancouncil.ru/en/analytics-and-comments/analytics/what-are-the-core-benefits-of-multilateralism-at-the-present-stage/#:~:text=Multilateralism%20is%20a%20mechanism%20for,organizations%20easy%20and%20readily%20available> (Accessed on 16/10/2024)

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change and pollution, and managing the global commons including the high seas and the atmosphere<sup>21</sup>. It has been noted that in an increasingly interconnected world, multilateralism has become a key factor in dealing with transnational problems and guaranteeing global stability for Sustainable Development<sup>22</sup>.

Multilateralism is also integral in fostering international trade. It has been noted that multilateralism is crucial in promoting a stable and inclusive international trade environment towards Sustainable Development for all countries<sup>23</sup>. For example, greater international cooperation and integration through trade can advance services trade and allow a wider application of digital technologies all over the world lowering the carbon intensity of trade thus promoting environmental sustainability<sup>24</sup>. It has been noted that when combined with appropriate environmental policies, trade can significantly advance the green transition by unlocking green comparative advantage<sup>25</sup>. This approach enhances the ability of developing economies to tap into new trading opportunities arising from the green transition for environmental

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<sup>21</sup> What is Multilateralism., Available at <https://www.mfat.govt.nz/mi/peace-rights-and-security/multilateralism-matters#:~:text=The%20multilateral%20system%20is%20best,or%20involve%20managing%20things%20that> (Accessed on 16/10/2024)

<sup>22</sup> Morgera, E., 'The EU and Environmental Multilateralism: The Case of Access and Benefit-Sharing and the Need for a Good-Faith Test' Available at [https://www.researchgate.net/profile/Elisa-Morgera/publication/267926423\\_The\\_EU\\_and\\_Environmental\\_Multilateralism\\_The\\_Case\\_of\\_Access\\_and\\_Benefit-Sharing\\_and\\_the\\_Need\\_for\\_a\\_Good-Faith\\_Test/links/545d0f690cf27487b44d492d/The-EU-and-Environmental-Multilateralism-The-Case-of-Access-and-Benefit-Sharing-and-the-Need-for-a-Good-Faith-Test.pdf](https://www.researchgate.net/profile/Elisa-Morgera/publication/267926423_The_EU_and_Environmental_Multilateralism_The_Case_of_Access_and_Benefit-Sharing_and_the_Need_for_a_Good-Faith_Test/links/545d0f690cf27487b44d492d/The-EU-and-Environmental-Multilateralism-The-Case-of-Access-and-Benefit-Sharing-and-the-Need-for-a-Good-Faith-Test.pdf) (Accessed on 16/10/2024)

<sup>23</sup> United Nations., 'Absence of Multilateral Trade System Threatens Sustainable Development, Delegates Stress as Second Committee Takes Up Macroeconomic Policy Questions' Available at <https://press.un.org/en/2019/gaef3517.doc.htm> (Accessed on 17/10/2024)

<sup>24</sup> World Trade Organization., 'Re-Globalization to Promote Environmental Sustainability' Op Cit

<sup>25</sup> Ibid

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sustainability<sup>26</sup>. Multilateralism therefore provides a forum to enhance the coherence between trade and environmental policies thus strengthening efforts to make trade more sustainable<sup>27</sup>. It also promotes open international markets for environmental goods and services therefore enhancing environmentally sustainable economic growth<sup>28</sup>. It has been noted that the rules and transparency mechanisms of multilateral trading systems can make a key contribution to minimize the risk of tensions and to ensure that open trade continues to support efforts towards transitioning to green economies<sup>29</sup>.

According to UNCTAD, multilateral trade mechanisms contribute significantly to improvements in living conditions worldwide<sup>30</sup>. It further notes that multilateral trade mechanisms are appropriate for economic, social and environmental development in both developed and developing countries and remains indispensable for the achievement of the 2030 Agenda for Sustainable Development and its SDGs<sup>31</sup>. Through multilateralism, international trade allows access to foreign products, services and markets, enables economies of scale and generates employment<sup>32</sup>. In addition, multilateral trade processes allow for better use of productive resources and can support structural transformation that can trigger long-term economic development in both developed and developing countries<sup>33</sup>. Rules-based multilateral

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Organisation for Economic Co-operation and Development, 'Trade and Environmental Sustainability' Available at <https://www.oecd.org/en/topics/trade-and-environmental-sustainability.html> (Accessed on 17/10/2024)

<sup>29</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

<sup>30</sup> United Nations Conference on Trade and Development., 'Trade, Multilateral Cooperation and Sustainable Development' Available at [https://unctad.org/system/files/official-document/cid45\\_en.pdf](https://unctad.org/system/files/official-document/cid45_en.pdf) (Accessed on 17/10/2024)

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid



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trading systems have been identified as part of the solution to the triple planetary crisis of climate change, biodiversity loss and pollution<sup>34</sup>.

There has been progress towards utilising multilateral trade mechanisms for sustainability. For example, the World Trade Organization (WTO), is an international organization dealing with the global rules of trade between nations<sup>35</sup>. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field among all its members<sup>36</sup>. WTO operates a global system of trade rules, acts as a forum for negotiating trade agreements, settles trade disputes between its members and supports the needs of developing countries<sup>37</sup>. The *Agreement Establishing the WTO*<sup>38</sup> recognizes the role of trade in sustainability. It aims to expand the production of and trade in goods and services among member states while allowing for the optimal use of the world's resources in accordance with the objective of Sustainable Development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development<sup>39</sup>. The WTO is therefore a key body in promoting multilateral trade mechanisms for sustainability.

It has been argued that the WTO offers a powerful supporting framework for Sustainable Development and a green economy<sup>40</sup>. It

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<sup>34</sup> Organisation for Economic Co-operation and Development., 'Trade and Environmental Sustainability' Op Cit

<sup>35</sup> World Trade Organization., Available at [https://www.wto.org/english/thewto\\_e/thewto\\_e.htm](https://www.wto.org/english/thewto_e/thewto_e.htm) (Accessed on 18/10/2024)

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Agreement Establishing the World Trade Organization., Available at [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf) (Accessed on 18/10/2024)

<sup>39</sup> Ibid

<sup>40</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

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offers an enabling environment through its objectives, institutions and monitoring of potential trade protectionism, enforcement mechanism, a wide set of rules, and growing case law in the environment area<sup>41</sup>. The WTO is central to achieving the 2030 Agenda for Sustainable Development and its SDGs. For example, it can promote well planned and strategically executed trade policy initiatives which can impact positively on sustainable poverty reduction in line with SDG 1<sup>42</sup>. Further, it plays a key role in eliminating subsidies that cause distortions in agriculture markets leading to fairer and more competitive markets helping both farmers and consumers while contributing to food security towards achieving the targets of SDG 2<sup>43</sup>. The WTO is also crucial in achieving the targets of SDG 9 (industry, innovation, and infrastructure) by enhancing mechanism for transfer of technology, knowledge and innovation<sup>44</sup>. It also plays a key role in reducing inequalities between nations. WTO rules try to reduce the impact of existing inequalities through the principle of Special and Differential Treatment for Developing Countries<sup>45</sup>. This allows the use of flexibilities by developing and least-developed countries to take into account their capacity constraints<sup>46</sup>. It has been noted that trade is a powerful ally of Sustainable Development<sup>47</sup>. The WTO is thus an important body in promoting multilateral trade for sustainability.

The Doha Development Agenda under the WTO aims to achieve major reform of the international trading system through the introduction of

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<sup>41</sup> Ibid

<sup>42</sup> World Trade Organization., 'The WTO and the Sustainable Development Goals' Available at [https://www.wto.org/english/thewto\\_e/coher\\_e/sdgs\\_e/sdgs\\_e.htm#:~:text=The%20WTO%20is%20central%20to,health%2C%20education%20and%20the%20environment.](https://www.wto.org/english/thewto_e/coher_e/sdgs_e/sdgs_e.htm#:~:text=The%20WTO%20is%20central%20to,health%2C%20education%20and%20the%20environment.) (Accessed on 18/10/2024)

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> World Trade Organization., 'Sustainable Development' Available at [https://www.wto.org/english/tratop\\_e/envir\\_e/sust\\_dev\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm) (Accessed on 18/10/2024)

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lower trade barriers and revised trade rules<sup>48</sup>. It seeks to reorganize multilateral trade for sustainability by promoting agriculture through increased market access, eliminating export subsidies, reducing distorting domestic support, and dealing with non-trade concerns such as food security and rural development<sup>49</sup>. The Doha Development Agenda also includes specific negotiations on trade and environment. It aims to promote freer trade in environmental goods such as wind turbines, carbon capture and storage technologies, and solar panels<sup>50</sup>. It also aims to improve collaboration among states for sustainability through multilateral environmental agreements and establishing more coherence between trade and environmental rules<sup>51</sup>. It is therefore necessary for the WTO member states to conclude negotiations under the Doha Development Agenda in order to reorganize multilateral trade mechanisms for sustainability.

At a regional level, there have been efforts to foster multilateral trade for sustainability through the African Continental Free Trade Area (AfCFTA). The *Agreement Establishing the African Continental Free Trade Area*<sup>52</sup>, establishes the AfCFTA whose objectives include to create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “An integrated, prosperous and peaceful Africa” enshrined in Agenda 2063<sup>53</sup>; to create a liberalised market for goods and services through successive rounds of

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<sup>48</sup> World Trade Organization., ‘Doha Round’ Available at [https://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](https://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (Accessed on 18/10/2024)

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> African Union., ‘Agreement Establishing the African Continental Free Trade Area.’ Available at [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf) (Accessed on 18/10/2024)

<sup>53</sup> Ibid

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negotiations<sup>54</sup>; to contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and Regional Economic Communities<sup>55</sup>; to enhance the competitiveness<sup>56</sup> of the economies of State Parties within the continent and the global market<sup>56</sup>; to promote industrial development through diversification and regional value chain development, agricultural development and food security<sup>57</sup>; and to resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes<sup>58</sup>.

It has been noted that AfCFTA is appropriately designed to deepen integration, foster trade and investment, enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa<sup>59</sup>. The AfCFTA provides an opportunity for African countries to harness the full potential of multilateral trade and industrialization to advance sustainable and inclusive growth<sup>60</sup>. It also offers a platform towards sustainability in Africa through green growth<sup>61</sup>. For example, the AfCFTA Protocol on

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at [https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-.Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of%20day\)%2C%20according%20to%20UNCTAD](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-.Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of%20day)%2C%20according%20to%20UNCTAD) (Accessed on 18/10/2024)

<sup>60</sup> United Nations., 'AfCFTA: African Free Trade Area will Spur Sustainable Growth, says UN chief' Available at <https://www.un.org/africarenewal/news/afcfata%2C%20african-free-trade-area%2C%20will%2C%20spur-sustainable-growth%2C%20says%2C%20un-chief> (Accessed on 18/10/2024)

<sup>61</sup> United Nations Economic Commission for Africa., 'Africa Should Leverage the AfCFTA to Promote Green Transition' Available at <https://www.uneca.org/stories/africa-should-leverage-the-afcfata-to-promote-green-transition> (Accessed on 18/10/2024)

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Investment presents a unique opportunity for African countries to attract and promote investments in green sectors that support green transition<sup>62</sup>. It is also suitable in facilitating technology transfer, developing green investment standards and encouraging regional cooperation towards sustainability<sup>63</sup>. Implementing the AfCFTA is therefore vital towards promoting Intra-African trade for sustainability in Africa.

Multilateral trade is therefore an important driver of sustainability. However, in light of challenges including the impacts of trade on the environment, and unequal opportunities for developing countries, it is imperative to reorganize multilateral trade mechanisms for sustainability<sup>64</sup>.

### **3.0 Reorganizing Multilateral Trade Mechanisms for Sustainability**

There is need to reorganize multilateral trade mechanisms for sustainability. In order to realise this goal, it is imperative to green international trade<sup>65</sup>. According to the United Nations Environment Programme (UNEP), greening international trade serves as a non-technical entry point for actors keen to navigate the environment-trade policy conversation and promote sustainable trade and the overall Sustainable Development agenda<sup>66</sup>. Greening international trade safeguards and strengthens ambitious environmental policies nationally and internationally<sup>67</sup>; harnesses trade and trade policy to incentivize and

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<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> World Trade Organization: Challenges and Opportunities., Available at <https://researchbriefings.files.parliament.uk/documents/CBP-9942/CBP-9942.pdf> (Accessed on 18/10/2024)

<sup>65</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

<sup>66</sup> United Nations Environment Programme., 'Greening International Trade' Available at <https://www.unep.org/resources/publication/greening-international-trade> (Accessed on 18/10/2024)

<sup>67</sup> Ibid

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drive green economic transformation<sup>68</sup>; strengthens coherence of national trade policies with environmental goals and Sustainable Development initiatives<sup>69</sup>; and reduces negative environmental impacts of international trade and trade policies<sup>70</sup>. Greening international trade is therefore a key approach towards reorganizing multilateral trade mechanisms and harnessing trade for Sustainable Development and a green economy. It is thus imperative to foster green international trade through approaches such as reducing carbon emissions from transportation across borders, promoting international trade and investment in green sectors including renewable energy, and facilitating green technology development and transfer in order to effectively reorganize multilateral trade mechanisms for sustainability<sup>71</sup>.

Further, there is also need to embrace effective trade policies especially for developing countries in order to foster Sustainable Development<sup>72</sup>. Barriers in international trade including trade volatility and unfair tariffs prevent developing countries from maximizing benefits of international trade affecting their ability of to achieve Sustainable Development<sup>73</sup>. It is therefore necessary to promote a universal, rules-based, fair and non-discriminatory trading system that fosters the needs of developing countries for sustainability<sup>74</sup>. Conclusion of the Doha Development Agenda is key towards ensuring a universal, rules-based, open, non-discriminatory, and equitable multilateral trading system under the

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<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> United Nations Economic Commission for Africa., 'Africa Should Leverage the AfCFTA to Promote Green Transition' Op Cit

<sup>72</sup> United Nations., 'Absence of Multilateral Trade System Threatens Sustainable Development, Delegates Stress as Second Committee Takes Up Macroeconomic Policy Questions'

<sup>73</sup> Ibid

<sup>74</sup> Ibid

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WTO<sup>75</sup>. It is also necessary to implement the principle of Special and Differential Treatment for Developing Countries under the WTO<sup>76</sup>. This Principle is vital in ensuring longer time periods for implementing agreements and commitments by developing countries, increasing trade opportunities for developing countries, and safeguarding trade interests of developing countries<sup>77</sup>. Upholding the principle of Special and Differential Treatment for Developing Countries is therefore necessary in order to reorganize multilateral trading systems for sustainability.

It is also vital to foster human rights in international trade<sup>78</sup>. It has been noted that the global trade and investment regime has a profound impact on human rights, given that the promotion of economic growth in itself may not lead to inclusive, sustainable and equitable development outcomes<sup>79</sup>. For example, international trade often overlaps and interfaces with intellectual property, transfer of technology, climate change, and energy considerations therefore resulting in human rights concerns<sup>80</sup>. In addition, trade liberalization through bilateral, regional and/or multilateral agreements may have adverse impacts on human rights in areas such agriculture by putting pressure on rural farmers to produce export crops therefore adversely impacting on the livelihoods of vulnerable populations who trade at smaller scale or in informal systems<sup>81</sup>. It is therefore necessary to

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<sup>75</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>76</sup> World Trade Organization., 'Special and Differential Treatment' Available at [https://www.wto.org/english/tratop\\_e/dda\\_e/status\\_e/sdt\\_e.htm#:~:text=The%20WTO%20agreements%20contain%20special,abbreviated%20as%20S%26D%20or%20SDT](https://www.wto.org/english/tratop_e/dda_e/status_e/sdt_e.htm#:~:text=The%20WTO%20agreements%20contain%20special,abbreviated%20as%20S%26D%20or%20SDT). (Accessed on 18/10/2024)

<sup>77</sup> Ibid

<sup>78</sup> Office of the United Nations High Commissioner for Human Rights., 'Trade and Investment' Available at <https://www.ohchr.org/en/development/trade-and-investment> (Accessed on 18/10/2024)

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Office of the United Nations High Commissioner for Human Rights., 'Key Messages About Trade and Human Rights' Available at

safeguard human rights in international trade. Human rights impact assessments have been identified as an important tool to identify positive and adverse impacts of trade on human rights and to ensure that they are adequately considered in the negotiating process and agreements for sustainability<sup>82</sup>.

#### **4.0 Conclusion**

Multilateral trade mechanisms play a vital role in sustainability by enabling countries achieve a more efficient allocation of scarce resources including environmental goods, services and technologies for Sustainable Development<sup>83</sup>. However, in light of challenges including the impacts of trade on the environment, and unequal opportunities for developing countries, it is imperative to reorganize multilateral trade mechanisms for sustainability<sup>84</sup>. In order to effectively reorganize multilateral trade mechanisms for sustainability, it is vital to green international trade<sup>85</sup>; embrace effective trade policies especially for developing countries including through conclusion of the Doha Development Agenda and implementing the principle of Special and Differential Treatment under the WTO<sup>86</sup>; and safeguard human rights in international trade<sup>87</sup>.

Reorganizing multilateral trade mechanisms for sustainability is therefore necessary and achievable.

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<https://www.ohchr.org/sites/default/files/2022-01/Key-Messages-on-Trade-and-Human-Rights.pdf> (Accessed on 18/10/2024)

<sup>82</sup> Ibid

<sup>83</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

<sup>84</sup> World Trade Organization: Challenges and Opportunities., Op Cit

<sup>85</sup> World Trade Organization., 'Harnessing Trade for Sustainable Development and a Green Economy' Op Cit

<sup>86</sup> World Trade Organization., 'Special and Differential Treatment' Op Cit

<sup>87</sup> Office of the United Nations High Commissioner for Human Rights., 'Trade and Investment' Op Cit



## **Addressing The Root Causes of Conflicts for International Peace and Security**

### *Abstract*

*This paper critically discusses the need to address the root causes of conflicts towards international peace and security. The paper argues that conflicts are a major threat to international peace and security. It examines the impact of conflicts on international peace and security. The paper further asserts that achieving international peace and security requires both internal and external root causes of conflicts to be addressed beyond traditional responses. The paper offers proposals towards addressing the root causes of conflicts for international peace and security.*

### **1.0 Introduction**

Achieving peace and security is a vital goal for the global community. The ideal of peace refers to a state of harmony, tranquility, cooperation, alliance, well-being, and agreement among individuals, groups, and nations<sup>1</sup>. It comprises of both positive and negative peace. Positive peace refers to attitudes, institutions and structures that create and sustain peaceful and inclusive societies<sup>2</sup>. These include well-functioning governments; respect for human rights; equitable distribution of resources; and good relations among individuals, communities, and nations<sup>3</sup>. Negative peace on the other hand entails the absence of violence and conflicts<sup>4</sup>. According to the United Nations, peace is not only the absence of conflict, but also requires a positive, dynamic

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<sup>1</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>2</sup> The Eight Pillars of Positive Peace., Available at <https://www.visionofhumanity.org/the-eight-pillars-of-positive-peace/> (Accessed on 03/10/2024)

<sup>3</sup> Ibid

<sup>4</sup> Herath. O., 'A critical analysis of Positive and Negative Peace.' Available at <http://repository.kln.ac.lk/bitstream/handle/123456789/12056/journal1%20%281%29.104-107.pdf?sequence=1&isAllowed=y> (Accessed on 03/10/2024)

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participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation<sup>5</sup>.

The ideal of security can be attained at various levels including individual, national, regional and global levels<sup>6</sup>. It is associated with absence of danger or fear; the safety of an individual, company or state against theft, attacks, espionage among other dangers; and the economic notions of security<sup>7</sup>. Security can also be understood as the preservation of the norms, rules, institutions and values of society<sup>8</sup>. It entails national security which is the ability of a state to cater for the protection and defence of its citizens; and global security that entails cooperation among states towards peace and stability in light of global interconnection and interdependence<sup>9</sup>.

It has been noted that Sustainable Development cannot exist without peace and security<sup>10</sup>. The *2030 Agenda for Sustainable Development* acknowledges that there can be no Sustainable Development without peace and no peace without Sustainable Development<sup>11</sup>. It further notes that Sustainable Development cannot be realized without security and

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<sup>5</sup> United Nations., 'Cultivating a Culture of Peace' Available at <https://www.un.org/en/observances/international-day-peace#:~:text=In%20that%20declaration%2C%20the%20United,of%20mutual%20understanding%20and%20cooperation.%E2%80%9D> (Accessed on 03/10/2024)

<sup>6</sup> Fast. L., 'Peace and Security' Available at <https://www.eolss.net/sample-chapters/c11/E1-10-04-05.pdf> (Accessed on 03/10/2024)

<sup>7</sup> Ibid

<sup>8</sup> United Nations., 'National Security versus Global Security' Available at <https://www.un.org/en/chronicle/article/national-security-versus-global-security> (Accessed on 03/10/2024)

<sup>9</sup> Ibid

<sup>10</sup> European Commission., 'Peace and Security' Available at [https://international-partnerships.ec.europa.eu/policies/peace-and-governance/peace-and-security\\_en](https://international-partnerships.ec.europa.eu/policies/peace-and-governance/peace-and-security_en) (Accessed on 03/10/2024)

<sup>11</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 03/10/2024)

security at all levels will be at risk without Sustainable Development<sup>12</sup>. Achieving international peace and security is therefore necessary for Sustainable Development.

Despite the need to foster peace and security for Sustainable Development, conflicts at all levels are becoming more intricate and protracted threatening the ideals of peace, security, and development<sup>13</sup>. In order to solve this challenge and foster international peace and security, it is imperative to address both internal and external root causes of conflicts<sup>14</sup>.

This paper critically discusses the need to address the root causes of conflicts towards international peace and security. The paper argues that conflicts are a major threat to international peace and security. It examines the impact of conflicts on international peace and security. The paper further asserts that achieving international peace and security requires both internal and external root causes of conflicts to be addressed beyond traditional responses. The paper offers proposals towards addressing the root causes of conflicts for international peace and security.

## **2.0 Impact of Conflicts on International Peace and Security**

Conflicts are a major threat to international peace and security. It has been noted that conflicts are rarely caused by one single factor since several issues play a role to reinforce and worsen the incidence of conflicts<sup>15</sup>. Conflicts are often fueled by factors such as inequalities,

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<sup>12</sup> Ibid

<sup>13</sup> European Commission., 'Peace and Security' Op Cit

<sup>14</sup> United Nations., 'Root Causes of Conflicts in Africa Must Be Addressed beyond Traditional Response, Special Adviser Tells Security Council Debate on Silencing Guns' Available at <https://press.un.org/en/2023/sc15249.doc.htm> (Accessed on 03/10/2024)

<sup>15</sup> Stockholm International Peace Research Institute., 'Peace and Development' Available at <https://www.sipri.org/research/peace-and-development> (Accessed in 03/10/2024)

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poverty, weak governance systems, lack of inclusion and participation, organized crime, radicalization and violent extremism, forced displacement and migration<sup>16</sup>. In Africa, the prevalence of violent conflicts and civil strife in many countries especially in West and Central Africa has been attributed to poverty, human rights violations, bad governance and corruption, ethnic marginalization and small arms proliferation<sup>17</sup>. Further, it has been pointed out that new and emerging technologies such as Artificial Intelligence (AI), advances in biotechnology and nanotechnology, and the rise in space exploration are creating international peace and security concerns<sup>18</sup>. For example, cyberattacks have become more prevalent with countries deploying AI to develop autonomous weapons<sup>19</sup>. In addition, the militarization of outer space is a growing challenge to global peace and security<sup>20</sup>. Emerging technologies are therefore adding to existing threats on international peace and security such as from organized crime and terrorism<sup>21</sup>.

Resource wars are also a major source of conflicts especially in countries that are rich in natural resources<sup>22</sup>. Such conflicts are often attributed to the abundance of resources and their mismanagement<sup>23</sup>. The phrase 'resource curse' also known as the 'paradox of plenty' has been coined to refer to the failure of many resource-rich countries to benefit fully from

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<sup>16</sup> European Commission., 'Peace and Security' Op Cit

<sup>17</sup> Annan. N., 'Violent Conflicts and Civil Strife in West Africa: Causes, Challenges and Prospects' *International Journal of Security & Development.*, Volume 3, Issue 1, (2014)

<sup>18</sup> United Nations., 'New and Emerging Threats' Available at <https://www.un.org/en/peaceandsecurity/new-and-emerging-threats#:~:text=Cyberattacks%20have%20become%20more%20prevalent,landscape%20of%20peace%20and%20security> (Accessed on 04/10/2024)

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Doucey. M., 'Understanding the Root Causes of Conflicts: Why it Matters for International Crisis Management' Available at <https://www.iar-gwu.org/print-archive/9w4e9g1kqj9n2ui95nfsjibxbh876g> (Accessed on 03/10/2024)

<sup>23</sup> Ibid

their natural resource wealth, and for governments in these countries to respond effectively to public welfare needs<sup>24</sup>. It highlights the paradox that countries endowed with natural resources tend to be embroiled in conflicts and have incidences of poverty instead of such resources fostering development, poverty eradication, and human well-being<sup>25</sup>.

The resource curse phenomenon is particularly visible in Africa which is characterized by the abundance of natural resources, low economic development, misuse of natural resources and prevalence of conflicts<sup>26</sup>. The resource curse in Africa has been attributed to factors such as corruption, mismanagement of revenues from natural resources, volatility of prices, ineffective benefit sharing regimes, rent-seeking by elites, and weak governance frameworks<sup>27</sup>. Many countries in Africa that are rich in natural resources including the Democratic Republic of the Congo, Liberia, and South Sudan have been embroiled in conflicts including civil wars<sup>28</sup>. According to the United Nations, natural resource exports provide opportunities to drive growth and human development or they can result in slow growth, poverty and conflict<sup>29</sup>. It further notes that resource-rich countries face a higher risk of experiencing violent conflict due to increases in unemployment, inequalities and inadequate

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<sup>24</sup> Tsani, S., 'Natural resources, governance and institutional quality: The role of resource funds,' *Resources Policy*, 38(2013), pp.181-195, p. 181.

<sup>25</sup> Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy*, Volume 63, 2019

<sup>26</sup> Extractive Industries Transparency Initiative., 'The Natural Resource Curse in Sub-Saharan Africa: Transparency and International Initiatives.' Available at <https://eiti.org/documents/natural-resourcecurse-sub-saharan-africa-transparency-and-international-initiatives> (Accessed on 03/10/2024)

<sup>27</sup> African Development Bank Group., 'Africa's Natural Resources: The Paradox of Plenty.' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/%28E%29%20AfricanBank%202007%20Ch4.pdf> (Accessed on 03/10/2024)

<sup>28</sup> Ibid

<sup>29</sup> United Nations., 'Conflict Prevention in Resource Rich Economies' Available at <https://www.un.org/en/land-natural-resources-conflict/resource-rich-economies.shtml> (Accessed on 03/10/2024)

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provision of social services, particularly education when such resources are mismanaged.

Climate change is also a major cause and contributing factor to conflicts<sup>30</sup>. It has been noted that climate change and environmental degradation – including unequal access to and unsustainable exploitation of natural resources, minerals and energy sources is fueling conflicts at the global, regional, and national levels<sup>31</sup>. Climate change contributes to conflicts by increasing the vulnerability of particular individuals, communities, and nations<sup>32</sup>. It increases food insecurity and competition over scarce vital resources including water<sup>33</sup>. Further, adverse impacts of climate change as droughts, extreme flooding among other natural disasters result in displacement of populations<sup>34</sup>. As a result of such displacement, climate change impacts livelihoods making it more difficult for displaced people to become self-reliant<sup>35</sup>. In addition, the effects of climate change can also escalate tensions and conflicts over vital resources like water, fuel and arable land, threatening peaceful coexistence between displaced populations and host communities<sup>36</sup>.

Climate change is therefore a key threat to global peace and security. The United Nations notes that there is a rise risk of conflicts arising from

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<sup>30</sup> European Commission., 'Peace and Security' Op Cit

<sup>31</sup> Ibid

<sup>32</sup> United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate> (Accessed on 03/10/2024)

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> United Nations High Commissioner for Refugees 'Climate Change and Displacement' Available at <https://www.unhcr.org/what-we-do/build-better-futures/climate-change-and-displacement#:~:text=Climate%20impacts%20can%20also%20escalate,displaced%20populations%20and%20host%20communities.> (Accessed on 03/10/2024)

<sup>36</sup> Ibid

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rising sea levels, droughts, floods and other climate-related events<sup>37</sup>. Climate change and conflict converge since climate change amplifies threats to human security while conflicts and wars damage the environment in numerous ways, from the destruction of dams to attacks on oil pipelines and agricultural land that sustains rural communities<sup>38</sup>. It has been noted that people, communities and countries enduring conflict are among those most vulnerable to growing climate risks because of the devastating effects of conflicts on societies<sup>39</sup>. This is due to the fact that conflict increases the fragility of institutions, essential services, infrastructure, governance and other capacities that are critical to help people cope with and adapt to climate change<sup>40</sup>. Climate change can therefore act as both a primary cause of conflict and as a risk multiplier magnifying underlying vulnerabilities and compounding existing grievances<sup>41</sup>. Understanding and responding to climate-related security risks is therefore key in fostering peace and security at all levels<sup>42</sup>.

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<sup>37</sup> United Nations., 'With Climate Crisis Generating Growing Threats to Global Peace, Security Council Must Ramp Up Efforts, Lessen Risk of Conflicts, Speakers Stress in Open Debate' Available at <https://press.un.org/en/2023/sc15318.doc.htm#:~:text=With%20the%20climate%20crisis%20generating,and%20other%20climate%2Drelated%20events%2C> (Accessed on 03/10/2024)

<sup>38</sup> Ibid

<sup>39</sup> Grayson. C-L., & Khouzam. A., 'Responding to Climate Risks in Conflict Settings: In Search of Solutions' Available at <https://blogs.icrc.org/law-and-policy/2023/11/23/responding-to-climate-risks-in-conflictsettings-in-search-of-solutions/> (Accessed on 03/10/2024)

<sup>40</sup> International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Available at [https://www.icrc.org/sites/default/files/topic/file\\_plus\\_list/the\\_icrcs\\_call\\_to\\_strengthen\\_climate\\_acti\\_on\\_in\\_conflict\\_settings\\_ahead\\_of\\_cop28\\_1.pdf](https://www.icrc.org/sites/default/files/topic/file_plus_list/the_icrcs_call_to_strengthen_climate_acti_on_in_conflict_settings_ahead_of_cop28_1.pdf) (Accessed on 03/10/2024)

<sup>41</sup> United Nations Department of Political and Peacebuilding Affairs., 'Addressing the Impact of Climate Change on Peace and Security' Available at <https://dppa.un.org/en/addressing-impact-of-climate-change-peace-and-security> (Accessed on 03/10/2024)

<sup>42</sup> Ibid

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Conflicts are undesirable and affect global peace and security. It has been pointed out that war and armed conflicts leave deep scars in society and affect individuals and communities, and nations for generations to come<sup>43</sup>. They result in the loss of development gains and substantial economic losses<sup>44</sup>. Conflicts place heavy burdens on the social development of countries, by decreasing revenues, increasing defense expenditure, and diverting funds away from social and development initiatives<sup>45</sup>. They also cause human suffering in terms of loss of lives, displacement of populations and increased levels of poverty<sup>46</sup>. Further, it has been noted that armed conflicts result in devastating loss of civilian life, massive displacement and violations of human rights and international humanitarian law with women, the elderly, persons with disabilities, and children being adversely affected<sup>47</sup>. For example, use of sexual violence against women and girls to deliberately inflict lasting physical and psychological damage has often been the case during armed conflicts<sup>48</sup>. In some cases, women and girls have been subjected to rape, gang rape, sexual slavery, sexual mutilation and other forms of torture during conflicts<sup>49</sup>. Further, older people are often left to starve,

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<sup>43</sup> Swedish International Development Cooperation Agency., 'Conflict Prevention: Opportunities and Challenges in Implementing Key Policy Commitments and Priorities' Available at [https://cdn.sida.se/app/uploads/2020/12/01125316/s209461\\_thematicoverview\\_conflict\\_prevention\\_webb\\_final.pdf](https://cdn.sida.se/app/uploads/2020/12/01125316/s209461_thematicoverview_conflict_prevention_webb_final.pdf) (Accessed on 03/10/2024)

<sup>44</sup> Ibid

<sup>45</sup> United Nations Economic Commission for Africa., 'Socioeconomic Impact of Conflict in Africa' Available at <https://repository.uneca.org/handle/10855/50100#:~:text=It%20places%20onerous%20burdens%20on,from%20social%20and%20development%20initiatives> (Accessed on 04/10/2024)

<sup>46</sup> Swedish International Development Cooperation Agency., 'Conflict Prevention: Opportunities and Challenges in Implementing Key Policy Commitments and Priorities' Op Cit

<sup>47</sup> Amnesty International., 'Armed Conflict' Available at <https://www.amnesty.org/en/what-we-do/armed-conflict/> (Accessed on 03/10/2024)

<sup>48</sup> Ibid

<sup>49</sup> Ibid



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placed in unlawful military detention or killed in their homes in conflict situations<sup>50</sup>. Persons with disabilities often face challenges accessing humanitarian aid during armed conflicts while also facing challenges fleeing from conflict situations<sup>51</sup>. The use of child soldiers has also been a common occurrence during armed conflicts<sup>52</sup>.

Conflicts are prevalent all over the world affecting international peace and security. It has been noted that global crises including wars and conflicts are a common concern for humankind<sup>53</sup>. Conflicts are not only a problem for a certain country or region but are a problem for all humanity<sup>54</sup>. Global interdependence and interconnectedness means that the effects of conflicts in one country or region can spillover to other regions of the world. For example, the ongoing conflict between Russia and Ukraine is not an isolated crisis since the ripple effects of the war can be felt across the globe<sup>55</sup>. It has been noted that blockades of Ukrainian grain exports especially wheat have worsened hunger in some of the world's most vulnerable regions<sup>56</sup>. The war has driven up prices of oil, food and fertilizers globally<sup>57</sup>. In addition, the conflict has also fueled displacement of populations to other countries in Europe worsening the refugee crisis in the region<sup>58</sup>.

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<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> The Golden Rule: The Path Way to Human Right and World Peace

<sup>54</sup> Ibid

<sup>55</sup> International Rescue Committee., 'Ukraine War: What are the Impacts on the World Today?' Available at <https://www.rescue.org/article/ukraine-war-what-are-impacts-world-today> (Accessed on 04/10/2024)

<sup>56</sup> Ibid

<sup>57</sup> Raga. S et al., 'Impact of the Russia-Ukraine War on Africa: Policy Implications for Navigating Shocks and Building Resilience' Available at <https://odi.org/en/publications/impact-of-the-russia-ukraine-war-on-africa-policy-implications-for-navigating-shocks-and-building-resilience/> (Accessed on 04/10/2024)

<sup>58</sup> International Rescue Committee., 'Ukraine War: What are the Impacts on the World Today?' Op Cit

It is therefore necessary to address the root causes of conflicts for international peace and security.

### **3.0 Addressing the Root Causes of Conflicts**

It is imperative to address the root causes of conflicts for international peace and security. It has been noted that developing and sustaining peace and security requires an understanding of the root causes of conflict and insecurity<sup>59</sup>. Root causes of conflicts have been identified as long-term or systemic causes of both violent and non-violent conflict that are built into the norms, structures and policies of a society<sup>60</sup>. They often interact with drivers of conflicts leading to an escalation of conflict situation. Drivers of conflicts refer to direct causes of conflicts<sup>61</sup>.

Addressing the root causes of conflicts is an approach that requires an understanding of what fuels conflict and what drives long-term, positive change by examining economic, social, political and environmental factors<sup>62</sup>. It has been opined that at the root of the conflict are structural factors which keep the state weak and fragmented and which cause tensions between the state and its citizens, thereby creating conditions of conflicts and violence<sup>63</sup>. These factors include weak governance mechanisms, poverty, inequitable access to natural resources including land, and conflict multipliers such as availability of arms<sup>64</sup>. Further, it has been pointed out that conflicts should be considered as a process

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<sup>59</sup> Stockholm International Peace Research Institute., 'Peace and Development' Op Cit

<sup>60</sup> Swedish International Development Cooperation Agency., 'Root Causes of Violent Conflict- An Evidence Based Overview' Available at [https://cdn.sida.se/app/uploads/2023/05/02102900/Root\\_causes\\_of\\_conflict\\_Evidence\\_Brief\\_web.pdf](https://cdn.sida.se/app/uploads/2023/05/02102900/Root_causes_of_conflict_Evidence_Brief_web.pdf) (Accessed on 04/10/2024)

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Finnbakk. I., 'Addressing Root Causes of Conflict: A Case Study of the International Security and Stabilization Support Strategy and the Patriotic Resistance Front of Ituri (FRPI) in Ituri Province, Eastern Democratic Republic of Congo' Available at <https://www.nrc.no/globalassets/norcap/nordem/documents/un-experience-paper-finnbakk.pdf> (Accessed on 04/10/2024)

<sup>64</sup> Ibid

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driven by collective needs and fears rather than driven by rational calculation and national interest<sup>65</sup>. These include unfulfilled needs which can lead to violent reactions, as an ultimate attempt of people to secure the necessities of life and rectify the perceived injustice<sup>66</sup>; and identity needs which trigger ideological conflicts<sup>67</sup>. Identity has been described as a human need whose denial can dramatically increase the probability that a conflict will become prolonged and violent<sup>68</sup>.

It has been noted that most approaches towards conflict management lack a comprehensive and holistic approach by failing to take into account the root causes of conflicts<sup>69</sup>. Root causes and drivers of conflict have to be analysed and understood as factors that are contextual and dynamic that, in combination with other factors, can lead to and sustain violent conflicts<sup>70</sup>. Effective conflict management therefore requires the root causes of conflicts to be addressed beyond traditional responses.

In order to address the root causes of conflicts for international peace and security, it is vital to enhance respect for human rights<sup>71</sup>. Human rights violations are often among the root causes of conflict due to social inequalities, severe discrimination and injustices<sup>72</sup>. Human rights and conflicts are intertwined since the violation of human rights contributes to conflicts and insecurity while conflicts perpetuate human rights

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<sup>65</sup> Doucey. M., 'Understanding the Root Causes of Conflicts: Why it Matters for International Crisis Management' Op Cit

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Doucey. M., 'Understanding the Root Causes of Conflicts: Why it Matters for International Crisis Management' Op Cit

<sup>69</sup> Ibid

<sup>70</sup> Swedish International Development Cooperation Agency., 'Root Causes of Violent Conflict- An Evidence Based Overview' Op Cit

<sup>71</sup> Office of the United Nations High Commissioner for Human Rights., 'Human Rights are Powerful tools that Address the Root Causes of Conflict, Türk Points Out' Available at <https://www.ohchr.org/en/statements-and-speeches/2023/11/human-rights-are-powerful-tools-address-root-causes-conflict-turk> (Accessed on 04/10/2024)

<sup>72</sup> Ibid

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abuses<sup>73</sup>. Fostering human rights especially in the socio-economic and political spheres and combating discrimination that drives conflict-related grievances in access to economic opportunities, access to justice and welfare services, and in the organisation of state institutions is therefore key in addressing the root causes of conflicts<sup>74</sup>. Human rights have been identified as powerful tools that address the root causes of conflicts<sup>75</sup>. They promote social cohesion because they emphasize equal dignity and worth of each and every human being<sup>76</sup>. It has been noted that countries that invest in human rights, including rights-based development, are less prone to conflict and violence<sup>77</sup>. It is therefore necessary to uphold human rights at all levels in order to address the root causes of conflicts towards international peace and security.

It is also necessary to build and sustain peace at the global, regional, and national levels through suitable approaches such as mediation and diplomacy<sup>78</sup>. It has been suggested that the most effective way to diminish human suffering and the massive economic costs of conflicts and their aftermath is to prevent conflicts in the first place<sup>79</sup>. Mediation and diplomacy are appropriate techniques in achieving this goal. For example, mediation fosters dialogue, cooperation, and collaboration among parties to a conflict<sup>80</sup>. It is therefore ideal in addressing the root

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<sup>73</sup> Ibid

<sup>74</sup> Human Rights and Conflict., Available at [https://assets.publishing.service.gov.uk/media/5a806fa840f0b623026937f1/RA\\_Newsletter\\_Mar\\_2016\\_Human\\_Rights\\_and\\_Conflict\\_.pdf](https://assets.publishing.service.gov.uk/media/5a806fa840f0b623026937f1/RA_Newsletter_Mar_2016_Human_Rights_and_Conflict_.pdf) (Accessed on 04/10/2024)

<sup>75</sup> Office of the United Nations High Commissioner for Human Rights., 'Human Rights are Powerful tools that Address the Root Causes of Conflict, Türk Points Out' Op Cit

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> United Nations., 'Peace and Security' Available at <https://unis.unvienna.org/unis/en/topics/peace-and-security.html#:~:text=Under%20Chapter%20VII%20of%20the,Operations%20and%20Special%20Political%20Missions> (Accessed on 04/10/2024)

<sup>79</sup> Ibid

<sup>80</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

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causes of conflict resulting in mutually satisfying and long-lasting outcomes thus creating a suitable environment for peace and security by eliminating the likelihood of conflicts reemerging in future<sup>81</sup>. Further, preventive diplomacy is a key approach that focuses on early intervention to address emerging conflicts and tensions before they escalate into violent crises<sup>82</sup>. It focuses on preventing existing disputes from escalating into conflicts and at preventing conflicts, if they occur, from spreading<sup>83</sup>. Preventive diplomacy is therefore suitable in addressing the root causes of conflicts therefore effectively resolving such conflicts and preventing them from escalating<sup>84</sup>. It is therefore necessary to utilise mediation and diplomacy in order to address the root causes of conflicts for international peace and security. The United Nations and regional bodies such as the Africa Union in their peacekeeping and peacebuilding operation should adopt diplomacy, good offices and mediation to help nations prevent and resolve conflicts peacefully<sup>85</sup>. This will strengthen dialogue and cooperation within and between nations towards reconciliation in conflict situations therefore effectively addressing the root causes of conflicts<sup>86</sup>.

In addition, there is need to ensure that peacekeeping operations by the United Nations and regional bodies including the African Union are designed towards addressing the root causes of conflicts for

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<sup>81</sup> Ibid

<sup>82</sup> The Role of Diplomacy in Resolving Global Conflicts., Available at <https://medium.com/@tnnpub/therole-of-diplomacy-in-resolving-global-conflictsd3285871a2b9#:~:text=Preventive%20diplomacy%20is%20a%20vital,maintain%20international%20peace%20and%20security> (Accessed on 04/10/2024)

<sup>83</sup> Preventative Diplomacy., Available at <https://www.exteriores.gob.es/en/PoliticaExterior/Paginas/DiplomaciaPreventiva.aspx#:~:text=Preventive%20diplomacy%20includes%20all%20measures,if%20they%20occur%2C%20from%20spreading> (Accessed on 04/10/2024)

<sup>84</sup> The Role of Diplomacy in Resolving Global Conflicts.,

<sup>85</sup> United Nations., 'Peace and Security' Op Cit

<sup>86</sup> Ibid

international peace and security<sup>87</sup>. Peacekeeping activities by the United Nations are crucial in fostering international peace and security by reducing civilian casualties, preventing and addressing conflicts, and enabling parties to conflicts to enter into peace agreements<sup>88</sup>. In order to ensure that peacekeeping and peacebuilding activities are effective in addressing the root causes of conflicts, it is vital to ensure that such operations are deployed with the consent of the parties to conflicts<sup>89</sup>. In addition, there is need to ensure that peacekeeping operations are impartial in dealing with the parties to conflicts<sup>90</sup>. Further, there is need to prevent excessive use of force except in self-defense in order to ensure effectiveness of such activities<sup>91</sup>. By embracing such principles in peacekeeping activities, conflicts can be effectively managed through peace agreements among other approaches<sup>92</sup>.

Fostering equitable benefit sharing in resource rich countries is also an appropriate technique in addressing the root causes of conflicts<sup>93</sup>. Resource wars in such countries are often fueled by ineffective benefit sharing regimes among other causes<sup>94</sup>. Natural resource- based conflicts can be triggered by a sense of injustice about how a social group is treated (for example, systematic economic discrimination) despite the

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<sup>87</sup> United Nations Peacekeeping., 'Principles of Peacekeeping' Available at <https://peacekeeping.un.org/en/principles-of-peacekeeping#:~:text=These%20three%20principles%20are%20inter,and%20defence%20of%20the%20mandate> (Accessed on 04/10/2024)

<sup>88</sup> United Nations., 'Maintain International Peace and Security' Available at <https://www.un.org/en/our-work/maintain-international-peace-and-security#:~:text=The%20General%20Assembly%20and%20other,the%20regulation%20of%20conventional%20arms> (Accessed on 04/10/2024)

<sup>89</sup> United Nations Peacekeeping., 'Principles of Peacekeeping' Op Cit

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Muigua. K., 'Realizing Equitable Benefit Sharing in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Realizing-Equitable-Benefit-Sharing-in-Kenya.pdf> (Accessed on 04/10/2024)

<sup>94</sup> African Development Bank Group., 'Africa's Natural Resources: The Paradox of Plenty.' Op Cit

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abundance of resources<sup>95</sup>. Unfair distribution of natural resources, corruption and mismanagement can lead to conflict, especially in countries with weaker institutions<sup>96</sup>. It has been noted that effective benefit sharing, facilitated by transparent and informed decision-making, can help build community partnerships and support for conservation, facilitate law enforcement, and prevent conflicts and corruption in relation to natural resources<sup>97</sup>. Further, there is need to regulate the sale and trade of minerals and other natural resources especially in Africa through cooperative arrangements involving civil society, governments and regional and international organizations<sup>98</sup>. A positive example is the Kimberley process which has been hailed in reducing the trade in conflict diamonds<sup>99</sup>. Through such processes, it is possible to ensure certified extraction, production and fair trade practices with a focus on aiding local communities thus ensuring that lawlessness is countered and tangible benefits brought to conflict-affected populations<sup>100</sup>. Realising equitable benefit sharing in resource rich countries is therefore vital in addressing root causes of conflicts for global, regional and national peace and security.

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<sup>95</sup> Ibid

<sup>96</sup> United Nations., 'Remarks to Security Council on the Maintenance of International Peace and Security: The Root Causes of Conflict – The Role of Natural Resources' Available at <https://www.un.org/sg/en/content/sg/speeches/2018-10-16/maintenance-international-peace-and-security-remarks-security-council> (Accessed on 04/10/2024)

<sup>97</sup> Mbeche. R., 'Anti-corruption and Equitable Benefit Sharing in Kenya's Wildlife and Forest Sectors: Gaps and Lessons.' Available at <https://www.worldwildlife.org/pages/tncr-topic-brief-anti-corruptionand-equitable-benefit-sharing-in-kenya-s-wildlife-and-forest-sectors-gaps-and-lessons> (Accessed on 04/10/2024)

<sup>98</sup> United Nations., 'Remarks to Security Council on the Maintenance of International Peace and Security: The Root Causes of Conflict – The Role of Natural Resources' Op Cit

<sup>99</sup> The Kimberley Process., Available at <https://www.kimberleyprocess.com/> (Accessed on 04/10/2024)

<sup>100</sup> United Nations., 'Remarks to Security Council on the Maintenance of International Peace and Security: The Root Causes of Conflict – The Role of Natural Resources' Op Cit

Finally, there is need to address the impacts of climate change on peace and security<sup>101</sup>. Climate change contributes to increased conflicts arising from scarcity of vital resources such as water, food insecurity, and displacement of populations as a result of adverse weather events such as droughts and floods<sup>102</sup>. In addition, communities and countries enduring conflict are among those most vulnerable to growing climate risks because of the devastating effects of conflicts on societies<sup>103</sup>. It is therefore vital to integrate climate change considerations into conflict prevention, mediation and peacebuilding strategies. Through this approach, it is possible to integrate peacebuilding with climate resilience and adaptation efforts therefore addressing the root causes of conflicts while also confronting climate change<sup>104</sup>.

#### **4.0 Conclusion**

Achieving international peace and security requires the root causes of conflicts to be addressed beyond traditional responses. Root causes of conflicts entail long-term or systemic causes of both violent and non-violent conflict that are built into the norms, structures and policies of a society<sup>105</sup>. In order to realise this objective it is imperative to understand what fuels conflict and what drives long-term, positive change by examining economic, social, political and environmental factors of conflicts<sup>106</sup>; enhance respect for human rights<sup>107</sup>; embrace appropriate techniques such as mediation and diplomacy in sustaining and building

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<sup>101</sup> United Nations Department of Political and Peacebuilding Affairs., 'Addressing the Impact of Climate Change on Peace and Security' Op Cit

<sup>102</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>103</sup> Grayson. C-L., & Khouzam. A., 'Responding to Climate Risks in Conflict Settings: In Search of Solutions' Op Cit

<sup>104</sup> United Nations Department of Political and Peacebuilding Affairs., 'Addressing the Impact of Climate Change on Peace and Security' Op Cit

<sup>105</sup> Swedish International Development Cooperation Agency., 'Root Causes of Violent Conflict- An Evidence Based Overview' Op Cit

<sup>106</sup> Ibid

<sup>107</sup> Office of the United Nations High Commissioner for Human Rights., 'Human Rights are Powerful tools that Address the Root Causes of Conflict, Türk Points Out' Op Cit



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peace<sup>108</sup>; ensure effective peacekeeping operations<sup>109</sup>; foster equitable benefit sharing in resource rich countries<sup>110</sup>; and address the impacts of climate change on peace and security<sup>111</sup>.

Addressing the root causes of conflicts for international peace and security in practicable and achievable for Sustainable Development.

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<sup>108</sup> United Nations., 'Peace and Security' Op Cit

<sup>109</sup> United Nations Peacekeeping., 'Principles of Peacekeeping' Op Cit

<sup>110</sup> Muigua. K., 'Realizing Equitable Benefit Sharing in Kenya' Op Cit

<sup>111</sup> United Nations Department of Political and Peacebuilding Affairs., 'Addressing the Impact of Climate Change on Peace and Security' Op Cit

## **Achieving Sustainability for A Green Tomorrow**

### **Abstract**

*In light of mounting global environmental, economic, and social problems facing the planet including the triple planetary crisis of climate change, biodiversity loss, and pollution, it has become imperative to forge a new relationship between humanity and nature. Achieving sustainability is an ideal towards establishing harmony between humanity and nature and tackling environmental, social, and economic problems facing the world. This paper critically examines the progress made towards achieving sustainability. The paper posits that achieving sustainability is a key priority for the well-being of both humanity and nature. The paper defines sustainability and highlights its key elements. It also discusses the progress made towards achieving this ideal and examines challenges hindering the attainment of sustainability. The paper offers proposals towards achieving sustainability for a green tomorrow.*

### **1.0 Introduction**

The global community is currently facing numerous environmental, economic, and social challenges. Such problems include poverty, rising inequalities within and among nations, gender inequalities, unemployment, global health threats, conflicts, and more frequent and intense natural disasters<sup>1</sup>. These challenges are worsened by environmental threats including depletion of natural resources, environmental degradation, desertification, drought, freshwater scarcity, loss of biodiversity, and climate change<sup>2</sup>. Addressing these challenges has therefore become an urgent priority for the prosperity of both humanity and nature.

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<sup>1</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 07/08/2024)

<sup>2</sup> Ibid

The United Nations Environment Programme (UNEP) notes that it has become imperative to forge a new relationship between people and the planet in light of mounting environmental, social, and economic challenges that are prevalent throughout the world<sup>3</sup>. This urgency is heightened by the growing triple planetary crisis of climate change, biodiversity loss, and pollution<sup>4</sup>. Sustainability has become a clarion call towards establishing harmony between humanity and nature and tackling environmental, social, and economic problems facing the world<sup>5</sup>.

This paper critically examines the progress made towards achieving sustainability. The paper posits that achieving sustainability is a key priority for the well-being of both humanity and nature. The paper defines sustainability and highlights its key elements. It also discusses the progress made towards achieving this ideal and examines challenges hindering the attainment of sustainability. The paper offers proposals towards achieving sustainability for a green tomorrow.

## **2.0 Defining Sustainability**

Achieving sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>6</sup>. Sustainability involves finding a balance between economic, social, and environmental factors to ensure that resources are used in a way that is not only environmentally

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<sup>3</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at [https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad\\_source=1&gclid=EAIaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAAYASAAEglqsfD\\_BwE](https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad_source=1&gclid=EAIaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAAYASAAEglqsfD_BwE) (Accessed on 07/08/2024)

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 07/08/2024)

sustainable but also socially equitable and economically viable in the long term<sup>7</sup>. The ideal of sustainability therefore has environmental, social, and economic facets.

In the environmental context, sustainability entails conserving the environment and natural resources and protecting global ecosystems to support health and wellbeing, now and in the future<sup>8</sup>. Environmental sustainability envisages the condition of resilience, balance, and connection to allow humanity to meet its requirements without surpassing the capacity of its supporting ecosystems and without harming biological diversity<sup>9</sup>. It focuses on issues such as reducing carbon emissions, promoting renewable energy, promoting effective waste management, curbing pollution, and ensuring equitable access and use of natural resources<sup>10</sup>. In the social context, sustainability is the ability of a society to uphold universal human rights and meet the basic needs of every person such as food, water, healthcare, and education<sup>11</sup>. It has been noted that healthy and sustainable communities ensure personal, labour, and cultural rights are respected and all people are protected from discrimination<sup>12</sup>. Economic sustainability on the other hand envisages fostering long term economic without damaging or depleting the environment and natural resources<sup>13</sup>. It entails a broad set

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<sup>7</sup> Sustainability: A Better Tomorrow, But How?., Available at <https://www.green.earth/sustainability> (Accessed on 07/08/2024)

<sup>8</sup> What Is Environmental Sustainability?., Available at <https://sphaera.com/resources/glossary/what-is-environmental-sustainability/> (Accessed on 07/08/2024)

<sup>9</sup> Khan. N. H., 'Ecodesigning for Ecological Sustainability' *Frontiers in Plant-Soil Interaction.*, 2021. Pp 589-616

<sup>10</sup> Ibid

<sup>11</sup> What is Sustainability?., Available at <https://www.mcgill.ca/sustainability/files/sustainability/what-is-sustainability.pdf> (Accessed on 07/08/2024)

<sup>12</sup> Ibid

<sup>13</sup> Rowse. B., 'Economic Sustainability: Definition, Importance, and Examples' Available at <https://sustainabilityeducationacademy.com/economic-sustainability-defined/> (Accessed on 07/08/2024)

of principles and practices aimed at achieving economic growth without engaging in the harmful environmental trade-offs that historically accompany economic growth<sup>14</sup>.

The term sustainability has often been used interchangeably with Sustainable Development. However, it has been argued that there is a slight difference between the two expressions, in which sustainability refers to a state or ideal, while Sustainable Development refers to the process for achieving this state or ideal<sup>15</sup>. Sustainable Development can therefore be understood as a means of achieving the ideal of sustainability. Sustainable Development refers to development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>16</sup>. Sustainable Development aims to improve the quality of life in a comprehensive manner, including economic prosperity, social equity and environmental protection<sup>17</sup>. According to the United Nations, Sustainable Development requires an integrated approach that takes into consideration environmental concerns along with economic and social development<sup>18</sup>. Sustainable Development therefore aims to achieve the ideal of sustainability by promoting environmental

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<sup>14</sup> Economic Sustainability: Definition, Importance, and Examples., Available at <https://www.masterclass.com/articles/economic-sustainability> (Accessed on 07/08/2024)

<sup>15</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 07/08/2024)

<sup>16</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>17</sup> Muigua. K., 'Nurturing Our Environment for Sustainable Development' Glenwood Publishers Limited, 2016

<sup>18</sup> United Nations., 'Sustainability' Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 07/08/2024)

protection and conservation, economic development and social progress<sup>19</sup>.

Achieving sustainability is key for both humanity and nature. This ideal is vital in creating and maintaining conditions under which humans and nature can exist in productive harmony, that permit fulfilling the environmental, social, economic and other requirements of both present and future generations<sup>20</sup>. Sustainability improves the quality of our lives, protects our environment and its ecosystems and also preserves natural resources for future generations<sup>21</sup>. It is therefore imperative to achieve sustainability for a green tomorrow.

### **3.0 Achieving Sustainability: Opportunities and Challenges**

The need to achieve sustainability was given global prominence during the United Nations Conference on the Human Environment held in Stockholm Sweden in 1972. The Conference led to the adoption of the *Stockholm Declaration*<sup>22</sup> which was the first global instrument recognizing the urgent need to achieve sustainability. The Stockholm Declaration recognizes that the protection and improvement of the human environment is a major issue which affects the well-being of all people and economic development throughout the world<sup>23</sup>. It calls upon Governments and every person to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity<sup>24</sup>. In addition, the Declaration recognizes that every person has the fundamental right to freedom, equality and adequate conditions of life, in an environment of

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<sup>19</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

<sup>20</sup> United States Environmental Protection Agency., 'What is Sustainability.' Op Cit

<sup>21</sup> Ibid

<sup>22</sup> United Nations, Report of the United Nations Conference on the Human Environment., Stockholm, 5-16 June, 1972, A/CONF. 48/14/Rev. 1

<sup>23</sup> Ibid, Preamble

<sup>24</sup> Ibid

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a quality that permits a life of dignity and well-being, and that humanity bears a solemn responsibility to protect and improve the environment for present and future generations<sup>25</sup>. In order to achieve environmental sustainability, the Stockholm Declaration acknowledges that natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate<sup>26</sup>. The Stockholm Declaration also embraces economic and social facets of sustainability. It acknowledges that economic and social development is essential for ensuring a favorable living and working environment for humanity and for creating conditions on earth that are necessary for the improvement of the quality of life<sup>27</sup>.

The Stockholm Declaration therefore represents a key milestone in the global agenda towards sustainability. It ushered in a new era of global cooperation to search for solutions to reconcile economic development and environmental management and paved the way for the concept of Sustainable Development<sup>28</sup>. Since then, the ideal of sustainability has received widespread attention<sup>29</sup>.

The *United Nations Conference on Environment and Development* ('*Earth Summit*')<sup>30</sup> held in Rio de Janeiro, Brazil, from 3-14 June 1992 led to the

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<sup>25</sup> Ibid, Principle 1

<sup>26</sup> Ibid, Principle 2

<sup>27</sup> Ibid, Principle 8

<sup>28</sup> International Institute for Sustainable Development., 'Stockholm and the Birth of Environmental Diplomacy' Available at [https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy\\_0.pdf](https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf) (Accessed on 08/08/2024)

<sup>29</sup> Ibid

<sup>30</sup> United Nations., 'United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992.' Available at <https://www.un.org/en/conferences/environment/rio1992> (Accessed on 08/08/2024)

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adoption of the *Rio Declaration on Environment and Development*<sup>31</sup> which is another major instrument guiding the global agenda on sustainability. The Rio Declaration seeks to balance the interests of states in exploiting their natural resources for development and environmental conservation with the aim of achieving Sustainable Development<sup>32</sup>. The Declaration notes that human beings are at the centre of concerns for Sustainable Development and are entitled to a healthy and productive life in harmony with nature<sup>33</sup>. In order to achieve Sustainable Development, the Rio Declaration acknowledges that environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it<sup>34</sup>. In addition, the Rio Declaration affirms that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations in order to achieve sustainability<sup>35</sup>.

The United Nations *2030 Agenda for Sustainable Development* sets out the global vision for sustainability<sup>36</sup>. The Agenda envisions attainment of the environmental, economic, and social facets of sustainability through 17 Sustainable Development Goals (SDGs)<sup>37</sup>. The SDGs recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and conserving natural resources including land, oceans and forests<sup>38</sup>. The 17 SDGs are integrated since they recognize that action in one area will

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<sup>31</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)

<sup>32</sup> Ibid, Principle 2

<sup>33</sup> Ibid, Principle 1

<sup>34</sup> Ibid, Principle 4

<sup>35</sup> Ibid, Principle 3

<sup>36</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>37</sup> Ibid

<sup>38</sup> Ibid



affect outcomes in others, and that development must balance social, economic and environmental sustainability<sup>39</sup>. Realizing the 2030 Agenda for Sustainable Development and its 17 SDGs is therefore crucial in achieving sustainability.

Achieving sustainability is also a key priority for Africa. *Agenda 2063*<sup>40</sup> sets out a strategic framework for inclusive growth and sustainable Development in Africa. It seeks to foster a prosperous Africa based on inclusive growth and Sustainable Development<sup>41</sup>. *Agenda 2063* identifies several aspirations, goals, and priority areas towards achieving sustainability in Africa<sup>42</sup>. It has been pointed out that actualizing the aspirations, goals, and targets of the *Agenda 2063* can accelerate the Sustainable Development agenda in Africa<sup>43</sup>. It is therefore necessary to implement *Agenda 2063* in order to achieve the ideal of sustainability in Africa.

Despite the adoption of key instruments setting out the need for sustainability, achieving this ideal continues to be a major challenge both globally and in Africa. Environmental challenges such as climate change, pollution, and loss of biodiversity together with issues of poverty, increasing disparity between nations and the tensions brought by social inequalities continue to hinder the quest towards sustainability<sup>44</sup>. In addition, it has been noted that Africa continues to

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<sup>39</sup> Ibid

<sup>40</sup> Africa Union., 'Agenda 2063: The Africa we Want' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 08/08/2024)

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> United Nations Development Programme., '2023 Africa Sustainable Development Report.' Available at <https://www.undp.org/africa/publications/2023-africa-sustainable-development-report> (Accessed on 08/08/2024)

<sup>44</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' Op Cit

face numerous challenges such as poverty, hunger, food insecurity, conflicts, drought, water scarcity, climate change, unemployment and inequalities which are a threat to the Sustainable Development agenda<sup>45</sup>. Tackling these challenges is vital in achieving sustainability for a green tomorrow.

#### **4.0 Towards Sustainability**

It is imperative to achieve sustainability at the global, regional, and national levels. Achieving sustainability is key for both present and future generations. Sustainability improves the quality of our lives, protects our environment and its ecosystems and also preserves natural resources for future generations<sup>46</sup>. There are numerous opportunities and interventions available in unlocking the environmental, economic, and social facets of sustainability.

Environmental sustainability can be achieved through efficient conservation of the environment and natural resources, reducing pollution and waste, embracing renewable sources of energy, and encouraging global and local responsibility in environmental conservation<sup>47</sup>. Tackling climate change is a key priority towards environmental sustainability<sup>48</sup>. Climate change impacts the availability of basic necessities like freshwater, food, and energy<sup>49</sup>. Further, it has been noted that poor and developing countries, particularly least

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<sup>45</sup> African Development Bank., 'The way Forward to Achieving Sustainable Development in Africa.' Available at [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/ADR15\\_chapter\\_8.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/ADR15_chapter_8.pdf) (Accessed on 08/08/2024)

<sup>46</sup> United States Environmental Protection Agency., 'What is Sustainability.' Op Cit

<sup>47</sup> Strategies for Promoting Environmental Sustainability in Communities., Available at <https://aithor.com/essay-examples/strategies-for-promoting-environmental-sustainability-in-communities> (Accessed on 08/08/2024)

<sup>48</sup> United Nations., 'Climate Change' Available at <https://sustainabledevelopment.un.org/topics/climatechange> (Accessed on 08/08/2024)

<sup>49</sup> Ibid

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developed countries are the most adversely affected and least able to cope with climate shocks to their social, economic and natural systems<sup>50</sup>. The impacts of climate change including intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity represents a key threat to achieving sustainability<sup>51</sup>. The 2030 Agenda for Sustainable Development identifies climate change as one of the greatest challenges of our time whose adverse impacts undermine the ability of all countries to achieve Sustainable Development<sup>52</sup>. SDG 13 urges all countries to take urgent action to combat climate change and its impacts<sup>53</sup>. It is therefore necessary for all countries to strengthen their response to climate change in order to achieve environmental sustainability.

Renewable sources of energy provide an excellent opportunity for the world to achieve environmental sustainability<sup>54</sup>. Generating renewable energy creates far lower emissions than burning fossil fuels and therefore offers numerous advantages to both the environment and humanity<sup>55</sup>. It has been noted that transitioning from fossil fuels, which currently account for the lion's share of global greenhouse gas emissions, to renewable energy is key to addressing the climate crisis and achieving environmental sustainability<sup>56</sup>. By shifting towards renewable sources of energy, the world can reduce its dependence on

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<sup>50</sup> Ibid

<sup>51</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change#:~:text=The%20consequences%20of%20climate%20change,catastrophic%20storms%20and%20declining%20biodiversity>. (Accessed on 08/08/2024)

<sup>52</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>53</sup> Ibid

<sup>54</sup> United Nations., 'What is Renewable Energy?' Available at <https://www.un.org/en/climatechange/what-is-renewable-energy#:~:text=Renewable%20energy%20is%20energy%20derived,plentiful%20and%20all%20around%20us>. (Accessed on 08/08/2024)

<sup>55</sup> Ibid

<sup>56</sup> Ibid

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fossil fuels, enhance energy security, strengthen environmental sustainability, and stimulate economic growth in certain sectors<sup>57</sup>. It has been noted that Africa has immense potential for renewable energy including wind, solar, hydro, bioenergy, ocean tidal waves, geothermal among other renewables which are abundant throughout the continent<sup>58</sup>. There is an urgent need to harness renewable energy in Africa and all over the world in order to achieve environmental sustainability.

For countries to achieve economic sustainability, it is imperative to foster socially responsible investing through approaches such as integrating Environmental, Social, and Governance (ESG) factors in economic and corporate decision making<sup>59</sup>. It has been pointed out that ESG has a positive impact on economic growth<sup>60</sup>. ESG fosters economic sustainability by encouraging responsible business practices and creating economic opportunities that benefit both people and the planet<sup>61</sup>.

Achieving economic sustainability also requires countries to enhance employment opportunities and decent work for all<sup>62</sup>. SDG urges all countries to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all<sup>63</sup>. It is therefore necessary for all countries to promote sustained economic

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<sup>57</sup> Sustainability: A Better Tomorrow, But How?., Op Cit

<sup>58</sup> Africa Union., 'Agenda 2063: The Africa we Want.' Op Cit

<sup>59</sup> Sustainability: A Better Tomorrow, But How?., Op Cit

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Muigua. K., 'Promoting Sustained Economic Growth and Decent Work for All' Available at <https://kmco.co.ke/wp-content/uploads/2024/04/Promoting-Sustained-Economic-Growth-and-Decent-Work-for-All-x.pdf> (Accessed on 08/08/2024)

<sup>63</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

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growth and decent work for all in order to achieve economic sustainability.

In addition, it is imperative for all countries to embrace the idea of green growth in order to achieve economic sustainability. Green growth involves fostering economic growth and development, while ensuring that natural assets continue to provide the resources and environmental services on which our well-being relies<sup>64</sup>. Green growth ensures that economic development can go hand in-hand with environmental sustainability<sup>65</sup>. Achieving green growth for economic sustainability requires all countries to green key sectors of the economic through approaches such as embracing low-carbon and climate-resilient infrastructure, promoting green industrialization, implementing circular economy, promoting blue economy (sustainable use of marine resources), embracing climate-smart agriculture, fostering sustainable forestry, enhancing sustainable water management, and promoting sustainable tourism through ecotourism, among other initiatives<sup>66</sup>.

Finally, in order to achieve social sustainability, there is need to enhance social cohesion which is a shared purpose, trust, and willingness to cooperate within and across communities, and between communities

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<sup>64</sup> Organisation for Economic Co-operation and Development., 'What is Green Growth and How Can it Help Deliver Sustainable Development?' Available at <https://www.oecd.org/greengrowth/whatisgreengrowthandhowcanithelpdeliversustainabledevelopment.htm> (Accessed on 08/08/2024)

<sup>65</sup> United Nations Economic and Social Commission for Asia and the Pacific., 'Green Growth Uptake in Asia-Pacific Region.' Available at [https://unece.org/fileadmin/DAM/env/cep/CEP20/ppp/Item10\\_b\\_ESCAP\\_GreenGrowthUptake\\_esm.pdf](https://unece.org/fileadmin/DAM/env/cep/CEP20/ppp/Item10_b_ESCAP_GreenGrowthUptake_esm.pdf) (Accessed on 08/08/2024)

<sup>66</sup> African Development Bank Group., 'Climate and Green Growth Strategic Framework: Projecting Africa's Voice' Available at [https://www.afdb.org/sites/default/files/documents/publications/african\\_development\\_bank\\_-\\_climate\\_change\\_and\\_green\\_growth\\_policy.pdf](https://www.afdb.org/sites/default/files/documents/publications/african_development_bank_-_climate_change_and_green_growth_policy.pdf) (Accessed on 08/08/2024)

and the state;<sup>67</sup> social inclusion through access for all to services, markets, and the opportunity to participate in society and live with dignity<sup>68</sup>; and resilience by ensuring that everyone, including poor and marginalized groups, are safe and can withstand shocks and protect their cultural integrity<sup>69</sup>. It has been noted that social sustainability has intrinsic values grounded in human rights and aligned with the SDGs<sup>70</sup>. Therefore, social sustainability requires all countries to promote human rights, combat poverty, embrace diversity and inclusion and enhance access to basic services including food, healthcare, water, and education<sup>71</sup>.

## **5.0 Conclusion**

The ideal of sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>72</sup>. The concept of Sustainable Development offers a pathway towards sustainability by promoting environmental protection and conservation, economic development and social progress<sup>73</sup>. Achieving sustainability is key in enhancing the quality of our lives, protecting our environment and its ecosystems and also preserving natural resources for future generations<sup>74</sup>. Realizing sustainability remains an elusive agenda for the world in light of environmental challenges such as climate change, pollution, and loss of biodiversity together with issues of poverty, increasing disparity between nations and the tensions brought by social

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<sup>67</sup> World Bank., 'Social Sustainability: A Critical Gap in the Global Development Agenda' Available at <https://blogs.worldbank.org/en/developmenttalk/social-sustainability-critical-gap-global-development-agenda> (Accessed on 08/08/2024)

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Ibid

<sup>72</sup> United States Environmental Protection Agency., 'What is Sustainability.' Op Cit

<sup>73</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' Op Cit

<sup>74</sup> United States Environmental Protection Agency., 'What is Sustainability.' Op Cit

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inequalities continue to hinder the quest towards sustainability<sup>75</sup>. It is imperative to address these challenges in order to achieve sustainability. In order to achieve environmental sustainability, it is vital to strengthen environmental governance, combat climate change, reduce pollution and waste, embrace renewable sources of energy, and encourage global and local responsibility in environmental conservation<sup>76</sup>. Unlocking economic sustainability requires all countries to embrace ESG, enhance employment opportunities and decent work for all, and promote green growth<sup>77</sup>. Social sustainability can be realized through enhancing social cohesion, social inclusion, resilience, respect for human rights, and access to basic needs such as food, healthcare, water, and education<sup>78</sup>. It is imperative to realize the ideal of sustainability in order to foster harmony between humanity and nature for the benefit of present and future generations. Achieving Sustainability for a Green tomorrow is not only necessary, but it is also possible.

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<sup>75</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' Op Cit

<sup>76</sup> Strategies for Promoting Environmental Sustainability in Communities., Op Cit

<sup>77</sup> Organisation for Economic Co-operation and Development., 'What is Green Growth and How Can it Help Deliver Sustainable Development?' Op Cit

<sup>78</sup> World Bank., 'Social Sustainability: A Critical Gap in the Global Development Agenda'

## **Governing The Extractive Industry in East Africa- Challenges and Promises**

### *Abstract*

*The extractive industry provides numerous opportunities for job creation and economic growth especially in developing countries. It has the potential to drive growth, support Sustainable Development, and reduce poverty. However, the extractive industry has become a source of conflict rather than opportunity in developing countries. Many of the countries that are rich in extractives including African countries suffer from poverty, corruption, human right abuses and conflict stemming from weak governance leading to the so-called resource curse or paradox of plenty. Good governance of the extractive industry is therefore necessary to spur Sustainable Development and uphold human rights. This paper critically examines the need for good governance of the extractive industry in East Africa. The paper argues that the East African region and Africa at large has immense potential to utilize the extractive industry to spur socio-economic growth. The paper further notes that poor governance practices have hindered the potential of the extractive industry to drive Sustainable Development in East Africa and Africa at large. It notes that some of the key challenges in the extractive industry in East Africa and Africa in general. The paper also suggests reforms towards good governance of the extractive industry in East Africa and Africa for Sustainable Development.*

### **1.0 Introduction**

The extractive industry comprises of businesses that take raw materials, including oil, coal, gold, iron, copper and other minerals, from the earth<sup>1</sup>. The extractive industry has also been defined as processes that involve different activities that lead to the extraction of raw materials from the earth (such as oil, metals, mineral and aggregates), processing

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<sup>1</sup> Extractive Industries., Available at <https://opendevelopmentmekong.net/topics/extractive-industries/> (Accessed on 02/09/2024)



and utilization by consumers<sup>2</sup>. The extractive industry therefore recovers raw materials from the earth, process them, and turn them into products and services for use by consumers<sup>3</sup>. These raw materials may be fossil fuels (coal, oil and gas), minerals (such as bauxite, phosphate, potash, copper, gold and diamonds, rare earth minerals) and aggregates (such as sand, gravel and clay)<sup>4</sup>. The industrial processes that fall under the extractive industry include drilling and pumping, quarrying, and mining<sup>5</sup>.

The extractive industry is a key driver of development. It has been noted that since the industrial revolution, natural resources including extractives such as fossil fuels and minerals have underpinned our global economic system, shaping geopolitics and the course of human development<sup>6</sup>. The extractive industry has been a major driver of economic growth, particularly for now-advanced economies that benefitted during and after the industrial revolution<sup>7</sup>. The extractive industry provides numerous opportunities for job creation and economic growth especially in developing countries<sup>8</sup>. According to the United Nations, extractive industries have immense potential to drive

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<sup>2</sup> United Nations Conference on Trade and Development., 'Extractive Industries: Optimizing Value Retention in Host Countries' Available at [https://unctad.org/system/files/official-document/suc2012d1\\_en.pdf](https://unctad.org/system/files/official-document/suc2012d1_en.pdf) (Accessed on 02/09/2024)

<sup>3</sup> United Nations., 'Transforming Extractive Industries for Sustainable Development' Available at [https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_extractives.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_extractives.pdf) (Accessed on 02/09/2024)

<sup>4</sup> Ibid

<sup>5</sup> Extractive Industries., Op Cit

<sup>6</sup> United Nations., 'Transforming Extractive Industries for Sustainable Development' Op Cit

<sup>7</sup> Ibid

<sup>8</sup> National Action Plan on Business and Human Rights., 'Extractives Sector' Available at <https://globalnaps.org/issue/extractives/> (Accessed on 02/09/2024)

growth, support Sustainable Development, and reduce poverty in developing countries<sup>9</sup>.

However, despite its potential to unlock Sustainable Development especially in developing countries, it has been noted that the actual contribution of extractive industries to Sustainable Development in countries rich in raw materials including fossil fuels and minerals has often been mired by financial, economic, governance, social and environmental concerns, leading to the so-called resource curse or paradox of plenty<sup>10</sup>. It is estimated that approximately 3.5 billion people globally live in countries rich in oil, gas, or minerals<sup>11</sup>. However, these resources have become a source of conflict rather than opportunity<sup>12</sup>. Many of the countries that are rich in extractives also suffer from poverty, corruption, and conflict stemming from weak governance<sup>13</sup>. The extractives industry can also have adverse impacts on a broad range of human rights, as a result of: resettlement of communities without adequate consultation and compensation; environmental degradation; deprivation of livelihood and access to clean water; forced labour; sexual and gender-based violence; and even extrajudicial killings by security forces protecting assets of companies<sup>14</sup>. Good governance of the extractive industry is therefore necessary to spur Sustainable Development and uphold human rights<sup>15</sup>.

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<sup>9</sup> United Nations., 'Transforming Extractive Industries for Sustainable Development' Op Cit

<sup>10</sup> Ibid

<sup>11</sup> The World Bank., 'Extractive Industries' Available at <https://www.worldbank.org/en/topic/extractiveindustries#:~:text=Extractive%20Industries%20At%2DA%2DGlance,conflict%20stemming%20from%20weak%20governance>. (Accessed on 02/09/2024)

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> National Action Plan on Business and Human Rights., Op Cit

<sup>15</sup> Ibid

This paper critically examines the need for good governance of the extractive industry in East Africa. The paper argues that the East African region and Africa at large has immense potential to utilize the extractive industry to spur socio-economic growth. The paper further notes that poor governance practices have hindered the potential of the extractive industry to drive Sustainable Development in East Africa and Africa at large. It notes that some of the key challenges in the extractive industry in East Africa and Africa in general. The paper also suggests reforms towards good governance of the extractive industry in East Africa and Africa for Sustainable Development.

## **2.0 The Extractive Industry in Africa and East Africa: Opportunities and Challenges**

The extractive industry which include mining and oil and gas production is a major source of investment and revenue in many African countries<sup>16</sup>. It estimated that Africa is home to nearly thirty percent of the world's mineral reserves, eight per cent of the world's natural gas and twelve per cent of the world's oil reserves<sup>17</sup>. In addition, Africa holds nearly fourty percent of the world's gold and up to ninety percent of its chromium and platinum<sup>18</sup>. The largest reserves of cobalt, diamonds, platinum and uranium in the world are all in Africa<sup>19</sup>.

Africa is therefore home to some of the world's largest deposits of minerals and oil. It has been noted that the continent is home to key minerals which are critical to renewable and low-carbon technologies

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<sup>16</sup> African Development Bank Group., 'Governance of the Extractive Industries in Africa: Survey of Donor-Funded Assistance' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Strauss%20brochure.pdf> (Accessed on 03/09/2024)

<sup>17</sup> United Nations Environment Programme., 'Our Work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa#:~:text=The%20largest%20reserves%20of%20cobalt,50%20percent%20of%20total%20wealth.> (Accessed on 03/09/2024)

<sup>18</sup> Ibid

<sup>19</sup> Ibid

including solar, electric vehicles, battery storage, green hydrogen, and geothermal<sup>20</sup>. The transition to low-carbon economies through the production of minerals and metals such as lithium, graphite and cobalt cannot therefore be achieved without Africa's resources<sup>21</sup>. Many of the minerals needed for the energy transition are found in Africa<sup>22</sup>. The extraction and processing of these minerals could act as a potential catalyst for socioeconomic development in the continent<sup>23</sup>. However, it has been noted that if these developmental benefits are to be realised, African countries will have to work with stakeholders to ensure that responsible and sustainable governance practices are implemented across different stages of the supply chain<sup>24</sup>.

Africa is also emerging as a production hub for rare earths with significant deposits being available in the continent especially in Eastern and Southern countries including South Africa, Madagascar, Malawi, Kenya, Namibia, Mozambique, Tanzania, Zambia and Burundi<sup>25</sup>. Rare earths have been described as the catalysts of industrial societies in the 21<sup>st</sup> century since they are vital to key products from hi-tech items including smartphones and monitors to energy conversion systems such as wind turbines, photovoltaic panels and electrical machinery and even

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<sup>20</sup> Mo Ibrahim Foundation., 'Africa's Critical Minerals: Africa at the Heart of a Low-Carbon Future' Available at <https://mo.ibrahim.foundation/sites/default/files/2022-11/minerals-resource-governance.pdf> (Accessed on 03/09/2024)

<sup>21</sup> Ibid

<sup>22</sup> Joseph. A., 'Navigating Governance Challenges in African Critical Mineral Supply Chains' Available at [https://saiia.org.za/wp-content/uploads/2024/06/Saiia\\_PI\\_151\\_NavigatingGovernanceChallenges.pdf](https://saiia.org.za/wp-content/uploads/2024/06/Saiia_PI_151_NavigatingGovernanceChallenges.pdf) (Accessed on 04/09/2024)

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Italian Institute for International Political Studies., 'The Scramble for Africa's Rare Earths: China is not Alone.' Available at <https://www.ispionline.it/en/publication/scramble-africas-rare-earths-chinanotalone-30725> (Accessed on 03/09/2024)

military equipment including lasers and radar<sup>26</sup>. It is estimated that Africa's rare earths could make up nine per cent of global supply by 2029<sup>27</sup>.

The extractive industry is also a major source of revenue in East Africa. The oil, gas and mining industries in the region are positioned to grow and potentially trigger broad-based development and industrialization<sup>28</sup>. East Africa is endowed with a variety of minerals, including fluorspar, titanium and zirconium, gold, cobalt and nickel, diamonds, copper, coal and iron ore<sup>29</sup>. The Democratic Republic of the Congo (DRC) which recently joined the East African Community (EAC) is endowed with exceptional natural resources, including minerals such as cobalt and copper<sup>30</sup>. Further, South Sudan, another country within the EAC, is a major produce of oil<sup>31</sup>. It has been pointed out that oil is responsible for approximately ninety per cent of South Sudan's revenue and nearly all of its exports<sup>32</sup>. Uganda, Kenya, and Tanzania are also developing their oil and gas sectors<sup>33</sup>.

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<sup>26</sup> Ibid

<sup>27</sup> Clowes. W., 'Africa's Rare Earths Could Make Up 9% of Global Supply by 2029' Available at <https://www.bloomberg.com/news/articles/2024-07-10/africa-s-rare-earth-could-make-up-9-of-global-supply-by-2029?embedded-checkout=true> (Accessed on 03/09/2024)

<sup>28</sup> Oxfam., 'Extractive Industries' Available at <https://heca.oxfam.org/what-we-do/extractive-industries#:~:text=A%20growing%20sector,already%20developing%20its%20gas%20resources.> (Accessed on 03/09/2024)

<sup>29</sup> East African Community., 'Natural Resources' Available at <https://www.eac.int/why-invest-in-eac/natural-resources> (Accessed on 03/09/2024)

<sup>30</sup> World Bank Group., 'The World Bank in DRC' Available at <https://www.worldbank.org/en/country/drc/overview> (Accessed on 03/09/2024)

<sup>31</sup> Lucente. A., 'South Sudan's Oil at Risk due to Sudan Civil War' Available at <https://www.al-monitor.com/originals/2024/03/south-sudans-oil-risk-due-sudan-civil-war> (Accessed on 03/09/2024)

<sup>32</sup> Ibid

<sup>33</sup> Oxfam., 'Extractive Industries' Op Cit

The extractive industries often represent a double-edged sword<sup>34</sup>. If optimally exploited, extractive industries can result in huge tax and revenue benefits, multiplier economic effects and can have the transformative potential to address deep-seated poverty and inequality in East Africa and the Africa continent at large<sup>35</sup>. However, if these revenue processes are not properly regulated, wealth share becomes unfair and governments and communities risk losing much-needed resources for economic and social development<sup>36</sup>. The exclusion of local communities from key decision making processes also robs them of the opportunity to actively participate in deciding how these resources will be used and could further fuel interminable conflict<sup>37</sup>. Further, communities also risk losing natural resources including land, by being involuntarily displaced during mining activities<sup>38</sup>. These challenges are prevalent in the extractive industry in East Africa and the African continent at large.

It has been pointed out that developing countries generally have not succeeded in translating revenues from the extractive industry into sustainable economic development<sup>39</sup>. In many cases, the extractive industry even appears to have retarded economic and social development through a number of phenomena often referred to collectively as the 'resource curse'<sup>40</sup>. For example, within the EAC, most people in the DRC have not benefited from the country's natural wealth including minerals<sup>41</sup>. A long history of conflict, political upheaval and instability, and authoritarian rule have led to a grave, ongoing

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<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> African Development Bank Group., 'Governance of the Extractive Industries in Africa: Survey of Donor-Funded Assistance' Op Cit

<sup>40</sup> Ibid

<sup>41</sup> World Bank Group., 'The World Bank in DRC' Op Cit

humanitarian crisis in the country<sup>42</sup>. In addition, there has been forced displacement of populations<sup>43</sup>. Further, the long history of civil war in South Sudan and prevalent conflicts with neighboring Sudan have hindered the ability of the country to reap from its rich oil and gas sector<sup>44</sup>.

It is therefore evident that several governance challenges exist in the extractive industry in the African continent and East African region. In Africa, most mineral resources are extracted mainly for processing and use outside the continent, and mineral sectors have remained an enclave and disconnected from broader economies<sup>45</sup>. Public debt and fiscal stress is rising in several mineral-rich African countries such as Nigeria, Zambia, Angola and Mozambique<sup>46</sup>. The exploration of oil and gas in Africa by Multinational Corporations (MNCs) has also resulted in several concerns including human rights abuses, fueling of ethnic militancy, displacement of indigenous communities and environmental concerns including environmental degradation, loss of biodiversity and soil and air pollution as a result of oil spillages<sup>47</sup>. The exploitation of high-value natural resources, including oil, gas, minerals and timber has often been cited as a key factor in triggering, escalating or sustaining

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<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> African Development Bank Group., 'South Sudan Economic Outlook' Available at <https://www.afdb.org/en/countries/east-africa/south-sudan/south-sudan-economic-outlook> (Accessed on 03/09/2024)

<sup>45</sup> Oxfam., 'From Aspiration to Reality: Unpacking the Africa Mining Vision.' Available at <https://wwwcdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf> (Accessed on 03/09/2024)

<sup>46</sup> Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy* , Volume 63, 2019

<sup>47</sup> Ajibade, L.T & Awomuti, A.A. 'Petroleum Exploitation or Human Exploitation? An Overview of Niger Delta Oil Producing Communities in Nigeria' *African Research Review* Vol. 3 (1), 2009. Pp. 111-124

violent conflicts in Africa and all over the world<sup>48</sup>. Therefore, despite its immense potential, the extractive industry in East Africa and Africa in general is associated with poor governance, human right abuses, corruption, widespread poverty, environmental degradation, and conflicts<sup>49</sup>. It is thus vital to embrace good governance in the extractive industry in East Africa for Sustainable Development.

### **3.0 Towards Good Governance in the Extractive Industry in East Africa**

It is imperative to embrace good governance in the extractive industry in East Africa for Sustainable Development. The *Africa Mining Vision*<sup>50</sup> sets out the ideal of good governance in the extractive industry in Africa with specific emphasis on mining. The Vision seeks to achieve transparent, equitable and optimal exploitation of mineral resources in Africa in order to underpin broad-based sustainable growth and socio-economic development<sup>51</sup>. The African Mining Vision sets out the ideal of a well-governed mining sector in Africa that effectively garners and deploys resource rents and that is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities<sup>52</sup>. It sets out how development can be achieved through the creation of local value, driven by the strategic use of mineral resources in Africa<sup>53</sup>. The Vision identifies key interventions towards ensuring sustainable utilization of natural resources in Africa in order to ensure that the continent's natural

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<sup>48</sup> United Nations., 'Extractive Industries and Conflict' Available at [https://www.un.org/en/land-natural-resources-conflict/pdfs/GN\\_Extractive.pdf](https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Extractive.pdf) (Accessed on 04/09/2024)

<sup>49</sup> African Development Bank Group., 'Governance of the Extractive Industries in Africa: Survey of Donor-Funded Assistance' Op Cit

<sup>50</sup> Africa Union., 'Africa Mining Vision.' Available at [https://au.int/sites/default/files/documents/30995-doc-africa\\_mining\\_vision\\_english\\_1.pdf](https://au.int/sites/default/files/documents/30995-doc-africa_mining_vision_english_1.pdf) (Accessed on 03/09/2024)

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Ibid



resources are used to transform the social and economic development path of the continent<sup>54</sup>. Achieving the objectives of the African Mining Vision is therefore paramount in ensuring effective governance of the extractive industry in the East Africa region and the African continent at large.

In order to achieve sound governance in the extractive industry, it is imperative to embrace the tenets of Sustainable Development in relation to mining and oil and gas exploration activities<sup>55</sup>. Sustainable mining is an ideal that optimizes the environmental performance and social impact of mining activities<sup>56</sup>. Sustainable mining operates with minimal environmental impact, ensuring that mine sites are left in a condition suitable for re-use by both humans and ecosystems<sup>57</sup>. Fostering sustainability in the mining sector entails reducing and reusing waste, conserving water, reducing carbon emissions by transitioning to renewable energy, ensuring that communities thrive beyond the life of mining activities, restoring the land to its natural state after mining activities, and combatting illegal mining and its impact on communities and the environment. Sustainability in the oil and gas sector involves embracing cost-efficient and environmentally friendly operations<sup>58</sup>.

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<sup>54</sup> Ibid

<sup>55</sup> Muigua. K., 'Embracing Sustainable Mining in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Embracing-Sustainable-Mining-in-Africa.pdf> (Accessed on 03/09/2024)

<sup>56</sup> Pan African Resources., 'Sustainable Mining.' Available at <https://www.panafricanresources.com/sustainablemining/#:~:text=Sustainable%20mining%20refers%20to%20the,generations%20can%20also%20be%20me> (Accessed on 03/09/2024)

<sup>57</sup> Pan African Resources., 'A Blueprint for Sustainable Mining' Available at <https://www.panafricanresources.com/sustainable-mining/#:~:text=Sustainable%20mining%20operates%20with%20minimal,by%20both%20humans%20and%20ecosystems>. (Accessed on 03/09/2024)

<sup>58</sup> Sustainability in the Oil & Gas Industry., Available at <https://www.borregaard.com/markets/energy-resources/oil-gas/sustainability/sustainability-in-the-oil-gas-industry/#:~:text=1.to%20optimise%20their%20production%20strategies>. (Accessed on 03/09/2024)

Companies have been encouraged to embrace digital tools and automation in their operations in order to optimise their production strategies<sup>59</sup>. The oil and gas industry in Africa can improve sustainability through measures such as carbon capture and storage, improving efficiency, and reducing greenhouse gas emissions<sup>60</sup>. By embracing the tenets of Sustainable Development, the extractive industry can foster economic growth, social progress, and environmental conservation including promoting the right to a clean, healthy, and sustainable environment<sup>61</sup>.

There is also need to uphold human rights in the extractive industry<sup>62</sup>. The extractive industry in Africa especially mining and oil and gas exploration activities by MNCs have often been associated with gross human rights violations, including killings, poor labour practices, land injustices against host communities, and environmental degradation which threatens the right to a clean, healthy, and sustainable environment<sup>63</sup>. Further, the exclusion of communities from key processes in the extractive industry robs them of the opportunity to actively participate in deciding how these resources will be used and could further fuel interminable conflict<sup>64</sup>. It has been noted that communities in Africa often face the risk of losing natural resources including land, and being involuntarily displaced during mining and oil and gas exploration activities<sup>65</sup>. State and non-state entities in the

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<sup>59</sup> Ibid

<sup>60</sup> Sustainability in the Oil and Gas Industry., Available at [https://petrowiki.spe.org/Sustainability\\_in\\_the\\_oil\\_and\\_gas\\_industry](https://petrowiki.spe.org/Sustainability_in_the_oil_and_gas_industry) (Accessed on 03/09/2024)

<sup>61</sup> Ibid

<sup>62</sup> Makwana, R., 'Multinational Corporations (MNCs): Beyond the Profit Motive,' Share the World Resources, 3rd October 2006, available at <http://www.stwr.org/multinationalcorporations/multinational-corporations-mncs-beyond-the-profitmotive.html#legalrights> (Accessed on 03/09/2024)

<sup>63</sup> Ibid

<sup>64</sup> Oxfam., 'Extractive Industries' Op Cit

<sup>65</sup> Ibid

extractive industry therefore have an obligation to respect, protect and fulfill human rights at all times in their policies, programmes and projects<sup>66</sup>. The extractive industry can promote human rights by ensuring sound labour practices including good safety standards and paying workers a fair wage<sup>67</sup>. Challenges such as death, injury and disease among mineworkers remain high with mining being the most hazardous occupation when the number of people exposed to risk is taken into account<sup>68</sup>. It is therefore necessary to invest in the tools, equipment and training needed to safeguard workers as much as possible in order to ensure their safety<sup>69</sup>. In addition, players in the extractive industry especially MNCs should undertake human rights due diligence practices, and support corporate-based non-judicial access to remedies for stakeholders whose rights have been violated<sup>70</sup>. The extractive industry can also contribute to the achievement of the right to a clean, healthy, and sustainable environment by embracing sustainable practices including transitioning to renewable energy, conserving water among other resources, minimizing waster, and restrng the environment and ecosystems at the end of the mining and oil and gas exploration cycle<sup>71</sup>.

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<sup>66</sup> Office of the High Commissioner on Human Rights., 'Guiding Principles on Human Rights Impact Assessment of Economic Reforms.' Available at [https://www.ohchr.org/sites/default/files/GuidePrinciples\\_EN.pdf](https://www.ohchr.org/sites/default/files/GuidePrinciples_EN.pdf) (Accessed on 03/09/2024)

<sup>67</sup> Sammour. J., 'What Exactly is Ethical Mining?.' Available at <https://www.daintylondon.com/blogs/news/what-is-ethicalmining#:~:text=Whether%20mining%20metals%2C%20diamonds%20or,its%20workers%20a%20fair%20wage> (Accessed on 03/09/2024)

<sup>68</sup> International Labour Organization., 'Mining (Coal; other Mining) Sector.' Available at <https://www.ilo.org/global/industries-and-sectors/mining/lang--en/index.htm> (Accessed on 03/09/2024)

<sup>69</sup> Sammour. J., 'What Exactly is Ethical Mining?.' Op Cit

<sup>70</sup> Idemudia. U., Tuokuu. F., & Essah. M., 'The Extractive Industry and Human Rights in Africa: Lessons from the Past and Future Directions' *Resources Policy.*, Volume 78, 2022

<sup>71</sup> Sustainability in the Oil & Gas Industry., Op Cit

Community engagement is also at the core of good governance in the extractive industry<sup>72</sup>. For example, it has been noted that obtaining the consent of local communities at all stages in the lifecycle of a mine from mineral right application to the closure and rehabilitation of the mining sites can enhance good governance and sustainability in the mining sector<sup>73</sup>. Ensuring the Free, Prior, and Informed Consent (FPIC) of local communities is key therefore necessary to ensure good governance in the extractive industry<sup>74</sup>. FPIC is a fundamental right of self-determination that ensures participation by indigenous communities in development projects in order to ensure that such projects are conducted in a sustainable manner taking into account their economic, social and cultural impact<sup>75</sup>. FPIC can therefore guarantee human rights such as the right to participation and economic development whilst promoting environmental protection and conservation<sup>76</sup>. It has been noted that oil, gas and mining companies are increasingly aware of the need to secure the trust of local communities to gain a 'social licence to operate'<sup>77</sup>. Implementing a project without it can lead to operational delays, financial costs and litigation, or even project closure, violence and loss

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<sup>72</sup> Well Planning Group., 'At The Heart of Mining Sustainability is Community Engagement.' Available at <https://www.wallplanning.com.au/at-the-heart-of-mining-sustainability-is-communityengagement/#:~:text=You'll%20likely%20have%20heard,%3A%20Social%2C%20Environmental%2C%20Economic> (Accessed on 03/09/2024)

<sup>73</sup> Mathiba. G., 'The Incorporation of the FPIC Principle in South African Policy on Mining-Induced Displacements.' *International Journal on Minority and Group Rights.*, 2023 (1-23)

<sup>74</sup> Muigua. K., 'Maximising the Right to Free, Prior, and Informed Consent for Enhanced Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2019/03/Maximising-the-Rightto-FPIC-in-Kenya-Kariuki-Muigua-29th-March-2019.pdf> (Accessed on 03/09/2024)

<sup>75</sup> Owen, J.R. and Kemp, D., "Free Prior and Informed Consent', Social Complexity and the Mining Industry: Establishing A Knowledge Base," *Resources Policy*, Vol.41 (2014): 91-100

<sup>76</sup> Ibid

<sup>77</sup> Buxton. A., & Wilson. E., 'FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects' Available at <https://www.iiied.org/16530iiied> (Accessed on 03/09/2024)

of life<sup>78</sup>. Therefore embracing FPIC in the extractive industry demonstrates a deeper commitment to engage with local communities to reach shared agreement, allowing people to have a meaningful voice in deliberative decision-making processes related to their own development<sup>79</sup>. The global call for FPIC in the mining industry is generally meant to address the abuse of the rights of indigenous peoples worldwide including: indigenous land rights, recognition of and respect for culture, the right to economic participation, to a livelihood and to a clean environment, among others<sup>80</sup>.

FPIC is also key in fostering environmental democracy<sup>81</sup>. Environmental democracy is based on the idea that land and natural resource decisions adequately and equitably address citizens' interests<sup>82</sup>. Environmental democracy seeks to enhance the ability for people to freely access information on environmental quality and problems, to participate meaningfully in decision-making, and to seek enforcement of environmental laws or compensation for environmental damages<sup>83</sup>. Environmental democracy thus seeks to ensure transparency, participation and justice in environmental decision making<sup>84</sup>. It is therefore necessary to maximise FPIC in the extractive industry in order to foster community engagement and achieve environmental democracy<sup>85</sup>.

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<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Muigua. K., 'Maximising the Right to Free, Prior, and Informed Consent for Enhanced Environmental Justice in Kenya.' Op Cit

<sup>81</sup> Center for International Environmental Law., 'Environmental Democracy & Access Rights' Available at <https://www.ciel.org/issue/environmental-democracy-access-rights/> (Accessed on 03/09/2024)

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Westminster Foundation for Democracy., 'Environmental Democracy' Available at <https://www.wfd.org/environmental-democracy> (Accessed on 03/09/2024)

<sup>85</sup> Ibid

Embracing the concept of subsidiarity is also necessary in enhancing good governance in the extractive industry<sup>86</sup>. The idea of subsidiarity states that problems should be dealt with at the lowest level possible, but the highest level necessary<sup>87</sup>. It emphasizes that decision-making authority should be placed where responsibility for outcomes will occur and in close proximity to where actions are taken.<sup>88</sup> Subsidiarity emphasizes matching authority with responsibility and situating them as close as possible to operations for well-informed decisions<sup>89</sup>. In the case of extractive industries such as mining, subsidiarity means that local communities impacted by mining operations need to be centered and empowered to the greatest extent possible, but that the national, regional, and/or global nature of the issues at stake, like climate change, environmental degradation, violent conflict, or economic justice, mean that community goals and decisions need to be weighed against other common goods or translated into broader frameworks<sup>90</sup>. Embracing the principle of subsidiarity is therefore necessary for good governance of the extractive industry in East Africa.

Further, in order to strengthen governance of the extractive industry in East Africa, it is necessary enhance transparency<sup>91</sup>. The Extractive Industries Transparency Initiative (EITI) has been advocated as a policy mechanism economic improvement in resource-rich developing

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<sup>86</sup> Montecchio. C., 'Subsidiarity: A Central Principle for Justice, Peace, and Sustainability in Mining' *The Journal of Social Encounters.*, Volume 7, Issue 1 (2023)

<sup>87</sup> Ibid

<sup>88</sup> Principle of Subsidiarity., Available at <https://www.sciencedirect.com/topics/social-sciences/principle-of-subsidiarity> (Accessed on 03/09/2024)

<sup>89</sup> Ibid

<sup>90</sup> Montecchio. C., 'Subsidiarity: A Central Principle for Justice, Peace, and Sustainability in Mining' Op Cit

<sup>91</sup> Hilson. G., & Maconachie. R., 'Good Governance" and the Extractive Industries in Sub-Saharan Africa' Available at <https://www.tandfonline.com/doi/abs/10.1080/08827500802045511> (Accessed on 03/09/2024)

countries in sub-Saharan Africa<sup>92</sup>. The EITI framework contends that impoverished institutions, the embezzlement of petroleum and/or mineral revenues, and a lack of transparency are the chief reasons why resource-rich sub-Saharan Africa is underperforming economically<sup>93</sup>. EITI contends that enhancing transparency and good governance can enable Africa countries to reap the full benefits from their abundant natural resources including minerals, oil, and gas<sup>94</sup>. It is therefore necessary for East African countries to embrace the EITI model in order to foster open and accountable management of oil, gas and mineral resources<sup>95</sup>. This approach is key in enhancing transparency in the extractive industry by obliging states to disclose information along the extractive industry value chain – from how extraction rights are awarded, to how revenues make their way through government and how they benefit the public<sup>96</sup>. Other initiatives such as the Publish What You Pay (PWYP) Coalition have also drawn worldwide attention to the need for increased transparency and accountability in the management of extractive industries<sup>97</sup>. PWYP is an initiative that seeks to ensure that revenues from oil, gas and mining are used to drive development<sup>98</sup>. It is therefore necessary for East African countries and the African continent at large to adopt these initiatives in order to enhance transparency, accountability, and good governance of the extractive industry for development.

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<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Extractive Industries Transparency Initiative., Available at [https://www.google.com/search?q=EITI&oq=EITI&gs\\_lcrp=EgZjaHJvbWUyCQgAEEUYORiABDIPCAEQABgKGIMBGLDGLIAEMgYIAhBFGDwyBggDEEUYPDIGCAQORRg8MgYIBRBFGDwyBggGEAUyQDIGCAcQRRg80gEIMTY1OWowajeoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=EITI&oq=EITI&gs_lcrp=EgZjaHJvbWUyCQgAEEUYORiABDIPCAEQABgKGIMBGLDGLIAEMgYIAhBFGDwyBggDEEUYPDIGCAQORRg8MgYIBRBFGDwyBggGEAUyQDIGCAcQRRg80gEIMTY1OWowajeoAgCwAgA&sourceid=chrome&ie=UTF-8) (Accessed on 03/09/2024)

<sup>96</sup> Ibid

<sup>97</sup> Publish What You Pay., Available at <https://pwyp.org/> (Accessed on 03/09/2024)

<sup>98</sup> Ibid

Finally, there is need to embrace technology in order to enhance good governance in the extractive industry<sup>99</sup>. It has been noted that the use of technology is transforming the extractive industry<sup>100</sup>. For example, in the oil and gas industry, technology enables producers to drill more accurately, taking advantage of geological conditions and optimizing both the drilling process and the production process<sup>101</sup>. Technology is also key in enhancing safety by automating some of the processes in the extractive industry therefore reducing health and occupational risks to workers<sup>102</sup>. Technologies such as Artificial intelligence (AI) are enhancing the viability of the extractive industry by boosting productivity, optimizing operational costs, and maximizing profitability<sup>103</sup>. Embracing technology is therefore key in strengthening governance in the extractive industry.

#### **4.0 Conclusion**

The extractive industry including mining and oil and gas production is a major source of investment and revenue in many African countries<sup>104</sup>. Africa has immense potential to achieve socio-economic growth through the extractive industry with the continent holding a significant proportion of minerals, oil, and gas deposits<sup>105</sup>. However, African countries have not succeeded in translating revenues from the extractive

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<sup>99</sup> World Economic Forum., 'Five Ways Technology will Change the Mining, Oil and Gas Industries' Available at <https://www.weforum.org/agenda/2017/05/five-ways-in-which-technology-will-change-the-extractive-industries/#:~:text=The%20use%20of%20new%20technology,to%20correct%20course%20as%20needed.> (Accessed on 04/09/2024)

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Ibid

<sup>103</sup> Institute for Ethics in Artificial Intelligence., 'The Potential for AI in the Extractive Industries to Promote Multi-objective Optimization (AI4EI)' Available at <https://www.ieai.sot.tum.de/research/the-potential-for-ai-in-the-extractive-industries-to-promote-multi-objective-optimization/> (Accessed on 04/09/2024)

<sup>104</sup> African Development Bank Group., 'Governance of the Extractive Industries in Africa: Survey of Donor-Funded Assistance' Op Cit

<sup>105</sup> United Nations Environment Programme., 'Our Work in Africa' Op Cit



industry into sustainable economic development<sup>106</sup>. The extractive industry in East Africa and Africa in general is associated with poor governance, human right abuses, corruption, widespread poverty, environmental degradation, and conflicts<sup>107</sup>. It is therefore imperative to enhance governance of the extractive industry in Africa and East Africa in order to maximize benefits from this industry. This goal can be realized through: embracing the tenets of Sustainable Development in relation to mining and oil and gas exploration activities<sup>108</sup>; upholding human rights in the extractive industry including the right to a clean, healthy, and sustainable environment<sup>109</sup>; fostering community engagement by maximizing FPIC and embracing the principle of subsidiarity in the extractive industry<sup>110</sup>; enhancing transparency<sup>111</sup>; and embracing technology<sup>112</sup>.

Achieving good governance in the extractive industry in Africa and East Africa is therefore possible.

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<sup>106</sup> African Development Bank Group, 'Governance of the Extractive Industries in Africa: Survey of Donor-Funded Assistance' Op Cit

<sup>107</sup> Ibid

<sup>108</sup> Muigua. K., 'Embracing Sustainable Mining in Africa' Op Cit

<sup>109</sup> Makwana, R., 'Multinational Corporations (MNCs): Beyond the Profit Motive,' Op Cit

<sup>110</sup> Montevecchio. C., 'Subsidiarity: A Central Principle for Justice, Peace, and Sustainability in Mining' Op Cit

<sup>111</sup> Hilson. G., & Maconachie. R., 'Good Governance" and the Extractive Industries in Sub-Saharan Africa' Op Cit

<sup>112</sup> World Economic Forum., 'Five Ways Technology will Change the Mining, Oil and Gas Industries' Op Cit

## **Alternative Dispute Resolution in A New Age- Navigating Turbulent Seas with Optimism**

### **Abstract**

*Alternative Dispute Resolution (ADR) mechanisms are being increasingly recognized as 'Appropriate' and ideal in managing disputes due to their several advantages. As a result, these processes have been embraced globally, regionally, and nationally to foster effective management of disputes. ADR mechanism are also proving to be useful in new world of technological advancements, greater regional integration, and the drive towards green growth. This paper critically examines the opportunities and challenges for ADR in a new age. The paper posits that ADR is vital in light of emerging issues such as green growth, climate change, regional integration, and technological advancements. It also points out the opportunities for ADR in these contexts. The paper also discusses challenges facing ADR in a new age. The paper also suggests measures towards navigating these challenges with optimism towards a bright tomorrow for ADR.*

### **1.0 Introduction**

Alternative Dispute Resolution (ADR) is an umbrella term that refers to a set of processes that are applied to manage disputes without resort to adversarial litigation<sup>1</sup>. ADR has also been defined as a term that encompasses a series of mechanisms for resolving disputes that are linked to but function outside formal court litigation processes<sup>2</sup>. According to the United Nations, ADR is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a nonconfrontational way<sup>3</sup>. The United Nations notes that ADR covers a

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<sup>1</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>2</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>3</sup> United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at

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broad spectrum of approaches, from party-to-party engagement in negotiations as the most direct way to reach a mutually accepted resolution, to arbitration and adjudication at the other end, where an external party imposes a solution<sup>4</sup>. In addition, somewhere along the axis of ADR approaches between these two extremes lies mediation, a process by which a third party aids the disputants to reach a mutually acceptable solution<sup>5</sup>. ADR therefore covers various techniques including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>6</sup>.

ADR techniques offer several benefits in conflict management. These mechanisms are associated with features such as informality, flexibility, efficiency, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost- effective management of disputes<sup>7</sup>. As a result of these features, ADR offers significant advantages, such as reducing case backlogs, lowering costs of managing conflicts, and promoting peaceful dispute resolution<sup>8</sup>. In addition, ADR processes also allow for more creative and collaborative outcomes than those available through litigation<sup>9</sup>. Some ADR techniques such as negotiation and mediation are also key in preserving and even enhancing the

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[https://www.un.org/waterforlifedecade/water\\_cooperation\\_2013/pdf/adr\\_background\\_paper.pdf](https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper.pdf)

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>8</sup> American Bar Association., 'Unlocking the Power of Alternative Dispute Resolution: Beyond Courts and Conflict' Available at <https://www.americanbar.org/advocacy/global-programs/news/2024/unlocking-power-alternative-dispute-resolution/#:~:text=ADR%20offers%20significant%20benefits%2C%20such,equity%2C%20and%20access%20to%20justice>. (Accessed on 26/08/2024)

<sup>9</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 26/08/2024)

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relationship of parties to a conflict<sup>10</sup>. These advantages of ADR enhance justice system effectiveness and accessibility, aligning with values of fairness, equity, and access to justice<sup>11</sup>.

Due to the foregoing advantages, it has been argued that there is need to embrace ADR as 'Appropriate Dispute Resolution'<sup>12</sup>. These processes are suitable in delivering ideal and long- lasting outcomes and are therefore 'Appropriate' and not 'Alternative' in managing disputes<sup>13</sup>. Due to their appropriateness, ADR mechanisms have been embraced globally, regionally, and nationally to foster effective management of disputes. The *Charter of the United Nations*<sup>14</sup> sets out the legal framework for utilizing ADR processes at the global stage. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means* of their own choice (Emphasis added)<sup>15</sup>. At a regional level, the *Treaty Establishing the East African Community*<sup>16</sup> mandates the East African Court of Justice (EACJ) to foster ADR processes including arbitration<sup>17</sup>. At a national level, the Constitution of Kenya urges courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and

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<sup>10</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>11</sup> American Bar Association., 'Unlocking the Power of Alternative Dispute Resolution: Beyond Courts and Conflict' Op Cit

<sup>12</sup> United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Op Cit

<sup>13</sup> P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52

<sup>14</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>15</sup> Ibid, article 33 (1)

<sup>16</sup> Treaty Establishing the East African Community., Available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download> (Accessed on 26/08/2024)

<sup>17</sup> Ibid, article 32

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TDRMs<sup>18</sup>. The Constitution of Uganda also urges courts in adjudicating cases of both a civil and criminal nature to promote reconciliation between parties<sup>19</sup>.

The potential of ADR has therefore been recognized globally, regionally, and nationally. ADR mechanisms are also proving to be useful in the new world of technological advancements, greater regional integration, and the drive toward green growth<sup>20</sup>. This paper critically examines the opportunities and challenges for ADR in new age. The paper posits that ADR is vital in in light of emerging issues such as green growth, climate change, regional integration, and technological advancements. It also points out the opportunities for ADR in these contexts. The paper also discusses challenges facing ADR in a new age. The paper also suggests measures towards navigating these challenges with optimism towards a bright tomorrow for ADR.

### **2.0 Alternative Dispute Resolution in a New Age**

The concept of ADR is relevant in light of emerging issues including technological advancement, greater regional integration, and the quest towards green growth. The rapid growth of technology has permeated into all aspects of life including the field of dispute resolution<sup>21</sup>.

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<sup>18</sup> Constitution of Kenya, 2010., Article 159 (2) (c)., Government Printer, Nairobi

<sup>19</sup> Constitution of Uganda., Article 126 (2) (d)., Available at <https://www.parliament.go.ug/documents/1240/constitution> (Accessed on 26/08/2024)

<sup>20</sup> Muigua. K., 'Alternative Dispute Resolution in the Context of Emerging Challenges of Climate Change, Cyber Security, and Globalization' Available at <https://kmco.co.ke/wp-content/uploads/2024/04/Alternative-Dispute-Resolution-in-the-Context-of-Emerging-Challenges-of-Climate-Change-Cyber-Security-and-Globalization.pdf> (Accessed on 26/08/2024)

<sup>21</sup> Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2022/04/The-EvolvingAlternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-KariukiMuigua.pdf> (Accessed on 26/08/2024)

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Technology is seen as a disruptive phenomenon that has the capacity to end traditional business models, to cast whole industries into oblivion, and to destroy traditional crafts, arts, and professions<sup>22</sup>. In the age of rapid technological advancements, Online Dispute Resolution (ODR) platforms have become increasingly vital for addressing consumer disputes effectively and efficiently<sup>23</sup>. ODR consists of mechanisms for resolving disputes facilitated through the use of electronic communications and other information and communication technology<sup>24</sup>. It has also been described as the application of Information and Communications Technology to the practice of dispute resolution<sup>25</sup>. As a result of technological advancements, new forms of ADR such as online mediation, online arbitration, and block chain arbitration have emerged<sup>26</sup>.

It has been noted that technology has the ability to make dispute resolution more efficient<sup>27</sup>. It holds the promise for an improved dispute resolution landscape that is based on fewer physical, conceptual, psychological and professional boundaries, while enjoying a higher degree of transparency, expeditiousness, efficiency, accessibility,

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<sup>22</sup> Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Available at <https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/09/digital-dispute-resolution> (Accessed on 26/08/2024)

<sup>23</sup> United Nations Trade and Development., 'Technology and the Future of Online Dispute Resolution Platforms for Consumer Protection Agencies' Available at <https://unctad.org/publication/technology-and-future-online-dispute-resolution-platforms-consumer-protection-agencies#:~:text=Consumer%20ODR%20consists%20of%20mechanisms,other%20information%20and%20communication%20technology.> (Accessed on 26/08/2024)

<sup>24</sup> Ibid

<sup>25</sup> Rule. C., 'Technology and the Future of Dispute Resolution' Available at <https://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf> (Accessed on 26/08/2024)

<sup>26</sup> Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Op Cit

<sup>27</sup> Mania. K., 'Online Dispute Resolution: The Future of Justice.' *International Comparative Jurisprudence*, No. 1 of 2015, (pg 76-86)

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participation and change<sup>28</sup>. ODR can also foster access to justice for geographically separated parties<sup>29</sup>. It can also enable parties access information relevant to their dispute in real time therefore enhancing the efficacy of dispute resolution<sup>30</sup>. Further, as a result of technological advancement, it is possible to use software algorithms to keep communication focused on key issues that need to be addressed while structuring negotiations to keep them moving toward resolution<sup>31</sup>. ADR therefore holds immense promise in light of technological advancement. ADR, with its diverse range of methods such as mediation, arbitration, and negotiation, presents a viable option that aligns with the dynamic nature of technological advancement while addressing the specific demands of disputes in the cyberspace<sup>32</sup>.

Technology is therefore revolutionizing ADR. For example, Artificial Intelligence (AI) is significantly impacting ADR by automating and enhancing various aspects of the dispute resolution process<sup>33</sup>. AI algorithms have the ability to analyse vast amounts of legal data to predict outcomes and suggest resolutions based on historical trends and case law<sup>34</sup>. This capacity is key in not only expediting dispute resolution but also aiding arbitrators and mediators in making more informed

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<sup>28</sup> Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

<sup>29</sup> Rule. C., 'Technology and the Future of Dispute Resolution' Op Cit

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Singh. B., 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues arising in Cyberspace Lensing E-Commerce and Intellectual Property' Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/183> (Accessed on 26/08/2024)

<sup>33</sup> Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Available at <https://www.linkedin.com/pulse/technology-adr-overview-transformative-tools-saleem-shaheen-j4j3e/> (Accessed on 27/08/2024)

<sup>34</sup> Ibid

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decisions<sup>35</sup>. In addition, the use of blockchain in creating smart contracts has been a major development in dispute resolution and ADR<sup>36</sup>. These contracts execute automatically when predetermined conditions are met, therefore minimizing disputes<sup>37</sup>.

ADR is also relevant in light of greater emphasis on regional integration. In Africa, regional economic integration aims to create larger, more attractive markets, link landlocked countries to international markets and support intra-African trade<sup>38</sup>. There have been efforts towards bolstering regional integration in Africa through the formation of Regional Economic Communities (RECs) and inter-governmental organizations including the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC)<sup>39</sup>. In addition, the establishment of the African Continental Free Trade Area (AfCFTA) is anticipated to deepen integration, foster trade and investment, enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa<sup>40</sup>.

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<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> African Development Bank Group., 'Regional Integration' Available at <https://www.afdb.org/en/topics-and-sectors/topics/regional-integration> (Accessed on 26/08/2024)

<sup>39</sup> Africa Union., 'Regional Economic Communities.' Available at [https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20\(1991\)](https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20(1991)) (Accessed on 26/08/2024)

<sup>40</sup> United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at <https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though.->



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ADR presents numerous benefits in light of these efforts towards regional integration. For example, the *Protocol on Rules and Procedures on the Settlement of Disputes* under the Agreement establishing the AfCFTA<sup>41</sup> envisages the use of ADR processes including negotiation, mediation, arbitration, conciliation, and good offices to manage disputes under the AfCFTA. ADR processes can therefore strengthen efforts towards regional integration in Africa by ensuring efficiency, neutrality of forum, and expeditious management of disputes under the AfCFTA<sup>42</sup>. In addition, the formation of regional ADR centres in Africa including the Nairobi Centre for International Arbitration, the Kigali International Arbitration Centre, and the Cairo Regional Centre for International Commercial Arbitration is key in bringing the continent together in the field of dispute resolution<sup>43</sup>.

ADR is also relevant in the quest towards green growth. The concept of green growth aims to foster economic growth that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities<sup>44</sup>. It involves promoting

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[/Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of%20day\)%2C%20according%20to%20UNCTAD](#) (Accessed on 26/08/2024)

<sup>41</sup> African Union., 'Agreement Establishing the African Continental Free Trade Area.' Available at [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf) (Accessed on 26/08/2024)

<sup>42</sup> The Efficiency of the AfCFTA Dispute Resolution Mechanism: An In-Depth Analysis., Available at <https://arbitrationblog.kluwerarbitration.com/2023/07/11/the-efficiency-of-the-afcfta-dispute-resolution-mechanism-an-in-depth-analysis/> (Accessed on 26/08/2024)

<sup>43</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Available at <https://aln.africa/wp-content/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf> (Accessed on 26/08/2024)

<sup>44</sup> United Nations Economic Commission for Africa., 'Enabling Measures for an Inclusive Green Economy in Africa' Available at [https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA\\_Enabling%20](https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA_Enabling%20)

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economic growth and development, while ensuring that natural assets continue to provide the resources and environmental services on which human well-being relies<sup>45</sup>. Green growth is therefore an idea that seeks to achieve environmentally sustainable economic and social growth<sup>46</sup>. Green growth is low carbon, resource efficient and socially inclusive<sup>47</sup>. In addition, green growth ensures that growth in employment and income are driven by public and private investment into such economic activities, infrastructure and assets that allow reduced carbon emissions and pollution, enhanced energy and resource efficiency, and prevention of the loss of biodiversity and ecosystem services<sup>48</sup>.

It has been noted that in the quest towards green growth, disputes may occur in key sectors including renewable energy, carbon reduction, waste management, electrification, transport and other initiatives and collaborations aimed at developing and implementing sustainable innovation<sup>49</sup>. Further, with the urgent need to combat climate change for green growth, the risk of disputes related to sustainability and green growth is on the rise<sup>50</sup>. ADR mechanisms are suitable in resolving

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[measures%20for%20an%20inclusive%20green%20economy%20in%20Africa.pdf](#)

(Accessed on 26/08/2024)

<sup>45</sup> Organisation for Economic Cooperation and Development., 'Towards Green Growth' Available at <https://www.oecd-ilibrary.org/docserver/9789264111318-sumen.pdf?expires=1724073546&id=id&accname=guest&checksum=E34A1AF0D5BEFA1932CC992346CAD9> (Accessed on 26/08/2024)

<sup>46</sup> World Bank Group., 'Inclusive Green Growth' Available at <https://documents1.worldbank.org/curated/en/129971468157532224/pdf/793260BRI0v20R00Box037737400Public0.pdf> (Accessed on 26/08/2024)

<sup>47</sup> United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resourceefficiency/green-economy> (Accessed on 26/08/2024)

<sup>48</sup> Ibid

<sup>49</sup> World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Available at <https://www.wipo.int/amc/en/center/specific-sectors/greentechnology-sustainability/> (Accessed on 26/08/2024)

<sup>50</sup> Ibid

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disputes related to green growth in areas such as climate change, renewable energy, infrastructure, transport, agriculture and other land use and food production systems<sup>51</sup>. As time- and cost-efficient alternatives to litigation, ADR allows parties to choose a mediator, arbitrator or expert with legal and technical expertise in thematic areas within the green growth discourse<sup>52</sup>. ADR also provides a neutral forum for managing cross border disputes through which disputes can be resolved through a single procedure while also ensuring efficient enforcement of outcomes<sup>53</sup>.

From the foregoing, it emerges that there are immense opportunities for ADR in a new age. However, several challenges are also emerging within the practice of ADR in a new age.

### **3.0 Challenges facing ADR in a New Age**

Despite its numerous benefits, the practice of ADR in a new age raises several concerns. For example, the technology systems supporting digital dispute resolution may be subject to cyberattacks<sup>54</sup>. Unauthorized persons may access the technology supporting digital dispute resolution and engage in unwarranted practices such as stealing of information, deleting information or sending unwanted information

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<sup>51</sup> International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (Accessed on 26/08/2024)

<sup>52</sup> World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Op Cit

<sup>53</sup> Ibid

<sup>54</sup> Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-andNew-Frontiers-EmbracingTechnology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-MuiguaPh.DJune-2020.pdf> (Accessed on 27/08/2024)

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to the detriment of the parties<sup>55</sup>. It has been noted that technology simultaneously presents the biggest opportunity and the biggest challenge for the practice of dispute resolution<sup>56</sup>. On the positive side, it has the ability to improve access to justice, and provide speedier and better outcomes<sup>57</sup>. However, on the negative side, concerns around data privacy and the potential for algorithmic bias in AI are major challenges for ADR in the era of technological advancement<sup>58</sup>. Further, some technologies are expensive and maybe out of reach for ordinary citizens therefore creating barriers in embracing online dispute resolution<sup>59</sup>.

Further, the role of ADR in the context of regional integration is hindered by several obstacles including. For example, ADR in Africa faces key challenges including inadequate political support, human resources, legal foundations, and sustainable financing<sup>60</sup>. These challenges are hindering the development of the legal and institutional capacity on ADR in Africa including the growth of regional ADR centres<sup>61</sup>.

In the context of green growth, it has been noted that the promise of litigation remains at a more ideal and policy- based level when compared with the real and practical impact of ADR mechanisms<sup>62</sup>.

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<sup>55</sup> Ibid

<sup>56</sup> Rule. C., 'Technology and the Future of Dispute Resolution' Op Cit

<sup>57</sup> Ibid

<sup>58</sup> Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

<sup>59</sup> Ibid

<sup>60</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>61</sup> Asian African Legal Consultative Organization., 'Alternative Dispute Resolution: Asian-African Perspectives' Available at <https://www.aalco.int/ADR-PAPER22may2011.pdf> (Accessed on 27/08/2024)

<sup>62</sup> Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Available at <https://www.hkiac.org/content/resolving-climate-change-related-disputes-through-alternative-modes-dispute-resolution> (Accessed on 27/08/2024)

Litigation has been more effective than ADR in fostering green growth through court rulings that take into account the principles of Sustainable Development<sup>63</sup>. Through litigation, governments are being held accountable and required to implement green growth strategies including sustainable infrastructure, green jobs, sustainable fisheries, renewable energy, sustainable tourism, sustainable waste management, and sustainable agricultural practices<sup>64</sup>. It is therefore imperative to enhance the role of ADR in green growth.

#### **4.0 Conclusion**

ADR holds immense promise in a new age. As digital technologies continue to advance, they have also begun to revolutionize various aspects of ADR processes<sup>65</sup>. Technology is enhancing the efficiency, accessibility, and effectiveness of dispute resolution processes<sup>66</sup>. ODR has emerged as a viable process for managing disputes that arise in a variety of contexts, including e-commerce transactions, online services, and other forms of online interactions<sup>67</sup>. This form of ADR offers various advantages such as accessibility by parties regardless of geographical distances, cost-effectiveness, automation of administrative tasks associated with dispute resolution, such as document management and scheduling and the availability of an online repository for all communications and actions taken during the dispute resolution

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<sup>63</sup> International Development Law Organization., 'Laws for the Planet: Using Law to Deliver Sustainability and Green Growth' Available at <https://www.idlo.int/news/speeches-and-advocacy/laws-planet-using-law-deliver-sustainability-and-green-growth> (Accessed on 27/08/2024)

<sup>64</sup> Ibid

<sup>65</sup> The Impact of Digital Technologies on Alternative Dispute Resolution., Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/175#:~:text=Abstract,various%20aspects%20of%20ADR%20processes>. (Accessed on 27/08/2024)

<sup>66</sup> Ibid

<sup>67</sup> Use of Technology in ADR: A case for Online Dispute Resolution (ODR)., Available at <https://medium.com/@legalpayofficial/use-of-technology-in-adr-a-case-for-online-dispute-resolution-odr-df1296b9296c> (Accessed on 27/08/2024)

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process<sup>68</sup>. ADR is also relevant in the context of regional integration. For example, establishment of the AfCFTA provides opportunities for utilizing ADR processes to boost Intra-African trade and strengthen efforts towards regional integration in Africa by ensuring efficiency, neutrality of forum, and expeditious management of disputes<sup>69</sup>. The establishment of regional ADR centres in Africa is also key in fostering regional integration through ADR<sup>70</sup>. ADR processes are also ideal in the green growth agenda by providing appropriate forums for managing disputes in areas such as climate change, renewable energy, infrastructure, transport, agriculture and other land use and food production systems<sup>71</sup>.

Despite this optimism, ADR in a new age faces several hurdles. Technology raises challenges related to data privacy, potential for algorithmic bias, and accessibility especially for poor citizens<sup>72</sup>. The role of ADR in regional integration is hindered by inadequate political support, human resources, legal foundations, and sustainable financing<sup>73</sup>. Further, litigation is proving to be more practical than ADR in holding governments accountable and shaping green growth policies<sup>74</sup>. It is therefore imperative to navigate these challenges in order to enhance the potential of ADR in a new age.

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<sup>68</sup> Ibid

<sup>69</sup> The Efficiency of the AfCFTA Dispute Resolution Mechanism: An In-Depth Analysis., Op Cit

<sup>70</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>71</sup> International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Op Cit

<sup>72</sup> Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

<sup>73</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>74</sup> Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Op Cit

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In order to enhance the appropriateness of ADR in a world of technological advancement, concerns around data privacy and the potential for algorithmic bias must be addressed to maintain the integrity of the process<sup>75</sup>. It is imperative to enhance data privacy and security in digital dispute resolution in order to enhance the viability of ADR in the cyber space<sup>76</sup>. It is also important to foster access to technology in order to avoid a digital divide in dispute resolution<sup>77</sup>. Further, in light of greater regional integration, it is necessary to enhance political support and sustainable financing for the growth of ADR processes at a regional level<sup>78</sup>. It is imperative for countries to enhance their legal, policy, and institutional frameworks on ADR in order to ensure the acceptability of these mechanisms at national and regional levels<sup>79</sup>. Establishment of more ADR centres offering a broad range of services including arbitration, mediation, and conciliation is also necessary to foster regional integration through ADR<sup>80</sup>. In addition, it is necessary to widely embrace ADR in green growth for effective management of disputes on climate change, renewable energy, infrastructure, transport, and industrialization among other key sectors<sup>81</sup>. ADR practitioners including arbitrators and mediators should also enhance their expertise on green growth in order to foster this

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<sup>75</sup> Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

<sup>76</sup> Muigua. K., 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Navigating-the-Digital-DisputeResolution-Landscape-Challenges-and-Opportunities-.pdf> (Accessed on 27/08/2024)

<sup>77</sup> Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

<sup>78</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Ci

<sup>79</sup> Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIALARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf> (Accessed on 27/08/2024)

<sup>80</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>81</sup>International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Op Cit

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agenda nationally, regionally, and globally<sup>82</sup>. ADR institutions also have a crucial role to play by developing rules and/or expertise specific to the resolution of disputes concerning green growth including environmental disputes<sup>83</sup>.

ADR presents numerous opportunities in a new age of technological advancements, greater regional integration and a push for green growth. However, it vital to navigate the emerging challenges with optimism in order to ensure a bright tomorrow for ADR.

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<sup>82</sup> Ibid

<sup>83</sup> Ibid



## **Enhancing Africa's Competitiveness in The Global ADR Arena**

### **Abstract**

*Globalization has led to the growth of Alternative Dispute Resolution (ADR) as a viable forum for managing disputes involving parties from different nationalities. ADR processes in the global arena provide numerous benefits including neutrality of forum, enforcement of outcomes, and flexible procedures for managing disputes. ADR is therefore being embraced as the preferred method of conflict resolution in the international business world. This paper critically examines the need to enhance Africa's competitiveness in the global ADR arena. It argues that the potential of ADR is yet to be fully harnessed in Africa therefore limiting the continent's competitiveness in the global ADR arena. The paper critically explores the landscape of ADR in Africa. It argues that ADR has been practiced in Africa for many centuries therefore creating an ideal environment for the growth of these mechanisms in the continent. The paper also examines some of the factors hindering Africa's competitiveness in the global ADR arena. In addition, the paper suggests measures towards enhancing Africa's competitiveness in the global ADR arena.*

### **1.0 Introduction**

Globalization is shaping the function of international law and with it the mechanisms used to resolve international conflicts and disputes<sup>1</sup>. It has been noted that collective global problems are driving the development of collaborative problem-solving approaches<sup>2</sup>. The need to foster international peace and security has resulted in the global community embracing approaches aimed at pacific resolution of international disputes for both legal disputes as well as for those that arise from armed

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<sup>1</sup> Spain. A., 'International Dispute Resolution in an Era of Globalization' Available at <https://lawweb.colorado.edu/profiles/pubpdfs/spain/IntlDispRes-EraGlobalization.pdf> (Accessed on 02/09/2024)

<sup>2</sup> Ibid

conflict<sup>3</sup>. The *Charter of the United Nations*<sup>4</sup> stipulates that parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice<sup>5</sup>.

Alternative Dispute Resolution (ADR) entails a set of processes that are applied to manage disputes without resort to adversarial litigation<sup>6</sup>. ADR mechanisms may be linked to but function outside formal court litigation processes<sup>7</sup>. These techniques include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>8</sup>.

ADR processes are being widely embraced globally as a result of the increase in trade and commerce between parties from different nationalities which activities have also lead to disputes among parties from different nations<sup>9</sup>. ADR processes such as arbitration and mediation offer several advantages in the global arena such as neutrality of forum in the determination of disputes therefore addressing the differences that may arise as a result of multiple legal systems<sup>10</sup>. They also guarantee enforcement of outcomes across jurisdictions due to the

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<sup>3</sup> Ibid

<sup>4</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>5</sup> Ibid, article 33 (1)

<sup>6</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>7</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>8</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>9</sup> Spain. A., 'International Dispute Resolution in an Era of Globalization' Op Cit

<sup>10</sup> Moses, 'The Principles and Practice of International Commercial Arbitration' 2<sup>nd</sup> Edition, 2017, Cambridge University Press

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presence of legal frameworks such as the *New York*<sup>11</sup> and *Singapore*<sup>12</sup> Conventions. Further, it has been noted that unlike national legal systems, ADR processes in the global arena including international arbitration and international mediation are less rigid and flexible therefore permitting the parties to adjust procedures to the particular demands of their dispute<sup>13</sup>. ADR processes have therefore emerged as a viable and effective forum for managing disputes in the global arena making ADR the preferred method of conflict resolution in the international business world<sup>14</sup>.

This paper critically examines the need to enhance Africa's competitiveness in the global ADR arena. It argues that the potential of ADR is yet to be fully harnessed in Africa therefore limiting the continent's competitiveness in the global ADR arena. The paper critically explores the landscape of ADR in Africa. It argues that ADR has been practiced in Africa for many centuries therefore creating an ideal environment for the growth of these mechanisms in the continent. The paper also examines some of the factors hindering Africa's competitiveness in the global ADR arena. In addition, the paper suggests measures towards enhancing Africa's competitiveness in the global ADR arena.

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<sup>11</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), Available at [www.newyorkconvention.org/english](http://www.newyorkconvention.org/english) (Accessed on 02/09/2024)

<sup>12</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation., Available at [https://uncitral.un.org/sites/uncitral.un.org/files/singapore\\_convention\\_eng.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf) (Accessed on 02/09/2024)

<sup>13</sup> Lominack. R., 'Examining Alternative Dispute Resolution in the International Business Domain' *South Carolina Journal of International Law and Business.*, Volume 1, Issue 1 (2003)

<sup>14</sup> Ibid

## **2.0 Alternative Dispute Resolution in Africa: Prospects and Challenges**

ADR occupies a special place in Africa. It has been part and parcel of conflict management in Africa since time immemorial<sup>15</sup>. ADR mechanisms have been practiced in Africa for many centuries<sup>16</sup>. These techniques were firmly embedded in the culture and customs of African communities<sup>17</sup>. The idea of conflict management in Africa societies is guided by key values including peace, harmony, truth, honesty, unity, cooperation, forgiveness, reconciliation, and respect<sup>18</sup>. Conflict management in African societies was therefore aimed at creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and gave prominence to communal needs over individual needs<sup>19</sup>. In order to achieve these objectives, African societies had flexible dispute resolution mechanisms that offered a speedy, inexpensive, and accessible just resolution that maintains and restores communal relations, especially in disputes involving family and the community at large<sup>20</sup>. African societies therefore embraced traditional forms of mediation, adjudication, reconciliation, arbitration and negotiation since these techniques fitted comfortably within traditional concepts of African justice, particularly its core value of reconciliation<sup>21</sup>.

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<sup>15</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

<sup>19</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>20</sup> Ntuli. N., 'Africa: Alternative Dispute Resolution in a Comparative Perspective' Available at

[https://www.researchgate.net/publication/322638491\\_Africa\\_Alternative\\_Dispute\\_Resolution\\_in\\_a\\_Comparative\\_Perspective](https://www.researchgate.net/publication/322638491_Africa_Alternative_Dispute_Resolution_in_a_Comparative_Perspective) (Accessed on 05/09/2024)

<sup>21</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

ADR in the African context is therefore generally seen as a return to traditional African conflict resolution methods and hence not a novelty<sup>22</sup>. It has been argued that ADR mechanisms can strengthen dispute settlement systems and bridge the gap between formal legal systems and traditional concepts of African justice<sup>23</sup>. These techniques may have particular value in stabilization and statebuilding efforts especially when judicial institutions are weak and social tensions are high<sup>24</sup>. It has been noted that despite numerous attempts at modernization, many African countries are still struggling to establish functional, timely, cost-effective and trusted judicial systems<sup>25</sup>. Access to justice through formal justice processes in Africa is hindered by obstacles such as costs, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow<sup>26</sup>. ADR techniques are suitable in addressing these challenges and enhancing access to justice in Africa<sup>27</sup>. Embracing ADR in Africa can therefore contribute towards building effective dispute management systems and further bridge the gap between the formal legal system and traditional modes of African justice<sup>28</sup>.

The landscape of ADR in Africa is growing. Africa's dispute resolution landscape has long been dominated by litigation, but the use of ADR processes such as arbitration and mediation is becoming more

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<sup>22</sup> Ntuli. N., 'Africa: Alternative Dispute Resolution in a Comparative Perspective' Op Cit

<sup>23</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</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>27</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>28</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

prevalent<sup>29</sup>. For example, countries such as South Africa, Kenya, Nigeria, Egypt and Rwanda all have established arbitration centres, with Cairo and Johannesburg considered among the most popular arbitral seats on the continent<sup>30</sup>. The formation of regional ADR centres in Africa including the Nairobi Centre for International Arbitration, the Kigali International Arbitration Centre, and the Cairo Regional Centre for International Commercial Arbitration is enhancing the uptake of ADR in Africa<sup>31</sup>. As a result, it has been noted that there is increasing confidence in selecting African laws to govern commercial contracts and African seats for domestic and international arbitrations<sup>32</sup>. Most African countries also have in place arbitration laws with others including Nigeria and Malawi recently reforming their laws to align with global standards including the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration<sup>33</sup>.

Arbitration in Africa therefore enjoys a thriving present and a promising future<sup>34</sup>. Arbitral institutions are playing an important role in developing regional centres, which will be key to meeting the growing demand for dispute resolution services on the continent<sup>35</sup>. For example,

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<sup>29</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Available at <https://aln.africa/wpcontent/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf> (Accessed on 05/09/2024)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Available at <https://hsfnotes.com/africa/2022/11/25/2022-soasarbitration-in-africa-survey-reveals-a-thriving-market-for-arbitration-on-the-continent/> (Accessed on 05/09/2024)

<sup>33</sup> Owa. I., '2023 Year in Review: A Transformative Expedition of Arbitration in Africa' Available at <https://arbitrationblog.kluwerarbitration.com/2024/01/24/2023-year-in-review-a-transformative-expedition-of-arbitration-in-africa/> (Accessed on 05/09/2024)

<sup>34</sup> Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Op Cit

<sup>35</sup> Ibid

the implementation of the African Continental Free Trade Area (AfCFTA) is expected to boost Intra African trade and enhance cross-border investments in the continent<sup>36</sup>. However, commercial and investment disputes may also arise in the course of implementation of the AfCFTA involving parties from different nationalities in Africa<sup>37</sup>. Effective management of such disputes is therefore necessary in order to maintain commercial relationships and enhance trade and investments in Africa<sup>38</sup>. The Protocol on Rules and Procedures on the Settlement of Disputes to the Agreement establishing the AfCFTA envisages the use of ADR processes including arbitration, conciliation, and mediation in managing disputes under the AfCFTA<sup>39</sup>. It has been noted that the AfCFTA and its focus on fostering economic integration in Africa through trade will result in more intra-African disputes<sup>40</sup>. This in turn provides opportunities to help the continent's arbitral institutions gain more experience, compel the continent to pay the required attention to supporting ADR infrastructure, and in turn increase the level of comfort with Africa as a seat for arbitration<sup>41</sup>. It is therefore imperative to develop ADR in Africa in order to meet the growing needs of dispute management under the AfCFTA.

Mediation is also gaining traction in Africa with countries such as Kenya introducing mandatory court-annexed mediation as part of the broader

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<sup>36</sup> Erasmus. G., 'The AfCFTA Dispute Settlement Mechanism as part of a continental Trade Regime' Available at <https://www.tralac.org/blog/article/15378-the-afcfta-dispute-settlement-mechanism-as-part-of-a-continental-trade-regime.html> (Accessed on 05/09/2024)

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> African Union., 'Agreement Establishing the African Continental Free Trade Area' Available at [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf) (Accessed on 05/09/2024)

<sup>40</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>41</sup> Ibid

ADR framework<sup>42</sup>. This gives the courts discretionary powers to refer certain disputes to mediation towards reducing backlogs in the court system<sup>43</sup>. It has been noted that mediation is preferred in many cultures across the continent, as African philosophical and political thinking largely favours the approach of conciliation and mediation of disputes over the adversarial approach of Western cultures<sup>44</sup>. Mediation may provide a greater scope for solutions which account for the context of the dispute, and can provide greater fairness (or perceived fairness) in outcomes<sup>45</sup>. Mediation can also result in collaborative outcomes based on mutual problem solving<sup>46</sup>. It is also vital in ensuring open communication, finding common ground, and creating a culture of trust<sup>47</sup>. Mediation is therefore ideal when it is necessary to maintain all parties' relationships or when the solution itself will have a significant impact on a large group of people<sup>48</sup>. As a result, there is room for significant growth in the adoption of mediation for commercial disputes in Africa<sup>49</sup>.

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<sup>42</sup> The Judiciary of Kenya., 'Court Annexed Mediation' Available at <https://judiciary.go.ke/court-annexed-mediation/> (Accessed on 05/09/2024)

<sup>43</sup> Ibid

<sup>44</sup> Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Op Cit

<sup>45</sup> Ibid

<sup>46</sup> Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 05/09/2024)

<sup>47</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests.> (Accessed on 05/09/2024)

<sup>48</sup> Isenhardt. M.W., & Spangle. M., 'Summary of "Collaborative Approaches to Resolving Conflict"' Available at <https://www.beyondintractability.org/bksum/isenhardt-collaborative> (Accessed on 05/09/2024)

<sup>49</sup> Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Op Cit



Notwithstanding their benefits, ADR processes in Africa face key challenges, including inadequate political support, human resources, legal foundations, and sustainable financing<sup>50</sup>. Further, the current practice of ADR in most African countries is largely based on the western notions of dispute resolution and access to justice and hence could defeat its purpose and limit its uptake by communities in the continent<sup>51</sup>. The colonial era in Africa resulted in the introduction of western justice systems with customary law being largely ignored and marginalized<sup>52</sup>. The indigenous practices and institutions on conflict management were largely weakened and even destroyed in many African societies, since the colonial powers introduced formal justice processes such as law courts, which came to pronounce judgments rather than resolve conflicts according to the African concepts of justice<sup>53</sup>. Further, it has been noted that the current practice of ADR originated and developed within specific cultural, ideological and political contexts inherent in the West and therefore, its application in non-Western societies especially Africa may turn out to be counter-productive since the latter exhibit markedly different social, historical and political conditions<sup>54</sup>. ADR in the African context was a cultural specific process that made it possible for disputants to reach, understand

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<sup>50</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>51</sup> Ntuli. N., 'Africa: Alternative Dispute Resolution in a Comparative Perspective' Op Cit

<sup>52</sup> Dieng. A., 'ADR in Sub-Saharan African Countries' Available at <https://www.ohada.com/uploads/actualite/1131/Dieng-Chapter%2028-ADR-in-Business-II.pdf> (Accessed on 06/09/2024)

<sup>53</sup> Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2)

<sup>54</sup> Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1612865](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1612865) (Accessed on 06/09/2024)

and own the verdict or outcome of the resolution process<sup>55</sup>. African societies developed flexible dispute resolution mechanisms that offered a speedy, inexpensive, and accessible just resolution that maintained and restored communal relations, especially in disputes involving family and the community at large<sup>56</sup>. The current practice of ADR in Africa may not meet these objectives since the process has been largely formalized<sup>57</sup>. Addressing these challenges requires ADR to be embraced from an African perspective<sup>58</sup>.

Africa is also yet to fully entrench its place in the global ADR arena<sup>59</sup>. For example, most commercial and investment disputes arising in Africa often end up being contested outside Africa, with London being the most popular seat for mining related arbitration<sup>60</sup>. Further, it has been noted that even when disputes involve two parties from Africa, the cases tend to be subject to either the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA) rules, with the arbitration proceedings taking place in centres such as Paris, London and Singapore<sup>61</sup>.

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<sup>55</sup> Ntuli. N., 'Africa: Alternative Dispute Resolution in a Comparative Perspective' Op Cit

<sup>56</sup> Ibid

<sup>57</sup> Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISINGALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 06/09/2024)

<sup>58</sup> Muigua. K., 'Preparing for the Future: ADR and Arbitration from an African Perspective' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Preparing-for-the-Future-ADR-and-Arbitration-from-an-African-Perspective.pdf> (Accessed on 06/09/2024)

<sup>59</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>60</sup> Ibid

<sup>61</sup> Ibid

Africa's effectiveness in the global ADR arena is hindered by several factors including bias and perception of corruption<sup>62</sup>. The governance challenges that are prevalent in some African countries portray the continent in a negative image to the global community with parties doubting the ability to attain justice in Africa<sup>63</sup>. There are also concerns of inadequate legal enforcement, with parties often concerned that arbitral awards may not be effectively enforced in the continent<sup>64</sup>. Court interference in arbitration in Africa is also a key concern that limits Africa's competitiveness in the global ADR arena<sup>65</sup>. Lack of clarity and uniformity on the limits of court intervention in arbitration portrays Africa as a continent that is not arbitration- friendly<sup>66</sup>. Defining and limiting the extent of court intervention in arbitration is therefore key in enhancing Africa's competitiveness in the global ADR arena<sup>67</sup>.

It is imperative to address the foregoing challenges in order to enhance Africa's competitiveness in the global ADR arena.

### **3.0 Conclusion**

In order to enhance Africa's competitiveness in the global ADR arena, it is imperative to market the continent<sup>68</sup>. It is imperative for stakeholders including ADR practitioners and ADR institutions to use marketing

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<sup>62</sup> Amazu A. Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development*, University Press, Cambridge, 2001. PP. 5-6 Available at <http://catdir.loc.gov/catdir/samples/cam031/2001018482.pdf> (Accessed on 05/09/2024)

<sup>63</sup> Ibid

<sup>64</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>65</sup> Muigua. K., 'Promoting International Commercial Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf> (Accessed on 05/09/2024)

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Muigua. K., 'Promoting International Commercial Arbitration in Africa' Op Cit

tools such as ADR conferences and collaborations with institutions in other continents in order to enhance their visibility in the global ADR spectrum and showcase the continent's capacity in ADR<sup>69</sup>. In addition, ADR practitioners including arbitrators and mediators can also tap into marketing tools such as publications, websites and social media in order to portray their skills and qualifications and promote confidence to the global community in relation to Africa's capacity in ADR<sup>70</sup>.

Governments also have a key role to play in enhancing Africa's competitiveness in the global ADR arena. Among the key challenges facing ADR in Africa include inadequate political support, human resources, legal foundations, and sustainable financing<sup>71</sup>. In order to address these challenges, it is imperative to enact robust ADR legislations throughout Africa<sup>72</sup>. It has been noted that legislation is key in elevating the status of ADR in the continent, building public confidence, and further increasing ADR utilization<sup>73</sup>. Legislation would also provide a framework for reference, review, and reform as well as institutionalize much needed education and professional training in ADR<sup>74</sup>. Governments should also support capacity building efforts through establishing national and regional ADR centres and financing ADR programmes in the continent<sup>75</sup>.

It is also imperative for ADR practitioners and institutions to build their capacity in order to enhance Africa's competitiveness in the global ADR

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<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid

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arena<sup>76</sup>. Education, training and mentorship are vital in enhancing the capacity of ADR practitioners in Africa<sup>77</sup>. Further, ADR practitioners should enhance their knowledge and capacity in relation to emerging global issues in ADR including climate change disputes<sup>78</sup>. It is also vital to set up more ADR institutions to facilitate training in ADR mechanisms such as arbitration, mediation and conciliation in addition to the existing institutions<sup>79</sup>. ADR institutions in Africa should also develop rules and/or expertise specific to the resolution of climate change disputes among other emerging areas in order to enhance Africa's competitiveness in the global ADR arena<sup>80</sup>. Further, closer collaboration among regional ADR centres in Africa is essential in raising the continent's capacity in the global ADR arena and increasing appointment opportunities for African arbitrators and mediators in global disputes<sup>81</sup>.

Finally, there is also need to define and limit the extent of court intervention in ADR<sup>82</sup>. Unnecessary interference by courts in ADR mechanisms especially arbitration can hinder Africa's competitiveness in the global ADR arena<sup>83</sup>. Due to unnecessary intervention, delays, and uncertainty on issues such enforcement of awards, the global

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<sup>76</sup> Muigua. K., 'Nurturing International Commercial Arbitration in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2021/10/Nurturing-International-Commercial-Arbitration-inKenya.pdf> (Accessed on 06/09/2024)

<sup>77</sup> Ibid

<sup>78</sup> International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adrcommission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (Accessed on 06/09/2024)

<sup>79</sup> Muigua. K., 'Nurturing International Commercial Arbitration in Kenya.' Op Cit

<sup>80</sup> International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Op Cit

<sup>81</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>82</sup> Muigua. K., 'Promoting International Commercial Arbitration in Africa' Op Cit

<sup>83</sup> Ibid

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community may shun away from Africa in favour of arbitration-friendly jurisdictions<sup>84</sup>. It has been noted that investors want to be certain that courts in Africa respect arbitration agreements, and have a reputation for providing the needed and timely support for arbitration proceedings including enforcement of arbitral awards<sup>85</sup>. Adopting an arbitration friendly approach by courts is therefore key in enhancing Africa's competitiveness in the global ADR arena<sup>86</sup>.

Enhancing Africa's competitiveness in the global ADR arena is therefore necessary and achievable.

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<sup>84</sup> Ibid

<sup>85</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

<sup>86</sup> Ibid

## **Defining and Strengthening the Role of Lawyers in Climate Change Conflicts**

### ***Abstract***

*In the wake of the worsening climate crisis, responding to climate change has become a matter of urgent global, regional, national, and local priority. Sustainable Development Goal 13 under the United Nations 2030 Agenda for Sustainable Development calls upon all countries to take urgent action towards combating climate change and its impacts. While confronting climate change, it is also imperative to address the nexus between climate change and conflicts. In addition to its adverse environmental, social, and economic effects, climate change is also fueling conflicts at all levels. Effective management of climate change conflicts is a key measure towards strengthening climate action and delivering climate justice. This paper critically explores the role of lawyers in climate change conflicts. The paper argues that lawyers are crucial agents in the effective management of climate change conflicts towards climate justice. The paper discusses the nature, causes, and effects of climate change conflicts. In addition, the paper highlights the opportunities and challenges for lawyers in climate change conflicts. It also proposes measures towards defining and strengthening the role of lawyers in climate change conflicts.*

### **1.0 Introduction**

The climate crisis is worsening with every person, in every country in every continent being impacted in some shape or form by climate change<sup>1</sup>. According to the United Nations Environment Programme (UNEP), the world is in a climate emergency<sup>2</sup>. UNEP points out that unless greenhouse gas emissions fall dramatically, global warming could pass 2.9°C this century, a situation that will have catastrophic consequences for life on the planet<sup>3</sup>. With rising greenhouse gas

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<sup>1</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 06/09/2024)

<sup>2</sup> United Nations Environment Programme., 'Climate Action' Available at <https://www.unep.org/topics/climate-action> (Accessed on 06/09/2024)

<sup>3</sup> Ibid

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emissions, climate change is occurring at rates much faster than anticipated<sup>4</sup>. Its impacts can be devastating and include extreme and changing weather patterns and rising sea levels<sup>5</sup>. The climate crisis is disrupting national economies and affecting lives and livelihoods, especially for the most vulnerable<sup>6</sup>. Climate change is a major global challenge that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda<sup>7</sup>.

Responding to climate change has therefore become a matter of urgent global, regional, national, and local priority. According to the United Nations, if the climate crisis is left unchecked, it will undo a lot of the development progress made over the past years<sup>8</sup>. It further notes that if climate change is not addressed, it will also provoke mass migrations that will lead to instability and wars<sup>9</sup>. The United Nations *2030 Agenda for Sustainable Development*<sup>10</sup> acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development. Sustainable Development Goal 13 under the Agenda calls upon all countries to take urgent action towards combating climate change and its impacts<sup>11</sup>. Urgent and transformative action and policies that cover entire economies, foster climate-resilient development, while outlining

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<sup>4</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>8</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

<sup>9</sup> Ibid

<sup>10</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 06/09/2024)

<sup>11</sup> Ibid



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a clear path to achieve net-zero emissions are therefore needed to confront climate change<sup>12</sup>.

It has been pointed out that while responding to climate change, it is imperative to address the nexus between climate change and conflicts<sup>13</sup>. In addition to its adverse environmental, social, and economic effects, climate change is also fueling conflicts at all levels<sup>14</sup>. Effective management of climate change conflicts has been identified as a key measure towards strengthening climate action and delivering climate justice<sup>15</sup>.

This paper critically explores the role of lawyers in climate change conflicts. The paper argues that lawyers are crucial agents in the effective management of climate change conflicts towards climate justice. The paper discusses the nature, causes, and effects of climate change conflicts. In addition, the paper highlights the opportunities and challenges for lawyers in climate change conflicts. It also proposes measures towards defining and strengthening the role of lawyers in climate change conflicts.

### **2.0 Climate Change and Conflicts**

Climate change is fueling and contributing to increased conflict<sup>16</sup>. It has been noted that the environmental effects of climate change, especially

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<sup>12</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

<sup>13</sup> International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at [https://www.iisd.org/system/files/publications/climate\\_change\\_conflict\\_kenya.pdf](https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf) (Accessed on 06/09/2024)

<sup>14</sup> Ibid

<sup>15</sup> United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Available at <https://www.unep.org/news-andstories/pressrelease/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (Accessed on 06/09/2024)

<sup>16</sup> United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate> (Accessed on 07/09/2024)

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the depletion of natural resources creates conditions that increase the risk of violent conflict<sup>17</sup>. For example, impacts such as rising temperatures, more severe and frequent extreme weather events such as droughts and extreme flooding, and erratic rainfall patterns cause or worsen volatile food prices, affect livelihoods, and result in large-scale displacement therefore posing the risk of conflicts<sup>18</sup>. The environmental impacts of climate change including water scarcity, crop failure, food insecurity, migration, and displacement of populations increase the risk of conflict and violence<sup>19</sup>.

Climate change has been identified as a threat multiplier that is already increasing food insecurity, water scarcity and resource competition, while disrupting livelihoods and spurring migration<sup>20</sup>. The effects of climate change are particularly destabilizing in already fragile and disadvantaged regions and communities, including least developed countries, small island developing states and dryland regions therefore increasing the likelihood of conflicts in such settings<sup>21</sup>. As the climate crisis intensifies in the coming years and decades in such settings, more

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<sup>17</sup> International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at [https://www.iisd.org/system/files/publications/climate\\_change\\_conflict\\_kenya.pdf](https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf) (Accessed on 07/09/2024)

<sup>18</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNoteTheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 07/09/2024)

<sup>19</sup> Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

<sup>20</sup> International Crisis Group., 'Climate, Environment and Conflict' Available at <https://www.crisisgroup.org/future-conflict/climate-environment-and-conflict> (Accessed on 07/09/2024)

<sup>21</sup> Grzybowski. A., & Hunnie. C., 'Mediating Peace with Climate Change' Available at <https://ecopeaceme.org/wp-content/uploads/2022/03/mediating-peace-with-climate-change.pdf> (Accessed on 07/09/2024)

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people will be forced to leave their homes due to the impacts of climate change including desertification and rising sea levels<sup>22</sup>.

It has been noted that although climate change may not always be a direct cause of conflict, it can multiply and amplify existing risks to peace and development<sup>23</sup>. For example, it can obstruct access to basic services including water, food, health and housing<sup>24</sup>. Further, people who are already in vulnerable situations including those living in poverty or in situations of conflict may experience the impacts of climate change more acutely because they have less capacity for coping and fewer resources with which to build climate resilience<sup>25</sup>. It has been noted that people enduring conflict are among the most vulnerable to the climate and environmental crises – and they are also among those most neglected by climate action<sup>26</sup>.

Climate change can therefore cause and contribute to conflict. Its impacts including extreme flooding, severe droughts, desertification, biodiversity loss and environmental degradation are displacing millions of people all over the world and intensifying competition over scarce natural resources<sup>27</sup>. This in turn fuels conflict, violence, human right violations and threatens the effectiveness and sustainability of

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<sup>22</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>23</sup> United Nations Environment Programme., 'Climate Action Holds Key to Tackling Global Conflict' Available at <https://www.unep.org/news-and-stories/story/climate-action-holds-key-tackling-global-conflict> (Accessed on 07/09/2024)

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> International Committee of the Red Cross., 'Climate and Conflict' Available at <https://www.icrc.org/en/law-and-policy/climate-and-conflict> (Accessed on 07/09/2024)

<sup>27</sup> Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Available at <https://climate-diplomacy.org/magazine/conflict/four-climate-frontiers-howmediators-can-make-peace-and-help-protect-planet> (Accessed on 07/09/2024)

peacemaking efforts globally<sup>28</sup>. Effective management of climate change conflicts is therefore crucial in strengthening the response towards climate change and delivering climate justice<sup>29</sup>.

### **3.0 The Role of Lawyers in Climate Change Conflicts**

Lawyers have been described as crucial agents in mitigating the climate crisis<sup>30</sup>. It has been argued that in order to remain competitive in today's market, legal professionals should leverage the influence they have in society through lobbying, litigation, and legislation in order to accelerate the green transition towards combating climate change<sup>31</sup>.

Lawyers can play a vital role in mitigating climate change conflicts by strengthening environmental rule of law<sup>32</sup>. The idea of environmental rule of law integrates environmental needs with the essential elements of the rule of law, and provides the basis for improving environmental governance on issues such as climate change<sup>33</sup>. Environmental rule of law highlights environmental sustainability by connecting it with fundamental rights and obligations<sup>34</sup>. According to UNEP, environmental rule of law implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for

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<sup>28</sup> Ibid

<sup>29</sup> United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Op Cit

<sup>30</sup> Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Available at [https://www.legal500.com/global\\_green\\_guide/the-role-of-lawyers-in-the-green-transition-six-ways-of-making-a-positive-impact/](https://www.legal500.com/global_green_guide/the-role-of-lawyers-in-the-green-transition-six-ways-of-making-a-positive-impact/) (Accessed on 08/09/2024)

<sup>31</sup> Ibid

<sup>32</sup> 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Available at <https://www.bestlawyers.com/article/tackle-climate-change-environmental-law/5346> (Accessed on 08/09/2024)

<sup>33</sup> United Nations Environment Programme., 'Environmental Rule of Law' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0> (Accessed on 08/09/2024)

<sup>34</sup> Ibid

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environmental rights and obligations<sup>35</sup>. Environmental rule of law therefore seeks to apply the tenets of the rule of law to environmental governance. It has been argued that laws and their implementation are the essential link between policies aimed at reaching the goals of the Sustainable Development agenda and the actual realization of that agenda<sup>36</sup>. There is a growing awareness that sustainability and Environmental and Social Governance (ESG) are not only a matter of good practice, but the subject of binding and enforceable regulations<sup>37</sup>.

Environmental rule of law is therefore central to achieving the goals of the Sustainable Development agenda including confronting climate change<sup>38</sup>. Lawyers can play a pivotal role in addressing climate change conflicts by using environmental law as a tool to advocate for stronger laws and regulations, holding polluters accountable and promoting sustainable practices<sup>39</sup>. They can also utilize environmental rule of law in addressing the impacts of climate change including conflicts by driving climate friendly policies<sup>40</sup>. Lawyers have the necessary knowledge and power to influence policy and legislative changes by actively engaging in advocacy and lobbying to shape environmental and climate-related regulations<sup>41</sup>. Effective laws, regulations and justice systems based on the rule of law are key in confronting the effects of climate change by providing a basis for protecting environmental rights, increasing institutional capacity to enhance resilience to the effects of climate change, and empowering local communities to know and claim

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<sup>35</sup> Ibid

<sup>36</sup> Stephens. C., 'An Evolving Role for Law and Lawyers in Development' Available at <https://blogs.worldbank.org/en/voices/evolving-role-law-and-lawyers-development> (Accessed on 08/09/2024)

<sup>37</sup> Ibid

<sup>38</sup> United Nations Environment Programme., 'Environmental Rule of Law' Op Cit

<sup>39</sup> 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Op Cit

<sup>40</sup> Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

<sup>41</sup> Ibid

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their rights<sup>42</sup>. Lawyers should therefore utilize environmental rule of law as a tool to address the impacts of climate change including conflicts.

Lawyers also have a key role to play in climate change conflicts by enhancing access to climate justice<sup>43</sup>. The concept of climate justice acknowledges the unequal historical responsibility that countries and communities bear in relation to the climate crisis<sup>44</sup>. Climate justice acknowledges that some nations and communities which due to an unfortunate mixture of economic and geographic vulnerability, continue to shoulder the brunt of the burdens of climate change despite their relative innocence in causing it<sup>45</sup>. It has been noted that the people most vulnerable to the effects of climate change are those who already experience systematic exclusion and marginalization, and will be disproportionately affected<sup>46</sup>. For example, people living in least-developed countries, fragile and conflict affected contexts are the most exposed, due to a combination of geographic factors, economic systems reliant on climate threatened sectors including agriculture and pastoralism, and limited institutional capacity to address climate risks<sup>47</sup>. In addition, women and girls, youth and children, the elderly,

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<sup>42</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Available at [https://www.idlo.int/sites/default/files/pdfs/publications/climate\\_justice\\_policy\\_paper\\_-\\_climate\\_action\\_-\\_final.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/climate_justice_policy_paper_-_climate_action_-_final.pdf) (Accessed on 08/09/2024)

<sup>43</sup> United Nations Development Programme., 'UNDP Launches "Climate Justice" Training for Young Lawyers' Available at <https://www.undp.org/turkiye/press-releases/undp-launches-climate-justicetraining-young-lawyers> (Accessed on 08/09/2024)

<sup>44</sup> United Nations Development Programme., 'Climate change is a Matter of Justice – Here's Why' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 08/09/2024)

<sup>45</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Available at <https://earth.org/principles-ofclimatejustice/#:~:text=That%20response%20should%20be%20based,the%20consequences%20of%20climate%20change> (Accessed on 08/09/2024)

<sup>46</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

<sup>47</sup> Ibid

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indigenous peoples, climate migrants and other excluded and marginalized communities bear the brunt of the impacts of climate justice<sup>48</sup>. Lawyers have a key role to play in delivering Climate Justice to the vulnerable.

Achieving Climate Justice means putting equity and human rights at the core of decision-making and action on climate change<sup>49</sup>. This entails linking human rights and development to tackle pre-existing vulnerabilities and inequalities contributing to and worsened by climate change<sup>50</sup>; prioritizing the rights of the most climate-vulnerable to ensure that no one is left behind<sup>51</sup>; investing in people-centered laws and institutions<sup>52</sup>; building effective justice systems that can resolve climate-related disputes, while protecting the environmental rights of people and communities<sup>53</sup>; and ensuring fair and inclusive climate decision-making<sup>54</sup>.

Lawyers can enhance Climate Justice by ensuring access to justice in climate related conflicts in order to protect the rights of the most vulnerable<sup>55</sup>. Climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture and development, and the right to a clean, healthy, and sustainable environment especially for

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<sup>48</sup> Ibid

<sup>49</sup> United Nations Development Programme., 'Climate change is a Matter of Justice – Here's Why' Op Cit

<sup>50</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Muigua. K., 'Promoting Climate Litigation in Kenya for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Promoting-Climate-litigation-in-Kenya-forSustainability-Kariuki-Muigua-August-2023.pdf> (Accessed on 08/09/2024)

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those in vulnerable situations<sup>56</sup>. Lawyers can represent clients including those in vulnerable situations in litigation related to environmental damage, pollution, and breaches of environmental regulation, among others towards achieving Climate Justice<sup>57</sup>. Climate litigation has been identified as a frontier solution to change the dynamics of the fight against climate change<sup>58</sup>. It has been noted that children and youth, women's groups, local communities, and indigenous peoples, among others, are taking a prominent role in bringing cases to courts and driving climate change governance reform in more and more countries around the world<sup>59</sup>. Lawyers are therefore important in ensuring access to justice for these groups. Lawyers can also foster Climate Justice and help in protecting the rights of individuals and communities that are threatened by climate change by inducing governments and companies to adopt more climate-friendly policies and practices through lobbying and advocacy<sup>60</sup>.

In addition, lawyers can foster Climate Justice by utilizing Alternative Dispute Resolution (ADR) processes to address climate change conflicts<sup>61</sup>. ADR processes including arbitration and mediation are ideal in managing climate change conflicts and delivering Climate Justice<sup>62</sup>.

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<sup>56</sup> Office of the United Nations High Commissioner for Human Rights., 'OHCHR and Climate Change' Available at <https://www.ohchr.org/en/climate-change> (Accessed on 08/09/2024)

<sup>57</sup> Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

<sup>58</sup> United Nations Environment Programme., 'Global Climate Litigation Report: 2023 Status Review' Available at <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review> (Accessed on 08/09/2024)

<sup>59</sup> Ibid

<sup>60</sup>United Nations Development Programme., 'UNDP Launches "Climate Justice" Training for Young Lawyers' Op Cit

<sup>61</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 08/09/2024)

<sup>62</sup> Muigua. K., 'Utilizing Alternative Dispute Resolution in Climate Change Disputes' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Utilizing->



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The advantages of ADR processes in climate change conflicts include allowing parties to select a third party with requisite knowledge and experience in climate change matters, providing a platform for collaborative problem -solving approaches, enhancing the participation of all stakeholders especially in mediation, and ensuring a neutral forum for managing cross border climate change conflicts<sup>63</sup>. As a result, it has been pointed out that ADR mechanisms are suitable in managing environmental and sustainability conflicts and disputes such as those concerning access to natural resources including land and water, renewable energy, carbon reduction, waste management, electrification, sustainable transport and infrastructure among others<sup>64</sup>. Lawyers should therefore advise their clients to embrace ADR for effective management of climate change conflicts while also representing them in arbitration and mediation proceedings.

Lawyers are therefore vital for effective management of climate change conflicts towards climate justice. It is therefore necessary to strengthen the role of lawyers in climate change conflicts.

### **4.0 Conclusion**

Climate change is causing and worsening conflicts<sup>65</sup>. These conflicts affect appropriate climate action while also contributing to inequalities within and among nations especially for most vulnerable including the youth, women, the elderly, persons with disabilities, and indigenous peoples<sup>66</sup>. Effective management of climate change conflicts is therefore

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[Alternative-Dispute-Resolution-in-Climate-Change-Disputes.pdf](#) (Accessed on 09/08/2024)

<sup>63</sup> Ibid

<sup>64</sup> United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNoteTheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 08/09/2024)

<sup>65</sup> United Nations Climate Change., 'Conflict and Climate' Op Cit

<sup>66</sup> Ibid

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necessary in order to strengthen the response towards climate change and achieve climate justice<sup>67</sup>.

Lawyers are important in addressing climate change conflicts. Lawyers hold immense influence in the society which can be leveraged through lobbying, litigation, and legislation in order to accelerate the green transition towards combating climate change<sup>68</sup>. In order to strengthen their role in climate change conflicts, lawyers should continue shaping environmental rule of law and utilizing it as a tool to address the impacts of climate change including conflicts<sup>69</sup>. They should enhance access to climate justice by utilizing avenues such as litigation and ADR to uphold the rights of those in vulnerable situations<sup>70</sup>.

Lawyers can also contribute to climate change mitigation efforts by providing legal advice to clients on climate change compliance and disclosure requirements in order to avoid worsening the climate change crisis and minimize disputes<sup>71</sup>. Further, they can help in structuring sustainable contracts that incorporate climate clauses that promote eco-friendly operations in order to minimize potential conflicts especially those involving private developers and local communities<sup>72</sup>. Further, in addition to structuring sustainable contracts that enhance climate change mitigation, it has been pointed out that lawyers can go a step further and choose to assist clients who are working towards decarbonisation and increased sustainability instead of those who

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<sup>67</sup> Ibid

<sup>68</sup> Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

<sup>69</sup> 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Op Cit

<sup>70</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

<sup>71</sup> Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

<sup>72</sup> Ibid

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work against it<sup>73</sup>. There is also need to adopt sustainable practices in the legal profession to order to reduce its carbon footprint<sup>74</sup>. It is also necessary to foster continuous professional development, education, and training in climate change matters in order to strengthen the role of lawyers in climate change conflicts<sup>75</sup>.

Effective management of climate change conflicts is therefore key in tackling climate change delivering climate justice. The role of lawyers in climate change conflicts should therefore be defined and strengthened in order to make them agents of Climate Justice.

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<sup>73</sup> Ibid

<sup>74</sup> International Bar Association., 'How the Climate Crisis is Changing the Legal Profession' Available at <https://www.ibanet.org/How-the-climate-crisis-is-changing-the-legal-profession> (Accessed on 08/09/2024)

<sup>75</sup> Muigua. K., 'Re-imagining the Role of Lawyers in Climate Justice' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Re-imagining-the-Role-of-Lawyers-in-Climate-Justice-Kariuki-Muigua-20th-July-2023.pdf> (Accessed on 08/09/2024)

## **Actualising The Ideal of Environmental Justice for Africa**

### **Abstract**

*This paper critically examines the ideal of Environmental Justice with particular focus on Africa. It argues that realising the ideal of Environmental Justice is key towards fostering Sustainable Development in Africa. The paper explores the progress made towards achieving Environmental Justice in Africa. It also discusses the obstacles facing the attainment of the ideal of Environmental Justice in Africa. The paper further offers suggestions towards actualising the ideal of Environmental Justice for Africa.*

### **1.0 Introduction**

Achieving Environmental Justice has become an urgent priority in light of mounting environmental problems facing the world including the triple planetary crisis of climate change, biodiversity and ecosystem loss, and pollution<sup>1</sup>. These challenges undermine the enjoyment and protection of fundamental human rights and contribute to environmental injustices, disproportionately affecting the most vulnerable, marginalized and excluded people and communities including women, the youth, persons with disabilities and indigenous peoples and communities<sup>2</sup>. It has been noted that current environmental crises are intertwined with the crisis of inequality and are inextricably linked to the protection and fulfilment of human rights and Sustainable Development<sup>3</sup>.

Environmental Justice provides a framework for addressing environmental inequities, disparate impact of environmental crises, and

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<sup>1</sup> United Nations Development Programme., 'Environmental Justice' Available at <https://www.undp.org/rolhr/justice/environmental-justice> (Accessed on 30/09/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

unequal protection in environmental matters<sup>4</sup>. Environmental Justice refers to the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies<sup>5</sup>. It encompasses 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>6</sup>.

The ideal of Environmental Justice therefore seeks to ensure that every person is fully protected from disproportionate and adverse human health and environmental effects<sup>7</sup>; has equitable access to a healthy, sustainable, and resilient environment<sup>8</sup>; and participates in meaningful engagement in environmental decision-making<sup>9</sup>. This ideal therefore comprises of substantive and procedural facets of justice<sup>10</sup>. Substantive

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<sup>4</sup> Ekhatior. E., & Agbaitoro. G., 'The Role of Environmental Justice in Promoting the Rule of Law in Natural Resource Conflict Resolution in Africa: A Case Study of Nigeria' Available at [https://www.researchgate.net/publication/366640118\\_The\\_Role\\_of\\_Environmental\\_Justice\\_in\\_Promoting\\_the\\_Rule\\_of\\_Law\\_in\\_Natural\\_Resource\\_Conflict\\_Resolution\\_in\\_Africa\\_A\\_Case\\_Study\\_of\\_Nigeria](https://www.researchgate.net/publication/366640118_The_Role_of_Environmental_Justice_in_Promoting_the_Rule_of_Law_in_Natural_Resource_Conflict_Resolution_in_Africa_A_Case_Study_of_Nigeria) (Accessed on 30/09/2024)

<sup>5</sup> United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Environmental-Justice-TechnicalReport.pdf> (Accessed on 30/09/2024)

<sup>6</sup> Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at <https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml> (Accessed on 30/09/2024)

<sup>7</sup> United States Environmental Protection Agency., 'Environmental Justice' Available at <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (Accessed on 30/09/2024)

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Toxopeus. M., & Kotze. L., 'Promoting Environmental Justice through Civil-Based Instruments in South Africa' Available at <https://docs.manupatra.in/newsline/articles/Upload/A226F6AC-CCFC-4251-92AA-58CBF12F9BF7.pdf> (Accessed on 30/09/2024)

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Environmental Justice focuses on the equitable distribution of environmental benefits and burdens<sup>11</sup>. Procedural Environmental Justice on the other hand advocates for informed and active participation in environmental decision-making and governance while also providing the means to achieve the equitable distribution of environmental benefits and burdens<sup>12</sup>.

Environmental Justice is a key ideal that can contribute to fighting discrimination in environmental governance, eliminating poverty and reducing inequalities<sup>13</sup>. It provides a platform for accountability towards the protection of rights and the prevention and punishment of wrongs related to the disproportionate impacts of environmental challenges on the poor and vulnerable in society including climate change, pollution and degradation of ecosystem services, and from inequitable access to and benefits from the use of natural assets and extractive resources<sup>14</sup>. This ideal is anchored in human rights and is a key tool towards actualizing the human right to a clean, healthy, and sustainable environment<sup>15</sup>.

This paper critically examines the ideal of Environmental Justice with particular focus on Africa. It argues that realising the ideal of Environmental Justice is key towards fostering Sustainable Development in Africa. The paper explores the progress made towards achieving Environmental Justice in Africa. It also discusses the obstacles

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> United Nations Development Programme., 'Environmental Justice: Comparative Experiences in Legal Empowerment' Available at <https://www.undp.org/sites/g/files/zskgke326/files/publications/Environmental-Justice-Comparative-Experiences.pdf> (Accessed on 30/09/2024)

<sup>14</sup> Ibid

<sup>15</sup> United Nations Development Programme., 'Environmental Justice and the Right to a Clean, Healthy, and Sustainable Environment' Available at <https://www.undp.org/rollhr/human-rights/environmentaljustice> (Accessed on 30/09/2024)

facing the attainment of the ideal of Environmental Justice in Africa. The paper further offers suggestions towards actualising the ideal of Environmental Justice for Africa.

## **2.0 Environmental Justice Challenges in Africa**

Attaining Environmental Justice is a key priority for Africa. The continent is rich in natural resources ranging from arable land, water, oil, natural gas, minerals, forests and wildlife<sup>16</sup>. It has been noted that Africa holds a huge proportion of the world's natural resources, both renewables and non-renewables<sup>17</sup>. Despite being endowed with natural resources, Africa faces serious environmental challenges, including deforestation, land degradation, biodiversity loss and climate change<sup>18</sup>. According to the United Nations Environment Programme (UNEP), Africa loses a huge percentage of its natural capital annually through activities such as illicit financial flows, illegal mining, illegal logging, the illegal trade in wildlife, unregulated fishing and environmental degradation and loss<sup>19</sup>.

Natural resource- based conflicts are also negatively impacting much needed development in Africa<sup>20</sup>. Natural resources have motivated and fueled armed conflicts in many parts of Africa threatening peace, security, and stability<sup>21</sup>. Conflicts over natural resources – such as land,

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<sup>16</sup> United Nations Environment Programme., 'Our Work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa> (Accessed on 30/09/2024)

<sup>17</sup> Ibid

<sup>18</sup> Jeffang, K., 'Hope for Environmental Justice in Africa' Available at <https://dialogue.earth/en/justice/hope-for-environmental-justice-in-africa/> (Accessed on 30/09/2024)

<sup>19</sup> United Nations Environment Programme., 'Our Work in Africa' Op Cit

<sup>20</sup> Ekhatior. E., & Agbaitoro. G., 'The Role of Environmental Justice in Promoting the Rule of Law in Natural Resource Conflict Resolution in Africa: A Case Study of Nigeria' Op Cit

<sup>21</sup> Mwanika. PAN., 'Natural Resource Conflict: Management Processes and Strategies in Africa' Available at <https://www.files.ethz.ch/isn/136685/PAPER216.pdf> (Accessed on 30/09/2024)

fresh water, minerals or fishing rights – are prevalent in Africa<sup>22</sup>. The continent has for many decades experienced the ‘resource curse phenomenon’ which refers to the paradox that countries endowed with natural resources tend to be embroiled in conflicts and have high incidences of poverty<sup>23</sup>.

There has been a rise in Environmental Justice claims and actions in Africa due to an increase in activities in the extractive sector leading to a dramatic transformation of landscapes, pressures on arable land, destruction of ecosystems critical to rural livelihoods, and pollution of air and water impacting human health and ecosystem services<sup>24</sup>. It has been noted that relatively unconstrained executive power in most African countries, strong incentives for private investment and powerful interests by external entities in extracting Africa’s natural resources have converged to create rapidly growing challenges of environmental sustainability and social equity in the continent perpetuating environmental injustices<sup>25</sup>. Africa’s natural resources including oil, gas, and minerals are often exploited by foreign entities at the expense of the continent’s development perpetuating poverty and underdevelopment<sup>26</sup>. Further, the exploration of Africa’s natural resources is associated with resource-based conflicts, human rights violations and environmental

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<sup>22</sup> Brown, O., & Keating, M., ‘Addressing Natural Resource Conflicts: Working towards more Effective Resolution of National and Sub-National Resource Disputes’ Available at <https://www.chathamhouse.org/2015/06/addressing-natural-resource-conflicts-working-towards-more-effective-resolution-national> (Accessed on 30/09/2024)

<sup>23</sup> Henri, A., ‘Natural Resources Curse: A Reality in Africa.’ *Resources Policy*, Volume 63, 2019

<sup>24</sup> United Nations Development Programme., ‘Environmental Justice: Comparative Experiences in Legal Empowerment’ Op Cit

<sup>25</sup> Ibid

<sup>26</sup> Bassey, N., ‘The Struggle for Environmental Justice in Africa’ Available at <https://www.downtoearth.org.in/africa/the-struggle-for-environmental-justice-in-africa-90314#:~:text=The%20struggle%20for%20environmental%20justice%20in%20Africa%20is%20complex%20and,not%20inanimate%20or%20lifeless%20entities.> (Accessed on 01/10/2024)



degradation, loss of biodiversity and soil and air pollution as a result of oil spillages and unsustainable mining activities<sup>27</sup>.

The shift to renewable energy is also fueling environmental injustices in Africa<sup>28</sup>. Renewable energy presents numerous opportunities in the quest towards energy transition and energy justice in Africa<sup>29</sup>. Renewable energy can help address many of Africa's social, economic, health and environmental challenges and foster the realization of a climate-safe future in which Sustainable Development goals are actualized<sup>30</sup>. Africa has vast potential for renewable energy with sources such as wind, solar, hydro, and geothermal energy being abundant throughout the continent<sup>31</sup>. However, it has been noted that the extraction of critical minerals for renewable energy in Africa is done without prior consultation with and consent of the people of Africa often causing environmental degradation and creating environmental injustices<sup>32</sup>.

Climate change is also contributing to environmental injustices in Africa. Africa is classified as a continent that is highly vulnerable to climate change due to several reasons including endemic poverty and high dependence on rain-fed agriculture, complex governance and institutional dimensions, limited access to capital including markets and technology, weak infrastructure, ecosystem degradation and poor management of natural resources, disasters both natural and man-made

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<sup>27</sup> Ajibade, L.T & Awomuti, A.A. 'Petroleum Exploitation or Human Exploitation? An Overview of Niger Delta Oil Producing Communities in Nigeria' *African Research Review* Vol. 3 (1), 2009. Pp. 111-124

<sup>28</sup> Bassey. N., 'The Struggle for Environmental Justice in Africa' Op Cit

<sup>29</sup> International Renewable Energy Agency., 'Renewable Energy Market Analysis: Africa and its Regions.' Available at <https://www.irena.org/publications/2022/Jan/Renewable-Energy-Market-Analysis-Africa> (Accessed on 01/10/2024)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Bassey. N., 'The Struggle for Environmental Justice in Africa' Op Cit

and conflicts<sup>33</sup>. Despite having contributed the least to global warming and having the lowest emissions, Africa faces exponential collateral damage from the effects of climate change posing systemic risks to its economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo its modest development gains and slip the continent into higher levels of extreme poverty<sup>34</sup>. Climate change creates environmental injustices in Africa with its extreme impacts including drought, water scarcity, and severe flooding disproportionately affecting the poor despite the continent's negligible contribution to the climate crisis<sup>35</sup>.

In light of the foregoing challenges, actualising Environmental Justice is necessary for Africa.

### **3.0 Actualising Environmental Justice for Africa**

The ideal of Environmental Justice in Africa seeks to foster the right to have access to, use and control of natural resources by communities<sup>36</sup>. It has further been opined that Environmental Justice in Africa seeks to ensure the equitable distribution of environmental benefits, rectification and retribution of environmental abuses, restoration of nature, and the fair exchange of resources<sup>37</sup>. Achieving Environmental Justice in Africa

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<sup>33</sup> Kimaro. Didas et al., 'Climate Change Mitigation and Adaptation in ECA/SADC/COMESA Region: Opportunities and Challenges.' Available at [https://www.researchgate.net/publication/346628199\\_Climate\\_Change\\_Mitigation\\_and\\_Adaptation\\_in\\_ECASADCCOMESA\\_region\\_Opportunities\\_and\\_Challenges](https://www.researchgate.net/publication/346628199_Climate_Change_Mitigation_and_Adaptation_in_ECASADCCOMESA_region_Opportunities_and_Challenges) (Accessed on 01/10/2024)

<sup>34</sup> African Development Bank Group., 'Climate Change in Africa.' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 01/10/2024)

<sup>35</sup> United Nations Environment Programme., 'Responding to Climate Change.' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 01/10/2024)

<sup>36</sup> Obiora, L., 'Symbolic Episodes in the Quest for Environmental Justice'. *Human Rights Quarterly*, 21, 2, 1991. P. 477.

<sup>37</sup> Ekhatior. E., & Agbaitoro. G., 'The Role of Environmental Justice in Promoting the Rule of Law in Natural Resource Conflict Resolution in Africa: A Case Study of Nigeria' Op Cit

therefore entails ensuring the equitable distribution of environmental risks and benefits<sup>38</sup>; fair and meaningful participation in environmental decision-making by all persons<sup>39</sup>; recognition of community ways of life, local and indigenous knowledge, and cultural difference<sup>40</sup>; and the capability of communities and individuals to function and flourish in the society<sup>41</sup>.

In order to actualise the ideal of Environmental Justice for Africa, it is imperative to strengthen environmental governance in the continent<sup>42</sup>. Sound environmental governance is key in actualising the ideal of Environmental Justice<sup>43</sup>. Through effective environmental governance, it is possible to realise both procedural and distributive elements of Environmental Justice including participation in environmental decision-making, access to environmental information, and the equitable distribution of environmental benefits and burdens<sup>44</sup>. It is therefore vital to strengthen environmental governance in Africa by promoting environmental rule of law; strengthening environmental laws, policies, and institutions; and fostering civic engagement in environmental decision-making in order to actualise the ideal of Environmental Justice<sup>45</sup>.

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<sup>38</sup> Akeem. A., 'Critical Notes on Environmental Justice and Sustainable Development' *International Journal of Sociology and Anthropology*, Volume 10, No. 3, :21-26

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2024/01/Embracing-Sound-Environmental-Governance-in-Africa-1.pdf> (Accessed on 01/10/2024)

<sup>43</sup> Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' *Ecological Economics.*, Volume 63, No. 1 (2007): 93-103, p 94

<sup>44</sup> Ibid

<sup>45</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Op Cit

### *Actualising The Ideal of Environmental Justice for Africa*

Realising the right to a clean, healthy, and sustainable environment in Africa is also critical in achieving Environmental Justice<sup>46</sup>. Since human rights and the environment are interdependent; a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights including the rights to life, health, food, water and sanitation and development, among others<sup>47</sup>. Realising the right to a clean, healthy, and sustainable environment for all persons is key in empowering the people and groups that are particularly affected by and most at risk from environmental degradation including indigenous peoples, women, children, the elderly, persons with disabilities, and the poor towards Environmental Justice<sup>48</sup>. It has been noted that achieving Environmental Justice requires respecting, protecting and fulfilling of environmental rights including the right to a clean, healthy, and sustainable environment<sup>49</sup>. It is therefore necessary to fulfill the right to a clean, healthy, and sustainable environment in Africa in order to actualise the ideal of Environmental Justice.

Further, it is imperative to enhance access to justice in environmental matters<sup>50</sup>. Access to justice in environmental matters is a key pillar of Environmental Justice<sup>51</sup>. It gives individuals a possibility to challenge through legal processes the legality of decisions, acts, or omissions that harm the environment<sup>52</sup>. It is therefore imperative to enhance access to justice in environmental matters through avenues such as litigation and

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<sup>46</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> (Accessed on 01/10/2024)

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Brocca. L., 'Access to Justice in Environmental Matters' Available at <https://just-access.de/access-to-justice-in-environmental-matters/> (Accessed on 01/10/2024)

<sup>51</sup> Ibid

<sup>52</sup> Ibid

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Alternative Dispute Resolution (ADR) processes<sup>53</sup>. For example, ADR is an appropriate tool for individuals and communities to give their own voices, to share in decision-making, and to promote innovative solutions in respect of environmental problems towards actualising the ideal of Environmental Justice<sup>54</sup>. ADR techniques such as mediation and negotiation are also ideal in enhancing Environmental Justice by enhancing collaboration and cooperation towards effective management of environmental conflicts<sup>55</sup>. Courts are also key in enhancing Environmental Justice through adjudication of environmental disputes and implementing the purposes of environmental legislation<sup>56</sup>. It is therefore necessary to foster access to justice in environmental matters in order to actualise the ideal of Environmental Justice in Africa.

Finally, it is vital to foster Climate Justice in Africa<sup>57</sup>. It has been noted that African countries continue to disproportionately shoulder the impacts of climate change on their environments, their economies, their resources and their infrastructure<sup>58</sup>. This leads to greater vulnerability

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<sup>53</sup> Muigua. K., 'Achieving Environmental Justice through Alternative Dispute Resolution and the Court Process' Available at <https://kmco.co.ke/wp-content/uploads/2024/09/Achieving-Environmental-Justice-through-Alternative-Dispute-Resolution-and-the-Court-Process-2.pdf> (Accessed on 01/10/2024)

<sup>54</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at <https://www.eli.org/environmental-governance/community-guideusing-alternative-dispute-resolution-secure-1> (Accessed on 01/10/2024)

<sup>55</sup> Ibid

<sup>56</sup> The Role of the Courts in Delivering Environmental Justice., Available at [https://lec.nsw.gov.au/documents/speeches-and-papers/Preston\\_CJ\\_-\\_The\\_Role\\_of\\_the\\_Courts\\_in\\_Delivering\\_Environmental\\_Justice.pdf](https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Role_of_the_Courts_in_Delivering_Environmental_Justice.pdf) (Accessed on 01/10/2024)

<sup>57</sup> Williams. J et al., 'Africa and Climate Justice at COP27 and Beyond: Impacts and Solutions through an Interdisciplinary Lens' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10476578/> (Accessed on 01/10/2024)

<sup>58</sup> Ibid

and increased exposure to the negative effects climate change in Africa<sup>59</sup>. Climate change therefore reinforces and exacerbates existing inequalities in Africa<sup>60</sup>. Fostering Climate Justice is vital in addressing these inequalities towards realising Environmental Justice. Climate Justice entails putting equity and human rights at the core of decision-making and action on climate change<sup>61</sup>. Achieving Climate Justice entails ensuring representation, inclusion, and protection of the rights of those most vulnerable to the effects of Climate Change including the youth, women, indigenous peoples, persons with disabilities, and the elderly<sup>62</sup>.

#### **4.0 Conclusion**

Environmental Justice is an urgent need for Africa in light of environmental problems facing the continent including natural resource- based conflicts, environmental degradation, loss of biodiversity, pollution, and climate change<sup>63</sup>. The ideal of Environmental Justice in Africa seeks to ensure the equitable distribution of environmental benefits, rectification and retribution of environmental abuses, restoration of nature, and the fair exchange of resources<sup>64</sup>. In order to realise this ideal it is imperative to strengthen environmental governance in Africa<sup>65</sup>; foster the right to a clean, healthy,

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<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> United Nations Development Programme., 'Climate Change is a Matter of Justice – Here's Why' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-hereswhy> (Accessed on 01/10/2024)

<sup>62</sup> Ibid

<sup>63</sup> Jeffang. K., 'Hope for Environmental Justice in Africa' Op Cit

<sup>64</sup> Ekhatior. E., & Agbaitoro. G., 'The Role of Environmental Justice in Promoting the Rule of Law in Natural Resource Conflict Resolution in Africa: A Case Study of Nigeria' Op Cit

<sup>65</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Op Cit

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and sustainable environment<sup>66</sup>; enhance access to justice in environmental matters<sup>67</sup>; and foster climate justice<sup>68</sup>.

Actualising the ideal of Environmental Justice for Africa is necessary and achievable for posterity.

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<sup>66</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Op Cit

<sup>67</sup> Brocca. L., 'Access to Justice in Environmental Matters' Op Cit

<sup>68</sup> Wiliams. J et al., 'Africa and Climate Justice at COP27 and Beyond: Impacts and Solutions through an Interdisciplinary Lens' Op Cit

## **Resolving Multicultural Conflicts Through Negotiation, Diplomacy and Mediation in Africa**

### *Abstract*

*This paper critically examines the suitability of negotiation, diplomacy, and mediation in resolving multicultural conflicts in Africa. The paper posits that negotiation, diplomacy, and mediation are ideal processes in managing multicultural conflicts in Africa. It examines the relationships between culture and conflicts and argues that culture plays a pivotal role in conflict management. The paper discusses the influence of culture on conflicts in Africa and the nature of multicultural conflicts in the continent. In addition, the paper explores ways through which negotiation, diplomacy, and mediation can be effectively harnessed towards resolving multicultural conflicts in Africa.*

### **1.0 Introduction**

Negotiation, diplomacy, and mediation are key conflict management strategies. Negotiation involves direct discussions between parties to find a mutually acceptable solution<sup>1</sup>. It has been described as an informal process that involves parties to a conflict meeting to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party<sup>2</sup>. Negotiation is one of the most fundamental methods of managing conflicts which offers parties maximum control over the process and outcome<sup>3</sup>. Negotiation can take place informally or through formal diplomatic channels<sup>4</sup>. According to

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<sup>1</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Available at <https://remedialcorner.com/blog/comprehensive-guide-to-conflict-resolution-traditional-and-modern-methods-in-east-africa/> (Accessed on 01/10/2024)

<sup>2</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>3</sup> Ibid

<sup>4</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Op Cit



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the United Nations, negotiation is a way of coping with disagreement, with varying views and with different objectives through agreement<sup>5</sup>.

Diplomacy has been defined as the art and practice of conducting negotiations and maintaining relationships among nations in order to address common concerns, settle disputes, and promote mutual interests without resorting to violence or coercion<sup>6</sup>. Diplomacy has also been described as the art and science of maintaining peaceful relationships between nations, groups, or individuals<sup>7</sup>. Diplomacy is the cornerstone of international relations providing a suitable and peaceful approach for nations to engage with one another<sup>8</sup>. Diplomacy provides critical strategies utilised by nations to navigate complex issues in the global landscape, often involving negotiations, alliances, and policies aimed at achieving national interests while maintaining international peace and security<sup>9</sup>. Diplomacy fosters friendly relations among nations through communication, negotiation, and cooperation therefore enabling them to resolve conflicts, establish economic partnerships, and promote cultural exchange<sup>10</sup>. Diplomacy therefore plays a pivotal role in

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<sup>5</sup> United Nations., 'Fundamental of Negotiation' Available at <https://www.un.org/en/model-united-nations/fundamentals-negotiation> (Accessed on 01/10/2024)

<sup>6</sup> The Role of Diplomacy in Resolving Global Conflicts., Available at <https://medium.com/@ttnpub/the-role-of-diplomacy-in-resolving-global-conflicts-d3285871a2b9#:~:text=Preventive%20diplomacy%20is%20a%20vital,maintain%20international%20peace%20and%20security> (Accessed on 01/10/2024)

<sup>7</sup> Diplomacy., Available at <https://education.nationalgeographic.org/resource/diplomacy/> (Accessed on 01/10/2024)

<sup>8</sup> The Role of Diplomacy in Resolving Global Conflicts., Op Cit

<sup>9</sup> Diplomatic Strategies., Available at <https://www.studysmarter.co.uk/explanations/spanish/spanish-social-issues/diplomatic-strategies/#:~:text=Diplomatic%20strategies%20are%20critical%20tools,interests%20while%20maintaining%20international%20peace> (Accessed on 01/10/2024)

<sup>10</sup> Ibid

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shaping the world's geopolitical dynamics<sup>11</sup>. It has been noted that diplomacy is not only about negotiations and treaties among nations but it also involves building trust and understanding between different cultures and governments<sup>12</sup>.

Mediation is a process of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information, and thus aiding in the process of reaching an agreement<sup>13</sup>. It has also been defined as a constructive conversation between people in conflict facilitated by a neutral third person known as a mediator<sup>14</sup>. The United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>15</sup>. It further notes that the premise of mediation is that in the right environment, parties to a conflict can improve their relationships and move towards cooperation<sup>16</sup>. Mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock<sup>17</sup>. They therefore involve a neutral third party known as a mediator who facilitates communication, promotes understanding, focuses the parties on their

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<sup>11</sup> Ibid

<sup>12</sup> The Role of Diplomacy in Resolving Global Conflicts., Op Cit

<sup>13</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

<sup>14</sup> What is Mediation?., Available at <https://www.nyc.gov/site/oath/conflict-resolution/what-is-mediation.page#:~:text=Mediation%20is%20a%20constructive%20conversation,conflict%20and%20repair%20professional%20relationships> (Accessed on 01/10/2024)

<sup>15</sup> United Nations., 'Guidance for Effective Mediation' Available at [https://unrcca.unmissions.org/sites/default/files/dpa\\_msu\\_guidance\\_english\\_web.pdf](https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf) (Accessed on 01/10/2024)

<sup>16</sup> Ibid

<sup>17</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

interests, and uses creative problem- solving to enable the parties to reach their own agreement<sup>18</sup>. It has been noted that mediation provides participants an opportunity to collaboratively design creative solutions to conflict and repair or even strengthen their relationships<sup>19</sup>.

This paper critically examines the suitability of negotiation, diplomacy, and mediation in resolving multicultural conflicts in Africa. The paper posits that negotiation, diplomacy, and mediation are ideal processes in managing multicultural conflicts in Africa. It examines the relationships between culture and conflicts and argues that culture plays a pivotal role in conflict management. The paper discusses the influence of culture on conflicts in Africa and the nature of multicultural conflicts in the continent. In addition, the paper explores ways through which negotiation, diplomacy, and mediation can be effectively harnessed towards resolving multicultural conflicts in Africa.

## **2.0 Conflict Management and Culture**

The term culture has been defined as a set of attitudes, values, beliefs, and behaviors shared by a group of people, but different for each individual, communicated from one generation to the next<sup>20</sup>. Culture can also be viewed as a system of shared symbols (including language) that create meaning and a sense of belonging<sup>21</sup>. It has also been defined as a complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by human beings as members of a society<sup>22</sup>. The concept of culture can also be understood

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<sup>18</sup> Ibid

<sup>19</sup> What is Mediation?., Op Cit

<sup>20</sup> Spencer-Oatey. H., 'What is Culture?.' Available at [https://warwick.ac.uk/fac/soc/al/globalpadrip/openhouse/interculturalskills\\_old/core\\_concept\\_compilations/global\\_pad\\_-\\_what\\_is\\_culture.pdf](https://warwick.ac.uk/fac/soc/al/globalpadrip/openhouse/interculturalskills_old/core_concept_compilations/global_pad_-_what_is_culture.pdf) (Accessed on 01/10/2024)

<sup>21</sup> LeBaron. Michelle., *'Bridging Cultural Conflicts: A New Approach for a Changing World'*, Jossey-Bass, San Francisco, CA, 2003

<sup>22</sup> Spencer-Oatey. H., 'What is Culture?.' Op Cit

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as the collective programming of the mind that distinguishes the members of one group or category of people from another<sup>23</sup>.

Culture is an essential component of conflicts and the conflict management process<sup>24</sup>. For example, culture shapes how human beings view the world<sup>25</sup>. It affects perceptions, behaviour, and expectations<sup>26</sup>. Differences in culture can be seen in instances such as how a particular society handles social inequalities resulting from wealth, fame and power; how individuals feel independent compared to being interdependent in a given society; the division of roles between men and women in a society; and whether a society is forward-looking with long term objectives or focuses on the present<sup>27</sup>. These differences in culture shape our understandings of relationships, and of how to deal with the conflict and harmony that are always present whenever two or more people interact<sup>28</sup>. It has been noted that when individuals from different cultures interact with each other, misunderstandings and miscommunications are likely to arise often resulting in conflict development or conflict escalation<sup>29</sup>.

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<sup>23</sup> Sher. M., 'Embracing Cultural Diversity in Mediation' Available at <https://mediate.com/embracing-cultural-diversity-in-mediation/#:~:text=Cultural%20differences%20often%20result%20in,thereby%20hindering%20the%20mediation%20process> (Accessed on 01/10/2024)

<sup>24</sup> LeBaron. M., 'Culture and Conflict.' Available at [https://www.beyondintractability.org/essay/culture\\_conflict](https://www.beyondintractability.org/essay/culture_conflict) (Accessed on 01/10/2024)

<sup>25</sup> Abala. A., 'Bridging Cultures in Mediation: Insights from a Multicultural Mediation Panel' Available at <https://mediationblog.kluwerarbitration.com/2024/07/15/bridging-cultures-in-mediation-insights-from-a-multicultural-mediation-panel/#:~:text=The%20panel%20shared%20that%20mediators,also%20go%20beyond%20cultural%20nuances> (Accessed on 01/10/2024)

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> LeBaron. M., 'Culture and Conflict.' Op Cit

<sup>29</sup> LeBaron. Michelle., 'Bridging Cultural Conflicts: A New Approach for a Changing World' Op Cit

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It has been asserted that all conflicts entail interpersonal interactions that occur in the context of cultures<sup>30</sup>. Culture shapes not only the possibilities for conflict resolution or transformation, but also the naming, interpretation, enactment and course of conflicts<sup>31</sup>. Culture therefore shapes our understanding of conflict by affecting the ways we name, frame, blame, and attempt to tame conflicts<sup>32</sup>. In addition, it has been noted that whether a conflict exists at all is a question of culture<sup>33</sup>. Due to differences in attitudes, belief systems, religious practices, language, social set ups and economic practices among different cultures, conflicts may take different forms in each culture<sup>34</sup>. Therefore, conflict may be emphasized in one culture and ignored in another<sup>35</sup>.

Culture is therefore a key component of conflict and conflict management approaches. Differences in culture are often the grounds for conflict, and conflict resolution is largely determined by how different cultural groups adapt to each other<sup>36</sup>. At an intragroup level, culture shapes the way individuals perceive a conflict and respond to it<sup>37</sup>. Culture is thus inextricably linked to conflict. A person's cultural

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<sup>30</sup> Weiss, A., 'Power and Difference: An Extended Model for the Conflict Potentials in the Negotiation of Intercultural Conflicts'. 2000, Berlin: Berghof Institute. Available at <http://www.berghof-center.org/> (Accessed on 01/10/2024)

<sup>31</sup> LeBaron. M., 'Transforming Cultural Conflict in an Age of Complexity' Available at <https://researchers.allard.ubc.ca/ws/portalfiles/portal/39713135/Transforming%20Cultural%20Conflict%20in%20an%20Age%20of%20Complexity.pdf> (Accessed on 01/10/2024)

<sup>32</sup> LeBaron. M., 'Culture and Conflict.' Op Cit

<sup>33</sup> Ibid

<sup>34</sup> Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' *International Journal of Intercultural Relations* 30 (2006) 579-603

<sup>35</sup> Ibid

<sup>36</sup> Worchel. S., 'Culture's Role in Conflict and Conflict Management: Some Suggestions, Many Questions' Available at <https://www.sciencedirect.com/science/article/abs/pii/S0147176705001343#:~:text=These%20cultural%20differences%20are%20the,conflict%20and%20respond%20to%20it.> (Accessed on 01/10/2024)

<sup>37</sup> Ibid

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background therefore heavily influences every aspect of the conflict process, ranging from the goals that are considered incompatible, why they are seen as so, what one chooses to do about incompatibility of goals, and whether the outcome is considered to be satisfactory or not<sup>38</sup>. In addition, the nature of conflict itself varies across cultures; where it may be emphasized in one culture, it may be ignored in another<sup>39</sup>. Therefore, whenever disagreements arise in families, organizations, or communities, culture is always present, shaping perceptions, attitudes, behaviors, and outcomes<sup>40</sup>.

An adequate response to conflict thus requires an understanding of the cultural dynamics in place<sup>41</sup>. It has been noted that culture hugely shapes conflict resolution styles, with individuals in a more supportive and cooperative culture employing more collaborative approaches to conflict resolution<sup>42</sup>. Some cultures especially in Western societies focus on the individual rather than the collective as the unit of social organization and public policy<sup>43</sup>. Conflict management in such cultures often takes the form of confrontational approaches employing adversarial techniques due to focus on individuals' rights and interests<sup>44</sup>. Other societies especially those in Africa operate in a cultural and political landscape that gives precedence to communal rights as

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<sup>38</sup> Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' Op Cit

<sup>39</sup> Ibid

<sup>40</sup> LeBaron. M., 'Culture and Conflict.' Op Cit

<sup>41</sup> Ibid

<sup>42</sup> Mohammed. U., White. G., & Prabhakar. G., 'Culture and Conflict Management Style of International Project Managers' *International Journal of Business and Management.*, Volume 3, No. 5 (2009)

<sup>43</sup> Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at [https://www.researchgate.net/publication/228182138\\_Alternative\\_Dispute\\_Resolution\\_ADR\\_in\\_SubSaharan\\_Africa\\_The\\_Role\\_of\\_Customary\\_Systems\\_of\\_Conflict\\_Resolution\\_CSCR](https://www.researchgate.net/publication/228182138_Alternative_Dispute_Resolution_ADR_in_SubSaharan_Africa_The_Role_of_Customary_Systems_of_Conflict_Resolution_CSCR) (Accessed on 01/10/2024)

<sup>44</sup> Ibid

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opposed to individual rights and interests<sup>45</sup>. In such cultures, conflict management usually takes the form of customary conflict resolution which focuses on restorative justice in order to build lasting relationships among conflicting parties towards collective peace and harmony in the society<sup>46</sup>.

It is therefore imperative to understand and recognize the influence of culture in conflicts for effective conflict management.

### **3.0 Resolving Multicultural Conflicts through Negotiation, Diplomacy and Mediation in Africa**

Multicultural conflicts arise due to differences in values, norms, and behavior of people from different cultures<sup>47</sup>. For example, when a person from a particular culture acts according to the values and norms of his or her culture; another person holding a different worldview might interpret his or her behavior from an opposite standpoint<sup>48</sup>. Such a situation creates misunderstanding that can lead to conflicts. Multicultural conflicts are inevitable in a world of diversity and interconnectedness<sup>49</sup>. Effective management of multicultural conflicts requires an understanding of cultural differences and building bridges across different cultures<sup>50</sup>.

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<sup>45</sup> Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' Op Cit

<sup>46</sup> Ibid

<sup>47</sup> Williams. A., 'Resolving Conflict in a Multicultural Environment' *MCS Conciliation Quarterly.*, 1994, pp 2-6

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' Op Cit

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Africa has a rich history and culture which is diverse and varies not only from one country to another but also within regions and countries<sup>51</sup>. The continent is inhabited by various ethnic groups with their different languages, modes of dressing, eating, dancing and even greeting habits<sup>52</sup>. However, it has been noted that despite the presence of diverse cultures in the continent, Africans do share some dominant traits in their belief systems and have similar values that mark them out from the rest of the world<sup>53</sup>. Before colonialism, most African societies, if not all, were living communally and were organized along clan, village, tribal or ethnic lines<sup>54</sup>. As a result, the spirit of collectivism permeates almost all African societies in that they live an inclusive as against exclusive lifestyle apparent in the western world<sup>55</sup>.

Multicultural conflicts are a common phenomenon in Africa. For example, ethnic clashes are prevalent in the continent related to land ownership, resource scarcity, economic disparities, political exclusion, religious differences, and lack of effective conflict resolution mechanisms among other factors<sup>56</sup>. It has been noted that many postcolonial African states have experienced violent intra state conflicts

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<sup>51</sup> Africa Union., 'African Culture: Versatile Approach to Realize the Africa we Want.' Available at <https://www.africanunion-un.org/post/african-culture-versatile-approach-to-realize-the-africa-wewant> (Accessed on 02/10/2024)

<sup>52</sup> Idang. G., 'African Culture and Values' Available at [https://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1561-40182015000200006](https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1561-40182015000200006) (Accessed on 02/10/2024)

<sup>53</sup> Ibid

<sup>54</sup> Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elderssuccesseschallenges-and-opportunities-1.pdf> (Accessed on 02/10/2024)

<sup>55</sup> Oladipupo. S., 'Rethinking the African Spirit of Collectivism as a Tool for African Empowerment.' *Human Discourse.*, Volume 2, No. 1 (2022)

<sup>56</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Available at <https://remedialcorner.com/blog/comprehensive-guide-to-conflict-resolution-traditional-and-modern-methods-in-east-africa/> (Accessed on 02/10/2024)



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including those involving different cultural and ethnic groups prompting the quest for viable approaches to conflict resolution and peace-building<sup>57</sup>. The desire by certain ethnic and cultural groups to control power and resources at the expense of others as has been witnessed in many African countries has fueled civil wars, armed insurrections, ethnic conflicts, genocide, xenophobia, and intracommunity and domestic conflict prevalent in the continent especially in countries that experienced prolonged foreign domination<sup>58</sup>.

The prevalence of conflicts including multicultural conflicts is major threat to peace and development in Africa. Conflicts in Africa cause not only immense human suffering but also substantial economic losses<sup>59</sup>. They place huge burdens on the social development of countries, by decreasing revenues, increasing defense expenditure, and diverting funds away from social and development initiatives<sup>60</sup>. Africa continues to face a series of complex multi-layered political challenges including humanitarian crises, ethnic, political, religious, or territorial tensions, and climate shocks terrorism, and decades of armed conflict at both inter and intra state levels<sup>61</sup>. This often leads to displacements, loss of lives, destruction of infrastructure, social disruption, public health crises,

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<sup>57</sup> Akinola. A., & Uzodike. N., 'Ubuntu and the Quest for Conflict Resolution in Africa' Available at [https://www.researchgate.net/publication/320693169\\_Ubuntu\\_and\\_the\\_Quest\\_for\\_Conflict\\_Resolution\\_in\\_Africa](https://www.researchgate.net/publication/320693169_Ubuntu_and_the_Quest_for_Conflict_Resolution_in_Africa) (Accessed on 02/10/2024)

<sup>58</sup> Ibid

<sup>59</sup> United Nations Economic Commission for Africa., 'Socioeconomic Impact of Conflict in Africa' Available at <https://repository.uneca.org/handle/10855/50100#:~:text=Conflict%20causes%20not%20only%20immense,from%20social%20and%20development%20initiatives> (Accessed on 02/10/2024)

<sup>60</sup> Ibid

<sup>61</sup> African Union., 'The Impact of Humanitarian Crises and Armed Conflict on Girls' and Women's Education in Africa' Available at <https://cieffa.au.int/en/blog/impact-humanitarian-crisis-and-armed-conflict-gwe-africa> (Accessed on 02/10/2024)

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collective and individual physical, and psychological trauma<sup>62</sup>. In order to address these challenges including the presence of multicultural conflicts and ethnic clashes in Africa, comprehensive approaches are needed, including effective conflict resolution mechanisms, good governance, economic development, equitable resource distribution, and efforts to promote interethnic dialogue and understanding.<sup>63</sup> Negotiation, diplomacy, and mediation are effective techniques in resolving multicultural conflicts in Africa.

African societies have for many centuries had in place institutional mechanisms as well as cultural sources to uphold the values of peace, tolerance, solidarity and respect for, and of, one another<sup>64</sup>. It has been noted that these institutions and structures were responsible for peace education, confidence-building, peacemaking, peacebuilding, conflict monitoring, conflict prevention, conflict management, and conflict resolution<sup>65</sup>. Among African cultures, it was customary as well as common practice for people to sit down informally and discuss and agree on important issues<sup>66</sup>. African communities developed and embraced conflict management strategies that were aimed towards effectively dealing with conflicts in order to ensure peaceful co-existence within the community<sup>67</sup>. Conflict management among African cultures was well-entrenched in the traditions, customs, norms and taboos of the

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<sup>62</sup> Ibid

<sup>63</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Op Cit

<sup>64</sup> Traditional Methods of Conflict Resolution., Available at <https://www.accord.org.za/conflict-trends/traditional-methods-of-conflict-resolution/#:~:text=The%20major%20sources%20of%20conflict,customs%20and%20traditions%2C%20were%20upheld> (Accessed on 02/10/2024)

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

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people including the need to foster social harmony and cohesion<sup>68</sup>. The resolution of conflicts in African cultures has for many centuries taken the form of mediation, adjudication, reconciliation, arbitration and negotiation<sup>69</sup>. These approaches were well anchored within the traditional concepts of justice in Africa and its core value of reconciliation<sup>70</sup>.

The resolution of conflicts in African cultures was therefore anchored in the African philosophy of *ubuntu*<sup>71</sup>. This philosophy places emphasis on 'being self through others'<sup>72</sup>. It aims at fostering communal values such as sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus<sup>73</sup>. It has been noted that *ubuntu* is deeply rooted in the culture of the African people and it was taught and instilled in the hearts of every person at a very young age since it as an important aspect of leading a peaceful and prosperous life<sup>74</sup>. Since *ubuntu* is based on culture, it is well fitted in the lives of the people of Africa and influenced all spheres of life including

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<sup>68</sup> Ademowo. A., 'Conflict Management in Traditional African Society.' Available at [https://www.researchgate.net/publication/281749510\\_Conflict\\_management\\_in\\_Traditional\\_African\\_Society](https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society) (Accessed on 02/10/2024)

<sup>69</sup> Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' Op Cit

<sup>70</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>71</sup> Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Available at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4272&context=sspapers&httpsredirect=1&referer#::~:te xt=Ubuntu%20can%20best%20be%20described,ngumuntu%20ngabantu%20in%20Zulu%20language>. (Accessed on 02/10/2024)

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Akinola. A., & Uzodike. N., 'Ubuntu and the Quest for Conflict Resolution in Africa' Op Cit

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the resolution of conflicts<sup>75</sup>. At the core of *ubuntu*, is the understanding that the collective, whether a community, society, or humanity, takes precedence over the individual<sup>76</sup>. In the field of conflict management, *ubuntu* seeks to deter vengeance, confrontation and retribution by fostering dignity, compassion, humaneness, harmony and reconciliation<sup>77</sup>. *Ubuntu* is therefore a key philosophy in addressing intragroup conflicts and enhancing peacebuilding efforts<sup>78</sup>. It emphasises cooperation with one another for the common good as opposed to competition that could lead to grave instability within any community<sup>79</sup>.

Negotiation, diplomacy, and mediation align with the African philosophy of *ubuntu* and can therefore be effectively harnessed towards resolving multicultural conflicts in Africa. These mechanisms focus on collaboration and cooperation among parties and are therefore suitable in preserving relationships, building trust, and promoting long term and sustainable solutions<sup>80</sup>. For example, negotiation can promote inter-ethnic dialogue and understanding among parties from different cultures therefore mitigating ethnic and multicultural

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<sup>75</sup> Ibid

<sup>76</sup> Kurbalija. J., 'Ubuntu Ethos: African Insights for Ethical AI' Available at <https://www.diplomacy.edu/blog/ubuntu-ethos-african-insights-for-ethical-ai/> (Accessed on 02/10/2024)

<sup>77</sup> Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Op Cit

<sup>78</sup> Johansen. L., 'African Solutions to African Intergroup Conflicts: Ubuntu and Humiliation' Available at <https://www.humiliationstudies.org/documents/JohansenProjectDescriptionUbuntu.pdf> (Accessed on 02/10/2024)

<sup>79</sup> Ibid

<sup>80</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests> (Accessed on 02/10/2024)

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conflicts<sup>81</sup>. Negotiation can encourage open and respectful dialogue among different ethnic and cultural groups in Africa to address grievances, misunderstandings, and historical tensions<sup>82</sup>.

In addition, diplomacy can play a key role in resolving multicultural conflicts. For example, preventive diplomacy has been identified as a key approach that focuses on early intervention to address emerging conflicts and tensions before they escalate into violent crises<sup>83</sup>. Preventive diplomacy has the capacity to prevent the loss of lives, minimize human suffering, and maintain international and regional peace and security<sup>84</sup>. It involves measures aimed at preventing existing disputes from escalating into conflicts and at preventing conflicts, if they occur, from spreading<sup>85</sup>. Through preventive diplomacy, it is possible to address the root causes of conflicts therefore effectively resolving such conflicts and preventing them from escalating<sup>86</sup>. Diplomacy can therefore be effectively harnessed to resolve multicultural conflicts in Africa through proactive engagement involving negotiation, and mediation towards identifying and addressing the root causes of conflicts, fostering trust among parties, and mitigating the risk of conflicts spiraling out of control<sup>87</sup>.

Mediation is also an ideal process towards resolving multicultural conflicts in Africa. Mediation is a vital technique in conflict resolution,

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<sup>81</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> The Role of Diplomacy in Resolving Global Conflicts., Op Cit

<sup>84</sup> Ibid

<sup>85</sup> Preventative Diplomacy., Available at

<https://www.exteriores.gob.es/en/PoliticaExterior/Paginas/DiplomaciaPreventiva.aspx#:~:text=Preventive%20diplomacy%20includes%20all%20measures,if%20they%20occur%2C%20from%20spreading> (Accessed on 02/10/2024)

<sup>86</sup> Ibid

<sup>87</sup> The Role of Diplomacy in Resolving Global Conflicts., Op Cit

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serving as a key tool for facilitating dialogue and negotiation between conflicting parties<sup>88</sup>. Mediation fosters understanding and empathy among parties to a conflict<sup>89</sup>. By encouraging active listening and promoting open and respectful communication, mediation helps break down barriers including cultural barriers and build trust among the parties<sup>90</sup>. Mediation also has the ability to preserve relationships and provides parties with a wide range of solutions than those available through litigation<sup>91</sup>. In multicultural conflicts, mediation can enhance participation and collaboration among all stakeholders towards identifying and addressing the root causes of conflicts through creative and sustainable outcomes<sup>92</sup>. Mediation has been identified as a common resolution tool used in traditional peacebuilding in Africa<sup>93</sup>. It can therefore be effectively harnessed in resolving multicultural conflicts by facilitating dialogue, collaboration and compromise<sup>94</sup>.

Negotiation, diplomacy, and mediation are therefore ideal processes in resolving multicultural conflicts in Africa.

### **4.0 Conclusion**

Negotiation, diplomacy, and mediation are ideal processes in resolving multicultural conflicts in Africa. These techniques have been practices in Africa for many centuries and fit well within the traditional concepts of

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<sup>88</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at [https://www.researchgate.net/publication/372289839\\_Peace\\_Studies\\_Conflict\\_Resolution\\_and\\_Mediation\\_Strategies](https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies) (Accessed on 02/10/2024)

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>92</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Op Cit

<sup>93</sup> Ajayi. AT., & Buhari. LO., 'Methods of Conflict Resolution in African Traditional Society' Available at [https://www.researchgate.net/publication/290233437\\_Methods\\_of\\_Conflict\\_Resolution\\_in\\_African\\_Traditional\\_Society](https://www.researchgate.net/publication/290233437_Methods_of_Conflict_Resolution_in_African_Traditional_Society) (Accessed on 02/10/2024)

<sup>94</sup> Ibid

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justice in Africa and its core values of harmony and reconciliation<sup>95</sup>. Negotiation, diplomacy, and mediation can foster effective resolution of multicultural conflicts in Africa by bridging the cultural divide and fostering the African philosophy of *ubuntu* and its core principles including compassion, humaneness, harmony and reconciliation<sup>96</sup>. It is therefore imperative to embrace and strengthen negotiation, diplomacy, and mediation for effective management of multicultural conflicts in Africa. This goal can be realized by utilizing negotiation, diplomacy, and mediation to foster peaceful coexistence within and among communities, respect, harmony, and reconciliation as envisaged under the African philosophy of *ubuntu*<sup>97</sup>. These approaches have deep roots among African communities, which still have a strong belief in the principles of common humanity, reciprocity and respect for one another and can therefore be effectively utilized in addressing multicultural conflicts<sup>98</sup>. It is therefore necessary to strengthen traditional institutions of conflict management in Africa including elders and community organizations which play a pivotal role in resolving disputes at an interpersonal, community, and inter community level through negotiation, diplomacy, and mediation among other techniques<sup>99</sup>.

It is also necessary to ensure that negotiation, diplomacy, and mediation techniques are appropriate and responsive in the context of multicultural conflicts. For example, in negotiation, it is imperative for parties to approach the negotiation process with an open mind, respect each other's cultural views and opinions, use interpreters to manage

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<sup>95</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>96</sup> Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Op Cit

<sup>97</sup> Traditional Methods of Conflict Resolution., Op Cit

<sup>98</sup> Ibid

<sup>99</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Op Cit

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linguistic and cultural differences, and embrace compromise<sup>100</sup>. It is also important to foster good relations among different communities and culture and strengthen the use of preventive tools in order to effectively utilise diplomacy in managing multicultural conflicts<sup>101</sup>. In addition, it is imperative to ensure that mediation processes are culturally sensitive and responsive<sup>102</sup>. It has been noted that in mediation processes, culture can affect an individual's negotiation style, whether it be collaborative or competitive<sup>103</sup>. In order to bridge the cultural divide in mediation, mediators should foster open communication among the parties and create an atmosphere of trust, where despite cultural differences between parties, the process can still lead to win-win outcomes<sup>104</sup>. Embracing cultural diversity in mediation is therefore important in resolving multicultural conflicts<sup>105</sup>.

Resolving multicultural conflicts through negotiation, diplomacy, and mediation is therefore possible for peace and prosperity.

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<sup>100</sup> Guide to Culturally Appropriate Communication Techniques., Available at <https://au.indeed.com/career-advice/career-development/culturally-appropriate-communication-techniques#:~:text=Many%20strategies%20for%20cross%2Dcultural,aware%20of%20appropriate%20body%20language> (Accessed on 02/10/2024)

<sup>101</sup> The Role of Diplomacy in Resolving Global Conflicts., Op Cit

<sup>102</sup> Abala. A., 'Bridging Cultures in Mediation: Insights from a Multicultural Mediation Panel' Op Cit

<sup>103</sup> Ibid

<sup>104</sup> Ibid

<sup>105</sup> Sher. M., 'Embracing Cultural Diversity in Mediation' Op Cit



## **Placing Environmental Concerns at The Core of Sustainable Development**

### *Abstract*

*This paper critically discusses the need to place environmental concerns at the core of Sustainable Development. The paper asserts that environmental concerns are integral in the quest towards Sustainable Development. It explores the role of the environment in the Sustainable Development agenda. In addition, the paper discusses some of the key environmental challenges hindering the realization of the Sustainable Development agenda. It also suggests approaches towards placing environmental concerns at the core of Sustainable Development.*

### **1.0 Introduction**

Sustainability is an ideal geared towards creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>1</sup>. It has been defined as the efficient and equitable distribution of resources intra-generationally and inter-generationally with the operation of socio-economic activities within the confines of a finite ecosystem<sup>2</sup>. It involves finding a balance between economic, social, and environmental factors to ensure that resources are used in a way that is not only environmentally sustainable but also socially equitable and economically viable in the long term<sup>3</sup>. Sustainability is the foundation for the current global framework for international cooperation—the

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<sup>1</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 05/10/2024)

<sup>2</sup> Stoddart, H et al., 'A Pocket Guide to Sustainable Development Governance.' *Stakeholder Forum* 2011.

<sup>3</sup> Sustainability: A Better Tomorrow, But How?., Available at <https://www.green.earth/sustainability> (Accessed on 05/10/2024)

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2030 Agenda for Sustainable Development<sup>4</sup> and its Sustainable Development Goals (SDGs).

Sustainable Development offers a pathway towards attaining the ideal of sustainability<sup>5</sup>. It has been defined as development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>6</sup>. Sustainable Development has been identified as a guiding principle that focuses on sustaining the planet's natural resources and its ecosystems in line with human development<sup>7</sup>. Sustainable Development provides a framework through which humanity can interact with the environment while not risking damaging natural resources for the benefit of future generations<sup>8</sup>. It advocates for improving living standards for all human beings without jeopardising the earth's ecosystems or causing environmental challenges such as deforestation, environmental degradation, and water and air pollution that can result in problems such as climate change and biodiversity loss<sup>9</sup>.

Sustainable Development therefore requires an integrated approach to development that takes into consideration environmental concerns

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<sup>4</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 05/10/2024)

<sup>5</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 05/10/2024)

<sup>6</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>7</sup> Sustainable Development: Challenges and Opportunities., Available at <https://www.plasticcollective.co/sustainable-development-challenges-and-opportunities/> (Accessed on 05/10/2024)

<sup>8</sup> Mensah. J., 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' Available at <https://doi.org/10.1080/23311886.2019.1653531> (Accessed on 05/10/2024)

<sup>9</sup> Ibid

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along with economic and social development<sup>10</sup>. At the core of Sustainable Development is environmental conservation, economic development, and social equity<sup>11</sup>. For Sustainable Development to be realized, it is crucial to harmonise its three core elements: economic growth, social inclusion and environmental protection<sup>12</sup>. It has been pointed out that the three pillars of Sustainable Development are interconnected and are all crucial for the well-being of individuals and societies<sup>13</sup>. Sustainable development acknowledges that economic, social, and environmental considerations are interconnected and must be balanced to achieve long-term well-being for both humanity and nature<sup>14</sup>.

This paper critically discusses the need to place environmental concerns at the core of Sustainable Development. The paper asserts that environmental concerns are integral in the quest towards Sustainable Development. It explores the role of the environment in the Sustainable Development agenda. In addition, the paper discusses some of the key environmental challenges hindering the realization of the Sustainable Development agenda. It also suggests approaches towards placing environmental concerns at the core of Sustainable Development.

### **2.0 The Environment and Sustainable Development**

The environment plays a crucial role in Sustainable Development outcomes. It provides resources both renewable and non-renewable, it assimilates waste, it sustains life by providing crucial genetic and

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<sup>10</sup> United Nations., 'Sustainability' Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 05/10/2024)

<sup>11</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

<sup>12</sup> What is Sustainable Development?., Available at <https://www.eeb.gov.hk/en/susdev/sd/index.htm> (Accessed on 05/10/2024)

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>14</sup> United Nations., 'Sustainability' Op Cit

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biodiversity functions, and also offers aesthetic services<sup>15</sup>. The environment therefore plays a crucial role towards Sustainable Development by providing the resources and ecosystem services that support human well-being, economic growth, and social progress<sup>16</sup>. It has been noted that the environment is at the core of each one of the SDGs with humanity depending on nature for a wide range of products and services<sup>17</sup>. However, the environment is only able to steer Sustainable Development without any interruption as long as the demand on natural resources and ecosystem services is within its carrying capacity<sup>18</sup>. Achieving this state requires that resource use and extraction to be within the rate of regeneration of the resource and the wastes generated to be within the assimilating capacity of the environment<sup>19</sup>. This can be achieved through fostering environmental sustainability.

Environmental sustainability entails conserving the environment and natural resources and protecting global ecosystems in order to ensure that the environment supports health and wellbeing, now and in the future<sup>20</sup>. Environmental sustainability relates to ecosystem integrity and carrying capacity of the natural environment<sup>21</sup>. This idea requires that natural capital be sustainably used as a source of economic inputs and

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<sup>15</sup> Environment and Sustainable Development., Available at <https://ncert.nic.in/textbook/pdf/keec109.pdf> (Accessed on 05/10/2024)

<sup>16</sup> Ibid

<sup>17</sup> United Nations Environment Programme., 'The UN Environment Programme and the Sustainable Development Goals' Available at <https://www.unep.org/unga/our-position/unep-and-sustainable-development-goals> (Accessed on 05/10/2024)

<sup>18</sup> Environment and Sustainable Development., Op Cit

<sup>19</sup> Ibid

<sup>20</sup> What Is Environmental Sustainability?., Available at <https://sphera.com/resources/glossary/what-isenvironmental-sustainability/> (Accessed on 05/10/2024)

<sup>21</sup> Brodhag, C., & Taliere, S., 'Sustainable Development Strategies: Tools for Policy Coherence.' *Natural Resources Forum*, Volume 30, issue 2, 136-145

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as a sink for waste<sup>22</sup>. Therefore, achieving environmental sustainability implies that natural resources must be harvested no faster than they can be regenerated while waste must be emitted no faster than they can be assimilated by the environment<sup>23</sup>.

The pillar of environmental sustainability under the Sustainable Development agenda therefore envisions the condition of resilience, balance, and connection to allow humanity to meet its requirements without surpassing the capacity of its supporting ecosystems and without harming biological diversity<sup>24</sup>. At the heart of environmental sustainability is reducing carbon emissions, promoting renewable energy, promoting effective waste management, curbing pollution, and ensuring equitable access and use of natural resources<sup>25</sup>. Further, it has been noted that environmental sustainability focuses on conserving biodiversity; conserving and preventing the depletion of natural resources and ensuring that the harvesting rate of renewable resources is within the capacity of regeneration; reusing and recycling products in order to reduce waste, emissions, and cost and improve product efficiency<sup>26</sup>.

Environmental sustainability is therefore a key ideal towards Sustainable Development. It integrates environmental concerns into Sustainable Development and seeks to maintain the planet's natural capital<sup>27</sup>. Environmental sustainability focuses on meeting the resource

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<sup>22</sup> Mensah. J., 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' Op Cit

<sup>23</sup> Ibid

<sup>24</sup> Khan. N. H., 'Ecodesigning for Ecological Sustainability' *Frontiers in Plant-Soil Interaction.*, 2021. Pp 589- 616

<sup>25</sup> Ibid

<sup>26</sup> Khan. N et al., 'Ecodesigning for Ecological Sustainability' *Frontiers in Plant-Soil Interaction.*, 2021, pp 589-616

<sup>27</sup> Goodland. R., 'The Concept of Environmental Sustainability (ES)' Available at <https://www.iaia.org/pdf/special->

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and services needs of current and future generations without compromising the health of the ecosystems that provide them<sup>28</sup>. Achieving environmental sustainability is vital in improving human welfare by protecting the sources of raw materials used for human needs and ensuring that the sinks for human wastes are not exceeded, in order to prevent harm to humanity<sup>29</sup>.

Despite its importance, several factors hinder the attainment of the ideal of environmental sustainability at the global, regional, and national levels. The 2030 Agenda for Sustainable Development acknowledges that the depletion of natural resources and adverse impacts of environmental degradation including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity are among the key challenges facing humanity and hindering the ideal of environmental sustainability<sup>30</sup>. It has been noted that the planet is facing a growing triple planetary crisis of climate change, biodiversity loss, and pollution<sup>31</sup>.

The consequences of climate change are already being manifested all over the world through increased intensity and severity of droughts, water scarcity, wildfires, rising sea levels, flooding, melting polar ice,

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[publications/Green%20Book\\_Environmental%20Methods%20Review.pdf#page=73](#)

(Accessed on 05/10/2024)

<sup>28</sup> World Commission on Environment and Development., 'Our Common Future.' Op Cit

<sup>29</sup> Goodland. R., 'The Concept of Environmental Sustainability (ES)' Op Cit

<sup>30</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>31</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at [https://www.unep.org/news-and-stories/speech/tripleplanetary-crisis-forging-new-relationship-between-people-andearth?gad\\_source=1&gclid=EAIaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAYASAAEgIqsfD\\_BwE](https://www.unep.org/news-and-stories/speech/tripleplanetary-crisis-forging-new-relationship-between-people-andearth?gad_source=1&gclid=EAIaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAYASAAEgIqsfD_BwE) (Accessed on 05/10/2024)

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catastrophic storms and declining biodiversity<sup>32</sup>. In addition, air pollution has been identified as the largest cause of disease and premature deaths globally<sup>33</sup>. According to the United Nations Environment Programme (UNEP), air pollution is the biggest environmental health risk of our time<sup>34</sup>. It points out that air pollutants are responsible for about one third of deaths from stroke, chronic respiratory disease, and lung cancer, as well as one quarter of deaths from heart attack<sup>35</sup>. Further, air pollution is contributing to the climate crisis with profound impacts on the health of the planet<sup>36</sup>. This is due to the fact that many of the drivers of air pollution (especially the combustion of fossil fuels) are also sources of greenhouse gas emissions which contribute to the climate crisis<sup>37</sup>. Air pollution and climate change are therefore related challenges which affect the ideal of environmental sustainability. In addition, the planet is losing its biodiversity at an alarming rate with many species facing extinction, forest ecosystems being degraded due to deforestation, and wetlands, such as salt marshes and mangrove swamps which absorb large amounts of carbon disappearing<sup>38</sup>. The loss of biodiversity impacts the availability of critical ecosystem services including food supplies and access to clean water therefore threatening human health and well-being<sup>39</sup>.

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<sup>32</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Available at <https://unfccc.int/news/what-is-the-triple-planetary-crisis> (Accessed on 05/10/2024)

<sup>33</sup> Ibid

<sup>34</sup> United Nations Environment Programme., 'About Air' Available at <https://www.unep.org/explore-topics/air/about-air> (Accessed on 05/10/2024)

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> World Health Organisation., 'Air Pollution' Available at [https://www.who.int/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/health-topics/air-pollution#tab=tab_1) (Accessed on 05/10/2024)

<sup>38</sup> United Nations., 'Biodiversity - Our Strongest Natural Defense Against Climate Change' Available at <https://www.un.org/en/climatechange/science/climate-issues/biodiversity> (Accessed on 05/10/2024)

<sup>39</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Op Cit

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Increase in the global population is also affecting the attainment of the ideal of environmental sustainability<sup>40</sup>. The rise in global population puts pressure on finite resources such as food, water, energy making these resources increasingly scarce<sup>41</sup>. Further, as more people consume resources, they create waste and pollution that can degrade the environment<sup>42</sup>. It also leads to increased demand for land, housing among other needs, a situation that can lead to environmental degradation through deforestation in order to meet these rising demands<sup>43</sup>. According to the United Nations, population growth magnifies the harmful impact of economic processes on the environment<sup>44</sup>. It notes that population growth intensifies resource extraction, waste generation and environmental damage<sup>45</sup>.

The challenges hindering achievement of the ideal of environmental sustainability are being witnessed all over the world. For example, Africa faces serious environmental challenges, including land degradation, deforestation, biodiversity loss and extreme vulnerability to climate change<sup>46</sup>. It has been noted that the continent has lost nearly two-thirds of its productive land due to land degradation,

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<sup>40</sup> Kolkowska. N., 'How Does Overpopulation Affect Sustainability? Challenges and Solutions' Available at <https://earth.org/overpopulation-sustainability/#:~:text=This%20can%20lead%20to%20soil,that%20can%20have%20severe%20consequences.&text=Overpopulation%20leads%20to%20an%20increased,10%20million%20hectares%20a%20year>. (Accessed on 05/10/2024)

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> United Nations., 'Why Population Growth Matters for Sustainable Development' Available at [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa\\_pd\\_2022\\_policy\\_brief\\_population\\_growth.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2022_policy_brief_population_growth.pdf) (Accessed on 05/10/2024)

<sup>45</sup> Ibid

<sup>46</sup> United Nations Environment Programme., 'Africa' Available at <https://www.unep.org/regions/africa> (Accessed on 05/10/2024)



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desertification, droughts, and climate change<sup>47</sup>. Further, population growth in Sub-Saharan African nations continues to contribute to environmental degradation<sup>48</sup>.

In light of these concerns, it is imperative to place environmental concerns at the core of Sustainable Development in order to achieve the ideal of environmental sustainability.

### **3.0 Placing Environmental Concerns at the Core of Sustainable Development**

There is need to place environmental concerns at the core of Sustainable Development in order to achieve the ideal of environmental sustainability. In order to achieve this goal, the 2030 Agenda for Sustainable Development seeks to protect the planet from degradation including through sustainable consumption and production, sustainable management of natural resources and ecosystems, and taking urgent action on climate change to ensure that the planet supports the needs of present and future generations<sup>49</sup>. It also seeks to ensure that economic, social and technological progress occurs in harmony with nature<sup>50</sup>.

Environmental concerns can be effectively placed at the core of Sustainable Development by decoupling natural resource use and

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<sup>47</sup> United Nations Environment Programme., 'Fostering Collaboration to Address Environmental Challenges in Africa' Available at <https://www.unep.org/news-and-stories/speech/fostering-collaboration-address-environmental-challenges-africa> (Accessed on 05/10/2024)

<sup>48</sup> United Nations Development Programme., 'Demographic Projections, the Environment and Food Security in SubSaharan Africa' <https://www.undp.org/sites/g/files/zskgke326/files/migration/africa/Demographic-Projections-Environment.pdf> (Accessed on 05/10/2024)

<sup>49</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>50</sup> Ibid

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environmental impacts from economic growth<sup>51</sup>. It has been noted that with the increasing growth in global population and the need for natural resources to drive economic development prosperity, especially in developing countries, the prospect of much higher resource consumption levels is far beyond what is required to achieve sustainability<sup>52</sup>. It is estimated that this situation could result in the world running out of essential materials such as oil, copper and gold, the supplies of which, in turn, require ever-rising volumes of fossil fuels and freshwater to produce<sup>53</sup>. In order to address this challenge, there is need to decouple natural resource use and environmental impacts from economic growth. This approach is designed to improve the rate of resource productivity faster than the economic growth rates<sup>54</sup>. It entails delinking economic growth from resource use and from environmental impacts. Decoupling involves practices such as reducing the use of (primary) natural resources per unit of economic activity<sup>55</sup>; and raising economic output while minimizing negative environmental impacts that arise from the extraction of natural resources including pollution, land degradation, wastes, and emissions<sup>56</sup>. It is therefore vital to decouple economic growth from resource use in order to effectively place environmental concerns at the core of Sustainable Development.

There is also need for all countries to pursue green growth strategies. Green growth is anchored in the ideal of Sustainable Development and

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<sup>51</sup> United Nations Environment Programme., 'Decoupling Natural Resource Use and Environmental Impacts from Economic Growth (Summary)' Available at <https://www.unep.org/resources/report/decoupling-natural-resource-use-and-environmental-impacts-economic-growth-summary> (Accessed on 06/10/2024)

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Hennicke. P., & Khosla. A., 'Decoupling Economic Growth from Resource Consumption: A Transformation Strategy with Manifold Socio-Economic Benefits for India and Germany' Available at [https://www.giz.de/de/downloads/giz2014-en-IGEG\\_2\\_decoupling-economic-growth.pdf](https://www.giz.de/de/downloads/giz2014-en-IGEG_2_decoupling-economic-growth.pdf) (Accessed on 06/10/2024)

<sup>56</sup> Ibid

### *Placing Environmental Concerns at The Core of Sustainable Development*

provides a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner<sup>57</sup>. Green growth entails fostering economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which human well-being depends on<sup>58</sup>. It aims to harmonize economic growth with environmental sustainability, while improving the eco-efficiency of economic growth and enhancing the synergies between environment and economy<sup>59</sup>. According to UNEP, green growth is low carbon, resource efficient and socially inclusive<sup>60</sup>. It notes that green growth ensures that economic activities reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services<sup>61</sup>. Green growth therefore places environmental concerns at the core of Sustainable Development by ensuring that economic growth occurs in harmony with environmental sustainability. It is therefore important for all countries to pursue green growth strategies by leveraging on key sectors such as renewable energy, sustainable agriculture, sustainable infrastructure, sustainable tourism, green industrialization, and sustainable forestry, and the blue economy<sup>62</sup>.

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<sup>57</sup> African Development Bank Group., 'Green Growth' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/green-growth-initiative/background> (Accessed on 06/10/2024)

<sup>58</sup> Organisation for Economic Cooperation and Development ., 'Towards Green Growth' Available at <http://dx.doi.org/10.1787/9789264111318-en> (Accessed on 06/10/2024)

<sup>59</sup> Green Growth., Available at <https://sustainabledevelopment.un.org/index.php?menu=1447#:~:text=The%20green%20growth%20approach%20adopted,synergies%20between%20environment%20and%20economy.> (Accessed on 06/10/2024)

<sup>60</sup> United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy> (Accessed on 06/10/2024)

<sup>61</sup> Ibid

<sup>62</sup> African Development Bank Group., 'East Africa Economic Outlook 2023' Available at <https://www.afdb.org/en/documents/east-africa-economic-outlook-2023> (Accessed on 06/10/2024)

## *Placing Environmental Concerns at The Core of Sustainable Development*

Placing environmental concerns at the core of Sustainable Development further requires humanity to adopt sustainable consumption and production models<sup>63</sup>. It has been noted that humanity is currently consuming more resources than ever, exceeding the planet's capacity for generation<sup>64</sup>. Further, current consumption and production models are creating more waste and emissions fueling pollution and climate change therefore hindering the ideal of environmental sustainability<sup>65</sup>. Sustainable consumption and production entails the use of products and services in a manner that is socially beneficial, economically viable and environmentally sustainable over their whole life cycle<sup>66</sup>. SDG 12 urges all countries to embrace sustainable consumption and production patterns including sustainable management and efficient use of natural resources<sup>67</sup>; reducing global food waste<sup>68</sup>; promoting sustainable public procurement practices<sup>69</sup>; and reducing waste generation through prevention, reduction, recycling, and reuse<sup>70</sup>. There is need to promote sustainable consumption and production patterns in order to put environmental concerns at the core of Sustainable Development. In particular, there is need to implement circular economy. In a circular economy, products and materials are kept in circulation through processes like maintenance, reuse, refurbishment, remanufacture, recycling, and composting<sup>71</sup>. Circular economy practices minimize

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<sup>63</sup> United Nations Environment Programme., 'Sustainable Consumption and Production Policies' Available at <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-consumption-and-production-policies> (Accessed on 06/10/2024)

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Ellen MacArthur Foundation., 'What is a Circular Economy?.' Available at <https://www.ellenmacarthurfoundation.org/topics/circulareconomyintroduction/o>

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waste and promote sustainable use of natural resources through prevention, reduction, recycling and reuse<sup>72</sup>. Besides tackling the problem of pollution by minimizing, circular economy can play a critical role in solving other environmental challenges such as climate change and biodiversity loss<sup>73</sup>. Adopting sustainable consumption and production models including circular economy is therefore key in placing environmental concerns at the core of Sustainable Development.

Finally, it is vital to confront the triple planetary crisis of climate change, pollution, and biodiversity loss<sup>74</sup>. Addressing these challenges is key in forging a new relationship between humanity and nature and achieving the ideal of environmental sustainability<sup>75</sup>. This calls for strengthening environmental governance at all levels<sup>76</sup>; utilising science and technology to confront climate change, biodiversity loss and pollution<sup>77</sup>; fostering global and regional environmental cooperation through multilateral environment agreements<sup>78</sup>; and enhancing the capacity of all countries especially developing countries through financial

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[verview#:~:text=The%20circular%20economy%20is%20a,remanufacture%2C%20recycling%2C%20and%20composting](#) (Accessed on 28/03/2024)

<sup>72</sup> United Nations Development Programme., 'What is Circular Economy and Why Does it Matter?.' Available at <https://climatepromise.undp.org/news-and-stories/what-is-circular-economy-and-how-it-helps-fight-climate-change> (Accessed on 06/10/2024)

<sup>73</sup> United Nations Development Programme., 'What is Circular Economy and Why Does it Matter?' Available at <https://climatepromise.undp.org/news-and-stories/what-is-circular-economy-and-how-it-helps-fight-climate-change> (Accessed on 06/10/2024)

<sup>74</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Op Cit

<sup>75</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at [https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad\\_source=1&gclid=EAlaIQobChMI6\\_GHmrL5iAMVaZKDBx2vlwr0EAAYAIAAEgIRHfD\\_BwE](https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad_source=1&gclid=EAlaIQobChMI6_GHmrL5iAMVaZKDBx2vlwr0EAAYAIAAEgIRHfD_BwE) (Accessed on 06/10/2024)

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Ibid

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assistance and technology transfer<sup>79</sup>. Tackling the triple planetary crisis is thus key in placing environmental concerns at the core of Sustainable Development and achieving harmony between humanity and nature.

### **4.0 Conclusion**

The environment is crucial in achieving Sustainable Development by providing the resources and ecosystem services that support human well-being, economic growth, and social progress<sup>80</sup>. Fostering environmental sustainability is therefore vital in ensuring that humanity can harness benefits from natural resources and ecosystem services for Sustainable Development<sup>81</sup>. However, environmental sustainability remains an elusive reality for the planet with challenges such as climate change, pollution, biodiversity loss, environmental degradation, and rapid population growth hindering the attainment of this ideal<sup>82</sup>. In light of these challenges, it is imperative to place environmental concerns at the core of Sustainable Development towards environmental sustainability. This goal can be realised by decoupling natural resource use and environmental impacts from economic growth<sup>83</sup>; fostering green growth<sup>84</sup>; adopting sustainable consumption and production models including circular economy<sup>85</sup>; and confronting the triple planetary crisis of climate change, pollution, and biodiversity loss<sup>86</sup>. Placing Environmental Concerns at the Core of Sustainable Development is an imperative that is realizable.

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<sup>79</sup> Ibid

<sup>80</sup> Environment and Sustainable Development., Op Cit

<sup>81</sup> Mensah. J., 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' Op Cit

<sup>82</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>83</sup> United Nations Environment Programme., 'Decoupling Natural Resource Use and Environmental Impacts from Economic Growth (Summary)' Op Cit

<sup>84</sup> African Development Bank Group., 'Green Growth' Op Cit

<sup>85</sup> United Nations Environment Programme., 'Sustainable Consumption and Production Policies' Op Cit

<sup>86</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Op Cit

# *Building Capacity for Lawyers on Environmental Law, Climate Change, and Mediation*

## **Building Capacity for Lawyers on Environmental Law, Climate Change, and Mediation**

### *Abstract*

*This paper critically discusses the need to build capacity for lawyers on environmental law, climate change, and mediation. The paper argues that lawyers have a vital role to play in fostering Sustainable Development. Lawyers can aid in the effective management of environment and climate change disputes. The paper further posits that mediation is an appropriate avenue available for lawyers to foster Sustainable Development through effective management of environment and climate change disputes. As a result, the paper notes that it is imperative to build capacity for lawyers on environmental law, climate change, and mediation. The paper offers ideas towards building capacity for lawyers on environmental law, climate change, and mediation for Sustainable Development.*

### **1.0 Introduction**

Lawyers have been described as key agents of social engineering in society as well as justice, equity, and equality<sup>1</sup>. It has been noted that lawyers are not mere professionals whose sole purpose is to represent clients but they are also meant to fix and help in controlling the social environments and communities using the law among other available legal channels<sup>2</sup>. As a social engineer, a lawyer speaks out for the rights of vulnerable people and helps the society fight injustices<sup>3</sup>. Lawyers therefore play a significant role in the development of the society<sup>4</sup>. They

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<sup>1</sup> Muigua. K., 'Re-imagining the Role of Lawyers in Climate Justice' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Re-imagining-the-Role-of-Lawyers-in-Climate-Justice-Kariuki-Muigua-20th-July-2023.pdf> (Accessed on 15/07/2024)

<sup>2</sup> Why Lawyers are Social Engineers., Available at <https://www.iambenue.com/why-lawyers-are-social-engineers/> (Accessed on 15/07/2024)

<sup>3</sup> Ibid

<sup>4</sup> Badlani. G., 'Lawyers Are Social Engineers, Not Mere Professionals Representing Clients: Justice Surya Kant' Available at

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can ensure that justice is served to all including the weakest and most vulnerable sections of the society and can also help in the development of an egalitarian societies<sup>5</sup>.

The role of lawyers as social engineers has become more urgent in the wake of the Sustainable Development debate<sup>6</sup>. The ideal of Sustainable Development aims to promote development that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>7</sup>. It entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>8</sup>. Sustainable Development aims to achieve environmental conservation, economic development and social progress<sup>9</sup>.

Realizing Sustainable Development has become an urgent global concern in the wake of mounting problems facing the planet including environmental challenges such as climate change, pollution, and loss of biodiversity together with issues of poverty, increasing disparity

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<https://www.lawyersclubindia.com/articles/lawyers-are-social-engineers-not-mere-professionals-representing-clients-justice-surya-kant-14488.asp> (Accessed on 15/07/2024)

<sup>5</sup> Ibid

<sup>6</sup> International Lawyers Project., 'Environment and Sustainable Development' Available at <https://www.internationallawyersproject.org/environment-and-sustainable-development#:~:text=We%20build%20the%20capacity%20of,not%20disproportionate%20burden%20the%20marginalised.> (Accessed on 15/07/2024)

<sup>7</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>8</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 15/07/2024)

<sup>9</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1



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between societies and the tensions brought by social inequalities<sup>10</sup>. It has been noted that lawyers have a key role to play in achieving Sustainable Development by challenging economic, social, and environmental injustices caused by environmental damage, biodiversity loss, deforestation, illegal trafficking of natural resources, climate change and conflicts over natural resources, by helping affected communities hold actors to account, defending human rights, negotiating equitably, and halting illegal environmental acts that violate human rights and cause dispossession<sup>11</sup>. Lawyers also have a crucial role to play in building the capacity of governments to better enforce environmental laws, protect environmental rights, and use climate finance instruments to promote a green economy<sup>12</sup>. Lawyers are therefore key agents in the Sustainable Development agenda.

This paper critically discusses the need to build capacity for lawyers on environmental law, climate change, and mediation. The paper argues that lawyers have a vital role to play in fostering Sustainable Development. Lawyers can aid in the effective management of environment and climate change disputes. The paper further posits that mediation is an appropriate avenue available for lawyers to foster Sustainable Development through effective management of environment and climate change disputes. As a result, the paper notes that it is imperative to build capacity for lawyers on environmental law, climate change, and mediation. The paper offers ideas towards building capacity for lawyers on environmental law, climate change, and mediation for Sustainable Development.

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<sup>10</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 15/07/2024)

<sup>11</sup> International Lawyers Project., 'Environment and Sustainable Development' Op Cit

<sup>12</sup> Ibid

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### **2.0 The Role of Lawyers in the Context of Environmental Law, Climate Change, and Mediation**

#### **2.1 Lawyers and Environmental Law**

It has been noted that the legal profession plays a critical role in realizing the environmental dimension of Sustainable Development<sup>13</sup>. Lawyers have a critical role in the development, implementation, and enforcement of environmental law<sup>14</sup>. For example, lawyers play a crucial role in enacting and enforcing the legal framework on environmental sustainability<sup>15</sup>. In addition, in cases where environmental conflicts arise, lawyers play an important role in determining whether companies will be held accountable for their actions against the environment, including the climate<sup>16</sup>. Lawyers can represent clients in litigation related to environmental damage, pollution, and breaches of environmental regulation, among others towards realizing environmental sustainability<sup>17</sup>. In addition, it has been noted that lawyers and law firms can position themselves as thought leaders and promote awareness around environmental laws and regulations as well as the importance of Environment, Social, and Governance (ESG) and sustainability to clients and the general public<sup>18</sup>.

According to the United Nations Environment Programme (UNEP), lawyers have a major role to play in effectively enforcing and supporting

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<sup>13</sup> United Nations Environment Programme., 'Framework Model Curriculum on Continuing Legal Education In Environmental Law' Available at <https://www.ibanet.org/MediaHandler?id=3D48AC6C-1A29-4190-9CF8-C2F057C3B77F> (Accessed on 15/07/2024)

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact., Available at [https://www.legal500.com/global\\_green\\_guide/the-role-of-lawyers-in-the-green-transition-six-ways-of-making-a-positive-impact/](https://www.legal500.com/global_green_guide/the-role-of-lawyers-in-the-green-transition-six-ways-of-making-a-positive-impact/) (Accessed on 15/07/2024)

<sup>17</sup> Ibid

<sup>18</sup> Ibid

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the implementation of environmental law at the global, regional, and national levels<sup>19</sup>. They can achieve this goal through negotiating and drafting natural resource agreements and shaping laws and regulations on the environment and natural resources<sup>20</sup>. Lawyers can also foster access to environmental information, public participation, and access to justice in environmental matters<sup>21</sup>. For example, it has been noted that public interest litigation or citizen suits is a tool that can be undertaken by lawyers against polluters, whether this are private or public in nature, to force the adequate implementation of environmental legislation or to stop the activity of any person, including governments and governmental bodies or agencies, alleged to be in violation of the right to a clean, healthy, and sustainable environment<sup>22</sup>. Further, lawyers are crucial in providing continuing legal advice on environmental sustainability issues to clients including corporations towards strengthening environmental law<sup>23</sup>.

Lawyers therefore have a major role to play in shaping environmental law. They can foster environmental rule of law through the development, implementation, and enforcement of environmental law<sup>24</sup>. They can also foster the attainment of environmental justice by challenging economic, social, and environmental injustices caused by environmental challenges such as climate change, biodiversity loss, and pollution and fostering access to information, public participation, and access to justice in environmental matters<sup>25</sup>.

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<sup>19</sup> United Nations Environment Programme., 'Framework Model Curriculum on Continuing Legal Education In Environmental Law' Op Cit

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> International Lawyers Project., 'Environment and Sustainable Development' Op Cit

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### **2.2 Lawyers and Climate Change**

Climate Change has been described as the most defining challenge humanity is currently facing<sup>26</sup>. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale<sup>27</sup>. It has been noted that no corner of the globe is immune from the devastating consequences of climate change<sup>28</sup>. The impacts of climate change including rising temperatures are fueling environmental degradation, natural disasters, weather extremes, food and water insecurity, economic disruption, and conflicts<sup>29</sup>. Climate change is therefore a major global challenge that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda<sup>30</sup>.

Climate change also raises justice concerns<sup>31</sup>. It has been noted that there is unequal historical responsibility that countries and communities bear in relation to the climate crisis<sup>32</sup>. The impacts of climate change are more severe for vulnerable populations who have limited means to adapt to climate change impacts<sup>33</sup>. The ideal of climate justice therefore seeks to

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<sup>26</sup> United Nations., 'Climate Change' Available at <https://www.un.org/en/global-issues/climate-change#:~:text=Climate%20Change%20is%20the%20defining,scope%20and%20unprecedented%20in%20scale>. (Accessed on 15/07/2024)

<sup>27</sup> Ibid

<sup>28</sup> United Nations., 'The Climate Crisis – A Race we Can Win' Available at <https://www.un.org/en/un75/climate-crisis-race-we-can-win> (Accessed on 15/07/2024)

<sup>29</sup> Ibid

<sup>30</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

<sup>31</sup> United Nations Development Programme., 'Climate change is a matter of justice – here's why' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 15/07/2024)

<sup>32</sup> Ibid

<sup>33</sup> Ibid

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ensure that countries, industries, businesses, and people that have become wealthy from emitting large amounts of greenhouse gases have a responsibility to help those affected by climate change, particularly the most vulnerable countries and communities, who often are the ones that have contributed the least to the crisis<sup>34</sup>. Climate justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly<sup>35</sup>.

Lawyers have a key role to play in the climate change debate. Lawyers play a pivotal role in addressing climate change by using environmental law as a tool to advocate for stronger regulations, holding polluters accountable and promoting sustainable practices<sup>36</sup>. For example, lawyers work with regulators and lawmakers to draft policies and environmental protections laws that impose stricter standards on greenhouse gas emissions<sup>37</sup>. They also represent environmental groups and other stakeholders in proceedings before regulatory agencies<sup>38</sup>. In addition, lawyers assist in the development of renewable energy projects by providing advice on regulatory compliance, securing permits and negotiating renewable energy contracts<sup>39</sup>.

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<sup>34</sup> Ibid

<sup>35</sup> Mary Robinson Foundation Climate Justice., 'Principles of Climate Justice' Available at <https://www.mrfcj.org/principles-of-climate-justice/> (Accessed on 15/07/2024)

<sup>36</sup> 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Available at <https://www.bestlawyers.com/article/tackle-climate-change-environmental-law/5346> (Accessed on 15/07/2024)

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

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Climate litigation is another avenue available for lawyers in the climate change debate<sup>40</sup>. Through litigation, lawyers pursue legal action against companies and individuals responsible for significant pollution and environmental damage. This includes filing lawsuits for violations of emissions standards and seeking compensation and remediation for affected communities<sup>41</sup>. Lawyers also have an important role to play in drafting and analyzing laws and policies that promote climate change adaptation and mitigation measures and green investments, in order to ensure that such measures do indeed support Sustainable Development<sup>42</sup>.

Lawyers are also important agents in achieving climate justice<sup>43</sup>. They can help in protecting the rights of individuals and communities that are threatened by climate change and inducing governments and companies to adopt more climate-friendly policies and practices<sup>44</sup>. It has been noted that lawyers can help advance climate justice through climate change litigation, fostering public awareness and education on climate change, unlocking climate finance, participating in the formulation of laws and policies on climate change, and greening the legal profession<sup>45</sup>.

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<sup>40</sup> Muigua. K., 'Promoting Climate Litigation in Kenya for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Promoting-Climate-litigation-in-Kenya-for-Sustainability-Kariuki-Muigua-August-2023.pdf> (Accessed on 15/07/2024)

<sup>41</sup> Ibid

<sup>42</sup> International Lawyers Project., 'Environment and Sustainable Development' Op Cit

<sup>43</sup>United Nations Development Programme., 'UNDP Launches "Climate Justice" Training for Young Lawyers' Available at <https://www.undp.org/turkiye/press-releases/undp-launches-climate-justice-training-young-lawyers> (Accessed on 15/07/2024)

<sup>44</sup> Ibid

<sup>45</sup> Muigua. K., 'Redefining the Role of Lawyers in Climate Justice' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Redefining-the-Role-of-Lawyers-in-Climate-Justice-.pdf> (Accessed on 15/07/2024)

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### **2.3 Lawyers and Mediation**

Mediation is one of the Alternative Dispute Resolution (ADR) processes<sup>46</sup>. ADR entails a set of mechanisms that are applied to manage disputes without resort to adversarial litigation<sup>47</sup>. ADR has also been defined as a spectrum of less costly and more expeditious alternatives to litigation, where a neutral party assists the disputing parties in reaching a resolution<sup>48</sup>. ADR processes include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>49</sup>. These processes may be linked to but function outside formal court litigation processes<sup>50</sup>. They are ideal in enhancing access to justice due to their advantages which include privacy, confidentiality, flexibility, informality, efficiency, party autonomy and the ability to foster expeditious and cost-effective management of disputes<sup>51</sup>. ADR mechanisms also allow for more creative and collaborative solutions than that of traditional litigation<sup>52</sup>.

Mediation has been defined as a process wherein parties to a dispute meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences<sup>53</sup>. Mediation has also been defined as an informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement

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<sup>46</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>47</sup> Ibid

<sup>48</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 16/07/2024)

<sup>49</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>50</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>51</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>52</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Op Cit

<sup>53</sup> JAMS ADR., 'Mediation Defined: What is Mediation?' Available at <https://www.jamsadr.com/mediation-defined/> (Accessed on 16/07/2024)

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of their dispute, based on the parties' respective interests<sup>54</sup>. According to the United Nations, mediation is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>55</sup>. A mediator cannot impose a decision upon the parties<sup>56</sup>. Rather, a mediator facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutually acceptable agreement<sup>57</sup>.

Mediation is a powerful tool available to lawyers in enhancing access to justice<sup>58</sup>. Its key features such as informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost-effective management of disputes makes it suitable in promoting access to justice<sup>59</sup>. It also has the ability to preserve relationships and provides parties with a wide range of solutions<sup>60</sup>. Further, mediation has the potential to address the root causes of conflicts therefore preventing conflicts from reemerging in future<sup>61</sup>. Lawyers can therefore embrace mediation towards access to justice and amicable management of disputes. Where appropriate, lawyers can advise and assist their clients to negotiate an amicable solution with the

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<sup>54</sup> World Intellectual Property Organization., 'Guide to WIPO Mediation' Available at <https://tind.wipo.int/record/29081?v=pdf> (Accessed on 16/07/2024)

<sup>55</sup> United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 16/07/2024)

<sup>56</sup> World Intellectual Property Organization., 'Guide to WIPO Mediation' Op Cit

<sup>57</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

<sup>58</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Ibid



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opposing party through mediation and other ADR techniques<sup>62</sup>. They also provide valuable guidance and advice clients on the strengths and weaknesses of their case while also helping to negotiate settlements or other resolutions as appropriate<sup>63</sup>. A lawyer's role in mediation includes representing clients, providing practical and legal advice on the process and on issues raised and offers made, and assisting in drafting terms and conditions of settlement as agreed<sup>64</sup>.

Lawyers can also utilize mediation to strengthen environmental rule of law and foster effective management of climate change disputes<sup>65</sup>. Mediation is a key tool towards achieving environmental sustainability<sup>66</sup>. It has been noted that many business conflicts stem from environmental issues, such as disputes over land use or pollution<sup>67</sup>. By resolving these issues through mediation, companies can find solutions

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<sup>62</sup> The Role of an International Commercial Arbitration Lawyer., Available at <https://www.boccadutri.com/the-role-of-an-international-commercial-arbitrationlawyer/#:~:text=Their%20responsibilities%20include%20developing%20a%20n,hearings%2C%20and%20defe%20nds%20their%20interests> (Accessed on 16/07/2024)

<sup>63</sup> Understanding the Role of Arbitration Attorneys in Resolving Disputes., Available at <https://www.jlegal.org/blog/role-of-arbitration-attorneys-in-resolvingdisputes/#:~:text=They%20help%20to%20prepare%20and,negotiate%20settlements%20or%20other%20re%20solutions> (Accessed on 16/07/2024)

<sup>64</sup> Law Council of Australia., 'Guidelines for Lawyers in Mediations' Available at <https://lawcouncil.au/publicassets/39a0c218-0994-ea11-9434-005056be13b5/Guidelines%20for%20Lawyers%20in%20Mediations%20Final%2016%20May%202019.pdf> (Accessed on 16/07/2024)

<sup>65</sup> Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf> (Accessed on 16/07/2024)

<sup>66</sup> Maia. A., 'The Importance of Mediation in ESG: Promoting Sustainability in Corporations' Available at <https://mediationblog.kluwerarbitration.com/2024/03/08/the-importance-of-mediation-in-esg-promoting-sustainability-in-corporations/#:~:text=Many%20business%20conflicts%20stem%20from,environment%20and%20promote%20sustainable%20development>. (Accessed on 16/07/2024)

<sup>67</sup> Ibid

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that protect the environment and promote Sustainable Development<sup>68</sup>. In addition, mediation provides a unique opportunity for the parties involved to directly engage in resolving their conflicts<sup>69</sup>. This approach allows companies to build stronger and long-term relationships with their stakeholders and to promote corporate social responsibility<sup>70</sup>.

Mediation is a key collaborative approach towards managing environmental and natural resource conflicts<sup>71</sup>. It has been noted that applying collaborative approaches in managing conflicts allows competing or opposing stakeholder groups to work together to reach an agreement on a controversial issue<sup>72</sup>. Collaborative approaches towards conflict management aim to preserve relationships, build trust, and promote long term positive change<sup>73</sup>. In environmental and natural resources conflicts, sustainable outcomes are more desirable because the shared benefits of these resources often cross tribal, societal, communal, and national boundaries<sup>74</sup>. Mediation can enhance collaboration over the ownership, management, and use of natural resources therefore promoting peace and stability<sup>75</sup>. According to UNEP, mediation is a vital tool in preventing and resolving environment and natural resource-

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<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 16/07/2024)

<sup>72</sup> Ibid

<sup>73</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20int%20erest> (Accessed on 16/07/2024)

<sup>74</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDP\\_AUNEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDP_AUNEP2015_0.pdf) (Accessed on 16/07/2024)

<sup>75</sup> Ibid

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based conflicts<sup>76</sup>. It further notes that mediation can be particularly effective in helping parties identify ways to maximize and share resource benefits<sup>77</sup>.

In addition, mediation is a suitable process in resolving climate change disputes<sup>78</sup>. It has been opined that as climate change is fast becoming a major test to humanity's collective ability to prevent and manage crises, mediators will increasingly need to consider its short-, medium- and long-term implications for their engagements and integrate climate-informed practices into mediation and other forms of peacemaking<sup>79</sup>. Such approaches are not only necessary to help parties to conflicts address the risks associated with the adverse effects of climate change, but they also allow mediators to take advantage of potential opportunities for bringing conflict parties together to discuss shared responses to common climate-related threats<sup>80</sup>. Climate-informed mediation provides a platform to engage and better support the efforts of conflict parties to find a peaceful and sustainable solution to their dispute while strengthening the global response on climate change<sup>81</sup>. It has been noted that mediation can be a more flexible mode of resolving climate change conflicts<sup>82</sup>. Parties to such disputes may opt to appoint

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<sup>76</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched' Available at <https://www.unep.org/news-and-stories/press-release/mediation-can-prevent-resolve-natural-resources-disputes-new-un> (Accessed on 16/07/2024)

<sup>77</sup> Ibid

<sup>78</sup> United Nations., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNote-TheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 16/07/2024)

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Available at <https://www.hkiac.org/content/resolving->

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a mediator who is an expert on the specific matter involved in the dispute in order better to facilitate a mutually acceptable settlement agreement between and among the parties involved<sup>83</sup>.

From the foregoing, it is evident that that the ideas of environmental law, climate change, and mediation are related. It is therefore necessary to build the capacity of lawyers on environmental law, climate change, and mediation for Sustainable Development.

### **3.0 Conclusion**

It is imperative to build the capacity of lawyers in environmental law, climate change, and mediation. Lawyers play a major role in the development, implementation, and enforcement of environmental law<sup>84</sup>. They can also represent clients in litigation related to environmental damage, pollution, and breaches of environmental regulation, among others towards realizing environmental sustainability<sup>85</sup>. Lawyers are also crucial in promoting awareness around environmental laws and regulations as well as the importance of ESG tenets and sustainability tissues to clients and the general public<sup>86</sup>. The role of lawyers in environmental law can also be realized by enhancing access to environmental information, public participation, and access to justice in environmental matters<sup>87</sup>. Further, lawyers have a pertinent role to play in role in addressing climate change by using

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[climate-change-related-disputes-through-alternative-modes-dispute-resolution](#)

(Accessed on 16/07/2024)

<sup>83</sup> Ibid

<sup>84</sup> United Nations Environment Programme., 'Framework Model Curriculum on Continuing Legal Education In Environmental Law' Op Cit

<sup>85</sup> Ibid

<sup>86</sup> The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact., Op Cit

<sup>87</sup> United Nations Environment Programme., 'Framework Model Curriculum on Continuing Legal Education In Environmental Law' Op Cit

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environmental law as a tool to advocate for stronger regulations, holding polluters accountable and promoting sustainable practices<sup>88</sup>. They can also help in realizing climate justice through climate litigation<sup>89</sup>. Mediation is a tool available to lawyers in enhancing access to justice<sup>90</sup>. Lawyers can also utilize mediation to strengthen environmental rule of law and foster effective management of climate change disputes<sup>91</sup>. It is therefore imperative to build the capacity of lawyers on environmental law, climate change, and mediation.

In order to build the capacity of lawyers, there is need for continuing legal education on environmental law and climate change<sup>92</sup>. This is key in helping lawyers develop knowledge and skills to be able to effectively support the attainment of Sustainable Development, and the health of people and planet<sup>93</sup>. Continuing legal education is also key in ensuring that lawyers are able to effectively support the enforcement and implementation of environmental rule of law globally, regionally, and nationally<sup>94</sup>.

Lawyers should also be encouraged to embrace environmental law and climate change considerations including climate litigation as an area of practice<sup>95</sup>. This will be key in building the capacity of lawyers as agents

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<sup>88</sup> 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Op Cit

<sup>89</sup> Muigua. K., 'Promoting Climate Litigation in Kenya for Sustainability' Op Cit

<sup>90</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>91</sup> Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Op Cit

<sup>92</sup> United Nations Environment Programme., 'Framework Model Curriculum on Continuing Legal Education In Environmental Law' Op Cit

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</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 16/07/2024)

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of environmental and climate justice<sup>96</sup>. It is therefore necessary for law schools to embrace environmental law and climate change as key courses in order to build the capacity of lawyers in these areas<sup>97</sup>. In addition, it is important for legal bodies and institutions to develop guidelines for law firms and law practitioners to encourage them to reduce their carbon footprint in order to build the capacity of lawyers on climate change<sup>98</sup>.

Finally, it is imperative to embrace ADR in the legal profession<sup>99</sup>. ADR has emerged not as a mere alternative but as a beacon of hope, offering a pathway to resolve disputes with grace and efficacy<sup>100</sup>. Legal practitioners and disputants alike should therefore view ADR not as an avenue of last resort but as a preferred path towards mutual resolution of conflicts<sup>101</sup>. By embracing ADR mechanisms including mediation, lawyers can effectively discharge their mandate in ensuring access to justice while also being provided with an appropriate forum to manage environmental law and climate change disputes<sup>102</sup>. Strengthening the legal, policy, and institutional framework on ADR processes including mediation is also key in enhancing the effectiveness of these mechanisms<sup>103</sup>.

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<sup>96</sup> Ibid

<sup>97</sup> Muigua. K., 'Re-imagining the Role of Lawyers in Climate Justice' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Re-imagining-the-Role-of-Lawyers-in-Climate-Justice-Kariuki-Muigua-20th-July-2023.pdf> (Accessed on 16/07/2024)

<sup>98</sup> Ibid

<sup>99</sup> Barwell. J., 'A Tale of Conflict and Resolution: My Dive into Alternative Dispute Resolution' Available at <https://www.linkedin.com/pulse/tale-conflict-resolution-my-dive-alternative-dispute-john-barwell-dmwme/> (Accessed on 16/07/2024)

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Op Cit

<sup>103</sup> Ibid

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Building capacity for lawyers on Environmental Law, Climate Change and Mediation is an ideal that is necessary and achievable.

# *Promoting Environmental Rule of Law in Africa: Prospects and Challenges*

## **Promoting Environmental Rule of Law in Africa: Prospects and Challenges**

### *Abstract*

*This paper examines the concept of environmental rule of law in the African context. The paper defines environmental rule of law. It argues that environmental rule of law is key in the Sustainable Development agenda and the quest towards environmental sustainability. The paper explores the progress made towards enhancing environmental rule of law in Africa. It also discusses the challenges facing environmental rule of law in Africa. In addition, the paper offers proposals towards promoting environmental rule of law in Africa for Sustainable Development.*

### **1.0 Introduction**

Recognizing and safeguarding the rights of nature has become an urgent clarion call for the world in the quest towards sustainability<sup>1</sup>. Nature is at the key of human health and well-being and offers solutions to many of our most pressing global challenges including climate change, diseases and food insecurity<sup>2</sup>. However, despite its key role in human health and well-being, the natural environment is facing mounting problems flowing from human activities including climate change, pollution, biodiversity loss and the extinction of species, deforestation, land degradation, and increased incidents of environmental disasters<sup>3</sup>. Achieving environmental sustainability is therefore an ideal recognizing

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<sup>1</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Available at <https://www.garn.org/rights-of-nature/> (Accessed on 17/09/2024)

<sup>2</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 17/09/2024)

<sup>3</sup> United Nations Development Programme., 'Triple Planetary Crisis' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-CrisisInfographic.pdf> (Accessed on 17/09/2024)



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and safeguarding the rights of nature while also fostering harmony between humanity and nature<sup>4</sup>.

The idea of sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>5</sup>. The concept of Sustainable Development provides a pathway towards achieving the ideal of sustainability<sup>6</sup>. Sustainable Development refers to development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>7</sup>. It aims to achieve the ideal of sustainability by promoting environmental protection and conservation, economic development and social progress<sup>8</sup>.

In the environmental context, sustainability entails conserving the environment and natural resources and protecting global ecosystems to support health and wellbeing, now

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<sup>4</sup> International Science Council., 'Sustainable Human Development means Living in Harmony with Nature' Available at <https://council.science/blog/sustainable-human-development-means-living-inharmony-with-nature/> (Accessed on 17/09/2024)

<sup>5</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 17/09/2024)

<sup>6</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 17/09/2024)

<sup>7</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>8</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.'

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and in the future<sup>9</sup>. It involves practices and strategies that ensure the long-term health of our planet's ecosystems<sup>10</sup>. Among the key strategies that has been advocated towards achieving environmental sustainability is environmental rule of law<sup>11</sup>. According to the United Nations Environment Programme (UNEP), environmental rule of law is central to Sustainable Development<sup>12</sup>.

This paper examines the concept of environmental rule of law in the African context. The paper defines environmental rule of law. It argues that environmental rule of law is key in the Sustainable Development agenda and the quest towards environmental sustainability. The paper explores the progress made towards enhancing environmental rule of law in Africa. It also discusses the challenges facing environmental rule of law in Africa. In addition, the paper offers proposals towards promoting environmental rule of law in Africa for Sustainable Development.

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<sup>9</sup> What Is Environmental Sustainability?., Available at <https://sphaera.com/resources/glossary/what-isenvironmental-sustainability/> (Accessed on 17/09/2024)

<sup>10</sup> Environmental Sustainability: Definition, Policy, Examples, and More., Available at <https://www.lythouse.com/blog/environmental-sustainability-definition-policy-examples-and-more> (Accessed on 17/09/2024)

<sup>11</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Available at <https://www.unep.org/topics/environmental-law-and-governance/promoting-environmental-rule-law/promoting-environmental> (Accessed on 17/09/2024)

<sup>12</sup> Ibid

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### **2.0 Conceptualizing Environmental Rule of Law**

Environmental rule of law has been described as a refinement of the traditional notions of rule of law<sup>13</sup>. The idea of rule of law comprises a number of principles of a formal and procedural character, addressing the way in which a society is governed<sup>14</sup>. It has also been described as 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<sup>15</sup>. The rule of law is essential in all sectors of governance including the environment<sup>16</sup>.

Environmental rule of law is a concept that integrates environmental needs with the essential elements of the rule of law therefore providing the basis for improving environmental governance<sup>17</sup>. It has been described as the legal framework of procedural and substantive rights and obligations that incorporates the principles of ecologically Sustainable Development in the rule of law<sup>18</sup>. Environmental rule of law is attained when environmental laws and policies are widely

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<sup>13</sup> International Union for Conservation of Nature., 'Environmental Rule of Law' Available at <https://iucn.org/our-union/commissions/world-commission-environmental-law/our-work/history/foundational-documents-4> (Accessed on 17/09/2024)

<sup>14</sup> Waldron. J., 'The Rule of Law.' Available at <https://plato.stanford.edu/Entries/rule-of-law/> (Accessed on 17/09/2024)

<sup>15</sup> United Nations., 'What is the Rule of Law.' Available at <https://www.un.org/ruleoflaw/what-istherule-of-law/> (Accessed on 17/09/2024)

<sup>16</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

<sup>17</sup> Ibid

<sup>18</sup> International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Available at [https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/session\\_s/uploads/english\\_world\\_declaration\\_on\\_the\\_environmental\\_rule\\_of\\_law\\_final.pdf](https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/session_s/uploads/english_world_declaration_on_the_environmental_rule_of_law_final.pdf) (Accessed on 17/09/2024)

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understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet<sup>19</sup>. It provides a framework for addressing the gap between environmental laws in text and in practice<sup>20</sup>.

The idea of environmental rule of law is central to sound environmental governance and achieving environmental sustainability<sup>21</sup>. According to UNEP, environmental rule of law highlights environmental sustainability by connecting it with fundamental rights and obligations<sup>22</sup>. Environmental rule of law reflects universal moral values and ethical norms of behaviour, and provides a foundation for fostering environmental rights and obligations<sup>23</sup>. It has been noted that environmental rule of law and presence of robust institutions are essential to respond to increasing environmental pressures including climate change, pollution, and biodiversity loss that threaten the ecological integrity of the Earth, in a way that respects fundamental rights and principles of justice and fairness<sup>24</sup>. Without environmental rule of law and the enforcement of environmental legal rights and obligations, environmental governance, conservation, and protection may be arbitrary, subjective, and unpredictable<sup>25</sup>.

Environmental rule of law is therefore a concept that seeks to improve environmental governance and promote environmental sustainability and the overall Sustainable Development agenda. It combines

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<sup>19</sup> Environment Law Institute., 'Environmental Rule of Law' Available at <https://www.eli.org/environmental-rule-law> (Accessed on 17/09/2024)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

<sup>23</sup> Ibid

<sup>24</sup> International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Op Cit

<sup>25</sup> Ibid

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environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance<sup>26</sup>. Environmental rule of law is premised on key governance elements including the development, enactment, and implementation of clear, strict, enforceable, and effective environmental laws, regulations, and policies that are efficiently administered through fair and inclusive processes<sup>27</sup>; protection of human rights, including the right to a safe, clean, healthy, and sustainable environment<sup>28</sup>; ensuring access to information, public participation, and access to justice in environmental matters<sup>29</sup>; and accountability, transparency, ethics, and integrity in environmental governance<sup>30</sup>.

It has been noted that the benefits of environmental rule of law extend far beyond the environmental sector<sup>31</sup>. Environmental rule of law also strengthens the rule of law more broadly, supports sustainable economic and social development, protects public health, fosters peace and security by preventing and defusing environmental conflicts, and protects human and constitutional rights including the right to a clean, healthy, and sustainable environment<sup>32</sup>. Promoting environmental rule of law is key towards achieving the Sustainable Development Goals (SDGs)<sup>33</sup>. Environmental rule of law is at the core of SDG 16, which is geared towards advancing rule of law at the national and international levels in order to promote peaceful and inclusive societies for

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<sup>26</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Available at <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report> (Accessed on 17/09/2024)

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Environment Law Institute., 'Environmental Rule of Law' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

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Sustainable Development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels<sup>34</sup>. The rule of law in environmental matters has been described as essential for equity in terms of the advancement of the SDGs, the provision of fair access by assuring a rights-based approach towards environmental governance, and the promotion and protection of environmental and other socio-economic rights<sup>35</sup>. It is therefore imperative to promote environmental rule of law for sustainability.

### **3.0 Environmental Rule of Law in Africa: Prospects and Challenges**

There has been progress towards promoting environmental rule of law in Africa. Some African countries have codified environmental rights including the right to a clean, healthy, and sustainable environment in their national constitutions. For example, the *Constitution of the Republic of South Africa*<sup>36</sup> provides that everyone has the right to an environment that is not harmful to their health and well-being<sup>37</sup>. It further provides that every person has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution or ecological degradation, promote conservation, and secure ecologically Sustainable Development and use of natural resources while promoting justifiable economic and social development<sup>38</sup>. The *Constitution the Republic of Uganda*<sup>39</sup> also stipulates that every Ugandan has the right to a clean and healthy environment and urges the state to uphold this right. In addition,

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<sup>34</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 17/09/2024)

<sup>35</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

<sup>36</sup> Constitution of the Republic of South Africa., No. 108 of 1996

<sup>37</sup> Ibid, s 24 (a)

<sup>38</sup> Ibid, s 24 (b)

<sup>39</sup> Constitution of the Republic of Uganda., 1995.,

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the *Constitution of the Republic of Kenya*<sup>40</sup> recognizes the right to a clean and healthy environment as a fundamental human right. The Constitution of Kenya further stipulates several obligations by the state in respect of the environment including the obligation to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits, the need to encourage public participation in the management, protection and conservation of the environment, the obligation to protect genetic resources and biological diversity and the obligation to eliminate processes and activities that are likely to endanger the environment<sup>41</sup>.

It has been argued that environmental rule of law is closely connected to constitutional and human rights<sup>42</sup>. As a result, many constitutional and human rights depend on the environment—without a healthy environment and the clean air, water, and sustenance it provides, people would not have the most basic necessities for life therefore threatening human health and well-being<sup>43</sup>. Constitutional and human rights law therefore offers a framework for reinforcing and strengthening environmental rule of law since many environmental harms can be addressed through the protection of constitutional and human rights<sup>44</sup>. Framing environmental matters in a constitutional or human rights context can consequently bring heightened legal and moral authority to environmental violations as well as open additional avenues for addressing those violations<sup>45</sup>. Therefore, the codification of the right to a clean, healthy, and sustainable environment in national constitutions

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<sup>40</sup> Constitution of Kenya, 2010., Article 42., Government Printer, Nairobi

<sup>41</sup> Ibid, article 69

<sup>42</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid

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is a key measure towards promoting environmental rule of law in Africa.

There has also been progress towards promoting environmental rule of law in Africa through the establishment of national environmental framework laws in Africa<sup>46</sup>. For example, the *Environmental Protection Agency Act*<sup>47</sup> of the Republic of Ghana, establishes the Environmental Protection Agency whose functions include formulation of policies on all aspects of the environment and making recommendations for the protection of the environment. In addition, the *Environmental Management and Co-ordination Act*<sup>48</sup> of the Republic of Kenya establishes the legal and institutional framework for the management of the environment in Kenya. The Act upholds the right of every Kenyan to a clean and healthy environment and sets out various measures towards upholding this right<sup>49</sup>. In addition, the Act establishes the National Environment Management Authority which has the mandate to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment<sup>50</sup>. Further, the *Environmental Management Act*<sup>51</sup> of the United Republic of Tanzania provides the legal and institutional framework for sustainable management of the environment. The Act provides that every person living in Tanzania has a right to a clean, safe and healthy environment<sup>52</sup>. It also establishes an institutional framework for the management of the

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<sup>46</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>47</sup> Republic of Ghana., Environmental Protection Agency Act, 1994 (Act 490)

<sup>48</sup> Republic of Kenya., Environmental Management and Co-ordination Act., No. 8 of 1999, Government Printer, Nairobi

<sup>49</sup> Ibid

<sup>50</sup> Ibid, s 7 & 9

<sup>51</sup> United Republic of Tanzania., the Environmental Management Act., 2004

<sup>52</sup> Ibid, s 4 (1)



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environment in the United Republic of Tanzania comprising of various bodies including the National Environment Management Council<sup>53</sup>.

Civic engagement is also fundamental in promoting environmental rule of law<sup>54</sup>. It has been noted that strengthening environmental rule of law requires a whole-of-society approach<sup>55</sup>. UNEP points out that while substantial emphasis is naturally placed on strengthening governmental institutions at the national, regional, and local levels towards promoting environmental rule of law, the civil society also plays an essential role<sup>56</sup>. Effective engagement of civil society in environmental matters results in more informed decision making by government, more responsible environmental actions by companies, more assistance in environmental management by the public, and more effective environmental law<sup>57</sup>. The fundamental role of civic engagement in environmental decision making is enshrined under the *Rio Declaration on Environment and Development*<sup>58</sup>. The Declaration 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*

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<sup>53</sup> Ibid, s 16 (1)

<sup>54</sup> United Nations Environment Programme., 'Civic Engagement - Environmental Rule of Law: First Global Report' Available at <https://stg-wedocs.unep.org/handle/20.500.11822/27380> (Accessed on 18/09/2024)

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>58</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)

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*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).'*

Principle 10 of the Rio Declaration on Environment and Development therefore identifies access to information, public participation, and access to justice as key pillars of civic engagement in environmental matters<sup>59</sup>. There has been progress towards upholding these pillars and promoting environmental rule of law in Africa. African countries including Ghana, Democratic Republic of the Congo, Zambia, and Malawi have enshrined the constitutional right of access to information. Public participation is also set out in national constitutions in African countries including Kenya, Burundi, Uganda, and Zimbabwe<sup>60</sup>.

Progress is also being made towards enhancing access to justice as a tool for promoting environmental rule of law in Africa<sup>61</sup>. Access to justice in environmental matters is a fundamental pillar of environmental rule of law<sup>62</sup>. The right of access to justice obliges states to guarantee every individual the right to turn to a court – or, in certain circumstances, to Alternative Dispute Resolution (ADR) processes in order to obtain remedies when it is determined that the individual's rights have been violated<sup>63</sup>. In addition, access to justice means that the public has ready and meaningful access to courts, tribunals, commissions, and other bodies that are charged with protecting their rights and peacefully

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<sup>59</sup> Ibid

<sup>60</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>61</sup> Ibid

<sup>62</sup> Access to Justice in Environmental Matters., Available at <https://just-access.de/access-to-justice-in-environmental-matters/> (Accessed on 18/09/2024)

<sup>63</sup> Ibid

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resolving disputes<sup>64</sup>. Access to justice in environmental matters is an effective means of securing environmental protection and conservation and promoting environmental rule of law<sup>65</sup>.

There has been progress towards enhancing access to justice in environmental matters in Africa. For example, in Kenya, the Constitution provides 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>66</sup>. Courts in such cases may make orders to prevent, stop or discontinue any act or omission that is harmful to the environment, to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment, and to provide compensation for any victim of a violation of the right to a clean and healthy environment<sup>67</sup>. Courts and tribunals in Kenya therefore have an important role to play in promoting environmental rule of law by enhancing access to justice in environmental matters.

At a continental level, the African Court of Justice and Human Rights and the African Commission on Human and Peoples' Rights are judicial bodies established pursuant to the *African Charter on Human and People's Rights*<sup>68</sup> which play a key role in promoting environmental rule of law in Africa. It has been observed that the African Commission on Human

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<sup>64</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>65</sup> Access to Justice in Environmental Matters., Op Cit

<sup>66</sup> Constitution of Kenya, 2010., article 70 (1)

<sup>67</sup> Ibid, article 70 (2) (c)

<sup>68</sup> African Union., 'African Charter on Human and Peoples' Rights' Available at [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) (Accessed on 18/09/2024)

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and Peoples' Rights has continued to elaborate on the understanding of environment-related rights enshrined in the African Charter on Human and Peoples' Rights, including the right to a general satisfactory environment favourable to development, the right to life, and the right to cultural development and equal enjoyment of the common heritage of mankind<sup>69</sup>. For example, in the Endorois Case, the African Commission on Human and People's Rights upheld the right of indigenous communities to utilize natural resources including ancestral land<sup>70</sup>. This decision is integral in enhancing environmental rule of law in Africa by recognizing the rights of indigenous people to property, to culture, to the free disposition of natural resources, and to development<sup>71</sup>.

The East African Court of Justice (EACJ) is another judicial body that is key in promoting environmental rule of law within the East African Community (EAC) through fostering access to justice in environmental matters<sup>72</sup>.

It is therefore evident that progress has been made towards promoting environmental rule of law in Africa. However, while there has been an increase in the legal recognition of environmental rights across the continent, implementation and enforcement has not been robust<sup>73</sup>. It has

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<sup>69</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental\\_rule\\_of\\_law\\_progress.pdf?sequence=3](https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3) (Accessed on 18/09/2024)

<sup>70</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya., 276/2003

<sup>71</sup> Ibid

<sup>72</sup> East African Court of Justice., Environmental Matters., Available at <https://www.eacj.org/?case-classifications=environmental-matter> (Accessed on 18/09/2024)

<sup>73</sup> The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Available at <https://accessinitiative.org/wp->

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been noted that challenges in promoting environmental rule of law in Africa stem from weak institutions and capacity, lack of political incentives, and insufficient public awareness including limited access to information related to environmental rights and limited access to the appropriate decision-making forums, especially at the local level<sup>74</sup>. Further, challenges facing court processes in Africa including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow can limit access to justice in environmental matters therefore hindering the growth of environmental rule of law<sup>75</sup>. It is imperative to address these challenges in order to effectively promote environmental rule of law in Africa.

### **4.0 Conclusion**

It is imperative to promote environmental rule of law in Africa. Environmental rule of law is vital in addressing the gap between environmental laws in text and in practice towards strengthening environmental governance<sup>76</sup>. In order to promote environmental rule of law in Africa, it is imperative to strengthen the implementation of environmental laws and policies at national and regional levels<sup>77</sup>. Strengthening the implementation of environmental laws and policies in Africa requires political interest and support, ensuring the dedicated human and financial resources necessary to address implementation challenges<sup>78</sup>. This can be achieved through capacity building including

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[content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf) (Accessed on 18/09/2024)

<sup>74</sup> Ibid

<sup>75</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>76</sup> Environment Law Institute., 'Environmental Rule of Law' Op Cit

<sup>77</sup> The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Op Cit

<sup>78</sup> Ibid

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training of key officials responsible for enforcement of environmental rights laws and policies<sup>79</sup>. It also requires improving specific policy frameworks on the environment, fostering sound environmental governance, and adopting community strategies towards environmental conservation<sup>80</sup>.

There is also need to embrace and strengthen civic engagement in environmental governance in Africa<sup>81</sup>. It has been noted that effective engagement of civil society results in more informed decision making by government, more responsible environmental actions by companies, more assistance in environmental management by the public, and more effective environmental law<sup>82</sup>. African countries should therefore embrace civic engagement in environmental governance through promoting access to environmental information and fostering public participation in environmental governance<sup>83</sup>.

It is vital to realize and expand the available channels of access to justice in environmental matters<sup>84</sup>. Barriers hindering access to justice including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow should be addressed in order promote environmental rule of law in Africa<sup>85</sup>. Courts and tribunals at national, regional, and continental levels including the African Court of Justice and Human

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<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-for-Sustainability-.pdf> (Accessed on 18/09/2024)

<sup>85</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," Op Cit

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Rights and the African Commission on Human and Peoples' Rights should continue upholding environmental rights and shaping environmental jurisprudence in the continent in order to promote environmental rule of law in Africa<sup>86</sup>. There is also need to utilize ADR processes including mediation and arbitration in order to enhance access to environmental justice in Africa<sup>87</sup>. ADR processes can speed the resolution of environmental disputes and conflicts while also enhancing collaboration and cooperation among parties<sup>88</sup>. The transnational applicability of ADR processes such as mediation and arbitration can also be utilized to resolve cross border environmental disputes and conflicts in Africa thus enhancing access to justice and promoting environmental rule of law at regional and continental levels<sup>89</sup>.

Promoting environmental rule of law in Africa is therefore necessary and achievable towards realizing the Sustainable Development agenda and actualizing the vision of Africa Union's Agenda 2063.

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<sup>86</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

<sup>87</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 18/09/2024)

<sup>88</sup> Ibid

<sup>89</sup> Muigua. K., 'Managing Transboundary Natural Resource Disputes through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2024/06/Managing-Transboundary-Natural-Resource-Disputes-through-Alternative-Dispute-Resolution.pdf> (Accessed on 18/09/2024)

## *Achieving Environmental Justice Through Alternative Dispute Resolution and The Court Process*

### **Achieving Environmental Justice Through Alternative Dispute Resolution and The Court Process**

#### *Abstract*

*This paper critically examines the need to achieve Environmental Justice. The paper posits that realizing Environmental Justice is a global ideal in the wake of environmental challenges being faced at the global, regional, and national levels including the triple planetary crisis of climate change, biodiversity loss, and pollution. The paper defines Environmental Justice and explores its core tenets. It further argues that Alternative Dispute Resolution (ADR) techniques and court processes are suitable in promoting Environmental Justice. The paper interrogates the progress made towards fostering Environmental Justice through ADR and court processes and challenges thereof. It also offers recommendations towards achieving Environmental Justice through ADR and court processes.*

#### **1.0 Introduction**

Sound environmental conservation has emerged as global ideal towards Sustainable Development<sup>1</sup>. Environmental conservation is vital in maintaining the diversity and integrity of ecosystems, as well as the services they provide to both humanity and nature<sup>2</sup>. According to the United Nations Environment Programme (UNEP), appropriate environmental management entails making the best use of natural resources to meet basic human needs without destroying the sustaining and regenerative capacity of natural systems<sup>3</sup>.

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<sup>1</sup> Muigua. K., 'Embracing Sound Environmental Governance in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2024/01/Embracing-Sound-Environmental-Governance-in-Africa-1.pdf> (Accessed on 14/09/2024)

<sup>2</sup> Ibid

<sup>3</sup> United Nations Environment Programme., 'Environmentally Sound Technologies' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/environmentally->



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The United Nations *2030 Agenda for Sustainable Development*<sup>4</sup> sets out the global blueprint towards sustainability including the need for effective environmental governance. In order to achieve the ideal of sound environmental governance, the Agenda seeks to protect the planet from degradation including through sustainable consumption and production, sustainably managing its natural resources, and taking urgent action to confront climate change so that the planet can support the needs of the present and future generations<sup>5</sup>. The Agenda sets out 17 Sustainable Development Goals (SDGs) that seeks to integrate environmental conservation, economic development, and social progress towards sustainability<sup>6</sup>.

Despite the global ideal of sustainability including the need for effective environmental governance and conservation, the planet is facing mounting problems including environmental challenges such as climate change, pollution, and loss of biodiversity<sup>7</sup>. Environmental problems facing the planet including the triple planetary crisis of climate change, biodiversity and ecosystem loss, and pollution undermine the enjoyment and protection of human rights and exacerbate environmental injustices, disproportionately affecting the most vulnerable, marginalized and excluded people and communities

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<sup>4</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 14/09/2024)

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) *Integrated Reporting*. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 14/09/2024)

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including the poor, women, children, indigenous peoples, and persons with disabilities<sup>8</sup>. It has been noted that current environmental crises are intertwined with the crisis of inequality and are inextricably linked to the protection and fulfilment of human rights and Sustainable Development<sup>9</sup>. In order to effectively respond to ongoing environmental challenges and their impacts on human rights especially for the vulnerable and marginalized people and communities, it imperative to achieve Environmental Justice towards increasing accountability and protection of environmental rights for current and future generations<sup>10</sup>.

This paper critically examines the need to achieve Environmental Justice. The paper posits that realizing Environmental Justice is a global ideal in the wake of environmental challenges being faced at the global, regional, and national levels including the triple planetary crisis of climate change, biodiversity loss, and pollution. The paper defines Environmental Justice and explores its core tenets. It further argues that Alternative Dispute Resolution (ADR) techniques and court processes are suitable in promoting Environmental Justice. The paper interrogates the progress made towards fostering Environmental Justice through ADR and court processes and challenges thereof. It also offers recommendations towards achieving Environmental Justice through ADR and court processes.

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<sup>8</sup> United Nations Development Programme., 'Environmental Justice' Available at <https://www.undp.org/rolhr/justice/environmental-justice> (Accessed on 14/09/2024)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

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### **2.0 Environmental Justice: Definition and Elements**

Justice is a key theme under the 2030 Agenda for Sustainable Development<sup>11</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>12</sup>. The concept of justice has been described as multi-faceted<sup>13</sup>. It has been pointed out that in a world increasingly threatened by environmental challenges, including the triple planetary crisis of climate change, biodiversity loss and pollution, the concept of justice increasingly embraces environmental justice<sup>14</sup>.

Environmental Justice has been described as a concept that continues to evolve and expand in the context of the planetary crisis<sup>15</sup>. Historically, Environmental Justice sought to address the concern that environmental risks and hazards disproportionately affected societal groups in the most vulnerable and less empowered contexts and countries<sup>16</sup>. The idea of Environmental Justice in this context therefore sought to ensure accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs related to the impacts of ecological change on the poor and vulnerable in society<sup>17</sup>. The concept

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<sup>11</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, Op Cit

<sup>12</sup> Ibid

<sup>13</sup> The Role of the Courts in Delivering Environmental Justice., Available at [https://lec.nsw.gov.au/documents/speeches-and-papers/Preston\\_CJ\\_-\\_The\\_Role\\_of\\_the\\_Courts\\_in\\_Delivering\\_Environmental\\_Justice.pdf](https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Role_of_the_Courts_in_Delivering_Environmental_Justice.pdf) (Accessed on 14/09/2024)

<sup>14</sup> Ibid

<sup>15</sup> United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Environmental-Justice-Technical-Report.pdf> (Accessed on 14/09/2024)

<sup>16</sup> Ibid

<sup>17</sup> Ibid

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of Environmental Justice has however expanded its scope to focus on social inequalities, such as disparities between environmental conditions experienced by the richest and poorest sectors of societies<sup>18</sup>.

Environmental Justice can therefore be conceptualized as the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies<sup>19</sup>. Environmental Justice has also been defined as 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>20</sup>. Environmental Justice is attained when every person enjoys the same degree of protection from environmental and health hazards and has access to the decision-making processes to have a clean, healthy, and sustainable environment<sup>21</sup>.

The idea of Environmental Justice therefore highlights the plight of vulnerable people and communities who bear the most burden when it comes to environmental damage and seeks to give them a voice through access to environmental information and participation in environmental decision making in order to ensure sustainable and equitable development<sup>22</sup>. This concept involves at least three types of justice:

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<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at <https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml> (Accessed on 14/09/2024)

<sup>21</sup> United States Environmental Protection Agency; 'Environmental Justice.' Available at <https://www.epa.gov/environmentaljustice> (Accessed on 14/09/2024)

<sup>22</sup> Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

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distributive justice, procedural justice and recognition justice<sup>23</sup>. Distributive justice entails the substantive distribution of environmental benefits and burdens<sup>24</sup>. Procedural justice involves ensuring participation, access to information, and providing access to justice for all in environmental matters<sup>25</sup>. Recognition justice is based on the understanding that failure to acknowledge the circumstances those affected by environmental problems devalues individuals and communities, thereby allowing injustices to persist<sup>26</sup>. Environmental justice also seeks to foster intra and intergenerational equity in the environmental context, including the realization that environmental problems have been mostly led by industrialized countries, and their impacts more acutely experienced by developing countries which contribute least to such problems<sup>27</sup>. It also seeks to address environmental problems including climate change, biodiversity loss, and pollution in order protect and safeguard the environment for the benefit of both present and future generations towards intergenerational equity<sup>28</sup>.

Environmental Justice therefore seeks to address distributive inequity, lack of recognition, disenfranchisement and exclusion in environmental matters and decision-making processes<sup>29</sup>. It is a concept that seeks to

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<sup>23</sup> Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' *WIREs Clim Change* 2014

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Eisenhauer. E et al., 'New Directions in Environmental Justice Research at the U.S. Environmental Protection Agency: Incorporating Recognition and Capabilities Justice Through Health Impact Assessments' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8884111/> (Accessed on 14/09/2024)

<sup>27</sup> United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Op Cit

<sup>28</sup> Ibid

<sup>29</sup> United States Environmental Protection Agency; 'Environmental Justice.' Op Cit

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achieve the ideal of access, participation and procedural justice in environmental decision making<sup>30</sup>. The fundamental principle of environmental justice is that all stakeholders should have meaningful and informed participation in all aspects of environmental decision-making that could affect their community<sup>31</sup>. Therefore, in order to attain Environmental Justice, affected communities must have the ability to effectively collect data and other information in order to be informed and active participants in environmental decision-making processes<sup>32</sup>. It has been argued that addressing environmental injustices requires a human-rights based, multi-disciplinary approach that tackles both immediate environmental justice needs and the structural inequalities that cause and perpetuate environmental injustices<sup>33</sup>. Environmental Justice is therefore anchored in human rights and is a key tool towards actualizing the human right to a clean, healthy, and sustainable environment<sup>34</sup>.

### **3.0 Achieving Environmental Justice through Alternative Dispute Resolution**

ADR is an umbrella term that covers a range of tools and skills that can be utilized to manage conflicts and disputes without resort to courts<sup>35</sup>.

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<sup>30</sup> Schlosberg, D & Collins, L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

<sup>31</sup> United States Department of Energy., 'Environmental Justice Strategy' Available at [https://www.energy.gov/sites/prod/files/EJ\\_Strategy\\_FINAL.pdf](https://www.energy.gov/sites/prod/files/EJ_Strategy_FINAL.pdf) (Accessed on 14/09/2024)

<sup>32</sup> Ibid

<sup>33</sup> United Nations Development Programme., 'Environmental Justice and the Right to a Clean, Healthy, and Sustainable Environment' Available at <https://www.undp.org/rollhr/human-rights/environmental-justice> (Accessed on 14/09/2024)

<sup>34</sup> Ibid

<sup>35</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at

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ADR has also been defined as a spectrum of less costly and more expeditious alternatives to litigation, where a neutral party assists the disputing parties in reaching resolution<sup>36</sup>. However, in some ADR processes such as negotiation, parties to a conflict meet to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party<sup>37</sup>. According to the United Nations, ADR (sometimes also referred to as “Appropriate Dispute Resolution”) is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a nonconfrontational way<sup>38</sup>. ADR encompasses a set of processes including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>39</sup>.

ADR is a suitable forum for achieving environmental justice<sup>40</sup>. In the quest towards environmental justice, ADR has been identified as a tool for individuals and communities to give their own voices, to share in decision-making, and to promote innovative solutions in respect of environmental problems<sup>41</sup>. For example, instead of going to court, a

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<https://www.eli.org/environmental-governance/community-guide-using-alternative-dispute-resolution-secure-1> (Accessed on 15/09/2024)

<sup>36</sup> JAMS ADR., ‘What is ADR’ Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 15/09/2024)

<sup>37</sup> Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Glenwood Publishers Limited, 2015

<sup>38</sup> United Nations., ‘Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building’ Available at [https://www.un.org/waterforlifedecade/water\\_cooperation\\_2013/pdf/adr\\_backgroud\\_paper.pdf](https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_backgroud_paper.pdf) (Accessed on 15/09/2024)

<sup>39</sup> Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Op Cit

<sup>40</sup> Environmental Law Institute., ‘A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice’ Op Cit

<sup>41</sup> Ibid

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community that is affected by environmental challenges such as pollution can use ADR techniques such as negotiation and mediation with the party most able to resolve the problem, such as the company causing harmful pollution in order to effectively and expeditiously address such problems<sup>42</sup>.

One of the key ways through which ADR process can promote Environmental Justice is by ensuring meaningful public participation in environmental decision-making<sup>43</sup>. Public participation is a key pillar in the Environmental Justice debate<sup>44</sup>. When effectively implemented, public participation improves the quality of decisions about the environment<sup>45</sup>. In addition, public participation increases the legitimacy of environmental decisions in the eyes of those affected by them, which makes it more likely that the decisions will be implemented effectively<sup>46</sup>. Effective public participation is a mechanism for integrating public concerns and knowledge into public policy decisions affecting the environment towards achieving Environmental Justice<sup>47</sup>. It has been pointed out that informed and effective public participation at early stages of environmental decision-making helps to forestall future

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<sup>42</sup> Ibid

<sup>43</sup> United States Commission on Civil Rights., 'Alternative Dispute Resolution and Meaningful Public Participation' Available at <https://www.usccr.gov/files/pubs/envjust/ch5.htm> (Accessed on 15/09/2024)

<sup>44</sup> United States Environmental Protection Agency., 'Benefits of Public Participation' Available at <https://www.epa.gov/international-cooperation/public-participation-guide-internet-resources-public-participation> (Accessed on 15/09/2024)

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> United Nations Economic Commission for Latin America and the Caribbean., 'Access to Information, Participation, and Justice in Environmental Matters in Latin America and the Caribbean' Available at <https://repositorio.cepal.org/server/api/core/bitstreams/df4bbf15-d052-4247-a17a-b56acc77a3d/content> (Accessed on 15/09/2024)



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socioenvironmental conflicts<sup>48</sup>. Ensuring effective and meaningful public participation is therefore vital in achieving environmental justice.

ADR mechanisms can ensure greater and more effective public participation in environmental matters therefore fostering Environmental Justice<sup>49</sup>. The informality, voluntariness, and flexibility of ADR processes makes ADR a suitable platform for ensuring the participation of all stakeholders including marginalized groups and individuals in environmental decision making<sup>50</sup>. ADR mechanisms such negotiation and mediation can be effectively harnessed to ensure the participation of all stakeholders including local communities in environmental decision making towards realizing Environmental Justice<sup>51</sup>.

In addition, ADR techniques are ideal in achieving Environmental Justice by ensuring access to justice in environmental matters<sup>52</sup>. Access to justice is vital in the quest towards Environmental Justice<sup>53</sup>. Access to justice has been identified as an essential element of safeguarding environmental rule of law, protecting the environment, fostering Sustainable Development and protecting human health and well-

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<sup>48</sup> Ibid

<sup>49</sup> United States Commission on Civil Rights., 'Alternative Dispute Resolution and Meaningful Public Participation' Op Cit

<sup>50</sup> Ibid

<sup>51</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 15/09/2024)

<sup>52</sup> Ibid

<sup>53</sup> United Nations Economic Commission for Europe., 'Enhancing Access to Justice to Tackle Climate Change and Pollution and Protect Biodiversity' Available at [https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE\\_Access2Justice\\_Study\\_Final\\_logos.pdf](https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE_Access2Justice_Study_Final_logos.pdf) (Accessed on 15/09/2024)

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being<sup>54</sup>. It has been noted that members of the public are increasingly seeking access to justice to reduce exposure to pollution, ensure climate action, or minimize environmental impacts of unsustainable energy-related decision-making<sup>55</sup>. Ensuring access to justice is therefore important in achieving Environmental Justice by tackling environmental problems including climate change, pollution, and biodiversity loss<sup>56</sup>.

ADR processes are suitable in enhancing access to justice since they allow for more creative and collaborative solutions than that of traditional litigation<sup>57</sup>. In environmental matters, ADR provides an opportunity for community members to reach creative, and custom-made solutions therefore fostering Environmental Justice<sup>58</sup>. It has been argued that since the goal of ADR is to find solutions that satisfy everyone involved, communities can avoid the risk of an 'all-or-nothing' result, which often happens with litigation<sup>59</sup>. By ensuring that every person works together to shape an agreement that addresses the concerns and interests of all participants, ADR can also improve relationships between parties in conflict therefore ensuring access to justice<sup>60</sup>. ADR processes therefore provide a suitable platform for managing environmental disputes including those concerning climate change and pollution thus ensuring access to justice towards achieving Environmental Justice<sup>61</sup>.

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> JAMS ADR., 'What is ADR' Op Cit

<sup>58</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Op Cit

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

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It is imperative to utilize ADR processes in order to achieve Environmental Justice.

### **4.0 Achieving Environmental Justice through the Court Process**

Courts play a fundamental role in delivering Environmental Justice<sup>62</sup>. For example, through the adjudication of environmental disputes, courts play a role in explaining and upholding the values underpinning Environmental Justice<sup>63</sup>. In addition, courts are crucial in achieving Environmental Justice by implementing the purposes of environmental legislation<sup>64</sup>. It has been noted that the purposes of environmental laws and policies may include distributive justice (by providing for more equitable distribution of environmental benefits and burdens); procedural justice (by providing for access to environmental information, public participation in environmental decision-making, and access to the courts); and recognition justice (giving recognition to and overcoming misrecognition of marginalised people, groups or communities in environmental matters)<sup>65</sup>. Therefore, by upholding such legislative purposes when resolving environmental disputes, courts facilitate the realization of Environmental Justice.

Litigation is therefore an appropriate forum for achieving Environmental Justice. Through litigation, the jurisdiction of courts and tribunals can be utilized to enhance Environmental Justice<sup>66</sup>. Litigation has emerged as a tool for environmental defenders seeking to prevent ecological destruction and ensure justice for affected communities all

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<sup>62</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 15/09/2024)

<sup>63</sup> The Role of the Courts in Delivering Environmental Justice., Op Cit

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

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over the world<sup>67</sup>. For example, in Kenya, the *Environment and Land Court Act*<sup>68</sup> establishes the Environment and Land Court to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources among other environmental matters<sup>69</sup>. While exercising its jurisdiction, the Act mandates the Environment and Land Court to be guided by several tenets that are key in achieving Environmental Justice including the principles of Sustainable Development such as the principle of public participation; the polluter-pays principle and the pre-cautionary principle<sup>70</sup>. The Environment and Land Court and other courts and tribunals including the National Environment Tribunal are therefore key in promoting Environmental Justice in Kenya<sup>71</sup>.

The principles of Environmental Justice were upheld in Kenya in the case of *KM & 9 others v Attorney General & 7 others*<sup>72</sup>. The Environment and Land Court decided that acts of pollution from a lead acid batteries recycling factory had resulted in violation of the Petitioner's rights to their personal life, the environment where they stayed and the water which they consumed<sup>73</sup>. The Court proceeded to award the petitioners monetary compensation while also directing the Respondents to clean-up the soil, water and remove any wastes deposited within the Owino-Ohuru settlement<sup>74</sup>. This decision is key in fostering Environmental

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<sup>67</sup> Hope for Environmental Justice in Africa., Available at <https://dialogue.earth/en/justice/hope-for-environmental-justice-in-africa/> (Accessed on 16/09/2024)

<sup>68</sup> Environment and Land Court Act., No. 19 of 2011, Government Printer, Nairobi

<sup>69</sup> Ibid, s 13 (2) (a)

<sup>70</sup> Ibid, s 18 (a)

<sup>71</sup> Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

<sup>72</sup> *KM & 9 others v Attorney General & 7 others*, Petition No. 1 of 2016 (2020) eKLR,

<sup>73</sup> Ibid

<sup>74</sup> Ibid

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Justice in Kenya since it upholds the concepts of access to justice and access to remedies including compensation in cases of environmental pollution<sup>75</sup>. The decision has been described as a milestone for Environmental Justice and enforcement of the right to a clean, healthy, and sustainable environment in Kenya and Africa at large<sup>76</sup>.

The principles of Environmental Justice were also reiterated by the Environment and Land Court in Kenya in the case of *Friends of Lake Turkana Trust vs Attorney General & 2 others*<sup>77</sup>. The Court in the case decided that the petitioner's rights including access to information and public participation has been violated in respect of the proposed construction and operation of Gibe III dam between the Governments of Kenya and Ethiopia<sup>78</sup>. The court decided that the state is a custodian of the environment and natural resources of its people and is under certain duties and obligations including ensuring that there is public participation in the sustainable management, protection and conservation of the environment<sup>79</sup>. It also decided that access to environmental information is a prerequisite to effective public participation in decision-making and to monitoring governmental and private sector activities on the environment<sup>80</sup>.

Courts in other African countries are also upholding the principles of Environmental Justice. The High Court of South Africa in the case of *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources*

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<sup>75</sup> Ibid

<sup>76</sup> Hope for Environmental Justice in Africa., Op Cit

<sup>77</sup> Friends of Lake Turkana Trust vs Attorney General & 2 others., ELC Suit No. 825 of 2012, (2014) eKLR

<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Ibid

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*and Energy and Others*<sup>81</sup> set aside an exploration right, part-held by Shell, which would have enabled the company to undertake a seismic survey off South Africa's coastline, to explore for oil and gas reserves<sup>82</sup>. The Court set aside the exploration right on the basis of procedural unfairness; the failure to take into account relevant considerations; and the failure to comply with applicable legal standards<sup>83</sup>. The High Court noted that the process leading to the grant of the exploration right failed to adequately consult with interested and affected communities<sup>84</sup>. It further noted that the process ought to have invoked the precautionary principle (to the effect that where there is a risk of environmental harm, incomplete scientific knowledge should not be used as a reason to delay taking action to avoid the harm)<sup>85</sup>. The Court noted that the process would have adverse impacts including harm to marine and bird life; the spiritual and cultural rights of the communities and their rights to livelihood; and climate change hence the need to take into account the precautionary principle<sup>86</sup>. This decision is important in the quest towards Environmental Justice in Africa by reiterating the importance of meaningfully consulting with affected communities and respecting constitutional rights in cases of proposed exploration activities<sup>87</sup>. Further, it has been pointed out that the decision represents the first time that Indigenous communities in South Africa specifically invoked their

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<sup>81</sup> *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others.*, (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022)

<sup>82</sup> *Ibid*

<sup>83</sup> *Ibid*

<sup>84</sup> *Ibid*

<sup>85</sup> *Ibid*

<sup>86</sup> *Ibid*

<sup>87</sup> African Law Matters., 'The Shell Case: A Victory for Social and Ecological Justice in South Africa' Available at <https://www.africanlawmatters.com/blog/the-shell-case-a-victory-for-social-and-ecological-justice-in-south-africa> (Accessed on 16/09/2024)

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cultural rights in climate litigation and adds to a growing body of indigenous-oriented climate litigation cases around the world<sup>88</sup>.

In addition, the East African Court of Justice in the case of *African Network for Animal Welfare v. The Attorney General of the United Republic of Tanzania*<sup>89</sup> held that the proposal to construct a bitumen road across the Serengeti National Park was unlawful and infringed articles 5(3)(c), 8(1)(c), 111(2) and 114(1) of the Treaty Establishing the East African Community requiring partner states to conserve, protect and co-operate in the management of natural resources and the environment within the East African Community<sup>90</sup>. It decided that the proposed construction would cause devastating and irreversible damage to the Serengeti and neighboring parks like the Masai Mara in Kenya therefore threatening the right to a clean, healthy, and sustainable environment<sup>91</sup>. It granted a permanent injunction restraining the Government of Tanzania from constructing and maintaining the planned road across the Serengeti National Park<sup>92</sup>. This decision is key in fostering Environmental Justice and the right to a clean, healthy, and sustainable environment in Africa.

At the global level, the International Court of Justice (ICJ) provides a suitable platform for achieving Environmental Justice through the right

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<sup>88</sup> Du Toit. L., Soyapi. B., & Kotze. L., 'South African Communities vs Shell: High Court Victories show that Cultural Beliefs and Practices Count in Climate Cases' Available at <https://theconversation.com/south-african-communities-vs-shell-high-court-victories-show-that-cultural-beliefs-and-practices-count-in-climate-cases-228029> (Accessed on 16/09/2024)

<sup>89</sup> *African Network for Animal Welfare v. The Attorney General of the United Republic of Tanzania*, 20 June 2014, EACJ First Instance Division, Ref. No. 9 of 2010

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

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of access to justice and legal remedies in environmental matters<sup>93</sup>. For example, in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*<sup>94</sup>, ICJ emphasized the need for the two countries to continue their cooperation and devise the necessary means to promote the equitable utilization of the river, while protecting its environment. The ICJ also recently rendered its first decision on environmental damage and compensation in the case *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*<sup>95</sup> therefore enhancing Environmental Justice through access to legal remedies.

The court process at global, regional, and national level is therefore appropriate in promoting Environmental Justice.

### **5.0 Conclusion**

Achieving Environmental Justice has become a vital agenda in light of mounting environmental problems that are prevalent all over the world including the triple planetary crisis of climate change, biodiversity loss, and pollution<sup>96</sup>. Environmental Justice seeks to achieve the ideal of access to justice, participation and access to legal remedies in environmental matters<sup>97</sup>. ADR is a suitable platform for achieving Environmental Justice. These processes can ensure the participation of

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<sup>93</sup> The ICJ and Environmental Case Law., Available at <https://www.uio.no/studier/emner/jus/jus/JUS5520/h15/undervisningsmateriale/icj-andinternational-environmental-law.pdf> (Accessed on 16/09/2024)

<sup>94</sup> International Court of Justice., 'Pulp Mills on the River Uruguay (Argentina v. Uruguay).' Available at <https://www.icj-cij.org/case/135> (Accessed on 16/09/2024)

<sup>95</sup> International Court of Justice., 'Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua).' Available at <https://www.icj-cij.org/case/150> (Accessed on 16/09/2024)

<sup>96</sup> The Role of the Courts in Delivering Environmental Justice., Op Cit

<sup>97</sup> Schlosberg, D & Collins, L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit



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all stakeholders while also allowing parties to come up with collaborative and creative remedies toward achieving Environmental Justice<sup>98</sup>. However, the role of ADR processes in promoting Environmental Justice may be limited by power imbalances and enforceability challenges in mechanisms such as mediation, delays and costs in arbitration, and lack of criminal sanctions in cases of environmental crimes<sup>99</sup>. It is therefore imperative to legitimize ADR processes through effective legal, policy, and institutional frameworks in order to enhance their role in access to justice including Environmental Justice<sup>100</sup>. It is also vital to build capacity for ADR practitioners and institutions in environmental matters in order to effectively utilize ADR as a tool for achieving Environmental Justice<sup>101</sup>.

The Court process at the national, regional, and global levels is also suitable in promoting Environmental Justice. Courts have the power to pronounce binding judgments while also ensuring that such judgments are enforceable and are ideal in fostering Environmental Justice<sup>102</sup>. However, concerns in litigation such high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow can hinder the viability of the court process in enhancing Environmental Justice<sup>103</sup>. It is

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<sup>98</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

<sup>99</sup> Ibid

<sup>100</sup> Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISINGALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 16/09/2024)

<sup>101</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

<sup>102</sup> Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

<sup>103</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

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imperative to address these challenges by enhancing the right of access to justice, ensuring expeditious management of disputes, addressing the issue of costs, and opening doors for public interest litigation in environmental matters in order to achieve Environmental Justice through the court process<sup>104</sup>. It is also imperative to establish specialized environmental courts at national, regional, and global levels and build the capacity of judicial officers in order to achieve Environmental Justice through the court process<sup>105</sup>.

Achieving Environmental Justice through ADR and the court process is therefore a practical and realizable endeavour towards Sustainable Development.

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<sup>104</sup> United Nations Economic Commission for Europe., 'Access to Justice in Environmental Matters: Standing, Costs and Available Remedies.' Available at [https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE\\_Access2Justice\\_Study\\_Final\\_logos.pdf](https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE_Access2Justice_Study_Final_logos.pdf) (Accessed on 16/09/2024)

<sup>105</sup> Ibid

## **Mobilizing The Youth to Combat Climate Change**

### *Abstract*

This paper critically examines the need to mobilise the youth to combat climate change. The paper posits that the youth are key agents in the global response towards climate change. It further argues that climate change disproportionately affects the youth. As a result, the paper points out that embracing the voice of the youth in climate action is a key measure towards achieving climate justice. The paper proposes measures towards mobilising the youth to combat climate change.

### **1.0 Introduction**

Climate change has been described as the global phenomenon of climate transformation characterized by the changes in the usual climate of the planet (regarding temperature, precipitation, and wind) that are especially caused by human activities<sup>1</sup>. As a result of climate change, the sustainability of the planet's ecosystems is under threat, as well as the future of humankind and the stability of the global economy<sup>2</sup>. It has been noted that the Earth's climate is changing and the global climate is projected to continue to change over this century and beyond<sup>3</sup>.

Climate change is a major global challenge that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda<sup>4</sup>. Its impacts including intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being

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<sup>1</sup> Climate Change: Meaning, Definition, Causes, Examples And Consequences., Available at <https://youmatter.world/en/definitions/climate-change-meaning-definition-causes-and-consequences/> (Accessed on 14/08/2024)

<sup>2</sup> Ibid

<sup>3</sup> World Bank Group., 'What is Climate Change ?' Available at <https://climateknowledgeportal.worldbank.org/overview> (Accessed on 14/08/2024)

<sup>4</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

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witnessed across the world threatening human well-being and development<sup>5</sup>. According to the United Nations, climate change is the defining issue of our time<sup>6</sup>. It notes that from shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale<sup>7</sup>. In addition, the United Nations points out that without drastic action today, adapting to these impacts in the future will be more difficult and costly<sup>8</sup>.

Combating climate change is therefore a matter of urgency and necessity. It has been noted that if left unchecked, climate change will undo a lot of the development progress made over the past years and will also provoke mass migrations that will lead to instability and wars<sup>9</sup>. The United Nations *2030 Agenda for Sustainable Development*<sup>10</sup> acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development. Sustainable Development Goal 13 under the Agenda urges states to take urgent action to combat climate change and its impacts<sup>11</sup>.

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<sup>5</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 14/08/2024)

<sup>6</sup> United Nations., 'Climate Change' Available at <https://www.un.org/en/global-issues/climate-change> (Accessed on 14/08/2024)

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 14/08/2024)

<sup>10</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 14/08/2024)

<sup>11</sup> Ibid

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Given that every person has different capabilities to survive and is impacted by the climate crisis differently, climate change especially affects children, young people and women disproportionately<sup>12</sup>. The ideal of climate justice therefore envisions the inclusion, meaningful participation and equality of every person in climate action<sup>13</sup>. Therefore, every person needs to be involved in decision-making and implementation of climate governance and policies and have access to remedies in case of breach of their rights<sup>14</sup>. Young people have an important role to play in confronting climate change<sup>15</sup>.

This paper critically examines the need to mobilise the youth to combat climate change. The paper posits that the youth are key agents in the global response towards climate change. It further argues that climate change disproportionately affects the youth. As a result, the paper points out that embracing the voice of the youth in climate action is a key measure towards achieving climate justice. The paper proposes measures towards mobilising the youth to combat climate change.

### **2.0 Impacts of Climate Change on the Youth**

Climate change continues to pose an escalating threat to human well-being and its long-term impacts disproportionately affect young people<sup>16</sup>. It has been asserted that as the climate crisis worsens, today's youth and future generations will bear the consequences of the present

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<sup>12</sup> United Nations Development Programme., 'Rising Up: How Youth are Leading the Charge for Climate Justice' Available at <https://www.undp.org/blog/rising-how-youth-are-leading-charge-climate-justice> (Accessed on 14/08/2024)

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> United Nations., 'Climate Action' Available at <https://www.un.org/en/climatechange/youth-in-action#:~:text=Young%20people%20are%20not%20only,skills%20to%20accelerate%20climate%20action> (Accessed on 14/08/2024)

<sup>16</sup> International Union for Conservation of Nature., 'Youth as Agents of Change for a Sustainable Future' Available at <https://iucn.org/blog/202308/youth-agents-change-sustainable-future> (Accessed on 15/08/2024)

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climate actions and inactions<sup>17</sup>. Climate change poses an urgent threat to future generations<sup>18</sup>. Children are more susceptible to the effects of climate change than adults, with immediate and lifelong impacts on their physical and mental health<sup>19</sup>. It has been noted that children are also more susceptible to the effects of climate change, such as food insecurity, water scarcity, conflicts, economic challenges, and forced migration<sup>20</sup>. The dependency of children on adults can lead to health and psychosocial consequences related to the impacts of climate change on parents' well-being, family functioning, and economic status<sup>21</sup>.

The climate crisis perpetuates climate injustices for the youth<sup>22</sup>. Although climate change is predominantly caused by the current generation of adults, its worst consequences will occur during the lifetimes of today's children and young people<sup>23</sup>. It is estimated that compared to their parents and grandparents, a child born in 2021 will live through seven times as many heatwaves, nearly three times as many droughts and twice as many wildfires as a result of climate change<sup>24</sup>. Further, it has been noted that young people in developing countries are the most disproportionately affected by climate change<sup>25</sup>. Climate change therefore unevenly affects the lives of young people and children, particularly when it comes to extreme weather events<sup>26</sup>. It has

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<sup>17</sup> Ibid

<sup>18</sup> Sanson. A., Van Hoorn. J., & Burke. S., 'Responding to the Impacts of the Climate Crisis on Children and Youth' Available at <https://doi.org/10.1111/cdep.12342> (Accessed on 15/08/2024)

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Sanson. A., & Bellemo. M., 'Children and Youth in the Climate Crisis' *BJPsych Bull.* 2021 Aug; 45(4): 205-209.

<sup>23</sup> Ibid

<sup>24</sup> Chow. D., 'Triple Jeopardy: Children Face Dark Future of Climate Disasters' Available at <https://www.nbcnews.com/science/environment/triple-jeopardy-children-face-dark-future-climate-disasters-rcna2304> (Accessed on 15/08/2024)

<sup>25</sup> Ibid

<sup>26</sup> Ibid

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been noted that current generations and the next ones will bear the brunt of climate change impacts, as extreme weather events become more frequent and severe with time<sup>27</sup>. As a result of climate change, current and future generations will experience frequent and severe wildfires, droughts, flooding, and heat waves<sup>28</sup>.

Climate change also has both direct and indirect effects on the physical and mental health of children and youth<sup>29</sup>. It has been noted that due to their immature physiological systems, reliance on adults and likely repeated exposure to climate events over time, children are more vulnerable to the negative effects of climate change than adults<sup>30</sup>. Further, it has been argued that young people tend to experience unique and heightened vulnerabilities when it comes to the potential adverse impacts of climate change on mental health and wellbeing<sup>31</sup>. When compared to adults, young people are still undergoing significant neural and cognitive development which can limit a young person's capacity to cope with stress and uncertainties caused by climate change<sup>32</sup>. Climate change also threatens the underlying social, economic and environmental determinants of children's health<sup>33</sup>. For example, by disrupting families and communities, climate change can have an indirect impact on children by

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<sup>27</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Available at <https://www.sei.org/wp-content/uploads/2022/04/stockholm50-youthreport-10.51414-sei2022.010.pdf> (Accessed on 15/08/2024)

<sup>28</sup> Ibid

<sup>29</sup> Sanson. A., & Bellemo. M., 'Children and Youth in the Climate Crisis' Op Cit

<sup>30</sup> Ibid

<sup>31</sup> Ma. T., Moore. J., & Cleary. A., 'Climate Change Impacts on the Mental Health and Well-Being of Young People: A Scoping Review of Risk and Protective Factors' *Social Science & Medicine.*, Volume 301, 2022

<sup>32</sup> Ibid

<sup>33</sup> Sanson. A., & Bellemo. M., 'Children and Youth in the Climate Crisis' Op Cit

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increasing domestic violence and child abuse after hurricanes and wildfires<sup>34</sup>.

Further, climate change causes and worsens conflicts<sup>35</sup>. The repercussions of conflict as a result of climate change disproportionately affects vulnerable populations, including youth, women, and Indigenous Peoples, exacerbating existing challenges<sup>36</sup>. It is estimated that a huge percentage of the global youth population reside in developing or conflict-ridden countries, where climate change acts as a serious risk multiplier<sup>37</sup>. In addition, climate change also fuels youth migration. Young people have been identified as the most vulnerable section of society who are forced to migrate, thereby causing displacements due to extreme weather disasters, nutritional deficiencies and communicable diseases spread from the environment due to climate change<sup>38</sup>. This forces the youth to grow up in increasingly vulnerable environments with their health, education, nutrition, development, survival, and future being increasingly threatened by climate-induced displacements<sup>39</sup>.

It is therefore evident that climate change disproportionately affects the youth. Climate change negatively impacts the youth including through increased experience of natural disasters and extreme weather; physical

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<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Kofi Annan Foundation., 'The Kofi Annan Foundation launches Youth-Led Research on Climate, Environment and Peace' Available at <https://www.kofiannanfoundation.org/news/the-kofi-annan-foundation-launches-youth-led-research-on-climate-environment-and-peace/#:~:text=14%20of%20the%2025%20most,indigenous%20communities%2C%20exacerbating%20existing%20challenges>. (Accessed on 15/08/2024)

<sup>37</sup> Ibid

<sup>38</sup> Halder. A., 'The Role of Youth in Mitigating Climate Risk' Available at <https://environmentalmigration.iom.int/blogs/role-youth-mitigating-climate-risk> (15/08/2024)

<sup>39</sup> Ibid



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and mental health; economic and business activities; behavioural change; and food supply and consumption<sup>40</sup>. Climate change therefore fuels injustices against the youth<sup>41</sup>. It has been noted that environmental and climate disruptions combined with the inaction of governments is threatening the present and the future of young people worldwide<sup>42</sup>. Mobilising the youth to combat climate change is therefore necessary in achieving climate justice.

### **3.0 Role of the Youth in Combating Climate Change**

Young people have a key role to play in combating climate change. According to the United Nations, young people are not only victims of climate change but they are also valuable contributors to climate action<sup>43</sup>. Young people are agents of change, entrepreneurship and innovation<sup>44</sup>. It has been noted that young people are embracing education, science and technology to scale up their efforts and skills to accelerate climate action globally, regionally, and nationally<sup>45</sup>.

It has been noted that young people all over the world are becoming catalysts for change in the wake of the looming climate crisis<sup>46</sup>. The youths are raising their voices, spearheading climate initiatives for a sustainable future, calling for immediate climate action and inspiring

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<sup>40</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Op Cit

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> United Nations., 'Youth in Action' Available at <https://www.un.org/en/climatechange/youth-in-action#:~:text=Young%20people%20are%20not%20only,skills%20to%20accelerate%20climate%20action> (Accessed on 16/08/2024)

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> World Economic Forum., 'How today's youth are taking the lead in global climate action' Available at <https://www.weforum.org/agenda/2023/07/empowering-tomorrows-climate-leaders-how-youth-influence-climate-action/> (Accessed on 16/08/2024)

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change through grassroots movements and worldwide campaigns<sup>47</sup>. Among the climate initiatives that are being led by the youth include the Sunrise Movement, a movement of young people fighting to stop the climate crisis and win a green new deal<sup>48</sup>. Further, the Youth Voices for Climate Action Campaign, serves as an inclusive platform for youth in the Asia-Pacific region to make their voices heard on climate action<sup>49</sup>. The Campaign seeks to give space to young people to share views on how climate change is impacting the youth; enhance grassroots youth initiatives towards confronting climate change; and make decision-makers aware of young people's need for urgent climate action<sup>50</sup>. On an individual level, young people such as Greta Thunberg have played a key role in enhancing the voice of the youth in climate action<sup>51</sup>. Her message has challenged many young people to join the frontlines and spearhead climate action at global, regional, and national levels<sup>52</sup>.

Further, in Africa, the *Africa Youth Declaration for Climate Mobility*<sup>53</sup> recognizes the key role played by young people in confronting climate change in the continent. The Declaration notes that since the youth account for about 60 per cent of Africa's population, and climate disasters disproportionately affect children, young people and women; it is imperative that action is taken to address the impacts of climate change and mobility on youth and other vulnerable groups, and build

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<sup>47</sup> Ibid

<sup>48</sup> Sunrise Movement., Available at <https://www.sunrisemovement.org/about/#principles> (Accessed on 16/08/2024)

<sup>49</sup> Youth Voices for Climate Action Campaign., Available at <https://sdghelpdesk.unescap.org/youth-voices-climate-action-campaign#:~:text=The%20ESCAP%20Youth%20Voices%20for,and%20to%20accelerate%20climate%20action> (Accessed on 16/08/2024)

<sup>50</sup> Ibid

<sup>51</sup> Dawuni. R., 'Greta Thunberg' Available at <https://www.unep.org/blogs/2019-09/climate-leadership-inspires/greta-thunberg> (Accessed on 16/08/2024)

<sup>52</sup> Ibid

<sup>53</sup> African Union., 'Africa Youth Declaration for Climate Mobility' Available at [https://au.int/sites/default/files/documents/43107-doc-African\\_Youth\\_Declaration\\_for\\_Climate\\_Mobility\\_3.pdf](https://au.int/sites/default/files/documents/43107-doc-African_Youth_Declaration_for_Climate_Mobility_3.pdf) (Accessed on 16/08/2024)

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the resilience of those at risk and protect those already on the move in the face of climate change<sup>54</sup>. The Declaration urges the African Union and other stakeholders to meaningfully include African youth in climate change and mobility-related decision-making and policy implementation in the continent<sup>55</sup>.

The role of the youth in climate action also featured prominently at the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) during its 28<sup>th</sup> session (COP 28)<sup>56</sup>. Parties agreed at COP 28 to institutionalize the role of the Presidency Youth Climate Champion (YCC) within the UNFCCC process, to enhance the meaningful participation and representation of youth in future COPs<sup>57</sup>. It has been noted that this decision mandates all future COP Presidencies to facilitate the meaningful participation and representation of youth in future COPs<sup>58</sup>. It is necessary to implement this decision in order to give a voice to the youth in the global climate agenda.

Young people are therefore key in fighting climate change. The constant dedication and creative strategies employed by the youth is influencing effective climate action and raising awareness all over the world<sup>59</sup>. It has been noted that the youth highlight the gravity of the climate situation through climate strikes, public demonstrations, awareness campaigns

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> COP28 UAE., 'COP28 Delivers Lasting Legacy for Youth with Youth Climate Champion Role Institutionalized' Available at <https://www.cop28.com/en/news/2023/12/15/06/57/cop28-delivers-lasting-legacy-for-youth-with-youth-climate-champion-role-institutionalized> (Accessed on 16/08/2024)

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> World Economic Forum., 'How today's youth are taking the lead in global climate action' Op Cit

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and artistic expressions<sup>60</sup>. In addition, they engage with decision-makers increasing public awareness and inspiring governments and communities to take action on climate change<sup>61</sup>. It has been pointed out that the enthusiasm, commitment and innovative ideas offered by the youth are an inspiration and serve as a reminder that everyone can make a difference in the fight against climate change<sup>62</sup>.

Despite their vital role in combating climate change, the youth have historically been excluded from global platforms and decision-making processes in climate action<sup>63</sup>. Engaging the youth in climate action is therefore crucial. It has been noted that environmental and climate disruptions combined with the inaction of governments is threatening the present and the future of young people worldwide<sup>64</sup>. It has been opined that governments need to give voice to young people, who hold the risk of current decisions yet have the least power, to take action and shape climate-related policies<sup>65</sup>. It is therefore necessary to mobilise the youth to combat climate change.

### **4.0 Conclusion**

Young people are integral in the fight against climate change. The youth are humanity's link between today and tomorrow<sup>66</sup>. They are the ones who will experience the consequences of climate change, biodiversity loss, continuing or worsening inequality long after the older decision

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<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Centre for Public Impact., 'Six Ways Governments can Meaningfully Engage Youth in Tackling Climate Change' Available at <https://www.centreforpublicimpact.org/insights/six-ways-governments-can-meaningfully-engage-youth-in-tackling-climate-change> (Accessed on 16/08/2024)

<sup>64</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Op Cit

<sup>65</sup> Centre for Public Impact., 'Six Ways Governments can Meaningfully Engage Youth in Tackling Climate Change' Op Cit

<sup>66</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Op Cit

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makers are no longer around<sup>67</sup>. It is thus important to involve the youth more fully in the deliberative and decision-making processes on climate change for sustainability<sup>68</sup>.

Mobilising the youth to combat climate change requires young people to be involved in climate decision making and policy formation and implementation<sup>69</sup>. It has been noted that there is an urgent need to involve young people in the decision-making processes at the local, national, regional, and global levels, raise their awareness and develop strong cases of their participation in climate action<sup>70</sup>. Young people must also be given responsibility to lead climate initiatives and connect to decision-makers for effective climate action<sup>71</sup>. It has been opined that global climate governance needs clear goals and metrics to ensure global youth representation, especially of youth from marginalized communities<sup>72</sup>. Youth representation in climate action should also be systematically encouraged, legally guaranteed and financially supported for effective climate action<sup>73</sup>. Appointment of national, regional, and global youth climate envoys is key towards ensuring the representation and participation of the youth in climate action<sup>74</sup>.

It is also vital to build the capacity of the youth in climate matters. In order to achieve this goal, governments have been urged to invest in climate education for children and youth at all levels including the

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<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> African Union., 'Africa Youth Declaration for Climate Mobility' Op Cit

<sup>70</sup> UNICEF., 'Youth in Climate Change Action: Bringing Young People to the Decision-Making Table' Available at <https://www.unicef.org/serbia/en/youth-climate-change-bringing-young-people-decision-making-table> (Accessed on 16/08/2024)

<sup>71</sup> Ibid

<sup>72</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Op Cit

<sup>73</sup> Ibid

<sup>74</sup> African Union., 'Africa Youth Declaration for Climate Mobility' Op Cit

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curriculum of elementary, primary, secondary and tertiary education<sup>75</sup>. Further, it is necessary to ensure that the content on climate education is contextualised to local climate issues in different countries and regions<sup>76</sup>. Climate education is key in empowering the youth by enabling them appreciate the causes and effects of climate change therefore creating basis for meaningful participation in decision making and simultaneously encouraging them to opt for safer and sustainable lifestyle choices to combat climate change<sup>77</sup>.

It is also imperative to equip the youth with green skills for a sustainable future<sup>78</sup>. Equipping the young workforce with green skills will accelerate the green transition and create new opportunities to mitigate climate risk now and in the future<sup>79</sup>. It has been noted that the youth who are standing at the nexus of technological innovation, social dynamism, and visionary thinking, are uniquely positioned to drive transformative change<sup>80</sup>. By imparting the youth with green skills, it is possible not only prepare them for sustainable career paths but also empower them to ignite a paradigm shift towards eco-conscious decision-making and behaviors<sup>81</sup>. This is also gives the youth the tools and skills to engage in efforts to mitigate climate change through projects like afforestation, renewable energy deployment, and carbon reduction initiatives<sup>82</sup>.

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<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Stockholm Environment Institute., 'Charting a Youth Vision for a Just and Sustainable Future' Op Cit

<sup>78</sup> Halder. A., 'The Role of Youth in Mitigating Climate Risk' Op Cit

<sup>79</sup> Ibid

<sup>80</sup> Hinga. J., 'Empowering Youth with Green Skills for a Sustainable Future Amidst Climate Change Crisis' Available at <https://sbs.strathmore.edu/empowering-youth-with-green-skills-for-a-sustainable-future-amidst-climate-change-crisis/> (Accessed on 16/08/2024)

<sup>81</sup> Ibid

<sup>82</sup> Ibid

### *Mobilizing The Youth to Combat Climate Change*

Governments should also encourage and support youth led climate initiatives<sup>83</sup>. The role of the youth in combating climate change is often hindered by lack of access to proper education, financial resources, and networks to move their ideas forward and make meaningful contributions<sup>84</sup>. It is therefore important for governments to support the efforts of young people in combating climate change by publicly recognising and rewarding youth led climate initiatives, and setting up tailored programmes to support and fund youth ideas on combating climate change<sup>85</sup>.

Young people play a crucial role in the global, regional, national, and local responses towards climate change. Mobilising the youth to combat climate change is therefore a necessary and achievable endeavour for sustainability.

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<sup>83</sup> Centre for Public Impact., 'Six Ways Governments can Meaningfully Engage Youth in Tackling Climate Change' Op Cit

<sup>84</sup> Ibid

<sup>85</sup> Ibid

# *Promoting Justice and Reconciliation Through Mediation and Alternative Justice Systems*

## **Promoting Justice and Reconciliation Through Mediation and Alternative Justice Systems**

### *Abstract*

*This paper critically discusses the role of mediation and Alternative Justice Systems (AJS) in promoting justice and reconciliation. The paper argues that mediation and AJS are suitable processes in fostering justice and reconciliation. The paper critically explores the key features of mediation and AJS that make these mechanisms ideal in achieving justice and reconciliation. It also assesses the progress made towards embracing mediation and AJS towards justice and reconciliation and notes the challenges thereof. The paper offers proposals towards promoting justice and reconciliation through mediation and AJS.*

### **1.0 Introduction**

Conflicts are a common and inevitable occurrence in human relationships and interactions<sup>1</sup>. Conflicts often arise in instances where two or more parties perceive that they possess mutually incompatible goals<sup>2</sup>. According to the United Nations, conflicts arise when two or more groups believe their interests are incompatible<sup>3</sup>. It has been noted that conflicts are an inevitable part of living since they are related to situations of scarce resources, division of functions, power relations and role-differentiation<sup>4</sup>.

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<sup>1</sup> Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <https://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-EastAfricanCommunityMoving-from-Alternative-to-Appropriate-Dispute-Resolution> (Accessed on 11/09/2024)

<sup>2</sup> Demmers. J., 'Theories of Violent Conflict: An Introduction' (Routledge, New York, 2012)

<sup>3</sup> United Nations., 'Land and Conflict' Available at [https://www.un.org/en/land-natural-resources-conflict/pdfs/GN\\_ExeS\\_Land%20and%20Conflict.pdf](https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_ExeS_Land%20and%20Conflict.pdf) (Accessed on 11/09/2024)

<sup>4</sup> Bercovitch. J., 'Conflict and Conflict Management in Organizations: A Framework for Analysis.' Available at <https://ocd.lcwu.edu.pk/cfiles/International%20Relations/EC/IR403/Conflict.ConflictManagementinOrganizations.pdf> (Accessed on 11/09/2024)



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Some forms of conflict such as violent conflicts are undesirable since they affect peace, sustainability and development<sup>5</sup>. However, conflict is not in itself a negative phenomenon<sup>6</sup>. For example, non-violent conflict can be an essential component of social change and development, and is a necessary component of human interaction<sup>7</sup>. It has been noted that non-violent resolution of conflict is possible when individuals and groups have trust in their governing structures, society and institutions to manage incompatible interests<sup>8</sup>. Effective, efficient and expeditious management of conflicts is a key goal towards promoting peace, development and sustainability<sup>9</sup>.

Justice and reconciliation are two vital objectives in conflict management<sup>10</sup>. It has been noted that the concepts of justice and reconciliation are related to the building of trust in the context of inclusive peace building especially after violent conflicts<sup>11</sup>. Both justice and reconciliation seek to address the legacies of violence and human rights abuses to compensate for past wrongs and promote social healing towards peace, sustainability, and development<sup>12</sup>. Justice in the legal sense entails a structure or system that guides the allocation of benefits

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<sup>5</sup> Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

<sup>6</sup> United Nations., 'Land and Conflict' Op Cit

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-anddevelopmentinKenyaRevised-version-of-20.10.14.pdf> (Accessed on 11/09/2024)

<sup>10</sup> Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Available at <https://cic.nyu.edu/wp-content/uploads/2023/11/Multiple-Doors-to-Justice-in-Kenya-2023.pdf> (Accessed on 11/09/2024)

<sup>11</sup> SIDA., 'Transitional Justice and Reconciliation' Available at <https://cdn.sida.se/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf> (Accessed on 11/09/2024)

<sup>12</sup> Ibid

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or burdens when the law is applied to particular factual circumstances<sup>13</sup>. Justice can be divided into *distributive justice* which involves fair division of resources in the society; *retributive justice* which focuses on punishing crimes in a society; *restorative justice* that focuses on trying to repair the harm that has caused by criminal activities by involving those who have been affected; and *procedural justice* that focuses on making and implementing decisions according to fair processes that ensure fair treatment of every person<sup>14</sup>. Reconciliation on the other hand refers to the process of building or rebuilding relationships damaged by violent conflict, between individuals or groups within the society, or between the population and the state/institutions<sup>15</sup>. Reconciliation is a concept of justice since it focuses on restoring right relationship following wrongs<sup>16</sup>.

This paper critically discusses the role of mediation and Alternative Justice Systems (AJS) in promoting justice and reconciliation. The paper argues that mediation and AJS are suitable processes in fostering justice and reconciliation. The paper critically explores the key features of mediation and AJS that make these mechanisms ideal in achieving justice and reconciliation. It also assesses the progress made towards embracing mediation and AJS towards justice and reconciliation and notes the challenges thereof. The paper offers proposals towards promoting justice and reconciliation through mediation and AJS.

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<sup>13</sup> Justice., Available at <https://www.law.cornell.edu/wex/justice> (Accessed on 11/09/2024)

<sup>14</sup> Maiese. M., & Burgess. H., 'Types of Justice' Available at [https://www.beyondintractability.org/essay/types\\_of\\_justice](https://www.beyondintractability.org/essay/types_of_justice) (Accessed on 11/09/2024)

<sup>15</sup> SIDA., 'Transitional Justice and Reconciliation' Op Cit

<sup>16</sup> Philpott, Daniel, 'Reconciliation as a Concept of Justice', *Just and Unjust Peace: An Ethic of Political Reconciliation*, Studies in Strategic Peacebuilding (New York, 2012; online edn, Oxford Academic, 20 Sept. 2012), <https://doi.org/10.1093/acprof:oso/9780199827565.003.0005> (Accessed on 11/09/2024)

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### **2.0 Overview of Mediation and Alternative Justice Systems**

Mediation refers to a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>17</sup>. It has also been defined as a non-adversarial and collaborative process through which an impartial third party helps parties in a dispute reach a resolution through interest-based negotiations<sup>18</sup>. Mediation can also be understood as a process of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information therefore aiding parties in the process of reaching an agreement<sup>19</sup>. The basis of mediation is that in the right environment, parties to a conflict can improve their relationships and move towards cooperation<sup>20</sup>. It has been noted that mediation outcomes can be limited in scope, dealing with a specific issue in order to contain or manage a conflict, or can tackle a broad range of issues in a comprehensive peace agreement<sup>21</sup>.

Mediation arises where the parties to a conflict have attempted negotiations, but have reached a deadlock<sup>22</sup>. Parties therefore agree to involve a third party to assist them continue with the negotiations and

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<sup>17</sup> United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 12/09/2024)

<sup>18</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDP\\_AUNEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDP_AUNEP2015_0.pdf) (Accessed on 12/09/2024)

<sup>19</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition., 2017

<sup>20</sup> United Nations., 'Guidance for Effective Mediation' Available at <https://peacemaker.un.org/sites/default/files/document/files/2022/09/guidanceeffectivemediationundpa2012english0.pdf> (Accessed on 12/09/2024)

<sup>21</sup> Ibid

<sup>22</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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ultimately break the deadlock<sup>23</sup>. Mediation is therefore usually a continuation of the negotiation process. In the mediation process, a mediator does not have the power to impose an outcome upon the parties but rather facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutually satisfactory agreement<sup>24</sup>.

The *Charter of the United Nations*<sup>25</sup> identifies mediation as an important means for the peaceful settlement of disputes and conflicts<sup>26</sup>. At a national level, the *Constitution of Kenya*<sup>27</sup> urges courts and tribunals to promote mediation among other Alternative Dispute Resolution processes<sup>28</sup>. According to the United Nations, mediation has proven to be an effective instrument in addressing both inter-State and intra-State conflicts<sup>29</sup>.

AJS has been defined as both a philosophical concept as well as a practice for accessing justice<sup>30</sup>. As a philosophical concept, AJS is consistent with the human rights school of thought, and is based on the fundamental ideas of freedom, equality, non-discrimination, dignity, and equity<sup>31</sup>. Further, as a practice for accessing justice, AJS refers to initiatives that can be taken to attain equality and equity for all members

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<sup>23</sup> Ibid

<sup>24</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

<sup>25</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>26</sup> Ibid, article 33 (1)

<sup>27</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>28</sup> Ibid, article 159 (2) (c)

<sup>29</sup> United Nations., 'Guidance for Effective Mediation' Op Cit

<sup>30</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 12/09/2024)

<sup>31</sup> Ibid

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of a particular cultural, political and social identity<sup>32</sup>. It has been noted that the term AJS covers various techniques including Customary and Informal Justice Systems (CIJ) and Traditional Dispute Resolution Mechanisms (TDRMs)<sup>33</sup>. These phrases cover dispute resolution practices that are often embraced by indigenous communities in managing conflicts through institutions such as community paralegals, local authorities, and elders<sup>34</sup>.

AJS have been practiced in Kenya and Africa at large for many centuries<sup>35</sup>. It has been pointed out that in Kenya, the different communities that existed before colonial occupation and rule had their own systems and mechanisms of promoting justice<sup>36</sup>. These systems are referred to as Customary or Traditional systems<sup>37</sup>. For many years, customary and informal justice mechanisms were at the center of conflict management as communities thrived and its constituents expressed satisfaction at how justice was dispensed<sup>38</sup>. However, AJS have to a certain extent been altered through the encounter with the colonial and post-colonial legal systems<sup>39</sup>. During the colonial era, AJS were considered retrogressive, archaic and outdated with the colonial powers

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<sup>32</sup> Ibid

<sup>33</sup> Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Op Cit

<sup>34</sup> Ibid

<sup>35</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> The International Commission of Jurists., 'Alternative Justice System Solution To Backlog Of Cases' Available at <https://icj-kenya.org/news/alternative-justice-system-solution-to-backlog-of-cases/> (Accessed on 12/09/2024)

<sup>39</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

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introducing their own justice systems that were favourable to white settlers and punitive to indigenous communities<sup>40</sup>.

The Constitution of Kenya provides a basis for recognition and promotion of AJS by mandating courts and tribunals to promote TDRMs<sup>41</sup>. It has been noted that the Constitution does not establish AJS, but only recognises their existence and provides the basis for their promotion<sup>42</sup>. The Constitutional recognition of AJS is a key measure towards restoring customary law and culture to a place of prominence<sup>43</sup>.

### **3.0 Efficacy of Mediation and Alternative Justice Systems in Promoting Justice and Reconciliation**

Mediation is an ideal process that can promote justice and reconciliation<sup>44</sup>. Mediation has certain advantages that makes it ideal in promoting justice and reconciliation including informality, expeditiousness, cost-effectiveness, flexibility, efficiency, and confidentiality<sup>45</sup>. In addition, mediation usually results in mutually satisfying and long- lasting outcomes therefore creating a suitable environment for peace and reconciliation by eliminating the likelihood of conflicts reemerging in future<sup>46</sup>. Mediation also has the potential to preserve and at times even enhance relationships therefore making it an

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<sup>40</sup> The International Commission of Jurists., 'Alternative Justice System Solution To Backlog Of Cases' Op Cit

<sup>41</sup> Constitution of Kenya, 2010., article 159 (2) (c)

<sup>42</sup> Pamoja Trust., 'Alternative Justice Systems (AJS) Guidelines' Available at <https://www.trocaire.org/wp-content/uploads/2021/04/Alternative-Justice-Systems-regulations-final.pdf?type=policy> (Accessed on 12/09/2024)

<sup>43</sup> Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Op Cit

<sup>44</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>45</sup> Ibid

<sup>46</sup> Ibid

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ideal mechanism in achieving justice and reconciliation<sup>47</sup>. It further allows parties to come up with creative solutions than those available in traditional litigation<sup>48</sup>.

Mediation can enhance justice and reconciliation due to its potential to unlock collaboration in managing conflicts<sup>49</sup>. Collaboration is a key approach towards managing conflicts wherein parties work together to reach an agreement over issues in dispute<sup>50</sup>. It has been identified as a powerful approach to conflict resolution built on cooperation, open communication, and finding win-win outcomes<sup>51</sup>. Collaboration aims to preserve relationships, build trust, and promote long-term positive change<sup>52</sup>. Mediation provides a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding<sup>53</sup>. By enhancing collaboration, mediation emphasizes on voluntary participation of the parties, confidentiality, and the flexibility to tailor the outcomes to the specific needs of the parties involved<sup>54</sup>.

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<sup>47</sup> World Intellectual Property Organization., 'What is Mediation?' Available at <https://www.wipo.int/amc/en/mediation/what-mediation.html> (Accessed on 13/09/2024)

<sup>48</sup> JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 13/09/2024)

<sup>49</sup> Unlocking Collaboration: The Power of Mediation., Available at <https://www.linkedin.com/pulse/unlocking-collaboration-power-meditation-jharna-jagtiani-g7kxc/> (Accessed on 13/09/2024)

<sup>50</sup> Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 13/09/2024)

<sup>51</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests> (Accessed on 13/09/2024)

<sup>52</sup> Ibid

<sup>53</sup> Unlocking Collaboration: The Power of Mediation., Op Cit

<sup>54</sup> Mediation: The Art of Collaborative Conflict Resolution., Available at <https://legalservicesdubai.com/mediation-the-art-of-collaborative-conflict-resolution-understanding-its-processes-and-advantages/> (Accessed on 13/09/2024)

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Due to the foregoing advantages, mediation is ideal in promoting justice and reconciliation. The informality, flexibility, and cost-effectiveness of mediation makes it suitable in enhancing access to justice especially for the poor and marginalized individuals and groups<sup>55</sup>. Through mediation, conflicts can be resolved expeditiously and without undue regard to procedural hurdles that bedevil the court system<sup>56</sup>. It has been noted that mediation can bring justice closer to the people and make it more affordable<sup>57</sup>. Further, mediation has the potential to foster reconciliation by addressing the root causes of conflicts therefore leading to long lasting and sustainable outcomes and preventing the likelihood of conflicts reemerging in future<sup>58</sup>. Mediation can also preserve and at times even enhance relationships therefore making it an ideal mechanism in promoting reconciliation<sup>59</sup>. It has been noted that mediation relies heavily on principles of reconciliation to achieve long-lasting and meaningful outcomes<sup>60</sup>. By fostering understanding, empathy, and communication, mediation can ultimately result in reconciliation between parties<sup>61</sup>. It is therefore necessary to harness the potential of mediation in order to promote justice and reconciliation. AJS are also ideal in promoting justice and reconciliation<sup>62</sup>. In Kenya and Africa at large, AJS are deeply rooted in the culture and customs of the

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<sup>55</sup> Muigua. K., 'Reflections on the Use of Mediation for Access to Justice in Kenya: Maximising on the Benefits of Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Reflections-on-the-Use-of-Mediation-for-Access-to-Justice-in-Kenya-Maximising-on-the-Benefits-of-Mediation-Kariuki-Muigua-14th-June-2018-1.pdf> (Accessed on 13/09/2024)

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>59</sup> World Intellectual Property Organization., 'What is Mediation?' Op Cit

<sup>60</sup> Dallago. D., 'How Reconciliation in Mediation Can Transform Conflict into Sustainable Harmony' Available at <https://imamediation.com/blog/how-reconciliation-in-mediation-can-transform-conflict-into-sustainable-harmony> (Accessed on 13/09/2024)

<sup>61</sup> Ibid

<sup>62</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011



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African people<sup>63</sup>. Culture plays a prominent role in conflict management<sup>64</sup>. Culture has been described as essential part of conflict and conflict resolution<sup>65</sup>. It affects the ways we name, frame, blame, and attempt to tame conflicts<sup>66</sup>. Differences in attitudes, belief systems, religious practices, language, social set ups and economic practices among different cultures means that conflicts may take different forms in each culture<sup>67</sup>. Culture therefore plays an important role in conflict management and shapes the way in which individuals or groups frame and respond to conflicts<sup>68</sup>.

Conflict management in African societies was well-entrenched in the traditions, customs, norms and taboos of the people<sup>69</sup>. Conflicts in African communities were seen as threat to the social fabric that held the community together<sup>70</sup>. African communities therefore developed and embraced conflict management strategies that were aimed towards effectively dealing with conflicts in order to ensure peaceful co-existence within the community<sup>71</sup>. Conflict management among African communities was aimed at creating consensus, facilitating

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<sup>63</sup> Ibid

<sup>64</sup> LeBaron. M., 'Culture and Conflict.' Available at [https://www.beyondintractability.org/essay/culture\\_conflict](https://www.beyondintractability.org/essay/culture_conflict) (Accessed on 13/09/2024)

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' *International Journal of Intercultural Relations* 30 (2006) 579-603

<sup>68</sup> LeBaron. M., 'Culture and Conflict.' Op Cit

<sup>69</sup> Ademowo. A., 'Conflict Management in Traditional African Society.' Available at [https://www.researchgate.net/publication/281749510\\_Conflict\\_management\\_in\\_Traditional\\_African\\_Society](https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society) (Accessed on 13/09/2024)

<sup>70</sup> Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elderssuccesseschallenges-and-opportunities-1.pdf> (Accessed on 13/09/2024)

<sup>71</sup> Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

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reconciliation, fostering peace, harmony and cohesion and gave prominence to communal needs over individual needs<sup>72</sup>.

AJS are therefore able to promote justice and reconciliation. These techniques fit comfortably within traditional concepts of African justice, particularly its core value of reconciliation<sup>73</sup>. In addition, informal justice systems, such as customary and traditional dispute resolution mechanisms, are often more accessible and affordable than formal justice systems therefore making them an appropriate tool in enhancing access to justice<sup>74</sup>. Since most AJS processes are closely tied to the communities and are mostly non-institutionalized, these processes are cost-effective and more affordable when compared to formal systems<sup>75</sup>.

In addition, the focus of AJS goes beyond resolution of disputes<sup>76</sup>. AJS also focus on dispute prevention and ensuring minimal or non-recurrence of disputes<sup>77</sup>. It has been noted that AJS include mechanisms that deal both with resolving legal disputes as well as those seeking everyday justice<sup>78</sup>. This expansion moves AJS beyond the narrow conception of Alternative Dispute Resolution (ADR) that only captures mechanisms designed towards resolution of disputes<sup>79</sup>. AJS are therefore suitable in promoting justice and reconciliation.

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<sup>72</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>73</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>74</sup> Judiciary of Kenya., 'Promoting Alternative Justice Systems (AJS)' Available at <https://judiciary.go.ke/promoting-alternative-justice-systems-ajs/> (Accessed on 13/09/2024)

<sup>75</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

<sup>76</sup> Pamoja Trust., 'Alternative Justice Systems (AJS) Guidelines' Op Cit

<sup>77</sup> Ibid

<sup>78</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

<sup>79</sup> Ibid

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Despite their ability to promote justice and reconciliation, the efficacy of mediation and AJS may be limited by certain factors. For example, it has been noted that power is a major concern in mediation<sup>80</sup>. Where there is a significant power difference, one party may dominate the process and the resulting outcome may largely reflect only that party's needs and interests therefore not promoting justice and reconciliation<sup>81</sup>. In addition, the non-binding nature of mediation may affect the continuation of mediation proceedings and the enforcement of outcomes thus limiting its suitability in promoting justice and reconciliation<sup>82</sup>. On the other hand, AJS often reflect patriarchal values and discriminate against women, children, and other marginalized groups<sup>83</sup>. Therefore, a key concern in utilizing AJS is the potential for violation of human rights, particularly those of women and marginalized groups<sup>84</sup>. For example, it has been noted that in some communities, women are not permitted to speak or even be present during proceedings, even if they are the victim, and must rely on male relatives to plead their case<sup>85</sup>. In addition, there are concerns about procedural fairness in AJS and the ability to adhere to constitutional thresholds of access to justice<sup>86</sup>.

It is imperative to address these challenges in order to promote justice and reconciliation through mediation and AJS.

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<sup>80</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>81</sup> Ibid

<sup>82</sup> Ibid

<sup>83</sup> Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Op Cit

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

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### **4.0 Conclusion**

There is need to promote justice and reconciliation through mediation and AJS. Mediation is suitable in promoting justice and reconciliation due to its key features including informality, expeditiousness, cost-effectiveness, flexibility, efficiency, and confidentiality<sup>87</sup>. Further, by focusing on collaboration, mediation is able to preserve and even enhance relationships therefore promoting justice and reconciliation<sup>88</sup>. AJS are rooted in the culture and customs of the African people and are therefore suitable in upholding values that are held sacrosanct in African communities including peace, harmony, and cohesion<sup>89</sup>. AJS therefore suit well within traditional concepts of African justice, particularly its core value of reconciliation<sup>90</sup>.

It is imperative to institutionalise mediation and AJS in order to enhance their uptake towards promoting justice and reconciliation<sup>91</sup>. Institutionalising mediation and AJS is key in legitimizing these processes by providing elaborate legal and policy framework and guidelines for their application while also linking them to formal justice processes<sup>92</sup>. However, in legitimizing, mediation and AJS, it is vital to ensure that their key attributes including informality, voluntariness, confidentiality and party autonomy are preserved in order to ensure their suitability in promoting justice and reconciliation<sup>93</sup>. There has been progress towards mainstreaming AJS in Kenya through the *Alternative*

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<sup>87</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>88</sup> Ibid

<sup>89</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>90</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>91</sup> Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISINGALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 13/09/2024)

<sup>92</sup> Ibid

<sup>93</sup> Ibid

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*Justice Systems Framework Policy*<sup>94</sup>. The Policy notes that AJS is effective in promoting justice and reconciliation for the people of Kenya and reducing backlog of cases in courts<sup>95</sup>. The Policy sets out interventions towards mainstreaming AJS in Kenya including the formal recognition of AJS and identification of the kinds of cases that can be handled through AJS; strengthening the process for selection, election, appointment and removal of AJS practitioners; development of procedures and customary law jurisprudence; facilitation of effective intermediary interventions; and strengthened and sustainable resource allocation and mobilization towards AJS<sup>96</sup>. It is imperative to implement this Policy in order to strengthen AJS in Kenya and address some of their key concerns including human rights violations and the potential to disregard procedural fairness<sup>97</sup>.

The role of mediation and AJS in promoting justice and reconciliation can also be enhanced by raising public awareness on the suitability and benefits of these processes<sup>98</sup>. It is also vital to build human and institutional capacity in order to have in place effective and efficient practitioners and institutions that can promote justice and reconciliation through mediation and AJS<sup>99</sup>.

Promoting justice and reconciliation through mediation and AJS is an achievable reality for the people of Kenya and Africa at large. It is imperative to actualize this agenda for peace, prosperity, and development.

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<sup>94</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Ibid

## *Taking Collective Action to Eliminate Air Pollution*

### **Taking Collective Action to Eliminate Air Pollution**

#### **Abstract**

*A safe and healthy environment is a core human right. This right has been recognized by the United Nations General Assembly which affirms the importance of the right to a clean, healthy and sustainable environment for the full enjoyment of all human rights. Despite its importance, several factors affect the attainment of the right to a clean, healthy, and sustainable environment including the triple planetary crisis of climate change, biodiversity loss, and pollution. The Resolution by the United Nations General Assembly acknowledges that the pollution of air, land and water interferes with the enjoyment of a clean, healthy and sustainable environment. Tackling all forms of pollution including air pollution is therefore necessary for effective realization of the right to a clean, healthy, and sustainable environment. This paper critically discusses the need to combat air pollution. It argues that air pollution is a major threat to the full realization of the right to a clean, healthy, and sustainable environment. The paper explores the nature, causes, and effects of air pollution. It further suggests approaches towards eliminating air pollution for effective realization of the right to a clean, healthy, and sustainable environment.*

#### **1.0 Introduction**

A safe and healthy environment is fundamental human right<sup>1</sup>. It has been noted that every person has the right to a clean, healthy and sustainable environment<sup>2</sup>. Since human rights and the environment are interdependent, the right to a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of

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<sup>1</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> (Accessed on 09/09/2024)

<sup>2</sup> Ibid

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human rights, including the rights to life, health, food, water and sanitation and development, among others<sup>3</sup>. In addition, the enjoyment of all human rights, including the rights to information, participation and access to justice, is of great importance to the protection of the environment<sup>4</sup>. It has been noted that this right entails substantive elements including clean air; a safe and stable climate; access to safe water and adequate sanitation; and healthy biodiversity and ecosystems<sup>5</sup>. It also contains procedural elements such as access to information, the right to participate in decision-making, and access to justice and effective remedies<sup>6</sup>.

The right to a clean, healthy, and sustainable environment has been recognized by the United Nations General Assembly as a core human right<sup>7</sup>. The Resolution by the United Nations General Assembly affirms the importance of the right a clean, healthy and sustainable environment for the full enjoyment of all human rights<sup>8</sup>. The Resolution calls upon states, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all<sup>9</sup>. The Resolution by the United Nations General Assembly is expected to have a trickle-down effect, prompting countries to enshrine the right to a healthy environment in national constitutions and regional treaties, and encouraging states to implement those laws<sup>10</sup>. The Resolution has also been described as a powerful new

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<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' A/76/L.75

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> United Nations Environment Programme., 'In Historic Move, UN Declares Healthy Environment a Human Right' Available at <https://www.unep.org/news-and->

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tool to address the human rights impacts of climate change, biodiversity loss and pollution and ensure rights-based environmental action<sup>11</sup>.

Despite its recognition, several challenges undermine the achievement of the right to a clean, healthy, and sustainable environment. It has been noted that global crises including climate change, loss of biodiversity, and pollution, represent some of the biggest threats to humanity, severely affecting the exercise and enjoyment of all human rights including the right to a clean, healthy, and sustainable environment<sup>12</sup>. The Resolution by the United Nations General Assembly acknowledges that the pollution of air, land and water interferes with the enjoyment of a clean, healthy and sustainable environment<sup>13</sup>. Tackling all forms of pollution including air pollution is therefore necessary for effective realization of the right to a clean, healthy, and sustainable environment<sup>14</sup>.

This paper critically discusses the need to combat air pollution. It argues that air pollution is a major threat to the full realization of the right to a clean, healthy, and sustainable environment. The paper explores the nature, causes, and effects of air pollution. It further suggests approaches towards eliminating air pollution for effective realization of the right to a clean, healthy, and sustainable environment.

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[stories/story/historic-move-un-declares-healthy-environment-human-right](#)

(Accessed on 09/09/2024)

<sup>11</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/publications/what-right-healthy-environment> (Accessed on 09/09/2024)

<sup>12</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Op Cit

<sup>13</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' Op Cit

<sup>14</sup> Ibid



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### **2.0 Air Pollution: Causes and Effects**

According to the United Nations Environment Programme (UNEP), pollution is the indirect or direct alteration of the biological, thermal, physical, or radioactive properties of any medium in such a way as to create a hazard or potential hazard to human health or to the health, safety or welfare of any living species<sup>15</sup>. Pollution has also been defined as the presence of substances and/or heat in environmental media (air, water, land) whose nature, location, or quantity produces undesirable environmental effects<sup>16</sup>. It has been noted that as the world's population continues to increase and resource use intensifies, pollution is ever more extensive, pervasive, and persistent<sup>17</sup>. Pollution affects our health through the food we eat, the water we drink and the air we breathe<sup>18</sup>. Factors such as industrialisation, use of pesticides and nitrogen-based fertilizers, crop residues in agriculture, urbanization, forest fires, desert dust, and unsustainable waste management have intensified environmental health risks and pollution, especially in low- and middle-income countries<sup>19</sup>. Pollution of all types hinder development outcomes<sup>20</sup>.

Air pollution entails the contamination of the indoor or outdoor environment by any chemical, physical or biological agent that modifies

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<sup>15</sup> United Nations Environment Programme., 'Pollution' Available at <https://leap.unep.org/en/knowledge/glossary/pollution#:~:text=The%20indirect%20or%20direct%20alteration,welfare%20of%20any%20living%20species.%20> (Accessed on 09/09/2024)

<sup>16</sup> United Nations Office for Disaster Risk Reduction., 'Pollution' Available at <https://www.undrr.org/understanding-disaster-risk/terminology/hips/tl0028> (Accessed on 09/09/2024)

<sup>17</sup> United Nations Environment Programme., 'Towards a Pollution-Free Planet' Available at <https://www.unep.org/beatpollution/> (Accessed on 09/09/2024)

<sup>18</sup> Ibid

<sup>19</sup> World Bank Group., 'Pollution' Available at <https://www.worldbank.org/en/topic/pollution> (Accessed on 09/09/2024)

<sup>20</sup> Ibid

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the natural characteristics of the atmosphere<sup>21</sup>. The main drivers of air pollution include emissions from the burning of fossil fuels for energy and transport, and the burning of traditional fuels for household cooking, as well as agricultural and waste burning<sup>22</sup>. UNEP notes that air pollution comes from many sources – from cookstoves and kerosene lamps to coal-fired power plants, vehicle emissions, industrial furnaces, wildfires, and sand and dust storms<sup>23</sup>. The problem of air pollution is most prevalent in urban areas, particularly in Africa and Asia<sup>24</sup>.

Air pollution has been described as one of the greatest environmental risks to health<sup>25</sup>. The World Health Organization (WHO) estimates that air pollution in both cities and rural areas causes over 4.2 million premature deaths worldwide per year<sup>26</sup>. This mortality is due to exposure to fine particulate matter, which causes cardiovascular and respiratory disease, and cancers<sup>27</sup>. It has further been noted that environmental contamination significantly contributes to non-infectious diseases like cancer and respiratory illnesses<sup>28</sup>.

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<sup>21</sup> World Health Organization., 'Air Pollution' Available at [https://www.who.int/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/health-topics/air-pollution#tab=tab_1) (Accessed on 09/09/2024)

<sup>22</sup> United Nations Environment Programme., 'Collective Action Needed to Improve Quality of the Air we Share' Available at <https://www.unep.org/news-and-stories/story/collective-action-needed-improve-quality-air-we-share#:~:text=Other%20ways%20to%20address%20air,reducing%20trash%20and%20crop%20burning> (Accessed on 09/09/2024)

<sup>23</sup> United Nations Environment Programme., 'Why Does Air Matter?' Available at <https://www.unep.org/topics/air/why-does-air-matter> (Accessed on 09/09/2024)

<sup>24</sup> Ibid

<sup>25</sup> World Health Organization., 'Ambient (Outdoor) Air Pollution' Available at [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health) (Accessed on 09/09/2024)

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> United Nations Environment Programme., 'Pollution and Health' Available at <https://www.unep.org/topics/chemicals-and-pollution-action/pollution-and-health> (Accessed on 09/09/2024)

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Due to its effects, air pollution has been described as the most-pressing environmental health crisis of our time<sup>29</sup>. It is estimated that approximately nine in ten people around the world breathe unclean air, which increases the risk of asthma, heart disease and lung cancer<sup>30</sup>. Air pollution impacts everyone, with people living in low- and middle-income countries bearing most of the burden<sup>31</sup>. In addition, women and young children are more vulnerable to air pollution<sup>32</sup>. It has been noted that close to half of pneumonia deaths among children under 5 are due to household air pollution<sup>33</sup>.

In addition to its adverse impacts, air pollution is also linked to climate change<sup>34</sup>. Air pollution is intricately linked with climate change since both problems come largely from the same sources, such as emissions from burning fossil fuels<sup>35</sup>. Many of the drivers of air pollution (such as combustion of fossil fuels) are also sources of greenhouse gas emissions that cause climate change<sup>36</sup>. Air pollution is strongly correlated with the worsening climate crisis, and it impacts ecosystems, threatening food security and economic productivity<sup>37</sup>. Therefore, policies to reduce air pollution offer a win-win strategy for both climate and health, lowering the burden of disease attributable to air pollution, as well as contributing

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<sup>29</sup> United Nations Environment Programme., 'Five Cities Tackling Air Pollution' Available at <https://www.unep.org/news-and-stories/story/five-cities-tackling-air-pollution> (Accessed on 09/09/2024)

<sup>30</sup> Ibid

<sup>31</sup> United Nations Environment Programme., 'Collective Action Needed to Improve Quality of the Air we Share' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> National Institute of Environmental Health Sciences., 'Air Pollution and Your Health' Available at <https://www.niehs.nih.gov/health/topics/agents/air-pollution> (Accessed on 09/09/2024)

<sup>35</sup> Ibid

<sup>36</sup> World Health Organization., 'Air Pollution' Op Cit

<sup>37</sup> United Nations Environment Programme., 'Collaboration Key to Securing Clean Air for All, Experts Say' Available at <https://www.unep.org/news-and-stories/story/collaboration-key-securing-clean-air-all-experts-say> (Accessed on 09/09/2024)

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to the near- and long-term mitigation of climate change<sup>38</sup>. As a result, it has been noted that air pollution and climate change should be tackled jointly, with a focus on protecting peoples' health particularly in low- and middle-income countries in order to strengthen human capital and reduce poverty<sup>39</sup>.

Curbing air pollution is therefore vital for global health and prosperity.

### **3.0 Taking Collective Action to Eliminate Air Pollution**

It is imperative to eliminate air pollution in order to achieve the right to a clean, healthy, and sustainable environment towards sustainability. According to UNEP, addressing all forms of pollution including air pollution is not only an environmental priority, but also a priority for the achievement of the Sustainable Development Goals<sup>40</sup>. Further, it has been noted that tackling air pollution can bring significant benefits for economies, human health, and the climate<sup>41</sup>.

Eliminating air pollution requires collective action<sup>42</sup>. The impacts of air pollution can be spread over national boundaries<sup>43</sup>. As a result, it has been pointed out that air pollution is not only a challenge at national levels but it is also a regional and global challenge since air pollutants stay sufficiently long in the atmosphere to be transported across administrative boundaries and national borders while also contributing to climate change<sup>44</sup>. Therefore, curbing air pollution requires

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<sup>38</sup> World Health Organization., 'Air Pollution' Op Cit

<sup>39</sup> World Bank Group., 'What You Need to Know About Climate Change and Air Pollution' Available at <https://www.worldbank.org/en/news/feature/2022/09/01/what-you-need-to-know-about-climate-change-and-air-pollution> (Accessed on 09/09/2024)

<sup>40</sup> United Nations Environment Programme., 'Towards a Pollution-Free Planet' Op Cit

<sup>41</sup> United Nations Environment Programme., 'Why Does Air Matter?' Op Cit

<sup>42</sup> United Nations Environment Programme., 'Collective Action Needed to Improve Quality of the Air we Share' Op Cit

<sup>43</sup> Ibid

<sup>44</sup> Ibid

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multilateral cooperation and collective action at the regional and global levels<sup>45</sup>. Since air pollution has no boundaries, collective action by governments, Non-Governmental Organizations (NGOs), businesses, civil society and the public at large is key to delivering clean air for all<sup>46</sup>.

In order to take collective action to eliminate air pollution, it is imperative for all stakeholders including governments and the private sector to accelerate the energy transition by upscaling investments in renewable sources of energy<sup>47</sup>. One of the major causes of air pollution is emissions from the burning of fossil fuels for energy and transport, and the burning of traditional fuels for household cooking<sup>48</sup>. Therefore, eliminating air pollution requires collective action to end reliance on fossil fuels and invest in alternative sources of energy that are clean, accessible, affordable, sustainable, and reliable<sup>49</sup>. Renewable sources of energy – which are available in abundance all over the world, provided by the sun, wind, water, waste, and heat from the Earth – are replenished by nature and emit little to no greenhouse gases or pollutants into the air<sup>50</sup>. Therefore, developing renewable energy could jointly reduce air pollution, greenhouse gas emissions, and bring air pollution-related

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<sup>45</sup> Collective Action on Climate, Biodiversity, Pollution Vital., Available at <https://nation.africa/kenya/blogs-opinion/blogs/collective-action-on-climate-biodiversity-pollution-vital-4533948> (Accessed on 11/09/2024)

<sup>46</sup> Clean Air Fund., '6 Cross-Sector Collaborations Tackling Air Pollution' Available at <https://www.cleanairfund.org/news-item/cross-sector-collaborations/> (Accessed on 11/09/2024)

<sup>47</sup> Xie. Y., 'Large-Scale Renewable Energy Brings Regionally Disproportional Air Quality and Health Co-Benefits in China' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10432202/> (Accessed on 11/09/2024)

<sup>48</sup> United Nations Environment Programme., 'Collective Action Needed to Improve Quality of the Air we Share' Op Cit

<sup>49</sup> United Nations., 'Renewable Energy - Powering a Safer Future' Available at <https://www.un.org/en/climatechange/raising-ambition/renewable-energy> (Accessed on 11/09/2024)

<sup>50</sup> Ibid

## *Taking Collective Action to Eliminate Air Pollution*

health co-benefits<sup>51</sup>. It is therefore imperative to shift to renewable energy and modern bioenergy, and adopt cleaner cooking fuels in order to eliminate air pollution<sup>52</sup>.

It is also necessary to take collective action towards improving air quality data and monitoring<sup>53</sup>. Air quality data and monitoring is crucial for understanding and addressing air pollutants<sup>54</sup>. Through air quality data and monitoring, it is possible to understand the causes of air pollution and how it impacts people, places and the planet<sup>55</sup>. Through access to reliable data and monitoring, it is possible to identify air pollution hotspots and take targeted action to protect and improve human and environmental well-being<sup>56</sup>. At the global level, the *World Health Organization Global Air Quality Guidelines*<sup>57</sup> provides a framework for assessing air quality and reducing levels of air pollutants in order to decrease the enormous health burden resulting from exposure to air pollution worldwide<sup>58</sup>. Further, at a national level, Kenya has enacted *Air Quality Regulations*<sup>59</sup> which provide for the prevention, control and abatement of air pollution in order to ensure clean and healthy ambient air. It is imperative to ensure compliance with these standards in order to improve air quality data and monitoring at the global and national

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<sup>51</sup> Xie. Y., 'Large-Scale Renewable Energy Brings Regionally Disproportional Air Quality and Health Co-Benefits in China' Op Cit

<sup>52</sup> United Nations Environment Programme., 'Collective Action Needed to Improve Quality of the Air we Share' Op Cit

<sup>53</sup> Clean Air Fund., '6 Cross-Sector Collaborations Tackling Air Pollution' Op Cit

<sup>54</sup> Ibid

<sup>55</sup> United Nations Environment Programme., 'How is Air Quality Measured?' Available at <https://www.unep.org/news-and-stories/story/how-air-quality-measured#:~:text=Some%20use%20lasers%20to%20scan,nitrogen%20dioxide%20and%20sulfur%20dioxide> (Accessed on 11/09/2024)

<sup>56</sup> Ibid

<sup>57</sup> World Health Organization., 'Global Air Quality Guidelines' Available at <https://iris.who.int/bitstream/handle/10665/345329/9789240034228-eng.pdf?sequence=1> (Accessed on 11/09/2024)

<sup>58</sup> Ibid

<sup>59</sup> Environmental Management and Co-ordination Act., The Environmental Management and Coordination (Air Quality) Regulations, 2014, Legal Notice No. 34

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levels towards eliminating air pollution. It is also vital to invest in science and technology including sensing technologies in order to improve air quality data and monitoring as a prerequisite for combating air pollution<sup>60</sup>.

Finally, there is need for international cooperation towards an integrated climate and clean air policy<sup>61</sup>. The *Convention on Long-Range Transboundary Air Pollution*<sup>62</sup> establishes a common framework for transboundary cooperation on air pollution. The Convention sets out the general principles of international cooperation for air pollution abatement including air quality management, research and development, and exchange of information<sup>63</sup>. There is need for international cooperation on these among other standards in order to strengthen laws and policies and eliminate air pollution globally. There is also need to foster international cooperation towards combating climate change<sup>64</sup>. Since air pollution and climate change are interconnected, efforts to combat climate change by avoiding or limiting greenhouse gas emissions are also important in tackling air pollution<sup>65</sup>.

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<sup>60</sup> Global Clean Air., 'Innovative Air Quality Monitoring' Available at <https://globalcleanair.org/innovative-air-quality-monitoring/> (Accessed on 11/09/2024)

<sup>61</sup> Clean Air Fund., '6 Cross-Sector Collaborations Tackling Air Pollution' Op Cit

<sup>62</sup> 1979 Convention on Long-Range Transboundary Air Pollution., Available at <https://unece.org/sites/default/files/2021-05/1979%20CLRTAP.e.pdf> (Accessed on 11/09/2024)

<sup>63</sup> Ibid

<sup>64</sup> United Nations Climate Change., 'Air Quality Sinks as Climate Change Accelerates' Available at <https://unfccc.int/news/air-quality-sinks-as-climate-changeaccelerates#:~:text=%E2%80%99CAs%20the%20globe%20warms%2C%20wildfires,says%20WMO%20Secretary%20General%20Prof.> (Accessed on 11/09/2024)

<sup>65</sup> Ibid

## *Taking Collective Action to Eliminate Air Pollution*

Tackling climate change by reducing greenhouse gas emissions therefore provides dual benefits of better air quality and improved health in localities and the global benefit of mitigating climate change<sup>66</sup>.

### **4.0 Conclusion**

Air pollution is one of the most-pressing environmental health crisis of our time<sup>67</sup>. Air pollution results in premature deaths worldwide while also increasing the risk of asthma, heart disease and lung cancer<sup>68</sup>. Air pollution also contributes to climate change<sup>69</sup>. Eliminating air pollution is therefore important for global health and prosperity. Since air pollution has no boundaries, collective action by all stakeholders including governments, NGOs, businesses, civil society and the public at large is key in curbing air pollution and delivering clean air for all<sup>70</sup>. Eliminating air pollution therefore requires collective action towards accelerating the energy transition by upscaling investments in renewable sources of energy<sup>71</sup>; improving air quality data and monitoring<sup>72</sup>; international cooperation on clean air policy<sup>73</sup>; and combating climate change<sup>74</sup>.

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<sup>66</sup> World Bank Group., 'What You Need to Know About Climate Change and Air Pollution' Op Cit

<sup>67</sup> United Nations Environment Programme., 'Five Cities Tackling Air Pollution' Op Cit

<sup>68</sup> United Nations Environment Programme., 'Five Cities Tackling Air Pollution' Op Cit

<sup>69</sup> National Institute of Environmental Health Sciences., 'Air Pollution and Your Health' Op Cit

<sup>70</sup> Clean Air Fund., '6 Cross-Sector Collaborations Tackling Air Pollution' Op Cit

<sup>71</sup> Xie. Y., 'Large-Scale Renewable Energy Brings Regionally Disproportional Air Quality and Health Co-Benefits in China' Op Cit

<sup>72</sup> Clean Air Fund., '6 Cross-Sector Collaborations Tackling Air Pollution' Op Cit

<sup>73</sup> Ibid

<sup>74</sup> United Nations Climate Change., 'Air Quality Sinks as Climate Change Accelerates' Op Cit



## *Taking Collective Action to Eliminate Air Pollution*

It is necessary to take collective action to eliminate air pollution in order to achieve the right to a clean, healthy, and sustainable environment at all levels

## *Managing Cross Border Natural Resource Conflicts Through Alternative Dispute Resolution*

### **Managing Cross Border Natural Resource Conflicts Through Alternative Dispute Resolution**

#### *Abstract*

*This paper critically examines the suitability of Alternative Dispute Resolution (ADR) as a tool for managing cross border natural resource conflicts. The paper opines that ADR is an effective tool for managing cross border natural resource conflicts due to advantages including the potential to foster collaboration among various stakeholders and the transnational applicability of ADR processes including arbitration and mediation. The paper explores the nature and causes of cross border natural resource conflicts. It also interrogates the key features of ADR that makes it ideal in managing cross border natural resource conflicts. The paper further highlights some of the factors hindering the suitability of ADR in managing cross border natural resource conflicts. It also proposes interventions towards managing cross border natural resource conflicts through ADR.*

#### **1.0 Introduction**

Conflicts are an undesirable phenomena in any given society since they can affect peace, sustainability and development<sup>1</sup>. It has been correctly pointed out that development is not feasible in a conflict situation<sup>2</sup>. Effective, efficient and expeditious conflict management is therefore a desirable ideal in order to spur peace, development and sustainability<sup>3</sup>.

The idea of conflict management refers to the processes and techniques adopted towards stopping or preventing overt conflicts and aiding the parties involved to reach a durable and peaceful solution to their

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<sup>1</sup> Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-KenyaRevised-version-of-20.10.14.pdf> (Accessed on 23/09/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

## *Managing Cross Border Natural Resource Conflicts Through Alternative Dispute Resolution*

differences<sup>4</sup>. It involves handling all stages of a conflict as well as the mechanisms used in the management of conflicts<sup>5</sup>. The goal of Conflict management is to resolve disagreements or conflicts with positive outcomes that satisfy all individuals involved or is beneficial to a particular group<sup>6</sup>. It also aims to affect the entire structure of a conflict so as to contain the destructive components in the conflict process (such as hostility and use of violence) and help the parties possessing incompatible goals to find some solution to their conflict<sup>7</sup>.

Conflict management involves various approaches and techniques ranging from the most informal negotiations between the parties themselves through increasing formality and more directive interventions from external sources to a full court hearing with strict rules of procedure<sup>8</sup>. It takes various styles including *avoidance* where some or all people involved in a conflict simply avoid the situation or ignore its existence<sup>9</sup>; *competing* which involves one party winning, and one party losing in relation to the issues in dispute<sup>10</sup>; *compromise* which involves parties sacrificing their positions in order to aid a resolution<sup>11</sup>; and *collaborating* wherein all parties involved are brought together for a resolution through active listening and respectful communication<sup>12</sup>.

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<sup>4</sup> Leeds. C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners.' *International Journal of Peace Studies*, Volume 2, No. 2, 1997

<sup>5</sup> Ibid

<sup>6</sup> Ronquillo. Y et al., 'Conflict Management' Available at <https://www.ncbi.nlm.nih.gov/books/NBK470432/> (Accessed on 23/09/2024)

<sup>7</sup> Bercovitch. J., 'Conflict and Conflict Management in Organizations: A Framework for Analysis.' Available at <https://ocd.lcwu.edu.pk/cfiles/International%20Relations/EC/IR403/Conflict.ConflictManagementinOrganizations.pdf> (Accessed on 23/09/2024)

<sup>8</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>9</sup> Ronquillo. Y et al., 'Conflict Management' Op Cit

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

## *Managing Cross Border Natural Resource Conflicts Through Alternative Dispute Resolution*

Alternative Dispute Resolution (ADR) has been described as an effective strategy to conflict management due to its many advantages including the ability to foster collaboration<sup>13</sup>.

This paper critically examines the suitability of ADR as a tool for managing cross border natural resource conflicts. The paper opines that ADR is an effective tool for managing cross border natural resource conflicts due to advantages including the potential to foster collaboration among various stakeholders and the transnational applicability of ADR processes including arbitration and mediation. The paper explores the nature and causes of cross border natural resource conflicts. It also interrogates the key features of ADR that makes it ideal in managing cross border natural resource conflicts. The paper further highlights some of the factors hindering the suitability of ADR in managing cross border natural resource conflicts. It also proposes interventions towards managing cross border natural resource conflicts through ADR.

### **2.0 Cross Border Natural Resource Conflicts**

Natural resources are a major source of conflicts. Natural resource conflicts can occur in the form of disagreements and disputes over access to, control over and use of natural resources<sup>14</sup>. For example, when natural resources are poorly managed or inequitably shared, or when business operations are implemented without due consideration for context and communities, they can contribute to tensions that can escalate into violent conflict, or feed into and exacerbate pre-existing

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<sup>13</sup> Muigua. K., 'Applying Collaborative Approaches towards Conflict Management' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Applying-Collaborative-Approaches-towards-Conflict-Management-.pdf> (Accessed on 23/09/2024)

<sup>14</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Available at <https://www.fao.org/4/a0032e/a0032e04.htm> (Accessed on 23/09/2024)

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conflict dynamics<sup>15</sup>. Natural resource conflicts are often fueled by disagreements over access, control, and exploitation of high-value resources like timber, diamonds, gold, minerals and oil, or scarce ones like arable land and water<sup>16</sup>. Competition over land use and access to natural resources such as water has been identified as one of the main drivers of violent conflict worldwide<sup>17</sup>. In addition, it has been noted that many inter and intra state armed conflicts have been triggered, funded or sustained by exploitation of natural resources<sup>18</sup>.

Climate change is also a major factor in natural resource conflicts<sup>19</sup>. It has been noted that climate change is not a direct source of natural resource conflicts, but is seen as a threat multiplier that exacerbates resource scarcity and existing vulnerabilities<sup>20</sup>. Climate change contributes to increased food insecurity following droughts and disasters and fuels competition over resources particularly water<sup>21</sup>. It has been noted that when combined with other planetary crises such as land degradation and over exploitation of the environment, climate change can make an already volatile situation untenable therefore fueling conflicts<sup>22</sup>.

With the continued rise in global population, and the resulting increased demand for resources, there is significant potential for conflicts over

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<sup>15</sup> Ibid

<sup>16</sup> United Nations Peacekeeping., 'Conflict and Natural Resources' Available at <https://peacekeeping.un.org/en/conflict-and-natural-resources> (Accessed on 23/09/2024)

<sup>17</sup> Transforming Environmental and Natural Resource Conflicts., Available at [https://www.giz.de/fachexpertise/downloads/giz2019\\_EN\\_Themeninfo\\_Ressourcenkonflikte\\_en.pdf](https://www.giz.de/fachexpertise/downloads/giz2019_EN_Themeninfo_Ressourcenkonflikte_en.pdf) (Accessed on 23/09/2024)

<sup>18</sup> Ibid

<sup>19</sup> United Nations Peacekeeping., 'Conflict and Natural Resources' Op Cit

<sup>20</sup> Ibid

<sup>21</sup> United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate> (Accessed on 23/09/2024)

<sup>22</sup> Ibid

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natural resources to intensify in the coming years and decades<sup>23</sup>. In addition, the possible impacts of climate change for water availability, food security, prevalence of disease, coastal boundaries and population distribution may worsen existing tensions and generate new conflicts<sup>24</sup>. Natural resource conflicts can be useful in helping communities to clarify interests and needs and in reducing possible injustices or inequities in resource distribution<sup>25</sup>. However, natural resource conflicts can also contribute to resource degradation and insecurity therefore threatening peace, stability and development<sup>26</sup>. Effective management of natural resource conflicts is therefore vital for development.

Natural resource conflicts are therefore caused or worsened by resource scarcity, disagreements over access and ownership, and environmental damage including environmental degradation and climate change<sup>27</sup>. Such conflicts also occur due to weak and inequitable resource governance including gender-based inequalities of rights and obligations, corruption, unequitable benefit-sharing, lack of participation in governance, and lack of transparency and accountability<sup>28</sup>. In addition, the mismanagement of land, water and other natural resources is contributing to new conflicts and obstructing the peaceful resolution of existing ones<sup>29</sup>.

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<sup>23</sup> International Institute for Sustainable Development., 'From Conflict to Peacebuilding: The Role of Natural Resources and the Environment' Available at <https://www.iisd.org/publications/conflict-peacebuilding-role-natural-resources-and-environment> (Accessed on 23/09/2024)

<sup>24</sup> Ibid

<sup>25</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>26</sup> Ibid

<sup>27</sup> Transforming Environmental and Natural Resource Conflicts., Op Cit

<sup>28</sup> Ibid

<sup>29</sup> United Nations., 'Strengthening Capacity for Conflict-Sensitive Natural Resource Management' Available at [https://www.un.org/en/land-natural-resources-conflict/pdfs/GN\\_Capacity.pdf](https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Capacity.pdf) (Accessed on 23/09/2024)

## *Managing Cross Border Natural Resource Conflicts Through Alternative Dispute Resolution*

Natural resource conflicts are prevalent all over the world including in Africa. The continent is rich in natural resources ranging from arable land, water, oil, natural gas, minerals, forests and wildlife<sup>30</sup>. However, natural resources have motivated and fueled armed conflicts in Africa threatening peace, security, and stability<sup>31</sup>. Africa continues to suffer from the resource curse which refers to the paradox that countries endowed with natural resources tend to be embroiled in conflicts and have incidences of poverty<sup>32</sup>. The East Africa region, like the rest of Africa, has been the scene of many conflicts related to land, water and other natural resources<sup>33</sup>. Such conflicts emanate from the increasing demand on natural resources due to population growth, but also as a result of the continued depletion of these resources in both quantity and quality because of degradation, overuse and over-harvesting, governance deficits, and climate change<sup>34</sup>.

Natural resource conflicts can occur at different levels including local, national, and cross border contexts<sup>35</sup>. Cross border natural resource conflicts are those that spillover the political boundaries of two or more

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<sup>30</sup> United Nations Environment Programme., 'Our Work in Africa' Available at <https://www.unep.org/regions/africa/our-workafrica#:~:text=Africa%20is%20rich%20in%20natural,both%20renewables%20and%20non%2Drenewables>. (Accessed on 24/09/2024)

<sup>31</sup> Mwanika. PAN., 'Natural Resource Conflict: Management Processes and Strategies in Africa' Available at <https://www.files.ethz.ch/isn/136685/PAPER216.pdf> (Accessed on 24/09/2024)

<sup>32</sup> Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy*, Volume 63, 2019

<sup>33</sup> United Nations Economic Commission for Africa., 'Natural Resources & Conflict Management' Available at [https://archive.uneca.org/sites/default/files/PublicationFiles/land\\_and\\_conflict\\_study\\_0.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/land_and_conflict_study_0.pdf) (Accessed on 24/09/2024)

<sup>34</sup> Ibid

<sup>35</sup> Transforming Environmental and Natural Resource Conflicts., Op Cit

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states<sup>36</sup>. Such conflicts arise due to difficulties in balancing interests of all concerned parties in relation to the access, use, and management of transboundary natural resources<sup>37</sup>. For example, it has been noted that conflict is a common occurrence among pastoral communities across borders due to disagreements over the sharing of natural resources like pastures and water<sup>38</sup>. For example, in the East African region, pastoralist communities remain highly mobile across the region, moving from the north of East Africa into South Sudan, Somalia and Ethiopia; and from Kenya to Tanzania in search of water and pasture resulting in conflicts over these resources<sup>39</sup>. In addition, transboundary wildlife ecosystems are often a source of cross border disputes due to human activities such as poaching, illegal wildlife trade, uncontrolled human settlement, and degradation of wildlife habitats<sup>40</sup>. In the East African region, the Mara/Serengeti, a shared ecosystem between Kenya and Tanzania has often been a source of conflicts between the two countries<sup>41</sup>. The exploitation of shared natural resources such as the construction of dams can affect water supply downstream states resulting in cross border

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<sup>36</sup> Dhliwayo, M., "Legal Aspects of Trans-Boundary Natural Resources Management in Southern Africa," *In Commons in an Age of Globalisation*, the Ninth Conference of the International Association for the Study of Common Property, 2002

<sup>37</sup> Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2018/11/Managing-Transboundary-Natural-Resources-inKenya-Kariuki-Muigua-26th-November-2018.pdf> (Accessed on 23/09/2024)

<sup>38</sup> Good Practice :Cross border Conflict Mitigation., Available at <https://icpald.org/wp-content/uploads/2020/01/Uganda-Poster.pdf> (Accessed on 23/09/2024)

<sup>39</sup> United Nations Economic Commission for Africa., 'Natural Resources & Conflict Management' Op Cit

<sup>40</sup> Republic of Kenya., Ministry of Tourism & Wildlife., 'Kenya-Tanzania Explore Possibilities of TransBoundary Collaboration To Stop Poaching And Illegal Wildlife Trade' Available at <https://www.tourism.go.ke/kenya-tanzania-explore-possibilities-of-trans-boundary-collaboration-tostop-poaching-and-illegal-wildlife-trade-06-09-2023/> (Accessed on 23/09/2024)

<sup>41</sup> Ibid



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natural resource disputes<sup>42</sup>. For example, the construction of the Gabčíkovo-Nagymaros hydroelectric dam project on the Danube resulted in a major conflict between Hungary and Slovakia due to the potential impacts of the project on water supply and navigation rights for the state of Slovakia<sup>43</sup>. The conflict was eventually decided by the International Court of Justice which urged the two countries to *negotiate* in good faith and cooperate towards effective management of the shared resource<sup>44</sup>. At a regional level, the construction of the Gibe III dam along River Omo in Ethiopia resulted in a dispute between Kenya and Ethiopia since the River is a major source of water for Lake Turkana in Kenya<sup>45</sup>.

Cross border natural resource conflicts are a threat to regional peace, security, and development<sup>46</sup>. These conflicts can also be worsened by the unresolved historical border issues in many contexts<sup>47</sup>. It is therefore vital to foster effective management of cross border disputes for peace, security, and development.

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<sup>42</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDP\\_AUNEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDP_AUNEP2015_0.pdf) (Accessed on 24/09/2024)

<sup>43</sup> International Court of Justice., 'Gabčíkovo-Nagymaros Project (Hungary/Slovakia)' Available at <https://www.icj-cij.org/case/92> (Accessed on 24/09/2024)

<sup>44</sup> Ibid

<sup>45</sup> The Guardian., 'Ethiopia Dam will turn Lake Turkana into 'endless battlefield', locals warn' Available at <https://www.theguardian.com/global-development/2015/jan/13/ethiopia-gibe-iii-dam-kenya> (Accessed on 24/09/2024)

<sup>46</sup> Maru. M. T., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Available at <https://www.linkedin.com/pulse/transboundary-natural-resource-disputes-africa-mehari-taddele-maru/> (Accessed on 23/09/2024)

<sup>47</sup> Ibid

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### **3.0 Efficacy of Alternative Dispute Resolution Processes in Managing Cross Border Natural Resource Conflicts**

ADR is a concept that involves managing disputes without resort to adversarial litigation<sup>48</sup>. It has also been defined as a set of approaches and techniques aimed at resolving disputes in a non-confrontational way<sup>49</sup>. According to the United Nations, ADR covers a broad spectrum of approaches, ranging from party-to-party engagement in *negotiations* as the most direct way to reach a mutually accepted resolution, to *arbitration* and *adjudication* at the other end, where an external party imposes a solution<sup>50</sup>. It further notes that somewhere along the axis of ADR approaches, between these two extremes, lies *mediation*, a process by which a third party aids the disputants to reach a mutually agreed solution<sup>51</sup>. ADR processes include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>52</sup>. It has been noted that these approaches may be linked to but function outside formal court litigation processes<sup>53</sup>. The *Charter of the United Nations*<sup>54</sup> provides the legal basis for the application of ADR processes in managing disputes at the global level and in the cross border context. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or*

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<sup>48</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>49</sup> United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at

[https://www.un.org/waterforlifedecade/water\\_cooperation\\_2013/pdf/adr\\_backgroud\\_paper.pdf](https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_backgroud_paper.pdf) (Accessed on 24/09/2024)

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>53</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>54</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

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arrangements, or *other peaceful means* of their own choice<sup>55</sup>(Emphasis added)<sup>56</sup>.

ADR processes are appropriate in managing natural resource conflicts<sup>57</sup>. ADR mechanisms are viewed as ideal in conflict management due to their advantages which include privacy, confidentiality, flexibility, informality, efficiency, party autonomy and the ability to foster expeditious and cost- effective management of disputes<sup>58</sup>. ADR also allows for more creative and collaborative solutions than that of traditional litigation<sup>59</sup>. These attributes can be harnessed for effective management of natural resource conflicts at all levels including local, national, and cross border levels.

It has been correctly noted that in conflicts involving natural resources, sustainable outcomes are often more desirable because the shared benefits of these resources in most cases cross tribal, societal, communal, and national boundaries<sup>60</sup>. As a result, collaboration over the ownership, management, and use of these resources is critical to peace and stability<sup>61</sup>. Embracing a collaborative approach is therefore more appropriate in managing natural resource conflicts. It has been noted that collaborative management involves joint decision-making by all stakeholders including governments, communities, Non-Governmental Organizations (NGOs) and the private sector in relations to natural

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<sup>55</sup> Ibid, article 33 (1)

<sup>57</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>58</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>59</sup> JAMS ADR., 'What is ADR?' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 24/09/2024)

<sup>60</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>61</sup> Ibid

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resource access and use<sup>62</sup>. Collaborative resource management pays particular attention to conflict management issues<sup>63</sup>. Through this approach, challenges such as disagreement over access rights, lack of consensus on management objectives and misinformation or misunderstandings among various stakeholders can be effectively addressed<sup>64</sup>.

ADR techniques particularly mediation and negotiation are suitable in fostering collaboration towards effective management of natural resource conflicts especially in the cross border context<sup>65</sup>. It has been asserted that collaborative management approaches have two main objectives: managing the use of natural resources including land, forests, wildlife, water ecosystems, marine areas and their products through negotiating mutually agreeable principles and practices among stakeholders<sup>66</sup>; and establishing ways of sharing among stakeholders the power to make decisions and exercise control over the use of natural resources<sup>67</sup>. These objectives can be achieved through the use of ADR processes including negotiation and mediation.

Negotiation and mediation processes are voluntary and consensus-based thus enhancing collaboration and outcomes that are longer lasting and more sustainable than adversarial processes or otherwise imposed

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<sup>62</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf> (Accessed on 24/09/2024)

<sup>66</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>67</sup> Ibid

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outcomes<sup>68</sup>. It has been noted that consensual negotiations can help to achieve collaborative resource management and sustainable rural livelihoods through the involvement of local communities in managing natural resources while also addressing conflicts related to resource access and use<sup>69</sup>. Further, it has been pointed out that natural resource conflicts are often more amenable to mediation<sup>70</sup>. For instance, mediation over natural resources conflicts can effectively help parties identify ways to maximize and share benefits, and ultimately unlock entrenched or zero-sum positions, allowing parties to develop cooperative and constructive relationships<sup>71</sup>. In the cross border context, consensual negotiations and mediation are more ideal in managing natural resource conflicts by enhancing cooperation and collaboration among different stakeholders while also ensuring that root causes of conflicts are eliminated therefore eliminating the possibility of conflicts reemerging in future<sup>72</sup>.

Another key feature of ADR processes which makes them more appropriate in managing cross border natural resource disputes is their transnational applicability<sup>73</sup>. ADR processes such as arbitration and mediation apply across borders and can therefore be effectively utilized in managing environmental and natural resource conflicts involving parties from different jurisdictions<sup>74</sup>. In Africa, arbitration has often been

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<sup>68</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>69</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>70</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Op Cit

<sup>74</sup> Ibid

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utilized in managing cross border natural resource disputes including the South Sudan- Sudan border dispute involving oil fields in the Abyei region that was determined by the Abyei Arbitration Commission and the dispute between Ghana and Cote D'Ivoire over the Jubilee and Tweneboa-EnyenraNtomme maritime oil fields that was determined through arbitration proceedings under United Nations Convention on the Law of the Sea<sup>75</sup>. International arbitral institutions including the Permanent Court of Arbitration (PCA) also play a key role in managing cross border natural resource conflicts through arbitration<sup>76</sup>. PCA has adopted *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment*<sup>77</sup> which envisage managing cross border natural resource disputes through arbitration. Arbitration is particularly viable in cross border natural resource conflicts especially when there is need to obtain binding and enforceable outcomes<sup>78</sup>.

Despite their advantages, several factors may hinder the viability of ADR processes in managing cross border natural resource disputes. For example, it has been argued that the effectiveness of arbitration in environmental and natural resource conflicts may be limited since courts needs to maintain a supervisory role in the natural resource conflicts management, especially where a foreign investor is involved

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<sup>75</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Available at <https://repository.uneca.org/bitstream/handle/10855/24471/b11898410.pdf?sequence=1&isAllowed=y> (Accessed on 24/09/2024)

<sup>77</sup> Permanent Court of Arbitration., 'Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment' Available at [https://docs.pca-cpa.org/2016/01/Optional-Rules-forArbitration-of-Disputes-Relating-to-the-Environment-and\\_or-Natural-Resources.pdf](https://docs.pca-cpa.org/2016/01/Optional-Rules-forArbitration-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf) (Accessed on 24/09/2024)

<sup>78</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Op Cit

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and the rights of local communities are likely to be violated<sup>79</sup>. In addition, arbitration may not be effective in cross border natural resource conflicts especially where there is need to preserve relationships among various stakeholders including neighboring communities and nations<sup>80</sup>. Further, it has been pointed out that mediation has been underutilized by the international community in addressing conflicts over natural resources since issues in these conflicts tend to be very technical in nature and, as such, require that mediators themselves have extensive technical expertise or have access to it<sup>81</sup>. In addition, natural resource disputes are inherently political, since they feed into power disparities among various players<sup>82</sup>. Therefore, any comprehensive attempt at conflict resolution need to take into account the political context of the conflict along with its technical dimensions<sup>83</sup>. Negotiation and mediation techniques may therefore be of limited use when natural resource conflicts are characterized by protracted or deep-rooted structural issues that can only be addressed through legal, economic, political, or social reforms<sup>84</sup>.

Further, win-win solutions envisaged in ADR processes such as negotiation and mediation are not always possible in natural resource conflicts, especially in situations of absolute resource scarcity or

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<sup>79</sup> Muigua. K., 'Natural Resource Conflicts in Kenya: Effective Management for Attainment of Environmental Justice' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Natural-Resource-Conflicts-in-Kenya-Effective-Management-for-Attainment-of-Environmental-Justice.pdf> (Accessed on 24/09/2024)

<sup>80</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Op Cit

<sup>81</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Ibid

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incompatible land use<sup>85</sup>. In addition, power imbalances in mediation may cause one party to have an upper hand in the process thus causing the outcome to unfavourably address his or her concerns or interests at the expense of the other<sup>86</sup>. Further, it has been noted that Africa is yet to develop effective national and regional institutes, frameworks, and policies for managing cross border natural resource conflicts<sup>87</sup>. It is imperative to address these challenges in order to effectively manage cross border natural resource conflicts through ADR.

### **4.0 Conclusion**

ADR techniques are suitable in managing cross border natural resource conflicts. Mechanisms such as negotiation and mediation can enhance collaboration in relation to the use, access, and management of natural resources<sup>88</sup>. Through collaboration, natural resources can be treated as a platform for cooperation that transcends religious, ideological, political, or tribal differences at local, national, and even transboundary settings<sup>89</sup>. ADR techniques can therefore be utilized as part of a cooperative efforts among parties to natural resource conflicts<sup>90</sup>. The transnational applicability of ADR techniques such as arbitration and mediation also makes these mechanisms particularly useful in managing cross border

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<sup>85</sup> Ibid

<sup>86</sup> Muigua. K., 'Natural Resource Conflicts in Kenya: Effective Management for Attainment of Environmental Justice' Op Cit

<sup>87</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Op Cit

<sup>88</sup> Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

<sup>89</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>90</sup> Inderbitzin. S., 'The Use of Alternative Dispute Resolution in Natural Resource Damage Assessments' *William & Mary Environmental Law and Policy Review.*, Volume 20, Issue 1, (1995-1996)



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natural resource conflicts<sup>91</sup>. It is therefore necessary to harness ADR processes for effective, efficient, and expeditious management of natural resource conflicts at both national and cross border contexts.

In order to effectively utilize ADR in managing cross border natural resource conflicts, there is need to enhance human, technical, institutional, and legal capacity at all levels. It is necessary for ADR practitioners including mediators and arbitrators to enhance their knowledge and skills in relation to the management of natural resource conflicts<sup>92</sup>. There is also need to ensure that all parties have equal access to impartial scientific and technical information about the resource in dispute in order to effectively manage such disputes<sup>93</sup>. Further, in order to enhance collaboration and cooperation, it is crucial to identify ways through which all stakeholders including local communities can maximize shared benefits and address common problems and challenges together<sup>94</sup>. In addition, in order to ensure effective cooperation, there is need to identify and involve relevant and key stakeholders in ADR processes such as mediation since inviting the participation of all stakeholders may prove too wide or fragmented to produce consensus<sup>95</sup>.

The effectiveness of ADR mechanisms in managing cross border natural resource conflicts can further be enhanced through the establishment of regional arrangements including institutional and policy frameworks<sup>96</sup>.

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<sup>91</sup> Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Op Cit

<sup>92</sup> United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Op Cit

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For example, it has been suggested that African countries should establish Joint Border Commissions in respect of cross border natural resources with greater mandates, more resources and regular meetings and functions<sup>97</sup>. Such Commissions can enhance collaboration and cooperation among parties through consensual negotiations and mediation in respect of cross border natural resource conflicts<sup>98</sup>. In addition, the establishment of an overarching continental institution responsible for coordinating transboundary regional institutions, supporting capacity development and use of shared resources can strengthen efforts towards cooperation over cross border natural resources<sup>99</sup>.

The suitability of ADR techniques in managing cross border natural resource conflicts can also be enhanced by addressing the inherent challenges in these processes. For example, power imbalances in mediation can be addressed through fostering equal participation of all stakeholders in the mediation process<sup>100</sup>. It is therefore vital for all stakeholders including mediators, mediation institutions, and regional bodies to enhance capacity-building on mediation skills and the use of technical information among other creative approaches that can diminish power asymmetries in mediation processes<sup>101</sup>.

ADR processes hold immense promise in the quest towards effective management of natural resource conflicts at all levels. It is therefore necessary to harness ADR techniques for effective, efficient,

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<sup>97</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Voyles. R., 'Managing an Imbalance of Power' Available at <https://mediate.com/managing-an-imbalance-of-power/> (Accessed on 24/09/2024)

<sup>101</sup> United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Op Cit

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collaborative, expeditious, and cost-effective management of cross border natural resource conflicts.

## *Reaffirming the Human Right to a Clean, Healthy and Sustainable Environment*

### **Reaffirming the Human Right to a Clean, Healthy and Sustainable Environment**

#### **Abstract**

*This paper critically examines the right to a clean, healthy, and sustainable environment. The paper argues that reaffirming this right is key towards fostering harmony between nature and humanity by promoting environmental sustainability and human health and well-being. The paper defines the right to a clean, healthy and sustainable environment and explores its key elements. It also discusses the progress made towards promoting this right and challenges facing its realisation. In addition, the paper suggests measures towards reaffirming the human right to a clean, healthy and sustainable environment towards sustainability.*

#### **1.0 Introduction**

The need for sound environmental conservation has become an urgent priority in the wake of mounting global, regional, and national environmental challenges. For many years, human activities have posed a major threat to the earth's natural processes which have been strained beyond limits, causing a major environmental crisis<sup>1</sup>. Human activities including overexploitation of natural resources such as land, water, forests, minerals and energy are straining the environment and natural resources<sup>2</sup>. This is being manifested in various ways including an unprecedented triple planetary crisis of climate change, biodiversity loss, and pollution<sup>3</sup>. These challenges undermine human health and well-being and attainment of the ideal of environmental sustainability<sup>4</sup>.

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<sup>1</sup> McClymonds JT, 'Human Right to a Healthy Environment: An International Legal Perspective, The' (1992) 37 *New York Law School Law Review* 583

<sup>2</sup> Muigua. K., 'Utilising Science and Technology for Environmental Management in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2020/04/Utilising-Science-and-Technology-for-EnvironmentalManagement-in-Kenya.pdf> (Accessed on 23/10/2024)

<sup>3</sup> United Nations Development Programme., 'Triple Planetary Crisis' Available at [https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-Crisis-Infographic\\_0.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-Crisis-Infographic_0.pdf) (Accessed on 23/10/2024)

<sup>4</sup> Ibid

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In order to effectively tackle environmental problems including the triple planetary crisis, it has become imperative to forge a new relationship between humanity and nature<sup>5</sup>. This ideal is set out under the United Nation's 2030 Agenda for Sustainable Development which seeks to ensure that human beings enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature<sup>6</sup>. The Agenda also seeks to foster sound environmental conservation by protecting 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<sup>7</sup>. Sound environmental conservation including the sustainable use of the environment, natural resources and ecosystem services has been recognized as a key factor in accelerating socio-economic development and improving human welfare, and as a necessary condition for achieving Sustainable Development<sup>8</sup>. In order to achieve the ideal of sound environmental conservation, it is necessary to reaffirm environmental rights including the right to a clean, healthy and sustainable environment<sup>9</sup>.

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<sup>5</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship between People and the Earth' Available at <https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth> (Accessed on 23/10/2024)

<sup>6</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 23/10/2024)

<sup>7</sup> Ibid

<sup>8</sup> International Institute for Sustainable Development., 'Understanding the Contribution of the Environment to Human Well-Being: A Review of Literature' Available at [https://www.iisd.org/system/files/publications/understanding\\_contribution\\_environment.pdf](https://www.iisd.org/system/files/publications/understanding_contribution_environment.pdf) (Accessed on 23/10/2024)

<sup>9</sup> United Nations Environment Programme., 'Advancing the Right to a Healthy Environment' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-right-healthy-environment> (Accessed on 01/08/2024)

## *Reaffirming the Human Right to a Clean, Healthy and Sustainable Environment*

This paper critically examines the right to a clean, healthy, and sustainable environment. The paper argues that reaffirming this right is key towards fostering harmony between nature and humanity by promoting environmental sustainability and human health and well-being. The paper defines the right to a clean, healthy and sustainable environment and explores its key elements. It also discusses the progress made towards promoting this right and challenges facing its realisation. In addition, the paper suggests measures towards reaffirming the human right to a clean, healthy and sustainable environment towards sustainability.

### **2.0 The Human Right to a Clean, Healthy and Sustainable Environment: Definition and Elements**

It has been noted that human rights and the environment are intertwined<sup>10</sup>. Since all human beings depend on the environment for survival, a safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation among others<sup>11</sup>. Polluted, hazardous and otherwise unhealthy environments potentially violate human rights including the rights to life, clean water and sanitation, and health<sup>12</sup>. On the other hand, sound environmental governance cannot exist without the establishment of and respect for human rights<sup>13</sup>. It has been pointed out that environmental sustainability and the respect, promotion, protection and fulfilment of human

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<sup>10</sup> United Nations Environment Programme., 'What are Environmental Rights?' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> (Accessed on 23/10/2024)

<sup>11</sup> Office of the United Nations High Commissioner for Human Rights., 'About Human Rights and the Environment' Available at <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment#:~:text=All%20human%20beings%20depend%20on,unable%20to%20fulfil%20our%20aspirations>. (Accessed on 23/04/2024)

<sup>12</sup> Geneva Environment Network., 'Human Rights and the Environment' Available at <https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment/> (Accessed on 23/10/2024)

<sup>13</sup> United Nations Environment Programme., 'What are Environmental Rights?' Op Cit

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rights are complementary objectives at the core of the Sustainable Development agenda<sup>14</sup>.

The human rights framework should therefore be construed in a broad manner to cover environmental rights since human rights and the environment are interdependent<sup>15</sup>. Environmental rights have been defined as any proclamation of a human right to environmental conditions of a specified quality<sup>16</sup>. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve the substantive rights)<sup>17</sup>. The relationship between human rights and the environment has been recognized as the right to a clean, healthy, and sustainable environment<sup>18</sup>.

The human right to a clean, healthy and sustainable environment comprises of several elements including a safe and stable climate, healthy ecosystems, non-toxic environments, and justice and inclusion in environmental decision making<sup>19</sup>. This right comprises of both substantive and procedural elements<sup>20</sup>. The substantive elements under this right include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; and non-toxic environments<sup>21</sup>. The procedural elements of the right to a clean, healthy and sustainable environment include access to

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<sup>14</sup> United Nations Sustainable Development Group., 'Human Rights and the Environment' Available at <https://unsdg.un.org/sites/default/files/2020-03/Human-Rights-and-the-Environment.pdf> (Accessed 23/10/2024)

<sup>15</sup> Ibid

<sup>16</sup> Geneva Environment Network., 'Human Rights and the Environment' Op Cit

<sup>17</sup> United Nations Environment Programme., 'What are Environmental Rights?' Op Cit

<sup>18</sup> Ibid

<sup>19</sup> Right to a Clean, Healthy and Sustainable Environment., Available at <https://youth4yes.com/youth-human-rights-basics/what-rights-do-young-people-have/rights-to-a-clean-healthy-and-sustainable-environment/> (Accessed on 23/10/2024)

<sup>20</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> (Accessed on 23/10/2024)

<sup>21</sup> Ibid

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information, the right to participate in decision-making, and access to justice and effective remedies in environmental matters<sup>22</sup>. The fundamental interconnection between the protection of the environment and the effective preservation of human rights is therefore at the core of the right to a clean, healthy and sustainable environment<sup>23</sup>. Since human rights are considered interrelated, inter-dependent and mutually reinforcing; the right to a clean, healthy and sustainable environment is linked to other human rights existing under international human rights law<sup>24</sup>.

Upholding the human right to a clean, healthy and sustainable environment is vital for human well-being. It has been noted that without a clean, healthy and sustainable environment, human beings are unable to fulfill their aspirations<sup>25</sup>. Further, in the face of mounting environmental problems including the triple planetary crisis, recognition and implementation of the right to a clean, healthy and sustainable environment is vital in protecting human life, well-being and dignity<sup>26</sup>. In addition, it has been pointed out that while many human rights are linked to the quality of the environment (including life, health and water), the right to a clean, healthy and sustainable environment is unique since it provides comprehensive protection against the full range of environmental harms, including damage to nature<sup>27</sup>. Reaffirming the right to a clean, healthy and sustainable environment is important in fostering sound environmental

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<sup>22</sup> Ibid

<sup>23</sup> International Union for Conservation of Nature., 'The Right to a Healthy Environment' Available at <https://iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment> (Accessed on 23/10/2024)

<sup>24</sup> International Labour Organization., 'UN General Assembly recognizes human right to a clean, healthy, and sustainable environment' Available at <https://www.ilo.org/resource/article/un-general-assembly-recognizes-human-right-clean-healthy-and-sustainable> (Accessed on 23/10/2024)

<sup>25</sup> Office of the United Nations High Commissioner for Human Rights., 'About Human Rights and the Environment' Op Cit

<sup>26</sup> Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Available at <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf> (Accessed on 23/10/2024)

<sup>27</sup> Ibid



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conservation since this right is capable of acting as a crucial legal pathway to protecting the environment both by encouraging governments to pass stronger environmental laws and allowing courts to hold violators accountable<sup>28</sup>. It has further been noted that enforcing the right to a clean, healthy and sustainable environment offers several benefits including stronger environmental laws and policies, improved implementation and enforcement of environmental laws and policies, increased public participation in environmental decision-making, enhanced access to environmental information and access to justice in environmental matters, and reduced environmental injustices<sup>29</sup>. It is therefore necessary to foster the right to a clean, healthy and sustainable environment for sustainability.

### **3.0 Reaffirming the Human Right to a Clean, Healthy and Sustainable Environment: Progress and Challenges**

There have been attempts to codify the right to a clean, healthy and sustainable environment in the international, regional, and national human rights framework and in a number of global and regional environmental treaties and declarations. At the global level, the *International Covenant on Economic, Social and Cultural Rights*<sup>30</sup> was the first legal instrument to consider the environment as human right issue. The Covenant requires state parties to improve all aspects of environmental and industrial hygiene<sup>31</sup>. The right to a clean, healthy and sustainable environment is also recognized under the *Stockholm Declaration*<sup>32</sup>. According to the Stockholm Declaration, all human beings have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and that they bear a solemn responsibility to protect and improve the environment

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<sup>28</sup> Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment' (2021) *Journal of cmsd*, Volume 6(3))

<sup>29</sup> Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Op Cit

<sup>30</sup> United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966

<sup>31</sup> *Ibid*, article 12 (2) (b)

<sup>32</sup> Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972, UN Doc.A/CONF.48/14/Rev.1

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for present and future generations<sup>33</sup>. The Stockholm Declaration therefore does not just recognise the right to a good quality environment but also places a responsibility on human beings to protect and improve the environment for present and future generations. It has been noted that the Stockholm Declaration which was the first major international environment conference paved the way for the recognition and adoption of the right to a clean, healthy and sustainable environment all over the world in national constitutions<sup>34</sup>.

The importance of the human right to a clean, healthy and sustainable environment has also been reaffirmed by the United Nations General Assembly (UNGA) which has recognized it as a fundamental right<sup>35</sup>. The UNGA Resolution acknowledges the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights<sup>36</sup>. It also notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law<sup>37</sup>. The Resolution urges states, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and share good practices in order to scale up efforts towards ensuring a clean, healthy and sustainable environment for all<sup>38</sup>.

The universal recognition of the human right to a clean, healthy, and sustainable environment by the UNGA Resolution provides a powerful and effective response that could catalyze a transformative change in the wake of global environmental challenges including the triple planetary crisis of climate

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<sup>33</sup> Ibid, principle 1

<sup>34</sup> Zimmer. K., 'The Human Right That Benefits Nature' Available at <https://www.bbc.com/future/article/20210316-how-the-human-right-to-a-healthyenvironment-helps-nature> (Accessed on 24/10/2024)

<sup>35</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' A/76/L.75

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Ibid

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change, biodiversity loss, and pollution<sup>39</sup>. The Resolution is poised to have numerous benefits including increased understanding of how environmental degradation threatens the enjoyment of all human rights and how the exercise of human rights contributes to better environmental protection, enhanced legal acknowledgement of the right in countries that do not recognize the right yet, strengthened implementation and enforcement in countries where the right to a clean, healthy and sustainable environment is already recognized, and promotion of the free, active and meaningful participation of the public and affected populations in issues related to a right to a clean, healthy and sustainable environment<sup>40</sup>. Though the Resolution is not legally binding, it is anticipated to have a trickle-down effect, prompting countries to enshrine the right to a clean, healthy and sustainable environment in national constitutions and regional treaties, and encouraging states to implement those laws<sup>41</sup>. It is therefore necessary to implement the UNGA Resolution in order to reaffirm the right to a clean, healthy and sustainable environment.

At a regional level, the human right to a clean, healthy and sustainable environment is envisaged under the *African Charter on Human and Peoples' Rights*<sup>42</sup>. The Charter provides that all people in Africa shall have the right to a general satisfactory environment favourable to their development<sup>43</sup>. Further, at national levels, it has been noted that the right to a clean, healthy and

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<sup>39</sup> International Institute for Sustainable Development., 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' Available at [https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/#:~:text=The%20UN%20General%20Assembly%20\(UNGA,and%20sustainable%20environment%20for%20all](https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/#:~:text=The%20UN%20General%20Assembly%20(UNGA,and%20sustainable%20environment%20for%20all). (Accessed on 24/10/2024)

<sup>40</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Op Cit

<sup>41</sup> United Nations Environment Programme., 'In Historic Move, UN Declares Healthy Environment a Human Right' Available at <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> (Accessed on 24/10/2024)

<sup>42</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>43</sup> Ibid, article 24

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sustainable environment has gained constitutional recognition and protection in more than 100 countries<sup>44</sup>. This right has been captured in various forms under national constitutions including healthy environment and alternative formulations such as the rights to a clean, safe, favourable, wholesome or ecologically balanced environment<sup>45</sup>. For example, the *Constitution of Kenya*<sup>46</sup> stipulates 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<sup>47</sup>. Constitution recognition of the right to a clean, healthy and sustainable environment provides the strongest form of legal protection available and is therefore a key measure towards reaffirming this right<sup>48</sup>.

The right to a clean, healthy and sustainable environment has therefore been recognized globally, regionally, and nationally. However, despite its recognition, the condition of our environment keeps deteriorating<sup>49</sup>. The triple planetary crisis of climate change, loss of biodiversity, and pollution, represent some of the biggest threats to humanity, severely undermining the exercise and enjoyment of all human rights including the right to a clean, healthy and sustainable environment<sup>50</sup>. In the face of the triple planetary crisis among other environmental challenges, recognition and implementation of the right to a clean, healthy and sustainable environment is essential to protecting human

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<sup>44</sup> United Nations Environment Programme., 'What are your Environmental Rights?' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what-0> (Accessed on 24/10/2024)

<sup>45</sup> Ibid

<sup>46</sup> Constitution of Kenya, 2010., Government Printer, Nairobi

<sup>47</sup> Ibid, article 42

<sup>48</sup> United Nations Environment Programme., 'What are your Environmental Rights?' Op Cit

<sup>49</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Op Cit

<sup>50</sup> Ibid

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life, well-being and dignity<sup>51</sup>. As a result, there is need to reaffirm the human right to a clean, healthy and sustainable environment.

### **4.0 Conclusion**

It is vital to reaffirm the human right to a clean, healthy and sustainable environment. Upholding this right is vital in fostering sound environmental conservation including through tackling the triple planetary crisis of climate change, loss of biodiversity, and pollution<sup>52</sup>. Further reaffirming the right to a clean, healthy and sustainable environment is necessary in order to reduce environmental injustices<sup>53</sup>; close protection gaps and empower people, especially those in vulnerable situations, including environmental human rights defenders, children, youth, women, and indigenous peoples<sup>54</sup>; and accelerate the implementation of member states' environmental and human rights obligations and commitments<sup>55</sup>.

There is need to implement the UNGA Resolution recognizing the human right to a clean, healthy and sustainable environment in order to effectively reaffirm this right<sup>56</sup>. It is also vital for all countries to recognize this right in their national constitutions and ensure its effective implementation<sup>57</sup>. Constitutional recognition of the right to a clean, healthy and sustainable environment has been recognized as an important safeguard towards enhancing its legal protection<sup>58</sup>. It is also imperative to develop a common internationally agreed understanding of the content and scope of the right to a clean, healthy, and sustainable environment in order to ensure its effective recognition and

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<sup>51</sup> Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Op Cit

<sup>52</sup> Ibid

<sup>53</sup> International Institute for Sustainable Development., 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' Op Cit

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' Op Cit

<sup>57</sup> United Nations Environment Programme., 'What are your Environmental Rights?' Op Cit

<sup>58</sup> Ibid

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implementation<sup>59</sup>. This can be achieved through adopting legally binding international and regional treaties and developing judicial precedent on the right to a clean, healthy and sustainable environment<sup>60</sup>. It has been suggested that at a minimum, the right to a clean, healthy and sustainable environment should include the right to enjoy clean air, safe and sufficient water, healthy and sustainably produced food, a safe climate, healthy biodiversity and ecosystems, and non-toxic environments where people can live, work, learn and play<sup>61</sup>.

Reaffirming the human right to a clean, healthy and sustainable environment also requires the full implementation of Multilateral Environmental Agreements (MEAs) under the principles of international environmental law<sup>62</sup>. States have adopted numerous MEAs at the global and regional levels governing key aspects of environmental conservation including climate action, biodiversity conservation, and pollution control<sup>63</sup>. Implementing these MEAs is vital in strengthening environmental conservation at all levels and fostering the human right to a clean, healthy and sustainable environment<sup>64</sup>.

Enhancing international cooperation, strengthening capacity-building and sharing good practices among all stakeholders including states, international organizations, and business enterprises is also necessary in order to scale up efforts towards achieving a clean, healthy and sustainable environment for

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<sup>59</sup> International Institute for Sustainable Development., 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' Op Cit

<sup>60</sup> Ibid

<sup>61</sup> Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Op Cit

<sup>62</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' Op Cit

<sup>63</sup> United Nations Environment Programme., 'How Multilateral Environmental Agreements can help mend the planet' Available at <https://www.unep.org/news-and-stories/story/how-multilateral-environmental-agreements-can-help-mend-planet> (Accessed on 24/10/2024)

<sup>64</sup> Ibid

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all<sup>65</sup>. Businesses have a vital role of fostering the right to a clean, healthy and sustainable environment through measures such as reforming supply chains to reduce climate, environmental and human rights impacts<sup>66</sup>; reducing humanity's overall environmental footprint through decreased material consumption<sup>67</sup>; transitioning to clean energy<sup>68</sup>; scaling up ecosystem conservation and restoration<sup>69</sup>; and shifting to circular economy founded on principles of sufficiency, equality and regeneration<sup>70</sup>. All stakeholders therefore have a crucial role to play in promoting the human right to a clean, healthy and sustainable environment.

The human right to a clean, healthy and sustainable environment is key in ensuring human well-being and sound environmental conservation. It is vital to reaffirm this right for sustainability.

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<sup>65</sup> United Nations General Assembly., 'The Human Right to a Clean, Healthy and Sustainable Environment' Op Cit

<sup>66</sup> Business and the Right to a Clean, Healthy and Sustainable Environment., Available at <https://www.wearehumanlevel.com/content-hub/business-and-the-right-to-a-clean-healthy-and-sustainable-environment> (Accessed on 24/10/2024)

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> International Institute for Sustainable Development., 'Expert Urges Rethink of Business Paradigm to Protect Earth, Human Rights' Available at <https://sdg.iisd.org/news/expert-urges-rethink-of-business-paradigm-to-protect-earth-human-rights/> (Accessed on 24/10/2024)

<sup>70</sup> Ibid

## **Fostering Maritime Security for Sustainable Development**

### **Abstract**

*This paper critically examines the concept of maritime security. The paper argues that fostering maritime security is vital in the quest towards Sustainable Development. It defines maritime security and explores its core tenets. The paper further discusses some of the key challenges and threats facing the world's oceans and seas and their effect on Sustainable Development. It also suggests interventions towards addressing these challenges and threats in order to foster maritime security for Sustainable Development.*

### **1.0 Introduction**

The world's oceans and seas are a crucial part of the global economy and without them, international trade would come to a standstill<sup>1</sup>. For instance, shipping has for many centuries been the major form of transportation, as well as an essential communication link connecting coastal cities, countries and continents<sup>2</sup>. Further, it has been pointed out that since the dawn of humanity, the sea has been a source of sustenance, providing food and avenues of trade<sup>3</sup>.

Oceans and seas play a critical role across all three pillars of Sustainable Development; the environment, society and economy<sup>4</sup>. They cover approximately 71% of the Earth's surface and provide untapped

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<sup>1</sup> Chiltern., 'Why is the Maritime Industry so Important.' Available at <https://www.chilternmaritime.com/why-is-the-maritime-industry-so-important/> (Accessed on 19/10/2024)

<sup>2</sup> Maritime Sector., Available at <https://www.windrosenetwork.com/Maritime-Sector> (Accessed on 19/10/2024)

<sup>3</sup> Lord. B., 'Dispute Resolution on the High Seas: Aspects of Maritime Arbitration.' Available at <https://core.ac.uk/download/pdf/234109331.pdf> (Accessed on 19/10/2024)

<sup>4</sup> United Nations Climate Change., 'Ocean Science, Data, and Services for the UN 2030 Sustainable Development Goals' Available at <https://unfccc.int/sites/default/files/resource/EID%20Poster%20T2%20MercatorOcean%20SDGs.pdf> (Accessed on 19/10/2024)



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potential to unlock Sustainable Development in various sectors<sup>5</sup>. Under the economic pillar of Sustainable Development, oceans and seas play a key role in the economic development of nations through the exploitation of maritime and marine resources – for example, through shipping, tourism, commercial fishing, and oil, gas, and mineral development<sup>6</sup>. Further, oceans and seas play a vital role in environmental sustainability. For example, marine ecosystems such as coral reefs, mangroves, seagrass meadows and wetlands deliver critical ecosystem services such as coastal protection and carbon sequestration<sup>7</sup>. Oceans and seas therefore play an important role in climate mitigation. Oceans and seas are also key in fostering the social pillar of Sustainable Development since they are a major source of food and livelihood including employment for local communities<sup>8</sup>.

The 2030 Agenda for Sustainable Development recognizes the role of oceans and seas in fostering sustainability<sup>9</sup>. Sustainable Development Goal 14 seeks to conserve and sustainably use the oceans, seas and marine resources for Sustainable Development<sup>10</sup>. Despite the key role that oceans and seas play in promoting Sustainable Development, there are increasing challenges and threats to world oceans and seas that need

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<sup>5</sup> Purcell. N., 'What is the Blue Economy?' Available at <https://bluerobotics.com/what-is-the-blueeconomy/#:~:text=The%20blue%20economy%20encourages%20the,reduce%20fuel%20consumption%20and%20emissions>. (Accessed on 19/10/2024)

<sup>6</sup> Commonwealth Blue Economy., 'Sustainable Blue Economy' Available at <https://thecommonwealth.org/bluecharter/sustainable-blue-economy#:~:text=The%20blue%20economy%20embraces%20economic,of%20poverty%20and%20climate%20change> (Accessed on 19/10/2024)

<sup>7</sup> United Nations., 'Sustainable Blue Economy Vital for Small Countries and Coastal Populations.' Available at <https://news.un.org/en/story/2022/06/1121562> (Accessed on 19/10/2024)

<sup>8</sup> Ibid

<sup>9</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 19/10/2024)

<sup>10</sup> Ibid

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to be effectively navigated<sup>11</sup>. As a result, fostering maritime security is a key priority towards Sustainable Development<sup>12</sup>.

This paper critically examines the concept of maritime security. The paper argues that fostering maritime security is vital in the quest towards Sustainable Development. It defines maritime security and explores its core tenets. The paper further discusses some of the key challenges and threats facing the world's oceans and seas and their effect on Sustainable Development. It also suggests interventions towards addressing these challenges and threats in order to foster maritime security for Sustainable Development.

### **2.0 Maritime Security: Opportunities and Challenges**

The idea of security in general is associated with absence of danger or fear; the safety of an individual, company or state against theft, attacks, espionage among other dangers; and the economic notions of security<sup>13</sup>. It can be attained at various levels including individual, national, regional and global levels<sup>14</sup>. However, it has been noted that the maritime domain has its unique features that have significant policy bearings and cannot be simply reduced to national security or human security notions in the general sense<sup>15</sup>. These features include a high level of openness and mobility, a major portion of the maritime space lying in areas beyond national jurisdiction, and the maritime domain being critical as a whole for maintaining the health of the global ecosystem<sup>16</sup>.

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<sup>11</sup> Li. L., 'Building Up a Sustainable Path to Maritime Security: An Analytical Framework and its Policy Applications' Available at <https://www.mdpi.com/2071-1050/15/8/6757> (Accessed on 19/10/2024)

<sup>12</sup> Ibid

<sup>13</sup> Fast. L., 'Peace and Security' Available at <https://www.eolss.net/sample-chapters/c11/E1-10-04-05.pdf> (Accessed on 20/10/2024)

<sup>14</sup> Ibid

<sup>15</sup> Li. L., 'Building Up a Sustainable Path to Maritime Security: An Analytical Framework and its Policy Applications' Op Cit

<sup>16</sup> Ibid

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The concept of maritime security draws attention to existing and new challenges in the maritime space and rallies support for tackling these challenges<sup>17</sup>. These threats and challenges include maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes, maritime accidents and disasters<sup>18</sup>. Further, it has been noted that maritime security involves measures and strategies implemented to protect vessels, ports, and maritime infrastructure from threats<sup>19</sup>. It covers a wide range of activities aimed at safeguarding maritime assets, ensuring the safety and security of trade routes, and preventing illicit activities at sea<sup>20</sup>. Fostering maritime security requires cooperation and collaboration involving governments, international organizations, and maritime industry stakeholders to address challenges and vulnerabilities in the maritime domain<sup>21</sup>.

Maritime security therefore focuses on keeping oceans and seas safe and prosperous<sup>22</sup>. It involves protecting ships, ports, marine resource, human well-being and sea areas while following international rules and regulations to maintain stability and welfare in global sea routes<sup>23</sup>. Maritime security thus encompasses ecosystem health that entails the preservation of marine ecosystems by preventing and mitigating activities such as marine pollution and illegal fishing<sup>24</sup>; the safety of

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<sup>17</sup> Bueger. C., 'What is Maritime Security?' *Marine Policy*., Volume 53, 2015., pp 159-164

<sup>18</sup> Ibid

<sup>19</sup> Maritime Security., Available at <https://windward.ai/glossary/what-is-maritime-security/#:~:text=Maritime%20security%20operations%20help%20to,fundamental%20aspect%20of%20maritime%20security> (Accessed on 20/10/2024)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Key Concept of Maritime Security., Available at <https://sinay.ai/en/key-concept-of-maritime-security/> (Accessed on 20/10/2024)

<sup>23</sup> Ibid

<sup>24</sup> Guide to Maritime Security: Safeguarding Ports, Vessels, and Cyber Spaces., Available at <https://www.jouav.com/blog/maritime-security.html> (Accessed on 20/10/2024)

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global trade and transportation by protecting shipping routes and ports and preventing illegal trade activities<sup>25</sup>; ensuring order at sea including protection against threats such as piracy and robbery, in order to ensure national, regional, and global security and stability<sup>26</sup>; and human safety by guarding against illegal activities such as human trafficking<sup>27</sup>.

Since it ensures that all economic operations in oceans and seas are carried out safely and securely, maritime security is an essential component of the Blue Economy<sup>28</sup>. The notion of Blue Economy refers to the responsible and sustainable use of marine resources in line with the core tenets of Sustainable Development including economic growth, environmental conservation, and social progress<sup>29</sup>. Blue Economy has also been defined as the sustainable use of ocean resources for economic growth, improved livelihoods, and job creation while preserving the health of ocean ecosystems<sup>30</sup>. It is an ideal that aims to harmonize socio-economic growth with environmental conservation of aquatic resources through sustainable practices<sup>31</sup>. Blue Economy seeks to ensure that marine resources and industries including fisheries, aquaculture, tourism, transportation, renewable energy, and biotechnology are

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<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Artur. L., 'Maritime Security and the Blue Economy: Interconnected Challenges and Opportunities' Available at [https://www.linkedin.com/pulse/maritime-security-blue-economy-interconnected-artur-lucas-da-silva?utm\\_source=share&utm\\_medium=member\\_android&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/maritime-security-blue-economy-interconnected-artur-lucas-da-silva?utm_source=share&utm_medium=member_android&utm_campaign=share_via) (Accessed on 20/10/2024)

<sup>29</sup> Ibid

<sup>30</sup> World Bank Group., 'The Potential of the Blue Economy: Increasing Long-term Benefits of the Sustainable Use of Marine Resources for Small Island Developing States and Coastal Least Developed Countries' Available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/cee24b6c-2e2f-5579-b1a4-457011419425/content> (Accessed on 20/10/2024)

<sup>31</sup> Purcell. N., 'What is the Blue Economy?' Available at <https://bluerobotics.com/what-is-the-blueeconomy/#:~:text=The%20blue%20economy%20encourages%20the,reduce%20fuel%20consumption%20and%20emissions> (Accessed on 20/10/2024)

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harnessed in a sustainable manner<sup>32</sup>. These activities and resources have the potential to contribute to economic growth, the provision of employment opportunities, and the assurance of food security all while conserving maritime ecosystems and protecting biodiversity<sup>33</sup>. According to the United Nations Environment Programme (UNEP), a sustainable Blue Economy unlocks multiple environmental, social and economic benefits and drives Sustainable Development<sup>34</sup>. It further notes that a sustainable Blue Economy provides essential benefits for current and future generations; restores, protects and maintains diverse, productive and resilient marine ecosystems; and is based on clean technologies, renewable energy and circular material flows<sup>35</sup>.

Maritime security is therefore at the heart of Blue Economy. Therefore, investing in the Blue Economy encourages better stewardship of oceans, seas and their resources, and can play a critical part in strengthening maritime security by enhancing resilience, especially from factors that drive individuals and communities to engage in maritime crimes<sup>36</sup>. In addition, maritime security is an enable of Blue Economy<sup>37</sup>. It safeguards navigation routes, ensures availability of data in relation to marine resources, and protects marine resources and ecosystems all which are vital for sustainable utilization of oceans and seas and their resources in line with the concept of Blue Economy<sup>38</sup>. Maritime security is therefore

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<sup>32</sup> Artur. L., 'Maritime Security and the Blue Economy: Interconnected Challenges and Opportunities' Op Cit

<sup>33</sup> Ibid

<sup>34</sup> United Nations Environment Programme., 'Sustainable Blue Economy' Available at <https://www.unep.org/topics/ocean-seas-and-coasts/ecosystem-based-approaches/sustainable-blue-economy> (Accessed on 20/10/2024)

<sup>35</sup> Ibid

<sup>36</sup> Sitawa. M., 'Investment in the Blue Economy for enhanced Maritime Security' Available at <https://blog.prif.org/2022/01/20/investment-in-the-blue-economy-for-enhanced-maritime-security/> (Accessed on 20/10/2024)

<sup>37</sup> Voyer. M et al., 'Maritime security and the Blue Economy: intersections and interdependencies in the Indian Ocean' *Journal of the Indian Ocean Region*, 2018, 1-21.

<sup>38</sup> Ibid

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at the core of Blue Economy since the Blue Economy cannot thrive in an insecure marine environment<sup>39</sup>.

The need to foster maritime security is recognized under the *International Convention for the Safety of Life at Sea*<sup>40</sup> adopted by the International Maritime Organization (IMO). The Convention seeks to promote safety of life at sea by establishing uniform principles and rules<sup>41</sup>. It contains specific measures to ensure the safety of vessels at sea including requirements on construction, fire protection, lifesaving appliances, radio communications, and safety of navigation<sup>42</sup>. It also stipulates measures towards enhancing maritime security which include the requirement for International Ship and Port Facilities Security Code, ship security alarm systems, port facility security assessments, and the control of ships in port including through measures such as the delay, detention, restriction of operations including movement within the port, or expulsion of a ship from port<sup>43</sup>. It is therefore vital to implement the International Convention for the Safety of Life at Sea in order to foster maritime security for Sustainable Development.

At a regional level, the African Union *Integrated Maritime Security Strategy*<sup>44</sup> seeks to foster maritime security for Sustainable Development in Africa. It aims to achieve this goal by combating illegal activities such as toxic waste dumping and discharge of oil, dealing in illicit crude oil, human, arms and drug trafficking, piracy and armed robbery at sea<sup>45</sup>;

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<sup>39</sup> Ibid

<sup>40</sup> International Maritime Organization (IMO), *International Convention for the Safety of Life At Sea*, 1184 UNTS 3, 1 November 1974,

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> African Union., 'Africa's Integrated Maritime Strategy (2050 Aim Strategy)' Available at [https://au.int/sites/default/files/newsevents/workingdocuments/33832-wd-african\\_union\\_3-1.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/33832-wd-african_union_3-1.pdf) (Accessed on 20/10/2024)

<sup>45</sup> Ibid

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ensuring sustainable energy exploitation, tackling climate change, promoting environmental protection, conservation and safety of life and property at sea<sup>46</sup>; and enhancing maritime sector development, including competitiveness, job creation, international trade, maritime infrastructure, transport, information, communication, technology, and logistics<sup>47</sup>. It is necessary to implement this Strategy in order to foster maritime security for Sustainable Development in Africa.

Fostering maritime security is therefore vital for Sustainable Development and unlocking the potential of Blue Economy. However, achieving the ideal of maritime security is hindered by several threats and challenges. These include illegal, unreported, and unregulated fishing; resource theft, including oil bunkering; trafficking of both humans and goods, including arms, narcotics, stolen antiquities, and diverted natural resources; piracy, armed robbery at sea, and insecurity of trade and navigation routes; terrorism; money laundering and illicit financial activities through sea; climate change and environmental degradation including illegal dumping (including toxic waste), pollution, and oil and chemical spills, among others<sup>48</sup>. It is necessary to effectively tackle these challenges in order to foster maritime security for Sustainable Development.

### **3.0 Fostering Maritime Security**

It is vital to foster maritime security for Sustainable Development. Maritime security is a vital endeavour towards sustainability by enhancing the resilience of marine systems and resources and minimizing potential disruptions which could negatively impact the

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<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Africa Center for Strategic Studies., 'The Process of National Maritime Security Strategy Development in Africa' Available at <https://africacenter.org/wp-content/uploads/2024/03/TK-MSS-2024EN-National-Maritime-Security-Strategy-Development-in-Africa.pdf> (Accessed on 20/10/2024)

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economic development, environmental conditions, and social stability of affected countries and communities<sup>49</sup>.

In order to foster maritime security, it is imperative to combat threats such as maritime inter-state disputes, maritime terrorism, piracy, and maritime crimes including drug trafficking, illegal fishing, arms trafficking, and environmental crimes at sea<sup>50</sup>. This will ensure that oceans and seas are peaceful and pacified at all levels in order to foster economic growth, social progress, and environmental conservation<sup>51</sup>. Achieving this goal requires countries to develop maritime security regulatory regimes as requirements to govern all facets of maritime domain activities and operations<sup>52</sup>.

There is also need to embrace sound maritime governance<sup>53</sup>. This requires countries to enhance their maritime surveillance capabilities including through utilizing advanced technologies, such as optical drones, for the early detection of maritime threats and the swift deployment of counteractions<sup>54</sup>. Sound maritime governance is a collaborative objective that requires the involvement of all stakeholders including states and their authorities such as naval forces and coast guards, customs and border authorities to conduct inspections and monitor cargo shipments; and prevent the smuggling of contraband, weapons, and illicit goods through ports and maritime borders, the

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<sup>49</sup> Edgerton. M., 'Port and Maritime Security and Sustainability' Available at [https://www.researchgate.net/publication/351958658\\_Port\\_and\\_Maritime\\_Security\\_and\\_Sustainability](https://www.researchgate.net/publication/351958658_Port_and_Maritime_Security_and_Sustainability) (Accessed on 20/10/2024)

<sup>50</sup> Intergovernmental Authority on Development., 'Prospects for Future Development and Intermediate Challenges to the IGAD Region' Available at <https://igad.int/from-maritime-security-to-blue-economy/> (Accessed on 20/10/2024)

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> United Nations Institute for Training and Research., 'Maritime Governance' Available at <https://unitar.org/sustainable-development-goals/peace/our-portfolio/maritime-governance> (Accessed on 20/10/2024)

<sup>54</sup> Ibid



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private sector, and international organizations including the IMO to facilitate cooperation, coordination, and capacity-building efforts among member states to address maritime security challenges at the global level<sup>55</sup>.

Fostering maritime security also requires national, regional, and global efforts towards ensuring safety of vessels at sea including ships<sup>56</sup>. This requires well-managed waterways and ports that comply with International Ship and Port Security (ISPS) codes, and properly dredged harbor channels<sup>57</sup>. It has been noted that maintaining these important resources improves overall maritime safety and security and advances many maritime objectives<sup>58</sup>. The *International Convention for the Safety of Life at Sea*<sup>59</sup> sets out measures towards ensuring safety of vessels at sea including requirements on construction, fire protection, lifesaving appliances, radio communications, and safety of navigation<sup>60</sup>. Complying with these standards is vital in ensuring safety of vessels at sea towards maritime security.

Finally, it is imperative to invest in the Blue Economy in order to enhance maritime security<sup>61</sup>. The concept of Blue Economy seeks to ensure the sustainable use of ocean resources for economic growth, improved livelihoods, and job creation while preserving the health of

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<sup>55</sup> Maritime Security., Op Cit

<sup>56</sup> Africa Center for Strategic Studies., 'The Process of National Maritime Security Strategy Development in Africa' Op Cit

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> International Maritime Organization (IMO), *International Convention for the Safety of Life At Sea*, Op Cit

<sup>60</sup> Ibid

<sup>61</sup> Artur. L., 'Maritime Security and the Blue Economy: Interconnected Challenges and Opportunities' Op Cit

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ocean ecosystems<sup>62</sup>. There is a nexus between maritime security and Blue Economy. Maritime security threats including illegal, unreported, and unregulated, piracy, and dumping of toxic wastes impact on the sustainability of marine resources therefore undermining Blue Economy<sup>63</sup>. Further, investing in the Blue Economy encourages better stewardship of oceans, seas and their resources towards strengthening maritime security<sup>64</sup>. It is therefore necessary to unlock the Blue Economy in order to foster maritime security for Sustainable Development. This requires all countries to ensure efficient utilization of marine resources including through establishing marine protected areas, fostering sustainable fishing practices, and tackling climate change and marine pollution<sup>65</sup>.

Fostering maritime security for Sustainable Development is a crucial ideal that is achievable.

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<sup>62</sup> World Bank Group., 'The Potential of the Blue Economy: Increasing Long-term Benefits of the Sustainable Use of Marine Resources for Small Island Developing States and Coastal Least Developed Countries' Op Cit

<sup>63</sup> <sup>63</sup> Intergovernmental Authority on Development., 'Prospects for Future Development and Intermediate Challenges to the IGAD Region' Op Cit

<sup>64</sup> Sitawa. M., 'Investment in the Blue Economy for enhanced Maritime Security' Op Cit

<sup>65</sup> United Nations Economic Commission for Africa., 'The Nairobi Statement of Intent on Advancing the Global Sustainable Blue Economy.' Available at <https://archive.uneca.org/sites/default/files/uploadeddocuments/SROs/EA/HIG-H-LEVEL-SUSTAINABLE-BLUE-ECONOMY-CONFERENCE-2018/nairobistatement-of-intent-advancing-global-sustainable-blue-economy.pdf> (Accessed on 20/10/2024)

#### **4.0 Conclusion**

The concept of maritime security draws attention to existing and new challenges in the maritime space and rallies support for tackling these challenges<sup>66</sup>. It focuses on keeping oceans and seas safe and prosperous in order to support economic, social, and environmental objectives of Sustainable Development<sup>67</sup>. Achieving maritime security is an endeavour that requires concerted efforts by all stakeholders towards combating threats such as maritime inter-state disputes, maritime terrorism, piracy, and maritime crimes including drug trafficking, illegal fishing, arms trafficking, and environmental crimes at sea<sup>68</sup>; sound maritime governance<sup>69</sup>; ensuring safety of vessels at sea including ships<sup>70</sup>; and investing in the Blue Economy<sup>71</sup>.

It is vital to enhance maritime security in order to achieve the ideal of Sustainable Development.

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<sup>66</sup> Bueger. C., 'What is Maritime Security?' Op Cit

<sup>67</sup> Key Concept of Maritime Security., Op Cit

<sup>68</sup> Intergovernmental Authority on Development., 'Prospects for Future Development and Intermediate Challenges to the IGAD Region' Op Cit

<sup>69</sup> United Nations Institute for Training and Research., 'Maritime Governance' Op Cit

<sup>70</sup> Africa Center for Strategic Studies., 'The Process of National Maritime Security Strategy Development in Africa' Op Cit

<sup>71</sup> Artur. L., 'Maritime Security and the Blue Economy: Interconnected Challenges and Opportunities' Op Cit

*Enforcing Mediated Agreements and The Singapore Convention: The African Experience*

**Enforcing Mediated Agreements and The Singapore Convention:  
The African Experience**

*Abstract*

*Mediation has become a key process for managing disputes at the global stage due to its ability to allow parties to negotiate business solutions without being constrained by law or contract. The suitability of mediation at the global stage has further been enhanced by the adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) which provides a harmonized legal framework for enforcing mediated agreements. This paper critically appraises the African experience in enforcing mediated agreements under the Singapore Convention. The paper argues that the Singapore Convention has enhanced the practice of international commercial mediation by providing a harmonized legal framework for enforcing mediated agreements. The paper critically discusses the progress made and challenges being faced in enforcing mediated agreements under the Singapore Convention in Africa. In addition, the paper suggests reforms towards enhancing the process of enforcing mediated agreements under the Singapore Convention in Africa for the growth of international commercial mediation.*

**1.0 Introduction**

Mediation involves the intervention in a dispute or negotiation by an acceptable, impartial and neutral third party to assist disputing parties in voluntarily reaching their own mutually acceptable resolution of the issues in dispute<sup>1</sup>. Mediation can also be understood as a method of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information, and thus aiding in the process of reaching an agreement<sup>2</sup>. The United Nations defines mediation as a

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<sup>1</sup> Moore. C., 'The Mediation Process: Practical Strategies for Resolving Conflict' (Jossey-Bass Publishers, San Francisco, 1996), p. 14

<sup>2</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

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process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>3</sup>.

It has been noted that mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock<sup>4</sup>. Parties therefore involve a third party known as a mediator to assist them continue with the negotiations and ultimately break the deadlock<sup>5</sup>. The premise of mediation is that in the right environment, parties to a conflict can improve their relationships and move towards cooperation<sup>6</sup>. It has been noted that a mediator does not have authoritative decision-making power<sup>7</sup>. A mediator facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutually acceptable agreement<sup>8</sup>.

Mediation has certain key attributes which makes it an ideal process in managing disputes. Its key features include informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost-effective management of disputes<sup>9</sup>. Mediation also has the ability to preserve relationships and provides parties with a wide range of solutions<sup>10</sup>. In addition, mediation has the potential to address

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<sup>3</sup> United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 12/07/2024)

<sup>4</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit  
<sup>5</sup> Ibid

<sup>6</sup> United Nations., 'Basics of Mediation: Concepts and Definitions.' Op Cit

<sup>7</sup> Moore. C., 'The Mediation Process: Practical Strategies for Resolving Conflict' Op Cit

<sup>8</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit

<sup>9</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

<sup>10</sup> Ibid

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the root causes of conflicts therefore negating the need for future conflict or conflict management<sup>11</sup>.

Due its advantages, mediation alongside other Alternative Dispute Resolution (ADR) processes is now being widely embraced in managing disputes at both the national and global levels<sup>12</sup>. It has been noted that the use of the mediation process is growing globally<sup>13</sup>. At the global stage, mediation allows parties to negotiate business solutions without being constrained by law or contract<sup>14</sup>. The suitability of mediation at the global stage has been enhanced by the adoption of the *United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)*<sup>15</sup>. The development of the Singapore Convention was necessitated by challenges facing the practice of international commercial mediation where the trend has been that the outcome of a mediation is treated as a contractual agreement enforced as such and not as an award as in the case of arbitration<sup>16</sup>. This approach had several drawbacks since one party could pull out of such an agreement and seek court intervention over the underlying dispute as if the mediation never took place<sup>17</sup>. The Singapore Convention aims at enhancing the practice

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> International Centre for Dispute Resolution., 'International Mediation' Available at <https://www.icdr.org/services/international-mediation#:~:text=Use%20of%20the%20mediation%20process,a%20high%20percentage%20of%20settlement.> (Accessed on 12/07/2024)

<sup>14</sup> Ibid

<sup>15</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation., Available at [https://uncitral.un.org/sites/uncitral.un.org/files/singapore\\_convention\\_eng.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf) (Accessed on 12/07/2024)

<sup>16</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' available at <http://kmco.co.ke/wpcontent/uploads/2019/12/The-Singapore-Convention-on-International-Settlement-AgreementsResulting-from-Mediation-Kariuki-Muigua-December-2019.pdf> (Accessed on 12/07/2024)

<sup>17</sup> Ibid

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of international commercial mediation by building a bridge that would enable acceptability of international settlement agreements across states with different legal, social and economic systems<sup>18</sup>.

This paper critically appraises the African experience in enforcing mediated agreements under the Singapore Convention. The paper argues that the Singapore Convention has enhanced the practice of international commercial mediation by providing a harmonized legal framework for enforcing mediated agreements. The paper critically discusses the progress made and challenges being faced in enforcing mediated agreements under the Singapore Convention in Africa. In addition, the paper suggests reforms towards enhancing the process of enforcing mediated agreements under the Singapore Convention in Africa for the growth of international commercial mediation.

### **2.0 Overview of the Singapore Convention**

Parties to the Singapore Convention recognize the value of mediation as an ideal process for amicable settlement of commercial disputes<sup>19</sup>. The Singapore Convention acknowledges that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by states<sup>20</sup>. According to the Singapore Convention, the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to states with different legal, social and economic systems would contribute to the development of harmonious international economic relations<sup>21</sup>.

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<sup>18</sup> Singapore Convention., Op Cit

<sup>19</sup> Ibid, Preamble

<sup>20</sup> Ibid

<sup>21</sup> Ibid

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The Singapore Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute (“settlement agreement”) which, at the time of its conclusion, is international<sup>22</sup>. For a settlement agreement to be considered international under the Singapore Convention: at least two parties to the settlement agreement have their places of business in different states<sup>23</sup>; and the state in which the parties to the settlement agreement have their places of business must be different from either the state in which a substantial part of the obligations under the settlement agreement is performed<sup>24</sup>; or the state with which the subject matter of the settlement agreement is most closely connected<sup>25</sup>. It has been noted that these provisions are aimed at encouraging cross border mediation and provides parties with an alternative to arbitration which has for many years been the main dispute resolution mechanism for international commercial disputes<sup>26</sup>.

The Singapore Convention does not apply to settlement agreements flowing from certain disputes including those relating to family, inheritance or employment law<sup>27</sup>. Further, the Singapore Convention does not also apply to settlement agreements that have been approved by a court or concluded in the course of proceedings before a court<sup>28</sup>; that are enforceable as a judgment in the State of that court<sup>29</sup>; and that have been recorded and are enforceable as an arbitral award<sup>30</sup>.

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<sup>22</sup> Ibid, article 1 (1)

<sup>23</sup> Ibid, article 1 (a)

<sup>24</sup> Ibid, article 1 (b) (i)

<sup>25</sup> Ibid, article 1 (b) (ii)

<sup>26</sup> IK. Zafar, ‘The Singapore Mediation Convention, 2019’, available at [https://www.academia.edu/40289206/The\\_Singapore\\_Mediation\\_Convention](https://www.academia.edu/40289206/The_Singapore_Mediation_Convention) (Accessed on 12/07/2024)

<sup>27</sup> Singapore Convention, article 1 (2) (b)

<sup>28</sup> Ibid, article 1 (3) (a) (i)

<sup>29</sup> Ibid, article 1 (3) (a) (ii)

<sup>30</sup> Ibid, article 1 (3) (b)



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In order to enhance enforcement of settlement agreements, the Singapore Convention sets out certain requirements to be fulfilled by parties. A party relying on a settlement agreement under the Singapore Convention is required to supply to the competent authority of the state party to the Convention where relief is sought: the settlement agreement signed by the parties<sup>31</sup>; and evidence that the settlement agreement resulted from mediation such as the mediator's signature on the settlement agreement, a document signed by the mediator indicating that the mediation was carried out, and an attestation by the institution that administered the mediation<sup>32</sup>.

Grant of relief under the Singapore Convention is not absolute and the competent authority of the party to the Singapore Convention where relief is sought may refuse to grant such relief in certain circumstances. These include where a party to the settlement agreement was under some incapacity<sup>33</sup>; the settlement agreement sought to be relied upon is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it<sup>34</sup>; the settlement agreement is not binding or is not final according to its terms<sup>35</sup>; the settlement agreement has been subsequently modified<sup>36</sup>; where the obligations in the settlement agreement have been performed or are not clear and comprehensible<sup>37</sup>; where granting relief would be contrary to the terms of the settlement agreement; where there was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the

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<sup>31</sup> Ibid, article 4 (1) (a)

<sup>32</sup> Ibid, article 4 (1) (b)

<sup>33</sup> Singapore Convention, article 5 (1)

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Ibid

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settlement agreement<sup>38</sup>; and where there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement<sup>39</sup>. A competent authority of the state party to the convention may also refuse to grant relief if it finds that: granting relief would be contrary to the public policy of that party<sup>40</sup>; or the subject matter of the dispute is not capable of settlement by mediation under the law of that party<sup>41</sup>.

The Singapore Convention is complemented by the *United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation*<sup>42</sup>, which was developed by UNCITRAL in parallel to the Singapore Convention. The Model Law is designed to assist States in reforming and modernizing their laws on mediation procedure<sup>43</sup>. It provides uniform rules in respect of the mediation process and aims at encouraging the use of mediation and ensuring greater predictability and certainty in its use<sup>44</sup>. Development of the Model Law alongside the Singapore Convention provides States with flexibility in implementing the cross-border enforcement mechanism

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<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid, article 5 (2) (a)

<sup>41</sup> Ibid, article 5 (2) (b)

<sup>42</sup> UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation., Available at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363\\_mediation\\_guide\\_e\\_ebook\\_rev.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf) (Accessed on 12/07/2024)

<sup>43</sup> Ibid

<sup>44</sup> Ibid

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and achieving a comprehensive legal framework on mediation<sup>45</sup>. Countries therefore have the option of either adopting the Singapore Convention or the Model Law as stand-alone legal instruments or both as complementary instruments in order to facilitate a comprehensive legal framework on mediation<sup>46</sup>.

### **3.0 Enforcing Mediated Agreements and the Singapore Convention: Challenges and Prospects for Africa**

The Singapore Convention has been described as the missing piece in the international dispute resolution framework<sup>47</sup>. Adoption of the Convention is expected to enhance cross-border enforceability of mediated agreements<sup>48</sup>. The Singapore Convention is expected to have similar benefits for mediation as an international dispute resolution mechanism in the same way the New York Convention has had for arbitration<sup>49</sup>. The *New York Convention*<sup>50</sup> was adopted for purposes of providing a harmonized legal framework for the recognition and enforcement of foreign arbitral awards and has had tremendous impact and success on the growth and practice of international commercial arbitration. It has been asserted that the Singapore Convention has the potential of having such an impact on the practice of international

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<sup>45</sup> United Nation., 'The United Nations "Singapore Convention on Mediation" opens for signature in Singapore' Available at <https://unis.unvienna.org/unis/en/pressrels/2019/unisl278.html> (Accessed on 12/07/2024)

<sup>46</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>47</sup> Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Available at <https://ncia.or.ke/wp-content/uploads/2022/12/NCIA-AND-THE-SINGAPORE-CONVENTION-IN-THE-CONTEXT-OF-THE-AfCFTA.pdf> (Accessed on 12/07/2024)

<sup>48</sup> Ibid

<sup>49</sup> IK. Zafar, 'The Singapore Mediation Convention, 2019' Op Cit

<sup>50</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), available at [www.newyorkconvention.org/english](http://www.newyorkconvention.org/english) (Accessed on 12/07/2024)

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commercial mediation<sup>51</sup>. Further, it has been opined that the Singapore Convention has great ability to bolster the use of mediation as a method for resolving cross-border commercial disputes<sup>52</sup>. The Singapore Convention is therefore an important step forward in the promotion of mediation as a tool for the resolution of international disputes since it paves the way for settlements reached by mediation to be recognised internationally<sup>53</sup>. The Convention allows parties to rely on mediated agreements and enforce them across borders following simplified procedures<sup>54</sup>. The Singapore Convention also has the potential to increase the visibility of mediation and encourage its use as an international dispute resolution mechanism, moving past the more commonly used routes of arbitration and litigation<sup>55</sup>.

Enforcing mediated agreements is a key theme under the Singapore Convention. The Convention unifies the framework for enforcing mediated settlement agreements related to international commercial matters<sup>56</sup>. It has been noted that states that ratify the Singapore Convention are obliged to enforce settlement agreements resulting from mediation under their own domestic rules, yet via a streamlined procedures, as envisaged under the Convention<sup>57</sup>. The Singapore Convention provides a process for the direct enforcement of cross-border settlement agreement between parties resulting from

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<sup>51</sup> IK. Zafar, 'The Singapore Mediation Convention, 2019' Op Cit

<sup>52</sup> Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

<sup>53</sup> The Singapore Convention on Mediation., Available at <https://www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/global-guide-commercial-mediation/the-singapore-convention-on-mediation> (Accessed on 12/07/2024)

<sup>54</sup> Singapore Convention., Op Cit

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> 2018 Singapore Convention on Mediation., Available at <https://www.acerislaw.com/2018-singapore-convention-on-mediation/> (Accessed on 12/07/2024)

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mediation<sup>58</sup>. Parties to the Convention are required to enforce settlement agreements in accordance with their rules of procedure<sup>59</sup>. It has been noted that this provision allows parties to formulate their own rules of procedure suitable to national or local circumstances for purposes of effective enforcement of mediated agreements<sup>60</sup>. The Singapore Convention ultimately aims to facilitate international trade by rendering mediation an efficient and entrusted method for resolving disputes, alongside arbitration and litigation<sup>61</sup>.

The Singapore Convention holds immense promise for mediation in Africa<sup>62</sup>. Mediation alongside other ADR processes has been utilized in managing conflicts in Africa for many centuries<sup>63</sup>. Conflict management in Africa has since time immemorial taken the form of informal negotiation, mediation, reconciliation and arbitration<sup>64</sup>. These processes are well suited within the concept of justice in Africa including its key objectives of creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and giving prominence to communal needs over individual needs<sup>65</sup>. Mediation therefore holds a special place in Africa. Mediation has been described as a major intervention tool in

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<sup>58</sup> Singapore Convention., Op Cit

<sup>59</sup> Ibid, article 3 (1)

<sup>60</sup> Muigua. K., 'Adopting the Singapore Convention in Kenya: Insight and Analysis' Available at <https://kmco.co.ke/wp-content/uploads/2020/09/Adopting-the-Singapore-Convention-in-Kenya-Insight-and-Analysis-15th-Sept.pdf> (Accessed on 12/07/2024)

<sup>61</sup> 2018 Singapore Convention on Mediation., Op Cit

<sup>62</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>63</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya' Op Cit

<sup>64</sup> Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successeschallenges-and-opportunities-1.pdf> (Accessed on 13/07/2024)

<sup>65</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

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Africa<sup>66</sup>. It has been used to prevent and resolve many violent conflicts in the continent<sup>67</sup>. Mediation alongside other ADR techniques are often considered 'Appropriate' and not 'Alternative' in the administration of justice<sup>68</sup>.

The growth of mediation in Africa has permeated into the commercial space. It has been noted that Africa needs to create more awareness around mediation as an appropriate way to settle commercial disputes by tapping into its historical roots in the continent<sup>69</sup>. With economic growth in Africa and rising investment in recent years, many African states are fast becoming ideal investment destinations<sup>70</sup>. This has resulted in higher volume in inter-state investment originating from economic powers in Europe, Asia, and growth in intra-state investment in Africa<sup>71</sup>. These developments have led to a demand for legal frameworks that protect investments and offer robust investor-state dispute resolution mechanisms<sup>72</sup>. In addition, development of the African Continental Free Trade Area (AfCFTA) is appropriately designed to deepen economic integration, foster trade and investment,

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<sup>66</sup> Tiekou. T. K., 'Lessons learned from mediation by an African regional Organization' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/LessonsLearnedfromMediationbyanAfricanRegionalOrg\\_Tiekou2011.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/LessonsLearnedfromMediationbyanAfricanRegionalOrg_Tiekou2011.pdf) (Accessed on 13/07/2024)

<sup>67</sup> Ibid

<sup>68</sup> Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Moving-from-Alternative-to-Appropriate-Dispute-Resolution-1.pdf> (Accessed on 13/07/2024)

<sup>69</sup> ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Available at <https://aln.africa/wp-content/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf> (Accessed on 13/07/2024)

<sup>70</sup> Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' *Africa Current Issues*, (2019) 5.

<sup>71</sup> Ibid

<sup>72</sup> Ibid

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enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa<sup>73</sup>. In light of these developments, it has become imperative to adopt effective dispute management processes to deal with commercial disputes that flow from the increased business and investment activities in Africa.

The Singapore Convention alongside the Model Law will permit enforcement of mediated settlement agreements in signatory countries<sup>74</sup>. In addition, it has been opined that African states that ratify the Convention and incorporate its key provisions in their existing domestic laws on mediation will greatly streamline the processes for international businesses looking for entry points into the continent but are concerned about relationship preservation or enforceability of settlements<sup>75</sup>. Adopting the Singapore Convention is therefore key in strengthening domestic mediation environments in Africa<sup>76</sup>. It is also key in helping African countries reap from the full benefits of the AfCFTA and other regional and continental agreements<sup>77</sup>. The Agreement establishing the AfCFTA envisions the use of mediation in managing commercial disputes in the continent<sup>78</sup>. It has been noted that while the AfCFTA provides for mediation as a mode of dispute resolution, it is silent as regards its binding nature as envisioned by the

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<sup>73</sup> United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at [https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-.Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of%20day\)%2C%20according%20to%20UNCTAD](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-.Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of%20day)%2C%20according%20to%20UNCTAD) (Accessed on 13/07/2024)

<sup>74</sup> Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the

Singapore Convention on Mediation?' Op Cit

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> African Union., 'Agreement Establishing the African Continental Free Trade Area.' Available at [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf) (Accessed on 13/07/2024)

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Singapore Convention<sup>79</sup>. However, should more African state parties who are signatories to the AfCFTA be also signatories to the Singapore Convention, an avenue for establishing binding, enforceable and recognized international mediation settlement agreements will have been established<sup>80</sup>. The Singapore Convention is therefore suitable in enforcing mediated agreements within the context of the AfCFTA which is key in boosting Intra-African trade<sup>81</sup>.

One of the key challenges related to mediation as a dispute resolution mechanism has always been in the inability to enforce the agreements that flow from the mediation process in the event of non-compliance by parties<sup>82</sup>. Further, it has been noted that certain circumstances, accepting to and engaging the process of mediation is confronted by this singular challenge from the outset<sup>83</sup>. This concern is particularly heightened with respect to commercial mediation where there is need to enforce mediated agreements in order to protect business interests<sup>84</sup>. The Singapore Convention therefore provides governments and business entities in Africa and across the globe, an opportunity to engage in and utilize another mechanism for resolution of international commercial transactions without necessarily resorting to arbitration<sup>85</sup>. By guaranteeing enforcement of mediated agreements, the Singapore

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<sup>79</sup> Mediation: Challenges and Prospects for African States' Op Cit

<sup>79</sup> Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> African Arbitration Association., 'The Singapore Mediation Convention: A Game Changer for Mediation in Cross-Border Disputes?' Available at <https://afaa.ngo/page-18097/10399137> (Accessed on 13/07/2024)

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Ibid



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Convention will enhance the growth of commercial mediation in Africa<sup>86</sup>.

It has been noted that there is there is inadequacy of an efficient and harmonised framework for cross-border enforcement of settlement agreements resulting from mediation which is a major challenge to the use of mediation within the commercial community in Africa<sup>87</sup>. There have been concerns among the business community in Africa that any settlement agreement arrived upon in mediation is not immediately executable should one or the other breach the terms of the agreement<sup>88</sup>. On the other hand in arbitration and litigation there is an award or an order obliging the parties to comply, failing which there are court sanctioned consequences<sup>89</sup>. These concerns have resulted in the underutilization of mediation in managing commercial disputes in Africa<sup>90</sup>. However, the African experience shows that mediation is a useful tool in managing disputes<sup>91</sup>. It is vital in preserving relationships which is very key in the business world<sup>92</sup>. Further, if successful, mediation is much more efficient than litigation and arbitration – saving not only money, but also time, and the dispute is settled by the parties themselves and not a third-party arbitrator or judicial officer<sup>93</sup>. In addition, mediation also eases the burden placed on courts by reducing

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<sup>86</sup> Ibid

<sup>87</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>88</sup> CDH., 'International Dispute Resolution in Africa' Available at <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/news/publications/2022/Practice/Dispute/Downloads/International-Dispute-Resolution-in-Africa-22-June-2022.pdf> (Accessed on 13/07/2024)

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya' Op Cit

<sup>92</sup> Ibid

<sup>93</sup> CDH., 'International Dispute Resolution in Africa' Op Cit

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the number of disputes they need to adjudicate therefore enhancing access to justice<sup>94</sup>.

Adopting and implementing the Singapore Convention can therefore enhance the Africa experience with mediation by streamlining the enforcement of mediated agreements<sup>95</sup>. It is therefore imperative for all African countries to adopt and implement the Singapore Convention in order to boost international commercial mediation in the continent<sup>96</sup>. However, the Singapore Convention can create some challenges in enforcing mediated agreements in Africa. It has been noted that since the signatory states are permitted to enforce settlement agreements in accordance with their respective local rules, this could create a lot of uncertainty which could cause a lot of hindrances to the Convention's success and hinder effective enforcement of mediated agreements<sup>97</sup>. It is imperative to address such challenges in order to boost the Africa experience in enforcing mediated agreements under the Singapore Convention.

### **4.0 Conclusion**

It is imperative for all African countries to adopt and implement the Singapore Convention in order to enhance the African experience on enforcing mediated agreements. Embracing the Singapore Convention will facilitate the growth of international commerce and promote the use of international mediation around the world especially in Africa as

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<sup>94</sup> Ibid

<sup>95</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>96</sup> Ibid

<sup>97</sup> VIA Mediation Centre., 'Singapore Convention on Mediation: Viability & Challenges' Available at

<https://viamediationcentre.org/readnews/MzA1/Singapore-Convention-on-Mediation-Viability-Challenges#:~:text=The%20Convention%20does%20not%20state,lot%20of%20confusi on%20and%20uncertainty>. (Accessed on 13/07/2024)

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evidenced in international arbitration<sup>98</sup>. It will also boost trade and investments in Africa including Intra-African trade by providing a robust investor-state dispute resolution mechanism through international commercial mediation<sup>99</sup>. At the moment only a few African countries have adopted the Singapore Convention<sup>100</sup>. It is vital for all countries to adopt and implement the Singapore Convention in order to boost the growth of international commercial mediation in the continent through effective enforcement of mediated agreements.

Further, it is necessary for all African countries to enact domestic legislations on mediation to not only give effect to the Singapore Convention but to also capture Africa's view on mediation<sup>101</sup>. It has been correctly opined that there is a need to set up legal and institutional frameworks at national levels in order to facilitate the uptake and practice of mediation in Africa<sup>102</sup>. The legal frameworks should among other things, provide for who should act as the competent authority for the purposes of enforcing mediated agreements under the Singapore Convention<sup>103</sup>. Further, in institutionalizing mediation for purposes of the Singapore it is imperative to preserve its key attributes such as flexibility, informality, privacy and confidentiality<sup>104</sup>. For African

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<sup>98</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>99</sup> Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

<sup>100</sup> Singapore Convention on Mediation., 'Jurisdictions' Available <https://www.singaporeconvention.org/jurisdictions> (Accessed on 13/07/2024)

<sup>101</sup> Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

<sup>102</sup> Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

<sup>103</sup> Ibid

<sup>104</sup> Muigua. K., 'Fusion of Mediation and Other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Available at <http://kmco.co.ke/wpcontent/uploads/2022/11/Fusion-of-Mediation-and-Other->

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countries to fully benefit from the Singapore Convention it is necessary to have both regulatory (including domestic laws and policies on mediation) and institutional (courts, judiciary, mediation practitioners, and mediation institutions) frameworks in place<sup>105</sup>. African countries should also consider establishing regional institutional frameworks on mediation in order to boost trade and commerce in the continent and further enable it to benefit from the AfCFTA and other regional agreements through appropriate dispute resolution processes<sup>106</sup>. Strengthening legal, policy, and institutional frameworks is thus key in bolstering the African experience on enforcing mediated agreements under the Singapore Convention.

Further, in order to capture the African perspective on mediation, African countries can consider adopting the Singapore Convention with necessary modifications that reflect their local circumstances<sup>107</sup>. For example, African countries can consider adopting the Convention with necessary modifications to allow for the conduct of mediation proceedings in local languages<sup>108</sup>. This will be key in enhancing the African experience on mediation.

As other regions are taking the lead in international commercial mediation, African states should follow suit by developing their regulatory and institutional frameworks to match current developments in the international commercial mediation landscape, narrowing gaps,

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[ADR-Mechanisms-with-Modern-DisputeResolution-in-Kenya-Prospects-and-Challenges.pdf](#) (Accessed on 13/07/2024)

<sup>105</sup> Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the

Singapore Convention on Mediation?' Op Cit

<sup>106</sup> Ibid

<sup>107</sup> Muigua, K., 'Adopting the Singapore Convention in Kenya: Insight and Analysis' Op Cit

<sup>108</sup> Ibid

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harmonising policy and practice, and building skills<sup>109</sup>. The Singapore Convention is a much welcome idea in the mediation landscape in Africa. It is imperative for all Africa countries to adopt and implement the Convention in order to boost the African experience in mediation through an effective framework for enforcing mediated agreements.

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<sup>109</sup> Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

## **Strengthening Climate Action for Sustainability**

### **Abstract**

*The ideal of sustainability involves creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations. Achieving this ideal requires all countries to embrace Sustainable Development by integrating economic growth, social equity, and environmental conservation while taking into account the needs of present and future generations. Sustainability however remains elusive for the global community in light of numerous and mounting problems facing the planet key among them being climate change. Responding to climate change is therefore an urgent priority in order to achieve sustainability. This paper critically appraises the need to strengthen climate action for sustainability. The paper argues that climate change is a major challenge for all countries in their efforts towards sustainability. The paper examines the impacts of climate change on sustainability. It also discusses the suitability of measures adopted at global, regional, and national levels towards responding to climate change. The paper also proposes measures towards strengthening climate action for sustainability.*

### **1.0 Introduction**

Sustainability is an ideal that entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>1</sup>. It involves the integration of environmental conservation, social equity and economic vitality in order to create thriving, healthy, diverse and resilient communities and ecosystems for both present and future generations<sup>2</sup>. Achieving sustainability requires striking a balance between economic, social, and environmental factors to ensure that resources are used in a

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<sup>1</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 21/10/2024)

<sup>2</sup> UCLA Sustainability., 'What is Sustainability?' Available at <https://www.sustain.ucla.edu/what-is-sustainability/> (21/10/2024)

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way that is not only environmentally sustainable but also socially equitable and economically viable in the long term<sup>3</sup>.

The concept of Sustainable Development has emerged as a means of achieving the ideal of sustainability<sup>4</sup>. It seeks to promote development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs in order to achieve sustainability<sup>5</sup>. Sustainable Development requires an integrated approach towards development that takes into consideration environmental concerns along with economic development and social progress<sup>6</sup>. It therefore provides a framework towards sustainability by integrating economic growth, social equity, and environmental conservation while taking into account the needs of present and future generations<sup>7</sup>. Sustainable Development has been embraced as the global blueprint for sustainability as captured under the United Nation's 2030 *Agenda for Sustainable Development*<sup>8</sup> and its 17 Sustainable Development Goals which seek to strike a balance between social, economic and environmental concerns in order to promote sustainability at all levels<sup>9</sup>.

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<sup>3</sup> Sustainability: A Better Tomorrow, But How?., Available at <https://www.green.earth/sustainability> (Accessed on 21/10/2024)

<sup>4</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) *Integrated Reporting*. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 21/10/2024)

<sup>5</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>6</sup> United Nations., 'Sustainability' Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 21/10/2024)

<sup>7</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

<sup>8</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 21/10/2024)

However, achieving sustainability remains an elusive reality for the global community. The world is facing mounting environmental challenges such as climate change, pollution, and loss of biodiversity; and economic and social problems including poverty<sup>10</sup>, gender inequalities, unemployment, economic recession, and rising inequalities within and among nations which hinder sustainability<sup>11</sup>. Climate change is a major threat to sustainability. It has been identified as a major global challenge that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda<sup>12</sup>. Responding to climate change is therefore an urgent priority in order to achieve sustainability.

This paper critically appraises the need to strengthen climate action for sustainability. The paper argues that climate change is a major challenge for all countries in their efforts towards sustainability. The paper examines the impacts of climate change on sustainability. It also discusses the suitability of measures adopted at global, regional, and national levels towards responding to climate change. The paper also proposes measures towards strengthening climate action for sustainability.

## **2.0 Impacts of Climate Change on Sustainable Development**

The *United Nations Framework Convention on Climate Change* (UNFCCC) defines climate change as a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability

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<sup>10</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' Op Cit

<sup>11</sup> Ibid

<sup>12</sup> Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021



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observed over comparable time periods<sup>13</sup>. According to the United Nations, climate change refers to long-term shifts in temperatures and weather patterns<sup>14</sup>. It notes that such shifts can be natural, due to changes in the sun's activity or large volcanic eruptions<sup>15</sup>. However, human activities have been the main driver of climate change, primarily due to the burning of fossil fuels including coal, oil and gas<sup>16</sup>. Climate change can therefore be described as the significant variation of average weather conditions for example by becoming warmer, wetter, or drier over long periods of time<sup>17</sup>. It has been noted that it is the longer-term trend that differentiates climate change from natural weather variability<sup>18</sup>.

Climate change severely impacts the attainment of the ideal of sustainability. The United Nations 2030 Agenda for Sustainable Development acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development<sup>19</sup>. Its impacts including warmer temperatures, intense droughts, water scarcity, severe wild fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed all over the world undermining sustainability<sup>20</sup>. For example, higher temperatures increase heat-related illnesses and make working

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<sup>13</sup> United Nations Framework Convention on Climate Change., United Nations, 1992., Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 22/10/2024)

<sup>14</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 22/10/2024)

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> What is Climate Change ?, Available at <https://climateknowledgeportal.worldbank.org/overview> (Accessed on 22/10/2024)

<sup>18</sup> Ibid

<sup>19</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>20</sup> United Nations., 'What is Climate Change?' Op Cit

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outdoors more difficult therefore threatening development<sup>21</sup>. Further, severe storms due to climate change destroy homes and communities, causing deaths and huge economic losses<sup>22</sup>. Intense droughts affect agricultural productivity resulting in food insecurity while also increasing the vulnerability of ecosystems<sup>23</sup>. Further, rise in sea levels threaten the well-being of coastal and island communities<sup>24</sup>. Loss of biodiversity due to climate change also threatens key ecosystem services that are crucial for the well-being of both humanity and nature<sup>25</sup>.

It has been pointed out that climate change is an undesirable phenomenon that affects realization of the Sustainable Development agenda across the world by affecting the sustainability of the planet's ecosystems, the stability of the global economy and the future of humankind<sup>26</sup>. The links between climate change and Sustainable Development are strong<sup>27</sup>. Poor and developing countries, particularly least developed countries, are among those most adversely affected and least able to cope with the anticipated shocks to their social, economic and natural systems<sup>28</sup>. For instance, climate change is having a devastating impact on the African continent creating food insecurity, stressing water resources, affecting human health, displacing

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<sup>21</sup> United Nations., 'Causes and Effects of Climate Change' Available at <https://www.un.org/en/climatechange/science/causes-effects-climate-change> (Accessed on 22/10/2024)

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Climate Change., 'Meaning, Definition, Causes, Examples and Consequences.' Available at <https://youmatter.world/en/definition/climate-change-meaning-definition-causes-and-consequences/> (Accessed on 22/10/2024)

<sup>27</sup> Climate Change., Available at <https://sustainabledevelopment.un.org/topics/climatechange> (Accessed on 22/10/2024)

<sup>28</sup> Ibid

populations and impeding socio-economic development<sup>29</sup>. Africa is highly vulnerable to climate change due to several factors such as endemic poverty, high dependence on rain-fed agriculture, complex governance and institutional dimensions, limited access to capital including markets and technology, weak infrastructure, ecosystem degradation and poor management of natural resources, disasters both natural and man-made and conflicts<sup>30</sup>. Despite being the region with the lowest greenhouse gas emissions, Africa faces exponential collateral damage as a result of climate change, posing systemic risks to its economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo the continent's modest development gains and slip it into higher levels of extreme poverty<sup>31</sup>.

Climate change is therefore a major threat to sustainability for all countries. It has been identified as a major constraint to Sustainable Development across its various dimensions including environmental conservation, social equity, and economic growth<sup>32</sup>. Climate change undermines global efforts to tackle hunger, poverty, ill-health, improve access to clean water and energy and many other aspects of Sustainable

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<sup>29</sup> Rao. V., & Yadav. P., 'Confronting Climate Change in Africa.' Available at <https://knowledge.insead.edu/responsibility/confronting-climate-change-africa> (Accessed on 22/10/2024)

<sup>30</sup> Kimaro. Didas et al., 'Climate Change Mitigation and Adaptation in ECA/SADC/COMESA Region: Opportunities and Challenges.' Available at [https://www.researchgate.net/publication/346628199\\_Climate\\_Change\\_Mitigation\\_and\\_Adaptation\\_in\\_ECASADCCOMESA\\_region\\_Opportunities\\_and\\_Challenges](https://www.researchgate.net/publication/346628199_Climate_Change_Mitigation_and_Adaptation_in_ECASADCCOMESA_region_Opportunities_and_Challenges) (Accessed on 22/10/2024)

<sup>31</sup> African Development Bank Group., 'Climate Change in Africa' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 22/10/2024)

<sup>32</sup> Osman-Elasha. B., 'Climate Change Impacts, Adaptation and Links to Sustainable Development in Africa' Available at <https://www.fao.org/4/i0670e/i0670e03.htm> (Accessed on 22/10/2024)

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Development<sup>33</sup>. If left unchecked, climate change threatens to undo a lot of the development progress made over the past years and has the potential to provoke mass migrations that will lead to instability and wars<sup>34</sup>. As a result, it has been noted that urgent and transformative action on climate change is necessary if the Sustainable Development agenda is to be achieved by all countries<sup>35</sup>.

Due to its adverse impacts on sustainability, responding to climate action has become a key agenda at the global, regional, and national levels. Sustainable Development Goal 13 under the United Nation's 2030 Agenda for Sustainable Development calls upon all countries to take urgent actions towards combating climate change and its impacts<sup>36</sup>. It sets out several targets towards strengthening climate action for sustainability including strengthening resilience and adaptive capacity to climate-related hazards and natural disasters in all countries; integrating climate change measures into national policies, strategies and planning; improving education, awareness-raising, human, and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning; implementing the commitment undertaken by developed country parties to the UNFCCC to mobilize jointly \$ 100 billion annually by 2020 to support developing countries; and promoting mechanisms for raising capacity for effective climate change-related planning and management in least developed countries

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<sup>33</sup> United Nations Environment Programme., 'Climate Change Undermines nearly all Sustainable Development Goals' Available at <https://www.unep.org/news-and-stories/press-release/climate-change-undermines-nearly-all-sustainable-development-goals> (Accessed on 22/10/2024)

<sup>34</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 22/10/2024)

<sup>35</sup> Ibid

<sup>36</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

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and small island developing states, including focus on women, youth and local and marginalized communities<sup>37</sup>.

Strengthening climate action for sustainability is also a key priority under several legal instruments at the global level including the *UNFCCC* which is the primary international, and intergovernmental forum for negotiating the global response to climate change<sup>38</sup>; and the *Paris Agreement* which is a legally binding international treaty on climate change<sup>39</sup>.

At a continental level, *Agenda 2063*<sup>40</sup> acknowledges that climate change is a major challenge for the continent's development and seeks to strengthen climate action for sustainability in Africa. The *African Union Climate Change and Resilient Development Strategy and Action Plan*<sup>41</sup> has since been adopted to accelerate the realization of Africa's Agenda 2063 through proactive and collective continental efforts aimed at addressing the impacts and encumbrances of climate change in Africa. At a regional level, the *East African Community Climate Change Policy*<sup>42</sup> recognizes the adverse impacts of climate change as a major challenge to socio-economic development both globally and within the East African region.

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<sup>37</sup> Ibid

<sup>38</sup> United Nations Framework Convention on Climate Change., United Nations, 1992., Op Cit

<sup>39</sup> United Nations Climate Change., 'The Paris Agreement.' Available at <https://unfccc.int/process-and-meetings/the-paris-agreement> (Accessed on 22/10/2024)

<sup>40</sup> Africa Union., 'Agenda 2063: The Africa we Want.' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 12/10/2024)

<sup>41</sup> African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032) Available at [https://au.int/sites/default/files/documents/41959-doc-CC\\_Strategy\\_and\\_Action\\_Plan\\_2022-2032\\_08\\_02\\_23\\_Single\\_Print\\_Ready.pdf](https://au.int/sites/default/files/documents/41959-doc-CC_Strategy_and_Action_Plan_2022-2032_08_02_23_Single_Print_Ready.pdf) (Accessed on 22/10/2024)

<sup>42</sup> East African Community., 'East African Community Climate Change Policy.' Available at <https://www.eac.int/environment/climate-change/eac-climate-change-policy-framework> (Accessed on 22/10/2024)

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The Policy aims to enhance Sustainable Development within the East African region through harmonized and coordinated regional strategies, programmes and actions to respond to climate change<sup>43</sup>. Further, at a national level, Kenya enacted the *Climate Change Act*<sup>44</sup> in order to enhance the national response to climate change and achieve low carbon climate development for Sustainable Development<sup>45</sup>. The *Climate Change (Amendment) Act*<sup>46</sup> 2023 also seeks to strengthen climate action in Kenya including through the concept of carbon trading.

It is imperative to implement the foregoing legal and policy instruments at global, regional, and national levels in order to strengthen climate action for sustainability.

### **3.0 Strengthening Climate Action for Sustainability**

Despite global, regional, and national efforts being undertaken to respond to climate change, climate-related shocks and stresses such as floods, cyclones, wildfires and droughts are being manifested all over the world posing significant economic, social, and environmental risks and threatening sustainability<sup>47</sup>. These impacts can also further limit access to livelihoods and work opportunities therefore affecting human well-being<sup>48</sup>. In addition, the impacts of climate change also put pressure on limited natural resources, such as water and arable farming land therefore disrupting livelihoods and development<sup>49</sup>. In light of these

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<sup>43</sup> Ibid

<sup>44</sup> Climate Change Act., No. 11 of 2016, Government Printer, Nairobi

<sup>45</sup> Ibid, S 3(1)

<sup>46</sup> Climate Change (Amendment) Act, 2023, Government Printer, Nairobi

<sup>47</sup> United Nations High Commissioner for Refugees., 'Strengthening Climate Adaptation and Resilience' Available at <https://www.unhcr.org/what-we-do/build-better-futures/climate-change-and-displacement/strengthening-climate-adaptation#:~:text=We%20aim%20to%20ensure%20they,displaced%20people%20and%20their%20hosts>. (Accessed on 22/10/2024)

<sup>48</sup> Ibid

<sup>49</sup> Ibid

challenges, it is imperative to strengthen climate action for sustainability.

Strengthening climate action is a goal that requires all countries to embrace climate-resilient development, while outlining a clear path to achieve net-zero emissions<sup>50</sup>. It has been noted that in order to effectively combat climate change, it is imperative for countries to take urgent actions and build climate resilient and low-carbon economies<sup>51</sup>. Low carbon development refers to forward-looking national economic development policies, plans and strategies that encompass low-emission and/or climate-resilient economic growth<sup>52</sup>. The objective of low-carbon development is to reduce greenhouse gas emissions, exploit low-carbon energy, and ensure economic growth<sup>53</sup>. Low-carbon development is therefore an approach that focuses on reducing greenhouse gas emissions through the development process<sup>54</sup>. This concept brings together three separate goals that are vital in strengthening climate action: reducing climate change emissions (mitigation), resilience to climate change (adaptation) and economic and social development<sup>55</sup>. According to the United Nations, affordable, scalable solutions are now available to enable countries to leapfrog to cleaner, and more resilient

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<sup>50</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 22/10/2024)

<sup>51</sup> African Development Bank Group., 'Climate Change in Africa' Op Cit

<sup>52</sup> United Nations., 'Low Carbon Development.' Available at <https://sustainabledevelopment.un.org/index.php?menu=1448#:~:text=The%20concept%20of%20low%20carbon,low%2Dcarbon%20growth%20plans> (Accessed on 22/10/2024)

<sup>53</sup> Yuan. H, Zhou. P, & Zhou. D., 'What is Low-Carbon Development? A Conceptual Analysis.' *Energy Procedia*, 5 (2011) 1706-1712

<sup>54</sup> International Institute for Environment and Development., 'Low-Carbon Resilient Development in the Least Developed Countries' Available at <https://www.ied.org/sites/default/files/pdfs/migrate/17177IIED.pdf> (Accessed on 22/10/2024)

<sup>55</sup> Ibid

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economies<sup>56</sup>. These measures include investing in renewable sources of energy and transforming key sectors including food systems, transport, industrialization, water systems, and the blue economy by making them more sustainable and enhancing their resilience and adaptive capacity to climate change<sup>57</sup>. It is vital to embrace these among other measures in order to strengthen climate action for sustainability.

It is also imperative to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries<sup>58</sup>. Most areas of the world are already experiencing changes in average temperature, shifts in the seasons, an increasing frequency of extreme weather events, and slow onset events including droughts, flooding, and rising temperatures<sup>59</sup>. These events disrupt livelihoods, result in loss of lives, and affect development<sup>60</sup>. In order to effectively respond to the adverse impacts of climate change, it is necessary to enhance resilience and adaptive capacity at all levels<sup>61</sup>. Climate resilience refers to the ability to anticipate, prepare for, and respond to hazardous events, trends, or disturbances related to climate change<sup>62</sup>. It also refers to the capacity or ability to anticipate and cope with climate shocks, and to

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<sup>56</sup> United Nations., 'Tackling Climate Change' Available at <https://www.un.org/sustainabledevelopment/climate-action/> (Accessed on 22/10/2024)

<sup>57</sup> African Union Climate Change and Resilient Development Strategy and Action Plan., Op Cit

<sup>58</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>59</sup> United Nations Climate Change., 'Adaptation and Resilience' Available at <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/introduction> (Accessed on 22/10/2024)

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Center for Climate and Energy Solutions., 'Climate Resilience Portal' Available at <https://www.c2es.org/content/climate-resilience-overview/#:~:text=For%20example%2C%20a%20combination%20of,impacts%20can%20exacerbate%20existing%20inequalities> (Accessed on 22/10/2024)



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recover from their impacts in a timely and efficient manner<sup>63</sup>. Adaptation on the other hand refers to adjustments in ecological, social or economic systems in response to climate change and its effects<sup>64</sup>. It involves changes in processes, practices and structures to moderate potential damages or to benefit from opportunities associated with climate change<sup>65</sup>. Enhancing climate resilience and adaptive capacity at all levels is integral in strengthening climate action by ensuring that individuals, communities, and nations are able to effectively anticipate, prepare for, and respond to the adverse impacts of climate change<sup>66</sup>. Some of the key interventions towards strengthening resilience and adaptive capacity for effective climate action include strengthening disaster risk reduction, building flood defences, setting up early warning systems for extreme weather events such as cyclones, and switching to drought-resistant crops<sup>67</sup>.

Strengthening climate action for sustainability also requires significant financial investments<sup>68</sup>. Finance is vital in strengthening climate action since large scale investments in areas such as energy, transport, and infrastructure are required to significantly reduce emissions and adapt to the adverse impacts of climate change<sup>69</sup>. It is therefore necessary to increase financial investments towards strengthening climate action in the form of climate finance. The idea of climate finance refers to local, national, and transnational financing drawn from public, private, and alternative sources of financing which seeks to enhance climate

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<sup>63</sup> The London School of Economics and Political Science., 'What is the Difference between Climate Change Adaptation and Resilience?' Available at <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-difference-between-climate-change-adaptation-and-resilience/> (Accessed on 22/10/2024)

<sup>64</sup> United Nations Climate Change., 'Adaptation and Resilience' Op Cit

<sup>65</sup> Ibid

<sup>66</sup> Center for Climate and Energy Solutions., 'Climate Resilience Portal' Op Cit

<sup>67</sup> United Nations Climate Change., 'Adaptation and Resilience' Op Cit

<sup>68</sup> United Nations Climate Change., 'Introduction to Climate Finance' Available at <https://unfccc.int/topics/introduction-to-climate-finance> (Accessed on 22/10/2024)

<sup>69</sup> Ibid

mitigation and adaptation actions<sup>70</sup>. Climate finance is important in addressing climate change since large-scale investments are needed to transition to a low-carbon global economy and to help societies build resilience and adapt to the impacts of climate change<sup>71</sup>. It can come from various sources including public or private, national or international, bilateral or multilateral<sup>72</sup>. Further, climate finance can employ different instruments including grants and donations, green bonds, equities, debt swaps, guarantees, and concessional loans.<sup>73</sup> Climate finance is critical in strengthening climate action in areas such as mitigation, adaptation, and resilience-building<sup>74</sup>. Despite its key role in strengthening climate action, it has been noted that the current landscape of climate finance is inadequate to effectively respond to climate change<sup>75</sup>. It is therefore vital to unlock climate finance in order to strengthen climate action for sustainability.

#### **4.0 Conclusion**

Climate change is one of the greatest challenges of our time whose adverse impacts undermine the ability of all countries to achieve Sustainable Development<sup>76</sup>. Climate change undermines global, regional, and national efforts to tackle hunger, poverty, ill-health, improve access to clean water and energy and many other aspects of Sustainable Development<sup>77</sup>. Strengthening climate action is therefore

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<sup>70</sup> Ibid

<sup>71</sup> United Nations Development Programme., 'What is Climate Finance and why do we Need More of It?' Available at <https://climatepromise.undp.org/news-and-stories/what-climate-finance-and-why-do-we-need-more-it> (Accessed on 22/10/2024)

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

<sup>76</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>77</sup> United Nations Environment Programme., 'Climate Change Undermines nearly all Sustainable Development Goals' Op Cit

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crucial towards sustainability. Realising this goal requires all countries to embrace climate-resilient development, while outlining a clear path to achieve net-zero emissions<sup>78</sup>; strengthen resilience and adaptive capacity to climate-related hazards and natural disasters<sup>79</sup>; and enhance financial investments in the form of climate finance<sup>80</sup>.

Strengthening climate action for sustainability is a vital goal that can be achieved by all countries.

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<sup>78</sup> United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

<sup>79</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

<sup>80</sup> United Nations Climate Change., 'Introduction to Climate Finance' Op Cit

## **Entrenching a Human Rights-based Approach for Sound Biodiversity Conservation**

### **Abstract**

*This paper critically examines the need to adopt a human rights-based approach towards biodiversity conservation. It explores the progress made towards conserving biodiversity and challenges therefore. The paper argues that entrenching a human-rights based approach can enhance sound biodiversity conservation for Sustainable Development. It discusses the relationship between human rights and biodiversity conservation. The paper also suggests approaches towards entrenching a human rights- based approach for sound biodiversity conservation.*

### **1.0 Introduction**

The *Convention on Biological Diversity*<sup>1</sup> defines biological diversity (biodiversity) to mean the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; including diversity within species, between species and of ecosystems<sup>2</sup>. According to the United Nations Environment Programme (UNEP), biodiversity is the variety of life on Earth and the natural patterns it forms<sup>3</sup>. Biodiversity has also been defined as an umbrella term that describes collectively the variety and variability of nature<sup>4</sup>. It has been noted that biodiversity encompasses three basic levels of organisation in living systems: the genetic, species, and ecosystem levels<sup>5</sup>. Biodiversity underpins all life on Earth, and refers to

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<sup>1</sup> The Convention on Biological Diversity, 5 June 1992 (1760 U.N.T.S. 69)

<sup>2</sup> Ibid, Article 2

<sup>3</sup> United Nations Environment Programme., 'UNEP and Biodiversity' Available at <https://www.unep.org/unep-and-biodiversity#:~:text=Biological%20diversity%20is%20the%20variety,of%20human%20influence%20as%20well>. (Accessed on 24/10/2024)

<sup>4</sup> United Nations Educational, Scientific and Cultural Organization., 'Biodiversity' Available at <https://whc.unesco.org/en/glossary/193> (Accessed on 24/10/2024)

<sup>5</sup> Ibid

biological variety in all its forms, ranging from the genetic make-up of plants and animals to cultural diversity<sup>6</sup>.

Biodiversity is crucial for survival of life on Earth. UNEP notes that biodiversity forms the web of life, of which humans are integral and upon which people and the planet so fully depend<sup>7</sup>. It is vital for provision of human necessities including food, water, medicine, a stable climate, economic growth, among others<sup>8</sup>. Biodiversity plays a crucial role in Sustainable Development and is vital in realising the Sustainable Development Goals in areas such as food security, poverty eradication, and climate mitigation among others<sup>9</sup>. For example, plant, animal, microbial and genetic resources are vital for food production, agriculture, and ecosystem functions including fertilizing the soil, recycling nutrients, regulating pests and disease, controlling erosion, and pollinating crops and trees<sup>10</sup>. Biodiversity is also crucial for economic growth and poverty eradication since a majority of the world's poor live in rural areas and depend upon forests, water, wetlands, fields and pastures among other critical ecosystems for their livelihoods<sup>11</sup>. Of vital importance, biodiversity including ecosystems such as forests,

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<sup>6</sup> World Health Organization., 'Biodiversity and Health' Available at <https://www.who.int/news-room/fact-sheets/detail/biodiversity-and-health#:~:text=Biodiversity%20supports%20human%20and%20societal,which%20together%20underpin%20good%20health> (Accessed on 25/10/2024)

<sup>7</sup> United Nations Environment Programme., 'UNEP and Biodiversity' Op Cit

<sup>8</sup> United Nations., 'Biodiversity - Our Strongest Natural Defense Against Climate Change' Available at <https://www.un.org/en/climatechange/science/climate-issues/biodiversity#:~:text=The%20risk%20of%20species%20extinction,destroy%20almost%20all%20remaining%20reefs.> (Accessed on 24/10/2024)

<sup>9</sup> Muigua. K., 'Conserving Biodiversity for a Better Future' (2021) *Journalofcmsd Volume 6(5)*

<sup>10</sup> The Importance of Biodiversity for Development., Available at <https://geneva.usmission.gov/2010/04/20/usaid-biodiversity/#:~:text=Biodiversity%20conservation%2C%20the%20practice%20of,and%20services%20we%20depend%20on> (Accessed on 24/10/2024)

<sup>11</sup> Ibid

peatlands, and oceans acts as natural carbon sinks, providing nature-based solutions to climate change<sup>12</sup>.

Biodiversity therefore plays an important role in Sustainable Development. Despite its key role in Sustainable Development, it has been noted that the planet is experiencing a rapid decline and disappearance of biodiversity including animals, plants and ecosystems<sup>13</sup>. The loss of biodiversity undermines the survival of both humanity and nature now and in the future<sup>14</sup>. Conserving biodiversity is therefore necessary for sustainability.

This paper critically examines the need to adopt a human rights-based approach towards biodiversity conservation. It explores the progress made towards conserving biodiversity and challenges therefore. The paper argues that entrenching a human-rights based approach can enhance sound biodiversity conservation for Sustainable Development. It discusses the relationship between human rights and biodiversity conservation. The paper also suggests approaches towards entrenching a human rights- based approach for sound biodiversity conservation.

## **2.0 Biodiversity Conservation: Promises and Pitfalls**

Conservation and sustainable use of biodiversity is vital for human well-being. Protecting and preserving the wealth and variety of species, habitats, ecosystems, and genetic diversity on the planet has been identified as key for our health and well-being due to the provision of important ecosystem services including food, fuel, and water<sup>15</sup>. Biodiversity conservation ensures food security, fosters economic

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<sup>12</sup> United Nations., 'Biodiversity - Our Strongest Natural Defense Against Climate Change' Op Cit

<sup>13</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Available at <https://unfccc.int/news/what-is-the-triple-planetary-crisis> (Accessed on 24/10/2024)

<sup>14</sup> Ibid

<sup>15</sup> The Importance of Biodiversity for Development., Op Cit

growth and poverty reduction, strengthens climate action, and helps to minimize conflicts related to scarce and contested natural resources<sup>16</sup>.

It has been noted that sound conservation of biodiversity provides a wide range of benefits, ranging from medical breakthroughs, improved mental wellness and stronger economies<sup>17</sup>. For example, when biodiversity declines or disappears, the critical plants and animals that make up the modern food chain become scarce or more vulnerable to pests and disease undermining food security<sup>18</sup>. Conserving biodiversity therefore ensures food security. It is also key in creating jobs since many industries including forestry, agriculture and medicine rely on the wealth of plants and animals<sup>19</sup>. It has also been pointed out that biodiversity conservation including through ecosystem conservation, restoration and management can play a crucial role in climate change mitigation through carbon sequestration and the reduction of greenhouse gas emissions<sup>20</sup>. Biodiversity conservation can also strengthen climate change adaptation by buffering communities and societies from the adverse impacts of climate change<sup>21</sup>. For instance, flood plains and mangroves can provide natural protection against extreme weather events and rising sea levels<sup>22</sup>.

Conserving biodiversity also ensures human health and well-being. According to the World Health Organization (WHO), healthy

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<sup>16</sup> Ibid

<sup>17</sup> 6 Reasons Why Biodiversity Conservation Is Important., Available at <https://ccaps.umn.edu/story/6-reasons-why-biodiversity-conservation-important> (Accessed on 25/10/2024)

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> UNCC: Learn., 'Addressing Climate Change: Why Biodiversity Matters' Available at <https://www.uncclern.org/wp-content/uploads/library/unep248.pdf> (Accessed on 25/10/2024)

<sup>21</sup> Ibid

<sup>22</sup> Ibid

communities rely on well-functioning ecosystems<sup>23</sup>. Such ecosystems provide clean air, fresh water, medicines and food security while also limiting diseases and stabilizing the climate<sup>24</sup>. These services are a prerequisite for good health and well-being. It has further been noted that biological diversity of microorganisms, flora and fauna provides extensive benefits for biological, health, and pharmacological sciences<sup>25</sup>. For example, significant medical and pharmacological breakthroughs are made through greater understanding of the Earth's biodiversity<sup>26</sup>. Conserving biodiversity is therefore vital for human health and well-being.

The *2030 Agenda for Sustainable Development*<sup>27</sup> acknowledges the importance of sound biodiversity conservation for sustainability. The Agenda identifies the loss of biodiversity as one of the greatest challenges facing humanity and which threatens the ideal of Sustainable Development<sup>28</sup>. Among the targets of Sustainable Development Goal (SDG) 15 is to halt biodiversity loss in order to ensure sustainability<sup>29</sup>. In order to achieve this goal, SDG 15 urges all countries to take urgent and significant action to reduce the degradation of natural habitats; halt the loss of biodiversity; protect and prevent the extinction of threatened species; integrate ecosystem and biodiversity values into national and local planning and development processes; and increase financial resources from all sources in order to effectively conserve and

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<sup>23</sup> World Health Organization., 'Biodiversity and Health' Op Cit

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</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 25/10/2024)

<sup>28</sup> Ibid

<sup>29</sup> Ibid



sustainably use biodiversity and ecosystems<sup>30</sup>. Achieving these targets is necessary towards ensuring sound biodiversity conservation.

The Convention on Biological Diversity also seeks to ensure sound biodiversity conservation<sup>31</sup>. The objectives of the Convention include ensuring the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies<sup>32</sup>. According to the Convention, all states have in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction<sup>33</sup>. The Convention calls for cooperation among all contracting states in order to ensure sound biodiversity conservation<sup>34</sup>. It also urges each contracting state to as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity<sup>35</sup>.

At a regional level, the *African Convention on the Conservation of Nature and Natural Resources*<sup>36</sup> sets out the need for sound biodiversity conservation in Africa. In order to achieve this goal, the Convention

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<sup>30</sup> Ibid

<sup>31</sup> The Convention on Biological Diversity., Op Cit

<sup>32</sup> Ibid

<sup>33</sup> Ibid, article 3

<sup>34</sup> Ibid, article 5

<sup>35</sup> Ibid, article 11

<sup>36</sup> African Union., 'African Convention on the Conservation of Nature and Natural Resources' Available at [https://au.int/sites/default/files/treaties/41550-treaty-Charter\\_ConservationNature\\_NaturalResources.pdf](https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf) (Accessed on 25/10/2024)

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urges African countries to establish, maintain and extend, as appropriate, conservation areas in order to ensure the long-term conservation of biological diversity<sup>37</sup>. It also urges African countries to ensure effective conservation of ecosystems characterized by a high degree of biological diversity<sup>38</sup>.

Sound conservation of biodiversity is also a key agenda in Kenya. The *Constitution of Kenya*<sup>39</sup> places several obligations on the state in respect of the environment. These include the obligation to protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities<sup>40</sup>. The Constitution of Kenya sets out key biodiversity conservation strategies identified in the Convention on Biological Diversity including benefit sharing, traditional knowledge, elimination of activities harmful to biodiversity and the role of the community in conservation and sustainable use of biodiversity<sup>41</sup>. Implementing these Constitutional provisions is vital in ensuring sound biodiversity conservation in Kenya.

Despite the importance of sound biodiversity conservation in ensuring Sustainable Development, this ideal is yet to be achieved. According to UNEP, species are now disappearing hundreds, or even thousands, of times faster than the natural background rate of extinction<sup>42</sup>. The loss of biodiversity has been identified as among the triple planetary crisis, a term that refers to the three main interlinked issues that humanity currently faces, alongside climate change and pollution<sup>43</sup>. Biodiversity loss affects ecosystem functioning and significant disruptions of ecosystems can result in the loss of life sustaining ecosystem goods and

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<sup>37</sup> Ibid, article XII (1)

<sup>38</sup> Ibid, article XII (1) (a)

<sup>39</sup> Constitution of Kenya, 2010., Government Printer, Nairobi

<sup>40</sup> Ibid, article 69 (1) (c)

<sup>41</sup> Ibid, article 69

<sup>42</sup> United Nations Environment Programme., 'UNEP and Biodiversity' Op Cit

<sup>43</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Op Cit

services food, water, energy, and medicine<sup>44</sup>. Biodiversity loss is also linked to climate change<sup>45</sup>. It has been noted that climate change is a major driver of biodiversity loss, and that loss of biodiversity also accelerates climate change since the capacity of degraded ecosystems to assimilate and store carbon dioxide is reduced<sup>46</sup>. The loss of biodiversity is therefore affecting the benefits that nature offers to human beings all over the world<sup>47</sup>. It worsens climate change, undermines food security, affects human health and well-being, and puts people and communities at risk<sup>48</sup>. In light of these challenges, it is imperative to foster sound biodiversity conservation for Sustainable Development.

### **3.0 A Human-Rights Based Approach for Sound Biodiversity Conservation**

Human rights are integral in actualising the Sustainable Development agenda. It has been noted that human rights are essential to achieving Sustainable Development and are central to all its three dimensions – social, environmental, and economic<sup>49</sup>. The 2030 Agenda for Sustainable Development seeks to realize the human rights of all and is firmly embedded in human rights principles and standards, including the Universal Declaration of Human Rights among other international

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<sup>44</sup> World Health Organization., ‘Biodiversity and Health’ Op Cit

<sup>45</sup> United Nations Educational, Scientific and Cultural Organization., ‘Biodiversity and Climate Change’ Available at <https://www.unesco.org/en/climate-change/biodiversity> (Accessed on 25/10/2024)

<sup>46</sup> Ibid

<sup>47</sup> United Nations Environment Programme., ‘Facts about the Nature Crisis’ Available at [https://www.unep.org/facts-about-nature-crisis?gad\\_source=1&gclid=CjwKCAjwg-24BhB EiwA1ZOx8ukNxvbbHgX5JkxfU7M\\_9ueZPu8pG1zMpLslaicgxiRegUJSXr NhoCDTsQAvD\\_BwE](https://www.unep.org/facts-about-nature-crisis?gad_source=1&gclid=CjwKCAjwg-24BhB EiwA1ZOx8ukNxvbbHgX5JkxfU7M_9ueZPu8pG1zMpLslaicgxiRegUJSXr NhoCDTsQAvD_BwE) (Accessed on 25/10/2024)

<sup>48</sup> Ibid

<sup>49</sup> Office of the United Nations High Commissioner for Human Rights., ‘OHCHR and the 2030 Agenda for Sustainable Development’ Available at <https://www.ohchr.org/en/sdgs> (Accessed on 25/10/2024)

human rights treaties<sup>50</sup>. Upholding human rights is a necessary foundation for a peaceful, prosperous and sustainable societies<sup>51</sup>. As a result, adopting a human rights-based approach ensures that no one is left behind in the quest towards Sustainable Development<sup>52</sup>.

Achieving sound environmental conservation is an ideal that requires respect for and promotion of human rights<sup>53</sup>. According to UNEP, human rights and the environment are intertwined<sup>54</sup>. For instance, human rights cannot be enjoyed without a safe, clean and healthy environment while sustainable environmental governance cannot exist without the establishment of and respect for human rights<sup>55</sup>. It has been noted that sound environmental conservation is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, energy, water and sanitation<sup>56</sup>. The relationship between human rights and the environment has been recognized under the right to a clean, healthy, and sustainable environment<sup>57</sup>. This right encompasses various elements including clean air, safe and sufficient

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<sup>50</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' Op Cit

<sup>51</sup> United Nations Development Programme., 'Human Rights for Sustainable Development' Available at <https://www.undp.org/rolhr/publications/human-rights-sustainable-development> (Accessed on 25/10/2024)

<sup>52</sup> Ibid

<sup>53</sup> United Nations Environment Programme., 'What are Environmental Rights?' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> (Accessed on 25/10/2024)

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Office of the United Nations High Commissioner for Human Rights., 'About Human Rights and the Environment' Available at <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment#:~:text=All%20human%20beings%20depend%20on,unable%20to%20fulfil%20our%20aspirations.> (Accessed on 25/10/2024)

<sup>57</sup> United Nations Environment Programme., 'What are Environmental Rights?' Op Cit

water, healthy and sustainably produced food, a safe climate, healthy and rich biodiversity and ecosystems, and non-toxic environments<sup>58</sup>.

Biodiversity is integral in realising human rights. The attainment of wide range of human rights depends on thriving biodiversity as well as healthy habitats and ecosystems<sup>59</sup>. Such rights include the rights to food, clean air and water, health, energy, culture, and the right to life<sup>60</sup>. Further, biodiversity and habitat loss can result in infringement of fundamental human rights<sup>61</sup>. This situation may disproportionately affect the human rights of indigenous peoples, local communities, women and girls, children and youth, the poor, among other people in vulnerable situations who largely depend on rich biodiversity and healthy ecosystems for their livelihoods and well-being<sup>62</sup>. On this basis, it has been noted that all stakeholders including states, businesses, and international organizations have an obligation to address biodiversity and habitat loss, prevent its negative impacts on human rights, and ensure that actions to address biodiversity loss are equitable, non-retrogressive, non-discriminatory and sustainable<sup>63</sup>. This requires a human rights-based approach towards biodiversity conservation.

A human rights-based approach towards biodiversity conservation acknowledges that rich biodiversity and healthy ecosystems are key for enjoying a broad range of human rights, including the rights to food,

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<sup>58</sup> Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Available at <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvi ronment/activities/2024-04-22-stm-earth-day-sr-env.pdf> (Accessed on 25/10/2024)

<sup>59</sup> United Nations Environment Programme., 'Human Rights and Biodiversity: Key Messages' Available at <https://www.unep.org/resources/report/human-rights-and-biodiversity-key-messages> (Accessed on 25/10/2024)

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Ibid

water and health<sup>64</sup>. It also recognizes that exercising human rights including public participation and access to information, can foster stronger action for conservation and the sustainable use of biodiversity and ecosystems through the involvement of all people especially indigenous peoples and people in rural areas who directly depend on biodiversity for their survival and have rich knowledge and experience on biodiversity conservation<sup>65</sup>. A human rights-based approach towards biodiversity conservation thus involves understanding and acting upon synergies between biodiversity and human rights for Sustainable Development<sup>66</sup>.

It has been noted that a human rights-based approach embraces the fact that all human rights ultimately depend on a healthy biodiversity<sup>67</sup>. It acknowledges that nature provides countless irreplaceable contributions to human well-being, including food, clean air, water, energy, carbon storage, pollination, medicines and buffers against disease<sup>68</sup>. This framework therefore stipulates that every person has the right to live in a safe, clean, healthy and sustainable environment, a right which also entails healthy ecosystems and biodiversity<sup>69</sup>.

A human rights-based approach envisages the participation of all persons in biodiversity conservation<sup>70</sup>. For example, it acknowledges

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<sup>64</sup> Swedish International Development Cooperation Agency., 'Human Rights, Biodiversity and Ecosystems' Available at <https://cdn.sida.se/publications/files/sida62041en-human-rights-biodiversity-and-ecosystems.pdf> (Accessed on 25/10/2024)

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Boyd. R., & Keene. S., 'Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative' Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/policy-briefing-1-summary.pdf> (Accessed on 25/10/2024)

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Swedish International Development Cooperation Agency., 'Human Rights, Biodiversity and Ecosystems' Op Cit

that local communities and indigenous peoples have a key role to play in biodiversity conservation<sup>71</sup>. Indigenous peoples and local communities have developed detailed local knowledge of plants, animals, and key ecological processes, and therefore play a pertinent role in shaping and preservation of biodiversity<sup>72</sup>. For many centuries, indigenous peoples have been successful stewards of the world's biodiversity, and their knowledge, innovations and practices ensure the sustainable use of biological resources, carbon sequestration, food security and crop diversity among other crucial ecosystem services<sup>73</sup>. It is estimated that while indigenous peoples account for approximately six per cent of the global population, they are custodians of more than a third of the world's most important areas for biodiversity<sup>74</sup>. A human rights-based approach therefore embraces the role of local communities and indigenous peoples as rights holders for sound biodiversity conservation.

A human rights-based approach has been identified as the most effective, efficient, and equitable path forward to safeguarding the planet including through sound biodiversity conservation<sup>75</sup>. It has been noted that rights-based approaches to biodiversity will lead to better outcomes for people and planet and a more just and sustainable future<sup>76</sup>. This framework identifies rights holders under international and national human rights law, alongside duty bearers who have an

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<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> UN Environment Programme World Conservation Monitoring Centre., 'Championing Indigenous Peoples' Stewardship of Biodiversity' Available at <https://www.unep-wcmc.org/en/news/championing-indigenous-peoples-stewardship-of-biodiversity> (Accessed on 25/10/2024)

<sup>74</sup> Ibid

<sup>75</sup> Boyd. R., & Keene. S., 'Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative' Op Cit

<sup>76</sup> Convention on Biological Diversity Secretariat., 'Guidance on Integrating Human Rights in National Biodiversity Strategy and Action Plans (NBSAPs)' Available at <https://www.cbd.int/doc/nbsap/Integrating-human%20rights-in-NBSAPs.pdf> (Accessed on 25/10/2024)

obligation to ensure that rights holders are able to safely exercise and enjoy their human rights<sup>77</sup>. It is also geared towards strengthening the capacity of rights holders and duty bearers to claim their rights and fulfil their obligations respectively<sup>78</sup>. A human rights-based approach towards biodiversity conservation notes that all people are rights holders in respect of conserving biodiversity but some people may be disproportionately affected by biodiversity loss, including indigenous peoples, local communities, rural populations, women, youth and those who closely depend on biodiversity<sup>79</sup>. It therefore seeks to address inequality and discrimination and ensure that all rights holders participate in biodiversity conservation efforts<sup>80</sup>. It is therefore vital to embrace a human rights-based approach for sound biodiversity conservation.

#### **4.0 Conclusion**

It is imperative to embrace a human rights-based approach for sound biodiversity conservation. This framework recognizes that rich biodiversity and healthy ecosystems are key for enjoying a broad range of human rights, including the rights to food, water, energy and health<sup>81</sup>. It provides that every person has the right to live in a safe, clean, healthy and sustainable environment, a right that also envisages healthy ecosystems and biodiversity<sup>82</sup>. It also seeks to ensure the participation of all persons in biodiversity conservation<sup>83</sup>.

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<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Swedish International Development Cooperation Agency., 'Human Rights, Biodiversity and Ecosystems' Op Cit

<sup>82</sup> Boyd. R., & Keene. S., 'Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative' Op Cit

<sup>83</sup> Swedish International Development Cooperation Agency., 'Human Rights, Biodiversity and Ecosystems' Op Cit



### *Entrenching a Human Rights-based Approach for Sound Biodiversity Conservation*

In order to entrench a human rights-based approach to biodiversity conservation, there is need to embrace and strengthen the participation of all rights holders including indigenous peoples and local communities for sound biodiversity conservation<sup>84</sup>. It has been noted that these groups possess the knowledge and ability necessary to successfully conserve and manage biodiversity and ecosystems more effectively than governments and at a fraction of the cost, particularly where their rights are recognized, respected and supported<sup>85</sup>. Indigenous peoples and local communities' ways of life and territories have been identified as a key part of the solution to global crises including climate change and biodiversity loss and should therefore be recognized and supported including through recognition of rights over lands, territories and resources, embracing and preserving traditional ecological knowledge, fostering equitable sharing of benefits arising from utilizing genetic resources and ensuring their full and effective participation in biodiversity conservation<sup>86</sup>. Other rights holders including women and youth should also be empowered to participate in biodiversity conservation including through enhanced access to information and access to justice in case of violation of their fundamental rights<sup>87</sup>.

It is also imperative to integrate human rights in National Biodiversity Strategy and Action Plans (NBSAPs)<sup>88</sup>. The Convention on Biological Diversity commits parties to developing, implementing and reporting on NBSAPs and to integrating the conservation and sustainable use of

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<sup>84</sup> Ibid

<sup>85</sup> Boyd. R., & Keene. S., 'Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative' Op Cit

<sup>86</sup> Implementing a Human Rights-Based Approach., Available at <https://www.forestpeoples.org/sites/default/files/documents/HumanRights-based-approach-Mar22.pdf> (Accessed on 25/10/2024)

<sup>87</sup> Ibid

<sup>88</sup> Convention on Biological Diversity Secretariat., 'Guidance on Integrating Human Rights in National Biodiversity Strategy and Action Plans (NBSAPs)' Op Cit

*Entrenching a Human Rights-based Approach for Sound Biodiversity Conservation*

biological diversity into relevant sectoral or cross-sectoral plans, programmes, and policies<sup>89</sup>. It has been noted that NBSAPs reflect national strategies, plans, or programs for the conservation and sustainable use of biodiversity as aligned with measures set out in the Convention on Biological Diversity<sup>90</sup>. Integrating human rights in NBSAPs is an effective strategy for sound biodiversity conservation through tackling inequalities and discrimination and empowering rights holders to participate in decision-making, access information, and access justice in order to protect and sustainably use biodiversity<sup>91</sup>.

Entrenching a human rights-based approach for sound biodiversity conservation is therefore a vital and realizable endeavour in the quest towards Sustainable Development.

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<sup>89</sup> The Convention on Biological Diversity., Op Cit

<sup>90</sup> Convention on Biological Diversity Secretariat., 'Guidance on Integrating Human Rights in National Biodiversity Strategy and Action Plans (NBSAPs)' Op Cit

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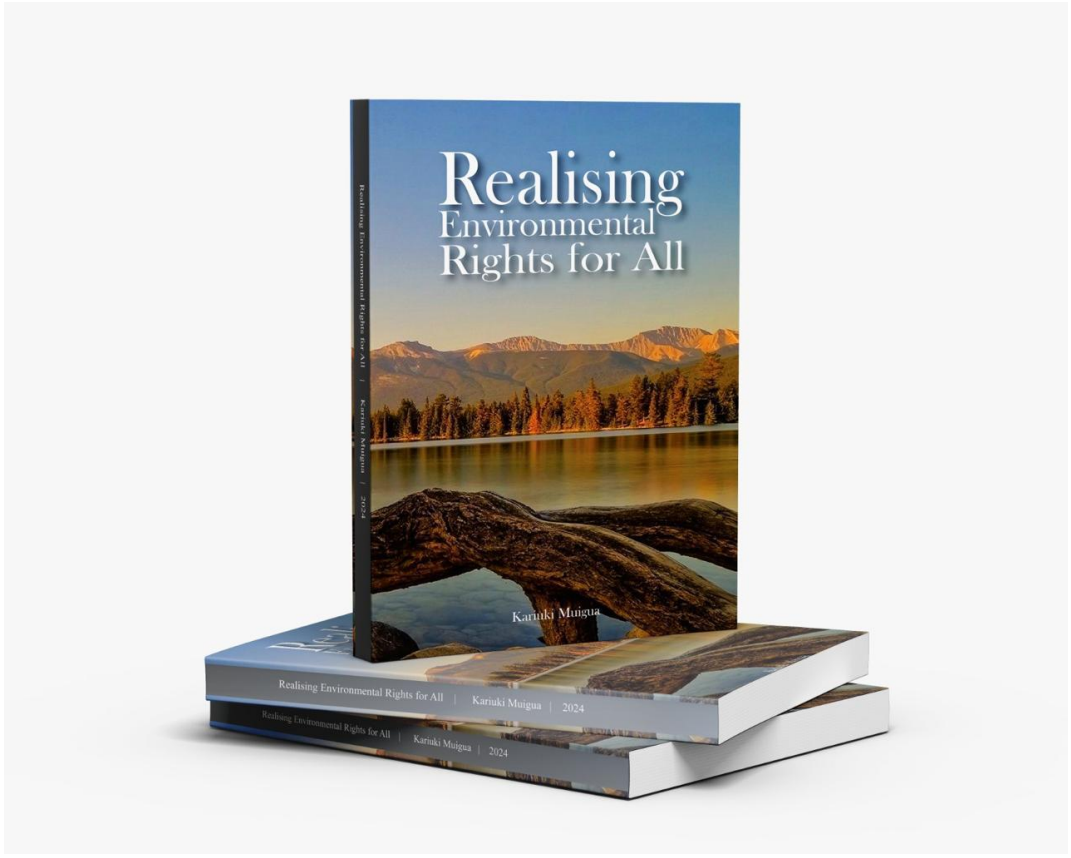
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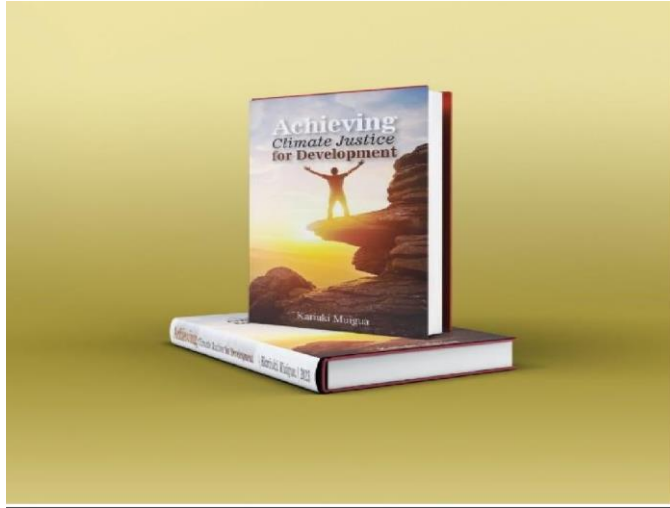
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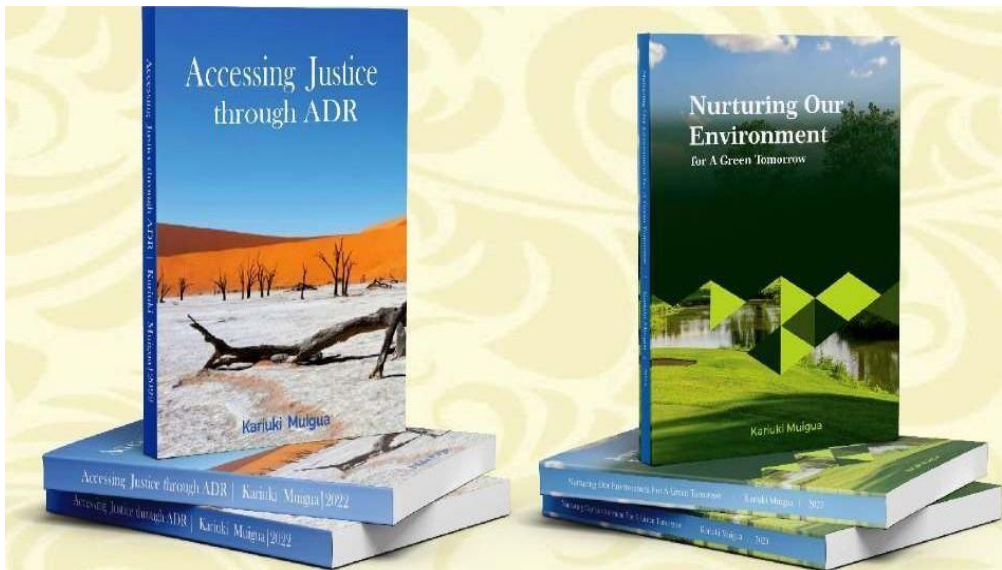
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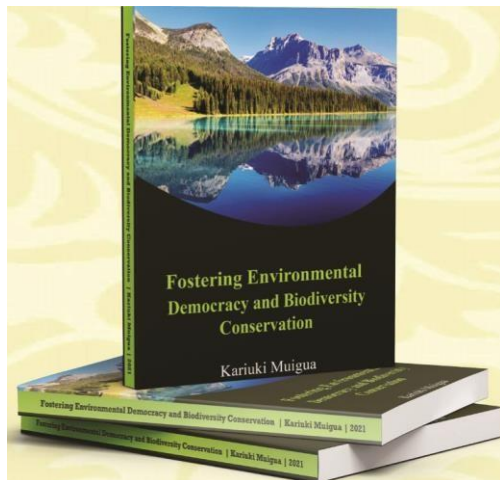
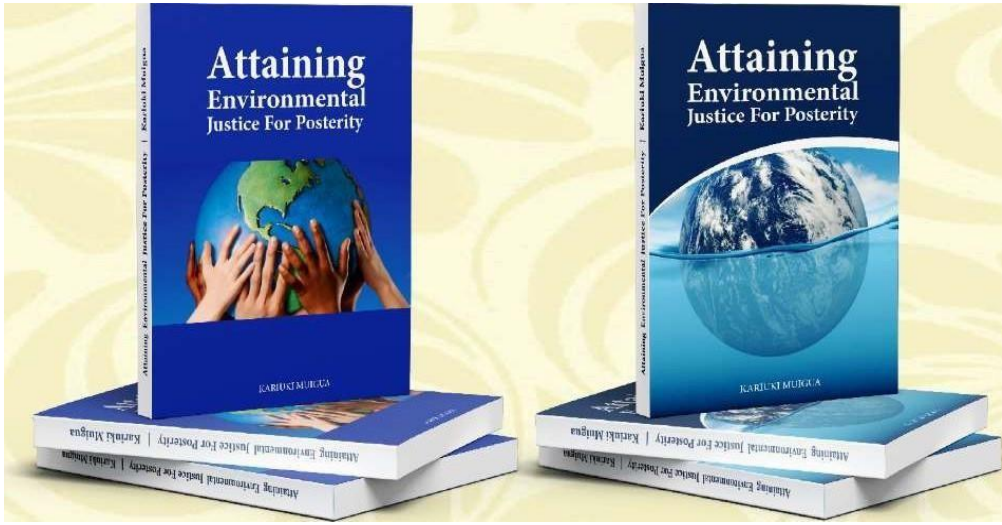




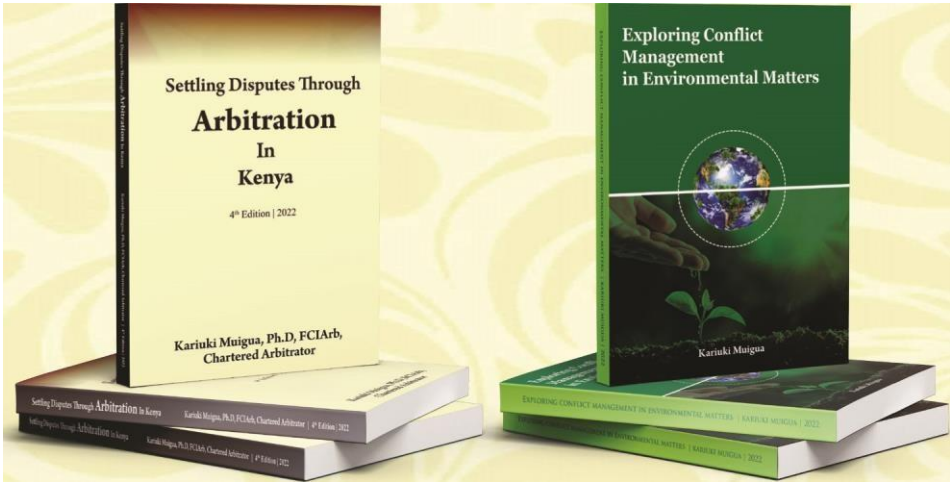


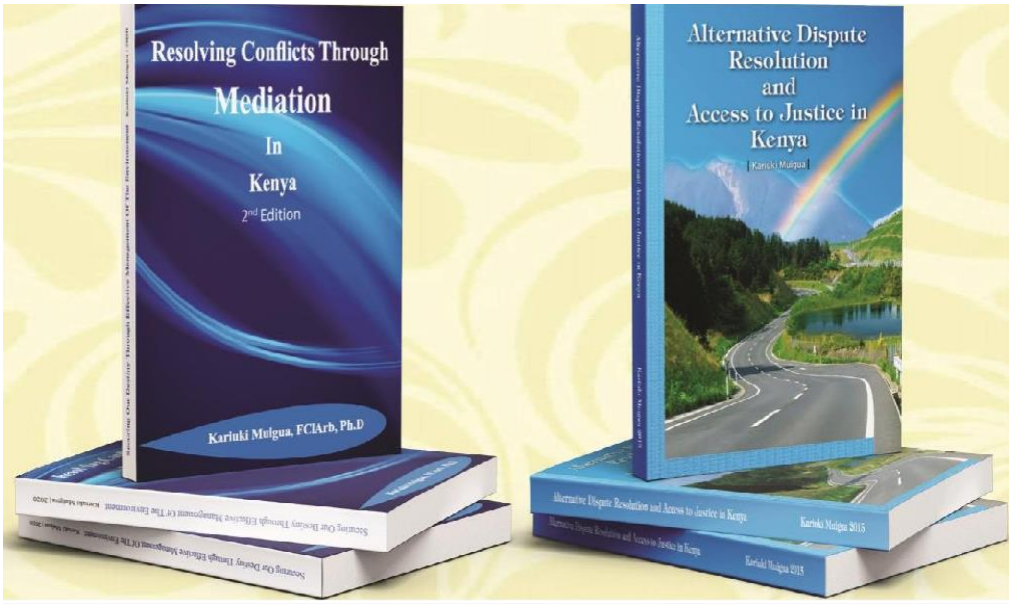
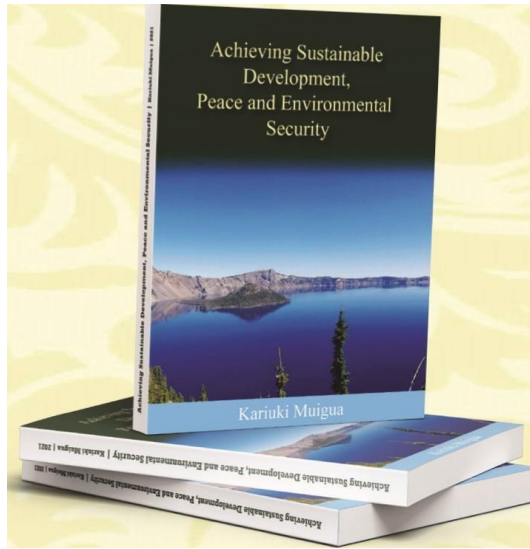












**Towards Human Rights and Prosperity for All** is a book that entails a collection of papers covering Environmental Governance, Access to Justice, Conflict Management, Climate Change, Human Rights and Rule of Law under the theme 'Towards Human Rights and Prosperity for All.'

The papers in this book delve into discussions on the said theme: They include Achieving Sustainability for a green Tomorrow; Towards Human Rights and prosperity for all; Eliminating Racism for Peace, Harmony and Prosperity; Mobilizing the youth for climate change; Enhancing Environmentalism for Green Growth; Realising the Human Right to Water and Sanitation; Promoting Environmental Rule of Law in Africa: Prospects and Challenges; Appraising the Role of Culture in Sustainable Development.

The book is aimed at researchers, students and academics who have an interest in working towards Human Rights and Prosperity for All.

#### Author's Bio-data

Hon. Prof. Kariuki Muigua Ph.D; FCIArb; OGW; C. Arb is a holder of 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.

He is a Professor of Environmental Law and Conflict Management at the University of Nairobi Faculty of Law and the Centre for Advanced Studies in Environmental Law and Policy (CASELAP). He also teaches at the Wangari Maathai Institute for Peace and Environmental Studies.

He is a Member of the Permanent Court of Arbitration (PCA) nominated by the Republic of Kenya and served as a Member of the National Environment Tribunal. 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 was appointed as a member of the Protem Committee for the Asian International Arbitration Centre (Malaysia) (AIAC) Court of Arbitration. Chambers and Partners Global Guide 2024 ranked him in Band 1 of Dispute Resolution (Arbitrators), the ranking which recognizes the Top 6 Arbitrators in Kenya noting that he is "highly recommended as a leading lawyer". He was awarded the 'Academic Champion of ADR' at the Inaugural Women in ADR Awards 2024. He was also awarded the Outstanding Mentor Award by his mentees in recognition of his guidance, care and support. He was recognized and awarded for his role as the Chartered Institute of Arbitrators (CIArb) Africa Trustee from 2019 to 2022 by CIArb Kenya Branch at the CIArb Kenya Branch ADR Excellence Awards 2022. Chambers and Partners Global Guide 2023 ranked him in Band 1 of Dispute Resolution (Arbitrators), the ranking which recognizes the Top 6 Arbitrators in Kenya noting that he is "highly recommended as a leading lawyer". His book, *Settling Disputes through Arbitration in Kenya, 4<sup>th</sup> Edition*; Glenwood publishers 2022, was awarded the Publication of the Year Award 2022 by CIArb Kenya Branch at the CIArb Kenya Branch ADR Excellence Awards 2022. He is the winner of ADR Practitioner of the Year Award at the AFAA Awards 2022. He is also 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. In 2022, Chambers and Partners ranked him in Band 1 of Dispute Resolution (Arbitrators) noting that "He has been involved in several ground-breaking arbitrations," "has an astute understanding of arbitration" and "is respected for litigation." He was awarded the Inaugural CIArb (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.

Hon. Prof. Muigua Ph.D. has on various occasions been appointed by leading arbitral institutions including the Chartered Institute of Arbitrators (CIArb-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 (CIArb)-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, Member of Commonwealth Lawyers Association and fellow of the Institute of Certified Public Secretaries of Kenya. He served as the Branch Chairman of CIArb-Kenya from 2012 to 2015. He was elected (unopposed) to the Chartered Institute of Arbitrators (CIArb) Board of Trustees as the Regional Trustee for Africa, for the term beginning 1<sup>st</sup> January 2019 for a term of four years until 31<sup>st</sup> December 2022.

Hon. Prof. Muigua Ph.D. also serves as the Editor in Chief of three leading peer reviewed journals in East Africa, the *Alternative Dispute Resolution Journal*, the *Journal of Conflict Management and Sustainable Development* and *Journal of ADR & Sustainability*. The three 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.

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