

Sustainable Development Goals and Social Justice in Kenya

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Abstract

While the sustainable development goals are concerned with striking a balance between economic development, environmental protection and conservation, on the other hand, it is also concerned with achievement of human rights and improving the social well-being of all groups of people. This is where the social justice concept comes in; it is only through promoting social, economic and environmental sustainability that the 2030 Agenda on Sustainable Development Goals (SDGs) will truly be achieved. This paper makes a case for promotion of social justice in Kenya as a step towards achieving the sustainable development agenda.

1. Introduction

The three-pillar conception of (social, economic and environmental) sustainability, commonly represented by three intersecting circles with overall sustainability at the centre, is arguably one of the best demonstrations of the place of social justice in the realisation of an all-inclusive sustainable development agenda.¹ However, it has been argued that:

The historical but artificial separation of the human rights domain from the economic and social domains led to undesired development outcomes and therefore requires focus of priority policy action on addressing inequity and inequality. Consequently:

“To support the concept of social justice is to argue for a reconciliation of these priorities within the context of a broader social perspective in which individuals endowed with rights and freedoms operate within the framework of

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¹ Ben Purvis, Yong Mao and Darren Robinson, ‘Three Pillars of Sustainability: In Search of Conceptual Origins’ (2019) 14 Sustainability Science 681.

the duties and responsibilities attached to living in society.”
(United Nations, 2006, p. 13)²

It is thus worth pointing out that all the three dimensions of sustainability must be addressed together to attain the most sustainable outcome possible.³ Kenya, like many other countries around the world has committed itself to work towards achieving sustainable development goals and in the process transform the lives of its people.⁴

The desire of a socially just society in Kenya was well captured in the Supreme Court case of *In the Matter of the Speaker of the Senate & another [2013] eKLR*,⁵ where the Court stated as follows:

[51] Kenya’s Constitution of 2010 is a transformative charter. Unlike the conventional “liberal” Constitutions of the earlier decades which essentially sought the control and legitimization of public power, the avowed goal of today’s Constitution is to institute social change and reform, through values such as social justice, equality, devolution, human rights, rule of law, freedom and democracy. This is clear right from the preambular clause which premises the new Constitution on – “RECOGNISING 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.”

And the principle is fleshed out in Article 10 of the Constitution, which specifies the “national values and principles of governance”, and more particularly in Chapter Four (Articles 19-59) on the Bill of

² Sumpf D, ‘A Review of the Relationship Between Corruption and Social Justice’ (Social Science Research Network 2015) SSRN Scholarly Paper ID 2744590 <<https://papers.ssrn.com/abstract=2744590>> accessed 6 February 2021, 2.

³ ‘What Is Social Sustainability? | Definition of Social Sustainability | ADEC ESG Solutions’ <<https://www.esg.adec-innovations.com/about-us/faqs/what-is-social-sustainability/>> accessed 5 February 2021.

⁴ ‘Sustainable Development Goals | UNDP in Kenya’ (UNDP) <<https://www.ke.undp.org/content/kenya/en/home/sustainable-development-goals.html>> accessed 6 February 2021.

⁵ *In the Matter of the Speaker of the Senate & another [2013] eKLR*, Advisory Opinion Reference 2 of 2013.

Rights, and Chapter Eleven (Articles 174-200) on devolved government.

Similarly, in *Centre for Rights Education & Awareness (CREAW) v Attorney General & another [2015] eKLR*⁶, the High Court of Kenya at Nairobi observed that:

1. *The Constitution of Kenya has been described as one of the most progressive in the world. **It envisions a society based on the rule of law, non-discrimination and social justice.** (Emphasis added) At its core is the belief that there can only be real progress in society if all citizens participate fully in their governance, and that all, male and female, persons with disabilities and all hitherto marginalized and excluded groups get a chance at the table.*

Despite such pronouncements by courts, strong constitutional and statutory provisions as well as positive steps taken by the State in creating a socially just society in Kenya, the country is arguably still very far from achieving the ideals of social justice, namely, inter alia: equality, equity, inclusiveness and fairness, among others.

2. Social Justice: Meaning and Concepts

Social justice has been defined as an aspect of distributive justice that seeks to achieve fair distribution of benefits among the members of various associations.⁷

Notably, while some authors consider social justice equivalent to ‘distributive justice’, others differentiate it from both general justice and distributive justice where social justice is seen as a unique type of justice characterized by a focus on the ‘common good’ and the individual’s obligation and right to make a contribution to that (hence, sometimes called

⁶ Centre for Rights Education & Awareness (CREAW) v Attorney General & another [2015] eKLR, Petition 182 of 2015.

⁷ David Miller, ‘Distributive Justice: What the People Think’ (1992) 102 Ethics 555.

‘contributive’ justice) while acknowledging the role of the state and civil society to remove barriers that prevent individuals from so doing.⁸

While advocating for social justice, some of the earliest scholars commenting on the subject have asserted that:

‘Society should treat all *equally* well who have *deserved* equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which *all institutions*, and the efforts of all virtuous citizens, *should be made in the utmost degree to converge*’.⁹ [Emphasis added]

Social justice is based on several principles including equality and fairness. It has been argued that social justice should be based on three biologically-grounded fairness principles which, must be combined and balanced in order to achieve a society that is fair to everyone. The three fairness principles are *equality, equity, and reciprocity*, derived from the emerging, multi-disciplinary science of human nature and the mounting evidence that a sense of fairness is an evolved and distinctively human behavioral trait.¹⁰

For instance, in the case of *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR*¹¹, the Supreme Court of Kenya, while rendering its advisory opinion on the one-third gender rule, stated, *inter alia*:

⁸ Weigert KM, ‘Social Justice: Historical and Theoretical Considerations’ in James D Wright (ed), *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)* (Elsevier 2015)

<<https://www.sciencedirect.com/science/article/pii/B9780080970868320815>> accessed 6 February 2021.

⁹ ‘Utilitarianism by John Stuart Mill’ <<https://www.utilitarianism.com/mill5.htm>> accessed 6 February 2021.

¹⁰ Corning P, ‘Equality, Equity, and Reciprocity: The Three Pillars of Social Justice | Institute for the Study of Complex Systems’

<<https://complexsystems.org/publications/equality-equity-and-reciprocity-the-three-pillars-of-social-justice/>> accessed 6 February 2021.

¹¹ *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR*, Advisory Opinions Application 2 of 2012.

1.6 I believe the immediate implementation of the two-thirds gender principle is reinforced by values of patriotism, equity, social justice, human rights, inclusiveness, equality and protection of the marginalized (Emphasis added). Such values would be subverted by an interpretation of the provisions that accepts progressive realization of this principle.

The United Nations has defined social Justice as “the fair and compassionate distribution of the fruits of economic growth.”¹²

Social justice is also viewed as the extension of principles, enshrined in [our] Constitution, of human dignity, equity, and freedom to participate in all of the political, socio-economic and cultural spheres of society.¹³ Indeed, it has also been argued that the legal needs of low-income persons are basic to their survival and ability to thrive. As such, fundamental legal rights need to be forced as they relate to such basic necessities as nutrition, health, shelter, income, education, and protection from violent physical abuse, to uphold the foundational tenets of social justice.¹⁴

According to the Center for Economic and Social Justice, “Social justice encompasses economic justice. Social justice is the virtue which guides us in creating those organized human interactions we call institutions. In turn, social institutions, when justly organized, provide us with access to what is good for the person, both individually and in our associations with others. Social justice also imposes on each of us a personal responsibility to work with others to design and continually perfect our institutions as tools for personal and social development.”¹⁵

¹² Sumpf D, ‘A Review of the Relationship between Corruption and Social Justice’ (Social Science Research Network 2015) SSRN Scholarly Paper ID 2744590 <<https://papers.ssrn.com/abstract=2744590>> accessed 6 February 2021.

¹³ Dexter, P. "Social cohesion and social justice in South Africa." *Report prepared for the Department of Arts and Culture by the Human Sciences Research Council* (2004), i.

¹⁴ Tyner A, ‘Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering’ (2013) 10 *Hastings Race and Poverty Law Journal* 219, 220.

¹⁵ ‘Defining Economic Justice and Social Justice | Center for Economic & Social Justice’ (28 May 2012) <<https://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/>> accessed 6 February 2021.

It has been observed that while formal definitions for social justice vary in wording, they all encompass: Equal rights; Equal opportunity; and Equal treatment.¹⁶

Also worth pointing is the assertion that the principles of social justice are of three general types: procedural, redistributive/compensatory, and distributive whereby principles pertaining to procedural justice concern the fairness of the process for determining what is just, independent of the outcome; principles pertaining to redistributive/compensatory justice are concerned with the determination of punishment and compensation for wrongs, injuries, and losses; and the principles that are concerned with the just allocation of limited benefits and resources pertain to distributive justice.¹⁷

While the discussion in this paper is mainly concerned with the procedural justice and distributive justice, as these two have a closer relationship with the Sustainable Development Goals (SDGs), all the three aspects certainly have a bearing on SDGS, as captured under SDG Goal 16 which 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*; SDG Goal 6 seeks to: *Ensure Availability And Sustainable Management Of Water And Sanitation For All*; SDG Goal 7 seeks to: *Ensure Access To Affordable, Reliable, Sustainable And Modern Energy For All*; and SDG Goal 10 seeks to *Reduce Inequality Within And Among Countries*, among others.

Form the foregoing meaning and concepts of ‘social justice’, sustainable development debates should be informed by the desire to ensure the creation of a just and conducive living environment where all persons get to satisfy all their basic needs but also get to fulfil their self-actualization dreams.

¹⁶ TSDF, ‘What Is Social Justice?’ (*The San Diego Foundation*, 24 March 2016) <<https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/>> accessed 26 January 2021.

¹⁷ Almgren G, ‘A Primer on Theories of Social Justice and Defining the Problem of Health Care’, *Health Care Politics, Policy, and Services* (Springer Publishing Company 2017) <<https://connect.springerpub.com/content/book/978-0-8261-6898-6/chapter/ch01>>, 2.

3. Social Justice and the Law: International and National Legal Frameworks

3.1. International and Regional Legal Frameworks on Social Justice

Justice is a universally accepted principle that has been enshrined in various international legal instruments including the Charter of the United Nations which seeks among other things *'to establish conditions under which justice and respect for obligations arising under international law can be maintained.'*¹⁸

Further, the *Universal Declaration of Human Rights* recognises the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, *justice* and peace in the world.¹⁹ The *International Covenant on Economic, Social and Cultural Rights*²⁰ recognises in its preamble that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

The *International Covenant on Civil and Political Rights*²¹ recognizes in its preamble that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

¹⁸ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

¹⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

²⁰ United Nations, *International Covenant on Economic, Social and Cultural Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

²¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

The *African Charter on Human and Peoples' Rights*²² (Banjul Charter) reaffirms in its preamble the pledge African States members of the African Union solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

4. Domestic Legal Frameworks: Kenya

The Preamble to the Constitution of Kenya 2010 recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality, democracy, *social justice* and the rule of law (Emphasis added).

Article 4(2) of the Constitution provides that the Republic of Kenya is *a multi-party democratic State founded on the national values and principles of governance referred to in Article 10*. These values and principles of governance include; (a) *patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people*; (b) *human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized* (Emphasis added).

The Constitution of Kenya 2010 also provides that the national values and principles of governance which include the rule of law, human dignity, equity, *social justice*, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised are binding on all State organs, State officers, public officers and all persons whenever any of them applies, or interprets, the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions²³ (Emphasis added).

Also notable is Article 19 (2) of the Constitution which provides that the purpose of recognising and protecting human rights and fundamental

²² 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).

²³ Article 10, Constitution of Kenya 2010.

freedoms is to preserve the dignity of the individuals and communities and to promote social justice and the realization of the potential of all human beings.

Further, article 48 of the Constitution enshrines the right of access to justice and mandates the state to ensure access to justice for all persons in Kenya.²⁴

5. Sustainable Development Goals (SDGs) and Social Justice

Sustainable Development Goals (SDGs) were adopted by all United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030.²⁵

The 17 SDGs are integrated and interconnected and acknowledge that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability.²⁶ The SDGs represent a global vision for development which necessitate members to undertake necessary legislative, political, economic, technological, social and environmental interventions towards their attainment.²⁷

Most of the SDGs are geared towards social justice and seek to achieve the following: end extreme poverty (SDG No.1); end hunger and achieve food security (SDG No.2); ensure healthy lives and promote well-being for all (SDG No.3); ensure quality education (SDG No.4); achieve gender equality

²⁴ In the case of *Thomas Alugha Ndegwa v Republic* [2016] eKLR, Criminal Appeal (Application) 2 of 2014, the Court of Appeal at Nairobi elaborated on the content of social justice as provided under Article 10 as follows:

3. While these two provisions, and more so Article 50(2)(h), are specific on legal aid, there are many other provisions of the Constitution that are relevant to the concept of legal aid. These include the value of social justice under Article 10; provisions on equality before the law under Article 27; provisions on protection of marginalised and vulnerable persons and the requirement under Article 159 that justice shall be done to all irrespective of status. The overarching notion to be derived from these provisions is that it is difficult to achieve justice where one party has to compete with the elaborate machinery and resources available to the opposite party.

²⁵ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

²⁶ 'Sustainable Development Goals' (UNDP) <<https://www.undp.org/content/oslo-governance-centre/en/home/sustainable-development-goals.html>> accessed 6 February 2021.

²⁷ *Ibid.*

(SDG No.5); ensure availability of clean water and sanitation (SDG No.6); ensure access to affordable and clean energy (SDG No.7); decent work for all and economic growth (SDG No.8); reduce inequalities within and among countries (SDG No.10); ensure responsible consumption and production (SDG No.12), combat climate change (SDG No.13) and achieve peace, justice and strong institutions (SDG No.16).²⁸

6. Achieving Social Justice in Kenya: Challenges

Despite the ambitious plan set forward by the SDGs, the situation in Kenya is still wanting. Social injustices are still widespread. Economic disparities between the poor and the rich mean that one class of people can afford all the luxuries life has to offer while the other struggles to meet even the basic human needs.²⁹ Consequently, as a result of extreme poverty a good population of Kenya cannot access quality and adequate food; health services; quality education; clean water and sanitation and affordable and clean energy.³⁰ There has been an increasing inequality gap in Kenya despite the reports on any economic development in the country, implying that the ‘fruits’ of such development do not impact everyone in the same way, with the poor becoming poorer, devoid of access to basic resources and inability to meaningfully participate in national development agenda.³¹

Further, gender disparities are still evident especially in the political and economic arena and despite the attempt by framers of the constitution to cure this ill, the country’s attempts towards gender equality has been futile.³²

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

²⁹ ‘Kenya: Extreme Inequality in Numbers | Oxfam International’ <<https://www.oxfam.org/en/kenya-extreme-inequality-numbers>> accessed 6 February 2021.

³⁰ ‘Water, Sanitation and Hygiene | UNICEF Kenya’ <<https://www.unicef.org/kenya/water-sanitation-and-hygiene>> accessed 6 February 2021.

³¹ ‘Kenya: Extreme Inequality in Numbers | Oxfam International’ <<https://www.oxfam.org/en/kenya-extreme-inequality-numbers>> accessed 6 February 2021.

³² Cf. Hydrant (<http://www.hydrant.co.uk>) S designed and built by, ‘Blog: Kenya’s Milestones in Accelerating Gender Equality and Women’s Empowerment’ (*The Commonwealth*, 20 September 2019) <<https://thecommonwealth.org/media/news/opinion-kenya-milestones-accelerating-gender-equality-and-womens-empowerment>> accessed 6 February

In addition, social injustices are evident in the employment sector where most youths and persons with disabilities in Kenya are often overlooked in employment opportunities.³³

Environmental pollution is still widespread as evidenced by pollution of water sources, poor solid waste management and industrial pollution which creates climate change concerns.³⁴

In summary, the World Bank notes that while Kenya has made significant political, structural and economic reforms that have largely driven sustained economic growth, social development and political gains over the past decade, its key development challenges still include poverty, inequality, climate change, continued weak private sector investment and the vulnerability of the economy to internal and external shocks.³⁵

2021; 'Progress towards Gender Equality under Threat, World Leaders Warn as General Assembly Marks Twenty-Fifth Anniversary of Landmark Women's Rights Conference - World' (*ReliefWeb*) <<https://reliefweb.int/report/world/progress-towards-gender-equality-under-threat-world-leaders-warn-general-assembly-marks>> accessed 6 February 2021; 'Has COVID-19 Pushed Women in Politics off Kenya's Agenda? | Inter Press Service' <<http://www.ipsnews.net/2020/07/has-covid-19-pushed-women-in-politics-off-kenyas-agenda/>> accessed 6 February 2021; 'Virus Exacerbating Global Inequality, Hunger - FNArena' <<https://www.fnarena.com/index.php/2020/10/26/virus-exacerbating-global-inequality-hunger/>> accessed 6 February 2021.

³³ Opoku MP and others, 'Access to Employment in Kenya: The Voices of Persons with Disabilities' (2017) 16 *International Journal on Disability and Human Development* 77; 'Youth With Disabilities | United Nations For Youth' (8 June 2015) <<https://www.un.org/development/desa/youth/youth-with-disabilities.html/>> accessed 6 February 2021.

³⁴ Ferronato N and Torretta V, 'Waste Mismanagement in Developing Countries: A Review of Global Issues' (2019) 16 *International Journal of Environmental Research and Public Health* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6466021/>> accessed 6 February 2021.

³⁵ 'Overview' (*World Bank*) <<https://www.worldbank.org/en/country/kenya/overview>> accessed 6 February 2021; 'World Report 2018: Rights Trends in Kenya' (Human Rights Watch, 21 December 2017) <<https://www.hrw.org/world-report/2018/country-chapters/kenya>> accessed 6 February 2021.

This state of affairs has resulted in social injustices in Kenya and does not fit within the ideal of the Sustainable Development Goals to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030.

7. Attaining Sustainable Development Goals for Social Justice in Kenya

There is need for political, economic, legal, social and technological interventions in order to hasten achievement of SDGs in Kenya whilst promoting social justice. Some of these interventions can include:

a) Integrating the SDGs into Kenya's vision and plans.³⁶

The Agenda 2030 on Sustainable Development Goals covers many aspects of development and as such, Kenya should continually review and align its development plans with the SDGs agenda in order to ensure that it is not left behind by the rest of the world.

b) Sound planning and resource allocation by the government to key sectors such as education, health, energy and agriculture.³⁷

The available resources should be strategically distributed in order to win the fight against poverty, inequality, bad governance, the skills gap between market requirements and the education curriculum, climate change, and low investment and low firm productivity, among others.³⁸

³⁶ Republic of Kenya, *Implementation of the Agenda 2030 For Sustainable Development in Kenya, June, 2017*,

<<https://sustainabledevelopment.un.org/content/documents/15689Kenya.pdf>> accessed 6 February 2021; 'Kenya: Sustainable Development Knowledge Platform' <<https://sustainabledevelopment.un.org/memberstates/kenya>> accessed 6 February 2021.

³⁷ Republic of Kenya, *Sessional paper No. 10 of 2012 On Kenya Vision 2030*, <<https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/KENYA2030.pdf>> accessed 6 February 2021; United Nations, *Sustainable Development in Kenya: Stocktaking in the run up to Rio+20*, Nairobi Kenya, 2012 <<https://sustainabledevelopment.un.org/content/documents/985kenya.pdf>> accessed 6 February 2021.

³⁸ Arias, Omar, David K. Evans, and Indhira Santos. *The skills balancing act in Sub-Saharan Africa: Investing in skills for productivity, inclusivity, and adaptability*. World Bank Publications, 2019

<<http://documents1.worldbank.org/curated/en/558991560840574354/pdf/The-Skills-Balancing-Act-in-Sub-Saharan-Africa-Investing-in-Skills-for-Productivity-Inclusivity-and-Adaptability.pdf>> accessed 6 February 2021; 'How to Fix Economic Inequality?' (*PIIE*, 17 November 2020) <<https://www.piie.com/microsites/how-fix>

c) Financial accountability and transparency in government to prevent wastage of resources which can be channeled towards social justice programmes.³⁹

It has been argued that ‘as the notions of fairness and trust permeate procedural rules (for example, democracy), their administration (for instance, no bias) and income distribution (such as, unskewed and relatively equal), corruption evidently undermines justice, as it is neither functional for economic efficiency nor human development due to the negative externalities corrupt practices create.⁴⁰ In addition, in an uncertain institutional environment of the public sector, private actors (firms, individuals, non-state actors, etc.) might take-over functions of the state and control access to services where their distribution may not be based on fairness or equity, but on group-membership or any deliberate criteria to differentiate.⁴¹ As a result, social justice outcomes over time will be negative.⁴² As such, there is a need for the government to remain steadfast in not only provision of basic services but also fighting corruption.⁴³ This is

economic-inequality> accessed 6 February 2021; ‘Nine strategies to reduce inequality’ (*A-id*, 8 November 2016) <<https://www.a-id.org/2016/11/08/nine-strategies-to-reduce-inequality/>> accessed 6 February 2021; Nam, Chang Woon. "World Economic Outlook for 2020 and 2021." In *CESifo Forum*, vol. 21, no. 02, pp. 58-59. München: ifo Institut-Leibniz-Institut für Wirtschaftsforschung an der Universität München, 2020.

³⁹ ‘Combating Corruption’

<<https://www.worldbank.org/en/topic/governance/brief/anti-corruption>> accessed 6 February 2021; Adams, Dawda, Kweku Adams, Subhan Ullah, and Farid Ullah. "Globalisation, governance, accountability and the natural resource ‘curse’: Implications for socio-economic growth of oil-rich developing countries." *Resources Policy* 61 (2019): 128-140; Read ‘*Democratization in Africa: African Views, African Voices*’ at *NAP.Edu* <<https://www.nap.edu/read/2041/chapter/5>> accessed 6 February 2021; Brechenmacher TC Saskia and Brechenmacher TC Saskia, ‘Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?’ (*Carnegie Endowment for International Peace*) <<https://carnegieendowment.org/2014/10/20/accountability-transparency-participation-and-inclusion-new-development-consensus-pub-56968>> accessed 6 February 2021.

⁴⁰ Sumpf D, ‘A Review of the Relationship between Corruption and Social Justice’ (Social Science Research Network 2015) SSRN Scholarly Paper ID 2744590 <<https://papers.ssrn.com/abstract=2744590>> accessed 6 February 2021, 3.

⁴¹ *Ibid*, 3.

⁴² *Ibid*, 9.

⁴³ ‘The Fight Against Corruption in Kenya...Yet Another Chapter’ <<https://cytonn.com/topicals/the-fight-against-corruption-in-kenyayet-another->

especially important considering that the country has been borrowing heavily and these funds should be made to count as far as transforming the citizens' lives is concerned.⁴⁴

d) Empowering the youth, persons with disabilities and other marginalised groups through equal opportunities in employment and other sectors of the economy.⁴⁵

It has rightly been pointed out that poverty and inequality are exacerbated by unemployment.⁴⁶ Poverty also creates a barrier to accessing the legal system and to exercising political power.⁴⁷ Unless these groups of persons are empowered to through giving them stable sources of income, addressing poverty in the country will remain a mirage.

e) Creating a conducive economic environment that will encourage entrepreneurship and job creation through measures such as tax waivers and financial support for startups, youth and women economic groups.⁴⁸

There is a need for economic empowerment programs for empowering women and marginalised individuals to overcome social injustice through

chapter> accessed 6 February 2021; 'Role of Parliaments in Fighting Corruption' <<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8861&lang=EN>> accessed 6 February 2021; Alfada, Anisah. "The destructive effect of corruption on economic growth in Indonesia: A threshold model." *Heliyon* 5, no. 10 (2019): e02649.

⁴⁴ 'China Says Its Ready to Help Kenya Deal with Its Debt Challenges' <<https://finance.yahoo.com/news/china-says-ready-help-kenya-155118368.html>> accessed 6 February 2021.

⁴⁵ Ver Medalla, Donie, and Bella Marie Medalla. "Empowering persons with disabilities through training and employment: A case study." In *International Forum Journal*, vol. 21, no. 1, pp. 150-172. 2018; Rua, Gustavo. "Helping Families: One Step at a Time." (2020); Ramey, Aslinda, Yarina Ahmad, and Nor Hafizah Mohamed Harith. "Social Inclusion Of Malaysian Elderly In Labour Market: The Enthusiasm Culture To Be Productive Or Just Desperate For Money?." (2035).

⁴⁶ Jayanathan Govender and Jayanathan Govender, 'Social Justice in South Africa' (2016) 16 *Civitas - Revista de Ciências Sociais* 237.

⁴⁷ Tyner A, 'Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering' (2013) 10 *Hastings Race and Poverty Law Journal* 219, 220.

⁴⁸ Oladimeji, Moruff Sanjo, Augusta Thereza Ebodaghe, and Peter Babatunde Shobayo. "Effect of globalization on small and medium enterprises (smes) performance in Nigeria." *International Journal of Entrepreneurial Knowledge* 5, no. 2 (2017): 56-65.

economic capacity building.⁴⁹ The government should put in place incentives that will encourage women and marginalised individuals to set up and flourish in business thus creating job opportunities for many more individuals.

f) Improving the representation of youths, women and persons with disabilities in political positions through necessary legal and policy measures.⁵⁰

The social disparities especially between men and women was greatly exposed by the Covid-19 pandemic where it was reported that in 13 out of 17 countries surveyed since the outbreak, women reported more emotional stress and mental health challenges compared to men, including higher gender-based violence, fewer sexual and reproductive services, greater economic impact and increased household burdens. Notably, the 17 countries surveyed were France, Germany, the UK, US, Canada, Japan, Australia, New Zealand, India, Mexico, China, Colombia, Switzerland, South Africa, Argentina, Kenya and Tunisia.⁵¹

There is a need for the state to continually adopt and put in place measures that will address the social inequalities and inequities that exist among the different groups for inclusive social development.

⁴⁹ 'Social Justice and Peace for Marginalized Women in Kenya | ASEC-SLDI News' (ASEC-SLDI) <<http://asec-sldi.org/news/success/social-justice-peace-kenya/>> accessed 6 February 2021.

⁵⁰ 'Realising the Inclusion of Youth with Disabilities in Political and Public Life in Kenya [2016] ADRY 3' <<http://www.saflii.org/za/journals/ADRY/2016/3.html>> accessed 6 February 2021; Editor, 'Political Participation of Women with Disabilities' (*International Knowledge Network of Women in Politics*, 13 June 2019) <<https://www.iknowpolitics.org/en/discuss/e-discussions/political-participation-women-disabilities>> accessed 6 February 2021.

⁵¹ 'Aiming for a Gender-Equal World' (*Cosmos Magazine*, 29 January 2021) <<https://cosmosmagazine.com/people/society/aiming-for-a-gender-equal-world/>> accessed 6 February 2021; see also 'The Changes and Challenges to Justice in the Time of COVID-19' (UNDP) <<https://www.undp.org/content/undp/en/home/blog/2020/the-changes-and-challenges-to-justice-in-the-time-of-covid-19.html>> accessed 6 February 2021.

g) Fast tracking the country's journey towards renewable energy and electrification programme towards promoting access to clean and affordable energy.⁵²

In order to reduce the cost of energy and also move closer towards combating climate change, there is a need for the government to encourage investment in cleaner and affordable alternative sources of energy in the country.⁵³

h) Working together with the global community towards achieving common goals such as combating climate change and reducing inequality among countries.⁵⁴

It is acknowledged that Kenya cannot achieve some of the SDGs without working closely with other international players either due to funding challenges or simply lack of expertise in certain areas, hence the need to strategically pick cooperation partners in its efforts towards achieving sustainable development goals.⁵⁵

⁵² Energy Sector Management Assistance Program. "The State of Access to Modern Energy Cooking Services." (2020); Herrero, Carmen, José Pineda, Antonio Villar, and Eduardo Zambrano. "Tracking progress towards accessible, green and efficient energy: The Inclusive Green Energy index." *Applied Energy* 279 (2020): 115691.

⁵³ 'Goal 7: Affordable and Clean Energy | UNDP'

<<https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-7-affordable-and-clean-energy.html>> accessed 6 February 2021; July 26 and Alum 2016 Noah Long Kevin Steinberger-, 'Renewable Energy Is Key to Fighting Climate Change' (NRDC) <<https://www.nrdc.org/experts/noah-long/renewable-energy-key-fighting-climate-change>> accessed 6 February 2021; Environment UN, 'GOAL 7: Affordable and Clean Energy' (UNEP - UN Environment Programme, 2 October 2017)

<<http://www.unenvironment.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-7>> accessed 6 February 2021; Owusu PA and Asumadu-Sarkodie S, 'A Review of Renewable Energy Sources, Sustainability Issues and Climate Change Mitigation' (2016) 3 Cogent Engineering 1167990; 'Bill Gates: This Is What We Need to Do to Tackle Climate Change' (World Economic Forum) <<https://www.weforum.org/agenda/2019/05/a-critical-step-to-reduce-climate-change/>> accessed 6 February 2021.

⁵⁴ Martin, 'Reduce Inequality within and among Countries' (United Nations Sustainable Development)

<<https://www.un.org/sustainabledevelopment/inequality/>> accessed 6 February 2021.

⁵⁵ 'Universality and the SDGs: A Business Perspective' (Sustainable Development Goals Fund, 7 November 2016) <<https://www.sdgfund.org/universality-and-sdgs>> accessed 6 February 2021; 'Kenya .:. Sustainable Development Knowledge Platform' <<https://sustainabledevelopment.un.org/memberstates/kenya>> accessed 6

i) Strengthening and Supporting Institutions Such as the Judiciary In Order To Achieve the Right of Access to Justice.⁵⁶

Article 20(4) (a) of the Constitution of Kenya provides that the court, in interpreting the Bill of Rights, should promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom. In addition, Article 21 (3) requires the court to address the needs of the vulnerable groups within the society, including women, older members of society, persons with disability, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

In ensuring equality and non-discrimination, Article 27 (6) obligates the State to give full effect to the realization of the right to equality and freedom from discrimination by taking legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Kenyan courts have also clearly expressed themselves on the place of social justice and access to justice generally. For instance, in the case of *Kenya Bus Service Ltd & Another V Minister For Transport & 2 others* [2012] eKLR⁵⁷, the Court stated as follows:

8. **By incorporating the right of access to justice, the Constitution requires us to look beyond the dry letter of the law.** *The right of access to justice is a reaction to and a protection against legal formalism and dogmatism. (See “Law and Practical Programme for Reforms” (1992) 109 SALJ 22) Article 48 must be located within the Constitutional imperative that recognises as the Bill of Rights as the framework for social, economic and cultural policies. **Without***

February 2021; ‘Sustainable Development Goals | UNDP in Kenya’ (UNDP) <<https://www.ke.undp.org/content/kenya/en/home/sustainable-development-goals.html>> accessed 6 February 2021.

⁵⁶ ‘Access to Justice - United Nations and the Rule of Law’ <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>> accessed 6 February 2021.

⁵⁷ *Kenya Bus Service Ltd & another V Minister For Transport & 2 others* [2012] eKLR, Civil Suit 504 of 2008.

access to justice the objects of the Constitution which is to build a society founded upon the rule of law, dignity, social justice and democracy cannot be realised for it is within the legal processes that the rights and fundamental freedoms are realised. Article 48 therefore invites the court to consider the conditions which clog and fetter the right of persons to seek the assistance of courts of law. (Emphasis added)

Lawyers have also been challenged- that in order to accomplish meaningful social change, they must also move beyond their traditional role as mediaries between clients and the justice system and work collaboratively with marginalized communities.⁵⁸ To this end, lawyers should stand as leaders to help underprivileged people obtain the basic necessities of life and dignity through three pillars of new social justice lawyering: social justice lawyering, leadership, and public policy advocacy.⁵⁹ This is because lawyers in particular are trained with the tools needed to critically analyze law and policies, problem solve around complex social issues, and use writing as a form of advocacy.⁶⁰ These social justice lawyering roles and pillars are summarized as follows:

The first pillar, social justice lawyering, focuses on using the law as a tool to dismantle systems of oppression and create equal access to justice. The second pillar challenges lawyers to develop their leadership skills and strengthen the leadership capacity of others. Within the leadership capacity, lawyers can aid in empowering others. This moves beyond serving a particular client to acknowledging that each person can serve as an invaluable contributor in the process of social change. Lawyers are challenged to explore the question: "Do you grow the people whom you lead?" Finally, the third pillar is the foundation of systems change and policy reform. Public policy advocacy focuses on working with communities to organize and mobilize around social justice issues impacting their daily lives. This type of advocacy cultivates the

⁵⁸ Gonzalez, Thalia. "Root to rise: mindful lawyering for social justice." *NYU Rev. L. & Soc. Change* 41 (2017): 91.

⁵⁹ Tyner A, 'Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering' (2013) 10 *Hastings Race and Poverty Law Journal* 219.

⁶⁰ *Ibid*, 219.

transformational power of collective engagement with the goal in mind of fostering equitable policies. By applying the principles of “new social justice lawyering” lawyers can collaborate with marginalized communities to realize a vision of justice and equity.⁶¹

j) Meaningful Participation of the Media and Learning Institutions in combating Social Injustice⁶²

While learning institutions play an important role in providing education which is a very relevant tool in economic, social and political empowerment of communities through future job opportunities, alleviating poverty and enabling public participation in governance, they can also be very useful in changing attitudes in the society.⁶³ This is however not to say that other members of the society and institutions should sit back; the country’s transformation agenda should be a concerted effort from all.⁶⁴

It has rightly been pointed out that the active and meaningful participation of citizens in public affairs is the distinguishing feature of democratic societies, which are judged by the extent to which governments open up to

⁶¹ Ibid, 263-264.

⁶² Jansen SC, ‘Introduction: Media, Democracy, Human Rights, and Social Justice’ in Sue Curry Jansen, Jefferson Pooley and Lora Taub-Pervizpour (eds), *Media and Social Justice* (Palgrave Macmillan US 2011) <https://doi.org/10.1057/9780230119796_1> accessed 6 February 2021; Wilson-Strydom M, ‘University Access and Theories of Social Justice: Contributions of the Capabilities Approach’ (2015) 69 Higher Education 143; ‘(PDF) Civic Engagement, Social Justice, and Media Literacy’ <https://www.researchgate.net/publication/339692611_Civic_Engagement_Social_Justice_and_Media_Literacy> accessed 6 February 2021.

⁶³ ‘Opinion | Social Justice, Austerity, and the Humanities Death Spiral’ (*CHE*, 2 February 2021) <<https://www.chronicle.com/article/social-justice-austerity-and-the-humanities-death-spiral>> accessed 6 February 2021.

⁶⁴ Mutunga W, ‘WILLY MUTUNGA - Memo to Upper Deck People: Fight for the 2010 Constitution or Perish | The Elephant’ (5 February 2021) <<https://www.theelephant.info/op-eds/2021/02/05/memo-to-upper-deck-people-support-the-constitution-or-perish/>> accessed 6 February 2021; ‘7 African Musicians Whose Music Stands Up Against Injustice & Inequality’ (*Global Citizen*) <<https://www.globalcitizen.org/en/content/african-musicians-music-fight-inequality-injustice/>> accessed 6 February 2021; Knight B, ‘African Radicals Must Realise the Importance of Pan-Africanism’ <<https://www.aljazeera.com/opinions/2021/2/2/african-radicals-must-realise-the-importance-of-pan-africanism>> accessed 6 February 2021.

citizen involvement in public affairs and the space they give for citizens to hold the government accountable.⁶⁵

k) Supporting county governments through adequate budgetary allocation and timely release of funds to enable them discharge their mandate under the Constitution.⁶⁶

There is a need for timely release of adequate funds to the concerned organs and departments in both the national and county governments' level in order to support the fulfilment of the state obligations towards realisation of socio-economic rights in the country.

In *John Kabui Mwai & 3 Others V Kenya National Examination Council & 2 Others [2011] eKLR*⁶⁷, a Three-Judge High Court Bench stated as follows:

In our view, the inclusion of economic, social and cultural rights in the Constitution is aimed at advancing the socio-economic needs of the people of Kenya, including those who are poor, in order to uplift their human dignity. The protection of these rights is an indication of the fact that the Constitution's transformative agenda looks beyond merely guaranteeing abstract equality. There is a commitment to transform Kenya from a society based on socio-economic deprivation to one based on equal and equitable distribution of resources. This is borne out by Articles 6(3) and 10 (2) (b).

The realisation of socio-economic rights means the realization of the conditions of the poor and less advantaged and the beginning of a generation that is free from socio-economic need. One of the obstacles to the realisation of this objective, however, is limited

⁶⁵ 'Kenya: Democracy and Political Participation' <<https://www.opensocietyfoundations.org/publications/kenya-democracy-and-political-participation>> accessed 6 February 2021.

⁶⁶ *County Assembly of Machakos v Governor, Machakos County & 4 others [2019] eKLR, Petition 17 of 2017*; Mohamed, Mohamed Musa. "Resource allocation: experiences and challenges in County Governments." PhD diss., Strathmore University, 2018.

⁶⁷ *John Kabui Mwai & 3 Others v Kenya National Examination Council & 2 Others [2011] eKLR, Petition 15 of 2011.*

financial resources on the part of the Government. The available resources are not adequate to facilitate the immediate provision of socio-economic goods and services to everyone on demand as individual rights. There has to be a holistic approach to providing socio-economic goods and services that focus beyond the individual.

Socio-economic rights are by their very nature ideologically loaded. The realisation of these rights involves the making of ideological challenges which, among others, impact on the nature of the country's economic system. This is because these rights engender positive obligations and have budgetary implications which require making political choices. In our view, a public body should be given appropriate leeway in determining the best way of meeting its constitutional obligations (*Emphasis added*).

Through these and many other measures, Kenya will fast-track the attainment of Sustainable Development Goals and achieve the ideal of a society that is just and founded on the principles of equality and fairness.

9. Conclusion

Some scholars have rightly pointed out that social justice in theory and practice is part of the general evolution of justice in human civilizations, which is a part of the ongoing struggles against the repression of any people and on behalf of the liberation of all people.⁶⁸

It has been observed that the aspiration for social justice, through which every working man and woman can claim freely and on the basis of equality of opportunity their fair share of the wealth that they have helped to generate, has always been great.⁶⁹

⁶⁸ Barak G, 'Social Justice and Social Inequalities' in James D Wright (ed), *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)* (Elsevier 2015) <<https://www.sciencedirect.com/science/article/pii/B9780080970868450853>> accessed 6 February 2021.

⁶⁹ 'The Need for Social Justice' <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm>> accessed 6 February 2021.

Notably, while the term social justice has many uses and interpretations, but in its most basic and universal sense, social justice is a philosophical construct—in essence, a political theory or system of thought used to determine what mutual obligations flow between the individual and society.⁷⁰ While discussed in the context of sustainable development goals, the 2030 Agenda on Sustainable Development Goals spells out obligations for states but also requires the meaningful participation of citizens in meeting the goals thereof.⁷¹ The concept of social justice requires that the citizens should not only be treated equally and equitably in access and use of resources but also getting affair opportunity to play their part in development agenda.

The stakeholders in Kenya should ensure that even as they strive towards realisation of the SDGs, social justice as envisaged in the Constitution of Kenya should actively be pursued as a means towards an end-achieving sustainable development goals.

⁷⁰ Almgren G, ‘A Primer on Theories of Social Justice and Defining the Problem of Health Care’, *Health Care Politics, Policy, and Services* (Springer Publishing Company 2017) <<https://connect.springerpub.com/content/book/978-0-8261-6898-6/chapter/ch01>>

⁷¹ See SDG Goal which 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.

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<<https://www.opensocietyfoundations.org/publications/kenya-democracy-and-political-participation>> accessed 6 February 2021.

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