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## Addressing the Contemporary Issues in Biodiversity Conservation

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### **Abstract**

*Biodiversity resources play a huge role in not only meeting the needs of human beings but also sustaining healthy ecosystems for the sake of all living organisms. However, there are increased rates of biodiversity degradation, thus calling for improved measures towards conservation of these biological diversity resources. In acknowledging that biodiversity resources face a myriad of threats, this paper discusses the various issues that affect biodiversity conservation efforts and which issues must thus be addressed as part of conservation measures.*

### **1. Introduction**

This paper highlights some of the contemporary issues that arise from biological diversity debates, and ones that are likely to affect how countries respond to the conservation of biodiversity responsibilities as envisaged under the international, regional and national environmental regulatory frameworks. The author argues that unless these issues are strategically addressed, any efforts geared towards biodiversity conservation may not bear much fruits. Biological diversity is a term used to refer to 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: this includes diversity within species, between species and of ecosystems. These resources play a huge role in not only environmental processes but also in provision of ecosystem resources for all living organisms, including human beings.<sup>1</sup> Arguably, if the world is to achieve the

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sustainable development goals, then the conservation of these resources must be treated with urgency and it also calls for the concerted efforts of all stakeholders and cooperation from all countries, at least at the international level. The world must address the human activities that have been contributing to the degradation of these resources.<sup>2</sup>

The need for this cooperation was born out of the fact that ‘the responsibility for biodiversity conservation has traditionally been seen as a function of government and, particularly, of its environment departments and conservation agencies, where Non-governmental organisations, local communities and other interest groups have supported this role by championing specific environmental issues and conversely, business and industry are typically regarded as competitors to environmental causes, needing land and resources for production’.<sup>3</sup>

This paper acknowledges that biodiversity conservation is a cross-cutting issue which is affected by different but related development and environmental issues that must be considered in any efforts taken by stakeholders in any conservation measures.

## **2. Contemporary Issues in Biodiversity Conservation**

It is now a non-contentious position that ‘biodiversity is considered to be an essential component for sustainable development and human well-being, which underpins the provision of food and water; mitigates and provides resilience to climate change; supports human health, and provides jobs in agriculture, fisheries, and forestry, among other sectors.’<sup>4</sup> It is worth pointing out that globally, early environmental conservation and natural resource

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<sup>1</sup> United Nations Development Programme. "The future we want: Biodiversity and ecosystems—driving sustainable development." (2012),1.

<sup>2</sup> *Ibid.*

<sup>3</sup> Ginsburg, A., Stephens, A., Tau, M., Botts, E., & Holness, S., ‘Biodiversity Mainstreaming in South Africa’s Production Landscapes: Lessons and Achievements’ [2020] International Grassland Congress Proceedings <<https://uknowledge.uky.edu/igc/22/2-15/1>> accessed 24 July 2021.

<sup>4</sup> United Nations, “Biodiversity at the Heart of Sustainable Development”, *Input to the 2018 High-level Political Forum on Sustainable Development (HLPF)*, Secretariat of the Convention on Biological Diversity (CBD), 27 April 2018, 1.

management initiatives concentrated on improving water and land management, by the 1980s, there had been a shift in country-level's environmental focus to integrate biodiversity conservation into mainstream development processes, with an emphasis on production sector projects, national and sub-national policy and planning, institutional development, and disaster risk reduction.<sup>5</sup> This section highlights some of the main environmental and development issues that have a bearing on biodiversity conservation efforts.

### 2.1. Sustainable Trade and Investment Regimes

Kenya's position as a global investment destination has been improving significantly, with the World Bank's latest 'Ease of Doing Business' ratings identifying Kenya as one of the most notably improved countries globally, progressing 24 places in two years from 80th in 2017 to 56th in 2019.<sup>6</sup> During the said period, the flow of foreign direct investment also saw a significant step up in 2018, increasing by 27 per cent to \$1.6 billion, according to the United Nations Conference on Trade and Development (UNCTAD).<sup>7</sup> In order to strengthen the private sector which is considered to be crucial to implementing the President's Big Four Agenda, and foreign direct investment which has a key role in increasing private sector activity, the Kenyan Government has been working towards increased foreign direct investment by taking steps to facilitate private enterprise and foreign investment, for instance, through predictable regulatory and tax practices.<sup>8</sup> The Presidency's *Big Four Agenda* which is a 5-year development plan under 4 key pillars, namely: food security, affordable housing, manufacturing, and affordable healthcare for all.<sup>9</sup>

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<sup>5</sup> United Nations Development Programme, 'The Future We Want: Biodiversity and Ecosystems—Driving Sustainable Development.' (Biodiversity and ecosystems global framework 2012–2020, 2012), 9-10.

<sup>6</sup> 'What's the Role of an Impact Investor like CDC in Kenya?' (CDC Group) <<https://www.cdcgroup.com/en/news-insight/insight/articles/whats-the-role-of-an-impact-investor-like-cdc-in-kenya/>> accessed 23 July 2021.

<sup>7</sup> *Ibid.*

<sup>8</sup> 'What's the Role of an Impact Investor like CDC in Kenya?' (CDC Group) <<https://www.cdcgroup.com/en/news-insight/insight/articles/whats-the-role-of-an-impact-investor-like-cdc-in-kenya/>> accessed 23 July 2021.

<sup>9</sup> 'The Big 4 - Empowering the Nation' <<https://big4.delivery.go.ke/>> accessed 25 December 2020.

The Kenya National Action Plan On Business And Human Rights For the Implementation of the United Nations Guiding Principles on Business and Human Rights<sup>10</sup> (NAP) was drafted to domesticate the UN Guiding Principles on Business and Human Rights focusing on five thematic issues identified by stakeholders, namely: Land and Natural Resources; labour rights; revenue transparency; environmental protection; and access to remedy.<sup>11</sup> The objectives of this NAP are: To guide the State as it fulfils its duty to protect individuals and communities from business-related human rights abuses, consistent with its domestic and international obligations; To guide businesses on the measures they should undertake to meet their responsibility to respect human rights in their operations; To offer a roadmap of strengthening access to State-based judicial and non-judicial remedies for victims of business-related harm and to promote human rights due diligence by businesses, ensuring that they play their role in the attainment of SDGs in a manner that respects human rights; and to form a basis for dialogue between the State, businesses, individuals and communities whose rights are adversely impacted by business operations, and civil society organisations on promoting respect for human rights by businesses.<sup>12</sup>

The NAP outlines policy actions aimed at enhancing State duty to protect human rights as well as those aimed at enhancing and upholding corporate responsibility to respect human rights.<sup>13</sup> It is a step in the right direction and has the potential to enhance respect for human rights in the country. Notably, businesses must also ensure that their business operations and decisions are friendly and indeed promote biodiversity conservation. In light of this, it has been suggested that for a business to establish whether their actions are contributing to the strategic goals, they must: (a) make a clear commitment to balance or outweigh any negative impacts on biodiversity through

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<sup>10</sup> Republic of Kenya, Kenya national action plan on business and human rights For the Implementation of the United Nations Guiding Principles on Business and Human Rights, June 2019

<[https://www.ohchr.org/Documents/Issues/Business/NationalPlans/2019\\_FINAL\\_BHR\\_NAP.PDF](https://www.ohchr.org/Documents/Issues/Business/NationalPlans/2019_FINAL_BHR_NAP.PDF)> accessed 23 July 2021.

<sup>11</sup> *Ibid*, p. ii.

<sup>12</sup> *Ibid*, p. 11.

<sup>13</sup> *Ibid*, chapter two.

mitigation activities (e.g., no net loss or net gain for biodiversity); (b) quantify their impacts on biodiversity, and the biodiversity benefits that are derived from their actions; and (c) determine the net outcome of their biodiversity performance at site, supply chain or organizational level, thus advancing business accountability.<sup>14</sup>

There is a need for continued development of a trade and investment regime aimed at enhancing and promoting public participation in development as part of ensuring that there is encouragement and realization of development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed, as envisaged under SDG 17, Target 17.7. Notably, the push for economic growth cannot only be driven by Kenya's Government but also by its people, hence the need for a regime that promotes active and meaningful participation of the people in these activities.<sup>15</sup> The Convention on Biological Diversity (CBD) Aichi Target 3 also requires that "by 2020, at the latest, incentives, including subsidies, harmful to biodiversity are eliminated, phased out or reformed in order to minimize or avoid negative impacts, and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio-economic conditions".<sup>16</sup>

In order to achieve the sustainable development goals, the *2015 Addis Ababa Action Agenda on Financing for Development* captured the importance of domestic resource mobilization, noting that the "mobilization and effective use of domestic resources ... are central to our common pursuit of sustainable

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<sup>14</sup> Smith, T., Beagley, L., Bull, J., Milner-Gulland, E.J., Smith, M., Vorhies, F. and Addison, P.F., 'Biodiversity Means Business: Reframing Global Biodiversity Goals for the Private Sector' (2020) 13 Conservation Letters e12690, 7.

<sup>15</sup> 'What's the Role of an Impact Investor like CDC in Kenya?' (*CDC Group*) <<https://www.cdcgroup.com/en/news-insight/insight/articles/whats-the-role-of-an-impact-investor-like-cdc-in-kenya/>> accessed 23 July 2021.

<sup>16</sup> Unit B, 'Aichi Biodiversity Targets' (18 September 2020) <<https://www.cbd.int/sp/targets/>> accessed 8 September 2021.

development.”<sup>17</sup> Notably, it has also been rightly pointed out that the only reliable and sustained sources of government revenue are taxes and some non-tax revenue instruments, such as royalties and resource rents from extractive industries and, to a limited extent, user fees for public services, generally delivered by local governments.<sup>18</sup> However, most African countries have been over relying on foreign aid and loans to fund their ever expanding national budgets, and Kenya is no exception.<sup>19</sup> With the pressure and the 2030 deadline to achieve the sustainable development goals, the need for alternative funding will only grow. As such, there is a need for these countries to not only look for alternative sources of the required financial resources but also the ones that come with less complications and strings attached. It is for this reason that these countries need to focus more on capitalizing on domestic resource mobilization as a source of funding development projects. This is important as Official Development Assistance (ODA) is finite and fluctuates over time, creating uncertainty for recipient countries about planning, budgeting, and expenditures in the public sector.<sup>20</sup> External debt burdens have an impact on biodiversity conservation as both climate and biodiversity targets require countries to mobilise resources to meet those ambitions.<sup>21</sup> Some researchers have even suggested that forgiving developing countries’ debts, such as Kenya’s hefty foreign debt, in exchange for the government devoting those resources to fighting climate change threats and biodiversity loss, could tackle several big

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<sup>17</sup> Junquera-Varela, R. F., Verhoeven, M., Shukla, G. P., Haven, B., Awasthi, R., & Moreno-Dodson, B., *Strengthening Domestic Resource Mobilization: Moving from Theory to Practice in Low-and Middle-Income Countries* (The World Bank 2017), chapter Two.

<sup>18</sup> *Ibid*, 5.

<sup>19</sup> Kwemo AB, ‘Making Africa Great Again: Reducing Aid Dependency’ (*Brookings*, 20 April 2017) <<https://www.brookings.edu/blog/africa-in-focus/2017/04/20/making-africa-great-again-reducing-aid-dependency/>> accessed 8 September 2021.

<sup>20</sup> Junquera-Varela, R. F., Verhoeven, M., Shukla, G. P., Haven, B., Awasthi, R., & Moreno-Dodson, B., *Strengthening Domestic Resource Mobilization: Moving from Theory to Practice in Low-and Middle-Income Countries* (The World Bank 2017), 6.

<sup>21</sup> ‘Time for Solutions to Tackle the Twin Sovereign Debt and Nature Crises’ (*Green Fiscal Policy Network*) <<https://greenfiscalpolicy.org/blog/time-for-solutions-to-tackle-the-twin-sovereign-debt-and-nature-crises/>> accessed 8 September 2021.

problems at once, in what is referred to as debt swaps.<sup>22</sup> However, while debt-for-nature and debt-for-climate swaps are a relatively new idea, they hold a potential to tackling biodiversity loss challenges through funding, while promoting sustainable development.<sup>23</sup>

It is documented that when the investment requirements for the Sustainable Development Goals (SDGs) were first assessed in the United Nations Conference on Trade and Development's (UNCTAD's) World Investment Report 2014, at least 10 relevant sectors (encompassing all 17 SDGs) were identified and the report projected an annual investment gap of \$2.5 trillion in developing countries.<sup>24</sup> While this projection remains valid today, according to a recent review (UNCTAD, 2020), the SDGs have significant resource implications across developed and developing countries and require a step-change in levels of both public and private investment in the SDGs.<sup>25</sup> In line with this, the CBD post-2020 biodiversity framework negotiations have increased attention on opportunities for increased businesses engagement with, and accountability for, their interdependencies.<sup>26</sup>

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<sup>22</sup> 'Debt Swaps Could Free Funds to Tame Climate, Biodiversity and Virus Threats' *Reuters* (7 September 2020) <<https://www.reuters.com/article/us-global-debtrenegotiation-nature-clima-idUSKBN25Y26P>> accessed 8 September 2021.

<sup>23</sup> *Ibid*; Yue M and WANG CN, 'Debt-For-Nature Swaps: A Triple-Win Solution for Debt Sustainability and Biodiversity Finance in the Belt and Road Initiative (BRI)? – Green Belt and Road Initiative Center' <<https://green-bri.org/debt-for-nature-swaps-in-the-belt-and-road-initiative-bri/>> accessed 8 September 2021; Smith, T., Beagley, L., Bull, J., Milner-Gulland, E.J., Smith, M., Vorhies, F. and Addison, P.F., 'Biodiversity Means Business: Reframing Global Biodiversity Goals for the Private Sector' (2020) 13 *Conservation Letters* e12690; Bishop J, *The Economics of Ecosystems and Biodiversity in Business and Enterprise* (Routledge 2013); Arlaud M and others, 'The Biodiversity Finance Initiative: An Approach to Identify and Implement Biodiversity-Centered Finance Solutions for Sustainable Development' [2018] *Towards a Sustainable Bioeconomy: Principles, Challenges and Perspectives* 77.

<sup>24</sup> Zhan JX and Santos-Paulino AU, 'Investing in the Sustainable Development Goals: Mobilization, Channeling, and Impact' (2021) 4 *Journal of International Business Policy* 166.

<sup>25</sup> *Ibid*.

<sup>26</sup> Smith, T., Beagley, L., Bull, J., Milner-Gulland, E.J., Smith, M., Vorhies, F. and Addison, P.F., 'Biodiversity Means Business: Reframing Global Biodiversity Goals for the Private Sector' (2020) 13 *Conservation Letters* e12690, 2.



The need for enhanced domestic resource mobilization is also more urgent in light of the UNCTAD's observations that the COVID-19 shock has exacerbated existing constraints for the SDGs and could undo the progress made in the last six years in SDG investment and the international private sector investment flows to developing and transition economies in sectors relevant for the SDGs were also expected to fall by about one-third in 2020 because of the COVID-19 pandemic, posing a risk to delivering on the 2030 agenda for sustainable development.<sup>27</sup>

Thus, as part of laying the groundwork for the achievement of SDGs, there is a need for countries, including Kenya, to review their domestic resource mobilization efforts and work towards enhancing the same, aimed at reducing over-reliance on external debt which may come with conditions and subsequently affect a country's commitment to climate change and biodiversity conservation.

Indeed, at the UN/WTO joint side event to COP26, held in November 2021, whose agenda was 'climate finance and trade to build resilience to climate change', it was agreed that international trade can be an integral part in building resilience and achieving the SDGs through generating the resources needed for investment, simultaneously creating wealth and building resilience of the most vulnerable nations while promoting a systemic shift towards sustainable production and consumption.<sup>28</sup> It was also agreed that mobilizing climate finance and investment capital through innovative finance mechanisms, such as climate action-debt swaps and green bonds, can also ensure that solutions are translated into practice and enhance the adaptive capacity and resilience of the most vulnerable.<sup>29</sup>

The unveiling of the SDGs in 2015 meant that most developing countries would have to step up their efforts to raise domestic resources to finance

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<sup>27</sup> Zhan JX and Santos-Paulino AU, 'Investing in the Sustainable Development Goals: Mobilization, Channeling, and Impact' (2021) 4 *Journal of International Business Policy* 166.

<sup>28</sup> 'Program COP26 Side Event' <<https://unctad.org/system/files/information-document/ditc-ted-06112021-COP26-sideevent-programme-v1.pdf>> accessed 23 November 2021.

<sup>29</sup> Ibid.

needed domestic investment as support from development partners and private sector investors would not be enough.<sup>30</sup>

While there are various external mechanisms of funding that are available to countries for exploitation, there is a need for countries such as Kenya to enhance their domestic resources mobilization mechanisms.

Domestic trade and investments that financially and socially empower communities will mean that their over-reliance on environmental resources will decrease and subsequently reduce over-exploitation of these resources, which usually has a great impact on biodiversity. This is protecting, restoring, and managing key ecosystems helps biodiversity and people to adjust to changing climatic conditions.

## **2.2. Climate Change Mitigation and Biodiversity Conservation**

Climate change is one of the factors that affect agricultural production and, therefore, critical in understanding biodiversity mainstreaming and conservation in the agricultural sector.

The Convention on Biological Diversity (CBD) Aichi Target 15 obligates States to ensure that “by 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification”.<sup>31</sup> Current reports also indicate that countries need to decrease greenhouse gas emissions by 25% by 2030 compared to 1990 levels to achieve the 2 degrees Celsius (°C) target of the Paris Agreement and 55% to reach the 1.5°C target, and this can arguably be achieved through, *inter alia*, conserving, sustainably managing and restoring ecosystems as plants and soils in terrestrial ecosystems absorb an estimated

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<sup>30</sup> ‘Heightening Domestic Resource Mobilization in Africa During COVID-19’ (Center for Global Development) <<https://www.cgdev.org/blog/heightening-domestic-resource-mobilization-africa-during-covid-19>> accessed 22 March 2021.

<sup>31</sup> Unit B, ‘Aichi Biodiversity Targets’ (18 September 2020) <<https://www.cbd.int/sp/targets/>> accessed 8 September 2021.

9.5 billion tonnes of carbon dioxide equivalent every year.<sup>32</sup> This is especially important considering that land-use change and poor management have depleted carbon stocks in terrestrial ecosystems, resulting in large emissions of carbon into the atmosphere, with deforestation and forest degradation accounting for around 12% of global emissions of carbon dioxide (CO<sub>2</sub>).<sup>33</sup>

The *Climate Change Act 2016* is to be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya. The Act is to be applied in all sectors of the economy by the national and county governments to mainstream climate change responses into development planning, decision making and implementation; build resilience and enhance adaptive capacity to the impacts of climate change; formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change; mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities; mainstream intergenerational and gender equity in all aspects of climate change responses and provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development.

**It is hoped that the commitments made at the COP 26 will renew the hope for funding, especially with the *Glasgow Climate Pact*, which includes an unprecedented goal for developed countries to double the funding provided to developing countries for adaptation by 2025, taking the annual figure to around US \$40 billion.**<sup>34</sup>

The National Policy for the Sustainable Development of Northern Kenya and other Arid Lands affirms that in Kenya, the ASALs occupy 89% of the

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<sup>32</sup> OECD (2019), *Biodiversity: Finance and the Economic and Business Case for Action*, report prepared for the G7 Environment Ministers' Meeting, 5-6 May 2019, 31.

<sup>33</sup> *Ibid*, 31.

<sup>34</sup> 'What Does COP26 Mean for Adaptation?' (UNEP, 17 November 2021) <<http://www.unep.org/news-and-stories/story/what-does-cop26-mean-adaptation>> accessed 23 November 2021.

country and are home to about 36% of the population, 70% of the national livestock herd and 90% of the wild game that supports the country's tourism industry. The objectives of this policy are to: provide a framework for ASAL development coordination, resource mobilization, research, monitoring and evaluation; strengthen cohesion and integration of ASAL with the rest of the country and address inequality including gender, youth and vulnerable groups; improve the enabling environment for development in the ASALs by establishing the necessary foundations for development and bridge development gaps; develop alternative approaches to service delivery in Pastoral Areas; provide a policy framework for enhancing synergy on ending drought emergencies; promote sustainable utilization of existing land and land based resources to facilitate national economic development; and to provide an enabling environment for sustainable agriculture, livestock, trade and tourism development in the ASALs.

Arguably, **climate change adaptation actions that do not consider the role of, and potential impacts on, biodiversity can have adverse effects – increasing rather than reducing climate change vulnerability.**<sup>35</sup> Thus, an effective climate change response requires consideration of the role of, and potential impacts on, biodiversity and ecosystem services, where biodiversity and ecosystem services support people to adapt to climate change through approaches collectively called ecosystem-based adaptation.<sup>36</sup> Ecosystem-Based Adaptation (EBA) has been defined as the adaptation policies and measures that take into account the role of ecosystem services in reducing the vulnerability of society to climate change, in a multi-sectoral and multi-scale approach, where BA involves national and regional governments, local communities, private companies and NGOs in addressing the different pressures on ecosystem services, including land use change and climate change, and managing ecosystems to increase the resilience of people and economic sectors to climate change.<sup>37</sup> Arguably, ecosystem based approaches to adaptation

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<sup>35</sup> Mant, R., Perry, E., Heath, M., Munroe, R., Väänänen, E., Großheim, C., & Kümper-Schlake, L., 'Addressing Climate Change—Why Biodiversity Matters' [2014] UNEP-WCMC: Cambridge, UK, 3.

<sup>36</sup> *Ibid*, 2.

<sup>37</sup> Vignola, R., Locatelli, B., Martinez, C., & Imbach, P., 'Ecosystem-Based Adaptation to Climate Change: What Role for Policy-Makers, Society and

**harness the capacity of nature to buffer human communities against the adverse impacts of climate change through the sustainable delivery of ecosystem services.<sup>38</sup> This is because, deployed with focus on specific ecosystem services with the potential to reduce climate change exposures, the forms used are targeted management, conservation and restoration activities.<sup>39</sup>**

Ecosystems are important to not only important to sustenance of human life but they also deliver services that can help meet adaptation needs across multiple human development sectors including disaster risk reduction (through flood regulation and storm surge protection), food security (from fisheries to agro-forestry), sustainable water management and livelihood diversification (through increasing resource-used options) and can also generate significant multiple benefits such as carbon sequestration and other social, economic and cultural benefits.<sup>40</sup> **In short, healthy ecosystems and their services provide opportunities for sustainable economic prosperity while providing defence against the negative effects of climate change.<sup>41</sup> It has thus been posited that EBA integrates the use of biodiversity and ecosystem services into an overall strategy to help people adapt to the adverse impacts of climate change and it includes the sustainable management, conservation and restoration of ecosystems to provide services that help people adapt to both current climate variability, and climate change, consequently contributing to reducing vulnerability and increasing resilience to both climate and non-climate risks and provides multiple benefits to society and the environment.<sup>42</sup> Notably, COP 26 Glasgow Climate Pact recognized the critical role of “restoring nature**

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Scientists?’ (2009) 14 *Mitigation and adaptation strategies for global change* 691, 692.

<sup>38</sup> Richard Munang and others, ‘Climate Change and Ecosystem-Based Adaptation: A New Pragmatic Approach to Buffering Climate Change Impacts’ (2013) 5 *Current Opinion in Environmental Sustainability* 67, 68.

<sup>39</sup> *Ibid*, 68.

<sup>40</sup> *Ibid*, 68.

<sup>41</sup> *Ibid*, 68.

<sup>42</sup> A Colls, Neville Ash and Ninni Ikkala, *Ecosystem-Based Adaptation: A Natural Response to Climate Change*, vol 21 (Iucn Gland 2009), 1.

and ecosystems in delivering benefits for climate adaptation”, which is basically ‘ecosystem-based adaptation’.<sup>43</sup>

Due to the important connection between climate change mitigation and biodiversity conservation, it has been observed that the multiple international agreements and national processes relevant to climate change and biodiversity should be implemented in ways that are coordinated, mutually supportive and enhance synergies.<sup>44</sup> It follows that **protecting, restoring, and managing key ecosystems helps biodiversity and people to adjust to changing climatic conditions.**<sup>45</sup> It has thus been argued that **‘ecosystem-based Adaptation can be embedded into national, regional and local policy and practice by adopting an integrated, participatory and ecosystem-based approach to territorial planning’.**<sup>46</sup> Policy makers must, however, be aware of the fact that **‘unlike some adaptation measures, while Ecosystem-based Adaptation can be readily implemented, adopting best practice approaches for the sustainable management of, for example, fisheries, forests, agricultural systems, river catchments, and coastlines, Ecosystem-based Adaptation initiatives still face a range of barriers, which can include a lack of finance, land use conflict and community opposition and knowledge gaps, where there is lack of information about the costs and benefits of EBA measures.**<sup>47</sup>

### 2.3. Global Partnerships for Biodiversity Conservation and Sustainable Development

The Convention on Biological Diversity (CBD) calls for cooperation among Contracting States in conservation and sustainable use of biological

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<sup>43</sup> ‘What Does COP26 Mean for Adaptation?’ (UNEP, 17 November 2021) <<http://www.unep.org/news-and-stories/story/what-does-cop26-mean-adaptation>> accessed 23 November 2021.

<sup>44</sup> Mant, R., Perry, E., Heath, M., Munroe, R., Väänänen, E., Großheim, C., & Kümper-Schlake, L., ‘Addressing Climate Change—Why Biodiversity Matters’ [2014] UNEP-WCMC: Cambridge, UK.

<sup>45</sup> A Colls, Neville Ash and Ninni Ikkala, *Ecosystem-Based Adaptation: A Natural Response to Climate Change*, vol 21 (Iucn Gland 2009), 2.

<sup>46</sup> *Ibid*, 3.

<sup>47</sup> *Ibid*, 15.

diversity.<sup>48</sup> The 2030 Agenda for SDGs<sup>49</sup> and specifically SDG 17 also requires state parties to create partnerships for the Goals and specially to strengthen the means of implementation and revitalize the global partnership for sustainable development.<sup>50</sup> The United Nations reports that as at 2021, ‘Kenya aimed to attract more than USD 30 billion in manufacturing investments over the next 5 years by focusing on sectors with high growth potential’ by ‘boosting domestic manufacturing which is believed to have huge potential to attract investment, create employment, stimulate growth, and linkages to all other sectors of the economy’.<sup>51</sup>

SDG Goal 17 related targets are spread over several target areas namely: finance; technology; Capacity-Building; Trade; and Systemic issues which entail, Policy and institutional coherence, multi-stakeholder partnerships, and Data, monitoring and accountability.<sup>52</sup>

**At 2021 COP 26, it was recognized that climate change poses serious threats to sustainable development, so countries urgently need to integrate efforts to reduce greenhouse gas emissions (GHG), as well as investments in adaptation, in their development strategies.<sup>53</sup> It is thus acknowledged that tackling climate change will require major social, economic and technological changes, many of which are costly and will**

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<sup>48</sup> Article 5, Convention on Biological Diversity.

<sup>49</sup> United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1.

<sup>50</sup> SDG 17.

<sup>51</sup> ‘United Nations Supporting Kenya’s Post COVID-19 Industrial Recovery and Growth to Achieve Inclusive and Sustainable Growth | United Nations in Kenya’ <<https://kenya.un.org/en/126013-united-nations-supporting-kenyas-post-covid-19-industrial-recovery-and-growth-achieve>> accessed 23 July 2021.

<sup>52</sup> ‘SDG 17: Strengthen the Means of Implementation and Revitalize the Global Partnership for Sustainable Development – SDG Compass’ <<https://sdgcompass.org/sdgs/sdg-17/>> accessed 8 July 2021.

<sup>53</sup> ‘Country Climate and Development Report (CCDR) | DataBank’ <<https://databank.worldbank.org/source/country-climate-and-development-report-ccdr>> accessed 23 November 2021.

**require large investments.**<sup>54</sup> **Countries must thus start considering exploring strategic cooperation and partnerships with not only governments but also private sector to enable them achieve some of these adaptation goals.**

#### **2.4. Upholding Human Rights and Meaningful Public Participation in Development Projects**

The Convention on Biological Diversity (CBD) Aichi Target 2 requires that “by 2020, at the latest, biodiversity values have been integrated into national and local development and poverty reduction strategies and planning processes and are being incorporated into national accounting, as appropriate, and reporting systems”.<sup>55</sup> This, arguably, combines sustainability in environmental aspirations as well as social sustainability, as part of promoting biodiversity conservation for the achievement of the sustainable development agenda.

Articles 2(5) and (6) of the Constitution of Kenya 2010<sup>56</sup> provide that the general rules of international law, and any treaty or convention ratified by Kenya, form part of the laws of Kenya, thus binding Kenya to observe its human rights obligations under international bill of human rights.<sup>57</sup> In addition, Article 20 of the Constitution of Kenya states that the Bill of Rights binds all state organs and all persons, which persons are defined under Article 260 as including a “company, association or other body of persons whether incorporated or unincorporated.”

Arguably, there is a need for governments together with their development partners to solicit proposals and suggestions from indigenous and local communities about policies, the Constitution, and development strategies to encourage communities to express their views and increase their sense of

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<sup>54</sup> ‘COP26 Climate Change Briefs – Summaries and Downloads’ (World Bank) <<https://www.worldbank.org/en/topic/climatechange/publication/world-bank-group-cop26-climate-briefs>> accessed 23 November 2021.

<sup>55</sup> Unit B, ‘Aichi Biodiversity Targets’ (18 September 2020)

<<https://www.cbd.int/sp/targets/>> accessed 8 September 2021.

<sup>56</sup> Republic of Kenya, Constitution of Kenya 2010 (Government Printer, Nairobi, 2010).

<sup>57</sup> See also Treaty Making and Ratification Act, No. 45 of 2012, Laws of Kenya.



ownership and responsibility in the future of their country.<sup>58</sup> While Kenya has been making tremendous steps towards opening up the marginalised parts of the country such as the North Eastern parts of Kenya, there have been concerns about violation of human rights of the locals in these areas.<sup>59</sup> For instance, there have been reports that while Kenya's newest mega infrastructure project, the Lamu port, is aimed at integrating marginalised northern Kenya into the Kenyan economy and the nation, the planning and construction of the port have yielded a wide range of concerns and contestations, particularly on land rights, the environment, local livelihoods and security.<sup>60</sup> There have been documented reports by different rights groups from the residents about compulsory land acquisition with the government being accused of having taken more land than it paid compensation for.<sup>61</sup> If such reports on forceful acquisition of property were to be true, then such actions would be against Article 40 of the Constitution of Kenya 2010.<sup>62</sup> There have also been major concern on the environmental

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<sup>58</sup> Environmental Research Institute Science Technology and Environment Agency Lao People's Democratic Republic, "Public Participation in Development Projects in LAO PDR" <[http://pdf.wri.org/mekong\\_governance\\_mreg\\_eri.pdf](http://pdf.wri.org/mekong_governance_mreg_eri.pdf)> accessed 21 July 2021.

<sup>59</sup> Benard Musembi Kilaka and Jan Bachmann, 'Kenya Launches Lamu Port. But Its Value Remains an Open Question' (*The Conversation*) <<http://theconversation.com/kenya-launches-lamu-port-but-its-value-remains-an-open-question-161301>> accessed 24 July 2021.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> 40. Protection of right to property

(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property--

- (a) of any description; and
- (b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person--

- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
- (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

impact of the port's construction<sup>63</sup>, and local protests against the project have been met with harassment by Kenyan security forces.<sup>64</sup> There were also growing concerns about employment opportunities to residents.<sup>65</sup> Arguably, such allegations against the government, that is, inadequate meaningful public participation may raise concerns on the government's commitment to protection and promotion of human rights of the affected communities.

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(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation--

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or  
(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that--

(i) requires prompt payment in full, of just compensation to the person; and  
(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

<sup>63</sup> See *Mohamed Ali Baadi and others v Attorney General & 11 others [2018] eKLR* where the Petitioners averred that the LAPSSSET Project was designed and implemented in violation of the Constitution and statutory law; the project would have far reaching consequences on the marine ecosystem of the Lamu region in terms of the destruction of the mangrove forests, discharge of industrial effluents into the environment, and effects of the fish species and marine life; and if the project was to be implemented as designed, it would affect their cultural heritage and way life as well as their livelihoods.

<sup>64</sup> Benard Musembi Kilaka and Jan Bachmann, 'Kenya Launches Lamu Port. But Its Value Remains an Open Question' (*The Conversation*) <<http://theconversation.com/kenya-launches-lamu-port-but-its-value-remains-an-open-question-161301>> accessed 24 July 2021.

<sup>65</sup> *Ibid.*

The United Nations *Declaration on the Right to Development*<sup>66</sup> states that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.<sup>67</sup> The *Declaration* also provides that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>68</sup> The need for public participation is well captured in the following quote:

*"People today have an urge - an impatient urge - to participate in the events and processes that shape their lives. And that impatience brings many dangers and opportunities. It can dissolve into anarchy, ethnic violence or social disintegration. But if properly nurtured in a responsive national and global framework, it can also become a source of tremendous vitality and innovation for the creation of new and more just societies." (UNDP, 1993: 1)*<sup>69</sup>

The international human rights law is designed primarily to protect individuals and groups from abusive action by states and state agents.<sup>70</sup> While it is true that most of the investment projects are financed and carried out by international companies, with Development Financial Institutions (DFIs) and multi-national development banks having long track records of being critical providers of financing in Africa, supplying riskier, longer term

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<sup>66</sup> UN General Assembly, *Declaration on the Right to Development: resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128.

<sup>67</sup> *Ibid*, Preamble.

<sup>68</sup> Article 1.1, *Declaration on the Right to Development: resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128.

<sup>69</sup> 'Human Development Report 1993 | Human Development Reports' <<http://hdr.undp.org/en/reports/global/hdr1993>> accessed 16 July 2021; Giles Mohan, 'Participatory Development' [2002] *The companion to development studies* 49.

<sup>70</sup> Shelton Dinah, 'Protecting Human Rights in a Globalized World', *Human Rights and Corporations* (Routledge 2017).

investment capital that tends to focus on sustainability<sup>71</sup>, some commentators have accused some international and multinational investors of alleged human rights and environmental abuses, including using child labour to clean toxic materials, failing to repair pipeline leakages, and operating in protected indigenous lands without authorization especially in developing countries.<sup>72</sup> As far as trade agreements are concerned, there have also been worldwide concerns in relation to the lack of transparency of the negotiations as far as citizens are concerned, in contrast with the fundamental role being played by the large multinationals.<sup>73</sup> Notably, the negotiations are the result of long-term efforts by ultraliberal circles, politicians and directors of multinationals, working through many common bodies and the treaties are not published until, at best, the negotiations have been concluded.<sup>74</sup>

It has been argued that the international protection of human rights and environmental protection represent two of the fundamental values and aims of modern international society.<sup>75</sup> It has been opined that ‘the rights to the highest attainable standard of health and to an adequate standard

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<sup>71</sup> ‘ESG Investments Will Fuel Africa’s Post-Pandemic Recovery’ (13 July 2021) <<https://www.internationalinvestment.net/opinion/4031186/esg-investments-fuel-africa-post-pandemic-recovery>> accessed 23 July 2021.

<sup>72</sup> ‘Foreign Investors Gone Wild’

<<https://archive.globalpolicy.org/soecon/develop/democracy/2007/0507wild.htm>> accessed 21 July 2021; ‘What Are the Main Criticisms of the World Bank and the IMF?’ (*Bretton Woods Project*, 4 June 2019)

<<https://www.brettonwoodsproject.org/2019/06/what-are-the-main-criticisms-of-the-world-bank-and-the-imf/>> accessed 24 July 2021; see also ‘Globalization, Tourism, and Indigenous Peoples: What You Should Know About the World’s Largest Industry – Planeta.Com’ <<https://www.planeta.com/globalization-1999/>> accessed 24 July 2021.

<sup>73</sup> Robert Joumard, ‘The Free Trade Agreements: Contempt for Citizens, Sovereignty for Multinationals’ (*CADTM*, 23 July 2021) <<https://www.cadtm.org/The-free-trade-agreements-contempt>> accessed 24 July 2021.

<sup>74</sup> *Ibid*; see also Eric Toussaint, ‘The World Bank, the IMF and the Respect of Human Rights’ (*CADTM*, 23 July 2021) <<https://www.cadtm.org/The-World-Bank-the-IMF-and-the-respect-of-human-rights>> accessed 24 July 2021.

<sup>75</sup> Dinah Shelton, *A Rights-Based Approach to Public Participation and Local Management of Natural Resources* (2008), 20 <[https://www.iges.or.jp/en/publication\\_documents/pub/conferenceproceedings/en/739/3ws-26-dinah.pdf](https://www.iges.or.jp/en/publication_documents/pub/conferenceproceedings/en/739/3ws-26-dinah.pdf)> Accessed 16 July 2021.

of living depend on a certain degree of environmental quality and in several cases, environmental degradation or destruction has been viewed as a violation of these human rights'.<sup>76</sup> In addition to this, destruction of the environment through such problems as pollution or global warming can directly interfere with the enjoyment of communities' fundamental human rights including a wide range of social and cultural rights as well.<sup>77</sup>

Notably, among the extraordinary achievements of the *Declaration on the Right to Development*<sup>78</sup> is the advancement of a human rights-based approach to development.<sup>79</sup> For those who advocate for this approach, 'development from a human rights perspective embraces as key attributes: Social justice (through inclusion, equality and non-discrimination, taking the human person as the central subject of development and paying special attention to the most deprived and excluded); Participation, accountability and transparency (through free, meaningful and active participation, focusing on empowerment); and international cooperation (as the right to development is a solidarity-based right).<sup>80</sup>

Participatory development, as it is popularly referred to, has been defined as: "development that seeks to give the poor a part in initiatives and projects that are designed by outside organizations in the hopes that these projects will be more sustainable and successful by involving local stakeholders in the projects goals."<sup>81</sup>

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<sup>76</sup> Bridget Lewis, 'Environmental Rights or a Right to the Environment? Exploring the Nexus between Human Rights and Environmental Protection.' (2012) 8 *Macquarie Journal of International and Comparative Environmental Law* 36.

<sup>77</sup> *Ibid*, 36.

<sup>78</sup> UN General Assembly, *Declaration on the Right to Development: resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128

<sup>79</sup> Flávia Piovesan, 'Active, Free and Meaningful Participation in Development' (2013) 25 Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of*, 103 <<https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIChapter6.pdf>> Accessed 16 July 2021.

<sup>80</sup> Flávia Piovesan, 'Active, Free and Meaningful Participation in Development' (2013) 25 Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of*, 104.

<sup>81</sup> 'Why Is Participatory Development So Important for Your Nonprofit?' (*grassrootscollective*)

Community participation has been defined as the involvement of people in a community in projects to solve their own problems, where people should be given the opportunity where possible to participate as a basic human right and a fundamental principle of democracy.<sup>82</sup>

The need for public participation and respect for human rights is important for development projects to gain social license to operate.<sup>83</sup> This is because as it has been observed, ‘a development process often has four phases: articulation of demand, knowledge generation, dissemination and knowledge utilization where the result of the development cycle is that the solutions are implemented, and the more ownership is felt in all steps of this process, the more applicable the solutions are.’<sup>84</sup> Thus, rapid and sustained economic growth (“development”), popular political participation (“democracy”), and respect for the rights of their citizens (“human rights”) are considered to be hegemonic political ideals all around the world.<sup>85</sup> A Social License to Operate (SLO) refers to the perceptions of local stakeholders that a project, a company, or an industry that operates in a given area or region is socially acceptable or legitimate.<sup>86</sup> Companies can gain the social license through: maintaining positive corporate reputation; understanding culture, customs,

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<<https://www.thegrassrootscollective.org/what-is-participatory-development>>  
accessed 22 July 2021.

<sup>82</sup> “Chapter 12 Community participation,” *Manual*, 2005

<[https://ec.europa.eu/echo/files/evaluation/watsan2005/annex\\_files/WEDC/es/ESI2CD.pdf](https://ec.europa.eu/echo/files/evaluation/watsan2005/annex_files/WEDC/es/ESI2CD.pdf)> accessed 21 July 2021.

<sup>83</sup> Kathleen Wilburn and Ralph Wilburn, ‘Achieving Social License to Operate Using Stakeholder Theory’ (2011) 4 *J. Int. Bus. Ethics* 3; Emmanuel Raufflet and others, ‘Social License’ in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social Responsibility* (Springer 2013) <[https://doi.org/10.1007/978-3-642-28036-8\\_77](https://doi.org/10.1007/978-3-642-28036-8_77)> accessed 24 July 2021; Lain Dare, Jacki Schirmer and Frank Vanclay, ‘Community Engagement and Social Licence to Operate’ (2014) 32 *Impact Assessment and Project Appraisal* 188.

<sup>84</sup> Chris J Koopmans, K van Veluw and FG Wijnands, ‘Participatory Development as a Way to Innovations: Five Key Elements for Success’ (2014) 3 *Building Organic Bridges* 791, at 792.

<sup>85</sup> Jack Donnelly, ‘Human Rights, Democracy, and Development’ (1999) 21 *Human Rights Quarterly* 608.

<sup>86</sup> Emmanuel Raufflet and others, ‘Social License’ in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social Responsibility* (Springer 2013) <[https://doi.org/10.1007/978-3-642-28036-8\\_77](https://doi.org/10.1007/978-3-642-28036-8_77)> accessed 24 July 2021.

language history and history of communities, among others;<sup>87</sup> educating local stakeholders about project; ensuring open communication amongst all stakeholders;<sup>88</sup> business partnerships with communities; workforce training; community support and capacity building; and employing innovation and technology.<sup>89</sup> Arguably, these activities are capable of enhancing respect for human rights. As for communities, for them to grant the social license, they ask themselves the following questions: Do they Respect us? Are they Listening? Do they let us Participate? Do they let us Participate? Are they Transparent with us? Can we Believe what they say? Are they Responsive to our issues? Can we Trust them?<sup>90</sup> Companies must ensure that the answers to all these questions remain continually affirmative.

It has been argued that ‘democratic governance and human rights are critical components of sustainable development and lasting peace’, where ‘countries with ineffective government institutions, rampant corruption, and weak rule of law are estimated to have a 30-to-45 percent higher risk of civil war and a higher risk of extreme criminal violence than other developing countries’.<sup>91</sup> In addition, public involvement in decision-making processes is not only important for development projects affecting the environment, but is also necessary for identifying the impact projects will have on communities.<sup>92</sup> Arguably, development, particularly at the local level, can be made much more effective by active public participation where effective civic action can hold governments accountable<sup>93</sup> and ensure that the decisions of government

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<sup>87</sup> Ian Thomson and Susan Joyce, ‘The Social Licence to Operate: What It Is and Why Does It Seem so Difficult to Obtain?’, *Prospectors and Developers Association of Canada Convention, Toronto, Ontario, Canada* (2008).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> ‘Democracy, Human Rights and Governance | U.S. Agency for International Development’ (26 March 2021) <<https://www.usaid.gov/democracy>> accessed 21 July 2021.

<sup>92</sup> Environmental Research Institute Science Technology and Environment Agency Lao People’s Democratic Republic, ‘Public Participation in Development Projects in LAO PDR’ <[http://pdf.wri.org/mekong\\_governance\\_mreg\\_eri.pdf](http://pdf.wri.org/mekong_governance_mreg_eri.pdf)> accessed 21 July 2021.

<sup>93</sup> ‘How Can Participatory Development Be Improved? | Devex’ <<https://www.devex.com/news/how-can-participatory-development-be-improved-80472>> accessed 24 July 2021; ‘Determinants of Public Participation in Kenya

are in line with the needs of citizens and thus potentially solve failures in government that plague most poor countries including; wastage and leakage, unequal access, corruption, and poor coordination.<sup>94</sup>

Communities are mostly impacted upon by investments and development projects through what is popularly known as the impact investing, defined which is “part of the decades-old tradition of corporate social responsibility that holds domestic and international financial institutions and corporations accountable for harmful employment, community, or environmental impacts.”<sup>95</sup> Impact investments have also defined as “investments made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return.”<sup>96</sup> As far as impact investment in Kenya is concerned, Kenya has in the recent past been ranked highly compared to its East African counterparts, with Kenya representing nearly half of impact capital disbursed in East Africa—more than USD 650 million by non-development finance institutions (non-DFIs) impact investors and more than USD 3 billion by development finance institutions (DFIs), and more than triple the amount deployed in each of Uganda and Tanzania, the countries with the next highest amounts at around 13% and 12% respectively.<sup>97</sup>

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County Governments - Antony Mbithi, Damiana Ndambuki, Fredrick Owino Juma, 2019’ <<https://journals.sagepub.com/doi/full/10.1177/0021909618794028>> accessed 24 July 2021; Berner, M. M., Amos, J. M., & Morse, R. S., "What constitutes effective citizen participation in local government? Views from city stakeholders." *Public Administration Quarterly* (2011): 128-163; Alessandra Ricciardelli, ‘Governance, Local Communities, and Citizens Participation’ in Ali Farazmand (ed), *Global Encyclopedia of Public Administration, Public Policy, and Governance* (Springer International Publishing 2017) <[https://doi.org/10.1007/978-3-319-31816-5\\_3221-1](https://doi.org/10.1007/978-3-319-31816-5_3221-1)> accessed 24 July 2021.

<sup>94</sup> Devex Editor // 11 March 2013, ‘How Can Participatory Development Be Improved?’ (*Devex*, 11 March 2013) <<https://www.devex.com/news/sponsored/how-can-participatory-development-be-improved-80472>> accessed 21 July 2021.

<sup>95</sup> Ronald Phillips, ‘Impact Investing and Community Development’ (2016) 25 *Maine Policy Review* 63, 63.

<sup>96</sup> Castano, T., “Preparing for Impact: Five Ideas to Maximize the Potential of Impact Investing”, *New Start New Jersey*, April 2017, 1< <https://ideas.nsnj.org/wp-content/uploads/2017/08/NSNJ-Preparing-for-Impact.pdf>> accessed 21 July 2021.

<sup>97</sup> ‘Kenya Tops East Africa Blocs in Impact Investment - Ministry of Industrialization, Trade and Enterprise Development (MoITED)’



It has been observed that ‘while governments at every level –local, state, national –determine how to meet fundamental needs with constrained resources, impact investing continues to mature into a vehicle for innovative, socially oriented enterprises, where the convergence of these two macro-level developments can create opportunities for stakeholders and communities.’<sup>98</sup>

The success of development activities is thus closely linked with the status of respect for human rights for concerned communities as well as how effectively these communities are involved in the processes leading to the negotiations leading to the seating up and operation of investment and development projects.

## 2.5. Funding Biodiversity Conservation Efforts

CBD Decision XIII/3 called for Parties to encourage public and private sources of finance to be channelled into practices that improve the sustainability of production while reducing biodiversity loss, and to promote and support the restoration of ecosystems that provide essential services in a way that provides for the needs of indigenous peoples and local communities, does not cause harm to other ecosystems.<sup>99</sup>

The CBD Aichi Target 20 also requires countries to ensure that “by 2020, at the latest, the mobilization of financial resources for effectively implementing the Strategic Plan for Biodiversity 2011-2020 from all sources, and in accordance with the consolidated and agreed process in the Strategy for Resource Mobilization, should increase substantially from the

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<<https://www.industrialization.go.ke/index.php/media-center/blog/240-kenya-tops-east-africa-bloc-in-impact-investment>> accessed 23 July 2021; ‘Kenya: The Country Impact Investors Cannot Afford to Ignore’ (20 January 2020) <<https://www.pioneerspost.com/news-views/20200120/kenya-the-country-impact-investors-cannot-afford-ignore>> accessed 23 July 2021; Global Impact Investing Network and Open Capital Advisors, *The Landscape for Impact Investing in East Africa* (ETHIOPIA 2015).

<sup>98</sup> Castano, T., “Preparing for Impact: Five Ideas to Maximize the Potential of Impact Investing”, New Start New Jersey, April 2017, 1 < <https://ideas.nsnj.org/wp-content/uploads/2017/08/NSNJ-Preparing-for-Impact.pdf>> accessed 21 July 2021.

<sup>99</sup> CBD Decision XIII/3, para 32.

current levels. This target will be subject to changes contingent to resource needs assessments to be developed and reported by Parties.

Closer home, the *National Horticulture Policy, 2012* states that: - *horticulture Research will be financed through the Government of Kenya, private sector, development partners, trust funds, royalties and competitive grants. Partnerships with relevant public and private institutions will be promoted to increase funding for germplasm conservation and to protect plant varieties with potential for commercial value.*

The *Kenya Agricultural and Livestock Research Act, 2013* establishes the Kenya Agricultural and Livestock Research Organisation, whose object and function is to— promote, streamline, co-ordinate and regulate research in crops, livestock, genetic resources and biotechnology in Kenya; promote, streamline, co-ordinate and regulate research in crops and animal diseases; and expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the field of agriculture.

The unveiling of the Sustainable Development Goals (SDGs) in 2015 meant that most developing countries would have to step up their efforts to raise domestic resources to finance needed domestic investment as support from development partners and private sector investors would not be enough.<sup>100</sup> The SDG Goal 17 acknowledges that the SDGs cannot be realised without the global cooperation amongst countries as well as mobilizing the relevant resources necessary to achieve these goals.<sup>101</sup> Target 17.1 seeks to strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

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<sup>100</sup> 'Heightening Domestic Resource Mobilization in Africa During COVID-19' (Center For Global Development) <<https://www.cgdev.org/blog/heightening-domestic-resource-mobilization-africa-during-covid-19>> accessed 22 March 2021.

<sup>101</sup> Martin, 'Global Partnerships' (*United Nations Sustainable Development*) <<https://www.un.org/sustainabledevelopment/globalpartnerships/>> accessed 8 July 2021.

Domestic Resource Mobilization remains essential to accelerate economic growth and lift people from extreme poverty, particularly in the low-income countries, an important component of the SDGs.<sup>102</sup> Lower poverty levels means better response to conservation measures by the general public.

In order to achieve the sustainable development goals, the 2015 Addis Ababa Action Agenda on Financing for Development captured the importance of domestic resource mobilization, noting that the “mobilization and effective use of domestic resources ... are central to our common pursuit of sustainable development.”<sup>103</sup> Notably, it has rightly been pointed out that the only reliable and sustained sources of government revenue are taxes and some non-tax revenue instruments, such as royalties and resource rents from extractive industries and, to a limited extent, user fees for public services, generally delivered by local governments.<sup>104</sup> However, most African countries have been over relying on foreign aid and loans to fund their ever expanding national budgets. Kenya is no exception. With the pressure and the 2030 deadline to achieve the sustainable development goals, the need for alternative funding will only grow. As such, there is a need for these countries to not only look for alternative sources of the required financial resources but also the ones that come with less complications and strings attached.

At COP 26, while indigenous leaders welcomed the United Kingdom’s \$1.7 billion pledge to help protect emissions-absorbing forests, the indigenous leaders at COP26 felt that their pleas were starting to be heard, but some still expressed concern that the pledges were too little and worried that the money

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<sup>102</sup> Yamada K, ‘Financing Sustainable Development with Enhanced Domestic Resource Mobilization: Transitional Role of International Cooperation’ (2017) 23 *Asia-Pacific Development Journal* 61, at 61.

<sup>103</sup> Junquera-Varela, R. F., Verhoeven, M., Shukla, G. P., Haven, B., Awasthi, R., & Moreno-Dodson, B., *Strengthening Domestic Resource Mobilization: Moving from Theory to Practice in Low-and Middle-Income Countries* (The World Bank 2017), chapter Two.

<sup>104</sup> *Ibid*, 5.

won't end up where it is needed if they continue to be kept out of the decision-making.<sup>105</sup>

It is for this reason that these countries need to focus more on capitalizing on domestic resource mobilization as a source of funding development projects. This is important as Official development assistance (ODA) is finite and fluctuates over time, creating uncertainty for recipient countries about planning, budgeting, and expenditures in the public sector.<sup>106</sup>

It is documented that when the investment requirements for the SDGs were first assessed in the United Nations Conference on Trade and Development's (UNCTAD's) World Investment Report 2014, at least 10 relevant sectors (encompassing all 17 SDGs) were identified and the report projected an annual investment gap of \$2.5 trillion in developing countries.<sup>107</sup> While this projection remains valid today according to a recent review (UNCTAD, 2020), the SDGs have significant resource implications across developed and developing countries and require a step-change in levels of both public and private investment in the SDGs.<sup>108</sup>

The need for enhanced domestic resource mobilization is also more urgent in light of the UNCTAD's observations that the COVID-19 shock has exacerbated existing constraints for the SDGs and could undo the progress made in the last six years in SDG investment and the international private sector investment flows to developing and transition economies in sectors relevant for the SDGs were also expected to fall by about one-third in 2020

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<sup>105</sup> 'Why It's Not Just about the Money for Indigenous Leaders at COP26' (*The New Humanitarian*, 10 November 2021)

<<https://www.thenewhumanitarian.org/news/2021/11/10/COP26-Indigenous-leaders-welcome-funding-but-demand-more>> accessed 23 November 2021.

<sup>106</sup> Junquera-Varela, R. F., Verhoeven, M., Shukla, G. P., Haven, B., Awasthi, R., & Moreno-Dodson, B., *Strengthening Domestic Resource Mobilization: Moving from Theory to Practice in Low-and Middle-Income Countries* (The World Bank 2017), 6.

<sup>107</sup> Zhan JX and Santos-Paulino AU, 'Investing in the Sustainable Development Goals: Mobilization, Channeling, and Impact' (2021) 4 *Journal of International Business Policy* 166.

<sup>108</sup> *Ibid.*

because of the COVID-19 pandemic, posing a risk to delivering on the 2030 agenda for sustainable development.<sup>109</sup>

Thus, as part of laying the groundwork for the achievement of SDGs, there is a need for countries, including Kenya, to review their domestic resource mobilization efforts and work towards enhancing the same.

While there are various external mechanisms of funding that are available to countries for exploitation, there is a need for countries such as Kenya to enhance their domestic resources mobilization mechanisms. Indeed, this is acknowledged by the UNCTAD which points out that ‘strengthening domestic public resource mobilization is crucial for Governments in financing national sustainable development strategies and implementing Agenda 2030 for Sustainable Development and the Addis Ababa Action Agenda.

In addition, the particular role of fiscal revenues in public resource mobilization lies in their greater stability and predictability compared to other sources of long-term finance. According to International Monetary Fund (IMF) estimates, for low-income countries, average domestic taxes would have to increase by about 5 percentage points if they were to meet the SDGs in five key areas (education, health, roads, electricity, and water), with the financing needed in sub-Saharan Africa being larger given their development level.<sup>110</sup> It is also worth pointing out that investment in human, social, and physical capital, are at the core of sustainable and inclusive growth and represent an important share of national budgets—specifically, education, health, roads, electricity, and water and sanitation.<sup>111</sup> IMF

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<sup>109</sup> Zhan JX and Santos-Paulino AU, ‘Investing in the Sustainable Development Goals: Mobilization, Channeling, and Impact’ (2021) 4 *Journal of International Business Policy* 166.

<sup>110</sup> ‘Heightening Domestic Resource Mobilization in Africa During COVID-19’ (*Center For Global Development*) <<https://www.cgdev.org/blog/heightening-domestic-resource-mobilization-africa-during-covid-19>> accessed 22 March 2021.

<sup>111</sup> ‘Fiscal Policy and Development : Human, Social, and Physical Investments for the SDGs’ (*IMF*) <<https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2019/01/18/Fiscal-Policy-and-Development-Human-Social-and-Physical-Investments-for-the-SDGs-46444>> accessed 22 March 2021.

estimates that delivering on the SDG agenda will require additional spending in 2030 of US\$0.5 trillion for low-income developing countries and US\$2.1 trillion for emerging market economies.<sup>112</sup> To achieve this, IMF points out that countries themselves own the responsibility for achieving the SDGs, especially through reforms to foster sustainable and inclusive growth that will in turn generate the tax revenue needed, and their efforts should focus on strengthening macroeconomic management, combating corruption and improving governance, strengthening transparency and accountability, and fostering enabling business environments.<sup>113</sup>

The IMF considers domestic resources as the largest untapped source of financing to fund national development plans.<sup>114</sup> Arguably, the Global Goals can only be met if countries work together, where international investments and support is needed to ensure innovative technological development, fair trade and market access, especially for developing countries.<sup>115</sup> It has been argued that domestic resource mobilization will be crucial not only to meet the sheer scale of investment needed to implement the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), but also because it holds its own broader promise for transformative change.<sup>116</sup> Transformative change will give rise to stronger Environmental Democracy, lower poverty levels and more effective biological diversity conservation by all stakeholders.

### 3. Conclusion

This paper has highlighted some of the contemporary issues that either directly or indirectly affect efforts aimed at sustainable biodiversity utilisation and conservation. This is a demonstration that biodiversity

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<sup>112</sup> Ibid, 5.

<sup>113</sup> Ibid.

<sup>114</sup> ‘Tax Policy for Domestic Resource Mobilization | ADB Knowledge Event Repository’ <<https://events.development.asia/learning-events/tax-policy-domestic-resource-mobilization>> accessed 24 March 2021.

<sup>115</sup> ‘Goal 17: Partnerships for the Goals’ (The Global Goals) <<https://www.globalgoals.org/17-partnerships-for-the-goals>> accessed 8 March 2021.

<sup>116</sup> ‘Mobilizing Domestic Resources for Sustainable Development: Toward a Progressive Fiscal Contract | United Nations ILibrary’ <<https://www.un-ilibrary.org/content/books/9789210601023c009>> accessed 24 March 2021.

conservation should not be treated as an independent issue but a complex one that involves various actions spanning across sectors. The issues touch on environmental, social, political and economic spheres of development. This is why there is a need for adoption of integrated approaches to management of various environmental and biodiversity resources, in order to ensure that the issues raised in this paper have been addressed.

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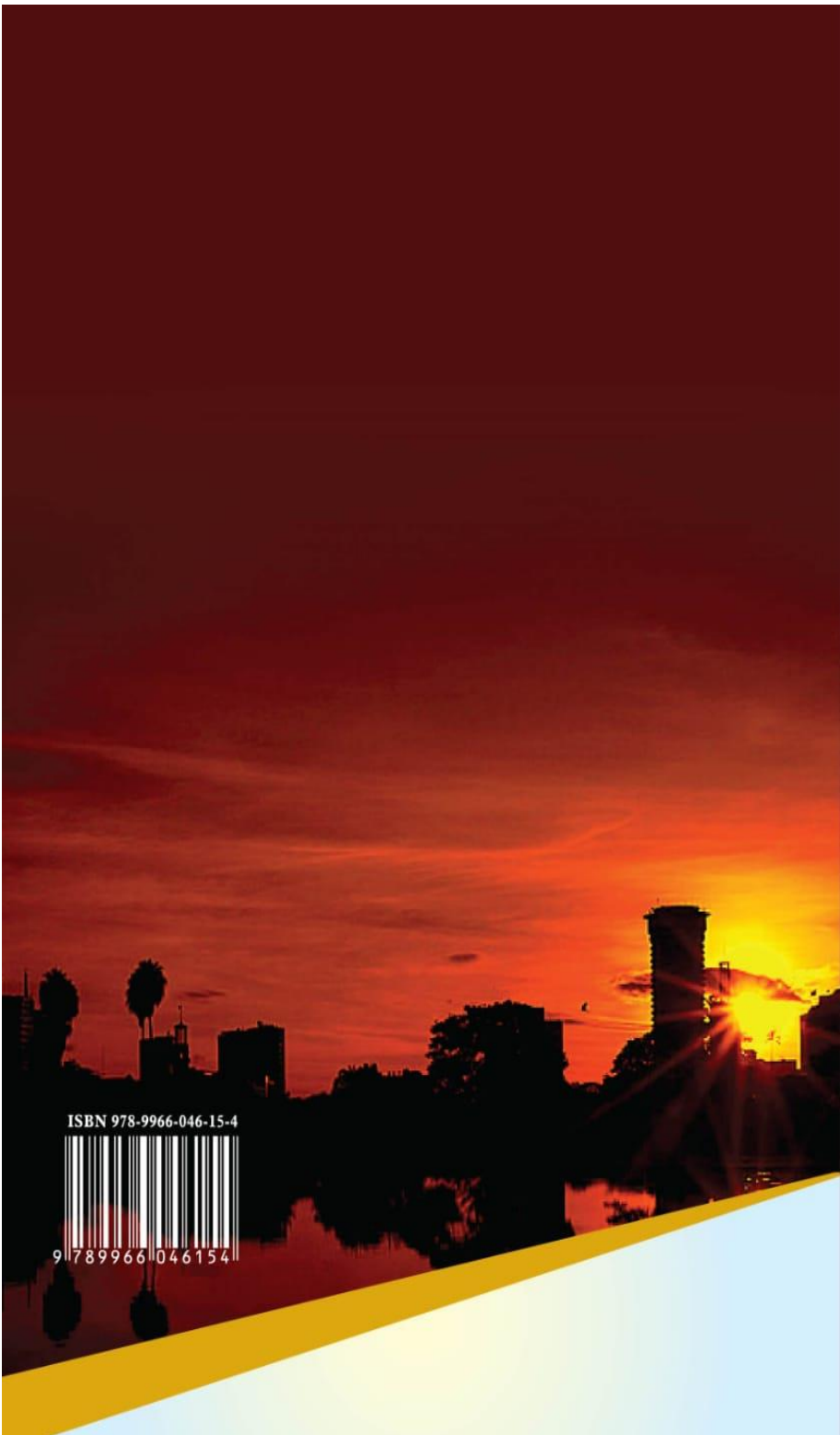
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