

Journal of Conflict Management & Sustainable Development



Africa's Blue Economy: Harnessing Opportunities in the Technology Era and Addressing Challenges for Sustainable Development

Hon. Prof. Kariuki Muigua

Conceptualizing Asset Recovery through ADR in Kenya: Legislative Frameworks, Systemic Deficiencies, and Comparative Jurisprudence

Brigid Maina, IISC

Legal Solutions to the Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency

Michael Sang

Climate Change before the Bench: Judicial Recognition of the Right to a Stable Climate

Brian Chacha Sammy

Greening of Transport Systems in Africa: Utilising Renewable Energy for Low Emission Vehicles

Hon. Prof. Kariuki Muigua

Forging A New Lex Pacificatoria: A Critical Review of The Journal of Appropriate Dispute Resolution & Sustainability (Vol. 3, Issue 1, 2025)

Raphael Okochi

Journal of Appropriate Dispute Resolution & Sustainability, Vol. 3 Issue 2 (2025)

Mwiti Muriithi

Legal Challenges in the Forfeiture of Proceeds of Corruption in Kenya: A Review of Ethics and Anti-Corruption Commission v Nashon Wilson Kanani and 5 Others

Michael Sang

Transformation of Lion-Maasai Conflict Through Community Based Conciliation Initiatives

Abuya John Onyango & Stephanie Lore Okoyo

Volume 12

Issue 4

2025

ISSN : 3008-1238



Journal of Conflict Management and Sustainable Development

Volume 12 Issue 4

2025

Journal of Conflict Management and Sustainable Development

Typesetting by:

Anne W. Kiramba
P.O. Box 60561 – 00200,
Tel: +254 737 662 029,
Nairobi, Kenya.

Printed by:

Mouldex Printers
P.O. Box 63395,
Tel – 0723 366839,
Nairobi, Kenya.

Published by:

Glenwood Publishers Limited
P.O. Box 76115 - 00508
Tel +254 2210281,
Nairobi, Kenya.

© Glenwood Publishers Limited

All rights reserved. No article published in this journal may be reproduced, transmitted in any form, stored in any retrieval system of any nature without prior written permission of the copyright holder. The views expressed in each article are those of the contributors and not necessarily those of Glenwood Publishers Limited.

Editorial Board

Managing Editor

Hon. Prof. Kariuki Muigua

Associate Managing Editor

Hon. Prof. Kenneth Wyne Mutuma

Senior Assistant Editors

Ngararu Maina

Salome Karimi Ngore

Hon. Endoo Dorcas Chepkemei

Editorial Team

Emmanuel Mwati Muriithi

Anne Wairimu Kiramba

Grace Chelagat-Tanah

James Ngotho Kariuki

Advisory Board

Dr. Lilian Namuma S. Kong'ani

Dr. Johana Kambo Gathongo

Dr. Felix Otieno Odhiambo

Dr. Jane Mutheu Mutune

Dr. Peter Gitahi Munyi

Prof. Tom Ojienda Sc.

Abdirazak Mohamed

Dr. Naomi Njuguna

Prof. Thuita Thenya

Dr. Fidele Masengo

Dr. Francis Kariuki

This Journal should be cited as (2025) 12(4) Journal of cmsd **ISSN: 3008-1238**

Editor's Note

We are pleased to launch another issue of the *Journal of Conflict Management and Sustainable Development*, Volume 12, No.4.

The Journal is focused on disseminating knowledge and creating a platform for scholarly debate on pertinent and emerging areas in the fields of Conflict Management and Sustainable Development.

Sustainable Development has emerged as arguably the most important goal in the 21st century. It is geared towards meeting the needs of both the present and future generations. The Sustainable Development goals represent a shared blueprint for achieving global peace and prosperity. The Journal analyses some of the current concerns and proposes interventions towards attaining Sustainable Development. It also discusses the role of Conflict Management in the quest towards Sustainable Development.

The Journal is peer reviewed and refereed in order to adhere to the highest quality of academic standards and credibility of information. Papers submitted to the Journal are taken through a rigorous review by our team of internal and external reviewers.

This issue contains papers on key thematic areas of Conflict management and Sustainable Development including: *Africa's Blue Economy: Harnessing Opportunities in the Technology Era and Addressing Challenges for Sustainable Development*; *Conceptualizing Asset Recovery through ADR in Kenya: Legislative Frameworks, Systemic Deficiencies, and Comparative Jurisprudence*; *Legal Solutions to the Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency*; *Climate Change before the Bench: Judicial Recognition of the Right to a Stable Climate*; *Greening of Transport Systems in Africa: Utilising Renewable Energy for Low Emission Vehicles*; *Legal Challenges in the Forfeiture of Proceeds of Corruption in Kenya: A Review of Ethics and Anti-Corruption Commission v Nashon Wilson Kanani and 5 Others* and *Transformation of Lion-Maasai Conflict Through Community Based Conciliation Initiatives*. The Journal also contains two reviews of *Journal of Appropriate Dispute Resolution (ADR) & Sustainability* Volume 3 Issue 1 and Volume 3 Issue 2.

The Journal has witnessed significant growth since its launch and is now a widely cited and authoritative publication in the fields of Conflict Management and

Sustainable Development. The Editorial Team welcomes feedback and suggestions from our readers across the globe to enable us to continue improving the Journal.

I wish to thank the contributing authors, Editorial team, reviewers and everyone who has made this publication possible.

The Journal is available online at <https://journalofcmsd.net>

We welcome the submission of papers, commentaries, case and book reviews on the themes of Conflict Management and Sustainable Development or other related fields of knowledge to be considered for publication in subsequent issues of the Journal. These submissions should be channeled to admin@kmco.co.ke and editor@journalofcmsd.net

Hon. Prof. Kariuki Muigwa Ph.D,FCI Arb,Ch.Arb,OGW.

Editor, Nairobi,

October, 2025.

List of Contributors

Hon. Prof. Kariuki Muigua

Prof. Kariuki Muigua is a distinguished law scholar, an accomplished mediator and arbitrator with a Ph.D. in law from the University of Nairobi and with widespread training and experience in both international and national commercial arbitration and mediation. Prof. Muigua is a Fellow of Chartered Institute of Arbitrators (CIArb)-Kenya chapter and also a Chartered Arbitrator. He is a member of the Permanent Court of Arbitration, The Hague. He also serves as a member of the National Environment Tribunal. He has served as the Chartered Institute of Arbitrator's (CIArb- UK) Regional Trustee for Africa from 2019 -2022.

Prof. became the first winner of the Inaugural CIArb (Kenya Branch) ADR Lifetime Achievement Award 2021. He was also the winner of the ADR Practitioner of the Year Award 2021 given by the Nairobi LSK and the ADR Publisher of the Year 2021 awarded by CIArb Kenya. He was the winner of the African Arbitrator of the Year 2022 award at the 3rd African Arbitration Awards held at Kigali Rwanda beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. The African Arbitrator of the Year award is the highest and most prestigious ADR and Arbitration Award in Africa.

Prof. is an Advocate of the High Court of Kenya of over 30 years standing and practicing at Kariuki Muigua & Co. Advocates, where he is also the senior advocate. His research interests include environmental and natural resources law, governance, access to justice, human rights and constitutionalism, conflict resolution, international commercial arbitration, the nexus between environmental law and human rights, land and natural resource rights, economic law and policy of governments with regard to environmental law and economics. Prof. Muigua teaches law at the Centre for Advanced Studies in Environmental Law and Policy (CASELAP), Wangari Maathai

Institute for Peace and Environmental Studies (WMI) and the Faculty of Law, University of Nairobi.

Prof. Kariuki Muigua can be reached through muigua@kmco.co.ke or admin@kmco.co.ke

Brigid Maina, HSC

Brigid holds an LLM from the University of Nairobi and an LLB from Moi University, and is an Advocate of the High Court of Kenya. She possesses a Post Graduate Diploma in Law from the Kenya School of Law and professional certifications including ACI Arb (Chartered Institute of Arbitrators), Certified Professional Mediator (MTI-USA), Certified Forensic Fraud Examiner (CFFE, KASNEB), and Certified Secretary (ICS). With a strong background in law, arbitration, mediation, governance, and forensic practice, she is committed to advancing justice, integrity, and excellence in legal and professional practice.

Brigid can be reached through brigidmainalaw@gmail.com

Michael Sang

The Author holds a Master of Laws (LLM) in International Law from the University of Cape Town, South Africa and a Bachelor of Laws (LLB) from Moi University, Eldoret. The author is also an Advocate of the High Court with a Post Graduate Diploma in Law and employed in public service as a Prosecutor currently holding the position of Acting Deputy Director of Public Prosecutions (Ag. DDPP).

The author is in charge of the Department of Regional, County Affairs and Regulatory Prosecutions and also the Head of the Counter - Terrorism and Transnational Organized Crimes Division at the Office of the Director of Public Prosecutions and is based in Nairobi.

The author can be contacted through emails sang7michael@gmail.com or michael.sang@odpp.go.ke

Brian Chacha Sammy

Brian Chacha Sammy is a Kenyan lawyer with a keen interest in environmental law, climate justice, and human rights. He is volunteering as the Communications Lead at the Laudato Si' Movement - Kenya Chapter, where he advances ecological awareness and policy advocacy inspired by Catholic social teaching on care for creation. He is also a member of Amnesty International Kenya, advocating for human rights and social justice. Chacha previously held the position of Secretary-General (2024) of the Africa Nazarene

University Law School, where he championed student leadership and academic excellence.

His research explores the intersection of law, sustainability, and governance—particularly how judicial and policy frameworks can promote environmental accountability and intergenerational equity. He has contributed to policy reviews such as the Wildlife Conservation and Management Bill, 2025, and participated in the Climate Governance, Diplomacy, and Negotiations Leadership Program (Cohort XVII) organized by AGNES Africa.

Beyond academia, Chacha has spoken on topics including *Catholicism and the Environment: A Theology of Creation*, and has volunteered in national environmental initiatives such as Mazingira Day (2024) at Ngong Hills. His work reflects a commitment to bridging law, ethics, and ecology in pursuit of a just and sustainable future.

He can be reached via his email: bchachaofficial@gmail.com for a constructive discourse.

Raphael Okochil

Raphael Okochil is a law graduate from Jomo Kenyatta University of Agriculture and Technology, Class of 2025. He is the founder of ADR & The Law Journal, a platform he started to share ideas on law and justice in Africa. His main interests are human rights, environmental and sports law. He has written a few articles published in top journals, including the Jus Corpus Law Journal which is India's highest indexed journal. Raphael enjoys writing, research and good conversations about how the law can make life better for issues facing people in the society.

The author can be reached through raphaelokochil@gmail.com

Mwati Muriithi

Mwati Muriithi is an Advocate of the High Court of Kenya, an Associate member of the Chartered Institute of Arbitrators (ACI Arb) and a Legal Researcher. He holds a Bachelor of Laws (LL. B) degree from Kenyatta University and a Post-Graduate Diploma in Law from Kenya School of Law. He is currently an associate at the firm of Kariuki Muigua & Co. Advocates. His interests include arbitration, conveyancing, civil litigation, probate and succession, constitutional law and commercial litigation.

Mwati can be reached through: emwati96@gmail.com

Stephanie Lore Okoyo

Fourth Year Student of Law at the University of Nairobi and Certified Professional Secretariat Student at the Vision Institute of Professionals. She is also a Certified Professional Mediator and an Associate Editor at the Young Arbiters Society (YAS) University of Nairobi Chapter. She is also a Millennium Fellow Class of 2025.

She is a passionate legal researcher and writer and has published articles in the Platform Magazine focusing on International Investment Law, Exploitation of Kenyan Workers by Global AI Companies and Workplace Mediation.

She is also an Award Winning Author for the ADR and The Law Essay Writing Competition. Her work on AI was also recognized as outstanding and was therefore published in the Starlight Magazine by the People's Accolade Law Magazine (The PALM).

Contact : +254713722571 Email: lorestephanie20@gmail.com

Abuya John Onyango

Final Year Student of Law awaiting Graduation at the University of Nairobi. He is currently a legal intern at Car and General Group Kenya. He is a Certified Professional Mediator and an Associate Editor at the Young Arbiters Society University of Nairobi Chapter. He has passion in legal research and writing and has published several articles in the platform magazine and the Journal of Conflict Management and Sustainable Development focusing on the rule of law, socioeconomic justice and alternative dispute resolution mechanisms.

He won the First place award at the Alternative Dispute Resolution Mechanisms (ADR) and the Law Essay Writing Competition. Recently participated in the Lady Justice Joyce Aluoch International Inter-Varsity ADR Moot Competition representing the University of Nairobi. The University of Nairobi won the Best Overall Mediation Plan and the 2nd Runners Up Mediator. The Competition was organized by Women in ADR and the United States International University (USIU-Africa).

He has a certification in Tax from the Kenya School of Revenue Administration. Recently joined the training on International Commercial and Investment Arbitration organized by the Institute for African Women in Law. This anchored his passion on International Commercial and Investment Arbitration.

Contact: +254794478421 Email: johnabuya92@gmail.com.

Journal of Conflict Management and Sustainable Development

Volume 12 Issue 4 - 2025

Content	Author	Page
Africa's Blue Economy: Harnessing Opportunities in the Technology Era and Addressing Challenges for Sustainable Development	Hon. Prof. Kariuki Muigua	1
Conceptualizing Asset Recovery through ADR in Kenya: Legislative Frameworks, Systemic Deficiencies, and Comparative Jurisprudence	Brigid Maina, HSC	176
Legal Solutions to the Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency	Michael Sang	78
Climate Change before the Bench: Judicial Recognition of the Right to a Stable Climate	Brian Chacha Sammy	111
Greening of Transport Systems in Africa: Utilising Renewable Energy for Low Emission Vehicles	Hon. Prof. Kariuki Muigua	128
Forging A New Lex Pacificatoria: A Critical Review of The Journal of Appropriate Dispute Resolution & Sustainability (Vol. 3, Issue 1, 2025)	Raphael Okochil	142
Journal of Appropriate Dispute Resolution & Sustainability, Vol. 3 Issue 2 (2025)	Mwati Muriithi	164
Legal Challenges in the Forfeiture of Proceeds of Corruption in Kenya: A Review of Ethics and Anti-Corruption Commission v Nashon Wilson Kanani and 5 Others	Michael Sang	167
Transformation of Lion-Maasai Conflict Through Community Based Conciliation Initiatives	Abuya John Onyango Stephanie Lore Okoyo	191

Africa's Blue Economy: Harnessing Opportunities in the Technology Era and Addressing Challenges for Sustainable Development

By: Hon. Prof. Kariuki Muigua*

Abstract

This paper critically examines how Africa's Blue Economy can be effectively nurtured for Sustainable Development. The paper examines the concept of Blue Economy in Africa. It argues that Africa has immense opportunities to harness the Blue Economy towards Sustainable Development. It explores some of the benefits of the Blue Economy in Africa. Despite its immense Blue Economy potential, the paper also notes that the health of oceans and marine resources in Africa is facing significant threats. The paper examines some of the challenges facing the Blue Economy in Africa. In light of these challenges, the paper examines how Africa can harness opportunities in the technology era and address challenges towards nurturing the Blue Economy for Sustainable Development.

1.0 Introduction

Blue Economy refers to the sustainable use of ocean resources for economic growth, improved livelihoods and jobs while maintaining the health and vitality of oceans and marine resources¹. In addition, it has been argued that the concept of Blue Economy is broad and generally relates to a sustainable ocean economy the economic activities associated with the ocean, seas and coastal regions². These

* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [September, 2025].

¹ World Bank Group., 'What is the Blue Economy?' <https://www.worldbank.org/en/news/infographic/2017/06/06/blue-economy> (Accessed on 27/09/2025)

² What is the blue economy?., Available at

activities allow resource use while preserving the health of the ocean and its ecosystems³. The Blue Economy therefore has three related but distinct meanings: the overall contribution of the oceans to economies; the need to foster the environmental and ecological sustainability of the oceans; and the ocean economy as a growth opportunity for both developed and developing countries⁴.

The Blue Economy has emerged as an increasingly influential global concept which seeks to ensure the development of oceans and seas and related ecosystems in a manner which also addresses concerns about ocean health in the face of increasing demands on ocean resources, marine pollution, and climate change⁵. It has been argued that a sustainable Blue Economy unlocks multiple environmental, social and economic benefits and drives Sustainable Development⁶. The Blue Economy is a major driver of local, regional and global development, creating millions of jobs in sectors such as fisheries, tourism, and shipping⁷. The Blue Economy is therefore integral in the quest towards Sustainable Development. The importance of Blue Economy in the Sustainable Development discourse is recognized under the United Nations 2030 *Agenda for*

<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-blue-economy/>

(Accessed on 27/09/2025)

³ Ibid

⁴ United Nations., 'Blue Economy Definitions' Available at

https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/rok_part_2.pdf (Accessed on 27/09/2025)

⁵ Benzaken. D et al., 'Good governance for sustainable blue economy in small islands: Lessons learned from the Seychelles experience' Available at <https://www.frontiersin.org/journals/political-science/articles/10.3389/fpos.2022.1040318/full> (Accessed on 27/09/2025)

⁶ United Nations Environment Programme., 'Sustainable Blue Economy' Available at <https://www.unep.org/topics/ocean-seas-and-coasts/ecosystem-based-approaches/sustainable-blue-economy> (Accessed on 27/09/2025)

⁷ Organisation for Economic Co-operation and Development., 'Blue Economy' Available at <https://www.oecd.org/en/topics/sub-issues/water-governance/blue-economy.html> (Accessed on 27/09/2025)

*Sustainable Development*⁸ which seeks to conserve and sustainably use the oceans, seas and marine resources for Sustainable Development⁹.

Despite its role in the Sustainable Development agenda, the Blue Economy is facing mounting threat from human and environmental factors. For example, vital resources in the Blue Economy are being degraded and depleted through unsustainable practices such as marine pollution, unsustainable coastal development, deforestation and overfishing¹⁰. It has been argued that with a growing global population and increasing demand for ocean and marine resources, our connected ocean, coasts and inland waters are facing a triple-planetary crisis of climate change, pollution and biodiversity loss¹¹. In light of these challenges, nurturing the Blue Economy is vital for Sustainable Development.

This paper critically examines how Africa's Blue Economy can be effectively nurtured for Sustainable Development. The paper examines the concept of Blue Economy in Africa. It argues that Africa has immense opportunities to harness the Blue Economy towards Sustainable Development. It explores some of the benefits of the Blue Economy in Africa. Despite its immense Blue Economy potential, the paper also notes that the health of oceans and marine resources in Africa is facing significant threats. The paper examines some of the challenges facing the Blue Economy in Africa. In light of these challenges, the paper examines how Africa can harness opportunities in the technology era and

⁸ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 27/09/2025)

⁹ Ibid

¹⁰ Muigua. K., 'Fostering Africa's Blue Economy: Problems and Promises' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Fostering-Africas-Blue-Economy-Problems-and-Promises-.pdf> (Accessed on 27/09/2025)

¹¹ United Nations Environment Programme., 'Sustainable Blue Economy' Op Cit

address challenges towards nurturing the Blue Economy for Sustainable Development.

2.0 The Blue Economy in Africa: Opportunities and Challenges

Africa has an immense Blue Economy potential. It has been argued that Africa has an opportunity to unleash the potential to develop a resilient Blue Economy to fast-track the continent's development agenda¹². Africa is surrounded by some of the world's most important oceans and seas including the Atlantic and Indian oceans and the Mediterranean and Red seas in addition to marine biodiversity, strategic maritime trade routes, abundant aquatic resources and blue carbon assets providing immense opportunities to foster development in the continent¹³. With the Mediterranean Sea and the Red Sea to the North, the Atlantic Ocean to the West, and the Indian Ocean to the East, Africa boasts a vast shoreline with myriad coastal and marine ecosystems and biodiversity¹⁴. These resources and ecosystems provide the continent's coastal countries and communities with immense opportunities including food, livelihoods, and economic opportunities in key sectors such as fisheries and tourism while protecting against adverse climatic events including storm surges, flooding, coastal erosion and sea-level rise¹⁵.

The Blue Economy is therefore at the heart of Africa's development agenda. The continent's vast ocean and inland water resources hold immense promise for

¹² The World Bank., 'Blue Economy for Resilient Africa Program.' Available at <https://www.worldbank.org/en/events/2022/11/16/blue-economy-for-resilient-africa-program> (Accessed on 28/09/2025)

¹³ African Union., 'Shaping a Sustainable Blue Economy for Africa UN Oceans Conference Side Event.' Available at <https://au.int/en/newsevents/20220630/shaping-sustainable-blue-economy-africa-un-oceans-conference-side-event> (Accessed on 28/09/2025)

¹⁴ World Bank Group., 'Blue Economy in Africa: a Synthesis' Available at <https://thedocs.worldbank.org/en/doc/213a25f8770328e39b2ef15e7104a136-0320012022/original/Overview.pdf> (Accessed on 28/09/2025)

¹⁵ Ibid

Sustainable Development¹⁶. Africa's blue economy is valued at approximately \$450 billion annually, presenting numerous opportunities for growth and development in several sectors¹⁷. For instance, it has been pointed out that the Blue Economy creates nearly 49 million jobs in Africa making it an indispensable resource in the continent's development agenda¹⁸. It is also crucial for food security, livelihoods, and biodiversity which are all dependent on the ocean's health¹⁹. Further, it has been observed that international trade is important to many African economies, with more than 90 percent of Africa's imports and exports conducted by sea²⁰. Africa's 38 coastal and island states, with their 47,000 kilometers of coastline house 85 commercial ports that serve as gateways to global markets making the Blue Economy a vital resource in international trade²¹.

A sustainable Blue Economy can therefore unleash opportunities in a number of highly productive activities which can make a powerful contribution to Africa's development agenda. These activities include trade and transport by sea, inland water ways and lakes, fisheries and aquaculture, mining and oil and gas resources, exploitation of renewable marine energy, and coastal and marine tourism²². The Blue Economy in Africa also provides environmental benefits by

¹⁶ Africa's Blue Economy - it's time for Action, not Words., Available at <https://african.business/2025/06/economy/africas-blue-economy-pivotal-to-the-continent-sustainable-economic-growth-and-development> (Accessed on 28/09/2025)

¹⁷ Ibid

¹⁸ The World Bank., 'Blue Economy for Resilient Africa Program.' Op Cit

¹⁹ Ibid

²⁰ United Nations Economic Commission for Africa., 'Africa's Blue Economy: A Policy Handbook.' Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/30130/AfricasBlueEconomy.pdf?sequence=1&isAllowed=y> (Accessed on 28/09/2025)

²¹ Africa's Blue Economy - it's time for Action, not Words., Op Cit

²² United Nations Economic Commission for Africa., 'Africa's Blue Economy: Opportunities and challenges to bolster sustainable development and socioeconomic transformation' Available at

supporting marine biodiversity²³. Coastal/marine ecosystems including coral reefs, mangrove forests, seagrass beds, estuaries, hydrothermal vents, seamounts and soft sediments on the ocean floor are biodiversity hotspots providing habitats for thousands of species²⁴. Marine biodiversity both globally and in Africa provides a wide range of ecosystem services necessary for sustaining life on the planet including food, oxygen and climate regulation²⁵. For instance, it has been observed that deep-sea life is essential to life on Earth because of its crucial role in global carbon and biogeochemical cycles, including nutrient regeneration²⁶. Marine biodiversity provides numerous benefits and opportunities to coastal communities in Africa including poverty eradication, sustained economic growth, food security sustainable livelihoods and inclusive work²⁷.

The Blue Economy in Africa also provides opportunities towards combating climate change²⁸. For example, coastal and marine ecosystems including mangroves, saltmarshes and seagrasses are vital blue carbon sinks which can

https://nairobi-convention.org/clearinghouse/sites/default/files/Africa%27s%20Blue%20Economy%20Issues_Paper_UNECA.pdf (Accessed on 28/09/2025)

²³ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

²⁴ Secretariat of the Convention on Biological Diversity., 'Oceans Contain a Wealth of Biodiversity' Available at <https://www.cbd.int/article/biodiversityforwater-1#:~:text=Deep%2Dseabed%20habitats%20host%20between,sustainable%20fishery%20and%20mariculture%20management>. (Accessed on 28/09/2025)

²⁵ United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Available at <https://www.un.org/en/chronicle/article/marine-biodiversity-and-ecosystems-underpin-healthy-planet-and-social-well-being> (Accessed on 28/09/2025)

²⁶ Secretariat of the Convention on Biological Diversity., 'Oceans Contain a Wealth of Biodiversity' Op Cit

²⁷ United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Op Cit

²⁸ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

enhance the continent's response to climate change²⁹. It has been argued that blue carbon ecosystems provide a natural solution to remove carbon from the atmosphere, build resilience against the mounting impacts of climate change and preserve vital biodiverse habitats³⁰. They are effective carbon sinks and have been described as carbon removal powerhouses, storing up to 5 times more carbon per area than tropical forests and absorbing it from the atmosphere about 3 times as quickly as tropical forests³¹. In addition, these ecosystems support livelihoods through fisheries, improve water quality, and provide coastal protection against floods and storms³².

Due to the foregoing opportunities, it has been argued that a sustainable Blue Economy is at the heart of Africa's development and competitiveness³³. This is recognised under African Union's *Agenda 2063*³⁴ which seeks to exploit the vast potential of Africa's blue/ocean economy for Sustainable Development. Agenda 2063 acknowledges the potential of the Blue Economy to trigger Sustainable Development in Africa through marine resources, fishing, tourism, energy, port operations, mining and marine transport³⁵. It calls for the sustainable utilization

²⁹ World Bank Group., 'What You Need to Know About Blue Carbon' Available at <https://www.worldbank.org/en/news/feature/2023/11/21/what-you-need-to-know-about-blue-carbon> (Accessed on 28/09/2025)

³⁰ Wood. K., Ashford. O., 'How Blue Carbon Can Tackle the Climate, Biodiversity and Development Crises' Available at <https://www.wri.org/insights/what-is-blue-carbon-benefits-for-people-planet> (Accessed on 28/09/2025)

³¹ Ibid

³² United Nations Environment Programme., 'Why protecting & restoring blue carbon ecosystems matters' Available at <https://www.unep.org/explore-topics/oceans-seas/what-we-do/protecting-restoring-blue-carbon-ecosystems/why-protecting> (Accessed on 28/09/2025)

³³ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

³⁴ Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 28/09/2025)

³⁵ Ibid

and management of the Blue Economy in Africa in order to realize its potential³⁶.

Further, the *Africa Blue Economy Strategy*³⁷ aims to foster an inclusive and sustainable Blue Economy that significantly contributes to Africa's transformation and growth. The Strategy seeks to guide the development of an inclusive and sustainable Blue Economy that becomes a significant contributor to continental transformation and growth, through advancing knowledge on marine and aquatic biotechnology, environmental sustainability, the growth of an Africa-wide shipping industry, the development of sea, river and lake transport, the management of fishing activities on these aquatic spaces, and the exploitation and beneficiation of deep sea mineral and other resources³⁸. The Africa Blue Economy Strategy therefore seeks to harness opportunities and address challenges towards nurturing the Blue Economy in Africa for Sustainable Development.

Despite having an immense Blue Economy potential, Africa faces several challenges that undermine the role of the ocean economy in the continent's development agenda. For example, unsustainable infrastructure development, pollution, and the inadequate management of natural habitats and resources are key challenges threatening the productivity of the Blue Economy in Africa³⁹. In addition, it has been pointed out that oceans and aquatic inland ecosystems in Africa face multiple stresses from resource overexploitation, poor governance, rapid coastal population growth, habitat degradation, and pollution⁴⁰. In particular, marine pollution is a major challenge in Africa with the continent

³⁶ Ibid

³⁷ Africa Union., 'Africa Blue Economy Strategy.' Available at https://www.aubiar.org/sites/default/files/2020-10/sd_20200313_africa_blue_economy_strategy_en.pdf (Accessed on 28/09/2025)

³⁸ Ibid

³⁹ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁴⁰ Africa's Blue Economy – it's time for Action, not Words., Op Cit

estimated to be the second biggest ocean plastic polluter⁴¹. This undermines economic activities such as fisheries, aquaculture, tourism, and shipping while also harming marine life⁴². In addition unsustainable practices including overfishing, deforestation of mangroves, unsustainable coastal development and habitat degradation are impacting coastal/marine ecosystems leading the loss and decline of marine biodiversity with severe consequences for people and planet⁴³. Climate change is also impacting the Blue Economy in Africa. For example, climate change-related events such as sea-level rise, land subsidence, storm surge, and coastal flooding are exacerbating the vulnerability of the Blue Economy in Africa⁴⁴. Further, according to the Africa Blue Economy Strategy, harmful and illegal practices including maritime terrorism, sea piracy, human trafficking, illicit trade in crude oil and arms, and drug trafficking are serious challenges to Africa's Blue Economy since these incidences pose a real threat not only to the safety of vessels and their crew but also to the economies of affected countries⁴⁵.

In light of the foregoing challenges, it is imperative to nurture a sustainable Blue Economy for Africa's development.

3.0 Nurturing the Blue Economy in Africa for Sustainable Development

The Blue Economy is at the core of Sustainable Development efforts in Africa. A sustainable Blue Economy provides immense opportunities for economic development by supporting key sectors including fisheries, tourism, maritime trade and transport, blue energy and ocean mining⁴⁶. The Blue Economy is also at the heart of biodiversity conservation, climate action due to the vital role of

⁴¹ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁴² Ibid

⁴³ Ibid

⁴⁴ Childs. J & Hicks. C., 'Securing the Blue: Political Ecologies of the Blue Economy in Africa.' *Journal of Political Ecology*, 2019

⁴⁵ Africa Union., 'Africa Blue Economy Strategy.' Op Cit

⁴⁶ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

blue carbon ecosystems in confronting climate change, and coastal protection against adverse climatic and weather events including sea-level rise, flooding and storm surges⁴⁷. Despite its important contribution to Sustainable Development, the Blue Economy in Africa is facing mounting threats including marine pollution, illegal and unsustainable fishing, coastal erosion, degradation and destruction of marine/coastal ecosystems, harmful and illegal activities and adverse climatic events⁴⁸.

In light of the foregoing, it is imperative to harness opportunities and address challenges towards nurturing the Blue Economy for Sustainable Development in Africa. In particular, it has been argued that promoting good governance in the Blue Economy sector and establishing regional and sub-regional cooperation in the Blue Economy can enable Africa to harness opportunities and address challenges facing this vital sector⁴⁹. Through good governance, it is possible to ensure a sustainable Blue Economy by curbing harmful practices including overfishing, unsustainable coastal development, habitat degradation, marine biodiversity loss and marine pollution⁵⁰.

By embracing good governance practices that take into account all levels of government, all stakeholders including the private sector and coastal communities, and all Blue Economy sectors including fisheries and aquaculture, tourism, renewable energy, marine biotechnology, transport, ports, logistics, wastewater and solid waste management, it is possible to harness opportunities and curb challenges facing the Blue Economy through sustainable fisheries,

⁴⁷ United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Op Cit

⁴⁸ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁴⁹ Roy. A., 'Blue Economy in the Indian Ocean: Governance Perspectives for Sustainable Development in the Region.' Available at https://www.orfonline.org/wp-content/uploads/2019/01/ORF_Occasional_Paper_181_Blue_Economy.pdf (Accessed on 28/09/2025)

⁵⁰ Ibid

sustainable wastewater and solid waste management, sound marine biodiversity conservation, and sustainable extraction of resources including blue energy, minerals, oil and gas⁵¹. Further, global, regional and sub-regional cooperation is key towards tackling harmful and illegal practices in the Blue Economy including, piracy, human trafficking, maritime terrorism, illicit trade and drug trafficking⁵².

It is also imperative to utilise technology towards harnessing opportunities and addressing challenges facing the Blue Economy in Africa. Technology can strengthen governance of the Blue Economy in Africa through integrated maritime surveillance which can inform better decision making, digital mapping of maritime and coastal space and natural assets which can form the basis for cross-sector analysis and planning in order to prevent conflicts and avoid externalities, sustainable extraction of resources including fish, minerals, oil and gas, and effective monitoring and conservation of marine biodiversity⁵³. It has been argued that modern data and information technologies are key towards nurturing the Blue Economy in Africa through evidence-based knowledge and information and growing the marine knowledge base required for sound governance of the Blue Economy⁵⁴. Utilising science and technology is therefore key towards effective governance of coastal and marine resources and ecosystems⁵⁵. It is thus necessary to harness opportunities in the technology era by increasing scientific knowledge, developing research capacity and transfer of

⁵¹ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁵² Roy. A., 'Blue Economy in the Indian Ocean: Governance Perspectives for Sustainable Development in the Region.' Op Cit

⁵³ United Nations Economic Commission for Africa., 'The Nairobi Statement of Intent on Advancing the Global Sustainable Blue Economy.' Available at <https://archive.uneca.org/sites/default/files/uploadeddocuments/SROs/EA/HIGH-LEVEL-SUSTAINABLE-BLUE-ECONOMY-CONFERENCE-2018/nairobistatement-of-intent-advancing-global-sustainable-blue-economy.pdf> (Accessed on 28/09/2025)

⁵⁴ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁵⁵ Africa Union., 'Africa Blue Economy Strategy.' Op Cit

marine technology towards ensuring a sustainable Blue Economy in Africa⁵⁶.

4.0 Conclusion

Africa has an immense Blue Economy potential. It is therefore necessary to harness opportunities in key sectors including tourism, fisheries and aquaculture, maritime trade and transport, blue energy, minerals, oil and gas extraction, marine biodiversity conservation, and climate action through blue carbon sinks towards nurturing the Blue Economy for Sustainable Development in Africa⁵⁷. It is also vital to address challenges including overfishing, unsustainable coastal development, habitat degradation, marine biodiversity loss and marine pollution towards nurturing the Blue Economy in Africa for Sustainable Development⁵⁸. It is also important for Africa to utilise science, technology and innovation towards harnessing opportunities and tackling the challenges facing its Blue Economy sector⁵⁹. Nurturing the Blue Economy in Africa is therefore a practical ideal that can be actualised in the technology era for Sustainable Development.

⁵⁶ Ibid

⁵⁷ World Bank Group., 'Blue Economy in Africa: a Synthesis' Op Cit

⁵⁸ Ibid

⁵⁹ Africa Union., 'Africa Blue Economy Strategy.' Op Cit

References

Africa Union., 'Africa Blue Economy Strategy.' Available at https://www.aubiar.org/sites/default/files/2020-10/sd_20200313_africa_blue_economy_strategy_en.pdf

Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf

Africa's Blue Economy – it's time for Action, not Words., Available at <https://african.business/2025/06/economy/africas-blue-economy-pivotal-to-the-continents-sustainable-economic-growth-and-development>

African Union., 'Shaping a Sustainable Blue Economy for Africa UN Oceans Conference Side Event.' Available at <https://au.int/en/newsevents/20220630/shaping-sustainable-blue-economy-africa-un-oceans-conference-side-event>

Benzaken. D et al., 'Good governance for sustainable blue economy in small islands: Lessons learned from the Seychelles experience' Available at <https://www.frontiersin.org/journals/political-science/articles/10.3389/fpos.2022.1040318/full>

Childs. J & Hicks. C., 'Securing the Blue: Political Ecologies of the Blue Economy in Africa.' *Journal of Political Ecology*, 2019

Muigua. K., 'Fostering Africa's Blue Economy: Problems and Promises' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Fostering-Africas-Blue-Economy-Problems-and-Promises-.pdf>

Organisation for Economic Co-operation and Development., 'Blue Economy' Available at <https://www.oecd.org/en/topics/sub-issues/water-governance/blue-economy.html>

Roy. A., 'Blue Economy in the Indian Ocean: Governance Perspectives for Sustainable Development in the Region.' Available at https://www.orfonline.org/wp-content/uploads/2019/01/ORF_Occasional_Paper_181_Blue_Economy.pdf

Secretariat of the Convention on Biological Diversity., 'Oceans Contain a Wealth of Biodiversity' Available at <https://www.cbd.int/article/biodiversityforwater-1#:~:text=Deep%2Dseabed%20habitats%20host%20between,sustainable%20fishery%20and%20mariculture%20management>

The World Bank., 'Blue Economy for Resilient Africa Program.' Available at <https://www.worldbank.org/en/events/2022/11/16/blue-economy-for-resilient-africa-program> (Accessed on 28/09/2025)

United Nations Economic Commission for Africa., 'Africa's Blue Economy: A Policy Handbook.' Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/30130/AfricasBlueEconomy.pdf?sequence=1&isAllowed=y>

United Nations Economic Commission for Africa., 'Africa's Blue Economy: Opportunities and challenges to bolster sustainable development and socioeconomic transformation' Available at https://nairobi-convention.org/clearinghouse/sites/default/files/Africa%27s%20Blue%20Economy%20Issues_Paper_UNECA.pdf

United Nations Economic Commission for Africa., 'The Nairobi Statement of Intent on Advancing the Global Sustainable Blue Economy.' Available at <https://archive.uneca.org/sites/default/files/uploadeddocuments/SROs/EA/HIGH-LEVEL-SUSTAINABLE-BLUE-ECONOMY-CONFERENCE-2018/nairobistatement-of-intent-advancing-global-sustainable-blue-economy.pdf>

United Nations Environment Programme., 'Sustainable Blue Economy' Available at <https://www.unep.org/topics/ocean-seas-and-coasts/ecosystem-based-approaches/sustainable-blue-economy>

United Nations Environment Programme., 'Why protecting & restoring blue carbon ecosystems matters' Available at <https://www.unep.org/explore-topics/oceans-seas/what-we-do/protecting-restoring-blue-carbon-ecosystems/why-protecting>

United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20>

[for%20Sustainable%20Development%20web.pdf](#)

United Nations., 'Blue Economy Definitions' Available at

https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/rok_part_2.pdf

United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Available at <https://www.un.org/en/chronicle/article/marine-biodiversity-and-ecosystems-underpin-healthy-planet-and-social-well-being>

What is the blue economy?., Available at

<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-blue-economy/>

Wood. K., Ashford. O., 'How Blue Carbon Can Tackle the Climate, Biodiversity and Development Crises' Available at <https://www.wri.org/insights/what-is-blue-carbon-benefits-for-people-planet>

World Bank Group., 'Blue Economy in Africa: a Synthesis' Available at

<https://thedocs.worldbank.org/en/doc/213a25f8770328e39b2ef15e7104a136-0320012022/original/Overview.pdf>

World Bank Group., 'What is the Blue Economy?'

<https://www.worldbank.org/en/news/infographic/2017/06/06/blue-economy>

World Bank Group., 'What You Need to Know About Blue Carbon' Available at

<https://www.worldbank.org/en/news/feature/2023/11/21/what-you-need-to-know-about-blue-carbon>

Conceptualizing Asset Recovery through ADR in Kenya: Legislative Frameworks, Systemic Deficiencies, and Comparative Jurisprudence

By: **Brigid Maina, HSC***

Abstract

This article examines the integration of Alternative Dispute Resolution (ADR) mechanisms into Kenya's asset recovery framework as a transformative approach to combating corruption. The study systematically analyses constitutional principles, statutory frameworks, and court interpretations to assess how ADR can improve the efficiency of recovering illicitly acquired assets while preserving procedural integrity. The inquiry indicates that although Kenya's legal framework grants considerable endorsement for Alternative Dispute Resolution via the Constitution of Kenya 2010, the Ethics and Anti-Corruption Commission Act 2011, and the Anti-Corruption and Economic Crimes Act 2003, notable deficiencies persist in procedural guidelines, transparency measures, and enforcement structures. Drawing on documentary evidence from institutional reports and examining recent developments in the United Kingdom, South Africa, and Brazil, this article proposes comprehensive legal reforms to strengthen ADR implementation. The analysis demonstrates that properly structured ADR mechanisms can accelerate asset recovery, reduce costs, and promote restorative justice, but only when supported by robust safeguards addressing power imbalances, ensuring transparency, and maintaining judicial oversight.

The article has ten parts; the introduction, theoretical foundations and justification for

** LLM, University of Nairobi; LLB, Moi University; Post Graduate Diploma in Law, Kenya School of Law; Advocate of the High Court of Kenya; ACIarb, Chartered Institute of Arbitrators; Certified Professional Mediator, MTI-USA; Certified Forensic Fraud Examiner (CFFE), KASNEB; Certified Secretary (CS), Institute of Certified Secretaries.*

The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which she is affiliated.

ADR in public law, constitutional and legislative architecture, judicial interpretation and the evolution of ADR principles, practical implementation, and lessons from selected jurisdictions, critical gaps and challenges in the current framework, pathways to reform, and the conclusion.

Keywords: *Alternative Dispute Resolution, Asset Recovery, Anti-Corruption, Kenya, Legal Reform, Comparative practice, Institutional Reforms.*

1. Introduction

Global and domestic anti-corruption and economic crime operations require asset recovery.¹ Kenyan asset recovery relies on conventional judicial systems.² These procedures are crucial, but they often involve lengthy litigation, high expenses, and procedural complexity.³ This paper analyses ADR's transformational potential as a complementary tool to asset recovery. It claims that ADR; mediation, negotiation, and conciliation, makes asset recovery more flexible, economically efficient, and expeditious, especially in complex transnational corruption cases.⁴

This study examines the practicality and potential benefits of ADR integration in Kenya's asset recovery processes. It analyses the legal and institutional

¹ Jackie Harvey, 'Tracking the International Proceeds of Corruption and the Challenges of National Boundaries and National Agencies: The UK Example', *Frauds and Financial Crimes* (Routledge 2021).

² Constance Gikonyo, 'The Kenyan Civil Forfeiture Regime: Nature, Challenges and Possible Solutions' (2020) 64 *Journal of African Law* 27.

³ Edwin Glasgow Qc and Marion Smith Qc, 'Mediation and Alternative Dispute Resolution' in Edwin Glasgow Qc and Marion Smith Qc, *Wilmot-Smith on Construction Contracts* (Oxford University Press 2021) <<https://academic.oup.com/book/40022/chapter/340382042>> accessed 23 January 2024.

⁴ Aaron Ringera, 'Kenya: Slow Court System Frustrating War against Corruption' *The Nation* (Nairobi, 7 September 2009) <<https://allafrica.com/stories/200909070649.html>> accessed 6 June 2025.

architecture to identify structural barriers to ADR's successful implementation and uses worldwide best practices to assess their contextual relevance and applicability to Kenya. The main research question is how to best use ADR mechanisms to strengthen asset recovery efforts. This paper proposes that Kenya's legal authorization for ADR in asset recovery is undermined by procedural guidance, transparency requirements, and inter-agency coordination issues.⁵ These institutional flaws create legal uncertainty, discouraging ADR use and making them vulnerable to abuse. This article analyses existing statutory provisions and their practical implementation, using international practice as a guide, to identify targeted reforms that will turn ADR from an underutilized option into a cornerstone of Kenya's asset recovery strategy.

This study goes beyond academic discourse to address urgent practical needs. Corruption drains billions of shillings from Kenya's economy each year, hurting development goals and weakening public trust in government.⁶ While legal robust, conventional asset recovery techniques can take years, even decades, during which illicitly acquired assets might be lost, transferred, or depreciated.⁷ The Ethics and Anti-Corruption Commission and the Assets Recovery Agency are commendable institutions that recognize these formidable challenges, but fundamental questions remain about whether existing mechanisms are sufficient to serve the public interest in swift and effective asset recovery.

This article uses a doctrinal legal research methodology to examine Kenya's legal

⁵ Naser Sherman and Bashar Talal Momani, 'Alternative Dispute Resolution: Mediation as a Model' (2025) 13 F1000Research 778.

⁶ CIVIL FORUM FOR ASSET RECOVERY, 'Alternative Dispute Resolution & Asset Recovery in Kenya' (2024) <https://cifar.eu/wp-content/uploads/2024/01/ADR-paper_web.pdf> accessed 1 May 2024.

⁷ ICJ Kenya, 'Strengthen Global Cooperation to Tackle Corruption - ICJ Kenya' (6 September 2024) <<https://icj-kenya.org/news/strengthening-global-cooperation-to-tackle-corruption/>, <https://icj-kenya.org/news/strengthening-global-cooperation-to-tackle-corruption/>> accessed 6 June 2025.

framework for ADR in asset recovery, including constitutional provisions, statutory enactments, and relevant judicial decisions. Documentary evidence from official institutional reports, policy documents, and regulatory instruments is carefully analyzed to illuminate real execution. An integrated approach helps clarify legislative purpose and practical application by highlighting the gaps between formal legal frameworks and their operations.

Comparative international experiences are chosen strategically based on their contextual relevance to Kenya's unique status. The UK's common law Deferred Prosecution Agreement (DPA) framework provides a sophisticated paradigm for structured corporate corruption discussions. Its strict judicial checks at the beginning and conclusion aid safeguard Kenya's new Alternative Dispute Resolution (ADR) methods from political influence and power issues,⁸ while its clear legal rules and promise of transparency by publicizing DPA terms create a strong basis for establishing clear procedures and enhancing public trust.⁹

Conversely, South Africa is an important regional and developmental comparative. The National Prosecuting Authority's 2024 policy formalizing Corporate Alternative Dispute Resolution (C-ADR) shows a pragmatic and growing reaction to chronic litigation and multinational financial crimes.¹⁰ C-ADR landmark settlements with SAP (R2.2 billion)¹¹ and McKinsey (over \$122

⁸ Federico Mazzacuva, 'Justifications and Purposes of Negotiated Justice for Corporate Offenders: Deferred and Non-Prosecution Agreements in the UK and US Systems of Criminal Justice' (2014) 78 the Journal of Criminal Law 249.

⁹ Nicholas Lord, 'Prosecution Deferred, Prosecution Exempt: On the Interests of (In) Justice in the Non-Trial Resolution of Transnational Corporate Bribery' (2023) 63 the British Journal of Criminology 848.

¹⁰ Michael-James Currie, 'Non-Trial Resolutions: South Africa's Corporate Alternative Dispute Resolution (C-ADR) Policy'.

¹¹ Siphelele Dlodla, 'SAP's R2. 2bn Fine Is "Bold New Step" That Takes SA Forward in Fighting Crime - NPA' (*The Star*, 1705039200000) <<https://thestar.co.za/business->

million)¹² demonstrate ADR's ability to recover assets quickly and significantly, affording Kenya's aspirational ambitions tangible lessons. Switzerland¹³ and Brazil¹⁴ also offer valuable insights into international cooperation and large-scale corruption resolution, but the UK and South Africa's direct legal heritage and regional developmental contexts make them particularly instructive for Kenya's reform pathways.

This paper argues that while Kenya has legal endorsement for ADR in asset recovery, major inadequacies in procedural guidelines, transparency standards, and coordination mechanisms undercut the current framework. These limitations create legal uncertainty, discouraging ADR use and making them vulnerable to abuse. This article proposes targeted reforms to turn ADR from an underutilized option into a cornerstone of Kenya's comprehensive asset recovery strategy by analyzing existing provisions and their practical implementation and drawing from international practice.

II. Theoretical Foundations and Justification for ADR in Public Law

The incorporation of ADR into asset recovery processes requires solid theoretical grounding, particularly given the public law nature of corruption offences and

report/economy/2024-01-12-saps-r2-2bn-fine-is-bold-new-step-that-takes-sa-forward-in-fighting-crime-npa/> accessed 6 June 2025.

¹² 'McKinsey Africa to Pay over \$122m over South African Bribes' (*Pinsent Masons*, 6 June 2025) <<https://www.pinsentmasons.com/out-law/news/mckinsey-africa-pay-over-south-african-bribes>> accessed 6 June 2025.

¹³ 'FRACCK Agreement with Kenya Illustrates That Partnership Is Essential When the Disposal of Confiscated Assets Should Benefit Development' (*Basel Institute on Governance*) <<https://baselgovernance.org/news/fracck-agreement-kenya-illustrates-partnership-essential-when-disposal-confiscated-assets>> accessed 6 June 2025.

¹⁴ Iuanavargasmacedo, 'Leniency Agreements Under Brazil's Clean Company Act: Are They a Good Idea?' (*GAB | The Global Anticorruption Blog*, 19 December 2016) <<https://globalanticorruptionblog.com/2016/12/19/leniency-agreements-under-brazils-clean-company-act-are-they-a-good-idea/>> accessed 29 May 2025.

the public interest in recovering stolen assets.¹⁵ Understanding these theoretical foundations is essential for appreciating both the potential and limitations of ADR in this context.

The doctrine of substantive justice, embedded in Article 159(2) of Kenya's Constitution, provides the primary theoretical justification for ADR in asset recovery. This constitutional principle mandates that justice shall be done to all irrespective of status, prioritizing just outcomes over rigid procedural formalism.¹⁶ In the case of *Ali & 4 others v Gashambi & 8 others (Constitutional Petition 8 of 2019) [2024] KEHC 8072 (KLR)*¹⁷, the High Court emphasized that procedural technicalities should not defeat the ends of justice, establishing jurisprudential support for mechanisms that achieve just outcomes through alternative means. This principle becomes particularly relevant in asset recovery, where prolonged litigation often results in asset dissipation, effectively denying justice despite procedural correctness.

The principle of proportionality adds another dimension to the theoretical framework supporting ADR. Kenyan courts have recognized that legal remedies must be proportionate to the harm addressed and resources expended. In the case of *Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR*, the doctrine of proportionality can be interpreted in the context of ADR and asset recovery, where the court reinforces why alternative mechanisms are constitutionally justified. Just as the court identified "less restrictive means" to combat illegal devices without excessive rights limitations, ADR represents a proportionate response to asset recovery challenges. Traditional litigation's lengthy processes and costs may fail the proportionality test when ADR can

¹⁵ Merilyne Omondi, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (Thesis, University of Nairobi 2021) <<http://erepository.uonbi.ac.ke/handle/11295/161100>> accessed 23 October 2025.

¹⁶ The Constitution of Kenya, 2010.

¹⁷ *Ali 4 others v Gashambi 8 others (Constitutional Petition 8 of 2019) 2024KEHC8072 (KLR) (4July2024) (Ruling) (Malindi High Court)*.

achieve the same legitimate objective - recovering stolen assets - through "less drastic means." The court's emphasis on existing effective alternatives (like the 1.89 million blocked devices) parallels how Kenya's ADR framework has demonstrated success in recovering assets more efficiently while minimally impairing rights.¹⁸ Applied to asset recovery, this principle suggests that where traditional litigation would consume substantial portions of recoverable assets through legal fees and extended proceedings, alternative mechanisms preserving greater value for public benefit may be more appropriate. This proportionality analysis becomes acute in cases involving modest assets where litigation costs might exceed recoverable amounts, effectively creating impunity for small-scale corruption.¹⁹

Significantly, restorative justice principles provide compelling theoretical support for ADR in asset recovery.²⁰ Despite the fact that Kenyan anti-corruption legislation does not particularly codify restorative justice, statutory provisions that prioritize asset recovery and victim compensation over measures that are solely punitive reflect this approach. A provision of the Anti-Corruption and Economic Crimes Act known as Section 56B, which allows for out-of-court settlements, exemplifies the ideals of restorative justice by making it possible to negotiate the restoration of assets without necessarily carrying out criminal prosecutions.²¹ This approach acknowledges that speedy asset recovery and institutional reforms may sometimes be more beneficial to the public than lengthy criminal actions, which may eventually fail to win convictions or asset

¹⁸ Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR [2018] Beryl A Ikamari(ed) (High Court at Nairobi (Milimani Law Courts)).

¹⁹ Lena Chepkosgei, 'Assessing the Effectiveness of Recovering Unexplained Wealth in Combating Corruption in the Public Sector: A Focused Comparison of Select Countries in Africa and Europe' (University of Nairobi 2021).

²⁰ Ilham Nur Pratama and Nurul Restu Azyanti, 'Application of Restorative Justice In The Settlement of Corruption Crimes' (2022) 3 *Corruptio* 135.

²¹ ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003 s 56B.

returns.²²

The intersection of these theoretical foundations creates a robust framework supporting ADR in asset recovery, but also reveals inherent tensions requiring careful navigation. The efficiency promised by ADR must not compromise fundamental fairness guarantees.²³ The flexibility of negotiated resolutions must operate within constitutional constraints. The restorative focus on asset recovery must not create perceptions of impunity that undermine corruption deterrence. These tensions are not fatal to ADR's legitimacy but rather define parameters within which it must operate to maintain both effectiveness and legitimacy.²⁴

The theoretical justification for ADR extends beyond mere efficiency considerations to encompass broader transformative potential. Traditional adversarial proceedings often entrench positions and destroy relationships that might be salvaged for future cooperation.²⁵ In asset recovery contexts, this adversarial dynamic can impede disclosure of hidden assets, discourage cooperation in identifying other wrongdoers, and prevent institutional reforms

²² CIVIL FORUM FOR ASSET RECOVERY, 'Alternative Dispute Resolution & Asset Recovery in Kenya' (2024) <https://cifar.eu/wp-content/uploads/2024/01/ADR-paper_web.pdf> accessed 1 May 2024.

²³ Samuel Olugbenga Ojo, 'Alternative Dispute Resolution (ADR): A Suitable Broad Based Dispute Resolution Model in Nigeria; Challenges and Prospects.' (2023) 4 International Journal of Conflict Management 50 <<https://carijournals.org/journals/index.php/IJCM/article/view/1253>> accessed 31 March 2024.

²⁴ Vivi Arfiani Siregar and Feni Puspitasari, 'ALTERNATIVE RETURN FOR STATE LOSSES IN CRIME CASES' (2023) 2 International Journal of Multidisciplinary Research and Literature 481 <<https://ijomral.esc-id.org/index.php/home/article/view/137>> accessed 29 March 2024.

²⁵ Kelly Milliron, 'ADDRESSING DUE PROCESS CONCERNS: EVALUATING PROPOSALS FOR CIVIL ASSET FORFEITURE REFORM' (2018) 70 13976 <<https://vpn.uonbi.ac.ke/proxy/46880209/https://heinonline.org/HOL/Print?collection=usjournals&handle=hein.journals/uflr70&id=1420>> accessed 23 April 2024.

addressing systemic corruption. ADR mechanisms, by fostering dialogue rather than confrontation, create possibilities for comprehensive solutions addressing root causes rather than merely symptoms of corruption.²⁶

Furthermore, the theoretical framework must account for the unique nature of corruption as both a criminal offence and a breach of public trust.²⁷ Unlike purely private disputes where party autonomy prevails, corruption cases involve public interest dimensions that limit the scope of acceptable negotiated outcomes.²⁸ The theoretical justification for ADR in this context must therefore incorporate public interest safeguards ensuring that efficiency gains do not come at the expense of broader accountability objectives.²⁹ This requires reconceptualizing ADR not as privatization of public justice but as an alternative pathway to achieving public justice through different means.

III. Constitutional and Legislative Architecture

Kenya's legal framework for ADR in asset recovery emerges from an intricate web of constitutional provisions and statutory enactments that collectively

²⁶ Jean R Sternlight, 'Is Alternative Dispute Resolution Consistent with the Rule of Law?: Lessons from Abroad' 56 DEPAUL LAW REVIEW.

²⁷ N Blackaby, 'Public Interest and Investment Treaty Arbitration' [2003] Transnational Dispute Management <<https://www.semanticscholar.org/paper/Public-Interest-and-Investment-Treaty-Arbitration-Blackaby/1c814787e67950dd9d778c2b999bc7ba46b967e5>> accessed 12 October 2024.

²⁸ Ariadna H Ochnio, 'Recent Developments in EU Anti-Corruption Strategy: The Missing Element of the Return of Corrupt Assets to "Victim Countries"' (2024) 27 Journal of Money Laundering Control 1 <<https://www.emerald.com/insight/content/doi/10.1108/JMLC-11-2023-0176/full/html>> accessed 31 March 2024.

²⁹ Albert W Dzur, 'Restorative Justice and Democracy: Fostering Public Accountability for Criminal Justice' (2011) 14 Contemporary Justice Review 367 <<http://www.tandfonline.com/doi/abs/10.1080/10282580.2011.616367>> accessed 3 September 2023.

authorize while constraining alternative approaches to recovering stolen assets.³⁰ Understanding this architecture requires careful analysis of how different legal instruments interact to create space for ADR while maintaining essential safeguards.

The Constitution of Kenya 2010 provides the essential legal framework for Alternative Dispute Resolution (ADR) via a set of interrelated provisions. Article 159(2)(c) clearly requires that judicial bodies, such as courts and tribunals, "shall" encourage alternative dispute resolution methods, including reconciliation, mediation, arbitration, and traditional mechanisms.³¹ The use of "shall" instead of "may" in this phrasing creates a definitive constitutional requirement for judicial bodies to actively support ADR, moving beyond a simple optional approach. This mandatory directive applies to all judicial authority, encompassing all asset recovery proceedings, regardless of whether they are civil or criminal in nature.³² This judicial approach mandates that negotiations must incorporate procedural fairness guarantees, including adequate disclosure of allegations, meaningful opportunity to respond, and reasoned consideration of representations, thereby effectively importing administrative law principles into ADR contexts and ensuring that informality does not equate to arbitrariness. This safeguards individual rights while preserving ADR's efficiency advantages.

Article 159(3) of the constitution establishes essential limitations by explicitly prohibiting the use of ADR mechanisms that violate the Bill of Rights, are

³⁰ Muthoni Kimani, 'Use of Settlements and Their Implications on the Recovery and Return of Stolen Assets' (2017) <<https://www.unodc.org/easternafrika/en/Stories/unodc-lauds-anti-corruption-efforts-in-kenya.html>> accessed 26 March 2024.

³¹ The 2010 Constitution art 159 (2)(c).

³² '159. Judicial Authority - Kenya Law Reform Commission (KLRC)' <<https://www.klrc.go.ke/index.php/constitution-of-kenya/134-chapter-ten-judiciary/part-1-judicial-authority-and-legal-system/328-159-judicial-authority>> accessed 6 June 2025.

contrary to justice or morality, or produce results that are inconsistent with these foundational principles.³³ While textually limited to "traditional" dispute resolution mechanisms, judicial interpretation has extended these constraints to all forms of ADR operating within the constitutional framework. These limitations prevent any form of ADR from undermining constitutional values, establishing that efficiency cannot trump fundamental rights or public interest considerations.³⁴

Article 252(1)(b) provides specific authorization for constitutional commissions and independent offices to conduct conciliation, mediation, and negotiation. This provision directly empowers the Ethics and Anti-Corruption Commission, established as an independent commission under Chapter Six, to employ ADR mechanisms. The constitutional status of this authorization is significant, elevating ADR from mere statutory permission to constitutional mandate for these institutions.

The Ethics and Anti-Corruption Commission Act 2011 translates constitutional authorization into operational reality through specific statutory provisions. Section 11(1)(j) empowers the Commission to institute proceedings for asset recovery, while Section 13(2)(d) explicitly includes conciliation, mediation, and negotiation among the Commission's functions.³⁵ The relationship between these provisions reveals legislative intent that court proceedings represent one option

³³ Benson Mutuku and others, 'Formal Justice and Alternative Dispute Resolution on Land Based Conflicts in Kenya' (2022) 7 International Journal of Gender Studies 1 <<https://www.iprijb.org/journals/index.php/IJGS/article/view/1498>> accessed 18 August 2023.

³⁴ Peter M. Muriithi, 'The Interface between Access to Justice and Arbitration in Kenya' [2021] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3892672>> accessed 29 May 2025.

³⁵ The Ethics and Anti-Corruption Act No. 22 of 2011 2011.

among several, with ADR mechanisms equally available for fulfilling the Commission's mandate.

The Anti-Corruption and Economic Crimes Act provides the most detailed statutory framework for ADR implementation. Section 25A, introduced through the 2016 amendment, establishes comprehensive mechanisms for negotiated resolutions in criminal investigations.³⁶ The provision authorizes the Commission to undertake not to institute or discontinue investigations where suspects fulfil specified conditions, including full disclosure of corrupt conduct, return of stolen property, payment of compensation, and reparation for losses to public property. These requirements reflect legislative balancing between efficiency and accountability, ensuring ADR serves broader anti-corruption objectives beyond mere asset recovery.³⁷

The detailed requirements under Section 25A merit careful examination as they reveal legislative intent regarding acceptable parameters for negotiated resolutions. The requirement for "full disclosure of all material facts" ensures that ADR contributes to uncovering systemic corruption rather than merely recovering assets from known incidents. This disclosure obligation transforms individual settlements into opportunities for broader anti-corruption intelligence gathering. The emphasis on returning "corruptly acquired property" rather than negotiated portions reflects zero-tolerance for retention of illicit gains.³⁸ The compensation requirement acknowledges that corruption's harm extends

³⁶ Anti-Corruption And Economic Crimes Act No. 3 of 2003.

³⁷ Komang Ekayana, 'Returns Of Assets In Corruption Criminal Acts As Alternative Restoring State Losses' (2020) 2 Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan 27

<<https://ejournal2.undiksha.ac.id/index.php/IMPPPKn/article/view/82>> accessed 29 March 2024.

³⁸ Áine Clancy, 'A Better Deal? Negotiated Responses to the Proceeds of Grand Corruption' (2022) 33 Criminal Law Forum 149
<<https://link.springer.com/10.1007/s10609-022-09436-6>> accessed 27 March 2024.

beyond direct asset loss to include opportunity costs and institutional damage. The reparation provision recognizes that public property may suffer non-monetary damage requiring restoration.

Section 56B creates parallel authorization for civil recovery proceedings, enabling out-of-court settlements subject to court registration.³⁹ The mandatory registration requirement ensures judicial oversight while preserving the flexibility of negotiation. This dual framework, addressing both criminal and civil proceedings, provides comprehensive coverage for different asset recovery scenarios while maintaining distinct procedures appropriate to each context.

The Proceeds of Crime and Anti-Money Laundering Act 2009⁴⁰ adds another dimension through provisions accommodating consensual approaches. Section 81 enables consent forfeiture orders where parties agree to asset forfeiture without contested proceedings. While not explicitly framed as ADR, this mechanism operates on similar principles of voluntary resolution, demonstrating legislative recognition that adversarial proceedings need not be the exclusive path to asset recovery.⁴¹

The Civil Procedure Rules reinforce this framework through Order 46 Rule 20, mandating courts to adopt alternative dispute resolution for efficient case disposal.⁴² This procedural requirement applies to civil asset recovery suits, creating judicial obligation to consider ADR referral. The establishment of the Mediation Accreditation Committee under Section 59A of the Civil Procedure

³⁹ Nurazlina Abdul Raof and Aiman @ Nariman Mohd Sulaiman, 'Show Me The Money! Unexplained Wealth and Civil Forfeiture in Malaysia' (2023) 31 IIUM Law Journal 127 <<https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/825>> accessed 2 May 2024.

⁴⁰ THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT 2009 81.

⁴¹ Constance Gikonyo, 'Kenya's Proceeds of Crime Act: The Asset Forfeiture Regime and Attendant Human Rights Issues' [2023] East African Law Journal 2023. 1.

⁴² Civil Forum for Asset Recovery (n 14).

Act provides institutional infrastructure ensuring qualified mediators handle sensitive public interest matters.⁴³

This legislative architecture reveals sophisticated recognition of ADR's potential while maintaining crucial safeguards. The framework enables flexibility in selecting appropriate mechanisms while ensuring transparency through court registration requirements, public notification provisions, and reporting obligations. However, the dispersal of provisions across multiple statutes creates complexity that may impede coherent implementation, a challenge requiring careful coordination and possibly legislative consolidation.

The interaction between different statutory provisions creates a complex web of authorities and procedures that practitioners must navigate carefully. The relationship between Section 25A undertakings not to prosecute and Section 56B civil settlements remains particularly intricate. While both provisions enable negotiated resolutions, they operate under different paradigms with distinct requirements and consequences. Section 25A operates within the criminal justice framework, requiring admissions that might have self-incrimination implications, while Section 56B functions within civil recovery where lower standards of proof apply. This dual system creates strategic choices for both authorities and accused persons that may not always align with public interest optimization.

IV. Judicial Interpretation and the Evolution of ADR Principles

The development of jurisprudence on ADR in asset recovery remains nascent in Kenya, yet several significant judicial pronouncements have begun shaping the

⁴³ Dr Kariuki Muigua, Ph.D, 'Enhancing the Court Annexed Mediation Environment in Kenya' [2020] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3833291>> accessed 16 August 2023.

legal landscape. These decisions reveal judicial attitudes toward negotiated resolutions while establishing important parameters for acceptable practice.

The case of *Republic v Ibrahim Haji Isaac* represents a watershed moment in judicial acceptance of negotiated resolutions in corruption cases.⁴⁴ The court permitted withdrawal of criminal charges following an out-of-court settlement where the accused had made full restitution of KES 11.5 million to the Kenya Meat Commission. The court reasoning emphasized pragmatism over rigid prosecution, holding that where public resources have been recovered and the interests of justice served, continued prosecution may not be necessary. The court stated that where an accused person demonstrates good faith by making full restitution and the affected institution confirms satisfaction, judicial discretion may favor case withdrawal in the interest of justice.⁴⁵

This decision establishes several crucial principles that now guide ADR implementation. The requirement for "full restitution" prevents partial settlements that might enable wrongdoers to retain portions of stolen assets.⁴⁶ The emphasis on "good faith" introduces subjective elements requiring genuine cooperation rather than mere tactical compliance. The necessity for institutional confirmation ensures public bodies cannot be coerced into accepting inadequate settlements.⁴⁷ Most significantly, the retention of judicial discretion prevents

⁴⁴ *Republic v Isaac (Anti-Corruption Case 9 of 2015) [2020] KEMC 3 (KLR) (Anti-Corruption and Economic Crimes) (8 September 2020) (Ruling) [2020] Milimani Anti-Corruption Magistrate's Court [2020] KEMC 3 (KLR).*

⁴⁵ Benjamin Balzer and Johannes Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) 52 the RAND Journal of Economics 415.

⁴⁶ Anna Sakellaraki, 'EU Asset Recovery and Confiscation Regime – *Quo Vadis?* A First Assessment of the Commission's Proposal to Further Harmonise the EU Asset Recovery and Confiscation Laws. A Step in the Right Direction?' (2022) 13 New Journal of European Criminal Law 478.

⁴⁷ Nicholas Lord, 'Prosecution Deferred, Prosecution Exempt: On the Interests of (In) Justice in the Non-Trial Resolution of Transnational Corporate Bribery' (2023) 63 the British Journal of Criminology 848.

automatic acceptance of settlements, maintaining court oversight as a safeguard against abuse.

The boundaries of ADR in complex, multiple parties' corruption cases received detailed examination in *Josphat Kipkoech Sirma v Director of Public Prosecutions & Another*.⁴⁸ The petitioners challenged criminal prosecution following a civil settlement between EACC and one co-accused, arguing that the settlement created legitimate expectation of non-prosecution for all involved parties. The High Court firmly rejected this expansive interpretation, with Justice Maina holding that settlements with one party cannot prejudice the State's right to prosecute other participants who were not parties to the agreement.

This decision addresses a critical concern in corruption cases often involving networks of actors with varying culpability levels. The court's emphasis on individual assessment prevents principal offenders from escaping liability by arranging settlements through minor participants.⁴⁹ The principle protects prosecutorial discretion while ensuring ADR cannot be manipulated to create blanket immunity for corruption networks. This approach aligns with international best practices recognizing that effective anti-corruption efforts must address all participants proportionate to their involvement.

Constitutional constraints on ADR received authoritative interpretation in *Ethics and Anti-Corruption Commission v Tom Ojienda, SC t/a Prof. Tom Ojienda & Associates*.⁵⁰ While primarily addressing investigative powers, the Supreme Court's emphasis on procedural fairness extends to ADR contexts. The court

⁴⁸ *Josphat Kipkoech Sirma v Director of Public Prosecutions another 2022KEHC758 (KLR)*.pdf (High Court of Kenya at Nairobi (Anti-Corruption and Economic Crimes Division)).

⁴⁹ Michelle D'Arcy and Agnes Cornell, 'Devolution and Corruption in Kenya: Everyone's Turn to Eat?' (2016) 115 *African Affairs* 246.

⁵⁰ *Ethics and Anti-Corruption Commission & another v Tom Ojienda, SC t/a Prof Tom Ojienda & Associates Advocates & 2 others (Petition 30 & 31 of 2019 (Consolidated))* [2022] Supreme Court of Kenya KESC 59, Kaikai Toili.

stated that the Commission's mandate to combat corruption does not exempt it from constitutional obligations, with any process affecting rights requiring compliance with fair administrative action requirements under Article 47. Judicial approach necessitates that the integration of procedural fairness guarantees into ADR negotiations, including adequate disclosure of allegations, a substantive opportunity for response, and a reasoned consideration of all representations. This effectively imports administrative law principles into ADR contexts, thereby ensuring that informality does not devolve into arbitrariness, consequently safeguarding individual rights while preserving ADR's inherent efficiency advantage.⁵¹

Public interest considerations in asset recovery received detailed analysis in *Ethics and Anti-Corruption Commission v Kamlesh Pattni & Another*.⁵² The Court of Appeal emphasized that asset recovery serves multiple public interests beyond mere financial restitution. The Court observed that recovery proceedings advance deterrence objectives, restore public confidence, and vindicate rule of law principles. Any resolution mechanism, the court held, must advance these broader objectives rather than focusing solely on asset return.

This expansive interpretation of public interest establishes parameters for acceptable ADR outcomes. Negotiated resolutions must incorporate elements addressing deterrence, such as public acknowledgment of wrongdoing or cooperation in prosecuting others. Settlements should include measures

⁵¹ Deborah J La Fetra, 'Are Property Owners of Assets Seized by Law Enforcement Entitled to a "Prompt" Hearing to Recover Custody, Governed by the Fourteenth Amendment's Due Process Clause, or Are They Entitled to a "Timely" Hearing, as Governed by the Sixth Amendment's Speedy Trial Guarantee?' (2023) 51 Preview of United States Supreme Court Cases 3.

⁵² Roman Grynberg and Fwasa K Singogo, 'An Anatomy of Grand Fraud: The Goldenberg Scandal and the IMF/World Bank' in Roman Grynberg and Fwasa K Singogo, *African Gold* (Springer International Publishing 2021) <http://link.springer.com/10.1007/978-3-030-65995-0_9> accessed 16 April 2024.

rebuilding public trust, possibly through institutional reforms or transparency commitments. The vindication of rule of law might require demonstrating that corruption has consequences, even where full criminal prosecution is not pursued. These requirements ensure ADR serves comprehensive anti-corruption objectives rather than mere asset recovery.

Judicial oversight requirements received specific attention in *Ethics Anti-Corruption Commission v Maitai & 13 others*.⁵³ The case involved a settlement that had been registered in court as statutorily required. Lady Justice Maina held that the registration requirement under Section 56B of ACECA is not mere formality but substantive safeguard ensuring judicial scrutiny of settlements affecting public interest. Thus unregistered agreements are legally ineffective, they lack strict compliance with procedural requirements.

This decision reinforces that ADR in asset recovery cannot operate entirely outside judicial supervision. The registration requirement enables judges to evaluate whether settlements align with public interest, comply with legal requirements, and result from voluntary agreement rather than coercion. In *Uhuru Highway Development Ltd v KDIC*,⁵⁴ the High Court highlighted the necessity of judicial oversight in out-of-court settlements involving public interest and statutory duties. The applicant relied on a prior consent settlement to claim release of withheld funds, which was contested by KDIC and other parties. The Court found the factual and legal issues complex and unsuitable for resolution by Originating Summons, ordering full pleadings instead. This affirms that where settlements implicate fiduciary obligations or involve ambiguous

⁵³ *Ethics Anti-Corruption Commission v Maitai & 13 others* (Anti-Corruption and Economic Crimes Civil Suit 8 of 2020) 2024KEHC2700 (KLR) (Anticorruption and Economic Crimes) (14March2024) (Ruling) (<https://new.kenyalaw.org/judgments/KEHC/HCNRB/>).

⁵⁴ *Uhuru Highway Development Limited v Kenya Deposit Insurance Corporation; Ethics & Anticorruption Commission & another (Interested Parties)* [2019] eKLR 7 (High Court of Kenya at Nairobi (Commercial & Admiralty Division)).

terms, courts must scrutinize their scope and effect to ensure fairness, legality, and protection of public assets through due process.⁵⁵

These judicial developments demonstrate sophisticated understanding of ADR's complexities in public law contexts. Unlike private commercial disputes where party autonomy prevails, asset recovery involves public interest dimensions requiring careful judicial calibration. The emerging jurisprudence suggests courts will support ADR where it genuinely serves public interest while maintaining robust oversight to prevent abuse. This judicial attitude provides foundation for expanded ADR utilization while establishing clear boundaries for acceptable practice.

V. Practical Implementation: Evidence from Documentary Sources

The translation of legal frameworks into operational reality reveals both successes and challenges in ADR implementation for asset recovery. The Ethics and Anti-Corruption Commission's (EACC) Policy on Alternative Dispute Resolution⁵⁶, established in 2017, exemplifies the principal institutional interpretation that implements statutory ADR requirements. This policy outlines practical guidelines for the implementation of ADR, connecting legislative intent with actual enforcement. Policy and institutional papers, are essential since they provide vital empirical insights into the practical implementation of legislative provisions, thereby revealing operational patterns frequently hidden by only doctrinal examination. The policy delineates specific criteria for case suitability, explicitly authorizing ADR for recovery of corruptly acquired public assets, proceeds of economic crimes, forfeiture of unexplained assets, ethics breaches, and contractual matters involving the Commission. Significantly, the policy also establishes clear exclusions, prohibiting ADR for cases involving habitual offenders, situations where material facts are withheld, settlements contrary to

⁵⁵ Yuriy Fedkovych Chernivtsi National University, Ukraine and Oksana Melenko, 'Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis' (2021) 7 European Journal of Law and Public Administration 46.

⁵⁶ Ethics and Anti - Corruption Commission Alternative Dispute Policy 2017.

public interest, matters requiring judicial interpretation for precedential value, and settlements significantly affecting non-parties.⁵⁷

These exclusions demonstrate sophisticated institutional understanding of ADR's limitations in serving public interest. The prohibition on repeat offenders reflects recognition that deterrence requires consistent consequences for persistent wrongdoing. Exclusion of cases where facts are withheld protects process integrity by preventing manipulation through selective disclosure. The reservation of precedential matters for judicial determination preserves law development functions essential to legal system evolution. These self-imposed limitations enhance ADR credibility by demonstrating institutional commitment to appropriate use rather than indiscriminate application.⁵⁸

Documentary analysis of annual reports submitted to Parliament pursuant to statutory requirements reveals compelling evidence of ADR's practical impact. The Commission's 2019/2020 Annual Report documents recovery of assets valued at KES 2.7 billion within four months through ADR mechanisms, dramatically exceeding the KES 1.5 billion recovered through traditional litigation over the preceding five years.⁵⁹ This performance differential, while not solely attributable to procedural differences, suggests ADR's potential for accelerating asset recovery when properly implemented.

⁵⁷ *Assets Recovery Agency v Pamela Aboo; Ethics & Anti-Corruption Commission (Interested Party)* [2018] eKLR [2018] ilimani Anti-Corruption and Economic Crimes Division Milimani ACECS Miscellaneous 73 of 2017.

⁵⁸ Beverly-Ann Rogers, 'Alternative Dispute Resolution' in Beverly-Ann Rogers, *International Trust Disputes, Second Edition* (Oxford University Press 2020) 275–286 <<https://academic.oup.com/book/41322/chapter/352277900>> accessed 23 January 2024.

⁵⁹ Ethics and Anti-Corruption Commission, 'REPORT OF ACTIVITIES AND FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR 2019/2020' (2021) Statutory annual report 40.

Patterns emerging from reported cases illuminate how ADR operates across different asset categories. Land recovery cases demonstrate particular success, with the 2021/2022 report documenting recovery of 140 acres in Naivasha Municipality designated for research purposes by the Kenya Agricultural and Livestock Research Organization.⁶⁰ These cases typically involve irregular allocations discovered through investigations, with ADR facilitating voluntary surrender rather than protracted litigation over title validity. The willingness of parties to negotiate return suggests recognition that defending questionable titles through courts poses greater risks than negotiated resolution.⁶¹

The documentary evidence reveals evolution in institutional approaches to ADR implementation. Early reports from 2018-2019 show tentative application primarily in straightforward cases with cooperative subjects and clear evidence. Settlements during this period typically involved individual actors and single assets, suggesting institutional caution in testing ADR boundaries. More recent reports from 2021-2023 demonstrate increasing sophistication, with ADR applied to complex multi-party cases, international asset recovery, and situations involving corporate entities. This evolution suggests growing institutional confidence and capability in managing ADR processes.⁶²

Cash recovery settlements reveal another dimension of ADR application, with huge amounts recovered from various government entities. These cases often involve acknowledgment of administrative failures rather than criminal culpability, with institutions preferring restitution coupled with systemic reforms over adversarial proceedings that might expose broader institutional

⁶⁰ *ibid* 41.

⁶¹ Lola Akin Ojelabi and Mary Anne Noone, 'Jurisdictional Perspectives on Alternative Dispute Resolution and Access to Justice: Introduction' (2020) 16 *International Journal of Law in Context* 105.

⁶² Michael Goa & Dr. Emanuel Awuor, 'Alternative Dispute Resolution Strategies in Business: A Case of Companies Listed at the Nairobi Securities Exchange' (2028) 2 *Journal of Human Resource & Leadership* 24.

weaknesses.⁶³ The documentation suggests ADR creates space for admitting mistakes and implementing corrections without the defensive posturing that litigation encourages.

In the case of *Republic v Isaac* highlighted in the EACC Annual Report for financial year 2020/2021 involved the recovery of Kshs. 11 million from an employee of the Kenya Meat Commission. The settlement resulted from investigations that exposed systematic procurement irregularities spanning multiple years. A comprehensive settlement which encompassed full restitution, the monitored implementation of new procurement controls, regular compliance audits, and cooperation in ongoing investigations was preferred than pursuit of criminal prosecution. This approach achieved faster recovery while addressing systemic issues that criminal prosecution of individuals might not have resolved.⁶⁴

International asset recovery efforts particularly benefit from ADR flexibility, as documented in reports describing negotiations under the Framework for Return of Assets from Corruption and Crime in Kenya.⁶⁵ Traditional mutual legal assistance procedures often span years navigating different legal systems, while negotiated approaches can achieve faster results through voluntary cooperation. The involvement of Swiss and UK authorities in these negotiations demonstrates international recognition of ADR's legitimacy in appropriate circumstances.

⁶³ Hamdan Rampadio, Ana Fauzia and Fathul Hamdani, 'THE URGENCY OF ARRANGEMENT REGARDING ILLICIT ENRICHMENT IN INDONESIA IN ORDER TO ERADICATION OF CORRUPTION CRIMES BY CORPORATIONS' (2022) 9 *Jurnal Pembaharuan Hukum* 225.

⁶⁴ *Republic v Isaac (Anti-Corruption Case 9 of 2015) [2020] KEMC 3 (KLR) (Anti-Corruption and Economic Crimes) (8 September 2020) (Ruling)* (n 45).

⁶⁵ Basel Institute on Governance, 'FRACCK Agreement with Kenya Illustrates That Partnership Is Essential When the Disposal of Confiscated Assets Should Benefit Development' (*Basel Institute on Governance*, 16 May 2019) <<https://baselgovernance.org/news/fracck-agreement-kenya-illustrates-partnership-essential-when-disposal-confiscated-assets>> accessed 29 May 2025.

The multi-Agency Team framework, while lacking specific statutory authorization, operates through inter-agency agreements documented in official communications.⁶⁶ These coordination mechanisms address practical challenges arising from overlapping mandates between EACC, Assets Recovery Agency, and other institutions. The framework establishes protocols for information sharing, joint negotiations in cases involving multiple agencies, and consistent settlement terms across different proceedings.⁶⁷ This organic development of coordination mechanisms demonstrates institutional adaptation to fragmentation challenges, though the informal nature creates uncertainty that statutory clarification could resolve.⁶⁸

Analysis of settlement patterns reveals interesting dynamics in negotiation outcomes. Settlements involving land typically achieve near-complete recovery, with negotiated returns averaging 95% of irregularly acquired properties.⁶⁹ Cash settlements show more variation, ranging from 70% to 100% of identified amounts, with recovery rates influenced by factors including cooperation level, evidence strength, and systemic reform commitments.⁷⁰ Corporate settlements tend toward comprehensive packages combining financial restitution with

⁶⁶ Caroline Nyaga, 'ENHANCING SYNERGIES: THE MULTI-AGENCY EXPERIENCE IN FIGHTING CORRUPTION IN KENYA' (2024) <https://www.unafei.or.jp/publications/pdf/RS_No104/No104_21_IP_Kenya.pdf> accessed 11 April 2024.

⁶⁷ 'The National Ethics and Anti-Corruption Policy 2020' <<https://repository.kippra.or.ke/handle/123456789/4228>> accessed 13 April 2024.

⁶⁸ Yussuf M. Daud, 'A Review of Effectiveness of Anti-Corruption Strategies and Institutions in Kenya' (2024) 4 *African Journal of Commercial Studies* 303.

⁶⁹ Fibian Lukalo and Esterina Dokhe, 'Securing Public Lands in Marsabit County' <https://www.academia.edu/35714833/Securing_Public_Lands_in_Marsabit_County> accessed 23 October 2025.

⁷⁰ Todor Kolarov, 'Challenges in Settling Non-Conviction Based Civil Confiscation of Unexplained Wealth' (2021) 24 *Journal of Money Laundering Control* 483.

compliance programs and monitoring arrangements, suggesting recognition that sustainable reform requires beyond monetary recovery.⁷¹

Judicial training materials developed by the Judiciary Training Institute reveal evolving judicial perspectives on ADR in public law matters. These materials emphasize scrutiny of power imbalances, assessment of public interest implications, verification of voluntary consent, evaluation of settlement adequacy, and consideration of deterrent effects. The sophisticated analysis promoted through judicial education suggests growing acceptance of ADR accompanied by awareness of its risks and limitations.⁷²

Policy documents from analogous frameworks provide additional context for understanding ADR implementation. The Office of the Director of Public Prosecutions' Diversion Policy establishes principles for alternatives to prosecution that parallel asset recovery ADR. The emphasis on restorative justice, accountability, and systemic reform in these policies suggests broader institutional shifts toward negotiated resolutions in appropriate cases. The convergence of approaches across different agencies indicates emerging consensus on ADR's role within Kenya's justice system.⁷³

The documentary evidence also reveals challenges in ADR implementation.⁷⁴ Scholars acknowledge failed negotiations where parties could not reach

⁷¹ CIVIL FORUM FOR ASSET RECOVERY (n 7).

⁷² Judiciary of Kenya, 'Judiciary to Deal with Corruption Cases in Accordance with the Law – The Judiciary.Htm' (<https://judiciary.go.ke/category/editor-news-pick/>, 20 August 2023) <<https://judiciary.go.ke/judiciary-to-deal-with-corruption-cases-in-accordance-with-the-law/>> accessed 23 April 2024.

⁷³ Office of the Director of Public Prosecutions, 'DIVERSION GUIDELINES AND EXPLANATORY NOTES' <<https://odpp.go.ke/wp-content/uploads/2024/08/DIVERSION-GUIDELINES.pdf>> accessed 29 May 2025.

⁷⁴ Owen M Fiss, 'Against Settlement' in Owen M Fiss, *Discussions in Dispute Resolution* (Oxford University Press 2021)

acceptable terms, resulting in reversion to traditional litigation. These failures typically involve disputes over asset valuation, disagreements about culpability admissions, or inability to agree on systemic reforms. The documentation of failures alongside successes demonstrates institutional transparency and learning orientation rather than uncritical ADR promotion.⁷⁵

Compliance monitoring emerges as a critical success factor from documentary analysis. Settlements incorporating specific monitoring mechanisms show higher compliance rates than those relying on general commitments.⁷⁶ The 2022/2023 report documents establishment of dedicated compliance units tracking settlement implementation, conducting regular audits, and managing enforcement of breach consequences. This infrastructure development suggests recognition that ADR success requires not just reaching agreements but ensuring their faithful implementation.⁷⁷

VI. Lessons from Selected Jurisdictions

The examination of international experiences provides valuable insights for enhancing Kenya's ADR framework, though careful selection ensures relevance to local contexts. The choice of the United Kingdom and South Africa reflects

<<https://academic.oup.com/book/41631/chapter/353480652>> accessed 23 January 2024.

⁷⁵ Omondi Merilyne Adhiambo, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (University of Nairobi 2021) <<http://erepository.uonbi.ac.ke/handle/11295/161100>> accessed 16 August 2023.

⁷⁶ 'Five Banks Fined Ksh.385 Million over NYS Scandal' (*Citizen Digital*, 5 March 2020) <<https://www.citizen.digital/business/five-banks-fined-ksh-385-million-over-nys-scandal-325296>> accessed 23 October 2025.

⁷⁷ Ethics and Anti-Corruption Commission, 'EACC-REPORT-OF-ACTIVITIES-AND-FINANCIAL-STATEMENTS-FOR-THE-FINANCIAL-YEAR-2023-2024' (Ethics and Anti-Corruption Commission 2024) Statutory Annual Report.

deliberate consideration of jurisdictions offering specific lessons applicable to Kenya's challenges.

i. United Kingdom

The United Kingdom's Deferred Prosecution Agreement (DPA) framework, established by the Crime and Courts Act 2013, presents a sophisticated model for structured negotiations in corruption cases within a common law jurisdiction, offering direct comparative value for Kenya's evolving Alternative Dispute Resolution (ADR) landscape.⁷⁸ The UK framework's detailed procedural requirements address many gaps identified in Kenya's current system. DPAs require judicial approval at both preliminary and final stages, with judges evaluating whether agreements serve interests of justice and whether terms are fair, reasonable, and proportionate. This two-stage judicial involvement ensures independent scrutiny while preserving negotiation flexibility.⁷⁹

The statutory framework establishing DPAs demonstrates legislative precision absent in Kenya's current provisions. Prosecutors must evaluate DPA suitability by considering offence seriousness, cooperation level, compliance history, and collateral consequences of prosecution.⁸⁰ These detailed criteria provide guidance reducing discretionary decision-making while ensuring consistent application

⁷⁸ Herbert Smith Freehills LLP-Susannah Cogman and others, 'UK Deferred Prosecution Agreements' (*Lexology*, 10 January 2024)
<<https://www.lexology.com/library/detail.aspx?g=fc8eae7d-6a92-4da5-981b-9c9a794ddca3>> accessed 1 May 2024.

⁷⁹ Serious Fraud Office, 'Deferred Prosecution Agreements' (*Serious Fraud Office*, 1 May 2024)
<<https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/deferred-prosecution-agreements/>> accessed 1 May 2024.

⁸⁰ Costantino Grasso, 'Peaks and Troughs of the English Deferred Prosecution Agreement: The Lesson Learned from the DPA between the SFO and ICBC SB Plc' (2016) 2016 *The Journal of Business Law* 388.

across cases.⁸¹ Kenya could adapt similar statutory guidance, modified for local contexts including corruption prevalence and institutional capacity constraints.

The transparency requirements in the UK model deserves particular attention. Following judicial approval, DPA terms must be published with only limited redactions for ongoing investigations or commercial sensitivity. This approach balances public accountability with practical needs for some confidentiality. The publication requirement addresses concerns about secret deals while demonstrating that transparency need not prevent effective negotiations. Kenya could adapt similar requirements, perhaps with modifications recognizing different media landscapes and public access to information.⁸²

The first UK DPA in *SFO v Standard Bank* demonstrates practical implementation of these principles.⁸³ The agreement required \$25.2 million in compensation and profit disgorgement, coupled with cooperation obligations and compliance improvements. The published judicial reasoning provides detailed analysis of public interest factors, creating precedent guiding future cases. This transparency in judicial reasoning helps establish consistent standards while building public confidence in the process.⁸⁴

The UK experience also reveals challenges worth noting. Critics argue DPAs allow corporations to buy their way out of criminal liability, creating two-tier

⁸¹ Rita Cheung, 'Deferred Prosecution Agreements: Cooperation and Confession' (2018) 77 *The Cambridge Law Journal* 12.

⁸² Qingxiu Bu, 'The Viability of Deferred Prosecution Agreements (DPAs) in the UK: The Impact on Global Anti-Bribery Compliance' (2021) 22 *European Business Organization Law Review* 173.

⁸³ *SERIOUS FRAUD OFFICE vs STANDARD BANK PLC (Now known as ICBC Standard Bank plc)* [2015] Royal Courts of Justice 1 (CROWN COURT AT SOUTHWARK).

⁸⁴ 'Takeaways From UK's 1st Deferred Prosecution Agreement | News & Resources | Dorsey'

<<https://www.dorsey.com/newsresources/publications/articles/2015/12/takeaways-from-uks-1st-deferred-prosecution>> accessed 23 October 2025.

justice favoring wealthy defendants.⁸⁵ Some agreements have faced public criticism for perceived leniency relative to offense gravity. These criticisms highlight importance of careful calibration ensuring settlements reflect offense seriousness while recognizing cooperation value.⁸⁶ Kenya must learn from these controversies by establishing clear standards preventing perception that ADR enables impunity for the powerful.

ii. South Africa

South Africa's developing Alternative Dispute Resolution (ADR) framework in asset recovery presents important insights for Kenya, especially in addressing the challenges associated with corruption and illicit financial flows.⁸⁷ The formalization of Corporate Alternative Dispute Resolution (C-ADR), as established by the National Prosecuting Authority's 2024 policy, represents a crucial best practice.⁸⁸ This initiative has clearly led to expedited recoveries from corporate entities, highlighted by landmark settlements with SAP amounting to R2.2 billion and McKinsey exceeding \$122 million. This approach, which necessitates transparency via the dissemination of agreement summaries, offers a framework for Kenya to amplify its own ad-hoc ADR achievements, thereby fostering enhanced accountability and public confidence in the process.

⁸⁵ 'United Kingdom: Overview of the Corporate Criminal Liability Regime and Recent Major Developments' (*Lexology*, 14 November 2024) <<https://www.lexology.com/library/detail.aspx?g=5b2d45a7-4660-450c-8908-6a0b25115b80>> accessed 23 October 2025.

⁸⁶ Mazzacuva (n 9).

⁸⁷ 'REVIEW OF THE CRIMINAL JUSTICE SYSTEM: NON-TRIAL RESOLUTIONS: DEFERRED PROSECUTION, ALTERNATIVE DISPUTE RESOLUTION AND NON-PROSECUTION PRE-TRIAL PROCESSES' (South Africa Law Reform Commission 2025) <<https://www.justice.gov.za/salrc/dpapers/DP165-Project151-Non-TrialResolutions.pdf>> accessed 6 June 2025.

⁸⁸ Currie (n 11).

Moreover, South Africa's experience highlights the importance of utilizing international collaboration in intricate transnational matters, enabling synchronized resolutions that surpass jurisdictional limits.⁸⁹ The investigation into restorative justice principles within the South African context, with the objective of achieving improved asset recovery rates and fostering public trust through accountability and the reparation of harm, offers a significant opportunity for Kenya to contemplate in its approach to combating corruption.⁹⁰ Nevertheless, Kenya should take into account the difficulties encountered by South Africa, particularly the legal uncertainties regarding the application of non-trial resolutions to individuals, given that C-ADR is predominantly orientated towards corporate matters. This raises significant concerns about the possible interpretations of leniency or the emergence of a dual justice system if not carefully managed.

Mitigating intrinsic power disparities in negotiations between governmental entities and accused individuals, while establishing strong protections against political influences, is essential for both jurisdictions. Ultimately, South Africa's trajectory underscores the imperative of enhancing institutional capacity, formalizing inter-agency coordination protocols beyond ad-hoc arrangements, and investing in specialized ADR knowledge to establish a unified and effective asset recovery mechanism.

Kenya's asset recovery objectives are significantly aligned with the Deferred Prosecution Agreement (DPA) framework of the United Kingdom and the Corporate Alternative Dispute Resolution (C-ADR) policy that is currently in the

⁸⁹ 'Anti-Bribery and Corruption Developments in South Africa' <<https://www.ibanet.org/south-africa-antibribery-and-corruption-developments>> accessed 6 June 2025.

⁹⁰ 'Corporate Corruption Settlement Policy Finalised in South Africa' (*Pinsent Masons*, 6 June 2025) <<https://www.pinsentmasons.com/out-law/news/corporate-corruption-settlement-policy-finalised-in-south-africa>> accessed 6 June 2025.

process of development in South Africa.⁹¹ Both jurisdictions are demonstrating a strategic transition towards the formalization of non-trial resolutions for corporate entities.⁹² This transition is a recognition of the potential of alternative dispute resolution (ADR) to expedite significant asset recoveries and foster corporate collaboration, thereby avoiding the prolonged duration and inflated costs associated with traditional litigation.⁹³ A collective focus on stringent judicial oversight, though differing in intensity, and obligatory transparency via public disclosure of settlement terms, highlights a universal dedication to legitimacy and public accountability, directly confronting Kenya's apprehensions about opacity and possible political interference in its ADR processes. Both the UK and South Africa contend with the intrinsic conflict between efficiency and accountability, encountering critiques that alternative dispute resolution (ADR) may engender perceptions of leniency or a dual justice system, especially regarding its application to individuals.⁹⁴ These commonalities impart a dual lesson to Kenya: the necessity of formalizing its ADR framework with explicit procedural guidelines and strong safeguards, while carefully adjusting these mechanisms to guarantee that the quest for expedited recovery does not unintentionally undermine the essential principles of justice, deterrence, and public trust.

⁹¹ 'Anti-Bribery and Corruption Developments in South Africa' (n 90).

⁹² Michael-James Currie, 'Non-Trial Resolutions: South Africa's Corporate Alternative Dispute Resolution (C-ADR) Policy'.

⁹³ Michel A Perez, 'The Rise and Globalization of Negotiated Settlements: How an American Procedure, the Deferred Prosecution Agreement (DPA), Became a Transnational Key Tool to Fight Transnational Corporate Crimes' (2020) 2020 Rule of Law and Anti-Corruption Center Journal <<https://www.qscience.com/content/journals/10.5339/rolacc.2020.4>> accessed 2 May 2024.

⁹⁴ Cecily Rose, 'The Progressive Development of International Law on the Return of Stolen Assets: Mapping the Paths Forward' (2024) 35 European Journal of International Law 701.

VII. Critical Lacunae and Operational Challenges within the Current Framework

There are several gaps and challenges in the present framework that warrants need for reforms. They include procedural deficiencies, civil-criminal interface ambiguity, power asymmetries, lack of transparency and accountability, constitutional integration weaknesses, contemporary corruption inadequacies and enforcement and compliance issues.⁹⁵

▪ Procedural Deficiencies

Kenya's ADR framework's biggest gap is procedural regulations.⁹⁶ ADR mechanisms are authorized by statute, but implementation details are scarce, unlike traditional litigation.⁹⁷ Negotiations without documentation standards may compromise transparency and accountability, and no statutory timelines risk indefinite proceedings that defeat efficiency goals.⁹⁸ Officials use excessive discretion without clear representation requirements or minimum settlement terms, resulting in inconsistent outcomes and corruption risks.⁹⁹ This procedural vacuum leaves parties uncertain about process requirements, potentially

⁹⁵ CiFAR, 'Asset Management in Kenya' (CiFAR, 12 June 2024) <<https://cifar.eu/asset-management-in-kenya/>> accessed 23 October 2025.

⁹⁶ Dr Kariuki Muigua, Ph.D, 'The Alternative Dispute Resolution (ADR) Framework for Tax Dispute Resolution in Kenya' [2024] SSRN Electronic Journal <<https://www.ssrn.com/abstract=4733539>> accessed 27 June 2024.

⁹⁷ Office of the Attorney General and Department of Justice, 'NATIONAL ETHICS AND ANTI-CORRUPTION POLICY' (2018) Government directive Sessional Paper No. 2 of 2018 <<https://eacc.go.ke/default/wp-content/uploads/2020/10/ANTI-CORRUPTION-POLICY-2020.pdf>> accessed 9 April 2024.

⁹⁸ Branislav Hock, 'Policing Corporate Bribery: Negotiated Settlements and Bundling' (2021) 31 Policing and Society 950.

⁹⁹ Nicholas Lord, 'Prosecution Deferred, Prosecution Exempt: On the Interests of (In)Justice in the Non-Trial Resolution of Transnational Corporate Bribery' (2023) 63 The British Journal of Criminology 848.

invalidating settlements for non-compliance with unspecified standards, and the public without a basis for assessing settlements' interests.¹⁰⁰

- Civil-Criminal Interface Ambiguity

The ambiguous relationship between civil and criminal proceedings creates critical uncertainty that discourages ADR participation and risks constitutional violations.¹⁰¹ Sections 25A and 56B of ACECA address prosecutorial undertakings and civil settlements respectively, yet their interaction remains undefined, leaving parties uncertain whether civil settlement precludes subsequent criminal prosecution or whether ADR disclosures enjoy evidentiary protection in criminal proceedings.¹⁰² While the *Sirma* case established that settlements with one party do not bar prosecution of others, it failed to clarify whether settling parties themselves enjoy prosecution immunity. This ambiguity enables tactical manipulation whereby authorities may exploit civil settlements for criminal evidence gathering while accused persons forum-shop based on perceived strategic advantages rather than public interest, fundamentally undermining the voluntary cooperation essential to effective ADR.

- Power Imbalance Issues

Inadequate provisions addressing power asymmetries fundamentally compromise ADR legitimacy by transforming putatively voluntary negotiations

¹⁰⁰ Gus De Franco, R Christopher Small and Aida Sijamic Wahid, 'Determinants of and Future Violations Following Deferred Prosecution and Non-prosecution Agreements in Corporate Criminal Cases' (2025) 42 Contemporary Accounting Research 1271.

¹⁰¹ 'Khamala - 2023 - Beyond Criminal or Civil Asset Forfeiture in Kenya.Pdf' <<https://globalresearchpublishing.com/wp-content/uploads/2024/05/Beyond-Criminal-or-Civil-Asset-Forfeiture-in-Kenya.pdf>> accessed 23 October 2025.

¹⁰² Constance Gikonyo, 'Criminal Forfeiture under Kenya's Proceeds of Crime and Anti-Money Laundering Act: Nature and Challenges' (2020) 28 African Journal of International and Comparative Law 657.

into coercive processes.¹⁰³ State agencies possess superior investigative capabilities, legal resources, and institutional knowledge relative to individual respondents, yet Kenya's statutory framework, unlike developed jurisdictions, lacks equalizing mechanisms such as mandatory representation or independent oversight.¹⁰⁴ These disparities manifest through epistemic asymmetries wherein respondents negotiate without comprehensive understanding of evidentiary foundations, capacity differentials resulting in sophisticated acceptance of suboptimal terms, and coercive dynamics where officials instrumentalize prosecutorial threats to extract settlements exceeding judicially determinable outcomes. Documentary evidence indicates settlements wherein individuals relinquish assets surpassing potential prosecution recoveries, motivated by intimidation rather than authentic consent, generating systemic injustices disproportionately affecting vulnerable populations lacking adequate legal representation or procedural comprehension.¹⁰⁵

- Transparency and Accountability Deficits

Insufficient transparency mechanisms fundamentally compromise framework legitimacy by enabling clandestine agreements that engender public distrust rather than confidence.¹⁰⁶ While Section 56B mandates judicial registration of settlements, statutory lacunae preclude public disclosure of terms or aggregate outcome reporting, rendering impossible both public evaluation of settlement adequacy and systematic pattern analysis of recovery rates relative to alleged malfeasance. This opacity contravenes international best practices exemplified by

¹⁰³ Paul F Kirgis, 'Bargaining with Consequences: Leverage and Coercion in Negotiation' 19 Harvard Negotiation Law Review 70.

¹⁰⁴ Oren Gazal-Ayal and Ronen Perry, 'Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes' (2014) 39 Law & Social Inquiry 791.

¹⁰⁵ *ibid.*

¹⁰⁶ Erik S Knutsen, 'Keeping Settlements Secret' <<https://ir.law.fsu.edu/lr/vol37/iss4/4>> accessed 23 October 2025.

the UK's DPA publication protocols while permitting inconsistent adjudication of analogous cases lacking comparative transparency.¹⁰⁷ The absence of reporting mandates precludes parliamentary oversight of ADR efficacy, civil society monitoring of preferential treatment, and detection of corrupt process manipulation, creating conditions conducive to abuse while preventing legitimate ADR benefits from cultivating public support.¹⁰⁸

- Constitutional Integration Weaknesses

Deficient constitutional integration engenders risks that ADR operates contrary to fundamental governance principles of integrity and accountability.¹⁰⁹ While Article 159(3) establishes broad ADR limitations, specific application to asset recovery remains underdeveloped, with statutory provisions failing to operationalize "public interest" criteria for settlement appropriateness and constitutional rights protections remaining implicit rather than explicit. This integration deficit manifests practically where settlements achieve immediate asset recovery while subverting long-term integrity objectives, exemplified by agreements permitting corrupt officials to retain positions through asset restitution that recovers funds while perpetuating systemic corruption. Absent explicit constitutional alignment requirements or verification mechanisms

¹⁰⁷ 'Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication' (*Federal Register*, 15 October 2019) <<https://www.federalregister.gov/documents/2019/10/15/2019-22624/promoting-the-rule-of-law-through-transparency-and-fairness-in-civil-administrative-enforcement-and>> accessed 23 October 2025.

¹⁰⁸ Muigua, Ph.D (n 97).

¹⁰⁹ Jean R Sternlight, 'Is Alternative Dispute Resolution Consistent With the Rule of Law' (2007) <<https://www.semanticscholar.org/paper/Is-Alternative-Dispute-Resolution-Consistent-With-Sternlight/53a115e36c548dddce05bb24d07a3245e959f058>> accessed 31 March 2024.

ensuring settlements advance comprehensive anti-corruption objectives rather than narrow recovery goals, such contradictions persist unaddressed.¹¹⁰

- Modern Corruption Inadequacies

Limited provisions for contemporary corruption complexities expose the framework's anachronistic assumptions and inability to address evolving malfeasance patterns effectively.¹¹¹ Modern corruption frequently transcends jurisdictional boundaries yet lacks specific cross-border ADR coordination mechanisms, while multi-defendant cases with varying culpability levels lack appropriate negotiation frameworks. Corporate corruption proliferates absent adequate provisions for entity-level negotiations, and beneficial ownership obfuscation remains unaddressed through hidden ownership mechanisms. The framework additionally fails to accommodate emerging methodologies including cryptocurrency valuation and recovery, complex financial instrument manipulation requiring specialized expertise, and environmental corruption involving non-pecuniary damages necessitating innovative remedies beyond current ADR parameters, rendering the system obsolescent against contemporary criminal complexity.¹¹²

¹¹⁰ Samuel Hickey, 'Remediation in Foreign Bribery Settlements: The Foundations of a New Approach' (2021) 21 Chicago Journal of International Law <<https://chicagounbound.uchicago.edu/cjil/vol21/iss2/5>>.

¹¹¹ David Zaslow, 'The Evolution of Cryptocurrency Regulation in Kenya: From Opposition to Legalization' (*Blockchain*, 14 January 2025) <<https://blockchain.bakermckenzie.com/2025/01/14/the-evolution-of-cryptocurrency-regulation-in-kenya-from-opposition-to-legalization/>> accessed 9 May 2025.

¹¹² Sarah Meiklejohn and others, 'A Fistful of Bitcoins: Characterizing Payments among Men with No Names', *Proceedings of the 2013 conference on Internet measurement conference* (ACM 2013) <<https://dl.acm.org/doi/10.1145/2504730.2504747>> accessed 16 June 2025.

- Enforcement and Compliance Failures

Enforcement mechanisms exhibit critical deficiencies that undermine framework credibility and operational effectiveness.¹¹³ While settlements require judicial registration, comprehensive compliance frameworks remain absent, creating enforcement challenges as ADR agreements occupy ambiguous legal terrain between contractual and judicial instruments without explicit breach consequences. Systematic compliance monitoring lacunae exacerbate these challenges, with Kenya's framework presuming voluntary adherence absent verification mechanisms, contrasting unfavorably with international models incorporating rigorous monitoring requirements.¹¹⁴ Documentary evidence reveals variable compliance rates spanning full implementation to partial non-compliance, yet absent systematic tracking, patterns remain opaque and experiential learning foreclosed. Institutional capacity constraints compound these deficits through EACC and ARA's lack of specialized ADR units, prosecutorial officials' limited collaborative negotiation competencies, and broader ecosystem weaknesses including scarce public law ADR expertise among private practitioners and inadequate judicial training in ADR agreement review.¹¹⁵

VIII. Pathways to Reform

The comprehensive analysis of Kenya's current ADR framework reveals critical gaps that undermine its effectiveness in asset recovery.

¹¹³ Jennifer Arlen, 'Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed through Deferred Prosecution Agreements' (2016) 8 Journal of Legal Analysis 191.

¹¹⁴ Leonardo Borlini, 'Monitoring and Compliance Mechanisms as a Diagnostic and Prognostic Tool of International Anti-Corruption Cooperation: A Data-Driven Study' (2024) 22 International Journal of Constitutional Law 487.

¹¹⁵ Todd Haugh and Hui Chen, 'Remaking Monitorships: A First Principles Approach to Monitor Effectiveness' (SSRN, 2025) <<https://www.ssrn.com/abstract=5045770>> accessed 23 October 2025.

- Legislative Consolidation and Clear Definitions

Kenya's asset recovery framework requires fundamental legislative restructuring through the establishment of a dedicated Part VIA within the Anti-Corruption and Economic Crimes Act (ACECA), which would consolidate the currently fragmented statutory provisions into a coherent whole. This consolidation must begin with precise definitional clarity that addresses current ambiguities by establishing clear parameters for "negotiated settlements," "affected parties," and most critically, "public interest" - a term that should encompass not only financial recovery but also deterrence objectives, institutional reform requirements, and the restoration of public confidence in governmental integrity. The reformed framework should replace current discretionary assessments with objective eligibility standards that incorporate asset value thresholds, evidence strength indicators, and cooperation levels, while strategically preserving certain cases for traditional judicial determination, particularly those involving novel legal questions or constitutional interpretation that require precedent-setting decisions.

- Fair Procedures and Due Process

Procedural safeguards constitute the operational foundation of any legitimate ADR system, requiring mandatory legal representation to address the inherent power imbalances between state agencies and individual defendants, with provisions for state-funded qualified counsel ensuring the equality of arms fundamental to fair negotiations.¹¹⁶ The framework must establish clear temporal boundaries, such as ninety-day proceedings with exceptional thirty-day extensions, striking a balance between thorough negotiation and expeditious resolution while preventing indefinite negotiations that might facilitate asset

¹¹⁶ Pablo Cortés, 'Embedding Alternative Dispute Resolution in the Civil Justice System: A Taxonomy for ADR Referrals and a Digital Pathway to Increase the Uptake of ADR' (2023) 43 Legal Studies 312.

dissipation.¹¹⁷ Documentation standards requiring written summaries and audio recordings of settlement discussions ensure transparency without stifling the candid exchanges necessary for successful negotiations, while public notice requirements through newspapers and official websites with twenty-one day objection periods enable third-party interest protection without compromising negotiation momentum.¹¹⁸

- **Balanced Remedies and Constitutional Protection**

Settlement frameworks must achieve a delicate equilibrium between recovery objectives and constitutional rights through minimum recovery thresholds of eighty percent for reasonably traceable assets, preventing sweetheart deals while recognizing the legitimate value of cooperation and litigation risk considerations.¹¹⁹ Exceptional circumstances permitting greater leniency must be narrowly defined to encompass only substantial cooperation that facilitates additional asset recovery or successful prosecution of co-conspirators, while mandatory admissions of essential facts serve multiple purposes: establishing wrongdoing records, providing deterrent effects, and creating foundations for institutional reform. Constitutional protections must be explicitly preserved by ensuring that admissions made during ADR proceedings cannot be used in subsequent criminal prosecutions except for perjury cases, thereby encouraging full disclosure while maintaining the self-incrimination safeguards essential to due process integrity.¹²⁰

¹¹⁷ Shay Lavie and Avraham Tabbach, 'The Promise of Bargaining Protocols' (2023) 15 *Journal of Legal Analysis* 79.

¹¹⁸ Ellen Deason, 'Procedural Rules for Complementary Systems of Litigation and Mediation - Worldwide' (2004) 80 *The Notre Dame law review*.

¹¹⁹ Gus De Franco, R Christopher Small and Aida Sijamic Wahid, 'Determinants of and Future Violations Following Deferred Prosecution and Non-prosecution Agreements in Corporate Criminal Cases' (2025) 42 *Contemporary Accounting Research* 1271.

¹²⁰ Bobette Wolski, 'CONFIDENTIALITY AND PRIVILEGE IN MEDIATION: CONCEPTS IN NEED OF BETTER REGULATION AND EXPLANATION' (2020) 43.

- Judicial Oversight and Institutional Gatekeeping

Enhanced judicial supervision must transcend current minimal registration requirements through the implementation of preliminary approval mechanisms for high impact cases, ensuring early screening of case appropriateness through comprehensive evaluation of evidence strength, recovery prospects, deterrent needs, and broader accountability objectives. The settlement approval process should require fourteen-day advance submission to enable thorough judicial evaluation, accompanied by public hearings that provide objection opportunities and multi-factor judicial consideration that examines not only recovery adequacy but also deterrent effects, institutional reforms addressing systemic vulnerabilities, and alignment with broader public interest objectives that transcend immediate financial recovery goals.¹²¹

- Transparency and Democratic Accountability

Comprehensive transparency mechanisms must address the current opacity surrounding ADR processes through mandatory publication of all approved settlements within seven days, quarterly parliamentary reports detailing both successful and failed negotiations, and systematic tracking of compliance status to ensure agreement implementation. Annual independent audits conducted by parliamentary appointees should provide systematic evaluation of the framework's effectiveness, examining financial recovery rates, temporal efficiency compared to traditional litigation, stakeholder satisfaction including public perception, and contribution to broader anti-corruption objectives. The establishment of specialized Asset Recovery ADR Tribunals comprising retired judges, forensic accountants, and civil society representatives would develop expert jurisprudence, while independent ADR Oversight Committees could

¹²¹ Frederick Davis, 'Judicial Review of Deferred Prosecution Agreements: A Comparative Study' [2022] SSRN Electronic Journal
<<https://www.ssrn.com/abstract=4072985>> accessed 23 October 2025.

investigate process abuse complaints and publish regular effectiveness assessments.¹²²

- Protecting Vulnerable Parties and Constitutional Rights

Explicit rights protection measures must extend beyond mandatory legal representation to include cooling-off periods that prevent hasty commitments made under pressure, special procedures recognizing the unique needs of vulnerable persons including elderly individuals and those with medical conditions, and access to independent financial advisors who can level the expertise disparities between sophisticated state agencies and individual defendants. Constitutional integration requires moving from implicit to explicit rights protections, ensuring that ADR processes actively respect fundamental freedoms while serving comprehensive anti-corruption objectives, with built-in mechanisms to verify that settlements align with constitutional values of integrity, accountability, and human dignity rather than merely focusing on asset recovery metrics.¹²³

- International Cooperation and Cross-Border Coordination

The transnational nature of modern corruption demands explicit amendments to the Mutual Legal Assistance Act that specifically cover ADR proceedings, removing current legal uncertainties that hamper cross-border negotiations while establishing clear asset-sharing agreements that incentivize international cooperation and ensure that jurisdictions contributing investigative resources

¹²² Ehud Guttel, Alon Harel and Yuval Procaccia, 'General Courts, Specialized Courts, and the Complementarity Effect' (2023) 17 Regulation & Governance 1021.

¹²³ Sternlight (n 110).

benefit from recovery outcomes.¹²⁴ The development of model agreements for common scenarios would reduce negotiation complexity while ensuring cross-jurisdictional consistency, supported by expedited procedures that leverage ADR's inherent flexibility advantages over traditional mutual legal assistance mechanisms to accelerate recovery before sophisticated money laundering schemes can dissipate assets across multiple jurisdictions.¹²⁵

- Technology Integration and Digital Infrastructure

Technological advancement presents significant opportunities for enhancing ADR effectiveness through electronic negotiation platforms that enable efficient cross-border discussions without prohibitive travel costs, digital evidence protocols that ensure authenticity while facilitating efficient sharing between parties and across borders, and blockchain technology that provides immutable agreement records addressing enforcement challenges through transparent, tamper-proof documentation.¹²⁶ Artificial intelligence applications offer sophisticated pattern analysis capabilities for identifying settlement outliers that might suggest corruption or inconsistent treatment requiring investigation, while supporting comprehensive case management systems that enable systematic

¹²⁴ Joko Setiyono and others, 'Enhancing Cross-Border Justice: Facilitating Asset Recovery from Corruption between Indonesia and Australia through Mutual Legal Assistance' (2024) 9 Journal of Indonesian Legal Studies 537.

¹²⁵ Radha Ivory and Tina Søreide, 'THE INTERNATIONAL ENDORSEMENT OF CORPORATE SETTLEMENTS IN FOREIGN BRIBERY CASES' (2020) 69 International and Comparative Law Quarterly 945.

¹²⁶ Jamilya Kamalova, 'Exploring Blockchain-Based Alternative Dispute Resolution: Limitations of Traditional Methods and Prospects for Further Research' [2024] SSRN Electronic Journal <<https://www.ssrn.com/abstract=4748761>> accessed 23 October 2025.

tracking of outcomes, compliance rates, and effectiveness metrics essential for evidence-based policy refinement and continuous improvement.¹²⁷

- Professional Development and Capacity Building

Successful implementation demands fundamental transformation in institutional competencies through comprehensive training programs that develop investigator negotiation skills to complement traditional adversarial capabilities, enhance prosecutorial judgment in evaluating ADR appropriateness against public interest criteria, and build judicial expertise in settlement review that balances multiple considerations beyond traditional evidence-based determinations.¹²⁸ Legal practitioners require specialized training in interest-based negotiation techniques, creative problem-solving approaches for complex asset structures, and appreciation of public interest constraints that distinguish public law negotiations from private commercial disputes, supported by curricular integration in legal education institutions and mandatory continuing professional development programs that facilitate ongoing adaptation to evolving framework requirements.¹²⁹

- Cultural Transformation and Public Legitimacy

Achieving paradigmatic shift within enforcement agencies necessitates fundamental evolution in performance metrics from prosecution numbers to recovery effectiveness, recognizing that swift ADR-facilitated asset recovery may serve public interest more effectively than delayed convictions achieving minimal recovery, while institutional leadership must model collaborative

¹²⁷ John Zeleznikow, 'Using Artificial Intelligence to Provide Intelligent Dispute Resolution Support' (2021) 30 Group Decision and Negotiation 789.

¹²⁸ Ruth Woldmichael, 'The Prosecutor's Role in Facilitating Criminal Alternative Dispute Resolution' (1831) 173 University of Pennsylvania Law Review.

¹²⁹ "'Training for Bargaining'" by Jenny Roberts and Ronald F. Wright' <<https://scholarship.law.wm.edu/wmlr/vol57/iss4/11/>> accessed 23 October 2025.

approaches while maintaining appropriate skepticism against manipulation attempts.¹³⁰ Public engagement strategies must counter perceptions of elite impunity through comprehensive education campaigns emphasizing swift, visible consequences for corruption maintained through robust judicial oversight and transparency requirements, supported by tangible demonstrations of recovered assets benefiting citizens through infrastructure development or social programs, providing concrete evidence of ADR value that transcends abstract efficiency arguments and builds sustained public support for this critical anti-corruption tool.¹³¹

IX. Conclusion

In summary, Kenya stands at a pivotal juncture in its anti-corruption journey. While the legal foundations for Alternative Dispute Resolution in asset recovery exist, their current underutilization reflects a profound dissonance between legislative intent and institutional practice. Section 56B of the Anti-Corruption and Economic Crimes Act (ACECA) is emblematic of a missed opportunity – an underdeveloped provision whose transformative potential remains dormant due to definitional ambiguity, procedural opacity, and institutional inertia. This study has demonstrated that incremental reforms are insufficient. What is required is a paradigmatic shift: one that places ADR at the heart of Kenya's asset recovery regime, not at its periphery.

Drawing on global best practices and local constitutional imperatives, this article proposes a comprehensive suite of reforms to repurpose ADR as a legitimate, credible, and accountable mechanism for expediting the return of stolen public assets. Legislative consolidation, judicial supervision, transparency mandates,

¹³⁰ Laurence R Helfer, Cecily Rose and Rachel Brewster, 'Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism' (2023) 117 American Journal of International Law 559.

¹³¹ Samuel Sittlington and Jackie Harvey, 'Prevention of Money Laundering and the Role of Asset Recovery' (2018) 70 Crime, Law and Social Change 421.

and strong rights protections must operate in concert to restore public trust and ensure that negotiated settlements serve justice rather than impunity. Crucially, implementation must transcend statutory reform; it must reorient prosecutorial and judicial mindsets, recalibrate institutional priorities, and inspire societal belief in the integrity of non-adversarial resolution processes.

In a country where the cost of corruption is measured not just in shillings, but in classrooms not built, medicines not procured, and futures stolen, ADR must be embraced not merely as a tool of procedural efficiency but as a vehicle for restorative justice.¹³² If adopted with courage and rigor, the reforms advanced herein can unlock unprecedented gains: swift recovery of stolen wealth, deterrence of high-level corruption, and elevation of Kenya as a continental pioneer in innovation-driven anti-corruption strategy.¹³³ Such a transformation would not only vindicate the spirit of Article 159(2)(c) but would reaffirm Kenya's constitutional commitment to justice, accountability, and the public good.

¹³² Odetunde Adeola Isiaka, 'Examining the Effectiveness of Restorative Justice as an Alternative Approach to Traditional Punitive Measures in Handling Corruption Cases' (2025) 8 *African Journal of Law, Political Research and Administration* 102.

¹³³ Hickey (n 111).

Bibliography

A. Constitutions and Statutes

1. Constitution of Kenya 2010
2. Anti-Corruption and Economic Crimes Act No 3 of 2003
3. Ethics and Anti-Corruption Commission Act No 22 of 2011
4. Proceeds of Crime and Anti-Money Laundering Act 2009

B. Policy Documents and Guidelines

1. Ethics and Anti-Corruption Commission, *Alternative Dispute Policy* 2017
2. Government of Kenya, *The National Ethics and Anti-Corruption Policy* 2020
<https://repository.kippira.or.ke/handle/123456789/4228> accessed 13 April 2024
3. Office of the Director of Public Prosecutions, *Diversion Guidelines and Explanatory Notes* <https://odpp.go.ke/wp-content/uploads/2024/08/DIVERSION-GUIDELINES.pdf> accessed 29 May 2025

C. Cases

Domestic Cases

1. *Ali & Others v Gashambi & Others* (Constitutional Petition 8 of 2019) 2024 KEHC 8072 (Malindi High Court)
2. *Assets Recovery Agency v Pamela Aboo; Ethics & Anti-Corruption Commission (Interested Party)* [2018] eKLR Milimani ACECS Misc 73 of 2017
3. *Ethics Anti-Corruption Commission v Maitai & 13 Others* (Anti-Corruption and Economic Crimes Civil Suit 8 of 2020) 2024 KEHC 2700
4. *Ethics and Anti-Corruption Commission & Another v Tom Ojienda t/a Prof Tom Ojienda & Associates Advocates & 2 Others* (Petition 30 & 31 of 2019, Consolidated) [2022] KESC 59

5. *Josphat Kipkoech Sirma v Director of Public Prosecutions & Another* 2022 KEHC 758 (High Court Nairobi, Anti-Corruption and Economic Crimes Division)
6. *Julius Kiplagat Korir v Director of Public Prosecutions & Another; Everlyne Chepkorir Koech (Interested Party)* 2021 KEHC 2541
7. *Kenya Human Rights Commission v Communications Authority of Kenya & 4 Others* [2018] eKLR (High Court Nairobi)
8. *Republic v Isaac* (Anti-Corruption Case 9 of 2015) [2020] KEMC 3
9. *Republic v Mohamed Abdow Mohamed* [2013] eKLR (High Court Nairobi)
10. *Uhuru Highway Development Limited v Kenya Deposit Insurance Corporation; Ethics & Anti-Corruption Commission & Another (Interested Parties)* [2019] eKLR (High Court Nairobi, Commercial & Admiralty Division)

International Cases

1. *Serious Fraud Office v Standard Bank plc* [2015] Royal Courts of Justice 1 (Crown Court Southwark)

D. Institutional Reports

1. Ethics and Anti-Corruption Commission, *Report of Activities and Financial Statements for the Financial Year 2019/2020* (2021)
2. Ethics and Anti-Corruption Commission, *Report of Activities and Financial Statements for the Financial Year 2023/2024* (2024)
3. Civil Forum for Asset Recovery, *Alternative Dispute Resolution & Asset Recovery in Kenya* (2024) https://cifar.eu/wp-content/uploads/2024/01/ADR-paper_web.pdf accessed 1 May 2024
4. South African Law Reform Commission, *Review of the Criminal Justice System: Non-Trial Resolutions: Deferred Prosecution, Alternative Dispute Resolution and Non-Prosecution Pre-Trial Processes* (2025)

E. Journal Articles

1. Adeola, O I, 'Examining the Effectiveness of Restorative Justice as an Alternative Approach to Traditional Punitive Measures in Handling Corruption Cases' (2025) 8 *African Journal of Law, Political Research and Administration* 102
2. Adhiambo, O M, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (University of Nairobi 2021) <http://erepository.uonbi.ac.ke/handle/11295/161100> accessed 16 August 2023
3. Arlen, J, 'Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed through Deferred Prosecution Agreements' (2016) 8 *Journal of Legal Analysis* 191
4. Blackaby, N, 'Public Interest and Investment Treaty Arbitration' [2003] *Transnational Dispute Management*
<https://www.semanticscholar.org/paper/Public-Interest-and-Investment-Treaty-Arbitration-Blackaby/1c814787e67950dd9d778c2b999bc7ba46b967e5> accessed 12 October 2024
5. Borlini, L, 'Monitoring and Compliance Mechanisms as a Diagnostic and Prognostic Tool of International Anti-Corruption Cooperation: A Data-Driven Study' (2024) 22 *International Journal of Constitutional Law* 487
6. Chepkosgei, L, 'Assessing the Effectiveness of Recovering Unexplained Wealth in Combating Corruption in the Public Sector: A Focused Comparison of Select Countries in Africa and Europe' (University of Nairobi 2021)
7. Cheung, R, 'Deferred Prosecution Agreements: Cooperation and Confession' (2018) 77 *The Cambridge Law Journal* 12
8. Cortés, P, 'Embedding Alternative Dispute Resolution in the Civil Justice System: A Taxonomy for ADR Referrals and a Digital Pathway to Increase the Uptake of ADR' (2023) 43 *Legal Studies* 312
9. Currie, M-J, 'Non-Trial Resolutions: South Africa's Corporate Alternative Dispute Resolution (C-ADR) Policy'

10. Davis, F, 'Judicial Review of Deferred Prosecution Agreements: A Comparative Study' [2022] SSRN Electronic Journal <https://www.ssrn.com/abstract=4072985> accessed 23 October 2025
11. Gikonyo, J, 'Asset Recovery in Africa: Comparative Approaches and Practical Challenges' (2022) 12 *African Journal of International and Comparative Law* 85
12. Jackson, H, 'Legal Challenges in Cross-Border Asset Recovery' (2023) 5 *International Review of Law* 111
13. Kamau, T, 'Restorative Justice Mechanisms and Asset Recovery in Kenya' (2021) 15 *Journal of Criminal Justice in Africa* 44
14. Muigua, K, 'Enhancing the Court Annexed Mediation Environment in Kenya' [2020] SSRN Electronic Journal
15. Njoroge, P, 'Tracing Illicit Financial Flows in Cryptocurrencies: Legal and Regulatory Considerations' (2024) 9 *East African Law Journal* 112
16. Otieno, M, 'Comparative Analysis of Deferred Prosecution Agreements and Plea Bargains in Asset Recovery Cases' (2023) 18 *Journal of African Law* 203
17. Wambua, P, 'Alternative Dispute Resolution and Recovery of Stolen Assets: Lessons from Kenya' (2022) 7 *African Journal of Law and Governance* 55
18. Wachira, J, 'Legal Frameworks for Cross-Border Asset Recovery: Challenges and Opportunities' (2021) 13 *International Journal of Law, Policy and the Family* 45

F. Books and Book Chapters

1. Fiss, O M, 'Against Settlement' in Owen M Fiss, *Discussions in Dispute Resolution* (Oxford University Press 2021)
2. Grynberg, R and Singogo, F K, 'An Anatomy of Grand Fraud: The Goldenberg Scandal and the IMF/World Bank' in Roman Grynberg and Fwasa K Singogo, *African Gold* (Springer International Publishing 2021)
3. Rogers, B-A, 'Alternative Dispute Resolution' in Beverly-Ann Rogers, *International Trust Disputes*, 2nd edn (Oxford University Press 2020)

G. Working Papers and Electronic Sources

1. Blackaby, N, 'Public Interest and Investment Treaty Arbitration' [2003] Transnational Dispute Management
2. Koile, S, 'Restorative Justice through the Application of Traditional Dispute Resolution Mechanisms in Criminal Matters' [2023] SSRN Electronic Journal
3. Muriithi, P M, 'The Interface between Access to Justice and Arbitration in Kenya' [2021] SSRN Electronic Journal

H. Theses and Dissertations

- A. Adhiambo, O M, *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (University of Nairobi 2021)
- B. Muthoni, K, *Use of Settlements and Their Implications on the Recovery and Return of Stolen Assets* (2017)

I. Online Resources and News Articles

1. Kenya Law Reform Commission, 'Judicial Authority - Kenya Law Reform Commission (KLRC)' <https://www.klrc.go.ke/index.php/constitution-of-kenya/134-chapter-ten-judiciary/part-1-judicial-authority-and-legal-system/328-159-judicial-authority> accessed 6 June 2025
2. International Bar Association, 'Anti-Bribery and Corruption Developments in South Africa' <https://www.ibanet.org/south-africa-antibribery-and-corruption-developments> accessed 6 June 2025
3. Basel Institute on Governance, 'FRACCK Agreement with Kenya Illustrates That Partnership Is Essential When the Disposal of Confiscated Assets Should Benefit Development' (16 May 2019)

J. Journal Articles

1. Adeola Isiaka O, 'Examining the Effectiveness of Restorative Justice as an Alternative Approach to Traditional Punitive Measures in Handling Corruption Cases' (2025) 8 African Journal of Law, Political Research and Administration 102
2. Adhiambo OM, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (University of Nairobi 2021) <http://erepository.uonbi.ac.ke/handle/11295/161100> accessed 16 August 2023
3. 'Anti-Bribery and Corruption Developments in South Africa' <https://www.ibanet.org/south-africa-antibribery-and-corruption-developments> accessed 6 June 2025
4. Arlen J, 'Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed through Deferred Prosecution Agreements' (2016) 8 Journal of Legal Analysis 191
5. Blackaby N, 'Public Interest and Investment Treaty Arbitration' [2003] Transnational Dispute Management <https://www.semanticscholar.org/paper/Public-Interest-and-Investment-Treaty-Arbitration-Blackaby/1c814787e67950dd9d778c2b999bc7ba46b967e5> accessed 12 October 2024
6. Borlini L, 'Monitoring and Compliance Mechanisms as a Diagnostic and Prognostic Tool of International Anti-Corruption Cooperation: A Data-Driven Study' (2024) 22 International Journal of Constitutional Law 487
7. Chepkosgei L, 'Assessing the Effectiveness of Recovering Unexplained Wealth in Combating Corruption in the Public Sector: A Focused Comparison of Select Countries in Africa and Europe' (University of Nairobi 2021)
8. Cheung R, 'Deferred Prosecution Agreements: Cooperation and Confession' (2018) 77 The Cambridge Law Journal 12

9. CiFAR, 'Asset Management in Kenya' (CiFAR, 12 June 2024) <https://cifar.eu/asset-management-in-kenya/> accessed 23 October 2025
10. Civil Forum for Asset Recovery, 'Alternative Dispute Resolution & Asset Recovery in Kenya' (2024) https://cifar.eu/wp-content/uploads/2024/01/ADR-paper_web.pdf accessed 1 May 2024
11. Cogman HSFL-S and others, 'UK Deferred Prosecution Agreements' (Lexology, 10 January 2024) <https://www.lexology.com/library/detail.aspx?g=fc8eae7d-6a92-4da5-981b-9c9a794ddca3> accessed 1 May 2024
12. 'Corporate Corruption Settlement Policy Finalised in South Africa' (Pinsent Masons, 6 June 2025) <https://www.pinsentmasons.com/out-law/news/corporate-corruption-settlement-policy-finalised-in-south-africa> accessed 6 June 2025
13. Cortés P, 'Embedding Alternative Dispute Resolution in the Civil Justice System: A Taxonomy for ADR Referrals and a Digital Pathway to Increase the Uptake of ADR' (2023) 43 Legal Studies 312
14. Currie M-J, 'Non-Trial Resolutions: South Africa's Corporate Alternative Dispute Resolution (C-ADR) Policy'
15. Davis F, 'Judicial Review of Deferred Prosecution Agreements: A Comparative Study' [2022] SSRN Electronic Journal <https://www.ssrn.com/abstract=4072985> accessed 23 October 2025
16. De Franco G, Small RC and Wahid AS, 'Determinants of and Future Violations Following Deferred Prosecution and Non-prosecution Agreements in Corporate Criminal Cases' (2025) 42 Contemporary Accounting Research 1271
17. Deason E, 'Procedural Rules for Complementary Systems of Litigation and Mediation - Worldwide' (2004) 80 The Notre Dame Law Review
18. Dlodla S, 'SAP's R2.2bn Fine Is "Bold New Step" That Takes SA Forward in Fighting Crime - NPA' (The Star, 12 January 2024) <https://thestar.co.za/business-report/economy/2024-01-12-saps-r2->

- 2bn-fine-is-bold-new-step-that-takes-sa-forward-in-fighting-crime-
 npa/ accessed 6 June 2025
19. Fiss OM, 'Against Settlement' in Owen M Fiss, *Discussions in Dispute Resolution* (Oxford University Press 2021) <https://academic.oup.com/book/41631/chapter/353480652> accessed 23 January 2024
 20. 'Five Banks Fined Ksh.385 Million over NYS Scandal' (Citizen Digital, 5 March 2020) <https://www.citizen.digital/business/five-banks-fined-ksh-385-million-over-nys-scandal-325296> accessed 23 October 2025
 21. 'FRACCK Agreement with Kenya Illustrates That Partnership Is Essential When the Disposal of Confiscated Assets Should Benefit Development' (Basel Institute on Governance) <https://baselgovernance.org/news/fracck-agreement-kenya-illustrates-partnership-essential-when-disposal-confiscated-assets> accessed 6 June 2025
 22. Gikonyo C, 'The Kenyan Civil Forfeiture Regime: Nature, Challenges and Possible Solutions' (2020) 64 *Journal of African Law* 27
 23. Gikonyo C, 'Criminal Forfeiture under Kenya's Proceeds of Crime and Anti-Money Laundering Act: Nature and Challenges' (2020) 28 *African Journal of International and Comparative Law* 657
 24. Glasgow QC E and Smith QC M, 'Mediation and Alternative Dispute Resolution' in Edwin Glasgow QC and Marion Smith QC, *Wilmot-Smith on Construction Contracts* (Oxford University Press 2021) <https://academic.oup.com/book/40022/chapter/340382042> accessed 23 January 2024
 25. Grynberg R and Singogo FK, 'An Anatomy of Grand Fraud: The Goldenberg Scandal and the IMF/World Bank' in Roman Grynberg and Fwasa K Singogo, *African Gold* (Springer International Publishing 2021) http://link.springer.com/10.1007/978-3-030-65995-0_9 accessed 16 April 2024

26. Guttel E, Harel A and Procaccia Y, 'General Courts, Specialized Courts, and the Complementarity Effect' (2023) 17 Regulation & Governance 1021
27. Harvey J, 'Tracking the International Proceeds of Corruption and the Challenges of National Boundaries and National Agencies: The UK Example' (Routledge 2021)
28. Helfer LR, Rose C and Brewster R, 'Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism' (2023) 117 American Journal of International Law 559
29. Haugh T and Chen H, 'Remaking Monitorships: A First Principles Approach to Monitor Effectiveness' [2025] SSRN Electronic Journal <https://www.ssrn.com/abstract=5045770> accessed 23 October 2025
30. Hickey S, 'Remediation in Foreign Bribery Settlements: The Foundations of a New Approach' (2021) 21 Chicago Journal of International Law <https://chicagounbound.uchicago.edu/cjil/vol21/iss2/5>
31. Hock B, 'Policing Corporate Bribery: Negotiated Settlements and Bundling' (2021) 31 Policing and Society 950
32. ICJ Kenya, 'Strengthen Global Cooperation To Tackle Corruption - ICJ Kenya' (6 September 2024) <https://icj-kenya.org/news/strengthening-global-cooperation-to-tackle-corruption/> accessed 6 June 2025
33. Ivory R and Søreide T, 'The International Endorsement of Corporate Settlements in Foreign Bribery Cases' (2020) 69 International and Comparative Law Quarterly 945
34. Judiciary of Kenya, 'Judiciary to Deal with Corruption Cases in Accordance with the Law' (20 August 2023) <https://judiciary.go.ke/judiciary-to-deal-with-corruption-cases-in-accordance-with-the-law/> accessed 23 April 2024
35. Kamalova J, 'Exploring Blockchain-Based Alternative Dispute Resolution: Limitations of Traditional Methods and Prospects for

- Further Research' [2024] SSRN Electronic Journal
<https://www.ssrn.com/abstract=4748761> accessed 23 October 2025
36. Khamala, 'Beyond Criminal or Civil Asset Forfeiture in Kenya'
<https://globalresearchpublishing.com/wp-content/uploads/2024/05/Beyond-Criminal-or-Civil-Asset-Forfeiture-in-Kenya.pdf> accessed 23 October 2025
 37. Kirgis PF, 'Bargaining with Consequences: Leverage and Coercion in Negotiation' (19 Harvard Negotiation Law Review 70)
 38. Knutsen ES, 'Keeping Settlements Secret'
<https://ir.law.fsu.edu/lr/vol37/iss4/4> accessed 23 October 2025
 39. Kolarov T, 'Challenges in Settling Non-Conviction Based Civil Confiscation of Unexplained Wealth' (2021) 24 Journal of Money Laundering Control 483
 40. Lavie S and Tabbach A, 'The Promise of Bargaining Protocols' (2023) 15 Journal of Legal Analysis 79
 41. Lord N, 'Prosecution Deferred, Prosecution Exempt: On the Interests of (In)Justice in the Non-Trial Resolution of Transnational Corporate Bribery' (2023) 63 The British Journal of Criminology 848
 42. Luanavargasmacedo, 'Leniency Agreements Under Brazil's Clean Company Act: Are They a Good Idea?' (GAB | The Global Anticorruption Blog, 19 December 2016)
<https://globalanticorruptionblog.com/2016/12/19/leniency-agreements-under-brazils-clean-company-act-are-they-a-good-idea/>
 accessed 29 May 2025
 43. Lukalo F and Dokhe E, 'Securing Public Lands in Marsabit County'
https://www.academia.edu/35714833/Securing_Public_Lands_in_Marsabit_County accessed 23 October 2025
 44. M Daud Y, 'A Review of Effectiveness of Anti-Corruption Strategies and Institutions in Kenya' (2024) 4 African Journal of Commercial Studies 303
 45. M Muriithi P, 'The Interface between Access to Justice and Arbitration in Kenya' [2021] SSRN Electronic Journal
<https://www.ssrn.com/abstract=3892672> accessed 29 May 2025

46. 'McKinsey Africa to Pay over \$122m over South African Bribes' (Pinsent Masons, 6 June 2025) <https://www.pinsentmasons.com/out-law/news/mckinsey-africa-pay-over-south-african-bribes> accessed 6 June 2025
47. Meiklejohn S and others, 'A Fistful of Bitcoins: Characterizing Payments among Men with No Names' (Proceedings of the 2013 Conference on Internet Measurement Conference, ACM 2013) <https://dl.acm.org/doi/10.1145/2504730.2504747> accessed 16 June 2025
48. Milliron K, 'Addressing Due Process Concerns: Evaluating Proposals for Civil Asset Forfeiture Reform' (2018) 70 13976 <https://vpn.uonbi.ac.ke/proxy/46880209/https://heinonline.org/HOL/Print?collection=usjournals&handle=hein.journals/uflr70&id=1420> accessed 23 April 2024
49. Muigua PhD Dr. K, 'Enhancing the Court Annexed Mediation Environment in Kenya' [2020] SSRN Electronic Journal <https://www.ssrn.com/abstract=3833291> accessed 16 August 2023
50. Muigua PhD Dr. K, 'The Alternative Dispute Resolution (ADR) Framework for Tax Dispute Resolution in Kenya' [2024] SSRN Electronic Journal <https://www.ssrn.com/abstract=4733539> accessed 27 June 2024
51. Nyaga C, 'Enhancing Synergies: The Multi-Agency Experience in Fighting Corruption in Kenya' (2024) https://www.unafei.or.jp/publications/pdf/RS_No104/No104_21_IP_Kenya.pdf accessed 11 April 2024
52. Ochnio AH, 'Recent Developments in EU Anti-Corruption Strategy: The Missing Element of the Return of Corrupt Assets to "Victim Countries"' (2024) 27 Journal of Money Laundering Control 1 <https://www.emerald.com/insight/content/doi/10.1108/JMLC-11-2023-0176/full/html> accessed 31 March 2024
53. Ojelabi LA and Noone MA, 'Jurisdictional Perspectives on Alternative Dispute Resolution and Access to Justice: Introduction' (2020) 16 International Journal of Law in Context 105

54. Omondi M, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (Thesis, University of Nairobi 2021)
<http://erepository.uonbi.ac.ke/handle/11295/161100> accessed 23 October 2025
55. Perez MA, 'The Rise and Globalization of Negotiated Settlements: How an American Procedure, the Deferred Prosecution Agreement (DPA), Became a Transnational Key Tool to Fight Transnational Corporate Crimes' (2020) 2020 Rule of Law and Anti-Corruption Center Journal
<https://www.qscience.com/content/journals/10.5339/rolacc.2020.4> accessed 2 May 2024
56. Pratama IN and Azyanti NR, 'Application of Restorative Justice in the Settlement of Corruption Crimes' (2022) 3 *Corruptio* 135
57. 'Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication' (Federal Register, 15 October 2019)
<https://www.federalregister.gov/documents/2019/10/15/2019-22624/promoting-the-rule-of-law-through-transparency-and-fairness-in-civil-administrative-enforcement-and> accessed 23 October 2025
58. Rampadio H, Fauzia A and Hamdani F, 'The Urgency of Arrangement Regarding Illicit Enrichment in Indonesia in Order to Eradicate Corruption Crimes by Corporations' (2022) 9 *Jurnal Pembaharuan Hukum* 225
59. 'Review of the Criminal Justice System: Non-Trial Resolutions: Deferred Prosecution, Alternative Dispute Resolution and Non-Prosecution Pre-Trial Processes' (South Africa Law Reform Commission 2025)
<https://www.justice.gov.za/salrc/dpapers/DP165-Project151-Non-TrialResolutions.pdf> accessed 6 June 2025
60. Ringera A, 'Kenya: Slow Court System Frustrating War Against Corruption' *The Nation* (Nairobi, 7 September 2009)

<https://allafrica.com/stories/200909070649.html> accessed 6 June 2025

61. Rogers B-A, 'Alternative Dispute Resolution' in Beverly-Ann Rogers, *International Trust Disputes*, Second Edition (Oxford University Press 2020) <https://academic.oup.com/book/41322/chapter/352277900> accessed 23 January 2024
62. Rose C, 'The Progressive Development of International Law on the Return of Stolen Assets: Mapping the Paths Forward' (2024) 35 *European Journal of International Law* 701
63. Sakellaraki A, 'EU Asset Recovery and Confiscation Regime - Quo Vadis? A First Assessment of the Commission's Proposal to Further Harmonise the EU Asset Recovery and Confiscation Laws. A Step in the Right Direction?' (2022) 13 *New Journal of European Criminal Law* 478
64. Serious Fraud Office, 'Deferred Prosecution Agreements' (Serious Fraud Office, 1 May 2024) <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/deferred-prosecution-agreements/> accessed 1 May 2024
65. Setiyono J and others, 'Enhancing Cross-Border Justice: Facilitating Asset Recovery from Corruption Between Indonesia and Australia Through Mutual Legal Assistance' (2024) 9 *Journal of Indonesian Legal Studies* 537
66. Sherman N and Momani BT, 'Alternative Dispute Resolution: Mediation as a Model' (2025) 13 *F1000Research* 778
67. Siregar VA and Puspitasari F, 'Alternative Return for State Losses in Crime Cases' (2023) 2 *International Journal of Multidisciplinary Research and Literature* 481 <https://ijomral.esc-id.org/index.php/home/article/view/137> accessed 29 March 2024
68. Sittlington S and Harvey J, 'Prevention of Money Laundering and the Role of Asset Recovery' (2018) 70 *Crime, Law and Social Change* 421
69. Sternlight JR, 'Is Alternative Dispute Resolution Consistent With the Rule of Law' (2007) <https://www.semanticscholar.org/paper/Is->

- [Alternative-Dispute-Resolution-Consistent-With-Sternlight/53a115e36c548dddce05bb24d07a3245e959f058](#) accessed 31 March 2024
70. 'Takeaways From UK's 1st Deferred Prosecution Agreement | News & Resources | Dorsey' <https://www.dorsey.com/newsresources/publications/articles/2015/12/takeaways-from-uks-1st-deferred-prosecution> accessed 23 October 2025
71. 'The National Ethics and Anti-Corruption Policy 2020' <https://repository.kippra.or.ke/handle/123456789/4228> accessed 13 April 2024
72. 'Training for Bargaining' by Jenny Roberts and Ronald F. Wright <https://scholarship.law.wm.edu/wmlr/vol57/iss4/11/> accessed 23 October 2025
73. 'United Kingdom: Overview of the Corporate Criminal Liability Regime and Recent Major Developments' (Lexology, 14 November 2024) <https://www.lexology.com/library/detail.aspx?g=5b2d45a7-4660-450c-8908-6a0b25115b80> accessed 23 October 2025
74. Woldmichael R, 'The Prosecutor's Role in Facilitating Criminal Alternative Dispute Resolution' (1831) 173 University of Pennsylvania Law Review
75. Wolski B, 'Confidentiality and Privilege in Mediation: Concepts in Need of Better Regulation and Explanation' (2020) 43
76. Yuriy Fedkovych Chernivtsi National University, Ukraine and Melenko O, 'Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis' (2021) 7 European Journal of Law and Public Administration 46
77. Zaslowsky D, 'The Evolution of Cryptocurrency Regulation in Kenya: From Opposition to Legalization' (Blockchain, 14 January 2025) <https://blockchain.bakermckenzie.com/2025/01/14/the-evolution-of-cryptocurrency-regulation-in-kenya-from-opposition-to-legalization/> accessed 9 May 2025

78. Zeleznikow J, 'Using Artificial Intelligence to Provide Intelligent Dispute Resolution Support' (2021) 30 Group Decision and Negotiation 789
79. Abdul Raof N and Mohd Sulaiman A@ N, 'Show Me the Money! Unexplained Wealth and Civil Forfeiture in Malaysia' (2023) 31 IIUM Law Journal 127
80. Balzer B and Schneider J, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) 52 The RAND Journal of Economics 415
81. Bu Q, 'The Viability of Deferred Prosecution Agreements (DPAs) in the UK: The Impact on Global Anti-Bribery Compliance' (2021) 22 European Business Organization Law Review 173
82. Clancy Á, 'A Better Deal? Negotiated Responses to the Proceeds of Grand Corruption' (2022) 33 Criminal Law Forum 149
83. Gikonyo C, 'Kenya's Proceeds of Crime Act: The Asset Forfeiture Regime and Attendant Human Rights Issues' [2023] East African Law Journal 1
84. D'Arcy M and Cornell A, 'Devolution and Corruption in Kenya: Everyone's Turn to Eat?' (2016) 115 African Affairs 246
85. Dzur AW, 'Restorative Justice and Democracy: Fostering Public Accountability for Criminal Justice' (2011) 14 Contemporary Justice Review 367
86. Ekayana K, 'Returns of Assets in Corruption Criminal Acts as Alternative Restoring State Losses' (2020) 2 Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan 27
87. Gazal-Ayal O and Perry R, 'Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes' (2014) 39 Law & Social Inquiry 791
88. Grasso C, 'Peaks and Troughs of the English Deferred Prosecution Agreement: The Lesson Learned from the DPA between the SFO and ICBC SB Plc' (2016) 2016 The Journal of Business Law 388
89. La Fetra DJ, 'Are Property Owners of Assets Seized by Law Enforcement Entitled to a "Prompt" Hearing to Recover Custody, Governed by the Fourteenth Amendment's Due Process Clause, or

- Are They Entitled to a "Timely" Hearing, as Governed by the Sixth Amendment's Speedy Trial Guarantee?' (2023) 51 Preview of United States Supreme Court Cases 3
90. Mazzacuva F, 'Justifications and Purposes of Negotiated Justice for Corporate Offenders: Deferred and Non-Prosecution Agreements in the UK and US Systems of Criminal Justice' (2014) 78 The Journal of Criminal Law 249
 91. Michael Goa and Awuor EA, 'Alternative Dispute Resolution Strategies in Business: A Case of Companies Listed at the Nairobi Securities Exchange' (2018) 2 Journal of Human Resource & Leadership 24
 92. Milliron K, 'Addressing Due Process Concerns: Evaluating Proposals for Civil Asset Forfeiture Reform' (2018) 70 13976
 93. Mutuku B and others, 'Formal Justice and Alternative Dispute Resolution on Land Based Conflicts in Kenya' (2022) 7 International Journal of Gender Studies 1
 94. Ochnio AH, 'Recent Developments in EU Anti-Corruption Strategy: The Missing Element of the Return of Corrupt Assets to "Victim Countries"' (2024) 27 Journal of Money Laundering Control 1
 95. Ojo SO, 'Alternative Dispute Resolution (ADR): A Suitable Broad-Based Dispute Resolution Model in Nigeria; Challenges and Prospects' (2023) 4 International Journal of Conflict Management 50
 96. Rij AV, 'Corruption in Kenya. Understanding a Multifaceted' [2021] French Institute of International Relations 32
 97. Sakellaraki A, 'EU Asset Recovery and Confiscation Regime - Quo Vadis? A First Assessment of the Commission's Proposal to Further Harmonise the EU Asset Recovery and Confiscation Laws. A Step in the Right Direction?' (2022) 13 New Journal of European Criminal Law 478
 98. Sherman N and Momani BT, 'Alternative Dispute Resolution: Mediation as a Model' (2025) 13 F1000Research 778

99. Siregar VA and Puspitasari F, 'Alternative Return for State Losses in Crime Cases' (2023) 2 International Journal of Multidisciplinary Research and Literature 481

K. Books and Book Chapters

1. Fiss OM, 'Against Settlement' in Owen M Fiss, Discussions in Dispute Resolution (Oxford University Press 2021)
2. Grynberg R and Singogo FK, 'An Anatomy of Grand Fraud: The Goldenberg Scandal and the IMF/World Bank' in Roman Grynberg and Fwasa K Singogo, African Gold (Springer International Publishing 2021)
3. Rogers B-A, 'Alternative Dispute Resolution' in Beverly-Ann Rogers, International Trust Disputes, Second Edition (Oxford University Press 2020)

L. Theses and Dissertations

1. Adhiambo OM, 'Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets' (University of Nairobi 2021)
2. Muthoni Kimani, 'Use of Settlements and Their Implications on the Recovery and Return of Stolen Assets' (2017)

M. Online Resources and News Articles

1. '159. Judicial Authority - Kenya Law Reform Commission (KLRC)' <https://www.klrc.go.ke/index.php/constitution-of-kenya/134-chapter-ten-judiciary/part-1-judicial-authority-and-legal-system/328-159-judicial-authority> accessed 6 June 2025
2. 'Anti-Bribery and Corruption Developments in South Africa' <https://www.ibanet.org/south-africa-antibribery-and-corruption-developments> accessed 6 June 2025

3. Basel Institute on Governance, 'FRACCK Agreement with Kenya Illustrates That Partnership Is Essential When the Disposal of Confiscated Assets Should Benefit Development' (16 May 2019)
4. Cogman HSFL-S and others, 'UK Deferred Prosecution Agreements' (Lexology, 10 January 2024)
5. 'Corporate Corruption Settlement Policy Finalised in South Africa' (Pinsent Masons, 6 June 2025)
6. Currie M-J, 'Non-Trial Resolutions: South Africa's Corporate Alternative Dispute Resolution (C-ADR) Policy'
7. Dlodla S, 'SAP's R2. 2bn Fine Is "Bold New Step" That Takes SA Forward in Fighting Crime - NPA' (The Star, 2024)
8. ICJ Kenya, 'Strengthen Global Cooperation To Tackle Corruption - ICJ Kenya' (6 September 2024)
9. Judiciary of Kenya, 'Judiciary to Deal with Corruption Cases in Accordance with the Law' (20 August 2023)
10. Iuanavargasmacedo, 'Leniency Agreements Under Brazil's Clean Company Act: Are They a Good Idea?' (GAB | The Global Anticorruption Blog, 19 December 2016)
11. 'McKinsey Africa to Pay over \$122m over South African Bribes' (Pinsent Masons, 6 June 2025)
12. Serious Fraud Office, 'Deferred Prosecution Agreements' (1 May 2024)

Legal Solutions to the Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency

By: Michael Sang *

Abstract

This paper examines the institutional conflicts between Kenya's Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA), focusing on overlapping mandates in asset recovery and prosecution. It explores the statutory frameworks governing these institutions, analyses the root causes of conflicts, and proposes solutions based on comparative experiences from jurisdictions such as the UK, South Africa, and Singapore. The paper advocates for statutory clarification, enhanced inter-agency collaboration, and the adoption of technology to improve the effectiveness of asset recovery and crime prosecution in Kenya.

Key Words: *Institutional conflict; asset recovery; Office of the Director of Public Prosecutions; Assets Recovery Agency; legal framework*

1. Introduction

Institutional conflicts between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) in Kenya have posed significant challenges in the effective enforcement of legal mandates concerning asset recovery and prosecution of crimes.¹ These conflicts stem from overlapping jurisdictions, particularly in the areas of forfeiture proceedings, recovery of proceeds of crime, and the application for preservation orders.² The legal

** LLM, University of Cape Town, South Africa; LLB, Moi University; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.*

¹ Mwaura, J. N. (2020). The Role of the Office of the Director of Public Prosecutions in Fighting Money Laundering and Terrorist Financing in Kenya. *International Journal of Humanities and Social Science Research*, 8(1), 14-25.

² *ibid*

frameworks governing these institutions, including the Constitution of Kenya 2010, the Office of the Director of Public Prosecutions Act, and the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), provide for their respective mandates but also highlight areas of potential overlap and conflict.

This paper explores the underlying legal and institutional issues contributing to these conflicts, analysing the specific powers granted to the ODPP and ARA under relevant Kenyan statutes. By examining comparative experiences from jurisdictions such as the United Kingdom, South Africa, and Singapore, this paper proposes solutions to enhance inter-agency collaboration, clarify institutional competencies, and leverage technology for more effective asset recovery.

Moreover, the paper underscores the importance of judicial intervention in managing institutional conflicts, drawing lessons from South Africa's judiciary, which plays a pivotal role in maintaining checks and balances among state institutions. Finally, the paper advocates for the adoption of best practices from global leaders in asset recovery, emphasizing the need for Kenya to refine its legal frameworks and enhance international cooperation to address the complex challenges of economic crime.

This paper aims to provide a comprehensive analysis of the legal solutions available to mitigate institutional conflicts between the ODPP and ARA, ultimately contributing to a more effective and coordinated approach to combating economic crime in Kenya.

2. Legal Framework for the Respective Mandates of the Director of Public Prosecutions and the Assets Recovery Agency

2.1 Constitution of Kenya 2010

Article 157 of the Constitution of Kenya 2010 establishes the Office of the Director of Public Prosecutions (ODPP) and outlines its powers and responsibilities. The ODPP is a constitutionally established office, with the holder nominated and

appointed by the President following the approval of the National Assembly. The qualifications for the Director of Public Prosecutions (DPP) align with those required for a judge of the High Court. The DPP has the exclusive mandate to exercise state powers of prosecution, which include:

- **Instituting and Conducting Criminal Proceedings:** The DPP can initiate and prosecute criminal cases in any court, except for courts-martial.
- **Taking Over Prosecutions:** The DPP can take over and continue any criminal proceedings initiated by another person or authority.
- **Discontinuing Proceedings:** The DPP has the authority to discontinue criminal proceedings, subject to certain limitations, such as needing court permission if discontinuance occurs after the prosecution's case has closed.³

The DPP operates independently, without needing consent from any person or authority to commence prosecutions. The DPP is required to act in the public interest, with regard to the administration of justice and the prevention of legal process abuse. Parliament may grant prosecutorial powers to other authorities, but the DPP remains the principal authority over state prosecutions.⁴

This constitutional framework underpins the DPP's role as the chief prosecutor in Kenya, with wide-ranging powers to ensure justice is administered fairly and effectively. However, the exercise of these powers must consider public interest and the integrity of the legal process.

³ Constitution of Kenya 2010, Article 157

⁴ *ibid*

2.2 Statutory Provisions

2.2.1 Office of the Director of Public Prosecutions Act

Section 5 of the Office of the Director of Public Prosecutions (ODPP) Act 2013 elaborates on the powers and functions of the Director of Public Prosecutions (DPP) as established under Article 157 of the Constitution of Kenya. The DPP is empowered to direct investigations and exercise state prosecution powers, including instituting, undertaking, and discontinuing criminal proceedings. Additionally, the DPP has the authority to formulate public prosecution policies and oversee their implementation, ensuring that prosecution practices align with constitutional mandates and public interest.⁵

The DPP's role extends to ensuring the effectiveness of public prosecutions by promoting collaboration with other justice system stakeholders, such as the National Police Service, investigative agencies, and the courts.⁶ The DPP is also responsible for maintaining high standards of practice among public prosecutors and ensuring that prosecutorial decisions are guided by the principles of justice, fairness, and the rule of law.⁷

Furthermore, the DPP can review decisions related to prosecution and provide advice to the state on matters of criminal justice.⁸ The DPP's mandate also includes the responsibility to enhance the prosecution's role in tackling complex crimes such as economic crimes, organized crime, and transnational crimes, particularly through specialized divisions like the Department of Economic, Organized, and International Crimes.⁹

⁵ Office of the Director of Public Prosecutions (ODPP) Act, Section 5

⁶ *ibid*

⁷ *ibid*

⁸ Office of the Director of Public Prosecutions. (2019). *Guidelines on the Decision to Charge*, 2019.

⁹ *ibid*

The Department of Economic, Organized, and International Crimes is a critical unit within the Office of the Director of Public Prosecutions (ODPP) in Kenya.¹⁰ This department handles complex cases involving economic and organized crimes, which include corruption, money laundering, terrorism financing, and other transnational crimes. It is structured into several specialized divisions:¹¹

1. Anti-Corruption & Economic Crimes Division
2. Anti-Money Laundering and Asset Forfeiture Division
3. Banking and Financial Crimes Division
4. Land, Environment, and Related Crimes Division
5. International, Transnational & Organized Crimes Division
6. Counter Terrorism Division

These divisions focus on investigating and prosecuting crimes that not only undermine the Kenyan economy but also threaten national and international security.¹² The department is responsible for guiding investigations, providing policy guidelines, and ensuring effective prosecution strategies are in place to combat these high-stakes crimes. Given the global nature of many of these crimes, the department also plays a vital role in international cooperation, often working with foreign governments and international organizations to address cross-border criminal activities.¹³ This cooperation is essential for tackling issues like human trafficking, drug smuggling, and cybercrime, which are increasingly facilitated by technological advancements such as cryptocurrencies.¹⁴

¹⁰ Office of the Director of Public Prosecutions (ODPP) Department of Economic, Organized, and International Crimes available at <https://www.odpp.go.ke/departments/> accessed 20 August 2024

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

2.2.2 Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) Assets Recovery Agency

Section 53 of POCAMLA establishes the Assets Recovery Agency (ARA) as a body corporate with the authority to sue and be sued, hold property, and perform other legal functions typical of a corporate entity. The ARA's primary mandate is to identify, trace, and recover assets acquired through criminal activities, especially those related to money laundering and other serious financial crimes. The Director of the Agency is appointed by the Attorney-General upon the recommendation of an Advisory Board, ensuring the Director's qualifications and experience align with the responsibilities of the role. The Director's term is four years, with eligibility for one reappointment.¹⁵

Assets Management Department

The Assets Management Department within the ARA is crucial for managing properties subject to restraint or preservation orders. Under Section 72, a court may appoint a manager to oversee the care, administration, and potentially the sale of properties under restraint orders, especially if they are perishable or liable to deterioration.¹⁶ Similarly, Section 86 empowers the court to appoint a manager to assume control and administer properties under preservation orders, ensuring these assets are maintained or disposed of appropriately, depending on their condition and legal status.¹⁷

Criminal Assets Recovery Fund

Section 109 of POCAMLA establishes the Criminal Assets Recovery Fund. This fund is where proceeds from recovered criminal assets are deposited. The fund's purpose is to support further recovery efforts, victim compensation, and other related activities, thereby reinforcing the framework for combating financial crimes in Kenya.¹⁸

¹⁵ Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), sec 53

¹⁶ Ibid, sec 72

¹⁷ Ibid, sec 86

¹⁸ Ibid, sec 109

2.3 Overlapping Mandates between the Office of the Director of Public Prosecutions (DPP) and the Assets Recovery Agency (ARA)

The Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) in Kenya both play crucial roles in the fight against corruption, money laundering, and other financial crimes.¹⁹ However, their mandates often overlap, leading to potential conflicts and challenges in their operations.

Key Areas of Overlap:

1. Initiation of Legal Proceedings:

Both the ODPP and ARA have the authority to initiate legal proceedings related to the seizure and forfeiture of assets. The ODPP prosecutes criminal cases, while the ARA focuses on the recovery of assets obtained through criminal activities. This overlap can create conflicts, especially when deciding which agency should lead in cases where both criminal prosecution and asset recovery are involved.²⁰

2. Asset Management and Disposal:

The ARA is responsible for managing and disposing of assets recovered from criminal activities.²¹ However, during criminal prosecutions led by the ODPP, the question of who controls and manages these assets can become contentious,

¹⁹ Kamau Muthoni (2024) 'Battle rages over control of Asset Recovery Agency' *The Standard* available at <https://www.standardmedia.co.ke/national/article/2001500286/battle-rages-over-control-of-asset-recovery-agency> accessed 1 September 2024

²⁰ Report of The Task Force on The Review of The Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015) available at <https://statelaw.go.ke/wp-content/uploads/2020/07/Report-of-the-Task-Force-on-the-Review-of-the-Legal-Policy-and-Institutional-Framework-for-Fighting-Corruption.pdf> accessed 20 August 2024

²¹ POCAMLA, sec 54

particularly when the timing of prosecutions and asset seizures does not align.²²

3. Investigative Authority:

The ODPP has the power to direct investigations into criminal activities, while the ARA also conducts investigations specifically focused on tracing and recovering assets.²³ The simultaneous involvement of both agencies in investigations can lead to duplication of efforts or, conversely, gaps in the investigation if the agencies do not coordinate effectively.²⁴

4. Collaboration vs. Autonomy:

Although the law encourages collaboration between the ODPP and ARA, their respective needs for autonomy can create friction. For instance, the ARA's mandate under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) emphasizes the swift freezing and recovery of assets, which might conflict with the ODPP's broader considerations in prosecuting criminal cases, such as ensuring fair trials and adherence to due process.²⁵

Efforts to Mitigate Conflict:

To address these overlaps, there have been initiatives to enhance inter-agency coordination. For example, training programs and inter-agency task forces have been established to ensure that both the ODPP and ARA work together more effectively, reducing conflicts and improving the efficiency of corruption and asset recovery cases.²⁶ These efforts have been supported by international

²² *ibid*

²³ Gikonyo, C. (2020). The Kenyan Civil Forfeiture Regime: Nature, Challenges and Possible Solutions, *Journal of African Law* 64(1), 27-51.

²⁴ *ibid*

²⁵ *ibid*

²⁶ Office of the Director of Public Prosecutions. (2022). Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing.

partners and are aimed at strengthening Kenya's overall anti-corruption framework.²⁷

3. Institutional Conflicts between the Office of the Director of Public Prosecutions and the Assets Recovery Agency

3.1 Powers to Commence and Discontinue Forfeiture Proceedings

The conflict between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) largely centres on their overlapping powers concerning the commencement and discontinuance of forfeiture proceedings.²⁸

1. Commencement of Forfeiture Proceedings:

The DPP, under Article 157 of the Constitution and Section 5 of the Office of the Director of Public Prosecutions Act, has the power to initiate criminal proceedings, which can include actions leading to the forfeiture of assets linked to criminal activities.²⁹ This power includes the authority to oversee investigations and direct the prosecution of criminal cases, including those involving financial crimes that may result in asset forfeiture.

On the other hand, the ARA, established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), is specifically mandated to trace, seize, and recover assets obtained through criminal activities. The ARA has the authority to initiate civil forfeiture proceedings independent of criminal convictions, focusing on the recovery of assets rather than the prosecution of the individual.³⁰

²⁷ *ibid*

²⁸ *ibid*

²⁹ Constitution of Kenya, 2010, Article 157; Office of the Director of Public Prosecutions Act, Section 5

³⁰ POCAMLA, Section 54

2. Discontinuance of Forfeiture Proceedings:

The power to discontinue proceedings is another area of potential conflict. Under Article 157(6)(c) of the Constitution, the DPP has the exclusive authority to discontinue any criminal proceedings at any stage before the judgment is delivered. This includes cases where forfeiture is sought as part of the prosecution. The DPP's decision to discontinue proceedings can be based on various factors, including insufficient evidence or considerations of public interest.³¹

In contrast, the ARA's mandate under POCAMLA is focused on the uninterrupted recovery of assets, regardless of the outcome of criminal prosecutions.³² This can create a situation where the DPP may choose to discontinue a case for reasons such as a lack of sufficient evidence for criminal prosecution, while the ARA may wish to proceed with civil forfeiture to recover assets associated with the alleged crime.³³

3. Potential Conflicts and Solutions:

The potential for conflict arises when the ODPP discontinues criminal proceedings that involve asset forfeiture, which may undermine the ARA's efforts to recover assets.³⁴ Conversely, the ARA's pursuit of civil forfeiture, independent of criminal convictions, might conflict with the ODPP's prosecutorial strategy, especially if criminal proceedings are ongoing or have been discontinued for valid legal reasons.³⁵

³¹ Office of the Director of Public Prosecutions. (2019). Guidelines on the Decision to Charge, 2019.

³² POCAMLA, Sections 54 and 82

³³ Kamau Muthoni (2024) 'Battle rages over control of Asset Recovery Agency' *The Standard* available at <https://www.standardmedia.co.ke/national/article/2001500286/battle-rages-over-control-of-asset-recovery-agency> accessed 1 September 2024

³⁴ Ibid

³⁵ Mulele, R. (2023). The Director of Public Prosecutions (DPP): Strategic Agenda.

3.2 Powers to Recover Proceeds of Crime

The powers to recover proceeds of crime are a critical area where institutional conflicts between the Office of the Director of Public Prosecutions (DPP) and the Assets Recovery Agency (ARA) arise.³⁶ Both agencies have roles in recovering assets acquired through criminal activities, but their mandates and methods differ, often leading to overlapping functions and potential conflicts.³⁷

1. Director of Public Prosecutions (DPP):

Under Article 157 of the Constitution and Section 5 of the Office of the Director of Public Prosecutions Act, the DPP has the authority to initiate and conduct criminal prosecutions. This includes cases involving the recovery of proceeds from criminal activities. The ODPP's role is primarily prosecutorial, focusing on securing convictions and, where applicable, ensuring that the proceeds of crime are forfeited to the state as part of the criminal justice process. The DPP may also collaborate with other agencies, including the ARA, in pursuing the recovery of assets as part of broader criminal proceedings.³⁸

2. Assets Recovery Agency (ARA):

The ARA, established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), is a specialized agency with the mandate to recover proceeds of crime, particularly through civil forfeiture. Unlike the ODPP, which focuses on criminal prosecutions, the ARA's mandate is specifically tailored to the identification, tracing, freezing, and recovery of assets obtained through criminal conduct. The ARA operates independently of criminal convictions, meaning it can pursue the recovery of assets even when no criminal

³⁶ Office of the Director of Public Prosecutions. (2022). Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing.

³⁷ Ibid

³⁸ Constitution of Kenya, 2010, Article 157; Office of the Director of Public Prosecutions Act, Section 5

prosecution has been initiated or successfully concluded.³⁹

The ARA's powers under POCAMLA include:

- ✓ **Civil Forfeiture:** Under Section 71 of POCAMLA, the ARA can seek court orders to freeze, seize, and eventually forfeit assets believed to be the proceeds of crime, even in the absence of a criminal conviction. This power is significant in cases where criminal proceedings might be difficult to pursue or prove beyond a reasonable doubt.⁴⁰
- ✓ **Management of Recovered Assets:** Sections 72 and 86 of POCAMLA grant the ARA the authority to manage and dispose of assets that have been preserved or forfeited, ensuring that they are not wasted or diminished while legal processes are ongoing.⁴¹

3. Conflicts and Overlaps:

The overlapping powers of the ODPP and ARA in recovering proceeds of crime can lead to conflicts, particularly in cases where both criminal prosecution and asset recovery are involved. The ODPP may prioritize criminal prosecution and only consider asset recovery as a secondary goal, while the ARA's primary focus is on recovering assets, sometimes independently of the criminal justice process. For example:

Parallel Proceedings: The ODPP may initiate criminal proceedings that include asset forfeiture, while the ARA may pursue civil forfeiture for the same assets. This can lead to jurisdictional conflicts, especially if the criminal case is dismissed or if the ODPP decides to discontinue proceedings.

Differing Standards of Proof: The ODPP operates within the criminal justice framework, which requires proof beyond a reasonable doubt. In contrast, the ARA's civil forfeiture cases operate on a balance of probabilities, a lower standard

³⁹ POCAMLA, Section 53

⁴⁰ Ibid, Section 71, Part VII, Part VIII, Part IX

⁴¹ Ibid, Sections 72 and 86

of proof. This difference can lead to situations where the ARA successfully recovers assets that the ODPP could not secure through criminal prosecution, potentially leading to conflicting legal outcomes.

3.3 Powers to Apply for Preservation Orders for Suspect Assets

The powers to apply for preservation orders for suspect assets are a significant area where institutional conflicts may arise between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA), particularly under the framework established by the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).

1. Assets Recovery Agency (ARA) - Primary Role in Applying for Preservation Orders:

Under Section 82 of POCAMLA, the ARA has the explicit power to apply for preservation orders. The Agency Director may, by way of an ex parte application, request the court to issue an order that prohibits any person from dealing with the specified property. This order is crucial in preventing the dissipation, concealment, or removal of assets suspected to be involved in or derived from criminal activities. The application is made ex parte, meaning it is done without notifying the other party, which allows for swift action to secure the assets before they can be tampered with. The court is required to grant the preservation order if there are reasonable grounds to believe that the property in question: Has been used or is intended to be used in the commission of an offence, or is the proceeds of crime.⁴²

Once the preservation order is granted, the court may also authorize the seizure of the property by a police officer and issue any additional orders necessary to ensure the proper execution of the preservation order.⁴³ This provision empowers the ARA to act decisively in securing assets before they can be misappropriated, providing a robust tool for asset preservation in financial crime cases.

⁴² POCAMLA, Section 82

⁴³ Ibid, Section 82(3)

2. Office of the Director of Public Prosecutions (ODPP) - Overlapping Jurisdiction:

While the primary authority to apply for preservation orders lies with the ARA, the ODPP also has a vested interest in the process, particularly when it overlaps with ongoing criminal investigations or prosecutions. As the body responsible for prosecuting criminal cases under Article 157 of the Constitution, the ODPP might encounter situations where preservation of assets is essential to the success of a criminal case. This overlap can create tension, particularly if the ODPP believes that the ARA's actions might interfere with the criminal proceedings or if there is a lack of coordination between the two bodies.⁴⁴

3. Conflicts and Coordination Challenges:

The potential for conflict arises primarily from the timing and strategy of applying for preservation orders.⁴⁵ The ARA may prioritize asset preservation as a preventative measure, whereas the ODPP might focus on securing evidence for a prosecution. If not carefully coordinated, the ARA's swift action in applying for a preservation order could inadvertently affect the ODPP's prosecution strategy, such as by alerting suspects prematurely or complicating the collection of evidence.⁴⁶

4. Legal Framework for Resolving Conflicts:

To mitigate these conflicts, POCAMLA provides some guidance. For instance, under Section 85 of POCAMLA the police are authorized to seize property subject to a preservation order if they believe it might be disposed of or removed contrary to the order. However, this seizure must be conducted in accordance with the court's directions, which implicitly requires communication and

⁴⁴ Office of the Director of Public Prosecutions. (2022). *Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing*.

⁴⁵ Ibid

⁴⁶ Ibid

coordination with the prosecutorial authorities.⁴⁷

The legal framework emphasizes the need for both the ARA and ODPP to work together closely, with each agency respecting the other's mandate. Joint task forces and inter-agency protocols can be effective in ensuring that preservation orders are applied for and executed in a manner that supports both asset recovery and criminal prosecution objectives without causing unnecessary friction or legal complications.

3.4 Powers to Act as a Competent Authority for Purposes of International Cooperation

The ability to act as a competent authority for international cooperation is a critical function for both the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) in Kenya.⁴⁸ This role involves representing Kenya in matters of mutual legal assistance, extradition, and other forms of international cooperation in criminal matters.⁴⁹ However, the overlapping mandates of the ODPP and ARA in this area can lead to institutional conflicts.

1. Office of the Director of Public Prosecutions (ODPP):

Under Article 157 of the Constitution, the ODPP is the principal authority responsible for overseeing prosecutions in Kenya, including cases with international dimensions. The ODPP's role extends to engaging with foreign counterparts in matters of mutual legal assistance, extradition requests, and international criminal prosecutions. The ODPP often acts as the central authority in these cases, coordinating the exchange of legal documents, evidence, and suspects between jurisdictions.⁵⁰ The DPP is empowered to liaise with

⁴⁷ POCAMLA, Section 85

⁴⁸ The Proceeds of Crime and Anti-Money Laundering Regulations, 2023, Legal Notice 153 of 2023

⁴⁹ Ibid

⁵⁰ Constitution of Kenya, 2010, art 157

international bodies and foreign governments to facilitate international cooperation in the prosecution of transnational crimes, such as terrorism, drug trafficking, and money laundering, where international collaboration is essential.

2. Assets Recovery Agency (ARA):

On the other hand, the ARA, established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), also has powers that involve international cooperation, particularly concerning the identification, tracing, and recovery of assets located outside Kenya. Sections 54 and 82 of POCAMLA empower the ARA to work with international partners to freeze, seize, and recover assets that are the proceeds of crime, even if they are held in foreign jurisdictions.⁵¹

The ARA is often required to engage with foreign governments, international organizations, and financial institutions to effectively recover assets.⁵² This might include submitting requests for mutual legal assistance, cooperating on investigations, and executing foreign court orders related to asset recovery. The ARA's ability to act independently in these matters can sometimes overlap with the DPP's prosecutorial functions, leading to potential conflicts over who should take the lead in international engagements.⁵³

3. Conflicts and Challenges:

The potential for conflict arises when both the DPP and ARA assert their roles as competent authorities in international cooperation.⁵⁴ For instance, if a foreign jurisdiction requests assistance in a case involving both criminal prosecution and asset recovery, it might not be immediately clear whether the DPP or ARA should

⁵¹ POCAMLA, Sections 54 and 82

⁵² Ibid

⁵³ Ibid

⁵⁴ Office of the Director of Public Prosecutions. (2022). Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing.

handle the request. This ambiguity can lead to delays, duplication of efforts, or even conflicting responses to international partners.

Another area of conflict can arise in cases where the DPP and ARA have different priorities. The DPP may prioritize the criminal prosecution of offenders, while the ARA focuses on civil asset recovery. In cases where both goals are linked, such as in transnational corruption or money laundering cases, the lack of a coordinated approach can undermine Kenya's effectiveness in international legal cooperation.⁵⁵

Mutual Legal Assistance (MLA) in Kenya is governed by the Mutual Legal Assistance Act 2011, enabling Kenya to exchange information on criminal investigations, prosecutions, and judicial proceedings. The Attorney General (AG) serves as the central authority, with competent authorities including the AG, investigative agencies like the ARA, EACC, and DCI, and other designated entities.⁵⁶ Under POCAMLA, Sections 114-120, international assistance is also provided. The ODPP plays a key role in MLA and extradition,⁵⁷ exemplified by cases like *DPP vs Chrysanthus Barnabas Okemo* and *Republic v Grace Sarapay Wakhungu*.⁵⁸ The ODPP collaborates regionally and internationally, engaging with organizations like EAAP, IAP, and APA to enhance MLA capabilities, leveraging partnerships with entities like the EU, USDOJ, and BHC. These collaborations have facilitated the acquisition of critical evidence, such as in the *Republic v Grace Sarapay Wakhungu* case, where MLA from South Africa helped secure convictions.⁵⁹

⁵⁵ Ibid

⁵⁶ Mutual Legal Assistance Act, 2011

⁵⁷ POCAMLA, Sections 114-120

⁵⁸ *DPP vs Chrysanthus Barnabas Okemo* Petition 14 of 2020 [2021] KESC 13[KLR]; *Republic v Grace Sarapay Wakhungu* Anti-Corruption Case No. 31 of 2018 [2020] eKLR

⁵⁹ *Republic v Grace Sarapay Wakhungu* Anti-Corruption Case No. 31 of 2018 [2020] eKLR

Sources of Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency

Institutional conflicts between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) primarily stem from the overlapping and sometimes conflicting statutory mandates outlined in the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), particularly in Section 53. These conflicts are exacerbated by the evolving legal landscape following the promulgation of the Constitution of Kenya 2010, which redefined the roles and powers of the Attorney General (AG) and the DPP, leading to a constitutional standoff regarding control over the ARA.

Under Section 53 of POCAMLA, the Attorney General retains significant authority over the ARA, including the appointment of the Director of the ARA, approval and secondment of staff, and setting terms and conditions for the staff in consultation with the Salaries and Remuneration Commission (SRC) and the Advisory Board.⁶⁰ These functions, assigned to the AG under Sections 53(2) & (4), 53A(1) & (3), and 53A(6A) of POCAMLA, conflict with the constitutional mandate of the DPP as the principal authority for prosecutions in Kenya. Article 157 of the Constitution shifted prosecutorial powers from the AG to the DPP, leaving the AG with the role of principal legal advisor to the government and representation in non-criminal matters. However, the AG's continued control over key aspects of the ARA's operations, which involve criminal investigations and asset recovery, arguably usurps the DPP's constitutional mandate, creating significant friction between the two offices.⁶¹

Further complicating this relationship is the power conferred upon the Director of the ARA under Section 53(5) of POCAMLA to control and direct police officers

⁶⁰ POCAMLA, Section 53

⁶¹ Kamau Muthoni (2024) 'Battle rages over control of Asset Recovery Agency' *The Standard* available at <https://www.standardmedia.co.ke/national/article/2001500286/battle-rages-over-control-of-asset-recovery-agency> accessed 1 September 2024

in the execution of the ARA's mandate. This provision conflicts with Article 245 of the Constitution, which vests exclusive command and control over the National Police Service in the Inspector General of Police. The potential for the ARA to operate independently of police command structures, while simultaneously exercising powers akin to those of police officers (as provided for under Section 53A (5) of POCAMLA), raises concerns about the appropriate limits of the ARA's authority and its encroachment on functions traditionally within the domain of law enforcement agencies.⁶²

This tension is further exacerbated by the fact that the ARA, despite not being gazetted as a police station or expressly granted authority to conduct criminal investigations, has been effectively performing police functions.⁶³ This operational overlap creates ambiguity regarding the proper sequencing of roles—whether the police should exclusively handle intelligence gathering and criminal investigations, followed by the DPP's prosecution, and only thereafter should the ARA be involved in the recovery of illicit assets.⁶⁴ The lack of clear delineation in these roles has contributed to a constitutional and operational impasse between the DPP and the AG regarding control over the ARA, necessitating urgent statutory and procedural clarifications to resolve these conflicts.

⁶² Kamau Muthoni (2024) 'Battle rages over control of Asset Recovery Agency' *The Standard* available at <https://www.standardmedia.co.ke/national/article/2001500286/battle-rages-over-control-of-asset-recovery-agency> accessed 1 September 2024

⁶³ Ibid

⁶⁴ Ibid

4. Proposed Solutions to the Institutional Conflicts between the Office of the Director of Public Prosecutions and the Assets Recovery Agency: Comparative Lessons

4.1 Statutory Clarification of Institutional Competence over Civil and Criminal Forfeiture

The institutional conflicts between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) in Kenya, particularly concerning civil and criminal forfeiture, can be mitigated through a clearer statutory framework as laid out in the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). The provisions within Sections 61-68 and 81-99 of POCAMLA provide a basis for this clarification, highlighting the distinct roles that the ODPP and ARA should play in the forfeiture process.

Criminal Forfeiture under POCAMLA

The Act empowers the court, upon the conviction of a defendant, to inquire into any benefits derived from the offense. The application for such an inquiry can be made by the Attorney-General, the ARA Director, or on the court's own motion. The court may then order the defendant to pay the government an amount equivalent to the benefit derived, effectively initiating a confiscation order. This highlights the DPP's central role in prosecuting criminal cases where asset forfeiture is part of the punishment.⁶⁵

The Act outlines how the court determines the value of the defendant's proceeds of crime. It stipulates that the value is based on the property, services, advantages, benefits, or rewards received in connection with the offense. This provision is crucial in ensuring that the amount recovered in criminal forfeiture is just and reflective of the actual gains from criminal activity.⁶⁶

Section 63 deals with determining the realizable amount from the defendant's

⁶⁵ POCAMLA, Section 61

⁶⁶ Ibid, Section 62

property at the time of making the confiscation order. It takes into account the value of all realizable property and any affected gifts made by the defendant, less any obligations with priority. This ensures that the court's order is enforceable and that the state can recover the value of the crime's proceeds.⁶⁷

Section 64 allows the court to require affidavits or statements from the defendant or other relevant persons to assess the value of the proceeds of crime. This is critical for ensuring transparency and accountability in the forfeiture process. The court can rely on prima facie evidence, such as the absence of legitimate sources of income, to determine whether the defendant's assets are derived from criminal activity. This facilitates the court's ability to issue confiscation orders, even in complex cases where direct evidence may be challenging to obtain.⁶⁸ A confiscation order has the effect of a civil judgment, thereby enabling the government to enforce it as such. This provision underlines the seriousness of criminal forfeiture and its enforceability.⁶⁹ The ARA Director may apply to a court for a restraint order to prohibit any dealings with property suspected of being connected to criminal activities. This order ensures that assets are not dissipated before the court can determine their criminal origins, allowing for their eventual confiscation under a criminal forfeiture order.⁷⁰

Civil Forfeiture under POCAMLA

All proceedings under Part VIII, which deals with civil forfeiture, are civil in nature. This section emphasizes the difference between civil and criminal forfeiture, with civil forfeiture focusing on the property itself rather than the criminal conviction of the owner.⁷¹ The ARA Director can apply ex parte for preservation orders to freeze assets suspected to be proceeds of crime. This section empowers the ARA to act swiftly to secure assets pending further

⁶⁷ Ibid, Section 63

⁶⁸ Ibid, Section 65

⁶⁹ Ibid, Section 66

⁷⁰ Ibid, Section 68

⁷¹ Ibid, Section 81

investigation or forfeiture proceedings, regardless of whether a criminal conviction has occurred.⁷²

Section 83 requires the ARA to notify all interested parties of the preservation order within 21 days, ensuring due process and allowing for any challenges to the order. To prevent the disposal of assets contrary to a preservation order, any police officer may seize the property. This provision ensures that assets are protected from being concealed or transferred while under investigation.⁷³ The court may appoint a manager to oversee and administer property subject to a preservation order. This ensures that the property is maintained and possibly generates income, preserving its value for potential forfeiture.⁷⁴

If a preservation order is in place, the ARA Director may apply to the High Court for a forfeiture order, transferring the property to the government. This section underscores the ARA's role in civil forfeiture, focusing on recovering assets rather than prosecuting individuals.⁷⁵ Section 94 allows third parties who claim an interest in the preserved property to apply for exclusion from the forfeiture order. It ensures that innocent parties' rights are protected in the civil forfeiture process.

Lessons from the United Kingdom's Economic Crime (Transparency and Enforcement) Act 2022

The UK's Economic Crime (Transparency and Enforcement) Act 2022 provides a useful model for Kenya in delineating roles between different agencies involved in asset recovery.

- **Unexplained Wealth Orders (UWOs) - Sections 45-53:** These sections empower law enforcement to demand explanations for assets that appear

⁷² Ibid, Section 82

⁷³ Ibid, Section 85

⁷⁴ Ibid, Section 86

⁷⁵ Ibid, Section 90

disproportionate to an individual's known income, operating as a civil tool for asset recovery. By maintaining a clear separation between civil actions (such as UWOs) and criminal prosecutions, the UK's framework ensures that agencies do not overstep their competencies, reducing conflicts.⁷⁶

- **Transparency Measures - Section 4:** The introduction of a register for foreign property owners enhances transparency and aids enforcement agencies in tracking illicit assets.⁷⁷ This parallels the ARA's role in civil forfeiture under POCAMLA, where transparency and swift action are crucial for effective asset recovery.

By adopting similar statutory clarifications and frameworks, Kenya can better define the roles of the DPP and ARA, reducing institutional conflicts and improving the effectiveness of both criminal and civil forfeiture processes.

4.2 Implementation of Inter-Agency Collaboration and Whole-of-Government Approach Lessons from the United States Department of Justice Multi-Agency Approach

The United States Department of Justice (DOJ) utilizes a robust multi-agency approach to combat complex and multifaceted criminal activities such as drug trafficking, organized crime, and economic crimes.⁷⁸ This model is centred on the creation of task forces that integrate various federal, state, and local agencies, thereby pooling resources, expertise, and intelligence.⁷⁹ One key example is the Organized Crime Drug Enforcement Task Forces (OCDETF), which operates as a prosecutor-led, intelligence-driven initiative. This task force combines the

⁷⁶ Economic Crime (Transparency and Enforcement) Act 2022, Sections 45-53

⁷⁷ Ibid, Section 4

⁷⁸ Boyd, C.L. (2021). *The Politics of Federal Prosecution* 171.

⁷⁹ United States Department of Justice 'Executive Office for Organized Crime Drug Enforcement Task Forces' available at <https://www.justice.gov/doj/organization-mission-and-functions-manual-executive-office-organized-crime-drug-enforcement-task> accessed 20 August 2024

efforts of multiple federal agencies, including the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and others, to disrupt and dismantle transnational criminal organizations by targeting their entire infrastructure. The success of OCDETF is attributed to its comprehensive approach, which includes financial investigations, asset forfeiture, and coordinated legal actions across different jurisdictions.⁸⁰

The Violent Crime Initiative (VCI), another DOJ model, emphasizes a coordinated response involving the U.S. Attorney's Office, local police departments, and federal agencies like the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The initiative targets violent offenders through a focused strategy that includes intelligence-sharing, joint task forces, and data-driven policing. The VCI's collaborative model has been instrumental in reducing violent crime rates in targeted areas.⁸¹

Lessons from the United Kingdom's Economic Crime Plan 2023-2026

The United Kingdom's Economic Crime Plan 2023-2026 is another exemplary model for inter-agency collaboration. This plan aims to enhance the UK's ability to tackle economic crime through a "whole-of-government" approach that integrates efforts across different government departments, law enforcement agencies, and the private sector.⁸² Key components of the Economic Crime Plan include strengthening the cooperation between law enforcement and regulatory bodies, improving intelligence-sharing mechanisms, and leveraging technological advancements to track and disrupt financial crimes. The plan also

⁸⁰ *ibid*

⁸¹ Drug Enforcement Administration (2022) 'U.S. Attorney Announces Coordinated Law Enforcement Actions to Combat Violent Organized Crime and Drug Trafficking' available at <https://www.dea.gov/press-releases/2022/10/26/us-attorney-announces-coordinated-law-enforcement-actions-combat-violent> accessed 20 August 2024

⁸² Economic Crime Plan 2023-2026 available at <https://www.gov.uk/government/publications/economic-crime-plan-2023-to-2026> accessed 20 August 2024

emphasizes the importance of international cooperation, recognizing that economic crimes often have a global dimension and require cross-border collaboration.⁸³

The UK's approach is structured around clear roles and responsibilities for each agency, ensuring that there is no overlap or conflict in their mandates.⁸⁴ This clarity in jurisdiction, combined with regular communication and joint operations, has been crucial in enhancing the efficiency and effectiveness of the UK's fight against economic crime.⁸⁵

By adopting similar strategies, the Director of Public Prosecutions (DPP) and the Assets Recovery Agency (ARA) in Kenya can mitigate institutional conflicts and enhance their ability to combat crime. Clear delineation of roles, regular inter-agency communication, and collaborative operations are essential for a cohesive approach to law enforcement and asset recovery.

4.3 Non-conviction Based Asset Recovery Lessons from the United Kingdom

The United Kingdom has established a comprehensive framework for non-conviction based (NCB) asset recovery through the Proceeds of Crime Act 2002 (POCA). This legislation allows the UK government to recover assets suspected of being linked to criminal activity without the need for a criminal conviction. The primary mechanisms under POCA include civil recovery, unexplained wealth orders (UWOs), and freezing orders. Under Sections 240-242 of POCA, the UK government can initiate civil proceedings to recover property obtained through unlawful conduct. The standard of proof is on a balance of probabilities, making it easier to recover assets compared to criminal proceedings that require

⁸³ Smith, I. & Owen, T. (2025). *Smith and Owen on Asset Recovery: Criminal Confiscation, Civil Recovery, Money Laundering, and Sanctions* 36.

⁸⁴ Ibid

⁸⁵ Ibid

proof beyond a reasonable doubt.⁸⁶

Introduced through amendments to POCA, UWOs compel individuals to explain the origins of their wealth. If they cannot provide a satisfactory explanation, the assets in question can be subjected to civil recovery proceedings.⁸⁷ This tool has been particularly useful in targeting assets held by foreign officials and individuals involved in organized crime, where a direct link to criminal activity is challenging to establish.⁸⁸ The UK's NCB asset recovery framework is bolstered by strong international cooperation.⁸⁹ The UK engages with international partners through treaties and mutual legal assistance agreements to trace, freeze, and recover assets across borders, recognizing the global nature of many criminal enterprises.⁹⁰

Application to Kenya

Kenya can draw significant lessons from the UK's experience. The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) already provides a foundation for NCB asset recovery, but further refinement could include the introduction of UWOs and enhanced international cooperation frameworks. Additionally, ensuring that NCB mechanisms are aligned with human rights standards will be crucial for both domestic legitimacy and international collaboration.

By adopting and adapting these lessons, Kenya can enhance the effectiveness of its asset recovery efforts, particularly in cases where criminal prosecution is impractical or impossible.

⁸⁶ Proceeds of Crime Act 2002 (POCA), Sections 240-242

⁸⁷ Ormerod, D. (ed) (2019) *Blackstone's Criminal Practice* para D.85.

⁸⁸ Baronak-Atkins, M. (2025). *Grand Corruption, Unexplained Wealth and the Law: Critical Analysis of Asset Recovery Measures*.

⁸⁹ Ibid.

⁹⁰ Ibid.

4.4 Specification of Judicial Role in Institutional Conflict Management Lessons from South Africa

South Africa's judicial system plays a crucial role in managing conflicts between state institutions, particularly when it comes to ensuring that each branch of government operates within its constitutional boundaries.⁹¹ The Constitutional Court of South Africa has been pivotal in this regard, particularly in adjudicating disputes that involve potential overreach by the executive or legislative branches.⁹²

The South African Constitutional Court has a well-established role in resolving conflicts between state organs.⁹³ The court exercises its mandate by interpreting the Constitution to ensure that all actions by public institutions are lawful, reasonable, and procedurally fair.⁹⁴ For example, in cases where there is a dispute over the separation of powers or where one branch of government is perceived to be encroaching on the mandate of another, the Constitutional Court steps in to provide a binding resolution. This is evident in landmark cases like *Glenister v President of the Republic of South Africa*, where the court affirmed the need for independent institutions to combat corruption effectively.⁹⁵

South Africa's judiciary frequently employs judicial review to manage conflicts between state institutions.⁹⁶ Judicial review allows courts to scrutinize the actions

⁹¹ Masumbe, P.S. & Qikani, S. (2024). The Rule of Law through Judicial Activism in South Africa. *Law and World* 10(30), 31-40.

⁹² *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 11; *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* [2017] ZACC 47.

⁹³ De Vos, P. (2017). *The South African Constitutional Law in Context* 69.

⁹⁴ *Ibid.*

⁹⁵ *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC).

⁹⁶ Kawadza, H. (2018). Attacks on the Judiciary: Undercurrents of a Political Versus Legal Constitutionalism Dilemma? *PELJ* 3.

of other branches of government, ensuring that they conform to constitutional requirements.⁹⁷ This process is critical in maintaining the checks and balances that prevent institutional conflicts from escalating into governance crises.⁹⁸ Beyond adjudication, South African courts also engage in mediation and arbitration between conflicting parties. The courts encourage amicable settlements in institutional disputes, often mandating mediation before proceeding to full litigation. This approach not only resolves conflicts more efficiently but also preserves inter-institutional relationships.⁹⁹

The South African judiciary is known for its proactive interpretation of the Constitution.¹⁰⁰ The courts do not merely react to conflicts; they often provide guidance on how different state organs should operate within their constitutional mandates. This proactive stance helps prevent conflicts from arising in the first place. The role of the judiciary in managing conflicts is reinforced by the public's confidence in the judiciary's impartiality and independence.¹⁰¹ The South African judiciary's credibility has been essential in ensuring that its rulings are respected and implemented, even in politically charged disputes.¹⁰²

Application to Kenya

Kenya can draw from South Africa's experience by enhancing the role of its judiciary in managing conflicts between institutions like the Director of Public Prosecutions (DPP) and the Assets Recovery Agency (ARA). Key actions could include:

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Drew A. Linzer & Jeffrey K. Staton, *A Global Measure of Judicial Independence, 1948-2012*, 3 J.L. & CTS. 223, 237 (2015).

¹⁰⁰ Ibid.

¹⁰¹ Ibid

¹⁰² *ibid*

- ✓ **Empowering the Judiciary:** Ensuring that Kenyan courts, particularly the Supreme Court, have clear constitutional authority to adjudicate conflicts between public institutions.
- ✓ **Promoting Judicial Review:** Encouraging the use of judicial review to resolve disputes over jurisdiction and mandate, especially in cases where the DPP and ARA might overlap.
- ✓ **Mediation and Arbitration:** Instituting mechanisms for mandatory mediation between conflicting agencies before litigation is pursued.
- ✓ **Public Engagement:** Strengthening the judiciary's engagement with the public to build trust and legitimacy, ensuring that judicial decisions are respected and effectively implemented.

4.5 Utilization of Technology for Tracing, Seizing, and Recovery of Assets Lessons from Singapore

Singapore is widely regarded as a global leader in utilizing technology for asset tracing, seizure, and recovery, particularly in cases of financial crimes. The country's approach provides valuable lessons for Kenya:

1. **Data Analytics and Artificial Intelligence (AI):** Singapore employs advanced data analytics and AI to analyse vast amounts of financial data, enabling authorities to trace complex money trails and identify hidden assets. The integration of AI with traditional investigative techniques enhances the efficiency and accuracy of asset recovery operations.¹⁰³
2. **Blockchain Technology:** Singapore leverages blockchain for secure and transparent tracking of asset ownership. This technology ensures that once assets are seized, their management is tamper-proof and transparent, reducing the risks of corruption or mismanagement.¹⁰⁴

¹⁰³AML Singapore available at <https://amlsingapore.com/> accessed 21 August 2024

¹⁰⁴ *ibid*

3. **Collaboration Platforms:** Singapore has developed digital platforms that facilitate real-time collaboration between financial institutions, law enforcement, and regulatory bodies. These platforms enable swift action in freezing and seizing assets across multiple jurisdictions, making cross-border asset recovery more efficient.¹⁰⁵
4. **Training and Capacity Building:** Recognizing the rapid advancement in technology, Singapore invests heavily in training law enforcement personnel in the latest technological tools and methodologies. This continuous capacity building ensures that authorities remain ahead of criminals who may also use advanced technology to hide assets.

Application to Kenya

Kenya can enhance its asset recovery processes by adopting similar technologies. By investing in AI-driven data analytics, blockchain technology and collaborative platforms, Kenya can improve the effectiveness and efficiency of tracing, seizing, and recovering assets linked to criminal activities. Additionally, continuous training for law enforcement agencies will be crucial to keep pace with evolving technological trends in financial crime.

These steps can significantly enhance Kenya's ability to combat financial crime and recover illicit assets, contributing to stronger governance and accountability.

Conclusion

The institutional conflicts between the Office of the Director of Public Prosecutions (ODPP) and the Assets Recovery Agency (ARA) in Kenya pose significant challenges to effective law enforcement and asset recovery. This paper has identified the legal overlaps and conflicts that hinder the smooth operation of these institutions. By analysing the statutory frameworks, drawing lessons from comparative jurisdictions like the UK, South Africa, and Singapore, and proposing solutions such as statutory clarifications, enhanced inter-agency collaboration, and the use of technology, this paper underscores the need for a

¹⁰⁵ *ibid*

cohesive approach to combating economic crimes in Kenya.

The proposed solutions emphasize the importance of clear jurisdictional boundaries, the role of the judiciary in conflict resolution, and the adoption of best practices in asset recovery. Implementing these strategies will not only resolve existing conflicts but also strengthen Kenya's capacity to effectively combat economic crimes, ensuring that justice is served, and public resources are protected.

References

AML Singapore available at <https://amlsingapore.com/>

Constitution of Kenya, 2010

DPP vs Chrysanthus Barnabas Okemo Petition 14 of 2020 [2021] KESC 13[KLR]

Drew A. Linzer & Jeffrey K. Staton, *A Global Measure of Judicial Independence, 1948-2012*, 3 J.L. & CTS. 223, 237 (2015).

Drug Enforcement Administration (2022) 'U.S. Attorney Announces Coordinated Law Enforcement Actions to Combat Violent Organized Crime and Drug Trafficking' available at <https://www.dea.gov/press-releases/2022/10/26/us-attorney-announces-coordinated-law-enforcement-actions-combat-violent>

Economic Crime (Transparency and Enforcement) Act 2022

Economic Crime Plan 2023-2026 available at <https://www.gov.uk/government/publications/economic-crime-plan-2023-to-2026>

Glenister v President of the Republic of South Africa and Others [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC).

Kamau Muthoni (2024) 'Battle rages over control of Asset Recovery Agency' *The Standard* available at <https://www.standardmedia.co.ke/national/article/2001500286/battle-ranges-over-control-of-asset-recovery-agency> accessed 1 September 2024

Mutual Legal Assistance Act, 2011

Mwaura, J. N. (2020). The Role of the Office of the Director of Public Prosecutions in Fighting Money Laundering and Terrorist Financing in Kenya. *International Journal of Humanities and Social Science Research*, 8(1), 14-25.

Office of the Director of Public Prosecutions (ODPP) Department of Economic,

Legal Solutions to the Institutional Conflict between the Office of the Director of Public Prosecutions and the Assets Recovery Agency - Michael Sang

(2025) *Journal of cmsd* Volume 12(4)

Organized, and International Crimes available at
<https://www.odpp.go.ke/departments/>
Office of the Director of Public Prosecutions Act

Proceeds of Crime Act 2002 (POCA)

Proceeds of Crime and Anti-Money Laundering Act, 2009

Report of the Task Force on The Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015) available at
<https://statelaw.go.ke/wp-content/uploads/2020/07/Report-of-the-Task-Force-on-the-Review-of-the-Legal-Policy-and-Institutional-Framework-for-Fighting-Corruption.pdf>

Republic v Grace Sarapay Wahkundu Anti-Corruption Case No. 31 of 2018 [2020] eKLR

United States Department of Justice 'Executive Office for Organized Crime Drug Enforcement Task Forces' available at
<https://www.justice.gov/doj/organization-mission-and-functions-manual-executive-office-organized-crime-drug-enforcement-task>

Climate Change before the Bench: Judicial Recognition of the Right to a Stable Climate

By: Brian Chacha Sammy*

Abstract

Climate Change is increasingly framed not only as an environmental challenge but as a human rights crisis. In the absence of effective political and regulatory responses, courts worldwide have become central arenas for demanding accountability from states and corporations. Recent judicial pronouncements, including the International Court of Justice (ICJ) Advisory Opinion (2025), the Inter-American Court of Human Rights (IACtHR) Advisory Opinion (2025), and the European Court of Human Rights (ECtHR) decision in *Verein KlimaSeniorinnen Schweiz v Switzerland* (2024), have begun to recognize a right to a stable climate as implicit within existing human rights frameworks. This article examines the implications of these developments, situating them within the broader trajectory of environmental constitutionalism, rights-based litigation, and intergenerational justice. It argues that judicial recognition of a stable climate as a right represents a paradigm shift in environmental law, but highlights challenges in enforcement, justiciability, and the limits of judicial power.

Introduction

Climate change is a major global issue of our time.¹ It not only harms the environment but also threatens basic human rights like the rights to life, health,

** Brian Chacha is a Climate Governance advocate, a Certified Professional Mediator, and a Lawyer.*

¹ *Intergovernmental Panel on Climate Change (IPCC), Climate Change 2021: The Physical Science Basis (Contribution of Working Group I to the Sixth Assessment Report of the IPCC, Cambridge University Press 2021).*

housing, and culture.² As a result, legal discussions are starting to view climate change as a matter of rights and justice, instead of just an environmental or policy problem. The rise of climate litigation reflects this shift. Where political institutions have failed to adopt sufficiently ambitious measures, courts are being asked to intervene.³ This growing jurisprudence raises a profound question: can courts recognize and enforce a “right to a stable climate,” and what would such recognition mean for state responsibility under both domestic and international law?

This article contends that courts are increasingly acknowledging a right to a stable climate, moving beyond abstract ideals to concrete legal practice. By examining significant legal decisions and opinions from different jurisdictions, the article demonstrates how courts are connecting environmental law and human rights law, thus broadening the legal basis for climate action.

The body of this article is structured in five sections. The first section gives context on the development of climate law and the enforcement shortcomings that have led to rights-based lawsuits. The second section reviews recent legal decisions at the international, regional, and national levels that acknowledge climate-related rights. The third section discusses the effects of judicial recognition on government responsibilities, corporate responsibility, and fairness between generations. The fourth section considers the difficulties of rights-based litigation, including questions of whether such cases are appropriate for courts, proving cause and effect, and enforcing judgments. The fifth section makes suggestions for incorporating climate rights into both national and international legal systems. The article concludes that while judicial recognition is an important advancement, achieving true climate justice requires a more comprehensive coordination of legal, political, and institutional efforts.

² Human Rights Council, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ UN Doc A/HRC/31/52 (1 February 2016).

³ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (CUP 2015) 3–5.

I. Climate Change and the Evolution of Law

The main international laws dealing with climate change are environmental treaties, especially the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 2015 Paris Agreement.⁴ While these instruments create obligations for states, their reliance on nationally determined contributions and lack of robust enforcement mechanisms have limited their effectiveness.⁵ This inadequacy of climate action has led to an increase in climate litigation based on human rights.⁶ Litigants are using environmental constitutionalism and intergenerational equity to argue that government inaction on climate change violates human rights.⁷ Courts are increasingly agreeing with this argument, which shows a merging of environmental protection and human rights law.⁸

⁴ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

⁵ Joana Setzer and Catherine Higham, *Global trends in climate change litigation: 2025 snapshot* (Grantham Research Institute, LSE 2025) Available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>> accessed 17 October 2025.

⁶ Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2023 Snapshot' (Grantham Research Institute on Climate Change and the Environment 2023) <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot/> <accessed 21 August 2025>

⁷ Joana Setzer and Lisa C. Vanhala, *Climate change litigation: a review of research on courts and litigants in climate governance* (Wiley Interdisciplinary Reviews, 2019) Available at: https://eprints.lse.ac.uk/100257/1/Setzer_Vanhala2019_EarlyView.pdf > accessed 17 October 2025.

⁸ Antonio T. (or general overview) on intergenerational equity: *Minors Oposa v Factoran* (Philippines Supreme Court, 30 July 1993) (Oposa) – classic authority on intergenerational claims. Available at <<https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/oposa-v-factoran.html>> accessed 17 October 2025.

II. Judicial Recognition of Climate-Related Rights

(a) International Courts and Advisory Opinions

In 2024-2025, key events included the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) releasing advisory opinions on climate change and countries' responsibilities regarding human rights.⁹

In March 2023, the UN General Assembly requested the ICJ to clarify the obligations of states concerning climate change under international law.¹⁰ The Court's advisory opinion, delivered in 2025, held that states have binding obligations not only under environmental treaties but also under customary international law and international human rights law to prevent and mitigate the adverse effects of climate change.¹¹ While advisory in nature, this pronouncement has significant normative force, affirming that a failure to adopt adequate climate measures may constitute a breach of fundamental human rights such as the rights to life and health.¹²

In 2023, Colombia and Chile sought guidance from the Inter-American Court of Human Rights (IACtHR) on countries' responsibilities in the face of the climate emergency.¹³ The IACtHR's 2025 opinion affirmed that the right to a healthy environment, as established in the Inter-American system, inherently includes climate system protection.¹⁴ The Court highlighted the importance of fairness

⁹ *Request for an advisory opinion on the obligations of States with respect to climate change*, Advisory Opinion, International Court of Justice, 23 July 2025. Available at < <https://www.icj-cij.org/case/187/advisory-opinions> > accessed 17 October 2025.

¹⁰ UNGA Res 77/276 (29 March 2023) UN Doc A/RES/77/276.

¹¹ ICJ, *Obligations of States in respect of Climate Change* (Advisory Opinion, 2025) para 114.

¹² Maria Antonia Tigre and Margaret Barry, *Climate Change in the Courts: A 2024 Retrospective* (Sabin Center for Climate Change Law, January 2025) Available at: https://scholarship.law.columbia.edu/sabin_climate_change/240 > accessed 17 October 2025.

¹³ IACtHR, *Request for Advisory Opinion submitted by the Republic of Colombia and the Republic of Chile* (2023).

¹⁴ IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (2025) para 186.

between generations, emphasizing that countries have duties to both present and future populations, as future generations will experience the most severe impacts of climate change.

These developments represent a judicial crystallization of the idea that a stable climate is indispensable for the enjoyment of recognized human rights.

(b) Regional Human Rights Jurisprudence

The European Court of Human Rights (ECtHR) has also played a groundbreaking role. In the case of *Verein KlimaSeniorinnen Schweiz v Switzerland* (2024), the European Court of Human Rights ruled that Switzerland violated the European Convention on Human Rights by not taking sufficient action, consistent with its obligations under the European Convention on Human Rights (ECHR), to mitigate climate change.¹⁵ The applicants, a group of elderly Swiss women, argued that this lack of action put their lives and health at risk, and the court agreed.

This judgment by the European Court of Human Rights marked for the first time that a country's insufficient response to climate change can breach human rights laws. The court based its decision on Articles 2, on the rights to life,¹⁶ and 8, private/family life¹⁷ of the ECHR, turning the responsibility of governments to ensure a stable climate into a legal requirement rather than just a matter of policy.

(c) Domestic Judicial Innovation

At the domestic level, national courts have been increasingly assertive in recognising climate obligations. For example, the Dutch Supreme Court's decision in *Urgenda Foundation v State of the Netherlands* (2019) mandated that the Netherlands reduce greenhouse gas emissions by at least 25% by 2020, citing

¹⁵ *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

¹⁶ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, article 2.

¹⁷ *Ibid*, article 8

violations of rights to life and family life under the European Convention on Human Rights.¹⁸ Likewise, Germany's Federal Constitutional Court in *Neubauer v Germany* (2021) invalidated portions of the Federal Climate Change Act, arguing that it unfairly burdened future generations and infringed upon their constitutional rights.¹⁹

These court cases show that judges are increasingly prepared to interpret constitutional and human rights in a way that includes obligations to protect the climate. This, along with recent advisory opinions, suggests a trend in legal thinking towards acknowledging a right to a stable climate as a human right that can be defended in court.

III. Implications of Judicial Recognition of a Right to a Stable Climate

(a) Strengthening State Obligations

Legal systems increasingly acknowledge a right to a stable climate, changing climate action from an optional policy to a legal obligation. International courts' opinions and decisions like *KlimaSeniorinnen* and *Urgenda* show that countries can be legally responsible under human rights law if they don't take sufficient action to reduce emissions and adapt to climate change.²⁰

The concept of due diligence in international law is evolving. It's no longer limited to preventing harm that crosses borders but now applies to the global commons, like the climate.²¹ This means countries are expected to take all

¹⁸ *Urgenda Foundation v State of the Netherlands* (2019) ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands).

¹⁹ *Neubauer v Germany* (BVerfG, 24 March 2021) 1 BvR 2656/18.

²⁰ ICJ, *Obligations of States in respect of Climate Change* (Advisory Opinion, 2025) para 114; *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

²¹ ICJ Advisory Opinion (2025) – it explicitly canvasses due diligence duties and environmental protection for global commons; *Philippe Sands, Principles of International Environmental Law* (or relevant book chapter) – on due diligence as an international obligation. Available at: <https://www.icj-cij.org/index.php/node/202891> > accessed 18 October 2025.

possible actions to avoid dangerous climate change.²² Courts are increasingly viewing a lack of strong climate policies as a potential violation of human rights, even when the harm is widespread and results from the combined emissions of many sources.

(b) **Intergenerational Equity and Future Generations**

Courts have also emphasised the **temporal dimension of justice**. The *Neubauer* ruling by the German Federal Constitutional Court stated that insufficient action now unfairly restricts the ability of younger people and future generations to live sustainably within environmental limits.²³ Similarly, the IACtHR highlighted fairness between generations, stating that climate change damages both current and future rights.²⁴

This evolving jurisprudence reinforces the recognition of **future generations as rights-holders**, a principle long theorized in international environmental law but seldom enforced.²⁵ By making these intergenerational rights actionable, the courts are counteracting the tendency of short-term political thinking to ignore the long-term effects of climate change.

(c) **Expanding the Role of Human Rights Bodies**

Human rights institutions are playing a more important role in climate governance. The *KlimaSeniorinnen* case at the ECtHR shows that vulnerable individuals can use human rights bodies to address climate harms, avoiding the slow international climate talks.²⁶ The UN Human Rights Committee and other groups are also hearing climate complaints, integrating climate issues into

²² *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, para 101.

²³ *Neubauer v Germany* (BVerfG, 24 March 2021) 1 BvR 2656/18, para 183.

²⁴ IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (2025) para 186.

²⁵ Edith Brown Weiss, *In Fairness to Future Generations* (UN University Press 1989) 47–54.

²⁶ *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

standard human rights practices.²⁷

This use of legal avenues to govern climate change presents opportunities and challenges. It enables communities to hold governments responsible, but it also may overwhelm human rights courts with intricate scientific and policy matters typically handled by political bodies.

(d) Fragmentation and Harmonization Risks

Climate lawsuits are increasing worldwide, which could lead to inconsistent legal standards across different regions.²⁸ Courts in Europe, Latin America, and Africa might interpret governmental duties related to climate change differently, causing confusion in international law.²⁹ However, guidance from the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) could help standardize these legal approaches by establishing common principles like acting carefully, considering future generations, and recognizing that human rights and environmental protection are interconnected.³⁰

IV. Challenges in Judicial Recognition of a Right to a Stable Climate

(a) Standing and Justiciability

A major challenge in climate lawsuits is proving standing, as courts typically

²⁷ UN Human Rights Committee, *Billy et al v Australia* (Views, 2022) UN Doc CCPR/C/135/D/3624/2019.

²⁸ Joana Setzer & Catherine Higham, *Global trends in climate change litigation* (Grantham/LSE, 2024–2025 snapshots) — documents jurisdictional divergence in outcomes. Available at: <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf> > accessed 18 October 2025.

²⁹ Ibid.

³⁰ ICJ, *Obligations of States in respect of Climate Change* (Advisory Opinion, 2025) para 115.

demand evidence of direct, personal harm.³¹ This is hard to demonstrate with climate change due to its widespread effects.³² The European Court of Human Rights (ECtHR) eased standing requirements in the *KlimaSeniorinnen* case by acknowledging older women's vulnerability to heatwaves, giving them standing.³³ However, many national courts are still hesitant to hear cases from NGOs or future generations, fearing they would be overstepping their boundaries.³⁴

The concept of standing is closely related to justiciability. Some courts have been hesitant to hear climate change cases, suggesting that these issues should be resolved by the legislative and executive branches, as they are political matters.³⁵ The U.S. Supreme Court's decision to dismiss *Juliana v. United States* based on justiciability highlights this conflict.³⁶

(b) Causation and Attribution

Establishing causation is a major hurdle in climate lawsuits.³⁷ Plaintiffs need to prove that a government's inaction (or emissions) directly caused their specific

³¹ Joana Setzer and Lisa C. Vanhala, *Climate change litigation: a review of research on courts and litigants in climate governance* (Wiley Interdisciplinary Reviews, 2019) — discusses standing and locus standi strategies used worldwide.

³² Richard Lazarus, 'The Rule of Five: Making Climate History at the Supreme Court' (Harvard UP 2020) 97.

³³ *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024) para 204.

³⁴ Hari M Osofsky, 'The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance' (2005) 83 Wash UL Rev 1789, 1803.

³⁵ *Friends of the Irish Environment CLG v The Government of Ireland* [2020] IESC 49, para 7.5.

³⁶ *Juliana v United States* 947 F 3d 1159 (9th Cir 2020) 1175.

³⁷ Burger et al., *Law and Science of Climate Change Attribution* (Columbia Sabin Center executive summary / report) Available at: <https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/docs/Executive%20Summary.Law%20and%20Science%20of%20Climate%20Change%20Attribution.pdf> > accessed 18 October 2025.

damages.³⁸ This is difficult because greenhouse gas emissions are global, accumulate over time, and make it hard to assign blame to any single entity.³⁹ Climate attribution science is improving and helping to connect extreme weather events to human-caused climate change.⁴⁰ Courts are becoming more open to using probabilistic evidence that links these events, but the acceptance of such evidence differs among jurisdictions, resulting in varying legal outcomes.⁴¹

(c) Separation of Powers Concerns

Courts are being criticized for overstepping their boundaries and taking on the role of legislatures when they mandate specific climate policies.⁴² This is seen as a violation of the separation of powers and a threat to democratic accountability.⁴³ While the Dutch Supreme Court in the *Urgenda* case justified its ruling as enforcing existing human rights,⁴⁴ the distinction between enforcing rights and creating policy is still debated.

(d) Enforcement and Compliance

Even when courts make positive decisions regarding climate change, putting

³⁸ Ibid.

³⁹ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (CUP 2015) 145–148.

⁴⁰ R. Stuart-Smith / Smith School paper, *Attribution Science and Litigation* (2021) – practical guidance on probabilistic evidence in court. Available at: <https://www.smithschool.ox.ac.uk/sites/default/files/2022-03/attribution-science-and-litigation.pdf> > accessed 19 October 2025.

⁴¹ Friederike Otto, 'Attribution of Extreme Weather Events in the Context of Climate Change' (2017) 7 *Wiley Interdisciplinary Reviews: Climate Change* 23, 28.

⁴² Mariconda A, 'Separation of Powers and Climate Litigation: International Law as a Guide Between Judicial Activism and Legislative Prerogatives' (2025) 5 *Athena Critical Inquiries in Law, Philosophy & Globalization* 142. Available at: <https://doi.org/10.6092/issn.2724-6299/22114> > accessed 19 October 2025.

⁴³ Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton UP 1999) 47–49.

⁴⁴ *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) para 8.3.4.

these decisions into action is challenging. Climate-related rulings frequently necessitate broad policy changes that are hard to oversee and ensure compliance with.⁴⁵ Although the *Urgenda* case motivated the Netherlands to set more aggressive emissions goals, other places have struggled with similar implementation.⁴⁶ Despite their influence in shaping standards, international advisory opinions are not legally required, which makes their practical effect uncertain.⁴⁷

(e) Risk of Judicial Overload

Climate change lawsuits are increasing, raising concerns that human rights courts may become overwhelmed by intricate scientific and policy issues.⁴⁸ This could stretch the courts' resources and potentially weaken their credibility.⁴⁹ It's important to find a balance between safeguarding rights and maintaining the integrity of the legal system.⁵⁰

V. The Way Forward: Prospects and Recommendations

To advance climate justice, several steps can be taken:

- i. Strengthen rights-based approaches by interpreting existing human rights (like the rights to life, health, and private life) to

⁴⁵ Joana Setzer and Lisa Benjamin, 'Climate Litigation and the Global South: Constraints and Innovations' (2020) 9 *Transnational Environmental Law* 77, 92.

⁴⁶ Kati Kulovesi, 'Urgenda: Dutch Court Affirms State's Duty to Address Climate Change' (2020) 69 *ICLQ* 1, 15.

⁴⁷ Alan Boyle, 'Advisory Opinions and Climate Change: The Role of the ICJ' (2023) 72 *ICLQ* 1, 12.

⁴⁸ Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard UP 2011) 289.

⁴⁹ Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2025 snapshot* — sections on procedural burdens, backlogs and institutional capacity.

⁵⁰ *Ibid.*

include climate stability,⁵¹ drawing from precedents like *Urgenda* and *KlimaSeniorinnen*.⁵²

- ii. Enhance climate attribution and evidence by investing in climate attribution science and promoting international cooperation on scientific methodologies.⁵³ Courts can use expert climate panels to assess scientific claims.⁵⁴
- iii. Develop regional and international advisory jurisprudence through advisory opinions from bodies like the ICJ⁵⁵ and the IACtHR⁵⁶, which can guide courts and potentially evolve into customary international law.⁵⁷
- iv. Facilitate access to justice by easing procedural barriers and broadening access through mechanisms like **actio popularis** (public interest litigation) and collective redress.⁵⁸ National constitutions and environmental statutes should be amended to support these avenues.

⁵¹ Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 Eur J Intl L 613, 617.

⁵² *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) para 8.3.4; *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024) para 204

⁵³ Myles Allen and others, *Climate Change Attribution* (OUP 2018) 72–75.

⁵⁴ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (CUP 2015) 189.

⁵⁵ Alan Boyle, 'Advisory Opinions and Climate Change: The Role of the ICJ' (2023) 72 ICLQ 1, 15.

⁵⁶ Advisory Opinion OC-23/17 (Inter-American Court of Human Rights, 15 November 2017) para 62.

⁵⁷ Bruno Simma and Philip Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1989) 12 Aust YBIL 82, 97.

⁵⁸ Michael Anderson, 'Individual Rights to Environmental Protection in India' in Alan Boyle and Michael Anderson (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press 1996) 206

- v. Ensure compliance and implementation of judicial climate rulings through structural remedies like reporting obligations and monitoring mechanisms.⁵⁹
- vi. Foster intergenerational justice by embedding the principle of intergenerational equity into rights-based adjudication,⁶⁰ drawing on the doctrine of intergenerational justice as seen in *Minors Oposa v Factoran*.⁶¹

Conclusion

The recognition of a **right to a stable climate** is a significant development, transforming environmental law into a field that protects both ecosystems and human rights.⁶² Courts worldwide are increasingly recognizing climate change as a matter of legal obligation, not just political choice, as inaction conflicts with fundamental rights.⁶³ This reflects a need to protect the well-being of both individuals and communities.⁶⁴

While progress has been made, challenges remain concerning justiciability, separation of powers, and causation.⁶⁵ Resistance from other branches of

⁵⁹ S Muralidhar, 'Structural Remedies in Public Interest Litigation' (2005) 5 Indian J Const L 1, 18.

⁶⁰ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (UNUP 1989) 34.

⁶¹ *Minors Oposa v Factoran* GR No 101083 (Supreme Court of the Philippines, 30 July 1993).

⁶² International Court of Justice, *Request for an advisory opinion on the obligations of States with respect to climate change* (Advisory Opinion, 23 July 2025).

⁶³ *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019); *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

⁶⁴ Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 Eur J Intl L 613, 618.

⁶⁵ Daniel Bodansky, 'Climate Change and Human Rights: Unpacking the Issues' (2010) 38 Georgia J Intl & Comp L 511, 530.

government and disparities in judicial systems may impede implementation.⁶⁶ Despite these obstacles, the trajectory is clear: courts are becoming crucial in climate governance, using legal reasoning and scientific evidence to hold states accountable to their international commitments and domestic obligations.⁶⁷ This does not displace the primary role of legislatures and executives but rather complements them, ensuring that the constitutional promise of fundamental rights is not rendered illusory in the face of planetary crisis.⁶⁸

Future developments, such as the ICJ's advisory opinion and similar developments at the regional level, could provide a clearer framework for climate rights.⁶⁹ The focus on intergenerational equity highlights the importance of climate justice for current and future generations.⁷⁰ Ultimately, the right to a stable climate represents both a legal frontier and a moral imperative. As jurisprudence continues to evolve, it reaffirms the judiciary's indispensable role in bridging the gap between scientific urgency and political inertia. The bench, once hesitant, is now a forum where the claims of climate justice are being not only heard but vindicated.⁷¹ This signals the dawn of a jurisprudence that is as responsive to the atmosphere as it is to the constitution — a necessary step if law is to remain relevant in the Anthropocene.

⁶⁶ Hari M Osofsky, 'The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance' (2005) 83 Wash U L Rev 1789, 1812.

⁶⁷ *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands) ECLI:NL:HR:2019:2007 (20 December 2019).

⁶⁸ Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 AJIL 679, 699.

⁶⁹ Alan Boyle, 'Advisory Opinions and Climate Change: The Role of the ICJ' (2023) 72 ICLQ 1, 22.

⁷⁰ *Minors Oposa v Factoran* GR No 101083 (Supreme Court of the Philippines, 30 July 1993).

⁷¹ *Verein KlimaSeniorinnen Schweiz v Switzerland* (Grand Chamber) (European Court of Human Rights, 9 April 2024); *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands) ECLI:NL:HR:2019:2007 (20 December 2019).

Bibliography

Primary Sources

International Treaties and Instruments

Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016).

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994).

United Nations General Assembly Resolution A/RES/77/276, 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' (29 March 2023).

Oslo Principles on Global Obligations to Reduce Climate Change (2015).

Advisory Opinions

Inter-American Court of Human Rights, Advisory Opinion OC-32/25 (2025).

International Court of Justice, Request for an Advisory Opinion on the Obligations of States with Respect to Climate Change (Advisory Opinion, 23 July 2025).

Cases

Juliana v United States (D Or 2016, procedural history and subsequent appeals).

Minors Oposa v Factoran (Supreme Court of the Philippines, 30 July 1993).

Neubauer and Others v Germany (Bundesverfassungsgericht, 24 March 2021) 1 BvR 2656/18.

Urgenda Foundation v State of the Netherlands (Supreme Court of the Netherlands) ECLI:NL: HR:2019:2007 (20 December 2019).

Verein KlimaSeniorinnen Schweiz v Switzerland (Grand Chamber) (European Court of Human Rights, 9 April 2024).

Books and Articles

Boyd DR, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012).

Bodansky D, *The Art and Craft of International Environmental Law* (Harvard University Press, 2010).

Burger M, Wentz J, and Horton R, 'The Law and Science of Climate Change Attribution' (Sabin Center for Climate Change Law / Environmental Law Reporter 2021).

Kotzé LJ and others, 'Courts, Climate Litigation and the Evolution of Earth System Law' (2024) *Global Policy*.

Mariconda A, 'Separation of Powers and Climate Litigation: International Law as a Guide Between Judicial Activism and Legislative Prerogatives' (2025) 5 *Athena Critical Inquiries in Law, Philosophy & Globalization* 142.

Peel J and Osofsky HM, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015).

Peel J and Lin J, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 *American Journal of International Law Unbound* 155.

Rajamani L, *International Climate Change Law* (Oxford University Press 2021).

Sands P, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012).

Setzer J, 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance' (2019) *Wiley Interdisciplinary Reviews: Climate Change*.

Voigt C, 'The Paris Agreement: What is the Standard of Conduct for Parties?' (2016) 26 *Questions of International Law* 17.

Reports and Institutional Publications

Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis (Contribution of Working Group I to the Sixth Assessment Report of the IPCC, Cambridge University Press 2021)*.

Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2025 Snapshot* (Grantham Research Institute on Climate Change and the Environment, London School of Economics 2025).

United Nations Environment Programme and Sabin Center for Climate Change Law, *Global Climate Litigation Report: 2023 Status Review* (UNEP 2023).

United Nations Environment Programme, *The Climate Emergency and Human Rights: A Global Overview* (UNEP 2024).

Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights and Climate Change* (OHCHR Report 2022).

Other Materials

Intergovernmental Panel on Climate Change (IPCC), *Summary for Policymakers: Climate Change 2023 (AR6 Synthesis Report)*.

UN Human Rights Committee, *General Comment No. 36 on Article 6: Right to Life* (2018).

Columbia Law School Sabin Center for Climate Change Law, *Climate Attribution Database* (2023).

Greening of Transport Systems in Africa: Utilising Renewable Energy for Low Emission Vehicles

By: Hon. Prof. Kariuki Muigua*

Abstract

This paper critically examines the need to green transport systems in Africa. The paper argues that Africa is facing the challenge of balancing the increasing demand for transport services with environmental conservation. It posits that if not well designed, transport systems can contribute to environmental challenges including climate change, biodiversity loss, pollution and environmental degradation. In light of these challenges, the paper argues that greening transport systems in Africa and the rest of the world is a vital agenda towards sustainability. The paper discusses how Africa can utilise renewable energy for low emission vehicles towards greening transport systems for sustainability.

1.0 Introduction

Transport systems are vital sectors that ensure economic growth in all countries. It has been argued that transport systems including roadways, public transit systems, airports, train stations, bus stations, ferry terminals, pipelines and warehouses ensure the safe movement of people and goods therefore significantly contributing to economic growth¹. Further, it has been pointed out that transport is fundamental to supporting economic growth, creating jobs and

* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [September, 2025].

¹ How to build more sustainable transportation infrastructure., Available at <https://www.ibm.com/think/topics/sustainable-transportation> (Accessed on 26/09/2025)

connecting people to essential services including education and healthcare². Due to its intensive use of infrastructures, the transport sector has been identified as an important component of modern economies and a common tool used for development³. The global economy has transformed to the extent where economic opportunities are increasingly related to the mobility of people, goods and services, including information and communication technologies⁴.

Due to its benefits, it has been pointed out that there is a positive correlation between the level of economic development in a country and the quantity and quality of its transport systems⁵. Safe, accessible, reliable, affordable and modern transport systems are associated with lower transport costs, shorter transit times, and business expansion making economic activities more productive and competitive⁶. Integrated and well-functioning transport facilities are therefore necessary for achieving sustained and inclusive economic growth⁷. Such transport systems play a key role in countries' competitiveness, balanced and liveable urban spatial development, access to water and energy, and food

² World Bank Group., 'Transport' Available at <https://www.worldbank.org/en/topic/transport/overview#:~:text=Transport%20plays%20an%20important%20role,%2C%20efficient%2C%20clean%20and%20accessible.> (Accessed on 26/09/2025)

³ Rodrigue. J.P., & Notteboom. T., 'Transportation and Economic Development' Available at <https://transportgeography.org/contents/chapter3/transportation-and-economic-development/> (Accessed on 26/09/2025)

⁴ Ibid

⁵ Ibid

⁶ Transport Impacts on Economic Opportunities., Available at <https://transportgeography.org/contents/chapter3/transportation-and-economic-development/economic-opportunities-transport-impacts/> (Accessed on 26/09/2025)

⁷ Kumar. G.P., & Soumyananda. D., 'Revisited the Relationship Between Economic Growth and Transport Infrastructure in India: An Empirical Study' Available at <https://mp.ra.ub.uni-muenchen.de/116876/5/MPRA> (Accessed on 26/09/2025)

security, and are critical for social inclusion and improved quality of life⁸. Further, well-designed and functioning transport systems facilitate mobility and positively impact the development and welfare of the population through employment and income creation, connecting and providing to businesses and vital services thus enhancing economic development and growth⁹.

Accessible, reliable, safe and efficient transport systems are therefore key in ensuring economic growth. However, it has been pointed out that transport systems especially those in developing countries are not accessible or reliable¹⁰. For instance, most people in rural areas remain unconnected to transport systems¹¹. Further, it has been argued that in most cities, public transport remains unsustainable, unsafe, inefficient, inaccessible or unaffordable – a situation that is particularly detrimental to people living in poverty¹². Further, the transport sector comes at a huge cost since it may cause adverse planetary and environmental changes if left unchecked¹³. In light of these challenges, it has become necessary to build safe, accessible, affordable, reliable and modern transport systems. Greening of transport systems is therefore a key pathway towards sustainability.

This paper critically examines the need to green transport systems in Africa. The

⁸ Okoro. C., Musonda. I., & Agumba. J., 'Validity and Reliability of a Transportation Infrastructure Sustainable Performance Framework: A Study of Transport Projects in South Africa.' *Construction Economics & Building*., Volume 19, No. 2 (2019)

⁹ Ibid

¹⁰ United Nations., 'Fact Sheet: Inequalities' Available at https://www.un.org/sites/un2.un.org/files/media_gstc/FACT_SHEET_Inequalities.pdf (Accessed on 26/09/2025)

¹¹ Ibid

¹² Ibid

¹³ Brickstone., 'Low-Carbon Infrastructure in Curbing Climate Change.' Available at <https://brickstone.africa/low-carbon-infrastructure-in-climate-change/#:~:text=Urban%20transport%20projects%2C%20such%20as,emissions%20compared%20to%20fossil%20fuels> (Accessed on 26/09/2025)

paper argues that Africa is facing the challenge of balancing the increasing demand for transport services with environmental conservation. It posits that if not well designed, transport systems can contribute to environmental challenges including climate change, biodiversity loss, pollution and environmental degradation. In light of these challenges, the paper argues that greening transport systems in Africa and the rest of the world is a vital agenda towards sustainability. The paper discusses how Africa can utilise renewable energy for low emission vehicles towards greening transport systems for sustainability.

2.0 The Need to Green Transport Systems in Africa

The transport sector both globally and in Africa is linked to several environmental challenges. For instance, it is estimated that transport systems account for more than one-third of carbon dioxide emissions from end-use sectors¹⁴. This is due to the fact that motorised transport on land, sea and air remains dependent on internal combustion engines that run on fossil fuels¹⁵. The transport sector is therefore a major contributor to the global climate crisis. It has been argued that the transport sector significantly generates greenhouse gas emissions due to burning of fossil fuels making its transformation an urgent priority towards confronting climate change¹⁶.

In addition, transport systems in Africa and the rest of the world are a major cause of air pollution¹⁷. According to the World Health Organization (WHO), the transport sector is responsible for a large proportion of air pollution, as well as

¹⁴ International Energy Agency., 'Transport' Available at <https://www.iea.org/energy-system/transport> (Accessed on 26/09/2025)

¹⁵ Ibid

¹⁶ United Nations Development Programme., 'What is sustainable transport and what role does it play in tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-transport-and-what-role-does-it-play-tackling-climate-change#:~:text=Why%20is%20transforming%20the%20transport,adults%20aged%205%E2%80%939329%20years.> (Accessed on 26/09/2025)

¹⁷ World Bank Group., 'Transport' Op Cit

being a leading source of greenhouse gas emissions¹⁸. It has been argued that the transport sector is linked to air pollution-related deaths and illnesses due to transport emissions such as carbon monoxide, nitrogen oxides and methane¹⁹. Air pollution from transport is a major global environmental threat that impacts the health and well-being of millions of people all over the world²⁰. This is caused by the release of harmful pollutants into the atmosphere as a result of the operation of vehicles and transport systems which rely on fossil fuels such as petrol and diesel²¹. Air pollution has been linked to millions of deaths all over the world as well as respiratory and cardiovascular illnesses in humans demonstrating the urgent need to transform the transport sector towards sustainability²².

Transport systems can also lead to environmental degradation and biodiversity loss. For example, the development of transport systems including roads, public transit systems, railways and airports often leads to habitat loss and a subsequent decline in biodiversity²³. Extensive transport systems including major roads and railway lines usually pass through areas with endangered species, productive landscapes and critical ecosystems posing a threat to biodiversity conservation and ecosystem services²⁴. For instance, the construction of major transport

¹⁸ World Health Organization., 'Air Pollution' Available at <https://www.who.int/teams/environment-climate-change-and-health/healthy-urban-environments/transport/health-risks> (Accessed on 26/09/2025)

¹⁹ Ibid

²⁰ Air pollution from transport: causes, effects and solutions., Available at <https://kunakair.com/air-pollution-from-transport/> (Accessed on 26/09/2025)

²¹ Ibid

²² Ibid

²³ Transportation and Biodiversity., Available at https://transact.enotrans.org/wp-content/uploads/2014/04/Transportation_and_Biodiversity_Report.pdf (Accessed on 26/09/2025)

²⁴ Experts propose solutions for sustainable European transport by mainstreaming biodiversity., Available at <https://bison-transport.eu/2022/09/14/experts-propose-solutions-for-sustainable-european-transport-by-mainstreaming->

systems in Kenya including the Standard Gauge Railway and the Nairobi Expressway led to significant biodiversity loss due to cutting down of indigenous trees and encroachment into green spaces and parks²⁵.

In light of the foregoing challenges, it has become necessary to green the transport sector both globally and in Africa. It has been argued that in order to curb the negative environmental impacts associated with transport systems while maintaining transport as a priority sector for national economic growth, governments need to radically rethink how transport is planned, delivered and managed in order to make it suitable for a green, sustainable, low emission and resilient future²⁶. Governments have been urged to provide transport services for the mobility of people and goods in a manner that is safe, affordable, accessible, efficient, and resilient, while minimizing carbon and other emissions and environmental impacts including pollution and biodiversity loss²⁷.

The need to green transport systems globally is envisioned under the United Nations 2030 *Agenda for Sustainable Development*²⁸. The Agenda seeks to achieve sustainable transport systems; and quality and resilient infrastructure²⁹. Among

[biodiversity/#:~:text=Transport%20sustainability%20policies%20focus%20on,preserve%20biodiversity%20and%20ecosystem%20services](#). (Accessed on 26/09/2025)

²⁵ Greening expressway to reverse environmental loss., Available at <https://peopledaily.digital/news/greening-expressway-to-reverse-environmental-loss> (Accessed on 26/09/2025)

²⁶ Brickstone., 'Low-Carbon Infrastructure in Curbing Climate Change.' Op Cit

²⁷ International Institute for Sustainable Development., 'The Road to Sustainable Transport.' Available at Available at [https://www.iisd.org/articles/deep-dive/road-sustainable-](https://www.iisd.org/articles/deep-dive/road-sustainable-transport#:~:text=Transport%20accounts%20for%20about%2064,directly%20attributed%20to%20vehicular%20pollution)

[transport#:~:text=Transport%20accounts%20for%20about%2064,directly%20attributed%20to%20vehicular%20pollution](#). (Accessed on 26/09/2025)

²⁸ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 26/09/2025)

²⁹ Ibid

the key targets under SDG 11 include providing access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons³⁰. In addition, African Union's *Agenda 2063*³¹ seeks to expand Africa's transport and infrastructure systems including railway and road networks, port facilities and other transport infrastructure to enhance connectivity, spur trade and economic growth and create jobs³². *Agenda 2063* further seeks to ensure that every citizen in Africa has affordable and sustainable access to quality transport and other services³³. It further seeks to ensure that all urban mass transport will operate on renewable and low to zero emissions fuels³⁴.

Greening transport systems is therefore a key theme both globally and in Africa. It is imperative to actualise this agenda for sustainability.

3.0 Greening of Transport Systems in Africa

In light of the environmental impacts of the transport sector both globally and in Africa, there is need to green transport systems. Green transport which is also referred to as sustainable transport aims to minimize greenhouse gas emissions and environmental impacts of the transport sector while ensuring safety and affordability and providing equitable access to mobility for all³⁵. It has been that

³⁰ Ibid, SDG 11.2

³¹ Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 26/09/2025)

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ United Nations Development Programme., 'What is sustainable transport and what role does it play in tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-transport-and-what-role-does-it-play-tackling-climate-change#:~:text=Sustainable%20transport%20refers%20to%20mobility,across%20land%20C%20water%20and%20air?> (Accessed on 27/09/2025)

greening of transport systems is not a single solution, but a systems approach, which integrates technology, infrastructure, planning, policy and behavior change to reduce emissions and curb the negative environmental impacts of transport systems while enhancing connectivity³⁶. According to the United Nations Environment Programme (UNEP), greening of transport systems is vital towards mitigating and adapting to the impacts of climate change, decarbonizing economies, conserving biodiversity and minimizing pollution³⁷. By greening transport systems, it is possible to ensure that people and nature thrive together³⁸.

Greening of transport systems therefore involves designing and utilising environmentally friendly modes of travel towards lowering emissions, conserving energy, and reducing the environmental footprint of transporting people and goods³⁹. Achieving this ideal involves embracing sustainable modes of transport including the use of electric vehicles, public transit systems, cycling and walking⁴⁰. It also requires scientific and technological advancements through low carbon infrastructure projects such as railway infrastructure; urban transport projects including metros and light rail projects which reduce car usage; and renewable energy projects including solar, wind, and hydropower which are essential in transitioning the transport sector towards sustainability⁴¹. Africa has the potential to green its transport systems through the use of low and zero emission, energy efficient, affordable modes of transport, including electric and

³⁶ Ibid

³⁷ United Nations Environment Programme., 'New Report Reveals how Infrastructure Defines our Climate.' Available at <https://www.unep.org/news-and-stories/press-release/new-report-reveals-how-infrastructure-defines-our-climate> (Accessed on 27/09/2025)

³⁸ Ibid

³⁹ What is Green Transportation and its Significance?., Available at <https://nextbillion.ai/blog/what-is-green-transportation> (Accessed on 27/09/2025)

⁴⁰ Ibid

⁴¹ Muigua. K., 'Enhancing Low Carbon Development for Sustainability.' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Enhancing-Low-Carbon-Development-for-Sustainability-.pdf> (Accessed on 27/09/2025)

alternative fuel vehicles, as well as domestic fuels⁴². In particular, low emission vehicles provide an effective pathway towards transitioning the transport sector in Africa towards sustainability. These vehicles are designed to produce fewer emissions such as carbon dioxide emissions when compared to convention vehicles⁴³. Low emission vehicles have become a vital tool in ensuring the sustainability of the transport sector due to improvements to engine technology, as well as using 'hybrid' technology, where a vehicle runs in electric mode sometimes and petrol or diesel mode at others thus reducing emissions among other environmental impacts⁴⁴. These vehicles include battery-electric vehicles, plug-in hybrid electric vehicles and hybrid electric vehicles⁴⁵. Since these vehicles utilise viable and green sources of energy including electric power and hydrogen they have fewer environmental impacts due to little or no reliance on fossil fuels while also saving the cost of fuel⁴⁶.

Africa has immense potential to utilise low emission vehicles towards greening its transport systems. For example, it has been argued that renewable sources of energy including wind and solar power are a vital component of green transport systems by generating electricity for low emission vehicles thus reducing the environmental impacts of the transport sector⁴⁷. The electricity used to power low

⁴² Office of the Energy Efficiency & Renewable Energy., 'Sustainable Transportation and Fuels.' Available at <https://www.energy.gov/eere/sustainable-transportation-andfuels#:~:text=Sustainable%20transportation%20refers%20to%20low,as%20well%20as%20domestic%20fuels>. (Accessed on 27/09/2025)

⁴³ Low emission and zero emission vehicles., Available at <https://www.rbwm.gov.uk/transport-and-streets/motoring/guide-electric-vehicles/low-emission-and-zero-emission-vehicles#:~:text=An%20ultra%2Dlow%20emission%20vehicle,pollution%20from%20tyres%20and%20brakes>). (Accessed on 27/09/2025)

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ European Commission., '5 things you should know about electric cars' Available at <https://climate.ec.europa.eu/news-other-reads/news/5-things-you-should-know-about-electric-cars-2024-05->

emission vehicles such as battery-electric vehicles is increasingly being derived from renewable sources of energy such as solar and wind, which means that such vehicles cause fewer greenhouse gas emissions⁴⁸. Africa is rich in renewable energy with wind, solar, hydro, bioenergy, ocean tidal waves, geothermal among other renewables being abundant throughout the continent⁴⁹. In addition, Africa is rich in critical minerals such as manganese, bauxite, graphite, lithium and cobalt which are vital to renewable and low- carbon technologies including solar, electric vehicles, battery storage, green hydrogen and geothermal⁵⁰. Africa therefore has the potential to harness its vast renewable energy potential and critical raw materials towards greening its transport systems through low emission vehicles. It is therefore imperative to put in place and implement policies that support sustainable transport and enhance investments, technology development and transfer, research and innovation towards harnessing renewable energy and critical raw materials to support the uptake of low emission vehicles towards greening transport systems in Africa⁵¹.

4.0 Conclusion

Greening of transport systems is key towards tackling climate change, pollution and biodiversity loss among other environmental impacts of the transport sector. Africa has immense potential to green its transport systems due to the abundance of renewable sources of energy and critical raw materials in the continent which can support the adoption of low emission vehicles⁵². Utilising renewable energy for low emission vehicles is therefore a worthy endeavour that should be fast-tracked towards greening transport systems in Africa for sustainability.

[14_en#:~:text=The%20electricity%20used%20to%20power,levels%20of%20road%20traffic%20noise? \(Accessed on 27/09/2025\)](#)

⁴⁸ Ibid

⁴⁹ Africa Union., 'Agenda 2063: The Africa we Want.' Op Cit

⁵⁰ Renewable Energy Technologies in the Global South: Insights from Africa., Available at <https://saiaa.org.za/research/renewable-energy-technologies-in-the-global-south-insights-from-africa/> (Accessed on 27/09/2025)

⁵¹ Ibid

⁵² Ibid

References

Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf

Air pollution from transport: causes, effects and solutions., Available at <https://kunakair.com/air-pollution-from-transport/>

Brickstone., 'Low-Carbon Infrastructure in Curbing Climate Change.' Available at <https://brickstone.africa/low-carbon-infrastructure-in-climate-change/#:~:text=Urban%20transport%20projects%2C%20such%20as,emissions%20compared%20to%20fossil%20fuels>

European Commission., '5 things you should know about electric cars' Available at https://climate.ec.europa.eu/news-other-reads/news/5-things-you-should-know-about-electric-cars-2024-05-14_en#:~:text=The%20electricity%20used%20to%20power,levels%20of%20road%20traffic%20noise?

Experts propose solutions for sustainable European transport by mainstreaming biodiversity., Available at <https://bison-transport.eu/2022/09/14/experts-propose-solutions-for-sustainable-european-transport-by-mainstreaming-biodiversity/#:~:text=Transport%20sustainability%20policies%20focus%20on,preserve%20biodiversity%20and%20ecosystem%20services>

Greening expressway to reverse environmental loss., Available at <https://peopledaily.digital/news/greening-expressway-to-reverse-environmental-loss>

How to build more sustainable transportation infrastructure., Available at <https://www.ibm.com/think/topics/sustainable-transportation>

International Energy Agency., 'Transport' Available at <https://www.iea.org/energy-system/transport>

International Institute for Sustainable Development., 'The Road to Sustainable Transport.' Available at <https://www.iisd.org/articles/deep-dive/road-sustainable->

[transport#:~:text=Transport%20accounts%20for%20about%2064,directly%20attributed%20to%20vehicular%20pollution](#)

Kumar. G.P., & Soumyananda. D., 'Revisited the Relationship Between Economic Growth and Transport Infrastructure in India: An Empirical Study' Available at <https://mpr.ub.uni-muenchen.de/116876/5/MPRA>

Low emission and zero emission vehicles., Available at <https://www.rbwm.gov.uk/transport-and-streets/motoring/guide-electric-vehicles/low-emission-and-zero-emission-vehicles#:~:text=An%20ultra%2Dlow%20emission%20vehicle,pollution%20from%20tyres%20and%20brakes>

Muigua. K., 'Enhancing Low Carbon Development for Sustainability.' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Enhancing-Low-Carbon-Development-for-Sustainability-.pdf>

Office of the Energy Efficiency & Renewable Energy., 'Sustainable Transportation and Fuels.' Available at <https://www.energy.gov/eere/sustainable-transportation-and-fuels#:~:text=Sustainable%20transportation%20refers%20to%20low,as%20well%20as%20domestic%20fuel%20s>

Okoro. C., Musonda. I., & Agumba. J., 'Validity and Reliability of a Transportation Infrastructure Sustainable Performance Framework: A Study of Transport Projects in South Africa.' *Construction Economics & Building*., Volume 19, No. 2 (2019)

Renewable Energy Technologies in the Global South: Insights from Africa., Available at <https://saiia.org.za/research/renewable-energy-technologies-in-the-global-south-insights-from-africa/>

Rodrigue. J.P., & Notteboom. T., 'Transportation and Economic Development' Available at <https://transportgeography.org/contents/chapter3/transportation-and-economic-development/>

Transport Impacts on Economic Opportunities., Available at <https://transportgeography.org/contents/chapter3/transportation-and-economic-development/economic-opportunities-transport-impacts/>

Transportation and Biodiversity., Available at https://transact.enotrans.org/wp-content/uploads/2014/04/Transportation_and_Biodiversity_Report.pdf

United Nations Development Programme., 'What is sustainable transport and what role does it play in tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-transport-and-what-role-does-it-play-tackling-climate-change#:~:text=Why%20is%20transforming%20the%20transport,adults%20aged%205%E2%80%9329%20years>

United Nations Development Programme., 'What is sustainable transport and what role does it play in tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-transport-and-what-role-does-it-play-tackling-climate-change#:~:text=Sustainable%20transport%20refers%20to%20mobility,across%20land%20C%20water%20and%20air?>

United Nations Environment Programme., 'New Report Reveals how Infrastructure Defines our Climate.' Available at <https://www.unep.org/news-and-stories/press-release/new-report-reveals-how-infrastructure-defines-our-climate>

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

United Nations., 'Fact Sheet: Inequalities' Available at https://www.un.org/sites/un2.un.org/files/media_gstc/FACT_SHEET_Inequalities.pdf

What is Green Transportation and its Significance?., Available at <https://nextbillion.ai/blog/what-is-green-transportation>

World Bank Group., 'Transport' Available at <https://www.worldbank.org/en/topic/transport/overview#:~:text=Transport%20plays%20an%20important%20role,%2C%20efficient%2C%20clean%20and%20accessible>

*Greening of Transport Systems in Africa: Utilising Renewable Energy for Low Emission Vehicles: **Hon. Prof. Kariuki Muigua*** (2025) *Journal of cmsd* Volume 12(4)

World Health Organization., 'Air Pollution' Available at <https://www.who.int/teams/environment-climate-change-and-health/healthy-urban-environments/transport/health-risks>

Forging A New Lex Pacificatoria: A Critical Review of The Journal of Appropriate Dispute Resolution & Sustainability (Vol. 3, Issue 1, 2025)

By: Raphael Okochil*

Abstract

This article reviews Volume 3, Issue 1 of the Journal of Appropriate Dispute Resolution & Sustainability. The journal issue explores how Kenya is building its own systems of justice. It brings together twelve articles on topics like mediation, arbitration, human rights and governance. The review argues that the issue is timely and important. It shows how Kenyan scholars are using the 2010 Constitution to create justice systems that fit local needs. The articles are grouped into three themes. The first theme looks at Kenya's laws and policies. The second focuses on the human side of conflict, like gender and emotion. The third examines larger issues like politics, economics and culture. This review critiques each theme, offering specific examples from the articles. It also suggests areas for future research. The review concludes that the journal is a vital contribution to legal scholarship. It shows how an African nation is actively shaping its own legal future.

I. Introduction: Locating Justice in a Globalized World

The latest issue of the *Journal of Appropriate Dispute Resolution (ADR) & Sustainability* (Volume 3, Issue 1, 2025) is an extremely outstanding piece of scholarly work. This volume is published by Glenwood Publishers Limited based in Nairobi and it makes a lot of contribution to the existing conversations on arbitration, mediation and governance. Reading this volume carefully reveals a more ambitious project: a powerful exercise in jurisprudential construction. This

**Raphael Okochil is a certified conciliator, mediator and arbitrator who holds an LLB from Jomo Kenyatta University of Agriculture and Technology. He is the Founder ADR & The Law Journal and has served as a research intern at Jus Corpus Law Journal. His work and interests focus on ADR, international humanitarian law and access to justice across Africa. Email: raphaelokochil@gmail.com ORCID: [0009-0006-9970-1924](https://orcid.org/0009-0006-9970-1924).*

issue is a collective effort by Kenyan researchers to help readers gain an understanding of justice in the 21st century.

Globally, faith in traditional institutions is slowly diminishing.¹ Formal court systems are commonly perceived as slow, overly expensive and also disconnected from the community they are meant to serve.² At the same time, global frameworks advocating for peace and sustainability may appear remote and unable to take root at the local level. It is because of the foregoing that the journal's special focus on "Appropriate" Dispute Resolution is an important intellectual move. The adjective itself is a self-conscious move away from the traditional "Alternative Dispute Resolution." As Hon. Prof Kariuki Muigua states, "...in the African context, ADR mechanisms have always been considered 'Appropriate' and not 'Alternative'."³ This is particularly resonant for Kenya, a country that is still figuring out how best to conform to their progressive 2010 Constitution that explicitly mandates everyone to promote alternative forms of justice.⁴

This review therefore, has two objectives. First, it will offer a comprehensive and specific summary and critique of the key contributions within this volume.

¹ Organisation for Economic Co-operation and Development (OECD), *Government at a Glance* 2025 (OECD Publishing 2025) <
https://www.oecd.org/en/publications/government-at-a-glance-2025_0efd0bcd-en/full-report/trust-accessibility-responsiveness-and-quality-of-justice-services_d04411e8.html> accessed 10 August 2025.

² Stephen Nduvi and Sherry Omulando, *Addressing Case Backlog in Magistrates' Courts in Kenya* (GLOCEPS Weekly Influential Brief 01, Global Centre for Policy and Strategy 2023), 3.

³ Kariuki Muigua, 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution' available at <
<https://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Movingfrom-Alternative-to-Appropriate-Dispute-Resolution-1.pdf>> accessed 10 August 2025.

⁴ Constitution of Kenya, 2010, art 159(2)(c).

Second, and more importantly, this review will argue that when read as a cohesive whole, the issue presents a clear and persuasive thesis. It posits that sustainable peace and development are not achieved through simply importing global norms and solutions that have already been pre-fabricated elsewhere. Instead, they must be built from the ground up. This will require an impressive understanding the African context. this review will explain how the authors of the journal cumulatively build this argument, step by step and how they ponder the urgent questions they raise about the future of justice in Kenya and beyond.

II. Themes making up the New Jurisprudence

This journal issue has three main themes that stand out. The first theme examines Kenya's justice system, testing constitutional goals against real-world practice. The second theme focuses on the human element in disputes, like emotion and power. The final theme looks at bigger systems like politics and culture that influence conflict. Together, they form the map of the Kenyan law today.

A. Theme 1: Re-examining the Foundations of Justice in Kenya

Several articles in this volume anchor the entire discussion in the specific legal and policy framework of modern-day Kenya. They take a close look at the continuous and often problematic project of translating the high ideals of the 2010 Constitution into viable systems of common justice. These articles form the doctrinal basis of the issue. They provide a rigorous analysis of how the Kenyan law is evolving in real-time through legislation, judicial interpretation and policy-making.

David N. Njoroge's article, "Balancing Cultural Relevance and Modernity in Traditional Dispute Resolution Mechanisms (TDRMs) for Enhanced Access to Justice in Kenya," is one elegant mater key that unlocks this debate. Njoroge candidly asks, how can we honour indigenous traditions of justice while upholding modern constitutional principles? He argues fiercely that TDRMs are dynamic in nature, and they can provide accessible solutions for millions of Kenyans, especially those in the rural areas. However, he carefully avoids

romanticizing these traditions. He explores the tension between cultural legitimacy of TDRMs and the constitutional mandates of human rights and gender equality. This is legally backed by Article 159(2)(c) of the Constitution which demands TDRMs not be inconsistent with the Constitution or any written law. Njoroge illustrates this tension through case laws like *Rono v. Rono* where the court dismissed patriarchal customary norms in order to grant equal inheritance rights,⁵ and *Lubuaru M'Imanyara v. Daniel Murungi* where the court acknowledged Njuri Ncheke (council of elders) as a legitimate way of resolving dispute under the Constitution.⁶ His argument is to harmonize these two systems and not replace one with another.

While his argument is very compelling, his framework could be strengthened by extensively evaluating the inherent weaknesses of TDRMs. Linda Khaemba, in her article, comes up with a crucial concept of institutional isomorphism, which is derived from organizational theory.⁷ She warns that the more TDRMs interact with the formal justice system, the more they are likely to “become increasingly alike.” Thus, they will adopt the very pathologies they were meant to avoid. This can also be witnessed in some rural communities. Khaemba points us to the work of Joireman and Henryson, who found that in Kisii, customary practices are already adopting the vices in the formal justice system like corruption and rent seeking thus making dispute resolution prohibitively expensive.⁸ Doesn't this challenge the basic premises of TDRMs, to make justice inherently more accessible? Similarly, Dr Scholastica Omondi and Joseph Serгон, argue that TDRMs are often not in compliance with the rule of law and the principles of

⁵ *Rono v Rono* [2005] eKLR.

⁶ *Lubuaru M'Imanyara vs Daniel Murungi* (2013) eKLR.

⁷ Linda Khaemba, 'The Limits of Expanding Access to Justice through Traditional Dispute Resolution Mechanisms in Kenya' (2023) 19 *The Law Society of Kenya Journal* 145, 148.

⁸ Sandra Joireman and Elin Henrysson, 'On the Edge of the Law: Women's Property Rights and Dispute Resolution in Kisii, Kenya' (2009) Political Science Faculty Publications 71.

natural justice.⁹ They note that these mechanisms rarely incorporate factors such as recusal of the ‘adjudicators’ on the basis of bias, giving reasons for the decisions they made and the right of being heard. All of these are fundamental to procedural fairness under Rawls’ theory of justice. Thus, the argument forwarded by Njoroge about harmonization (which often times than not requires judicial review to correct TDRMs defects) places a heavy burden on a reactive system. Based on the foregoing critiques, Njoroge’s work would require some safeguards like mandatory training for elders on human rights as recommended by Omondi. This will prevent the vices of one contaminating the other.

The article about TDRMs is well-complemented by David Onsare’s “Rethinking Arbitration Agreements: The Kenyan Perspective.” Unlike Njoroge who has focused on the hoi polloi level, Onsare is focused on one of the key pillars of modern ADR, commercial arbitration. His central critique is aimed at the pervasive use of standard-form arbitration clauses in commercial contracts. Onsare argues that these generic clauses often fail miserably when faced with an actual dispute. As he puts it in his abstract, they “lack clarity on key issues like arbitrator selection and cost allocation. This creates delays and barriers to justice.”¹⁰

Onsare then connects this problem to a fundamental constitutional principle. By creating a number of procedural hurdles and financial burdens, poorly drafted arbitration clauses eventually thwart the right to access to justice under Article 48 of the Constitution, which is conferred on all citizens.¹¹ This especially affects small and medium-sized enterprises (SMEs), who don’t have the financial muscle to navigate complicated and costly preliminary legal battles over the meaning of

⁹ Joseph Serگون and Scholastica Omondi, ‘An Analysis of the Weaknesses of Traditional Dispute Resolution Mechanisms (TDRMS) As an Avenue of Dispute Resolution in Kenya’ (2019) 24(9) IOSR Journal of Humanities and Social Science 1, 5.

¹⁰ David Onsare, ‘Rethinking Arbitration Agreements: The Kenyan Perspective’ (2025) 3(1) Journal of Appropriate Dispute Resolution and Sustainability 48.

¹¹ Constitution of Kenya, 2010, art 48.

a poorly worded clause.¹² His argument is guided by the recent judicial trends, including the Supreme Court's pro-arbitration stance in *Nyutu Agrovet Limited v. Airtel Networks Kenya Limited*, which signaled an intent not to let arbitration become just another stage of litigation.¹³ Onsare urges lawyers to avoid these boilerplate templates and draft agreements that are actually beneficial to their clients and the broader constitutional goal of accessible justice.

The discussion is then taken into the public and criminal law arenas by the work of one Michael Sang. His various contributions to this issue show the complicated relationship between the state and its citizens. In "Reaffirming the Constitutional Validity of Mandatory Sentences in Kenya's Criminal Law," Sang provides a meticulous review of the Supreme Court's judgment in *Republic v Joshua Gichuki Mwangi and Others*.¹⁴ He dissects the court's reasoning on the perennial tension between judicial discretion and legislative mandate, situating the debate within the foundational constitutional doctrine of the separation of powers.¹⁵ His analysis is not merely descriptive; it is a thoughtful exploration of the delicate balance between the need for consistency in sentencing and the imperative of individualized justice. He skillfully evaluates the impact of the landmark *Francis Karioko Muruatetu* precedent, arguing that the Court of Appeal in *Mwangi* had misapplied its *ratio decidendi*, which was specific to the mandatory death sentence for murder and did not invalidate all other mandatory minimum sentences.¹⁶ Sang quotes the Supreme Court to emphasize this point, highlighting its finding that Parliament, not the judiciary, "sets the parameters of sentencing for each

¹²David Onsare, 'Rethinking Arbitration Agreements' 52.

¹³ *Nyutu Agrovet Limited v. Airtel Networks Kenya Limited* [2019] eKLR.

¹⁴ Michael Sang, 'Reaffirming the Constitutional Validity of Mandatory Sentences in Kenya's Criminal Law: A Review of the Supreme Court's Judgment in *Republic v Joshua Gichuki Mwangi and others* [2024] eKLR' (2025) 3(1) *Journal of Appropriate Dispute Resolution and Sustainability* 95.

¹⁵ *ibid* 102.

¹⁶ *Francis Karioko Muruatetu & another v Republic* [2017] eKLR.

crime in statute.”¹⁷

Sang’s second major piece, “Reinforcing the Duty of the State to Compensate Victims of Terrorism in Kenya,” is equally powerful. Using the tragic 2015 Garissa University terrorist attack as its case study, he examines the landmark High Court judgment in *Legal Advice Centre t/a Kituo Cha Sheria and 84 Others v The Cabinet Secretary, Ministry of Education and 7 Others*.¹⁸ This article reframes the concept of “dispute resolution” to encompass the ultimate dispute: that between citizens and a state that has failed in its most basic duty of care. Sang meticulously details the court’s findings on the state’s negligence, exploring the violation of the constitutional rights to life (Article 26) and security of the person (Article 29).¹⁹ He provides a roadmap for how legal action can deliver a measure of justice and solace to those who have suffered unimaginable loss, noting the court’s award of “Kshs. 3,000,000.00” for each deceased person’s estate.²⁰ His further exploration of the proposed Conflict-of-Interest Bill, 2023, reinforces this focus on state integrity. He provides a detailed legislative review of key provisions, such as the comprehensive definition of conflict of interest in Section 8 and the whistleblower protections in Section 54, which tackle the root causes of corruption and abuse of public office.²¹

However, Sang’s first article could be strengthened by engaging with more comparative analysis. On mandatory sentencing, he might have drawn from *S v*.

¹⁷ *ibid*.

¹⁸ Michael Sang, ‘Reinforcing the Duty of the State to Compensate Victims of Terrorism in Kenya’ 154.

¹⁹ Constitution of Kenya, 2010, arts 26, 29.

²⁰ Michael Sang, ‘Reinforcing the Duty of the State to Compensate Victims of Terrorism in Kenya’ 174.

²¹ Michael Sang, ‘Legislative Solutions to Conflict of Interest Affecting Public Officials in Kenya: A Review of the Conflict-of-Interest Bill, 2023’ (2025) 3(1) *Journal of Appropriate Dispute Resolution and Sustainability*, 279, 282, 286, 290.

Dodo (South Africa)²² and *R v. Smith* (Canada)²³ where the tests of proportionality were used to balance legislative minimums with justice based on a case-to-case basis. As for his second article, Sang's excellent doctrinal analysis could have looked at the gap of enforcement that's cracking public law. The judgement by High Court awarding victims Kshs. 3,000,000.00 is commendable, but securing this payment from the executive is where the real battle begins. This is a problem that Sang fails to interrogate. The Court of Appeal decision in *Gitobu Imanyara & 2 others v. Attorney General* provides the best, case study.²⁴ There, the appellants, who had suffered horrific torture and financial ruin, appealed damage awards of Kshs. 15, 10 and 7 million as "manifestly low." The courts while acknowledging the gory violations, refused to interfere.²⁵ It relied on a jurisprudence arguing that constitutional damages are primarily "vindicatory" and must consider the "burden to the innocent tax-payers."²⁶ Thus, even where liability is admitted, damage awards can feel symbolic and their enforcement remains the biggest hurdle. Thus, a future inquiry by Sang would be to bridge the gap between judicial decisions and executive implementation. What mechanisms, beyond contempt of court, can compel the state to pay?

When read together, this first cluster of articles paints a vivid picture of a legal system in constant evolution. The authors reveal a judiciary, a legal profession and a scholarly community that are no longer content to simply apply inherited colonial laws. Instead, they are actively engaged in a process of critical interpretation and creative innovation, using the 2010 Constitution as both their anchor and their guide. They reveal a productive dialogue between high-minded aspiration and messy reality, paving the way to a more accessible legal system in Kenya, case by case, clause by clause, and policy by policy.

²² *S v. Dodo* (CCT 1/01) [2001] ZACC 16, 2001 (3) SA 382 (CC), 2001 (5) BCLR 423 (CC), 2001 (1) SACR 594 (CC).

²³ *R. v. Smith* (1987), Supreme Court of Canada.

²⁴ *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR).

²⁵ *Ibid.*

²⁶ *Ibid.*

B. Theme 2: The Human Element in Conflict – Beyond Procedure to People

While the first theme meticulously maps the legal and institutional architecture of justice, the second theme shifts the focus from frameworks to faces. This group of articles argues with profound conviction that sustainable peace cannot be achieved through legal formulas or procedural checklists alone. It requires a deep and compassionate understanding of the human experience of conflict, including the complex interplay of power dynamics, emotional trauma, and the fundamental human need for recognition, dignity, and empathy. These articles provide the “soul” of the journal issue, complementing the doctrinal analysis with a profound and necessary humanism.

The lead article of the entire volume, Hon. Prof. Kariuki Muigua’s “Strengthening Women Voices to advance Human Rights, Peace and Sustainable Development,” sets a powerful and unequivocal tone for this conversation. Professor Muigua, a distinguished scholar and the journal’s Editor-in-Chief, constructs a tripartite argument. He posits that human rights, peace, and sustainable development are not separate or sequential goals; they are inextricably linked, forming a three-legged stool where the removal of one leg causes the entire structure to collapse.²⁷

He then delivers his central thesis: this entire structure is fundamentally unstable without the full, equal, and meaningful participation of women. The article systematically details how women are crucial agents of development in all its dimensions (economic, social and environmental). However, as he notes, their voices are consistently marginalized in decision-making processes, especially in peace negotiations and post-conflict reconstruction.²⁸ Professor Muigua’s work is a powerful and scholarly critique of patriarchal structures that effectively exclude

²⁷ Kariuki Muigua, ‘Strengthening Women Voices to advance Human Rights, Peace and Sustainable Development’ (2025) 3(1) *Journal of Appropriate Dispute Resolution and Sustainability* 1.

²⁸ *ibid* 3.

half of the population from the project of building a better world. It is a passionate call to action, demanding that international and national frameworks, including those guided by instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), move beyond tokenism to ensure that women are not just present at the table, but are empowered to shape the agenda.²⁹

Darryl Isabel's article, "The Emotional Core of Conflict Resolution: Integrating Emotional Intelligence into Mediation," provides a perfect micro-level complement to Professor Muigua's macro-level analysis. If Muigua asks *who* needs to be at the table for peace to be sustainable, Isabel asks *how* people at that table should interact to achieve a genuine resolution. Her article is a brilliant exposition on the practical application of Emotional Intelligence (EI) in the mediation process. She moves beyond the often-misunderstood concept of EI to break it down into a concrete set of skills for any mediator: "self-awareness, empathy, self-regulation, social skills and cultural sensitivity."³⁰ Isabel argues persuasively that these are in fact, the essential and non-negotiable toolkit of an effective mediator.³¹ In emotionally charged disputes, where logic and reason are often clouded by anger, fear, and grief, it is the mediator's ability to manage the emotional temperature of the room that determines success or failure. She demonstrates how a mediator with high EI can build trust, reduce hostility, and uncover the deeply rooted grievances that often lie beneath the surface of a stated legal claim. The article's use of the mediation in North Eastern Kenya between the Garre and Degodia clans as a case study is particularly effective. It grounds the theoretical discussion in a real-world example of inter-clan conflict resolution, showing how empathy and cultural

²⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

³⁰ Darryl Isabel, 'The Emotional Core of Conflict Resolution: Integrating Emotional Intelligence into Mediation' (2025) 3(1) *Journal of Appropriate Dispute Resolution* 114-117.

³¹ *Ibid*, 121.

sensitivity were not just helpful but were absolutely essential to achieving the historic Banissa Nine-Point Ceasefire Declaration.³²

These two articles serve as the ethical and psychological conscience of the journal. They challenge the technocratic or legalistic approach to ADR. They remind the reader that disputes are essentially human dramas that need to be navigated with care, compassion and skill. The authors argue that a justice system that ignores the realities of power, gender and emotion is a system destined to produce resolutions that are neither just nor sustainable.³³ Fittingly, this theme is rounded out by Mwati Muriithi's review of the book *Securing Lasting Peace and Justice in Africa through Appropriate Dispute Resolution*. The book review reinforces the central message of this thematic cluster: that achieving lasting peace is a holistic endeavor. It requires not just clever legal mechanisms but a fundamental and unwavering commitment to inclusivity and human dignity.³⁴

But still, even though Professor Muigua's article provides the essential normative foundation for a more inclusive approach to peacebuilding, a reader is left wanting a more detailed roadmap for the *how*. The paper makes a powerful case for *why* women's voices must be strengthened, but it is less specific on the concrete legal and policy mechanisms required to achieve this. For instance, future scholarship could build on Muigua's foundational work by examining the practical effectiveness of specific instruments, such as legally mandated gender quotas in peace delegations, the implementation of gender-responsive budgeting in post-conflict reconstruction funds, or the necessity of targeted legal reforms to property and inheritance laws that underpin women's economic empowerment and, by extension, their political voice. Furthermore, the article operates with a broad category of "women," which, while necessary for its powerful thesis, risks

³² *ibid* 121.

³³ *Ibid* 133.

³⁴ Mwati Muriithi, 'Book Review: Securing Lasting Peace and Justice in Africa through Appropriate Dispute Resolution' (2025) 3(1) *Journal of Appropriate Dispute Resolution* 182.

masking the diverse and sometimes conflicting interests of women based on class, ethnicity, age, or location.

This brings to mind the critical legal theory of intersectionality, famously articulated by scholar Kimberlé Crenshaw, which reminds us that experiences of oppression are compounded by multiple identities.³⁵ As David N. Njoroge's work on TDRMs in this very issue suggests, the experience of a senior woman from a dominant clan in a traditional justice setting may be vastly different from that of a young, widowed woman from a marginalized community.³⁶ A future research agenda could therefore explore these internal power dynamics, asking not just how to strengthen "women's voices," but *which* women's voices are being prioritized and how to ensure that the most marginalized are not left behind in the quest for representation.

Similarly, Darryl Isabel's brilliant exposition on Emotional Intelligence, while providing an indispensable toolkit for the individual mediator, invites a crucial question about the limits of its efficacy within flawed systems. EI equips the mediator to skillfully manage the *interpersonal* dynamics of a conflict, but can it truly resolve disputes rooted in profound *structural* inequality? This question echoes the critical perspective of legal anthropologists like Laura Nader, who cautioned that an overemphasis on harmony and emotional management in ADR can sometimes mask underlying power imbalances, leading to what she termed a "coercive harmony" where the weaker party is pacified into accepting an unjust settlement.³⁷ Can a mediator, no matter how emotionally intelligent, truly level

³⁵ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] University of Chicago Legal Forum 139.

³⁶ David Njoroge, 'Balancing Cultural Relevance and Modernity in Traditional Dispute Resolution Mechanisms (TDRMs) for Enhanced Access to Justice in Kenya' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 18, 28.

³⁷ Laura Nader, 'The ADR Explosion - The Implications of a Movement for Disputing' (1988) 14 Windsor YB Access Just 269.

the playing field between a rural community and a multinational corporation in an environmental dispute? Or between a non-unionized worker and a powerful corporation in a labor case? This is where Isabel's work enters into a fascinating and necessary tension with Stanley Kebathi's analysis of the construction industry in this same volume.

An emotionally intelligent arbitrator might skillfully mediate a single contractual dispute between a subcontractor and a main contractor. However, that arbitrator is powerless to dismantle the systemic political patronage and corruption that Kebathi identifies as the root cause of such conflicts in the first place.³⁸ This suggests that for ADR to be truly sustainable and not merely a tool for conflict management, the psychological and procedural skills championed by Isabel must be paired with a robust commitment to addressing the structural injustices that fuel conflict. Future scholarship could explore this tension by examining hybrid models that combine mediation with advocacy, community organizing, or strategic litigation to tackle both the symptoms and the sources of injustice. By placing the human element front and center, this thematic group ensures that the journal's conversation about ADR remains grounded, compassionate, and deeply relevant to the lived experiences of those most affected by conflict.

C. Theme 3: Systemic Pressures, the Wider Context of Conflict and Sustainability

The final group of articles in this issue performs a crucial analytical move: it zooms out. It connects the specific disputes and individual experiences discussed elsewhere in the volume to the broader systems of governance, economics, politics and culture that create the conditions for conflict in the first place. This systemic perspective is vital for fulfilling the journal's promise to link ADR with "Sustainability." Sustainability, in this context, means not just resolving today's dispute, but addressing the root causes of conflict to prevent future ones.

³⁸ Stanley Kebathi, 'Impact of politics on Kenya construction industry' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 246, 247-252.

Hon. Prof. Kariuki Muigua's second major contribution, "Boosting Efficiency in Environmental Governance," is a cornerstone of this theme. It tackles the concept of sustainability by framing the global environmental crisis (what he memorably calls the "triple planetary crisis" of climate change, biodiversity loss, and pollution) as a fundamental failure of governance.³⁹ The article argues that sound environmental governance is the essential pathway to sustainable development. It calls for legal and institutional frameworks that are effective, inclusive, and accountable. This piece is a powerful example of ADR conceptualized on a grand scale. It conceives of environmental management as a massive, ongoing, multi-party negotiation between diverse actors: governments, corporations, civil society, local communities, and indigenous peoples. Professor Muigua's analysis highlights the urgent need to move beyond traditional, top-down regulation and embrace science, technology, and robust multilateral collaboration through instruments like Multilateral Environmental Agreements (MEAs) to resolve the ultimate conflict: the one between unsustainable human activity and the finite carrying capacity of our planet.⁴⁰

However, while Professor Muigua's call for more efficient governance is both timely and correct, his framework could be further enriched by more engagement with the political economy of environmental harm. As scholars of global environmental justice like Joan Martinez-Alier have long argued, environmental crises are rarely just a matter of inefficient governance; they are often the result of a global economic system that externalizes costs onto the poor and marginalized.⁴¹ In this light, "boosting efficiency" in governance could, paradoxically, make the extraction of resources *more* efficient without necessarily making it more *just*. For instance, a more efficient licensing system for a mining operation does not, in itself, guarantee that the local community will be protected

³⁹ Kariuki Muigua, 'Boosting Efficiency in Environmental Governance' (2025) 3(1) *Journal of Appropriate Dispute Resolution* 140-141.

⁴⁰ *ibid* 148-149.

⁴¹ Joan Martinez-Alier, *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation* (Edward Elgar Publishing 2002).

from pollution or receive a fair share of the revenue. Future scholarship building on Muigua's work could integrate this critical perspective by examining how mechanisms like community benefit-sharing agreements, mandatory environmental and social impact bonds, or even the burgeoning legal theory of the rights of nature could be incorporated into Kenya's governance framework to ensure that efficiency serves equity, not just extraction. This would powerfully connect his macro-level governance framework to the on-the-ground realities of environmental conflict.

This theme of systemic fragility is powerfully illustrated at the regional level in Paul Dhel Gum's article, "Fragility of EAC Federation: Integration of Rich and Disintegration of Poor." Gum's work is a sobering and unflinching critical analysis of the East African Community (EAC). He argues that while the EAC professes a goal of regional integration and shared prosperity, the on-the-ground reality is one of deepening inequality. Wealthier member states, he contends, dominate the decision-making processes and reap disproportionate benefits from economic integration, a disparity captured by his specific data comparing the Gross Domestic Product (GDP) per capita of Kenya (2,200) with that of Burundi (240) as of 2023.⁴² Meanwhile, poorer states struggle with underdevelopment, debt and political marginalization. His powerful thesis (encapsulated in the title "integration of the rich and disintegration of the poor") is a potent indictment of top-down integration models that fail to address underlying structural and economic disparities.⁴³ Gum's analysis serves as a crucial case study. It demonstrates how unresolved issues of distributive justice can create systemic conflict that threatens the very cohesion of a regional federation. His work reminds us that without equity, political and economic unions are built on fragile foundations.

In as much as Gum's economic diagnosis is crucial, his analysis would be even

⁴² Paul Dhel Gum, 'Fragility of EAC Federation: Integration of Rich and Disintegration of Poor' (2025) 3(1) *Journal of Appropriate Dispute Resolution* 228, 229.

⁴³ *ibid* 228.

more compelling if it engaged more deeply with the legal architecture of the EAC itself. The Treaty for the Establishment of the East African Community contains explicit provisions aimed at mitigating the very imbalances Gum identifies. For example, Article 7(1)(f) commits Partner States to the “equitable distribution of benefits accruing,” and Article 75 establishes the principle of “asymmetry,” which allows for differential treatment of Partner States to address economic disparities.⁴⁴ Gum’s economic critique could be powerfully fused with a legal one by examining why these treaty provisions have seemingly failed to prevent the drift towards inequality. Has the EAC Court of Justice been reluctant to enforce these principles? Are the institutional mechanisms for operationalizing asymmetry, such as a better regional development fund, underfunded or politically captured? By placing his sharp economic analysis in conversation with the legal commitments of the EAC Treaty, Gum could move from diagnosing the problem to prescribing a more precise legal and institutional remedy, offering a pathway to reclaim the treaty’s original promise of a truly balanced and equitable community.

Stanley Kebathi’s piece, “Impact of politics on Kenya construction industry,” brings this systemic analysis back to the national level with a sharp, pragmatic, and deeply informed focus. His article is a brilliant exploration of how the political environment pervasively shapes a key economic sector. Kebathi provides a detailed anatomy of political influence, examining everything from the tendering process and public procurement to the uncertainty created by election cycles and the political manipulation of land ownership.⁴⁵ He reveals a system where political patronage, corruption, and ethnic bias often override merit, transparency, and the rule of law. He meticulously details how these dynamics impact the daily work of architects, contractors, and engineers.⁴⁶

⁴⁴ Treaty for the Establishment of the East African Community (as amended), arts 7(1)(f), 75.

⁴⁵ Stanley Kebathi, ‘Impact of politics on Kenya construction industry’ (2025) 3(1) *JADR&S* 246, 247, 252, 257.

⁴⁶ *ibid* 263-278.

Kebathi's work is essential because it provides a “supply-side” analysis of conflict. It shows how flawed governance systems do not just fail to resolve disputes; they actively and consistently generate them.

While Kebathi's descriptive analysis of the problem is comprehensive and damning, it stops short of offering a detailed exploration of potential systemic solutions. He masterfully shows us the disease but is less prescriptive about the cure. His work could be extended by engaging with successful anti-corruption models from other jurisdictions or by exploring the potential of new technologies in promoting transparency. For example, the use of blockchain technology in public procurement, as trialed in jurisdictions like Estonia, offers a potential model for creating immutable and transparent records of tendering and payment processes, making it much harder for political actors to manipulate the system.⁴⁷ Similarly, a deeper dive into the enforcement mechanisms of the Public Procurement and Asset Disposal Act of 2015 could ask a critical question: is the law itself weak, or is the problem a catastrophic failure of political will in its enforcement?⁴⁸ By supplementing his excellent diagnosis with a more robust comparative and technological analysis of solutions, Kebathi could provide an even more powerful roadmap for reform in one of Kenya's most vital and troubled sectors.

Finally, Paige Wanjiru Kiarie's “Contextualizing Arbitration -The Role of Culture, Politics and Economics” provides the theoretical capstone for this entire thematic cluster. Her article is a sophisticated and compelling argument against the idea that any legal practice, even one as seemingly standardized as international commercial arbitration, can be divorced from its local context. Through a brilliant comparative analysis of China, Hong Kong, and England, she demonstrates how deeply local culture, political systems, and economic priorities

⁴⁷ See, for example, Ines Dhaou, ‘The Contribution of Blockchain Technology to Fight Corruption in Public Procurement’ in K. Kuan Hon and others (eds), *The Identity-Minded Approach to Security and Privacy* (Springer 2021).

⁴⁸ Public Procurement and Asset Disposal Act, 2015 (Kenya).

shape the adoption and interpretation of global legal norms.⁴⁹ Kiarie's work is a theoretical warning. It cautions against the naive belief that simply adopting an international instrument like the UNCITRAL Model Law will produce the same results everywhere. It powerfully reinforces the journal's core theme of "appropriateness," arguing that legal systems are not neutral vessels but are always and inevitably imbued with the values, histories and power structures of the societies they serve, as illustrated by her analysis of the Hong Kong court's decision in *Gao Haiyan v Keeneye Holdings LTD*.⁵⁰

This final group of articles is what elevates the journal from a strong collection to an outstanding one. The authors successfully connect the dots between a single contractual dispute, a regional economic imbalance, and a global environmental crisis. They fulfill the journal's ambitious mandate by demonstrating that effective and sustainable dispute resolution must be system-aware. It must understand and engage with the difficult and often-hidden forces of politics, economics and culture that define the world in which we live.

III. Conclusion

This new issue of the *Journal of Appropriate Dispute Resolution & Sustainability* is a real achievement. Under Hon. Prof. Kariuki Muigua's guidance, the volume has a confident Kenyan voice, connecting big ideas about justice to the reality on the ground. Its main strength is showing that Kenyan legal scholarship has come of age. The authors are building a unique national approach to law based on the 2010 Constitution, not just borrowing from outside. Still, there is room for future work. The issue would benefit from more hard data on how ordinary people experience the justice system. It also misses a key topic for a 2025 journal: the role of technology and Online Dispute Resolution (ODR). More comparison with other African countries would also add value. Despite this, the volume is

⁴⁹ Paige Wanjiru Kiarie, 'Contextualizing Arbitration -The Role of Culture, Politics and Economics' (2025) 3(1) *Journal of Appropriate Dispute Resolution* 186.

⁵⁰ *Gao Haiyan v Keeneye Holdings Limited* [2011] CACV No.79.

*Forging A New Lex Pacificatoria: A Critical Review of The
Journal of Appropriate Dispute Resolution & Sustainability
(Vol. 3, Issue 1, 2025): **Raphael Okochil***

(2025) Journal of cmsd Volume 12(4)

outstanding. It is a must-read for anyone interested in the future of justice in Africa. It proves that the most “appropriate” forms of justice are, in the end, our own.

Bibliography

Table of Cases

Francis Karioko Muruatetu & another v Republic [2017] eKLR

Gao Haiyan v Keeneye Holdings Limited [2011] CACV No.79

Legal Advice Centre T/A Kituo Cha Sheria and 84 Others v The Cabinet Secretary,

Ministry of Education and 7 Others [2024] eKLR

Lubuaru M'Imanyara vs Daniel Murungi (2013) eKLR

Nyutu Agrovet Limited v. Airtel Networks Kenya Limited [2019] eKLR

Republic v Joshua Gichuki Mwangi and Others [2024] eKLR

Rono v. Rono [2005] eKLR

Table of Legislation

Conflict-of-Interest Bill, 2023 (Kenya)

Constitution of Kenya, 2010

Public Procurement and Asset Disposal Act, 2015 (Kenya)

Journal Articles

Gum PD, 'Fragility of EAC Federation: Integration of Rich and Disintegration of Poor' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 228

Isabel D, 'The Emotional Core of Conflict Resolution: Integrating Emotional

Intelligence into Mediation' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 111

Kebathi S, 'Impact of politics on Kenya construction industry' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 246

Kiarie PW, 'Contextualizing Arbitration -The Role of Culture, Politics and Economics' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 186

Muigua HK, 'Boosting Efficiency in Environmental Governance' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 140

Muigua HK, 'Strengthening Women Voices to advance Human Rights, Peace and Sustainable Development' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 1

Muriithi M, 'Book Review: Securing Lasting Peace and Justice in Africa through Appropriate Dispute Resolution' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 182

Njoroge DN, 'Balancing Cultural Relevance and Modernity in Traditional Dispute Resolution Mechanisms (TDRMs) for Enhanced Access to Justice in Kenya' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 18

Onsare D, 'Rethinking Arbitration Agreements: The Kenyan Perspective' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 48

Sang M, 'Legislative Solutions to Conflict of Interest Affecting Public Officials in Kenya: A Review of the Conflict-of-Interest Bill, 2023' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 279

Sang M, 'Reaffirming the Constitutional Validity of Mandatory Sentences in Kenya's Criminal Law: A Review of the Supreme Court's Judgment in Republic

*Forging A New Lex Pacificatoria: A Critical Review of The
Journal of Appropriate Dispute Resolution & Sustainability
(Vol. 3, Issue 1, 2025): **Raphael Okochil***

(2025) Journal of cmsd Volume 12(4)

v Joshua Gichuki Mwangi and others [2024] eKLR' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 95

Sang M, 'Reinforcing the Duty of the State to Compensate Victims of Terrorism in Kenya: A Review of the Judgment in the Garissa University Terrorist Attack Case' (2025) 3(1) *Journal of Appropriate Dispute Resolution & Sustainability* 154

**Journal of Appropriate Dispute Resolution & Sustainability, Vol. 3
Issue 2 (2025)**

Journal Review by Mwati Muriithi*

Published in May 2025, *Journal of Appropriate Dispute Resolution (ADR) & Sustainability*, Volume 3, Issue 2 is aimed at a worldwide audience and is focused on disseminating knowledge and creating a platform for scholarly debate on pertinent and emerging areas in the fields of Dispute Resolution and Sustainability.

The Journal is peer reviewed and refereed in order to adhere to the highest quality of academic standards and credibility of information. Papers submitted to the Journal are taken through a rigorous review by our team of internal and external reviewers.

It is edited by Hon. Prof. Kariuki Muigua Ph.D,FCI Arb,Ch.Arb, OGW who has earned his reputation as a distinguished legal practitioner in Kenya and a leading environmental scholar in Africa and the world. It adopts an open publication policy and does not discriminate against authors on any grounds.

Hon. Prof. Kariuki Muigua Ph.D,FCI Arb,Ch.Arb, OGW has demonstrated his prowess and sound understanding of Sustainable Development in his paper '*Unlocking Environment and Climate Finance in Africa for Sustainable Development*'. The paper critically examines how environment and climate finance can be unlocked in Africa. The paper conceptualises environment and climate finance. It argues that access to environment and climate finance is crucial in fostering Sustainable Development both globally and in Africa.

'The Role of the Prosecution in Facilitating ADR in Terrorism-Related Cases: A Means

* LLB (Hons) KU; Dip. In Law (KSL); ACI Arb; CPM (MTI); Advocate of the High Court of Kenya; Legal Researcher.

to Foster Disengagement, De-radicalization, Rehabilitation and Reintegration' by Michael Sang examines the role of the prosecution in facilitating Alternative Dispute Resolution (ADR) in terrorism-related cases, focusing on Kenya's Disengagement, De-radicalization, Rehabilitation, and Reintegration (DDRR) Programme.

Muthoni Njagi and Prof. Kariuki Muigua in '*Court-Annexed Mediation in Kenya: Assessing Legal, Policy and Institutional Frameworks for Access to Justice at Milimani Children's Court*' evaluates the adequacy of Kenya's legal, policy, and institutional frameworks for CAM, focusing on the Milimani Children's Court. The paper incorporates insights from key scholarly works, including Carolyne Njagi's thesis (Court-Annexed Mediation as a Tool for Access to Justice for Children in Kenya), Professor Kariuki Muigua's ADR scholarship, and Kenyan Judiciary reports such as the State of the Judiciary Report 2023–2024.

'An African Arbitration Practitioner's Guide to Selected Academic Works by Africans on Arbitration: Enhancing and Promoting African International Commercial Arbitration' by Prince Kanokanga examines some of the leading academic texts on arbitration which have been published abroad.

'Reducing our Carbon Footprint for Sustainability' by Hon Prof. Kariuki Muigua discusses how the global community can reduce its carbon footprint for sustainability.

The paper argues that human activities are generating huge amounts of carbon dioxide among other greenhouse gases fueling climate change and undermining sustainability. The paper offers possible solutions towards reducing our carbon footprint for sustainability.

James Ndungu Njuguna and Kola Muwanga in '*Third Party Funding in Kenya: The Time is Nigh for such Arbitral Jurisdictional Guide to be Embedded in our Statute Books*' examines the benefits of TPF in enhancing access to justice, promoting arbitral efficiency and attracting international investment arbitration. The paper explores the imperative of formally integrating TPF into Kenya's arbitral legal framework.

Mwati Muriithi critically reviews '*Journal of Conflict Management and Sustainable Development Volume 12 Issue 1*' which is the first issue of the Journal in the year 2025 and it has continued to grow as a key academic resource in the fields of Conflict Management, Sustainable Development and related fields of knowledge. The Journal is now one of the most cited and authoritative publications in the fields of Conflict Management and Sustainable Development.

'Tackling Systemic Failures of Inquests in Kenya's Criminal Justice System: The Need to Operationalize the National Coroners Service Act, 2017' by Michael Sang critically examines the systemic failures of inquests within Kenya's criminal justice system and underscores the urgent need to operationalize the National Coroners Service Act of 2017.

Lastly, Paul Dhel Gum in '*Devastating Impact of War on Children in South Sudan*' explores the devastating impact of war on children in South Sudan based on legal implication of children being recruited and participating in the war.

**Legal Challenges in the Forfeiture of Proceeds of Corruption in
Kenya: A Review of Ethics and Anti-Corruption Commission v
Nashon Wilson Kanani and 5 Others**

By: Michael Sang *

Abstract

This paper examines the legal challenges faced by investigative agencies in civil forfeiture proceedings in Kenya, focusing on the case of Ethics and Anti-Corruption Commission v. Nashon Wilson Kanani and 5 Others. The case highlights critical issues, including the absence of objective standards for evaluating disproportionality, the acceptance of inadequate explanations for asset acquisition, and the mismanagement of preservation orders. While civil forfeiture is a vital tool for recovering proceeds of corruption, the judgment exposes significant gaps in Kenya's legal framework that undermine its effectiveness. This paper analyses these challenges, explores the broader implications for future forfeiture cases, and provides recommendations to strengthen the asset recovery framework in Kenya.

Keywords: *Civil forfeiture, corruption, unexplained assets, preservation orders, Kenya; Ethics and Anti-Corruption Commission v Nashon Wilson Kanani and 5 Others*

1. Introduction

Asset forfeiture proceedings are a critical tool in the fight against corruption and economic crimes in Kenya, aimed at depriving offenders of the proceeds of their illicit activities¹. Civil forfeiture, in particular, provides an avenue for the

^{*} LLM, University of Cape Town, South Africa; LLB, Moi University; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.

¹ Oonge, E. (2021). *An Examination of Asset Seizure, Preservation, Forfeiture and Management in Kenya* (Doctoral dissertation, University of Nairobi).

recovery of assets without requiring a criminal conviction, making it an essential mechanism in cases where direct evidence of corruption is difficult to obtain.² However, despite the increasing use of civil forfeiture under statutes such as the Anti-Corruption and Economic Crimes Act (ACECA) and the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), investigative agencies face significant legal challenges in pursuing such cases.³

The case of *Ethics and Anti-Corruption Commission v. Nashon Wilson Kanani and 5 Others*⁴ provides a compelling lens through which to examine these challenges. While the judgment underscores the importance of procedural safeguards and evidentiary rigor, it also highlights key deficiencies in the legal framework and judicial approach that hinder the effective implementation of forfeiture laws, as will be discussed. The court's failure to establish objective standards for disproportionality, its acceptance of unsatisfactory explanations for asset acquisition, and its treatment of preservation orders collectively underscore the hurdles faced by investigative agencies.⁵

This paper analyses the legal and procedural challenges that arise in civil forfeiture proceedings, as illustrated by the *Nashon Wilson Kanani case*. It examines the implications of the judgment for future forfeiture cases and offers recommendations to address the gaps in Kenya's asset recovery framework. By doing so, it aims to contribute to the development of a robust and effective approach to combating corruption and safeguarding public resources.

² *ibid*

³ *ibid*

⁴ *Ethics and Anti-Corruption Commission v Kanani & 5 others* [2024] KEMC 45 (KLR)

⁵ *ibid*

2. Legal Framework of Forfeiture of Proceeds of Crime and Corruption in Kenya

2.1 The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA)

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) provides the legal framework for the forfeiture of property deemed to be proceeds of crime or used in the commission of an offense.⁶ The Act outlines the procedural and substantive requirements for forfeiture under sections 92 and 94.

Section 92: Making of Forfeiture Order

Section 92 empowers the High Court to issue a forfeiture order if it is satisfied on a balance of probabilities that the property in question: Has been used or is intended for use in the commission of an offense; or is proceeds of crime.⁷ This provision ensures that the forfeiture process is independent of the outcome of any criminal proceedings. It facilitates the recovery of assets even where no conviction has been secured, reinforcing the principle that crime should not pay. Key features include:

- ❖ **Ancillary orders:** The court may issue additional orders to facilitate the transfer of forfeited property to the government.
- ❖ **Non-requirement of presence:** The absence of a party affected by the order does not invalidate the process.
- ❖ **Publication in the Gazette:** Forfeiture orders must be gazetted within 30 days, enhancing transparency and public awareness.
- ❖ **Suspension of effectiveness:** Forfeiture orders are suspended pending the resolution of appeals or applications under Section 89.⁸

⁶ Proceeds of Crime and Anti-Money Laundering Act

⁷ Ibid, Section 92

⁸ ibid

Section 94: Exclusion of Interests in Property

Section 94 provides safeguards to protect legitimate property interests. A party may apply to the High Court to exclude their interest in property from a forfeiture order if they demonstrate on a balance of probabilities that: The interest was acquired legally and for fair value and; The applicant neither knew nor had reasonable grounds to suspect that the property was proceeds of crime or was intended for use in criminal activities.⁹

This provision balances the need to combat crime with the protection of innocent third parties. Important safeguards include:

- ❖ **Burden of proof on the applicant:** The applicant must demonstrate lawful acquisition and lack of knowledge or suspicion of the property's tainted nature.
- ❖ **Conditions imposed by the court:** The court may attach conditions to exclusion orders to ensure the property is not used for future criminal activities.¹⁰

Significance of Sections 92 and 94

These provisions reflect the dual goals of forfeiture: to deprive criminals of illicit gains while safeguarding the rights of bona fide third parties. They establish a comprehensive framework for asset recovery that combines preventive, punitive, and restorative measures.

2.2 Anti-Corruption and Economic Crimes Act (ACECA)

The Anti-Corruption and Economic Crimes Act (ACECA) complements POCAMLA in Kenya's legal framework for addressing corruption and economic crimes¹¹. A critical provision under ACECA is Section 55, which provides the

⁹ Ibid, Section 94

¹⁰ Ibid

¹¹ Anti-Corruption and Economic Crimes Act

legal basis for forfeiture of unexplained assets.¹²

Section 55(2): Forfeiture of Unexplained Assets

Section 55(2) enables the Ethics and Anti-Corruption Commission (EACC) to initiate forfeiture proceedings against individuals with unexplained wealth. The following conditions must be met for the Commission to act:

❖ Investigation and Determination of Unexplained Assets:

The EACC must conduct an investigation and determine that the individual possesses assets disproportionate to their known legitimate sources of income.

❖ Reasonable Opportunity to Explain:

- ✓ The individual must be afforded a reasonable opportunity to explain the discrepancy.
- ✓ If the explanation provided is deemed inadequate, the Commission may proceed with forfeiture action.¹³

Key Features of Section 55

- ❖ **Definition of Corrupt Conduct:** The section defines "corrupt conduct" broadly to include both:
 - ✓ Acts constituting corruption or economic crime under ACECA; and
 - ✓ Pre-ACECA conduct that would now qualify as corruption or economic crime.¹⁴
- ❖ **Focus on Civil Forfeiture:** Section 55 allows forfeiture proceedings to be initiated even in the absence of a criminal conviction. The burden shifts to the individual to provide a satisfactory explanation for their wealth,

¹² Ibid, sec 55

¹³ Ibid, Section 55(2)

¹⁴ Ibid, sec 55

emphasizing the **balance of probabilities** standard rather than the higher criminal standard of proof.¹⁵

- ❖ **Investigative Powers of EACC:** The Commission's mandate includes the power to trace, investigate, and pursue recovery of assets derived from corrupt conduct, leveraging this provision to address grand corruption and recover public funds.¹⁶

Significance of Section 55

Section 55 provides a powerful tool for combating corruption by targeting unexplained wealth, a common indicator of corrupt activity. It shifts the onus to individuals to account for their assets, thus addressing gaps in criminal prosecution where direct evidence of corruption may be insufficient. The provision also ensures that public officials and private individuals cannot retain illicit wealth simply because a criminal conviction is unattainable, reinforcing the principle that individuals must justify their wealth against their legitimate income.

The *Nashon Wilson Kanani* case highlights the challenges in enforcing this provision, which will be analyzed in the next section.

3. Facts and Judgment of the Case of *Ethics and Anti-Corruption Commission v Nashon Wilson Kanani and 5 Others*

3.1 Facts

The case of *Ethics and Anti-Corruption Commission (EACC) v. Nashon Wilson Kanani and 5 Others* revolves around allegations of possession of unexplained assets contrary to Section 55(2) of the Anti-Corruption and Economic Crimes Act (ACECA).¹⁷ Below is a summary of the key facts as presented in the judgment:

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *Ethics and Anti-Corruption Commission v Kanani & 5 others* [2024] KEMC 45 (KLR)

❖ **Basis of Suspicion:**

- The EACC alleged that Nashon Wilson Kanani, a junior employee of Nairobi City County, possessed assets grossly disproportionate to his known legitimate income, primarily his modest salary.¹⁸
- The EACC also impugned funds and properties held in the names of his wife, Regina Munyiva Mutinda (5th Respondent), and four companies associated with him: Willy Walla International Ltd, Wilcoreg Ltd, Bridge Side Farm, and Regineez Enterprises Ltd.¹⁹
- The EACC further alleged that the assets and funds in question, including parcels of land, motor vehicles, and funds in bank and Mpesa accounts, were acquired through corrupt activities such as bribes and kickbacks.²⁰

❖ **Previous Criminal Conviction:**

- The EACC relied on Kanani's prior conviction for soliciting bribes in *Nairobi CM's Court Anti-Corruption Case No. 29 of 2007* as evidence of corrupt conduct.²¹
- However, this conviction was overturned by the High Court in *Nairobi High Court Criminal Appeal No. 381 of 2010*. The High Court ruled that since the conviction had been quashed, it could not be used to support the allegations of corrupt conduct in the present case.²²

¹⁸ Ibid, Paragraph 1

¹⁹ Ibid, Paragraphs 2–3

²⁰ Ibid, Paragraph 4

²¹ Ibid, Paragraph 5

²² Ibid, Paragraph 6

❖ **Claim of Concealment:**

- The EACC contended that the funds and properties were disguised as belonging to Kanani's relatives and companies to obscure their true ownership.²³

❖ **Disproportionality Allegation:**

- The EACC claimed that Kanani's known sources of income could not account for the value of the impugned assets and funds. This formed the basis for their application for forfeiture under ACECA.²⁴

These facts lay the groundwork for the court's determination of whether the impugned assets were unexplained and subject to forfeiture.

3.2 Key Issues for Determination

The court in *Ethics and Anti-Corruption Commission (EACC) v. Nashon Wilson Kanani and 5 Others* identified the following issues for determination, as outlined in paragraph 9 of the judgment:

1. Whether there is proof that the 1st Respondent, Wilson Nashon Kanani, has engaged in corruption.
2. Whether the Respondents have satisfactorily explained how the impugned assets and funds were acquired, and whether the same were acquired through corruption.
3. Whether the said assets and funds are disproportionate to the known legitimate sources of income of the 1st Respondent and his co-Respondents.

²³ Ibid, Paragraph 4

²⁴ Ibid, Paragraph 7

4. Whether the said assets and funds should be forfeited to the state as having been acquired through corruption.²⁵

These issues formed the basis of the court's analysis in determining whether the EACC had met the statutory threshold for civil forfeiture under the Anti-Corruption and Economic Crimes Act (ACECA).

3.3 Findings of the High Court

The High Court made the following findings on the issues identified in paragraph 9 of the judgment:

- (a) Whether there is proof that the 1st Respondent, Wilson Nashon Kanani, has engaged in corruption**
 - The Commission alleged that the 1st Respondent had engaged in corruption, relying on a previous conviction in **Nairobi CM's Court Anti-Corruption Case No. 29 of 2007**.
 - However, the court noted that this conviction was quashed on appeal in **Nairobi High Court Criminal Appeal No. 381 of 2010**.
 - The court emphasized that the quashed conviction could not be used to support allegations of corruption in the present case.²⁶
- (b) Whether the Respondents have satisfactorily explained how the impugned assets and funds were acquired, and whether the same were acquired through corruption**

²⁵ Ibid, Paragraph 9

²⁶ Ibid, Paragraphs 23–26

- The Respondents provided explanations supported by documents such as audit reports, audited accounts, and bank statements.
- They argued that the Commission misclassified deposits, credits, and gross revenue as unexplained assets without considering withdrawals or transfers.
- The Respondents also pointed to inheritance, declared assets in wealth forms, and legitimate business ventures as sources of their assets.²⁷

(c) Whether the impugned assets and funds are disproportionate to the known legitimate sources of income of the 1st Respondent and his co-Respondents

- The court discussed the disproportionality test, requiring proof that the assets were beyond the subject's known legitimate income.
- It rejected the Commission's argument that the 1st Respondent's salary alone was the only legitimate source of income, emphasizing that investments, inheritance, and other ventures must be considered.²⁸

(d) Whether the impugned assets and funds should be forfeited to the state as having been acquired through corruption

- The court stressed that civil forfeiture proceedings require the Commission to prove its case on a balance of probabilities.
- The burden of proof remained with the Commission, and mere suspicion was insufficient for forfeiture.
- The court found that the Commission failed to prove a nexus between the assets and corrupt activities or demonstrate disproportionality.²⁹

²⁷ Ibid, Paragraphs 27–32

²⁸ Ibid, Paragraphs 33–43

²⁹ Ibid, Paragraphs 44–53

Final Determination

The court concluded that the Commission failed to prove its case, and the Respondents had satisfactorily explained the acquisition of the assets. The suit was dismissed, and the interlocutory preservation orders were discharged, unfreezing the impugned assets and bank accounts.³⁰

4. Problematic Implications of the *Nashon Wilson Kanani Case* for Asset Forfeiture Proceedings in Kenya

The judgment in *Ethics and Anti-Corruption Commission (EACC) v. Nashon Wilson Kanani and 5 Others* has introduced several challenges for future civil asset forfeiture cases in Kenya. While it reflects the judiciary's commitment to procedural fairness, it creates problematic implications for the effectiveness of asset recovery.

Main Problem: Lack of Objective Standards

The court's failure to establish clear and objective standards for evaluating whether assets were obtained illegally undermines the predictability and consistency of asset forfeiture proceedings. By rejecting the Commission's argument that unexplained assets were inherently suspect without more substantial evidence, the judgment sets a high bar that future cases may struggle to meet. This approach could make it harder to prove civil forfeiture cases, especially where the respondents provide limited but plausible explanations for their wealth.

Problematic Consequences

❖ Difficulty in Prosecution:

Investigative agencies will face challenges meeting the evidentiary burden, particularly in proving a nexus between suspected assets and corrupt conduct. The judgment places greater emphasis on detailed investigations and reliance on

³⁰ Ibid, Paragraphs 54–57

direct evidence, which is often hard to obtain in cases of financial crimes.

❖ **Risk of Deterring Civil Forfeiture Cases:**

The lack of clear guidance may discourage agencies like the EACC from pursuing forfeiture cases, especially when resources are limited, or evidence is circumstantial. This could lead to the perception that public officials with disproportionate wealth can avoid accountability if they provide vague or general explanations.

❖ **Weakening of Preventive Measures:**

Civil forfeiture proceedings are meant to serve as a deterrent against corruption and economic crimes. The heightened evidentiary threshold set by this case could weaken this preventive function.

4.1 Threshold of Legal Burden of Proof

The court addressed the burden of proof, emphasizing the need for the EACC to maintain the legal burden of proof throughout the proceedings. However, its reasoning lacked sufficient clarity and justification.

Key Concerns:

❖ **Unexplained Justification for Chosen Standard:**

The court applied the standard of proof on a balance of probabilities but did not clearly explain why this standard was most appropriate for civil forfeiture cases involving unexplained assets. A more elaborate rationale would have helped stakeholders understand why this standard balances the interests of fairness and effective asset recovery.³¹

³¹ Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

❖ **Inadequate Exploration of Contextual Appropriateness:**

While the court noted the difference between civil and criminal standards of proof, it failed to examine the nuances of asset forfeiture, which blends aspects of civil and quasi-criminal proceedings. A detailed discussion on why this burden was selected, and its implications for anti-corruption efforts, would have strengthened the judgment.³²

Proposed Improvements:

❖ **Clarifying Evidentiary Burdens:**

The judgment should have elaborated on how the legal burden of proof aligns with the policy goals of civil forfeiture, particularly the balance between protecting rights and deterring corruption. This could include an explanation of why the evidential burden shifts to the respondent upon establishment of a *prima facie* case.³³

❖ **Addressing Context-Specific Standards:**

The court could have examined whether a modified civil standard of proof (e.g., a higher balance of probabilities) might be more appropriate in cases involving public interest concerns, such as forfeiture proceedings.³⁴

By failing to clarify the standards of proof and evidentiary requirements in a manner tailored to the realities of corruption cases, the judgment leaves investigative agencies with limited guidance. This creates ambiguity in the prosecution of future civil forfeiture cases, potentially allowing individuals with significant but unexplained wealth to escape accountability.

³² *ibid*

³³ *ibid*

³⁴ *ibid*

4.2 Explanation of How Assets Were Acquired

One of the significant shortcomings in the *Nashon Wilson Kanani case* is the court's acceptance of explanations provided by the Respondents regarding the acquisition of assets. The failure to adequately scrutinize these explanations undermines the effectiveness of civil forfeiture proceedings, particularly in cases where unexplained assets are spread across associates, family members, and linked entities.³⁵

Unsatisfactory Explanations

Overreliance on Respondents' Evidence: The court accepted the explanations provided by the 1st Respondent and his co-Respondents, including declarations of assets, audit reports, and other documents, without subjecting them to rigorous scrutiny. For instance, the court accepted inheritance claims and entrepreneurial activity as plausible sources of wealth but did not investigate further to verify the validity of these assertions. This approach risks creating a precedent where unverified declarations suffice to avoid forfeiture proceedings.

Failure to Scrutinize the Source of Assets Linked to Spouse and Entities

❖ Spouse's Assets:

The 5th Respondent, Kanani's spouse, was implicated in the proceedings, yet the court failed to adequately examine the link between her alleged wealth and the 1st Respondent's disproportionate assets. The court dismissed her joinder as "oppressive" based solely on her spousal connection, without a deeper investigation into whether her wealth might have been used to conceal illicit assets.³⁶

³⁵ Gikonyo, C. (2023). Kenya's Proceeds of Crime Act: The Asset Forfeiture Regime and Attendant Human Rights Issues. *E. Afr. LJ*, 1.

³⁶ *Ethics and Anti-Corruption Commission v Kanani & 5 others* [2024] KEMC 45 (KLR)

❖ **Entities Linked to the 1st Respondent:**

The companies associated with Kanani were treated as distinct legal entities, with the court requiring a lifting of the corporate veil to establish any connection to the 1st Respondent's alleged corrupt activities. However, civil forfeiture cases often involve indirect ownership or use of entities to launder proceeds of corruption. The lack of a detailed analysis of transactions, financial flows, or directorships of these companies leaves significant gaps in the judgment.³⁷

Problematic Implications

❖ **Encouragement of Asset Concealment:**

By accepting insufficiently scrutinized explanations, the judgment may incentivize the use of spouses, relatives, and corporate entities as shields to obscure the true ownership of assets acquired through corruption.

❖ **Undermining Investigative Standards:**

The failure to scrutinize the nexus between the 1st Respondent's activities and the assets linked to him or his associates weakens the ability of anti-corruption bodies to enforce accountability.

❖ **Erosion of the Deterrent Effect of Forfeiture Proceedings:**

Allowing vague explanations to suffice undermines the purpose of forfeiture proceedings as a deterrent against corruption and economic crimes.³⁸

Recommendations for Future Cases

³⁷ Gikonyo, C. (2023). Kenya's Proceeds of Crime Act: The Asset Forfeiture Regime and Attendant Human Rights Issues. *E. Afr. LJ*, 1.

³⁸ *ibid*

❖ **Rigorous Examination of Wealth Declarations:**

Courts should insist on more detailed evidence and corroboration when respondents rely on wealth declarations, inheritance claims, or entrepreneurial activities to justify their assets.³⁹

❖ **Enhanced Scrutiny of Linked Parties and Entities:**

Judicial analysis should extend beyond formal ownership to explore patterns of transactions, transfers, and influence within linked entities and associates.⁴⁰

❖ **Strengthening the Corporate Veil Doctrine in Forfeiture Proceedings:**

In cases involving corporate entities, courts should adopt a more proactive approach in lifting the corporate veil to uncover potential connections to illicit wealth.⁴¹

The *Nashon Wilson Kanani* judgment's lax scrutiny of explanations creates a problematic precedent that investigative agencies may struggle to overcome, limiting their ability to trace and recover assets tied to corrupt activities.

4.3 Evaluation of Disproportionality of Assets to Legitimate Income Sources

In the *Nashon Wilson Kanani* case, one of the critical issues for determination was whether the Respondents' assets were disproportionate to their known legitimate sources of income.⁴² The court's failure to establish an objective standard for evaluating disproportionality is a major shortcoming, with significant implications for future asset forfeiture proceedings.

³⁹ *ibid*

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² *Ethics and Anti-Corruption Commission v Kanani & 5 others* [2024] KEMC 45 (KLR) par 9

Absence of an Objective Standard

❖ No Clear Benchmark for Disproportionality:

The court did not articulate a clear or consistent methodology for assessing whether the value of assets was disproportionate to the Respondents' known legitimate income. This omission leaves a significant gap, as disproportionality is central to the statutory framework under Section 55(2) of the Anti-Corruption and Economic Crimes Act (ACECA).

❖ Reliance on Respondents' Explanations:

While the Respondents provided explanations, including income from investments, inheritance, and entrepreneurial ventures, the court accepted these explanations without a detailed comparison of declared income and the value of the impugned assets. The court criticized the Commission's reliance on the 1st Respondent's salary as the primary indicator of legitimate income but failed to propose an alternative metric for determining disproportionality.⁴³

Implications of the Lack of Objective Standards

❖ Inconsistent Application of Forfeiture Laws:

Without a clear standard, courts handling similar cases may apply disproportionality tests arbitrarily, leading to inconsistent outcomes. This creates uncertainty for both investigative agencies and respondents.⁴⁴

⁴³ *ibid*

⁴⁴ Kabau, T. (2016). Constitutional dilemmas in the recovery of corruptly acquired assets in Kenya: strengthening judicial assault on corruption. *Africa Journal of Comparative Constitutional Law*, 2016(1), 23-57.

❖ **Increased Evidentiary Burden on Investigative Agencies:**

The lack of benchmarks places a heavier burden on investigative agencies to justify their findings of disproportionality, requiring extensive financial investigations and expert valuations.⁴⁵

❖ **Opportunity for Abuse of Loopholes:**

The absence of an objective standard creates opportunities for respondents to exploit vague or flexible interpretations of disproportionality, weakening the efficacy of forfeiture proceedings.⁴⁶

Recommendations for Establishing Objective Standards

❖ **Adoption of a Quantifiable Framework:**

Courts should adopt a framework for disproportionality that quantifies the gap between known income and asset values. For instance: Establishing ratios or thresholds (e.g., assets exceeding 300% of known income over a defined period); Utilizing forensic audits to substantiate claims of disproportionate wealth.⁴⁷

❖ **Guidance on Evidentiary Thresholds:**

Judicial guidelines should clarify what level of evidence suffices to demonstrate disproportionality, ensuring fairness to respondents while holding public officials accountable.⁴⁸

⁴⁵ *ibid*

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ *ibid*

❖ Consideration of Additional Income Sources:

Courts should require respondents to provide documentary evidence of income sources (e.g., business records, tax returns) and subject these to independent scrutiny.⁴⁹

The court's failure to advance an objective standard for disproportionality undermines the clarity and predictability of asset forfeiture laws. This shortcoming could hinder future efforts to recover assets derived from corruption, emphasizing the urgent need for a more structured approach to evaluating disproportionate wealth.

4.4 Preservation Orders

In civil forfeiture proceedings, preservation orders play a critical role in securing assets suspected to be linked to corrupt conduct or economic crimes.⁵⁰ The judgment in the *Nashon Wilson Kanani case* raises several concerns regarding how preservation orders are applied and managed during the process.

Key Concerns Highlighted in the Case

❖ Overreliance on Preservation Orders at the Interlocutory Stage:

The court acknowledged that preservation orders, which require only reasonable suspicion as a threshold, are intended as precautionary measures to secure disputed assets during investigations and litigation.⁵¹ However, the judgment underscored that such orders cannot form the substantive basis for forfeiture, as the latter requires proof beyond mere suspicion.

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ *Ethics and Anti-Corruption Commission v Kanani & 5 others* [2024] KEMC 45 (KLR) Paragraph 53

❖ **Insufficient Transition from Suspicion to Proof:**

The Commission's reliance on the preservation orders was problematic because it failed to substantiate its claims with sufficient evidence during the main proceedings. The court emphasized that preservation orders are temporary measures and should not replace the evidentiary burden required for forfeiture.⁵²

❖ **Impact on Respondents' Rights:**

Prolonged or improperly justified preservation orders can unfairly infringe on respondents' property rights, especially if the proceedings are ultimately unsuccessful. In this case, the court lifted the preservation orders and unconditionally unfroze the assets, citing the Commission's failure to transition from suspicion to conclusive proof.⁵³

Problematic Implications

❖ **Potential Misuse of Preservation Orders:**

The ease of obtaining preservation orders based on suspicion alone may lead to their misuse as punitive measures rather than precautionary tools. This risks undermining public confidence in the forfeiture process, especially when such orders are overturned without substantive findings.⁵⁴

❖ **Chilling Effect on Investigative Agencies:**

The judgment could discourage agencies from seeking preservation orders if they fear that failing to meet a high evidentiary threshold at trial may result in the reversal of these orders, even when suspicion is well-founded.⁵⁵

⁵² Ibid, Paragraphs 50–53

⁵³ Ibid, Paragraphs 56–57

⁵⁴ Barasa, M. N. (2021). *The Role of International Economic Crime on Economic Development: A Case Study of Kenya and Botswana* (Doctoral dissertation, University of Nairobi).

⁵⁵ ibid

❖ **Risk of Asset Dissipation:**

Conversely, the failure to effectively utilize preservation orders could lead to the dissipation of assets before forfeiture proceedings are concluded, frustrating the recovery process.⁵⁶

Recommendations for Future Cases

❖ **Enhanced Evidentiary Threshold for Issuing Preservation Orders:**

Courts should ensure that preservation orders are supported by strong preliminary evidence, rather than merely reasonable suspicion, particularly in high-value cases or those involving significant public interest.⁵⁷

❖ **Time-Bound Preservation Orders:**

Preservation orders should be time-limited, with mandatory reviews to ensure they remain necessary and proportionate based on the progress of investigations or proceedings.⁵⁸

❖ **Balanced Consideration of Rights and Public Interest:**

Courts should strike a balance between protecting respondents' property rights and preventing the dissipation of assets. This includes considering alternatives, such as partial freezing or interim management of disputed assets.⁵⁹

❖ **Clear Judicial Guidance on Transition from Preservation to Forfeiture:**

The judiciary should provide detailed guidelines on the evidentiary requirements needed to transition from preservation orders to forfeiture,

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ *ibid*

ensuring that preservation orders serve their intended purpose without overreach.⁶⁰

The judgment in the Kanani case highlights the challenges of reliance on preservation orders as a cornerstone of forfeiture proceedings. While necessary to prevent asset dissipation, the proper application and management of preservation orders require careful judicial oversight to ensure they are not misused or rendered ineffective. Clear guidelines and proportionality in their application are essential for maintaining fairness and the integrity of the forfeiture process.⁶¹

Conclusion

The case of *Ethics and Anti-Corruption Commission v. Nashon Wilson Kanani and 5 Others* illustrates the significant legal and procedural challenges facing civil forfeiture proceedings in Kenya. While civil forfeiture remains a vital tool for asset recovery, its effectiveness is hindered by gaps in the legal framework, the absence of clear and objective standards, and inconsistencies in judicial interpretation. The court's failure to establish robust benchmarks for evaluating disproportionality, scrutinizing asset acquisition explanations, and transitioning from preservation orders to forfeiture has created uncertainties that weaken the deterrent effect of forfeiture laws.

These challenges underscore the need for reforms to ensure that civil forfeiture proceedings are both effective and fair. Investigative agencies must be empowered with clear guidelines on evidentiary thresholds, and courts must adopt objective and consistent standards for assessing unexplained assets. Strengthening the procedural framework will enhance the ability of Kenya's anti-corruption bodies to recover stolen assets while maintaining procedural safeguards for respondents.

⁶⁰ *ibid*

⁶¹ *ibid*

Ultimately, addressing these shortcomings is essential to restoring public confidence in the asset recovery process and ensuring that corruption does not pay. By drawing lessons from the *Nashon Wilson Kanani case*, stakeholders have an opportunity to refine Kenya's legal tools for tackling economic crimes and safeguarding public resources.

References

Anti-Corruption and Economic Crimes Act

Barasa, M. N. (2021). *The Role of International Economic Crime on Economic Development: A Case Study of Kenya and Botswana* (Doctoral dissertation, University of Nairobi).

Ethics and Anti-Corruption Commission v Kanani & 5 others [2024] KEMC 45 (KLR)
Gikonyo, C. (2023). Kenya's Proceeds of Crime Act: The Asset Forfeiture Regime and Attendant Human Rights Issues. *E. Afr. LJ*, 1.

Kabau, T. (2016). Constitutional dilemmas in the recovery of corruptly acquired assets in Kenya: strengthening judicial assault on corruption. *Africa Journal of Comparative Constitutional Law*, 2016(1), 23-57.

Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

Oonge, E. (2021). *An Examination of Asset Seizure, Preservation, Forfeiture and Management in Kenya* (Doctoral dissertation, University of Nairobi).
Proceeds of Crime and Anti-Money Laundering Act

Transformation of Lion-Maasai Conflict Through Community Based Conciliation Initiatives

By: *Abuya John Onyango** & *Stephanie Lore Okoyo***

Abstract

Wildlife is a pillar to Kenya's tourism sector with Lions crowning it as one of the favorite wild animals. Around many of their habitats in Kenya is the Maasai community. The Maasai community has lived in close proximity with the Lions providing an incentive for conflicts between Lions and the Maasai. This paper appreciates how the community based conciliation initiatives have been instrumental in finding amicable solutions to the conflict which include the community led conservancies established under the wildlife Act that play an important role in preserving biodiversity and contributing to the socioeconomic growth of communities to which they belong. Maasai Olympics, Lion guardians and the Lion Lights programs have also been instrumental in Lion conservation. However, this paper notes that community-based conciliation initiatives are not recognised under the Wildlife Act thus putting at risk its benefits. It proposes a framework that recognises these initiatives for sustainable lion-maasai conflict management. This paper relies on doctrinal legal research through analysis of legislations and journal articles.

Key Words: *Maasai Lions Conservation Conflict Resolution*

1.0 Introduction

‘There is nothing, save the selfish heart of man that lives unto itself’.¹ In both

* Final Year Student of Law awaiting Graduation at the University of Nairobi. He is a Certified Professional Mediator and an Associate Editor at the Young Arbiters Society University of Nairobi Chapter. He has an astute passion in legal research and writing and has published several articles in the platform magazine and the Journal of Conflict Management and Sustainable Development focusing on the rule of law, socioeconomic justice and alternative dispute resolution mechanisms. He is currently the Chairperson of the Legal Aid Committee at the University of Nairobi Seventh Day Adventist Church. The Committee recently organized a Legal Aid Clinic at Kibera for two weeks

environmental and biodiversity conservation, man plays a significant role.²

championing the right of access to justice to the Kibera Community.

He has a Certification in Tax from the Kenya School of Revenue Administration having a good grasp on Income Tax, Taxation of Employment Income, Taxation of Terminal Benefits, Value Added Tax, Excise Duty, Withholding Taxes, Significant Economic Presence Tax, Customs, Tax Disputes Resolution, International Taxation and Transfer Pricing. He won the First place award at the Alternative Dispute Resolution Mechanisms (ADR) and the Law Essay Writing Competition. Recently participated in the Lady Justice Joyce Aluoch International Inter-Varsity ADR Moot Competition representing the University of Nairobi. The University of Nairobi won the Best Overall Mediation Plan and the 2nd Runners Up Mediator. The Competition was organized by Women in ADR and the United States International University (USIU-Africa).

He has engaged in Research for the African Arbitration Association as an Observer to the 81st Session of UNCITRAL United Nations Commission on International Trade Law Working Group II Session on Dispute Settlement in New York. The Research discussed the state of use, recognition and enforcement of Electronic Arbitral Awards in Africa and proposed recommendations to amend the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards to recognize Electronic Arbitral Awards. It also proposed amendment of the African Domestic Arbitration Acts to allow the use of Electronic Arbitral Awards in the digital commercial landscape.

Recently joined the training on International Commercial and Investment Arbitration organized by the Institute for African Women in Law. This anchored his passion on International Commercial and Investment Arbitration.

Contact: +254794478421 Email: johnabuya92@gmail.com.

*** Fourth Year Student of Law at the University of Nairobi and Certified Professional Secretariat Student at the Vision Institute of Professionals. She is a legal researcher and writer and has published articles in the Platform Magazine focusing on International Investment Law and AI. She is also a Certified Professional Mediator. She won the First place award at the Alternative Dispute Resolution Mechanisms (ADR) and the Law Essay Writing Competition.*

Contact: +254713722571 Email: lorestephanie20@gmail.com.

¹ Ellen W, The Desire of Ages, Pacific Press Publishing Company (1900), 20.

² Nyoman Arsana, "SUBAK: Traditional Ecological Knowledge for sustainable biodiversity conservation." IOP Conference Series: Earth and Environmental Science,

However, in many instances man has always ministered to his own needs in industrial civilization and development up to the twentieth century when attention was given to environmental and biodiversity conservation.³ This was due to the realization that the process of industrial civilization and development required limitations on the exploitation of natural resources and adoption of appropriate legal instruments as the natural resources were finite.⁴

In wildlife conservation, efforts were made towards the protection of wildlife in colonial areas through use of trade restriction on sale of skin and products of wildlife.⁵ This was through the 1968 Algiers convention on African biodiversity which was later on amended in 2003.⁶ These legislations were crucial in wildlife conservation as they established wildlife zones and conservancies, prevented human encroachment into the zones and outlawed poaching.⁷ In Kenya, some of these conservation policies were not embraced by some of the neighboring communities.⁸ The establishment of wildlife protected areas left many of them thinking that their land was taken away

2024, 4.

³ Proceedings of the United Nations Scientific Conference on the Conservation and Utilisation of Resources, 17 August- 6 September 1949.

⁴ Xuge Li, "The Construction of Ecological Socialism Under the Concept of Liberating Nature: William Rice's critique of the concept of controlling nature." *Unesp Journal of Philosophy*, 48(3) 2025 1-15.

⁵ African Convention on the Conservation of Nature and Natural Resources, September 15 1968.

⁶ Ibid.

⁷ Atmani Ali, "The Development of Algerian Environmental Legislation in Comparison to International Environmental Legislation" *Algerian Journal of Legal and Political Sciences* 61(N 04) 2024 48.

⁸ Álvaro Fernández-Llamazares, "Historical shifts in local attitudes towards wildlife by Maasai pastoralists of the Amboseli Ecosystem (Kenya): Insights from three conservation psychology theories" *Journal for Nature Conservation*, Volume 53, 2020, 3

from them as they were pastoralists.⁹ This fueled negative response towards conservation efforts leading to negative interactions between the Maasai and lions as the lions would attack and kill their livestock and they would kill the lions in retaliation. This has offered a stumbling block in lion conservation efforts in Kenya.¹⁰

The Wildlife Act enshrines anti-poaching laws that prohibit the killing of lions who are also listed as one of the endangered animals.¹¹ These laws are enforced mainly through litigation.¹² However, these have done little to solve the lion-Maasai conflict thus necessitating the involvement of third parties to help combat this problem.¹³ Non-governmental organizations and Kenya Wildlife Service have recently adopted community-based conciliation initiatives where awareness is created within the community on the importance of wildlife conservation thus encouraging their involvement in the conservation programs.¹⁴

This paper asserts that community-based conciliation initiatives have led to the adoption of conservation programs that guarantees wildlife conservation and benefits to the community.¹⁵ The products of these initiatives include

⁹ Ibid

¹⁰ Ibid

¹¹ Part XI, Wildlife Conservation and Management Act (Act No. 47 of 2013).

¹² Ibid.

¹³ Leela N. Hazzah; " Living Among Lions (panthera Leo): Coexistence or Killing? Community Attitudes towards conservation initiatives and the Motivations behind lion killing in Kenyan Maasailand" Thesis submitted in partial fulfilment of the requirements for the degree of Masters of Science Conservation Biology and Sustainable Development, 2006, 9.

¹⁴ Ibid.

¹⁵ Ibid.

Maasai Olympics,¹⁶ community-led conservancies,¹⁷ lion guardian¹⁸ and Lion Lights Program.¹⁹ However much the paper commend the community-based conciliation initiatives, it notes that the Wildlife Act does not recognize alternative dispute resolution mechanisms as solutions to the lion-maasai conflicts in Kenya. This threatens the sustainability of the programs as the only recognized mechanism is litigation which is coercive in nature, expensive, inflexible and offers win-lose situations.²⁰ However, this paper notes that litigation is important in enforcement of rights of the community in some cases.²¹

This paper proposes a framework that recognises the community-based conciliation initiatives as one of the methods of solving lion-maasai conflicts. In this framework, the government is to ensure that it is cost-free and protects the interests of the communities involved.²² The government is also to facilitate active involvement of non-governmental organisations in these initiatives. The paper also recommends the application of community-based conciliation initiatives in solving lion- maasai conflicts across the country.

¹⁶ Toshio Meguro, "The Unchanged and Unrepresented Culture of Respect In Maasai Society" *African Study Monographs*, 40(2&3) 2019 ,94-95.

¹⁷ Guy Western, "Creating Landscapes of Coexistence: Do Conservation Interventions Promote Tolerance of Lions in Human Dominated Landscapes?" *Conservation and Society* 17(2): 2019, 204-217.

¹⁸ Goldman MJ, "Beyond ritual and economics: Maasai lion hunting and conservation politics." *Oryx*. 2013 47(4) 490- 500.

¹⁹ Lesilau F, "Effectiveness of a LED flashlight technique in reducing livestock depredation by lions (*Panthera leo*) around Nairobi National Park, Kenya." *PLoS ONE* 13(1) 2018.

²⁰ Kariuki Muigua, "Managing Environmental Conflicts through Alternative Dispute Resolution" 6.

²¹ Ibid.

²² Ibid.

2.0 Lion Conservation in Kenya

The Government of Kenya has initiated several conservation programs to protect lions and adopt programs to ensure the Maasai community benefit from the wildlife. These include:

2.1 Wildlife Protected Areas.

Wildlife protected areas were created to protect the wildlife from unlawful exploitation by humans.²³ The increasing poaching activities and trading of wildlife products necessitated establishment of these protected areas to conserve wildlife.²⁴ This was in realization of the need for conservation of biological diversity and sustainable use of its components for the interest of the future generations.²⁵

Recently, the creation of wildlife zones have been necessitated by increase in human population, climate change and variability, land use change and the associated habitat degradation, fragmentation and loss and their impacts on livestock and wildlife populations.²⁶ These processes alter resources for humans, livestock and wildlife, intensifying competition for space, forage and water.²⁷

Ian Parker, a wildlife writer and researcher, referring to the situation in Kenya, noted that the increasing human population around the wildlife conservation areas cause the people to break laws more frequently by encroaching into the conservation zones thus leading to social and political

²³ Kiringe, Okello, "Threats and Their Relative Severity to Wildlife Protected Areas of Kenya" *Applied Ecology and Environmental Research* 5(2) 2007, 50.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Joseph M, 'Human-wildlife conflicts and their correlates in Narok County Kenya'. *Global Ecology and Conservation*, 2 Elsevier (2019), 14.

²⁷ ibid 16.

unrest necessitating a change on how the government enforces conservation laws which aim at restricting human encroachment to the wildlife zones.²⁸

Despite the good intended by the creation of wildlife protected areas, some of the neighboring communities had negative reactions towards it as they felt that large parts of their land were alienated for the parks and reserves²⁹ and that they received little or no benefits from their creation.³⁰

Lusigi notes that national parks are a western idea, the outgrowths of western conservation needs, fears and worries, introduced to developing countries by colonial powers and later copied by developing nations under pressure and encouragement from both international conservation organizations and conservationist members of local elite groups.³¹ This represented the attitude of the Maasai community towards establishment of wildlife zones. In response to the establishment of national parks and reserves, some of the Maasai community elders expressed themselves as follows:

“How did you feel when Amboseli was made a National Park?” The elder replied: “Let’s be honest, now. If I take your property away from you without your consent, will you be happy? Now for the fox [government or wazungu] who forced us to move from the park, have they succeeded in containing these animals in that park? Has the wildlife stopped roaming all over the group ranches and eating our cows? So, they could have just left it and just let us live with them like the time before. We have lost our land and our rights to use it. So, it

²⁸ Yeager and Miller, ‘Land Use and Survivals East Africa’. Wildlife, Wild Death, Albany State, University of New York Press, (1986).

²⁹ Supra n 13, 34.

³⁰ Ibid.

³¹ Lusigi W, ‘The Conservation Unit Approach to the planning and management of National Parks and Reserves in Kenya based on the Nairobi National Park Ecosystem’. Planning Human Activities on Protected Natural Ecosystem, University of Chicago Press Journals (1978).

was a very bad idea.”³²

“Conservation authorities are operating "anti-people preservation strategies" which fail to recognize the link between Indigenous culture and the survival of wildlife. Without involving the local people, no room should be expected for wildlife. Wildlife authority does not want us. They see us as poachers or protectors of poachers. We never poach. We have lived with wildlife for years - although they cause problems to us, we can still live with them, but the government must not intervene. Why take our land and refuse us to graze it?”³³

2.2 Compensation Schemes

The current compensation scheme was established in late 1979.³⁴ In this scheme, those who suffered property damage, human death or injury because of wildlife would receive monetary compensation from the government.³⁵ However, no compensation would be paid in cases where the loss of life or injury occurred in the course of illegal activities, as in the case of poaching wild animals³⁶. Indirect damage such as the loss of livestock due to disease transmitted by wildlife or competition for resources was not being included

³² Leela N, ‘Living Among Lions (Panthera Leo): Coexistence or Killing? Community Attitudes towards Conservation Initiatives and The Motivations behind Lion Killing in Kenyan Maasai land’ Unpublished LLM Thesis, University of Wisconsin-Madison, 2006 33-42

³³ Paul O, ‘Wildlife Human Conflict in Kenya: Integrating Wildlife Conservation with Human Needs in the Maasai Mara Region’ Unpublished LLM Thesis, McGill University, Montreal, August 1994 280.

³⁴ Task Force on Human Wildlife conflict Compensation Schemes Final Report July 2020 < <https://www.tourism.go.ke/wp-content/uploads/2020/07/Task-Force-on-Human-Wildlife-Conflict-Compensation-Schemes-Final-Report.pdf> > accessed 16th March, 2025.

³⁵ Ibid.

³⁶ Section 62, Wildlife Conservation and Management Act 1976.

in the scheme because it is difficult to quantify or confirm such losses.³⁷ A senior elder from Oltukai explained that when he was an olmurran, he ‘killed a lion so it would no longer kill cattle.’ When asked if ilmurran could be prevented from killing lions today if monetary compensation for the lost cattle was provided, he emphasized the need to kill the responsible lion:

“We cannot agree to compensation because we do not have cattle to be killed every day! We must go and kill that lion because our payment is to kill that lion today. If they pay money today, then tomorrow, they will pay every day because the lion will keep coming back to eat cattle until all the cattle are gone. And then what will we do with the money?”³⁸

The same elder further illustrated why they were dissatisfied with the compensation programs which they felt could not compensate for the cattle killed by the lions in stating that they cannot stop the ilmurran from killing the lion because of their deep emotional attachment to their lost cattle. The compensation programs are deficient in supplementing this emotional attachment.³⁹

3.0 Relationship between Lion and the Maasai

Lion, the King of the Jungle is loved and cherished by many because of its symbol of bravery, strength and power.⁴⁰ Branded as one of the Big Five, it attracts many tourists to Kenya thus leading to an increase in revenue from

³⁷ Ibid.

³⁸ Mara J, ‘Maasai lion hunting and conservation politics’. Beyond ritual and economics, Cambridge University Press (2013) 8.

³⁹ Ibid.

⁴⁰ Lion: King of the Jungle, WWF Kenya News <<https://www.wwfkenya.org/?233930/LION-KING-OF-THE-JUNGLE>> accessed 16th March, 2025.

wildlife as part of tourism.⁴¹ However, did you know that the King of the Jungle share a special relationship with the Maasai community? Many papers have been written discussing this relationship which this author shall not endeavor to discuss. In this part, the author would like to explore the unique nature of the conflict between the King of the Jungle and the Maasai. These conflicts have contributed to a decline in the number of Lions in Kenya thus attracting the attention of the world in understanding the nature of this conflict.⁴²

Why do the Maasai Kill lions? What motivates them to continue in the practice? This paper identifies three major reasons why the Maasai are motivated in killing lions. These include killing lions as a Ritual⁴³ and part of Olamayio⁴⁴ and killing of lions as a result of conservation politics.⁴⁵ The understanding of these reasons is crucial in developing sustainable conservation programs.

3.1 Ritual

In order to understand the relationship between lions and the Maasai community, the author shall rely on Mara Goldman's theory of beyond ritual and economics in appreciating the Maasai lion hunting and conservation politics.⁴⁶ Maasai are a predominantly pastoralist people who inhabit the

⁴¹ Okumu Paul, "Influence of Destination Brand Image and Stakeholders' Role on Wildlife Parks' Attractiveness in the Amoseli-Tsavo Ecosystem, Kenya" *Int Journal of Social Sciences Management and Entrepreneurship* 8(2): 2024, 1362.

⁴² Mumbi Chege, 'Evaluating past management practices and recommendations for future conservation actions'. Genetic diversity of Lion populations in Kenya, Evolutionary applications, wiley online library journal (2024).

⁴³ Goldman MJ, "Beyond ritual and economics: Maasai lion hunting and conservation politics." *Oryx*. 47(4) 2013 490- 500.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Alvaro F, 'Historical shifts in local attitudes towards wildlife by maasai pastoralists of

savannah grasslands of southern Kenya and northern Tanzania.⁴⁷ They are divided into territorial sections, and linked through clan affiliations and a common age-grade or age-set system.⁴⁸

Much has changed for Maasai over the past century, including land loss (to farms, protected areas), livelihood diversification, formal education and religious conversion.⁴⁹ But the age-grade system still forms the foundation of the Maasai social structure in a way that is essential to understanding why the Maasai hunt lions.⁵⁰ A new age-set is started every ten to fifteen years, where men proceed from being young uncircumcised boys to circumcised young men or *ilmurran* (warrior), to elders.⁵¹ The 'warrior' age-grade lasts approximately twenty years for each age-set, providing for a parallel overlap with at least one and sometimes two age-sets of *ilmurran*.⁵² Historically, this provided a standing army to protect the community from threats to people and livestock and ensure that younger *ilmurran* learn from their older cohorts.⁵³ Today it remains the duty of *ilmurran* to protect the community and cattle from raiding neighboring groups, predators and the impacts of

the Amboseli ecosystem (Kenya)'. Insights from the conservation psychology theories, 53
Journal for Nature Conservation (2020).

⁴⁷ Mara J. Goldman, "Maintaining Complex Relations with Large Cats: Maasai and Lions in Kenya and Tanzania." Human Dimensions of Wildlife: An International Journal, 15(5), 2010 332

⁴⁸ Spear & Waller, 'Ethnicity and Identity in East Africa'. Being Maasai, Ohio University Press Athens, (1993).

⁴⁹ Kituyi, 'Socio-Economic Transformation of the Pastoral Maasai'. Becoming Kenyans, Acts Press Nairobi, Kenya, (1993).

⁵⁰ Mara J. Goldman, "Maintaining Complex Relations with Large Cats: Maasai and Lions in Kenya and Tanzania." Human Dimensions of Wildlife: An International Journal, 15(5), 2010.

⁵¹ Ibid.

⁵² Knowles, Joan Nancie, "Power, influence and the political process among Iloitai Maasai." Durham theses, Durham University 1993 ix.

⁵³ Ibid.

drought.⁵⁴ They continue to learn from elders and senior cohorts, particularly regarding hunting lions, and the term used for the hunt is (*olamayio*).⁵⁵ Part of the duties of *ilmurran* is to know how to hunt lions.⁵⁶ *Olkiyioi* is the Maasai word for war cry.⁵⁷ When faced with an emergency *ilmurran* rally each other, issuing an *olkiyioi* by blowing a ceremonial kudu horn, delivering the message by foot, or today with the use of mobile phones.⁵⁸ An *olkiyioi* can be called in response to any threat.⁵⁹ If an *olkiyioi* is called because of a lion attack on livestock then the *ilmurran* go on an *olamayio*;

“Soon after we see the lion near our homes, we maybe hear it in the night. Tomorrow morning we start following it. [So, it does not always attack livestock first?] We can follow him before he attacks the livestock. We have to protect our cows before [the lion] attacks.”⁶⁰

Explaining why lions were hunted after predation on livestock a senior elder from Esilalei explained:⁶¹

“We know the character of lions. If a lion eats cattle, it will keep eating cattle until you kill it. It will run to eat cattle until you kill it or you move. But the *ilmurran* say, ‘don’t move, let’s go and kill that lion.”

3.2 Olamayio

⁵⁴ Supra n47.

⁵⁵ <https://maasai-association.org/lion.html> on 7 January 2025.

⁵⁶ Ibid.

⁵⁷ Goldman MJ, “Beyond ritual and economics: Maasai lion hunting and conservation politics.” *Oryx*. 47(4) 2013 490- 500.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Leela N, ‘Living Among Lions (Panthera Leo): Coexistence or Killing? Community Attitudes towards Conservation Initiatives and The Motivations behind Lion Killing in Kenyan Maasai land’ 78-104.

⁶¹ Ibid.

An *Olamayio* is an organized group hunt conducted by *ilmurran*,⁶² although elders often participate when there has been an attack on livestock.⁶³ *Olamayio* also refers to the celebration that follows successful hunts⁶⁴, when *ilmurran* are credited for the kill, and only when none of the participants are injured.⁶⁵ With *Kisongo* (community within the Maasai Land), the first two *ilmurran* to spear the lion are celebrated, with the first one who drew blood referred to as the owner of the lion (*olopeny olowaru*).⁶⁶ However, in all cases it is the age-set as a whole more than the individual that is credited with the kill. The lion tail and front paws are taken as trophies and carried by *ilmurran* on the tips of their spears throughout the *olamayio* celebration,⁶⁷ which involves the entire community (men, women, elders, *ilmurran* and young girls).⁶⁸ The hunt is celebrated at nine *bomas* (Maasai settlements), or eight in the case of a lioness.⁶⁹ This shows how important lion hunting is to the *Morans* (Maasai warriors).

In explaining the importance of *Olamayio*, an elder had the following to say:

“[Olamayio is important] because the *olmurrani* who owns the lion will celebrate and will be liked by *isiankikin* [young girlfriends, wives] and will get a new name. So, he looks like he is the one who killed the lion alone when in fact there were so many other *ilmurran* who helped in killing it. When thirty *ilmurran* go on *olamayio* the one who first

⁶² Goldman MJ, “Beyond ritual and economics: Maasai lion hunting and conservation politics.” *Oryx*. 47(4) 2013 490- 500.

⁶³Ibid.

⁶⁴ Mara G, “Strangers in their own Land: Maasai and Wildlife Conservation in Northern Tanzania” *Conservation and Society* 9(1) 2011 76.

⁶⁵ Ibid.

⁶⁶ Goldman MJ, “Beyond ritual and economics: Maasai lion hunting and conservation politics.” *Oryx*. 47(4) 2013 490- 500.

⁶⁷ <https://maasai-association.org/lion.html> on 7 January 2025.

⁶⁸ Supra n43.

⁶⁹ Ibid.

touches the lion with his spear, he is the owner of the lion. Even if the lion is going to injure you, you don't mind! This is why we go for the 'interview': to show who is the bravest, or the strongest or the fastest olmurrani and who isn't. So, this one sets the expectations for the whole age-set." (Kisongo junior elder, Imbirikani group ranch).⁷⁰

3.3 Conservation Politics

Maasai have also killed lions and other charismatic species as political protest against what they perceived as unfair conservation policies.⁷¹ In 1971, Maasai killed large numbers of lions, leopard cubs, hyenas, rhinos and elephants around Amboseli National Park in reaction to the loss of land and resources to the park,⁷² and outside Nairobi National Park, Maasai killed lions allegedly in an effort to get the attention of Kenya Wildlife Services to address increasing predation on their livestock by lions after a severe drought.⁷³ The Maasai in Kenya and Tanzania have been heavily affected by conservation policies, including the loss of grazing land,⁷⁴ permanent water sources and dry season grazing reserves⁷⁵ through the creation of protected areas and the negative impacts of wildlife-livestock and wildlife-people interactions.⁷⁶ Despite playing a large role in the tourism industry in Kenya, and sometimes

⁷⁰ Mara J, 'Maasai lion hunting and conservation politics'. Beyond ritual and economics, 7.

⁷¹ Alvaro F, 'Historical shifts in local attitudes towards wildlife by Maasai pastoralists of the Amboseli ecosystem (Kenya)'. Insights from the conservation psychology theories, 53 *Journal for Nature Conservation* (2020).

⁷² David W, 'Patterns of Depletion in Kenya Rhino Population and The Conservation Implications'. *Biological Conservation Journal* (1982).

⁷³ <https://www.google.com/amp/s/www.aljazeera.com/amp/news/2023/5/14/six-lions-killed-by-herders-in-blow-to-kenyas-conservation-push> on 7 January 2025.

⁷⁴ Elena Riboldi & Lanzavecchia, "National Parks and Conservation Areas: Impacts on the Maasai and Opportunities for Sustainable Cultural Heritage Tourism" 2025.

⁷⁵ Ibid.

⁷⁶ Pereira, Rosalino, "Livelihood vulnerability and human-wildlife interactions across protected areas." *Ecology and Society* 29(1):13 2024.

receiving financial benefits from tourism,⁷⁷ most maasai communities remain excluded from decision-making processes regarding conservation in and adjacent to their lands.⁷⁸

Interviews revealed that the Maasai were frustrated by the lack of benefits from the protected areas and perceived increased conflict with carnivores. An elder stated that:

“...those foxes [government/wazungu] have taken all our fertile land as zones for wildlife, and that wildlife are killing people, eating our livestock, damaging our crops...they just get money from wildlife and they forget about the problems people encounter from wildlife, and there are so many people and they all want to have a share. Now how can a pocket that has a hole get filled up? It's hard.”⁷⁹

Another elder who owns over 3000 cows and primarily uses his cattle for business (i.e., livestock trader) had a positive attitude towards wildlife because of the benefits he received from wildlife clearly revealing negative feeling experienced when no benefits are received. He stated that the Kenya wildlife service bursaries were given out to support the community in the realization of the right to education. The conservancy had also ensured the community had boreholes from which they had water for their livestock and grazing rights given to them were also crucial in sustaining their livelihoods.⁸⁰

⁷⁷ Ibid.

⁷⁸ Claire B, 'Conservation, tourism and pastoral livelihoods'. Wildlife Conservancies in the Maasai Mara, Kenya, Unpublished PhD Thesis, University College London, 2014.

⁷⁹ Leela N, 'Living Among Lions (Panthera Leo): Coexistence or Killing? Community Attitudes towards Conservation Initiatives and The Motivations behind Lion Killing in Kenyan Maasai land' 78.

⁸⁰ Rose M, 'Bridging the conservation and development trade-off? A working landscape critique of a conservancy in the Maasai Mara, Ecological Solutions and

In another instance, a warrior expressed his disappointment in younger age-sets among the Maasai being left out of employment opportunities in the conservancies and national parks. He expressed a desire to conserve wildlife if given an opportunity to participate in the conservation programs and not being left on the sideline.⁸¹

Evidence, 2024.

⁸¹ Shreya C, 'The sensitivity of the Maasai Mara conservancy model to external shocks'. Unpublished Masters Thesis in Global Environment History, Uppsala University 2021.

4.0 Kenya's framework on management of lion-maasai conflicts

In Kenya, conflict management within the wildlife is mainly through the court system based on legislation and policy statements.¹ However, litigation is a coercive process that does not offer the parties a fair chance to find a lasting solution.² It offers win-lose solution that leaves one of the parties dissatisfied with the outcome.³ It is however important to note that the courts have been instrumental in bringing to justice the wildlife poachers and those trading wildlife products thus promoting wildlife conservation.⁴

Despite these positive effects, the court system has fallen short of solving human-wildlife conflicts between the Lions and the Maasai.⁵ This is because the penal laws enforced by the courts have bred negative responses from the community inhibiting conservation processes.⁶ Community based conciliation initiatives have been instrumental in rebuilding the trust between the community and the wildlife.⁷

Article 159 (2) (c) of the Constitution⁸ has provided for the use of alternative

¹ Part XI, Wildlife Management and Conservation Act (Act No. 47 of 2013).

² Davronov D, "Coercive measures in the civil proceedings: Its importance and types" Norwegian Journal of Development of the International Science 2021 18.

³ Ayovi Saputra, "Impact assessment of litigation on construction projects in resolving construction disputes" Universitas Islam Indonesia Yogyakarta 2024.

⁴ Morris & Chris, "Inside the Wildlife Crime Courtrooms of Kenya" International Policy Digest 2024.

⁵ <https://www.aljazeera.com/news/2022/10/1/regional-court-dismisses-maasai-eviction-case-against-tanzania> accessed on 14 March 2025.

⁶ Allison Hailey, "Preserving lions and culture: Conflicting standards of human-wildlife conflict" Journal of African Media Studies 11(3) 2019 347-358.

⁷ Aderonke Adegbite, "Cultural Dimensions in Wildlife Preservation: African Indigenous Perspectives from Nigeria and Kenya" Open Journal of Social Sciences 13(2) 2025 445.

⁸ Article 159 2(c), Constitution of Kenya (2010).

dispute resolution mechanisms. This offers the foundation for the use of community-based conciliation, which is more similar to the Traditional Dispute Resolution Mechanisms (TDRMs).⁹ TDRMs include informal mediation, negotiation, problem-solving workshop, council of elders, consensus approaches among others.¹⁰ These enable the parties to reach a sustainable solution that transforms the conflict.¹¹

Conflict transformation involve the unveiling of the underlying cultural and structural issues in a conflict and parties cooperating together in finding long-term solutions for the conflict.¹² Conflict settlement on the other hand focus on reaching outcomes without necessarily addressing the underlying causes of the conflict.¹³ Community based conciliation initiatives are crucial in conflict transformation as the community is involved in decision making through information sharing and brainstorming to find long-term solutions for the lion-maasai conflicts.¹⁴ It is interest based and not rights based as the court system thus ensuring the interests of both parties are taken into account when formulating outcomes.¹⁵

⁹ Alagau Ababu Kifle, "The Relevance of Traditional Mechanisms of Conflict Resolution to End Localized Communal Conflicts in Africa" *Journal of Asian and African Studies* 2024.

¹⁰ Kariuki M, 'Conflict management mechanisms for effective environmental governance in Kenya, 2018 17.

¹¹ Ibid.

¹² Jumoke A, 'Conflict situations and ways to resolve conflicts'. Research Gate, 2016.

¹³ Engel A & Korf B, 'Negotiation and Mediation techniques for natural resource management,' 2005.

¹⁴ Ivy Nanvula, "Assessment of conflicts under human-wildlife interactions: An application of the conservation conflict transformation model in communities adjacent to Nyerere National Park, Tanzania" *Science of the Total Environment* 951 2024.

¹⁵ Ayush Gurav & Rutuja Moon, "Med-Arb: Ethical Challenges and Effectiveness in Hybrid ADR" *KnowLaw Journal on Socio-Legal and Contemporary Research* 2024 3.

The Convention on Biological Diversity provides for respect, preservation and maintaining knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.¹⁶ This embodies the principle of traditional knowledge in biodiversity conservation which is entrenched in the community based conciliation initiatives.¹⁷

This was reiterated in the case of *Joseph Letuya & 21 Others v Attorney General & 5 others* [2014] Eklr,¹⁸ where the court noted that:

“quite apart from the special consideration that needs to be given to the Ogiek Community as a minority and indigenous group when allocating forest land that this court has enunciated on in the foregoing, this court also recognizes the unique and central role of indigenous forest dwellers in the management of forests. This role is recognized by various national and international laws. The Convention on Biological Diversity which Kenya has ratified and which is now part of Kenyan law by virtue of Art 2(6) of the Constitution recognizes the importance of traditional knowledge, innovations and practices of indigenous and local communities for the conservation and sustainable use of biodiversity and that such traditional knowledge should be respected, preserved and promoted.”

¹⁶ Article 8(j) of the Convention on Biological Diversity, 5 June 1992 1760 UNTS 69.

¹⁷ Luca Luiselli, “Weaving the Middle Spaces Between Indigenous and Scientific Knowledge for Biodiversity Conservation and Ecology” *African Journal of Ecology* 2025 1.

¹⁸ *Joseph Letuya & 21 Others v Attorney General & 5 others* [2014] Eklr.

Traditional knowledge, innovations and practices of indigenous and local communities is essential in lion conservation in Kenya as they have lived with the wildlife ever since before the establishment of wildlife protected areas.¹⁹ Community based conciliation initiatives ensure that community is involved in the decision making where their knowledge and practices are considered.²⁰ If their practices are inconsistent with conservation efforts, awareness is made to them as the process is interest based and not rights based.²¹

5.0 Transformation of Lion-Maasai conflict through community-based conciliation initiatives

As Lusigi observes, the first and most important wildlife research priority is the realization and appreciation of the role man will have played and will continue to play in wildlife conservation.²² The long-standing tie between man and wildlife in Africa and how they co-existed in the past must be thoroughly understood.²³ It is this which will form the basis of our understanding of the present.²⁴ How is this possible? Through community-based conciliation initiatives. These initiatives look at the interests of both parties, in this case the Maasai community and the government, engaged in wildlife protection and provide a way in which these interests can be protected without harming one another.²⁵

¹⁹ Margaret Muriuki, "The influence of community-based conservation governance arrangements on lion population in the Amboseli ecosystem" *GeoJournal* 89 2024.

²⁰ Ibid.

²¹ Edwin Sabuhoro, "Human-Wildlife Conflicts, Household Livelihood Security, and Conservation Support Among Residents Adjacent to the Maasai Mara National Reserve in Kenya" *Wild Journal* 1(2) 2025 1-3.

²² Lusigi W, 'The Conservation Unit Approach to the planning and management of National Parks and Reserves in Kenya based on the Nairobi National Park Ecosystem'. Planning Human Activities on Protected Natural Ecosystem, 1978.

²³ Mara J Goldman, "Maintaining Complex Relations with Large Cats: Maasai and Lions in Kenya and Tanzania" *Human Dimensions of Wildlife Journal* 15(5) 2010 332-346.

²⁴ Ibid.

²⁵ Ayub Oduor, "Livelihood impacts and governance processes of community-based

The understanding of the Maasai community and their relationship with lions has led to the invention of solutions that will be long lasting in solving the conflict that has been a thorn in the flesh for many years.²⁶ This has been achieved through game scouts who are part of the community and non-governmental organizations which have offered an intermediary link between the community and government.²⁷ Through such initiatives, the Maasai community are no longer viewed as ignorant of wildlife and the government has launched good programs in ensuring the Maasai are involved in the conservation.²⁸ The fruits of these initiatives include: The Maasai Olympics, community led conservancies, lion guardians program and Lion Lights Program.

5.1 The Maasai Olympics

The Maasai Olympics idea was first conceived in 2008 by the community leaders and elders who proposed collaboration with the Big Life Foundation to help reduce the instances of cultural lion killing.²⁹ The first Maasai Olympics was held in 2012 in Kimana Sanctuary³⁰ which aimed at transforming the Maasai culture in a more constructive manner through

wildlife conservation in Maasai Mara ecosystem, Kenya” *Journal of Environmental Management* 260 2020.

²⁶ Ibid.

²⁷ Vincent O Oluoch, “Governance Roles of Membership Associations in Wildlife Conservation: Lessons from the Kenya Wildlife Conservancies Association” Thesis Report, University of Weningen 2015 7.

²⁸ Christine N Ochieng, “Awareness of traditional knowledge and attitudes towards wildlife conservation among Maasai communities: The case of Enkusero Sampu Conservancy, Kajiado County in Kenya” *African Journal of Ecology* 59(3) 2021.

²⁹ Big Life Foundation: A Timeline of Accomplishments < <https://biglife.org/who-we-are/timeline> > accessed on 13th March 2025.

³⁰ Ibid.

various games introduced including, racing and javelin throwing.³¹ Under this program, conservation education was paired with sports competition based on traditional warrior skills.³²

Every two years, participating warrior villages select teams and compete in a series of regional one-on-one tournaments leading up to the final, action-packed event with athletic performances and spirited but sporting rivalry.³³ Athletes compete for recognition, express bravery, attract and identify leaders in six events: 200m, 800m, and 5,000m races, javelin for distance, rungu (wooden club) for accuracy, and the high jump for the Maasai.³⁴ The Maasai thus get a wonderful opportunity to compete for medals and not for number of lions killed.³⁵

Education and awareness on the importance of wildlife conservation is done prior to the tournament enabling the Maasai to play a crucial role in wildlife conservation programs.³⁶ Both men and women are involved in the games which also offer a chance to sell the cultural shukas and shangas promoting their culture and providing a source of income.³⁷ Thank God we have the community based conciliation initiatives which have informed a turn-around from hunting lions to hunting medals.³⁸

In 2024, the sixth edition of the Olympics was held with great participation of the Maasai community.³⁹ This edition involved the participation of forty

³¹ <https://biglife.org/maasai-olympics/> accessed on 14 March 2025.

³² Ibid.

³³ <https://greatplainsfoundation.com/safaripros/> accessed on 14 March 2025.

³⁴ Ibid.

³⁵ <https://www.wwfkenya.org/?237811/Maasai-Olympics-championing-conservation-through-sports> accessed on 14 March 2025.

³⁶ Ibid.

³⁷ <https://biglife.org/maasai-olympics/> accessed on 14 March 2025.

³⁸ Ibid.

³⁹ <https://www.aljazeera.com/gallery/2024/12/15/at-kenyas-maasai-olympics-women->

female athletes thus encouraging the involvement of women in the games.⁴⁰ This is crucial in ensuring women actively participate in lion conservation and not act merely as cheering team.⁴¹ The involvement of women enforces the principle of women participation in biodiversity conservation.⁴²

An athlete who had won the 5000m and 800m races in the sixth edition expressed his gratitude for the Maasai Olympics which has been instrumental in creating awareness on the importance of wildlife conservation.⁴³ Some of the wildlife benefits including school fees, jobs and tourist visits encourage young maasai to participate in the Olympics and help in the conservation of lions.⁴⁴ Statistics provided on 18th December 2024 showed that the number of lions in the Kimana, Amboseli landscape in Kenya has increased by roughly sevenfold since 2004 to an estimated 250 today, thanks to the Maasai Olympics and other programs.⁴⁵

5.2 Community Led Conservancies

Conservancies are critical in creating more space for conserving biodiversity and ecological services outside state protected areas and buffering protected

[run-to-bridge-the-gender-gap](#) on 8 January 2025.

⁴⁰ Ibid.

⁴¹ Jessica Graham, "Women and Wildlife Trafficking: Women as Agents of Change in Efforts to Disrupt Illegal Wildlife Trade." Routledge 2022.

⁴² Ramesh Kumar, "Role and Empowerment of Women in Wildlife Conservation: The Intersection of Gender Equality and Biodiversity Protection" Pakistan Journal of Life and Social Sciences 22(2) 2024 1.

⁴³ <https://biglife.org/program-updates/big-life-news/the-2024-maasai-olympics> on 8 January 2025.

⁴⁴ Ibid.

⁴⁵ Kenya's Maasai Warriors Hunt For Medals Not Lions In 'Olympics To Protect Predators' <https://www.wjbf.com/business/press-release/ein-presswire/605647112/kenyas-maasai-warriors-hunt-for-medals-not-lions-in-olympics-to-protect-predators/> accessed on 14th March 2025

areas from growing human impacts pressing on their edges.⁴⁶ It is through the community-based conciliation initiatives that the Maasai community embraced the community led conservancies without resistance.⁴⁷ The revenue earned from the conservancies are used to improve access to education through establishment of new schools and scholarship programs and health care centers.⁴⁸

Lichtenfeld suggested that maasai-lion relations are connected to the degree of control, or lack thereof that the Maasai have over conservation-related decision-making processes affecting their livelihoods.⁴⁹ Maasai elders could exert pressure on ilmuran to refrain from killing a lion, even after predation, when they felt involved in a particular conservation endeavor and attached to potential benefits from it.⁵⁰ Increased alienation from decision making, restrictions on grazing and little to no benefits from wildlife conservation tourism despite increased costs of wildlife damage upon the communities lead to antagonism against the conservation area leading to rise in lion hunting.⁵¹

Community led conservancies are thus the solution that allow the community to have grazing rights on the conservation area as they give up part of their

⁴⁶ Section 41, Wildlife Conservation and Management Act (CAP 376) 2013.

⁴⁷ Elena Riboldi & Alberto Lanzavecchia, "National Parks and Conservation Areas: Impacts on the Maasai and Opportunities for Sustainable Cultural Heritage Tourism" New Trends in Tourism 2025.

⁴⁸ Edwin Muchapondwa, "Managing Trade-Offs Between Communities' Welfare and Nature Conservation: The Case of Wildlife Management Systems in and Outside Protected Areas in Africa" Annual Review of Resource Economics 16 2024

⁴⁹ Lichtenfeld L, 'Our Shared Kingdom at Risk: Human-Lion Relationships in the 21st Century' Unpublished PHD Thesis, Yale University New Haven, USA, 2005.

⁵⁰ https://ssir.org/books/excerpts/entry/from_lion_killers_to_lion_savers# on 7 January 2025.

⁵¹ Ingela Jansson, "The benefits of inclusive conservation for connectivity of lions across the Ngorongoro Conservation Area, Tanzania" Conservation Science and Practice 2025 2.

land for establishment of the conservancies.⁵² In addition to the grazing rights, they get employment opportunities which improve their living standards.⁵³ This initiative has indeed made a big difference and according to KWS, the lion population in Kenya has increased by 25% in the past decade, from 2000 in 2010 to 2589 in 2021 and even greater numbers in 2023 and one of the main reasons stated for this is the community-based conservation.⁵⁴

5.3 Lion Guardians

Lion Guardians is an organization of the Maasai warriors responsible for conserving lions by monitoring lions and other carnivores, educating their communities in improved livestock management and the economic value of wildlife.⁵⁵ Through this program, the Maasai community are actively involved in the conservation of wildlife and can reap benefits thus at the end of the day, human wildlife conflict ceases.⁵⁶ This has been made possible by the Kilimanjaro Lion Conservation Project (KLCP),⁵⁷ Ol Donyo Wuas Trust (ODWT),⁵⁸ and the Predator Compensation Fund (PCF),⁵⁹ organizations

⁵² Rose Muiyuro, "Bridging the conservation and development trade-off? A working landscape critique of a conservancy in the Maasai Mara" Ecological Solutions and Evidence 2024 2.

⁵³ Ibid.

⁵⁴ <https://www.aa.com.tr/en/africa/kenyas-thriving-lion-population-defies-global-trends/3109940#> accessed on 14th March 2025.

⁵⁵ Laurence G Frank, "Twenty years of lion conservation in a commercial rangeland" Frontiers in Ecology and Evolution 2023 2.

⁵⁶ Mara J Goldman, "People should also look after the people: relational values of wildlife and collectively titled land in Ilkisongo Maasai group ranches in Southern Kenya" Ecology and Society 28(3) 2021 2-3.

⁵⁷ <http://www.lionconservation.org/solutions.html> accessed on 16 March 2025.

⁵⁸ <https://greatplainsfoundation.com/a-lion-conservation-win-at-ol-donyo/> accessed on 16 March 2025.

⁵⁹ <https://biglife.org/what-we-do/human-wildlife-conflict-mitigation/predator-compensation> accessed on 16

which have been able to appreciate the fact that the Maasai had been living with the lions before the national parks and reserves were put in place thus in a better position to conserve the lions.⁶⁰

Lion guardians program is an embodiment of the following which make it an effective method of transforming the HWC: It creates employment opportunities for the community members,⁶¹ improvement of the livelihood of the community in the form of salary paid to warriors,⁶² which trickles down to other family members, and to a central community fund thus enabling them to access education and good health for their children,⁶³ Monitoring populations and movements lions and other carnivores which reduce the attack of predators on the livestock of the community⁶⁴ and educating fellow community members on sustainable livestock husbandry and land use which reduces depredation on livestock by carnivores.⁶⁵ This program is built on the desire of the community to be involved in conservation programs.⁶⁶

An elder, speaking of their desire to be involved in conservation said the following:

March 2025.

⁶⁰ Mara J Goldman, "People should also look after the people: relational values of wildlife and collectively titled land in Ilkisongo Maasai group ranches in Southern Kenya" *Ecology and Society* 28(3) 2021 2-3.

⁶¹ Margaret Muriuki, "Landscape level analysis of lion conservation interventions in the Amboseli ecosystem, Kenya; an actor-network theory perspective" *Geojournal* 88 2023.

⁶² Ibid.

⁶³ Ibid

⁶⁴ Kim S Jacobsen, "What is a lion worth to local people – Quantifying of the costs of living alongside a top predator" *Ecological and Economics* 198 2022.

⁶⁵ David W, 'Patterns of Depletion in Kenya Rhino Population and The Conservation Implications'. *Biological Conservation Journal* (1982).

⁶⁶ Mangana B Rampheri, "Local community involvement in nature conservation under the auspices of Community- Based Natural Resource Management: A state of the art review" *African Journal of Ecology* 59(4) 2021.

“We would like to urge all the conservationists to come forward and work hand in hand with us, because we’ve accepted living with wildlife and seeing them like our properties, and we want to see more benefits coming in, because we also suffer a lot of conflict from wildlife, and make sure that not just [a] few individual[s] enjoy the benefits but everyone since we all have to live with them.”⁶⁷

The program has greatly led to a reduction in the killing of lions hence a reduction in the maasai- lion conflict. In 2010, the Lion Guardians Annual Report⁶⁸ documented 21 lions killed within the ecosystem. The great majority of the lions killed by people were speared and poisoned. The Report says that the total number of lions killed could have been significantly higher if it were not for the hard work and dedication of the Lion Guardians and collaborators such as the KWS and game scouts. The Lion Guardians were key players in stopping a minimum of 44 lion hunts in 2010 because they work full time hence they are aware of every depredation event and attempted lion hunt that takes place.⁶⁹ In 2023, the Lion Guardians Impact Report 2023⁷⁰ recorded the highest ever lion population density across their operating area while conducting their annual lion consensus. The lion population has increased tremendously over the last 19 years from 3.0/km² in 2010 to 7.0/km² in 2023. Retaliatory hunts also remained low despite experiencing more lion attacks on livestock, demonstrating that communities are staying resilient and choosing co- existence.⁷¹

⁶⁷ Leela N, ‘Living Among Lions (Panthera Leo): Coexistence or Killing? Community Attitudes towards Conservation Initiatives and The Motivations behind Lion Killing in Kenyan Maasai land’ 2006.

⁶⁸ www.lionconservation.org/AnnualReports/2010-LionGuardians-Annual-Report.pdf accessed on 13th March 2025.

⁶⁹ Ibid, 12.

⁷⁰ <https://lionguardians.org/lion-guardians-impact-report-2023/> accessed on 13th March 2025

⁷¹ Ibid.

5.4 The Lion Lights Program

In a bid to halt human-wildlife conflict, early warning and conflict prevention measures such as the Lion Lights program are being implemented.⁷² This program involves installation of solar powered bulbs or the LED flashlight around the Maasai pastoralists cattle bomas to prevent predation of livestock by lions, which mostly takes place at night.⁷³ The LED flashlight technique was initially proposed by an 11-year-old school pupil named Richard Turere as a measure to prevent nocturnal livestock depredation at their own boma near Nairobi National Park.⁷⁴

A study conducted in the Kitengela triangle in Kenya, adjacent to the southern part of Nairobi National Park⁷⁵ showed that in 43 bomas where the LED flashlights had been installed, 184(96%) attacks took place prior to flashlight installation that is between the year (2007-2011) and 7(4%) after flashlight installation between (2011-2016). The study also showed a shift in lion behavior where they would cover greater distances to areas where bomas had no flashlights and also shifting their attacks from night time to day time. This shows how much they try to avoid the flashlight hence the probability of an attack on bomas without flashlight is significantly higher compared to bomas with flashlights.⁷⁶ This helps minimize the need for retaliatory killings and promote peaceful co-existence between the Maasai and lions.

⁷² Teresia Mbatia, "The Protection and Management of Nairobi National Park" University of Nairobi. Nairobi (2015) 21.

⁷³ Lesilau F, "Effectiveness of a LED flashlight technique in reducing livestock depredation by lions (*Panthera leo*) around Nairobi National Park, Kenya." PLoS ONE 13(1) 2018 8.

⁷⁴ Wikipedia contributors, "Lion lights," Wikipedia, The Free Encyclopedia, https://en.wikipedia.org/w/index.php?title=Lion_lights&oldid=1279013484 accessed 17th March, 2025.

⁷⁵ Supra n174 8.

⁷⁶ Ibid 13.

6.0 Way forward

6.1 Enhanced Legal and Institutional Framework on Human-wildlife Conflict Management

Human-wildlife conflicts affect Kenyans from destruction of crops, attack and killing of livestock and humans and spread of diseases to livestock.⁷⁷ As long as the humans live together with the wildlife, these conflicts will continue to recur thus the need for a comprehensive legal framework to manage these conflicts.⁷⁸ The current framework recognizes the court system only whereas the new constitutional dispensation embodies the alternative dispute resolution mechanisms which include community-based conciliation initiatives.⁷⁹

These initiatives are efficient, effective, and flexible as meetings can be held anywhere and at any time, cost friendly, offer win-win solutions to the parties, are voluntary in nature and are party driven.⁸⁰ Recognition of the use of alternative dispute resolution mechanisms will guarantee the sustainability of these initiatives promoting the conservation of wildlife and protecting the interests of the neighboring communities.⁸¹

6.2 Community Empowerment and Public Participation

The neighboring communities should be actively involved in wildlife

⁷⁷ Jocelyn Burudi, "A review of the human wildlife conflicts around the Nairobi National Park, Kenya" Review on Agriculture and Rural Development 12(1-2) 2023.

⁷⁸ Woolaston & Katie, "A Review of the Role of Law and Policy in Human-Wildlife Conflict" Conservation and Society 19(3) 2021 172-183.

⁷⁹ Article 159 2(c), Constitution of Kenya 2010.

⁸⁰ Kariuki Muigua, "Alternative Dispute Resolution in a New Age: Navigating Turbulent Seas with Optimism" 2024 4.

⁸¹ Samuel Lewa, "Alternative dispute resolution methods and the management of Human-Wildlife Conflict: the case of Arabukosokoke Forest Kenya" PhD Thesis University of Nairobi 2017.

conservation for sustainable programs that prevent harm both to wildlife and humans⁸² and guarantees benefits to the neighboring communities.⁸³ This is instrumental in preventing negative attitudes from the communities towards wildlife.⁸⁴ Community empowerment boosts conservation efforts as their traditional knowledge and practice are recognized and used in wildlife conservation efforts.⁸⁵ In creation of conservancies, public participation should be carried out to prevent land alienation without compensation⁸⁶ and encourage active public involvement in the running of the conservancies.⁸⁷ Meaningful public participation entail the aspect of participation, control and critical awareness.⁸⁸ Participation is when the individual contributes to the process,⁸⁹ control is the ability to influence decision⁹⁰ and critical awareness is the ability to comprehend and appreciate one's political and social environment.⁹¹ This empowers the community when they are involved in decision making allowing them to adopt and embrace long-term outcomes.⁹²

6.3 Effective government policies

The government should adopt effective policies that encourage non-

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Neil & Brendan, "Is it just conservation? A typology of Indigenous peoples' and local communities' roles in conserving biodiversity" *One Earth* 7(6) 2024.

⁸⁵ Ibid.

⁸⁶ Margaret Wachu Gichuhi, "Assessment of Conservation Management of State Parks, Community and Private Conservancies in Kenya" *Open Access Library Journal* 10(6) 2023.

⁸⁷ Ibid.

⁸⁸ Kariuki Muigua, "Towards Meaningful Public Participation in Natural Resource Management in Kenya" 2014.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid 24-26.

governmental organisations involvement in the conservation programs.⁹³ This guarantees a continual flow of income into some of the programs like the Maasai Olympics that not only promotes conservation but also builds on the talents of the neighboring communities.⁹⁴ The county governments have also been instrumental in ensuring the success of the Maasai Olympics reinforcing the idea that good political will is important in developing sustainable conservation programs.⁹⁵

Effective government policies also ensure that communities are protected from exploitation by non-governmental organisations.⁹⁶ This is achieved by active involvement of Kenya Wildlife Service in all negotiations pertaining wildlife conservation to protect the interests of both the organisations and the communities.⁹⁷

6.4 Adoption of Livestock Insurance Programs

The livestock insurance program as proposed by Margaret Muriuki⁹⁸ is where livestock insurance is offered to pastoralists and covers livestock from the risk of wildlife attack, and involves the local community and local governing bodies paying a premium share of the insurance,⁹⁹ thus allowing rural inhabitants to make a minimum annual cost to be refunded in the event of

⁹³ Antoine Gremaud, "The role of non-state actors in promoting environmental justice: A comparative study of Kenya and South Africa" *GeoJournal* 89 2024.

⁹⁴ <https://biglife.org/maasai-olympics/> accessed on 16 March 2025.

<https://biglife.org/maasai-olympics/> accessed on 16 March 2025.

⁹⁵ <https://www.kenyanews.go.ke/6th-maasai-olympics-edition-held-to-curb-human-wildlife-conflicts/> accessed on 16 March 2025.

⁹⁶ *ibid* 198.

⁹⁷ *ibid* 198.

⁹⁸ Margaret W Muriuki, 'The Cost of Livestock Lost to Lions and other Wildlife Species in the Amboseli Ecosystem in Kenya' *European Journal of Wildlife Research* 2017.

⁹⁹ Brian N Muchema, "Appraising Formal and Informal Insurance Approaches Within Pastoralist Social Networks in Northern Kenya" *Rangeland Economy and Management* 98 2025.

livestock losses.¹⁰⁰ Compensation schemes have been provided for under the Wildlife Management Act that compensate the damage wildlife causes upon the livestock and people injured or killed by wild animals.¹⁰¹

However, at times the funds are not enough as they are majorly run by the non-governmental organizations which cause the community to worry once they have left¹⁰² hence this demotivates them from avoiding retaliatory killings of the lions. Just recently, on the 6th of February, 2025, a tragic poisoning event in Maasai Mara National Reserve took the life of a lioness just days after a similar incident in the Pololeti Game Reserve in Tanzania, which borders the park.

The wildlife experts and environmentalists argued that arresting and prosecuting the offenders may not address the underlying problem and so they called for funding to support initiatives that reduce poisoning incidents, such as compensation schemes and measures to minimize predation on livestock.¹⁰³ This shows how ineffective the present compensation schemes are at reducing the lion-maasai conflict.

Under this proposed livestock insurance programs, all stakeholders, including the local community who suffer the cost of living with lions, private investors who benefit from the presence of lions, Kenya Wildlife Service and others should be involved in funding and management of the insurance. These

¹⁰⁰ Margaret W Muriuki, 'The Cost of Livestock Lost to Lions and other Wildlife Species in the Amboseli Ecosystem in Kenya' European Journal of Wildlife Research 2017 2.

¹⁰¹ Part IV, Wildlife Conservation and Management Act (Act No. 47 of 2013).

¹⁰² Manoa David, "Comparative Analysis of Monetary Transaction Cost of Human-Wildlife Conflict in Mt. Kenya and Amboseli Ecosystems, Kenya" EarthArXiv 2024 7-9.

¹⁰³ Wildlife Poisoning in the Mara puts species at risk https://www.standardmedia.co.ke/article/2001513133/wildlife-poisoning-in-the-mara-puts-species-at-risk?utm_cmp_rs=amp-next-page accessed on 13th March 2025.

insurance programs can encourage good livestock husbandry by giving cash rewards to livestock owners with low predation cases.¹⁰⁴ This could be replicated locally as it happens in the Spiti valley in India where a livestock insurance program provides cash rewards to farmers who have the fewest livestock predation cases.¹⁰⁵

In India and Pakistan, the livestock insurance scheme run by the collective community involved, is based on a two-pronged approach; Firstly, a collective insurance fund to compensate local farmers for loss of livestock¹⁰⁶ and secondly, a fund based on eco-tourism potential of the snow leopard.¹⁰⁷ The first fund consists of premium contributions paid by farmers per head of livestock¹⁰⁸ and the second fund which co-finances insurance compensation (if incurred losses are higher than expected), is a community-private sector partnership based on the proceeds of tourism¹⁰⁹ and may also be used to subsidize activities at the village level or be shared amongst village members.¹¹⁰

The scheme also establishes a Village Insurance Committee which manages the insurance scheme with the Project Snow Leopard staff jointly thus ensuring the community is actively involved in the management of the

¹⁰⁴ Justine Shanti Alexander, "Assessing the Effectiveness of a Community-based Livestock Insurance Program" *Environmental Management* 68 2021 87-99.

¹⁰⁵ Sasha Rodricks, 'Insurance Scheme to Protect Snow Leopards'. *Conservation of Snow Leopards in the Himalayan Region*, 2010.

¹⁰⁶ Ted L, 'Conservation, risk aversion, and livestock insurance'. *The case of the Snow Leopard*, *Conservation Letters*, *Journal of the Society for Conservation Biology*, 2021.

¹⁰⁷ Ibid.

¹⁰⁸ Charudutt Mishra, "Livestock predation by snow leopards: Conflicts and the search for solutions" *Biodiversity of World: Conservation from genes to landscapes* 2024 55-62.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

scheme.¹¹¹ All complaints are directed to the committee which give recommendations on how to go about the compensation when livestock loss is suffered.¹¹² The village council is thus not only involved with the development and acceptance of the scheme but also the monthly collections of insurance premiums from the community.¹¹³

This livestock insurance program will be highly appreciated among the communities facing human wildlife conflict as the communities are actively involved in its implementation.¹¹⁴ This will also be instrumental in lion conservation efforts.

6.5 Adoption of community-based conciliation initiatives in solving other types of human- wildlife conflicts

The community-based conciliation initiatives have proven to yield sustainable lion conservation programs like Maasai Olympics, community led conservancies, lion guardians and lion light program. These have been instrumental in encouraging growth of Lion populations¹¹⁵ and increasing benefits to the neighboring community.¹¹⁶

This method of conflict resolution is effective as it involves win-win solutions,

¹¹¹ Bhaskar S & Jonathan C, 'A concept paper on the development of a community-owned saving, credit and insurance scheme'. Conservation through insurance? 2002.

¹¹² Juliette C Young, "Collaborative conservation for snow leopards: Lessons learned from successful community- based interventions" Journal of the Society for Conservation of Biology 17(6) 2024.

¹¹³ Ibid.

¹¹⁴ Neil & Brendan, "Is it just conservation? A typology of Indigenous peoples' and local communities' roles in conserving biodiversity" One Earth 7(6) 2024.

¹¹⁵ Mumbi Chege, 'Evaluating past management practices and recommendations for future conservation actions'. Genetic diversity of Lion populations in Kenya, Evolutionary applications, Wiley online library journal (2024) 11.

¹¹⁶ Ibid.

flexibility, cost- effective, voluntary in nature and is party driven.¹¹⁷ It is thus ripe to be used to manage human- wildlife conflicts across the country.¹¹⁸ This will ensure that wildlife is conserved and the neighboring communities are benefited.¹¹⁹

7.0 Conclusion

Community-based conciliation initiatives sustain wildlife which is integral to tourism as a source of revenue to the country.¹²⁰ This reveals that alternative dispute resolution mechanisms are not only involved in solving disputes, restoring relationships and promoting harmony, but also in building and sustaining of Kenya's economy.¹²¹ This paper recognizes the crucial role community- based conciliation plays in transformation of conflicts and maintaining of relationships.¹²² However, it is important to note that the court system has also been instrumental in wildlife conservation and its role should not be downplayed.¹²³ A synergy in application of litigation and alternative dispute resolution mechanisms is crucial in wildlife conflict management depending on the nature of the conflict.¹²⁴

¹¹⁷ Kariuki Muigua, "Alternative Dispute Resolution in a New Age: Navigating Turbulent Seas with Optimism" 2024.

¹¹⁸ Neil & Brendan, "Is it just conservation? A typology of Indigenous peoples' and local communities' roles in conserving biodiversity" One Earth 7(6) 2024.

¹¹⁹ Ibid.

¹²⁰ Muninge A Bashire, "Winning space for conservation: the growth of wildlife conservancies in Kenya" Frontiers in Conservation Science 5 2024 2.

¹²¹ Kariuki Muigua & Kariuki Francis, "ADR, Access to Justice and Development in Kenya" 2018.

¹²² Kariuki Muigua, "Promoting Justice and Reconciliation through Mediation and Alternative Justice Systems" 2024.

¹²³ Nanda Subhasmita, "Human-Animal Conflict Management Through Judicial Intervention: A Critical Analysis." Library of Progress-Library Science, Information Technology & Computer 44(3) 2024.

¹²⁴ Kariuki Muigua, "Natural Resources and Conflict Management in East Africa" 2014 43-45.

This paper has discussed the nature and method of conflict management within Kenya's wildlife framework with focus on conflict between lions and the Maasai. It has suggested some approaches that may be employed to enhance the same for sustainable development. The recognition and enforcement of alternative dispute resolution mechanisms will be instrumental in solving human- wildlife conflicts.¹²⁵

Bibliography

Statutes and Conventions International

African Convention on the Conservation of Nature and Natural Resources, September 15 1968.

Proceedings of the United Nations Scientific Conference on the Conservation and Utilisation of Resources, 17 August- 6 September 1949.

The Convention on Biological Diversity, 5 June 1992 1760 UNTS 69

National

The Constitution of Kenya (2010)

Wildlife Conservation and Management Act (Act No. 47 of 2013)

Case Laws

¹²⁵ Samuel Lewa, "Alternative dispute resolution methods and the management of Human-Wildlife Conflict: the case of Arabukosokoke Forest Kenya" PhD Thesis University of Nairobi 2017.

Joseph Letuya & 21 Others v Attorney General & 5 others [2014] Eklr

Website

Big Life Foundation: A Timeline of Accomplishments < <https://biglife.org/who-we-are/timeline> > accessed on 13th March 2025

<https://biglife.org/program-updates/big-life-news/the-2024-maasai-olympics> on 8 January 2025.

<https://biglife.org/what-we-do/human-wildlife-conflict-mitigation/predator-compensation> accessed on 16 March 2025.

<https://greatplainsfoundation.com/a-lion-conservation-win-at-ol-donyo/> accessed on 16 March 2025.

<https://greatplainsfoundation.com/safari-pros/> accessed on 14 March 2025. <https://lionguardians.org/lion-guardians-impact-report-2023/> accessed on 13th March 2025

<https://ssir.org/books/excerpts/entry/from-lion-killers-to-lion-savers#> on 7 January 2025.

<https://www.aa.com.tr/en/africa/kenyas-thriving-lion-population-defies-global-trends/3109940#> accessed on 14th March 2025

<https://www.kenyanews.go.ke/6th-maasai-olympics-edition-held-to-curb-human-wildlife-conflicts/> accessed on 16 March 2025.

<https://www.kws.go.ke/article/update-lion-poisoning-mara> accessed on 16 March 2025

<https://www.wwfkenya.org/?237811/Maasai-Olympics-championing-conservation-through-sports> accessed on 14 March 2025..

Kenya's Maasai Warriors Hunt For Medals Not Lions In 'Olympics' To Protect Predators <https://www.wjbf.com/business/press-release/ein->

[presswire/605647112/kenyas-maasai-warriors-hunt-for-medals-not-lions-in-olympics-to-protect-predators/](https://www.presswire.com/605647112/kenyas-maasai-warriors-hunt-for-medals-not-lions-in-olympics-to-protect-predators/) accessed on 14th March 2025

Lion: King of the Jungle, WWF Kenya News<
<https://www.wwfkenya.org/?233930/LION-KING-OF-THE-JUNGLE>>
accessed 16th March, 2025

Task Force on Human-Wildlife conflict Compensation Schemes Final Report July 2020<
<https://www.tourism.go.ke/wp-content/uploads/2020/07/Task-Force-on-Human-Wildlife-Compensation-Schemes-Final-Report.pdf>> accessed 16th March, 2025

Wikipedia contributors, "Lion lights,"
Wikipedia, The Free Encyclopedia,
https://en.wikipedia.org/w/index.php?title=Lion_lights&oldid=1279013484
accessed 17th March, 2025

Wildlife Poisoning in the Mara puts species at risk
https://www.standardmedia.co.ke/article/2001513133/wildlife-poisoning-in-the-mara-puts-species-at-risk?utm_cmp_rs=amp-next-page accessed on 13th March 2025

www.lionconservation.org/AnnualReports/2010-LionGuardians-Annual-Report.pdf accessed on 13th March 2025

<https://maasai-association.org/lion.html> accessed on 16 March 2025.

<https://www.aljazeera.com/news/2022/10/1/regional-court-dismisses-maasai-eviction-case-against-tanzania> accessed on 14 March 2025.

<https://www.google.com/amp/s/www.aljazeera.com/amp/news/2023/5/14/six-lions-killed-by-herders-in-blow-to-kenyas-conservation-push>
on 7 January 2025

<https://www.aljazeera.com/gallery/2024/12/15/at-kenyas-maasai-olympics-women-run-to-bridge-the-gender-gap> on 8 January 2025.

<https://biglife.org/maasai-olympics/> accessed on 14 March 2025.

<http://www.lionconservation.org/solutions.html> accessed on 16 March 2025.

<https://biglife.org/maasai-olympics/> accessed on 16 March 2025.

Thesis

Ayovi Saputra, "Impact assessment of litigation on construction projects in resolving construction disputes" Universitas Islam Indonesia Yogyakarta 2024.

Knowles, Joan Nancie, "Power, influence and the political process among Iloitai Maasai." Durham theses, Durham University 1993

Leela N. Hazzah; " Living Among Lions (panthera Leo): Coexistence or Killing? Community Attitudes towards conservation initiatives and the Motivations behind lion killing in Kenyan Maasailand" Thesis submitted in partial fulfilment of the requirements for the degree of Masters of Science Conservation Biology and Sustainable Development, 2006.

Lichtenfeld L, 'Our Shared Kingdom at Risk: Human-Lion Relationships in the 21st Century' Unpublished PHD Thesis, Yale University New Haven, USA, 2005.

Paul O, 'Wildlife Human Conflict in Kenya: Integrating Wildlife Conservation with Human Needs in the Maasai Mara Region' Unpublished LLM Thesis, McGill University, Montreal, August 1994

Samuel Lewa, "Alternative dispute resolution methods and the management of Human-Wildlife Conflict: the case of Arabukosokoke Forest Kenya" PhD Thesis University of Nairobi 2017.

Shreya C, 'The sensitivity of the Maasai Mara conservancy model to external shocks'. Unpublished Masters Thesis in Global Environment History, Uppsala University 2021.

Teresia Mbatia, "The Protection and Management of Nairobi National Park" University of Nairobi. Nairobi (2015)

Vincent O Oluoch, "Governance Roles of Membership Associations in Wildlife Conservation: Lessons from the Kenya Wildlife Conservancies Association" Thesis Report, University of Weningen 2015

Journal Articles

Aderonke Adegbite, "Cultural Dimensions in Wildlife Preservation: African Indigenous Perspectives from Nigeria and Kenya" Open Journal of Social Sciences 13(2) 2025.

Alagau Ababu Kifle, "The Relevance of Traditional Mechanisms of Conflict Resolution to End Localized Communal Conflicts in Africa" Journal of Asian and African Studies 2024.

Allison Hailey, "Preserving lions and culture: Conflicting standards of human-wildlife conflict" Journal of African Media Studies 11(3) 2019.

Álvaro Fernández-Llamazares, "Historical shifts in local attitudes towards wildlife by Maasai pastoralists of the Amboseli Ecosystem (Kenya): Insights from three conservation psychology theories" Journal for Nature Conservation, Volume 53, 2020.

Antoine Gremaud, "The role of non-state actors in promoting environmental justice: A comparative study of Kenya and South Africa" GeoJournal 89 2024.

Atmani Ali, "The Development of Algerian Environmental Legislation in Comparison to International Environmental Legislation" Algerian Journal of Legal and Political Sciences 61(N 04) 2024.

Ayub Oduor, "Livelihood impacts and governance processes of community-

based wildlife conservation in Maasai Mara ecosystem, Kenya” *Journal of Environmental Management* 260 2020.

Ayush Gurav & Rutuja Moon, “Med-Arb: Ethical Challenges and Effectiveness in Hybrid ADR” *KnowLaw Journal on Socio-Legal and Contemporary Research* 2024

Bhaskar S & Jonathan C, ‘A concept paper on the development of a community-owned saving, credit and insurance scheme’. *Conservation through insurance?* 2002.

Brian N Muchema, “Appraising Formal and Informal Insurance Approaches Within Pastoralist Social Networks in Northern Kenya” *Rangeland Economy and Management* 98 2025.

Charudutt Mishra, “Livestock predation by snow leopards: Conflicts and the search for solutions” *Biodiversity of World: Conservation from genes to landscapes* 2024.

Christine N Ochieng, “Awareness of traditional knowledge and attitudes towards wildlife conservation among Maasai communities: The case of Enkusero Sampu Conservancy, Kajiado County in Kenya” *African Journal of Ecology* 59(3) 2021.

David W, ‘Patterns of Depletion in Kenya Rhino Population and The Conservation Implications’. *Biological Conservation Journal* (1982).

Davronov D, “Coercive measures in the civil proceedings: Its importance and types” *Norwegian Journal of Development of the International Science* 2021.

Edwin Muchapondwa, “Managing Trade-Offs Between Communities’ Welfare and Nature Conservation: The Case of Wildlife Management Systems in and Outside Protected Areas in Africa” *Annual Review of Resource Economics* 16 2024.

Edwin Sabuhoro, “Human-Wildlife Conflicts, Household Livelihood Security, and Conservation Support Among Residents Adjacent to the Maasai

Transformation of Lion-Maasai Conflict Through Community Based Conciliation Initiatives: (2025) Journal of cmsd Volume 12(4)
Abuya John Onyango & Stephanie Lore Okoyo

Mara National Reserve in Kenya” *Wild Journal* 1(2) 2025.

Elena Riboldi & Lanzavecchia, “National Parks and Conservation Areas: Impacts on the Maasai and Opportunities for Sustainable Cultural Heritage Tourism” 2025.

Ellen W, *The Desire of Ages*, Pacific Press Publishing Company (1900).

Goldman MJ, “Beyond ritual and economics: Maasai lion hunting and conservation politics.” *Oryx*. 47(4) 2013.

Guy Western, “Creating Landscapes of Coexistence: Do Conservation Interventions Promote Tolerance of Lions in Human Dominated Landscapes?” *Conservation and Society* 17(2): 2019.

Ingela Jansson, “The benefits of inclusive conservation for connectivity of lions across the Ngorongoro Conservation Area, Tanzania” *Conservation Science and Practice* 2025.

A Proposal for Legislation to Tackle Fake Gold Scammers, (2025) Journal of cmsd Volume 12(3)
"Wash Wash" Cartels and Other Organized Crime
Syndicates in Kenya: Lessons from the American
RICO Act: Michael Sang

Ivy Nanvula, "Assessment of conflicts under human-wildlife interactions: An application of the conservation conflict transformation model in communities adjacent to Nyerere National Park, Tanzania" *Science of the Total Environment* 951 2024.

Jessica Graham, "Women and Wildlife Trafficking: Women as Agents of Change in Efforts to Disrupt Illegal Wildlife Trade." Routledge 2022.

Jocelyn Burudi, "A review of the human wildlife conflicts around the Nairobi National Park, Kenya" *Review on Agriculture and Rural Development* 12(1-2) 2023.

Joseph M, 'Human-wildlife conflicts and their correlates in Narok County Kenya'. *Global Ecology and Conservation*, 2 Elsevier (2019).

Juliette C Young, "Collaborative conservation for snow leopards: Lessons learned from successful community-based interventions" *Journal of the Society for Conservation of Biology* 17(6) 2024.

Jumoke A, 'Conflict situations and ways to resolve conflicts'. Research Gate, 2016. Engel A & Korf B 'Negotiation and Mediation techniques for natural resource management,' 2005.

Justine Shanti Alexander, "Assessing the Effectiveness of a Community-based Livestock Insurance Program" *Environmental Management* 68 2021.

Kabeta Legese Kerorsa, "Examining the Roles and Attitudes of the Local Community in Wildlife Conservation of Ethiopia" *International Journal of Ecology* 2024.

Kariuki M, 'Conflict management mechanisms for effective environmental

A Proposal for Legislation to Tackle Fake Gold Scammers, (2025) Journalofcmsd Volume 12(3)
"Wash Wash" Cartels and Other Organized Crime
Syndicates in Kenya: Lessons from the American
RICO Act: Michael Sang

governance in Kenya, 2018.

Kariuki Muigua & Kariuki Francis, "ADR, Access to Justice and Development in Kenya" 2018

Kariuki Muigua, "Alternative Dispute Resolution in a New Age: Navigating Turbulent Seas with Optimism" 2024.

Kariuki Muigua, "Managing Environmental Conflicts through Alternative Dispute Resolution" 2024.

Kariuki Muigua, "Natural Resources and Conflict Management in East Africa" 2014.

Kariuki Muigua, "Promoting Justice and Reconciliation through Mediation and Alternative Justice Systems" 2024.

Kariuki Muigua, "Towards Meaningful Public Participation in Natural Resource Management in Kenya" 2014.

Kim S Jacobsen, "What is a lion worth to local people - Quantifying of the costs of living alongside a top predator" Ecological and Economics 198 2022.

Kiringe, Okello, "Threats and Their Relative Severity to Wildlife Protected Areas of Kenya" Applied Ecology and Environmental Research 5(2) 2007.

Kituyi, 'Socio-Economic Transformation of the Pastoral Maasai'. Becoming Kenyans, Acts Press Nairobi, Kenya, (1993).

Laurence G Frank, "Twenty years of lion conservation in a commercial rangeland" Frontiers in Ecology and Evolution 2023.

A Proposal for Legislation to Tackle Fake Gold Scammers, (2025) Journal of cmsd Volume 12(3)
"Wash Wash" Cartels and Other Organized Crime
Syndicates in Kenya: Lessons from the American
RICO Act: Michael Sang

Lesilau F, "Effectiveness of a LED flashlight technique in reducing livestock depredation by lions (*Panthera leo*) around Nairobi National Park, Kenya." PLoS ONE 13(1) 2018.

Luca Luiselli, "Weaving the Middle Spaces Between Indigenous and Scientific Knowledge for Biodiversity Conservation and Ecology" African Journal of Ecology 2025.

Lusigi W, 'The Conservation Unit Approach to the planning and management of National Parks and Reserves in Kenya based on the Nairobi National Park Ecosystem'. Planning Human Activities on Protected Natural Ecosystem, 1978.

Mangana B Rampheri, "Local community involvement in nature conservation under the auspices of Community-Based Natural Resource Management: A state of the art review" African Journal of Ecology 59(4) 2021.

Manoa David, "Comparative Analysis of Monetary Transaction Cost of Human-Wildlife Conflict in Mt. Kenya and Amboseli Ecosystems, Kenya" EarthArXiv 2024.

Mara G, "Strangers in their own Land: Maasai and Wildlife Conservation in Northern Tanzania" Conservation and Society 9(1) 2011.

Mara J Goldman, "Maintaining Complex Relations with Large Cats: Maasai and Lions in Kenya and Tanzania" Human Dimensions of Wildlife Journal 15(5) 2010.

Mara J Goldman, "People should also look after the people: relational values of wildlife and collectively titled land in Ilkisono Maasai group ranches in Southern Kenya" Ecology and Society 28(3) 2021.

Mara J, 'Maasai lion hunting and conservation politics'. Beyond ritual and economics, Cambridge University Press (2013).

A Proposal for Legislation to Tackle Fake Gold Scammers, (2025) Journal of cmsd Volume 12(3)
"Wash Wash" Cartels and Other Organized Crime
Syndicates in Kenya: Lessons from the American
RICO Act: Michael Sang

Margaret Muriuki, "Landscape level analysis of lion conservation interventions in the Amboseli ecosystem, Kenya; an actor-network theory perspective" *Geojournal* 88 2023.

Margaret Muriuki, "The influence of community-based conservation governance arrangements on lion population in the Amboseli ecosystem" *GeoJournal* 89 2024.

Margaret W Muriuki, 'The Cost of Livestock Lost to Lions and other Wildlife Species in the Amboseli Ecosystem in Kenya' *European Journal of Wildlife Research* 2017.

Margaret Wachu Gichuhi, "Assessment of Conservation Management of State Parks, Community and Private Conservancies in Kenya" *Open Access Library Journal* 10(6) 2023.

Morris & Chris, "Inside the Wildlife Crime Courtrooms of Kenya" *International Policy Digest* 2024.

Mumbi Chege, 'Evaluating past management practices and recommendations for future conservation actions'. Genetic diversity of Lion populations in Kenya, Evolutionary applications, wiley online library journal (2024).

Muninge A Bashire, "Winning space for conservation: the growth of wildlife conservancies in Kenya" *Frontiers in Conservation Science* 5 2024.

Nanda Subhasmita, "Human-Animal Conflict Management Through Judicial Intervention: A Critical Analysis." *Library of Progress-Library Science, Information Technology & Computer* 44(3) 2024.

Neil & Brendan, "Is it just conservation? A typology of Indigenous peoples' and local communities' roles in conserving biodiversity" *One Earth* 7(6) 2024.

Nyoman Arsana, "SUBAK: Traditional Ecological Knowledge for sustainable biodiversity conservation." *IOP Conference Series: Earth and Environmental Science*, 2024.

A Proposal for Legislation to Tackle Fake Gold Scammers, (2025) Journal of cmsd Volume 12(3)
"Wash Wash" Cartels and Other Organized Crime
Syndicates in Kenya: Lessons from the American
RICO Act: Michael Sang

Okumu Paul, "Influence of Destination Brand Image and Stakeholders' Role on Wildlife Parks' Attractiveness in the Amoseli-Tsavo Ecosystem, Kenya" *Journal of Social Sciences Management and Entrepreneurship* 8(2): 2024.

Pereira, Rosalino, "Livelihood vulnerability and human-wildlife interactions across protected areas." *Ecology and Society* 29(1) 2024.

Ramesh Kumar, "Role and Empowerment of Women in Wildlife Conservation: The Intersection of Gender Equality and Biodiversity Protection" *Pakistan Journal of Life and Social Sciences* 22(2) 2024.

Rose Muiyuro, "Bridging the conservation and development trade-off? A working landscape critique of a conservancy in the Maasai Mara" *Ecological Solutions and Evidence* 2024.

Sasha Rodricks, 'Insurance Scheme to Protect Snow Leopards'. *Conservation of Snow Leopards in the Himalayan Region*, 2010.

Spear & Waller, 'Ethnicity and Identity in East Africa'. *Being Maasai*, Ohio University Press Athens, (1993).

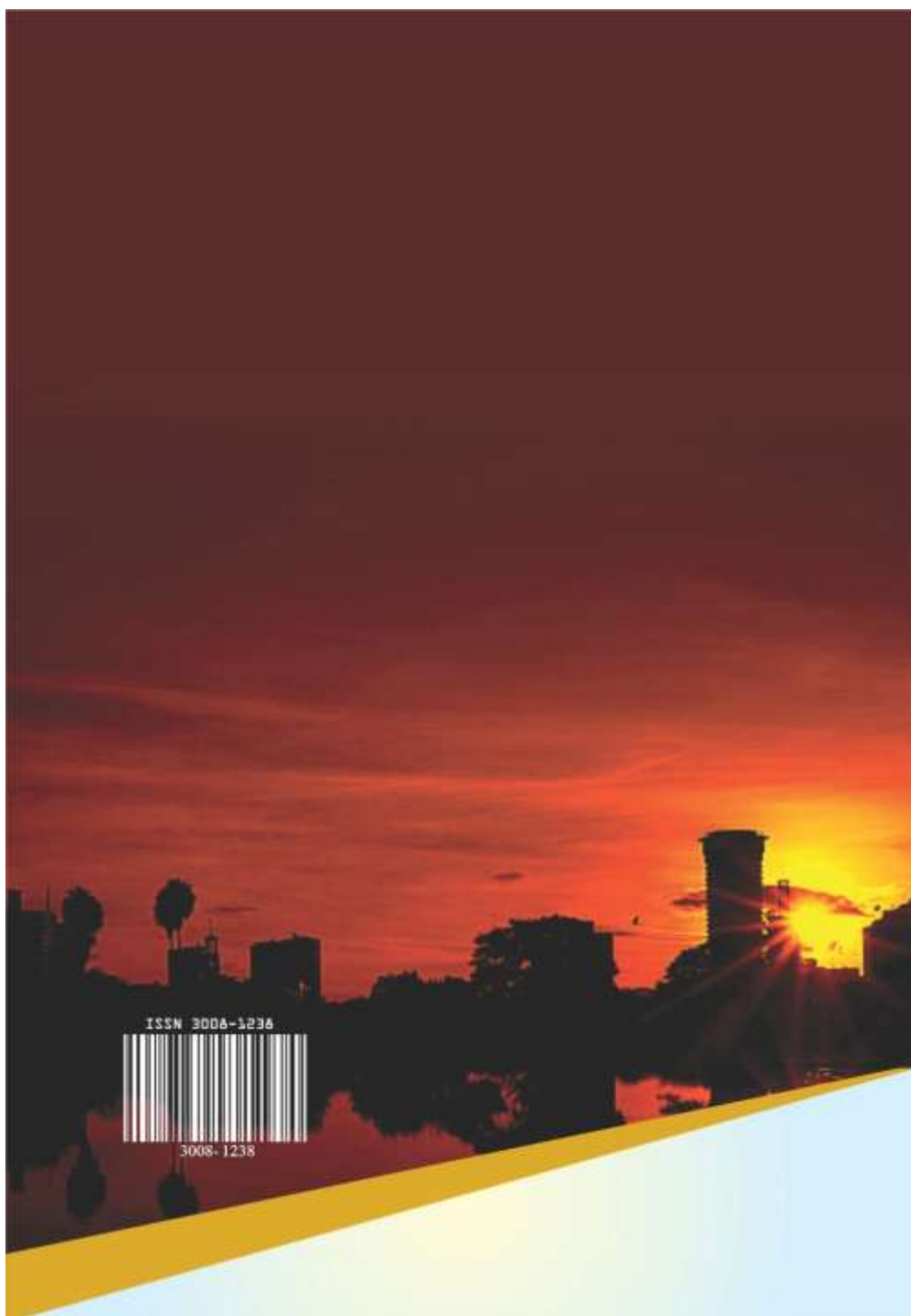
Ted L, 'Conservation, risk aversion, and livestock insurance'. *The case of the Snow Leopard*, *Conservation Letters*, *Journal of the Society for Conservation Biology*, 2021.

Toshio Meguro, "The Unchanged and Unrepresented Culture of Respect In Maasai Society" *African Study Monographs*, 40(2&3) 2019.

Woolaston & Katie, "A Review of the Role of Law and Policy in Human-Wildlife Conflict" *Conservation and Society* 19(3) 2021.

Xuge Li, "The Construction of Ecological Socialism Under the Concept of Liberating Nature: William Rice's critique of the concept of controlling nature." *Unesp Journal of Philosophy*, 48(3) 2025.

Yeager and Miller 'Land Use and Survivals East Africa'. *Wildlife, Wild Death*, Albany State, University of New York Press, (1986)



ISSN 3008-1238



3008-1238