Journal of Conflict Management & Sustainable Development

Towards Dependable Renewable Energy Systems: Achieving Just Transition for Posterity — Prof. Kariuki Muigua PhD, SC

The Impact of Poverty, Discrimination, and Limited Access to Property on People's Participation in Law-Making and Access to Justice in Kenya — Dr. Nancy Baraza

Sustainability in Africa's Oil and Gas Sector: A Critical Evaluation of ESG Principles and Emerging Technologies — Mwati Muriithi & Prof. Kariuki Muigua PhD, SC

The Regulation and Control of Export in Military and Dual Use Goods: An Appraisal of the Strategic Goods Control Bill, 2024 — Michael Sang

Human Rights, Afrocentrism and African Re-membering: Examining the Kurukan Fuga Charter (Manden Charter) — Prof. Kariuki Muigua PhD, SC

Legal Concealment of Femicide and its Implications for Remedy — Dr. Nancy Baraza

Community versus Adult Learning Institutions Conflict: Pathways to Sustainable Peace — Dr. Nelly Wamaitha Kamangu

The Admissibility of Verifiable Technical Intelligence Evidence Before Kenyan Courts: A Legislative Proposal for Criminal Law Reform — Michael Sang

Volume 13 | Issue 2 | 2026 ISSN : 3008-1238

Journal of Conflict Management and Sustainable Development

Volume 13 Issue 2 **2026**

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.

This Journal should be cited as (2026) 13(2) 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 13, No.2.

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: *Towards Dependable Renewable Energy Systems: Achieving Just Transition for Posterity; The Impact of Poverty, Discrimination, and Limited Access to Property on People's Participation in Law-Making and Access to Justice in Kenya; Sustainability in Africa's Oil and Gas Sector: A Critical Evaluation of ESG Principles and Emerging Technologies; The Regulation and Control of Export in Military and Dual Use Goods: An Appraisal of the Strategic Goods Control Bill, 2024; Human Rights, Afrocentrism and African Re-membering: Examining the Kurukan Fuga Charter (Manden Charter); Community versus Adult Learning Institutions Conflict: Pathways to Sustainable Peace; Gendered Dimensions of Violence Against Women: How Obscuring Femicide in Kenya Hampers Redress;* and *The Admissibility of Verifiable Technical Intelligence Evidence Before Kenyan Courts: A Legislative Proposal for Criminal Law Reform.*

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

Prof. Kariuki Muigua Ph.D, SC, FCIArb, Ch.Arb, OGW.
Editor, Nairobi,
July, 2026.

List of Contributors

Hon. Prof. Kariuki Muigua, PhD, SC.

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 and he is also a Senior Counsel. 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

Hon. Lady Justice (RTD) Dr Nancy Baraza, PhD, OGW, EBS

Hon. Lady Justice (RTD) Dr Nancy Baraza is a pioneering Kenyan legal scholar, reformist, and advocate for constitutionalism, justice and gender equality. She holds an LLB (Hons), LLM and PhD in Law degrees from the University of Nairobi. She served as the first Deputy Chief Justice of the Republic of Kenya under the 2010 Constitution, a Judge of the Supreme Court and first Vice President of the Supreme Court. As the Deputy Chief Justice, Dr. Baraza initiated the Judiciary Transformation Framework through which she championed judicial independence, integrity, and institutional reforms that has had far reaching impact on administration of justice in the Kenyan Judiciary.

Dr Baraza is one of the significant architects of the Kenyan Constitution, having served as a Commissioner with the Constitution of Kenya Review Commission (CKRC), where she chaired the Bill of Rights Committee that produced the framework for Kenya's current Bill of Rights. She has a major impact on law reforms that led to the enactment of family laws such as the Marriage Act, the Matrimonial Property Act and the Protection from Domestic Violence Act when she served as Vice Chairperson of the Kenya Law Reform Commission.

Dr Baraza is a scholar of repute, with areas of research focusing on Constitutional law, Human rights law, Family law, Law and Access to Justice, and gender and the law. She is has widely published in these areas of law. She is a senior lecturer at the Faculty of Law, University of Nairobi. She is an accredited Court Annexed Mediator.

Dr Baraza is a founding member of the Federation of Women Lawyers in Kenya, a premier internationally affiliated Women's Righs Organisation and previously served as its president between 1995-1998.

Dr Baraza was appointed by the President of the Republic of Kenya and served as the chairperson of the Technical Working Group on Gender Based Violence (GBV) including femicide which made recommendations to curb GBV and femicide in Kenya.

Dr. Baraza can be reached on nancy.baraza@uonbi.ac.ke,

Mwati Muriithi

Mwati Muriithi is an Advocate of the High Court of Kenya, an Associate member of the Chartered Institute of Arbitrators (ACIArb) 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

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

Dr. Nelly Wamaitha Kamangu
Dr. Nelly Wamaitha holds a PhD in Law Enforcement and Justice Administration focusing on how law enforcement interacts with the society from Mount Kenya University Kenya. She has a Master of Laws specializing in Gender and the law from the University of Nairobi, Kenya and a Bachelor of laws from the same University. Dr. Nelly Wamaitha is a legal scholar and researcher. Her research engages critically with law, gender, criminology, and access to justice and has published widely in these areas. She lectures at leading Kenyan universities and beyond. She is also a consultant on curriculum development and legal education accreditation process. Dr Wamaitha is also a certified mediator. Dr. Nelly Wamaitha is a lawyer, certified mediator, Senior Law lecturer, and seasoned administrator with a PhD in Law Enforcement and Justice Administration. Her research and professional interests focus on gender justice, constitutionalism, socio-legal transformation, governance, mediation, conflict resolution, and access to justice in Africa. She has published and presented scholarly work in the areas of gender, law, governance, and dispute resolution, and continues to engage in academic research, legal consultancy, and institutional leadership.
Dr. Nelly can be reached through nellywamaitha97@gmail.com,

Journal of Conflict Management and Sustainable Development

Volume 13 Issue 2 – 2026

Content	**Author**	**Page**
Towards Dependable Renewable Energy Systems: Achieving Just Transition for Posterity	Prof. Kariuki Muigua PhD, SC	1
The Impact of Poverty, Discrimination, and Limited Access to Property on People's Participation in Law-Making and Access to Justice in Kenya	Dr. Nancy Baraza	12
Sustainability in Africa's Oil and Gas Sector: A Critical Evaluation of ESG Principles and Emerging Technologies	Mwati Muriithi Prof. Kariuki Muigua PhD, SC	41
The Regulation and Control of Export in Military and Dual Use Goods: An Appraisal of the Strategic Goods Control Bill, 2024	Michael Sang	56
Human Rights, Afrocentrism and African Re-membering: Examining the Kurukan Fuga Charter (Manden Charter)	Prof. Kariuki Muigua PhD, SC	89
Gendered Dimensions of Violence Against Women: How Obscuring Femicide in Kenya Hampers Redress	Dr. Nancy Baraza	99
Community versus Adult Learning Institutions Conflict: Pathways to Sustainable Peace	Dr. Nelly Wamaitha Kamangu	125
The Admissibility of Verifiable Technical Intelligence Evidence Before Kenyan Courts: A Legislative Proposal for Criminal Law Reform	Michael Sang	158

Towards Dependable Renewable Energy Systems: Achieving Transition for Posterity

By: ***Kariuki Muigua****

Abstract

This paper critically examines how renewable energy can be sustainably harnessed to achieve just transition. The paper observes that renewable energy plays a central role in the just transition discourse. It discusses the key benefits of renewable energy and their role in fostering just transition. Despite its efficacy in fostering just transition, the paper observes that poor renewable energy policies and investments can undermine this ideal. Consequently, the paper notes that there is need to build dependable renewable energy systems in order to actualise the ideal of just transition. It discusses how this agenda can be achieved for posterity.

1.0 Introduction

Just transition is a concept that seeks to ensure equity, fairness, inclusivity and justice in the shift towards low-carbon and environmentally sustainable economies and societies[1]. In addition, it has been observed that just transition involves meeting environmental and climate goals while ensuring the whole of society – including all individuals, all communities, all workers and all social groups – are brought along in the transition to a net-zero future[2]. Just transition has also been defined as a fair and equitable process of moving towards a post-carbon society by addressing major global justice concerns such as (but not

* PhD in Law (Nrb),SC, FCIArb (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) [May, 2026].

[1] United Nations., 'Just Transition' Available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2023-1.pdf (Accessed on 19/05/2026)

[2] United Nations Development Programme., 'What is just transition? And why is it important?' Available at https://climatepromise.undp.org/news-and-stories/what-just-transition-and-why-it-important (Accessed on 19/05/2026)

limited to) ethnicity, income, and gender within both developed and developing contexts[3]. This concept seeks to ensure equitable access to the benefits and sharing of the costs of Sustainable Development as societies make the transition to low-carbon and resilient economies[4].

Achieving just transition is vital for both people and planet in light of mounting environmental threats including the triple planetary crisis of climate change, biodiversity loss, and pollution and waste. It has been observed that the impacts of these crises are uneven with vulnerable individuals and communities including women, the youth, people of colour, indigenous peoples and local communities being disproportionately affected[5]. Consequently, just transition seeks to combat this inequality in order to ensure fairer and sustainable outcomes as the world transitions to net zero carbon emissions, by maximising the benefits of climate action and other environmental policies and minimising the negative impacts on vulnerable individuals and communities[6]. At its core, just transition seeks to foster climate, energy and environmental justice in a manner that promotes fairness and equity in the journey towards sustainability[7].

It has been observed that just transitions to low-carbon and climate-resilient development can create opportunities for environmental sustainability, social equity and economic prosperity towards Sustainable Development[8]. Just transition offers an opportunity for countries to strengthen efforts to decarbonize,

---

[3] McCauley. D., & Heffron. R., 'Just Transition: Integrating Climate, Energy and Environmental Justice.' *Energy Policy*., Volume 119, 2018, pp 1-7

[4] African Development Bank Group., 'Just Transition Initiative to Address Climate Change in the African Context' Available at https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/climate-investment-funds-cif/just-transition-initiative (Accessed on 19/05/2026)

[5] What is the just transition and what does it mean for climate action?., Available at https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-just-transition-and-what-does-it-mean-for-climate-action/ (Accessed on 19/05/2026)

[6] Ibid

[7] McCauley. D., & Heffron. R., 'Just Transition: Integrating Climate, Energy and Environmental Justice.' Op Cit

[8] African Development Bank Group., 'Just Transition Initiative to Address Climate Change in the African Context.' Op Cit

green their economies, and build climate resilience[9]. This concept is envisaged under the *Paris Agreement*[10] which urges countries to take into account the imperatives of a *just transition* of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities in the pursuit of climate and environmental goals[11]. Just transition has been identified as a key approach towards ensuring that the move towards a green and net-zero future happens in a fair way, leaving no one behind[12]. Embracing just transition is therefore vital towards ensuring justice, equity, fairness, and inclusivity in the pursuit of environmental, climate and energy justice.

This paper critically examines how renewable energy can be sustainably harnessed to achieve just transition. The paper observes that renewable energy plays a central role in the just transition discourse. It discusses the key benefits of renewable energy and their role in fostering just transition. Despite its efficacy in fostering just transition, the paper observes that poor renewable energy policies and investments can undermine this ideal. Consequently, the paper notes that there is need to build dependable renewable energy systems in order to actualise the ideal of just transition. It discusses how this agenda can be achieved for posterity.

2.0 Renewable Energy and Just Transition: Promises and Pitfalls

Renewable energy refers to energy that is derived from natural sources that are replenished at a higher rate than they are consumed[13]. Renewable energy has also

---

[9] United Nations Development Programme., 'What is just transition? And why is it important?.' Op Cit

[10] United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 19/05/2026)

[11] Ibid

[12] European Commission., 'The Just Transition Mechanism: Making Sure no One is Left Behind.' Available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism_en (Accessed on 19/05/2026)

[13] United Nations., 'What is Renewable Energy?' Available at https://www.un.org/en/climatechange/what-is-renewable-energy (Accessed on 19/05/2026)

been defined as energy that is obtained from sources that cannot be depleted when used[14]. Renewable energy sources include solar, wind, hydropower, geothermal, ocean/tidal energy and bioenergy[15].

Renewable sources of energy provide numerous benefits in the quest towards just transition. For example, renewable sources are abundant all over the world, easily replenished by nature and natural processes, and emit little to no greenhouse gases or air pollutants[16]. It has been argued that most renewable energy sources produce zero carbon emissions and minimal air pollutants[17]. Renewable sources of energy such as solar power, wind power, hydropower, geothermal energy and biomass are therefore considered as clean energy[18]. Consequently, renewable energy is vital in confronting global environmental challenges including climate change and pollution and securing a net-zero and climate-resilient future[19]. In particular, renewable sources of energy are at the heart of the transition from fossil fuels towards clean energy. It has been observed that fossil fuels including oil, gas and coal, which dominate the global energy mix, are responsible for nearly two-thirds of global carbon dioxide emissions and are thus the primary cause of climate change[20].

Harnessing renewable energy can thus support the just transition agenda. In addition to their environmental benefits, it has been observed that the shift to modern, affordable, clean and sustainable energy solutions including renewable such as solar, wind and geothermal energy can enable vital services such as

[14] Renewable Energy., Available at https://climate.mit.edu/explainers/renewable-energy (Accessed on 19/05/2026)
[15] United Nations., 'What is Renewable Energy?' Op Cit
[16] United Nations., 'Renewable energy – powering a safer and prosperous future' Available at https://www.un.org/en/climatechange/raising-ambition/renewable-energy (Accessed on 19/05/2026)
[17] What is Renewable Energy?., Available at https://www.ibm.com/think/topics/renewable-energy (Accessed on 19/05/2026)
[18] Ibid
[19] United Nations., 'Renewable energy – powering a safer and prosperous future' Op Cit
[20] United Nations., 'The Role of Fossil Fuels in a Sustainable Energy System' Available at https://www.un.org/en/chronicle/article/role-fossil-fuels-sustainable-energy-system (Accessed on 02/01/2025)

improved healthcare, better education, and internet access, thus creating new jobs, improving livelihoods, and reducing poverty towards Sustainable Development[21]. Renewable sources of energy can ensure progress towards just transition by fostering access to affordable, reliable, sustainable, and modern energy for all, while also tackling broader social, economic, and environmental challenges[22].

It has been observed that with sustainable, inclusive and equitable practices, renewable sources of energy can promote just transition[23]. However, poorly implemented renewable energy systems can also undermine just transition by fuelling inequalities, violating human rights and undermining environmental sustainability[24]. For example, it has been observed that the acquisition and use of land for renewable energy production, especially in Africa and the Global South, without addressing historical land-based community grievances contributes to the vulnerability of local communities leading to conflicts and disputes[25]. The acquisition of land to support renewable energy developments can cause human rights violations especially when Free, Prior and Informed Consent (FPIC) is not obtained from indigenous peoples and local communities[26]. Poorly implemented renewable energy developments can also impact environmental sustainability. For instance, clearing land to support renewable energy developments such as

---

[21] United Nations Environment Programme., 'Renewable Energy' Available at https://www.unep.org/topics/energy/renewable-energy/renewable-energy (Accessed on 19/05/2026)

[22] PanAfrican Climate Justice Alliance., 'Just Transition and Energy Access' Available at https://pacja.org/just-transition-and-energy-access-2/ (Accessed on 19/05/2026)

[23] Just Transition: A Climate, Energy and Development Vision for Africa., Available at https://static1.squarespace.com/static/657880dcd408ac495a5cc888/t/65c45632b517e324955482c1/1707365954174/Just-Transition-Africa-report-ENG_single-pages_1685021139.pdf (Accessed on 19/05/2026)

[24] Ibid

[25] The Danish Institute For Human Rights., 'Scoping Paper: Human Rights and The Energy Transition in Kenya' Available at https://www.humanrights.dk/files/media/document/Kenya%20Energy%20Transition%20and%20Human%20Rights%20Scoping_accessible.pdf (Accessed on 20/05/2026)

[26] Building a resilient social license to operate in Africa's renewable energy transition., https://www.sustainability.com/insights/building-a-resilient-social-license-to-operate-in-africas-renewable-energy-transition/ (Accessed on 20/05/2026)

wind and geothermal projects can impact wildlife, biodiversity and ecosystems thus affecting local communities who rely on biodiversity and ecosystems for their livelihoods[27]. In addition, it has been observed that wind and solar farms, hydroelectric dams, and geothermal plants needed to adopt renewable energy all require significant land and water resources, often leading to disagreements and disputes with local communities over land rights and environmental impact[28].

In light of the foregoing concerns, it is imperative to implement dependable renewable energy systems in order to achieve just transition for posterity.

3.0 Building Dependable Renewable Energy Systems towards Just Transition

Achieving just transition is a noble global endeavour towards protecting people and planet for Sustainable Development. It has been observed that just transition provides an effective approach to address social, economic, and environmental justice concerns[29]. Just transition ensures that no one is left behind in the net zero transition by fostering equity, inclusivity, justice and human rights[30]. Renewable energy is at the heart of just transition since it enables the transition to clean, affordable, reliable, modern and sustainable energy towards protecting people and planet from climate change and pollution among other negative environmental impacts of fossil fuels[31]. Further, when sustainably harnessed, renewable energy can contribute to energy security and justice, poverty alleviation and job creation towards just transition[32]. However, in some contexts, the adoption of renewable energy is linked to uneven distribution of economic opportunities, financial burdens, pollution, biodiversity loss and human rights

[27] The Danish Institute For Human Rights., 'Scoping Paper: Human Rights and The Energy Transition in Kenya' Op Cit
[28] The Role of Fossil Fuel and Renewable Energy Projects in Conflict Across Africa., Available at https://www.accord.org.za/analysis/the-role-of-fossil-fuel-and-renewable-energy-projects-in-conflict-across-africa/ (Accessed on 20/05/2026)
[29] African Development Bank Group., 'Just Transition Initiative to Address Climate Change in the African Context.' Op Cit
[30] What is the just transition and what does it mean for climate action?., Op Cit
[31] United Nations., 'Renewable energy – powering a safer and prosperous future' Op Cit
[32] Ibid

violations against indigenous peoples and local communities thus undermining just transition[33].

In light of the benefits and challenges associated with its adoption, it is imperative to implement dependable renewable energy systems in order to achieve just transition for people and planet. It has been observed that just transition ensures that the shift to renewable energy is fair, inclusive and equitable, protecting the rights and livelihoods of those most affected by the transition[34]. Just transition therefore involves prioritising access to renewable energy for all while also ensuring that the shift to renewable energy does not fuel environmental, social and economic challenges[35].

In order to achieve just transition, there is need to ensure that the adoption of renewable energy is inclusive, fair, equitable and prioritises the needs of the vulnerable including indigenous peoples and local communities[36]. This can be achieved through inclusive energy policies primarily designed towards tackling energy poverty and promoting social equity[37]. Through inclusive policies, it is possible to ensure that renewable energy investments benefit all including vulnerable people and communities in remote areas towards achieving universal access to clean, affordable, modern and sustainable energy[38]. It is also imperative to foster community engagement in order to build dependable energy systems for just transition. In particular, there is need to obtain FPIC from indigenous peoples and local communities in renewable energy projects[39]. It has been observed that securing FPIC enables investors to proactively manage

[33] Energy Justice; A Guide to Energy Transition., Available at https://cleanenergy4africa.org/energy-justice-a-guide-to-renewable-energy-transition/ (Accessed on 20/05/2026)
[34] PanAfrican Climate Justice Alliance., 'Just Transition and Energy Access' Op Cit
[35] Ibid
[36] Impact of renewable energy projects on Indigenous communities in Kenya., Op Cit
[37] Ibid
[38] Muigua. K., 'Access to Energy as a Constitutional Right in Kenya', available at http://kmco.co.ke/wp-content/uploads/2018/08/Access-to-Energy-as-a-Constitutional-Right-in-Kenya-NOVEMBER-2013.pdf (Accessed on 20/05/2026)
[39] Building a resilient social license to operate in Africa's renewable energy transition., Op Cit

relationships with local communities and address human rights, land and environmental conservation concerns in renewable energy projects for a just transition[40]. In addition, there is need to prioritise environmental conservation during renewable energy developments. By effectively planning renewable energy developments, locating them in safe areas and ensuring efficient use of resources including water, it is possible to minimise the negative environmental impacts associated with renewable energy projects[41].

Through the foregoing, it is possible to ensure that the shift to renewable energy is fair, inclusive and equitable towards just transition.

4.0 Conclusion

Adopting renewable energy provides numerous benefits for both people and planet in the pursuit of Sustainable Development. However, it is imperative to build dependable renewable energy systems through inclusive policies and investments, fostering community engagement and prioritising environmental conservation in order to ensure that the shift to clean, affordable, modern, reliable and sustainable energy achieves just transition.

[40] Ibid

[41] What are the environmental impacts of renewable energy?., Available at https://www.wilderness.org/news/blog/faq-what-are-environmental-impacts-renewable-energy (Accessed on 20/05/2026)

References

African Development Bank Group., 'Just Transition Initiative to Address Climate Change in the African Context' Available at https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/climate-investment-funds-cif/just-transition-initiative

Building a resilient social license to operate in Africa's renewable energy transition., https://www.sustainability.com/insights/building-a-resilient-social-license-to-operate-in-africas-renewable-energy-transition/

Energy Justice; A Guide to Energy Transition., Available at https://cleanenergy4africa.org/energy-justice-a-guide-to-renewable-energy-transition/

European Commission., 'The Just Transition Mechanism: Making Sure no One is Left Behind.' Available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism_en

http://kmco.co.ke/wp-content/uploads/2018/08/Access-to-Energy-as-a-Constitutional-Right-in-Kenya-NOVEMBER-2013.pdf

Just Transition: A Climate, Energy and Development Vision for Africa., Available at https://static1.squarespace.com/static/657880dcd408ac495a5cc888/t/65c45632b517e324955482c1/1707365954174/Just-Transition-Africa-report-ENG_single-pages_1685021139.pdf

McCauley. D., & Heffron. R., 'Just Transition: Integrating Climate, Energy and Environmental Justice.' *Energy Policy*., Volume 119, 2018, pp 1-7

Muigua. K., 'Access to Energy as a Constitutional Right in Kenya', available at PanAfrican Climate Justice Alliance., 'Just Transition and Energy Access' Available at https://pacja.org/just-transition-and-energy-access-2/

Renewable Energy., Available at https://climate.mit.edu/explainers/renewable-energy

The Danish Institute For Human Rights., 'Scoping Paper: Human Rights and The Energy Transition in Kenya' Available at https://www.humanrights.dk/files/media/document/Kenya%20Energy%20Transition%20and%20Human%20Rights%20Scoping_accessible.pdf

The Role of Fossil Fuel and Renewable Energy Projects in Conflict Across Africa., Available at https://www.accord.org.za/analysis/the-role-of-fossil-fuel-and-renewable-energy-projects-in-conflict-across-africa/

United Nations Development Programme., 'What is just transition? And why is it important?' Available at https://climatepromise.undp.org/news-and-stories/what-just-transition-and-why-it-important

United Nations Environment Programme., 'Renewable Energy' Available at https://www.unep.org/topics/energy/renewable-energy/renewable-energy

United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

United Nations., 'Just Transition' Available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2023-1.pdf

United Nations., 'Renewable energy – powering a safer and prosperous future' Available at https://www.un.org/en/climatechange/raising-ambition/renewable-energy

United Nations., 'The Role of Fossil Fuels in a Sustainable Energy System' Available at https://www.un.org/en/chronicle/article/role-fossil-fuels-sustainable-energy-system

United Nations., 'What is Renewable Energy?' Available at https://www.un.org/en/climatechange/what-is-renewable-energy

What are the environmental impacts of renewable energy?., Available at https://www.wilderness.org/news/blog/faq-what-are-environmental-impacts-renewable-energy

What is Renewable Energy?., Available at https://www.ibm.com/think/topics/renewable-energy

What is the just transition and what does it mean for climate action?., Available at https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-just-transition-and-what-does-it-mean-for-climate-action/

The Impact of Poverty, Discrimination, and Limited Access to Property on People's Participation in Law-Making and Access to Justice in Kenya

By: ***Dr. Nancy Baraza****

Abstract

The Constitution of Kenya adopted in 2010, introduced a transformative framework grounded in democracy, equality, public participation, and access to justice. Articles 10, 48, 118, and 196 recognise participation in governance and access to justice as foundational constitutional values and rights. Despite these constitutional guarantees, significant socio-economic inequalities continue to undermine meaningful participation in law-making processes and limit effective access to justice for many Kenyans. This article examines how poverty, discrimination, and unequal access to productive and consumptive property operate as structural barriers that exclude individuals and communities from engaging fully in legal and political processes. The paper argues that formal legal recognition of rights alone is insufficient where citizens lack the material, educational, and institutional capacity to exercise those rights effectively. Poverty constrains the ability of individuals to access courts, legal representation, civic information, and participatory forums, while discrimination based on gender, ethnicity, disability, geographical location, and socio-economic status deepens exclusion from governance structures. Limited access to land, housing, credit, and other productive resources further entrenches dependency and marginalisation, particularly among women, rural communities, informal settlement dwellers, and historically disadvantaged groups.

Drawing on transformative constitutionalism, access to justice theory, and socio-legal scholarship, the article analyses the relationship between socio-economic inequality and democratic participation in Kenya. It further evaluates the role of state institutions, the Legal Aid Act, civil society organisations, and community-based initiatives in addressing these barriers. The article concludes that substantive access to justice and meaningful public participation require more than constitutional guarantees; they demand structural interventions aimed at reducing poverty, redistributing resources, combating discrimination, and strengthening legal empowerment. Without addressing these *underlying inequalities, constitutional promises of inclusion and participatory governance risk remaining largely formal rather than transformative realities.*

KEY WORDS: Transformative, constitutionalism, *socio-economic inequalities, inequality, access, justice.*

Introduction

Before the promulgation a new Constitution in 2010, Kenya's democratic and legal order was widely characterised as formally democratic but substantively constrained, particularly in relation to access to justice. Although the country had institutions of governance, courts, and statutory rights, the broader political-legal environment was shaped by executive dominance, weak institutional independence, and significant socio-economic exclusion, all of which limited meaningful access to justice for most citizens.[1] The promulgation of the Constitution of Kenya in 2010 marked a significant shift in the legal and political understanding of justice by expressly recognising access to justice as a constitutional right.[2] The Constitution further embeds values of equality, human dignity, social justice, inclusiveness, participation of the people, and protection of marginalised groups within the broader constitutional framework. These provisions are an attempt to transform the legal system from a historically formal and exclusionary institution into one that is responsive to the social and economic realities of the population.[3]

However, despite the noble promises of the Kenyan Constitution, poverty, unequal access to productive and consumptive property, discrimination, and limited legal awareness remain significant barriers affecting the ability of

[1] Yash P Ghai and J Patrick WB McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Oxford University Press 1970); Willy Mutunga, *Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992–1997* (SAREAT 1999).

[2] Ibid

[3] Yash Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011).

individuals and communities to participate meaningfully in governance and legal processes.[4] As argued by scholars of access to justice such as Cappelletti and Garth[5] the existence of legal rights alone does not automatically ensure their enjoyment. Rights are not self-executing but they only acquire real meaning when individuals have practical means of enforcing them through accessible legal institutions.[6] Cappelletti and Garth argue that the promises of equality before the law, participation in governance, and protection of rights become hollow where people cannot realistically use legal systems due to poverty, cost, distance, complexity, corruption, or lack of legal awareness. In this sense, democracy becomes "formal" rather than "substantive."[7] The challenge in access to justice lies in ensuring that ordinary people possess the actual capacity to enforce and benefit from them. The relationship between socio-economic inequality and access to justice is particularly evident in the area of public participation and law-making.[8]

The Constitution recognises public participation as an essential feature of democratic governance through Articles 10, 118, and 196.[9] Formal legal education, public legal awareness initiatives, community legal empowerment programmes, and state-supported legal aid services are intended to strengthen citizens' understanding of the law and improve their ability to utilise legal institutions effectively.[10] The enactment of the Legal Aid Act and the establishment of the National Legal Aid Service represent important steps towards institutionalising legal assistance for indigent and vulnerable persons. Civil society organisations and community-based initiatives have also played a

---

[4] Kenya National Commission on Human Rights, *Realising Sexual and Reproductive Health Rights in Kenya: A Myth or Reality?* (KNCHR 2012);

[5] Mauro Cappelletti and Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective* (1978) 27 *Buffalo Law Review* 181.

[6] Ibid

[7] Ibid

[8] Ibid

[9] Yash Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011

[10] Ibid

significant role in expanding legal awareness and representation, particularly among communities that remain underserved by formal state institutions.[11]

Theoretical Framework

This paper is discussed within two theoretical frameworks: transformative constitutionalism and Socio-Legal Analysis. Transformative constitutionalism and socio-legal analysis are suitable for this paper because they jointly explain how Kenya's constitutional promises of access to justice and public participation require not only formal legal recognition but also structural social and economic transformation to overcome real-world barriers such as poverty, discrimination, and unequal access to resources that limit meaningful participation in governance and justice processes.

Transformative Constitutionalism

Transformative constitutionalism is a constitutional theory that conceives the constitution as an instrument for fundamental social, political, economic, and institutional transformation rather than merely a legal framework for the organisation of state power. The theory emerged prominently within post-apartheid South African jurisprudence and scholarship, particularly through the work of Karl Klare, who defined transformative constitutionalism as a long-term project of constitutional enactment, interpretation, and enforcement committed to transforming political and social institutions in a democratic, participatory, egalitarian, and inclusive direction.[12]

The theory departs from traditional liberal constitutionalism, which primarily focuses on limiting governmental power and protecting formal civil and political rights. Transformative constitutionalism instead recognises that deeply unequal societies require constitutions capable of addressing structural injustice,

[11] Patricia Kameri-Mbote and others, *Searching for Lasting Solutions to Justice in Kenya* (University of Nairobi Press 2015).
[12] Karl E Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146, 150.

historical exclusion, poverty, and systemic discrimination.[13] It therefore places emphasis on substantive equality, social justice, redistribution, participation, and institutional transformation. The constitution is viewed not merely as a legal text but as a vehicle for social change and democratic reconstruction.[14] In the context of Kenya, transformative constitutionalism is central to understanding the philosophy and aspirations of the Constitution of Kenya, 2010. The Constitution emerged after decades of authoritarian rule, socio-economic inequality, exclusion, corruption, and political violence.[15] It therefore sought to transform the Kenyan state from a historically centralised and exclusionary system into a participatory constitutional democracy grounded in human dignity, equality, accountability, and social justice.[16] Transformative constitutionalism rejects purely formal notions of equality and participation. Formal equality assumes that individuals are similarly situated and therefore capable of enjoying rights equally once legal recognition is granted. However, transformative constitutionalism recognises that poverty, discrimination, illiteracy, unequal access to resources, and historical marginalisation substantially affect the ability of individuals and communities to exercise constitutional rights effectively. Consequently, meaningful participation in governance and access to justice require positive state intervention aimed at dismantling structural barriers.[17]

Transformative constitutionalism is therefore particularly relevant in examining the relationship between poverty, discrimination, and participation in law-making. The theory demonstrates that constitutional democracy cannot be realised solely through procedural guarantees where socio-economic inequality prevents citizens from meaningfully engaging in governance processes. Participation becomes illusory where citizens lack education, financial capacity,

---

[13] Ibid.
[14] Pius Langa, 'Transformative Constitutionalism' (2006) 17 *Stellenbosch Law Review* 351.
[15] Yash Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011)
[16] Willy Mutunga, *Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992–1997* (SAREAT 1999).
[17] Klare (n 1) 150.

legal awareness, or access to civic spaces.[18] Thus, transformative constitutionalism demands substantive measures aimed at legal empowerment, redistribution, inclusion, and institutional accessibility.

Socio-Legal Analysis

Socio-legal analysis is an interdisciplinary approach to legal scholarship that examines law within its broader social, political, economic, historical, and cultural context. Unlike traditional doctrinal legal analysis, which focuses primarily on legal rules, statutes, and judicial decisions, socio-legal scholarship investigates how law operates in practice and how social structures influence legal outcomes.[19] Socio-legal scholars challenge the assumption that law is neutral, objective, and equally accessible to all members of society. Instead, they argue that legal systems often reflect and reproduce existing social hierarchies and power relations.[20] Law is therefore understood not merely as a set of rules but as a social institution deeply embedded within broader structures of inequality and governance.

Socio-legal analysis is particularly useful in understanding the gap between formal constitutional guarantees and lived social realities. Although constitutions may recognise rights such as equality, public participation, and access to justice, the enjoyment of these rights often depends upon material conditions and social power.[21] Poverty, gender inequality, ethnicity, disability, geography, and economic marginalisation shape how individuals experience legal institutions and governance processes.[22] In the Kenyan context, socio-legal analysis reveals how structural inequalities continue to affect democratic participation and access to justice despite the progressive aspirations of the 2010 Constitution. Rural populations, women, persons with disabilities, informal settlement residents, and economically disadvantaged groups frequently

---

[18] Yash Ghai and Jill Cottrell Ghai (n 4) 89.

[19] Roger Cotterrell, *The Sociology of Law: An Introduction* (2nd edn, Butterworths 1992) 5.

[20] Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008) 2.

[21] Ibid

[22] **UN Women office publishing:** Kenya Country Office, 2024.

encounter barriers in accessing courts, legal representation, public information, and participatory forums. High litigation costs, institutional inefficiency, legal illiteracy, corruption, and unequal distribution of resources further exacerbate exclusion from justice systems.[23]

Conceptualising Access to Justice

Access to justice is a foundational legal and constitutional concept concerned with the ability of individuals to obtain fair, effective, and meaningful remedies through formal and informal legal systems. At its core, it goes beyond the mere existence of courts and laws to examine whether people can practically use legal institutions to enforce rights and resolve disputes.[24] The concept therefore shifts attention from formal legality to substantive justice, emphasising outcomes rather than procedures alone.

A leading formulation of access to justice is provided by Cappelletti and Garth, who argue that rights are "meaningless unless they can be effectively enforced," and that legal systems must remove barriers such as cost, complexity, and institutional inaccessibility.[25] Their "waves of access to justice" framework highlights legal aid, collective enforcement mechanisms, and simplified procedures as essential reforms to make justice systems responsive to ordinary people.[26] From a socio-legal perspective, access to justice is deeply shaped by structural conditions such as poverty, education, geography, and discrimination.[27] Individuals who lack financial resources, legal literacy, or institutional proximity are often excluded from formal justice systems even where rights are constitutionally guaranteed. This understanding reframes access to justice as a question of social inclusion and power, not merely legal design.

---

[23] Amartya Sen, *Development as Freedom* (OUP 1999) 87.

[24] United Nations Development Programme, *Access to Justice Practice Note* (UNDP 2004).

[25] Mauro Cappelletti and Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective* (1978) 27 *Buffalo Law Review* 181.

[26] Ibid

[27] Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008) 2.

In constitutional democracies such as Kenya, access to justice is both a legal right and a governance principle. Article 48 of the Constitution guarantees access to justice for all persons and requires the state to remove financial and procedural barriers. However, scholars note that formal constitutional guarantees are insufficient without practical legal empowerment, including legal aid, civic education, and institutional reform.[28] Amartya Sen's capability approach further deepens this understanding by arguing that justice depends on the real freedoms individuals have to achieve valued outcomes, not merely formal entitlements.[29] Similarly, socio-legal scholars such as Reimann, Cotterrell and Thurman Arnold emphasise that justice systems must be evaluated in terms of lived experiences, particularly for marginalised groups who face systemic exclusion.[30]

Socio-Economic Framework and Access to Justice

Legal scholars have increasingly approached access to justice as both a socio-economic and political question dealing with the capacity of individuals and communities to recognise, claim, and enforce rights within existing social structures.[31] Early liberal conceptions of justice tended to focus on formal equality before the law and the procedural availability of courts. Under this approach, justice was considered accessible so long as legal institutions were formally open to all persons irrespective of status or identity.

The approach is faulted for overlooking the material conditions necessary for meaningful participation within legal systems. Deborah Rhode notes that the mere existence of legal rights is insufficient where individuals cannot afford legal representation, navigate institutional procedures, or obtain adequate information concerning their entitlements. Cappelletti and Garth famously argued that access to justice must be understood as the most basic human right within modern legal

[28] Constitution of Kenya, 2010 art 48; Patricia Kameri-Mbote and others, *Searching for Lasting Solutions to Justice in Kenya* (University of Nairobi Press 2015).
[29] Amartya Sen, *Development as Freedom* (OUP 1999) 87.
[30] Naomi Creutzfeldt, Agnieszka Kubal and Fernanda Pirie. Exploring the comparative in socio-legal studies, Cambridge University Press, **2016**
[31] Ibid

systems because rights become meaningless if individuals are unable to enforce them effectively. This approach recognised that poverty, illiteracy, discrimination, and social exclusion are not peripheral concerns to justice, but central determinants of whether justice can be realised at all.

This relationship between economic inequality and institutional participation is particularly relevant in Kenya, where patterns of land ownership, wealth concentration, and social exclusion have historically influenced political participation and access to state institutions. Consequently, legal institutions developed within a context where law often functioned less as an instrument of inclusion and more as a mechanism of administration and control.[32] The Kenyan Constitution adopts a broader understanding of justice that extends beyond procedural adjudication. Article 10 identifies human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and participation of the people as national values binding all state organs and public officers.

Similarly, Article 48 imposes an obligation upon the State to ensure access to justice for all persons. The recognition of socio-economic rights under Article 43 further reinforces this position by acknowledging that access to housing, healthcare, education, food, water, and social security are integral to human dignity and social participation.

However, exclusion frequently occurs long before individuals enter formal legal institutions. Many people experience injustice at the level of social and economic relationships, including unequal access to property, exploitative labour arrangements, discrimination, and exclusion from governance processes. Young argues that injustice often arises not from isolated acts of wrongdoing, but from institutional processes and social structures that systematically disadvantage

[32] Yash P Ghai and J Patrick WB McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Oxford University Press 1970).

particular groups while privileging others. The challenge for access to justice therefore lies not merely in establishing legal rights, but in confronting the social conditions that determine who can realistically invoke those rights.

Poverty, Property Relations, and Structural Exclusion from Justice

Although the Constitution of Kenya, 2010 formally guarantees equality before the law and access to justice for all persons, the practical enjoyment of these guarantees continues to be influenced by unequal economic conditions and disparities in access to productive resources.[33] Economic deprivation frequently determines who can assert rights, seek remedies, participate in governance, and sustain legal disputes within formal institutional systems. Article 43 guarantees rights relating to healthcare, housing, food, water, education, social security, and freedom from hunger. The Constitution further obligates the State under Article 21(2) to take legislative, policy, and other measures, including the setting of standards, towards the progressive realisation of socio-economic rights.

At the most immediate level, poverty limits the ability of individuals to meet the direct costs associated with legal processes. Filing fees, transport expenses, legal representation, documentation costs, and time away from work often place formal legal institutions beyond the reach of economically disadvantaged persons. Rhode observes that legal systems frequently assume capacities and resources that poor populations do not possess, thereby reproducing exclusion despite formal guarantees of equality.[34] The Judiciary has attempted to address some of these barriers through measures such as waiver of court fees for indigent litigants, establishment of mobile courts, digitisation initiatives, and the introduction of Small Claims Courts aimed at facilitating faster and more affordable dispute resolution.

The question of access to productive and consumptive property is particularly

[33] Kariuki Muigua, 'Access to Justice in Kenya: Challenges and Opportunities' (2011) 1 *Strathmore Law Journal.*

[34] Deborah Rhode, *Access to Justice* (Oxford University Press 2007).

significant within the Kenyan context because property ownership has historically influenced economic security, political participation, and social status. Land remains one of the most contested and politically sensitive resources in Kenya due to the historical legacy of colonial dispossession and post-independence inequalities in allocation and ownership.[35] During colonial rule, land alienation displaced many African communities from economically productive areas while simultaneously entrenching racial and economic hierarchies through law and administration.[36]

The 2010 Constitution attempts to respond to these historical injustices through provisions relating to land, equality, and equitable access to resources. Article 60 establishes principles governing land ownership and management, including equitable access to land, elimination of gender discrimination in law and customs relating to land, and encouragement of communities to settle land disputes through recognised local community initiatives. Article 40 protects the right to property, while Article 67 establishes the National Land Commission with responsibility for addressing historical land injustices.

Frederick Engels argued *in the Origin of the Family, Private Property and the State* that control over productive property historically shaped political and legal authority by concentrating power within economically dominant classes.[37] This reality is visible in disputes involving land rights, evictions, labour exploitation, and environmental degradation, where affected communities may lack the financial and institutional resources necessary to challenge state agencies or

[35] HWO Okoth-Ogendo, *Some Issues of Theory in the Study of Tenure Relations in African Agriculture* (African Centre for Technology Studies 1989) (on land tenure, political power, and postcolonial inequality in Kenya); Ambreena Manji, *The Politics of Land Reform in Kenya 2014* (James Currey 2020).

[36] Ibid

[37] Friedrich Engels, *The Origin of the Family, Private Property and the State* (first published 1884, Penguin Classics 2010).

powerful private actors effectively. [38] In Mitu-Bell Welfare Society -v- Kenya Airports Authority, the Supreme Court recognised that forced evictions and denial of housing implicate constitutional rights to dignity and socio-economic protection under Article 43. The decision reflected judicial recognition that access to justice cannot be separated from material conditions affecting vulnerable communities.[39] Similarly, in Satrose Ayuma & 11 others -v- Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme, the High Court acknowledged that informal settlement residents possessed constitutional protections despite their socio-economic vulnerability. [40]

Poverty also affects participation in governance and law-making processes. Public participation has become a central constitutional principle under Articles 10, 118, and 196. However, effective participation frequently requires access to information, education, transport, time, and institutional awareness. Economically disadvantaged citizens may struggle to attend public forums, review legislative proposals, or engage meaningfully with technical policy discussions.

In practice, participation often becomes dominated by organised groups, professionals, political actors, and economically stable individuals capable of navigating institutional processes more effectively. In *Doctors for Life International -v- Speaker of the National Assembly,* the South African Constitutional Court, whose jurisprudence has frequently influenced Kenyan constitutional interpretation, held that meaningful public participation is an essential element of democratic governance. Kenyan courts have adopted similar reasoning in several decisions emphasising that participation must be real and not merely symbolic.[41] For example, in British American Tobacco Kenya v Cabinet Secretary for Health &

[38] Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008); HWO Okoth-Ogendo, *Some Issues of Theory in the Study of Tenure Relations in African Agriculture* (ACTS 1989); Ambreena Manji, *The Politics of Land Reform in Kenya 2014* (James Currey 2020).
[39] Ibid
[40] Ibid
[41] Ibid

Others, The Supreme Court held that public participation is a constitutional principle under Article 10, and that it must be real, meaningful, and not merely cosmetic,[42]

Women, persons with disabilities, minority communities, and informal sector workers often experience compounded barriers arising from both economic disadvantage and structural discrimination. Frances Heidensohn observes that gender inequality within legal systems frequently reflects broader social and economic arrangements that disadvantage women in access to resources and institutional authority.[43] Similarly, Eilionóir Flynn argues that persons with disabilities continue to encounter legal exclusion where institutions fail to accommodate their social and economic realities adequately. These vulnerabilities demonstrate that poverty and discrimination cannot always be analysed separately because they frequently reinforce one another within institutional contexts.[44]

Discrimination, Marginalisation, and Participation in Law-Making

In the context of Kenya, discrimination and marginalisation remain central obstacles to meaningful participation in law-making, The Constitution of Kenya, 2010 adopts a participatory model of governance grounded in sovereignty of the people, public participation, inclusiveness, equality, and non-discrimination. Articles 10, 118, and 196 require Parliament and County Assemblies to facilitate public participation in legislative and policy processes. However, the existence of formal participation mechanisms does not necessarily eliminate substantive exclusion. despite the progressive constitutional framework established under the Constitution of Kenya, 2010. Article 10 of the Constitution entrenches public participation, inclusiveness, equality, and non-discrimination as binding national

[42] British American Tobacco Kenya v Cabinet Secretary for Health & Others [2019] eKLR

[43] Frances Heidensohn. *Women and Crime* (Macmillan 1985); Frances Heidensohn, 'Gender and Crime' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (5th edn, OUP 2012).

[44] Eilionóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Routledge 2016).

values, while Articles 118 and 196 require Parliament and county assemblies to facilitate public involvement in legislative processes.[45] However, in practice, poverty, discrimination, and social marginalisation continue to affect the extent to which different groups are able to influence legislation, public policy, and institutional decision making in Kenya.

Indirect discrimination on the other hand frequently occurs where formally neutral systems disproportionately disadvantage populations already experiencing social or economic vulnerability. The Constitution addresses both forms by guaranteeing equality before the law and freedom from discrimination under Article 27. Article 56 further obligates the State to put in place affirmative action programmes designed to ensure minorities and marginalised groups participate and are represented in governance and other spheres of life.

Historical inequalities relating to property ownership, education, economic opportunity, and political representation have affected women's participation in governance structures and public decision-making. Frances Heidensohn observes that legal and political systems have historically reflected social structures that privileged male participation while marginalising women's voices and experiences[46]. Although Kenya has introduced constitutional and legislative measures aimed at enhancing gender equality, including the two-thirds gender principle under Article 27(8), implementation challenges continue to persist. The failure to fully implement gender representation requirements within Parliament itself illustrates the continuing tension between constitutional aspiration and political reality.

Care responsibilities, economic dependency, insecurity, and limited control over productive resources often affect the ability of women, particularly in rural areas, to attend public forums or sustain political engagement. Consequently, the formal availability of participation mechanisms does not always translate into

[45] Ibid

[46] Ibid

substantive equality of participation.[47] Marginalised communities similarly encounter barriers arising from historical exclusion, geographic isolation, and unequal access to state resources. The Constitution defines marginalised communities broadly to include groups disadvantaged by discrimination, geographic remoteness, cultural exclusion, or historical injustice.[48]

Communities residing in arid and semi-arid regions, informal settlements, and historically neglected areas frequently experience limited institutional presence, weaker educational infrastructure, and inadequate access to information concerning legislative or policy processes. In such circumstances, participation often becomes reactive rather than proactive.[49] In British American Tobacco Kenya Ltd -v- Cabinet Secretary for the Ministry of Health, the Court of Appeal emphasised that public participation must be real and purposive rather than illusory or cosmetic. Similarly, in Kiambu County Government & 3 others -v- Robert N Gakuru & others, the Court affirmed that public participation is a constitutional imperative intended to ensure that citizens are involved in decisions affecting them. However, the courts have also acknowledged that participation cannot be reduced to mere attendance at public forums. Effective participation requires access to information, adequate notice, intelligible communication, and reasonable opportunity for engagement.

Persons with disabilities also continue to face institutional and social barriers affecting participation in law-making and access to justice. Article 54 of the Constitution guarantees rights relating to accessibility, dignity, education, and participation for persons with disabilities. Flynn argues that disability exclusion within legal systems often arises from institutional assumptions concerning capacity, communication, and participation that fail to accommodate diverse realities. These barriers may prevent persons with disabilities from engaging

---

47 Ibid

48 Article 260 of the constitution.

49 United Nations Development Programme, *Access to Information and Public Participation Guidance Note* (UNDP 2010); Yash Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011)

effectively in legislative forums, accessing legal information, or pursuing remedies through formal institutions.[50]

Discrimination also affects participation through language and educational inequality. Legal and legislative processes are frequently conducted using highly technical language inaccessible to large segments of the population. Although Article 7 recognises Kiswahili and English as official languages while promoting indigenous languages, many legislative and institutional processes remain heavily dependent upon formal legal and administrative language unfamiliar to ordinary citizens.

The problem is compounded by the digitalisation of governance and legal processes. Increasing reliance on online publication of bills, virtual public participation forums, electronic submissions, and digital communication has improved efficiency for some populations while simultaneously deepening exclusion for others. Rural populations, elderly persons, economically disadvantaged groups, and individuals lacking digital literacy may struggle to access online participatory platforms. As a result, technological modernisation may inadvertently reproduce inequalities where access to technology and internet infrastructure remains uneven.[51] Young cautions that formal participatory structures may still reproduce exclusion where institutional cultures and power dynamics favour dominant groups while limiting the practical influence of marginalised populations.[52]

Marginalised groups frequently experience lower levels of institutional trust due to historical exclusion, discriminatory treatment, corruption, or perceived bias within state institutions. Fear of victimisation, social stigma, or institutional indifference may discourage vulnerable populations from reporting violations or pursuing legal remedies. This demonstrates that access to justice is not simply a

---

[50] Ibid

[51] United Nations Development Programme, *Digital Justice: Justice Systems in the Digital Era* (UNDP 2020)

[52] Marion Young, *Inclusion and Democracy* (Oxford University Press 2000

question of institutional availability, but also of whether institutions are perceived as legitimate, accessible, and responsive by the populations they are intended to serve.

Legal Education

Legal education is a foundational component of access to justice because it equips individuals with the knowledge and awareness necessary to understand, claim, and enforce their legal rights. Access to justice is not merely the availability of courts and laws, but also the capacity of individuals to recognise that they have rights and to navigate legal systems effectively.[1] Without legal education, constitutional and statutory rights remain largely theoretical, particularly for vulnerable and marginalised groups.[53] A key argument in access to justice scholarship is that ignorance of the law functions as a structural barrier equivalent to poverty or geographical exclusion. Cappelletti and Garth emphasise that legal systems must remove not only financial barriers but also informational and procedural obstacles that prevent individuals from engaging with justice mechanisms. Legal education therefore becomes a tool of empowerment that enables individuals to participate in legal processes, seek remedies, and hold state and private actors accountable.[54]

The Constitution of Kenya, 2010 contemplates an informed and participatory citizenry capable of engaging governance structures and asserting constitutional rights. Article 35 guarantees the right of access to information held by the State or required for the exercise or protection of any right or fundamental freedom. Access to information is therefore directly connected to access to justice because individuals cannot effectively challenge decisions or participate in governance processes where they lack relevant knowledge concerning laws, policies, or institutional procedures. Public participation itself becomes difficult where citizens are unable to access intelligible information regarding proposed

[53] Ibid

[54] Mauro Cappelletti and Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective* (1978) 27 *Buffalo Law Review* 181.

legislation or state action.[55]

Formal legal education is largely confined to universities, professional training institutions, and specialised legal environments. The language of legal discourse, statutory interpretation, and judicial reasoning frequently remains inaccessible to ordinary citizens without advanced educational backgrounds. William Quigley argues that legal systems often develop professional cultures and institutional practices that unintentionally distance law from the communities most affected by injustice. This disconnect may produce legal systems that are formally open yet practically unintelligible to vulnerable populations.

Although Kiswahili and English are recognised as official languages under Article 7 of the Constitution, many legal processes continue to operate primarily through technical English documentation and advocacy. Individuals with limited formal education may therefore experience institutional exclusion despite possessing valid legal claims.

The courts have occasionally acknowledged the relationship between legal knowledge and access to justice. In Republic -v- Karisa Chengo & 2 others, the Supreme Court emphasised the constitutional importance of fair process, institutional clarity, and proper administration of justice within Kenya's judicial structure. Although the case primarily concerned jurisdictional issues, it reflected broader constitutional concerns regarding institutional coherence and accessibility. Quigley criticises legal education models that prioritise commercial or technical competence while neglecting questions of social justice and structural inequality. Similar concerns have emerged within Kenya regarding the accessibility of legal services, concentration of advocates within urban centres, and the cost of professional legal representation.

Dan Banik observes that legal empowerment initiatives become particularly important within societies where poverty and informality shape everyday

[55] Ibid

interactions with law and governance. Many economically vulnerable individuals interact with legal systems primarily through administrative institutions, labour relations, land disputes, policing structures, or informal justice mechanisms rather than through formal constitutional litigation. Public legal education therefore performs an important preventative function by enabling citizens to recognise risks, avoid exploitation, and engage institutions more confidently.

The Legal Aid Act recognises legal awareness and legal education as part of the broader legal aid framework established under the Act. The National Legal Aid Service has similarly identified legal empowerment and public legal education among its institutional objectives. These developments reflect recognition that legal representation alone cannot resolve access to justice challenges where citizens remain unaware of their rights or available institutional remedies. Access to information does not necessarily eliminate barriers arising from poverty, discrimination, or institutional weakness. Individuals may understand their rights yet still lack the financial means, institutional confidence, or social protection necessary to pursue legal remedies effectively. Rhode notes that legal knowledge without institutional capacity or material support may produce frustration rather than empowerment where legal systems remain inaccessible in practice.[56] Similarly, legal awareness campaigns may have limited impact where state institutions are under resourced, geographically distant, or perceived as corrupt or unresponsive.

State Legal Aid and The National Legal Aid Service

The Constitution of Kenya, 2010 recognises legal assistance as part of the broader architecture of fair process and access to justice. Article 50(2)(g) guarantees every accused person the right to choose and be represented by an advocate, while Article 50(2)(h) further provides that an accused person has the right to have an advocate assigned by the State, and at State expense, where substantial injustice would otherwise result.

---

[56] Deborah L Rhode, *Access to Justice* (Oxford University Press 2004)

These provisions reflect constitutional recognition that legal representation is not merely a procedural convenience, but an important safeguard against inequality within adversarial legal systems. Without adequate legal assistance, economically vulnerable persons may struggle to understand proceedings, challenge evidence, invoke procedural protections, or present claims effectively.[57]

Russell Pearce argues that access to justice debates cannot be resolved solely through formal availability of courts because unequal access to legal expertise frequently reproduces substantive inequality within legal systems themselves. Legal representation often shapes the quality of advocacy, procedural navigation, evidence presentation, and strategic litigation decisions, all of which affect the practical enjoyment of rights. Prior to the enactment of the Legal Aid Act, legal aid in Kenya largely operated through fragmented institutional arrangements, limited pauper brief schemes, *pro bono* initiatives, and civil society interventions. The absence of a comprehensive statutory framework contributed to inconsistent provision of legal assistance and limited coordination between state institutions and non-governmental actors. The enactment of the Legal Aid Act represented an important legislative attempt to institutionalise legal aid within Kenya's constitutional framework and to operationalise Article 48 in a more structured manner.

The Act establishes the National Legal Aid Service as the principal institution responsible for administering legal aid in Kenya. The functions of the Service include provision of legal aid, legal awareness, legal advice, legal representation, legal education, and promotion of alternative dispute resolution mechanisms. The legal aid framework also attempts to prioritise vulnerable and marginalised groups within society. The Act identifies persons eligible for legal aid by reference to indigence, vulnerability, and inability to afford legal services. In practice, economically disadvantaged persons frequently face difficult choices

[57] Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95.

between pursuing legal claims and meeting basic socio-economic needs.

In David Njoroge Macharia -v- Republic, the Court of Appeal affirmed that legal representation at State expense may be necessary where substantial injustice would otherwise result. The Court observed that fair trial rights cannot be interpreted narrowly within circumstances where accused persons lack the ability to defend themselves adequately due to poverty or other vulnerabilities. Similarly, in Republic -v- Karisa Chengo & 2 others, the Supreme Court emphasised the constitutional centrality of fair process, institutional competence, and proper administration of justice. These decisions reflect judicial recognition that procedural fairness is closely connected to effective legal assistance and institutional accessibility.

The Judiciary has also introduced complementary initiatives aimed at improving accessibility for vulnerable litigants such as Small Claims Courts, court-annexed mediation, mobile courts, digitisation initiatives, and waiver of court fees for indigent litigants.

Nevertheless, significant challenges continue to affect the effectiveness of Kenya's legal aid framework. Funding remains one of the most persistent limitations. Although the Legal Aid Act establishes an institutional structure for legal aid provision, implementation has often been constrained by limited financial allocation, inadequate staffing, and uneven institutional reach. Rhode notes that adversarial systems tend to reward parties possessing superior legal knowledge and financial resources, thereby reproducing structural inequalities within formal legal processes. This problem becomes especially significant in disputes involving land ownership, commercial transactions, employment rights, or constitutional litigation where opposing parties may possess vastly different economic and institutional capacities. Banik therefore argues that legal empowerment should not be understood solely in terms of litigation support, but also in terms of strengthening social participation, institutional accountability, and economic capability.[58]

NGO Legal and Community-Based Access to Justice

Non-governmental organisations (NGOs) and community-based initiatives play a crucial role in expanding access to justice, particularly in contexts where formal state institutions are limited by cost, distance, inefficiency, or socio-economic inequality. Access to justice scholarship emphasises that legal systems cannot rely solely on courts and state institutions; instead, they must include plural and community-oriented mechanisms that bring justice closer to the people[59]During periods characterised by authoritarian governance, institutional repression, and limited constitutional accountability, civil society organisations frequently functioned as some of the few accessible avenues through which vulnerable populations could seek legal assistance, challenge state action, or obtain public interest representation.

One of the most visible examples is Kituo Cha Sheria, which has long provided legal aid, community legal education, refugee assistance, labour rights advocacy, and strategic litigation support to indigent and marginalised persons.

Banik argues that legal empowerment differs from conventional legal aid because it focuses not only on representation within formal legal proceedings, but also on strengthening the ability of individuals and communities to understand, utilise, and negotiate legal systems in everyday life. Their significance is especially evident in informal settlements, rural areas, prisons, refugee settings, and marginalised communities where professional legal services are scarce or financially inaccessible.

Litigation involving housing rights, environmental protection, police accountability, electoral justice, prisoners' rights, gender equality, and socio-

---

[58] Dan Banik, *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa* (Ashgate 2011)

[59] Mauro Cappelletti and Bryant Garth note 54 above.

economic rights has often depended upon support from non-governmental legal actors. In this respect, civil society has played an important role in operationalising transformative constitutionalism by translating abstract constitutional guarantees into practical institutional claims. Article 22 of the Constitution permits proceedings to be instituted not only by directly affected individuals, but also by persons acting in the public interest or on behalf of vulnerable groups unable to act in their own name. There are also broader questions concerning sustainability and institutional responsibility. Heavy reliance upon civil society interventions may inadvertently allow the State to underperform constitutional obligations relating to legal aid and access to justice. Gready and Robins caution that justice interventions can occasionally become overly institutional or externally oriented while failing to address deeper socio-economic structures producing vulnerability and exclusion. Penal Reform International observes that informal justice systems continue to play a major role across Sub-Saharan Africa because they are often geographically accessible, culturally familiar, and procedurally flexible.[60] The broader contribution of civil society to access to justice in Kenya lies not merely in supplementing legal representation, but in expanding legal knowledge and institutional participation among vulnerable populations.

Evaluation Of Legal Education and Legal Aid as Responses to Structural Inequality

One of the central strengths of legal aid and legal empowerment initiatives lies in their ability to reduce immediate barriers to institutional access. Legal representation improves procedural fairness within adversarial systems by enabling litigants to understand proceedings, prepare claims, challenge unlawful conduct, and navigate technical legal requirements.[61] However, the effectiveness of legal aid and legal education as responses to inequality remains limited where broader socio-economic structures remain substantially unchanged. Legal

---

[60] Gready P and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 International Journal of Transitional Justice 339.

[61] Rhode,D Access *note 56 above.*

systems may provide remedies for particular disputes while leaving intact the economic and political conditions that generate vulnerability in the first place. A litigant may successfully challenge an unlawful eviction yet still remain economically insecure, landless, or socially marginalised after the conclusion of proceedings. Similarly, legal awareness may improve understanding of rights without necessarily providing the material resources required to enforce those rights consistently. Banik notes that legal empowerment initiatives become less effective where populations continue to experience severe economic insecurity and weak institutional protection in their daily lives.

Pearce argues that access to lawyers alone cannot entirely eliminate inequality because adversarial systems frequently reward parties possessing greater economic and institutional power. Legal representation may reduce procedural imbalance, but it does not necessarily equalise broader disparities affecting bargaining power, social influence, or economic resilience.[62] Funding constraints, inadequate staffing, uneven geographical distribution of services, and limited institutional awareness have restricted the reach of the National Legal Aid Service, particularly within rural and marginalised regions.[63] Legal literacy programmes are valuable in strengthening awareness and institutional participation, but their impact may remain uneven where educational inequality, linguistic barriers, and digital exclusion continue to affect large segments of the population. Rhode observes that legal systems often assume forms of confidence, literacy, and institutional familiarity that disadvantaged populations may not possess despite increased awareness of rights.[64] The digitalisation of justice presents a particularly complex example. Online publication of judgments, e-filing systems, virtual hearings, and digital public participation mechanisms have expanded formal accessibility for some citizens while simultaneously creating new forms of exclusion for others. At the same time, legal aid and legal

---

[62] Russell G Pearce, 'Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help' (2004) 73 Fordham Law Review 969.

[63] Ibid

[64] Deborah Rhode note 61 above

empowerment should not be dismissed merely because they cannot independently resolve structural inequality. Their significance lies partly in preventing legal systems from becoming entirely inaccessible to vulnerable populations. [65]

The Kenyan constitutional framework itself appears to recognise that access to justice requires more than procedural accessibility alone. Articles 10, 27, 43, 48, and 56 collectively connect justice with equality, dignity, participation, and socio-economic protection. Young argues that inequality is often reproduced through ordinary institutional arrangements and social processes rather than isolated acts of discrimination alone. Access to justice therefore is fundamentally connected to the broader socio-economic conditions determining whether individuals possess the capability to participate fully within society and engage institutions on relatively equal terms.[66]

Conclusion

Through provisions relating to access to justice, public participation, socio-economic rights, equality, and protection of marginalised groups, the Constitution attempts to create a more inclusive legal and political order. Judicial interpretation has similarly contributed to the expansion of constitutional protection for vulnerable communities, particularly in areas involving housing rights, public participation, equality, and fair process. At the same time, constitutional guarantees alone do not automatically eliminate structural barriers affecting access to justice. Ultimately, meaningful access to justice requires more than procedural accessibility or formal recognition of rights. The Kenyan experience illustrates both the importance of constitutional and institutional reform and the continuing influence of socio-economic realities upon the practical enjoyment of justice. Access to justice, in this sense, remains both a legal commitment and an ongoing social project within Kenya's constitutional

[65] Ibid

[66] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990)

democracy.

Bibliography

Table of Cases

British American Tobacco Kenya Ltd v Cabinet Secretary for the Ministry of Health [2019] eKLR.

David Njoroge Macharia v Republic [2011] eKLR.

Doctors for Life International v Speaker of the National Assembly [2006] ZACC 11.

Kiambu County Government & 3 others v Robert N Gakuru & others [2017] eKLR.

Mitu-Bell Welfare Society v Kenya Airports Authority [2021] KESC 34 (KLR).
Republic v Karisa Chengo & 2 others [2017] eKLR.

Robert N Gakuru & others v Governor Kiambu County & 3 others [2014] eKLR.

Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme [2013] eKLR.

Legislation

Constitution of Kenya, 2010.

Legal Aid Act.

Books

Banik D, *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa* (Ashgate 2013).

Engels F, *The Origin of the Family, Private Property and the State* (Penguin Classics Reissue edn).

Flynn E, *Disabled Justice, Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Routledge 2016).

Ghai, Y P and McAuslan, J P, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Oxford University Press, 1970)

Guinchard A and others, *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing 2015).

Heidensohn F (ed), *Gender and Justice: New Concepts and Approaches* (Routledge 2011).

Keyzer P, Popovski V and Sampford C, *Access to International Justice* (Routledge 2015).

Kameri-Mbote, P, *Searching for Lasting Solutions to Justice in Kenya* (University of Nairobi Press 2015).

Miller D, *Principles of Social Justice* (Harvard University Press 2001).

Payne LA, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Duke University Press 2008).

Penal Reform International, *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems* (Penal Reform International 2001).

Young, IM, *Justice and the Politics of Difference* (Princeton University Press 1990)
Rhode D, *Access to Justice* (Oxford University Press 2007).

Journal Articles

Cappelletti M and Garth B, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 Buffalo Law Review

181.

Gready P and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 International Journal of Transitional Justice 339.

Galanter, M 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95.

McBride J, 'Access to Justice and Human Rights Treaties' (1998) 17 Civil Justice Quarterly 235.

Muigua, K 'Access to Justice in Kenya: Challenges and Opportunities' (2011) 1 *Strathmore Law Journal.*

Mutunga W, *Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992–1997* (SAREAT 1999).

Pearce RG, 'Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help' (2004) 73 Fordham Law Review 969.

Quigley WP, 'Letter to a Law Student Interested in Social Justice' (2007) 1 DePaul Journal for Social Justice 7.

Online Sources

Kariuki Muigua, Access to Justice: Promoting Court and Alternative Dispute Resolution Strategies accessed on 22nd May 2026.

National Legal Aid Service accessed on 22nd May 2026.

Sustainability in Africa's Oil and Gas Sector: A Critical Evaluation of ESG Principles and Emerging Technologies

By: ***Mwati Muriithi* & Prof. Kariuki Muigua SC****

Abstract

This paper critically examines the extent to which Environmental, Social and Governance (ESG) principles can transform Africa's oil and gas industry into a vehicle for Sustainable Development. It argues that ESG principles provide a useful framework for addressing the environmental, social and governance challenges that have long characterised the oil and gas sector. The paper further explores the role of emerging technologies in enhancing sustainability outcomes in the oil and gas sector. The paper contends that sustainability in Africa's oil and gas sector requires a holistic approach that combines robust ESG frameworks, technological innovation, strong institutions, community participation and environmental justice.

1.0 Introduction

Africa's oil and gas sector remains one of the continent's most strategically important economic sectors due to its potential to stimulate industrialisation, generate public revenue, create employment opportunities and improve living standards.[1] The continent possesses substantial reserves of crude oil and natural gas distributed across countries such as Nigeria, Angola, Algeria, Libya, Egypt,

* LLM (cont.) UoN; LLB (Hons) KU; Dip. In Law (KSL); ACIArb; CPM (MTI); Advocate of the High Court of Kenya; Legal Researcher. Email: advocatemwati@gmail.com

** PhD in Law (Nrb),SC, FCIArb (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) [May, 2026].

[1] Muigua, K., '*Oil and Gas Extraction in Africa: Employing ESG Tenets for Sustainability and Conflict Management*' available at https://kmco.co.ke/articles-publications/oil-and-gas-extraction-in-africa-employing-esg-tenets-for-sustainability-and-conflict-management/

Ghana, Mozambique and Uganda, among others.[2] These resources have positioned Africa as an important player in the global energy markets and a potential beneficiary of increasing global energy demand.[3]

Many African countries view petroleum extraction as an important avenue for accelerating socio-economic transformation and achieving development objectives.[4] However, despite the enormous promise associated with petroleum resources, Africa's experience with oil and gas extraction has been characterised by profound contradictions. [5]

In some jurisdictions, oil-producing communities continue to experience poverty, displacement and ecological destruction despite the wealth generated from resource extraction.[6] This phenomenon has often been described as the "*resource curse,*" whereby countries rich in natural resources paradoxically experience poor developmental outcomes.[7] Environmental concerns associated with oil and gas extraction are particularly significant in the African context.[8] The

[2] Oil and Gas in Africa: Reserves, Potential and Prospects of Africa., Available at https://assets.kpmg.com/content/dam/kpmg/za/pdf/Oil-and-Gas-in-Africa-2014.pdf

[3] McClay R, "*Understanding the Oil and Gas Industry: A comprehensive Overview,*" Investopedia, available at https://www.investopedia.com/investing/oil-gas-industry-overview/

[4] United Nations Economic Commission for Africa (UNECA), *Economic Report on Africa 2019: fiscal Policy for Financing Sustainable Development in Africa* (Addis Ababa: UNECA, 2019)

[5] Sachs JD and Warner AM, *"Natural Resource Abundance and Economic Growth,"* NBER Working Paper No. 5398 (1995)

[6] United Nations Environment Programme (UNEP), *Environmental Assessment of Ogoniland* (Nairobi:2011), available at https://www.unep.org/resources/report/environmental-assessment-ogoniland

[7] Ross ML, "*The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press, 2012)

[8] U.S. Environmental Protection Agency, *"Environmental Impacts of Oil and Gas Extraction."* Available at https://www.epa.gov/hw/management-oil-and-gas-exploration-and-production-waste

Social implications of unsustainable petroleum operations are equally profound.[9] Governance deficits further compound sustainability challenges in the oil and gas sector.[10]

Against this backdrop, ESG principles have emerged as an influential framework for promoting responsible business conduct and sustainable investment practices.[11] The adoption of ESG principles has transformed expectations within the global extractive sector.[12] Companies operating in Africa's oil and gas industry are therefore confronted with the challenge of balancing profitability with social legitimacy and environmental responsibility.[13]

At the same time, rapid technological advancement presents both opportunities and dilemmas for sustainability governance within the petroleum sector.[14] Emerging technologies possess the capacity to improve environmental monitoring, enhance operational efficiency, reduce emissions and strengthen transparency throughout extractive value chains.[15]

---

[9] Cedric R., "*Accountability of Multinational Corporations for Human Rights Abuses,*" (2018) 14 (2) Utrecht Law Review 1.

[10] Extractive Industries Transparency Initiative (EITI), *Standard 2023,* available at available at https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf

[11] Organisation for Economic Co-operation and Development, "*Environmental Social Governance (ESG) Investing,*" available at https://www.oecd.org/finance/esg-investing.htm

[12] Stuart LG, "*Firms and Social Responsibility: A review of ESG and CSR Research in Corporate Finance*" (2021) 66 Journal of Corporate Finance

[13] OECD, *ESG Investing and Climate Transition: Market Practices, Issues and Policy Considerations (Paris: OECD Publishing, 2021)*, available at https://www.oecd.org/finance/ESG-investing-and-climate-transition-Market-practices-issues-and-policy-considerations.pdf

[14] United Nations Economic Commission for Africa, *Advancing Technology Transfer for Sustainable Development in Africa* (2023), available at https://www.uneca.org/sites/default/files/TCND/STIF2023/Advancing_Technology_Transfer.pdf

[15] African Development Bank Group, *African Development Report 2012: Towards Green Growth in Africa'* available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Development_Report_2012.pdf?utm_source=chatgpt.com

The paper critically examines sustainability within Africa's oil and gas sector through the lens of ESG principles and emerging technologies. It argues that although ESG frameworks and technological innovations offer promising pathways towards more responsible petroleum governance, their transformative potential depends upon the existence of strong institutions, effective legal frameworks and meaningful stakeholder participation.

2.0 Conceptualising Sustainability and ESG in Africa's Oil and Gas Sector

Sustainability generally refers to the creation and maintenance of conditions under which human beings and nature can coexist in productive harmony for the benefit of the present and future generations.[16] The modern understanding of sustainability is closely linked to the concept of sustainable development articulated by the World Commission on Environment and Development in 1987.[17]

Sustainability has evolved into the overarching framework underpinning international efforts to address global challenges including poverty, inequality, climate change and environmental degradation.[18] The United Nations 2030 Agenda for Sustainable Development and its seventeen (17) Sustainable Development Goals (SDGs) reflect this integrated vision by recognising that economic advancement, social inclusion and environmental protection are mutually reinforcing objectives.[19]

Within the extractive sector, sustainability requires balancing the economic benefits associated with natural resource exploitation against environmental and social considerations.[20] Sustainability within Africa's oil and gas sector

---

[16] OECD, Op. Cit.

[17] Corporate Finance Institute (CFI), "*ESG (Environmental, Social and Governance)* available at https://corporatefinanceinstitute.com/resources/knowledge/other/esg-environmental-social-governance/

[18] OECD, Op. Cit.

[19] Corporate Finance Institute, Op. Cit.

[20] World Bank, *Environmental and Social Framework (Washinton DC: World Bank, (2018)*

necessitates careful management of competing interests and trade-offs.[21] Environmental, Social and Governance principles have increasingly emerged as practical tools for operationalising sustainability objectives within corporate settings.[22] It encourages businesses to identify, manage and disclose risks and opportunities relating to environmental stewardship, social responsibility and governance effectiveness.[23]

The Environmental dimension of ESG focuses on how organisations interact with the natural environment.[24] Within the oil and gas sector, environmental considerations require companies to minimise ecological harm throughout the lifecycle of petroleum operations.[25] Environmental performance has consequently become a key indicator of corporate legitimacy and investor confidence.[26]

The social pillar examines the relationships between corporations and the people affected by their activities.[27] It encompasses labour rights, occupational health and safety, community engagement, diversity and inclusion, respect for human rights and equitable benefit-sharing arrangements.[28] For Africa's oil and gas sector, social considerations are particularly significant because extractive activities frequently occur within vulnerable communities whose livelihoods depend upon land natural resources.[29]

---

21 OECD, Op. Cit.

22 Ibid

23 Financial Times Lexicon, "ESG", available at https://markets.ft.com/glossary/searchLetter.asp?letter=E

24 OECD, Op. Cit.

25 Norton Rose Fullbright, *Environmental, Social and Governance (ESG): managing Risk and Creating Longterm Value,* available at https://www.nortonrosefulbright.com/en/services/203f40d1/environmental-social-and-governance-esg

26 OECD, *ESG Investing and Climate Transition* Op. Cit.

27 Corporate Finance Institute, Op. Cit.

28 Stuart LG, Op. Cit.

29 World Bank, *Environmental and Social Framework,* Op. Cit.

Governance represents the institutional architecture through which organisations are directed and controlled.[30] Strong governance mechanisms are essential for ensuring that environmental and social commitments translate into concrete action rather than remaining aspirational statements.[31] In the absence of robust governance structures, ESG initiatives risk degenerating into public relations exercises disconnected from actual practice.[32]

Although ESG presents important opportunities for advancing sustainability within Africa's oil and gas sector, its application must be critically assessed within the continent's unique socio-economic and political contexts.[33] The challenge therefore lies in adapting ESG principles to local circumstances while preserving their core commitment to accountability, justice and sustainability.[34]

3.0 Emerging Technologies and Sustainability in Africa's Oil and Gas Sector

The oil and gas sector, traditionally regarded as technologically intensive, is increasingly embracing emerging technologies to enhance efficiency, reduce environmental impacts and strengthen accountability.[35] In Africa, where petroleum extraction continues to play a critical role in economic development, technological innovation presents a unique opportunity to reconcile the competing objectives of energy security and social justice.[36]

---

30 Peterdy K & Miller N, *"What is ESG?"*, Corporate Finance Institute, available at https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/

31 OECD, *ESG Investing and Climate Transition* Op. Cit.

32 Ibid

33 Muigua, K., *Embracing Environmental, Social and Governance Tenets for Sustainable Development'* available at https://kmco.co.ke/wp-content/uploads/2023/08/ESG-BOOK-.pdf

34 Ibid

35 United Nations Economic Commission for Africa, *Advancing Technology Transfer for Sustainable Development in Africa* (2023)

36 African Development Bank Group, *African Development Report 2012: Towards Green Growth in Africa* (African Development Bank Group 2013)

The effectiveness of technology depends on factors such as regulatory capacity, financial resources, technical expertise, digital infrastructure and public trust.[37] Consequently, while emerging technologies hold significant promise for enhancing sustainability in Africa's oil and gas sector, they also raise important concerns relating to inequality technological dependence and governance.[38]

Emerging technologies can improve environmental monitoring, strengthen transparency, reduce emissions and facilitate more proactive forms of governance.[39] However, technology cannot resolve deeply entrenched political, institutional and socio-economic challenges independently.[40]

Accordingly, emerging technologies should be viewed as enabling tools as their effectiveness depends upon integration within broader frameworks grounded in environmental justice, democratic accountability and inclusive development.[41] Technology can support sustainability, but it cannot substitute for the political will and institutional integrity necessary to achieve it.[42]

4.0 Challenges Undermining Sustainability in Africa's Oil and Gas Sector

Despite increasing recognition of ESG principles and technological innovations,

---

[37] Muigua, K., '*Break Down the Borders: Using Technology to Reunite Africa for Trade, Innovation, Climate Justice and Sustainable Development*', available at https://kmco.co.ke/articles-publications/break-down-the-borders-using-technology-to-reunite-africa-for-trade-innovation-climate-justice-and-sustainable-development/

[38] Ibid

[39] Institute of Sustainability Studies, '*The Role of Technology in Sustainable Development*' (Institute of Sustainability Studies), available at https://instituteofsustainabilitystudies.com/insights/guides/the-role-of-technology-in-sustainable-development/

[40] Henrik S., '*Technology and Sustainable Development: The Promise and Pitfalls of Techno-Solutionism*' (Routledge 2023)

[41] Organisation for Economic Co-operation and Development (OECD) *Environmental Justice: Context, Challenges and National Approaches (OECD Publishing 2024)*, available at https://doi.org/10.1787/57616eb4-en

[42] Muigua, K., '*Break Down the Borders: Using Technology to Reunite Africa for Trade, Innovation, Climate Justice and Sustainable Development*' Op. Cit.

several challenges continue to undermine sustainability within Africa's oil and gas sector.

Weak institutional and regulatory frameworks remain a significant obstacle.[43] Many environmental agencies operate under conditions of inadequate funding, limited technical expertise and political interference.[44] These constraints weaken monitoring and enforcement efforts and reduce public confidence in regulatory institutions.[45]

Corruption and governance deficits continue to impede responsible resource management.[46] Lack of transparency in licencing processes, revenue allocation and contractual arrangements undermines accountability and fuels perceptions of injustice.[47]

Competing development and environmental priorities create difficult policy dilemmas.[48]African states face legitimate pressures to utilise petroleum resources to address poverty, infrastructure deficits and energy insecurity.[49] At the same time, growing international climate commitments encourage transitions away from fossil fuel dependence.[50]

---

[43] United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (UNEP 2019)

[44] Ibid

[45] Bennett NJ and Satterfield T, '*Environmental Governance: A Practical Framework to Guide Design, Evaluation and Analysis'* (2018) 11 (6) Conservation Letters

[46] Ross ML, Op. Cit.

[47] Extractive Industries Transparency Initiative, *The EITI Standard 2023*

[48] UNECA, '*Economic Report on Africa 2019: Fiscal Policy for Financing Sustainable Development in Africa.*

[49] Ibid

[50] United Nations Development Programme, '*What is the Sustainable Energy Transition and Why is it Key to Tackling Climate Change?"* available at https://climatepromise.undp.org/news-and-stories/what-sustainable-energy-transition-and-why-it-key-tackling-climate-change

Limited financial and technological capacity constrains the adoption of innovative sustainability practices.[51] Emerging technologies capable of strengthening environmental governance often require investments and expertise unavailable within many developing economies.[52] Dependence upon imported technologies may also exacerbate inequalities and undermine domestic innovation.[53]

Social exclusion and inadequate community participation continue to undermine legitimacy within extractive governance processes.[54] Where communities perceive themselves as excluded from decision-making or denied equitable benefits, distrust and resistance are likely to emerge.[55] Sustainable Development cannot be imposed from above, rather, it requires inclusive and participatory approaches that recognise local agency and knowledge.[56]

5.0 Recommendations and the Way Forward

African states should strengthen legal and institutional frameworks governing petroleum operations.[57] Regulatory agencies require adequate resources, technical capacity and operational independence in order to discharge their mandates effectively.[58] Environmental laws should be enforced consistently and transparently without undue political interference.[59]

ESG disclosure requirements should move progressively from voluntary commitments towards mandatory and verifiable reporting obligations.[60]

---

[51] African Development Bank Group, *African Development Report 2012: Towards Green Growth in Africa* (2013)

[52] UNECA, *Advancing Technology Transfer for Sustainable Development in Africa* (2023)

[53] Ibid

[54] OECD, *Environmental Justice* Op. Cit.

[55] UNEP, *Environmental Governance* Op. Cit.

[56] Ibid

[57] Muigua, K., '*Embracing Environmental, Social and Governance (ESG) Tenets for Sustainable Development*' Op. Cit

[58] Ibid

[59] Ibid

[60] Organisation for Economic Co-operation and Development (OECD) *Environmental Justice* Op. Cit

Standardised reporting frameworks accompanied by independent verification mechanisms can reduce opportunities for greenwashing and improve stakeholder confidence.[61]

Governments and Corporations should institutionalise meaningful community participation throughout the lifecycle of petroleum projects.[62] Participation should extend beyond formal consultations to include shared decision-making processes, accessible grievance mechanism and equitable benefit-sharing arrangements.[63]

Investment in science, technology and innovation should be prioritised.[64] African countries should strengthen domestic capacities in areas such as environmental monitoring, artificial intelligence and digital governance in order to reduce technological dependence and improve sustainability outcomes.[65]

Petroleum revenues should be managed transparently and strategically to support long-term development objectives.[66] Resource wealth should finance investments in healthcare, education, renewable energy and economic diversification capable of benefiting both present and future generations.[67]

6.0 Conclusion

This paper has argued that Environmental, Social and Governance Principles provide a valuable framework through which challenges in the African oil and gas sector can be addressed. Properly implemented, ESG can encourage environmental stewardship, strengthen community relationships and enhance

---

[61] OECD, *ESG Investing and Climate Transition* Op. Cit.
[62] World Bank, *Environmental and Social Framework* Op. Cit.
[63] Ibid
[64] UNECA, Advancing Technology Transfer for Sustainable Development in Africa (2023)
[65] African Development Bank Group, *African Development Report 2012: Towards Green Growth in Africa* (2013)
[66] Extractive Industries Transparency Initiative (EITI), *Standard 2023.*
[67] United Nations Economic Commission for Africa (UNECA), *Economic Report on Africa 2019: fiscal Policy for Financing Sustainable Development in Africa* (Addis Ababa: UNECA, 2019)

accountability within the sector.

The paper has further demonstrated that emerging technologies offer important opportunities for strengthening sustainability outcomes through improved monitoring, transparency and efficiency. Nevertheless, technological innovation cannot substitute for justice, democratic governance and political goodwill.

References

African Development Bank Group, African Development Report 2012: Towards Green Growth in Africa' available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Development_Report_2012.pdf?utm_source=chatgpt.com

Cedric R., "*Accountability of Multinational Corporations for Human Rights Abuses*," (2018) 14 (2) Utrecht Law Review 1.

Corporate Finance Institute (CFI), "*ESG (Environmental, Social and Governance)*" available at https://corporatefinanceinstitute.com/resources/knowledge/other/esg-environmental-social-governance/

Extractive Industries Transparency Initiative (EITI), Standard 2023, available at https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf

Financial Times Lexicon, "ESG", available at https://markets.ft.com/glossary/searchLetter.asp?letter=E

Henrik S., '*Technology and Sustainable Development: The Promise and Pitfalls of Techno-Solutionism*' (Routledge 2023)

Institute of Sustainability Studies, '*The Role of Technology in Sustainable Development' (Institute of Sustainability Studies),* available at https://instituteofsustainabilitystudies.com/insights/guides/the-role-of-technology-in-sustainable-development/

McClay R, "*Understanding the Oil and Gas Industry: A comprehensive Overview*," Investopedia, available at https://www.investopedia.com/investing/oil-gas-industry-overview/

Muigua, K., '*Break Down the Borders: Using Technology to Reunite Africa for Trade, Innovation, Climate Justice and Sustainable Development*', available at https://kmco.co.ke/articles-publications/break-down-the-borders-using-technology-to-reunite-africa-for-trade-innovation-climate-justice-and-sustainable-development/

Muigua, K., '*Embracing Environmental, Social and Governance Tenets for Sustainable Development'* available at https://kmco.co.ke/wp-content/uploads/2023/08/ESG-BOOK-.pdf

Muigua, K., '*Oil and Gas Extraction in Africa: Employing ESG Tenets for Sustainability and Conflict Management*' available at https://kmco.co.ke/articles-publications/oil-and-gas-extraction-in-africa-employing-esg-tenets-for-sustainability-and-conflict-management/

Norton Rose Fullbright, *'Environmental, Social and Governance (ESG): managing Risk and Creating Longterm Value'*, available at https://www.nortonrosefulbright.com/en/services/203f40d1/environmental-social-and-governance-esg

OECD, ESG Investing and Climate Transition: Market Practices, Issues and Policy Considerations (Paris: OECD Publishing, 2021), available at https://www.oecd.org/finance/ESG-investing-and-climate-transition-Market-practices-issues-and-policy-considerations.pdf

Organisation for Economic Co-operation and Development (OECD) Environmental Justice: Context, Challenges and National Approaches (OECD Publishing 2024), available at https://doi.org/10.1787/57616eb4-en

Organisation for Economic Co-operation and Development, "*Environmental Social Governance (ESG) Investing*," available at https://www.oecd.org/finance/esg-investing.htm

Organisation of African Petroleum Producers (APPO), Annual Statistical Bulletin.

Peterdy K & Miller N, "*What is ESG*?", Corporate Finance Institute, available at https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/

Ross ML, "*The Oil Curse: How Petroleum Wealth Shapes the Development of Nations"* (Princeton University Press, 2012)

Sachs JD and Warner AM, "*Natural Resource Abundance and Economic Growth*," NBER Working Paper No. 5398 (1995)

Stuart LG, "*Firms and Social Responsibility: A review of ESG and CSR Research in Corporate Finance*" (2021) 66 Journal of Corporate Finance

U.S. Environmental Protection Agency, "*Environmental Impacts of Oil and Gas Extraction*."

United Nations Development Programme, '*What is the Sustainable Energy Transition and Why is it Key to Tackling Climate Change*?" available at https://climatepromise.undp.org/news-and-stories/what-sustainable-energy-transition-and-why-it-key-tackling-climate-change

United Nations Economic Commission for Africa (UNECA), Economic Report on Africa 2019: fiscal Policy for Financing Sustainable Development in Africa (Addis Ababa: UNECA, 2019)

United Nations Economic Commission for Africa, Advancing Technology Transfer for Sustainable Development in Africa (2023), available at https://www.uneca.org/sites/default/files/TCND/STIF2023/Advancing_Technology_Transfer.pdf

United Nations Economic Commission for Africa, Advancing Technology Transfer for Sustainable Development in Africa (2023)

United Nations Environment Programme (UNEP), Environmental Assessment of Ogoniland (Nairobi:2011)

United Nations Environment Programme, Environmental Rule of Law: First Global Report (UNEP 2019)

The Regulation and Control of Export in Military and Dual Use Goods: An Appraisal of the Strategic Goods Control Bill, 2024

By: ***Michael Sang*** *

Abstract

This paper provides an appraisal of the Strategic Goods Control Bill, 2024, which seeks to establish a comprehensive statutory framework for the regulation of military and dual-use items in Kenya. It highlights the Bill's progressive aspects, including its licensing regime, establishment of the Strategic Goods Control Committee, and its emphasis on end-use and end-user controls. However, it also identifies several shortcomings, such as weak end-use checks, limited inter-agency representation, and the absence of an export control number system. Drawing lessons from international models such as those of the United States, United Kingdom, Singapore, South Africa, and Canada, the paper proposes amendments aimed at strengthening Kenya's regulatory framework. The analysis is grounded in the importance of preventing the diversion of strategic goods for illicit purposes, illustrated by a recent sodium cyanide spill incident, which underscores the urgent need for robust regulation of dual-use items.

Keywords: *Strategic Goods Control Bill, 2024, Dual-Use Items, Export Control, Kenya, Non-Proliferation, Military Goods, Regulatory Framework.*

1.0 Introduction

The regulation of strategic goods, particularly military and dual-use items, is a critical aspect of national security and international trade governance.[1] In an increasingly interconnected world, the proliferation of weapons of mass destruction (WMDs) and the misuse of dual-use technologies pose significant

* *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] Rajput, T. (2022). "Restricting International Trade through Export Control Laws: National Security in Perspective". In *Regulation of Risk*. Leiden, The Netherlands: Brill | Nijhoff.

global threats.[2] Countries are obligated to ensure that their export control regimes not only align with international non-proliferation treaties but also address domestic security concerns.[3] Kenya, recognizing the importance of this responsibility, has introduced the *Strategic Goods Control Bill, 2024*, which seeks to establish a statutory framework for the control of military and dual-use items and technology.[4]

The Bill addresses the urgent need to prevent the diversion of strategic goods to unauthorized entities or for illicit purposes.[5] This necessity is illustrated by the recent incident in July 2024, where a truck transporting sodium cyanide—a toxic, dual-use chemical—overturned along the Nairobi-Nakuru highway, spilling the chemical and leading to looting of the hazardous material by residents. The spill posed serious health and environmental risks, underscoring the dangers associated with inadequate regulation of dual-use goods. The sodium cyanide, commonly used in industries like gold mining, demonstrated the urgent need for strict controls to prevent such materials from being mishandled or diverted for harmful purposes.[6]

As Kenya seeks to bolster its regulatory framework in line with international obligations, this Bill is a step toward enhancing oversight, enforcement, and compliance in the trade of sensitive goods. The *Strategic Goods Control Bill, 2024* introduces important measures, such as establishing a licensing regime, creating the Strategic Goods Control Committee, and instituting end-use controls. However, the Bill also reveals areas that require further refinement, such as weaknesses in end-use and end-user checks, the absence of a robust export control number system, and limited emphasis on ongoing training for exporters.

---

[2] ibid
[3] ibid
[4] Strategic Goods Control Bill, 2024
[5] Ibid, long title.
[6] Danvictor Munene (2024) 'NEMA issues warning after Kenyans loot sodium cyanide from overturned truck 'The *Star* available at https://www.the-star.co.ke/news/realtime/2024-07-22-nema-issues-warning-after-kenyans-loot-sodium-cyanide-from-overturned-truck/ accessed 6 September 2024

Drawing on international models from countries like the United States, the United Kingdom, Singapore, South Africa, and Canada, this paper proposes targeted amendments to strengthen Kenya's strategic goods control regime.
Ultimately, this analysis aims to provide a comprehensive understanding of how Kenya can enhance the effectiveness of the *Strategic Goods Control Bill, 2024* to safeguard national security, meet international obligations, and facilitate responsible trade in strategic goods.

2.0 Legal and Policy Framework Necessitating the Strategic Goods Control Bill, 2024

2.1 International Instruments

2.1.1 United Nations Security Council Resolution (UNSCR) 1540 (2004)

United Nations Security Council Resolution 1540, adopted on April 28, 2004, obligates all UN Member States to establish domestic legal frameworks to prevent non-state actors from acquiring nuclear, chemical, or biological weapons and their means of delivery.[7] The resolution, enacted under Chapter VII of the UN Charter, emphasizes the necessity for states to adopt and enforce effective measures that include laws prohibiting the development, possession, or use of these weapons by non-state actors, particularly for terrorist purposes.[8]

The resolution also requires states to implement domestic controls to prevent the proliferation of these weapons and related materials, through laws regulating their production, use, and transfer. This includes control over dual-use goods, which may have both civilian and military applications. UNSC 1540 further obliges states to assist one another in achieving these objectives, providing frameworks for cooperation at both international and regional levels.[9]

[7] United Nations Security Council Resolution (UNSCR) 1540 (2004) available at https://www.un.org/en/sc/1540/documents/Yokohama_statement_final.pdf accessed 6 September 2024
[8] ibid
[9] ibid

The implementation of UNSC 1540 is overseen by a committee (the 1540 Committee), which assists states in meeting their obligations and facilitates cooperation between international, regional, and national entities. While the resolution imposes binding obligations, it promotes collaboration and assistance rather than sanctions-based enforcement.[10]

This international mandate forms a crucial legal foundation for the Strategic Goods Control Bill, 2024, as it seeks to prevent the proliferation of weapons of mass destruction and regulate dual-use goods in Kenya.

2.1.2 Nuclear Proliferation Treaty (NPT)

The Treaty on the Non-Proliferation of nuclear weapons (NPT), which came into force in 1970, is a cornerstone of global efforts to prevent the spread of nuclear weapons, promote peaceful uses of nuclear energy, and facilitate disarmament.[11] The NPT is built on three primary pillars:

1. **Non-Proliferation**: Nuclear-weapon states (NWS) agree not to transfer nuclear weapons or assist non-nuclear-weapon states (NNWS) in acquiring them, while NNWS pledge not to pursue nuclear weapons.[12]

2. **Peaceful Use of Nuclear Energy**: The treaty guarantees the right of states to develop nuclear energy for peaceful purposes, while subjecting them to International Atomic Energy Agency (IAEA) safeguards to ensure that such technology is not diverted to weapons production.[13]

3. **Disarmament**: Parties to the treaty commit to negotiations aimed at nuclear disarmament, with the ultimate goal of eliminating nuclear weapons.[14]

---

[10] ibid

[11]The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) available at https://www.iaea.org/topics/non-proliferation-treaty#:~:text=The%20Treaty%20on%20the%20Non,and%20general%20and%20complete%20disarmament. Accessed 6 September 2024

[12] ibid

[13] ibid

[14] ibid

The NPT's global reach, with 191 states parties, demonstrates its significance in regulating nuclear material and preventing the risk of nuclear weapon proliferation. It provides a legal framework within which the Strategic Goods Control Bill, 2024, aligns, especially in controlling dual-use goods related to nuclear energy and ensuring compliance with international non-proliferation norms.

2.1.3 Biological and Toxic Weapons Convention (BWC)

The Biological and Toxic Weapons Convention (BWC), which entered into force in 1975, is a landmark multilateral treaty that prohibits the development, production, acquisition, transfer, stockpiling, and use of biological and toxin weapons. It was the first disarmament treaty to ban an entire category of weapons of mass destruction (WMD).[15]

The BWC obligates signatory states to destroy or divert to peaceful purposes all biological weapons and associated resources within their territories. The treaty also prohibits the transfer of biological agents, toxins, and related technologies for hostile purposes. Despite its scope, the BWC does not include a robust verification mechanism. Instead, it relies on trust, transparency, and periodic review conferences to address compliance issues.[16]

In the context of Kenya's *Strategic Goods Control Bill, 2024*, the BWC's framework provides a crucial legal basis for controlling biological agents and dual-use goods. By aligning with the BWC, Kenya strengthens its capacity to prevent the proliferation of biological weapons, which is particularly relevant as technology advances in bioengineering and synthetic biology continue to evolve.[17]

2.1.4 Chemical Weapons Convention (CWC)

The *Chemical Weapons Convention (CWC)*, which entered into force on April 29, 1997, is a landmark multilateral treaty aimed at eliminating chemical weapons

---

[15] Biological Weapons Convention available at https://disarmament.unoda.org/biological-weapons/ accessed 6 September 2024

[16] ibid

[17] ibid

globally.[18] It prohibits the development, production, acquisition, stockpiling, and use of chemical weapons and requires their destruction within a specified period. The convention also bans the transfer of chemical weapons and related technologies between states. Additionally, it establishes a rigorous verification regime, including on-site inspections of facilities producing chemicals that could be weaponized, to ensure compliance.[19]

The treaty is administered by the *Organisation for the Prohibition of Chemical Weapons (OPCW)*, which oversees the destruction of chemical weapons and ensures that chemical production facilities are not being used for hostile purposes. The CWC distinguishes between chemicals based on their risk, categorized into Schedules 1, 2, and 3, which regulate substances from those used primarily for military purposes (e.g., mustard gas) to chemicals with significant commercial applications (e.g., phosgene).[20]

In the context of Kenya's *Strategic Goods Control Bill, 2024*, the CWC's provisions are vital for controlling dual-use chemicals, ensuring that toxic chemicals are not misused for weapons production. This is especially relevant given the global movement towards non-proliferation of weapons of mass destruction.

2.2 National Trade Policy

Kenya's *National Trade Policy*, launched in 2017, aims to transform the country into a competitive, export-led, and efficient domestic economy.[21] It aligns with Kenya's *Vision 2030* and is designed to enhance the country's global trade competitiveness by addressing key challenges such as low value addition in

[18] The Chemical Weapons Convention (CWC) available at https://www.opcw.org/chemical-weapons-convention accessed 6 September 2024
[19] ibid
[20] ibid
[21] Tralac (2017) 'Kenya National Trade Policy: Transforming Kenya into a competitive export-led and efficient domestic economy' available at https://www.tralac.org/news/article/11897-kenya-national-trade-policy-transforming-kenya-into-a-competitive-export-led-and-efficient-domestic-economy.html accessed 6 September 2024

exports, limited diversification, and inadequate trade infrastructure. The policy emphasizes the development of a robust trade sector by improving domestic market efficiency, expanding regional integration, and enhancing Kenya's participation in global markets.[22]

The policy covers various sectors, including agriculture, manufacturing, infrastructure, and ICT, promoting synergy between these sectors to drive trade-led growth. Key objectives include increasing the participation of Micro, Small, and Medium Enterprises (MSMEs) in international trade, promoting export diversification, and fostering value addition in Kenya's manufacturing sector. It also addresses challenges such as non-tariff barriers, limited access to trade finance, and the need for enhanced trade facilitation.[23]

In the context of the *Strategic Goods Control Bill, 2024*, this policy provides a foundational framework for regulating dual-use goods and military exports by promoting efficiency, ensuring compliance with international trade obligations, and creating opportunities for secure, regulated trade in sensitive goods.

2.3 Office of the Director of Public Prosecutions Inter-Agency Guidelines

The *Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing* 2022 were developed to enhance coordination between various agencies in combating terrorism and terrorism financing.[24] These guidelines are crucial in the regulation of dual-use goods, as stipulated in *Regulation 4.4.1*, which mandates that the lead agency and relevant agencies closely pursue suspicious reports involving illicit trade in dual-use goods.[25] The purpose is to prevent the proliferation of weapons in line with UN Security Council Resolution 1540.

The term "lead agency" refers to the agency primarily responsible for

---

[22] ibid

[23] ibid

[24] Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing, 2022

[25] Ibid, Regulation 4.4.1

investigating cases of terrorism or terrorism financing, often involving multiple agencies.[26] This collaboration ensures that all relevant actors work together to address the complex issues surrounding the trade and potential misuse of dual-use items. The guideline reinforces the importance of inter-agency cooperation in tracking and controlling such items, as their unregulated export could significantly contribute to the development of weapons of mass destruction.
In the context of Kenya's *Strategic Goods Control Bill, 2024*, these guidelines underscore the necessity of a unified approach to monitoring dual-use goods to comply with international non-proliferation obligations. This regulatory framework aligns Kenya's domestic efforts with global standards aimed at curbing the illegal trade of military-grade or potentially hazardous materials.

3.0 An Appraisal of the Strategic Goods Control Bill, 2024

3.1 Progressive Aspects of the Strategic Goods Control Bill, 2024

3.1.1 Comprehensive Approach to Import and Export

The *Strategic Goods Control Bill, 2024* adopts a comprehensive approach to the regulation of import and export of strategic goods, which include military items and dual-use goods that can have both civilian and military applications. This approach is primarily reflected in *Clause 13*, which outlines the shipment of goods specified in the National Control List.[27] It empowers the Strategic Goods Control Committee to monitor and control exports, re-exports, transits, transfers, and transshipments of goods to ensure that they are not used in ways that may endanger national or international security.[28]

In addition, *Clause 14* establishes a licensing framework where individuals or entities engaging in the trade of strategic goods must obtain a valid license.[29] The issuance of licenses is subject to national security considerations and

[26] Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing, 2022
[27] Strategic Goods Control Bill, 2024, clause 13
[28] ibid
[29] Ibid, clause 14

international obligations, as outlined in *Clause 15*, ensuring that Kenya complies with global non-proliferation treaties[30]. This helps Kenya align its domestic laws with international commitments to prevent the proliferation of weapons of mass destruction and manage the trade of dual-use goods.

The detailed end-use control mechanisms provided in *Clause 12* ensure that any strategic goods imported or exported are tracked, preventing diversion to unauthorized or dangerous uses.[31] By incorporating these mechanisms, the Bill fosters a robust regulatory environment for the safe handling and transportation of strategic goods.

3.1.2 Implementation of International and Regional Obligations

The *Strategic Goods Control Bill, 2024* aligns Kenya with its international and regional obligations concerning the control of strategic goods, particularly those related to the non-proliferation of weapons of mass destruction (WMDs) and dual-use goods.

The Bill, under *Clause 15(2)*, explicitly requires the Strategic Goods Control Committee to consider Kenya's international commitments, such as United Nations Security Council Resolutions and treaties like the Nuclear Non-Proliferation Treaty (NPT), the Biological Weapons Convention (BWC), and the Chemical Weapons Convention (CWC).[32] These treaties impose binding duties on states to control the trade and use of WMDs and dual-use items. The Bill ensures compliance with these international norms by creating robust licensing, inspection, and end-use controls to monitor the movement of strategic goods.

In addition to international treaties, *Clause 15(2)* also highlights Kenya's commitments under African Union Peace and Security Council Resolutions. This underscores Kenya's role in fostering regional stability by controlling the export and import of strategic goods, particularly to countries embroiled in conflict or

[30] Ibid, clause 15
[31] Ibid, clause 12
[32] Ibid, Clause 15 (2)

under sanctions.[33]

Furthermore, *Clause 4(2)(b)* ensures that the National Control List complies with both international and regional obligations, preventing Kenya from becoming a conduit for the proliferation of strategic goods.[34] This comprehensive approach guarantees that Kenya adheres to global and regional security frameworks while addressing threats such as terrorism and organized crime.

3.1.3 National Control List

The *Strategic Goods Control Bill, 2024* introduces the *National Control List*, which plays a crucial role in regulating the trade of strategic goods and technologies within and outside Kenya. The list is described under *Clause 4*, where it is established and maintained by the Cabinet Secretary, in consultation with the Strategic Goods Control Committee.[35] This list categorizes the strategic goods and technologies subject to regulation and outlines the restrictions imposed on their export, import, and transit.

The National Control List is divided into two key categories:

1. **Military List:** This section of the list includes items explicitly designed or intended for military use. It covers weapons, munitions, armaments, and military technology. These goods are subject to more stringent controls due to their potential direct application in warfare or military operations, as outlined in *Clause 2* (Interpretation) under the definition of military goods.[36]

2. **Dual-Use List:** This section includes goods, software, and technologies that have both civilian and military applications, such as certain chemicals, electronics, and telecommunications equipment. Dual-use goods are particularly sensitive because, while they may serve legitimate civilian purposes, they can also be repurposed for military or weapons

---

[33] ibid
[34] Ibid, clause 4 (2)(b)
[35] Ibid, clause 4
[36] Ibid, clause 2

development, as captured in the Bill's definition of dual-use goods under *Clause 2*.[37]

The National Control List ensures compliance with international non-proliferation treaties, as highlighted in *Clause 4(2)(b)*, which requires the list to be in line with Kenya's international and regional commitments.[38] This structure promotes a clear, organized approach to distinguishing and regulating goods that pose potential security risks. It helps Kenya prevent the unauthorized use of military and dual-use goods, aligning the country with global security measures.

3.1.4 Strategic Goods Control Committee

The *Strategic Goods Control Bill, 2024* establishes the *Strategic Goods Control Committee* under *Clause 5*, which is central to the governance and implementation of the regulatory framework for strategic goods in Kenya.[39] This committee is tasked with overseeing the control of trade in military and dual-use goods, ensuring compliance with both national and international obligations.

The Committee comprises key representatives from various government ministries and agencies, as outlined in *Clause 5(2)*. It includes Principal Secretaries from critical sectors such as internal security, foreign affairs, defence, finance, ICT, health, agriculture, and trade. Other members include the Chief of the Defence Forces, the Director General of National Intelligence Service, and the Commissioner General of the Kenya Revenue Authority.[40] This broad-based membership ensures that all relevant sectors that interact with strategic goods and technologies are represented.

The Committee's key functions are detailed in *Clause 6*. These include:

- Providing oversight in the control of trade in strategic goods.
- Developing standards and procedures for effective implementation.

[37] ibid
[38] Ibid, clause 4 (2) (b)
[39] Ibid, clause 5
[40] Ibid, clause 5(2)

- Issuing, suspending, or revoking licenses related to strategic goods.
- Establishing and operating end-use controls to prevent the diversion of goods for unauthorized purposes.
- Ensuring compliance with national security concerns and international commitments.[41]

The inclusion of multiple government departments and security agencies within the Committee ensures a multidisciplinary and inter-agency approach to regulating strategic goods. This inter-agency composition is beneficial as it brings together technical expertise from various fields, ensuring that decisions are well-informed and account for diverse national interests, including economic, security, and diplomatic considerations. The collaboration of these agencies strengthens Kenya's capacity to regulate and monitor strategic goods effectively, preventing misuse and ensuring compliance with both national laws and international treaties.

By involving agencies with specific technical knowledge, such as the Ministry of Defence and the National Intelligence Service, the Committee can more efficiently tackle complex issues like terrorism, organized crime, and the proliferation of weapons of mass destruction.

3.1.5 Mandatory Registration and Licensing Regime

The *Strategic Goods Control Bill, 2024* introduces a mandatory registration and licensing regime that provides a structured framework for regulating the trade in strategic goods. This system is primarily outlined in *Clauses 9 to 23*.[42]

Registration and Licensing Procedure:

Under *Clause 9*, any person or entity that intends to engage in strategic trade must register with the Strategic Goods Control Committee.[43] The registration process involves submitting an application in a prescribed form, and the Committee may

[41] Ibid, clause 6
[42] Ibid, clause 9-23
[43] Ibid, clause 9

approve or deny the application based on various criteria, including national security concerns.[44] Upon approval, a certificate of registration is issued, and the details are entered into a public register maintained by the Director under *Clause 11*.[45]

Clause 14 sets out the licensing requirements, prohibiting any person from engaging in strategic trade without holding a valid license.[46] Applicants must apply for a license in a prescribed format, and the issuance is subject to certain conditions, including the submission of relevant documents and payment of fees. The Committee considers factors such as national security, compliance with international obligations, and the risk of diversion to unauthorized end-users before issuing the license.[47] Licenses issued under this Act can be individual, global, or general licenses, with varying validity periods outlined in *Clause 16*.

End-Use and End-User Controls:

In addition to registration and licensing, the Bill establishes stringent end-use and end-user controls under *Clause 12*. These controls are designed to prevent the diversion of strategic goods to unauthorized or harmful uses. End-user certificates must be obtained and certified by the Committee, specifying details such as the quantity, value, and purpose of the strategic goods involved. Importantly, the end-user must inform the Committee within 48 hours if there are any changes regarding the goods' use, ensuring continuous oversight and preventing misuse.[48]

This regime provides a robust and clear legal framework, enhancing the security of strategic goods while ensuring compliance with national and international laws. The mandatory nature of the registration and licensing process ensures that only authorized individuals and entities engage in the trade of sensitive goods, further bolstering national and global security.

---

[44] Ibid, clause 9(5)
[45] Ibid, clause 11
[46] Ibid, clause 14
[47] Ibid, clause 15
[48] Ibid, clause 12

3.1.6 Capacity Building and Information Sharing

In the *Strategic Goods Control Bill, 2024*, the progressive aspects of **capacity building and information sharing** are crucial for the effective implementation of the Bill's provisions.

Capacity Building via Strategic Trade Control Curriculum:

While the Bill does not specify a direct clause regarding the *Strategic Trade Control Curriculum*, the establishment of such a training framework aligns with the functions of the Strategic Goods Control Committee under *Clause 6(e)*, which mandates coordination and cooperation with government agencies and other institutions.[49] This provision ensures that the Committee collaborates with entities like the *Kenya School of Revenue Administration (KESRA)* to develop capacity through specialized training on the control of strategic goods.

Information Sharing through Government Single Window Portal:

The Bill supports enhanced information sharing through *Clause 6(e)*, which outlines the Committee's role in coordinating the sharing of relevant information among government agencies.[50] Additionally, *Clause 7 (2) (d)* tasks the Secretariat with coordinating, collaborating, and sharing relevant information with other agencies.[51] This lays the foundation for leveraging technology, like the *Single Window Portal*, to ensure real-time information access and improve oversight on the trade of strategic goods.

These references indicate that capacity building and information sharing are key priorities within the Bill, with specific roles assigned to both the Committee and Secretariat for ensuring the efficient regulation of strategic goods.

3.1.7 Enforcement

The *Strategic Goods Control Bill, 2024* establishes a comprehensive enforcement framework designed to regulate the trade in strategic goods and ensure

[49] Ibid, clause 6 (e)
[50] Ibid, clause 6(e)
[51] Ibid, Clause 7(2) (d)

compliance with the statutory provisions. The enforcement measures are primarily set out in *Part IV* of the Bill (*Clauses 24 to 37*), which detail the compliance requirements, the role of inspectors, and the statutory offences related to breaches of the Bill.[52]

Enforcement Measures:

Clause 24 outlines the compliance obligations for persons engaged in strategic trade, requiring adherence to the conditions of their licenses, the timely notification of any changes, and reporting suspicious activities related to weapons of mass destruction or military end-use. This ensures that traders and service providers in the strategic goods sector are constantly monitored.[53]

Clause 25 provides for the verification of compliance, which involves the inspection of documents, business premises, and goods by the Secretariat in collaboration with other enforcement agencies. Inspections are conducted before, during, and after the issuance of a license, ensuring that compliance is maintained throughout the trade lifecycle.[54]

Clause 26 empowers the Cabinet Secretary to appoint inspectors to carry out investigations and enforce the provisions of the Act. Inspectors are authorized to access buildings, premises, and documents, seize strategic goods, and request information as necessary.[55]

Statutory Offences:

Clause 36 specifies a range of offences under the Bill, including making false representations, obstructing enforcement officers, failing to report suspicious activities, and dealing in strategic goods without proper registration or licensing. Violations attract severe penalties, with fines up to fifty million shillings or imprisonment for up to ten years.[56]

[52] Ibid, Part IV (Clauses 24 to 37)
[53] Ibid, clause 24
[54] Ibid, clause 25
[55] Ibid, clause 26
[56] Ibid, clause 36

The Bill also criminalizes the unauthorized use of confidential information, the improper use of strategic goods, and knowingly facilitating or financing activities related to the proliferation of weapons of mass destruction.

3.2 Shortcomings of the Strategic Goods Control Bill, 2024

3.2.1 Weaknesses of End-Use and End User Checks

The *Strategic Goods Control Bill, 2024* establishes important mechanisms for controlling the end-use and end-users of strategic goods under *Clause 12*[57]. However, several shortcomings can be identified in the framework for end-use and end-user checks.

1. **Limited Verification Capacity:** While the Bill mandates end-user certification, it lacks detailed provisions for verifying the accuracy of the information provided by end-users. The requirement for an end-user certificate[58]assumes that the information supplied is accurate and trustworthy, but the Bill does not establish robust mechanisms for independent verification. This could allow for the potential misuse of strategic goods, particularly by actors who provide false information to bypass restrictions.

2. **Insufficient Follow-Up Mechanisms:** Although the Bill requires reporting of changes to end-user details within 48 hours[59], it does not provide clear guidelines on how frequently follow-up checks should be conducted after the goods have been exported or transferred. Without periodic checks, there is a risk that goods initially sent to authorized end-users could be diverted to unauthorized parties after the transaction is completed.

3. **Lack of International Collaboration Protocols:** The Bill does not explicitly outline protocols for collaboration with foreign governments or

[57] Ibid, clause 12
[58] Ibid, Clause 12(3)
[59] Ibid, Clause 12(6)

international organizations to track and verify end-use in other jurisdictions. Given that strategic goods often cross international borders, the absence of formalized cross-border information-sharing agreements weakens Kenya's ability to monitor end-use in foreign countries. This opens the door to possible diversion in countries with weaker regulatory frameworks.

4. **Reliance on End-User Declarations:** The Bill relies heavily on end-user declarations, which are prone to manipulation. There is no mandate for third-party audits or investigations to verify the final destination and use of goods, particularly in high-risk transactions involving dual-use items that could be repurposed for military or illicit activities.

3.2.2 Need for Broader Inter-Agency Representation in the Strategic Goods Control Committee

The *Strategic Goods Control Committee*, as established under *Clause 5* of the *Strategic Goods Control Bill, 2024*, includes a variety of key governmental agencies, particularly those responsible for national security, defence, foreign affairs, and finance. However, there are notable gaps in its composition that could limit the Committee's effectiveness in addressing the complex nature of strategic trade control.

1. **Lack of Representation from Critical Regulatory Sectors:** While the Committee includes relevant security and defence agencies, it lacks representation from certain regulatory bodies that oversee industries closely related to dual-use goods, such as the *Kenya Bureau of Standards* (KEBS), *National Environment Management Authority* (NEMA), or *Kenya Civil Aviation Authority* (KCAA). These agencies play crucial roles in regulating materials that can be used for civilian and military purposes, such as chemicals, electronics, and aviation equipment. Their exclusion could result in gaps in technical oversight and hinder the ability to monitor compliance effectively across industries.

2. **Inadequate Representation from Private Sector Stakeholders:** The Bill does not provide for the inclusion of private sector representatives or

industry experts. Given that much of the trade in dual-use goods occurs in sectors like telecommunications, manufacturing, and chemicals, having a structured input from industry players could enhance the Committee's understanding of market dynamics and technical nuances. Broader participation would also foster cooperation between regulators and businesses, improving the overall regulatory environment.

3. **Limited Involvement of Law Enforcement Agencies:** Although the Committee includes security-related members, there is minimal emphasis on day-to-day law enforcement agencies, such as the *Directorate of Criminal Investigations* (DCI) or the *Ethics and Anti-Corruption Commission* (EACC), which may have key insights into domestic and transnational illegal trade networks. Broadening the Committee's representation to include these bodies could strengthen its capacity to prevent illicit trafficking of strategic goods and improve enforcement against criminal actors.

4. **Need for Enhanced International Cooperation Links:** The Bill does not explicitly require representation from agencies focused on international cooperation, such as the *Ministry of East African Community* or other regional trade-focused institutions. Given the global nature of strategic goods trade, including such entities would facilitate better alignment with international and regional security obligations, fostering collaboration with global enforcement bodies like Interpol and enhancing Kenya's ability to track the movement of sensitive goods across borders.

3.2.3 Lack of Export Control Number System

The *Strategic Goods Control Bill, 2024* does not provide for an **Export Control Number (ECN) system**, which is a notable shortcoming in terms of streamlining the control of strategic goods and ensuring robust oversight. An ECN system assigns a unique identifier to each export transaction involving strategic goods, allowing for more precise tracking, regulation, and monitoring of such transactions. The absence of such a system presents the following challenges:

1. **Weak Tracking and Monitoring of Exported Goods:** Without an ECN system, the Bill lacks a systematic method for uniquely identifying and

tracking each export of strategic goods. This creates gaps in the ability to monitor the movement of sensitive goods across borders and increases the risk of goods being diverted for unauthorized or illegal uses. An ECN would help create a digital footprint for each transaction, making it easier for enforcement agencies to monitor compliance and identify potential violations.[60]

2. **Difficulty in Cross-Agency and International Coordination:** An ECN system facilitates easier sharing of information between domestic and international regulatory bodies.[61] In its absence, Kenya's authorities might face challenges when collaborating with foreign governments and organizations in investigating the end-use of exported strategic goods. A well-implemented ECN system ensures uniformity in the data exchanged, making it easier for Kenyan authorities to coordinate with global enforcement networks and prevent the misuse of sensitive technologies.

3. **Increased Burden on Manual Oversight Processes:** The absence of an ECN system places a greater reliance on manual processes for tracking and verifying exports, increasing the likelihood of errors and inefficiencies. Inspectors and regulators would need to manually verify export licenses, certificates, and shipments, which is time-consuming and prone to human error. By contrast, an automated ECN system would streamline these processes, ensuring more efficient verification and reducing the administrative burden on regulatory authorities.[62]

4. **Inadequate Deterrence for Illicit Trade:** The lack of an ECN system reduces the ability to deter illicit trade in strategic goods. When strategic exports are not linked to a specific, traceable export number, it becomes easier for exporters to conceal their activities, thereby increasing the risk

[60] Thomson Reuters (2021) 'ECN classification: Best practices for exporters' available at https://tax.thomsonreuters.com/en/insights/articles/ecn-classification-best-practices-for-exporters accessed 6 September 2024
[61] ibid
[62] ibid

of goods being misused for activities such as terrorism, organized crime, or the proliferation of weapons of mass destruction. An ECN system would add a layer of accountability and traceability, making it more difficult for illegal trade networks to operate undetected.[63]

3.2.4 Little Emphasis on Training Exporters

The *Strategic Goods Control Bill, 2024* does not place sufficient emphasis on the training and capacity-building of exporters involved in the trade of strategic goods, which is a significant shortcoming for several reasons:

1. **Lack of Awareness of Complex Regulations:** Exporters handling military or dual-use goods must navigate complex regulatory frameworks at both national and international levels.[64]The Bill does not include provisions that ensure exporters are adequately trained on compliance with these regulations, including understanding the various international treaties and export controls they are bound by. Without proper training, there is a heightened risk of unintentional violations, which could lead to penalties and harm Kenya's international standing.

2. **Risk of Non-Compliance and Legal Violations:** Since exporters play a crucial role in implementing export control regimes, a lack of training could result in non-compliance with the licensing and end-use control requirements stipulated in the Bill, such as those under *Clause 14* (licensing) and *Clause 12* (end-use controls). Exporters might not fully understand the legal obligations, including reporting changes in end-users or adhering to license conditions, increasing the risk of misuse of sensitive goods.

3. **Increased Vulnerability to Misuse of Strategic Goods:** Exporters need to be aware of the potential risks and consequences of diverting dual-use

---

[63] ibid

[64] Anna Wetter (2009) 'Enforcing European Union Law on Exports of Dual-use Goods' *Stockholm International Peace Research Institute* available at https://www.sipri.org/publications/2009/enforcing-european-union-law-exports-dual-use-goods accessed 6 September 2024

goods or technologies to unauthorized users or nations.[65] The Bill does not sufficiently address how exporters can be educated on identifying red flags or how to report suspicious transactions. This increases the possibility that goods could end up being used in the proliferation of weapons of mass destruction or other nefarious purposes, violating international treaties such as UNSC Resolution 1540.

4. **Missed Opportunity for Building a Secure Export Culture:** By neglecting to emphasize the need for formal training programs for exporters, the Bill misses an opportunity to create a secure export culture. Regular training sessions, compliance seminars, and updates on global best practices could ensure that exporters are more vigilant and knowledgeable, contributing to national and international security. Countries with advanced strategic goods control frameworks invest heavily in educating their exporters, making training an integral part of their export control regimes.

3.2.5 Absence of Authoritative Source of Guidance

The *Strategic Goods Control Bill, 2024* lacks an explicit mechanism for providing consistent and authoritative guidance to stakeholders, including exporters, government agencies, and law enforcement bodies. This is a notable shortcoming for the following reasons:

1. **Lack of Centralized Guidance for Compliance:** The Bill does not establish a central authoritative body or resource that stakeholders can consult for clear and updated guidance on compliance matters. This can result in inconsistent interpretations of the law, especially when dealing with complex issues like dual-use goods, end-use certificates, and international obligations. Without a dedicated source of information, businesses and exporters may struggle to understand their legal obligations, increasing the risk of inadvertent violations.

2. **No Established Mechanism for Real-Time Updates:** Strategic goods trade regulations are dynamic, often changing in response to international

[65] ibid

developments, such as changes in UN Security Council sanctions or updates in non-proliferation treaties.[66] The absence of a centralized platform or resource to provide real-time updates on these changes means that stakeholders may not be promptly informed, potentially leading to non-compliance with international laws.

3. **Inconsistent Interpretation Across Agencies:** The Bill involves multiple agencies, such as the Strategic Goods Control Committee, customs, and security agencies, each with different mandates and levels of expertise. The absence of a uniform, authoritative source of guidance could lead to inconsistent enforcement of the law across agencies, with each interpreting provisions in different ways. This weakens the overall effectiveness of the Bill and could cause confusion among stakeholders.

4. **No Access to Industry-Specific Advice:** The strategic goods industry covers a wide range of sectors, including technology, chemicals, and defense. The Bill does not provide a dedicated platform for industry-specific advice, which is essential for businesses dealing with dual-use goods. Without tailored guidance, exporters may be unsure how to manage specific challenges related to their industry, such as technical compliance requirements for sensitive technologies.

5. **Missed Opportunity for Public-Private Partnership:** By not establishing an authoritative source of guidance, the Bill misses an opportunity to foster closer cooperation between the government and private sector. Public-private partnerships are essential in ensuring that companies involved in the trade of strategic goods receive the necessary support to comply with national and international regulations. A central authority could also provide training, best practices, and resources to the private sector, enhancing overall compliance.

[66] Nayan, R. (2019). Dominant Practices in Strategic Trade Management. In: Global Strategic Trade Management. Springer, New Delhi. https://doi.org/10.1007/978-81-322-3926-0_2 accessed 6 September 2024

4.0 Proposed Amendments to Strengthen the Strategic Goods Control Bill, 2024

4.1 On-Site Visits for End-Use Checks

4.1.1 United States

In the United States, the *Export Administration Regulations (EAR)*, enforced by the Bureau of Industry and Security (BIS), provide for *End-Use Checks (EUCs)* as part of its compliance program.[67] These on-site visits allow U.S. officials to physically verify the use and recipient of U.S. goods and technology by non-U.S. parties. EUCs are conducted globally to determine if the recipient party is reliable and complies with the EAR regulations. The aim is to prevent the diversion of controlled items to unauthorized or illegal purposes, including the development of weapons of mass destruction or military applications.[68]

These on-site checks are a crucial enforcement tool, helping to ensure that sensitive U.S. exports, especially dual-use items, are not misused after they leave U.S. borders. The checks also facilitate collaboration between the U.S. government and foreign governments to strengthen compliance and deter illegal transfers of controlled items.[69]

4.1.2 Lessons for Kenya

Kenya can draw several important lessons from the U.S. approach to on-site end-use checks:

1. **Enhanced Verification Mechanism**: The United States' use of on-site visits allows for direct verification of the final destination and use of exported goods. Kenya could adopt a similar system under the *Strategic Goods Control Bill, 2024*, to ensure that exported strategic goods and dual-use technologies are being used for their declared purposes. This could

[67] Kevin J. Kurland (2016) 'End-Use Monitoring and Effective Export Compliance' *Director Office of Enforcement Analysis* available at https://www.bis.doc.gov/index.php/documents/pdfs/1593-end-user-verification-kurland/file accessed 6 September 2024

[68] ibid

[69] ibid

prevent the diversion of goods for unauthorized military or illegal purposes, strengthening compliance with international non-proliferation treaties.

2. **International Cooperation**: U.S. authorities conduct these checks in cooperation with foreign governments, ensuring effective oversight even outside U.S. borders. Kenya could enhance its own capacity by establishing agreements with partner nations to allow for reciprocal end-use checks, particularly in high-risk regions.

3. **Legal and Diplomatic Framework**: Implementing on-site verification in Kenya would require a robust legal and diplomatic framework, similar to that in the U.S., to facilitate access to foreign locations for Kenyan authorities or to permit foreign officials to conduct checks on imports to Kenya. This would help Kenya ensure that it meets its international obligations while securing the country from the risks posed by the uncontrolled export of strategic goods.

4.2 Broader Inter-Agency Representation in the Strategic Goods Control Committee

4.2.1 United Kingdom

The UK's approach to export control is managed by the *Export Control Joint Unit (ECJU)*, a multi-agency body responsible for overseeing strategic export controls.[70] The ECJU includes representatives from the *Department for International Trade*, *Ministry of Defence*, and *Foreign, Commonwealth & Development Office*, among others. These agencies work together to ensure that UK strategic export policies align with national security and foreign policy goals. This inter-agency collaboration allows for a broader scope of expertise and more robust oversight of military and dual-use goods.[71]

70 Guidance: UK strategic export controls (2022) available at https://www.gov.uk/guidance/uk-strategic-export-controls accessed 6 September 2024

71 ibid

4.2.2 Lessons for Kenya

Kenya can draw significant lessons from the UK's model, particularly regarding the need for broader representation in the *Strategic Goods Control Committee*:

1. **Inclusion of Key Regulatory Authorities**: The Kenyan Committee would benefit from the inclusion of agencies such as *NACOSTI*, *National Biosafety Authority*, *Kenya Nuclear Regulation Authority*, *Nuclear Power and Energy Agency*, and the *Kenya National Disaster Operations Centre*. These agencies provide vital technical expertise and regulatory oversight in sectors such as nuclear energy, biosafety, and disaster management—areas critical to controlling dual-use goods.

2. **Enhanced Technical Expertise**: Broader representation would ensure that Kenya's committee is equipped to deal with the complex technical and regulatory challenges associated with strategic goods, especially in biotechnology, nuclear energy, and disaster preparedness. This would align with international best practices seen in countries like the UK, where a wide array of governmental bodies collaborate to oversee the export control process.

3. **Improved Collaboration and Compliance**: A more diverse committee structure in Kenya would foster better inter-agency collaboration, allowing for a more comprehensive regulatory framework. It would also help streamline enforcement actions and ensure better compliance with both national security requirements and international treaties on non-proliferation.

4.3 Export Control Classification System

4.3.1 South Africa

South Africa employs an export control system managed by the *International Trade Administration Commission (ITAC)*, under the Department of Trade, Industry, and Competition.[72] This system is similar to the U.S. system, where

[72] International Trade Administration (2024) 'South Africa - Country Commercial Guide' available at https://www.trade.gov/country-commercial-guides/south-africa-us-export-controls accessed 7 September 2024

listed items are those that appear on a comprehensive control list, requiring specific licenses based on their classification. South Africa's export control structure aligns with international standards, such as the Wassenaar Arrangement, to control the trade of dual-use goods and technology that can have both civilian and military applications. Each item is assigned a unique classification number, which determines whether an export license is needed and the level of control based on the item's risk and destination.

4.3.2 Lessons for Kenya

Kenya can adopt similar practices to strengthen its export control system:

1. **Adopting a Comprehensive Classification System**: Like South Africa, Kenya should implement a classification system where each controlled item is assigned a distinct Export Control Classification Number (ECCN). This would enhance the ability to identify, track, and regulate dual-use items and military goods, ensuring that sensitive exports are subject to appropriate scrutiny.

2. **Integration with International Control Regimes**: By aligning Kenya's export control system with international agreements such as the Wassenaar Arrangement and utilizing a classification list similar to South Africa's, Kenya can ensure compliance with global non-proliferation standards. This integration would facilitate better cooperation with other nations, improving monitoring and enforcement mechanisms.

3. **Enhanced License Management**: The classification system should streamline the export licensing process, helping Kenyan authorities to make informed decisions regarding high-risk exports. It would also ensure that exporters are aware of their obligations and the necessary steps to obtain export permissions for controlled items.

4.4 Ongoing Training for Exporters

4.4.1 Singapore

In Singapore, government agencies such as Singapore Customs play a crucial role in disseminating regulatory updates and raising awareness among exporters through various training and outreach programs.[73] These efforts include seminars, workshops, and advisory sessions aimed at enhancing exporters' understanding of the country's strategic goods control system. For example, Singapore Customs regularly organizes joint industry outreach programs in collaboration with other countries, such as the United States and Japan, where they discuss topics related to export control laws, compliance standards, and strategic trade management.[74]

These programs ensure that exporters stay informed about regulatory changes, understand the risks associated with dual-use goods, and learn how to comply with international trade requirements. Moreover, the Singapore government has made it a priority to continuously update its strategic goods control list in line with global standards like the Wassenaar Arrangement, ensuring that exporters are aware of both domestic and international obligations.[75]

4.4.2 Lessons for Kenya

Kenya can adopt several key practices from Singapore to strengthen its own framework for ongoing training and education for exporters:

1. **Mandatory Training Programs**: Kenya could implement mandatory training sessions for exporters, similar to Singapore's awareness seminars, to ensure that businesses fully understand the legal requirements surrounding the export of strategic and dual-use goods. This would help prevent accidental non-compliance and minimize the risk of sensitive goods being misused.

2. **Government-Led Outreach**: Just like Singapore's proactive approach, Kenya's regulatory bodies could regularly organize outreach and advisory programs to keep exporters up-to-date on changes in export

[73] Singapore Customs 'Joint Industry Outreach on Strategic Trade Management 2023' available at https://www.customs.gov.sg/business-resources/courses-and-events/joint-industry-outreach-on-strategic-trade-management-2023/ accessed 7 September 2024

[74] ibid

[75] ibid

control regulations. This would ensure that exporters are always aware of the latest legal frameworks, both domestically and internationally.

3. **Cross-Agency Collaboration**: Singapore's success stems from its collaboration between multiple government agencies and international partners to conduct training and disseminate information. Kenya could enhance its own efforts by fostering cooperation between its regulatory bodies (e.g., NACOSTI, National Biosafety Authority, Kenya Nuclear Regulation Authority) and international organizations to provide comprehensive, up-to-date training.

4.5 Need for Authoritative Implementation Guidance

4.5.1 Canada

In Canada, the *Export and Import Permits Act (EIPA)* governs the regulation of goods and technology that are subject to export and import controls.[76] To provide clear and authoritative guidance, Canada has developed the *Exports and Brokering Controls Handbook*, which serves as the main reference tool for exporters and brokers. This Handbook provides practical information on the administration of export controls, including how to obtain permits, comply with the Export Control List, and understand the destination and origin considerations for controlled goods. It also addresses brokering controls, the application process, and the compliance requirements for different categories of controlled items.[77]

The Handbook is an essential resource for ensuring that exporters are informed about legal obligations, best practices, and procedures for adhering to Canada's international obligations, such as the Arms Trade Treaty (ATT) and Wassenaar Arrangement. It streamlines the export process by providing clear steps and detailed guidance on the technicalities of export control.[78]

---

[76] Export and Import Permits Act (EIPA)

[77] Government of Canada (2019) 'Export and brokering controls handbook' available at https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/ebc_handbook-cce_manuel.aspx?lang=eng accessed 7 September 2024

[78] ibid

4.5.2 Lessons for Kenya

Kenya can learn from Canada's approach to strengthening its *Strategic Goods Control Bill, 2024* by implementing similar authoritative guidance mechanisms:

1. **Development of a Comprehensive Handbook**: Kenya should create an authoritative *Export Control Handbook*, similar to Canada's, to provide exporters, brokers, and other stakeholders with detailed guidance on the legal requirements, processes, and compliance mechanisms related to strategic goods. This would help standardize the application of the law and reduce confusion among exporters.

2. **Clear Step-by-Step Instructions**: The Handbook should offer clear, step-by-step instructions on how to obtain export permits, navigate the National Control List, and comply with the end-use and end-user controls. By centralizing this information in an official guide, Kenya can ensure that all exporters follow consistent procedures and fully understand their responsibilities.

3. **Focus on Brokering and Dual-Use Items**: As Canada's Handbook includes specific sections on brokering and dual-use goods, Kenya could benefit from including similarly focused sections that deal with complex transactions, particularly those involving items with both civilian and military applications.

4. **Updated Regulatory Information**: Just like Canada's system, Kenya should ensure that the Handbook is continuously updated to reflect any changes in international trade agreements, sanctions, or export control regulations. This would provide exporters with the most current information, preventing inadvertent violations.

5.0 Conclusion

The *Strategic Goods Control Bill, 2024* represents a critical step forward in Kenya's efforts to regulate military and dual-use items, aligning the country with its international obligations under non-proliferation treaties while addressing domestic security concerns. The Bill's provisions, including the establishment of the Strategic Goods Control Committee, a mandatory licensing regime, and stringent end-use controls, reflect a comprehensive approach to preventing the diversion of strategic goods for illicit or harmful purposes.

However, as highlighted in this paper, the Bill contains notable gaps that must be addressed to ensure its effectiveness. Weaknesses in end-use and end-user checks, the absence of an export control number system, and limited focus on ongoing training for exporters present significant challenges. Additionally, the need for broader inter-agency representation in the Strategic Goods Control Committee and the absence of a central authoritative source of guidance further undermine the Bill's potential. Drawing lessons from established international practices in countries such as the United States, the United Kingdom, Singapore, South Africa, and Canada, Kenya can strengthen the Bill by incorporating targeted amendments.

The recent sodium cyanide spill incident underscores the urgent need for a robust regulatory framework that addresses both national security and environmental risks posed by dual-use items. By implementing the proposed reforms, Kenya can enhance its ability to safeguard against the misuse of strategic goods, ensure compliance with international norms, and contribute to global non-proliferation efforts. Ultimately, a more robust and responsive strategic goods control framework will not only protect Kenya's national interests but also position the country as a responsible actor in the international community.

References

Anna Wetter (2009) 'Enforcing European Union Law on Exports of Dual-use Goods' *Stockholm International Peace Research Institute* available at https://www.sipri.org/publications/2009/enforcing-european-union-law-exports-dual-use-goods

Biological Weapons Convention available at https://disarmament.unoda.org/biological-weapons/

Danvictor Munene (2024) 'NEMA issues warning after Kenyans loot sodium cyanide from overturned truck 'The *Star* available at https://www.the-star.co.ke/news/realtime/2024-07-22-nema-issues-warning-after-kenyans-loot-sodium-cyanide-from-overturned-truck/

Export and Import Permits Act (EIPA)

Government of Canada (2019) 'Export and brokering controls handbook' available at https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/ebc_handbook-cce_manuel.aspx?lang=eng

Guidance: UK strategic export controls (2022) available at https://www.gov.uk/guidance/uk-strategic-export-controls

Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing, 2022

International Trade Administration (2024) 'South Africa - Country Commercial Guide' available at https://www.trade.gov/country-commercial-guides/south-africa-us-export-controls

Kevin J. Kurland (2016) 'End-Use Monitoring and Effective Export Compliance' *Director Office of Enforcement Analysis* available at https://www.bis.doc.gov/index.php/documents/pdfs/1593-end-user-verification-kurland/file

Nayan, R. (2019). Dominant Practices in Strategic Trade Management. In: Global Strategic Trade Management. Springer, New Delhi. https://doi.org/10.1007/978-81-322-3926-0_2

Rajput, T. (2022). "Restricting International Trade through Export Control Laws: National Security in Perspective". In *Regulation of Risk*. Leiden, The Netherlands: Brill | Nijhoff.

Singapore Customs 'Joint Industry Outreach on Strategic Trade Management 2023' available at https://www.customs.gov.sg/business-resources/courses-and-events/joint-industry-outreach-on-strategic-trade-management-2023/
Strategic Goods Control Bill, 2024

The Chemical Weapons Convention (CWC) available at https://www.opcw.org/chemical-weapons-convention

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) available at https://www.iaea.org/topics/non-proliferation-treaty#:~:text=The%20Treaty%20on%20the%20Non,and%20general%20and%20complete%20disarmament.

Thomson Reuters (2021) 'ECN classification: Best practices for exporters' available at https://tax.thomsonreuters.com/en/insights/articles/ecn-classification-best-practices-for-exporters

Tralac (2017) 'Kenya National Trade Policy: Transforming Kenya into a competitive export-led and efficient domestic economy' available at https://www.tralac.org/news/article/11897-kenya-national-trade-policy-transforming-kenya-into-a-competitive-export-led-and-efficient-domestic-economy.html

United Nations Security Council Resolution (UNSCR) 1540 (2004) available at

https://www.un.org/en/sc/1540/documents/Yokohama_statement_final.pdf

Human Rights, Afrocentrism and African Re-membering?: Examining the Kurukan Fuga Charter (Manden Charter)

By: ***Kariuki Muigua****

Abstract

This paper critically examines the Kurukan Fuga Charter (Mandem Charter). The paper observes that the Manden Charter is a historic proclamation that has played a key role in shaping the human rights discourse both globally and in Africa. The paper discusses the salient provisions of the Manden Charter and their role in the protection of human rights. Due to its role in defining and protecting human rights, the paper observes that remembering and adhering to the values and principles of the Manden Charter is key towards achieving peace, justice and development. The paper discusses how the Manden Charter can be effectively remembered, protected and implemented towards protecting human rights for Sustainable Development.

1.0 Introduction

The pursuit of human rights is at the heart of Sustainable Development. Human rights refer to standards that recognize and protect the dignity of all human beings[1]. In addition, human rights have also been described as basic entitlements and freedoms that belong to every person in the world, from birth until death[2]. The United Nations correctly points out that human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language,

* PhD in Law (Nrb),SC, FCIArb (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) [May, 2026].

[1] United Nations Children's Fund., 'What are Human Rights?' Available at https://www.unicef.org/child-rights-convention/what-are-human-rights (Accessed on 18/05/2026)

[2] Equality and Human Rights Commission., 'What are Human Rights?' Available at https://www.equalityhumanrights.com/human-rights/what-are-human-rights (Accessed on 18/05/2026)

religion, or any other status[3]. It has been argued that human rights are central towards achieving Sustainable Development agenda since they are a necessary foundation for a peaceful, prosperous and sustainable world[4].

Efforts to codify human rights gained international support following the atrocities witnessed during the 2nd world war. It has been observed that in the aftermath of the 2nd world war, a series of declarations and covenants began to articulate universal human rights. For instance, the *Universal Declaration of Human Rights (UDHR)*[5] was adopted by the United Nations General Assembly in 1948. UDHR represents the universal recognition that human rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every person is born free and equal in dignity and rights[6]. It stipulates fundamental human rights and freedoms to be universally protected and common standards for achievement of these rights for all people in every nation[7]. Further, in 1966 the United Nations General Assembly adopted the *International Covenant on Civil and Political Rights (ICCPR)*[8], and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*[9], two major human right instruments. The UDHR, ICCPR and ICESCR are collectively known as the International Bill of Human Rights and set out global standards towards realising human rights for all without distinction[10]. In addition, at a continental level, the

[3] United Nations., 'Human Rights' Available at https://www.un.org/en/global-issues/human-rights (Accessed on 18/05/2026)
[4] United Nations Development Programme., 'Human Rights for Sustainable Development' Available at https://www.undp.org/rolhr/publications/human-rights-sustainable-development (Accessed on 18/05/2026)
[5] United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948
[6] Ibid
[7] Ibid
[8] United Nations General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966
[9] United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966
[10] Office of the United Nations High Commissioner for Human Rights., 'International Bill of Human Rights' Available at https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights (Accessed on 18/04/2026)

African Charter on Human and Peoples' Rights[11] was adopted in 1981 towards promoting and protecting human rights and fundamental freedoms for the people of Africa.

Despite the progress made towards recognising human rights at the international and regional level in the 20th century, attempts to codify fundamental rights and freedoms have existed for many centuries. For example, the *Kurukan Fuga Charter (Manden Charter),* is one of the oldest constitutions in the world which was adopted in the 13th century[12]. The Manden Charter has been hailed as a historic charter that represents one of the earliest attempts by humanity to define and protect human rights[13].

This paper critically examines the Kurukan Fuga Charter (Mandem Charter). The paper observes that the Manden Charter is a historic proclamation that has played a key role in shaping the human rights discourse both globally and in Africa. The paper discusses the salient provisions of the Manden Charter and their role in the protection of human rights. Due to its role in defining and protecting human rights, the paper observes that remembering and adhering to the values and principles of the Manden Charter is key towards achieving peace, justice and development. The paper discusses how the Manden Charter can be effectively remembered, protected and implemented towards protecting human rights for Sustainable Development.

2.0 The Kurukan Fuga Charter (Manden Charter), Human Rights and Afrocentrism

The Manden Charter has been identified as one of the oldest constitutions in the

---

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

[12] United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Available at https://ich.unesco.org/en/RL/manden-charter-proclaimed-in-kurukan-fuga-00290 (Accessed on 18/05/2026)

[13] Ibid

world, although mainly in oral form[14]. The Charter was issued by Sundiata Keita, founder of the Mali Empire, in the early 13th century following a major military victory[15]. It has been observed that the Manden Charter was proclaimed in order to ensure good relations between the various ethnic groups and peaceful coexistence among all people in the Mali Empire[16].

The Manden Charter which was proclaimed in Kuruka Fuga in the form of an oath, comprises a preamble and seven chapters concerning the rules of behaviour governing public and family life[17]. It has been observed that the chapters of the Manden Charter focus on fostering mutual understanding and social peace among diverse ethnic and cultural groups who lived in the Mali Empire[18]. For instance, chapters one and two of the Manden Charter focus on the sanctity of human life and the prohibition of physical and mental torture[19]. Chapter three focuses on the role of education in the society and seeks to promote education within the family to in order to ensure respect for parents, the upkeep of family members and the virtuous upbringing of children[20]. Chapter four on the other hand focuses on the integrity of the Mali Empire and the protection of the human person[21]. The Manden Charter also focuses on food security (chapter five), abolition of slave raiding (chapter six), and freedom of expression and enterprise (chapter seven)[22].

[14] United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Op Cit

[15] Manden Charter: as early as the 13th century, the Mali Empire defined human rights., Available at https://diplomatie.belgium.be/en/policy/policy-areas/highlighted/manden-charter-early-13th-century-mali-empire-defined-human-rights (Accessed on 19/05/2026)

[16] Ibid

[17] United Nations Educational, Scientific and Cultural Organization., 'Nomination for inscription on the Representative List in 2009 (Reference No. 00290): The Manden Charter, proclaimed in Kurukan Fuga' Available at https://ich.unesco.org/doc/src/28118-EN.doc (Accessed on 19/05/2026)

[18] Ibid

[19] Ibid

[20] Ibid

[21] Ibid

[22] Ibid

Despite the demise of the Mali Empire, it has been observed that the provisions of the Manden Charter and the rituals associated with it are still transmitted orally from father to son in a codified way within the Malinke clans[23]. Further, commemorative annual ceremonies are held in order to keep the spirit of the Manden Charter alive[24]. It has been observed that the Manden Charter continues to underlie the basis of the values of peace, love, unity, solidarity, integrity and identity of the populations concerned[25].

From the foregoing, it is evident that the Manden Charter represents one of the earliest attempts to recognise and uphold human rights. It has been described as an oral declaration of rights and law developed in the 13th century way before the current human rights discourse[26]. The Manden Charter has been identified as a premodern example of a statement of human rights since it discusses and covers the rights of every person including enslaved people, children, and women[27]. In addition to the rights of people, the Manden Charter also covers the rights of nature including trees, animals and ecosystems[28]. The salient features of the Manden Charter including social peace, diversity, the inviolability of the human being, education, the integrity of the motherland, food security, the abolition of slavery, and environmental protection are some of the core provisions of both international and regional human right instruments[29].

The Manden Charter has therefore influenced the growth of human rights both globally and in Africa. It represents an Afrocentric approach towards the codification of human rights. It has been observed that the Charter contains

[23] United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Op Cit
[24] Ibid
[25] Ibid
[26] The Manden Charter., Available at https://human.libretexts.org/Courses/The_Westminster_Schools/The_Manden_Charter (Accessed on 19/05/2026)
[27] Ibid
[28] Ibid
[29] United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Op Cit

aspects such as the right to life, individual freedom, equality, food security, social harmony within diversity, and freedom of expression and enterprise which have been embraced as fundamental rights and freedoms in the modern era[30]. The Charter covers both individual and collective rights and duties which is in accordance with modern human right instruments[31]. Due to its significance and emphasis on individual and communal well-being and proactive social order, the Manden Charter has been compared to the Magna Carter of Western Europe in terms of stipulating the fundamental rights and freedoms inherent for all persons[32].

The significance of the Manden Charter has been recognised by the United Nations Educational, Scientific and Cultural Organization (UNESCO) which inscribed the Charter on the Representative List of the Intangible Cultural Heritage of Humanity in 2009[33]. This recognition demonstrates that the Manden Charter is still applicable in the modern era and consequently, there is need to live by its aspirations towards upholding human rights and dignity.

3.0 Conclusion

The recognition, respect and promotion of human rights is key towards achieving Sustainable Development. It has been observed that without recognition, respect, implementation, and protection of human rights, it is impossible to build just, inclusive, equal and prosperous societies as envisaged under the Sustainable

[30] Manden Charter: as early as the 13th century, the Mali Empire defined human rights., Op Cit

[31] Sidibe. F.M., 'Chapter 4 The Manden Charter: Initiatic oral sources at the foundation of an endogenous governance' Available at https://www.researchgate.net/publication/387183085_Chapter_4_The_Manden_Charter_Initiatic_oral_sources_at_the_foundation_of_an_endogenous_governance (Accessed on 19/05/2026)

[32] Kouroukan Fouga-Indigenous Constitution of Ancient Mali: The Mandem Charter., Available at https://ccaf.africa/books/The_Manden_Charter.pdf (Accessed on 19/05/2026)

[33] United Nations Educational, Scientific and Cultural Organization., 'Nomination for inscription on the Representative List in 2009 (Reference No. 00290): The Manden Charter, proclaimed in Kurukan Fuga' Op Cit

Development agenda[34]. By promoting human rights, it is possible to appreciate the dignity and value of each person towards achieving social stability, environmental balance, and economic prosperity as envisaged under the idea of Sustainable Development[35].

Despite the progress made towards codifying human rights at the international and regional levels in the 20th century, protection of human rights has been a fundamental agenda for many centuries. For example, the Manden Charter which was proclaimed in Kurugan Fuga in the 20th century represents an Afrocentric approach towards recognising and protecting fundamental rights and freedoms[36]. The core provisions of the Manden Charter including social peace, diversity, the inviolability of the human being, education, the integrity of the motherland, food security, the abolition of slavery, and environmental protection are in accordance with the modern human rights agenda[37]. The concept of human rights is therefore not a foreign agenda since it has existed in Africa for many centuries as evidenced by the Manden Charter[38]. In particular, the Manden Charter takes a holistic view of human rights covering individual, communal and environmental rights[39]. The inscription of the Manden Charter into the UNESCO Representative List of the Intangible Cultural Heritage of Humanity in 2009 provides a basis for the recognition of its contribution to the human rights discourse[40].

---

34 United Nations Development Programme., 'Human Rights as a Foundation for Sustainable Development' Available at https://www.undp.org/kazakhstan/blog/human-rights-foundation-sustainable-development (Accessed on 19/05/2026)

35 Ibid

36 United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Op Cit

37 Ibid

38 Sidibe. F.M., 'Chapter 4 The Manden Charter: Initiatic oral sources at the foundation of an endogenous governance' Op Cit

39 Kouroukan Fouga-Indigenous Constitution of Ancient Mali: The Mandem Charter., Op Cit

40 United Nations Educational, Scientific and Cultural Organization., 'Nomination for inscription on the Representative List in 2009 (Reference No. 00290): The Manden Charter, proclaimed in Kurukan Fuga' Op Cit

It is therefore imperative to remember, value and live in accordance with the spirit of the Manden Charter in order to effective promote and protect human rights for Sustainable Development.

References

Equality and Human Rights Commission., 'What are Human Rights?' Available at https://www.equalityhumanrights.com/human-rights/what-are-human-rights

Kouroukan Fouga-Indigenous Constitution of Ancient Mali: The Mandem Charter., Available at https://ccaf.africa/books/The_Manden_Charter.pdf

Manden Charter: as early as the 13th century, the Mali Empire defined human rights., Available at https://diplomatie.belgium.be/en/policy/policy-areas/highlighted/manden-charter-early-13th-century-mali-empire-defined-human-rights

Office of the United Nations High Commissioner for Human Rights., 'International Bill of Human Rights' Available at https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights

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

Sidibe. F.M., 'Chapter 4 The Manden Charter: Initiatic oral sources at the foundation of an endogenous governance' Available at https://www.researchgate.net/publication/387183085_Chapter_4_The_Manden_Charter_Initiatic_oral_sources_at_the_foundation_of_an_endogenous_governance

The Manden Charter., Available at https://human.libretexts.org/Courses/The_Westminster_Schools/The_Manden_Charter

United Nations Children's Fund., 'What are Human Rights?' Available at https://www.unicef.org/child-rights-convention/what-are-human-rights

United Nations Development Programme., 'Human Rights as a Foundation for

Sustainable Development' Available at https://www.undp.org/kazakhstan/blog/human-rights-foundation-sustainable-development

United Nations Development Programme., 'Human Rights for Sustainable Development' Available at https://www.undp.org/rolhr/publications/human-rights-sustainable-development

United Nations Educational, Scientific and Cultural Organization., 'Manden Charter, proclaimed in Kurukan Fuga' Available at https://ich.unesco.org/en/RL/manden-charter-proclaimed-in-kurukan-fuga-00290

United Nations Educational, Scientific and Cultural Organization., 'Nomination for inscription on the Representative List in 2009 (Reference No. 00290): The Manden Charter, proclaimed in Kurukan Fuga' Available at https://ich.unesco.org/doc/src/28118-EN.doc

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

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

United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948

United Nations., 'Human Rights' Available at https://www.un.org/en/global-issues/human-rights

Legal Concealment of Femicide and its Implications for Remedy

By: ***Nancy Baraza****

Abstract

Femicide has emerged as a critical concept in feminist legal theory, criminology, sociology, and human rights discourse. While homicide refers generally to the unlawful killing of a human being, femicide draws attention to the gendered nature of killings in which women and girls are targeted because they are female. The concept challenges the traditional neutrality of criminal law by highlighting how violence against women is often rooted in unequal power relations, patriarchal social structures, and discriminatory cultural norms.*Yet these killings in Kenya, are commonly treated as ordinary homicides, crimes of passion, domestic disputes, or isolated criminal acts, thus obscuring the underlying causes. Obscuring femicide conceals the structural realities that sustain violence against women. It silences the role of patriarchy, normalises misogyny, and individualises crimes that are deeply systemic. The consequence is that legal redress becomes inadequate, prevention strategies remain weak, and state accountability is diminished. Recognising femicide as a gendered and structural phenomenon is therefore not merely a semantic exercise; it is essential for justice, prevention, and transformative social change. The paper interrogates the importance of terming femicide "femicide" through feminist legal theory and comparative doctrinal approaches in answering the central question of why it is important to distinguish femicide from other homicides. There is emerging international jurisprudence and comparative legal developments from jurisdictions that have formally recognised femicide as a distinct legal phenomenon with positive outcomes on prevention, from which Kenya can draw important lessons to strengthen its legal and institutional frameworks. The paper argues that conceptual clarity will lead to Kenya's holistic approach to combating the vice in a multidimensional manner that will address not just the legal but also the structural underpinnings of femicide.*

KEY WORDS: gender-based violence, accountability, femicide, redress, inequalities, patriarchy, misogyny, transformation.

* *Nancy Baraza is a senior Lecturer in the Department of Public Law, Faculty of Law, University of Nairobi*

1.0 Introduction

Gender-based violence (GBV) including femicide has emerged as one of the most pressing human rights challenges of the twenty-first century.[1] GBV for purposes of the paper is taken as any act of violence that results in physical, sexual, economic, or psychological harm or suffering to women, girls, men, and boys, as well as threats of such acts, coercion, or the arbitrary deprivation of liberty while femicide is understood as the intentional killing of women or girls because of their gender. It is a gender-based crime, often involving extreme violence, and includes cases such as intimate partner killings, honour killings, dowry-related killings, and targeted murders linked to gender discrimination or misogyny. Femicide is, therefore, a distinct form of homicide requiring specific attention in prevention and response measures.[2]

Although significant advances in women's rights, millions of women and girls continue to experience physical, sexual, psychological, and economic violence.[3] In its many reports, the United Nations consistently identifies violence against women as both a cause and consequence of gender inequality. Among the most extreme manifestations of GBV is femicide, commonly understood as the killing of women because they are women[4] The growing crisis of GBV including femicide in Kenya has increasingly drawn public attention to the killing of women in circumstances marked by misogyny, intimate partner violence, sexual domination, and structural inequality.[5] Women in Kenya are being killed because they are women.[6]

Despite the rising numbers of the crime and its visibility in media reports, civil society advocacy, and public protests, femicide is not legally recognised as a distinct crime for other homicides.[7] The language used within legal and

---

[1] UN Women: Socio-cultural analysis of femicide in Kenya, December 2025.
[2] See the Report of the Technical Working Group of 2025, Kenya.
[3] UN Women: Socio-cultural analysis of femicide in Kenya, December 2025.
[4] Ibid
[5] UN Women : Socio-cultural analysis of femicide in Kenya, December 2025.
[6] Ibid
[7] Ibid

institutional discourse to explain femicide obscures their gendered character.[8] The victims of this crime are categorised merely as victims of murder, domestic disputes, or family tragedies, thereby concealing the structural and patriarchal conditions that produce such violence.[9] Public discourse on the other hand portrays femicide as isolated incidents driven by jealousy, relationship conflict, or emotional instability, rather than manifestations of entrenched gender inequality.[10]

Although the Constitution of Kenya guarantees equality,[11] dignity,[12] freedom from violence,[13] and non-discrimination,[14] institutional responses to the killing of women remain ineffective. This paper argues that part of the reason for ineffectiveness of government responses to the scourge of femicide is failure to recognise its root causes and the gender-neutral and formalistic approaches that guide response strategies. The neutrality of the law, for instance, masks the disproportionate vulnerability of women to lethal violence within intimate and familial spaces, which are identified as the most dangerous spaces for women in Kenya today.[15] The most serious consequence of silencing the offence of femicide in the law language is that it limits the capacity of the criminal justice system to recognise patterns of misogyny, coercive control, and systemic discrimination that frequently precede such killings.[16] Cultural and institutional practices that individualise violence against women rather than situating it within broader systems of patriarchy and misogyny reinforce the obscuring of femicide.Without this distinction, patterns of GBV such as intimate partner violence, rape, defilement, stalking among others are obscured. Consequently, the state cannot

[8] Diana E.H. Russell, "Femicide: The Politics of Woman Killing," in Femicide: The Politics of Woman Killing (New York: Twayne Publishers, 1992).
[9] UN Women: Socio-cultural analysis of femicide in Kenya, December 2025.
[10] Ibid
[11] Article 27 (4) of the constitution of Kenya,
[12] Article 28 of the constitution of Kenya,
[13] Article 29 of the Constitution of Kenya,
[14] Artical 27 of the constitution of Kenya,
[15] See the Report of the Technical Working Group on GBV includeding Femicide dated 26th January, 2026.
[16] UN Women 2025, supra note 1 above

be held accountable for the failure to prevent femicide.[17]

This article argues that obscuring of femicide not only weakens legal and policy responses but also undermines broader efforts to confront the systemic nature of violence against women in Kenya.[18] the article calls for calling out femicide as femicide and such naming of femicide is not merely semantic; rather, it is a political and juridical act that exposes the structural nature of violence against women and enables more effective legal, policy, and societal interventions. Drawing on radical feminist theory and human rights approaches, the article examines how gender-neutral legal frameworks conceal the realities of misogynistic violence and perpetuate systemic impunity and the need for naming femicide "femicide".

This article is structured as follows: After the introduction, there is a background that explains the phenomenon of GBV including femicide in Kenya. It then discusses the theoretical framework guiding the work, followed by conceptualisation of GBV and femicide. It then examines the international law context of femicide, as well as the emerging jurisprudence and legislation on femicide. It then offers a conclusion on what lesson Kenya can draw from the literature covered to address the pressing phenomenon of femicide.

Theoretical Framework

This paper adopts a radical feminist and human rights-based approach as its theoretical framework. Framing discussions on naming femicide within radical feminism and human rights approaches is found suitable because both perspectives help explain why the killing of women as women must be specifically recognised, named, and addressed differently from ordinary homicide. Though feminists fault human rights framing of in women rights violations,[19] this paper argues that the two theoretical approaches together, illuminate the structural, political, and legal dimensions of femicide, especially in Kenyan context.

---

[17] Amnesty International, Kenya, 2025.
[18] Ibid
[19] See Mackinnon note 7 above

Femicide from Radical Feminist perspectives

Although feminism is diverse, the feminisms are 'critical of stereotypical images of women, and the question of women is central.'[20] Moreover, although it has been argued that there is little common agreement about what feminism is, Thompson argues that "it is a social enterprise, a moral and political framework concerned with redressing social wrongs".[21] In the context of sexual difference, feminism entails the possibility of social and economic change.[22] According to Thompson, feminism entails the possibility of social and economic change through the transformation of gender relations. This perspective is particularly relevant to understanding GBV and femicide because violence against women is not merely an individual or criminal phenomenon but a manifestation of broader patriarchal structures. Addressing such violence therefore requires not only legal reforms but also fundamental changes in social norms, economic arrangements, and institutional practices that sustain gender inequality.[23]

A radical feminist framing of femicide, particularly through the scholarship of Catharine MacKinnon, understands femicide not as isolated criminal acts committed by deviant individuals, but as a systemic manifestation of male dominance embedded within patriarchal social structures.[24] MacKinnon's radical feminist jurisprudence is grounded in the argument that society is fundamentally structured around hierarchical gender relations. In works such as *Toward a*

[20] Traditionally, feminism has been divided in three waves. According to Gillis and others, the first wave started in the nineteenth century with the women's movement, whose purpose was to oppose women's general exclusion from political, social, and economic life. The second wave of feminism was developed in the 1960s and 1970s and focused its attention to women's legal and political issues such as reproduction, sexual violence, sexuality, and domestic labour. The third wave of feminism was developed after the 1970s as a response to the issues raised regarding women's collective and unified identity.

[21] Thompson D, Radical Feminism Today (Routledge Publications 2001) 5.

[22] Ibid

[23] Denise Thompson, *Radical Feminism Today* (Sage Publications 2001).

[24] Ibid

Feminist Theory of the State[25] and *Sexual Harassment of Working Women*,[26] she contends that law is not neutral but reflects and institutionalises male power. According to MacKinnon, the state often mirrors patriarchal norms by treating violence against women as private, exceptional, or inevitable rather than structural and political.[27] This insight is central to a radical feminist understanding of femicide. Mackinnon's approach to femicide emphasises the need to address the systemic violence and discrimination that women and girls face, advocating for legal and social reforms to protect them from such harm.[28] From this perspective, femicide is not merely homicide in which the victim happens to be female but rather, it is the killing of women because they are women within systems that normalise male power, sexual domination, and female subordination.[29]

Radical feminism also critiques the role of legal systems in perpetuating impunity. MacKinnon argues that formal equality is insufficient where substantive inequalities remain entrenched. Laws may prohibit murder while simultaneously failing to address the structural conditions producing femicide. Police indifference, victim-blaming, weak sentencing, and societal normalisation of violence collectively sustain cultures of impunity. From this perspective, femicide is a crime, a human rights violation and evidence of state failure to protect women equally.[30]

---

[25] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989)

[26] Catharine A MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979).

[27] Ibid

[28] MacKinnon C. A., 'Reflections on Sex Equality under Law' (1991) 100 Yale LJ

[29] Ibid

[30] MacKinnon's radical feminist jurisprudence is grounded in the argument that society is fundamentally structured around hierarchical gender relations. In works such as *Toward a Feminist Theory of the State* and *Sexual Harassment of Working Women*, she contends that law is not neutral but reflects and institutionalizes male power. According to MacKinnon, the state often mirrors patriarchal norms by treating violence against women as private, exceptional, or inevitable rather than structural and political. This insight is central to a radical feminist understanding of femicide.

Andrea Dworkin, one of the most influential radical feminist theorists of the twentieth century, argues that violence against women is not incidental or exceptional but is embedded within patriarchal social structures. In this view, violence against women is a political and structural phenomenon rather than a series of isolated acts committed by individual men. In her view, rape, domestic violence, sexual harassment, prostitution, and pornography are interconnected mechanisms through which male dominance is maintained[31].In her book Intercourse[32], she argued that gender relations in patriarchal societies are often characterised by unequal power, making violence and coercion central to women's oppression.[33] She wrote: "Male power is systematic. Coercion is a means of that power."[34]

In Our Blood [35], Dworkin argued that rape functions not only as a crime against individual women but also as a mechanism through which all women are kept in a state of fear. She contended that the possibility of sexual violence shapes women's daily choices concerning movement, employment, relationships, and public participation. Thus, even women who have never experienced rape directly are affected by the social threat of violence.[36] Dworkin viewed domestic violence as an expression of unequal power relations within patriarchal family structures. She challenged liberal perspectives that treated domestic violence as a private family matter and argued that the state historically tolerated abuse within the home.[37] According to Dworkin, the distinction between public and

---

31 See Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Simon & Schuster 1975); Sheila Jeffreys, *Anticlimax: A Feminist Perspective on the Sexual Revolution* (Women's Press 1990);Linda Martín Alcoff, *Visible Identities: Race, Gender and the Self* (Oxford University Press 2006).
32 Andrea Dworkin, *Intercourse* (Free Press 1987).
33 Ibid
34 Ibid
35 Andrea Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics* (Harper & Row 1976).
36 Ibid
37 Ibid

private spheres often protected male authority while rendering women's suffering invisible.[38]

One of Dworkin's most controversial arguments concerned pornography. In Pornography: Men Possessing Women, [39] she argued that pornography is not merely speech or fantasy but a social practice that eroticizes domination, humiliation, and violence against women.

She contended that pornography normalises aggression against women, reinforces harmful gender stereotypes, and contributes to cultures that tolerate sexual violence.[40] Like MacKinnon, Dworkin criticized the liberal state's claim of neutrality. She argued that laws and institutions frequently reflect male perspectives and fail to adequately protect women from violence.

Femicide from human rights perspective

From an international human rights perspective, femicide reflects the failure of states, communities, and institutions to protect women's rights to life, dignity, equality, and security. It is both the culmination of persistent gender-based violence and a manifestation of systemic discrimination.[41] A human rights framework complements radical feminism by locating femicide within the language of state obligations, dignity, equality, and justice. Human rights approaches understand femicide as a violation of fundamental rights, including the right to life, equality and non-discrimination, human dignity, freedom from torture and violence, and access to justice.[42] This framework is important because it moves femicide from being viewed as a "private" or "domestic" matter into a matter of public accountability and state responsibility. Under international human rights law, states have duties to prevent violence against women, investigate femicide effectively, prosecute perpetrators, protect victims, and address structural discrimination. Human rights approaches are especially

---

[38] Ibid
[39] Andrea Dworkin, *Pornography: Men Possessing Women* (Perigee Books 1981).
[40] Ibid
[41] Rojas S, Maturana C, Maira G. Femicidio en Chile. Santiago, Chile: Corporación La Morada; 2004.
[42] Ibid

valuable in the Kenyan context because they connect local realities to international norms such as United Nations conventions, Committee on the Elimination of Discrimination against Women jurisprudence, and the African Union human rights system.[43]

Conceptualising Gender-Based Violence and Femicide

Definitions are not merely a means of establishing clarity; rather, they shape the field in which a concept is understood, measured and evaluated. Definitions of violence against women establish what acts are perceived as violence by a society and which are not, which acts come into the remit of the law and which go unrecognised, and who is perceived as a legitimate victim or perpetrator.[44] Definitions also lead to measures, directing what types of impacts are accounted for within research and what types of acts or individuals are included within prevalence estimates. It is therefore essential that researchers and activists working around violence against women and girls (VAWG) adopt clear definitions that adequately recognise the variety, scope and impact of violence on women and girls, their families, communities and societies.[45] In this section, the article examines contributions to understandings of gender-based violence from a number of disciplines which have shaped and informed the most common conceptualisations of VAWG today.

Gender-based violence (GBV) or gender-related violence' (GRV)

Several attempts to defining GBV have been made. According to the United Nations, "any act that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life" constitutes gender-based violence (GBV).[46] According to this

---

[43] Ibid

[44] Scriver, et al. Conceptualising violence: a holistic approach to understanding violence against women and girls. working paper published: 20 November 2015

[45] Ibid

[46] Muhammad Zubair, Farah Latif Naz, and Wajiha Yasir. Gender-Based Violence and Legal Responses: Analyzing the Effectiveness of Legal Frameworks Journal of Asian Development Studies, ol. 13, Issue 3 (September 2024)

definition, gender-based violence is any form of abuse that targets women.[47] At the United Nations Conference on Women in Beijing in 1995, this definition was adopted, reflecting a global consensus on how to comprehend the dynamics of gender-based violence. Problems like stalking, intimate partner violence, rape, coercive sex, and abuse of children fall under this category. Societal gender roles and status impact this type of violence, as the phrase "gender-based" emphasises.[48] It should be emphasised that this definition does not encompass all unlawful acts perpetrated against women, such as being threatened with a weapon during a robbery.

According to , UNFPA, violence against women and femicides are grounded in an oppressive structure such as patriarchy system which treats women as secondary support to men or even as property of men. This is the main factors which explain why femicides are in some way still considered to be normal, something that results in impunity due to the culture of silence and acceptance of this form of violence.[49] Femicide happens in every society, in every context, no cultural setting, no country, no society is totally free from it. it is a worldwide phenomenon".[50] According to several studies,[51] the victims of intimate partner abuse often receive little to no help from society and its institutions, which are influenced by gender-related cultural values, beliefs, and conventions.[52] The World Health Organisation (WHO) and other international bodies state that GBV is a worldwide pandemic, with one in three women experiencing it during their lifetime.[53] This violence knows no boundaries as to geography, wealth, or culture. The WHO's 2002 World Report on Violence and Health put forth a definition of violence in which violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury,

[47] Ibid
[48] Ibid
[49] Ibid
[50] Ibid
[51] Mary P Koss and others, *No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community* (American Psychological Association 1994).
[52] Ibid
[53] World Bank, 2019; World Health Organization, 2021; World Health Organization, 2022

death, psychological harm, maldevelopment or deprivation'.[54]

Zubair *et al* argue that the legitimisation, obfuscation, sexualisation, and perpetuation of violence against women can be traced back to gender norms and expectations, as well as to masculine entitlement, sexual objectification, and power inequalities. Unequal gender relationships, reflected in social structures, legitimise masculine aggression.[55] In many contexts, including the workplace, the home, the medical field, and athletics, there are shared structural and ideological features that keep women in a subservient position to men. As a result of these disparities, patriarchal views that normalise and demand women's submission persist, and strong, competent women are stigmatised. According to studies conducted in the US, certain men, particularly those who engage in sexual harassment, may find it sexually desirable to subjugate women.[56]

GBV manifests in multiple forms, affecting individuals physically, psychologically, and socially. Understanding these forms is crucial for effective prevention and intervention. Physical Violence includes acts such as hitting, slapping, punching, kicking, or any other form of physical assault. It is often perpetrated within households, intimate partnerships, or by community members, and can result in serious injury or death.[57] Sexual Violence includes sexual abuse, harassment, exploitation, rape, and coercion fall under this category. Sexual violence can occur in both private and public spaces and remains one of the most underreported forms of GBV due to stigma and fear of retaliation.[58] It can also take the form of psychological and Emotional Violence,

---

[54] Krug, E.G., Dahlberg, L.L., Mercy, J.A., Zwi, A.B. and Lozano, R. (eds). 2002. World report on violence and health. Geneva, World Health Organization

[55] Muhammad Zubair, Farah Latif Naz, and Wajiha Yasir. Gender-Based Violence and Legal Responses: Analyzing the Effectiveness of Legal Frameworks Journal of Asian Development Studies, Vol. 13, Issue 3 (September 2024)

[56] Ibid

[57] Treasure Malatjie 1 & John Mamokhere. The Intricacies and Prevalence of Gender-Based Violence in South Africa: Forms, Causes and Mitigation Measures. E-Journal of Humanities, Arts and Social Sciences (EHASS) ISSN – Online 2720-7722 | Print 2821-8949 Volume 5 Issue 7 July 2024 pp 1059-1070

[58] Ibid

which includes verbal abuse, intimidation, humiliation, isolation, and controlling behaviours that erode a person's self-esteem and mental health. Emotional violence often accompanies physical and sexual abuse.[59] GBV may also take the form of economic Violence in which perpetrators limit access to financial resources, control income, deny employment opportunities, or restrict educational access constitutes economic abuse. This form of GBV creates dependence and restricts autonomy.[60] It may also take the form of cultural and structural Violence, in which they may be embedded in societal norms and practices, such as child marriage, female genital mutilation, honour-based violence, or discriminatory laws and policies that perpetuate gender inequality.[61]

In the digital age, new forms of GBV are emerging. According to the UN, almost every high-ranking woman in public life faces escalating digital harassment, sexualised abuse and threats of physical violence." [62] According to the report, increased access to digital tools has exacerbated existing forms of violence against women and girls while also giving rise to new forms of violence such as non-consensual image-sharing, doxing and deepfake videos. Digital violence, which also includes cyberbullying, cyberstalking and sexual harassment, can result in physical, sexual, psychological, social, political or economic harm and the purpose remains to intimidate, to humiliate and especially to silence these women.[63] With the rapid advances in artificial intelligence, the scale and speed of this abuse is growing beyond anything that has been seen before.[64]

Femicide

The United Nations estimates that, globally, over 50,000 women are killed each year by intimate partners or family members. However, these numbers may under represent the reality due to insufficient reporting, inconsistent definitions,

[59] Ibid
[60] Ibid
[61] Ibid
[62] UN General Assebly Report:**Violence against women: UN sheds light on global femicide crisis, digital abuse.**
[63] Ibid
[64] Ibid

and lack of data collection in certain regions.[65] However, there is no consensus on what acts constitute 'femicide but suffice to state that it is the political concept developed by feminists to describe the killing of women as a hate crime against them. Scholarly literature demonstrates that femicide is not a single phenomenon but a spectrum of gender-related killings occurring in different social, cultural, economic, and political contexts.[66] From the foundational work of Diana Russell and Jill Radford[67] to the structural analyses of Marcela Lagarde, Julia Monárrez Fragoso, and Rita Laura Segato,[68] the central insight remains consistent: femicide is best understood as the most extreme manifestation of gender inequality. It reveals how social norms, patriarchal institutions, economic structures, and state failures can combine to make women vulnerable to lethal violence.Often, these killings result from a progression from other forms of gender-based violence (GBV),[69] embedded in broader forms of structural, cultural, symbolic violence and necro politics.[70] Its perpetrators could be intimate partners, former intimate partners, acquaintances, relatives, or unknowns. Through negligence, indifference, legal and institutional violence states participate directly or indirectly in the complexity of these crimes.[71]

Femicide is not a new phenomenon. Femicide had been documented in an 1801 book by the Irish writer John Corry, called "*A Satirical view of London at the Commencement of the Nineteenth Century*", where the word femicide was used to refer to the killing of a woman.[72] Since the 1990s, the term femicide has been used in relation to a pattern of kidnappings, rapes, and murders of women and girls.[73] However, Dina Russell, a pioneer researcher on violence against women, is credited as having popularised the use of the term 'femicide' to describe the

[65] Ibid
[66] UN Women, Gender-Related Killings of Women and Girls (Femicide/Feminicde) (2022)
[67] Ibid
[68] Ibid
[69] Pierre Bourdieu, *Masculine Domination* (Richard Nice tr, Polity Press 2001)
[70] Achille Mbembe, 'Necropolitics' (2003) 15(1) *Public Culture* 11
[71] Maya Restrepo, 2009; Menjívar & Abrego, 2012
[72] Ibid
[73] Ibid

killing of women because of their gender. She used the term publicly when she testified on the crimes against women during the first International Tribunal on Crimes Against Women held in Belgium in 1976.[74]

Consuelo Corradi et al posit that femicide is a violation of the basic human rights to life, liberty and personal security, as well as an obstacle to social and economic development.[75] Femicide indicates the specific crime of intentionally murdering a female person, either woman or girl, because of her gender.[76] The term indicates the act of intentionally killing a female person, either woman or girl, because of her gender, and it is the end-result of combined risk factors existing at the level of the individual, interpersonal relations, community and society.[77] Femicide is very often the last act in an abusive relationship and is therefore included in the overarching category of violence against women and girls (VAWG).[78] Since the early 1990s, this concept has been used by women's movements and, from the turn of the Millennium, it was also adopted in the social sciences to grasp those characteristics which distinguish between the killings of women and men, which were hitherto obscured by the neutral term 'homicide'.[79]

Acts of femicide are widespread as they are rooted in structural inequality, which mostly regards women and girls as unequal to men and originates in culturally entrenched sexist attitudes and practices.[80] Kate Manne in her influential book "*Down Girl: The Logic of Misogyny*" describes sexism as 'the "justificatory" branch of a patriarchal order, which consists in ideology that has the overall function of rationalising and justifying patriarchal social relations.'[81] In the context of

---

[74] Angela Hefti, 2022. Conceptualizing Femicide as a Human Rights Violation State Responsibility Under International Law. Edward Elgar Publishing Limited
[75] Consuelo Corradi, Chaime Marcuello-Servós, Santiago Boira and Shalva Weil, 'Theories of Femicide and Their Significance for Social Research' (2016) 64(7) *Current Sociology* 975–995
[76] Ibid
[77] Ibid
[78] Ibid
[79] Ibid
[80] Angela Heft not 36 above.
[81] Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press 2018) 78–80.

stereotyping, Cook and Cusack maintain that women's subordination is based on cultural and legal traditions entrenched in the patriarchal social order.[82] Sexist views in femicide are voiced by the police officers who tell female protestors to 'go home and make tortillas,' implying that women and girls' role is in the private sphere, rather than in political life.

Types of Femicide

femicide cases can be classified into different types, according to: the perpetrator's behaviour; the relationship with victims; and the broader context of this crime's occurrence. Context and gender are the two key determinants to look at when analysing femicide.

Intimate partner femicide.

This type is currently the best documented internationally. A woman is killed by her partner or former partner, very often in the context of a prior abusive relationship. Studies show that trying to escape from an abusive relationship, or seeking divorce or estrangement are events placing the woman at the highest risk of being killed by an intimate partner.[83] The perpetrator's motivation is rooted in a sense of ownership over the victim, based on unequal and rigid gender stereotypes[84] sometimes the perpetrator is also emotionally incapable of conceiving life without her.

Femicide in the name of honour

This is usually committed by relatives (including women), when the family considers that the victim's behaviour has transgressed rigid patriarchal norms, in a way that undermines the honour of a family. The victim is a young adult who refuses to marry the husband chosen by her family, or who has or is suspected of having pre-marital or extra marital sexual relations. In some cases, the woman killed has been a prior rape or sexual assault victim. High numbers of femicide

---

[82] Rebecca J Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2009) 20–29.

[83] Sylvia Walby et al., *The Concept and Measurement of Violence Against Women and Men* (Policy Press 2017).

[84] Weil et al., 2018);

cases in the name of honour are documented in countries such as Afghanistan, India, Palestine, Tunisia (UNESCO, 2019), as well as in ethnic communities residing in various European and North American countries (Aujla and Gill, 2014; Heydari et al., 2021). Often this type of femicide remains unreported and unrecorded (UNODC, 2018).

Dowry death

As recently as 2019 in India, official statistics recorded more than 7 000 crimes against women as 'dowry deaths' and more than 5 000 'abetments to suicide' under the Indian Penal Code (National Crimes Records Bureau, 2019). In the social system of arranged marriages, 'dowry' is the money and valuables that the bride's family gives to the groom's family. Wives whose family of origin has allegedly not delivered the expected amount may be subject to lethal 6 Policy Department, Directorate-General for External Policies domestic violence, such as arson. These practices remain embedded in the cultures of many South-Asian countries (UNODC, 2018). Dowry customs are also perpetuated through the traditional preference for a male child, which affects: the country sex ratio; female infanticide rates; and the status of women who give birth to daughters.

Femicide-suicide

Intentional murder of a woman followed by the perpetrator's suicide is an incident reported in almost all European countries, as well as Australia, Ghana, Moldovia, Turkey, the United States (US) (Balica, 2016) and South Africa. Research in Romania detailed the characteristics of this incident: up to 67 % of all femicide-suicide cases are committed by male intimate partners and up to 97 % of cases by relatives; almost 50 % are committed in the victim's house, after she has been divorced from her would-be perpetrator. When she has children, in 30 % of the cases they are also targeted by the perpetrator (Balica, 2016). This type of femicide is insufficiently recorded and highlights the need to focus on special preventative measures for perpetrators with mental health problems and adult women walking out of violent and abusive relationships, a time when the risk of femicide is very high. 3. 4. 5. 6. Femicide in war and conflict settings. During times of war, genocide and armed conflict, the systematic targeting of women and mass rape are employed to annihilate local communities and humiliate opponents.

Victims of rape may subsequently be marginalised and killed. The Academic Council on the United Nations System reports femicide in conflict settings as diverse as Afghanistan, Bosnia and Herzegovina, Darfur, the Democratic Republic of Congo, Iraq, ISIS groups and Rwanda (ACUNS, 2015). UNODC has recognised that 'these unrecorded gender-based killings of women and girls may substantially elevate the global number of [femicide] victims' (UNODC, 2018).

Female sex selection

Female sex selection is increasingly recognized within the broader concept of **femicide** because it involves the systematic elimination of females based solely on their sex. While traditional understandings of femicide focus on the killing of women and girls after birth, contemporary feminist scholars have expanded the concept to include practices that prevent female lives from coming into existence or surviving infancy due to gender discrimination.[85] Female sex selection generally occurs through Sex-selective abortion following prenatal sex determination; Female infanticide; Neglect of girl children leading to preventable deaths; Reproductive practices designed to ensure the birth of male children. Amartya Sen famously highlighted this phenomenon through his concept of **"missing women,"** referring to millions of women who are absent from populations due to discriminatory practices affecting survival and reproduction. Sen argued that these demographic imbalances reflect systemic gender discrimination rather than natural demographic variation.[86]

Global Legislative Efforts on Femicide: Including International and Domestic Case Law

Global legislative efforts on femicide demonstrate an emerging international consensus that gender-related killings of women require distinct legal recognition and robust state responses. International and domestic case law has been instrumental in shaping this evolution by recognising femicide as both a criminal justice issue and a profound human rights violation rooted in systemic

---

[85] **Marcia Texler Segal and Vasilikie Demos (eds),** *Gender Perspectives on Violence Against Women* (Emerald Publishing 2015).

[86] **Amartya Sen,** 'More Than 100 Million Women Are Missing' (1990) 37(20) *The New York Review of Books* 61.

discrimination against women. [87]The have increasingly been shaped not only by statutory reforms, but also by influential judicial decisions from domestic, regional, and international courts. Courts have played a central role in recognising that killings of women are frequently rooted in discrimination, misogyny, and structural gender inequality rather than isolated interpersonal violence. Through case law, judicial bodies have progressively clarified state obligations concerning prevention, investigation, prosecution, and redress in cases of gender-related killings of women.[88]

One of the most influential international decisions is González et al ("Cotton Field") v Mexico, decided by the Inter-American Court of Human Rights in 2009.[89] The case concerned the disappearance, sexual violence, and murder of several young women in Ciudad Juárez, Mexico, amidst a broader pattern of systematic killings of women. The Court held that Mexico had violated the rights to life, equality, dignity, and judicial protection under the American Convention on Human Rights and the Convention of Belém do Pará.[90] Importantly, the Court recognised that the murders occurred within a context of structural discrimination and gender-based violence against women.[913] The decision established that states have a due diligence obligation to prevent, investigate, and punish femicide and became a catalyst for femicide legislation throughout Latin America.

---

[87] See generally González et al. ("Cotton Field") v Mexico, *González et al ("Cotton Field") v Mexico* (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 205 (16 November 2009); Opuz v Turkey, *Opuz v Turkey* (2010) 50 EHRR 28; United Nations General Assembly, *Declaration on the Elimination of Violence against Women* UNGA Res 48/104 (20 December 1993).
[88] Ibid
[89] González et al ("Cotton Field") v Mexico (Preliminary Objection, Merits, Reparations and Costs) InterAmerican Court of Human Rights Series C No 205 (16 November 2009).
[90] American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (adopted 9 June 1994, entered into force 5 March 1995) 33 ILM 1534
[91] González et al ("Cotton Field") v Mexico (n 1) paras 388–401.

The Cotton Field judgment profoundly influenced legislative reforms in Mexico, where femicide was formally criminalised in the Federal Penal Code in 2012.[92] Article 325 of the Mexican Penal Code defines femicide as the killing of a woman for gender reasons and identifies indicators such as sexual violence, degrading injuries, prior threats, or intimate relationships with the perpetrator.[93] The law also imposes special investigative obligations on authorities in cases involving murdered women.

Guatemala similarly enacted the Law Against Femicide and Other Forms of Violence Against Women in 2008 following growing concern over widespread killings of women and impunity. Guatemalan courts subsequently began interpreting femicide as a crime rooted in structural gender inequality. In Rosa Franco v Guatemala, the Inter-American Commission on Human Rights criticised failures by Guatemalan authorities to properly investigate the murder of a woman within a context of gender discrimination and violence.

Argentina amended article 80 of its Penal Code in 2012 to classify femicide as an aggravated form of homicide punishable by life imprisonment. Argentine jurisprudence has increasingly acknowledged the structural dimensions of violence against women. Courts have emphasised that femicide reflects unequal gender power relations and therefore requires interpretation consistent with international human rights obligations under CEDAW and the Convention of Belém do Pará.[94] In El Salvador, the Special Comprehensive Law for a Violence-Free Life for Women 2011 introduced the offence of feminicide and established specialised tribunals for violence against women.[95] Judicial interpretation of the law has highlighted the need to distinguish feminicide from ordinary homicide because of its discriminatory and misogynistic dimensions.[96] Peru likewise

---

[92] Código Penal Federal (Mexico) art 325.
[93] Ibid
[94] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
[95] Ley Especial Integral para una Vida Libre de Violencia para las Mujeres (El Salvador) Decree No 520 (201 Rosa Franco v Guatemala Inter-American Commission on Human Rights Report No 4/16, Case 12.472 (13 April 2016).
[96] Rosa Franco v Guatemala Inter-American Commission on Human Rights Report No

criminalised femicide in article 108-B of its Penal Code and has strengthened prosecutorial guidelines and judicial mechanisms aimed at recognising patterns of gender-based killings.[97]

European legal developments have generally been more cautious. Rather than creating standalone offences of femicide, many European states have incorporated gender-based violence into broader frameworks addressing violence against women. Spain's Organic Law 1/2004 on Integrated Protection Measures against Gender Violence represented a landmark legislative reform recognising violence against women as a manifestation of discrimination and unequal power relations.[98] Although Spain does not specifically criminalise femicide, Spanish courts increasingly interpret intimate partner killings within the broader framework of structural gender violence.

The European Court of Human Rights has also played a critical role. In Opuz v Turkey, the Court held that Turkey had violated the European Convention on Human Rights by failing to protect a woman and her mother from severe domestic violence that culminated in murder.[99] The Court recognised domestic violence as a form of gender-based discrimination and established that state inaction in such contexts may amount to discriminatory treatment contrary to article 14 of the Convention.[100] The decision significantly influenced European approaches to violence against women and strengthened arguments for enhanced legal protections against femicide. Similarly, in Talpis v Italy, the European Court of Human Rights held Italy responsible for failing to adequately protect a woman whose abusive husband later murdered her son and attempted to kill her.[101] The Court emphasised the state's positive obligations to respond effectively to domestic violence and protect women at risk of lethal violence.[102]

4/16, Case 12.472 (13 April 2016).

[97] Código Penal de la Nación Argentina art 80.

[98] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

[99] Opuz v Turkey (2009) 50 EHRR 28.

[100] Ibid

[101] Talpis v Italy App no 41237/14 (ECtHR, 2 March 2017).

[102] Ibid

At the regional level, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) has become one of the most important legal instruments concerning gender-based violence.[103] Although the Convention does not expressly create the offence of femicide, it requires states to criminalise violence against women, exercise due diligence, and adopt preventive and protective mechanisms. Judicial bodies increasingly interpret lethal violence against women through the Convention's framework.

International human rights law has also progressively recognised femicide through the jurisprudence of treaty-monitoring bodies. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has repeatedly emphasised that gender-based violence, including femicide, constitutes discrimination under international law.[104] In A.T. v Hungary, the Committee criticised Hungary for failing to protect a woman from severe domestic violence and stressed the obligation of states to provide effective legal remedies and protection mechanisms.[105] Although the case did not involve femicide directly, it contributed to the development of state responsibility principles in contexts of lethal violence against women.

The jurisprudence of international and regional courts has therefore significantly shaped legislative reforms on femicide. Judicial decisions have clarified that states may incur international responsibility not only for direct violence, but also for failures to prevent foreseeable gender-based killings, inadequate investigations, discriminatory stereotyping, and systemic impunity.[106] These

---

[103] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210.
[104] CEDAW Committee, 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35.
[105] A.T. v Hungary (2005) Communication No 2/2003, CEDAW Committee, UN Doc CEDAW/C/32/D/2/2003.
[106] Rhonda Copelon, 'Gender Violence as Torture: The Contribution of CAT General Comment No 2' (2008) 11 NY City L Rev 229.

decisions have encouraged states to adopt specialised femicide laws, improve investigative protocols, establish specialised courts, and strengthen victim protection mechanisms.

Nevertheless, major challenges remain. Many jurisdictions continue to classify femicide merely as homicide, thereby obscuring the structural and discriminatory dimensions of violence against women.[107] Even where femicide laws exist, implementation is frequently undermined by weak institutions, patriarchal attitudes within justice systems, inadequate data collection, and impunity. Critics therefore argue that legislative reform must be accompanied by broader structural transformation addressing misogyny, gender inequality, and institutional discrimination. [108]

Conclusion

This article has demonstrated that the obscuring of femicide is not merely a semantic or definitional problem. It is a deeply structural one rooted in patriarchal norms, institutional limitations. The absence of an explicit legal framework that recognises gender-motivated killings as a distinct category of violence is a manifestation of these deeply rooted motivations. The legal and conceptual invisibility of femicide contributes to weak data systems, inconsistent prosecution practices, and inadequate preventive interventions that enable the vice to subsist at the magnitude that it does today.

Comparative insights explored in this paper also reveal that several jurisdictions have begun to recognise femicide as standalone offences distinguishable from other homicide with encouraging results on strategies to combat the vice. Countries worldwide are strengthening laws around femicide and other forms of gender-based violence. Many Latin American countries, for instance, have introduced femicide-specific laws with harsher punishments for perpetrators.

---

[107] United Nations Office on Drugs and Crime and UN Women, Gender-related Killings of Women and Girls (Femicide/Feminicide) (2022).
[108] Catharine MacKinnon, Toward a Feminist Theory of the State (Harvard University Press 1989).

The purpose of these laws is not only to penalize offenders but also to recognise the unique gendered motivations behind these crimes. This shows that legislative reform alone is not sufficient and they must be accompanied by broader structural transformation addressing misogyny, gender inequality, and institutional discrimination. Kenya can learn from this experience and adopt a more multifaceted and transformative approach that moves beyond formal equality in criminal law to substantive recognition of gendered violence as a systemic human rights concern.

References

Alessia Nicastro. Addressing Femicide Through International Criminal Law: The Need for a Binding Legal Framework. Yale Journal of International Law, 2025.

Andrea Dworkin, *Intercourse* (Free Press 1987).

Andrea Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics* (Harper & Row 1976).

Andrea Dworkin, *Pornography: Men Possessing Women* (Perigee Books 1981).

Angela Hefti, 2022. Conceptualizing Femicide as a Human Rights Violation State Responsibility Under International Law. Edward Elgar Publishing Limited.

Catharine A MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979).

Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

Catharine A. MacKinnon, "Difference and Dominance: On Sex Discrimination. (Cambridge, MA: Harvard University Press, 1987).

Catharine A. MacKinnon, Are Women Human? And Other International Dialogues
(Harvard University Press 2007).

Catherine A. MacKinnon ., 'Reflections on Sex Equality under Law' (1991) 100 Yale LJ

Denise Thompson, Radical Feminism Today (Routledge Publications 2001)

Diana E.H. Russell and Jill Radford (eds), Femicide: The Politics of Woman Killing (New York: Twayne Publishers, 1992)

Diana E.H. Russell, "Femicide: The Politics of Woman Killing," in Femicide: The Politics of Woman Killing (New York: Twayne Publishers, 1992).

Franz von Liszt, "Der Zweckgedanke im Strafrecht" (1882); Marc Ancel, *La défense sociale nouvelle* (1954).

Judy El-Bushra, and Eugenia Piza Lopez. 1993. Gender-Related Violence: Its Scope and Relevance. Focus on Gender 1: 1–9.

Liz Kelly, Surviving Sexual Violence (Cambridge: Polity Press, 1988)

Rhonda Copelon, 'Gender Violence as Torture: The Contribution of CAT General Comment No 2' (2008) 11 NY City L Rev 229.

Roberta A. Harmes (eds), *Femicide in Global Perspective* (Teachers College Press 2001)
UN Women East and Southern Africa Regional Office: Socio-cultural analysis of femicide in Kenya, December 2025.
UN WOMEN Handbook for legislation on violence against women. NEW YORK, 2012
UN Women, Gender-Related Killings of Women and Girls (Femicide/Feminicde) (2022)
United Nations Office on Drugs and Crime and UN Women, Gender-related Killings of Women and Girls: Improving Data to Improve Responses (2023).
World Bank, 2019; World Health Organization, 2021; World Health Organization, 2022
World Health Organization, *Understanding and Addressing Violence Against Women: Femicide* (WHO 2012)
World Health Organization. 2002. World report on violence and health.

CONVENTIONS AND CONSTITUTIONS AND SOFT LAW

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.
Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210.
CEDAW Committee, 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35.
Constitution of Kenya

CITED CASES

Maria da Penha v. Brazil).
Mestanza_Chavez_v_Peru European Court of Human Rights. 26 March 1985 https://hudoc.echr.coe.int/eng?i=001-57603
Opuz v Turkey (2009) (Application no. 33401/02).European Court of Human Rights

[Ahluwalia v. Ahluwalia, 2026 SCC 16 (CanLII)]
Maria Mamerita Mestanza Chávez v. Peru
MC v. Bulgaria.
Rosa Franco v Guatemala Inter-American Commission on Human Rights Report No 4/16, Case 12.472 (13 April 2016).
González et al ("Cotton Field") v Mexico (Preliminary Objection, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 205 (16 November 2009).
A.T. v Hungary (2005) Communication No 2/2003, CEDAW Committee, UN Doc CEDAW/C/32/D/2/200

Community versus Adult Learning Institutions Conflict: Pathways to Sustainable Peace

By: ***Dr. Nelly Wamaitha Kamangu***[*]

Abstract

Conflicts between host communities and adult learning institutions such as universities and colleges are increasingly emerging as complex socio-legal challenges in rapidly urbanizing contexts within the Global South. These conflicts often originate from interpersonal encounters but evolve into broader cycles of grievance, protest, and insecurity when shaped by perceptions of injustice, institutional bias, and socio-economic inequality. This article adopts an interdisciplinary approach drawing on conflict escalation theory, procedural justice, and the human security framework. It integrates Kenyan and African scholarship and examines structural drivers such as youth unemployment. It further advances mediation, community policing, and sports-based engagement as practical strategies for sustainable peace.

Keywords: *community–institution conflict, adult learning institutions, peacebuilding, conflict management, procedural justice, youth unemployment, mediation, community policing, sports-based peacebuilding, sustainable development, Kenya.*

1.0 Introduction

Conflicts between host communities and adult learning institutions have become increasingly visible in contemporary socio-legal and development discourse, particularly within rapidly urbanizing regions of Africa where institutions of higher learning serve as focal points of demographic, economic, and cultural transformation (Altbach et al., 2009; Teferra & Altbach, 2004). Universities and colleges do not exist in isolation; rather, they are embedded within surrounding communities whose socio-economic conditions, expectations, and identities interact continuously with institutional life. This interaction produces both opportunities for integration and conditions for tension, especially where

[*] *Dr. Nelly Wamaitha Kamangu, PhD, Advocate of the High Court of Kenya, Certified Mediator and Arbitrator, Law Lecturer, and Researcher in Conflict Management, Gender Identity, Gender Diversity, and Social Justice. Email: nellywamaitha97@gmail.com*

disparities in access to resources, opportunities, and social capital are perceived or experienced (Marginson, 2016; Cloete et al., 2015). Recent scholarship further emphasizes that higher education institutions in Africa increasingly operate within contested socio-economic spaces shaped by inequality, urbanization, and youth precarity (UNESCO, 2021; African Development Bank, 2022).

In many contexts, the presence of adult learning institutions contributes to local economic growth through employment opportunities, housing demand, and the development of ancillary businesses (Altbach et al., 2009; Cloete et al., 2015; UNESCO, 2021). However, these benefits are not always equitably distributed (African Development Bank, 2022). Local communities may perceive that the primary beneficiaries of institutional presence are external actors, that is students, academic staff, and investors, rather than long-term residents. Such perceptions may generate feelings of exclusion and resentment, particularly among unemployed or underemployed youth (Stewart, 2008; World Bank, 2018). These structural tensions often remain latent until activated by triggering events. Significantly, such conflicts rarely originate within formal institutional settings such as lecture halls or administrative offices. Rather, they often emerge within informal social spaces characterized by fluid social interaction, identity negotiation, and limited institutional regulation (Anderson, 2011; Collins, 2008; Pruitt & Kim, 2004). They frequently emerge in informal social spaces (bars, entertainment venues, transport nodes, and trading centers) where interactions between students and community members occur outside institutional regulation. These spaces are characterized by fluid social hierarchies, economic exchanges, and identity negotiation, making them fertile ground for both cooperation and conflict (Anderson, 2011; Collins, 2008). The influence of alcohol consumption, peer pressure, and performative masculinity further increases the likelihood of confrontation in such environments (Connell, 2005).

Crucially, interpersonal disputes in these contexts are rarely interpreted as isolated events. Rather, they are embedded within broader narratives of inequality, marginalization, and symbolic contestation between “locals” and “outsiders.” As Tilly (2004) argues, collective action is often driven by shared interpretations of injustice rather than purely material conditions. Thus, a conflict that begins as a personal altercation may quickly assume collective significance, triggering community mobilization, protest, and broader insecurity. When such incidents result in serious harm or loss of life, they often catalyze demands for justice and accountability. At this stage, the role of state institutions (particularly law enforcement) becomes critical. Procedural justice theory suggests that public responses to authority are shaped less by outcomes and more by perceptions of fairness in the processes through which decisions are made (Tyler, 2006; Sunshine & Tyler, 2003). Where investigations are perceived as biased, delayed, or selectively protective of certain groups, public trust in formal justice mechanisms may erode significantly, thereby reinforcing grievances and increasing the likelihood of conflict escalation (Tyler, 2006; Sunshine & Tyler, 2003; Tyler & Huo, 2002).

The consequences of such escalation extend beyond immediate security concerns. The human security framework emphasizes that insecurity encompasses not only physical violence but also economic disruption, social fragmentation, and psychological distress (UNDP, 1994). Conflicts between communities and adult learning institutions may therefore undermine local economies, disrupt educational environments, and weaken social cohesion, with significant implications for sustainable development (Stewart, 2008; Galtung, 1996). This article advances the argument that community versus adult learning institution conflicts are structurally embedded socio-legal phenomena shaped by the interaction of legal frameworks, institutional behavior, socio-economic inequality, and collective perception. It further contends that effective conflict management requires a shift from reactive enforcement to proactive, inclusive, and context-sensitive approaches that address both immediate triggers and underlying structural drivers, including youth unemployment and social exclusion.

A further dimension that warrants emphasis is the role of **spatial proximity and socio-economic juxtaposition** in shaping the dynamics of these conflicts. Universities and colleges frequently operate as spaces of relative socio-economic privilege situated within communities characterized by uneven development, economic vulnerability, and social exclusion (Marginson, 2016; Sassen, 2014; Cloete et al., 2015). This physical and symbolic proximity intensifies perceptions of inequality by rendering disparities in lifestyle, patterns of consumption, social status, and future opportunities highly visible within shared social spaces (Sassen, 2014; Bourdieu, 1984; Gurr, 1970). Such visibility may not inherently produce conflict; however, in contexts where structural inequalities are already pronounced, it can act as a catalyst for grievance formation (Sassen, 2014). Moreover, the rapid expansion of higher education across Africa has not consistently been matched by corresponding growth in employment opportunities, thereby contributing to rising frustration, graduate unemployment, and a broader crisis of socio-economic expectations among both graduates and non-students (Teferra & Altbach, 2004; Cloete et al., 2015; World Bank, 2018).This creates a shared but unevenly experienced condition of uncertainty, where different groups navigate similar structural constraints but interpret them through distinct positionalities. Understanding this complexity is critical in avoiding simplistic binaries between "community" and "institution," and instead recognizing the layered and intersecting identities that shape conflict dynamics.

Theoretical and Conceptual Framework

A comprehensive understanding of community–adult learning institution conflicts requires an interdisciplinary analytical framework capable of capturing its multi-dimensional nature. This study draws on conflict escalation theory, procedural justice theory, the human security paradigm, and gender analysis to provide a nuanced interpretation of the phenomenon.

Conflict escalation theory offers a foundational lens through which to understand how disputes evolve over time. Glasl (1999) conceptualizes conflict as a dynamic process characterized by progressive intensification, moving from stages of mild disagreement to open confrontation and ultimately to destructive interaction. Central to this framework is the idea that escalation is driven by reciprocal actions and perceptions, where each party's response contributes to the next stage of conflict. In community–institution settings, conflict escalation is often accelerated by collective identity formation, in-group solidarity, and group-based interpretations of events that reinforce perceptions of opposition and grievance (Tajfel & Turner, 1979; Glasl, 1999; Pruitt & Kim, 2004). Importantly, conflict escalation is not inevitable but is significantly shaped by the manner in which disputes are managed at different stages. Early intervention, transparent communication, and procedurally fair institutional responses can prevent conflicts from progressing into more destructive and entrenched forms (Glasl, 1999; Pruitt & Kim, 2004; Tyler, 2006). Conversely, mismanagement, perceived bias, or excessive use of force may accelerate escalation, transforming localized disputes into broader cycles of violence (Pruitt & Kim, 2004).

Procedural justice theory further illuminates the role of institutional conduct in shaping public behavior. Tyler (2006) argues that legitimacy is rooted in perceptions of fairness, transparency, and impartiality in decision-making processes. When individuals believe that authorities act fairly, they are more likely to comply with the law, even when outcomes are unfavorable. On the other hand, perceived injustice may lead to resistance, protest, and alternative forms of justice-seeking (Sunshine & Tyler, 2003). In the context of community–institution conflict, perceptions that law enforcement agencies are biased or protective of certain groups can therefore play a central role in escalation.

The human security framework expands the analytical focus beyond state-centric notions of security to include the lived experiences of individuals and communities. According to UNDP (1994), human security encompasses protection from both chronic threats (such as poverty and unemployment) and sudden disruptions, such as violence and displacement. In community–adult learning institution contexts, insecurity often manifests simultaneously across multiple dimensions, including physical safety, economic stability, and social cohesion (Stewart, 2008). This multidimensional perspective is essential for understanding the full impact of conflict on sustainable development.

A gender-sensitive lens adds further analytical depth by recognizing that conflict is experienced, interpreted, and expressed differently across gendered lines, with men and women often occupying distinct social positions and vulnerabilities within conflict settings (True, 2012; Enloe, 2014; Hudson et al., 2012). Masculinity norms often shape patterns of behavior among young men, who may engage in confrontation as a means of asserting identity, status, or control (Connell, 2005). This is particularly relevant in informal social settings where peer dynamics and alcohol consumption may amplify aggressive behavior. At the same time, women often experience indirect but significant impacts of conflict, including economic disruption, caregiving burdens, and increased vulnerability to insecurity (True, 2012; Hudson et al., 2012).

The above theoretical perspectives collectively provide a robust framework for analyzing community–adult learning institution conflict as a complex, evolving phenomenon shaped by interaction, perception, and structural conditions. In addition to the aforementioned frameworks, insights from **relative deprivation theory** further enhance the analytical depth of this study. Gurr (1970) posits that perceived discrepancies between expectations and actual conditions are central to the emergence of collective violence. In the context of community–adult learning institution conflict, such discrepancies may arise not only from material inequality but also from perceived disparities in recognition, respect, and opportunity. Similarly**, social identity theory** (Tajfel & Turner, 1979) provides a useful lens for understanding how group affiliations influence conflict behavior.

Individuals derive part of their identity from group membership, and in contexts where group boundaries are salient (such as "students" versus "locals") interactions may be shaped by in-group favoritism and out-group bias. This dynamic may amplify conflict, particularly where group identities become politicized or associated with broader socio-economic inequalities. These additional theoretical perspectives reinforce the argument that community–adult learning institution conflict is not merely situational but deeply embedded in broader processes of identity formation, perception, and structural inequality.

2.0 Methodology

This study adopts a qualitative desk research methodology, integrating doctrinal legal analysis, documentary review, and thematic synthesis of scholarly literature. Desk research is particularly appropriate for examining complex socio-legal phenomena where primary data collection may be constrained by ethical, temporal, or security considerations, and where existing sources provide rich analytical material (Bowen, 2009; Johnston, 2017). Doctrinal legal analysis forms a central component of the methodology, involving the systematic examination of constitutional provisions, statutory frameworks, and judicial decisions relevant to policing, public order, and human rights. This approach enables the study to establish normative standards against which the conduct of state and non-state actors can be evaluated (Hutchinson & Duncan, 2012). In the Kenyan context, particular attention is paid to constitutional rights, the National Police Service Act, and relevant case law addressing policing practices and the use of force. Documentary analysis complements this legal framework by examining policy documents, institutional reports, and credible media accounts relating to community–institution conflict. This method allows for the identification of patterns, narratives, and empirical insights that inform the analysis (Bowen, 2009). Given the potential for contested narratives—particularly in situations involving allegations of violence or retaliation—the study adopts a cautious and critical approach, distinguishing between verified facts and reported claims (Yin, 2018). Thematic analysis is employed to synthesize insights from scholarly literature across multiple disciplines, including law, sociology, conflict studies, and development studies. This involves identifying recurring themes, concepts, and explanatory frameworks that contribute to a deeper understanding of the phenomenon (Braun & Clarke, 2006). By integrating theoretical and empirical insights, the study develops a coherent analytical framework that moves beyond description to explanation.

An important strength of this methodology lies in its capacity for triangulation. By drawing on multiple sources of data and analytical approaches, the study enhances its reliability and validity, allowing for cross-referencing between legal norms, empirical observations, and theoretical perspectives. Contemporary qualitative research scholarship also underscores the importance of triangulation and reflexivity in socio-legal analysis involving contested social realities (Tracy, 2020; Denzin & Lincoln, 2018). While the absence of primary data may limit the ability to capture lived experiences in detail, the focus on structural and conceptual analysis provides a robust foundation for understanding the dynamics of community–adult learning institution conflict. While desk research provides a robust foundation for this analysis, it is important to acknowledge its epistemological positioning. The study adopts a **constructivist orientation,** recognizing that conflict is not an objective phenomenon but is socially constructed through narratives, perceptions, and interpretations (Berger & Luckmann, 1966). This perspective is particularly relevant in contexts where multiple and sometimes competing accounts of events exist. Furthermore, the study is attentive to issues of **reflexivity,** particularly in the interpretation of documentary and secondary data. Given the potential for bias in media reporting and institutional narratives, the analysis critically engages with sources to identify underlying assumptions and power dynamics. This approach enhances the rigor of the study and aligns with best practices in qualitative research (Creswell & Poth, 2018). Future research may benefit from incorporating empirical methods such as interviews and participatory observation to capture lived experiences more directly. However, the present desk-based approach provides a necessary foundation for conceptual and legal analysis, particularly in contexts where access to primary data may be constrained.

3.0 Legal and Human Rights Analysis

The legal dimension of community–adult learning institution conflict is grounded in constitutional, statutory, and international human rights frameworks that regulate state conduct, protect individual rights, and define the limits of public order management. In Kenya, these principles are anchored in the Constitution of Kenya 2010, which establishes a comprehensive Bill of Rights and imposes both negative and positive obligations on the state. The Constitution not only guarantees rights but also provides a normative framework through which state conduct must be assessed, particularly in situations involving conflict and public disorder. At the core of this framework is the right to life, which is non-derogable and imposes a duty on the state to protect individuals from unlawful harm. This duty extends beyond refraining from direct violations to include the obligation to investigate deaths effectively and transparently. In *Independent Policing Oversight Authority v Attorney General & Others* (2016), the High Court emphasized that accountability in cases involving loss of life is fundamental to maintaining public confidence in the justice system. The Court held that investigative processes must be independent and credible, particularly where allegations involve actors perceived to have institutional protection or privilege. This jurisprudence is particularly relevant in community–institution conflicts, where perceptions of unequal treatment may intensify tensions.

The right to peaceful assembly further plays a critical role in shaping community responses to perceived injustice. Article 37 of the Constitution guarantees the right to assemble, demonstrate, and present petitions to public authorities. In *Coalition for Reform and Democracy (CORD) v Republic* (2015), the High Court reaffirmed that this right is central to democratic participation. However, the Court also acknowledged that the right is not absolute and may be subject to limitations necessary to maintain public order, provided such limitations meet the constitutional test of proportionality. The balancing of constitutional rights and public order becomes especially complex in situations where protests emerge from emotionally charged incidents involving perceived injustice, collective grievance, or heightened social tension (Della Porta & Reiter, 1998; Tyler, 2006; Rawlings, 1998). The use of force by law enforcement agencies, especially in managing protests, must therefore be evaluated within a strict legal framework. The deployment of tear gas, while considered a less-lethal crowd control mechanism, must meet the criteria of necessity, proportionality, and accountability. The United Nations Basic Principles on the Use of Force and Firearms (1990) emphasize that force should be used only as a last resort and in a manner that minimizes harm. Kenyan courts have reinforced this principle. In *Katiba Institute v Inspector General of Police* (2017), the Court held that even non-lethal force may violate constitutional rights if applied indiscriminately or excessively. This highlights the importance of context and restraint in law enforcement responses.

Beyond doctrinal analysis, it is essential to situate legal frameworks within broader socio-political realities. African scholars have long highlighted the challenges of policing legitimacy in postcolonial contexts. Mahmood Mamdani (1996) argues that colonial governance structures have left enduring legacies that continue to shape contemporary state–citizen relations, often producing systems characterized by exclusion, uneven citizenship, and coercive administrative practices. According to Mamdani, postcolonial African states frequently inherited centralized and authoritarian governance models that prioritized control over participatory legitimacy, thereby contributing to persistent mistrust between state institutions and local communities. Similarly, Jean-François Bayart (2009) emphasizes that African governance structures are often shaped by complex patronage systems and informal power networks that influence how state authority is exercised and perceived. These dynamics may reinforce perceptions of selective justice and unequal treatment, particularly in contexts where institutions are viewed as aligned with politically or economically privileged groups (Bayart, 2009; Mamdani, 1996; Tyler, 2006). In situations involving conflict between communities and institutions, such perceptions may significantly undermine confidence in formal justice mechanisms.

African policing scholarship has further demonstrated that the legitimacy of law enforcement agencies is deeply connected to historical experiences of state violence and social exclusion. Alice Hills (2000) argues that policing in many African states has historically emphasized regime security and public order maintenance rather than community-oriented service delivery. This legacy continues to shape public perceptions of police conduct, particularly during protests and demonstrations. Where law enforcement responses are perceived as excessively forceful, selective, or procedurally unfair, affected communities may view such actions not as impartial enforcement of the law but as manifestations of institutional bias and unequal state power (Tyler, 2006; Sunshine & Tyler, 2003; Della Porta & Reiter, 1998). In Kenya, Ruteere and Pommerolle (2003) observe that community policing initiatives have faced significant challenges in building trust due to perceptions of bias, corruption, and limited institutional accountability. While community policing frameworks are intended to foster collaboration between police and citizens, their effectiveness is often undermined by inconsistent implementation and inadequate public participation. This observation is reinforced by Mutuma Ruteere (2011), who notes that public confidence in policing institutions is closely tied to perceptions of fairness, responsiveness, and accountability. Where these qualities are absent, community members may become reluctant to cooperate with formal security structures. Additional insight is provided by Achille Mbembe (2001), who argues that postcolonial governance in Africa is frequently characterized by tensions between formal legality and everyday lived realities. According to Mbembe, citizens often navigate state institutions through experiences of uncertainty, selective enforcement, and unequal access to justice. Such conditions may contribute to the normalization of informal dispute resolution practices and alternative forms of authority, particularly where formal systems are perceived as ineffective or exclusionary.

The concept of procedural justice is also highly relevant in this context. Tyler (2006) argues that institutional legitimacy depends not only on outcomes but also on the fairness and transparency of decision-making processes. Where communities perceive that institutions operate selectively or fail to treat individuals with dignity and impartiality, compliance with legal norms may decline significantly. This suggests that legal compliance alone may be insufficient to prevent conflict escalation if broader questions of legitimacy, trust, and social justice remain unresolved. Moreover, socio-economic inequality further complicates the relationship between law and legitimacy. Stewart (2008) argues that horizontal inequalities (defined as inequalities between socially constructed groups) are particularly likely to generate grievance and collective tension. In community–adult learning institution settings, disparities in educational access, employment opportunities, and economic security may reinforce perceptions that institutions primarily serve privileged populations while surrounding communities remain marginalized. Such perceptions may significantly intensify conflict dynamics, particularly where specific incidents are interpreted through broader narratives of exclusion, marginalization, and structural injustice (Gurr, 1970; Stewart, 2008; Tilly, 2004). These historical, institutional, and socio-economic dimensions are therefore critical in understanding why legal compliance alone may not prevent conflict escalation. Sustainable conflict management requires not only adherence to legal standards but also broader efforts to strengthen institutional legitimacy, enhance accountability, and address structural inequalities that shape community perceptions and experiences.

Another important legal issue relates to retaliatory violence. Criminal law is premised on individual responsibility, and collective targeting of individuals based on group identity (such as affiliation with an academic institution) is inconsistent with both domestic and international legal standards. Such practices may amount to collective punishment, which is prohibited under international human rights law (Ohlin, 2015). The emergence of retaliatory violence therefore signals not only a breakdown in law and order but also a deeper crisis of legitimacy in formal justice systems (Albrecht & Kyed, 2011). In sum, while the legal framework governing community–adult learning institution conflict is robust, its effectiveness depends on implementation, perception, and trust. Where a significant disconnect exists between formal legal norms and the lived realities of affected communities, legal frameworks alone may be insufficient to prevent conflict escalation or sustain institutional legitimacy (Tyler, 2006; Merry, 1988; Mamdani, 1996).

A further dimension of legal analysis concerns the principle of equality and non-discrimination, which is central to constitutional governance and human rights protection. In the context of community–adult learning institution conflict, perceptions of unequal treatment (whether real or perceived) can significantly influence the trajectory of conflict escalation. Article 27 of the Constitution of Kenya guarantees equality before the law and equal protection of the law. However, the practical realization of this principle is often contested, particularly in situations where certain groups are perceived to enjoy institutional privilege or protection.

The concept of **legal pluralism** is also relevant in this context. In many African societies, formal legal systems coexist with informal mechanisms of dispute resolution rooted in customary practices and community norms (Merry, 1988; Griffiths, 1986). When formal justice systems are perceived as inaccessible, biased, or ineffective, communities may resort to alternative forms of justice, including collective action or informal sanctioning. While such responses may emerge from perceptions of injustice and institutional failure, they frequently operate outside formal legal frameworks and may ultimately contribute to further instability, insecurity, and erosion of institutional legitimacy (Merry, 1988; Griffiths, 1986; Albrecht & Kyed, 2011). Additionally, the notion of **state legitimacy** is critical in assessing the effectiveness of legal frameworks. As Weber (1978) observes, the authority of the state is sustained not merely through coercion but through the belief in its legitimacy. Where communities perceive that state institutions exercise authority selectively, unfairly, or unjustly, institutional legitimacy may be significantly undermined, resulting in diminished compliance with legal norms and an increased propensity toward resistance and confrontation (Tyler, 2006; Weber, 1978; Sunshine & Tyler, 2003).

In such contexts, restoring legitimacy requires not only adherence to legal standards but also demonstrable fairness, transparency, and accountability in institutional conduct.

The concept of **accountability ecosystems,** which encompass the broader institutional arrangements through which state actors are monitored and held responsible (Fox, 2007). In Kenya, bodies such as the Independent Policing Oversight Authority (IPOA) play a critical role in enhancing police accountability. However, the effectiveness of such institutions depends on factors including independence, resourcing, and public trust. Where accountability mechanisms are perceived as weak, ineffective, or lacking independence, communities may lose confidence in formal justice processes and increasingly resort to alternative forms of justice-seeking, including informal dispute resolution mechanisms, collective action, or other extra-legal responses (Fox, 2007; Tyler, 2006; Albrecht & Kyed, 2011). This underscores the importance of strengthening institutional oversight not only as a legal requirement but also as a critical conflict prevention strategy. Effective accountability mechanisms enhance transparency, reinforce public trust, and contribute to perceptions of procedural fairness and institutional legitimacy (Sunshine & Tyler, 2003; Tyler, 2006). Accountability, in this sense, is not merely retrospective—focused on investigating and sanctioning past misconduct—but also preventive, shaping public perceptions of fairness, responsiveness, and legitimacy before conflicts escalate into broader cycles of grievance and confrontation (Fox, 2007; Tyler, 2006; Weber, 1978).

This analysis underscores the importance of aligning legal principles with lived experiences. The effectiveness of legal frameworks in managing conflict depends not only on their normative content but also on how they are implemented, experienced, and perceived by affected communities (Tyler, 2006; Merry, 1988; Mamdani, 1996). Without such alignment, even well-designed legal systems may fail to prevent, manage, or resolve conflict effectively, particularly in contexts characterized by historical grievances, social exclusion, and diminished institutional trust (Tyler, 2006; Weber, 1978; Stewart, 2008).

4.0 Conflict Dynamics and Escalation

The escalation of conflict between communities and adult learning institutions can be understood as a multi-layered process shaped by interaction, perception, and structural conditions. Drawing on conflict escalation theory (Glasl, 1999), this process unfolds in stages that reflect increasing intensity and complexity. The initial stage involves a triggering incident, often arising from interpersonal interaction in informal social environments. These incidents are frequently influenced by alcohol consumption, peer dynamics, and identity assertion, particularly among young men (Anderson, 2011). While the incident itself may be limited in scope, it often occurs within a broader context of latent tension. The second stage involves interpretation and narrative formation. At this stage, the incident is framed within existing social narratives, such as inequality, marginalization, or perceived disrespect. Community members may interpret the incident as evidence of systemic injustice, while institutional actors may view it as an isolated event. This divergence in interpretation is critical in shaping subsequent responses (Tilly, 2004). The third stage is collective mobilization, characterized by protests or public demonstrations. These actions are expressions of perceived injustice and demands for accountability. The scale and intensity of mobilization depend on factors such as community cohesion, leadership structures, and historical experiences with authority. The fourth stage involves state response, particularly by law enforcement agencies. At this stage, procedural justice becomes central. If the response is perceived as fair, transparent, and proportionate, it may contribute to de-escalation. However, if it is perceived as biased or excessive, it may reinforce grievances and accelerate escalation (Tyler, 2006). The fifth stage is grievance entrenchment, where perceptions of injustice become deeply embedded. Trust in formal institutions may erode, and alternative narratives of justice may emerge. This stage often marks a shift from episodic conflict to sustained tension. The sixth stage involves retaliatory behavior, where individuals or groups engage in actions perceived as responses to the original incident. These actions may include targeted violence, theft, or other forms of insecurity. Importantly, such behavior is often justified by actors as necessary or legitimate responses to perceived injustice, exclusion, or failures of formal justice mechanisms (Gurr, 1970; Tyler, 2006; Stewart, 2008). The final stage is conflict normalization, where patterns of insecurity become routine, institutionalized, and self-sustaining (Glasl, 1999; Pruitt & Kim, 2004). At this stage, conflict is no longer tied to the original incident but becomes embedded within ongoing social interactions, collective memories, and group perceptions (Bar-Tal, 2013; Lederach, 1997). Breaking this cycle requires deliberate intervention, trust-building measures, and long-term strategies aimed at transforming underlying relationships, addressing structural grievances, and rebuilding institutional legitimacy (Lederach, 1997; Galtung, 1996; Ramsbotham et al., 2016).

An additional layer of analysis can be drawn from the concept of **conflict transformation,** which shifts the focus from managing immediate disputes to addressing the underlying relationships and structures that sustain conflict (Lederach, 1997). In community–adult learning institution contexts, conflict is not merely a series of discrete events but a reflection of deeper relational and structural tensions. These include disparities in economic opportunity, social identity, and access to institutional resources. From this perspective, conflict escalation is not solely a negative phenomenon but also an indicator of underlying grievances that require attention The visibility of conflict may, in some cases, create opportunities for dialogue, institutional reform, and the renegotiation of relationships between communities and institutions (Lederach, 1997; Galtung, 1996; Ramsbotham et al., 2016). From a conflict transformation perspective, disputes can serve as catalysts for social learning by exposing underlying grievances, governance deficits, and relational tensions that might otherwise remain unaddressed (Lederach, 1997; Paris, 2004). However, such transformation is contingent upon the willingness of stakeholders to engage constructively, embrace dialogue, and address underlying structural causes rather than merely suppress visible symptoms of conflict (Galtung, 1996; Lederach, 1997; Mac Ginty, 2014). Sustainable peacebuilding therefore requires not only the cessation of immediate hostilities but also the transformation of relationships, institutions, and social conditions that contribute to recurring conflict (Lederach, 1997; Ramsbotham et al., 2016).The role of communication is particularly significant in this regard. Miscommunication or lack of communication between institutions and host communities can contribute to misunderstanding and mistrust. The establishment of formal communication mechanisms, including community liaison committees and institutional outreach initiatives, can play a critical role in bridging mistrust, enhancing dialogue, and facilitating early intervention before conflicts escalate into more destructive forms (Lederach, 1997; Moore, 2014; Skogan, 2006). It is also important to recognize the role of **rumor, information flows, and digital communication** in contemporary conflict dynamics. In an era characterized by rapid information dissemination through social media and informal networks, narratives surrounding conflict events can spread quickly and shape perceptions in real time. Misinformation or partial information may amplify tensions, particularly in contexts where trust in official communication is low. This highlights the importance of timely, transparent, and credible communication by institutions. Proactive communication strategies can help to counter misinformation, manage expectations, and provide clarity during periods of uncertainty (Castells, 2015; Sunstein, 2009; Moore, 2014). Transparent and timely communication is particularly important in conflict-prone environments because it reduces information vacuums that may otherwise be filled by speculation, rumor, and unverified narratives (Allport & Postman, 1947; Castells, 2015). In the absence of such communication, informal narratives may dominate public discourse, often reinforcing grievance, mistrust, and perceptions of institutional illegitimacy (Bar-Tal, 2013; Sunstein, 2009; Tyler, 2006).

Furthermore, the temporal dimension of conflict must be considered. Conflicts often evolve over time, with past experiences shaping present perceptions and future expectations (Bar-Tal, 2013; Lederach, 1997; Pruitt & Kim, 2004). Historical grievances, even when not directly related to current incidents, may significantly influence how contemporary events are interpreted, narrated, and responded to by affected communities (Bar-Tal, 2013; Mamdani, 1996; Stewart, 2008). Collective memories of exclusion, marginalization, injustice, or previous confrontations may become embedded within community narratives and continue to shape perceptions of institutional legitimacy and trust (Bar-Tal, 2013; Lederach, 1997). This highlights the importance of adopting a longitudinal perspective in both conflict analysis and intervention, recognizing that present tensions are often linked to historical experiences and broader patterns of social relations rather than isolated incidents alone (Lederach, 1997; Ramsbotham et al., 2016; Galtung, 1996).

4.0 Youth Unemployment as a Structural Driver

Recent regional studies continue to identify youth unemployment and underemployment as key drivers of social unrest and insecurity across sub-Saharan Africa (International Labour Organization [ILO], 2023; African Development Bank, 2024).

Youth unemployment remains one of the most critical structural drivers underpinning community–adult learning institution conflict, particularly within African contexts characterized by youthful populations and constrained economic opportunities. The persistence of high unemployment rates among young people not only exacerbates economic vulnerability but also contributes to psychological distress, social alienation, and diminished trust in institutions (World Bank, 2018; UNDP, 2019). In such contexts, conflict cannot be fully understood without situating it within broader political economy dynamics that shape access to opportunity and social mobility. From a theoretical perspective, the relationship between unemployment and conflict can be understood through opportunity cost models. Collier (2009) argues that when individuals lack viable economic alternatives, the relative cost of engaging in conflictual or even violent activities is significantly reduced In the context of community–adult learning institution interactions, unemployed youth may perceive participation in confrontational behavior not necessarily as deviance, but as a rational response to structural exclusion, limited socio-economic opportunities, and perceived marginalization (Collier, 2009; Gurr, 1970; Stewart, 2008). This is particularly evident in environments where inequality is highly visible and spatially concentrated, allowing disparities in opportunity, status, and access to resources to become part of everyday social experience (Sassen, 2014; Bourdieu, 1984; Marginson, 2016). Under such conditions, grievances may be interpreted not merely as individual frustrations but as reflections of broader structural injustices, thereby increasing the potential for collective mobilization and conflict (Gurr, 1970; Stewart, 2008; Tilly, 2004).

The proximity of universities and colleges to local communities often creates a stark contrast between groups with differing life trajectories (Marginson, 2016; Sassen, 2014; Bourdieu, 1984). Students are typically perceived as individuals on pathways toward upward mobility, supported by educational infrastructure and social networks. In contrast, local youth who lack access to similar opportunities may experience frustration and resentment, particularly where educational attainment does not translate into employment. This perceived disparity may reinforce narratives of relative deprivation, a concept extensively discussed in conflict literature as a driver of grievance-based mobilization (Stewart, 2008). Importantly, youth unemployment also intersects with identity and masculinity. As Connell (2005) notes, economic exclusion may undermine traditional constructions of masculinity tied to provision and status, leading some young men to seek alternative avenues for asserting identity and power. In informal social settings, this may manifest as aggression, territoriality, or confrontation, particularly in interactions with perceived "outsiders" (Connell, 2005; Anderson, 2011). Social identity dynamics may further reinforce distinctions between in-groups and out-groups, increasing the likelihood that interpersonal encounters are interpreted through collective rather than individual lenses (Tajfel & Turner, 1979). Such dynamics contribute to the escalation of interpersonal disputes into broader collective conflicts by transforming individual grievances into group-based narratives of competition, exclusion, or perceived threat (Glasl, 1999; Pruitt & Kim, 2004; Tilly, 2004).

Addressing youth unemployment as a structural driver of conflict requires more than short-term interventions. It necessitates integrated strategies that link economic development with social inclusion (World Bank, 2018; Stewart, 2008). Adult learning institutions themselves can play a critical role in this regard by establishing community outreach programs, vocational training initiatives, and partnerships with local enterprises aimed at enhancing employment opportunities for surrounding communities (UNESCO, 2021; Cloete et al., 2015). Without such efforts, the structural conditions that underpin conflict are likely to persist, undermining long-term peacebuilding efforts (Galtung, 1996; Lederach, 1997).

From a policy perspective, addressing youth unemployment requires a multisectoral approach that integrates education, economic development, and social policy (African Development Bank, 2022; World Bank, 2018). Adult learning institutions are uniquely positioned to contribute to this process through community-engaged scholarship and inclusive programming (Boyer, 1996; UNESCO, 2021). For example, universities can develop extension programs that provide vocational training, entrepreneurship support, and mentorship opportunities for local youth (Cloete et al., 2015; African Development Bank, 2022). Such initiatives not only enhance employability but also foster positive relationships between institutions and their host communities, thereby contributing to social cohesion and long-term conflict prevention (Lederach, 1997; Galtung, 1996). In addition, there is a need to re-examine the alignment between education systems and labor market demands. In many contexts, a mismatch exists between the skills produced by educational institutions and those required by the economy. This mismatch contributes to graduate unemployment and reinforces perceptions that education does not guarantee economic advancement (World Bank, 2018). Addressing this issue requires collaboration between educational institutions, government agencies, and the private sector to ensure that curricula are responsive to market needs.

Social protection mechanisms also play an important role in mitigating the effects of unemployment. Programs such as public works initiatives, youth funds, and conditional cash transfers can provide short-term relief while longer-term structural reforms are implemented. However, the effectiveness of such programs depends on transparency, accessibility, and sustainability Ultimately, addressing youth unemployment is not only an economic imperative but also a peacebuilding strategy. By reducing economic exclusion, enhancing social inclusion, and expanding opportunities for meaningful participation, employment-focused interventions can help address some of the structural conditions that contribute to grievance, marginalization, and conflict (Stewart, 2008; Galtung, 1996; World Bank, 2018). Moreover, initiatives that improve access to education, skills development, entrepreneurship, and decent work opportunities may strengthen social cohesion, foster a sense of belonging, and reduce the likelihood of conflict mobilization among vulnerable youth populations (African Development Bank, 2022; International Labour

Organization [ILO], 2023; Lederach, 1997). Consequently, youth employment should be viewed not merely as a development objective but as a critical component of sustainable peacebuilding and conflict prevention (UNDP, 2015; World Bank, 2011).

Finally, the sustainability of peacebuilding interventions depends on their integration into broader governance and development frameworks (Lederach, 1997; Galtung, 1996). Isolated interventions, while valuable, are unlikely to produce lasting impact unless they are embedded within institutional policies and supported by adequate resources (UNDP, 2015; OECD, 2011). This requires coordination across multiple levels of governance, including national, county, and institutional actors (World Bank, 2011; African Union, 2020).

In the Kenyan context, this may involve aligning peacebuilding initiatives with county development plans, youth empowerment strategies, and national policies on education and security (Republic of Kenya, 2010; National Cohesion and Integration Commission [NCIC], 2022). Such alignment enhances policy coherence, minimizes duplication of interventions, and ensures that peacebuilding strategies remain responsive to local realities while benefiting from broader institutional and governmental support (OECD, 2011; UNDP, 2015).

5.0 Conflict Management and Sustainable Peacebuilding

Emerging peacebuilding scholarship further highlights the importance of locally grounded, participatory, and context-sensitive conflict resolution mechanisms in sustaining institutional legitimacy, strengthening social cohesion, and enhancing community trust (United Nations, 2023; OECD, 2022; Lederach, 1997). Contemporary peacebuilding approaches increasingly recognize that sustainable peace cannot be imposed solely through top-down state interventions but must be rooted in inclusive local processes that address underlying grievances and structural inequalities (Galtung, 1996; Mac Ginty, 2014). In community–adult learning institution settings, this is particularly important because conflicts often involve long-term relational dynamics between institutions and surrounding communities rather than isolated disputes (Boyer, 1996; Cloete et al., 2015; Altbach et al., 2009). The sustainability of these relationships depends largely on the ability of institutions to engage meaningfully with local communities, foster mutual trust, and address concerns through continuous dialogue and collaborative problem-solving (Lederach, 1997; Boyer, 1996).

Effective conflict management in community–adult learning institution contexts therefore requires a transition from reactive approaches centered primarily on enforcement toward proactive, participatory, and multidimensional strategies that address both immediate tensions and underlying structural conditions (Lederach, 1997; OECD, 2022). Such an approach aligns with contemporary peacebuilding theory, which emphasizes inclusivity, legitimacy, dialogue, and sustainability in conflict transformation processes (Galtung, 1996; Paris, 2004). It also reflects broader human security approaches that recognize peace as extending beyond the absence of violence to include social justice, dignity, and socio-economic inclusion (UNDP, 1994; United Nations, 2023).

Mediation remains one of the most effective and widely recognized tools for addressing conflict in such contexts. Unlike adversarial legal processes, mediation prioritizes dialogue, mutual understanding, relationship preservation, and the identification of shared interests (Moore, 2014; Fisher et al., 2000). Moore (2014) emphasizes that mediation is particularly valuable in situations where long-term relationships must be maintained, as is often the case between institutions and their host communities. Similarly, Lederach (1997) argues that sustainable peacebuilding depends on creating spaces for constructive engagement and rebuilding fractured relationships. In practical terms, mediation processes in community–institution conflicts should involve a broad range of stakeholders, including community leaders, institutional representatives, local authorities, youth groups, religious leaders, civil society actors, and where appropriate, representatives of law enforcement agencies (Lederach, 1997; Fisher et al., 2000). This inclusive approach enhances legitimacy by ensuring that multiple perspectives are acknowledged and incorporated into decision-making processes (OECD, 2022). Participation also reduces the likelihood of exclusionary outcomes that may generate further grievance or resentment (Galtung, 1996).

Community policing further complements mediation by fostering ongoing collaboration between law enforcement agencies and local communities. Rather than conceptualizing policing as a purely coercive or enforcement-oriented function, community policing emphasizes partnership, problem-solving, accountability, and trust-building (Skogan, 2006; Trojanowicz & Bucqueroux, 1990). In contexts characterized by tension and mistrust, community policing can create opportunities for sustained engagement and early conflict prevention by facilitating dialogue between security agencies and affected populations. In Kenya, while the implementation of community policing initiatives has faced significant challenges, including limited resources, inconsistent implementation, and persistent perceptions of institutional bias, its potential as a mechanism for conflict prevention and trust-building remains substantial (Ruteere & Pommerolle, 2003; Ruteere, 2011). Kenyan scholars have observed that effective community policing depends heavily on procedural fairness, responsiveness, and meaningful public participation (Ruteere, 2011). Where communities perceive law enforcement agencies as transparent, accountable, and respectful, cooperation and information-sharing are more likely to occur (Tyler, 2006; Sunshine & Tyler, 2003). Moreover, the effectiveness of community policing is closely linked to broader issues of governance and institutional legitimacy. Hills (2000) argues that in many African contexts, policing institutions continue to struggle with historical legacies associated with authoritarianism and coercive state control. Consequently, rebuilding trust requires not only policy reform but also cultural and institutional transformation aimed at promoting human rights, accountability, and community responsiveness (Hills, 2000; Tyler, 2006).

Another increasingly important dimension of sustainable peacebuilding involves the institutionalization of dialogue mechanisms. Regular stakeholder forums, institutional outreach programs, and community liaison committees can provide structured spaces for communication, problem-solving, and early intervention before tensions escalate into open conflict (Lederach, 1997; Moore, 2014). Such mechanisms are particularly valuable in environments where misinformation, rumor, and mistrust may contribute to escalation dynamics.

Ultimately, sustainable peacebuilding in community–adult learning institution contexts requires an integrated and long-term approach that combines mediation, community policing, inclusive governance, socio-economic inclusion, and institutional accountability (United Nations, 2023; OECD, 2022). Without such comprehensive engagement, interventions risk addressing only the symptoms of conflict while leaving underlying structural drivers unresolved.

An innovative and increasingly recognized approach to peacebuilding is the use of sports as a tool for social integration and reconciliation (Sugden, 2008; Giulianotti, 2011). Sports-based peacebuilding initiatives create neutral and inclusive spaces where individuals from different social groups can interact on relatively equal terms, thereby reducing prejudice, fostering dialogue, and promoting mutual understanding (Keim, 2003; Giulianotti, 2011). John Sugden (2008) argues that sports possess a unique capacity to transcend social, ethnic, and economic divisions by creating shared identities and collective experiences, even in contexts characterized by tension and conflict.

In community–adult learning institution settings, joint sports activities—such as football tournaments involving both students and local youth—can serve as practical platforms for rebuilding trust, encouraging cooperation, and transforming adversarial relationships into constructive engagement (Sugden, 2008; Keim, 2003). Such initiatives may also contribute to reducing stereotypes and strengthening social cohesion by fostering repeated positive interaction between groups that might otherwise remain socially divided (Allport, 1954; Giulianotti, 2011).

The effectiveness of sports-based interventions lies not only in their recreational value but also in their capacity to engage young people constructively and provide alternative avenues for participation, recognition, and social belonging (Coalter, 2013; Keim, 2003). Given that young men are often central actors in conflict dynamics, particularly in contexts shaped by unemployment, marginalization, and identity struggles, providing positive and structured forms of engagement becomes critically important (Connell, 2005; World Bank, 2018). When carefully designed and inclusively implemented, sports initiatives can contribute to reducing idleness, strengthening teamwork, promoting leadership skills, and encouraging positive forms of identity construction and social responsibility (Coalter, 2013; Sugden, 2008).

Moreover, sports-based peacebuilding initiatives may serve broader developmental purposes by complementing community outreach and youth empowerment strategies. In contexts where mistrust between institutions and communities is high, collaborative sports programs can function as informal confidence-building mechanisms that facilitate longer-term dialogue and coexistence (Giulianotti, 2011; Lederach, 1997). However, scholars caution that sports alone cannot resolve structural inequalities or deep-rooted grievances unless integrated into broader peacebuilding and socio-economic development frameworks (Coalter, 2013; Galtung, 1996).

Gender-sensitive approaches must also be integrated into conflict management and peacebuilding strategies, particularly in contexts where conflict dynamics are shaped by social inequalities, identity politics, and uneven access to power and resources (True, 2012; Hudson et al., 2012). Feminist peacebuilding scholarship has consistently emphasized that conflict is not gender-neutral; rather, men and women experience, interpret, and respond to conflict differently due to socially constructed gender roles and expectations (Enloe, 2014; True, 2012). Consequently, sustainable peacebuilding requires approaches that recognize and address these differentiated experiences rather than treating communities as homogenous entities. As Jacqui True (2012) highlights, conflict often reinforces existing gender inequalities while simultaneously creating new forms of vulnerability and exclusion. Men, particularly young men, may be more directly associated with physical confrontation, retaliatory violence, and public expressions of conflict due to social expectations surrounding masculinity and power (Connell, 2005). In contrast, women frequently experience the indirect consequences of conflict, including economic instability, caregiving burdens, emotional trauma, and heightened insecurity within households and communities (Hudson et al., 2012). These differentiated experiences shape how various groups perceive conflict and participate in peacebuilding processes. Importantly, women often play critical but under-recognized roles in informal conflict resolution, community cohesion, and social stabilization (UN Women, 2015; Lederach, 1997). In many African contexts, women act as mediators within families and communities, facilitate dialogue across social divides, and contribute significantly to maintaining social networks during periods of tension and instability (Tripp et al., 2009). Their involvement in local peace initiatives may therefore provide valuable insights into community grievances, communication dynamics, and culturally appropriate approaches to reconciliation. Despite these contributions, women remain significantly underrepresented in formal peacebuilding, governance, and security processes (True, 2012; UN Women, 2015). This exclusion often limits the inclusivity and effectiveness of conflict management strategies by marginalizing perspectives that are essential for sustainable peace. Research demonstrates that peace processes involving women are more likely to produce durable agreements and socially inclusive outcomes because they tend to prioritize dialogue, social welfare, reconciliation, and community-level concerns (O'Reilly et al., 2015).

In community–adult learning institution settings, integrating gender-sensitive approaches may involve ensuring women's participation in mediation committees, community liaison forums, institutional outreach initiatives, and local peacebuilding programs. It may also require addressing gender-specific barriers to participation, such as cultural norms, economic dependency, and safety concerns (True, 2012). Furthermore, universities and colleges themselves can contribute to gender-responsive peacebuilding by promoting gender equality policies, supporting women's leadership initiatives, and integrating gender-sensitive conflict management training into student and community engagement programs.

A gender-sensitive approach also requires recognizing the intersectionality of identity and vulnerability. Gender does not operate in isolation but interacts with factors such as age, class, ethnicity, education, and employment status to shape experiences of conflict and exclusion (Crenshaw, 1989). For example, unemployed young men and economically marginalized women may experience conflict differently yet remain equally affected by broader structural inequalities. Effective peacebuilding strategies must therefore adopt an intersectional perspective that acknowledges these overlapping dimensions of vulnerability and participation.

Ultimately, integrating gender-sensitive approaches into conflict management enhances both the legitimacy and effectiveness of peacebuilding efforts by ensuring broader representation, deeper social understanding, and more inclusive forms of engagement (UN Women, 2015; Lederach, 1997). Sustainable peace is unlikely to emerge where significant segments of the community remain excluded from decision-making and reconciliation processes.

Another critical dimension of sustainable peacebuilding is the institutionalization of dialogue mechanisms. While ad hoc interventions may be effective in addressing immediate crises, long-term stability requires the establishment of permanent structures through which communities and institutions can engage continuously (Lederach, 1997; OECD, 2022). These may include joint committees, regular stakeholder forums, community liaison structures, and participatory decision-making processes that ensure ongoing communication, trust-building, and collaborative problem-solving (Moore, 2014; United Nations, 2023). Such mechanisms are particularly important in contexts characterized by mistrust and recurring tensions because they provide structured avenues for addressing grievances before they escalate into open conflict (Galtung, 1996; Mac Ginty, 2014).

The role of leadership is equally important in shaping peacebuilding outcomes. Both institutional leaders and community leaders play a critical role in framing narratives, mobilizing constituencies, facilitating dialogue, and influencing whether conflicts escalate or de-escalate (Burns, 1978; Lederach, 1997). Transformational leadership—characterized by inclusivity, empathy, accountability, and a commitment to collective well-being—can significantly enhance the effectiveness and legitimacy of peacebuilding efforts (Burns, 1978; Northouse, 2019). Leaders who promote dialogue, transparency, and

reconciliation are more likely to foster social cohesion and reduce polarization within communities and institutions (Paris, 2004).

Furthermore, monitoring and evaluation mechanisms are essential for assessing the effectiveness, sustainability, and responsiveness of peacebuilding interventions (OECD, 2022; United Nations, 2023). Without systematic evaluation, it becomes difficult to determine whether interventions are achieving their intended objectives, reducing tensions, or addressing underlying structural drivers of conflict (World Bank, 2011). Incorporating feedback from participants, local stakeholders, youth groups, and institutional actors can enhance the adaptability, legitimacy, and long-term effectiveness of peacebuilding strategies (Lederach, 1997; OECD, 2022). Participatory evaluation processes also strengthen local ownership and accountability, which are critical components of sustainable peacebuilding (Mac Ginty, 2014).

These additional dimensions reinforce the need for a comprehensive, multi-level approach to conflict management that integrates immediate crisis response with long-term structural transformation (Galtung, 1996; Paris, 2004). Sustainable peacebuilding requires interventions that move beyond short-term conflict suppression toward addressing broader issues of governance, inequality, exclusion, and institutional legitimacy (Stewart, 2008; UNDP, 2015). Ultimately, sustainable peacebuilding requires a holistic and integrated approach that combines mediation, community policing, sports engagement, youth empowerment, and economic inclusion (Lederach, 1997; Galtung, 1996). These strategies must be supported by strong institutional frameworks, political will, participatory governance, and continuous engagement to ensure that peace is understood not merely as the absence of violence, but as the presence of justice, dignity, inclusion, and social cohesion (United Nations, 2023; UNDP, 1994).

6.0 Conclusion

This study has demonstrated that conflicts between communities and adult learning institutions are complex, multi-dimensional phenomena that cannot be adequately understood through a singular lens. Rather, they emerge from the intersection of legal frameworks, institutional practices, socio-economic inequalities, and collective perceptions. While triggering incidents often appear

localized and interpersonal in nature, their escalation into broader conflict reflects deeper structural tensions that must be addressed. The analysis has highlighted the central role of procedural justice in shaping conflict trajectories. Where institutional responses are perceived as fair, transparent, and accountable, there is greater potential for de-escalation and trust-building. Conversely, perceptions of bias or injustice may reinforce grievances and contribute to cycles of conflict. This underscores the importance of aligning legal frameworks with lived experiences to ensure that justice is not only done but seen to be done. The study has also emphasized the significance of youth unemployment as a structural driver of conflict. Economic exclusion not only creates material hardship but also shapes identity, perception, and behavior, particularly among young men. Addressing this issue requires long-term, integrated strategies that link economic development with social inclusion. The article has advanced a multi-faceted approach to conflict management, incorporating mediation, community policing, sports-based engagement, and gender-sensitive strategies. These approaches move beyond reactive enforcement and offer pathways toward sustainable peace grounded in participation, inclusivity, and shared responsibility.

Achieving sustainable coexistence between communities and adult learning institutions requires a shift in both perspective and practice. Institutions must recognize their embeddedness within local communities and actively engage in fostering inclusive relationships. At the same time, communities must be supported in addressing structural challenges that contribute to conflict. Only through such integrated and context-sensitive approaches can cycles of conflict be transformed into opportunities for cooperation, resilience, and sustainable development. Ultimately, the significance of this study extends beyond the specific context of community–adult learning institution conflict. It speaks to broader questions of how societies manage diversity, inequality, and institutional change in an era of rapid transformation. As higher education continues to expand across Africa, the need to foster harmonious and mutually beneficial relationships between institutions and their host communities will become increasingly important. This study therefore contributes not only to academic discourse but also to policy and practice, offering insights that can inform more inclusive, equitable, and sustainable approaches to conflict management. By situating conflict within its broader structural and relational context, it provides a foundation for rethinking how institutions engage with the communities that surround them, and how such engagement can contribute to long-term peace and development.

References

African Development Bank. (2022). *African economic outlook 2022: Supporting climate resilience and a just energy transition in Africa*. African Development Bank Group.

African Development Bank. (2024). *African economic outlook 2024*. African Development Bank Group.

Albrecht, P., & Kyed, H. M. (2011). Introduction: Non-state and customary actors in development programs. In H. M. Kyed & L. Buur (Eds.), *State recognition and democratization in Sub-Saharan Africa: A new dawn for traditional authorities?* (pp. 1–28). Palgrave Macmillan.

Allport, G. W. (1954). *The nature of prejudice*. Addison-Wesley.

Allport, G. W., & Postman, L. (1947). *The psychology of rumor*. Henry Holt.

Altbach, P. G., Reisberg, L., & Rumbley, L. E. (2009). *Trends in global higher education: Tracking an academic revolution*. UNESCO.

Anderson, E. (2011). *Code of the street: Decency, violence, and the moral life of the inner city*. W. W. Norton & Company.

Bar-Tal, D. (2013). *Intractable conflicts: Socio-psychological foundations and dynamics*. Cambridge University Press.

Bayart, J.-F. (2009). *The state in Africa: The politics of the belly* (2nd ed.). Polity Press.

Berger, P. L., & Luckmann, T. (1966). *The social construction of reality: A treatise in the sociology of knowledge*. Anchor Books.

Bourdieu, P. (1984). *Distinction: A social critique of the judgement of taste*. Harvard University Press.

Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal, 9*(2), 27–40.

Boyer, E. L. (1996). The scholarship of engagement. *Journal of Public Service & Outreach, 1*(1), 11–20.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77–101.

Burns, J. M. (1978). *Leadership*. Harper & Row.

Cloete, N., Maassen, P., & Bailey, T. (2015). *Knowledge production and contradictory functions in African higher education*. African Minds.

Coalter, F. (2013). *Sport for development: What game are we playing?* Routledge.

Collier, P. (2009). *Wars, guns, and votes: Democracy in dangerous places*. HarperCollins.

Collins, R. (2008). *Violence: A micro-sociological theory*. Princeton University Press.

Connell, R. W. (2005). *Masculinities* (2nd ed.). Polity Press.

Crenshaw, K. (1989). Demarginalizing the intersection of race and sex. *University of Chicago Legal Forum, 1989*(1), 139–167.

Della Porta, D., & Reiter, H. (Eds.). (1998). *Policing protest: The control of mass demonstrations in Western democracies*. University of Minnesota Press.

Denzin, N. K., & Lincoln, Y. S. (2018). *The Sage handbook of qualitative research* (5th ed.). Sage Publications.

Enloe, C. (2014). *Bananas, beaches and bases: Making feminist sense of international politics* (2nd ed.). University of California Press.

Fisher, R., Ury, W., & Patton, B. (2000). *Getting to yes: Negotiating agreement without giving in* (2nd ed.). Penguin Books.

Fox, J. A. (2007). The uncertain relationship between transparency and accountability. *Development in Practice, 17*(4–5), 663–671.

Galtung, J. (1996). *Peace by peaceful means: Peace and conflict, development and civilization*. Sage Publications.

Giulianotti, R. (2011). The sport, development and peace sector: A model of four social policy domains. *Journal of Social Policy, 40*(4), 757–776. https://doi.org/10.1017/S0047279411000300

Glasl, F. (1999). *Confronting conflict: A first-aid kit for handling conflict*. Hawthorn Press.

Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law, 24*, 1–55.

Gurr, T. R. (1970). *Why men rebel*. Princeton University Press.

Hills, A. (2000). *Policing Africa: Internal security and the limits of liberalization*. Lynne Rienner Publishers.

Hudson, V. M., Caprioli, M., Ballif-Spanvill, B., McDermott, R., & Emmett, C. F. (2012). *Sex and world peace*. Columbia University Press.

International Labour Organization. (2023). *Global employment trends for youth 2023: Investing in transforming futures for young people*. ILO.

Keim, M. (2003). *Nation building at play: Sport as a tool for social integration in post-apartheid South Africa*. Meyer & Meyer Sport.

Lederach, J. P. (1997). *Building peace: Sustainable reconciliation in divided societies*. United States Institute of Peace Press.

Mac Ginty, R. (2014). Everyday peace: Bottom-up and local agency in conflict-affected societies. *Security Dialogue, 45*(6), 548–564.

Mamdani, M. (1996). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press.

Marginson, S. (2016). *The dream is over: The crisis of Clark Kerr's California idea of* *higher education*. University of California Press.

Mbembe, A. (2001). *On the postcolony*. University of California Press.

Merry, S. E. (1988). Legal pluralism. *Law & Society Review, 22*(5), 869–896.

Moore, C. W. (2014). *The mediation process: Practical strategies for resolving conflict* (4th ed.). Jossey-Bass.

Northouse, P. G. (2019). *Leadership: Theory and practice* (8th ed.). Sage Publications.

Organisation for Economic Co-operation and Development (OECD). (2022). *States of fragility 2022*. OECD Publishing.

Paris, R. (2004). *At war's end: Building peace after civil conflict*. Cambridge University Press.

Pruitt, D. G., & Kim, S. H. (2004). *Social conflict: Escalation, stalemate, and settlement* (3rd ed.). McGraw-Hill.

Ramsbotham, O., Woodhouse, T., & Miall, H. (2016). *Contemporary conflict resolution* (4th ed.). Polity Press.

Sassen, S. (2014). *Expulsions: Brutality and complexity in the global economy*. Harvard University Press.

Stewart, F. (2008). *Horizontal inequalities and conflict: Understanding group violence in multiethnic societies*. Palgrave Macmillan.

Sunshine, J., & Tyler, T. R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review, 37*(3), 513–548.

Tajfel, H., & Turner, J. C. (1979). An integrative theory of intergroup conflict. In W. G. Austin & S. Worchel (Eds.), *The social psychology of intergroup relations* (pp. 33–47). Brooks/Cole.

Tilly, C. (2004). *Social movements, 1768–2004*. Paradigm Publishers.

Tyler, T. R. (2006). *Why people obey the law*. Princeton University Press.

United Nations Development Programme. (2015). *Governance for peace: Securing the social contract*. UNDP.

United Nations. (2023). *New agenda for peace*. United Nations.

Weber, M. (1978). *Economy and society: An outline of interpretive sociology*. University of California Press.

World Bank. (2011). *World development report 2011: Conflict, security, and development*. World Bank.

World Bank. (2018). *World development report 2018: Learning to realize education's promise*. World Bank.

The Admissibility of Verifiable Technical Intelligence Evidence Before Kenyan Courts: A Legislative Proposal for Criminal Law Reform

By: ***Michael Sang*** *

Abstract

This paper critically examines the status and use of intelligence-gathered evidence in Kenyan courts and argues for legislative reform to expand its admissibility, particularly in proactive criminal investigations. It highlights the barriers to the effective sharing and use of intelligence among law enforcement agencies, intelligence personnel, and the judiciary, proposing a framework that facilitates cooperation and intelligence-led investigations. Drawing on lessons from international practices, including the United States' Classified Information Procedures Act (CIPA) and the United Kingdom's Justice and Security Act, the paper underscores the importance of incorporating verifiable technical intelligence, particularly in cases related to terrorism and organized crime. The proposed reforms aim to strengthen Kenya's criminal justice system by balancing national security concerns with the right to a fair trial.

Key words: *Intelligence-Gathered Evidence; Proactive Criminal Investigations; National Security; Legislative Reform; Classified Information; Terrorism and Organized Crime; Judiciary Cooperation, Kenya; Verifiable Technical Intelligence Evidence*

1.0 Introduction

The use of intelligence-gathered evidence in criminal trials is becoming increasingly critical as Kenya faces growing threats from terrorism, organized crime, and money laundering[1]. However, the current legal framework governing the admissibility of such evidence remains limited, particularly in its application

* *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] United Nations Office on Drugs and Crime (UNODC) 'Kenya Training Manual on Human Rights and Criminal Justice Responses to Terrorism' available at https://www.unodc.org/documents/terrorism/Publications/Kenya%20HR%20manual/Kenya_Manual_e-book.pdf accessed 20 September 2024

to proactive criminal investigations.[2] This article examines the status of intelligence-gathered evidence in Kenyan courts and argues for the need to expand its scope.

The primary objective of this article is to propose reforms that eliminate existing barriers between intelligence agencies, law enforcement, and the judiciary, which often hinder the effective sharing and utilization of intelligence in criminal investigations. By fostering greater cooperation and facilitating intelligence-led investigations, the criminal justice system will be better equipped to respond to complex security threats.[3]

This issue is especially pertinent to cases involving national security, where intelligence is often the most reliable form of evidence.[4] In operations aimed at preventing terrorism or organized crime, the ability to admit verifiable technical intelligence as evidence is crucial for successful prosecution and for safeguarding the public from these evolving threats.[5]

2.0 The Rationale for Admissibility of Verifiable Technical Intelligence as Evidence Before Kenyan Courts

2.1 Where Intelligence Evidence is the Only Available Evidence

In cases involving terrorism or organized crime, traditional evidence is often difficult to gather due to the covert nature of the activities.[6] Verifiable technical intelligence, such as electronic surveillance, intercepted communications, or digital footprints, may be the only means of uncovering the crime. Admitting this evidence is critical when:

---

[2] ibid

[3] D N Leone, 'Information Sharing for Intelligence-led Policing Within Multi-Agency Law Enforcement Teams' (doctoral dissertation, Saint Leo University 2024).

[4] ibid

[5] M R Ronczkowski, *Terrorism and Organized Hate Crime: Intelligence Gathering, Analysis and Investigations* (CRC Press 2017).

[6] Andrej Bozinovski (2021) 'Admissibility Of (Counter-) Intelligence Information As Evidence In Court' *Geneva Centre for Security Sector Governance*

- **Limited Access to Direct Evidence**: Criminals in organized networks operate discreetly, leaving minimal physical or eyewitness evidence. Technical intelligence offers reliable alternatives.[7]

- **Preventive Investigations**: Intelligence is often gathered before a crime is committed, particularly in terrorism cases. It can provide early warning signs and become essential in stopping attacks.[8]

- **High Probative Value**: While circumstantial, verified technical intelligence can be highly probative, especially when corroborated by other intelligence sources, leading to more effective prosecution.[9]

The admissibility of such evidence ensures the judiciary can consider all relevant facts, even when direct evidence is lacking.[10]

2.2 Where Intelligence Evidence Corroborates Other Forms of Evidence

In cases where traditional evidence exists but may not be sufficient to secure a conviction, verifiable technical intelligence can serve as crucial corroborative evidence.[11] The following points highlight the rationale for admissibility in such instances:

- **Enhancing Credibility**: Intelligence evidence, such as phone records, GPS data, or digital communications, can confirm the timeline or presence of a suspect, thereby reinforcing witness testimony or physical evidence.[12]

- **Filling Gaps**: In complex criminal cases, especially involving organized crime, conventional evidence often leaves gaps. Intelligence can fill these gaps by providing detailed insights into networks, communication

---

[7] S J Strang, 'Network Analysis in Criminal Intelligence' in *Networks and Network Analysis for Defence and Security* (Springer International Publishing 2014) 1–26.
[8] K A Duncan, 'Role of Intelligence in the Prevention of Terrorism (Early Warning-Early Response)' (International Centre for Counter-Terrorism (ICCT) 2020).
[9] ibid
[10] ibid
[11] ibid
[12] D Lovell and others, 'Exploring Technologies to Better Link Physical Evidence and Digital Information for Disaster Victim Identification' (2022) 7(3) *Forensic Sciences Research* 467–483.

patterns, and activities that are not easily visible through standard investigative techniques.[13]

- **Linking Criminal Actors**: Where evidence points to multiple suspects, intelligence data, such as intercepted communications or surveillance, can help establish connections between co-conspirators, corroborating physical or circumstantial evidence.[14]

- **Strengthening the Chain of Custody**: Verifiable intelligence evidence can support the continuity of evidence in cases where the chain of events is unclear, thus enhancing the overall strength of the prosecution's case.[15]

By admitting such corroborative intelligence, courts can have a more comprehensive view of the case, leading to more informed and just outcomes.[16]

3.0 Gaps of Criminal Justice That May Benefit From Verifiable Technical Intelligence Evidence

The Kenyan criminal justice system faces several challenges in effectively prosecuting complex crimes such as terrorism and organized crime. Key gaps include:

- **Reliance on Circumstantial Evidence**: In many cases, circumstantial evidence is insufficient to conclusively link suspects to criminal activities, making it harder for courts to secure convictions.[17]

---

[13] P William and others, 'Crime Analysis Using Computer Vision Approach with Machine Learning' in *Mobile Radio Communications and 5G Networks: Proceedings of Third MRCN 2022* (Springer Nature Singapore 2023) 297–315.
[14] ibid
[15] ibid
[16] ibid
[17] United Nations Office on Drugs and Crime (UNODC) 'Kenya Training Manual on Human Rights and Criminal Justice Responses to Terrorism' available at https://www.unodc.org/documents/terrorism/Publications/Kenya%20HR%20manual/Kenya_Manual_e-book.pdf accessed 20 September 2024

- **Lack of Access to Timely and Accurate Intelligence**: Intelligence agencies often gather critical data that is not admissible in court due to procedural limitations, hindering the use of valuable evidence.[18]

- **Weak Coordination Between Intelligence and Law Enforcement**: There is often a lack of streamlined collaboration between intelligence bodies and law enforcement, resulting in missed opportunities to use technical intelligence as part of an investigation.[19]

- **Limited Legal Framework for Admitting Intelligence Evidence**: The current legal framework does not comprehensively address how verifiable technical intelligence evidence can be used in court, especially for proactive investigations.[20]

3.1 Terrorism Cases

Republic v Victor Odede Bwire alias Abdul-Aziz (2023) (unreported)

In count II, the accused was charged with the offence of collection of information contrary to section 29 of the Prevention of terrorism Act 2012.[21] The particulars were that in preparation or facilitating the commission of a terrorist Act, the accused collected and transmitted information on security arrangement of Kenyatta International Convention Centre (KICC) using his mobile phone on Facebook account "Mohamed Yore Abdalah" which information was to be used in commission of a terrorist act. The accused in his defense stated that the information collected was not meant to facilitate a terrorist Act but was for general awareness of Mohamed Yare who was an Exhibitor intending to do a Somali cultural show at the KICC in mid-2019.[22]

The court opined that the prosecution largely relied on circumstantial evidence

---

[18] ibid

[19] M N A L Al Waroi, 'Coordination and Collaboration Between Secret Intelligence Agencies and Government Institutions: Challenges, Opportunities, and Dynamics' (2024) 7 *International Journal of Multidisciplinary Research and Analysis* 4626–4635.

[20] ibid

[21] *Republic v Victor Odede Bwire alias Abdul-Aziz* (2023) (unreported); Prevention of terrorism Act 2012, section 29

[22] ibid

and not direct evidence. Again, the challenge of purely relying on circumstantial evidence was brought to the fore in this case. Thankfully, the court addressed the issue by holding that that there were four key strands of evidence that connected the Accused with the offence. These are:

Nature of engagement-The accused was asked whether he was ready for the job at hand; he was warned that it was not easy and warned never to trust anyone not even 'his own friends, wife or even Sheikhs; he is also warned that there was a lot of espionage and therefore need for secrecy. This kind of engagement in the court's view, was consistent with a plan to engage in a terrorist activity.

Concealment of identity. The court held that the fact that the accused was instructed and attempted to conceal his identity could be an indicator of his intentions. The accused was advised to drop use of his mobile phone number and asked to use Facebook accounts, he did not use his own phone number or name to open the Facebook accounts but used other peoples' numbers without their knowledge.

Nature of surveillance and movements. The accused was asked to report on which he did, the number of police roadblocks on the way, the location of the roadblocks, whether the motor cycle was being stopped by the police, how many times if so and whether they asked for ID. He was also asked to carry luggage on the motorbike and a passenger and asked to confirm whether the luggage was being searched and whether the passenger ID was also being asked for. The court held that from this kind of information requested it can be deduced that the information requested was to assist in assessing the best mode of transport for the attackers who would naturally choose the least checked. It would also appear that they intended to carry some luggage and sought to know whether it was checked. The court opined that this kind of information definitely is critical for anyone wishing to perform a terrorist act.

The place of attack and surveillance. From the conversations, the court viewed that several questions were asked about KICC; the nature of questions related to the entrance, number of entrance gates and location, the security at the gates, the distance from the gate to the building, doors to the building and the parking area locations. This information, the court held, was necessary if one was to perform a terrorist act at KICC as allegedly planned.[23]

The court concluded that the information was for the purpose of carrying out a terrorist act. The court held that if Mohamed Yore wanted to do an event there was no need to disguise himself, or to secretly seek the security details stated above and in a secret manner. The court held that count II had been proved beyond reasonable doubt, the accused was found guilty of the offence of collection of information contrary to section 29 of POTA and was convicted under section 215 CPC.

This is a classic example of the court clearly interrogating the circumstantial evidence placed before it. Since relying only on circumstantial evidence can be problematic, the court went ahead to critically analyze the evidence and in doing so, established a rational link between the conduct of the accused and the offences. Drawing an inference of guilt can be challenging, it is upon the court to examine the evidence in totality.

The case of *Republic v Victor Odede Bwire alias Abdul-Aziz (2023)* illustrates key gaps in the Kenyan legal system that could be addressed by admitting verifiable technical intelligence. The prosecution's reliance on circumstantial evidence in the case demonstrates the difficulties faced when direct evidence is unavailable. The court’s extensive analysis of the accused’s activities highlights:

- **Inability to Fully Utilize Intelligence-Led Evidence**: Much of the evidence in this case was inferred from behavior and communications that could have been supported by more concrete technical intelligence, such as surveillance data or digital communications interception.

[23] ibid

- **Proactive Intelligence Gathering**: The case underscores the need for earlier and broader intelligence gathering, particularly in tracking movements and communications related to potential terrorist activities, which could serve as primary evidence.

- **Limited Use of Digital and Technical Tools**: In this case, the use of mobile phones and Facebook accounts played a central role. Expanding the legal framework to allow real-time or retrospective use of digital intelligence (e.g., metadata analysis) could enhance the prosecution's ability to present stronger evidence.

Admitting verifiable technical intelligence evidence in such cases would strengthen the criminal justice system by filling gaps that circumstantial evidence alone cannot address, ensuring better alignment between intelligence operations and the legal process.

3.2 Organized Crime Cases

Organized crime cases, particularly those involving complex networks such as drug cartels, often present significant challenges within Kenya's criminal justice system.[24] One prominent example is the *Akasha brothers* case, which underscores the gaps in prosecuting organized crime[25]. Despite overwhelming evidence, including recorded conversations, digital communications, and witness testimonies, the high evidentiary threshold required by the Prevention of Organized Crimes Act, 2010, proved to be a major barrier for successful prosecution in Kenyan courts.[26]

---

[24] A R Tura, 'The Nexus Between Organised Crime and Terrorism in Kenya: A Mixed-Evidence Approach' (2026) *African Journal of Security and Strategic Studies* 99–117.

[25] Department of Justice: U.S. Attorney's Office, Southern District of New York (2018) 'Former Leader Of Kenyan Organized Crime Family And His Brother Plead Guilty To Narcotics, Weapons, And Obstruction Offenses' available at https://www.justice.gov/usao-sdny/pr/former-leader-kenyan-organized-crime-family-and-his-brother-plead-guilty-narcotics accessed 20 September 2024

[26] ibid

Key gaps that verifiable technical intelligence could address include:

- ✓ **High Burden of Proof**: As seen in the Akasha case, Kenya's legal framework sets a higher evidentiary threshold for organized crime than other offenses. This makes it challenging to secure convictions, especially when most evidence is circumstantial. In the Akasha case, despite significant evidence, the prosecution faced hurdles leading to the case's eventual transfer to the U.S., where the brothers were convicted.[27]
- ✓ **Corruption and Judicial Challenges**: The Akasha brothers' ability to bribe Kenyan officials and delay extradition showcases how corruption can obstruct justice. The use of verifiable technical intelligence such as surveillance data, intercepted communications, and digital evidence can help bypass such challenges by providing clear, concrete evidence that can withstand corruption-related hurdles.[28]
- ✓ **Reliance on Circumstantial Evidence**: Organized crime, by its nature, operates covertly, making direct evidence hard to come by. Verifiable technical intelligence can fill this gap by providing reliable, traceable data (e.g., phone records, GPS tracking) that can strengthen circumstantial cases and help meet the higher burden of proof.[29]

3.3 Money Laundering Cases

Money laundering remains a significant challenge in Kenya's criminal justice system, with several gaps that could benefit from the admissibility of verifiable technical intelligence evidence[30]. Key issues include the limited use of financial intelligence and inefficiencies in the collaboration between law enforcement agencies and financial monitoring bodies such as the Financial Reporting Centre

---

[27] ibid

[28] Andrej Bozinovski (2021) 'Admissibility Of (Counter-) Intelligence Information As Evidence In Court' *Geneva Centre for Security Sector Governance*

[29] ibid

[30] ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam http://www.esaamlg.org/reports/me.php 20 September 2024

(FRC) and the Central Bank of Kenya (CBK).[31]

- ✓ **High Evidentiary Threshold**: Prosecuting money laundering cases requires substantial, often hard-to-obtain evidence to establish the complex flow of illicit funds. Technical intelligence, such as tracking electronic transactions, could help overcome this challenge by providing more detailed and reliable evidence trails.[32]

- ✓ **Delayed and Insufficient Financial Intelligence**: The FRC and CBK are responsible for monitoring suspicious financial activities, but there have been concerns about the quality and timeliness of the intelligence they provide to the Directorate of Public Prosecutions (DPP)[33]. Strengthening the FRC's capacity to analyse and disseminate financial intelligence could bridge this gap.[34]

- ✓ **Lack of Advanced Technological Tools**: With the rise of sophisticated money laundering techniques involving cryptocurrencies and digital finance, Kenya's financial monitoring systems need significant technological upgrades. Verifiable technical intelligence, including blockchain analysis and forensic accounting, could play a crucial role in detecting and prosecuting these modern financial crimes.[35]

- ✓ **International Pressure and Grey listing**: Kenya's recent grey listing by the Financial Action Task Force (FATF) highlights the country's strategic deficiencies in addressing money laundering and terrorism financing. Addressing these gaps, particularly through enhanced use of financial

---

[31] ibid

[32] ibid

[33] ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam http://www.esaamlg.org/reports/me.php 20 September 2024

[34] ibid

[35] FATF (2024) 'Kenya's progress in strengthening measures to tackle money laundering and terrorist financing' available at https://www.fatf-gafi.org/en/publications/Mutualevaluations/kenya-fur-2024.html accessed 20 September 2024

intelligence, is critical to improving prosecution rates and ensuring compliance with international standards[36].

Incorporating verifiable technical intelligence into financial investigations would not only enhance the prosecution of money laundering cases but also improve Kenya's standing in the global fight against illicit finance.

4.0 A Legislative Proposal for Criminal Law Reform in Kenya: Lessons from the United States Experience

In light of the above-mentioned gaps of the Kenyan criminal justice system that stand to benefit from verifiable technical intelligence evidence, this section argues for the need for a legislative solution. It proposes the adoption of a specific statute along the lines of the United States' Classified Information Procedures Act.[37]

4.1 The United States Experience under the Classified Information Procedures Act (CIPA)

The Classified Information Procedures Act (CIPA), codified in 18 U.S.C. App. III, was enacted in 1980 to address the challenges of using classified information in criminal prosecutions[38]. The objective of CIPA is to create procedures that allow the use of classified information while protecting national security interests. It establishes a framework that permits defendants to access classified evidence under controlled conditions without compromising sensitive information.[39]

Key Provisions:

- ✓ **Section 4 - Discovery of Classified Information by Defendants**: This section permits the court to limit the disclosure of classified information to defendants. The government may request, ex parte, to either delete certain information, substitute summaries, or admit facts in lieu of revealing sensitive details. This balances the defendant's right to a

[36] ibid

[37] D S McConkie Jr, 'Promoting and Reforming Kenya's Customary Justice Systems in Criminal Cases' (2024) 38 *Emory International Law Review* 343.

[38] Classified Information Procedures Act (CIPA), 18 U.S.C. App. III 1980

[39] ibid

fair trial with the protection of national security.[40]

- ✓ **Section 5 - Notice of Defendant's Intention to Disclose Classified Information**: Defendants must notify the court in advance if they plan to disclose any classified information during trial. This provision allows the court to evaluate whether the information should be subject to protective orders or if other measures should be taken to safeguard it.[41]

- ✓ **Section 6 - Procedure for Cases Involving Classified Information**: Courts are required to hold hearings to determine whether classified information is admissible and how it will be handled during the trial. This ensures that sensitive information is reviewed in a secure manner, preventing unauthorized disclosure.[42]

By providing clear guidelines for handling classified information, CIPA has allowed U.S. courts to maintain a balance between national security concerns and the rights of criminal defendants, ensuring that critical classified intelligence can be used in prosecutions without jeopardizing state secrets.

These provisions could serve as a model for a legislative proposal in Kenya to facilitate the use of verifiable technical intelligence in criminal trials, especially in terrorism and organized crime cases.[43]

4.2 Prescription of Rules to Protect Classified Information

4.2.1 The Position Under CIPA

The Classified Information Procedures Act (CIPA) outlines specific procedures aimed at protecting classified information during criminal trials.[44] Several key

---

[40] Ibid, sec 4

[41] Ibid, sec 5

[42] Ibid, sec 6

[43] Harry Graver, 'The Classified Information Procedures Act: What It Means and How It's Applied' (Lawfare, 20 November 2017) https://www.lawfaremedia.org/article/classified-information-procedures-act-what-it-means-and-how-its-applied.

[44] ibid

provisions ensure that classified information is disclosed to the defense in a controlled and secure manner without compromising national security.[45] These procedures include:

- ✓ **Protective Orders (Section 3)**: The court can issue protective orders to prevent unauthorized disclosure of classified information during trial or pretrial proceedings.[46]

- ✓ **Discovery Limitations (Section 4)**: The government can request to either delete sensitive classified information from documents or substitute summaries of the evidence. This process helps prevent sensitive details from being exposed to the public or unauthorized persons.[47]

- ✓ **Pretrial Conferences (Section 2)**: These conferences allow courts to plan how to handle classified information early in the proceedings, ensuring that protective measures are in place before classified material is introduced.[48]

- ✓ **Security Procedures (Section 9)**: This provision prescribes specific rules to handle and protect classified material during the proceedings. These include secure locations for storing and reviewing classified documents, and ensuring only authorized personnel have access.[49]

4.2.2 Lessons for Kenya

Kenya can learn valuable lessons from CIPA to protect classified information in criminal trials, especially in cases involving terrorism, organized crime, or espionage. Some key takeaways include:

- ❖ **Introduction of Protective Orders**: Kenyan legislation could introduce rules that allow courts to issue protective orders to safeguard classified information, similar to CIPA's Section 3. This would ensure that sensitive

[45] ibid
[46] Ibid, sec 3
[47] Ibid, sec 4
[48] Ibid, sec 2
[49] Ibid, sec 9

intelligence, such as national security or counterterrorism data, is protected from unauthorized disclosure.[50]

- **Controlled Discovery**: CIPA's provision allowing the substitution of summaries or admissions in place of classified details (Section 4) could be adopted in Kenya to facilitate the use of intelligence without risking national security. This would enable the prosecution to use verifiable technical intelligence without fully revealing sensitive details that could compromise ongoing operations.[51]

- **Pretrial Mechanisms**: The introduction of pretrial conferences, as seen in CIPA's Section 2, would allow Kenyan courts to anticipate and address issues regarding the handling of classified information early on. This would minimize the risk of security breaches during trial.

- **Development of Security Protocols**: Kenya should establish clear security protocols for handling classified information in court. CIPA's Section 9 security procedures offer a model for safeguarding classified intelligence by mandating secure locations and limiting access to authorized personnel.[52]

4.3 Appointment and Roles of a Neutral Classified Information Officer

4.3.1 The Position Under CIPA

Under the Classified Information Procedures Act (CIPA), the court has broad authority to manage classified information used during criminal trials. However, CIPA does not explicitly mandate the appointment of a "Classified Information Officer." Instead, it provides a framework for the court to balance the need for the

[50] Office of the Director of Public Prosecutions (Kenya), 'DPP Strengthens Kenya–U.S. Justice Collaboration' https://odpp.go.ke/dpp-strengthens-kenya-u-s-justice-collaboration/.

[51] A Mandelli and H Lee, 'From Means to End: Efficiency and the Quest for Legitimacy in the US Military and Civilian Terrorism Trials' (2025) 32(2) *Journal of International and Area Studies* 47–70.

[52] A Chandran, 'The Classified Information Procedures Act in the Age of Terrorism: Remodeling CIPA in an Offense-Specific Manner' (2015) 64 *Duke Law Journal* 1411–1451.

disclosure of classified material with the protection of national security. The following roles are fulfilled within the CIPA framework:

- ✓ **Judicial Oversight**: The court plays a central role in overseeing the handling of classified information, ensuring that it is disclosed in a manner that protects national security while allowing the defense adequate access to evidence. Courts can issue protective orders[53] and control discovery.[54]

- ✓ **Security Procedures**: CIPA's Section 9 outlines security protocols for handling classified information, ensuring that documents are stored securely and reviewed only by authorized personnel. While the court directs these processes, there is no specific role for a neutral officer beyond judicial oversight.[55]

Although CIPA does not explicitly create the role of a "Classified Information Officer," judges and government-appointed security officials fulfil functions that maintain the confidentiality of classified material. The focus remains on judicial management and protective orders rather than the appointment of a neutral officer.

4.3.2 Lessons for Kenya

In Kenya, adopting a neutral Classified Information Officer could help ensure that classified material is handled impartially, enhancing both national security and fairness in criminal trials. Lessons from CIPA suggest the following approaches:

- ❖ **Creation of a Specialized Officer Role**: Kenya could introduce a **Classified Information Officer** whose primary role would be to act as a neutral party responsible for overseeing the handling, storage, and transmission of classified evidence in trials. This officer could be appointed by the judiciary, independent of law enforcement or intelligence agencies, to maintain neutrality.

---

[53] Ibid, sec 3
[54] Ibid, sec 4
[55] Ibid, sec 9

- **Judicial Oversight with Support**: While CIPA entrusts courts with the management of classified information, Kenya could complement this by having the officer support the judiciary. This would streamline the process by ensuring that classified material is handled consistently according to established security protocols, thus reducing the burden on the judiciary to directly manage these sensitive processes.

- **Coordination Between Agencies**: The Classified Information Officer could act as a liaison between intelligence agencies, law enforcement, and the judiciary, ensuring that the sharing of classified material happens smoothly and securely. This would facilitate better collaboration between agencies while maintaining the confidentiality of critical intelligence.

- **Training and Expertise**: The officer would require specific training in both law and security procedures, enabling them to understand both the legal implications and the security needs related to classified information. This expertise would ensure that they can advise the court on best practices for protecting classified intelligence while upholding legal standards of fairness.

4.4 Procedures for Protective Orders

4.4.1 The Position Under CIPA

Under the **Classified Information Procedures Act (CIPA)**, protective orders play a critical role in ensuring that classified information used during criminal trials is safeguarded. Section 3 of CIPA allows courts to issue protective orders upon the government's request, which limits the disclosure of classified information to the defense[56]. These protective orders are intended to:

- ✓ **Prevent Unauthorized Disclosure**: Classified information must be protected from exposure to unauthorized persons, including the public and foreign governments. The court can restrict who has access to the information, ensuring that only authorized individuals involved in the

[56] Ibid, sec 3

case, such as the defense team with appropriate security clearances, are allowed to review it.[57]

- ✓ **Control Use and Distribution**: The court has the authority to specify how classified information is handled, including where it is stored and reviewed, under what conditions, and whether certain information should be redacted or substituted with summaries. This control prevents the unnecessary spread of sensitive details that could harm national security.[58]

- ✓ **Ensure Fair Trial Rights**: While CIPA aims to protect classified information, it also seeks to balance this with the defendant's right to a fair trial. Protective orders are crafted in a way that allows the defense to access the necessary information without jeopardizing national security.[59]

4.4.2 Lessons for Kenya

Kenya can learn from the procedures for protective orders under CIPA to create its own legal framework for managing classified information in criminal trials, particularly in sensitive cases involving national security, terrorism, or organized crime. Key lessons include:

- ❖ **Establishing a Legal Basis for Protective Orders**: Kenyan courts should have the statutory authority to issue protective orders in cases involving classified information. This legal framework would allow the court to restrict access to classified material and impose strict conditions on its use and distribution, similar to CIPA's provisions in Section 3.

- ❖ **Defining Conditions for Access**: Protective orders should clearly define the conditions under which classified information can be accessed by the defense. Kenya could adopt measures similar to those in CIPA, where only individuals with security clearances are granted access. This would

[57] ibid
[58] ibid
[59] ibid

ensure that sensitive information is not exposed to unauthorized persons while maintaining the fairness of the trial.[60]

- **Balance Between Security and Fair Trial Rights**: As in the U.S. under CIPA, Kenya must ensure that protective orders do not unduly prejudice the defence's ability to access critical evidence. Allowing for redactions or the use of summaries, as done under CIPA, would ensure that sensitive information is protected without infringing on the defendant's rights.[61]

- **Tailoring Orders to Specific Cases**: Protective orders in Kenya should be adaptable based on the nature of the classified information and the case at hand. Courts should have the flexibility to adjust the level of protection needed, ensuring that national security interests are upheld while allowing the case to proceed efficiently.[62]

4.5 Discovery

4.5.1 The Position Under CIPA

Under **CIPA**, discovery of classified information is tightly controlled to prevent unnecessary disclosure of sensitive national security information. Section 4 of CIPA addresses how the defense may access classified materials during the discovery process[63]:

- ✓ **Limitations on Disclosure**: The court may authorize the government to delete certain classified information from documents provided to the defense. Alternatively, the government can substitute a summary of the information or admit facts that the classified information would otherwise prove.[64]

- ✓ **Ex Parte Requests**: The government is allowed to submit ex parte requests—where only the court reviews the classified material without

---

[60] M Cleary, 'Civil CIPA: A Defense against the Government's Unchecked State Secrets Privilege' (2022) 49 *Journal of Legislation* 136.
[61] ibid
[62] ibid
[63] Ibid, sec 4
[64] ibid

the defence's knowledge. This process ensures that classified information remains secure, while the court determines whether it is necessary for the defense.[65]

✓ **Sealed Records**: Any ex parte request and the court's decision are sealed and preserved for appellate review, ensuring a secure and accountable process for handling classified materials.[66]

4.5.2 Lessons for Kenya

Kenya could incorporate similar discovery provisions in its legislative framework to handle classified intelligence during criminal trials. Key lessons include:

1. **Controlled Access to Classified Material**: Kenya could implement rules that limit the disclosure of classified information, allowing for redactions or the substitution of summaries. This would enable the defense to access crucial evidence without compromising national security.[67]

2. **Ex Parte Procedures**: As under CIPA, Kenyan courts could adopt ex parte procedures, allowing the prosecution to present classified materials solely to the court for review. This would protect intelligence sources and methods while ensuring that the court can decide on the necessity of disclosure.[68]

3. **Sealing and Appellate Review**: To ensure transparency and accountability, Kenya should establish procedures for sealing decisions on classified materials, allowing for appellate review as part of the due process.[69]

---

[65] ibid

[66] ibid

[67] V Kabata and F Garaba, 'The Legal and Regulatory Framework Supporting the Implementation of the Access to Information Act in Kenya' (2020) 36(3) *Information Development* 354–368.

[68] ibid

[69] E O Abuya, 'Promoting Transparency: Courts and Operationalization of the Right of Access to Information in Kenya' (2017) 46(2) *Common Law World Review* 112–139.

4.6 Obligation of Prosecution to Notify Defense of Material to be Relied Upon

4.6.1 The Position Under CIPA

Under **CIPA**, Section 5 mandates that the prosecution must notify the defense if it intends to disclose or use classified information during the trial[70]. This notification is crucial to allow the court to determine how such information will be handled, ensuring the balance between national security and the defendant's right to a fair trial. Key elements of this provision include:

- ✓ **Notice Requirement**: The prosecution must provide advance notice to the defense if classified information will be used in the trial. This ensures that both sides are prepared to address the legal and evidentiary implications of such material.[71]

- ✓ **Protective Measures**: Once notice is given, the court can schedule hearings to determine how the classified information will be disclosed, often under protective orders or through redactions and substitutions to safeguard sensitive details.[72]

- ✓ **Timing and Consequences**: The failure of the prosecution to give timely notice can result in the exclusion of the classified information from the trial. This encourages the government to carefully assess its evidence and decide early on how it will handle classified material.[73]

4.6.2 Lessons for Kenya

Kenya can draw important lessons from CIPA regarding the obligation of the prosecution to notify the defense about the use of classified information. Key recommendations include:

- ❖ **Formal Notification Process**: Under the Kenyan Constitution, Every accused person has the right to a fair trial, which includes the right to be informed in advance of the evidence the prosecution intends to rely on,

[70] Ibid, sec 5
[71] ibid
[72] ibid
[73] ibid

and to have reasonable access to that evidence.[74]Kenya should ensure to implement this requirement. This would allow the defense adequate time to prepare and request any necessary protective measures from the court.

- ❖ **Court Oversight of Classified Material**: Once notified, the court could hold pretrial hearings to determine how classified information will be handled, similar to CIPA's approach. This would help protect sensitive national security interests while ensuring that the defense is aware of the evidence against them.

- ❖ **Penalties for Non-Compliance**: Like CIPA, Kenya's legal framework should penalize the failure of the prosecution to provide timely notice, potentially leading to the exclusion of such evidence. This would encourage early and transparent disclosure of classified material, avoiding unfair surprises during the trial.

4.7 Obligations of the Defense

4.7.1 The Position Under CIPA

Under **CIPA**, the defense also has specific obligations when handling classified information during criminal trials. These obligations ensure that the defense cannot inadvertently or intentionally disclose sensitive information that could jeopardize national security. Key aspects include:

- ✓ **Notice of Intent to Disclose (Section 5)**: If the defense intends to disclose classified information during the trial, it must notify the court and the prosecution in advance. This allows the court to determine whether protective measures should be put in place or whether an alternative, such as redacted versions or summaries, can be provided.[75]

- ✓ **Compliance with Protective Orders**: Once the court issues protective orders to safeguard classified information, the defense must strictly

[74] Constitution of Kenya, 2010 art 50 (2) (j)
[75] CIPA, Sec 5

adhere to those orders. This includes limiting who can access the information and how it is stored, reviewed, or shared during the trial.[76]

- ✓ **Restrictions on Disclosure**: The defense is prohibited from disclosing classified information to unauthorized individuals. Failure to comply with this obligation can result in penalties, including contempt of court, and the potential exclusion of evidence.[77]

4.7.2 Lessons for Kenya

Kenya could implement similar obligations for the defense when handling classified information in criminal trials. Lessons from CIPA include:

1. **Advance Notification Requirement**: Kenya should require the defense to notify the court and prosecution in advance if it plans to disclose classified information. This would allow the court to determine how best to protect sensitive data while ensuring a fair trial.[78]

2. **Strict Adherence to Protective Orders**: Like under CIPA, the defense in Kenya should be required to strictly comply with any protective orders issued by the court. This would ensure that classified information is handled securely and that only authorized individuals have access.[79]

3. **Penalties for Unauthorized Disclosure**: Kenyan law should impose penalties for the unauthorized disclosure of classified information by the defense. These penalties could include contempt of court and restrictions on the use of such evidence, thereby promoting responsible handling of sensitive material.[80]

---

[76] ibid
[77] ibid
[78] ibid
[79] Strathmore University, 'International Exchange of Information and Taxpayers' Rights: Opposing Forces or Two Sides of the Same Coin? An Analysis of the Legislative Protection in Kenya of Taxpayers' Rights to Privacy and Confidentiality' https://su-plus.strathmore.edu/server/api/core/bitstreams/4d040147-99a2-4a08-8627-c625c71a7727/content.
[80] ibid

4.8 Pre-Trial Determination of Admissibility

4.8.1 The Position Under CIPA

Under the **Classified Information Procedures Act (CIPA)**, Section 6 provides a clear mechanism for the pre-trial determination of the admissibility of classified information[81]. This process ensures that disputes over the use of classified materials are resolved before trial, preventing delays or security risks during the proceedings.

The court is required to hold a pre-trial hearing to determine whether classified information is relevant and admissible. During this hearing, both the defense and prosecution can argue for or against the inclusion of classified evidence. The court will assess whether the information meets the standard for relevance and whether its use would compromise national security.[82]

If classified information is deemed relevant but too sensitive to be fully disclosed, the court can allow the use of substitutes or redacted versions. This ensures that the trial can proceed without exposing classified materials that may harm national security.[83]

The court's decision at the pre-trial hearing is binding, and the admissibility of the classified information cannot be re-litigated during the trial. This helps streamline the process and avoid unnecessary delays during the trial itself.[84]

4.8.2 Lessons for Kenya

Kenya can adopt a similar pre-trial procedure to determine the admissibility of classified information. This would enhance both the efficiency and security of criminal trials involving sensitive intelligence. Key lessons include:

- **Mandatory Pre-Trial Hearings**: Kenya should introduce mandatory pre-trial hearings for cases involving classified information. This would allow

[81] Ibid, sec 6
[82] ibid
[83] ibid
[84] ibid

the court to determine whether such evidence is admissible, helping to avoid security risks during the actual trial proceedings.

- **Use of Substitutes or Redactions**: As in CIPA, Kenya could allow for the substitution of summaries or redactions of classified materials to balance the need for a fair trial with national security concerns. This would ensure that essential intelligence is used without exposing sensitive details.

4.9 Protection During Trial

4.9.1 The Position Under CIPA

During the trial, **CIPA** establishes specific procedures to ensure that classified information remains protected. Key protections include:

1. **Introduction of Classified Information (Section 8)**: This section governs how classified information is introduced as evidence during trial. The court ensures that any classified material presented is done so in a way that minimizes public exposure, including in-camera (private) proceedings or the use of redacted documents.[85]

2. **Use of Secure Locations**: CIPA requires that classified materials be handled in secure locations, such as secure courtrooms, where only authorized individuals—such as judges, attorneys with security clearances, and select court personnel—have access. This helps prevent unauthorized exposure to sensitive information during the trial.[86]

3. **Controlled Access for the Defense**: The defense is granted limited access to classified information based on protective orders issued by the court. Defense counsel must have security clearances, and any classified evidence disclosed to them is done under strict conditions, such as reviewing materials in secure settings[87].

4. **Security Procedures (Section 9)**: This section outlines specific security protocols for handling classified information during the trial, ensuring

[85] Ibid, sec 8
[86] ibid
[87] ibid

that all personnel involved are aware of the confidentiality requirements and security risks associated with classified materials.[88]

4.9.2 Lessons for Kenya

Kenya can adopt similar trial protections to safeguard classified information during sensitive criminal proceedings. Key lessons include:

- **Use of Secure Courtrooms**: Like CIPA, Kenya could designate secure courtrooms for cases involving classified information. Only individuals with appropriate security clearances should be permitted to access these materials, reducing the risk of leaks during the trial.

- **Redactions and Summaries**: Kenya can utilize redactions or summaries for sensitive classified documents, ensuring that while the information is relevant to the case, its disclosure does not compromise state security. This would allow the trial to proceed with minimal security risks.

- **Comprehensive Security Procedures**: Kenya should establish detailed security protocols for handling classified information during trials, ensuring that all personnel involved are trained in security measures. This would prevent unauthorized disclosures and ensure that classified materials are treated with the necessary caution.[89]

4.10 Appeal

4.10.1 The Position Under CIPA

Under **CIPA**, appeals involving classified information are allowed under specific conditions to ensure that classified materials remain protected during the appellate process. Section 7 of CIPA governs **interlocutory appeals**, meaning that both the prosecution and defense can appeal rulings made by the trial court regarding the admissibility or handling of classified information before the trial concludes.[90]

CIPA allows either party to file an appeal on decisions related to classified

[88] Ibid, sec 9

[89] ibid

[90] Ibid, sec 7

information during pretrial or trial proceedings. This provides an immediate opportunity to review rulings that may compromise national security or infringe on the defendant's rights.[91]To prevent unnecessary delays in the trial, CIPA mandates that appeals be handled as quickly as possible. This ensures that disputes over classified information do not unduly stall the trial process.[92] Classified information presented in the trial remains sealed and protected during the appellate review process. The appellate court reviews the materials in-camera to maintain the confidentiality of classified data.[93]

4.10.2 Lessons for Kenya

Kenya could incorporate similar provisions to manage appeals in cases involving classified information, ensuring both fairness in the judicial process and protection of sensitive data. Key lessons include:

- **Expedited Appeal Handling**: Like CIPA, Kenya could mandate that appeals involving classified information be expedited to avoid delays in the judicial process. This would ensure that cases proceed efficiently, even when complex intelligence issues arise.[94]

- **Sealed Review Process**: Kenya should adopt procedures for keeping classified information sealed and confidential during appellate review, ensuring that the appellate court reviews sensitive data without compromising its security. This would protect the integrity of the information while allowing for a fair and thorough appeal.[95]

United Kingdom.

The **UK legal system** allows for the use of **Closed Material Procedure (CMP)** under the **Justice and Security Act 2013**, particularly in civil cases where sensitive national security information is involved[96]. CMP permits the

[91] ibid
[92] ibid
[93] ibid
[94] M Laibuta, 'The Evolution of Privacy and Data Protection in Kenya' (2024) 30 *Fundamina: A Journal of Legal History* 116–165.
[95] ibid
[96] Justice and Security Act, 2013

government to present evidence in a closed court session, where only the judge, specific security-cleared lawyers, and a **Special Advocate** (who represents the interests of the excluded party) are present. Sections 6 to 11 of the Justice and Security Act set out the framework for CMP, including the procedures for applying for closed hearings and the appointment of special advocates to ensure fairness in the process.[97]

Lessons for Kenya:

1. **Balancing National Security and Fairness**: Kenya could adopt a framework similar to CMP to handle classified information in sensitive cases, such as terrorism or organized crime. This would allow the government to protect national security while ensuring that the defendant's rights are upheld through a special advocate system.[98]

2. **Introduction of Special Advocates**: Kenya could implement the appointment of neutral special advocates who have access to classified information and represent the interests of the defense, even when the defense is excluded from parts of the proceedings. This would ensure that the defence's position is represented while maintaining national security .[99]

3. **Structured Procedures for Closed Hearings**: The CMP framework, governed by Sections 6–13 of the UK's Justice and Security Act, offers a detailed procedure for determining when closed hearings are appropriate. Kenya could benefit from establishing a similarly structured approach, ensuring transparency, predictability, and adherence to human rights standards in proceedings involving classified information.[100]

[97] Ibid, Sections 6 to 11

[98] W S Mwangi, 'The Use of Intelligence Gathering and Sharing in the Management of Transnational Terrorism in Kenya; 1975–2018' (doctoral dissertation, Kenyatta University 2021).

[99] ibid

[100] ibid

The **European Court of Justice (ECJ)**, in the case of **ZZ v Secretary of State for the Home Department**[101], further addressed the procedural safeguards required when secret evidence is used. The ECJ accepted the use of secret evidence in national security cases but emphasized the importance of procedural fairness, ensuring that the affected party receives a sufficient summary of the evidence against them. Kenya can learn from this ruling by ensuring that even in cases where classified evidence is withheld, a summary is provided to the defense.
By adopting similar safeguards, Kenya could manage the delicate balance between protecting national security and ensuring fairness and transparency in criminal trials.

5.0 Conclusion

The evolving nature of crime, particularly in the realms of terrorism, organized crime, and money laundering, necessitates a legal framework that effectively accommodates intelligence-gathered evidence in Kenyan courts.[102]This paper has demonstrated the critical importance of expanding the scope of intelligence evidence to include proactive criminal investigations. By addressing the current barriers to the use and sharing of intelligence among law enforcement, intelligence agencies, and the judiciary, Kenya can significantly enhance its ability to respond to modern security threats.

The proposed legislative reforms, inspired by international best practices such as the United States' Classified Information Procedures Act (CIPA) and the United Kingdom's Closed Material Procedures under the Justice and Security Act, offer a viable solution for safeguarding national security while ensuring fairness in criminal trials.[103] Implementing such reforms will facilitate greater cooperation

---

[101] *ZZ v Secretary of State for the Home Department* (C-300/11) [2013] ECLI:EU:C: 2013:363, Judgment of the Court of Justice of the European Union (Grand Chamber), 4 June 2013.
[102] Central Bank of Kenya, *Money Laundering and Terrorism Financing National Risk Assessment Report* (2023) https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assesstment-Report.pdf.
[103] A Tomkins, 'Justice and Security in the United Kingdom' (2014) 47(3) *Israel Law Review* 305–329.

among intelligence and law enforcement personnel and provide the judiciary with the necessary tools to handle complex evidence without compromising the integrity of the justice system.[104]

Adapting the Kenyan legal system to accommodate verifiable technical intelligence is not just a matter of procedural reform, but a crucial step in strengthening the country's national security apparatus and promoting justice in the face of evolving criminal activities.[105]

[104] ibid
[105] ibid

References

A Chandran, 'The Classified Information Procedures Act in the Age of Terrorism: Remodeling CIPA in an Offense-Specific Manner' (2015) 64 *Duke Law Journal* 1411–1451.

A Mandelli and H Lee, 'From Means to End: Efficiency and the Quest for Legitimacy in the US Military and Civilian Terrorism Trials' (2025) 32(2) *Journal of International and Area Studies* 47–70.

A R Tura, 'The Nexus Between Organised Crime and Terrorism in Kenya: A Mixed-Evidence Approach' (2026) *African Journal of Security and Strategic Studies* 99–117.

Andrej Bozinovski (2021) 'Admissibility Of (Counter-) Intelligence Information As Evidence In Court' *Geneva Centre for Security Sector Governance*

Central Bank of Kenya, *Money Laundering and Terrorism Financing National Risk Assessment Report* (2023) https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assesstment-Report.pdf.

Classified Information Procedures Act (CIPA), 18 U.S.C. App. III 1980

Constitution of Kenya, 2010

D Lovell and others, 'Exploring Technologies to Better Link Physical Evidence and Digital Information for Disaster Victim Identification' (2022) 7(3) *Forensic Sciences Research* 467–483.

D N Leone, 'Information Sharing for Intelligence-led Policing Within Multi-Agency Law Enforcement Teams' (doctoral dissertation, Saint Leo University 2024).

D S McConkie Jr, 'Promoting and Reforming Kenya's Customary Justice Systems in Criminal Cases' (2024) 38 *Emory International Law Review* 343.

Department of Justice: U.S. Attorney's Office, Southern District of New York (2018) 'Former Leader Of Kenyan Organized Crime Family And His Brother Plead Guilty To Narcotics, Weapons, And Obstruction Offenses' available at https://www.justice.gov/usao-sdny/pr/former-leader-kenyan-organized-crime-family-and-his-brother-plead-guilty-narcotics

E O Abuya, 'Promoting Transparency: Courts and Operationalization of the Right of Access to Information in Kenya' (2017) 46(2) *Common Law World Review* 112–139.

ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam http://www.esaamlg.org/reports/me.php

FATF (2024) 'Kenya's progress in strengthening measures to tackle money laundering and terrorist financing' available at https://www.fatf-gafi.org/en/publications/Mutualevaluations/kenya-fur-2024.html

Harry Graver, 'The Classified Information Procedures Act: What It Means and How It's Applied' (Lawfare, 20 November 2017) https://www.lawfaremedia.org/article/classified-information-procedures-act-what-it-means-and-how-its-applied.

Justice and Security Act, 2013

K A Duncan, 'Role of Intelligence in the Prevention of Terrorism (Early Warning-Early Response)' (International Centre for Counter-Terrorism (ICCT) 2020).

M Cleary, 'Civil CIPA: A Defense against the Government's Unchecked State Secrets Privilege' (2022) 49 *Journal of Legislation* 136.

M Laibuta, 'The Evolution of Privacy and Data Protection in Kenya' (2024) 30 *Fundamina: A Journal of Legal History* 116–165.

M N A L Al Waroi, 'Coordination and Collaboration Between Secret Intelligence Agencies and Government Institutions: Challenges, Opportunities, and Dynamics' (2024) 7 *International Journal of Multidisciplinary Research and Analysis* 4626–4635.

M R Ronczkowski, *Terrorism and Organized Hate Crime: Intelligence Gathering, Analysis and Investigations* (CRC Press 2017).

Office of the Director of Public Prosecutions (Kenya), 'DPP Strengthens Kenya–U.S. Justice Collaboration' https://odpp.go.ke/dpp-strengthens-kenya-u-s-justice-collaboration/.

P William and others, 'Crime Analysis Using Computer Vision Approach with Machine Learning' in *Mobile Radio Communications and 5G Networks: Proceedings of Third MRCN 2022* (Springer Nature Singapore 2023) 297–315.

Prevention of terrorism Act 2012

Republic v Victor Odede Bwire alias Abdul-Aziz (2023) (unreported)
S J Strang, 'Network Analysis in Criminal Intelligence' in *Networks and Network Analysis for Defence and Security* (Springer International Publishing 2014) 1–26.

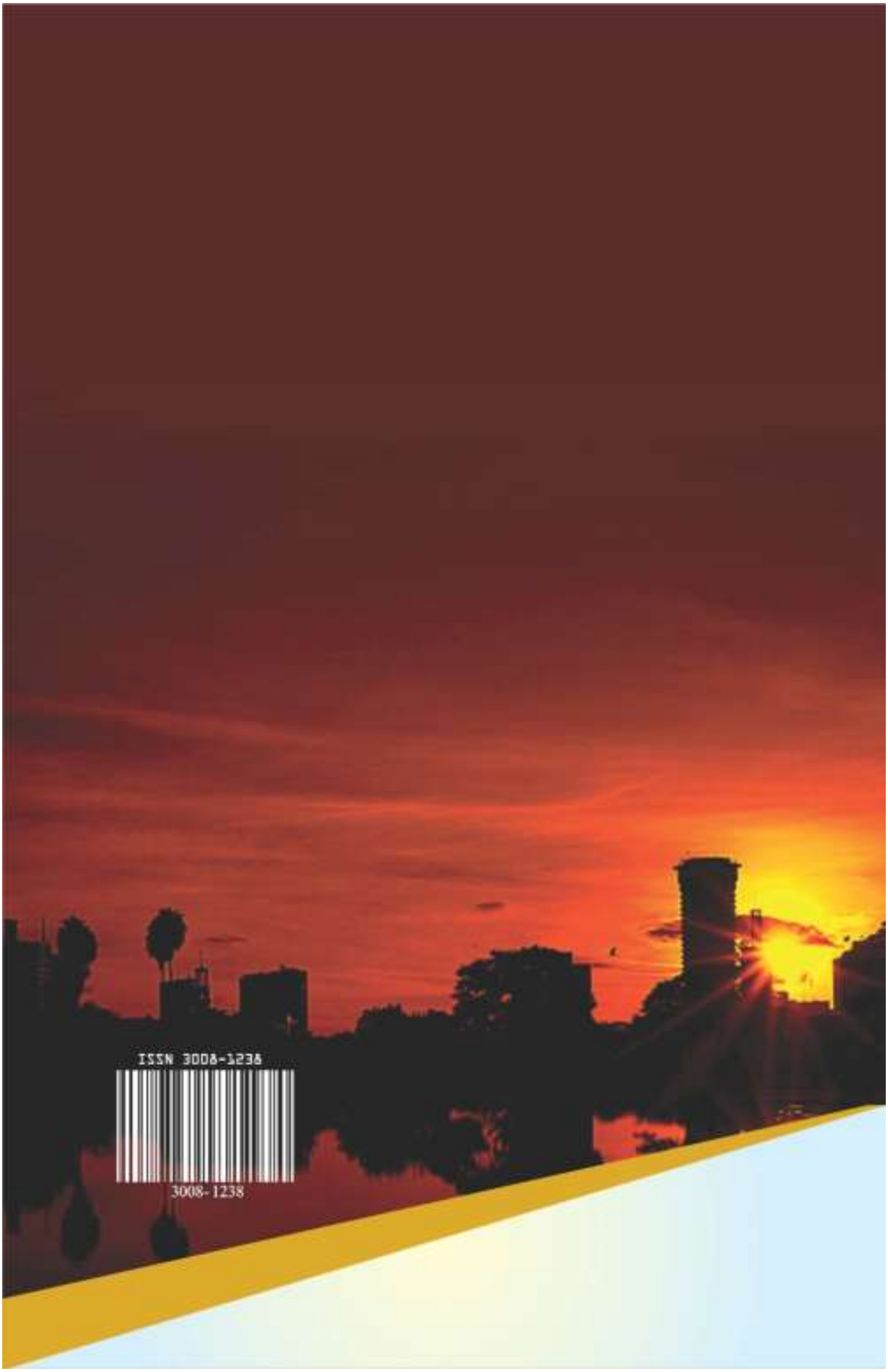
Strathmore University, 'International Exchange of Information and Taxpayers' Rights: Opposing Forces or Two Sides of the Same Coin? An Analysis of the Legislative Protection in Kenya of Taxpayers' Rights to Privacy and Confidentiality' https://su-plus.strathmore.edu/server/api/core/bitstreams/4d040147-99a2-4a08-8627-c625c71a7727/content.

United Nations Office on Drugs and Crime (UNODC) 'Kenya Training Manual on Human Rights and Criminal Justice Responses to Terrorism' available at https://www.unodc.org/documents/terrorism/Publications/Kenya%20HR%20manual/Kenya_Manual_e-book.pdf

V Kabata and F Garaba, 'The Legal and Regulatory Framework Supporting the Implementation of the Access to Information Act in Kenya' (2020) 36(3) *Information Development* 354–368.

W S Mwangi, 'The Use of Intelligence Gathering and Sharing in the Management of Transnational Terrorism in Kenya; 1975–2018' (doctoral dissertation, Kenyatta University 2021).

ZZ v Secretary of State for the Home Department (C-300/11) [2013] ECLI:EU:C: 2013:363, Judgment of the Court of Justice of the European Union (Grand Chamber), 4 June 2013.



ISSN 3008-1238
3008-1238