Embracing Sound Environmental Governance in Africa

Kariuki Muigua

Table of Contents

Embracing Sound Environmental Governance in Africa

Kariuki Muigua[*]

Abstract

This paper critically explores the need to embrace sound environmental governance in Africa. It argues that embracing sound environmental governance is an important agenda towards sustainability in Africa. The paper examines the progress made towards realizing good environmental governance in Africa. It also discusses some of the challenges facing the attainment of sound environmental governance in Africa. In addition, the paper also suggests reforms towards embracing sound environmental governance in Africa for sustainability.

1.0 Introduction

Governance refers to the fundamental question of how organisation, decisions, order and rule are achieved in heterogeneous and highly differentiated societies[1]. It has been asserted that at its core, governance addresses the problem of economic and political co-ordination in social life[2]. It has been argued that governance is one of the most important factors for ensuring effective environmental management and conservation actions[3].

Environmental governance has been defined as the set of regulatory processes, mechanisms and organizations through which political actors influence environmental actions and outcomes[4]. It comprises of rules, practices, policies and institutions that shape

---

[*] PhD in Law (Nrb), FCIArb (Chartered Arbitrator), 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; Senior Lecturer at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [January, 2024].

[1] Bridge. G., & Perreault. T., 'Environmental Governance.' *A Companion to Environmental Geography.*, Blackwell Publishing Ltd, 2009

[2] Ibid

[3] Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide Design, Evaluation, and Analysis.' Available at https://onlinelibrary.wiley.com/ (Accessed on 10/01/2024)

[4] Lemos. M.C., & Agrawal. A., 'Environmental Governance' *Annual Review of Environmental Resources.*, Volume 31, 2006, pp 297-325

how humans interact with the environment[5]. Environmental governance is a process that links and harmonizes policies, institutions, procedures, tools and information to allow participants (public and private sector, Non-Governmental Organizations (NGOs), local communities) to manage conflicts, seek points of consensus, make fundamental decisions, and be accountable for their actions[6]. Environmental governance can also refer to the processes of decision-making involved in controlling and managing the environment and natural resources[7]. According to the United Nations Environment Programme (UNEP), environmental governance includes policy, rules and norms that govern human behavior and it also addresses who makes decisions, how decisions are made and carried out, the scientific information needed for decision-making and how the public and major stakeholders can participate in the decision-making[8].

It has been argued that environmental governance should be understood broadly so as to include all institutional solutions for resolving conflicts over environmental resources[9]. It has been pointed that this approach would eliminate the distinction between 'governance' and 'government' in environmental matters and help to understand why solutions not involving the state are used to respond to some environmental conflicts, and why solutions based on the central role of the state prevail in others[10]. To this extent, it has been asserted that 'governance' is an umbrella term for diverse forms of state and non-state political control exercised today at various policy levels against the backdrop

---

[5] Haque. M., 'Environmental Governance.' Available at
https://www.researchgate.net/publication/318166768_Environmental_Governance (Accessed on 10/01/2024)

[6] Ibid

[7] What is Environmental Governance., Available at
https://acrobat.adobe.com/id/urn:aaid:sc:EU:a6a47b07-e9e0-4590-8a49-9e55a3bb2a75 (Accessed on 10/01/2024)

[8] United Nations Environment Programme., 'Environmental Governance.' Available at
https://www.unep.org/regions/west-asia/regional-initiatives/environmental-governance (Accessed on 10/01/2024)

[9] Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' *Ecological Economics*., Volume 63, No. 1 (2007): 93-103, p 94

[10] Ibid

of growing complexity in actor structures and the operating environment[11]. The term 'governance' therefore takes in a broader range of actors and policy instruments than 'government' which is restricted to state action[12]. It has correctly been pointed out that an important aspect of governance as opposed to government, and of multi-level governance in particular, is the participation of non-state actors in decision-processes on the different levels of governance[13]. It has been suggested that good governance entails elements such as participation, rule of law, transparency, responsiveness, consensus building, equity and inclusiveness, effectiveness and efficiency, and accountability[14]. Sound environmental governance takes into account the role of all actors that impact the environment, including governments, NGOs, the private sector and civil society, who must all cooperate to achieve effective governance that can help humanity move to a more sustainable future[15].

This paper critically explores the need to embrace sound environmental governance in Africa. It argues that embracing sound environmental governance is an important agenda towards sustainability in Africa. The paper examines the progress made towards realizing good environmental governance in Africa. It also discusses some of the challenges facing the attainment of sound environmental governance in Africa. In addition, the paper also suggests reforms towards embracing sound environmental governance in Africa for sustainability.

---

[11] Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Glenwood Publishers Limited, 2020

[12] Bell. C., 'Governance and Law: The Distinctive Context of Transitions from Conflict and its Consequences for Development Interventions.' Available at https://www.politicalsettlements.org/wp-content/uploads/2017/09/2015_BP_4_Bell_Governance-and-Law.pdf (Accessed on 10/01/2024)

[13] Newig. J., & Fritsch. O., 'Environmental Governance: Participatory, Multi-Level – And Effective?' *Environmental Policy & Governance*., Volume 19, Issue 3 (2009)

[14] United Nations Environment Programme., 'Environmental Governance.' Op Cit

[15] Ibid

2.0 The Need for Sound Environmental Governance

Sound environmental governance is vital in fostering Sustainable Development[16]. It has correctly been pointed out that sound management of the environment and natural resources in a sustainable and transparent manner can be the engine for Sustainable Development as well as a platform for peace and justice[17]. It has been contended that sound environmental governance has four generalizable and distinct objectives: to be effective, to be equitable, to be responsive, and to be robust[18]. Effective environmental governance focuses on aspects such as direction, coordination, capacity, accountability, and efficiency; equitable environmental governance engages decision-making processes and produces socioeconomic outcomes that might be characterized as: inclusive, participatory, fair, and just[19]; responsiveness ensures that environmental governance is adaptable both to changing environmental and social conditions and to diverse contexts[20]; and robust environmental governance ensures functioning institutions which persist over time, maintain performance, and cope with environmental disturbances and crises[21].

Sound environmental governance fosters environmental justice[22]. Environmental Justice refers to the right of every person to have access to natural resources; not to suffer disproportionately from environmental policies, laws and regulations; and the right to environmental information, participation and involvement in decision-making[23]. It has been argued that Environmental Justice seeks to achieve the ideal of access, participation

---

[16] Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Op Cit

[17] Ibid

[18] Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide Design, Evaluation, and Analysis.' Op Cit

[19] Ibid

[20] Ibid

[21] Ibid

[22] Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' Op Cit

[23] Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml (Accessed on 10/01/2024)

and procedural justice in environmental decision making[24]. Environmental Justice highlights the plight of vulnerable people and communities who bear the most burden when it comes to environmental damage and seeks to give them a voice through access to environmental information and participation in environmental decision making in order to ensure sustainable and equitable development[25]. It has been argued that sound environmental governance reflects both distributive and procedural justice concerns[26]. Procedural justice assures those whose interests are not endorsed by a particular environmental decision that their interests can count in other decisions[27]. It also enables affected parties to express their consent or dissent, and to maintain their dignity[28]. Distributive justice on the other hand seeks to ensure that environmental benefits and burdens are shared fairly and in a way that does not contribute toward further marginalization of vulnerable groups, from both intra and intergenerational perspectives, within and among nations[29].

According to UNEP, sound environmental governance can safeguard the environment and human rights and contribute towards the achievement of all 17 United Nations Sustainable Development Goals[30].It further points out that there is need for appropriate legal frameworks on the global, regional, national and local level to pursue good environmental governance that will lead to a healthy and prosperous planet for all living creatures, now and in the future[31].

---

[24] Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' *WIREs Clim Change* 2014

[25] Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

[26] Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' Op Cit

[27] Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

[28] Ibid

[29] Ibid

[30] United Nations Environment Programme., 'About Environmental Rights and Governance.' Available at https://www.unep.org/explore-topics/environmental-governance/about-environmental-rights-and-governance#:~:text=In%20our%20globalized%20world%2C%20environmental,humans%20interact%20with%20the%20environment. (Accessed on 10/01/2024)

[31] United Nations Environment Programme., 'Environmental Governance.' Op Cit

The need for sound environmental governance is succinctly captured in the United Nation's 2030 Agenda for Sustainable Development[32]. The 2030 Agenda seeks to balance the three dimensions of Sustainable Development: the economic, social and environmental[33]. It urges all countries to embrace sound environmental governance in order to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change so that the planet can support the needs of the present and future generations[34]. The 2030 Agenda embeds environmental protection in virtually all the Sustainable Development Goals (SDGs)[35]. Realizing the 2030 Agenda for Sustainable Development is critical in fostering sound environmental governance at all levels[36].

The importance of sound environmental governance was also considered during the Earth Summit in 1992[37]. The Earth Summit concluded that the concept of Sustainable Development was an attainable goal for all the people of the world, regardless of whether they were at the local, national, regional or international level[38]. It also recognized that integrating and balancing economic, social and environmental concerns in meeting our needs is vital for sustaining human life on the planet and that such an integrated approach is possible[39]. One of the major results of the Earth Summit was the adoption of *Agenda 21*[40] a daring program of action calling for new strategies to invest in the future

---

[32] United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf (Accessed on 10/01/2024)

[33] Ibid

[34] Ibid

[35] Ibid

[36] Ibid

[37] United Nations., 'United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992.' Available at https://www.un.org/en/conferences/environment/rio1992

[38] Ibid

[39] Ibid

[40] United Nations Conference on Environment & Development Rio de Janerio, Brazil, 3 to 14 June 1992., 'Agenda 21.' Available at https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf?_gl=1*9uipp7*_ga*MjA2NDk2MDMxMS4xNjcxMjU5NTEw*_ga_TK9BQL5X7Z*MTY5NDU5NjE3MS41NS4xLjE2OTQ1OTgzODUuM C4wLjA (Accessed on 10/01/2024)

to achieve overall sustainable development in the 21st century. Agenda 21 affirms that integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future[41]. One of the key objectives of Agenda 21 is to improve the legal and institutional capacities of countries to cope with national problems of governance and effective law-making and law-applying in the field of environment and Sustainable Development[42].

Another important legal instrument that was adopted during the Earth Summit which is vital in promoting sound environmental governance is the *Rio Declaration on Environment and Development*[43]. The Declaration seeks to balance the interests of states in exploiting their natural resources for development and environmental conservation with the aim of achieving Sustainable Development[44]. The Declaration stipulates that human beings are at the centre of concerns for Sustainable Development and are entitled to a healthy and productive life in harmony with nature[45]. It further states that in order to achieve Sustainable Development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it[46]. The Rio Declaration upholds key environmental principles that are vital in promoting sound environmental governance which include Sustainable Development, inter and intra generational equity, environmental protection, public participation, the precautionary principle and the principle of state cooperation[47]. Further, in order to achieve sound environmental governance, the Rio Declaration requires states to enact effective environmental legislation[48]. It also recognizes the role of women, youth and indigenous

---

[41] Ibid, Preamble
[42] Ibid
[43] United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1)
[44] Ibid, Principle 2
[45] Ibid, Principle 1
[46] Ibid, Principle 4
[47] Rio Declaration on Environment and Development, Op Cit
[48] Ibid, Principe 11

people and local communities in environmental governance[49]. In particular, the Declaration provides that indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices[50]. It requires states to recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of Sustainable Development[51]. Implementing the principles enshrined in the Rio Declaration on Environment and Development can enhance sound environmental governance.

From the foregoing, it emerges that sound environmental governance is a prerequisite for the attainment of Sustainable Development. It has been argued that there is need to embrace sound environmental governance in Africa in order to achieve sustainability[52].

3.0 Embracing Sound Environmental Governance in Africa: Progress and Setbacks
Africa is endowed with a rich environment that includes natural resources ranging from arable land, water, oil, natural gas, minerals, forests and wildlife[53]. It has been correctly pointed out that the continent holds a huge proportion of the world's natural resources, both renewables and non-renewables[54]. UNEP asserts that over 70 per cent of people living in sub-Saharan Africa depend on forests and woodlands for their livelihoods[55]. Further, it has been observed that land is an economic development asset as well as a socio-cultural resource in Africa[56]. Although not evenly distributed, each country in Africa has a fair share of its own natural resources therefore resulting in diversity on the

---

[49] Rio Declaration on Environment and Development, Op Cit
[50] Ibid, Principle 22
[51] Ibid
[52] Asongu. S., & Odhiambo. N., 'Enhancing Governance for Environmental Sustainability in Sub-Saharan Africa.' *Energy Exploration & Exploitation*., Volume 39, Issue 1 (2020)
[53] United Nations Environment Programme., 'Our Work in Africa.' Available at https://www.unep.org/regions/africa/our-work-africa (Accessed on 11/01/2024)
[54] Ibid
[55] Ibid
[56] Ibid

availability of these resources in the continent[57]. These include organic natural resources ranging from forests and the forest products in general and other land based resources such as oil, gold, iron, cobalt, uranium, copper, bauxite, silver and petroleum[58]. Africa is home to the world's largest arable landmass; second largest and longest rivers (the Nile and the Congo); and its second largest tropical forest[59]. Further, it is estimated that the continent's proven oil reserves constitute 8 per cent of the world's stock and those of natural gas amount to 7 per cent[60]. In addition, minerals account for an average of 70 per cent of total African exports and about 28 per cent of Gross Domestic Product (GDP)[61]. Against this backdrop, sound environmental governance is vital if Africa is to reap the full benefits from its rich environment and natural resources.

It has been posited that Africa's natural resources provide a unique opportunity to foster human and economic development in the continent[62]. According to UNEP, Africa has a lot to gain in pulling together and harnessing its vast environment and natural resources to finance the development agenda towards greater prosperity; and it must also ensure that future growth and exploitation of natural resources is results-oriented, climate resilient and sustainable[63]. On this basis, it has been argued that there is need to enhance responsible environmental stewardship in order to ensure sustainability in Africa[64]. The continent has enormous potential for sustainable growth and environmental conservation[65].

---

[57] Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Op Cit

[58] Ibid

[59] African Development Bank Group., 'Catalyzing Growth and Development through Effective Natural Resources Management.' Available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_ANRC_BROCHURE_en.pdf (Accessed on 11/01/2023)

[60] Ibid

[61] Ibid

[62] African Development Bank Group., 'Catalyzing Growth and Development through Effective Natural Resources Management.' Op Cit

[63] United Nations Environment Programme., 'Our Work in Africa.' Op Cit

[64] African Development Bank Group., 'Catalyzing Growth and Development through Effective Natural Resources Management.' Op Cit

[65] United Nations Environment Programme., 'Our Work in Africa.' Op Cit

According to the African Union, sustainable environmental management is fundamental to the pursuit of food security, peace, security, and stability in Africa[66]. The African Union correctly opines that many African economies are heavily dependent on natural resources to fuel economic growth and development[67]. For example, agriculture, forestry and fishing, mining and quarrying, and oil and natural gas are crucial contributors to the GDP of many African economies[68]. In addition, it has been correctly observed that a large portion of the African population, especially the rural population, is directly dependent on the natural environment for their sustenance and livelihoods[69]. According to Africa Union's *Agenda 2063*[70], Africa's natural resources play a critical role for vast segments of Africa's population who depend on the continent's biodiversity, forests and land for their livelihoods directly or indirectly[71]. Africa's natural resources also make a direct contribution to economic development through tourism, agriculture, logging among other activities[72]. Therefore, sound governance and management of the continent's natural resources is of paramount importance if the continent is to achieve the Sustainable Development agenda[73].

The need for sound environmental governance in Africa is captured in African Union's development blueprint *Agenda 2063*[74]. Agenda 2063 enshrines the ideal of a prosperous Africa, based on inclusive growth and Sustainable Development[75]. Sound environmental governance is an important item under Agenda 2063 which seeks to put in place measures to sustainably manage the continent's rich biodiversity, forests, land and

---

[66] Africa Union., 'Africa Environment and Wangari Maathai Day.' Available at https://au.int/en/wangari-maathai-day (Accessed on 11/01/2024)

[67] Ibid

[68] Ibid

[69] Ibid

[70] African Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 11/01/2024)

[71] Ibid

[72] Ibid

[73] Africa Union., 'Africa Environment and Wangari Maathai Day.' Op Cit

[74] African Union., 'Agenda 2063: The Africa we Want.' Op Cit

[75] Ibid

waters and using mainly adaptive measures to address climate change risks[76]. Among the key goals of Agenda 2063 is to foster environmentally sustainable and climate resilient economies and communities in Africa[77]. Agenda 2063 seeks to achieve this goal through sound environmental governance practices including sustainable natural resource management; conservation of biodiversity, genetic resources and ecosystems; promoting sustainable consumption and production patterns in Africa; fostering water security; enhancing climate resilience and natural disasters preparedness and prevention; and embracing renewable energy in Africa[78]. Realizing these targets is essential in promoting sound environmental governance in Africa.

In addition, there has been adoption of legal instruments in Africa at the continental, regional and national levels aimed to guide countries in their efforts to foster sound environmental governance towards Sustainable Development. The *African Convention on the Conservation of Nature and Natural Resources[79]* aims to enhance environmental protection in Africa; to foster the conservation and sustainable use of natural resources; and to harmonize and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes in Africa[80]. The Convention requires states to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner[81].

Further, the *Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa[82]* seeks to

---

[76] Ibid

[77] Ibid

[78] Ibid

[79] African Union., 'African Convention on the Conservation of Nature and Natural Resources.' Available at https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf (Accessed on 11/01/2024)

[80] Ibid, Article II

[81] Ibid, Article III (3)

[82] African Union., 'Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.' Available at

foster environmental conservation in Africa by prohibiting the import of all hazardous wastes for any reason into Africa. It has been argued that the Convention is meant to ensure that even as African countries engage in development projects and international trade with countries outside the region, they do not engage in activities that adversely affect the environment[83].

At the regional level, the *Treaty for the Establishment of the East African Community[84]* seeks to foster sound environmental governance within the East African Community (EAC). The treaty recognises that development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a prerequisite for Sustainable Development[85]. It requires actions by the EAC relating to the environment to pursue certain objectives including: to preserve, protect and enhance the quality of the environment; to contribute towards the sustainability of the environment; to ensure sustainable utilisation of natural resources like lakes, wetlands, forests and other aquatic and terrestrial ecosystems; and to jointly develop and adopt water resources conservation and management policies that ensure sustenance and preservation of ecosystems[86]. The Treaty also requires member states of the EAC to cooperate in the management of the environment and natural resources[87]. The Treaty is therefore vital in fostering sound environmental governance within the EAC.

At the national level, the *Constitution of Kenya of Kenya[88]* for example, seeks to promote sound environmental governance. It enshrines Sustainable Development as one the

---

https://au.int/sites/default/files/treaties/7774-treaty-0015_-_bamako_convention_on_hazardous_wastes_e.pdf (Accessed on 11/01/2024)

[83] Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

[84] East African Community., 'Treaty for the Establishment of the East African Community.' Available at https://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf (Accessed on 11/01/2024)

[85] Ibid, Article 111

[86] Ibid

[87] Ibid, Articles 112 & 114

[88] Constitution of Kenya, 2010, Government Printer, Nairobi

national values and principles of governance[89]. It also recognizes the right to a clean and heathy environment as a fundamental human right[90]. The Constitution further stipulates several obligations by the state in respect of the environment including the obligation to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits, the need to encourage public participation in the management, protection and conservation of the environment, the obligation to protect genetic resources and biological diversity and the obligation to eliminate processes and activities that are likely to endanger the environment[91]. The Constitution also recognizes the role of courts in promoting environmental governance and stipulates that if a person alleges that a right to a clean and healthy environment recognised and protected under article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter[92]. Realizing these provisions is vital in fostering sound environmental governance in Kenya.

Further, the *Environmental Management and Co-ordination Act[93]* establishes the legal and institutional framework for the management of the environment in Kenya. The Act upholds the right of every Kenyan to a clean and healthy environment and sets out various measures towards upholding this right including environmental planning, protection and conservation of the environment, Environmental Impact Assessment, Environmental Audit and Monitoring, environmental restoration and conservation orders and enforcement of environmental rights through courts and tribunals[94]. The Act further establishes the National Environment Management Authority which has the mandate to exercise general supervision and co-ordination over all matters relating to the

---

[89] Ibid, Article 10 (2) (d)
[90] Ibid, Article 42
[91] Ibid, Article 69
[92] Ibid, Article 70 (1)
[93] Environmental Management and Co-ordination Act., No. 8 of 1999, Government Printer, Nairobi
[94] Ibid

environment and to be the principal instrument of Government in the implementation of all policies relating to the environment[95].

As a result of the foregoing efforts, it has been observed that there has been progress towards embracing sound environmental governance in Africa[96]. UNEP notes that efforts have been made towards promoting sound environmental governance in Africa through measures such as strengthening environmental legislation, use of technology in environmental enforcement, decentralization of authority to govern renewable resources such as forests, irrigation systems, and inland fisheries, criminalization of environmental offences and enhanced environmental litigation[97]. In addition the *African Commission on Human and Peoples' Rights* has continued to elaborate on the understanding of environment-related rights enshrined in the African Charter on Human and Peoples' Rights, including the right to a general satisfactory environment favourable to development, the right to life , and the right to cultural development and equal enjoyment of the common heritage of mankind[98].

However, despite these efforts there are several challenges hindering the realization of sound environmental governance in Africa. It has been pointed out that unsustainable exploitation of Africa's natural resources by its growing population, and the laxity by authorities to effect and implement sound regulations to tame abuse and over exploitation of these resources is creating environmental challenges[99]. In addition, it has been pointed out that Africa is facing the prospect of environmental calamity in the form of the triple planetary crisis comprising of climate change, nature and biodiversity loss,

---

[95] Ibid, S 7 & 9

[96] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3 (Accessed on 11/01/2024)

[97] Ibid

[98] Ibid

[99] United Nations Environment Programme., 'Our Work in Africa.' Op Cit

and pollution and waste[100]. Africa is currently facing pressing environmental issues which include deforestation, air pollution, water pollution, biodiversity loss and oil spills which have been attributed to poor environmental governance among other reasons[101]. According to the African Union, the unfolding phenomena of climate change, biodiversity depletion, desertification, land degradation and unsustainable use of finite natural resources remain a serious risk for Africa since they pose real impediments to achieving the SDGs and Africa's Agenda 2063[102]. It also notes that crises being witnessed across the continent such as droughts, armed conflicts, or other natural disasters, are exacerbated by environmental deterioration[103]. It is imperative to embrace sound environmental governance in order to address the foregoing among other environmental challenges in Africa.

4.0 Way Forward

In order to embrace sound environmental governance in Africa, there is need to strengthen environmental rule of law[104]. Environmental law is a collective term encompassing all aspects of the law that provide protection to the environment[105]. It entails a set of regulatory regimes and environmental legal principles which focus on the management of specific natural resources, such as land, wildlife and biodiversity, forests, minerals, water, fisheries and coastal and marine resources[106]. According to UNEP,

---

[100] United Nations Environment Programme., 'Fostering Collaboration to Address Environmental Challenges in Africa.' Available at https://www.unep.org/news-and-stories/speech/fostering-collaboration-address-environmental-challenges-africa (Accessed on 11/01/2024)

[101] Nguyen. L., '5 Biggest Environmental Issues In Africa In 2023.' Available at https://earth.org/environmental-issues-in-africa/ (Accessed on 11/01/2024)

[102] Africa Union., 'Africa Environment and Wangari Maathai Day.' Op Cit

[103] Ibid

[104] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[105] Conserve Energy Future., 'What is Environmental Law: Importance and Components.' Available at https://www.conserve-energy-future.com/environmental-law-and-itscomponents.php#:~:text=The%20two%20basic%20factors%20that,preserve%20and%20protect%20the%20environmen (Accessed on 11/01/2024)

[106] Ibid

environmental rule of law is central to Sustainable Development[107]. It integrates environmental needs with the essential elements of the rule of law, and provides the basis for improving environmental governance[108]. It has been contended that without environmental rule of law and the enforcement of legal rights and obligations, environmental governance, conservation, and protection may be arbitrary, subjective, and unpredictable[109]. Therefore, environmental rule of law and robust institutions are vital in fostering responses to increasing environmental pressures that threaten the ecological integrity of the Earth, in a way that respects fundamental rights and principles of justice and fairness[110]. Environmental rule of law is therefore an essential tool of environmental governance[111]. Strengthening environmental rule of law can promote sound environmental governance in Africa through measures such as implementation and enforcement of environmental laws, building strong environmental institutions and enhancing access to justice in environmental matters[112].

In addition, there is need to embrace civic engagement in environmental management[113]. It has been pointed out that civic engagement encompasses sharing of information between the government and the public, participation by civil society organizations and other stakeholders—including academics, businesses and media—in decision-making processes, and political action by citizens to influence the adoption and implementation of policies and laws[114]. Civic engagement in environmental matters is a dynamic process

---

[107] United Nations Environment Programme., 'Promoting Environmental Rule of Law.' Available at https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law (Accessed on 11/01/2023)

[108] Ibid

[109] International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law.' Available at http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-091064.pdf (Accessed on 11/01/2023)

[110] Ibid

[111] Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability.' Available at https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-for-Sustainability-.pdf (Accessed on 11/01/2024)

[112] Ibid

[113] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[114] Ibid

that supports inclusive, consultative and accountable decision-making and implementation[115]. The Role of civic engagement in environmental governance is succinctly captured by the *Rio Declaration on Environment and Development* which stipulates as follows:

> 'Environmental issues are best handled with the *participation of all concerned citizens, at the relevant level.* At the national level, each individual shall have appropriate *access to information* concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to *participate in decision-making processes. States shall facilitate and encourage public awareness and participation* by making information widely available. *Effective access to judicial and administrative proceedings*, including *redress and remedy, shall be provided*. (Emphasis added)[116].

Principle 10 of the Rio Declaration establishes three fundamental pillars of civic engagement in environmental decision-making which are broad access to information concerning the environment that is held by public authorities; realistic and meaningful opportunities to participate in decision-making processes related to the environment; and effective access to judicial and administrative proceedings[117]. It has been correctly opined that the pillars of civic engagement including access to information and public participation can promote Sustainable Development and improve the quality of decision-making by providing decision-makers with additional, unique information on local conditions in the context of social, environmental and economic decision making[118]. In addition, public participation can also improve policy implementation and foster peace and sustainability by increasing the legitimacy of the decision-making process and, in so

---

[115] Ibid
[116] United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1), Principle 10
[117] Ibid
[118] Cerezo. L, & Garcia. G., 'Lay Knowledge and Public Participation in Technological and Environmental Policy.' Available at https://scholar.lib.vt.edu/ejournals/SPT/v2n1/pdf/CEREZO.PDF (Accessed on11/01/2024)

doing, reducing instances of conflict[119]. It has been asserted that citizen involvement in environmental decision making has been associated with several benefits which include: information and ideas on public issues; public support for planning decisions; avoidance of protracted conflicts and costly delays; reservoir of good will which can carry over to future decisions; and spirit of cooperation and trust between decision makers and the public[120].In addition, effective access to judicial and administrative proceedings is essential in fostering environmental justice[121]. Therefore in order to embrace sound environmental governance in Africa, there is need to enhance civic engagement through access to information, public participation, and effective access to judicial and administrative proceedings.

It is also imperative foster the role of indigenous people and indigenous knowledge in environmental conservation and management[122]. Indigenous people are often at the heart of environmental conservation efforts because conserving unique biodiversity relies on the knowledge, innovations and practices of those who live in direct contact with nature[123]. For example, it has been pointed out that forests managed by indigenous peoples and local communities are at least as effective at maintaining forest cover as those under stricter protection regimes[124]. The Rio Declaration provides that indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices[125].

---

[119] Ibid

[120] Muigua. K., 'Towards Meaningful Public Participation in Natural Resource Management in Kenya.' Available at http://kmco.co.ke/wp-content/uploads/2018/08/TOWARDSMEANINGFULPUBLICPARTICIPATION-IN-NATURAL-RESOURCEMANAGEMENT-IN-KENYA.pdf (Accessed on 11/01/2024)

[121] Muigua. K., 'Realizing Environmental Justice through Litigation.' Available at https://kmco.co.ke/wpcontent/uploads/2023/07/Realizing-Environmental-Justice-through-Litigation.pdf (Accessed on 11/01/2024)

[122] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[123] Ibid

[124] Ibid

[125] Rio Declaration on Environment and Development, Principle 22

It requires states to recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of Sustainable Development[126].

It has been posited that in Africa, indigenous knowledge systems such as using animal dung as manure, sighting of the new moon before planting, rain-making rituals, and planting of trees to serve as shades have helped to conserve the wetlands and the forests of most societies and are effective in promoting environmental sustainability[127]. African societies have for many centuries used indigenous knowledge to manage environmental issues such as water scarcity or pollution, land pollution, erosion, protection of forests, curbing overfishing, deforestation, and management of other natural resources[128]. African countries can therefore leverage indigenous knowledge to foster sound environmental governance. This can be achieved through approaches such as decentralized or community-based environmental management systems[129]. It has been argued that such approaches can promote sound environmental governance because of factors such as competition among subnational units, bringing decision-making closer to those affected by governance, thereby promoting higher participation and accountability and helping decision makers take advantage of more precise time- and place-specific knowledge about natural resources[130].

Finally there is need to combat climate change among other pressing environmental problems in Africa[131]. Africa is classified as a continent that is highly vulnerable to climate change due to several reasons including endemic poverty and high dependence on rain-

---

[126] Ibid

[127] Egeruoh-Adindu. I., 'Leveraging Indigenous Knowledge for Effective Environmental Governance in West Africa.' Available at
https://www.scirp.org/journal/paperinformation?paperid=121949#:~:text=Indigenous%20knowledge%20systems%20such%20as,effective%20in%20promoting%20environmental%20sustainability. (Accessed on 11/01/2024)

[128] Ibid

[129] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[130] Ibid

[131] Muigua. K., 'Reflections on Confronting Climate Change in Africa.' Available at https://kmco.co.ke/wp-content/uploads/2023/08/Reflections-on-Confronting-Climate-Change-in-Africa.pdf (Accessed on 11/01/2024)

fed agriculture, complex governance and institutional dimensions, limited access to capital including markets and technology, weak infrastructure, ecosystem degradation and poor management of natural resources, disasters both natural and man-made and conflicts[132]. This vulnerability is worsened by strong dependence of African economies on climate sensitive natural resources[133]. It has been observed that climate change is having a devastating impact on the African continent creating food insecurity, stressing water resources, depleting human health, displacing populations and impeding socio-economic development[134]. Climate change therefore represents a major threat to Africa achieving the Sustainable Development Goals[135]. Climate change is significantly impacting the environment and natural resources in Africa through intense droughts, water scarcity and increasing risk of extinction of biodiversity including plant and animal species[136]. Confronting climate change alongside other environmental problems including pollution, desertification and loss of biodiversity in Africa is thus an urgent need if the continent is to realize the Sustainable Development agenda[137]. African countries should therefore take urgent action to combat climate action and its impacts on the continent through measures such as embracing sound environmental governance[138].

The foregoing measures among others are essential in embracing sound environmental governance in Africa.

---

[132] Kimaro. Didas et al., 'Climate Change Mitigation and Adaptation in ECA/SADC/COMESA Region: Opportunities and Challenges.' Available at
https://www.researchgate.net/publication/346628199_Climate_Change_Mitigation_and_Adaptation_in_ECASADCCOMESA_region_Opportunities_and_Challenges (Accessed on 11/01/2024)
[133] Ibid
[134] Rao. V., & Yadav. P., 'Confronting Climate Change in Africa.' Available at
https://knowledge.insead.edu/responsibility/confronting-climate-change-africa (Accessed on 11/01/2024)
[135] African Development Bank Group., 'Climate Change in Africa.' Available at
https://www.afdb.org/en/cop25/climate-change-africa (Accessed on 11/01/2024)
[136] Ibid
[137] Ibid
[138] Muigua. K., 'Taking Urgent Action to Combat Climate Change.' Available at https://kmco.co.ke/wp-content/uploads/2023/09/Taking-Urgent-Action-to-Combat-Climate-Change.pdf (Accessed on 11/01/2024)

5.0 Conclusion

Sound management of the environment and natural resources in a sustainable and transparent manner can be the engine for Sustainable Development as well as a platform for peace and justice[139]. The United Nation's 2030 Agenda enshrines the need for sound environmental governance by seeking to balance the three dimensions of Sustainable Development: the economic, social and environmental[140.] Further, the importance of sound environmental governance in Africa is set out in the African Union's development blueprint *Agenda 2063[141].* There have been efforts towards promoting sound environmental governance in Africa through measures such as strengthening environmental legislation, use of technology in environmental enforcement, decentralization of authority to govern renewable resources such as forests, irrigation systems, and inland fisheries, criminalization of environmental offences and enhanced environmental litigation[142]. However, sound environmental governance in Africa continues to be threatened by environmental problems including climate change, biodiversity depletion, desertification, land degradation and unsustainable use of finite natural resources[143]. It is imperative to embrace sound environmental governance in Africa in order to achieve sustainability. This can be realized through strengthening environmental rule of law[144]; embracing civic engagement in environmental management[145]; fostering the role of indigenous people and indigenous knowledge in

---

[139] Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Op Cit

[140] United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

[141] African Union., 'Agenda 2063: The Africa we Want.' Op Cit

[142] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[143] Africa Union., 'Africa Environment and Wangari Maathai Day.' Op Cit

[144] United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

[145] Ibid

environmental conservation and management[146]; and combating climate change among other pressing environmental problems in Africa[147].

Embracing Sound Environmental Governance in Africa is key if the goal of Sustainability is to be attained.

References

Africa Union., 'Africa Environment and Wangari Maathai Day.' Available at https://au.int/en/wangari-maathai-day

African Development Bank Group., 'Catalyzing Growth and Development through Effective Natural Resources Management.' Available at

---

[146] Egeruoh-Adindu. I., 'Leveraging Indigenous Knowledge for Effective Environmental Governance in West Africa.' Op Cit

[147] Muigua. K., 'Reflections on Confronting Climate Change in Africa.' Ibid

https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_ANRC_BROCHURE_en.pdf

African Development Bank Group., 'Climate Change in Africa.' Available at https://www.afdb.org/en/cop25/climate-change-africa

African Union., 'African Convention on the Conservation of Nature and Natural Resources.' Available at https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf

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

African Union., 'Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.' Available at https://au.int/sites/default/files/treaties/7774-treaty-0015_-_bamako_convention_on_hazardous_wastes_e.pdf (Accessed on 11/01/2024)

Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml

Asongu. S., & Odhiambo. N., 'Enhancing Governance for Environmental Sustainability in Sub-Saharan Africa.' *Energy Exploration & Exploitation*., Volume 39, Issue 1 (2020)

Bell. C., 'Governance and Law: The Distinctive Context of Transitions from Conflict and its Consequences for Development Interventions.' Available at https://www.politicalsettlements.org/wp-content/uploads/2017/09/2015_BP_4_Bell_Governance-and-Law.pdf

Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide Design, Evaluation, and Analysis.' Available at https://onlinelibrary.wiley.com/

Bridge. G., & Perreault. T., 'Environmental Governance.' *A Companion to Environmental Geography.,* Blackwell Publishing Ltd, 2009

Cerezo. L, & Garcia. G., 'Lay Knowledge and Public Participation in Technological and Environmental Policy.' Available at https://scholar.lib.vt.edu/ejournals/SPT/v2n1/pdf/CEREZO.PDF

Conserve Energy Future., 'What is Environmental Law: Importance and Components.' Available at https://www.conserve-energy-future.com/environmental-law-and-

itscomponents.php#:~:text=The%20two%20basic%20factors%20that,preserve%20and%20protect%20the%20 environmen

Constitution of Kenya, 2010, Government Printer, Nairobi

East African Community., 'Treaty for the Establishment of the East African Community.' Available at https://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf

Egeruoh-Adindu. I., 'Leveraging Indigenous Knowledge for Effective Environmental Governance in West Africa.' Available at https://www.scirp.org/journal/paperinformation?paperid=121949#:~:text=Indigenous%20knowledge%20systems%20such%20as,effective%20in%20promoting%20environmental%20sustainability.

Environmental Management and Co-ordination Act., No. 8 of 1999, Government Printer, Nairobi

Haque. M., 'Environmental Governance.' Available at https://www.researchgate.net/publication/318166768_Environmental_Governance

International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law.' Available at http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-091064.pdf

Kimaro. Didas et al., 'Climate Change Mitigation and Adaptation in ECA/SADC/COMESA Region: Opportunities and Challenges.' Available at https://www.researchgate.net/publication/346628199_Climate_Change_Mitigation_and_Adaptation_in _ECASADCCOMESA_region_Opportunities_and_Challenges

Lemos. M.C., & Agrawal. A., 'Environmental Governance' *Annual Review of Environmental Resources*., Volume 31, 2006, pp 297-325

Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

Muigua. K., 'Realizing Environmental Justice through Litigation.' Available at https://kmco.co.ke/wpcontent/uploads/2023/07/Realizing-Environmental-Justice-through-Litigation.pdf

Muigua. K., 'Reflections on Confronting Climate Change in Africa.' Available at https://kmco.co.ke/wp-content/uploads/2023/08/Reflections-on-Confronting-Climate-Change-in-Africa.pdf

Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Glenwood Publishers Limited, 2020

Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability.' Available at https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-for-Sustainability-.pdf

Muigua. K., 'Taking Urgent Action to Combat Climate Change.' Available at https://kmco.co.ke/wp-content/uploads/2023/09/Taking-Urgent-Action-to-Combat-Climate-Change.pdf

Muigua. K., 'Towards Meaningful Public Participation in Natural Resource Management in Kenya.' Available at http://kmco.co.ke/wp-content/uploads/2018/08/TOWARDSMEANINGFULPUBLICPARTICIPATION-IN-NATURAL-RESOURCEMANAGEMENT-IN-KENYA.pdf

Muiguа. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

Newig. J., & Fritsch. O., 'Environmental Governance: Participatory, Multi-Level – And Effective?' *Environmental Policy & Governance*., Volume 19, Issue 3 (2009)

Nguyen. L., '5 Biggest Environmental Issues In Africa In 2023.' Available at https://earth.org/environmental-issues-in-africa/

Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' *Ecological Economics*., Volume 63, No. 1 (2007): 93-103, p 94

Paavola. J., 'Institutions and Environmental Governance: A Reconceptualization.' Op Cit

Rao. V., & Yadav. P., 'Confronting Climate Change in Africa.' Available at https://knowledge.insead.edu/responsibility/confronting-climate-change-africa

Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' *WIREs Clim Change* 2014

United Nations Conference on Environment & Development Rio de Janerio, Brazil, 3 to 14 June 1992., 'Agenda 21.' Available at https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf?_gl=1*9uipp7*_ga*MjA2ND k2MDMxMS4xNjcxMjU5NTEw*_ga_TK9BQL5X7Z*MTY5NDU5NjE3MS41NS4xLjE2O TQ1OTgzODUuM C4wLjA

United Nations Environment Programme., 'About Environmental Rights and Governance.' Available at https://www.unep.org/explore-topics/environmental-

governance/about-environmental-rights-and-governance#:~:text=In%20our%20globalized%20world%2C%20environmental,humans%20interact%20with%20the%20environment.

United Nations Environment Programme., 'Environmental Governance.' Available at https://www.unep.org/regions/west-asia/regional-initiatives/environmental-governance

United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3

United Nations Environment Programme., 'Fostering Collaboration to Address Environmental Challenges in Africa.' Available at https://www.unep.org/news-and-stories/speech/fostering-collaboration-address-environmental-challenges-africa

United Nations Environment Programme., 'Our Work in Africa.' Available at https://www.unep.org/regions/africa/our-work-africa

United Nations Environment Programme., 'Promoting Environmental Rule of Law.' Available at https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law

United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1)

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

United Nations., 'United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992.' Available at https://www.un.org/en/conferences/environment/rio1992

What is Environmental Governance., Available at https://acrobat.adobe.com/id/urn:aaid:sc:EU:a6a47b07-e9e0-4590-8a49-9e55a3bb2a75