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Managing Environmental Conflicts through Alternative Dispute Resolution

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Table of Contents

Abstract.....	3
1.0 Introduction.....	4
2.0 Environmental Conflicts: Definition and Causes.....	6
3.0 Managing Environmental Conflicts through ADR: Opportunities and Challenges.....	9
4.0 Way Forward.....	18
5.0 Conclusion.....	21
References.....	23

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Kariuki Muigua*

Abstract

This paper critically discusses the role of Alternative Dispute Resolution (ADR) mechanisms in managing environmental conflicts. It defines environmental conflicts and examines their nature and causes. It also explores the viability of ADR mechanisms in managing environmental conflicts noting to highlight the advantages and drawbacks thereof. The paper argues that ADR mechanisms can be a viable tool in managing environmental conflicts and fostering sustainability. It proposes initiatives towards strengthening the role of ADR mechanisms in managing environmental conflicts.

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1.0 Introduction

It has been correctly observed that conflicts are a common occurrence in human relationships and interactions¹. They are an inevitable part of living because they are related to situations of scarce resources, division of functions, power relations and role-differentiation². The term conflict generally refers to a situation in which two or more parties perceive that they possess mutually incompatible goals³. It has also been defined as a process of social interaction involving a struggle over claims to resources, power and status, beliefs, and other preferences and desires⁴. It has been pointed out that conflict centers on incompatibilities, an expressed struggle, and interdependence among two or more parties⁵. Incompatibility refers to mutually exclusive or diametrically opposed goals, values, or beliefs⁶. Conflict can therefore be understood as the interaction of interdependent people who perceive incompatibility and the possibility of interference from others as a result of this incompatibility⁷.

Conflicts are an undesirable phenomena in any given society. It has been posited that conflicts can affect peace, sustainability and development⁸. Conflicts can result in deaths and injuries, population displacement, the destruction of assets, and the

¹ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Moving-from-Alternative-to-Appropriate-Dispute-Resolution-1.pdf> (Accessed on 18/01/2024)

² Bercovitch. J., 'Conflict and Conflict Management in Organizations: A Framework for Analysis.' Available at <https://ocd.lcwu.edu.pk/cfiles/International%20Relations/EC/IR-403/Conflict.ConflictManagementinOrganizations.pdf> (Accessed on 18/01/2024)

³ Demmers. J., 'Theories of Violent Conflict: An Introduction' (Routledge, New York, 2012)

⁴ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

⁵ Putnam. L., 'Definitions and Approaches to Conflict and Communication.' Available at https://www.researchgate.net/profile/L_Putnam/publication/292654875_Definitions_and_approaches_to_conflict_and_communication/links/6483440ab3dfd73b776fe6ef/Definitions-and-approaches-to-conflict-and-communication.pdf (Accessed on 18/01/2024)

⁶ Ibid

⁷ Ibid

⁸ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

disruption of social and economic systems⁹. As a result, it has been argued that development is not feasible in a conflict situation¹⁰. According to the United Nations, conflicts are major threat to the achievement of Sustainable Development¹¹. It posits that the Sustainable Development Goals (SDGs) have an intrinsic relationship to peace and stability¹². As a result, there is need for effective and expeditious management of conflicts in order to spur Sustainable Development¹³.

Conflict management refers to the processes and techniques adopted towards stopping or preventing overt conflicts and aiding the parties involved to reach a durable and peaceful solution to their differences¹⁴. Conflict management therefore involves handling all stages of a conflict as well as the mechanisms used in addressing conflicts¹⁵. It has been pointed out that the purpose of conflict management, whether undertaken by the parties in conflict or whether involving the intervention of an outside party, is to affect the entire structure of a conflict situation so as to contain the destructive components in the conflict process (such as hostility and use of violence) and help the parties possessing incompatible goals to find some solution to their conflict¹⁶. In addition, it has been argued that effective conflict management succeeds in minimizing disruption stemming from the existence of a conflict, and providing a solution that is satisfactory and acceptable¹⁷. Various approaches and techniques can be adopted towards managing conflicts ranging from the most informal negotiations

⁹ Mahler. D. G., & Vishwanath. T., 'When the Consequences of Conflicts Last Generations: Intergenerational Mobility in Iraq and Vietnam.' Available at <https://blogs.worldbank.org/dev4peace/when-consequences-conflicts-last-generations-intergenerational-mobility-iraq-and-vietnam#:~:text=They%20include%20deaths%20and%20injuries,of%20social%20and%20economic%20systems>. (Accessed on 18/01/2024)

¹⁰ Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-KenyaRevised-version-of-20.10.14.pdf> (Accessed on 18/01/2024)

¹¹ United Nations., 'No Peace, No Sustainable Development: A Vicious Cycle that We Can Break.' Available at <https://www.un.org/en/chronicle/article/no-peace-no-sustainable-development-vicious-cycle-we-can-break> (Accessed on 18/01/2024)

¹² Ibid

¹³ Ibid

¹⁴ Leeds. C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners.' *International Journal of Peace Studies*, Volume 2, No. 2, 1997

¹⁵ Ibid

¹⁶ Bercovitch. J., 'Conflict and Conflict Management in Organizations: A Framework for Analysis.' Op Cit

¹⁷ Ibid

between the parties themselves through increasing formality and more directive interventions from external sources to a full court hearing with strict rules of procedure¹⁸.

It has been argued that conflict management could result in settlement through the use of mechanisms such as litigation and arbitration which are highly coercive, power based and involve a lot of compromise in addressing the conflict¹⁹. Settlement mechanisms can be effective in providing an immediate solution to a conflict but fail to address underlying issues leaving the likelihood of conflicts reemerging in future²⁰. Conflict management could also result in resolution through the use of Alternative Dispute Resolution (ADR) processes such as mediation, negotiation and facilitation which are non-coercive, non-power based and focus on the needs and interest of parties²¹. Resolution mechanisms result in mutually satisfying outcomes that address the root causes of conflicts therefore creating long lasting outcomes²².

This paper critically discusses the role of ADR mechanisms in managing environmental conflicts. It defines environmental conflicts and examines their nature and causes. It also explores the viability of ADR mechanisms in managing environmental conflicts noting to highlight the advantages and drawbacks thereof. The paper argues that ADR mechanisms can be a viable tool in managing environmental conflicts and fostering sustainability. It proposes initiatives towards strengthening the role of ADR mechanisms in managing environmental conflicts.

2.0 Environmental Conflicts: Definition and Causes

The environment is a major cause of conflicts. It has been observed that nearly every community finds itself embroiled in occasional disputes over public land use, private land development, water quality or quantity, air quality, protection of habitats and species, waste disposal, use and management of natural resources, environmental

¹⁸ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

hazards among other issues²³. Environmental conflicts are therefore a common occurrence. It has been posited that what is often at stake in such conflicts are fundamental issues including individual and community health, racial and ethnic justice, the integrity or destruction of whole ecosystems, and the economic or cultural viability of human communities²⁴. According to the United Nations Environment Programme (UNEP), factors such as environmental degradation, inequitable access to natural resources and the transboundary movement of hazardous materials can lead to environmental conflicts and pose a risk to national security and human health²⁵.

Environmental conflicts have been broadly defined as social conflicts related to the environment²⁶. Further, environmental conflicts have also been defined as conflicts caused by the environmental scarcity of a resource, that means: caused by a human-made disturbance of its normal regeneration rate²⁷. In addition, environmental conflicts can also refer to the contests that exist as a result of the various competing interests over access to and use of natural resources such as land, water, minerals and forests²⁸. It has been argued that conflicts caused by physical, geopolitical or socio-economic resource scarcity are not environmental conflicts but traditional conflicts of resource distribution²⁹. Further, it has been asserted that environmental conflicts differ, but frequently overlap, with other types of conflicts on gender, class, territory, and identity among others³⁰. In addition, it has been observed that environmental conflicts such as conflicts over natural resources have always been part of human

²³ Dukes. F., 'What we Know About Environmental Conflict Resolution: An Analysis Based on Research.' *Conflict Resolution Quarterly.*, Volume 22, Issue 1-2

²⁴ Ibid

²⁵ United Nations Environment Programme., 'Disasters and Conflicts.' Available at <https://www.unep.org/regions/europe/regional-initiatives/disasters-and-conflicts> (Accessed on 18/01/2024)

²⁶ Scheidel. A et al., 'Environmental Conflicts and Defenders: A Global Overview.' *Global Environmental Change*, 63 (2020)

²⁷ Libiszewski. S., 'What is an Environmental Conflict?' Available at https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/What_is_Environment_Conflict_1992.pdf (Accessed on 18/01/2024)

²⁸ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/Environmental-Conflict-Management-Institutions-and-Approaches.pdf> (Accessed on 18/01/2024)

²⁹ Libiszewski. S., 'What is an Environmental Conflict?' Op Cit

³⁰ Scheidel. A et al., 'Environmental Conflicts and Defenders: A Global Overview.' Op Cit

history³¹. Environmental conflicts have been classified as a subset of the larger category of public conflicts involving issues such as health and health care, race and ethnicity, economic development, and governance³². Environmental conflicts often involve a combination of these issues³³. In addition, it has been observed that environmental conflicts may involve multiple jurisdictions and multiple levels of jurisdiction (including international, regional, national and local), and the conflict may be less about the resources stake than about issues of jurisdiction or precedent³⁴.

The causes of environmental conflicts vary across the globe and their manifestations differ considerably³⁵. It has been observed that causes of environmental conflicts can range from control over vital environmental resources to contestations over natural resources at the community and/or household levels³⁶. In addition, it has been argued that environmental conflicts are largely due to poverty or resource scarcities, which can be demand-induced, supply-induced, or structural³⁷. This view implies that the occurrence and intensity of environmental conflicts would increase as resources become scarcer, or if resources have been overused, depleted, or degraded to a certain threshold, environmental conflicts would worsen³⁸. For example, it has been argued that environmental scarcities have had great adverse effects on populations, including violent conflicts in many parts of the developing world³⁹. In addition, it has been argued that these conflicts are especially expected to be more devastating in poor societies since they are less able to buffer themselves from environmental scarcities and the social crises they cause⁴⁰.

³¹ Ibid

³² Dukes. F., 'What we Know About Environmental Conflict Resolution: An Analysis Based on Research.' *Conflict Resolution Quarterly*, Volume 22, Issue 1-2

³³ Ibid

³⁴ Ibid

³⁵ Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

³⁶ Ibid

³⁷ Scheidel. A et al., 'Environmental Conflicts and Defenders: A Global Overview.' Op Cit

³⁸ Ibid

³⁹ Homer-Dixon, T.F., "Environmental scarcities and violent conflict: evidence from cases," *International Security* 19, No. 1 (1994): 5-40 at p. 6

⁴⁰ Ibid

Environmental conflicts are a major threat to the achievement of Sustainable Development⁴¹. According to UNEP, while natural resources are key to achieving Sustainable Development, they are also increasingly acting as drivers of fragility, conflict and violence⁴². It further asserts that as the global population continues to rise, the global demand for natural resources continues to grow, and the impacts of climate change begin to materialize, and therefore competition over natural resources is set to intensify, a situation that could spiral into more environmental conflicts⁴³. In addition, it has been contended that natural resource- based conflicts also are, directly and indirectly connected to and/or impact human development factors and especially the quest for social-economic development⁴⁴. It is therefore necessary to foster effective management of environmental conflicts in order to realize Sustainable Development.

3.0 Managing Environmental Conflicts through ADR: Opportunities and Challenges

ADR is an umbrella term that encompasses a set of processes that are applied to manage disputes without resort to adversarial litigation⁴⁵. It can also refer to a set of mechanisms that are applied in managing disputes that may be linked to but function outside formal court litigation processes⁴⁶. These processes include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among

⁴¹ United Nations Environment Programme., 'Environmental Cooperation and Peacebuilding.' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climate-change/environment-security/environmental-cooperation-and#:~:text=International%20law%2C%20environment%20and%20conflict,and%20reliance%20on%20conflict%20resources>. (Accessed on 18/01/2024)

⁴² Ibid

⁴³ Ibid

⁴⁴ Muigua. K., 'Managing Environmental Conflicts through Participatory Mechanisms for Sustainable Development in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Managing-Environmental-Conflicts-through-Participatory-Mechanisms-for-Sustainable-Development-in-Kenya-Kariuki-Muigua-August-2018.pdf> (Accessed on 18/01/2024)

⁴⁵ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁴⁶ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

others⁴⁷. ADR mechanisms have been recognized at the global level under the *Charter of the United Nations*⁴⁸. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration*, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice⁴⁹ (Emphasis added). At a national level, the *Constitution of Kenya*⁵⁰ embraces ADR mechanisms. It mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and TDRMs⁵¹.

ADR mechanisms are viewed as ideal in enhancing access to justice⁵². Access to justice has been recognized as a fundamental human right⁵³. It has been described as a basic principle of the rule of law⁵⁴. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable⁵⁵. It has been correctly observed that international standards recognize access to justice as both a basic human right and a means to protect other universally recognized human rights⁵⁶. Access to justice is at the heart of the United Nation's 2030 Agenda for Sustainable Development which acknowledges that sustainable peace and development cannot be achieved without justice⁵⁷. Sustainable Development Goal (SDG) 16 seeks to foster Peace, Justice and Strong Institutions with states committing to provide access to justice for all, recognizing it as a key indicator of peaceful and inclusive societies⁵⁸. At a national level, the Constitution of Kenya

⁴⁷ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁴⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁴⁹ Ibid, Article 33 (1)

⁵⁰ Constitution of Kenya, 2010., Government Printer, Nairobi

⁵¹ Ibid, Article 159 (2) (c)

⁵² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁵³ United Nations., 'Access to Justice.' Available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (Accessed on 19/01/2024)

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ American Bar Association., 'Human Rights and Access to Justice.' Available at https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/ (Accessed on 19/01/2024)

⁵⁷ 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 19/01/2024)

⁵⁸ Ibid, SDG 16

recognizes access to justice as a fundamental human right⁵⁹. It requires the state to ensure access to justice for all persons and that if any fee is required, it shall be reasonable and shall not impede access to justice⁶⁰.

Despite the recognition of access to justice as a basic human right at the global and national levels, it has been pointed out that the right of access to justice especially in developing countries has hitherto been hampered by many unfavourable factors such as high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow⁶¹. In light of the foregoing challenges, ADR mechanisms have been advocated as a viable option in enhancing access to justice⁶². ADR processes contain certain attributes which include informality, flexibility, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost- effective management of disputes which makes them ideal in enhancing access to justice⁶³.

It has been argued that ADR mechanisms can enhance Environmental Justice by promoting effective and efficient management of environmental conflicts⁶⁴. Environmental Justice is a concept that seeks to foster 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-making⁶⁵. Environmental Justice is attained when every person enjoys the same degree of protection from environmental and health hazards and has access to the decision-making process to have a healthy

⁵⁹ Constitution of Kenya, 2010., Government Printer, Nairobi

⁶⁰ Ibid

⁶¹ Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," *1 Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

⁶² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁶³ Ibid

⁶⁴ Grad. F.P., 'Alternative Dispute Resolution in Environmental Law.' *Columbia Journal of Environmental Law* Volume: 14, Issue 1

⁶⁵ Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at <https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml> (Accessed on 19/01/2024)

environment⁶⁶. It has been argued that enhancing access to justice in environmental matters is one of the key ways of promoting Environmental Justice⁶⁷.

ADR processes can foster Environmental Justice by enhancing access to justice in environmental matters due to their potential to promote effective and efficient management of environmental conflicts⁶⁸. For example, it has been opined that mediation has been effectively used to manage environmental disputes in areas such as land use, natural resource management, water resources, energy, air quality among others⁶⁹. In addition, it has been posited that ADR has been used with varying degrees of success in policy-making, standard setting, the determination of development choices, and in the enforcement of environmental standards⁷⁰.

The role of ADR mechanisms in managing environmental conflicts is recognized at both global and national levels. At the global level, the *Rio Declaration on Environment and Development*⁷¹ envisages the use of ADR mechanisms in managing environmental conflicts. Principle 10 of the Declaration 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)*⁷².

⁶⁶ United States Environmental Protection Agency; 'Environmental Justice.' Available at <https://www.epa.gov/environmentaljustice> (Accessed on 19/01/2024)

⁶⁷ Pickup, F., 'Five Steps to Environmental Justice.' Available at <https://www.undp.org/blog/five-stepsenvironmental-justice> (Accessed on 19/01/2024)

⁶⁸ Grad. F.P., 'Alternative Dispute Resolution in Environmental Law.' Op Cit

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ 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)

⁷² Ibid, Principle 10

It has been argued that principle 10 of the Rio Declaration encourages the use of ADR processes in managing environmental conflicts through its emphasis on three pillars of environmental governance: *information related to dangers to the environment should be available to the public, the public should participate in the decision-making process, methods and channels of accessing to justice should be available to all individuals*⁷³. ADR mechanisms such as mediation can realize these pillars by promoting participation, consensus building and access to justice in environmental matters⁷⁴.

In addition, the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*⁷⁵ also encourages the use of ADR techniques in managing environmental conflicts. The Convention urges states to pursue the management of disputes through negotiation or by any other means of dispute settlement acceptable to the parties to the dispute⁷⁶. It also permits parties to pursue binding methods like arbitration and adjudication if the amicable methods have failed⁷⁷.

Further, the *Paris Agreement*⁷⁸ also represents global efforts towards managing an environmental conflict through ADR mechanisms. It aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change⁷⁹. Adoption of the Paris Agreement saw the application of ADR mechanisms especially negotiation to respond to climate change which is a major environmental

⁷³ Alkhayer, J., 'Role of ADR Methods in Environmental Conflicts in the light of Sustainable Development.' Available at <https://iopscience.iop.org/article/10.1088/1755-1315/1084/1/012057/pdf> (Accessed on 19/01/2024)

⁷⁴ Ibid

⁷⁵ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters., Available at <https://unece.org/DAM/env/pp/documents/cep43e.pdf> (Accessed on 19/01/2024)

⁷⁶ Ibid, Article 16

⁷⁷ Ibid

⁷⁸ Paris Agreement., United Nations, 2015., Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 19/01/2024)

⁷⁹ Ibid, Article 2 (1) (a)

problem⁸⁰. The 2015 United Nations Climate Change Conference (COP 21) in Paris saw 195 nations participate in *negotiating* a framework to curb emissions and take common action on climate change (Emphasis added)⁸¹.

Further, at a national level, the *Environment and Land Court Act*⁸² of Kenya encourages the Environment and Land Court (ELC) to embrace the use of ADR mechanisms to manage environmental conflicts⁸³. The Act provides that the ELC may adopt and implement, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of Alternative Dispute Resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution⁸⁴. In addition, the *Community Land Act of Kenya*⁸⁵ also encourages settlement of disputes relating to community land through ADR methods including traditional dispute and conflict resolution mechanisms where it is appropriate to do so⁸⁶. In particular, the Act recognizes the use of mediation and arbitration in managing disputes relating to community land⁸⁷.

The role of ADR mechanisms in managing environmental conflicts is therefore well entrenched in law. It has been argued that certain benefits of ADR processes make them suited for use in resolving environmental problems⁸⁸. For instance, the processes that permit the greatest degree of party autonomy, such negotiation, conciliation, and mediation, are informal, cost-effective, and give parties the freedom to come up with their own creative and long-term solutions to environmental problems⁸⁹. For example, it has been argued that ADR mechanisms can aid parties to environmental conflicts, such as those involving the implementation of environmental projects, to come up

⁸⁰ Dani. R., 'Role of Alternative Dispute Resolution in Environmental Disputes.' Available at <https://viamediationcentre.org/readnews/NTE3/Role-of-Alternative-Dispute-Resolution-in-Environmental-Disputes> (Accessed on 19/01/2024)

⁸¹ Ibid

⁸² Environment and Land Court Act., No. 19 of 2011, Government Printer, Nairobi

⁸³ Ibid, Article 20

⁸⁴ Ibid, Article 20 (1)

⁸⁵ Community Land Act., No. 27 of 2016., Government Printer, Nairobi

⁸⁶ Ibid, S 39 (1)

⁸⁷ Ibid, S 40 & 41

⁸⁸ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

⁸⁹ Ibid

with creative remedies over and above traditional remedies available in litigation⁹⁰. Therefore, instead of cancelling projects, parties through ADR processes such as negotiation and mediation can agree and come up with mutually acceptable solutions such as effective mitigation measures taking into account their respective needs and concerns⁹¹.

ADR mechanisms can also promote effective management of environmental conflicts by encouraging consensus building and participatory approaches towards conflict management⁹². It has been pointed out that ADR mechanisms especially mediation can foster community involvement in the conflict management process through the use of peace committees, Non-Governmental Organisations, religious bodies, among other bodies within communities⁹³. This process can facilitate effective management of conflicts by addressing the root causes of such conflicts⁹⁴. Therefore, in case of environmental conflicts, mediation affords parties an opportunity to sustain or improve their relationships which is important especially in cases of environmental projects such as those related to energy, water and infrastructure whose completion may be for the larger good of every person involved⁹⁵. By encouraging participation and consensus building, ADR mechanisms encourage amicable management of environmental conflicts and provide the basis for sustained relationships which is especially important where environmental projects are involved⁹⁶.

⁹⁰ Higgs. S., 'The Potential for Mediation to Resolve Environmental and Natural Resources Disputes.' Available at https://www.acctm.org/docs/The%20Potential%20For%20Mediation%20to%20Resolve%20Environmental%20CONNOR-Higgs_.pdf (Accessed on 19/01/2024)

⁹¹ Ibid

⁹² Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 19/01/2024)

⁹³ Muigua. K., 'Natural Resource Conflicts: Addressing Inter-Ethnic Strife through Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2019/09/Natural-Resource-ConflictsAddressing-Inter-Ethnic-Strife-Through-Environmental-Justice-in-kenya-Kariuki-Muigua-7th-September2019.pdf> (Accessed on 19/01/2024)

⁹⁴ Ibid

⁹⁵ Higgs. S., 'The Potential for Mediation to Resolve Environmental and Natural Resources Disputes.'

Op Cit

⁹⁶ Ibid

From the foregoing, it is evident that ADR mechanisms are viable in managing environmental conflicts. Further, in light of climate change concerns and the need to transition towards green economies, it has been argued that ADR mechanisms will be increasingly useful in managing environmental and sustainability disputes such as those concerning renewable energy, carbon reduction, waste management, electrification, sustainable transport and infrastructure among others⁹⁷.

ADR mechanisms play crucial role in managing specific types of environmental conflicts and problems. For example, it has been argued that negotiation plays a critical role in environmental resource management which is vital step in minimizing environmental conflicts⁹⁸. Negotiation as an ADR mechanism often involves a discussion between two or more parties with conflicting interests aiming to reach an agreement⁹⁹. Negotiation has been at the heart of environmental conflict management and has resulted in the adoption of numerous global, continental and regional instruments aimed at addressing specific environmental problems and issues including climate change, conservation of biodiversity, pollution, and the management of specific natural resources including land, forests, water and wetlands, wildlife, the blue economy among others¹⁰⁰.

In addition, mediation has been advanced as a vital tool in preventing and resolving environmental and natural resources conflicts¹⁰¹. It has been observed that natural resources such as land, timber, water as well as extractive resources have played an important role in igniting and prolonging conflict particularly in fragile states where management and oversight of such resources is often weak¹⁰². Mediation is seen as a

⁹⁷ World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability.' Available at <https://www.wipo.int/amc/en/center/specific-sectors/greentechnology-sustainability/> (Accessed on 19/01/2024)

⁹⁸ Eshragh. F., Pooyandeh. M., & Marceau. D., 'Automated Negotiation in Environmental Resource Management: Review and Assessment.' *Journal of Environmental Management.*, Volume 162, No. 1 (2015)

⁹⁹ Ibid

¹⁰⁰ International Institute for Sustainable Development., 'Negotiations.' Available at <https://enb.iisd.org/negotiations> (Accessed on 19/01/2024)

¹⁰¹ United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Available at <https://www.unep.org/news-and-stories/press-release/mediation-can-prevent-resolve-natural-resources-disputes-new-un> (Accessed on 19/01/2024)

¹⁰² Ibid

viable tool in managing such conflicts by focusing on a broad range of benefits tied to natural resources, including employment opportunities, revenue, services, access and infrastructure¹⁰³. Attributes of mediation including voluntary participation and agreement, confidentiality of exchanges among parties, the search of mutually satisfactory solutions have been identified as well suited for the multi-party complex context of environmental conflicts¹⁰⁴.

Finally, arbitration can provide an avenue for the effective and efficient management of complex environmental conflicts such as those related to climate change and energy¹⁰⁵. Arbitration allows parties to select a third party with requisite knowledge and experience in such matters in order to promote effective management of their conflict¹⁰⁶. Further, due to its transnational applicability, arbitration can be effectively utilized in managing environmental conflicts involving parties from different jurisdictions¹⁰⁷. It has been observed that environmental conflicts may involve parties from different nationalities since the effects of issues such as pollution and climate change may spread across different states¹⁰⁸. Such disputes cannot be managed by national courts due to jurisdictional concerns¹⁰⁹. ADR mechanisms such as arbitration and mediation are able to promote management of such disputes since they apply across multiple jurisdictions and further guarantee enforcement of decisions¹¹⁰.

It therefore emerges that ADR techniques are viable in managing environmental conflicts. However, it has been contended that ADR processes have not been given an adequate chance within the framework of environmental conflict management¹¹¹.

¹⁰³ Ibid

¹⁰⁴ Kaufman. S., 'Mediation in Environmental Disputes.' Available at <https://www.eolss.net/sample-chapters/c14/E1-40-03-03.pdf> (Accessed on 19/01/2024)

¹⁰⁵ Muigua. K., 'The Viability of Arbitration in management of Climate Change Related Disputes in Kenya' Available at <http://kmco.co.ke/wp-content/uploads/2022/04/The-Viability-of-Arbitration-inmanagement-of-Climate-Change-Related-Disputes-in-Kenya-11th-April-2022.pdf> (Accessed on 19/01/2024)

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Elborough. L., 'International Climate Change Litigation: Limitations and Possibilities for International Adjudication and Arbitration in Addressing the Challenge of Climate Change.' Available at <http://www.nzlii.org/nz/journals/NZJLEnvLaw/2017/5.pdf> (Accessed on 19/01/2024)

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

UNEP posits that despite their viability, ADR mechanism such as negotiation and mediation are often underutilized in the context of conflicts involving natural resources¹¹². It is also necessary to address some of the challenges inherent in ADR mechanisms such as power imbalances, enforceability challenges and lack of urgent protection measures such as injunctions in order to encourage the use of these processes in managing environmental conflicts¹¹³.

4.0 Way Forward

ADR mechanisms can promote effective and efficient management of environmental conflicts. They allow parties to enjoy autonomy over the process and outcome and have the ability to foster expeditious, cost-effective, flexible and non-complex management of disputes¹¹⁴. They also allow parties to come up with creative remedies over and above traditional remedies available in litigation¹¹⁵. It is therefore necessary to embrace ADR processes in order to foster effective management of environmental conflicts.

It is also important to continuously modify the legal and institutional framework on ADR at all levels including national levels in order to enhance the uptake of these

¹¹² United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

¹¹³ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Op Cit

¹¹⁴ Muigua. K. & Kariuki. F., 'Towards Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Towards-Environmental-Justice-in-Kenya-January2015.pdf> (Accessed on 19/01/2024)

¹¹⁵ Higgs. S., 'The Potential for Mediation to Resolve Environmental and Natural Resources Disputes.' Op Cit

mechanisms in environmental conflicts¹¹⁶. ADR mechanisms such as mediation and arbitration have been well embraced in some kind of disputes especially those that are commercial in nature¹¹⁷. However their role in environmental conflict management is yet to be fully entrenched¹¹⁸. By continuously refining the legal and institutional framework on ADR, these mechanisms can become more utilized in managing environmental among other types of conflicts¹¹⁹.

It is also necessary for States to encourage the use of ADR mechanisms in environmental governance and conflict management¹²⁰. States play a fundamental role in environmental governance and are often responsible for formulating laws, policies and best approaches towards managing the environment¹²¹. Through this role, states and their institutions can encourage the use of ADR mechanisms in environmental governance and management¹²². For example, the Constitution of Kenya urges the state to encourage public participation in the management, protection and conservation of the environment¹²³. It has correctly been pointed out that fostering public participation which is a fundamental principle in the Environmental Justice debate involves the use of ADR processes such as negotiation and mediation¹²⁴. Therefore by encouraging the use of ADR mechanisms in environmental governance and conflict management, the state can fulfil its obligations in respect of the environment including the need to promote public participation in the management, protection and conservation of the environment¹²⁵.

In addition, state institutions such as the Judiciary also have a role to play in promoting the use of ADR mechanisms in managing environmental conflicts. For

¹¹⁶ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

¹¹⁷ Ibid

¹¹⁸ United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

¹¹⁹ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

¹²⁰ Ibid

¹²¹ Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

¹²² Ibid

¹²³ Constitution of Kenya., 2010., Article 69 (1) (d) Government Printer, Nairobi

¹²⁴ Grad. F., 'Alternative Dispute Resolution in Environmental Law.' *Columbia Journal of Environmental Law*, Volume: 14 Issue: 1

¹²⁵ Ibid

example, in Kenya the Environment and Land Court Act¹²⁶ encourages the Environment and Land Court (ELC) to embrace the use of ADR mechanisms to manage environmental conflicts¹²⁷. The Act provides that the ELC may adopt and implement, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of Alternative Dispute Resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159 (2) (c) of the Constitution¹²⁸. In addition, the Act provides that where an ADR mechanism is a condition precedent to any proceedings before the Court, the Court shall stay proceedings until such condition is fulfilled¹²⁹. The ELC can therefore foster the use of ADR mechanisms in managing environmental conflicts by referring cases to ADR. It has been argued that the ELC can adopt and implement environmental ADR by promoting supervised ADR (also referred to as court annexed ADR) or judicial referral of a dispute to an appropriate ADR process¹³⁰. Courts therefore have an important role to play in promoting the use of ADR in managing environmental conflicts.

Finally, it has been contended that the suitability of ADR mechanisms in managing environmental conflicts can be enhanced by addressing the inadequacies inherent in some ADR mechanisms such as lack of formal recognition and enforcement of outcomes¹³¹. As a result, there is a need for all countries to enact sound legal and policy frameworks for effective utilization of ADR to ensure full access to justice in all areas¹³². This will promote legitimization of ADR mechanisms thus enabling their advantages to be realized across different sectors including environmental

¹²⁶ Environment and Land Court Act., No. 19 of 2011, Government Printer, Nairobi

¹²⁷ Ibid, S 20

¹²⁸ Ibid, S 20 (1)

¹²⁹ Ibid, S 20 (2)

¹³⁰ Ingonga. R. M., 'Alternative Dispute Resolution in Environmental Disputes: A Case of the Specialized Environment and Land Court in Kenya' *Journal of Conflict Management and Sustainable Development*, Volume 2 (1) (2018)

¹³¹ Ansari. A et al., 'Alternative Dispute Resolution in Environmental and Natural Resource Disputes.' *Journal of the Indian Law Institute*, Volume 59, No.1, 2017

¹³² Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISINGALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 19/01/2024)

governance¹³³. For example, in Kenya, adoption of the *Alternative Justice Systems Framework Policy*¹³⁴ is a vital step in mainstreaming ADR mechanisms and enhancing their uptake in managing a wide range of conflicts including environmental conflicts¹³⁵.

The foregoing measures among others are necessary in order to promote efficient management of environmental conflicts through ADR.

5.0 Conclusion

Environmental conflicts are a major threat to the achievement of Sustainable Development¹³⁶. These conflicts are directly and indirectly connected to and/or impact human development factors and especially the quest for social-economic development¹³⁷. It is therefore necessary to foster effective management of environmental conflicts in order to realize Sustainable Development. ADR mechanisms are ideal in managing environmental conflicts. These techniques encourage participation and consensus building and can enable parties to craft creative and long-term solutions to environmental problems¹³⁸. However, despite their advantages, ADR processes have not been given an adequate chance within the framework of environmental conflict management¹³⁹. In addition, certain challenges such as power imbalances, enforceability challenges and lack of urgent protection measures such as injunctions could potentially limit the suitability of ADR mechanisms in managing environmental conflicts¹⁴⁰. It is imperative address such

¹³³ Ibid

¹³⁴ The Judiciary of Kenya., 'Alternative Justice Systems Framework Policy.' Available at https://www.unodc.org/documents/easternafrika/Criminal%20Justice/AJS_Policy_Framework_2020_Kenya.pdf (Accessed on 19/01/2024)

¹³⁵ Muigua. K., 'Mainstreaming Alternative Justice Systems in Africa.' Available at <https://kmco.co.ke/wp-content/uploads/2023/11/Mainstreaming-Alternative-Justice-Systems-in-Africa.pdf> (Accessed on 19/01/2024)

¹³⁶ United Nations Environment Programme., 'Environmental Cooperation and Peacebuilding.' Op Cit

¹³⁷ Muigua. K., 'Managing Environmental Conflicts through Participatory Mechanisms for Sustainable Development in Kenya.' Op Cit

¹³⁸ Ibid

¹³⁹ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

¹⁴⁰ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Op Cit

concerns in order to enhance management of environmental conflicts through ADR. This can be achieved through enhancing the uptake of ADR processes in environmental conflicts, strengthening the legal and institutional framework on ADR at all levels, encouraging the use of ADR mechanisms in environmental governance and management by the state and its institutions, and addressing the underlying concerns in ADR such as enforceability challenges and power imbalances¹⁴¹. Managing environmental conflicts through ADR is a noble and achievable endeavour towards Sustainable Development.

¹⁴¹ Ansari. A et al., 'Alternative Dispute Resolution in Environmental and Natural Resource Disputes.' Op Cit; Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Op Cit; Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

References

Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience'
Available at

<https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml>

Alkhayer. J., 'Role of ADR Methods in Environmental Conflicts in the light of Sustainable Development.' Available at

<https://iopscience.iop.org/article/10.1088/1755-1315/1084/1/012057/pdf>

American Bar Association., 'Human Rights and Access to Justice.' Available at

https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/

Ansari. A et al., 'Alternative Dispute Resolution in Environmental and Natural Resource Disputes.' *Journal of the Indian Law Institute*, Volume 59, No.1, 2017

Bercovitch. J., 'Conflict and Conflict Management in Organizations: A Framework for Analysis.' Available at

<https://ocd.lcwu.edu.pk/cfiles/International%20Relations/EC/IR-403/Conflict.ConflictManagementinOrganizations.pdf>

Community Land Act., No. 27 of 2016., Government Printer, Nairobi

Constitution of Kenya, 2010., Government Printer, Nairobi

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters., Available at

<https://unece.org/DAM/env/pp/documents/cep43e.pdf>

Dani. R., 'Role of Alternative Dispute Resolution in Environmental Disputes.'

Available at <https://viamediationcentre.org/readnews/NTE3/Role-of-Alternative-Dispute-Resolution-in-Environmental-Disputes>

Demmers. J., 'Theories of Violent Conflict: An Introduction' (Routledge, New York, 2012)

Dukes. F., 'What we Know About Environmental Conflict Resolution: An Analysis Based on Research.' *Conflict Resolution Quarterly.*, Volume 22, Issue 1-2

Dukes. F., 'What we Know About Environmental Conflict Resolution: An Analysis Based on Research.' *Conflict Resolution Quarterly.*, Volume 22, Issue 1-2

Elborough. L., 'International Climate Change Litigation: Limitations and Possibilities for International Adjudication and Arbitration in Addressing the Challenge of Climate Change.' Available at <http://www.nzlii.org/nz/journals/NZJLEnvLaw/2017/5.pdf>

Environment and Land Court Act., No. 19 of 2011, Government Printer, Nairobi

Eshragh. F., Pooyandeh. M., & Marceau. D., 'Automated Negotiation in Environmental Resource Management: Review and Assessment.' *Journal of Environmental Management.*, Volume 162, No. 1 (2015)

Grad. F., 'Alternative Dispute Resolution in Environmental Law.' *Columbia Journal of Environmental Law*, Volume: 14 Issue: 1

Grad. F.P., 'Alternative Dispute Resolution in Environmental Law.' *Columbia Journal of Environmental Law* Volume: 14, Issue 1

Higgs. S., 'The Potential for Mediation to Resolve Environmental and Natural Resources Disputes.' Available at https://www.acctm.org/docs/The%20Potential%20For%20Mediation%20to%20Resolve%20Environmental%20_CONNOR-Higgs_.pdf

Homer-Dixon, T.F., "Environmental scarcities and violent conflict: evidence from cases," *International Security* 19, No. 1 (1994): 5-40 at p. 6

Ingonga. R. M., 'Alternative Dispute Resolution in Environmental Disputes: A Case of the Specialized Environment and Land Court in Kenya' *Journal of Conflict Management and Sustainable Development*, Volume 2 (1) (2018)

International Institute for Sustainable Development., 'Negotiations.' Available at <https://enb.iisd.org/negotiations>

Kaufman. S., 'Mediation in Environmental Disputes.' Available at <https://www.eolss.net/sample-chapters/c14/E1-40-03-03.pdf>

Leeds. C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners.' *International Journal of Peace Studies*, Volume 2, No. 2, 1997

Libiszewski. S., 'What is an Environmental Conflict?' Available at https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/What_is_Environment_Conflict_1992.pdf

Mahler. D. G., & Vishwanath. T., 'When the Consequences of Conflicts Last Generations: Intergenerational Mobility in Iraq and Vietnam.' Available at <https://blogs.worldbank.org/dev4peace/when-consequences-conflicts-last-generations-intergenerational-mobility-iraq-and-vietnam#:~:text=They%20include%20deaths%20and%20injuries,of%20social%20and%20economic%20systems.>

Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-KenyaRevised-version-of-20.10.14.pdf>

Muigua. K. & Kariuki. F., 'Towards Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Towards-Environmental-Justice-in-Kenya-January2015.pdf>

Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf>

Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/Environmental-Conflict-Management-Institutions-and-Approaches.pdf> (Accessed on 18/01/2024)

Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISINGALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf>

Muigua. K., 'Mainstreaming Alternative Justice Systems in Africa.' Available at <https://kmco.co.ke/wp-content/uploads/2023/11/Mainstreaming-Alternative-Justice-Systems-in-Africa.pdf>

Muigua. K., 'Managing Environmental Conflicts through Participatory Mechanisms for Sustainable Development in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Managing-Environmental-Conflicts-through-Participatory-Mechanisms-for-Sustainable-Development-in-Kenya-Kariuki-Muigua-August-2018.pdf>

Muigua. K., 'Natural Resource Conflicts: Addressing Inter-Ethnic Strife through Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2019/09/Natural-Resource-ConflictsAddressing-Inter-Ethnic-Strife-Through-Environmental-Justice-in-kenya-Kariuki-Muigua-7th-September2019.pdf>

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

Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Moving-from-Alternative-to-Appropriate-Dispute-Resolution-1.pdf>

Muigua. K., 'The Viability of Arbitration in management of Climate Change Related Disputes in Kenya' Available at <http://kmco.co.ke/wp-content/uploads/2022/04/The-Viability-of-Arbitration-inmanagement-of-Climate-Change-Related-Disputes-in-Kenya-11th-April-2022.pdf>

Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

Paris Agreement., United Nations, 2015., Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Pickup. F., 'Five Steps to Environmental Justice.' Available at <https://www.undp.org/blog/five-stepsenvironmental-justice>

Putnam. L., 'Definitions and Approaches to Conflict and Communication.' Available at

https://www.researchgate.net/profile/L_Putnam/publication/292654875_Definitions_and_approaches_to_conflict_and_communication/links/6483440ab3dfd73b776fe6ef/Definitions-and-approaches-to-conflict-and-communication.pdf

Scheidel. A et al., 'Environmental Conflicts and Defenders: A Global Overview.' *Global Environmental Change*, 63 (2020)

Scheidel. A et al., 'Environmental Conflicts and Defenders: A Global Overview.' Op Cit

The Judiciary of Kenya., 'Alternative Justice Systems Framework Policy.' Available at https://www.unodc.org/documents/easternafrika/Criminal%20Justice/AJS_Policy_Framework_2020_Kenya.pdf

United Nations Environment Programme., 'Disasters and Conflicts.' Available at <https://www.unep.org/regions/europe/regional-initiatives/disasters-and-conflicts>

United Nations Environment Programme., 'Environmental Cooperation and Peacebuilding.' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climate-change/environment-security/environmental-cooperation-and#:~:text=International%20law%2C%20environment%20and%20conflict,and%20reliance%20on%20conflict%20resources.>

United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Available at <https://www.unep.org/news-and-stories/press-release/mediation-can-prevent-resolve-natural-resources-disputes-new-un>

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%20Sustainable%20Development%20web.pdf>

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

United Nations., 'Access to Justice.' Available at

<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

United Nations., 'No Peace, No Sustainable Development: A Vicious Cycle that We Can Break.' Available at <https://www.un.org/en/chronicle/article/no-peace-no-sustainable-development-vicious-cycle-we-can-break>

United States Environmental Protection Agency; 'Environmental Justice.' Available at <https://www.epa.gov/environmentaljustice>

Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability.' Available at <https://www.wipo.int/amc/en/center/specific-sectors/greentechnology-sustainability/>