

Managing Transboundary Natural Resource Disputes through Alternative Dispute Resolution

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Managing Transboundary Natural Resource Disputes through Alternative Dispute Resolution

Kariuki Muigua*

Abstract

This paper critically explores the role of Alternative Dispute Resolution (ADR) processes in managing transboundary natural resource conflicts and disputes. The paper examines the nature, causes and effects of transboundary natural resource conflicts and disputes. It argues that transboundary natural resource conflicts and disputes are a threat to international peace, stability, and development. The paper posits that ADR mechanisms are ideal in managing transboundary natural resource conflicts and disputes. It suggests ways through which ADR techniques can be harnessed in order to effectively managed transboundary natural resource disputes for Sustainable Development.

1.0 Introduction

Natural resources are central to human wellbeing¹. They play a fundamental role in the life of human beings which may be classified as economic, social and cultural². Economically, natural resources are not only a source of food and raw materials but are also a source of income for many individuals and the state³. Socially, natural resources like water bodies play recreational role amongst others and also contribute to the improvement of the quality of life of individuals⁴. Culturally, communities especially in

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¹ International Institute for Sustainable Development., 'The Sustainable Use of Natural Resources: The Governance Challenge' Available at <https://www.iisd.org/articles/deep-dive/sustainable-use-natural-resources-governance-challenge> (Accessed on 26/06/2024)

² Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

³ Costanza. R., 'The Ecological, Economic, and Social Importance of the Oceans.' *Ecological Economics*, Volume 31, No. 2 (1999)

⁴ Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Op Cit

Africa attach importance to some natural resources such as forests that may be revered as shrines, dwelling places for ancestors and sacred sites where rites of passage and other cultural celebrations take place⁵. For example, among the Mijikenda community in Kenya, the Kaya Forests are regarded as the abodes of ancestors and are revered as sacred sites and, as such, are maintained by the council of elders⁶. The Kaya Forests are seen as a defining characteristic of Mijikenda identity.

Natural resources are therefore vital for human well-being. They are essential for sustaining life by providing key ecosystems services and driving socio-economic development⁷. They provide food, raw materials, energy, and shelter while also maintaining environmental balance⁸. The *2030 Agenda for Sustainable Development*⁹ acknowledges that social and economic development depends on the sustainable management of the planet's natural resources. It urges all countries to conserve and sustainably use oceans and seas, freshwater resources forests, mountains and drylands and to protect biodiversity, ecosystems and wildlife¹⁰.

Despite their key economic, social, and cultural benefits, natural resources are also a major source of conflicts and disputes. It has been noted that when natural resources are poorly managed or inequitably shared, or when business operations are implemented without due consideration for context and communities, they can contribute to tensions that can escalate into violent conflict, or feed into and exacerbate pre-existing conflict dynamics¹¹. It has been opined that natural resource conflicts can be useful in helping

⁵ Ibid

⁶ United Nations Educational, Scientific and Cultural Organization., 'Sacred Mijikenda Kaya Forests' Available at <https://whc.unesco.org/en/list/1231/> (Accessed on 26/06/2024)

⁷ Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Op Cit

⁸ Ibid

⁹ 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>

¹⁰ Ibid

¹¹ Ibid

communities to clarify interests and needs and in reducing possible injustices or inequities in resource distribution¹². However, some natural resource conflicts have to be addressed effectively and in good time or they will upset local livelihoods by undermining trust among stakeholders and increasing insecurity and resource degradation¹³. Effective management of natural resource conflicts and disputes is therefore vital for Sustainable Development¹⁴.

This paper critically explores the role of Alternative Dispute Resolution (ADR) processes in managing transboundary natural resource conflicts and disputes. The paper examines the nature, causes and effects of transboundary natural resource conflicts and disputes. It argues that transboundary natural resource conflicts and disputes are a threat to international peace, stability, and development. The paper posits that ADR mechanisms are ideal in managing transboundary natural resource conflicts and disputes. It suggests ways through which ADR techniques can be harnessed in order to effectively managed transboundary natural resource disputes for Sustainable Development.

2.0 Transboundary Natural Resource Conflicts: Nature, Causes and Effects

Transboundary or shared natural resources are resources that cross the political boundaries of two more states¹⁵. Transboundary natural resources have also been defined as natural resources that are transected in their natural state by a political boundary such as a national frontier¹⁶. It has been noted that the plants, animals, micro-organisms,

¹² Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Available at <https://www.fao.org/4/a0032e/a0032e04.htm> (Accessed on 26/06/2024)

¹³ Ibid

¹⁴ Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf> (Accessed on 26/06/2024)

¹⁵ Dhliwayo, M., "Legal Aspects of Trans-Boundary Natural Resources Management in Southern Africa," *In Commons in an Age of Globalisation,* the Ninth Conference of the International Association for the Study of Common Property, 2002.

¹⁶ Beyene, Z. & Wadley, I., 'Common goods and the common good: Transboundary natural resources, principled cooperation, and the Nile Basin Initiative,' Breslauer Symposium on Natural Resource Issues in Africa, Center for African Studies, UC Berkeley, 2004, p. 3, Paper presented as part of the Breslauer

waters, weather systems, and other elements that constitute the environment do not remain within jurisdictional boundaries¹⁷. More often than not, they cross the political boundaries between and among nations¹⁸. When this occurs, the environmental issues of mutual concern that arise from the shared natural area, resource, system, or migratory species are called “transboundary”¹⁹.

Transboundary natural resources pose particular problems for the international community²⁰. The peaceful management and utilization of transboundary natural resources is a universal aspiration²¹. However, it has been noted that the principles and norms governing international cooperation over transboundary natural resources are often just as contested as the ownership of the resources²². Several principles govern the management of transboundary natural resources. These principles include the general principle of not causing transboundary harm which requires states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction²³; the principle of cooperation in the management and use of transboundary natural resources²⁴; the principle of equitable and reasonable utilization²⁵; the principle of public participation²⁶;

Graduate Symposium on Natural Resource Issues in Africa - held March 5th, 2004 at UC Berkeley. Available at <http://escholarship.org/uc/item/9492s0k4> (Accessed on 26/06/2024)

¹⁷ United Nations Environment Programme., ‘Transboundary Issues’ Available at https://na.unep.net/atlas/dAtlas/sites/default/files/unepsiouxfalls/atlasbook_1135/Kenya_Screen_Chapter3.pdf (Accessed on 26/06/2024)

¹⁸ Ibid

¹⁹ Ibid

²⁰ Haile. Z., & Wadley. I., ‘Common Goods and the Common Good: Transboundary Natural Resources, Principled Cooperation, and the Nile Basin Initiative.’ Available at https://escholarship.org/content/qt7dd7p4w1/qt7dd7p4w1_noSplash_cccc3e7751c3b2094c902ea6a06e207b.pdf (Accessed on 26/06/2024)

²¹ Ibid

²² Ibid

²³ Muigua. K., ‘Managing Transboundary Natural Resources in Kenya’ Available at <https://kmco.co.ke/wp-content/uploads/2018/11/Managing-Transboundary-Natural-Resources-in-Kenya-Kariuki-Muigua-26th-November-2018.pdf> (Accessed on 26/06/2024)

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

and peaceful settlement of disputes²⁷. However, these principles are often neglected in most instances resulting in several challenges in the management of transboundary natural resources.

It has been noted that there is increasing water demands in the transboundary rivers and lakes due to rising populations resulting in loss of biodiversity and diminished ecosystem services²⁸. Further, transboundary forest parks are witnessing increasing deforestation and biodiversity losses²⁹. In addition, it has been pointed out that the destruction of mangroves is threatening the sustainable livelihoods of millions of riverine communities across jurisdictions³⁰. Cooperative environmental management and policymaking to address issues of mutual concern over transboundary natural resources is also difficult to achieve since laws and regulations usually differ on either side of a border and there are many institutional players with different agendas and mandates³¹.

Challenges in the management of transboundary natural resources are usually worsened by climate change³². It has been noted that climate changes impact transboundary rivers, lakes, connected wetlands and melting of mountain snowpack and glaciers³³. Changing hydrologies as a result of climate change could drastically reduce water availability for all countries that share the water, alter flood and drought risks and impact ecosystem

²⁷ Ibid

²⁸ African Development Bank Group., 'Transboundary Natural Resources Management in a Changing Climate - The Case of Shared Watersheds in Africa' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Transboundary%20Natural%20Resources%20Management%20in%20a%20Changing%20Climate%20E2%80%93%20The%20Case%20of%20Shared%20Watersheds%20in%20Africa%20-%20CoP%20AD%20E2%80%9018%20Side%20Event%20Concept%20Note.pdf> (Accessed on 26/06/2024)

²⁹ Ibid

³⁰ Ibid

³¹ United Nations Environment Programme., 'Transboundary Issues' Op Cit

³² African Development Bank Group., 'Transboundary Natural Resources Management in a Changing Climate - The Case of Shared Watersheds in Africa' Op Cit

³³ Opitz-Stapleton. S et al., 'Transboundary Climate and Adaptation Risks in Africa: Perceptions From 2021' Available at https://www.sparc-knowledge.org/sites/default/files/documents/resources/odi-sparctcar-report_cp_amended_web.pdf (Accessed on 26/06/2024)

resilience³⁴. In addition, fish stocks already under pressure from overfishing in shared inland lakes and rivers, or marine waters, are further impacted by climate change, such as rising water temperatures resulting in algal blooms and fish die-off³⁵. The variability in river flows, erratic precipitation levels, increasing temperatures and sea level rise as a result of climate change affects the sustainable use of transboundary natural resources³⁶.

The foregoing challenges in the management and use of transboundary natural resources often trigger conflicts. Such conflicts can arise when an environmental problem caused in one nation spills over into another³⁷. In addition, conflicts are bound to arise due to difficulties in balancing interests of all the concerned parties³⁸. It has been noted that in many cases state consent is required before a decision is taken concerning a certain shared natural resource³⁹. However, consent is at times difficult to get since most States usually want to benefit most from these resources and they also jealously guard the sovereignty that they have over the natural resources within their territories⁴⁰.

Transboundary natural resource disputes often flow from vital resources such as water⁴¹. Shared water resources have been identified as a key source of conflicts⁴². As competition for water resources grows, tensions are inevitable⁴³. Disputes can occur between countries, livelihood groups, or economic sectors when unexpected changes take place in

³⁴ Ibid

³⁵ Ibid

³⁶ African Development Bank Group., 'Transboundary Natural Resources Management in a Changing Climate - The Case of Shared Watersheds in Africa' Op Cit

³⁷ United Nations Environment Programme., 'Transboundary Issues' Op Cit

³⁸ Fulazzaky, M., 'Challenges of Integrated Water Resources Management in Indonesia,' *Water* 6, No. 7 (2014): 2000-2020.

³⁹ Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Op Cit

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAUNEP2015_0.pdf (Accessed on 27/06/2024)

the availability or quality of the water supply⁴⁴. Such changes may be caused by human activities such as construction of dams, irrigation, pollution, overuse, natural variation, extreme events including floods and droughts or climate change⁴⁵. It has been noted that shared water resources can serve as a platform to build cooperation between parties in conflict when effective governance mechanisms are in place⁴⁶. However, in the absence of such systems, conflicts could spiral threatening peace, security, and sustainability⁴⁷. These conflicts in shared water resources are often caused by factors such as mounting pressures on water supplies, climate change, major infrastructure development. For example, the construction of the Gibe III dam along River Omo in Ethiopia resulted in a dispute between Kenya and Ethiopia since the River is a major source of water for Lake Turkana in Kenya⁴⁸.

It has also been pointed out that pollution can affect freshwater sources such as lakes, rivers, and groundwater aquifers, as well as marine resources, thereby having potential transboundary impacts⁴⁹. For example, water quality in the Mara Basin, a shared resource between Kenya and Tanzania, faces a number of threats including sedimentation from river bank erosion, continued deforestation and degradation, and water pollution⁵⁰. These issues have the potential to hamper access to water, sanitation and hygiene services, negatively impacting health and livelihoods and further fueling transboundary disputes⁵¹.

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ The Guardian., 'Ethiopia Dam will turn Lake Turkana into 'endless battlefield', locals warn' Available at <https://www.theguardian.com/global-development/2015/jan/13/ethiopia-gibe-iii-dam-kenya> (Accessed on 27/06/2024)

⁴⁹ United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

⁵⁰ Global Waters., 'Why the Mara River Basin?' Available at <https://www.globalwaters.org/resources/blogs/swp/why-mara-river-basin> (Accessed on 27/06/2024)

⁵¹ Ibid

Transboundary natural resources disputes can also flow from shared wildlife ecosystems⁵². For example, the Mara/Serengeti, a shared ecosystem between Kenya and Tanzania has often been a source of disputes due to human activities such as poaching, illegal wildlife trade, uncontrolled human settlement, and degradation of wildlife habitats⁵³. As a result, it has been noted that there is need to enhance cooperation and coordination among the stakeholders across the borders in order to effectively tackle these challenges⁵⁴.

The exploitation of transboundary resources is therefore usually coupled with conflicts between and among states⁵⁵. It is therefore vital to ensure that whatever conflicts arise they are settled amicably⁵⁶. This is to ensure that conflicts emanating from the use of shared natural resources are eliminated and that natural resources have beneficial impact on states⁵⁷. If not settled amicably, transboundary natural resource disputes could threaten peace and sustainability and affect livelihoods depending on such resources⁵⁸. It has been noted that opportunities for cooperation and peace building exist within the framework of transboundary natural resources⁵⁹. ADR processes are therefore ideal in managing transboundary natural resource disputes due to their potential to foster cooperation and peace building⁶⁰.

⁵² Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Op Cit

⁵³ Republic of Kenya., Ministry of Tourism & Wildlife., 'Kenya-Tanzania Explore Possibilities of Trans-Boundary Collaboration To Stop Poaching And Illegal Wildlife Trade' Available at <https://www.tourism.go.ke/kenya-tanzania-explore-possibilities-of-trans-boundary-collaboration-to-stop-poaching-and-illegal-wildlife-trade-06-09-2023/> (Accessed on 27/06/2024)

⁵⁴ Ibid

⁵⁵ Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Op Cit

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Roberts. A., 'The Role of Transboundary Natural Resource Management In Peace Building Across International Borders' Available at <https://www.cbd.int/doc/pa/tools/The%20Role%20of%20Transboundary%20Natural%20Resource%20Management%20In%20Peace%20Building%20Acr.pdf> (Accessed on 27/06/2024)

⁶⁰ Ibid

3.0 Utilizing ADR Processes in Managing Transboundary Natural Resource Disputes

ADR entails a set of mechanisms that are applied to manage disputes without resort to adversarial litigation⁶¹. These mechanisms may be linked to but function outside formal court litigation processes⁶². ADR processes include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others⁶³. These techniques are viewed as ideal in enhancing access to justice due to their advantages which include privacy, confidentiality, flexibility, informality, efficiency, party autonomy and the ability to foster expeditious and cost- effective management of disputes⁶⁴. The *Charter of the United Nations*⁶⁵ provides the legal basis for the application of ADR processes in managing disputes at the global level. It 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 choice*⁶⁶(Emphasis added).

ADR processes are ideal in managing transboundary natural resource disputes⁶⁷. These processes can enhance collaboration in managing transboundary natural resources therefore minimizing or mitigating conflicts⁶⁸. Collaborative management of natural resources involves joint decision-making by all stakeholders including governments, communities, Non-Governmental Organizations (NGOs) and the private sector in

⁶¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

⁶² Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

⁶³ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁶⁴ 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-justiceanddevelopmentinKenyaSTRATHMORE-CONFERENCE-PRESENTATION.pdf> (Accessed on 27/06/2024)

⁶⁵ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁶⁶ Ibid, article 33 (1)

⁶⁷ Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

⁶⁸ Ibid

relation to natural resource access and use⁶⁹. In collaborative management, two or more parties negotiate, define and guarantee among themselves the sharing of the management functions, entitlements and responsibilities for a given territory or set of natural resources⁷⁰.

ADR processes especially negotiation and mediation are ideal in fostering collaboration in the use and management of natural resources⁷¹. For example, mediation is key in helping parties to natural resource conflicts identify ways to maximize and share benefits, and ultimately unlock entrenched or zero-sum positions, allowing them to develop cooperative and constructive relationships that can be carried over to other areas⁷². It has been noted that mediation processes – which are voluntary and consensus-based – tend to lead to resolutions and outcomes that are longer lasting and more sustainable than adversarial processes or otherwise imposed outcomes⁷³. In conflicts involving natural resources, sustainable outcomes are even more desirable because the shared benefits of these resources often cross tribal, societal, communal, and national boundaries⁷⁴. Collaboration over their ownership, management, and use is therefore critical to peace and stability especially in the transboundary context⁷⁵.

Negotiation is also a key process in enhancing collaboration over natural resources⁷⁶. It can enable all stakeholders to come up with mutually agreeable principles and practices for effective management of vital natural resources such as land, forests, marine areas

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf> (Accessed on 28/06/2024)

⁷² United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

and their products⁷⁷. Consensual negotiation has been described as a powerful tool of conflict management in respect of natural resources⁷⁸. It can strengthen relationships and build trust within and among groups⁷⁹. In addition, it is also vital in achieving collaborative resource management and sustainable rural livelihoods⁸⁰.

Collaboration is a key approach in managing transboundary natural resource disputes⁸¹. It has been noted that increased cooperation can lessen the impact of conflict on natural resource management across boundaries⁸². Collaboration across boundaries increases the effectiveness of transboundary natural resource management and further strengthens biodiversity conservation goals⁸³. Transboundary collaboration and cooperation on conservation and the management of natural resources can enhance peaceful coexistence between and among nations⁸⁴. For example, the Nile Basin Initiative has been hailed for enhancing peace and sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources⁸⁵. Under the Initiative, countries have adopted a Cooperative Framework Agreement (CFA) which outlines principles, rights and obligations for cooperative management and development of the Nile Basin water resources⁸⁶. The CFA envisages collaboration and cooperation among the Nile Basin States in the conservation, management and development of the Nile River Basin and its waters⁸⁷.

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Roberts. A., 'The Role of Transboundary Natural Resource Management In Peace Building Across International Borders' Op Cit

⁸² Ibid

⁸³ Ibid

⁸⁴ Norwegian Institute of International Affairs., 'Transboundary Collaboration on Conservation and Natural Resources in East Africa' Available at <https://www.nupi.no/en/news/transboundary-collaboration-on-conservation-and-natural-resources-in-east-africa> (Accessed on 28/06/2024)

⁸⁵ Nile Basin Initiative., Available at <https://nilebasin.org/> (Accessed on 28/06/2024)

⁸⁶ Agreement on the Nile River Basin Cooperative Framework., Available at <https://nilebasin.org/sites/default/files/attachments/CFA%20-%20English%20FrenchVersion.pdf> (Accessed on 28/06/2024)

⁸⁷ Ibid

The CFA further envisages the use of ADR processes in managing transboundary disputes between two or more Nile Basin states⁸⁸. It provides that in the event of a dispute between two or more Nile Basin States, the States concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means⁸⁹. Further, it provides that if the States concerned cannot reach agreement by *negotiation* requested by one of them, they may jointly seek good offices, or request *mediation* or *conciliation* by, the Nile River Basin Commission or other third party, or agree to submit the dispute to *arbitration*, in accordance with procedures to be adopted by the Council, or to the International Court of Justice. (Emphasis added) The CFA therefore envisages the management of transboundary natural resource disputes involving the Nile Basin states through ADR processes including negotiation, mediation, conciliation, and arbitration⁹⁰.

The Nile Basin Initiative has been hailed for building consensus on the desirability of regional cooperation among Nile Basin states⁹¹. Embracing such initiatives can enhance collaboration and further strengthen the role of ADR processes in managing transboundary natural resource disputes.

ADR processes are therefore ideal in managing transboundary natural resource disputes. Negotiation and mediation can enhance collaboration and cooperation in the use and management of natural resources⁹². Negotiated agreements are often utilized to foster effective management of transboundary natural resources⁹³.

⁸⁸ Ibid

⁸⁹ Ibid, article 34 (1)

⁹⁰ Ibid

⁹¹ United Nations Economic Commission for Europe., 'The Nile Basin Initiative: Example of Transboundary Water Governance' Available at https://unece.org/fileadmin/DAM/env/documents/2017/WAT/05May_16-18_Workshop_Kisumu/10.2_Azza_Exemple_NBI.pdf (Accessed on 28/06/2024)

⁹² Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Op Cit

⁹³ van der Linde et al., 'Beyond Boundaries: Transboundary Natural Resource Management in Sub-Saharan Africa' Available at

Arbitration has also been utilized to manage transboundary natural resource disputes. It has been noted that states have recourse to arbitration in managing transboundary natural resource disputes. For example, arbitration was utilized to manage a transboundary natural resource dispute between France Spain in the *Lake Lanoux Arbitration (France -vs- Spain)*⁹⁴, which concerned the use of the waters of Lake Lanoux. In the case, the French Government had proposed to carry out certain works for the utilization of the waters of the lake and the Spanish Government feared that these works would adversely affect Spanish rights and interests⁹⁵. The Tribunal decided that the French project satisfied obligations under the law, and that France in carrying out, without a preliminary agreement between the two countries, works for the use of the waters of Lake Lanoux did not commit a violation of the provisions of the Treaty of Bayonne between the two countries⁹⁶.

International arbitral institutions such as the Permanent Court of Arbitration (PCA) have also enhanced the role of arbitration in managing transboundary natural resource disputes. The PCA has adopted *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment*⁹⁷. The rules reflect the public international law element which pertains to disputes which may involve States and utilization of natural resources and environmental protection issues, and international practice appropriate to such disputes⁹⁸. The Rules are therefore vital in enhancing the role of the PCA in managing transboundary natural resource disputes through arbitration.

<https://www.cbd.int/doc/pa/tools/Beyond%20Boundareas%20transboundary%20natural%20resource%20management.pdf> (Accessed on 28/06/2024)

⁹⁴ Lake Lanoux Arbitration (France -vs- Spain)., Available at <https://leap.unep.org/en/countries/fr/national-case-law/lake-lanoux-arbitration-france-v-spain> (Accessed on 28/06/2024)

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Permanent Court of Arbitration., 'Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment' Available at <https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and-or-Natural-Resources.pdf> (Accessed on 28/06/2024)

⁹⁸ Ibid

ADR processes are therefore suitable in managing transboundary natural resource disputes. However, it has been contended that ADR processes have not been given an adequate chance within the framework of environmental conflict management both within national and transboundary contexts⁹⁹. It is therefore imperative to embrace ADR techniques for effective management of transboundary natural resource disputes.

4.0 Conclusion

ADR techniques are suitable in managing transboundary natural resource disputes. For example, negotiation and mediation are ideal in fostering collaboration in the use and management of natural resources¹⁰⁰. It has been noted that in conflicts involving natural resources, sustainable outcomes are even more desirable because the shared benefits of these resources often cross tribal, societal, communal, and national boundaries¹⁰¹. Collaboration is therefore a key technique in managing such disputes¹⁰². Mediation and negotiation are therefore ideal in managing transboundary natural resource disputes¹⁰³. In addition, due to its transnational applicability, arbitration can be effectively utilized in managing environmental and natural resource conflicts involving parties from different jurisdictions¹⁰⁴. It is therefore necessary to embrace ADR processes for effective management of natural resource disputes.

⁹⁹ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/Environmental-Conflict-ManagementInstitutions-and-Approaches.pdf> (Accessed on 28/06/2024)

¹⁰⁰ Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Op Cit

¹⁰¹ United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ 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-Arbitrationinmanagement-of-Climata-Change-Related-Disputes-in-Kenya-11th-April-2022.pdf> (Accessed on 28/06/2024)

In order to effectively utilize ADR processes towards this end, it is vital to establish transboundary institutions and related agreements¹⁰⁵. This can enhance cooperation and collaboration in managing transboundary natural resources¹⁰⁶. The Nile Basin Initiative is a good example of such an arrangement¹⁰⁷. It is also vital to enhance the participation of all stakeholders in the use and management of transboundary natural resources.¹⁰⁸ It is also necessary to strengthen the negotiating and conflict resolution skills of all stakeholders in order to build capacity towards collaboration and cooperation in managing transboundary natural resource disputes¹⁰⁹.

It is necessary to embrace ADR techniques for effective management of transboundary natural resource disputes. Managing Transboundary Natural Resource disputes through ADR is indeed viable.

¹⁰⁵ United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

¹⁰⁶ Ibid

¹⁰⁷ Nile Basin Initiative., Op Cit

¹⁰⁸ van der Linde et al., 'Beyond Boundaries: Transboundary Natural Resource Management in Sub-Saharan Africa' Op Cit

¹⁰⁹ Ibid

References

African Development Bank Group., 'Transboundary Natural Resources Management in a Changing Climate - The Case of Shared Watersheds in Africa' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Transboundary%20Natural%20Resources%20Management%20in%20a%20Changing%20Climate%20%E2%80%93%20The%20Case%20of%20Shared%20Watersheds%20in%20Africa%20-%20CoP%20AD%E2%80%9018%20Side%20Event%20Concept%20Note.pdf>

Agreement on the Nile River Basin Cooperative Framework., Available at <https://nilebasin.org/sites/default/files/attachments/CFA%20-%20English%20FrenchVersion.pdf>

Beyene, Z. & Wadley, I., 'Common goods and the common good: Transboundary natural resources, principled cooperation, and the Nile Basin Initiative,' Breslauer Symposium on Natural Resource Issues in Africa, Center for African Studies, UC Berkeley, 2004, p. 3, Paper presented as part of the Breslauer Graduate Symposium on Natural Resource Issues in Africa - held March 5th, 2004 at UC Berkeley. Available at <http://escholarship.org/uc/item/9492s0k4>

Costanza, R., 'The Ecological, Economic, and Social Importance of the Oceans.' *Ecological Economics*, Volume 31, No. 2 (1999)

Dhliwayo, M., "Legal Aspects of Trans-Boundary Natural Resources Management in Southern Africa," In *Commons in an Age of Globalisation*, the Ninth Conference of the International Association for the Study of Common Property, 2002.

Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Available at <https://www.fao.org/4/a0032e/a0032e04.htm>

Fulazzaky, M., 'Challenges of Integrated Water Resources Management in Indonesia,' *Water* 6, No. 7 (2014): 2000-2020

Global Waters., 'Why the Mara River Basin?' Available at <https://www.globalwaters.org/resources/blogs/swp/why-mara-river-basin>

Haile, Z., & Wadley, I., 'Common Goods and the Common Good: Transboundary Natural Resources, Principled Cooperation, and the Nile Basin Initiative.' Available at https://escholarship.org/content/qt7dd7p4w1/qt7dd7p4w1_noSplash_cccc3e7751c3b2094c902ea6a06e207b.pdf

International Institute for Sustainable Development., 'The Sustainable Use of Natural Resources: The Governance Challenge' Available at

<https://www.iisd.org/articles/deep-dive/sustainable-use-natural-resources-governance-challenge>

Lake Lanoux Arbitration (France -vs- Spain), Available at <https://leap.unep.org/en/countries/fr/national-case-law/lake-lanoux-arbitration-france-v-spain>

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-justiceanddevelopmentinKenyaSTRATHMORE-CONFERENCE-PRESENTATION.pdf>

Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/Environmental-Conflict-ManagementInstitutions-and-Approaches.pdf>

Muigua. K., 'Managing Transboundary Natural Resources in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2018/11/Managing-Transboundary-Natural-Resources-in-Kenya-Kariuki-Muigua-26th-November-2018.pdf>

Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.pdf>

Muigua. K., 'Resolving Natural Resource-Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/wp-content/uploads/2024/05/Resolving-Natural-Resource-Based-Conflicts-in-Africa-through-Negotiation-and-Mediation.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-Arbitrationinmanagement-of-Climite-Change-Related-Disputes-in-Kenya-11th-April-2022.pdf>

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

Nile Basin Initiative., Available at <https://nilebasin.org/>

Norwegian Institute of International Affairs., 'Transboundary Collaboration on Conservation and Natural Resources in East Africa' Available at <https://www.nupi.no/en/news/transboundary-collaboration-on-conservation-and-natural-resources-in-east-africa>

Opitz-Stapleton. S et al., 'Transboundary Climate and Adaptation Risks in Africa: Perceptions From 2021' Available at https://www.sparcknowledge.org/sites/default/files/documents/resources/odi-sparctcar-report_cp_amended_web.pdf

Permanent Court of Arbitration., 'Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment' Available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf

Republic of Kenya., Ministry of Tourism & Wildlife., 'Kenya-Tanzania Explore Possibilities of Trans-Boundary Collaboration To Stop Poaching And Illegal Wildlife Trade' Available at <https://www.tourism.go.ke/kenya-tanzania-explore-possibilities-of-trans-boundary-collaboration-to-stop-poaching-and-illegal-wildlife-trade-06-09-2023/>

Roberts. A., 'The Role of Transboundary Natural Resource Management In Peace Building Across International Borders' Available at <https://www.cbd.int/doc/pa/tools/The%20Role%20of%20Transboundary%20Natural%20Resource%20Management%20In%20Peace%20Building%20Acr.pdf>

The Guardian., 'Ethiopia Dam will turn Lake Turkana into 'endless battlefield', locals warn' Available at <https://www.theguardian.com/global-development/2015/jan/13/ethiopia-gibe-iii-dam-kenya>

United Nations Department of Political Affairs., & United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAU_NEP2015_0.pdf

United Nations Economic Commission for Europe., 'The Nile Basin Initiative: Example of Transboundary Water Governance' Available at https://unece.org/fileadmin/DAM/env/documents/2017/WAT/05May_16-18_Workshop_Kisumu/10.2_Azza_Exemple_NBI.pdf

United Nations Educational, Scientific and Cultural Organization., 'Sacred Mijikenda Kaya Forests' Available at <https://whc.unesco.org/en/list/1231/>

United Nations Environment Programme., 'Transboundary Issues' Available at https://na.unep.net/atlas/datlas/sites/default/files/unepsiouxfalls/atlasbook_1135/Kenya_Screen_Chapter3.pdf

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>

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

van der Linde et al., 'Beyond Boundaries: Transboundary Natural Resource Management in Sub-Saharan Africa' Available at <https://www.cbd.int/doc/pa/tools/Beyond%20Boundareas%20transboundary%20natural%20resource%20management.pdf>