

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

Kariuki Muigua

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

Table of Contents

Abstract..... 3

1.0 Introduction 3

2.0 Natural Resources Disputes in Africa: Causes and Impacts on Environmental Justice 4

3.0 Utilising Specialized Courts for Expeditious and Expert Adjudication of Natural Resources Disputes in Africa towards Environmental Justice..... 6

4.0 Conclusion..... 8

References..... 9

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

Kariuki Muigua*

Abstract

This paper discusses how the use of specialized courts can accelerate progress towards environmental justice in Africa. The paper notes that specialized courts are needed to address natural resource disputes in Africa which are fuelling environmental injustices. It discusses the causes and effects of natural resource disputes in Africa. In particular, the paper notes that natural resource disputes in Africa are a major impediment to environmental justice since they disproportionately impact vulnerable groups in the continent including indigenous peoples, local communities and women. In light of their impacts on people and planet, the paper observes that effective and expeditious management of natural resource disputes in Africa is necessary towards securing environmental justice. In order to achieve this agenda, the paper proposes the establishment of specialized courts for expeditious and expert determination of natural resource disputes in Africa towards environmental justice.

1.0 Introduction

Environmental justice is a pertinent ideal whose attainment is necessary towards protecting people and planet. Environmental justice recognises the disproportionate impacts of environmental hazards including the triple planetary crisis of climate change, pollution, and biodiversity loss¹. It has been observed that environmental justice highlights the plight of vulnerable people and communities who bear the most burden when it comes to environmental damage and seeks to give them a voice through access to environmental information, participation in environmental decision-making processes and access to justice in order to ensure sustainable and equitable development². This concept envisages the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies³. At its core, environmental justice means that every person regardless of race, colour, nationality, origin, or income has the right to the same environmental protection and benefits, as well as meaningful involvement in environmental policy making⁴.

* PhD in Law (Nrb), SC, FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [June, 2026].

¹ United Nations Development Programme., 'Five steps to environmental justice' Available at <https://www.undp.org/blog/five-steps-environmental-justice> (Accessed on 29/05/2026)

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

³ United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Environmental-Justice-Technical-Report.pdf> (Accessed on 29/05/2026)

⁴ The Environmental Justice Movement., Available at <https://www.nrdc.org/stories/environmental-justice-movement> (Accessed on 29/05/2026)

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

Achieving environmental justice is particularly important for Africa. In the African context, environmental justice focuses on addressing the disproportionate burdens the continent faces due to environmental threat including climate change, unsustainable extraction of natural resources by foreign companies, pollution, and biodiversity loss⁵. In particular, environmental justice in Africa focuses on protecting the vulnerable including indigenous peoples, local communities, women and the youth who are adversely impacted by environmental threats including the triple planetary crisis of climate change, biodiversity loss and pollution⁶. It has been observed that mounting environmental threats in Africa including climate change, biodiversity loss, pollution and unsustainable resource extraction undermine human rights including the right to a clean, healthy and sustainable environment with disproportionate impacts on vulnerable individuals and communities in the continent⁷. Achieving environmental justice in Africa is therefore vital towards protecting people and planet in the pursuit of Sustainable Development.

This paper discusses how the use of specialized courts can accelerate progress towards environmental justice in Africa. The paper notes that specialized courts are needed to address natural resource disputes in Africa which are fuelling environmental injustices. It discusses the causes and effects of natural resource disputes in Africa. In particular, the paper notes that natural resource disputes in Africa are a major impediment to environmental justice since they disproportionately impact vulnerable groups in the continent including indigenous peoples, local communities and women. In light of their impacts on people and planet, the paper observes that effective and expeditious management of natural resource disputes in Africa is necessary towards securing environmental justice. In order to achieve this agenda, the paper proposes the establishment of specialized courts for expeditious and expert determination of natural resource disputes in Africa towards environmental justice.

2.0 Natural Resources Disputes in Africa: Causes and Impacts on Environmental Justice

Africa is endowed with natural resources. It has been observed that Africa is endowed with natural resources including vast arable land, huge deposits of extractives such as minerals, oil and gas, major forests, large rivers and lakes and wildlife⁸. According to the United Nations Environment Programme (UNEP), Africa holds a huge proportion of the world's natural resources including both renewable and non-renewable resources⁹. Africa's vast natural resources include renewable resources (such as water, forestry, and fisheries) and non-renewable resources (including minerals, coal, gas, and oil)¹⁰. It is estimated that Africa holds approximately 65 per cent of the world's uncultivated arable land while also holding

⁵ Mahadew. B., 'Can the African Human Rights System be an Effective Environmental Justice System in Africa?' Available at https://www.pulp.up.ac.za/images/edocman/edited-collections/environmental_justice_in_africa/Chapter%2011%20EJ.pdf (Accessed on 29/05/2026)

⁶ Ibid

⁷ Bassey. N., 'The Struggle for Environmental Justice in Africa' Available at <https://www.downtoearth.org.in/africa/the-struggle-for-environmental-justice-in-africa-90314#:~:text=The%20struggle%20for%20environmental%20justice%20in%20Africa%20is%20complex%20and,not%20inanimate%20or%20lifeless%20entities> (Accessed on 29/05/2026)

⁸ United Nations Environment Programme., 'Our work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa> (Accessed on 29/05/2026)

⁹ Ibid

¹⁰ African Development Bank Group., 'Africa's Natural Resources: The Paradox of Plenty' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/%28E%29%20AfricanBank%202007%20Ch4.pdf> (Accessed on 29/05/2026)

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

significant deposits of oil, gas and minerals including the largest reserves of diamonds, platinum and cobalt¹¹.

The abundance of natural resource in Africa can be platform for Sustainable Development. For instance, it has been correctly observed that Africa's abundant natural resources can finance the continent's development agenda towards greater prosperity¹². The ongoing discoveries of natural resources in the continent including oil, minerals, and gas offer a new source of revenue for advancing human development and supporting African countries on the path to self-sufficiency¹³. UNEP posits that tapping into Africa's rich natural capital could be the key to unlocking Africa's development potential and for pulling millions out of the poverty trap¹⁴.

However, Africa is yet to reap full benefits from its vast natural resources. It has been observed that rather than acting as catalysts of development, natural resources have hurt the prospects of several African national and regional economies by causing political corruption and feeding violence, wars and rebellion¹⁵. In particular, natural resources disputes and conflicts are prevalent all over Africa undermining the continent's development prospects. . Despite being endowed with natural resources including water, arable land, fisheries, oil, gas, forests, minerals and wildlife, Africa has over the years suffered from resource-based conflicts and disputes which undermine Sustainable Development by affecting economic development and sustainability¹⁶. It has been observed that the '*resource curse phenomenon*' is widespread in Africa, which refers to the paradox that countries endowed with natural resources tend be embroiled in conflicts and disputes and have high incidences of poverty¹⁷.

Many African countries that are rich in natural resources including oil, gas and minerals have been caught up in vicious cycles of conflicts and disputes undermining the potential of these resources to spur development¹⁸. Throughout Africa, natural resources have played a significant role in many violent conflicts by being used to finance armed wars and conflicts¹⁹.The prevalence of natural resources disputes and

¹¹ United Nations Environment Programme., 'Our Work in Africa' Op Cit

¹² Ibid

¹³ African Development Bank Group., 'Delivering on the Promise: Leveraging Natural Resources to Accelerate Human Development in Africa' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-natural-resources-centre/delivering-on-the-promise-leveraging-natural-resources-to-accelerate-human-development-in-africa> (Accessed on 29/05/2026)

¹⁴ United Nations Environment Programme., 'Is Africa's Natural Capital the Gateway to Finance Its Development?' Available at <https://www.unep.org/news-and-stories/story/africas-natural-capital-gateway-finance-its-development> (Accessed on 29/05/2026)

¹⁵ Maphosa. S.B., 'Natural Resources and Conflict: Unlocking the Economic Dimension of Peace-Building in Africa' Available at <https://africaportal.org/wp-content/uploads/2023/06/No.-74.-Natural-Resources-and-Conflict..pdf> (Accessed on 29/05/2026)

¹⁶ Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

¹⁷ Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy* , Volume 63, 2019

¹⁸ Ibid

¹⁹ Maphosa. S.B., 'Natural Resources and Conflict: Unlocking the economic dimension of peace-building in Africa' Op Cit

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

conflicts in Africa has been attributed to several factors including inequitable benefit-sharing arrangements, poor resource governance, corruption, and mismanagement of profits from resource use and extraction²⁰.

Natural resource disputes and conflicts in Africa are a major threat to environmental justice. For example, it has been correctly observed that natural resources disputes and conflicts can upset local livelihoods by undermining trust among stakeholders and increasing insecurity, violence and resource degradation²¹. This is particularly detrimental to vulnerable groups in Africa including indigenous peoples, local communities and rural women who rely on natural resources including land, forests and water for their livelihoods and well-being²².

Natural resources disputes and conflicts can therefore hinder access and use of vital resources such as land, water, pasture and forests while also fuelling environmental degradation thus undermining environmental justice. Effective and expeditious management of natural resources disputes and conflicts in Africa is therefore important towards promoting environmental justice.

3.0 Utilising Specialized Courts for Expeditious and Expert Adjudication of Natural Resources Disputes in Africa towards Environmental Justice

Courts have a key role to play in fostering environmental justice both globally and in Africa. In particular, it has been observed that courts are among the most appropriate forums in upholding the core tenets of environmental justice including public participation, access to information, access to justice, access to remedies, environmental democracy and Sustainable Development²³. In many jurisdictions, the role of courts in promoting environmental justice is guaranteed by measures such as allowing every person to access to justice through public interest litigation and by assigning courts special roles in protecting environmental rights²⁴. For example, the *Constitution of Kenya*²⁵ allows a person alleging the denial, infringement or violation of the right to a clean and healthy environment to apply to a court for redress in addition to any other legal remedies that are available²⁶. In addition, the *Environmental Management and Co-ordination Act (EMCA)*²⁷ of Kenya further upholds the role of courts in fostering environmental justice. The Act stipulates that if a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, that person may on his behalf or on behalf

²⁰ Fagbadebo. O., Binza. M., Kabange. M., 'Resource-Based Conflicts in Africa' Available at https://link.springer.com/chapter/10.1007/978-3-031-25151-1_6 (Accessed on 29/05/2026)

²¹ 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#:~:text=Natural%20resource%20conflicts%20are%20disagreements.o%20inequities%20in%20resource%20distribution> (Accessed on 29/05/2026)

²² Maphosa. S.B., 'Natural Resources and Conflict: Unlocking the economic dimension of peace-building in Africa' Op Cit

²³ See for example the cases of *KM & 9 others v Attorney General & 7 others* (Owino-Uhuru case); *Mohamed Ali Baadi and others –vs- Attorney General & 11 others* (LAPSSET projet case); *Mui Coal Basin Local Community & 15 others –vs- Permanent Secretary Ministry of Energy & 17 others*; and *Save Lamu & 5 others –vs- National Environmental Management Authority (NEMA) & another*

²⁴ Muigua. K., & Kariuki. F., 'Safeguarding Environmental Rights in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/A-Paper-on-Safeguarding-Environmental-Rights-in-Kenya.pdf> (Accessed on 29/05/2026)

²⁵ Constitution of Kenya, 2010., Government Printer, Nairobi

²⁶ Ibid, Article 70

²⁷ Environmental Management and Co-ordination Act, No. 8 of 1999, Government Printer, Nairobi

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

of a group or class of persons, members of an association or in the public interest may apply to the Environment and Land Court for redress²⁸. The Act empowers the Environment and Land Court of Kenya to make certain orders towards realizing environmental justice including an order to prevent, stop or discontinue any act or omission deleterious to the environment; an order to compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage and an order of compensation for environmental injustices²⁹.

Courts are therefore an important forum towards securing environmental justice. Through litigation it is possible to protect vulnerable and marginalized groups from the disproportionate impacts of environmental hazards such as climate change, pollution and climate change³⁰. Courts can ensure the enforcement of constitutional rights including the right to a clean, healthy and sustainable environment, hold polluters accountable for environmental damage, and safeguard procedural rights including public participation, access to information and access to justice in environmental matters towards environmental justice³¹. Further, it has been observed that courts are key in enhancing environmental justice through expert adjudication of environmental disputes and implementing the purposes of environmental legislation³².

With Africa facing mounting environmental injustices, utilising specialized courts is a key approach towards protecting people and planet. In particular, it has been observed that specialized courts are an effective pathway towards securing environmental justice both globally and in Africa³³. Establishment of specialised courts equipped with judicial officers competent in environmental matters is one of the most appropriate approaches towards promoting environmental justice for people and planet³⁴. It has been argued that in order to ensure effective access to justice in environmental matters in the pursuit of environmental justice, it is necessary to ensure that courts have qualified personnel that can competently handle environmental disputes³⁵.

Establishment of specialized courts in Africa is therefore necessary in order to realise environmental justice. Through such courts, it is possible to ensure expeditious, expert adjudication of natural resources disputes towards charting a path of justice that safeguards both humanity and the planet³⁶. Specialized courts can promote environmental justice by actively safeguarding the rights of the vulnerable including indigenous peoples, women, the youth and local communities, who are usually disproportionately

²⁸ Ibid, S 3 (3)

²⁹ Ibid

³⁰ Muigua. K., 'Realizing Environmental Justice through Litigation' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Realizing-Environmental-Justice-through-Litigation.pdf> (Accessed on 29/05/2026)

³¹ Ibid

³² The Role of the Courts in Delivering Environmental Justice., Available at https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Role_of_the_Courts_in_Delivering_Environmental_Justice.pdf (Accessed on 29/05/2026)

³³ The Role of the Courts in Delivering Environmental Justice., Op Cit

³⁴ Kameri-Mbote. P., 'Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention' Available at <https://www.ielrc.org/content/w0501.pdf> (Accessed on 01/06/2026)

³⁵ Ibid

³⁶ Judiciary of Kenya., 'CJ Koome Calls on Courts to Champion Climate Justice' Available at <https://judiciary.go.ke/cj-koome-calls-on-courts-to-champion-climate-justice/> (Accessed on 01/06/2026)

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

impacted by environmental injustices, by holding public and private actors accountable for environmental harm³⁷. Specialized courts are the heart of environmental justice since they can lead, promote accountability, and ensure equitable and fair solutions to environmental challenges including climate change, biodiversity loss and pollution³⁸. It is therefore imperative to establish specialized courts including environmental and land courts and tribunals in order to ensure expeditious, fair, equitable and expert adjudication of natural resources disputes both globally and in Africa towards environmental justice³⁹.

4.0 Conclusion

With Africa facing mounting environmental challenges including climate change, biodiversity loss and pollution, securing environmental justice is vital for people and planet. In particular, establishing specialized courts equipped with qualified and competent personnel can ensure expeditious, equitable and expert adjudication of natural resources disputes in Africa for environmental justice⁴⁰. It is therefore important to create specialized courts in Africa including environmental and land courts and tribunals in order to ensure expeditious, expert adjudication of natural resources disputes for environmental justice.

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Kameri-Mbote. P., 'Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention' Op Cit

Specialized Courts for Environmental Justice: Ensuring Expeditious, Expert Adjudication of Natural Resources Disputes in Africa

References

African Development Bank Group., 'Africa's Natural Resources: The Paradox of Plenty' Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/%28E%29%20AfricanBank%202007%20Ch4.pdf>

African Development Bank Group., 'Delivering on the Promise: Leveraging Natural Resources to Accelerate Human Development in Africa' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-natural-resources-centre/delivering-on-the-promise-leveraging-natural-resources-to-accelerate-human-development-in-africa>

Bassey. N., 'The Struggle for Environmental Justice in Africa' Available at <https://www.downtoearth.org.in/africa/the-struggle-for-environmental-justice-in-africa-90314#:~:text=The%20struggle%20for%20environmental%20justice%20in%20Africa%20is%20complex%20and,not%20inanimate%20or%20lifeless%20entities>

Constitution of Kenya, 2010., Government Printer, Nairobi

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

Fagbadebo. O., Binza. M., Kabange. M., 'Resource-Based Conflicts in Africa' Available at https://link.springer.com/chapter/10.1007/978-3-031-25151-1_6

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#:~:text=Natural%20resource%20conflicts%20are%20disagreements,or%20inequities%20in%20resource%20distribution>

Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy* , Volume 63, 2019

Judiciary of Kenya., 'CJ Koome Calls on Courts to Champion Climate Justice' Available at <https://judiciary.go.ke/cj-koome-calls-on-courts-to-champion-climate-justice/>

Kameri-Mbote. P., 'Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention' Available at <https://www.ielrc.org/content/w0501.pdf>

Mahadew. B., 'Can the African Human Rights System be an Effective Environmental Justice System in Africa?' Available at https://www.pulp.up.ac.za/images/edocman/edited-collections/environmental_justice_in_africa/Chapter%2011%20EJ.pdf

Maphosa. S.B., 'Natural Resources and Conflict: Unlocking the Economic Dimension of Peace-Building in Africa' Available at <https://africaportal.org/wp-content/uploads/2023/06/No.-74.-Natural-Resources-and-Conflict..pdf>

Muigua. K., & Kariuki. F., 'Safeguarding Environmental Rights in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/A-Paper-on-Safeguarding-Environmental-Rights-in-Kenya.pdf>

Specialized Courts for Environmental Justice: Ensuring Expedious, Expert Adjudication of Natural Resources Disputes in Africa

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

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

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

The Environmental Justice Movement., Available at <https://www.nrdc.org/stories/environmental-justice-movement>

The Role of the Courts in Delivering Environmental Justice., Available at https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Role_of_the_Courts_in_Delivering_Environmental_Justice.pdf

United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Environmental-Justice-Technical-Report.pdf>

United Nations Development Programme., 'Five steps to environmental justice' Available at <https://www.undp.org/blog/five-steps-environmental-justice>

United Nations Environment Programme., 'Is Africa's Natural Capital the Gateway to Finance Its Development?' Available at <https://www.unep.org/news-and-stories/story/africas-natural-capital-gateway-finance-its-development>

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