

Towards Sustainability:

Attaining Effective Conflict Management
in Environmental Governance



Kariuki Muigua

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in Environmental Governance**

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Kariuki Muigua, August, 2025

Typesetting by:

Anne Kiramba,
P.O. Box 60561 - 00200,
Tel: +254 721 262 409/ 737 662 029,
Nairobi, Kenya.

Printing by:

Mouldex Printers
P.O. Box 63395,
Tel: +254 723 366 839,
Nairobi, Kenya.

Published by:

Glenwood Publishers Limited
P.O. Box 76115 - 00508
Tel: +254 221 0281,
Nairobi, Kenya.

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ISBN 978-9966-046- 48-2

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Dedication

This book is dedicated
to the idea
that we must move
Towards
Sustainability
And a green Tomorrow

And that there is a need
to manage conflicts
Effectively
In the course of
Governing the Environment

Dedicated to those
who have suffered
As a result of conflicts
And to those whose lives
have been lost
In conflicts relating to
Environmental Resources

Dedicated to Environmental
Defenders
And to those who strive
to achieve
Sound Environmental Governance
for the sake of the unborn
the present and future generations

This book is dedicated to
that child
who did not choose sides
But is caught up in a conflict

This book is dedicated to those
who believe
That conflicts can be
managed
or even resolved
Through

Negotiation, mediation
Conciliation, arbitration
diplomacy and other
Appropriate mechanisms
So as to achieve
Peace, harmony
and 'Ubuntu'
in the Society.

This book is for those who believe
that human beings
should collaborate
to make today a bright day
And to have a green
Tomorrow
When all can live
In a Clean, Healthy
and Sustainable
Environment

This book is for the Peacemakers
And Peace - Builders
And for those
who fight for
Environmental Justice
And the Rights
of the people
and Planet.

This book is for those
who strive to achieve
Environmental Democracy
And meaningful
Public participation
In Environmental matters

This book is for those
who believe in fairness
and Equitable benefit
sharing of
Environmental Resources

To those who believe

In Green Transition
And the idea
that
People and Planet
should prosper
And no one should be
left behind

This book is for those
who keep hope alive
And pursue
Sustainable Development
In stormy times
laden with division
and Conflict
- You are the true Heroes

This book is for those
who know
That Conflict can be prevented
And where it occurs
It can be dealt with
through Pacific
Mechanisms

This book is for those
who believe
that we must
Strengthen Climate Action
In conflict situations
for Sustainable Development.

This book is for the proponents
Of the ideal of
“One Health for All”
That Human, animal and
Environmental Health
are Interconnected

This book is for those
who strive to
Sustainably balance
and optimize

the Health of People
animals and
the Environment itself.

This book is for those
who know
We must go beyond law
to deal with
Environmental Challenges.
- That we must consider
Politics, Culture
Technology
Economics
And Traditional Ecological
Knowledge.

This book is for
those
who work hard
To make peace with Nature
for Development

This book is for
those
who pursue the ideal
of incorporating Sustainability
Into
Conflict Management
Mechanisms

This Book
Is dedicated to all
Mothers
who give it all to
ensure
that their children
will see a better
tomorrow

We Honour you,
Keep up doing what you do
- Your work is not
in vain

This book
stands for the ideal
of walking towards
Sustainability
And the attainment of
effective Conflict Management
in Environmental Governance
for Health, wellness,
Harmony, Peace, prosperity
and a Green Tomorrow

Acknowledgments

On this bright, warm day I express my appreciation and humility to my maker for leading me this far.

I am indebted to those wise old men and women at whose feet I have learnt over the years.

I am grateful to my mentees who follow my work and contribute to the ideas for continued research.

I extend my sincere gratitude to Jack Liaduma, James Njuguna, Ngararu Maina, Mwati Muriithi, Anne Wairimu, Kelvin Kasyoki, Victor Makau and the staff of Kariuki Muigua & Company Advocates who have made my publication possible.

I am grateful to those who encourage me to dream big - And never ever give up.

Finally, I extend my gratitude to my family. They have stood by me in rough & sunny times. They have taught me that someday the sun will shine bright and erase the shadows of yesterday.

Author's Note

Towards Sustainability: Attaining Effective Conflict Management in Environmental Governance is a compendium that examines various themes.

The topics covered include: Sustainability; Conflict Management; Effective Environmental Governance; Conflict Management Mechanisms; Carbon Disputes; Peace Building; Clean & Healthy Environment; Environmental and Social Governance (ESG).

The emphasis is on Sustainability and Effective Management of Conflicts for the sake of the unborn, the present and future generations.

This book is aimed at Researchers, Students, Teachers, Environmentalists and the general reader.

It is hoped that the ideas within this book will ignite a spark and inspire the young and old ones to carry some ideas forward and grow the Climate Action movement to another level.

Hon. Prof. Kariuki Muigua PhD; Ch.Arb, OGW.
Nairobi,
August 2025.

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Friends of Lake Turkana Trust vs Attorney General & 2 others

KM & 9 others v Attorney General & 7 others

Peter K. Waweru v Republic, Misc. Civil Application No. 118 of 2004, (2006) eKLR

Pulp Mills on the River Uruguay (Argentina v. Uruguay)

Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others., (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022)

List of Abbreviations

ADR-Alternative Dispute Resolution

CIArb - Chartered Institute of Arbitrators

CSR-Corporate social responsibility

EAC - the East African Community

ESG - Environmental, Social, and Governance

FPIC - Free, Prior and Informed Consent

ICC - International Chamber of Commerce

ICRC - International Committee of the Red Cross

ICTY - International Criminal Tribunal for the Former Yugoslavia

IHL - International Humanitarian Law

ISDS - Investor-State Dispute Settlement

LCIA - London Court of International Arbitration

NGOs - Non-Governmental Organisations

NKRCP - Northern Kenya Rangelands Carbon Project

OECD-Organisation for Economic Co-operation and Development

SDGs - Sustainable Development Goals

TDRMs - Traditional Dispute Resolution Mechanisms (TDRMs)

UNDP-United Nations Development Programme

UNFCCC - United Nations Framework Convention on Climate Change

UNFCCC'S - United Nations Framework Convention on Climate Change

UN-United Nations

WIPO - World Intellectual Property Organization

Fostering Conflict Prevention, Resolution, Harmony and Sustainability in Environmental Governance

Abstract

Peace is vital tenet in the quest towards Sustainable Development. The United Nations 2030 Agenda for Sustainable Development acknowledges that there can be no Sustainable Development without peace and no peace without Sustainable Development. However, the ideal of peace is threatened by conflicts that are prevalent globally. The environment is also a victim of conflicts as evidenced by widespread environmental degradation during armed hostilities and conflict situations. Environmental conflicts therefore affect the ideal of sound environmental governance and sustainability. In addition, poor environmental governance fuels conflicts undermining peace and sustainability. This paper critically examines how to foster conflict prevention, resolution, harmony and sustainability for sound environmental governance towards Sustainable Development.

1.0 Introduction

Peace is necessary for Sustainable Development. According to the United Nations, peace is a fundamental precondition for social and economic development¹. Without peace, societies are often plagued by conflict, violence, and instability, which can hinder progress and result in the loss of lives and resources therefore undermining Sustainable Development². The advancement of human rights, social justice, and Sustainable development are all dependent on the pursuit of peace³. The United Nations *2030 Agenda for Sustainable Development*⁴ acknowledges that there can be no Sustainable Development without peace and no peace without Sustainable Development. It seeks to

¹ United Nations., 'Goal 16: Peace, Justice, and Strong Institutions' Available at <https://www.un.org/sustainabledevelopment/peace-justice/> (Accessed on 10/03/2025)

² Ibid

³ Mustafa. G., & Jamshed. U., 'Peace: A Conceptual Understanding' Available at Available at https://www.researchgate.net/publication/370062968_Peace_A_Conceptual_Understanding (Accessed on 10/03/2025)

⁴ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 10/03/2025)

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foster peaceful, just and inclusive societies which are free from fear and violence towards Sustainable Development⁵.

Peace is also crucial for environmental sustainability. For instance, a stable, harmonious, and peaceful society fosters effective environmental stewardship, and a healthy and sustainable environment supports social stability towards peace⁶. Where there is no peace such as in war zones and areas of political instability, environmental degradation is often witnessed⁷. In such areas forests are destroyed, natural resources including water sources are contaminated, and wildlife is driven away⁸. The environment is therefore often jeopardised and harmed during armed hostilities and conflict situations and reduced to a silent casualty of war⁹. Armed hostilities and conflict situations often lead to environmental degradation or destruction, with long-lasting effects that contribute to the increased vulnerability of the affected populations¹⁰. Parties to armed hostilities and conflict situations usually adopt tactics that damage the environment such as polluting water resources, torching down crops and forests, poisoning soils, and killing animals in order to gain military advantage¹¹.

Sound environmental governance is therefore undermined by conflicts. Environmental and natural resource-based conflicts are prevalent all over the world as a result of the various competing interests over access to and use of natural resources such as land, water, minerals and forests¹². These conflicts

⁵ Ibid

⁶ Whaley. J., 'The Connection Between Peace and Environmental Sustainability' Available at <https://mooreliberationtheology.com/connection-peace-environmental-sustainability/> (Accessed on 10/03/2025)

⁷ Ibid

⁸ Ibid

⁹ Palarczyk. D., 'Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment' *Criminal Law Forum.*, Volume 34, pp 147-207 (2023)

¹⁰ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Available at <https://www.genevaenvironmentnetwork.org/resources/updates/protecting-the-environment-inarmed-conflict/> (Accessed on 10/03/2025)

¹¹ Ibid

¹² Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp->

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undermine peace and Sustainable Development¹³. Sound environmental governance and effective management of conflicts is therefore crucial towards Sustainable Development. This paper critically examines how to foster conflict prevention, resolution, harmony and sustainability for sound environmental governance towards Sustainable Development.

2.0 Environmental Governance: Opportunities and Challenges

Governance refers to the institutions, structures, and processes that determine who makes decisions, how and for whom decisions are made, whether, how and what actions are taken and by whom and to what effect¹⁴. Governance can also be described as the exercise of political and administrative authority at all levels to manage a country's affairs¹⁵. It involves the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences¹⁶.

In the environmental context, governance involves understanding how decisions related to the environment are made and whether resultant policies and processes lead to environmentally and socially sustainable outcomes¹⁷. According to the United Nations Environment Programme (UNEP), environmental governance entails policy, rules and norms that govern human behavior in respect of the environment and it also addresses who makes decisions, how decisions are made and carried out, the scientific information needed for decision-making and how the public and major

<content/uploads/2022/09/EnvironmentalConflict-Management-Institutionsand-Approaches.pdf> (Accessed on 10/03/2025)

¹³ Ibid

¹⁴ Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Available at <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12600> (Accessed on 10/03/2025)

¹⁵ United Nations., 'Governance and Development' Available at https://www.un.org/millenniumgoals/pdf/Think%20Pieces/7_governance.pdf (Accessed on 10/03/2025)

¹⁶ Ibid

¹⁷ Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

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stakeholders can participate in environmental decision-making¹⁸. Environmental governance has also described as the set of regulatory processes, mechanisms and organizations that influence environmental actions and outcomes¹⁹. This concept comprises of a wide range of legal and other tools employed in both the private and public sectors to foster sound environmental protection²⁰.

Sound environmental governance is crucial in fostering sustainability. Effective environmental governance aims to manage individual behavior or collective actions in pursuance of public environmental goods and related societal outcomes²¹. It also seeks to ensure that rules, policies and processes related to the environment lead to environmentally and socially sustainable outcomes²². According to UNEP, sound environmental governance at the global, regional, national and local levels is vital towards a healthy and prosperous planet for all, now and in the future²³. Effective environmental governance is also key towards promoting environmental justice, and upholding human rights including the right to a clean, healthy and sustainable environment for current and future generations²⁴.

Strengthening environmental governance at all levels has been identified as an engine for Sustainable Development as well as a platform for peace and justice²⁵. As a result, there have been calls to pursue sound environmental

¹⁸ United Nations Environment Programme., 'Environmental Governance' Available at <https://www.unep.org/regions/west-asia/regional-initiatives/environmental-governance> (Accessed on 10/03/2025)

¹⁹ Lemos. M.C., & Agrawal. A., 'Environmental Governance' *Annual Review of Environmental Resources.*, Volume 31, 2006, pp 297-325

²⁰ Environmental Law Institute., 'Environmental Governance' Available at <https://www.eli.org/environmental-governance> (Accessed on 10/03/2025)

²¹ Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

²² Ibid

²³ United Nations Environment Programme., 'Environmental Governance' Op Cit

²⁴ United Nations Development Programme., 'Environmental Governance: Bolstering Inclusive and Effective Governance Systems that Champion Environmental Justice and Sustainability' Available at <https://www.undp.org/nature/our-work-areas/environmental-governance> (Accessed on 10/03/2025)

²⁵ Muigua. K., 'Securing Our Destiny through Effective Management of the Environment.' Glenwood Publishers Limited, 2020

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governance that is effective, equitable, inclusive, responsive, and robust²⁶. Further, effective legal, institutional, and policy frameworks at all levels are crucial in strengthening environmental governance and protecting and restoring our planet towards a sustainable tomorrow²⁷. Sound environmental governance is particularly important in light of mounting environmental problems facing the planet including the depletion of natural resources, environmental degradation, desertification, drought, freshwater scarcity, environmental pollution, loss of biodiversity, and climate change²⁸.

Despite its crucial role in fostering sustainability, achieving effective environmental governance remains a challenge globally. In most countries environmental governance systems are strained, with marginalized groups including indigenous peoples, local communities and women often excluded from environmental decision-making²⁹. Limited resources, weak institutions, and the lack of political will to prioritize environmental conservation are also major challenges undermining the ideal of sound environmental governance especially in Africa³⁰. These shortcomings in global, regional, national, and local systems of environmental governance frameworks are worsening environmental problems including the triple planetary crisis of biodiversity loss, pollution, and climate change³¹.

²⁶ Bennett. N., & Satterfield. T., 'Environmental Governance: A Practical Framework to Guide, Design, Evaluation, and Analysis' Op Cit

²⁷ United Nations Environment Programme., 'Environmental Law and Governance' Available at <https://www.unep.org/topics/environmental-law-and-governance> (Accessed on 10/03/2025)

²⁸ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' Op Cit

²⁹ United Nations Development Programme., 'Environmental Governance: Bolstering Inclusive and Effective Governance Systems that Champion Environmental Justice and Sustainability' Op Cit

³⁰ Tsiotery. M., & Zafimahova. C., 'Environmental Governance in The Division of Roles International Institutions and Government Institutions in African Countries' *Journal of Management and Administration Provision*, Volume 2, No. 2 , (2022), pp 58-64

³¹ United Nations Development Programme., 'Environmental Governance: Bolstering Inclusive and Effective Governance Systems that Champion Environmental Justice and Sustainability' Op Cit

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In addition, poor environmental governance is also fueling environmental conflicts. These conflicts arise due to unfair distribution of environmental costs and benefits and disagreements concerning access to and use of natural resources³². Environmental conflicts can take the form of political, social, economic, ethnic, religious, or territorial conflicts, or conflicts over resources or national interests, or any other type of conflict triggered by environmental degradation such as pollution and the impacts of climate change³³. It has been observed that nearly every community finds itself embroiled in occasional disputes and conflicts 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 hazards among other issues³⁴. Environmental conflicts are therefore a common phenomenon and involve 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 communities³⁵. According to 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 health³⁶.

Environmental conflicts have therefore emerged as key issues challenging local, regional, national and global security³⁷. Poor environmental governance is playing a major role in environmental conflicts globally. For example, in

³² Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

³³ Muigua. K., 'Understanding Environmental Conflicts: Causes and Manifestations' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/Environmental-Conflicts-Causes-and-Manifestations.pdf> (Accessed on 11/03/2025)

³⁴ Dukes. F., 'What we Know About Environmental Conflict Resolution: An Analysis Based on Research.' *Conflict Resolution Quarterly.*, Volume 22, Issue 1-2

³⁵ Ibid

³⁶ United Nations Environment Programme., 'Disasters and Conflicts.' Available at <https://www.unep.org/regions/europe/regional-initiatives/disasters-and-conflicts> (Accessed on 18/01/2025)

³⁷ Bob. U., & Bronkhorst. S., 'Environmental conflicts: Key issues and management implications' Available at <https://www.ajol.info/index.php/ajcr/article/view/63307> (Accessed on 11/03/2025)

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Africa, mismanagement of the proceeds of natural resources including minerals has led to the proliferation of armed conflicts and other criminal activities, while the political, military, and bureaucratic elites have remained the beneficiaries of these resources³⁸. Further, proceeds from illegal activities in the natural resources sector including illicit financial flows, illegal logging, illegal trade in wildlife and illegal mining of resources have been used to fund a series of wars and conflicts in Africa³⁹. In addition, poor governance of natural resources in the extractive industry is fueling conflicts globally due to inadequate engagement of communities and stakeholders in development processes, unfair distribution of the benefits, costs, risks and responsibilities associated with the extractive industry, impacts on the environment, communities, and the local and national economies, and corruption and diversion of funds to satisfy individual gains at the expense of national and community interests⁴⁰.

Poor environmental governance is therefore fueling environmental and natural resource-based conflicts. When the environment and natural resources are poor governed, it can be a source of conflicts particularly in areas with underlying social and political instability⁴¹. Poor management of natural resources in the face of environmental crises can therefore increase the risks of conflict⁴². On the other hand, armed conflicts can undermine sound environmental governance by causing environmental degradation with long-lasting effects that contribute to the increased vulnerability of the affected populations⁴³. Environmental and natural resource-based conflicts can be

³⁸ 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 11/03/2025)

³⁹ Ibid

⁴⁰ The United Nations Interagency Framework Team for Preventive Action., 'Extractive Industries and Conflict' Available at https://globalprotectioncluster.org/sites/default/files/2023-04/Extractive_Industries_and_Conflict_Guidance_Note_Practitioners_2010_EN.pdf (Accessed on 11/03/2025)

⁴¹ Muigua. K., 'Understanding Environmental Conflicts: Causes and Manifestations' Op Cit

⁴² Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

⁴³ Ibid

Fostering Conflict Prevention, Resolution, Harmony and Sustainability in Environmental Governance

useful in helping a community to clarify interests and needs and in reducing possible injustices or inequities in resource distribution⁴⁴. However, most environmental and natural resource-based 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 degradation⁴⁵. As a result, it is imperative to ensure that action on the environment is part of conflict prevention, peacekeeping and peacebuilding strategies since there can be no durable peace if the natural resources that sustain livelihoods are destroyed⁴⁶. Fostering conflict prevention, resolution, harmony and sustainability in environmental governance is therefore vital for peace and prosperity.

3.0 Fostering Conflict Prevention, Resolution, Harmony and Sustainability in Environmental Governance

It is imperative to foster conflict prevention, resolution, harmony and sustainability in environmental governance. Poor environmental governance can worsen existing conflicts and act as a potential trigger for new conflicts⁴⁷. Strengthening environmental governance and addressing environmental challenges can promote sustainable peace by fostering cooperation, addressing root causes of conflict, and promoting inclusive and equitable development⁴⁸.

Conflict prevention in environmental governance involves sound management of the environment and natural resources in order to avoid conflicts related to

⁴⁴ 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> (Accessed on 11/03/2025)

⁴⁵ Ibid

⁴⁶ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

⁴⁷ International Organization for Migration., 'Peace and Stability through Green Environment, Green Governance and Green Economy Action in Unstable and Newly Recovered Areas in Somalia' Available at <https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/documents/2023-12/iom-somalia-environmental-peacebuilding-infosheet.pdf> (Accessed on 11/03/2025)

⁴⁸ Ibid

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access, use, and management of natural resources, or those related to environmental degradation⁴⁹. On the other hand, conflict resolution in environmental governance involves effective, efficient, peaceful and expeditious management of conflicts for peace and Sustainable Development⁵⁰. Alternative Dispute Resolution (ADR) processes including mediation and negotiation have been identified as vital towards fostering conflict prevention and resolution in environmental governance⁵¹. In environmental and natural resource-based conflicts, sustainable outcomes are more desirable because the shared benefits of these resources often cross tribal, societal, communal, and national boundaries⁵². Collaboration over the ownership, management, and use of natural resources is therefore critical to peace and stability⁵³. Negotiation and 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 outcomes⁵⁴. Mediation and negotiation are therefore suitable processes towards conflict prevention and resolution in environmental governance due to their potential to foster collaboration in the ownership, management, and use of natural resources while also providing an appropriate forum for effective management of conflicts⁵⁵.

Collaborative management of natural resources involves joint decision-making by all stakeholders including the government, local communities, and the

⁴⁹ United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at https://peacemaker.un.org/sites/default/files/document/files/2022/09/naturalresourcesandconflic_1.pdf (Accessed on 11/03/2025)

⁵⁰ Ibid

⁵¹ Muigua. K., 'Resolving Natural Resource Based Conflicts in Africa through Negotiation and Mediation' Available at <https://kmco.co.ke/articles-publications/resolving-natural-resource-based-conflicts-in-africa-through-negotiation-and-mediation/> (Accessed on 11/03/2025)

⁵² United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

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private sector in relation to natural resource access and use⁵⁶. Through this, it is possible to strengthen environmental governance through informed and inclusive decision-making that enhances the process of resource management, making it more responsive to the needs of all stakeholders⁵⁷. It is therefore necessary to embrace ADR techniques such as mediation and negotiation for effective conflict prevention and resolution in environmental governance through collaboration and cooperation⁵⁸.

Fostering harmony in environmental governance entails balancing competing needs including environmental protection, social equity, and economic development in order to ensure sustainable outcomes by preventing conflicts over competing needs and ensuring cooperation among all participants including the public and private sectors, Non-Governmental Organisations (NGOs), and local communities⁵⁹. Harmony in environmental governance focuses on sound protection of the environment and natural resources, effective management of environmental and natural resource conflicts, promoting consensus and cooperation in environmental decision-making, and ensuring accountability in environmental decision-making⁶⁰. Fostering harmony is therefore crucial for sound environmental governance.

Sustainability in environmental governance involves protecting and conserving the environment and the natural resources on which human well-being depends for the benefit of current and future generations⁶¹. It involves tackling environmental challenges such as biodiversity loss, pollution and climate change in order to uphold human rights including the right to a clean,

⁵⁶ Food and Agriculture Organization., 'An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods' Op Cit

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Haque. M., 'Environmental Governance.' Available at https://www.researchgate.net/publication/318166768_Environmental_Governance (Accessed on 11/03/2025)

⁶⁰ Ibid

⁶¹ Agrawal. A et al., 'From Environmental Governance to Governance for Sustainability' Available at <https://www.sciencedirect.com/science/article/pii/S259033222200269X> (Accessed on 11/03/2025)

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healthy and sustainable environment in order to meet the needs of current and future generations as envisaged by the concept of Sustainable Development⁶². It is therefore necessary to strengthen environmental governance in order to effectively combat environmental challenges, promote environmental justice, human rights, and sustainability for current and future generations⁶³.

4.0 Conclusion

Sound environmental governance is vital towards Sustainable Development. However, the ideal of sound environmental governance is undermined by conflicts, exclusion and marginalisation of certain groups from environmental decision-making, and environmental challenges including climate change, pollution, and biodiversity loss⁶⁴. Fostering conflict prevention, resolution, harmony and sustainability in environmental governance is therefore an urgent and achievable target for peace and prosperity.

⁶² United Nations Development Programme., 'Environmental Governance: Bolstering Inclusive and Effective Governance Systems that Champion Environmental Justice and Sustainability' Op Cit

⁶³ Ibid

⁶⁴ Ibid

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Abstract

This paper critically examines how the right to a clean, healthy and sustainable environment can be achieved by reducing conflict and making peace with nature. The paper argues that conflict has negative impacts on the attainment of the right to a clean, healthy and sustainable environment. It discusses how conflicts undermine progress towards a clean, healthy and sustainable environment. In light of its impacts on the environment, the paper argues that addressing conflict and making peace with nature is a vital agenda towards sustainability. The paper offers ideas towards reducing conflict and making peace with nature in order to attain a clean, healthy and sustainable environment for Sustainable Development.

1.0 Introduction

A clean, healthy and sustainable environment is a fundamental human right. It has been argued that every person has the right to a clean, healthy and sustainable environment¹. Since human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others². It has been argued that the right to a clean, healthy and sustainable environment encompasses various elements including clean and balanced ecosystems, rich biodiversity and a stable climate³. This right recognises that nature is a keystone of a dignified human existence⁴. The right to a clean, healthy and sustainable environment is an essential human right that has been equated to

¹ United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> (Accessed on 07/08/2025)

² Ibid

³ Zimmer K, 'The Human Right That Benefits Nature' <https://www.bbc.com/future/article/20210316-how-the-human-right-to-a-healthy-environment-helps-nature> (Accessed on 07/08/2025)

⁴ Ibid

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the right to life⁵. Since the environment contains virtually all ingredients required to sustain human beings, a threat to the right to a clean, healthy and sustainable environment could potentially hinder attainment of other rights such as the right to food, water, health and sanitation among others⁶.

Attaining a clean, healthy and sustainable environment is vital for both people and planet. For instance, without a clean, healthy and sustainable environment, human beings are unable to fulfill their aspirations⁷. Further, in the face of mounting environmental problems including the triple planetary crisis, recognition and implementation of the right to a clean, healthy and sustainable environment is vital in protecting nature, human life, well-being and dignity⁸. According to the United Nations Environment Programme (UNEP), safeguarding a clean, healthy and sustainable environment is key towards limiting pollution, protecting plants and animals, and countering the impacts of climate change⁹.

A clean, healthy and sustainable environment has been recognised as a core human right both globally and at national levels. For instance, at the global level, the United Nations General Assembly has adopted a Resolution declaring that everyone on the planet has a right to a clean, healthy, and

⁵ Peter K. Waweru v Republic, Misc. Civil Application No. 118 of 2004, (2006) eKLR

⁶ Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment.' Available at <http://kmco.co.ke/wp-content/uploads/2021/04/Recognising-a-Human-Right-to-Safe-Healthy-and-Sustainable-Environment-Kariuki-Muigua-1st-April-2021.pdf> (Accessed on 07/08/2025)

⁷ Office of the United Nations High Commissioner for Human Rights., 'About Human Rights and the Environment' Available at <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment#:~:text=All%20human%20beings%20depend%20on,unable%20to%20fulfil%20our%20aspirations> (Accessed on 07/08/2025)

⁸ Office of the United Nations High Commissioner for Human Rights., 'The Right to a Healthy Environment: A User's Guide' Available at <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf> (Accessed on 07/08/2025)

⁹ United Nations Environment Programme., 'In historic move, UN declares healthy environment a human right' Available at <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> (Accessed on 07/08/2025)

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sustainable environment¹⁰. The resolution by the United Nations General Assembly affirms the importance of the right a clean, healthy and sustainable environment for the enjoyment of all human rights¹¹. It calls upon states, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all¹². At a national level, the right to a clean, healthy and sustainable environment has been enshrined under the *Constitution of Kenya*¹³ which stipulates that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures¹⁴. Achieving a clean, healthy and sustainable environment is therefore a core right both globally and at national levels.

This paper critically examines how the right to a clean, healthy and sustainable environment can be achieved by reducing conflict and making peace with nature. The paper argues that conflict has negative impacts on the attainment of the right to a clean, healthy and sustainable environment. It discusses how conflicts undermine progress towards a clean, healthy and sustainable environment. In light of its impacts on the environment, the paper argues that addressing conflict and making peace with nature is a vital agenda towards sustainability. The paper offers ideas towards reducing conflict and making peace with nature in order to attain a clean, healthy and sustainable environment for Sustainable Development.

2.0 Impacts of Conflict on the Environment

Conflict is a major threat to a clean, healthy and sustainable environment. It has been argued that while the human cost of war is undeniable and profound,

¹⁰ United Nations General Assembly (UNGA)., 'The Human Right to a Clean, Healthy and Sustainable Environment.' UNGA Resolution 'A/76/L.75.'. Available at <https://docs.un.org/en/A/RES/76/300> (Accessed on 07/08/2025)

¹¹ Ibid

¹² Ibid

¹³ Constitution of Kenya., 2010., Government Printer, Nairobi

¹⁴ Ibid, article 42

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the environment also suffers immense and often-overlooked consequences¹⁵. Conflict often fuels environmental destruction, disruption of ecosystems, depletion of natural resources and pollution¹⁶. According to the United Nations, conflict jeopardizes the health of our planet for generations to come¹⁷.

UNEP notes that conflict and the environment are deeply intertwined¹⁸. On one hand, most internal conflicts that are happening globally have been linked to the exploitation of natural resources such as timber, diamonds, gold and oil, or scarce resources such as fertile land and water¹⁹. It has been observed that natural resource- based conflicts are prevalent all over the world as a result of the various competing interests over access to and use of natural resources such as land, water, minerals and forests²⁰. It has been observed that while natural resources are key to achieving Sustainable Development, they are also increasingly acting as drivers of fragility, conflict and violence²¹.

In addition, the impacts of climate change including rising temperatures, drought and water scarcity are fueling the depletion of natural resources

¹⁵ United Nations., 'How conflict impacts our environment' Available at <https://www.un.org/en/peace-and-security/how-conflict-impacts-our-environment#:~:text=While%20the%20human%20cost%20of,planet%20for%20generations%20to%20come>. (Accessed on 08/08/2025)

¹⁶ Ibid

¹⁷ Ibid

¹⁸ United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Available at <https://www.unep.org/news-and-stories/video/inger-andersen-calls-peace-environment> (Accessed on 08/08/2025)

¹⁹ Ibid

²⁰ Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/EnvironmentalConflict-Management-Institutionsand-Approaches.pdf> (Accessed on 08/08/2025)

²¹ United Nations Environment Programme., 'Environmental Cooperation and Peacebuilding.' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climatechange/environmentsecurity/environmentalcooperationand#:~:text=International%20law%2C%20environment%20and%20conflict,and%20reliance%20on%20conflict%20resources> (Accessed on 08/08/2025)

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leading to environmental and natural-resources based conflicts²². It has been argued that the adverse effects of climate change and environmental degradation extend far beyond the environmental realm and increasingly shape human activity by causing and worsening conflicts at the global, regional, national, and local levels²³. Further, the environmental effects of climate change, especially the depletion of natural resources, create conditions that increase the risk of violent conflict²⁴. These impacts including water scarcity, crop failure, food insecurity, migration, and displacement of populations increase the risk of conflict and violence²⁵.

Environmental and natural-resource based conflicts undermine progress towards a clean, healthy and sustainable environment. These conflicts fuel depletion of natural resources and environmental degradation while also undermining peace and Sustainable Development²⁶.

On the other hand, armed conflict also threatens a clean, healthy and sustainable environment. It has been argued that the environment continues to be the silent victim of armed conflicts and wars all over the world²⁷. Armed

²² United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Op Cit

²³ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNote-TheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 08/08/2025)

²⁴ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf (Accessed on 08/08/2025)

²⁵ Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

²⁶ 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> (Accessed on 08/08/2025)

²⁷ United Nations Environment Programme., 'Rooting for the environment in times of conflict and war' Available at <https://www.unep.org/news-and-stories/story/rooting-environment-times-conflict-and-war> (Accessed on 08/08/2025)

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conflicts continue to cause significant damage to the environment – directly, indirectly including through bombing of industrial sites, extensive pollution, use of toxic chemicals and destruction of natural resources including forests²⁸. It has been noted that militaries often clear vegetation or otherwise disrupt ecosystems to remove cover for enemy combatants or make areas uninhabitable and force local populations to leave, with major impacts on nature²⁹. Parties to armed conflicts often damage the environment by polluting water, torching down crops, destroying forests, poisoning soils and killing animals in order to gain military advantage³⁰. It has been argued that environmental degradation and destruction from conflicts not only takes a toll on nature itself, but also exacerbates food and water insecurity and destroys livelihoods³¹.

The impact of conflict on the environment can be direct or indirect. It has been argued that direct impact of conflict on the environment include intentional targeting of the environment, physical destruction of natural resources, or the use of natural resources by militant groups to finance conflict, environmental contamination from bombing of industrial sites, and military debris and demolition waste from targeted infrastructure³². Indirect impacts include coping strategies used by the population to survive in conflict, including through overuse of natural resources, environmental damage due to population displacements, the growth of a black market for natural resources during conflict, and implementation of large-scale humanitarian and peacekeeping operations without due consideration to their environmental impacts³³. Further, conflict also weakens environmental governance structures

²⁸ Ibid

²⁹ United Nations., 'How conflict impacts our environment' Op Cit

³⁰ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Available at <https://www.genevaenvironmentnetwork.org/resources/updates/protecting-the-environment-in-armed-conflict/> (Accessed on 08/08/2025)

³¹ Ibid

³² United Nations Office for Disaster Risk Reduction., 'Environmental Degradation from Conflict' Available at <https://www.undrr.org/understanding-disaster-risk/terminology/hips/so0005> (Accessed on 08/08/2025)

³³ Ibid

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therefore undermining policy coordination, environmental monitoring and enforcement³⁴.

Conflict is therefore a major threat to clean, healthy and sustainable environment. Conflict often leads to environmental degradation and destruction, with long-lasting effects that contribute to the increased vulnerability of the affected populations³⁵. Conflict leads to destruction of ecosystems and natural resources, food and water insecurity, loss of livelihoods, and biodiversity loss thus threatening a clean, healthy and sustainable environment³⁶. In light of the impacts of conflict on the environment, it has been argued that there is need for peace for the environment in order to protect the planet and ensure human well-being³⁷.

3.0 Reducing Conflict and Making Peace with Nature for Development

Conflict has negative impacts on the environment. Environmental and natural-resource based conflicts fuel degradation and resource scarcity thus undermining the ideal of a clean, healthy and sustainable environment³⁸. Further, armed conflicts fuel environmental degradation, destruction of natural resources, pollution and biodiversity loss thus affecting the right to a clean and healthy and sustainable environment³⁹. Armed conflicts and wars generate greenhouse gas emissions that cause climate change, disrupt landscapes and terrestrial and marine ecosystems, and cause pollution from the use of weapons, aircrafts and vehicles⁴⁰. Reducing conflict and making peace with nature is therefore a prerequisite towards attaining a clean, healthy and sustainable environment.

³⁴ Ibid

³⁵ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

³⁶ Ibid

³⁷ United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Op Cit

³⁸ Ibid

³⁹ Ibid

⁴⁰ Conflict and Environment Observatory., 'How does war damage the environment?' Available at <https://ceobs.org/how-does-war-damage-the-environment/> (Accessed on 08/08/2025)

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In order to reduce conflict and make peace with nature for development, it has been argued that action on the environment should be part of conflict prevention, peacekeeping and peacebuilding strategies, since there can be no durable peace if the natural resources that sustain livelihoods and ecosystems are destroyed⁴¹. This goal can be realised by embracing Appropriate Dispute Resolution (ADR) processes in managing and reducing environmental conflicts and making peace with nature⁴². It has been argued that ADR processes including mediation, conciliation and negotiation can promote effective management of environmental conflicts by encouraging consensus building and participatory approaches towards environmental conflict management⁴³. ADR processes are ideal in resolving environmental and natural resource-based conflicts due to their potential to foster collaboration in the ownership, management, and use of natural resources⁴⁴.

Effective management of natural resource-based conflicts has been identified as a platform for peace, environmental justice and Sustainable Development⁴⁵. ADR processes including mediation, negotiation and conciliation provide a platform for collaboration, cooperation and participation towards effective management of environmental and natural-resource based conflicts⁴⁶. Further,

⁴¹ United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Op Cit

⁴² 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 08/08/2025)

⁴³ Ibid

⁴⁴ 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_UNDP_AUNEP2015_0.pdf (Accessed on 08/08/2025)

⁴⁵ Food and Agriculture Organization., 'Negotiation and Mediation Techniques for Natural Resource Management' Available at http://www.antonioacasella.eu/restorative/Castro_Engel_2007.pdf (Accessed on 08/08/2025)

⁴⁶ Ibid

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arbitration has been identified as a viable mechanism for managing cross-border environmental disputes including climate change disputes⁴⁷.

Embracing ADR processes such as negotiation, mediation, conciliation and arbitration can thus aid in reducing conflict and making peace with nature for development. In addition, it is also vital to address the impact of armed conflict and wars on the environment⁴⁸. According to UNEP, protecting the environment before, during and after armed conflict must rise to the same level of political importance as protecting human rights since a clean, healthy and sustainable environment is the foundation upon which peace and many human rights are founded⁴⁹. It is therefore necessary to strengthen the implementation and enforcement of the rules of International Humanitarian Law (IHL) relative to the environment⁵⁰. The rules of IHL prohibit acts that damage the environment including polluting water resources, torching down crops and forests, poisoning soils, killing animals, attacking industrial facilities and using chemical weapons⁵¹. Further, it has been argued that introducing and prosecuting ecocide as the fifth international crime under the Rome statute can strengthen environmental protection during armed conflicts⁵². Recognising ecocide as an international crime can deter acts that cause large-scale and long-term environmental damage while also ensuring that such acts

⁴⁷ United Nations Economic Commission for Africa., 'Transboundary Natural Resource Disputes in Africa: Policies, Institutions and Management Experiences' Available at <https://repository.uneca.org/bitstream/handle/10855/24471/b11898410.pdf?sequence=1&isAllowed=y> (Accessed on 08/08/2025)

⁴⁸ United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Op Cit

⁴⁹ United Nations Environment Programme., 'Rooting for the environment in times of conflict and war' Op Cit

⁵⁰ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

⁵¹ Ibid

⁵² Sarkar. U., 'Ecocide- Protection of Environment: An International Crime' Available at <https://thelawbrigade.com/wp-content/uploads/2021/12/Utsa-Sarkar-IJLDAI.pdf> (Accessed on 08/08/2025)

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are prosecuted at an international level thus reducing the impact of conflict on the environment⁵³.

4.0 Conclusion

A clean, healthy and sustainable environment is necessary for the enjoyment of human rights and a precondition for a liveable planet now and tomorrow. However, conflicts undermine attainment of a clean, healthy and sustainable environment with severe impacts for people and planet. It is therefore necessary to reduce conflict and make peace with nature by fostering effective management of environmental conflicts through ADR processes and protecting the environment during and after armed conflicts through the rules of IHL and ecocide law⁵⁴. Reducing conflict and making peace with nature can therefore be achieved towards a clean, healthy and sustainable environment.

⁵³ Gillett. M., 'Ecocide, environmental harm and framework integration at the International Criminal Court' Available at <https://www.tandfonline.com/doi/full/10.1080/13642987.2024.2433660#abstract> (Accessed on 08/08/2025)

⁵⁴ United Nations Environment Programme., 'Inger Andersen calls for peace for the environment' Op Cit

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Abstract

This paper discusses the need to reconceptualize Alternative Dispute Resolution (ADR) in the African context. The paper argues that ADR in the African context is an 'appropriate' and not 'alternative' tool in the administration of justice. The paper notes that ADR has been practiced in Africa for many centuries. Further, it posits that ADR fits well within the concept of justice in Africa. Consequently, the paper argues that ADR is a suitable tool towards justice, peace and development in Africa. Despite its advantages, the paper notes that ADR is often misconceptualized and considered alternative to litigation in Africa. The paper critically examines some of the key challenges undermining the growth and use of ADR as an appropriate process in Africa. In light of these challenges, the paper discusses how ADR can be reconceptualized in Africa for justice and development.

1.0 Introduction

Alternative Dispute Resolution (ADR) is a term that includes all dispute resolution methods other than court proceedings¹. It has been argued that ADR encompasses a wide range of dispute management techniques that function outside formal court processes². According to the United Nations, ADR comprises various approaches and techniques for resolving disputes in a non-confrontational way³. It has been observed that ADR covers a wide range of techniques and approaches ranging from party-to-party engagement through *negotiation* as the most direct way to reach a mutually accepted resolution, to *arbitration* and *adjudication* where an external party imposes a solution upon

¹ Alternative Dispute Resolution (ADR), Available at [https://uk.practicallaw.thomsonreuters.com/0-107-6391?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-107-6391?transitionType=Default&contextData=(sc.Default)&firstPage=true) (Accessed on 01/08/2025)

² Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

³ United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_backgr_ound_paper.pdf (Accessed on 01/08/2025)

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the parties⁴. Further, it has been noted that somewhere along the axis of ADR approaches between these two extremes lies *mediation* which is a process by which a third party aids the disputants to reach a mutually agreed solution (Emphasis added)⁵. ADR mechanisms may be linked to but function outside formal court litigation processes⁶.

ADR has emerged as a preferred approach towards managing disputes at all levels. At the global level the *Charter of the United Nations* encourages a peaceful approach to management of conflicts amongst states⁷. 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 choice⁸ (Emphasis added). Further, at a national level, the *Constitution of Kenya*⁹ mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and Traditional Dispute Resolution Mechanisms (TDRMs)¹⁰.

The growth of ADR globally is linked to the advantages it provides in the administration of justice. ADR mechanisms contain key attributes including informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes which makes them a viable tool in enhancing access to justice¹¹. ADR provides numerous advantages in the administration of justice including a system with procedural flexibility, a broad range of remedial options, and a focus on individualized justice¹². It has been argued that with the exception of binding arbitration, the

⁴ Ibid

⁵ Ibid

⁶ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁷ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁸ Ibid, article 33 (1)

⁹ Constitution of Kenya., 2010., Government Printer, Nairobi

¹⁰ Ibid, article 159 (2) (c)

¹¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

¹² Main. T., 'ADR: The New Equity.' Available at https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf (Accessed 01/08/2025)

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goal of ADR is to provide a forum for disputing parties to work toward a voluntary, consensual agreement, as opposed to having a judge or other authority impose an outcome upon them¹³. Further, ADR provides a platform for parties in dispute to resolve their differences prior to or during the use of formal administrative procedures and litigation which are often very costly and time-consuming¹⁴. In addition, ADR allows for more creative and collaborative solutions than those available in traditional litigation¹⁵.

Due to their key attributes and benefits, it has been argued that ADR mechanisms should be considered as *'appropriate'* and not *'alternative'* in the quest towards justice¹⁶. It has been argued that the term *'alternative'* is a misnomer since it may be understood to imply that ADR mechanisms are second-best to litigation which is not the case¹⁷. Access to justice through formal court processes is hindered by several challenges including costs, bureaucracy, complex legal procedures, illiteracy, corruption, distance from formal courts, backlog of cases in courts and lack of legal knowhow¹⁸. ADR has thus emerged as an appropriate tool towards addressing these challenges and enhancing flexibility, efficiency, informality, party autonomy, cost-effectiveness and expeditiousness in managing disputes¹⁹. It is therefore

¹³ Alternative Dispute Resolution., Available at <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=Types%20of%20ADR%20include%20arbitration,%2C%20neutral%20factfinding%2C%20and%20minitrials>. (Accessed on 01/08/2025)

¹⁴ Alternative Dispute Resolution Handbook., Available at <https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf> (Accessed on 01/08/2025)

¹⁵ JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 01/08/2025)

¹⁶ 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 01/08/2025)

¹⁷ P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52

¹⁸ 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

¹⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

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necessary to reconceptualize ADR in order to bolster its role in access to justice and development.

This paper discusses the need to reconceptualize ADR in the African context. The paper argues that ADR in the African context is an *'appropriate'* and not *'alternative'* tool in the administration of justice. The paper notes that ADR has been practiced in Africa for many centuries. Further, it posits that ADR fits well within the concept of justice in Africa. Consequently, the paper argues that ADR is a suitable tool towards justice, peace and development in Africa. Despite its advantages, the paper notes that ADR is often misconceptualized and considered alternative to litigation in Africa. The paper critically examines some of the key challenges undermining the growth and use of ADR as an appropriate process in Africa. In light of these challenges, the paper discusses how ADR can be reconceptualized in Africa for justice and development.

2.0 ADR in Africa: Promises and Pitfalls

ADR is not an alien concept in Africa. It has been observed that ADR mechanisms have been practiced in Africa for many centuries²⁰. Therefore, the introduction of some terms, laws, rules and/or terminologies in the current landscape of ADR in the continent does not make it foreign²¹. Before colonialism, most African societies, if not all, were living communally and were organized along clan, village, tribal or ethnic lines²². Conflicts were therefore a common phenomenon in African societies. Conflicts were a common occurrence in this set up due to various issues including land, chieftaincy, personal relationship issues, family property, murder, and matrimonial fall-

²⁰ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

²¹ Elachi. A.J., 'African Lawyers and Alternative Dispute Resolution' Available at <https://lawyersofafrica.org/wp-content/uploads/2019/08/African-Lawyers-and-Alternative-Dispute-Resolution.pdf> (Accessed on 02/08/2025)

²² Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successes-challenges-and-opportunities-1.pdf> (Accessed on 02/08/2025)

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outs among others²³. It has been observed that African societies have throughout history upheld norms and values geared towards promoting social cohesion and smooth running of the community²⁴. These values include respect and honor for elders, unity, cooperation, forgiveness, harmony, truth, honesty, *Ubuntu/Utu*, and peaceful co-existence²⁵. Conflicts were therefore seen as a threat to the social fabric that holds the community together²⁶.

Due to the negative impacts of conflicts on the entire community, African societies have frameworks in place for the resolution of conflicts and for preventing their escalation into violence, in order to avoid threatening the social fabric that holds these communities together²⁷. The process of conflict management in African societies is well-entrenched in the traditions, customs, norms and taboos of the people²⁸. It takes the form of informal negotiation, mediation, reconciliation and arbitration among other techniques²⁹. These mechanisms are considered 'appropriate' and not 'alternative' in management of disputes since they are able to safeguard values that are inherent in African societies and foster peace and social cohesion³⁰. ADR is considered appropriate since it fits well within the concepts of justice in Africa and its core values of peace, truth, harmony and reconciliation³¹.

ADR cannot therefore be considered as alternative in Africa. For many years, African societies have had institutional mechanisms including the Council of

²³ Ademowo. A., 'Conflict Management in Traditional African Society.' Available at https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society (Accessed on 02/08/2025)

²⁴ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

²⁵ Ibid

²⁶ Ibid

²⁷ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

²⁸ Ademowo. A., 'Conflict Management in Traditional African Society.' Op Cit

²⁹ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

³⁰ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

³¹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

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Elders as well as cultural and spiritual sources to uphold the values of peace, tolerance, solidarity and respect for, and of, one another³². These structures are responsible for peace education, confidence-building, peacemaking, peacebuilding, conflict monitoring, conflict prevention, conflict management, and conflict resolution³³. When conflicts occurred, these structures and systems ensure that they are effectively managed through dialogue, negotiation and mediation among other traditional conflict management techniques³⁴. It has been argued that the mechanisms adopted towards conflict prevention, management and resolution in African are largely effective and respected, and their decisions are binding on all parties, since the identity of an individual is linked to that of the community³⁵. Consequently, there is an impetus for individuals to comply with decisions for the well-being of the community³⁶. In addition, social ties, values, norms and beliefs and the threat of excommunication from the society provide institutions such as the Council of Elders with legitimacy and sanctions to ensure their decisions are complied with³⁷.

From the foregoing, it is evident that ADR has a long and rich history in Africa. As a result, it has been argued that ADR should be embraced as '*African Dispute Resolution*' and not Alternative Dispute Resolution³⁸. Throughout its history in the continent, ADR has focused greatly on principles of reconciliation and maintaining social cohesion as opposed to punitive justice which is the case in modern dispute resolution processes³⁹. ADR has been described as an age long cultural phenomenon in most African Countries⁴⁰. It has been argued that ADR

³² ACCORD., 'Traditional Methods of Conflict Resolution.' Available at <https://www.accord.org.za/conflict-trends/traditional-methods-of-conflict-resolution/> (Accessed on 02/08/2025)

³³ Ibid

³⁴ Ibid

³⁵ Ademowo. A., 'Conflict Management in Traditional African Society.' Op Cit

³⁶ Ibid

³⁷ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

³⁸ Elachi. A.J., 'African Lawyers and Alternative Dispute Resolution' Op Cit

³⁹ Ibid

⁴⁰ Phillips. F.P., 'ADR in Africa' Available at <https://www.businessconflictmanagement.com/blog/2012/06/adr-in->

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is an African concept and is on its face, a natural dispute resolution process for the continent⁴¹.

Despite its suitability and appropriateness in the continent, it has been observed that most African countries have adopted a form of ADR based on Western notions⁴². As African countries became colonized, the colonial governments controlled dispute resolution mechanisms and replaced the old customary law systems of dispute resolution with court processes⁴³. It has been observed that some of the traditional dispute resolution mechanisms survived only as informal systems and as lower courts in the judicial hierarchy⁴⁴. The traditional dispute resolution processes which promoted ADR in the African context were therefore disregarded following the introduction of formal dispute resolution processes in the continent. It has been argued that the indigenous practices and institutions on conflict management were largely weakened and even destroyed in many African societies, since the colonial powers introduced formal justice processes such as law courts, which came to pronounce judgments rather than resolve conflicts according to the African concepts of justice⁴⁵. This has significantly impacted the growth of ADR in the continent.

Further, it has been argued that the current practice of ADR as we know it today originated and developed within specific cultural, ideological and political contexts inherent in the West and therefore, its application in non-Western societies especially Africa may turn out to be counter-productive since the latter exhibit markedly different social, cultural, historical and political conditions⁴⁶. Most of the ADR mechanisms being practiced in Africa including

[africa/#:~:text=Alternative%20Dispute%20resolution%20is%20an,the%20indigenous%20system%20of%20governance.](#) (Accessed on 02/08/2025)

⁴¹ Elachi. A.J., 'African Lawyers and Alternative Dispute Resolution' Op Cit

⁴² Price. C., 'Alternative Dispute Resolution in Africa: Is ADR the Bridge Between Traditional and Modern Dispute Resolution?', 18 *Pepp. Disp. Resol. L.J.* 393 (2018)

⁴³ Phillips. F.P., 'ADR in Africa' Op Cit

⁴⁴ Ibid

⁴⁵ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' Op Cit

⁴⁶ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at

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arbitration, mediation and adjudication are largely influenced by the Western conceptions of justice where they are seen as *'alternative'* as opposed to *'appropriate'* in the African context⁴⁷.

In light of the foregoing challenges, it is imperative to reconceptualize ADR in the African context for justice and development.

3.0 Reconceptualizing ADR in the African Context for Development

It is imperative to reconceptualize ADR in the African context. ADR has been part and parcel of conflict management in Africa since time immemorial. It is an appropriate and effective tool in managing conflicts and disputes for peace and development⁴⁸. Despite its suitability in Africa, the current practice of ADR in the continent is heavily westernized and fails to fully capture African cultural values and conflict management practices and principles⁴⁹. On this basis, it has been argued that there is need to Africanize conflict management processes in order to fully capture the spirit of conflict management inherent in African societies⁵⁰.

It has been observed that many African countries are still struggling to establish functional, timely, and trusted judicial systems⁵¹. Consequently, it has been argued that many African citizens have lost faith in the ability of their nations' courts to provide timely or just closure to their grievances⁵². In post-conflict and fragile contexts, where societal tensions are already high and

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1612865 (Accessed on 02/08/2025)

⁴⁷ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

⁴⁸ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Op Cit

⁴⁹ Ghebretkle. T., & Rammala. M., 'Traditional African Conflict Resolution: The Case of South Africa and Ethiopia' available at <https://www.ajol.info/index.php/mlr/article/view/186176> (Accessed on 02/08/2025)

⁵⁰ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

⁵¹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁵² Ibid

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justice systems typically do not function as in the case of some African countries, the need for prompt resolution of disputes is particularly vital⁵³. ADR has thus developed as an ideal and popular channel outside formal procedures to resolve disputes in timely manner, while restoring the parties' sense of justice⁵⁴.

Further, ADR can play a key role in peacebuilding in Africa. ADR mechanisms such as mediation, conciliation and negotiation are not only vital in addressing internal conflicts but also doing so in ways that enhance sustainable peace rather than dividing people further as would be the case with adversarial court processes⁵⁵. For many decades, several African countries have been characterized by internal conflicts, intra and inter-state wars, and political instability threatening peace, security and development⁵⁶. As a result of these conflicts, it has become more challenging to secure lasting peace in Africa, with protracted and recurring conflict more difficult to prevent or resolve, often because their underlying causes are not well understood or addressed⁵⁷. Utilising ADR processes including mediation, negotiation and conciliation can foster lasting peace in Africa by addressing the root causes of conflict thus resulting in mutually satisfying and long-lasting outcomes while also eliminating the likelihood of conflicts reemerging in future⁵⁸.

Embracing ADR in Africa is therefore key for development. ADR can enhance access to justice by strengthening dispute management systems and bridging the gap between formal legal systems and traditional modes of African

⁵³ Ibid

⁵⁴ Price. C., 'Alternative Dispute Resolution in Africa: Is ADR the Bridge Between Traditional and Modern Dispute Resolution?.' Op Cit

⁵⁵ Muigua. K., 'Towards Effective Peacebuilding and Conflict Management in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2021/05/Towards-Peacebuilding-and-Conflict-Managementin-Kenya.docx-Kariuki-Muigua-MAY-2021x.pdf> (Accessed on 02/08/2025)

⁵⁶ Olaosebikan. A., 'Conflicts in Africa: Meaning, Causes, Impact and Solution.' *African Research Review.*, Volume 4, No. 4 (2010)

⁵⁷ United Nations., 'Promotion of Durable Peace and Sustainable Development in Africa.' Available at https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875_osaa_sg_report_web_new.pdf (Accessed on 02/08/2025)

⁵⁸ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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justice⁵⁹. Further, ADR has high value in stabilization, peacebuilding and state building efforts when judicial institutions are weak and social tensions are high⁶⁰. In order to achieve these goals, it is imperative to reconceptualize ADR in the African context. There is need to consider and embrace ADR mechanisms in Africa as 'appropriate' and not '*alternative*' in the quest towards access to justice⁶¹. Further, ADR mechanisms should be widely embraced in Africa including through putting in place appropriate legal, policy, and institutional frameworks in order to encourage their uptake⁶². Governments should support the growth of ADR in the continent including through initiating and financing ADR projects, fostering public awareness on ADR and putting in place effective ADR frameworks⁶³.

There is also need to reform the current practice of ADR in Africa in order to capture the spirit of conflict management inherent in African societies. It has been observed that most African countries have adopted a form of ADR based on Western notions⁶⁴. However, since the African culture and spirit of conflict management is quite different than Western culture, modifications are necessary in order to effectively embrace ADR in Africa⁶⁵. In particular, indigenous and customary systems of conflict management in Africa should be recognised and strengthened in order to capture and reflect ADR in the African context⁶⁶.

⁵⁹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁶⁰ Ibid

⁶¹ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

⁶² Muigua. K., 'Effective Justice for Kenyans: Is ADR Really Alternative?' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Alternative-Dispute-Resolution-or-Appropriate-Dispute-Resolution.pdf> (Accessed on 02/08/2025)

⁶³ Ibid

⁶⁴ Price. C., 'Alternative Dispute Resolution in Africa: Is ADR the Bridge Between Traditional and Modern Dispute Resolution?.' Op Cit

⁶⁵ Ibid

⁶⁶ Ibid

4.0 Conclusion

ADR holds a special place in Africa. It has been part and parcel of conflict management in the continent since time immemorial⁶⁷. ADR in the African context is considered '*appropriate*' and not '*alternative*'. It fits well within the concepts of justice in Africa and its core values of peace, truth, harmony and reconciliation⁶⁸. Reconceptualizing ADR in the African context is therefore necessary for justice, peace and development.

⁶⁷ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

⁶⁸ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

Addressing the Cost of Conflict in the Pursuit of Green Growth and Development

Abstract

This paper discusses how the cost of conflict can be effectively addressed in the pursuit of green growth and development. The paper argues that conflicts take a huge toll on green growth and development. It examines ways through which conflicts affect the quest towards green growth and development globally. In light of its impacts, the paper argues that addressing the cost of conflict is vital in order to achieve green growth and development. The paper proposes measures towards addressing the cost of conflict towards strengthening the pursuit of green growth and development.

1.0 Introduction

Pursuing green growth has become a key ideal globally in the quest towards Sustainable Development. Green growth has been described as a new revolutionary development paradigm that sustains economic growth while at the same time ensuring climatic and environmental sustainability¹. Green growth provides a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner². It has been argued that green growth is one that is environmentally sustainable³. This type of growth is efficient in its use of natural resources, clean in that it minimizes pollution and negative environmental impacts, and resilient in that it accounts for natural hazards and the role of environmental management in preventing physical hazards and excessive commodity price volatility⁴. According to the United Nations Environment Programme (UNEP), green growth seeks to ensure low-carbon, resource efficient and socially inclusive

¹ Green Growth., Available at <https://sustainabledevelopment.un.org/index.php?menu=1447> (Accessed on 15/07/2025)

² African Development Bank Group., 'Green Growth' Available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/green-growth-initiative/background> (Accessed on 15/07/2025)

³ World Bank Group., 'Inclusive Green Growth' Available at <https://documents1.worldbank.org/curated/en/129971468157532224/pdf/793260BRI0v20R00Box037737400Public0.pdf> (Accessed on 15/07/2025)

⁴ Ibid

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economies⁵. UNEP notes that green growth is designed towards reducing carbon emissions, tackling pollution, enhancing energy and resource efficiency, and preventing the loss of biodiversity and ecosystem services⁶.

Achieving green growth is necessary for Sustainable Development. It has been argued that green growth is a tool to achieve Sustainable Development and not a competing paradigm⁷. Green growth offers a development pathway that reconciles the urgent need for sustained economic growth and environmental sustainability⁸. It emphasizes that economic growth is of central importance for development and poverty reduction and that achieving environmental sustainability and social inclusion are equally important and necessary in order to ensure that economic development is sustainable over the long term⁹. It has been argued that green growth provides a clear and focused agenda for achieving Sustainable Development and entails an operational policy approach that can help achieve concrete, measurable progress at the interface between the economy and the environment towards sustainability¹⁰.

Pursuing green growth is therefore vital for development. Green growth focuses on investments in key sectors such as renewable energy, low-emission transport, energy-efficient buildings, clean and green technologies, sustainable waste management, sustainable agriculture and forest management and sustainable fishing towards balancing economic growth and environmental sustainability¹¹. It has been argued that green growth can help all countries to alleviate poverty, enhance employment opportunities and achieve social

⁵ United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy> (Accessed on 15/07/2025)

⁶ Ibid

⁷ World Bank Group., 'Inclusive Green Growth' Op Cit

⁸ Ibid

⁹ Global Green Growth Institute., 'Green Growth in Action: Attaining Green Cities' Available at https://gggi.org/wp-content/uploads/2020/11/Green-Growth-in-Action-Attaining-Green-Cities_reduced-size.pdf (Accessed on 15/07/2025)

¹⁰ Organisation for Economic Co-operation and Development., 'Towards Green Growth' Available at <http://dx.doi.org/10.1787/9789264111318-en> (Accessed on 15/07/2025)

¹¹ Kasztelan. A., 'Green Growth, Green Economy and Sustainable Development: Terminological and Relational Discourse' *Prague Economic Papers* (2017), 26(4):487-499

progress while also reducing ecological pressure, preserving natural resources and building resilience¹².

Despite its efficacy in fostering development, several factors undermine the pursuit of green growth. In particular, it has been argued that conflicts undermine green growth by affecting investments in key sectors such as renewable energy and infrastructure¹³; weakening institutions and resources available for green growth¹⁴; fueling social inequalities¹⁵; and affecting environmental sustainability¹⁶. Effective management of conflicts is therefore crucial for green growth.

This paper discusses how the cost of conflict can be effectively addressed in the pursuit of green growth and development. The paper argues that conflicts take a huge toll on green growth and development. It examines ways through which conflicts affect the quest towards green growth and development globally. In light of its impacts, the paper argues that addressing the cost of conflict is vital in order to achieve green growth and development. The paper proposes measures towards addressing the cost of conflict towards strengthening the pursuit of green growth and development.

2.0 Impacts of Conflict on Green Growth and Development

Conflicts undermine progress towards green growth and development. It has been argued that green growth is directly affected by conflict, peace and fragility¹⁷. It has been observed that countries that are most affected by climate

¹² African Development Bank Group., 'Green Growth and Human Capital Development in Africa: Economic Sector Working Paper' Available at <https://globalcad.org/wp-content/uploads/2018/04/Green-Growth-Human-Capital-Development-Final-Report.pdf> (Accessed on 15/07/2025)

¹³ Supporting Green Growth in Fragile and Conflict-affected Settings., Available at <https://www.enterprise-development.org/wp-content/uploads/GG-Fragile-Contexts-Technopolis.pdf> (Accessed on 15/07/2025)

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Enabling GGGI to Deliver Green Growth Impact in Conflict and Fragile Contexts., Available at <https://gggi.org/project/enabling-gggi-to-deliver-green-growth-impact-in-conflict-and-fragile-contexts/#:~:text=Green%20growth%20is%20directly%20affected,and%20impact%20in%20those%20contexts.> (Accessed on 16/07/2025)

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change, environmental degradation and unsustainable development are also facing high levels of conflict and fragility¹⁸. Fragile and conflict-affected settings suffer some from limited resources, poor governance, weak institutions and inequality¹⁹. These factors undermine green growth by affecting economic development and sound environmental protection²⁰. They fuel environmental challenges including resource scarcity, degradation of natural resources, deforestation, reduction in the quality and quantity of freshwater and environmental pollution²¹.

In addition, conflicts affect green growth by disrupting development²². The pursuit of green growth relies on investments in key sectors such as renewable energy, low-emission transport, energy-efficient buildings, clean and green technologies, sustainable waste management, sustainable agriculture and forest management and sustainable fishing²³. However, conflicts pose significant challenges to development and sustainability, leading to economic decline, social dislocation, humanitarian disasters, and environmental damage²⁴. For instance, armed conflicts can divert resources from green growth initiatives to military spending leading to decline in economic growth, decreased agricultural production, food insecurity and inequalities²⁵. It has been argued that the loss of human life, destruction of infrastructure, human capital, and institutions, political instability, and greater uncertainty associated with conflicts can impede investment and economic growth – not only during conflict but also in the aftermath of conflict²⁶.

¹⁸ Ibid

¹⁹ Supporting Green Growth in Fragile and Conflict-affected Settings., Op Cit

²⁰ Ibid

²¹ Ibid

²² African Development Bank Group., 'Nexus conflict and sustainability: An African perspective' Available at <https://blogs.afdb.org/climate-change-in-africa/nexus-conflict-and-sustainability-an-african-perspective-363#:~:text=Armed%20conflicts%20pose%20significant%20challenges,hindered%20development%20and%20sustainability%20efforts.> (Accessed on 16/07/2025)

²³ Kasztelan. A., 'Green Growth, Green Economy and Sustainable Development: Terminological and Relational Discourse' Op Cit

²⁴ African Development Bank Group., 'Nexus conflict and sustainability: An African perspective' Op Cit

²⁵ Ibid

²⁶ International Monetary Fund., 'The Economic Consequences of Conflicts' Available at

Armed conflicts are also a major cause of environmental degradation thus affecting green growth²⁷. The ideal of green growth aims at ensuring sustained economic growth while fostering environmental sustainability by reducing carbon emissions, tackling pollution, enhancing energy and resource efficiency, and preventing the loss of biodiversity and ecosystem services²⁸. However, armed conflicts fuel the contamination of lands, the pollution of waterways, and release of greenhouse gases taking a huge toll on the environment with severe impacts on green growth and development²⁹. Armed conflicts and wars that are happening globally are causing widespread and long-term environmental damage, leading to food and water insecurity, loss of livelihoods, and biodiversity loss³⁰. It has been pointed out that parties to armed conflicts and wars often employ tactics that damage the environment such as polluting water resources, torching down crops, destroying forests, poisoning soils, and killing animals in order to gain military advantage³¹. Armed conflicts therefore undermine environmental sustainability and green growth.

The pursuit of green growth can also trigger resource-based conflicts³². In particular, it has been argued that a global transition from fossil fuels to green technologies such as solar panels, wind turbines, energy storage and electric

<https://www.elibrary.imf.org/downloadpdf/display/book/9781484396865/ch002.pdf> (Accessed on 16/07/2025)

²⁷ African Development Bank Group., 'Nexus conflict and sustainability: An African perspective' Op Cit

²⁸ United Nations Environment Programme., 'Green Economy' Op Cit

²⁹ United Nations., 'How conflict impacts our environment' Available at <https://www.un.org/en/peace-and-security/how-conflict-impacts-our-environment#:~:text=Armed%20conflicts%20use%20large%20quantities,human%20health%20and%20the%20environment> (Accessed on 16/07/2025)

³⁰ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Available at <https://www.genevaenvironmentnetwork.org/resources/updates/protecting-the-environment-in-armed-conflict/> (Accessed on 16/07/2025)

³¹ Ibid

³² United States Institute of Peace., 'A 'Green Economy' risks new conflicts—but that's avoidable' Available at <https://www.usip.org/publications/2021/04/green-economy-risks-new-conflicts-thats-avoidable> (Accessed on 16/07/2025)

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vehicles relies on key minerals³³. These minerals are referred to as ‘critical raw materials’ and include cobalt, graphite, lithium, magnesium, niobium, silicon, vanadium, and rare earth elements (Emphasis added)³⁴. It has been argued that these materials are classified as ‘critical’ not because they are considered as scarce but because they have significant economic importance in key sectors including the environment, health, defence, and consumer electronics³⁵. The transition from fossil fuels to clean energy sources in pursuit of green growth depends on the availability and sustainable use of critical raw materials³⁶. These minerals are essential components in many of today’s rapidly growing clean energy technologies including wind turbines, solar panels and electric vehicles³⁷. Despite their vital importance, it has been observed that harnessing critical raw materials in pursuit of green growth is a major source of conflicts and inequality³⁸. Many of these resources are located in fragile states that suffer from poor governance and frequent violent conflicts³⁹. Further, it has been observed that most of the projects involving extraction of critical raw materials take place on lands belonging to indigenous peoples often resulting in conflict, displacement and loss of cultural heritage⁴⁰.

Conflict can therefore undermine green growth and development while the pursuit of green growth also risks new conflicts including those concerning critical raw materials. It is vital to address the cost of conflict in order to spur green growth and development.

³³ Ibid

³⁴ Critical Raw Material., Available at <https://www.bgs.ac.uk/mineralsuk/statistics/security-of-supply/critical-raw-materials/> (Accessed on 16/07/2025)

³⁵ CRM Alliance., ‘Critical Raw Materials’ Available at <https://www.crmalliance.eu/critical-raw-materials> (Accessed on 16/07/2025)

³⁶ United Nations Environment Programme., ‘Critical Energy Transition Minerals’ Available at <https://www.unep.org/topics/energy/renewable-energy/critical-energy-transition-minerals> (Accessed on 16/07/2025)

³⁷ Ibid

³⁸ United States Institute of Peace., ‘A ‘Green Economy’ risks new conflicts – but that’s avoidable’ Op Cit

³⁹ Ibid

⁴⁰ Environmental Coalition on Standards., ‘Resourceful thinking: Why we need a better approach to critical raw materials’ Available at https://ecostandard.org/news_events/resourceful-thinking-why-we-need-a-better-approach-to-critical-raw-materials/ (Accessed on 16/07/2025)

3.0 Addressing the Cost of Conflict in the Pursuit of Green Growth and Development

Pursuing green growth is vital in the quest towards Sustainable Development. The concept of green growth affirms that sustained economic growth can be compatible with staying in the ecological limits of our planet, with measures to decouple economic growth from negative environmental impacts⁴¹. It aims to ensure that continued economic growth is pursued in a more environmentally sustainable manner⁴². Green growth builds on Sustainable Development and provides a pathway that seeks to achieve growth targets and development objectives in a more efficient, sustainable and resilient manner⁴³. Green growth provides a development pathway that reconciles the urgent need for sustained economic growth and environmental sustainability⁴⁴. Green growth can therefore unlock development by ensuring sustained economic growth and environmental sustainability while ensuring social inclusion and poverty eradication⁴⁵.

Despite its efficacy as a pathway towards Sustainable Development, conflicts are taking a huge toll on green growth and development. Conflicts are disrupting green growth and development, undermining investments in green growth initiatives such as renewable energy and sustainable agriculture and fueling environmental degradation⁴⁶. The pursuit of green growth can also trigger resource-based conflicts especially those concerning green transition minerals⁴⁷.

Addressing the cost of conflict is therefore vital in the pursuit of green growth and development. In order to achieve this goal, it is key to support green

⁴¹ Green Growth: Sustainable Future or Myth? - Part One., Available at <https://populationmatters.org/news/2024/10/green-growth-sustainable-future-or-myth-part-one/> (Accessed on 16/07/2025)

⁴² Ibid

⁴³ African Development Bank Group., 'Green Growth' Op Cit

⁴⁴ World Bank Group., 'Inclusive Green Growth' Op Cit

⁴⁵ Ibid

⁴⁶ Supporting Green Growth in Fragile and Conflict-affected Settings., Op Cit

⁴⁷ United States Institute of Peace., 'A 'Green Economy' risks new conflicts – but that's avoidable' Op Cit

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growth in fragile and conflict-affected settings⁴⁸. It has been argued that adopting green growth initiatives that work well in fragile contexts and those that reduce or mitigate fragility contexts can aid in addressing the cost of conflict on green growth and development. For example, approaches such as decentralized sustainable energy, improved natural resources management, sustainable agriculture, circular economy, and sustainable and transparent extractive industries can tackle the impact of conflict on green growth by reducing inequalities, supporting the development of local supply chains, reducing environmental pressures and resource scarcity, and bolstering local institutions due to enhanced transparency⁴⁹.

Further, there is need to embrace effective conflict management techniques in order to spur green growth. It has been observed that in the quest towards green growth, disputes may occur in key sectors including renewable energy, carbon reduction, waste management, electrification, transport and other initiatives and collaborations aimed at developing and implementing sustainable innovation⁵⁰. Further, with the urgent need to combat climate change for green growth, the risk of disputes related to sustainability and green growth is on the rise⁵¹. It has been argued that Alternative Dispute Resolution (ADR) techniques including arbitration and mediation are appropriate in managing disputes and conflicts concerning green growth⁵². These processes are suitable in addressing conflicts and disputes concerning climate change, renewable energy, infrastructure, transport, agriculture and other land use and food production systems⁵³. For example, ADR allows parties to choose a mediator, arbitrator or expert with legal and technical expertise in thematic

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ 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 16/07/2025)

⁵¹ Ibid

⁵² Ibid

⁵³ International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (Accessed on 16/07/2025)

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areas within the green growth discourse⁵⁴. Further, for long-term green growth initiatives such as those involving renewable energy and infrastructure, ADR processes such as mediation can foster collaboration and preserve critical business relationships therefore ensuring the long-term sustainability and viability of such projects⁵⁵. Embracing ADR is therefore key towards addressing the cost of conflict in the pursuit of green growth and development.

Further, it is imperative to tackle the impact of conflict on the environment. It has been argued that beyond immediate environmental destruction, conflicts disrupt ecosystems, deplete natural resources, pollute the environment, and jeopardize the health of our planet for generations to come⁵⁶. Environmental damage and destruction due to conflict has severe impacts for natural resources, critical ecosystems, and people's health, livelihoods, and security⁵⁷. Conflicts therefore undermine environmental sustainability which is a key theme under green growth. It is thus vital to strengthen environmental protection during and after conflicts in order to enhance green growth and environmental sustainability⁵⁸.

In addition, there is need to prioritise sustainable resource extraction in order to tackle the cost of conflict in the pursuit of green growth and development⁵⁹. Unsustainable extraction of resources that support green growth including critical raw materials can trigger conflicts⁶⁰. It is therefore necessary to embrace sustainable extraction of these resources by upholding human rights especially for indigenous peoples and local communities, fostering sound labour

⁵⁴ World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Op Cit

⁵⁵ Managing and Resolving Cross-Border Disputes in the Energy Sector.' Available at Available at <https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/> (Accessed on 16/07/2025)

⁵⁶ United Nations., 'How conflict impacts our environment' Op Cit

⁵⁷ Ibid

⁵⁸ United Nations Environment Programme., 'Protecting the environment during armed conflict: an inventory and analysis of international law' Available at <https://www.unep.org/resources/report/protecting-environment-during-armed-conflict-inventory-and-analysis-international> (Accessed on 16/07/2025)

⁵⁹ United States Institute of Peace., 'A 'Green Economy' risks new conflicts – but that's avoidable' Op Cit

⁶⁰ Ibid

practices and safety standards, and ensuring equitable benefit-sharing of the accruing benefits⁶¹.

4.0 Conclusion

Pursuing green growth is fundamental towards Sustainable Development. However, conflicts can have a huge cost on green growth undermining development⁶². It is therefore important to address the cost of conflict in the pursuit of green growth and development by supporting green growth in fragile and conflict-affected settings;⁶³ embracing appropriate conflict management processes including mediation and arbitration;⁶⁴ tackling the impact of conflict on the environment;⁶⁵ and embracing sustainable resource extraction⁶⁶. Addressing the cost of conflict in the pursuit of green growth is therefore a key agenda that should be prioritised for Sustainable Development.

⁶¹ United Nations., 'Securing Indigenous Rights in the Energy Transition: Preventing Harm, Ensuring Consent, and Promoting Equity in Transition Minerals Extraction' Available at https://social.desa.un.org/sites/default/files/inline-files/Galina_Angarova_EGM_2024_0.pdf (Accessed on 16/07/2025)

⁶² Supporting Green Growth in Fragile and Conflict-affected Settings., Op Cit

⁶³ Ibid

⁶⁴ World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Op Cit

⁶⁵ United Nations Environment Programme., 'Protecting the environment during armed conflict: an inventory and analysis of international law' Op Cit

⁶⁶ United States Institute of Peace., 'A 'Green Economy' risks new conflicts – but that's avoidable' Op Cit

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Abstract

This paper critically examines the role of arbitration in managing carbon disputes. The paper examines the nature and causes of carbon disputes. It argues that these disputes are undesirable since they can hinder climate mitigation efforts at all levels. Consequently, the paper posits that effective management of carbon disputes is vital towards effectively confronting climate change. The paper argues that arbitration is a viable mechanism in managing carbon disputes. It examines the salient features of arbitration which makes it ideal in ensuring effective management of carbon disputes. Further, the paper suggests interventions towards arbitrating carbon disputes for green growth and sustainability.

1.0 Introduction

The world is witnessing a climate crisis. Adverse effects of climate change including extreme flooding, severe droughts, sea level rise, increasing temperatures and frequency and intensity of tropical cyclones, and storm surges are being witnessed globally undermining progress towards Sustainable Development¹. Climate change remains one of the main global challenges that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda². It has been described as the most defining challenge of our time³. Consequently, confronting climate change has become an urgent global priority towards attaining Sustainable Development. The United Nations *2030 Agenda for Sustainable Development*⁴ acknowledges that climate change is one of the

¹ Bafana. B., 'Climate Change is No 'Future Scenario' for Pacific Island Nations; Climate Change is 'Real' Available at <https://reliefweb.int/report/world/climate-change-no-future-scenario-pacific-islandnations-climate-change-real> (Accessed on 24/07/2025)

² Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

³ United Nations Department of Economic and Social Affairs., 'Forum on Climate Change and Science and Technology Innovation.' Available at <https://www.un.org/en/desa/forum-climate-change-and-science-and-technology-innovation> (Accessed on 24/07/2025)

⁴ 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 24/07/2025)

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greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development⁵. Under the Agenda, Sustainable Development Goal (SDG) 13 urges all states to take urgent action to combat climate change and its impacts⁶.

It has been correctly noted that in order to effectively confront climate change, there is need for all countries to reduce their greenhouse gas emissions⁷. Human activities have been the main drivers of climate change due to the burning of fossil fuels like coal, oil and gas⁸. These activities have increased the concentration of atmospheric carbon dioxide resulting to the greenhouse effect which contributes to global warming and climate change⁹. Reducing greenhouse gas emissions including carbon is therefore vital towards combating climate change. In order to achieve this goal, various climate mitigation initiatives have been embraced including the use of carbon markets.

Carbon markets have been defined as trading schemes that provide financial incentives for climate change mitigation¹⁰. It has been observed that under these schemes, greenhouse gas emission reductions and/or removals are quantified into carbon credits that can be bought and sold, with the aim of transitioning economies to net zero¹¹. Carbon markets have also been defined as a trading system in which carbon credits are sold and bought¹². They provide a trading system through which countries may buy or sell units of greenhouse-gas emissions in an effort to meet their national limits on

⁵ Ibid

⁶ Ibid, Goal 13

⁷ United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 24/07/2025)

⁸ Ibid

⁹ 'The Causes of Climate Change.' Available at <https://climate.nasa.gov/causes/> (Accessed on 24/07/2025)

¹⁰ United Nations Development Programme., 'Carbon Markets' Available at <https://climatepromise.undp.org/what-we-do/areas-of-work/carbon-markets> (Accessed on 24/07/2025)

¹¹ Ibid

¹² United Nations Development Programme., 'What are Carbon Markets and Why are They Important?' Available at <https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important> (Accessed on 24/07/2025)

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emission¹³. It has been pointed out that carbon markets allow both public and private entities to transfer and transact emission reduction units, mitigation outcomes or offsets generated through carbon initiatives, programmes and projects subject to compliance of national and international laws¹⁴. The *Paris Agreement*¹⁵ envisages the development of carbon markets through internationally transferred mitigation outcomes and voluntary cooperation between countries among other measures towards strengthening efforts to confront climate change. At a national level, the *Climate Change (Amendment) Act*¹⁶ of Kenya introduces the idea of carbon trading. The Amended Act requires national and county governments to provide guidance in the development and implementation of carbon markets and nonmarket approaches in compliance with international obligations¹⁷.

Carbon markets provide an effective approach towards limiting greenhouse gas emissions and confronting climate change. It has been argued that if well designed and implemented, carbon markets can be an effective, credible and transparent tool for helping to achieve low-cost emissions reductions in ways that mobilize private sector actors, attract investment, and encourage international cooperation on climate change¹⁸. Further, it has been argued that when effectively utilized with other strategies, carbon markets have the potential to meaningfully mitigate the impact of greenhouse gas emissions, as well as provide valuable conservation co-benefits for people and nature¹⁹.

¹³ UN-REDD Programme., 'Carbon Market' Available at <https://www.un-redd.org/glossary/carbon-market> (Accessed on 24/07/2025)

¹⁴ Climate Change (Amendment) Act, 2023., Laws of Kenya, Government Printer, Nairobi

¹⁵ United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 24/07/2025)

¹⁶ Climate Change (Amendment) Act, 2023., Laws of Kenya, S 2, Government Printer, Nairobi

¹⁷ Ibid, S 3

¹⁸ Natural Justice., 'Kenya's Climate Change Bill: Paving the Way for Sustainable Development and Carbon Markets.' Available at <https://naturaljustice.org/kenyas-climate-change-bill-paving-the-way-for-sustainable-development-and-carbon-markets/> (Accessed on 24/07/2025)

¹⁹ What are carbon markets and how do we work with them?., Available at <https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate->

Despite the role of carbon markets in reducing greenhouse gas emissions and confronting climate change, it has been observed that there has been a rise of disputes in carbon markets²⁰. If not well managed, these disputes can hinder effective carbon trading and therefore hinder effective climate action²¹. Managing carbon disputes effectively is therefore key towards strengthening climate action.

This paper critically examines the role of arbitration in managing carbon disputes. The paper examines the nature and causes of carbon disputes. It argues that these disputes are undesirable since they can hinder climate mitigation efforts at all levels. Consequently, the paper posits that effective management of carbon disputes is vital towards effectively confronting climate change. The paper argues that arbitration is a viable mechanism in managing carbon disputes. It examines the salient features of arbitration which makes it ideal in ensuring effective management of carbon disputes. Further, the paper suggests interventions towards arbitrating carbon disputes for green growth and sustainability.

2.0 Carbon Disputes: Causes and Effects

Carbon disputes have become a common phenomenon. For example, it has been argued that the integrity of carbon markets depends in large part on the reliability of carbon accounting and this requires information about an entity's emissions and offsets to be genuine, precise and accurate²². However, challenges such as the lack of a credible and consistent method of calculating both emissions produced by a business, and emissions avoided or stored by an abatement project²³; the lack of a standardised emissions data collection

[change/climate-change-stories/carbon-market-credits-offsets/](https://www.pslchambers.com/article/international-carbon-disputes-how-can-they-be-resolved-through-arbitration/#:~:text=Arbitration%20has%20played%20a%20vital,issues%20be%20resolved%20through%20ADR) (Accessed on 24/07/2025)

²⁰ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Available at <https://www.pslchambers.com/article/international-carbon-disputes-how-can-they-be-resolved-through-arbitration/#:~:text=Arbitration%20has%20played%20a%20vital,issues%20be%20resolved%20through%20ADR> (Accessed on 24/07/2025)

²¹ Ibid

²² Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Available at <https://arbitrationblog.kluwerarbitration.com/2023/09/16/dispute-resolution-in-carbon-markets/> (Accessed on 25/07/2025)

²³ Ibid

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procedure across entities and sectors, which is often done manually and is error-prone²⁴; inconsistencies in defining the scope of carbon accounting for example whether and how much upstream and downstream supply chain emissions are included²⁵; and the complex and heterogenous taxonomy of carbon accounting where the terminology commonly used to describe emissions and offsets lacks a universally recognised set of definitions present the risk of disputes in carbon markets²⁶. It has been argued that due to the lack of an internationally recognized standard method for carbon accounting, there is uncertainty and in turn, the risk of disputes²⁷. Factors such as breach of contract, misrepresentation and fraud in carbon markets and carbon accounting have been attributed to the rise of carbon disputes²⁸.

The practical challenges with maintaining consistency and transparency in carbon accounting is a major source of carbon disputes²⁹. It has been observed that carbon accounting practices lack a universally accepted standard, leading to a fragmented landscape of methodologies and reporting frameworks³⁰. This lack of clarity may lead to exposure to claims of greenwashing, misleading or deceptive conduct and, contractual disputes regarding the proper value and/or veracity of carbon allowances and carbon offsets³¹.

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ The role of international arbitration in voluntary carbon market disputes., Available at <https://www.nortonrosefulbright.com/en-pg/knowledge/publications/fdc65468/the-role-of-international-arbitration-in-voluntary-carbon-market-disputes#:~:text=Until%20there%20is%20an%20internationally,of%20the%20timeline%20for%20verification>). (Accessed on 25/07/2025)

²⁸ Ibid

²⁹ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

³⁰ ESG., 'Understanding the Challenges and Risks of Carbon Accounting: Implications for Organizations' Available at <https://empoweredsystems.com/blog/understanding-the-challenges-and-risks-of-carbon-accounting-implications-for-organizations/#:~:text=Carbon%20accounting%20practices%20lack%20a,between%20organizations%20or%20across%20industries> (Accessed on 25/07/2025)

³¹ Ibid

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Pricing disputes are also common in carbon markets. It has been observed that carbon credits are often sold in the form of forward purchase agreements where the seller and purchaser contract for carbon credits that are yet to be produced³². Consequently, when dealing in such an uncertain market, there is potential for significant fluctuations in the value of the carbon credits between the point of sale and the point of delivery a situation that give rise to pricing disputes³³.

Another main form of carbon disputes involve land disputes between investors and indigenous communities. In some cases, investors have been accused of failed to obtain the Free, Prior and Informed Consent (FPIC) of indigenous peoples and local communities before establishing carbon projects³⁴. As a result, there have been disputes between investors and local communities over the leasing of ancestral lands for carbon-offsetting initiatives³⁵. Further, it has been argued that there is potential for investor-state disputes in carbon markets with investors in international carbon projects relying on investment treaties to bring claims against a states or state-owned entities³⁶.

From the foregoing, it is evident that carbon markets are highly susceptible to disputes. It has been argued that carbon disputes frequently revolve on issues that are common to other contractual disputes including non-delivery, pricing, breach of covenants or guarantees, ownership or security disputes and failure to meet conditions precedent among others³⁷. Further, it has been observed that carbon disputes are not limited to carbon contracts themselves but can extend to the underlying infrastructure projects undertaken to generate emission reductions, potentially resulting in commercial or investment disputes³⁸. The distinctive elements of carbon disputes include the nature of the commodity,

³² The role of international arbitration in voluntary carbon market disputes., Op Cit

³³ Ibid

³⁴ Indigenous land disputes cloud Kenya's carbon market ambitions., Available at <https://www.climatechangenews.com/2025/05/15/indigenous-land-disputes-cloud-kenyas-carbon-market-ambitions/> (Accessed on 25/07/2025)

³⁵ Ibid

³⁶ The role of international arbitration in voluntary carbon market disputes., Op Cit

³⁷ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

³⁸ Ibid

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the carbon crediting project cycle, and the application of international climate standards³⁹. In addition, the project cycle itself can also generate disputes such as those concerning project registration or credit issuance⁴⁰.

Carbon disputes are therefore on the rise globally. It has been argued that as a new, rapidly expanding and largely unregulated market, there is the risk of disputes arising across the carbon market value chain as the industry tackles issues of carbon accounting, pricing, consistency, integrity, credibility, new and evolving regulation and competing interests between public, private, local and international stakeholders⁴¹.

Carbon disputes are undesirable. Such disputes can undermine green growth and sustainability. It has been argued that carbon markets play a major role in the energy transition by helping difficult-to decarbonize industries meet their net-zero ambitions through investing in carbon credits⁴². Carbon markets have the potential to unlock green growth⁴³. It has been argued that by putting a price on carbon, these markets encourage individuals, businesses, and governments to invest in cleaner technologies and practices towards green growth and carbon neutrality⁴⁴. In the African context, it has been argued that carbon markets can unlock new avenues for green growth, therefore helping Africa tap into investments in renewable energy, sustainable agriculture, ecosystem restoration and conservation while creating green jobs and tackling poverty⁴⁵. Carbon markets have been identified as a powerful tool to help

³⁹ Minas. S., 'COP26 Created New Carbon Market Rules: How Will Arbitration Respond?' Available at <https://arbitrationblog.kluwerarbitration.com/2022/01/23/cop26-created-new-carbon-market-rules-how-will-arbitration-respond/> (Accessed on 25/07/2025)

⁴⁰ Ibid

⁴¹ The role of international arbitration in voluntary carbon market disputes., Available at <https://www.nortonrosefulbright.com/en/knowledge/publications/fdc65468/the-role-of-international-arbitration-in-voluntary-carbon-market-disputes> (Accessed on 25/07/2025)

⁴² Ibid

⁴³ UN-REDD Programme., 'Africa's green wealth: unlocking the potential of carbon markets' Available at <https://www.un-redd.org/post/africas-green-wealth-unlocking-potential-carbon-markets> (Accessed on 25/07/2025)

⁴⁴ Ibid

⁴⁵ Ibid

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advance carbon justice⁴⁶. By entering carbon markets, all countries can advance their socio-economic development while transitioning to a low-carbon economy in a cost-effective way that puts a price on carbon, allows for carbon trading, and stimulates new market opportunities for companies⁴⁷. Carbon disputes are therefore undesirable since they can hinder the effective functioning of carbon markets thus undermining green growth and sustainability⁴⁸. Effective management of carbon disputes is therefore paramount for green growth and sustainability.

3.0 Arbitrating Carbon Disputes for Green Growth and Sustainability

Arbitration has been identified as a viable and effective process in managing carbon disputes for green growth and sustainability⁴⁹. Arbitration provides several benefits in managing disputes. These include party autonomy, flexibility, confidentiality, transnational applicability, ease of enforcement of outcomes, and the ability to foster neutral, expeditious and cost-effective management of disputes⁵⁰. Harnessing the attributes of arbitration is key for effective management of carbon disputes. For example, arbitration gives parties freedom to select arbitrators with sufficient expertise on the regulatory and technical issues at stake in carbon disputes⁵¹. It has been argued that carbon disputes are specialized and relatively new thus creating the need for appointment of arbitrators with relevant market and technical expertise⁵².

⁴⁶ United Nations Development Programme., 'Carbon Justice for All: How Carbon Markets Can Advance Equitable Climate Action Globally' Available at <https://www.undp.org/africa/blog/carbon-justice-all-how-carbon-markets-can-advance-equitable-climate-action-globally> (Accessed on 23/02/2024)

⁴⁷ Ibid

⁴⁸ Chen. B., Yuan. K., & Wen. X., 'The Legal Governance of the Carbon Market: Challenges and Application of Private Law in China' Available at <https://www.tandfonline.com/doi/full/10.1080/17583004.2023.2288591> (Accessed on 25/07/2025)

⁴⁹ The role of international arbitration in voluntary carbon market disputes., Op Cit

⁵⁰ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

⁵¹ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁵² The role of international arbitration in voluntary carbon market disputes., Op Cit

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In addition, it has been observed that a majority of carbon disputes are cross-jurisdictional involving a wide range of stakeholders including states and state entities, the private sector, foreign investors and local communities⁵³. International arbitration is therefore an appropriate forum for managing carbon disputes since it has transnational applicability while also giving parties the option of choosing a neutral tribunal for resolving sensitive disputes, as well as seamless enforcement of awards since majority of country states are signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards⁵⁴. Further, investment arbitration also allows for the management of disputes in carbon markets between investors and states⁵⁵. It has been argued that government regulation or intervention in carbon offset projects may lead to investor-state arbitration claims against states under applicable investment treaties, where investments in such carbon offset projects are foreign-owned⁵⁶. Actions by states such as cancellation of carbon markets or projects could result in disputes with investors trading in carbon markets which can be effectively managed through investor-state arbitration⁵⁷.

Further, it has been argued that carbon disputes usually deal with commercially sensitive information or matters that can impact national security⁵⁸. Managing carbon disputes through public forums such as national courts may therefore not be desirable since information pertaining national security may be made public⁵⁹. It has been argued that the ability for arbitration to maintain privacy and confidentiality by restricting public access to certain documents and proceedings makes it well-placed as the most appropriate dispute resolution forum for carbon disputes⁶⁰.

⁵³ Ibid

⁵⁴ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁵⁵ Green Arbitrations., 'Emissions Trading: What Role will Arbitration Play?' Available at <https://www.greenerarbitrations.com/news/emissions-trading-what-role-will-arbitration-play> (Accessed on 25/07/2025)

⁵⁶ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

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Arbitration is therefore an ideal process towards effective management of carbon disputes for green growth and sustainability. However, it has been argued that since climate change is a matter of public concern globally, managing carbon disputes through private forums such as arbitration can hinder transparency, accountability and public participation which are prerequisites for effective climate action⁶¹. Further, the use of arbitration in managing carbon disputes could result in problems of costs and delays due to the complex and technical nature of such disputes⁶². It is necessary to address these challenges in order to enhance the role of arbitration in managing carbon disputes for green growth and sustainability.

4.0 Conclusion

Carbon markets have the potential to bolster climate action for green growth and sustainability. However, carbon disputes hinder effective functioning of carbon markets thus undermining green growth and sustainability⁶³. Arbitration provides an appropriate forum for managing carbon disputes ensuring flexibility, neutrality, expertise, transnational application, enforcement of outcomes while also safeguarding commercial interests and sensitive information⁶⁴. It is therefore necessary to foster awareness and strengthen legal, institutional, policy and human capacities in order to effectively arbitrate carbon disputes⁶⁵. This requires arbitration practitioners to enhance their skills and develop familiarity with the unique regulatory context of carbon markets⁶⁶. In addition, arbitral institutions should also consider developing specialised rules tailored to carbon markets, the establishment of panels of arbitrators with relevant expertise in carbon disputes, and providing specialised courses and training on managing carbon disputes⁶⁷. Arbitrating

⁶¹ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁶² Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

⁶³ Chen. B., Yuan. K., & Wen. X., 'The Legal Governance of the Carbon Market: Challenges and Application of Private Law in China' Op Cit

⁶⁴ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

⁶⁵ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁶⁶ Ibid

⁶⁷ Minas. S., 'COP26 Created New Carbon Market Rules: How Will Arbitration Respond?' Op Cit

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carbon disputes for green growth and sustainability is therefore practical. It is imperative to embrace and enhance the use of arbitration for effective management of carbon disputes towards strengthening climate action for Sustainable Development.

ESG, Sustainability and Investment Arbitration: A Reflection

Abstract

This paper discusses how sustainability can be integrated in investment arbitration. The paper argues that incorporating sustainability into investment arbitration is key towards enhancing access to Environmental Justice while also minimising the negative impacts of investment activities on the environment and society. The paper posits that Environmental, Social, and Governance (ESG) provides a framework through which sustainability can be effectively incorporated into investment arbitration and other dispute resolution processes. It examines ways through which ESG can foster sustainability in investment arbitration. In addition, the paper suggests interventions towards integrating ESG in investment arbitration for sustainability.

1.0 Introduction

Achieving sustainability is a vital global ideal. It has been argued that sustainability entails the integration of environmental health, social equity and economic vitality in order to create thriving, healthy, diverse and resilient communities and ecosystems now and in the future¹. Sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations². Achieving sustainability has become an urgent priority globally in light of mounting environmental, social, and economic challenges facing the planet³. These challenges include poverty, inequalities, unemployment, conflicts, and global health threats⁴. Further, environmental threats facing the planet

¹ What is Sustainability?., Available at <https://www.sustain.ucla.edu/what-is-sustainability/> (Accessed on 17/07/2025)

² United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 17/07/2025)

³ United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad_source=1&gclid=EAlaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAAYASAAEglqsfD_BwE (Accessed on 17/07/2025)

⁴ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at

including depletion of natural resources, environmental degradation, desertification, drought, freshwater scarcity, loss of biodiversity, and climate change call for urgent and transformative approaches towards achieving sustainability in order to ensure harmony with nature⁵.

At the global level, the concept of Sustainable Development has been embraced as a pathway towards sustainability. Sustainable Development refers to development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs⁶. It has been argued that Sustainable Development provides the means for achieving sustainability⁷. Sustainable Development aims to achieve the ideal of sustainability by promoting environmental protection and conservation, economic development and social progress⁸.

The United Nations *2030 Agenda for Sustainable Development* sets out the global vision for sustainability⁹. The Agenda envisions attainment of the environmental, economic, and social facets of sustainability through 17 Sustainable Development Goals (SDGs)¹⁰. Achieving sustainability is also a key priority for Africa. African Union's *Agenda 2063*¹¹ sets out a strategic framework for inclusive growth and sustainable Development in Africa towards sustainability¹².

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 17/07/2025)

⁵ Ibid

⁶ World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

⁷ Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) *Integrated Reporting*. Springer, Cham. Available at https://doi.org/10.1007/978-3-319-02168-3_2 (Accessed on 17/07/2025)

⁸ Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

⁹ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Op Cit

¹⁰ Ibid

¹¹ Africa Union., 'Agenda 2063: The Africa we Want' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 17/07/2025)

¹² Ibid

It has been argued that sustainability is a cross-cutting theme that permeates all fields including dispute resolution¹³. Sustainability is a pertinent ideal in dispute resolution in order to ensure that conflicts and disputes are resolved in a manner that is environmentally and socially responsible, as well as economically viable especially in the corporate world, where many disputes are related to environmental issues such as pollution, climate change, resource depletion, and deforestation¹⁴. Sustainability is vital in dispute resolution in order to ensure that conflicts and disputes are managed in a manner that is environmentally and socially responsible, as well as economically viable while also ensuring that dispute resolution processes minimise negative impact on the environment and society¹⁵.

This paper discusses how sustainability can be integrated into investment arbitration. The paper argues that incorporating sustainability into investment arbitration is key towards enhancing access to Environmental Justice while also minimising the negative impacts of investment activities on the environment and society. The paper posits that Environmental, Social, and Governance (ESG) provides a framework through which sustainability can be effectively incorporated into investment arbitration and other dispute resolution processes. It examines ways through which ESG can foster sustainability in investment arbitration. In addition, the paper suggests interventions towards integrating ESG in investment arbitration for sustainability.

2.0 The Need for Sustainability in Investment Arbitration

Arbitration is among the key Alternative Dispute Resolution (ADR) processes. Arbitration is a private and consensual process where parties in dispute agree to present their grievances to a third party for resolution¹⁶. It has also been defined as a dispute management mechanism where parties through an

¹³ Gupta. A., & Bajpai. A., 'Green Dispute Resolution: A Sustainable way of Resolving Disputes' Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4855128 (Accessed on 17/07/2025)

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

agreement submit their dispute to one or more neutral third parties who make a binding decision on the dispute¹⁷. Arbitration and other ADR processes have been embraced both globally and at national levels. At the global level, ADR mechanisms including arbitration are recognized under the *Charter of the United Nations*¹⁸. 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 choice¹⁹ (Emphasis added). At a national level, the Constitution of Kenya mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, *arbitration* and Traditional Dispute Resolution Mechanisms (TDRMs)²⁰ (Emphasis added).

Arbitration can be classified into various forms including domestic and international arbitration²¹. It has been observed that international arbitration is being practiced through various forms including interstate arbitration, investor-state/investment arbitration, and international commercial arbitration²². Investment arbitration is an evolutionary innovation in international dispute settlement²³. It creates a system for the settlement of disputes between investors and host governments through a neutral forum that offers the possibility of a fair hearing before a tribunal unencumbered by domestic political considerations²⁴.

It has been argued that investment arbitration is a procedure to resolve disputes between foreign investors and host States (also called Investor-State

¹⁷ World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed on 18/07/2025)

¹⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

¹⁹ Ibid, article 33 (1)

²⁰ Constitution of Kenya., 2010., article 159 (2) (c)

²¹ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

²² Shonk. K., 'International Arbitration: What it is and How it Works' Available at <https://www.pon.harvard.edu/daily/international-negotiation-daily/international-arbitration-what-it-is-and-how-it-works/> (Accessed on 18/07/2025)

²³ Ibid

²⁴ United Nations Conference on Trade and Development., 'Investor-State Dispute Settlement' Available at https://unctad.org/system/files/official-document/diaeia2013d2_en.pdf (Accessed on 18/07/2025)

Dispute Settlement (ISDS))²⁵. The possibility for a foreign investor to sue a host State is a guarantee for the foreign investor that, in the case of a dispute, it will have access to independent, impartial and qualified arbitrators who will resolve the dispute and render an enforceable award²⁶. Investment arbitration allows foreign investor to bypass national jurisdictions that might be perceived to be biased and to resolve the dispute in accordance to different protections afforded under international treaties²⁷. It has been observed that ISDS are found in most international investment treaties between states and foreign investors²⁸. This form of dispute settlement was created to protect investors from arbitrary expropriation and ensure non-discriminatory treatment for foreign investments, in countries considered risky²⁹. ISDS therefore allows foreign investors (individuals and companies) to allege violation of international investment treaties by suing host states through arbitration³⁰.

Sustainability is a key theme in investment arbitration. It has been correctly noted that sustainability has become a pertinent concern in arbitration and ADR in order to foster justice and development³¹. As the world grapples with environmental challenges, disputes related to resource conservation, biodiversity, pollution, and climate change are on the rise globally³². In addition, the quest for energy transition towards sustainability is also fueling disputes in the energy sector including joint venture/contractual disputes,

²⁵ Introduction to Investment Arbitration., Available at <https://www.international-arbitration-attorney.com/investment-arbitration/> (Accessed on 18/07/2025)

²⁶ Ibid

²⁷ Ibid

²⁸ European Parliament., 'Investor-State Dispute Settlement (ISDS) State of play and prospects for reform' Available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI%282015%29545736_EN.pdf (Accessed on 18/07/2025)

²⁹ Ibid

³⁰ Columbia Center on Sustainable Investment., 'Primer on International Investment Treaties and Investor-State Dispute Settlement' Available at <https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement> (Accessed on 18/07/2025)

³¹ Synergizing Alternative Dispute Resolution, Sustainability and Infrastructure Development., Available at <https://onlinelibrary.wiley.com/page/journal/15411508/call-for-papers/si-2024-001260#:~:text=This%20special%20issue%20will%20primarily,and%20in%20a%20timely%20manner> (Accessed on 18/07/2025)

³² Ibid

claims arising from weather conditions in renewable energy projects, construction related disputes, technology related disputes, *investor/state disputes*, and regulatory disputes³³.

In particular, investment arbitration is increasingly focusing on key thematic areas under the ideal of sustainability including human rights, climate action, environmental conservation and energy transition³⁴. Human rights are often invoked in arbitration between states and foreign investors, through allegations of either state or investor infringements of such rights in investor-state arbitration³⁵. For example, an alleged failure by foreign investors to respect the rights of indigenous peoples, environmental rights, or labour rights may lead to a dispute with a local population that escalates into an international investment dispute under the auspices of investor-state arbitration³⁶. It has been argued that human rights are relevant in investment arbitration since both investor and host States may turn to human rights treaties to reinforce their positions or put forward autonomous claims³⁷.

Climate change is another pertinent theme under investment arbitration. It has been argued that climate change has created a dynamic environment that necessitates a careful interpretation of treaty standards in line with

³³ McMahon. M., Shah. P., 'The Rise of Renewable Energy Disputes and Arbitration.' Available at <https://www.stewartslaw.com/news/rise-of-renewable-energy-disputes/> (Accessed on 18/07/2025)

³⁴ Goh. N., 'ESG and Investment Arbitration: A Future with Cleaner Foreign Investment?' *The Journal of World Energy Law & Business.*, Volume 15, Issue 6, 2022

³⁵ Agius. M., 'Human Rights in International Arbitration' Available at <https://globalarbitrationreview.com/review/the-european-arbitrationreview/2023/article/humanrights-in-international-arbitration> (Accessed on 18/07/2025)

³⁶ Feldman. J., 'Human Rights and International Investment Arbitration: A snapshot' Available at <https://www.nortonrosefulbright.com/en/knowledge/publications/11a8c614/human-rights-and-international-investment-arbitration-a-snapshot> (Accessed on 18/07/2025)

³⁷ Human Rights Law and Investment Arbitration., Available at <https://www.acerislaw.com/human-rights-law-and-investment-arbitration/#:~:text=Human%20rights%20law%20is%20relevant,investment%20arbitration%20are%20wholly%20disassociated.> (Accessed on 18/07/2025)

international climate commitments³⁸. Investment arbitration is therefore playing an increasingly important role in disputes over policies aimed at mitigating climate change³⁹. It has been observed that many investment treaties are increasingly incorporating provisions on climate action⁴⁰. Measures adopted to mitigate or adapt to climate change have been considered in some investment arbitration claims, and a growing number of cases involve investments in the renewable energy sector⁴¹.

Investment arbitration is also relevant in the quest towards energy transition. It has been argued that as energy companies and governments navigate decarbonisation, energy security, and investment landscapes, energy disputes are becoming more frequent and complex⁴². For example, due to the abundance of energy sources in Africa, there has been an increase in investments in the energy sector in the Continent including through bilateral and multilateral investment treaties⁴³. The rise of energy and infrastructure projects in Africa, combined with the challenges deriving from the energy transition have led to a wide range of disputes both under contractual instruments (such as concession agreements) and investment treaties⁴⁴. It has been observed that renewable energy sources, including wind, solar and geothermal energy, have resulted in an increase in energy projects and, with that, the potential for a

³⁸ Investment Treaty Arbitration and Climate Change., Available at <https://lawclimateatlas.org/resources/investment-treaty-arbitration-and-climate-change/> (Accessed on 18/07/2025)

³⁹ Ibid

⁴⁰ United Nations Conference on Trade and Development., 'The International Investment Treaty Regime and Climate Action.' Available at https://unctad.org/system/files/officialdocument/diaepcbinf2022d6_en.pdf (Accessed on 18/07/2025)

⁴¹ International Centre for Settlement of Investment Disputes., 'Investment Arbitration and Climate Change' Available at <https://icsid.worldbank.org/form/webinar-investment-arbitration-climate> (Accessed on 18/07/2025)

⁴² Energy Disputes: Navigating Key Trends and Challenges., Available at <https://www.velaw.com/insights/energy-disputes-navigating-key-trends-and-challenges/> (Accessed on 18/07/2025)

⁴³ Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Available at <https://www.dlapiperafrica.com/en/senegal/insights/2024/resolving-infrastructure-and-energy-disputes-> (Accessed on 18/07/2025)

⁴⁴ Ibid

growing number of disputes coming from the energy sector in Africa⁴⁵. Unpredictable investment and regulatory environments, the pace of development required to achieve energy transition, the variety and number of stakeholders involved, supply chain complexity and the deployment of new technologies all create fertile conditions for energy disputes especially in Africa⁴⁶. Investment arbitration is therefore key towards effective resolution of energy disputes both globally and in Africa in order to fast-track the energy transition for sustainability⁴⁷.

Sustainability is therefore a pertinent concern in investment arbitration. Through investment arbitration, it is possible to foster sustainability by protecting human rights, bolstering climate action, fast-tracking energy transition and ensuring sound environmental conservation. Despite its efficacy, it has been observed that environmental, developmental and investment disputes are becoming more complex, hence there is need for arbitration and ADR to continue to evolve in order to effectively meet these new challenges⁴⁸. Investment activities are raising several sustainability concerns. For example, host states are increasingly asserting claims against foreign investors for alleged breaches of their environmental and climate obligations⁴⁹. In addition, there have been allegations of foreign investors' breach of human rights, for example, access to water, or the lack of public

⁴⁵ Global Arbitration Review., 'Energy Arbitration in Africa.' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2022/article/energy-arbitration-in-africa> (Accessed on 18/07/2025)

⁴⁶ Hameau. P., Bentley. J., & Robert. M., 'Energy arbitration in Africa: potential sources of energy and natural resources disputes' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/energy-arbitration-in-africa-potential-sources-of-energy-and-natural-resources-disputes> (Accessed on 18/07/2025)

⁴⁷ Ibid

⁴⁸ Synergizing Alternative Dispute Resolution, Sustainability and Infrastructure Development., Available at <https://onlinelibrary.wiley.com/page/journal/15411508/call-for-papers/si-2024-001260#:~:text=This%20special%20issue%20will%20primarily,and%20in%20a%20timely%20manner> (Accessed on 18/07/2025)

⁴⁹ Allen. N., 'Investment Treaty Disputes Role in Sustainability.' Available at <https://www.addleshawgoddard.com/globalassets/specialisms/litigation/esg-risk-reputation-compliance--disputes/investment-treaty-disputes-role-in-sustainability.pdf> (Accessed on 18/07/2025)

consultation of local communities in relation to development projects⁵⁰. Sustainability obligations are therefore becoming increasingly stringent in investment arbitration in light of concerns about climate change, human rights, Energy Justice, and environmental conservation⁵¹. It is therefore necessary to mould sustainability into investment arbitration.

3.0 Infusing ESG into Investment Arbitration for Sustainability

Environmental, Social, and Governance (ESG) is a concept that entails three central tenets that are used to measure the sustainability and ethical impact businesses and investments⁵². ESG is a framework that seeks to achieve sustainable, responsible and ethical investment by incorporating environmental, social and governance factors in corporate decision making⁵³. It has been argued that ESG takes the holistic view that sustainability extends beyond just environmental issues; it also seeks to incorporate social and governance criteria in the sustainability agenda⁵⁴. ESG therefore provides a framework used to evaluate the sustainability and ethical impact of businesses and investments. This framework incorporates environmental, social, and governance factors into investment and business decision-making processes in order to foster sustainability⁵⁵. It has been argued that ESG factors contribute to broader business sustainability efforts that aim to position companies for long-term success based on responsible corporate management and business strategies⁵⁶.

⁵⁰ Ibid

⁵¹ Ibid

⁵² Kiehne. D.O., 'Environmental, Social and Corporate Governance (ESG) -Also an Innovation Driver?' Available at https://www.researchgate.net/publication/334398123_Environmental_social_and_corporate_governance_ESG_-_also_an_innovation_driver (Accessed on 18/07/2025)

⁵³ Stuart. L.G et al., 'Firms and social responsibility: A review of ESG and CSR research in corporate finance.' *Journal of Corporate Finance* 66 (2021): 101889

⁵⁴ Peterdy. K., & Miller. N., 'ESG (Environmental, Social, & Governance)' Available at <https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/> (Accessed on 18/07/2025)

⁵⁵ Barbosa. A et al., 'Integration of Environmental, Social, and Governance (ESG) Criteria: Their Impacts on Corporate Sustainability Performance.' *Humanit Soc Sci Commun* 10, 410 (2023). Available at <https://doi.org/10.1057/s41599-023-01919-0> (Accessed on 18/07/2025)

⁵⁶ What is ESG (environmental, social and governance)?., Available at <https://www.techtarget.com/whatis/definition/environmental-social-and->

According to the United Nations Development Programme (UNDP), ESG is a model of sustainable business development that is based on responsible attitude towards the environment, high social responsibility, and good governance⁵⁷. ESG seeks to achieve sustainable, responsible and ethical investment by incorporating environmental, social and governance factors in corporate decision making⁵⁸. ESG focuses on three core tenets that aim to ensure sustainability. These include *environmental factors* such as climate change, energy efficiency, waste management, and pollution⁵⁹; *social factors* including sound labour practices, human rights, customer satisfaction, and community engagement⁶⁰; and *governance factors* including board composition, shareholder rights, and transparency (Emphasis added)⁶¹. The goal of ESG is to integrate Environmental, Social and Governance factors in corporate affairs in order to enhance the sustainability and social impact of business activities⁶².

The concept of ESG is vital in infusing sustainability into arbitration. ESG factors have become a critical aspect of business operations and investment decisions in the corporate world⁶³. Corporations are under immense pressure

[governance-](#)

[ESG#:~:text=Environmental%20factors%20involve%20considerations%20of,ESG%20criterias%20include%20the%20following:](#) (Accessed on 18/07/2025)

⁵⁷ United Nations Development Programme., 'ESG: From Challenges to Opportunities' Available at <https://www.undp.org/belarus/stories/esg-challenges-opportunities#:~:text=January%2016%2C%202024,social%20responsibility%2C%20and%20good%20governance.> (Accessed on 18/07/2025)

⁵⁸ Stuart. L.G et al., 'Firms and social responsibility: A review of ESG and CSR research in corporate finance.' Op Cit

⁵⁹ Corporate Governance Institute., 'A Simple guide to ESG' Available at https://www.thecorporategovernanceinstitute.com/insights/guides/simple-guide-esg/?srsltid=AfmBOopuGrb1qaCk3DYg-pDmv95eh87EN2vx-oD8_Xmsmxud2nsb61m6 (Accessed on 18/07/2025)

⁶⁰ Ibid

⁶¹ Ibid

⁶² Li. T.T et al., 'ESG: Research Progress and Future Prospects.' *Sustainability*, No. 13 of 2021.

⁶³ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Available at <https://www.mondaq.com/india/arbitration--dispute-resolution/1375770/cracking-the-esg-conundrum-is-arbitration-the-key-to-resolution-of-esg->

to ensure that their operations remain sustainable, socially responsible, and governed ethically⁶⁴. As a result, ESG clauses are being adopted in commercial and investment contracts⁶⁵. In case of violation of such clauses, ESG related disputes are bound to occur⁶⁶. It has been argued that arbitration and ADR are well suited in managing ESG disputes towards sustainability⁶⁷. For instance, arbitration allows parties to appoint specialised arbitrators with the requisite skills to manage technical ESG disputes including those involving energy, climate change and investments⁶⁸. Arbitration is important in the ESG discourse since it ensures neutrality of forum and flexibility as to where proceedings are held in addition to flexibility of procedure and availability of specialized procedural rules on ESG disputes⁶⁹.

ESG is also relevant in investment arbitration. It has been observed that international investment treaties are increasingly incorporating ESG protections with the purpose of ensuring that contracting parties promote and effectively achieve their ESG objectives including commitments on climate action, environmental conservation, sound labour practices and human

[disputes#:~:text=ESG%20issues%20usually%20involve%20multiple,arbitral%20awards%20across%20multiple%20jurisdictions](#) (Accessed on 18/07/2025)

⁶⁴ Ibid

⁶⁵ International Arbitration in 2022., 'The Rising Significance of ESG and the Role of International Arbitration' available at <https://www.freshfields.com/en-gb/our-thinking/campaigns/internationalarbitration-in-2022/the-rising-significance-of-esg-and-the-role-of-international-arbitration/> (Accessed on 18/07/2025)

⁶⁶ Muigua. K., 'The Place of Environmental, Social and Governance (ESG) in Arbitration' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/The-Place-of-Environmental-Social-and-Governance-ESG-in-Arbitration-2.pdf> (Accessed on 18/07/2025)

⁶⁷ Arbitration is fast becoming the frontrunner for ESG-related disputes in Africa., Available at <https://www.herbertsmithfreehills.com/notes/africa/2024-posts/arbitration-is-fast-becoming-the-frontrunner-for-esg-related-disputes-in-africa> (Accessed on 18/07/2025)

⁶⁸ Ibid

⁶⁹ Gaffney. J., 'In Praise and Criticism of Arbitration as a Means of Resolving ESG Disputes' Available at <https://arbitrationblog.kluwerarbitration.com/2023/04/18/in-praise-and-criticism-of-arbitration-as-a-means-of-resolving-esg-disputes/> (Accessed on 18/07/2025)

rights⁷⁰. Many investment treaties mandate that foreign investments be made in accordance with the host state's laws⁷¹. Consequently, if a host state has implemented ESG regulations, foreign investors must adhere to them, or their investments would not enjoy international protections under the ISDS regime⁷². Foreign investors are now increasingly required to adhere to ESG standards in host states including through protecting the environment, upholding human rights in the host state, and complying with core labour standards⁷³.

ESG therefore provides an effective framework for integrating sustainability into investment arbitration. Host states are now more likely to bring claims or counterclaims against foreign investors for failure to meet their ESG-related obligations or in situations where investor protection clauses frustrate a host state's ESG objectives⁷⁴. Further, Investors and states may be subject to arbitration proceedings pursuant to existing investment treaties or pursuant to ESG clauses in investment treaties⁷⁵.

It is therefore necessary to mould ESG into investment arbitration in order to foster sustainability. This involves enhancing the use of investment arbitration in managing ESG and sustainability disputes including those concerning climate change, energy transition, environmental conservation and labour rights⁷⁶. Achieving this goal requires the increased adoption of ESG clauses in investment treaties⁷⁷. Further, it is imperative to reform the ISDS regime

⁷⁰ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Available at <https://www.taylorwessing.com/en/insights-and-events/insights/2023/07/here-we-go-esg-disputes-in-international-arbitration> (Accessed on 18/07/2025)

⁷¹ ISDS and ESG: Friends or Foes?., Available at <https://legalblogs.wolterskluwer.com/arbitration-blog/isds-and-esg-friends-or-foes/> (Accessed on 18/07/2025)

⁷² Ibid

⁷³ Ibid

⁷⁴ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Op Cit

⁷⁵ International Bar Association., 'Report on Use of ESG Contractual Obligations and Related Disputes' Available at <https://www.ibanet.org/document?id=report-on-use-of-esg-contractual-obligations> (Accessed on 18/07/2025)

⁷⁶ ISDS and ESG: Friends or Foes?., Op Cit

⁷⁷ Sood. Y., 'Review Paper: 'ESG and Investment Arbitration: A Future with Cleaner Foreign Investment?' by Nelson Goh.' Available at

including through effective rules and institutions in order to strengthen its capacity in ESG and sustainability⁷⁸. Arbitrators and tribunals also have a crucial role in ensuring that investment arbitration fosters sustainability by enforcing ESG tenets including human rights, environmental protection and sound labour practices⁷⁹. Greening investment arbitration including through reducing its carbon footprint is also key towards fostering sustainability and enforcing ESG standards⁸⁰.

4.0 Conclusion

Achieving sustainability is vital in investment arbitration. ESG provides an effective framework towards moulding sustainability in investment arbitration. It is therefore important to infuse ESG into investment arbitration for sustainability by adopting ESG clauses in investment treaties⁸¹; building effective rules and institutions to enhance the management of ESG disputes through investment arbitration⁸²; enforcing ESG tenets in investment arbitration including human rights, environmental protection and sound labour practices⁸³; and greening investment arbitrations⁸⁴. ESG, sustainability and investment arbitration are therefore related and cross-cutting themes. Moulding ESG into investment arbitration is thus necessary towards sustainability.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4466733 (Accessed on 18/07/2025)

⁷⁸ ISDS and ESG: Friends or Foes?., Op Cit

⁷⁹ Muigua. K., 'The Place of Environmental, Social and Governance (ESG) in Arbitration' Op Cit

⁸⁰ The Green Pledge., Available at <https://www.greenerarbitrations.com/sign-green-pledge#:~:text=The%20Green%20Pledge&text=The%20Campaign%20addresses%20the%20need,carbon%20footprint%20when%20resolving%20disputes> (Accessed on 18/07/2025)

⁸¹ Sood. Y., 'Review Paper: 'ESG and Investment Arbitration: A Future with Cleaner Foreign Investment?' by Nelson Goh.' Op Cit

⁸² ISDS and ESG: Friends or Foes?., Op Cit

⁸³ Muigua. K., 'The Place of Environmental, Social and Governance (ESG) in Arbitration' Op Cit

⁸⁴ The Green Pledge., Op Cit

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Achieving Environmental Justice through Alternative Dispute Resolution and the Court Process

Abstract

This paper critically examines the need to achieve Environmental Justice. The paper posits that realizing Environmental Justice is a global ideal in the wake of environmental challenges being faced at the global, regional, and national levels including the triple planetary crisis of climate change, biodiversity loss, and pollution. The paper defines Environmental Justice and explores its core tenets. It further argues that Alternative Dispute Resolution (ADR) techniques and court processes are suitable in promoting Environmental Justice. The paper interrogates the progress made towards fostering Environmental Justice through ADR and court processes and challenges thereof. It also offers recommendations towards achieving Environmental Justice through ADR and court processes.

1.0 Introduction

Sound environmental conservation has emerged as global ideal towards Sustainable Development¹. Environmental conservation is vital in maintaining the diversity and integrity of ecosystems, as well as the services they provide to both humanity and nature². According to the United Nations Environment Programme (UNEP), appropriate environmental management entails making the best use of natural resources to meet basic human needs without destroying the sustaining and regenerative capacity of natural systems³.

¹ Muigua. K., 'Embracing Sound Environmental Governance in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2024/01/Embracing-Sound-Environmental-Governance-in-Africa-1.pdf> (Accessed on 14/09/2024)

² Ibid

³ United Nations Environment Programme., 'Environmentally Sound Technologies' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/environmentally-sound#:~:text=Rational%20environmental%20management%20means%20making,regenerative%20capacity%20of%20natural%20systems.> (Accessed on 14/09/2024)

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The United Nations 2030 *Agenda for Sustainable Development*⁴ sets out the global blueprint towards sustainability including the need for effective environmental governance. In order to achieve the ideal of sound environmental governance, the Agenda seeks to protect the planet from degradation including through sustainable consumption and production, sustainably managing its natural resources, and taking urgent action to confront climate change so that the planet can support the needs of the present and future generations⁵. The Agenda sets out 17 Sustainable Development Goals (SDGs) that seeks to integrate environmental conservation, economic development, and social progress towards sustainability⁶.

Despite the global ideal of sustainability including the need for effective environmental governance and conservation, the planet is facing mounting problems including environmental challenges such as climate change, pollution, and loss of biodiversity⁷. Environmental problems facing the planet including the triple planetary crisis of climate change, biodiversity and ecosystem loss, and pollution undermine the enjoyment and protection of human rights and exacerbate environmental injustices, disproportionately affecting the most vulnerable, marginalized and excluded people and communities including the poor, women, children, indigenous peoples, and persons with disabilities⁸. It has been noted that current environmental crises are intertwined with the crisis of inequality and are inextricably linked to the protection and fulfilment of human rights and Sustainable Development⁹. In

⁴ 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 14/09/2024)

⁵ Ibid

⁶ Ibid

⁷ Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at https://doi.org/10.1007/978-3-319-02168-3_2 (Accessed on 14/09/2024)

⁸ United Nations Development Programme., 'Environmental Justice' Available at <https://www.undp.org/rolhr/justice/environmental-justice> (Accessed on 14/09/2024)

⁹ Ibid

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order to effectively respond to ongoing environmental challenges and their impacts on human rights especially for the vulnerable and marginalized people and communities, it imperative to achieve Environmental Justice towards increasing accountability and protection of environmental rights for current and future generations¹⁰.

This paper critically examines the need to achieve Environmental Justice. The paper posits that realizing Environmental Justice is a global ideal in the wake of environmental challenges being faced at the global, regional, and national levels including the triple planetary crisis of climate change, biodiversity loss, and pollution. The paper defines Environmental Justice and explores its core tenets. It further argues that Alternative Dispute Resolution (ADR) techniques and court processes are suitable in promoting Environmental Justice. The paper interrogates the progress made towards fostering Environmental Justice through ADR and court processes and challenges thereof. It also offers recommendations towards achieving Environmental Justice through ADR and court processes.

2.0 Environmental Justice: Definition and Elements

Justice is a key theme under the 2030 Agenda for Sustainable Development¹¹. SDG 16 seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels¹². The concept of justice has been described as multi-faceted¹³. It has been pointed out that in a world increasingly threatened by environmental challenges, including the triple planetary crisis of climate change, biodiversity loss and pollution, the concept of justice increasingly embraces environmental justice¹⁴.

¹⁰ Ibid

¹¹ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, Op Cit

¹² Ibid

¹³ 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 14/09/2024)

¹⁴ Ibid

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Environmental Justice has been described as a concept that continues to evolve and expand in the context of the planetary crisis¹⁵. Historically, Environmental Justice sought to address the concern that environmental risks and hazards disproportionately affected societal groups in the most vulnerable and less empowered contexts and countries¹⁶. The idea of Environmental Justice in this context therefore sought to ensure accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs related to the impacts of ecological change on the poor and vulnerable in society¹⁷. The concept of Environmental Justice has however expanded its scope to focus on social inequalities, such as disparities between environmental conditions experienced by the richest and poorest sectors of societies¹⁸.

Environmental Justice can therefore be conceptualized as 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 policies¹⁹. Environmental Justice has also been defined as the right 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-making²⁰. Environmental Justice is attained when every person enjoys the same degree of protection from environmental and

¹⁵ 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 14/09/2024)

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at <https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml> (Accessed on 14/09/2024)

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health hazards and has access to the decision-making processes to have a clean, healthy, and sustainable environment²¹.

The idea of Environmental Justice therefore highlights the plight of vulnerable people and communities who bear the most burden when it comes to environmental damage and seeks to give them a voice through access to environmental information and participation in environmental decision making in order to ensure sustainable and equitable development²². This concept involves at least three types of justice: distributive justice, procedural justice and recognition justice²³. Distributive justice entails the substantive distribution of environmental benefits and burdens²⁴. Procedural justice involves ensuring participation, access to information, and providing access to justice for all in environmental matters²⁵. Recognition justice is based on the understanding that failure to acknowledge the circumstances those affected by environmental problems devalues individuals and communities, thereby allowing injustices to persist²⁶. Environmental justice also seeks to foster intra and intergenerational equity in the environmental context, including the realization that environmental problems have been mostly led by industrialized countries, and their impacts more acutely experienced by developing countries which contribute least to such problems²⁷. It also seeks to address environmental problems including climate change, biodiversity loss,

²¹ United States Environmental Protection Agency; 'Environmental Justice.' Available at <https://www.epa.gov/environmentaljustice> (Accessed on 14/09/2024)

²² Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

²³ Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' *WIREs Clim Change* 2014

²⁴ Ibid

²⁵ Ibid

²⁶ Eisenhauer. E et al., 'New Directions in Environmental Justice Research at the U.S. Environmental Protection Agency: Incorporating Recognition and Capabilities Justice Through Health Impact Assessments' Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8884111/> (Accessed on 14/09/2024)

²⁷ United Nations Development Programme., 'Environmental Justice: Securing our Right to a Clean, Healthy and Sustainable Environment' Op Cit

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and pollution in order protect and safeguard the environment for the benefit of both present and future generations towards intergenerational equity²⁸.

Environmental Justice therefore seeks to address distributive inequity, lack of recognition, disenfranchisement and exclusion in environmental matters and decision-making processes²⁹. It is a concept that seeks to achieve the ideal of access, participation and procedural justice in environmental decision making³⁰. The fundamental principle of environmental justice is that all stakeholders should have meaningful and informed participation in all aspects of environmental decision-making that could affect their community³¹. Therefore, in order to attain Environmental Justice, affected communities must have the ability to effectively collect data and other information in order to be informed and active participants in environmental decision-making processes³². It has been argued that addressing environmental injustices requires a human-rights based, multi-disciplinary approach that tackles both immediate environmental justice needs and the structural inequalities that cause and perpetuate environmental injustices³³. Environmental Justice is therefore anchored in human rights and is a key tool towards actualizing the human right to a clean, healthy, and sustainable environment³⁴.

²⁸ Ibid

²⁹ United States Environmental Protection Agency; 'Environmental Justice.' Op Cit

³⁰ Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

³¹ United States Department of Energy., 'Environmental Justice Strategy' Available at https://www.energy.gov/sites/prod/files/EJ_Strategy_FINAL.pdf (Accessed on 14/09/2024)

³² Ibid

³³ United Nations Development Programme., 'Environmental Justice and the Right to a Clean, Healthy, and Sustainable Environment' Available at <https://www.undp.org/rolhr/human-rights/environmental-justice> (Accessed on 14/09/2024)

³⁴ Ibid

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3.0 Achieving Environmental Justice through Alternative Dispute Resolution

ADR is an umbrella term that covers a range of tools and skills that can be utilized to manage conflicts and disputes without resort to courts³⁵. ADR has also been defined as a spectrum of less costly and more expeditious alternatives to litigation, where a neutral party assists the disputing parties in reaching resolution³⁶. However, in some ADR processes such as negotiation, parties to a conflict meet to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party³⁷. According to the United Nations, ADR (sometimes also referred to as “Appropriate Dispute Resolution”) is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a nonconfrontational way³⁸. ADR encompasses a set of processes including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others³⁹.

ADR is a suitable forum for achieving environmental justice⁴⁰. In the quest towards environmental justice, ADR has been identified as a tool for individuals and communities to give their own voices, to share in decision-making, and to promote innovative solutions in respect of environmental problems⁴¹. For example, instead of going to court, a community that is affected

³⁵ Environmental Law Institute., ‘A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice’ Available at <https://www.eli.org/environmental-governance/community-guide-using-alternative-dispute-resolution-secure-1> (Accessed on 15/09/2024)

³⁶ JAMS ADR., ‘What is ADR’ Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 15/09/2024)

³⁷ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Glenwood Publishers Limited, 2015

³⁸ United Nations., ‘Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building’ Available at https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper.pdf (Accessed on 15/09/2024)

³⁹ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Op Cit

⁴⁰ Environmental Law Institute., ‘A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice’ Op Cit

⁴¹ Ibid

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by environmental challenges such as pollution can use ADR techniques such as negotiation and mediation with the party most able to resolve the problem, such as the company causing harmful pollution in order to effectively and expeditiously address such problems⁴².

One of the key ways through which ADR process can promote Environmental Justice is by ensuring meaningful public participation in environmental decision-making⁴³. Public participation is a key pillar in the Environmental Justice debate⁴⁴. When effectively implemented, public participation improves the quality of decisions about the environment⁴⁵. In addition, public participation increases the legitimacy of environmental decisions in the eyes of those affected by them, which makes it more likely that the decisions will be implemented effectively⁴⁶. Effective public participation is a mechanism for integrating public concerns and knowledge into public policy decisions affecting the environment towards achieving Environmental Justice⁴⁷. It has been pointed out that informed and effective public participation at early stages of environmental decision-making helps to forestall future socioenvironmental conflicts⁴⁸. Ensuring effective and meaningful public participation is therefore vital in achieving environmental justice.

⁴² Ibid

⁴³ United States Commission on Civil Rights., 'Alternative Dispute Resolution and Meaningful Public Participation' Available at <https://www.usccr.gov/files/pubs/envjust/ch5.htm> (Accessed on 15/09/2024)

⁴⁴ United States Environmental Protection Agency., 'Benefits of Public Participation' Available at <https://www.epa.gov/international-cooperation/public-participation-guide-internet-resources-public-participation> (Accessed on 15/09/2024)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ United Nations Economic Commission for Latin America and the Caribbean., 'Access to Information, Participation, and Justice in Environmental Matters in Latin America and the Caribbean' Available at <https://repositorio.cepal.org/server/api/core/bitstreams/df4bbf15-d052-4247-a17a-b56acc77a3d/content> (Accessed on 15/09/2024)

⁴⁸ Ibid

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ADR mechanisms can ensure greater and more effective public participation in environmental matters therefore fostering Environmental Justice⁴⁹. The informality, voluntariness, and flexibility of ADR processes makes ADR a suitable platform for ensuring the participation of all stakeholders including marginalized groups and individuals in environmental decision making⁵⁰. ADR mechanisms such negotiation and mediation can be effectively harnessed to ensure the participation of all stakeholders including local communities in environmental decision making towards realizing Environmental Justice⁵¹.

In addition, ADR techniques are ideal in achieving Environmental Justice by ensuring access to justice in environmental matters⁵². Access to justice is vital in the quest towards Environmental Justice⁵³. Access to justice has been identified as an essential element of safeguarding environmental rule of law, protecting the environment, fostering Sustainable Development and protecting human health and well-being⁵⁴. It has been noted that members of the public are increasingly seeking access to justice to reduce exposure to pollution, ensure climate action, or minimize environmental impacts of unsustainable energy-related decision-making⁵⁵. Ensuring access to justice is therefore important in achieving Environmental Justice by tackling environmental problems including climate change, pollution, and biodiversity loss⁵⁶.

⁴⁹ United States Commission on Civil Rights., 'Alternative Dispute Resolution and Meaningful Public Participation' Op Cit

⁵⁰ Ibid

⁵¹ 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 15/09/2024)

⁵² Ibid

⁵³ United Nations Economic Commission for Europe., 'Enhancing Access to Justice to Tackle Climate Change and Pollution and Protect Biodiversity' Available at https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE_Access2Justice_Study_Final_logos.pdf (Accessed on 15/09/2024)

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

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ADR processes are suitable in enhancing access to justice since they allow for more creative and collaborative solutions than that of traditional litigation⁵⁷. In environmental matters, ADR provides an opportunity for community members to reach creative, and custom-made solutions therefore fostering Environmental Justice⁵⁸. It has been argued that since the goal of ADR is to find solutions that satisfy everyone involved, communities can avoid the risk of an 'all-or-nothing' result, which often happens with litigation⁵⁹. By ensuring that every person works together to shape an agreement that addresses the concerns and interests of all participants, ADR can also improve relationships between parties in conflict therefore ensuring access to justice⁶⁰. ADR processes therefore provide a suitable platform for managing environmental disputes including those concerning climate change and pollution thus ensuring access to justice towards achieving Environmental Justice⁶¹.

It is imperative to utilize ADR processes in order to achieve Environmental Justice.

4.0 Achieving Environmental Justice through the Court Process

Courts play a fundamental role in delivering Environmental Justice⁶². For example, through the adjudication of environmental disputes, courts play a role in explaining and upholding the values underpinning Environmental Justice⁶³. In addition, courts are crucial in achieving Environmental Justice by implementing the purposes of environmental legislation⁶⁴. It has been noted that the purposes of environmental laws and policies may include distributive

⁵⁷ JAMS ADR., 'What is ADR' Op Cit

⁵⁸ Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Op Cit

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

⁶² 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 15/09/2024)

⁶³ The Role of the Courts in Delivering Environmental Justice., Op Cit

⁶⁴ Ibid

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justice (by providing for more equitable distribution of environmental benefits and burdens); procedural justice (by providing for access to environmental information, public participation in environmental decision-making, and access to the courts); and recognition justice (giving recognition to and overcoming misrecognition of marginalised people, groups or communities in environmental matters)⁶⁵. Therefore, by upholding such legislative purposes when resolving environmental disputes, courts facilitate the realization of Environmental Justice.

Litigation is therefore an appropriate forum for achieving Environmental Justice. Through litigation, the jurisdiction of courts and tribunals can be utilized to enhance Environmental Justice⁶⁶. Litigation has emerged as a tool for environmental defenders seeking to prevent ecological destruction and ensure justice for affected communities all over the world⁶⁷. For example, in Kenya, the *Environment and Land Court Act*⁶⁸ establishes the Environment and Land Court to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources among other environmental matters⁶⁹. While exercising its jurisdiction, the Act mandates the Environment and Land Court to be guided by several tenets that are key in achieving Environmental Justice including the principles of Sustainable Development such as the principle of public participation; the polluter-pays principle and the pre-cautionary principle⁷⁰. The Environment and Land Court and other courts and tribunals including the National Environment Tribunal are therefore key in promoting Environmental Justice in Kenya⁷¹.

⁶⁵ Ibid

⁶⁶ Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

⁶⁷ Hope for Environmental Justice in Africa., Available at <https://dialogue.earth/en/justice/hope-for-environmental-justice-in-africa/> (Accessed on 16/09/2024)

⁶⁸ Environment and Land Court Act., No. 19 of 2011, Government Printer, Nairobi

⁶⁹ Ibid, s 13 (2) (a)

⁷⁰ Ibid, s 18 (a)

⁷¹ Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

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The principles of Environmental Justice were upheld in Kenya in the case of *KM & 9 others v Attorney General & 7 others*⁷². The Environment and Land Court decided that acts of pollution from a lead acid batteries recycling factory had resulted in violation of the Petitioner's rights to their personal life, the environment where they stayed and the water which they consumed⁷³. The Court proceeded to award the petitioners monetary compensation while also directing the Respondents to clean-up the soil, water and remove any wastes deposited within the Owino-Ohuru settlement⁷⁴. This decision is key in fostering Environmental Justice in Kenya since it upholds the concepts of access to justice and access to remedies including compensation in cases of environmental pollution⁷⁵. The decision has been described as a milestone for Environmental Justice and enforcement of the right to a clean, healthy, and sustainable environment in Kenya and Africa at large⁷⁶.

The principles of Environmental Justice were also reiterated by the Environment and Land Court in Kenya in the case of *Friends of Lake Turkana Trust vs Attorney General & 2 others*⁷⁷. The Court in the case decided that the petitioner's rights including access to information and public participation has been violated in respect of the proposed construction and operation of Gibe III dam between the Governments of Kenya and Ethiopia⁷⁸. The court decided that the state is a custodian of the environment and natural resources of its people and is under certain duties and obligations including ensuring that there is public participation in the sustainable management, protection and conservation of the environment⁷⁹. It also decided that access to environmental information is a prerequisite to effective public participation in decision-

⁷² *KM & 9 others v Attorney General & 7 others*, Petition No. 1 of 2016 (2020) eKLR,

⁷³ *Ibid*

⁷⁴ *Ibid*

⁷⁵ *Ibid*

⁷⁶ *Hope for Environmental Justice in Africa.*, Op Cit

⁷⁷ *Friends of Lake Turkana Trust vs Attorney General & 2 others.*, ELC Suit No. 825 of 2012, (2014) eKLR

⁷⁸ *Ibid*

⁷⁹ *Ibid*

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making and to monitoring governmental and private sector activities on the environment⁸⁰.

Courts in other African countries are also upholding the principles of Environmental Justice. The High Court of South Africa in the case of *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*⁸¹ set aside an exploration right, part-held by Shell, which would have enabled the company to undertake a seismic survey off South Africa's coastline, to explore for oil and gas reserves⁸². The Court set aside the exploration right on the basis of procedural unfairness; the failure to take into account relevant considerations; and the failure to comply with applicable legal standards⁸³. The High Court noted that the process leading to the grant of the exploration right failed to adequately consult with interested and affected communities⁸⁴. It further noted that the process ought to have invoked the precautionary principle (to the effect that where there is a risk of environmental harm, incomplete scientific knowledge should not be used as a reason to delay taking action to avoid the harm)⁸⁵. The Court noted that the process would have adverse impacts including harm to marine and bird life; the spiritual and cultural rights of the communities and their rights to livelihood; and climate change hence the need to take into account the precautionary principle⁸⁶. This decision is important in the quest towards Environmental Justice in Africa by reiterating the importance of meaningfully consulting with affected communities and respecting constitutional rights in cases of proposed exploration activities⁸⁷. Further, it has been pointed out that

⁸⁰ Ibid

⁸¹ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others.*, (3491/2021) [2022] ZAECKMHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022)

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ African Law Matters., 'The Shell Case: A Victory for Social and Ecological Justice in South Africa' Available at <https://www.africanlawmatters.com/blog/the-shell-case-a-victory-for-social-and-ecological-justice-in-south-africa> (Accessed on 16/09/2024)

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the decision represents the first time that Indigenous communities in South Africa specifically invoked their cultural rights in climate litigation and adds to a growing body of indigenous-oriented climate litigation cases around the world⁸⁸.

In addition, the East African Court of Justice in the case of *African Network for Animal Welfare v. The Attorney General of the United Republic of Tanzania*⁸⁹ held that the proposal to construct a bitumen road across the Serengeti National Park was unlawful and infringed articles 5(3)(c), 8(1)(c), 111(2) and 114(1) of the Treaty Establishing the East African Community requiring partner states to conserve, protect and co-operate in the management of natural resources and the environment within the East African Community⁹⁰. It decided that the proposed construction would cause devastating and irreversible damage to the Serengeti and neighboring parks like the Masai Mara in Kenya therefore threatening the right to a clean, healthy, and sustainable environment⁹¹. It granted a permanent injunction restraining the Government of Tanzania from constructing and maintaining the planned road across the Serengeti National Park⁹². This decision is key in fostering Environmental Justice and the right to a clean, healthy, and sustainable environment in Africa.

At the global level, the International Court of Justice (ICJ) provides a suitable platform for achieving Environmental Justice through the right of access to justice and legal remedies in environmental matters⁹³. For example, in the case

⁸⁸ Du Toit. L., Soyapi. B., & Kotze. L., 'South African Communities vs Shell: High Court Victories show that Cultural Beliefs and Practices Count in Climate Cases' Available at <https://theconversation.com/south-african-communities-vs-shell-high-court-victories-show-that-cultural-beliefs-and-practices-count-in-climate-cases-228029> (Accessed on 16/09/2024)

⁸⁹ African Network for Animal Welfare v. The Attorney General of the United Republic of Tanzania., 20 June 2014, EACJ First Instance Division, Ref. No. 9 of 2010

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

⁹³ The ICJ and Environmental Case Law., Available at <https://www.uio.no/studier/emner/jus/jus/JUS5520/h15/undervisningsmateriale/icj-andinternational-environmental-law.pdf> (Accessed on 16/09/2024)

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concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*⁹⁴, ICJ emphasized the need for the two countries to continue their cooperation and devise the necessary means to promote the equitable utilization of the river, while protecting its environment. The ICJ also recently rendered its first decision on environmental damage and compensation in the case *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*⁹⁵ therefore enhancing Environmental Justice through access to legal remedies.

The court process at global, regional, and national level is therefore appropriate in promoting Environmental Justice.

5.0 Conclusion

Achieving Environmental Justice has become a vital agenda in light of mounting environmental problems that are prevalent all over the world including the triple planetary crisis of climate change, biodiversity loss, and pollution⁹⁶. Environmental Justice seeks to achieve the ideal of access to justice, participation and access to legal remedies in environmental matters⁹⁷. ADR is a suitable platform for achieving Environmental Justice. These processes can ensure the participation of all stakeholders while also allowing parties to come up with collaborative and creative remedies toward achieving Environmental Justice⁹⁸. However, the role of ADR processes in promoting Environmental Justice may be limited by power imbalances and enforceability challenges in mechanisms such as mediation, delays and costs in arbitration, and lack of criminal sanctions in cases of environmental crimes⁹⁹. It is therefore imperative to legitimize ADR processes through effective legal, policy, and institutional

⁹⁴ International Court of Justice., 'Pulp Mills on the River Uruguay (Argentina v. Uruguay).' Available at <https://www.icj-cij.org/case/135> (Accessed on 16/09/2024)

⁹⁵ International Court of Justice., 'Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua).' Available at <https://www.icj-cij.org/case/150> (Accessed on 16/09/2024)

⁹⁶ The Role of the Courts in Delivering Environmental Justice.,Op Cit

⁹⁷ Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

⁹⁸ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

⁹⁹ Ibid

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frameworks in order to enhance their role in access to justice including Environmental Justice¹⁰⁰. It is also vital to build capacity for ADR practitioners and institutions in environmental matters in order to effectively utilize ADR as a tool for achieving Environmental Justice¹⁰¹.

The Court process at the national, regional, and global levels is also suitable in promoting Environmental Justice. Courts have the power to pronounce binding judgments while also ensuring that such judgments are enforceable and are ideal in fostering Environmental Justice¹⁰². However, concerns in litigation such high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow can hinder the viability of the court process in enhancing Environmental Justice¹⁰³. It is imperative to address these challenges by enhancing the right of access to justice, ensuring expeditious management of disputes, addressing the issue of costs, and opening doors for public interest litigation in environmental matters in order to achieve Environmental Justice through the court process¹⁰⁴. It is also imperative to establish specialized environmental courts at national, regional, and global levels and build the capacity of judicial officers in order to achieve Environmental Justice through the court process¹⁰⁵.

¹⁰⁰ 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 16/09/2024)

¹⁰¹ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Op Cit

¹⁰² Muigua. K., 'Realizing Environmental Justice through Litigation' Op Cit

¹⁰³ 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

¹⁰⁴ United Nations Economic Commission for Europe., 'Access to Justice in Environmental Matters: Standing, Costs and Available Remedies.' Available at https://unece.org/DAM/env/pp/a.to.j/AnalyticalStudies/SEE_Access2Justice_Study_Final_logos.pdf (Accessed on 16/09/2024)

¹⁰⁵ Ibid

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Achieving Environmental Justice through ADR and the court process is therefore a practical and realizable endeavour towards Sustainable Development.

Dealing with Carbon Disputes for Green Growth and Sustainability

Abstract

This paper discusses ways through carbon disputes can be appropriately managed for green growth and sustainability. The paper examines the causes of carbon disputes. It argues that these disputes undermine climate action. As a result, the paper posits that effective management of carbon disputes is necessary in order to ensure sound climate action for green growth and sustainability. The paper explores viable approaches both globally and at national levels towards dealing with carbon disputes for green growth and sustainability.

1.0 Introduction

Climate change is devastating the planet. The impacts of climate change including intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are on the rise globally undermining development efforts¹. It has been observed that climate change is causing dangerous and widespread disruption in nature and affecting the lives of billions of people all over the world². Climate change represents a grave challenge to the global economy, environment, and societal well-being, jeopardizing their long-term sustainability³. Due to its adverse impacts on people and planet, climate change has been identified as the greatest threat humanity is currently facing⁴.

¹ United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 03/08/2025)

² Intergovernmental Panel on Climate Change., 'Climate change: a threat to human wellbeing and health of the planet. Taking action now can secure our future' Available at https://www.ipcc.ch/report/ar6/wg2/downloads/press/IPCC_AR6_WGII_PressRelease-English.pdf (Accessed on 03/08/2025)

³ Ma. R et al., 'From Crisis to Resilience: Strengthening Climate Action in OECD Countries through Environmental Policy and Energy Transition' Available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10682128/> (Accessed on 03/08/2025)

⁴ United Nations Industrial Development Organization., 'Tackling Climate Change: Fostering trust in climate action through quality and standards' Available at https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/QI-CLIMATE_ACTION.pdf (Accessed on 03/08/2025)

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Tackling climate change has become a top policy agenda at local, national, regional and global levels⁵. The United Nations *2030 Agenda for Sustainable Development*⁶ acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development⁷. Sustainable Development Goal (SDG) 13 under the agenda calls upon all countries to take urgent action towards combating climate change and its impacts⁸. Further, African Union's *Agenda 2063*⁹ recognises the need for urgent and transformative action towards confronting climate change in order to foster Sustainable Development in Africa.

Carbon markets have emerged as a vital and effective tool in the global response to climate change. Carbon markets are a trading system through which countries, organisations or individuals may buy or sell units of greenhouse-gas emissions in an effort to meet their limits on greenhouse gas emissions¹⁰. They allow public and private entities to transfer and transact emission reduction units, mitigation outcomes or offsets generated through carbon initiatives, programmes and projects subject to compliance of national and international laws¹¹. Carbon markets have been embraced under the

⁵ United Nations Department of Economic and Social Affairs., 'Forum on Climate Change and Science and Technology Innovation.' Available at <https://www.un.org/en/desa/forum-climate-changeandscience-and-technology-innovation> (Accessed on 03/08/2025)

⁶ 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 03/08/2025)

⁷ Ibid

⁸ Ibid

⁹ Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 03/08/2025)

¹⁰ UN-REDD Programme., 'Carbon Market' Available at <https://www.un-redd.org/glossary/carbon-market> (Accessed on 03/08/2025)

¹¹ Climate Change (Amendment) Act, 2023., Laws of Kenya, Government Printer, Nairobi

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international climate change regime including the *Kyoto Protocol*¹² and the *Paris Agreement*¹³. Carbon markets have also been introduced in Kenya under the *Climate Change (Amendment) Act*¹⁴.

It has been argued that carbon markets provide a valuable approach towards confronting climate change¹⁵. For instance, companies or individuals can use carbon markets to compensate for their greenhouse gas emissions by purchasing carbon credits from entities that remove or reduce such emissions¹⁶. According to the United Nations Environment Programme (UNEP), carbon markets can enable states and non-state actors to achieve climate targets and implement climate actions cost effectively¹⁷. If well designed and implemented, carbon markets can be an effective, credible and transparent tool for helping to achieve low-cost emissions reductions in ways that mobilize private sector actors, attract investment, and encourage international cooperation on climate change¹⁸.

Despite their crucial role in climate action, carbon markets are also vulnerable to disputes. Carbon disputes can hinder effective functioning of carbon

¹² United Nations Framework Convention on Climate Change., 'Kyoto Protocol to the United Nations Framework Convention on Climate Change.' Available at <https://unfccc.int/resource/docs/convkp/kpeng.pdf> (Accessed on 03/08/2025)

¹³ United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 03/08/2025)

¹⁴ Climate Change (Amendment) Act, 2023., Op Cit

¹⁵ United Nations Development Programme., 'What are carbon markets and why are they important?' Available at <https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important> (Accessed on 03/08/2025)

¹⁶ Ibid

¹⁷ United Nations Environment Programme., 'Carbon Markets' Available at <https://www.unep.org/topics/climate-action/climate-finance/carbon-markets> (Accessed on 03/8/2025)

¹⁸ Natural Justice., 'Kenya's Climate Change Bill: Paving the Way for Sustainable Development and Carbon Markets.' Available at <https://naturaljustice.org/kenyas-climate-change-bill-paving-the-way-for-sustainable-development-and-carbon-markets/> (Accessed on 03/08/2025)

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markets therefore undermining climate action¹⁹. Dealing with carbon disputes is therefore crucial in ensuring effective responses to climate change.

This paper discusses ways through which carbon disputes can be appropriately managed for green growth and sustainability. The paper examines the causes of carbon disputes. It argues that these disputes undermine climate action. As a result, the paper posits that effective management of carbon disputes is necessary in order to ensure sound climate action for green growth and sustainability. The paper explores viable approaches both globally and at national levels towards dealing with carbon disputes for green growth and sustainability.

2.0 Impact of Carbon Disputes on Green Growth and Sustainability

The growth of carbon markets as a tool for confronting climate change has also led to the emergence of carbon disputes. It has been observed that carbon disputes primarily revolve around disagreement arising from carbon trading, carbon offsetting projects and other contractual, ethical and investment issues in carbon markets²⁰. For example, lack of clarity, inconsistencies in carbon accounting and misleading and deceptive conduct in carbon accounting practices are among the major causes of carbon disputes²¹. This has led to claims of greenwashing, misleading or deceptive conduct and contractual disputes regarding the proper value and/or veracity of carbon allowances and carbon offsets²². Due to the lack of an internationally recognized standard method for carbon accounting, there is uncertainty and in turn, the risk of

¹⁹ Ibid

²⁰ Nyanaro. G., 'Navigating Carbon Offset Projects and Trading Disputes in Africa: Assessing the Role of Appropriate Dispute Resolution Mechanisms' Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5216038 (Accessed on 04/08/2025)

²¹ Understanding the Challenges and Risks of Carbon Accounting: Implications for Organizations' Available at <https://empoweredsystems.com/blog/understanding-the-challenges-and-risks-of-carbon-accounting-implications-for-organizations/#:~:text=Carbon%20accounting%20practices%20lack%20a,between%20organizations%20or%20across%20industries> (Accessed on 04/08/2025)

²² Ibid

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carbon disputes²³. This has led to claims of breach of contract, misrepresentation and fraud in carbon markets and carbon accounting leading to the rise of carbon disputes²⁴. Further, it has been argued that when dealing with an uncertain market which is the case in carbon trading, there is potential for significant fluctuations in the value of the carbon credits between the point of sale and the point of delivery a situation that gives rise to pricing disputes²⁵.

Investment disputes have also arisen in carbon markets touching on vital sustainability concerns including environmental protection and human rights²⁶. The underlying infrastructure projects undertaken to generate emission reductions have been a source of commercial and investment disputes in carbon markets²⁷. In some cases, investors have been accused of failing to obtain the Free, Prior and Informed Consent (FPIC) of indigenous peoples and local communities before establishing carbon projects leading to land and human rights disputes²⁸. For example, the Northern Kenya Rangelands Carbon Project (NKRCP) was recently suspended due to shortcomings in the process for obtaining consent from participating communities and breaches of the Community Land Act of Kenya²⁹. There have

²³ The role of international arbitration in voluntary carbon market disputes., Available at <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/fdc65468/the-role-of-international-arbitration-in-voluntary-carbon-market-disputes#:~:text=Until%20there%20is%20an%20internationally,of%20the%20timeline%20for%20verification>). (Accessed on 04/08/2025)

²⁴ Ibid

²⁵ Ibid

²⁶ Nyanaro. G., 'Navigating Carbon Offset Projects and Trading Disputes in Africa: Assessing the Role of Appropriate Dispute Resolution Mechanisms' Op Cit

²⁷ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Available at <https://www.pslchambers.com/article/international-carbon-disputes-how-can-they-be-resolved-through-arbitration/#:~:text=Arbitration%20has%20played%20a%20vital,issues%20be%20resolved%20through%20ADR> (Accessed on 04/08/2025)

²⁸ Indigenous land disputes cloud Kenya's carbon market ambitions., Available at <https://www.climatechangenews.com/2025/05/15/indigenous-land-disputes-cloud-kenyas-carbon-market-ambitions/> (Accessed on 04/08/2025)

²⁹ Osman & 164 others (Suing on Their Behalf and Behalf of Residents of Merti Sub-County, Chari, and Cherab Wards in Isiolo County) v Northern Rangelands Trust & 8 others (Petition E006 of 2021) [2025] KEELC 99 (KLR) (24 January 2025) (Judgment)

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been disputes in carbon markets between investors and local communities over the leasing of ancestral lands for carbon-offsetting initiatives³⁰. Further, it has been argued that there is potential for investor-state disputes in carbon markets with investors in international carbon projects relying on investment treaties to bring claims against a states or state-owned entities³¹.

The growth of carbon disputes is a major threat to green growth and sustainability. Green growth is a development policy that emphasizes environmentally sustainable economic progress to foster low-carbon and socially inclusive development³². Green growth has been defined as growth that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities³³. It aims to foster economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which our well-being relies³⁴. UNEP defines green growth as low carbon, resource efficient and socially inclusive approach towards development³⁵. Sustainability on the other hand involves creating and maintaining the conditions under which humanity and nature can exist in productive harmony

³⁰ Indigenous land disputes cloud Kenya's carbon market ambitions., Op Cit

³¹ The role of international arbitration in voluntary carbon market disputes., Op Cit

³² United Nations Economic and Social Commission for Asia and the Pacific., 'Green Growth Uptake in Asia-Pacific Region.' Available at https://unece.org/fileadmin/DAM/env/cep/CEP-20/ppp/Item10_b_ESCAP_GreenGrowthUptake_e_sm.pdf (Accessed on 04/08/2025)

³³ United Nations Economic Commission for Europe., 'Greening the Economy: Mainstreaming the Environment into Economic Development.' Available at <https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=796&menu=1515> (Accessed on 04/08/2025)

³⁴ Organisation for Economic Co-operation and Development., 'What is Green Growth and How can it Help Deliver Sustainable Development?' Available at <https://www.oecd.org/greengrowth/whatisgreengrowthandhowcanithelpdeliverustainabledevelopment.htm> (Accessed on 04/08/2025)

³⁵ United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy> (Accessed on 04/08/2025)

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to support present and future generations³⁶. Sustainability seeks to balance between economic, social, and environmental factors to ensure that resources are used in a way that is not only environmentally sustainable but also socially equitable and economically viable in the long-term³⁷. The concept of Sustainable Development aims to achieve the ideal state of sustainability by promoting environmental protection and conservation, economic development and social progress³⁸. It has been argued that green growth is at the heart of sustainability³⁹. By embracing this approach, it is possible to sustain economic growth while at the same time ensuring climatic and environmental sustainability⁴⁰. Green growth seeks to deliver economic growth that is both environmentally sustainable and socially inclusive for Sustainable Development⁴¹.

Green growth is therefore a key development pathway towards sustainability. However, carbon disputes are a major threat to green growth and sustainability. It has been argued that carbon markets can unlock green growth and sustainability by unlocking investments in renewable energy, green and clean technologies, sustainable agriculture, ecosystem restoration and biodiversity conservation while creating green jobs and tackling poverty⁴². Carbon markets enable countries to confront climate change and transition to low-carbon economies in a cost-effective way therefore leading to

³⁶ United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 04/08/2025)

³⁷ Sustainability: A Better Tomorrow, But How?., Available at <https://www.green.earth/sustainability> (Accessed on 04/08/2025)

³⁸ Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

³⁹ United Nations., 'Green Growth' Available at <https://sustainabledevelopment.un.org/index.php?menu=1447> (Accessed on 04/08/2025)

⁴⁰ Ibid

⁴¹ Global Green Growth Institute., 'Green Growth in Action: Attaining Green Cities' Available at https://gggi.org/wp-content/uploads/2020/11/Green-Growth-in-Action-Attaining-Green-Cities_reduced-size.pdf (Accessed on 04/08/2025)

⁴² UN-REDD Programme., 'Africa's green wealth: unlocking the potential of carbon markets' Available at <https://www.un-redd.org/post/africas-green-wealth-unlocking-potential-carbon-markets> (Accessed on 04/08/2025)

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green growth and sustainability⁴³. Carbon disputes are therefore undesirable since they affect the effective functioning of carbon markets and slow down the progress towards confronting climate change⁴⁴. Carbon disputes are therefore a threat to green growth and sustainability. Dealing with carbon disputes in an appropriate manner is therefore vital towards green growth and sustainability.

3.0 Dealing with Carbon Disputes for Green Growth and Sustainability

Carbon disputes can be managed through various approaches including court processes and Alternative Dispute Resolution (ADR) techniques. The global and national legal framework on climate change envisions the management of climate change disputes including carbon disputes through both litigation and ADR processes. For example, the *United Nations Framework Convention on Climate Change (UNFCCC)*⁴⁵, allows parties to seek settlement of disputes through negotiation or any other peaceful means of their own choice⁴⁶. The UNFCCC also allows parties to submit their parties to the International Court of Justice (ICJ) or to arbitration in accordance with procedures to be adopted by the Conference of the Parties (COP)⁴⁷. It also envisions management of disputes through conciliation⁴⁸. Further, the *Kyoto Protocol* embraces the dispute management mechanisms set out under the UNFCCC⁴⁹. It thus envisages the management of climate change disputes including those in carbon markets through arbitration, litigation at the ICJ and conciliation through a conciliation commission⁵⁰. The *Paris Agreement* also embraces the

⁴³ United Nations Development Programme., 'Carbon Justice for All: How Carbon Markets Can Advance Equitable Climate Action Globally' Available at <https://www.undp.org/africa/blog/carbon-justice-all-how-carbon-markets-can-advance-equitable-climate-action-globally> (Accessed on 04/08/2025)

⁴⁴ Chen. B., Yuan. K., & Wen. X., 'The Legal Governance of the Carbon Market: Challenges and Application of Private Law in China' Available at <https://www.tandfonline.com/doi/full/10.1080/17583004.2023.2288591> (Accessed on 04/08/2025)

⁴⁵ United Nations Framework Convention on Climate Change., United Nations, 1992., Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 04/08/2025)

⁴⁶ Ibid, article 14 (1)

⁴⁷ Ibid, article 14 (2)

⁴⁸ Ibid, article 14 (6)

⁴⁹ Kyoto Protocol, article 19

⁵⁰ Ibid

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dispute management mechanisms stipulated under the UNFCCC which are arbitration, litigation, submissions of disputes to the ICJ and conciliation⁵¹.

At a national level, the *Climate Change (Amendment) Act*⁵² sets out the process of managing carbon disputes through both ADR and litigation. The Act provides that any dispute arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the Community Development Agreement in the first instance and be resolved within thirty days from the date the dispute is lodged⁵³. In addition, the Act provides that any dispute that is not land based and is not subjected to a Community Development Agreement shall be resolved through ADR in the first instance⁵⁴. The Act therefore envisages the use of ADR mechanisms in managing carbon disputes in Kenya. These mechanisms include negotiation, mediation, arbitration, and conciliation⁵⁵. Further, where any dispute is not managed within thirty days, the Act provides that such dispute shall be referred to the National Environment Tribunal⁵⁶. The Tribunal is established under the Environmental Management and Co-ordination Act with the jurisdiction to *inter alia* make orders to enhance the principles of Sustainable Development in Kenya⁵⁷.

From the foregoing, it is evident that both litigation and ADR can be utilised in managing carbon disputes. Litigation is being embraced to manage carbon disputes with climate litigation emerging as a key tool to manage climate change disputes towards climate justice⁵⁸. It has been observed that people are increasingly turning to courts to combat the climate crisis,

⁵¹ Paris Agreement, article 24

⁵² Climate Change (Amendment) Act, 2023, Op Cit

⁵³ Ibid, s 23 (H) 1

⁵⁴ Ibid, s 23 (H) 2

⁵⁵ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya' Glenwood Publishers Limited, 2015

⁵⁶ Climate Change (Amendment) Act, 2023, Laws of Kenya, S 23 H (3), Government Printer, Nairobi.

⁵⁷ Environmental Management and Co-ordination Act, No. 8 of 1999, Laws of Kenya S 125 & 129 (3) (c) Government Printer, Nairobi

⁵⁸ United Nations Environment Programme., 'Climate litigation more than doubles in five years, now a key tool in delivering climate justice' Available at <https://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (Accessed on 04/08/2025)

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holding governments and the private sector accountable therefore making litigation a key mechanism for securing climate action and promoting climate justice⁵⁹. Litigation is an effective tool in dealing with key issues in carbon disputes such as human rights including the land rights of indigenous peoples and local communities, and issues on climate disclosures and greenwashing claims⁶⁰.

At the global level, the ICJ provides a suitable platform for utilising litigation to manage carbon disputes. Most recently in its advisory opinion on climate change, the ICJ observed that states have an obligation to address climate change including through ensuring the proper functioning of carbon markets by regulating the conduct of public and private operators to ensure compliance with sound environmental conservation and human rights⁶¹. Further, at a national level, the Climate Change Amendment Act grants jurisdiction to the National Environment Tribunal to manage carbon disputes through litigation⁶². Despite its role in managing carbon disputes, it has been argued that litigating disputes in carbon markets can result in concerns such as lack of independence and bias in favour of host states, lack of flexibility, enforcement challenges in cross border carbon disputes, costs and delays⁶³.

ADR is therefore a more appropriate tool for managing carbon disputes for green growth and sustainability. At the global level, the *Charter of the United Nations* encourages a peaceful approach to management of conflicts amongst states including through the use of ADR⁶⁴. 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

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ International Court of Justice., 'Obligations of States in Respect of Climate Change' Available at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> (Accessed on 04/08/2025)

⁶² Climate Change (Amendment) Act, 2023, Laws of Kenya, S 23 H (3), Government Printer, Nairobi.

⁶³ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Available at <https://arbitrationblog.kluwerarbitration.com/2023/09/16/dispute-resolution-in-carbon-markets/> (Accessed on 04/08/2025)

⁶⁴ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

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arrangements, or other *peaceful means* of their own choice⁶⁵ (Emphasis added). Further, at a national level, the *Constitution of Kenya*⁶⁶ mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and Traditional Dispute Resolution Mechanisms (TDRMs)⁶⁷.

ADR mechanisms including negotiation, conciliation, mediation and arbitration have been identified as suitable in managing carbon disputes⁶⁸. For instance, negotiation can enable countries, organisations and individuals to enter into effective contracts where the risk of disputes is minimized, agree on emission reductions, and resolve the differences among the trading parties in the carbon markets before such differences can escalate to conflicts and disputes⁶⁹. In addition, it has been argued that conciliation provides a flexible and collaborative approach towards managing carbon disputes⁷⁰. It can also potentially preserve relationships therefore ensuring the effective functioning of carbon markets and the long-term viability of carbon projects for green growth and sustainability⁷¹. Mediation is also a useful approach in managing carbon disputes. It provides a timely, cost-effective, non-adversarial and flexible approach towards managing carbon disputes⁷². It has been argued that mediation can serve as a bridge between international legal standards and domestic implementation thus reducing the risk of non-compliance in carbon

⁶⁵ Ibid, article 33 (1)

⁶⁶ Constitution of Kenya., 2010., Government Printer, Nairobi

⁶⁷ Ibid, article 159 (2) (c)

⁶⁸ United Nations Framework Convention on Climate Change., United Nations, 1992., Op Cit

⁶⁹ Yang. C., Yang. Z., & Li. Y., 'Negotiation mechanism of carbon emission quota trading process' *Sustainable Production and Consumption.*, Volume 39, July 2023., pp 336-344

⁷⁰ Nyanaro. G., 'Navigating Carbon Offset Projects and Trading Disputes in Africa: Assessing the Role of Appropriate Dispute Resolution Mechanisms' Op Cit

⁷¹ Muigua. K., 'Managing Disputes in Carbon Markets' Available at <https://kmco.co.ke/wp-content/uploads/2024/02/Managing-Disputes-in-Carbon-Markets.pdf> (Accessed on 04/08/2025)

⁷² Mediating Climate Change Disputes: Navigating Scope 3 Effects and International Law Implementation in Energy Transition Projects., Available at <https://civilmediation.org/mediating-climate-change-disputes/> (Accessed on 04/08/2025)

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markets⁷³. Further, due to its focus on collaboration, mediation can also help investors to ensure the participation of local communities in carbon projects thus minimising disputes while also preserving and strengthening relationships⁷⁴.

Arbitration is also an effective process in managing carbon disputes. For instance, it gives parties freedom to select arbitrators with sufficient expertise on the regulatory and technical issues at stake in carbon disputes⁷⁵. The transnational applicability and binding nature of arbitration also allows neutrality of forum and enforcement of outcomes in cross-border carbon disputes⁷⁶. Further, due to its focus on privacy and confidentiality, arbitration can safeguard sensitive commercial interests and information at stake in carbon disputes⁷⁷.

ADR is therefore an effective tool for managing disputes. However, the suitability of processes such as negotiation and mediation can be limited by imbalance of powers among parties, lack of precedents and enforceability challenges⁷⁸. Further, it has been argued that the use of private forums such as arbitration in managing carbon disputes can hinder transparency, accountability and public participation which are prerequisites for effective climate action⁷⁹. In addition, utilising arbitration in managing carbon disputes can result in problems of costs and delays due to the complex and technical nature of such disputes⁸⁰. It is imperative to address these concerns in order to effectively deal with carbon disputes for green growth and sustainability.

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁷⁶ Ibid

⁷⁷ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

⁷⁸ Mediating Climate Change Disputes: Navigating Scope 3 Effects and International Law Implementation in Energy Transition Projects., Op Cit

⁷⁹ Darne. A., 'International Carbon Disputes - How can they be resolved through Arbitration?' Op Cit

⁸⁰ Kwan. E., Nagra. S., Zou. A., 'Dispute Resolution in Carbon Markets' Op Cit

4.0 Conclusion

Carbon disputes undermine green growth and sustainability. Dealing with carbon disputes is therefore necessary in order to foster the quest towards green growth and sustainability. Litigation and ADR provide suitable platforms for managing carbon disputes. However, litigation can be limited by several challenges such as lack of expertise in carbon disputes, lack of independence and bias in favour of host states, lack of flexibility, enforcement challenges in cross boarder carbon disputes, costs and delays⁸¹. It is therefore imperative to embrace the use of ADR processes including negotiation, conciliation, mediation and arbitration in managing carbon disputes for green growth and sustainability. However, in order to realise this ideal, it is imperative to strengthen the legal, policy and institutional frameworks on ADR, bolster human capacities and expertise in carbon markets and carbon disputes and ensure the participation of all stakeholders including local communities in ADR processes⁸². Dealing with carbon disputes for green growth and sustainability is therefore necessary and practical.

⁸¹ Ibid

⁸² Ibid

Resolving Climate Change Conflicts Globally through Mediation

Abstract

Climate change is a major threat to development both globally and in Africa. The United Nations 2030 Agenda for Sustainable Development acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development. Climate change is also causing and fueling conflicts at all levels. These conflicts hinder effective climate action and the achievement of climate goals at the global, regional, and national levels. Effective management of climate change conflicts is therefore needed in order to strengthen the response towards climate change and deliver climate justice. This paper critically explores the need to resolve climate change conflicts globally through mediation. The paper posits that mediation is a suitable mechanism for effective management of climate change conflicts globally. The paper examines the nature and causes of climate change conflicts globally. It also analyses the key features of mediation that makes it an ideal process for effective management of climate change conflicts globally. The paper further examines some of the challenges in utilizing mediation in resolving climate change conflicts globally. It also proposes measures towards harnessing mediation for appropriate management of climate change conflicts globally.

1.0 Introduction

The world is facing a growing and daunting threat to global peace and stability in the form of climate change¹. It has been noted that climate change is no longer an abstract concern or a threat far off in the future². Climate change is a real and present danger to the lives of billions of people today and to everyone on the planet in the foreseeable future³. It has been described as the most defining challenge of our time⁴. Climate change is a major global concern that

¹ Grzybowski. A., & Hunnie. C., 'Mediating Peace with Climate Change' Available at <https://ecopeaceme.org/wp-content/uploads/2022/03/mediating-peace-with-climate-change.pdf> (Accessed on 22/08/2024)

² Ibid

³ Ibid

⁴ United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 22/08/2024)

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is affecting both developed and developing countries in their efforts towards Sustainable Development⁵.

The impacts of climate change are being witnessed all over the world. These effects include intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity⁶. Climate change is also being manifested in Africa. Despite having the lowest greenhouse gas emissions, Africa faces exponential collateral damage as a result of climate change, posing systemic risks to its economies, infrastructure investments, water and food systems, public health, agriculture, and livelihoods, threatening to undo its modest development gains and slip into higher levels of extreme poverty⁷. Africa stands out disproportionately as the most vulnerable region in the world⁸. Climate change is having a devastating impact on the African continent creating food insecurity, stressing water resources, affecting human health, displacing populations and impeding socio-economic development⁹.

Climate change is therefore a threat to development both globally and in Africa. It is directly contributing to humanitarian emergencies from heatwaves, wildfires, floods, tropical storms and hurricanes which are increasing in scale, frequency and intensity¹⁰. It has been noted that if left unchecked, climate

⁵ Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

⁶ United Nations., 'What is Climate Change?' Op Cit

⁷ African Development Bank Group., 'Climate Change in Africa' Available at <https://www.afdb.org/en/cop25/climate-change-africa> (Accessed on 22/08/2024)

⁸ United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 22/08/2024)

⁹ Rao. V., & Yadav. P., 'Confronting Climate Change in Africa.' Available at <https://knowledge.insead.edu/responsibility/confronting-climate-change-africa> (Accessed on 22/08/2024)

¹⁰ World Health Organization., 'Climate Change' Available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (Accessed on 22/08/2024)

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change will undo a lot of the development progress made over the past years and will also provoke mass migrations that will lead to instability and wars¹¹.

Climate change is also causing and fueling conflicts at all levels¹². The environmental effects of climate change, especially the depletion of natural resources creates conditions that increase the risk of violent conflict¹³. Climate change conflicts affect the achievement of climate goals at levels¹⁴. Effective management of climate change conflicts is thus crucial in strengthening the response towards climate change and delivering climate justice¹⁵.

This paper critically explores the need to resolve climate change conflicts globally through mediation. The paper posits that mediation is a suitable mechanism for effective management of climate change conflicts globally. The paper examines the nature and causes of climate change conflicts globally. It also analyses the key features of mediation that makes it an ideal process for effective management of climate change conflicts globally. The paper further examines some of the challenges in utilizing mediation in resolving climate change conflicts globally. It also proposes measures towards harnessing mediation for appropriate management of climate change conflicts globally.

2.0 Climate Change and Conflicts

It has been pointed out that the adverse effects of climate change and environmental degradation extend far beyond the environmental realm and increasingly shape human activity by causing and worsening conflicts at the

¹¹ United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 22/08/2024)

¹² International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf (Accessed on 22/08/2024)

¹³ Ibid

¹⁴ United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Available at <https://www.unep.org/news-and-stories/pressrelease/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (Accessed on 22/08/2024)

¹⁵ Ibid

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global, regional, national, and local levels¹⁶. For example, rising temperatures, more severe and frequent extreme weather events, and erratic rainfall patterns cause or exacerbate volatile food prices, insecure livelihoods, and large-scale displacement therefore posing the risk of conflicts¹⁷. In addition, sea level rise is an existential threat especially for small island states and raises questions regarding maritime boundaries and national identity¹⁸. The effects of climate change can therefore worsen existing fault lines and vulnerabilities, thereby fueling violence, insecurity, and conflicts¹⁹.

The environmental effects of climate change, especially the depletion of natural resources, create conditions that increase the risk of violent conflict²⁰. These impacts including water scarcity, crop failure, food insecurity, migration, and displacement of populations increase the risk of conflict and violence²¹. Climate change has also been identified as a threat multiplier which can increase human security issues such as food and water scarcity while also leading to (violent) conflicts in climate-vulnerable regions and countries²². For example, it has been observed that severe and prolonged drought due to climate change has had a devastating impact upon natural resources, especially pasture and water, in northern Kenya among other arid and semi-arid regions of the world²³. The resulting scarcity of natural resources especially water and pasture fuels competition over these resources resulting in an increased threat of violent conflict as a result of the impacts of climate change²⁴. It has been pointed out that in many of the countries that are most vulnerable to climate

¹⁶ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNote-TheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 22/08/2024)

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Op Cit

²¹ Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

²² Ibid

²³ Ibid

²⁴ Ibid

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change, fragility and conflict have weakened coping mechanisms especially for people and communities who are dependent on natural resources²⁵.

Climate change contributes to increased conflict, but along indirect pathways²⁶. There are a variety of context factors including socioeconomic conditions, governance, and political factors that interact and play a key role in translating climate change into conflict risks²⁷. For example, it has been noted that the quality of governance and strength of institutions are frequently key determinants of how and to what extent climate change affects peace and conflict²⁸. The risk of climate change conflicts is most acute in those countries or regions which combine environmental fragility – be it low-lying land vulnerable to flooding or arid land vulnerable to drought – with fragile governance and security systems²⁹. For instance, in water-stressed regions with existing tensions between groups or states over a water source, the impacts of climate change on water resources might increase tensions, particularly in the absence of strong institutional capacity a situation that could spiral into conflicts³⁰. The impacts of climate change are particularly destabilizing in already fragile and disadvantaged regions and communities, such as least developed countries, small island developing states and dryland regions therefore increasing the likelihood of conflicts in such settings³¹. In addition, communities that are dependent on agriculture and coastal livelihoods are disproportionately affected due to climate change, and some indigenous communities also face higher risk when the natural world that underpins local

²⁵ United Nations Department of Political and Peacebuilding Affairs., ‘The Implications of Climate Change for Mediation and Peace Processes’ Op Cit

²⁶ United Nations Climate Change., ‘Conflict and Climate’ Available at <https://unfccc.int/news/conflict-and-climate#:~:text=The%20evidence%20is%20clear%20that,climate%20change%20into%20conflict%20risks.> (Accessed on 22/08/2024)

²⁷ Ibid

²⁸ United Nations Department of Political and Peacebuilding Affairs., ‘The Implications of Climate Change for Mediation and Peace Processes’ Op Cit

²⁹ International Institute for Sustainable Development., ‘Climate change and conflict: Lessons from Community Conservancies in Northern Kenya’ Op Cit

³⁰ United Nations Climate Change., ‘Conflict and Climate’ Op Cit

³¹ Grzybowski. A., & Hunnie. C., ‘Mediating Peace with Climate Change’ Op Cit

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livelihoods deteriorates³². The risk of conflicts in these settings is therefore high.

Due to its economic impacts, climate change can also affect the ability of governments to provide essential services³³. The impacts of climate change disrupts the natural, economic and social systems upon which humanity depends on³⁴. This disruption affects global food security, damage infrastructure and jobs, and harm human health³⁵. Climate change therefore has wide-ranging and serious impacts that represent huge economic and social risks³⁶. It has been noted that these factors increase the potential for conflict, political upheaval and mass displacement³⁷. The inability of governments to meet their social contracts/obligations, to provide the most essential services to citizens as a result of the economic and social impacts of climate change could lead to the emergence of non-state actors such as militant groups as has been witnessed in several parts of the world thus fueling conflicts, insecurity, and instability³⁸.

It is therefore evident that climate change is no longer merely environmental in nature but it also has a direct impact on people, their livelihood and sustenance. There is a definite link between climate change and conflict since climate change compounds existing risk factors such as scarcity of natural resources and rise in geo-political tensions over their sharing of such resources³⁹. Further, since climate change concerns are not restricted to any one nation or continent, there is a huge risk of conflicts spiraling beyond national

³² Ibid

³³ United Nations Climate Change., 'Conflict and Climate' Op Cit

³⁴ What are the Impacts of Climate Change?., Available at <https://www.imperial.ac.uk/grantham/publications/climate-change-faqs/what-are-the-impacts-of-climate-change/> (Accessed on 22/08/2024)

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ United Nations Climate Change., 'Conflict and Climate' Op Cit

³⁹ Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Available at <https://thac.or.th/conflicts-with-mediation/> (Accessed on 22/08/2024)

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borders⁴⁰. Natural disasters such as drought, floods or earthquakes often result major migratory movement of climate refugees into the territories of other states resulting in major political and diplomatic concerns globally⁴¹. Climate change is therefore shaping and reshaping relations between and within countries and communities⁴². It increases the likelihood of conflicts and violence, for instance by fueling transboundary or community tensions over diminishing water supplies⁴³.

Climate change conflicts are a major threat to global, regional, and national peace and security⁴⁴. For example, climate change amplifies the risk of violent conflict in Africa threatening peace, security, and stability⁴⁵. Growing competition over natural resources due to climate change is increasing tensions in Africa which is a continent that is experiencing some of the world's most protracted conflicts⁴⁶. Effective management of climate change conflicts is thus crucial in strengthening the response towards climate change and delivering climate justice⁴⁷.

3.0 Utilizing Mediation to Resolve Climate Change Disputes Globally: Prospects and Challenges

Mediation is among the processes that are referred to as Alternative Dispute Resolution (ADR)⁴⁸. These are a set of processes that are applied to manage

⁴⁰ Ibid

⁴¹ Ibid

⁴² European Institute for Peace., 'Making Peace with the Climate: Conflict Resolution in a Climate - Changing World' Available at <https://www.eip.org/publication/making-peace-with-the-climate-conflict-resolution-in-a-climate-changing-world/> (Accessed on 22/08/2024)

⁴³ Ibid

⁴⁴ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

⁴⁵ Stockholm Environment Institute., 'Climate Change Amplifies the Risks for Violent Conflicts in Africa' Available at <https://www.sei.org/perspectives/climate-change-amplifies-risks-violent-conflicts-africa/> (Accessed on 22/08/2024)

⁴⁶ Ibid

⁴⁷ United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Op Cit

⁴⁸ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

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disputes without resort to adversarial litigation⁴⁹. ADR techniques may be linked to but function outside formal court litigation processes⁵⁰. They 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 disputes⁵¹. In addition, ADR techniques allow parties to come up with creative and collaborative solutions than those available in traditional litigation therefore fostering efficient management of disputes⁵². The role of ADR techniques in managing conflicts globally is recognized under the *Charter of the United Nations*⁵³. 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 choice (Emphasis added)⁵⁴.

The United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements⁵⁵. Mediation has also been defined as an informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of their dispute, based on the parties' respective interests⁵⁶. Mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock⁵⁷. Parties therefore involve a third party known as a mediator to assist them

⁴⁹ Ibid

⁵⁰ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

⁵¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁵² JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 23/08/2024)

⁵³ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁵⁴ Ibid, article 33 (1)

⁵⁵ United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 23/08/2024)

⁵⁶ World Intellectual Property Organization., 'Guide to WIPO Mediation' Available at <https://tind.wipo.int/record/29081?v=pdf> (Accessed on 23/08/2024)

⁵⁷ Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

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continue with the negotiations and ultimately break the deadlock⁵⁸. Mediation can therefore be understood as negotiation with the assistance of a neutral third party⁵⁹. A mediator cannot impose a solution upon the parties but rather facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutual acceptable agreement⁶⁰.

Mediation is an ideal process in resolving climate change conflicts globally⁶¹. The attributes of mediation including informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost-effective management of disputes makes it an ideal process for resolving a wide range of disputes including those concerning climate change⁶². Mediation also has the ability to preserve relationships and provides parties with a wide range of solutions than those available through litigation⁶³. Due to its attributes, mediation offers a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding⁶⁴. Collaboration is a key approach towards managing conflicts which allows competing or opposing stakeholder groups to work together to reach an agreement over issues in dispute⁶⁵. Collaboration has been identified as a powerful approach towards conflict resolution built on cooperation, open

⁵⁸ Ibid

⁵⁹ Knaster. A., 'Resolving Conflicts Over Climate Change Solutions: Making the Case for Mediation' *Pepperdine Dispute Resolution Law Journal*, Volume 10, No. 3 (2010)

⁶⁰ Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit

⁶¹ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

⁶² 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 23/08/2024)

⁶³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

⁶⁴ Unlocking Collaboration: The Power of Mediation., Available at <https://www.linkedin.com/pulse/unlocking-collaboration-power-mediation-jharna-jagtiani-g7kxc/> (Accessed on 23/08/2024)

⁶⁵ Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 23/08/2024)

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communication, and finding win-win outcomes⁶⁶. According to the United Nations, the premise of mediation is that in the right environment, conflict parties can improve their relationships and move towards cooperation⁶⁷.

In climate change conflicts, mediation can enable parties to move from a position of conflict towards collaboration⁶⁸. For example, since populations in conflict-affected contexts tend to rely on natural resources for their livelihoods, the impact of climate shocks on natural resources is often a compelling issue that could trigger competition and conflicts over scarce resources⁶⁹. In such contexts, mediation is a useful entry point in peace processes⁷⁰. Mediation can enhance collaboration by fostering the engagement of local parties and communities, while offering options for integrating their voices and expertise in the climate change discourse⁷¹. By focusing on collaboration and cooperation, mediation enables the integration of women, youth and marginalized groups, who face particular climate risks and Indigenous peoples, whose expertise can help identify key issues, priorities, and solutions in climate change conflicts⁷².

Mediation is also key in resolving climate change conflicts globally by strengthening climate diplomacy⁷³. The idea of climate diplomacy has been described as the interface between national interest debates and international

⁶⁶ Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests.> (Accessed on 23/08/2024)

⁶⁷ United Nations., 'Guidance for Effective Mediation' Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf (Accessed on 23/08/2024)

⁶⁸ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

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cooperation on climate action⁷⁴. Climate diplomacy ensures the accurate assessment of other countries' interests and intentions, and finds the space for agreement on climate change issues⁷⁵. Climate diplomacy involves the use of diplomatic channels and strategies to address global climate change and its impact on international relations⁷⁶. It involves negotiating and implementing climate related policies, treaties, and agreements at the regional and international level, as well as cooperation between countries and other stakeholders to reduce greenhouse gas emissions, adapt to the impacts of climate change, and promote Sustainable Development⁷⁷. Mediation can enhance climate diplomacy and the management of climate change conflicts globally by enabling diplomats from different countries to negotiate and come up with common positions and solutions on climate change⁷⁸. This approach is not only vital in confronting climate change but it can also enable countries to build and strengthen Inter-State relations⁷⁹. In climate change conflicts involving two states, mediation is key in promoting mutual cooperation among the nations where the party states are directly involved in resolving the issues, through their representatives or diplomats negotiating for the benefits of the public at large⁸⁰.

The transnational applicability of mediation also makes it suitable in resolving climate change conflicts globally⁸¹. In transboundary conflicts, mediation is

⁷⁴ UUDA-NEPAD., 'Climate Diplomacy in Africa' Available at <https://www.nepad.org/climate/publication/climate-diplomacy-africa> (Accessed on 23/08/2024)

⁷⁵ Ibid

⁷⁶ Dimitrov. R., 'Climate Diplomacy' Available at https://www.researchgate.net/profile/RadoslavDimitrov-4/publication/322404819_Climate_diplomacy/links/5c89597b299bf14e7e7acf9c/Climatediplomacy.pdf (Accessed on 23/08/2024)

⁷⁷ Ibid

⁷⁸ Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Muigua. K., 'Utilizing Alternative Dispute Resolution in Climate Change Disputes' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Utilizing->

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ideal in promoting diplomacy across borders and initiating cooperation and strengthening of relations between nations⁸². For example, at international level, mediation has enabled the states of Israel and Jordan to enter into peace agreement on water-sharing as well as mutual protection of water quality through measures such as establishment of joint institutional bodies⁸³.

Mediation is therefore an ideal mechanism in resolving climate change conflicts globally. However, this suitability may be limited in certain circumstances. For example, win-win solutions are not always possible, especially in situations of absolute resource scarcity such as water due to the adverse impacts of climate change⁸⁴. Enforcement of outcomes may also be difficult especially in the cross border context⁸⁵. It is therefore necessary to effectively harness mediation in order to enhance its role in resolving climate change conflicts globally.

4.0 Conclusion

The impacts of climate change on conflict demands urgent and creative actions for effective conflict management⁸⁶. Violent storms, severe droughts, biodiversity loss and environmental degradation are displacing millions of people all over the world and intensifying competition over scarce natural

[Alternative-Dispute-Resolution-in-Climate-Change-Disputes.pdf](#) (Accessed on 23/08/2024)

⁸² Girinarayanan. I., 'Can Climate Change Disputes be Resolved through Mediation?' Available at <https://www.voicesofyouth.org/blog/can-climate-change-disputes-be-resolved-through-mediation> (Accessed on 23/08/2024)

⁸³ Climate Diplomacy., 'Jordan and Israel: Tensions and Water Cooperation in the Middle-East' Available at <https://climate-diplomacy.org/case-studies/jordan-and-israel-tensions-and-water-cooperation-middle-east> (Accessed on 23/08/2024)

⁸⁴ 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_UNDP_AUNEP2015_0.pdf (Accessed on 23/08/2024)

⁸⁵ Ibid

⁸⁶ Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Available at <https://climate-diplomacy.org/magazine/conflict/four-climate-frontiers-how-mediators-can-make-peace-and-help-protect-planet> (Accessed on 23/08/2024)

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resources⁸⁷. This in turn fuels violence and threatens the effectiveness and sustainability of peacemaking efforts globally⁸⁸.

Mediation is a suitable approach in resolving climate change conflicts globally. It has been noted that mediation processes respond to the specificity of the conflict by taking into account the causes and dynamics of the conflict, the positions, interests and coherence of the parties, the needs of the broader society, as well as the regional and international environments⁸⁹. Mediation can enhance collaboration and cooperation in the management of climate change conflicts⁹⁰. It is suitable in fostering the participation of all stakeholders including women, youth, marginalized groups, and Indigenous peoples in conflict resolution⁹¹. In the local contexts, mediation enables stakeholders to focus on localized, tangible effects of climate change therefore ensuring effective conflict management⁹². Further, in the global context, mediation is key in promoting diplomacy, initiating cooperation and strengthening of relations between nations⁹³. It is therefore imperative to effectively harness mediation in order to effectively resolve climate change conflicts globally.

In order to effectively harness mediation to resolve climate change conflicts globally, it is imperative to build the capacity of mediators on climate change issues⁹⁴. It is also necessary to increase the familiarity of parties to conflicts on climate-related concerns, for example by raising their awareness of climate projections and environmental impact in advance of a negotiation process⁹⁵. In addition, it is vital for parties to embrace collaborative outcomes in climate

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ United Nations., 'Guidance for Effective Mediation' Op Cit

⁹⁰ Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Op Cit

⁹¹ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

⁹² Ibid

⁹³ Girinarayanan. I., 'Can Climate Change Disputes be Resolved through Mediation?' Op Cit

⁹⁴ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Op Cit

⁹⁵ Ibid

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change conflicts ranging from environment and climate-sensitive peace agreements to cooperation on addressing the impact of climate change or environmental degradation in order to effectively manage such conflicts through mediation⁹⁶. At the global stage, it is imperative to embrace climate diplomacy in order to seek solutions to climate change concerns including conflicts through diplomatic mediation⁹⁷. In the context of shared resources, it is imperative for countries to establish joint institutions in order to effectively harness the power of mediation in addressing conflicts through cooperation⁹⁸.

Resolving climate change conflicts globally through mediation is thus viable and achievable.

⁹⁶ Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Op Cit

⁹⁷ Thailand Arbitration Center., 'Resolving Climate Conflicts with Mediation: Redesigning Earth's Destiny' Op Cit

⁹⁸ Climate Diplomacy., 'Jordan and Israel: Tensions and Water Cooperation in the Middle-East'

Mediation under the African Sunset: Harnessing Ubuntu, Collaboration and Peace

Abstract

This paper critically examines the practice of mediation in Africa. The paper argues that mediation has been part and parcel of conflict management in Africa for many centuries. It notes that mediation is well suited in managing conflicts in the African context towards peace and Sustainable Development. Despite its suitability, the paper notes that the current practice of mediation in Africa faces several challenges. The paper examines some of the key challenges affecting the mediation landscape in Africa. In light of these challenges, the paper explores how Ubuntu, collaboration and peace can be harnessed for effective mediation in Africa.

1.0 Introduction

The United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements¹. Mediation has also been defined as a process of conflict management which involves the intervention of a third person known as a mediator who assists parties to a conflict in negotiating jointly acceptable resolution of issues in conflict². Mediation can also be described as a method of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information thus aiding in the process of reaching an agreement³. It has been argued that mediation is non-adversarial and collaborative process through which an impartial third party helps parties in a dispute reach a resolution through interest-based negotiations⁴.

¹ United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 06/08/2025)

² What is Mediation?., Available at <https://www.commerce.gov/cr/reports-and-resources/eo-mediation-guide/what-mediation> (Accessed on 06/08/2025)

³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

⁴ United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at Available at

It has been correctly noted that mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock⁵. As a result of the deadlock, parties involve a third party known as a mediator to assist them continue with the negotiations and ultimately break the deadlock⁶. However, a mediator cannot impose a solution upon the parties but rather facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutually acceptable agreement⁷. It has been argued that unlike a judge or an arbitrator, a mediator does not decide the outcome of a dispute⁸. The role of the mediator is to help parties to a dispute to resolve their grievances through a process that encourages each side to air disputes; identify the strengths and weaknesses of their case; reach a compromise where necessary; and agree on a mutually satisfactory solution⁹. Mediation can therefore be described as a structured negotiation process in which an independent person, known as a mediator, assists the parties to identify and assess options and negotiate an agreement towards resolving their conflict¹⁰.

Mediation is an ideal process in managing conflicts and disputes. Its key features including informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost-effective management of disputes make mediation an appropriate process in dispute resolution¹¹. Mediation has been described as a non-adversarial, flexible,

https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDP_AUNEP2015_0.pdf (Accessed on 06/08/2025)

⁵ Bercovitch, J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

⁶ Ibid

⁷ Ibid

⁸ O'Neill, C., 'Mediation: The Six Stages' Available at <https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html> (Accessed on 06/08/2025)

⁹ Ibid

¹⁰ Mediation., Available at <https://www.fedcourt.gov.au/services/ADR/mediation#:~:text=What%20is%20Mediation?,parties%20than%20a%20judge's%20decision> (Accessed on 06/08/2025)

¹¹ Muigua, K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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expeditious and cost-effective process making it ideal in conflict management¹². Further, it has been noted that mediation guarantees confidentiality, neutrality and impartiality in conflict resolution¹³. Mediation focuses on the interests on the parties and provides a platform for collaboration enabling parties to come up with mutually satisfactory outcomes¹⁴.

Due to its key features and advantages, mediation has been identified as a vital technique in conflict management, serving as a key tool for facilitating dialogue and negotiation between conflicting parties¹⁵. Mediation encourages active listening while also promoting open and respectful communication therefore helping break down barriers including cultural barriers and building trust among parties¹⁶. Through these attributes, mediation has the ability to preserve and strengthen relationships and also provides parties with a wide range of solutions than those available through litigation¹⁷. According to the United Nations, the premise of mediation is that in the right environment, parties in conflict can improve their relationships and move towards cooperation¹⁸.

Mediation is therefore an appropriate process towards effective conflict management. Consequently, mediation is being embraced all over the world. At the global level, the *Charter of the United Nations*¹⁹ urges parties to disputes to embrace various conflict management strategies including negotiation, enquiry, *mediation*, conciliation, arbitration, judicial settlement, resort to

¹² Amoh. G., 'Mediation-The Preferred Alternative for Conflict Resolution' Available at <https://www.gdrc.org/u-gov/conflict-amoh.html> (Accessed on 06/08/2025)

¹³ Ibid

¹⁴ United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Op Cit

¹⁵ Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Reso_lution_and_Mediation_Strategies (Accessed on 06/08/2025)

¹⁶ Ibid

¹⁷ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

¹⁸ United Nations., 'Guidance for Effective Mediation' Available at https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf (Accessed on 06/08/2025)

¹⁹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

regional agencies or arrangements, or other *peaceful means* of their own choice²⁰ (Emphasis added). Further, at a national level, the *Constitution of Kenya*²¹ mandates courts and tribunals to promote Appropriate Dispute Resolution Mechanisms (ADR) mechanisms including reconciliation, *mediation*, arbitration and Traditional Dispute Resolution Mechanisms (TDRMs)²² (Emphasis added).

This paper critically examines the practice of mediation in Africa. The paper argues that mediation has been part and parcel of conflict management in Africa for many centuries. It notes that mediation is well suited in managing conflicts in the African context towards peace and Sustainable Development. Despite its suitability, the paper notes that the current practice of mediation in Africa faces several challenges. The paper examines some of the key challenges affecting the mediation landscape in Africa. In light of these challenges, the paper explores how Ubuntu, collaboration and peace can be harnessed for effective mediation in Africa.

2.0 Mediation in Africa: Promises and Challenges

Mediation has been practiced in Africa since antiquity. It has been observed that African communities have used traditional forms of mediation in resolving their conflicts for centuries²³. Throughout history in Africa, it was customary and an everyday affair for people to sit down informally and resolve their differences under the guidance of council of elders among other institutions which acted as mediators²⁴. It has been argued that informal and traditionally driven practices of mediation have existed for many generations in Africa²⁵.

²⁰ Ibid, article 33 (1)

²¹ Constitution of Kenya., 2010., Government Printer, Nairobi

²² Ibid, article 159 (2) (c)

²³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

²⁴ Ibid

²⁵ Gounden. V., 'International Mediation in Africa: Experiences and Challenges' Available at https://brill.com/view/journals/iner/22/3/article-p402_402.xml#:~:text=Although%20informal%20and%20traditionally%20driven,of%20a%20community%20of%20practitioners. (Accessed on 06/08/2025)

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Mediation has been an appropriate and viable process for conflict resolution in Africa for many centuries since it is rooted in the culture and customs of the people of Africa²⁶. It has been argued that culture is an essential component of conflicts and the conflict management process²⁷. For example, culture shapes how human beings view the world²⁸. Further, culture affects perceptions, behaviour, and expectations²⁹. It has been argued that culture serves as the vehicle for identifying and distinguishing the individuals and groups that are likely to be parties to conflict³⁰. In addition, culture shapes the way in which individuals perceive a conflict and respond to it³¹. Culture therefore plays an important role in conflict management and shapes the way in which individuals or groups frame and respond to conflicts³². Culture is therefore an important component of conflict resolution since it determines whether there is a conflict and the appropriate channels for resolving such conflicts.

It has been argued that most African cultures are anchored by values aimed at promoting social cohesion³³. These values include peaceful coexistence, harmony, truth, honesty, unity, cooperation, forgiveness and respect³⁴. The culture, customs and traditions of African communities emphasise harmony/togetherness over individual interest and humanness as expressed

²⁶ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

²⁷ LeBaron. M., 'Culture and Conflict.' Available at

https://www.beyondintractability.org/essay/culture_conflict (Accessed on 06/08/2025)

²⁸ Abala. A., 'Bridging Cultures in Mediation: Insights from a Multicultural Mediation Panel' Available at

<https://mediationblog.kluwerarbitration.com/2024/07/15/bridging-cultures-in-mediation-insights-from-a-multicultural-mediation-panel/#:~:text=The%20panel%20shared%20that%20mediators,also%20go%20beyond%20cultural%20nuances> (Accessed on 06/08/2025)

²⁹ Ibid

³⁰ Worchel. S., 'Culture's Role in Conflict and Conflict Management: Some Suggestions, Many Questions.' *International Journal of Intercultural Relations.*, Volume 29, Issue 6 (2005)

³¹ Ibid

³² LeBaron. M., 'Culture and Conflict' Op Cit

³³ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

³⁴ Ibid

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in the African philosophy of *Ubuntu/Utu*³⁵. The philosophy of *Ubuntu* aims at upholding values for the greater good of the community including sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus³⁶. *Ubuntu/Utu* seeks to deter vengeance, confrontation and retribution and on the other hand values life, dignity, compassion, humaneness harmony and reconciliation³⁷.

It has been observed that conflict management in Africa has since time immemorial taken the form of informal negotiation, *mediation*, conciliation and arbitration among other techniques which are administered by institutions such as the council of elders³⁸. These techniques are anchored in the culture and customs of the people of Africa and are considered appropriate in managing disputed by creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and giving prominence to communal needs over individual needs in line with the African philosophy of *Ubuntu/Utu*³⁹. Mediation among other ADR processes fit comfortably within traditional concepts of African justice, particularly its core values of truth, harmony, justice, peace and reconciliation⁴⁰.

Mediation in particular has been described as a restatement of African customary jurisprudence⁴¹. It has been argued that in African communities, a

³⁵ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

³⁶ Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Available at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4272&context=sspapers&httpsredir=1&referer#:~:text=Ubuntu%20can%20best%20be%20described,ngumuntu%20ngabantu%20in%20Zulu%20language> (Accessed on 06/08/2025)

³⁷ Ibid

³⁸ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successes-challenges-and-opportunities-1.pdf> (Accessed on 06/08/2025)

³⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁴⁰ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

⁴¹ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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sanction was seldom invoked for a breach of customary law⁴². Instead, corrective and reconciliatory mechanisms were the primary means of conflict resolution⁴³. At the core of dispute resolution in African societies is the concept of Ubuntu which emphasizes respect, tolerance, cooperation, forgiveness, compromise and collaboration⁴⁴. Mediation is therefore a preferred process in managing disputes in Africa since it is well anchored in the African philosophy of Ubuntu.

Mediation therefore has a rich history in Africa. Further, it has been argued that mediation and other ADR techniques such as arbitration enjoy a thriving present and a promising future in Africa⁴⁵. There has been a tremendous growth of mediation and ADR institutions in Africa with several African countries including Kenya embracing mediation as a core dispute resolution process in their national constitutions⁴⁶. In light of the challenges facing the judiciary in Africa, mediation and ADR has become a preferable and appropriate tool for accessing justice in Africa⁴⁷. These challenges include high legal costs, bureaucracy, complex legal procedures, illiteracy, corruption, distance from formal courts, backlog of cases in courts and lack of legal knowhow⁴⁸. As a result, it has been argued that many African citizens have lost faith in the ability of national courts to provide timely and just management of their disputes⁴⁹.

⁴² Our Mediation Heritage., Available at <https://www.conflictdynamics.co.za/Blog/Our-Mediation-Heritage-%20?swcfpc=1> (Accessed on 06/08/2025)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Available at <https://hsfnotes.com/africa/2022/11/25/2022-soasarbitration-in-africa-survey-reveals-a-thriving-market-for-arbitration-on-the-continent/> (Accessed on 06/08/2025)

⁴⁶ Constitution of Kenya., 2010., article 159 (2) (c)

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

⁴⁸ 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

⁴⁹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability' Op Cit

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In light of the foregoing, mediation and other ADR processes are being widely embraced in accessing justice in Africa⁵⁰. It has been noted that ADR is used as the default dispute resolution method in Africa⁵¹. ADR projects in the continent have demonstrated that formal court litigation is in most instances reserved for cases of constitutional or legal interpretation, in instances where there is need to set precedence, in cases with major public policy implications, or as a last resort after ADR mechanisms have been exhausted⁵². ADR processes including mediation and customary, traditional or informal legal systems fill the gaps in formal court processes, particularly for the poor and those from rural areas who do not have geographical access to formal courts⁵³.

Despite its suitability, mediation faces several challenges in Africa. For instance, mediation is seen as an alternative process rather than being embraced as an appropriate mechanism in the African context⁵⁴. This can be traced back to the colonial era where formal justice systems were introduced leading to the disregard of indigenous and customary systems of dispute resolution including mediation⁵⁵. It has been argued that colonialism disrupted the concept of justice in Africa since Western dispute resolution focused on adjudicative outcomes at the expense of consensual and reconciliatory ones which are preferred by African communities⁵⁶. Further, there has been a move towards formalizing mediation in some African countries. For example, in Kenya, mediation has been fused with the formal justice system through the Court-Annexed Mediation (CAM) programme⁵⁷. Despite the role of such

⁵⁰ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁵¹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability' Op Cit

⁵² Ibid

⁵³ Bowd. R., 'Access to justice in Africa: Comparisons between Sierra Leone, Tanzania and Zambia' Available at <https://www.files.ethz.ch/isn/112459/NO13OCT09.pdf> (Accessed on 06/08/2025)

⁵⁴ Elachi. A.J., 'African Lawyers and Alternative Dispute Resolution' Available at <https://lawyersofafrica.org/wp-content/uploads/2019/08/African-Lawyers-and-Alternative-Dispute-Resolution.pdf> (Accessed on 06/08/2025)

⁵⁵ Our Mediation Heritage., Op Cit

⁵⁶ Ibid

⁵⁷ Muigua. K., 'Fusion of Mediation and other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Available at <https://kmco.co.ke/wp-content/uploads/2022/11/Fusion-of-Mediation-and-Other-ADR-Mechanisms-with->

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initiatives in enhancing the use of mediation, it has been argued that institutionalizing and fusion of ADR mechanisms such as mediation with formal justice processes could result in the loss of some of the key attributes such as informality, confidentiality and privacy which have been pivotal for their success for many centuries⁵⁸. Further, it has been observed that the current practice of mediation and ADR in Africa originated from the West and is therefore largely influenced by Western conceptions of justice⁵⁹.

In light of the foregoing concerns, it is imperative to embrace mediation from an African perspective for justice and development.

3.0 Harnessing Ubuntu, Collaboration and Peace for Effective Mediation in Africa

Mediation is an appropriate mechanism for resolving conflicts in Africa. It has been practiced in the continent since antiquity and the process fits well within the concept of justice in Africa. However, in order to fully harness its benefits, it is imperative to 'Africanize' mediation⁶⁰. Ubuntu, collaboration and peace are core values that result in effective mediation processes in Africa.

The African philosophy of *Ubuntu* places emphasis on 'being self through others' (*Emphasis added*)⁶¹. This philosophy is geared towards upholding values for the greater good of the all community including sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus⁶². It has been argued that *Ubuntu* emphasizes the

[Modern-Dispute-Resolution-in-Kenya-Prospects-and-Challenges.pdf](#) (Accessed on 06/08/2025)

⁵⁸ Ibid

⁵⁹ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <http://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Movingfrom-Alternative-to-Appropriate-Dispute-Resolution-1.pdf> (Accessed on 07/08/2025)

⁶⁰ Elachi. A.J., 'African Lawyers and Alternative Dispute Resolution' Op Cit

⁶¹ Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Op Cit

⁶² Ibid

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interconnectedness of all humanity⁶³. *Ubuntu* is a core value in conflict management in Africa since it emphasizes restorative justice (harmony in the community), rather than punitive justice⁶⁴. It has been observed that throughout history, mediation in Africa has honoured the spirit of *Ubuntu* by giving prominence to cooperation, reconciliation, harmony, and peaceful co-existence among individuals and within communities⁶⁵. Harnessing *Ubuntu* is therefore key towards embracing mediation from an Africa perspective.

Collaboration is also a key ideal for effective mediation in Africa. Through collaboration, all parties involved in a conflict are brought together and work towards resolving the underlying conflict through active listening and respectful communication⁶⁶. Collaboration encourages parties in conflict to work through disagreements through empathy, and listening towards mutually beneficial solutions⁶⁷. It has been argued that mediation provides a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding⁶⁸. Mediation enhances collaboration by emphasizing on voluntary participation of the parties, confidentiality, and the

⁶³ Omodan. B., 'Ubuntu Politics of Process: An Alternative Conflict Management Culture in Universities' Available at https://www.researchgate.net/publication/364033950_Ubuntu_Politics_of_Process_An_Alternative_Conflict_Management_Culture_in_Universities (Accessed on 07/08/2025)

⁶⁴ Van Norren. D., 'African Ubuntu and Sustainable Development Goals: seeking human mutual relations and service in development' Available at <https://www.tandfonline.com/doi/full/10.1080/01436597.2022.2109458#abstract> (Accessed on 07/08/2025)

⁶⁵ Motsisi. M., 'Mediation & Ubuntu' Available at <https://www.mmatheomotsisi.com/mediation-ubuntu/#:~:text=Ubuntu%20as%20the%20Primeval%20Model,promotes%20genuine%20trust%20and%20openness> (Accessed on 07/08/2025)

⁶⁶ Ronquillo. Y., Ellis. V., & Toney-Butler. T., 'Conflict Management' Available at <https://www.ncbi.nlm.nih.gov/books/NBK470432/> (Accessed on 07/08/2025)

⁶⁷ Miroslavov. M., 'Mastering The Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaborating-conflict-style/> (Accessed on 07/08/2025)

⁶⁸ Mediation: The Art of Collaborative Conflict Resolution., Available at <https://legalservicesdubai.com/mediation-the-art-of-collaborative-conflict-resolution-understanding-its-processes-and-advantages/> (Accessed on 07/08/2025)

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flexibility to tailor the outcomes to the specific needs of the parties involved⁶⁹. It has been argued that collaboration fosters cooperation in conflict management⁷⁰. Through this, parties in conflict are able to reach a solution that satisfies everyone therefore strengthening relationships in the process⁷¹. Collaboration results in more lasting outcomes therefore minimising the likelihood of conflicts reemerging in future⁷². Harnessing collaboration can therefore lead to effective mediation processes in Africa which focus on cooperation and participation.

Peace is also integral for effective mediation processes in Africa. It has been argued that mediation can foster peace by addressing the root causes of conflicts⁷³. Mediation usually results in mutually satisfying and long- lasting outcomes therefore creating a suitable environment for peace by eliminating the likelihood of conflicts reemerging in future⁷⁴. The concept of mediation in Africa focuses on fostering peace by urging parties to reconcile and embrace forgiveness towards ensuring social harmony⁷⁵. As a result, it has been argued that mediation is an effective process in managing conflicts while simultaneously fostering peace and harmony⁷⁶. Peace is a core value that defines African societies⁷⁷. Embracing mediation from an African perspective therefore requires mediation processes to be geared towards promoting peace and harmony.

⁶⁹ Ibid

⁷⁰ Collaborating Conflict Resolution Style: Everything You Need to Know., Available at <https://conflict-resolution-training.com/blog/collaborative-conflict-resolution-style/> (Accessed on 07/08/2025)

⁷¹ Ibid

⁷² Ibid

⁷³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

⁷⁴ Ibid

⁷⁵ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability' Op Cit

⁷⁶ Masumy. N., 'Charting a Pathway to Resolving Conflicts through Harmony and Mediation: Chinese Approach to International Conflict Management' Available at <https://opiniojuris.org/2024/02/29/charting-a-pathway-to-resolving-conflicts-through-harmony-and-mediation-chinas-influence-in-managing-international-conflicts/> (Accessed on 07/08/2025)

⁷⁷ Motsisi. M., 'Mediation & Ubuntu' Op Cit

4.0 Conclusion

Mediation holds a special place in Africa. It has been practiced in the continent since time immemorial⁷⁸. Mediation provides many benefits and is therefore an appropriate process in conflict management in Africa⁷⁹. However, there is need to embrace mediation from an African perspective by harnessing *Ubuntu*, collaboration and peace⁸⁰. Through this, it is possible to ensure that the practice of mediation fully captures the spirit of conflict management in Africa.

⁷⁸ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

⁷⁹ Ibid

⁸⁰ Motsisi. M., 'Mediation & Ubuntu' Op Cit

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Abstract

This paper critically examines how Sustainable Development can be fostered in times of conflict through International Humanitarian Law (IHL). The paper defines IHL. It argues that IHL is a crucial tool in enhancing Sustainable Development in times of conflict. The paper discusses ways through which IHL can ensure that the Sustainable Development agenda is pursued in times of conflict. Despite its viability in promoting Sustainable Development in times of conflict, the paper notes that IHL is not always enforced, undermining sustainability with severe consequences for both humanity and nature. Consequently, the paper proposes approaches through which IHL can be effectively enforced in order to ensure Sustainable Development in times of conflict.

1.0 Introduction

Sustainable Development aims at promoting development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs¹. It is both an ideal and principle geared towards meeting human development goals and needs while at the same time ensuring the ability of nature to provide the natural resources and ecosystem services upon which the economy and society depends². Sustainable Development involves a broad range of policies, projects and investments that provide benefits for humanity today without sacrificing environmental, social and personal health now and in the future³. According to the United Nations, Sustainable Development envisions how we must live today if we want to ensure a better tomorrow, by meeting present needs without compromising

¹ World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

² Mensah. J., 'Sustainable Development: Meaning, history, principles, pillars, and implications for human action: Literature review' *Cogent Social Sciences*, Volume 5, Issue 1

³ World Health Organization., 'Sustainable Development' Available at https://www.who.int/health-topics/sustainable-development#tab=tab_1 (Accessed on 08/06/2025)

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the chances of future generations to meet their needs⁴. It has been pointed out that Sustainable Development entails striking a balance involving environmental protection, economic growth, and social progress⁵.

Ensuring Sustainable Development is a vital goal for the entire world. It has been argued that it is necessary to forge a new relationship between people and the planet in light of mounting environmental, social, and economic challenges that are prevalent throughout the world⁶. These problems include poverty, rising inequalities within and among nations, gender inequalities, unemployment, global health threats, conflicts, and more frequent and intense natural disasters⁷. The urgency to achieve Sustainable Development is heightened by the growing triple planetary crisis of climate change, biodiversity loss, and pollution⁸.

It has been argued that Sustainable Development provides a framework through which humanity can interact with the environment while not risking damaging natural resources for the benefit of both present and future generations⁹. According to the United Nations, the survival of our societies and

⁴ United Nations., 'Sustainable Development' Available at <https://www.un.org/sustainabledevelopment/blog/2023/08/what-is-sustainable-development/> (Accessed on 08/06/2025)

⁵ Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

⁶ United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth?gad_source=1&gclid=EAJaIQobChMI5Jf4zJXihwMVr6KDBx2jcx22EAAAYASAAEgIqsfD_BwE (Accessed on 08/06/2025)

⁷ 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 08/06/2025)

⁸ United Nations., 'Sustainable Development' Op Cit

⁹ Mensah. J., 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' Available at <https://doi.org/10.1080/23311886.2019.1653531> (Accessed on 06/08/2025)

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our shared planet depends on a more sustainable world¹⁰. By pursuing Sustainable Development, it is possible to create and maintain conditions under which humanity and nature can co-exist in productive harmony ensuring the fulfilment of environmental, social, economic and other needs of both present and future generations¹¹. Sustainable development therefore acknowledges that economic, social, and environmental considerations are interconnected and must be balanced to achieve long-term well-being for both humanity and nature¹².

Due to its fundamental role in ensuring prosperity for both people and the planet, Sustainable Development has been adopted as the global vision for development as set out under the *2030 Agenda for Sustainable Development*¹³ and its Sustainable Development Goals (SDGs). The SDGs are a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity¹⁴. They are integrated since they recognize that action in one area will affect outcomes in others, and that development must balance environmental sustainability, social equity and economic growth¹⁵. However, conflicts are undermining global progress towards the ideal of Sustainable Development. For instance, it has been pointed out that armed conflicts pose significant challenges to development and sustainability, resulting in economic decline, social dislocation, humanitarian disasters, and environmental damage¹⁶. Conflicts can impact natural resources such as wildlife,

¹⁰ United Nations., 'Sustainable Development' Op Cit

¹¹ United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 08/06/2025)

¹² Ibid

¹² United Nations., 'Sustainability' Available at Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 08/06/2025)

¹³ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' Op Cit

¹⁴ United Nations Development Programme., 'The SDGs in Action' Available at <https://www.undp.org/sustainable-development-goals> (Accessed on 08/06/2025)

¹⁵ Ibid

¹⁶ African Development Bank Group., 'Nexus Conflict and Sustainability: An African Perspective' Available at <https://blogs.afdb.org/climate-change-in-africa/nexus-conflict-and-sustainability-an-african-perspective->

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protected areas, vital ecological sites and other natural ecosystems therefore undermining Sustainable Development¹⁷. Conflicts fuel the loss of civilian lives, the displacement of populations, loss of livelihoods, increased poverty, and social fragmentation therefore hindering progress towards Sustainable Development¹⁸.

Further, it has been pointed out that violent and armed conflicts happening globally are causing environmental degradation, destruction of infrastructure, and the breakdown of institutions necessary for Sustainable Development¹⁹. For example, in Africa, armed conflicts have severely hindered progress towards Sustainable Development²⁰. In addition to their impacts of human life and livelihoods, armed conflicts happening in Africa and globally are causing environmental damage and degradation through large-scale massacres and illicit trafficking of wildlife and endangered species, overexploitation of forests and other natural resources, degradation of protected areas, dumping of hazardous military waste, destruction of agricultural land, and water poisoning among others²¹. In light of the foregoing challenges, it is imperative to ensure Sustainable Development in times of conflict.

This paper critically examines how Sustainable Development can be fostered in times of conflict through International Humanitarian Law (IHL). The paper defines IHL. It argues that IHL is a crucial tool in enhancing Sustainable Development in times of conflict. The paper discusses ways through which IHL can ensure that the Sustainable Development agenda is pursued in times of conflict. Despite its viability in promoting Sustainable Development in times of conflict, the paper notes that IHL is not always enforced, undermining

[363#:~:text=Armed%20conflicts%20pose%20significant%20challenges,hindered%20development%20and%20sustainability%20efforts.](#) (Accessed on 08/06/2025)

¹⁷ Ibid

¹⁸ Gray Group International., 'Peace and Sustainable Development: Synergies for Global Prosperity' Available at <https://www.graygroupintl.com/blog/peace-and-sustainable-development> (Accessed on 08/06/2025)

¹⁹ Ibid

²⁰ African Development Bank Group., 'Nexus Conflict and Sustainability: An African Perspective' Op Cit

²¹ Ibid

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sustainability with severe consequences for both humanity and nature. Consequently, the paper proposes approaches through which IHL can be effectively enforced in order to ensure Sustainable Development in times of conflict.

2.0 International Humanitarian Law and Sustainable Development: Promises and Pitfalls

IHL refers to a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict²². It has been pointed out that the rules and principles of IHL are designed to regulated conflict and minimise human suffering as a result of armed conflicts²³. IHL stipulates the responsibilities of states and non-state armed groups during armed conflicts²⁴. According to the International Committee of the Red Cross (ICRC), IHL protects persons who are not or are no longer participating in armed conflicts and restricts the means and methods of warfare during armed hostilities²⁵.

It has been pointed out that IHL aims to limit the impact of armed conflict by protecting people who are not fighting, or are no longer fleeing from conflict situations including civilians, the wounded, the sick or detained fighters²⁶. In order to achieve this objective, the rules of IHL envisions among other things: the rapid and unimpeded passage for humanitarian aid during armed

²² International Committee of the Red Cross., 'What is International Humanitarian Law?' Available at https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/what_is_ihl.pdf (Accessed on 08/06/2025)

²³ Basic Principles of IHL., Available at <https://www.diakonia.se/ihl/resources/international-humanitarian-law/basic-principles-ihl/> (Accessed on 08/06/2025)

²⁴ European Commission., 'International Humanitarian Law' Available at https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law_en (Accessed on 08/06/2025)

²⁵ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

²⁶ United Nations Office for the Coordination of Humanitarian Affairs., 'OCHA on Message: International Humanitarian Law' Available at <https://www.unocha.org/publications/report/world/ocha-message-international-humanitarian-law> (Accessed on 08/06/2025)

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conflicts²⁷; freedom of movement for humanitarian organisations and workers in conflict situations²⁸; protection of civilians during armed conflicts²⁹; and protection of refugees, prisoners of war, the wounded and the sick³⁰. Further, IHL is founded on several principles including the distinction between civilians and combatants, prohibition on the infliction of unnecessary suffering, the principle of proportionality, and the principle of humanity³¹.

A significant portion of IHL is contained in the four Geneva Conventions of 1949. These Conventions include *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*³². This Convention provides for the protection for the wounded and sick, but also for medical and religious personnel, medical units and medical transports during armed conflicts. Further, *Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*³³ governs the protection of wounded, sick and shipwrecked members of armed forces at sea. *Geneva Convention III relative to the Treatment of Prisoners of War*³⁴ governs the protection of prisoners of war during armed conflicts. In addition, *Geneva Convention IV relative to the Protection of Civilian Persons in Time of War*³⁵ provides for the protection of civilian populations in times of armed conflict.

²⁷ European Commission., 'International Humanitarian Law' Op Cit

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Basic Principles of IHL., Op Cit

³² International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 75 UNTS 31, 12 August 1949

³³ International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)*, 75 UNTS 85, 12 August 1949

³⁴ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 75 UNTS 135, 12 August 1949

³⁵ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287, 12 August 1949

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The Geneva Conventions are further supplemented by three additional Protocols³⁶.

In addition to the Geneva Conventions and their additional Protocols, IHL is also governed by international agreements which prohibit the use of certain weapons and military tactics during armed conflicts. These include the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*³⁷, the *Biological Weapons Convention*³⁸ which prohibits the development, production and stockpiling of bacteriological (biological) and toxin weapons; and the *Chemical Weapons Convention*³⁹ which prohibits the development, production, stockpiling and use of chemical weapons.

It has been observed that the rules of IHL only apply to armed conflict; they do not cover internal tensions or disturbances such as isolated acts of violence⁴⁰. Further, IHL only comes into effect once a conflict has begun, and applies equally to all sides regardless of who started the fighting⁴¹. IHL further distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two states are

³⁶ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977; and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005

³⁷ United Nations Educational, Scientific and Cultural Organisation (UNESCO), *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, -, 14 May 1954

³⁸ United Nations (1972): Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. United Nations General Assembly Resolution 2826 (XXVI), United Nations, New York.

³⁹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction., UNTS, Vol 1975, p 45

⁴⁰ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

⁴¹ Ibid

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involved⁴². On the other hand, non-international armed conflicts are those restricted to the territory of a single state⁴³.

IHL plays a crucial role in fostering Sustainable Development. For instance, by protecting civilians, preventing unnecessary destruction of critical infrastructure and fostering respect for human life and dignity, IHL can enhance Sustainable Development by minimising the humanitarian consequences of armed conflicts, reducing the economic costs of armed conflicts, protecting human capital, fostering social cohesion and ensuring a conducive environment for post-conflict development⁴⁴. IHL can also ensure that the environment is safeguarded during armed conflict by prohibiting certain military tactics that can damage the environment including destruction of vital natural resources such as forests and agricultural areas, pollution of water resources, soil and other natural resources, and the use of certain weapons including chemical weapons which can cause widespread and long-term environmental damage and degradation⁴⁵. IHL is therefore crucial in ensuring that methods and means of warfare are employed with due regard to the protection and preservation of the natural environment towards fostering environmental sustainability⁴⁶.

Further, it has been argued that IHL plays a key role in peacebuilding efforts⁴⁷. IHL plays an essential role in mitigating suffering resulting from armed

⁴² Ibid

⁴³ Ibid

⁴⁴ The Impact of IHL on Human Rights and Development., Available at <https://www.numberanalytics.com/blog/impact-of-ihl-on-human-rights-and-development#:~:text=IHL%20can%20play%20a%20crucial,and%20social%20costs%20of%20conflict> (Accessed on 08/06/2025)

⁴⁵ International Committee of the Red Cross., 'The Environment and International Humanitarian Law' Available at <https://casebook.icrc.org/case-study/environment-and-international-humanitarian-law> (Accessed on 08/06/2025)

⁴⁶ Ibid

⁴⁷ Droege. C., 'International humanitarian law and peace: A brief overview' Available at <https://international-review.icrc.org/articles/international-humanitarian-law-and-peace-a-brief-overview-927> (Accessed on 08/06/2025)

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conflicts and fostering conditions that may facilitate a return to peace⁴⁸. By applying the rules of IHL, it is possible to build trust among parties to armed conflicts thus creating a suitable environment for peace negotiations⁴⁹. The 2030 Agenda for Sustainable Development recognises that there can be no Sustainable Development without peace and no peace without Sustainable Development⁵⁰. IHL therefore plays a pertinent role in the quest towards Sustainable Development due to its role in peacebuilding.

Enforcing IHL is therefore vital in fostering Sustainable Development in times of conflict. However, armed conflicts are ongoing globally with the rules of IHL being violated in most cases⁵¹. For instance, the victims of armed conflicts are mostly civilians in clear violation of the rules and principles of IHL⁵². Ongoing armed conflicts are fueling the loss of civilian lives, the displacement of populations, disregard for human rights, loss of livelihoods, increased poverty, and social fragmentation⁵³. Further, it has been observed that during armed conflicts, buildings belonging to relief organisations are often attacked, vehicles and convoys hijacked, hospitals and schools attacked, and humanitarian workers murdered or kidnapped⁵⁴. Such acts of violence violate the rules of IHL affecting civilians and preventing millions of people from receiving life-saving assistance⁵⁵.

In addition, the environment continues to be a silent victim of armed conflicts⁵⁶. According to the United Nations, armed conflicts usually involve large

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' Op Cit

⁵¹ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

⁵² Ibid

⁵³ Gray Group International., 'Peace and Sustainable Development: Synergies for Global Prosperity' Available at <https://www.graygroupintl.com/blog/peace-and-sustainable-development> (Accessed on 08/06/2025)

⁵⁴ European Commission., 'International Humanitarian Law' Op Cit

⁵⁵ Ibid

⁵⁶ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Available at

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quantities of munitions containing heavy metals and depleted uranium, and explosive chemicals, all which are toxic even in modest quantities, with severe impacts on human health and the environment⁵⁷. Armed conflicts fuel the contamination of lands, the pollution of waterways, and release of greenhouse gases taking a huge toll of the environment⁵⁸. Parties to armed hostilities and conflict situations often adopt tactics that violate the rules and principles of IHL including polluting water resources, torching down crops and forests, poisoning soils, and killing animals in order to gain military advantage thus causing environmental damage and degradation⁵⁹. It has been pointed out that armed conflict remains a major cause of environmental damage, leading to food and water insecurity, loss of livelihoods, and biodiversity loss⁶⁰. According to the United Nations Environment Programme (UNEP), tactics such as the use of toxic chemicals, destruction of oil wells and bombing of industrial sites are often employed during armed conflicts leading to environmental damage and degradation while also undermining human life, health and livelihoods⁶¹.

From the foregoing, it emerges that the rules and principles of IHL are often violated during armed conflicts. This leads to loss of human life, displacement of populations, social fragmentation, loss of livelihoods, insecurity, and environmental damage and degradation undermining Sustainable

<https://www.genevaenvironmentnetwork.org/resources/updates/protecting-the-environment-inarmed-conflict/> (Accessed on 08/06/2025)

⁵⁷ United Nations., 'How conflict impacts our environment' Available at <https://www.un.org/en/peace-and-security/how-conflict-impacts-our-environment#:~:text=Armed%20conflicts%20use%20large%20quantities,human%20health%20and%20the%20environment.> (Accessed on 08/06/2025)

⁵⁸ Ibid

⁵⁹ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

⁶⁰ Ibid

⁶¹ United Nations Environment Programme., 'Rooting for the environment in times of conflict and war' Available at <https://www.unep.org/news-and-stories/story/rooting-environment-times-conflict-and-war> (Accessed on 08/06/2025)

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Development⁶². It is therefore imperative to enforce IHL in order to ensure Sustainable Development in times of conflict.

3.0 Enforcing International Humanitarian Law for Sustainable Development

There is need to enforce IHL in order to ensure Sustainable Development in times of conflict. IHL can foster Sustainable Development in times of conflict by minimising the humanitarian consequences of armed conflict, protecting civilians, preventing unnecessary destruction of vital facilities including schools and hospitals, protecting the environment, and creating a suitable environment for peacebuilding⁶³. It is therefore necessary to enforce IHL including through protecting those who do not engage in armed hostilities especially civilians, humanitarian and medical personnel⁶⁴. Further, states have been urged to teach the rules and principles of IHL to their armed forces in order to ensure that these rules and principles are applied in conflict situations⁶⁵.

Parties involved in armed conflicts also need to ensure freedom of movement for humanitarian workers in order to ensure that basic services such as food, medical care and shelter are provided to those affected by conflicts⁶⁶. In cases amounting to the most serious violations of the Geneva Conventions and their Additional Protocols, which are regarded as war crimes, the international community has an obligation to punish war criminals in order to create a culture of respect for IHL⁶⁷. For instance, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was a United Nations court of law that dealt with war crimes that took place during the armed conflicts in the Balkans in

⁶² Gray Group International., 'Peace and Sustainable Development: Synergies for Global Prosperity' Op Cit

⁶³ The Impact of IHL on Human Rights and Development., Op Cit

⁶⁴ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

⁶⁵ Ibid

⁶⁶ European Commission., 'International Humanitarian Law' Op Cit

⁶⁷ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

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the 1990s⁶⁸. It has been pointed out that the ICTY irreversibly changed the landscape of IHL by providing victims an opportunity to voice the horrors they witnessed and experienced and holding perpetrators of war crimes to account⁶⁹. In addition, the International Criminal Tribunal for Rwanda was an international court established by the United Nations to deal with the war crimes committed during the Rwandan genocide⁷⁰. Further, an international criminal court, with the responsibility of prosecuting war crimes among other violations of IHL, was established by the *Rome Statute of 1998*⁷¹. Such measures can ensure enforcement of IHL through criminal sanctions in order to foster Sustainable Development in times of conflict.

Further, it is imperative to protect the environment in times of conflict and war⁷². Armed conflicts continue to take a toll on the environment fueling environmental degradation, destruction of natural resources and ecosystems, pollution of waterways, loss of biodiversity, and climate change due to release of greenhouse gases associated with war⁷³. Consequently, it is imperative to strengthen environmental protection in times of conflict. Parties to armed conflicts should thus be encouraged to avoid tactics that damage the environment. Such acts include polluting water resources, torching down crops and forests, poisoning soils, killing animals, attacking industrial facilities

⁶⁸ International Criminal Tribunal for the former Yugoslavia., Available at <https://www.icty.org/> (Accessed on 09/06/2025)

⁶⁹ Ibid

⁷⁰ International Criminal Tribunal for Rwanda., Available at https://www.google.com/search?q=international+tribunal+for+rwanda&oq=international+tribunal+for+rwa&gs_lcrp=EgZjaHJvbWUqBwgAEAAAYgAQyBwgAEAAAYgAQyBggBEEUYOTIICAIQABgWGB4yCAGDEAAAYFhgeMggIBBAAGBYHjIICAUQABgWGB4yCAGGEAAAYFhgeMggIBxAAGBYHjIICAgQABgWGB4yCAGJEAAYFhg e0gEINzY3OWowajeoAgCwAgA&sourceid=chrome&ie=UTF-8 (Accessed on 09/06/2025)

⁷¹ United Nations General Assembly, Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, UN General Assembly, 17 July 1998

⁷² United Nations Environment Programme., 'Rooting for the environment in times of conflict and war' Op Cit

⁷³ Ibid

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and using chemical weapons⁷⁴. Further, it has been suggested that there is need to introduce and prosecute ecocide as the fifth international crime under the Rome statute⁷⁵. Recognising ecocide as a core international crime may prevent humanity from the effects armed hostilities and conflict situations as well as protect the environment from being damaged and degraded⁷⁶.

Through the foregoing, it is possible to enforce IHL in order to ensure Sustainable Development in times of conflict.

4.0 Conclusion

Conflicts undermine Sustainable Development with severe consequences for both humanity and nature. IHL thus provides a framework to foster Sustainable Development in times of conflict⁷⁷. It is therefore vital to enforce IHL including through protecting civilians and humanitarian workers from armed conflicts;⁷⁸ imposing criminal sanctions on perpetrators of war crimes;⁷⁹ and protecting the environment during armed conflicts through ecocide law⁸⁰. Enforcing IHL is therefore a universal goal that should be realised in order to ensure Sustainable Development in times of conflict.

⁷⁴ Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Op Cit

⁷⁵ Sarkar. U., 'Ecocide- Protection of Environment: An International Crime' Available at <https://thelawbrigade.com/wp-content/uploads/2021/12/Utsa-Sarkar-IJLDAI.pdf> (Accessed on 09/06/2025)

⁷⁶ Van Uhm. D., '22 Atrocity Crimes and Ecocide: Interrelations between Armed Conflict, Violence, and Harm to the Environment' Available at <https://academic.oup.com/edited-volume/42558/chapterabstract/357099488?redirectedFrom=fulltext> (Accessed on 09/06/2025)

⁷⁷ International Committee of the Red Cross., 'What is International Humanitarian Law?' Op Cit

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Sarkar. U., 'Ecocide- Protection of Environment: An International Crime' Op Cit

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Abstract

The negative effects of climate change are being felt – and will continue to be felt – in some of the most extreme ways by people living in places affected by armed conflict and other forms of violence. People, communities, and countries in conflict situations are often ill-equipped to cope with and adapt to climate change. They should therefore be ideally prioritized in climate action and finance. However, they are mostly neglected in climate action and finance therefore undermining development. This paper critically discusses the need to strengthen climate action in conflict situations for development. It argues that climate change is a major threat to development in conflict situations. The paper posits that people, communities, and countries in conflict situations often lack the capacity to effectively confront climate change. As a result, the paper notes that conflict may worsen the impacts of climate change and affect development. The paper suggests measures towards strengthening climate action in conflict situations for development.

1.0 Introduction

Climate change has been defined as an existential threat to humanity¹. It affects every aspect of people's lives, both creating and exacerbating humanitarian crises around the world². Warming of the atmosphere, ocean and land – driven by human activity – is causing climate variations and extremes all over the world, with over three billion people living in places that are highly vulnerable to climate change³. Climate change is an undesirable phenomenon that affects realization of the Sustainable Development agenda across the world by affecting the sustainability of the planet's ecosystems, the stability of the global economy and the future of humankind⁴. Its impacts including intense

¹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Available at https://www.icrc.org/sites/default/files/topic/file_plus_list/the_icrcs_call_to_strengthen_climate_action_in_conflict_settings_ahead_of_cop28_1.pdf (Accessed on 17/04/2024)

² Ibid

³ Ibid

⁴ Climate Change., 'Meaning, Definition, Causes, Examples and Consequences.' Available at <https://youmatter.world/en/definition/climate-change-meaning-definition-causes-and-consequences/> (Accessed on 17/04/2024)

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droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed across the world⁵.

Due to its adverse impacts, climate change has been described as the most defining problem facing humanity⁶. It is the main global challenge that is affecting both developed and developing countries in their quest towards achieving Sustainable Development⁷. Climate change has therefore risen to the top of the policy agenda, at local, national, and global levels⁸. Governments have been urged to strengthen climate action in their countries in order to respond to the threat of climate change and ensure that economies are climate resilient⁹. However, it has been noted that climate action taken to date by the international community has been insufficient to prevent or reverse the negative trends of climate change¹⁰. Urgent and transformative action is therefore required to combat climate change and promote Sustainable Development¹¹.

The United Nations *2030 Agenda for Sustainable Development*¹² seeks to strengthen climate action for development. It acknowledges that climate

⁵ United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 17/04/2024)

⁶ Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

⁷ Ibid

⁸ United Nations Department of Economic and Social Affairs., 'Forum on Climate Change and Science and Technology Innovation.' Available at <https://www.un.org/en/desa/forum-climate-changeandscience-and-technology-innovation> (Accessed on 17/04/2024)

⁹ Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

¹⁰ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹¹ United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts.' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 17/04/2024)

¹² United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at

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change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development¹³. Sustainable Development Goal 13 urges states to take urgent action to combat climate change and its impacts¹⁴.

According to the International Committee of the Red Cross (ICRC), the negative effects of climate change are being felt – and will continue to be felt – in some of the most extreme ways by people living in places affected by armed conflict and other forms of violence¹⁵. People, communities, and countries in conflict situations are ill-equipped to cope with and adapt to climate change¹⁶. This vulnerability and severe capacity constraints of people, communities, and countries in conflict means that they should ideally be prioritized in climate action¹⁷. However, it has been noted that in practice, they are among the most neglected when it comes to climate action and finance¹⁸. It is therefore vital to strengthen climate action in conflict situations for development.

This paper critically discusses the need to strengthen to strengthen climate action in conflict situations for development. It argues that climate change is a major threat to development in conflict situations. The paper posits that people, communities, and countries in conflict situations often lack the capacity to effectively confront climate change. As a result, the paper notes that conflict may worsen the impacts of climate change and affect development. The paper suggests measures towards strengthening climate action in conflict situations for development.

2.0 The Climate Change and Conflict Nexus

People, communities and countries enduring conflict are among those most vulnerable to growing climate risks because of the devastating effects of

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 17/04/2024)

¹³ Ibid

¹⁴ Ibid

¹⁵ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

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conflicts on societies¹⁹. Conflicts threaten people's lives, damage essential services, disrupt institutions, the economy, and community cohesion, and shrink the capacity of people, communities, and countries to cope with all types of risks²⁰. It has been observed that more than half of the countries considered most vulnerable and least ready to respond to climate change are countries enduring conflict, most of which are also among the world's least developed countries²¹. This vulnerability is not because climate change directly causes conflict²². Rather, the vulnerability arises since conflict increases the fragility of institutions, essential services, infrastructure, governance and other capacities that are critical to help people cope with and adapt to climate change²³.

Climate change also impacts development and social progress in conflict situations by hindering access to human needs including food, health, water, and energy²⁴. The nexus of hunger, conflict, and climate change has resulted in over 330 million people facing acute food insecurity²⁵. Climate and conflict have been identified as the main causes of acute food insecurity²⁶. The United Nations notes that where wars rage, hunger reigns as a result of displacement of people, destruction of agriculture and food systems, damage to infrastructure, disruption of supply chains, or deliberate policies of denial²⁷. It has further been noted that climate change, environmental degradation and

¹⁹ Grayson. C-L., & Khouzam. A., 'Responding to Climate Risks in Conflict Settings: In Search of Solutions' Available at <https://blogs.icrc.org/law-and-policy/2023/11/23/responding-to-climate-risks-in-conflict-settings-in-search-of-solutions/> (Accessed on 17/04/2024)

²⁰ Ibid

²¹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

²² Ibid

²³ Ibid

²⁴ Reliefweb., 'Climate Action Can Help Fight Hunger, Avoid Conflicts, Official Tells Security Council, Urging Greater Investment in Adaptation, Resilience, Clean Energy' Available at <https://reliefweb.int/report/world/climate-action-can-help-fight-hunger-avoid-conflicts-official-tells-security-council-urging-greater-investment-adaptation-resilience-clean-energy> (Accessed on 17/04/2024)

²⁵ Ibid

²⁶ United Nations., 'Climate Change and Conflict' Available at <https://press.un.org/en/2024/sc15589.doc.htm#:~:text=Climate%20and%20conflict%20were%20the,the%2014%20countries%20most%20at> (Accessed on 17/04/2024)

²⁷ Ibid

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biodiversity loss are exacerbating conflict, contributing to global food insecurity, and threatening international peace and security²⁸. In addition, it has been noted that climate change, insufficient access to water, and conflict interact to harm local communities²⁹. Higher temperatures and evapotranspiration decrease availability of water resources for people's livelihoods and economic activities, leading to increased tension sometimes resulting in or worsening existing conflicts³⁰. Regions such as the Lake Chad Basin have been identified as being caught in a conflict-climate risk trap³¹. Political, social, and security stressors are overwhelming governments on one hand; while on the other hand, climate change impacting weather variability, including changes in rainfall patterns and greater uncertainty, increases the risk of conflict around natural resources³². Conflicts in such situations hinder water security and the ability of people to respond to climate risks including drought and unpredictable rainy seasons that often result in flooding³³.

Conflicts therefore hinder effective climate action. Violent clashes disrupt food production and security, administrative capacity, and access to markets and services that are vital in responding to climate change³⁴. In addition, conflict prone states are often plagued by poor governance, lethargic development, and a lack of social investment in key elements such as education, health and the rule of law, are also unlikely to be able to put in the necessary investment to protect the environment and respond to climate change³⁵. It has also been noted that conflict prone states are unlikely to be able to support preparedness and

²⁸ Ibid

²⁹ Trevino, J., & Davy, T., 'Water Security is the Way out of the Conflict-Climate Risk Trap in Lake Chad Basin' Available at <https://blogs.worldbank.org/en/water/water-security-way-out-conflict-climate-risk-trap-lake-chad-basin#:~:text=Banseka%20explained%20how%20climate%20change,tension%20some%20times%20resulting%20in%20conflict>. (Accessed on 17/04/2024)

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Toulmin, C., & Barrett, S., 'Climate Action and Conflict' Available at <https://www.iied.org/sites/default/files/pdfs/2023-11/22131g.pdf> (Accessed on 17/04/2024)

³⁵ United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate> (Accessed on 17/04/2024)

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adaptation programmes, particularly for those on the margins of society³⁶. Strengthening climate action by adapting to, and mitigating the impacts of climate change can therefore play an important role in addressing many drivers of conflict and building peace³⁷.

Further, according to the United Nations High Commissioner for Refugees (UNHCR), forcibly displaced people are often on the frontlines of the climate crisis³⁸. It notes that refugees and other forcibly displaced people, regardless of the reason for flight, often reside in places prone to hazardous weather events and in harsh environmental conditions³⁹. UNHCR further points out that climate-related shocks and stresses including floods, cyclones, wildfires and droughts pose significant risks to refugees and Internally Displaced People (IDPs)⁴⁰. Climate change also limits their access to livelihoods and work opportunities⁴¹. Climate change is therefore a major threat to development for refugees and IDPs. In addition, the strain on limited local natural resources, such as water or arable farming land as a result of climate change can contribute to tensions between displaced populations and host communities worsening conflicts and undermining development⁴². It is therefore necessary to ensure that refugees and IDPs and their host communities living in highly climate-vulnerable conditions can withstand, recover and be protected from new or worsening threats to their lives and livelihoods that climate change is fueling⁴³.

According to the Organisation for Economic Co-operation and Development (OECD), the impacts of climate change, biodiversity loss and environmental degradation place additional demands on fragile and conflict -affected contexts which are already struggling to cope with multiple pressures, crises

³⁶ Ibid

³⁷ Ibid

³⁸ United Nations High Commissioner for Refugees., 'Strengthening Climate Adaptation and Resilience' Available at <https://www.unhcr.org/what-we-do/build-better-futures/climate-change-and-displacement/strengthening-climate-adaptation> (Accessed on 17/04/2024)

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

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and shocks⁴⁴. OECD notes that fragile and conflict-affected contexts harbour some of the world's biodiversity hotspots, which are critical to regulate the world's climate⁴⁵. Therefore, climate and human-induced disruptions affect the root causes, drivers and risks factors of multidimensional fragility and conflict⁴⁶. Similarly, conflicts can cause extensive damage to the environment, cause biodiversity loss and amplify the effects and impacts of climate change with a consequent increase in fragility⁴⁷.

Climate change is therefore a key concern in conflict settings⁴⁸. It has been noted that the impacts of climate change have already increased the physical insecurity of vulnerable communities, particularly in fragile and conflict-affected settings where governance is limited or ineffective⁴⁹. In such contexts, the effects of climate change can adversely affect political stability, food security, economic growth, and human mobility⁵⁰. It has been noted that in conflict situations, climate change interacts with other political, social, and economic stresses to compound existing tensions, which could escalate into violence or disrupt fragile peace building processes⁵¹. In turn, violent conflict and political instability leaves people and communities poorer, less resilient, and ill-equipped to cope with the consequences of climate change⁵². Strengthening climate action in conflict situations is therefore necessary for development. ICRC notes that strong climate action in places affected by conflict, and the finance to support it, is critical to reduce humanitarian needs,

⁴⁴ Organisation for Economic Co-operation and Development., 'INCAF Common Position on Climate Change, Biodiversity and Environmental Fragility' Available at <https://www.oecd.org/dac/conflict-fragility-resilience/conflict-fragility/INCAF-Common-position-climate-change-biodiversity-environmental-fragility.pdf> (Accessed on 17/04/2024)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ United Nations Environment Programme., 'Addressing Climate-Related Security Risks' Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/40330/security_risks_guidance.pdf?sequence=1&isAllowed=y (Accessed on 17/04/2024)

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

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preserve development gains, avoid systemic breakdowns and lasting fragility⁵³.

The need to strengthen climate action in conflict situations for development was recognized at COP 28 via the *Declaration on Climate, Relief, Recovery and Peace*⁵⁴. According to the Declaration, many of the people, communities, and countries threatened or affected by fragility or conflict, or facing severe humanitarian needs, are on the frontlines of the climate crisis, and are among the least resourced to cope with and adapt to associated shocks and stressors⁵⁵. It acknowledges that fragility and conflict increase people's vulnerability and exposure to climate hazards and impede coping capacity and adaptation options, and that, at the same time, climate change adversely affects lives, livelihoods, infrastructure, water, human capital, food, health, cultural identity, education, and human settlements, among other spheres, exacerbating humanitarian needs and constituting a significant and growing challenge to stability⁵⁶. The Declaration calls for bolder collective action to build climate resilience at the scale and speed required in highly vulnerable countries and communities, particularly those threatened or affected by fragility or conflict, or facing severe humanitarian needs, many of which are Least Developed Countries and Small Island Developing States⁵⁷. It recognizes that an ambitious, immediate scale up of enhanced support is urgently needed in such situations, including financial resources; technical and institutional capacities; local, national, regional partnerships; and data and information on the basis of complementarity and predictability⁵⁸. According to the COP 28 Declaration, strengthening climate action conflict settings is possible and if

⁵³ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

⁵⁴ COP 28 Declaration on Climate, Relief, Recovery, and Peace., Available at <https://www.cop28.com/en/cop28-declaration-on-climate-relief-recovery-and-peace> (Accessed on 17/04/2024)

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

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managed properly, can offer avenues for Sustainable Development, conflict prevention and inclusive peace building⁵⁹.

Actualizing the COP 28 Declaration on Climate, Relief, Recovery and Peace is vital in strengthening climate action in conflict situations for development. The COP 28 Declaration is a non-binding call to action outside the formal United Nations Framework Convention on Climate Change (UNFCCC) negotiations that reflects the concerns, common positions and solutions of countries and institutions from humanitarian, development, climate, and peace communities to urgently foster climate action and resilience in the most vulnerable and conflict situations⁶⁰. It recognizes that climate action is urgently needed, possible and effective in these settings, and that inaction comes with high cost to human development and stability⁶¹. Implementing the COP 28 Declaration can galvanize support for accelerated climate action and resourcing in countries experiencing multifaceted crises including conflicts which makes them highly vulnerable to climate change⁶².

Despite the importance of climate action in conflict situations, it has been noted that national, regional, and global support to help people adapt to a changing climate is particularly weak in places enduring conflict because of the challenges associated with long-term programming in these settings⁶³. Similarly, the most fragile countries tend to receive the least funding for climate action⁶⁴. ICRC further notes that conflict-affected areas within a country – particularly when such areas are not under state control – are often excluded from climate finance to mitigate risks, thus excluding millions of people from receiving support⁶⁵. The COP 28 Declaration on Climate, Relief, Recovery and Peace also notes that global efforts to build climate resilience remain

⁵⁹ Ibid

⁶⁰ Yousuf. H., ‘COP 28 Declaration on Climate, Relief, Recovery and Peace’ Available at <https://www.linkedin.com/pulse/climate-warrior-pakistani-youths-clamor-transpires-200-yousuf-mmvtf/> (Accessed on 17/04/2024)

⁶¹ Ibid

⁶² Ibid

⁶³ International Committee of the Red Cross., ‘The ICRC’s Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings’ Op Cit

⁶⁴ Ibid

⁶⁵ Ibid

insufficiently tailored or targeted to the specific needs and challenges of people, communities and countries threatened or affected by fragility or conflict, or facing severe humanitarian needs, including due to real and perceived risks and barriers associated with working in such settings⁶⁶. It is therefore necessary to address these challenges in order to strengthen climate action in conflict situations for development.

3.0 Way Forward

In order to strengthen climate action in conflict situations, there is need to achieve climate security⁶⁷. It has been acknowledged that in settings where conflict already exists, the impacts of climate change can aggravate or prolong it, making it more difficult to reach and sustain peace⁶⁸. Further, conflict can in turn disrupt or impede climate action, either through the active destruction of energy, water, and agricultural assets, or by delaying or blocking mitigation and adaptation interventions⁶⁹. Therefore, in order to achieve climate security in conflict situations, responses to climate change should align with conflict prevention and peacebuilding initiatives⁷⁰. It has been noted that investing in climate action is critical in fragile and conflict-affected settings and, if seized upon can be a valuable opportunity to strengthen cooperation, rebuild trust, and mend the social fabric therefore fostering peace, security, and development while confronting climate change⁷¹. Climate security enables the development of tailored analyses, response strategies, and programmes to the compounded challenges presented by the climate crisis on conflict-affected populations, communities, and countries⁷². It is therefore a key tool of conflict prevention, community stabilization and environmental peacebuilding⁷³. According to the United Nations Environment Programme (UNEP), climate

⁶⁶ COP 28 Declaration on Climate, Relief, Recovery, and Peace., Op Cit

⁶⁷ United Nations Development Programme., 'What is Climate Security and Why is it Important?' Available at <https://climatepromise.undp.org/news-and-stories/what-climate-security-and-why-it-important> (Accessed on 17/04/2024)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² International Organization for Migration., 'Climate, Peace and Security' Available at <https://environmentalmigration.iom.int/climate-and-security> (Accessed on 17/04/2024)

⁷³ Ibid

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security offers opportunities for promoting inclusive climate action, conflict prevention and peacebuilding⁷⁴. It is therefore vital to enhance climate security in order to strengthen climate action in conflict situations for development.

In addition, it is imperative to widely acknowledge the nexus between climate change and conflicts in order to develop adequate responses to these two related challenges⁷⁵. Climate change has been described as a conflict multiplier, rather than as a major direct cause of conflict in itself. It may aggravate and extend the scope of existing conflicts, or trigger underlying and latent conflicts to break out into the open⁷⁶. Climate change may contribute or worsen conflicts in areas such as access to natural resources including land and water⁷⁷; food security as a result of reduced rainfall and rising sea levels which may lead to a decline in agricultural production and a substantial loss of arable land reducing yields and increasing domestic food prices a situation that may result in civil unrest, and competition over access to land⁷⁸; and migration and displacement as a result of scarcity of natural resources and climate disasters such as droughts and floods resulting in conflicts between host communities and displaced populations⁷⁹. Conflicts on the other hand cause extensive damage to the environment, cause biodiversity loss and amplify the effects and impacts of climate change with a consequent increase in fragility⁸⁰. Conflict hinders climate action as a result of breakdown of institutions and lack of access to critical climate services⁸¹. Therefore, the converging crises of conflict and climate change can be mutually reinforcing, with climate impacts

⁷⁴ United Nations Environment Programme., 'Climate Security Mechanism (CSM)' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climate-change/climate-security-mechanism-csm> (Accessed on 17/04/2024)

⁷⁵ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

⁷⁶ Ibid

⁷⁷ Danish Institute for International Studies., 'Addressing Climate Change and Conflict in Development Cooperation' Available at https://www.diis.dk/files/media/publications/import/extra/rp2012-04-addressing-climate-change_web.jpg_1.pdf (Accessed on 17/04/2024)

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Organisation for Economic Co-operation and Development., 'INCAF Common Position on Climate Change, Biodiversity and Environmental Fragility' Op Cit

⁸¹ Ibid

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potentially exacerbating the conflict cycle while conflict weakening the governance structures and institutions needed to build climate resilience⁸². As a result of these linkages, communities and countries in conflict situations are highly vulnerable to climate risks due to their limited adaptive capacity therefore being exposed to the worst impacts of climate change which could exacerbate underlying conflicts⁸³.

It has been noted that acknowledging and drawing attention to the high vulnerability to climate risks of countries and communities enduring conflict is essential to ensure adequate climate action in these settings⁸⁴. It can lead to better responses to both climate change and conflict by aligning peacebuilding, development, and climate change adaptation strategies in National Adaptation Plans⁸⁵. For fragile states and communities in conflict situations, National Adaptation Plans provide governments struggling with conflict, instability, and climate change the opportunity to align their peacebuilding, development, and adaptation agendas and lay the foundation for lasting peace⁸⁶. It is therefore necessary to acknowledge the interlinkages between climate change and conflict in order integrate conflict dynamics into climate action for peacebuilding and development⁸⁷.

Further, it is imperative to foster effective conflict management by addressing the root causes of conflicts⁸⁸. It has been noted that in order to strengthen climate action in conflict situations, conflicts need to be addressed when planning climate actions⁸⁹. Effective conflict management strengthens climate

⁸² International Institute for Sustainable Development., 'Building Peace and Climate Resilience: Aligning Peacebuilding and Climate Adaptation in Fragile States' Available at <https://www.iisd.org/articles/deep-dive/building-peace-and-climate-resilience-aligning-peacebuilding-and-climate> (Accessed on 17/04/2024)

⁸³ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

⁸⁴ Ibid

⁸⁵ International Institute for Sustainable Development., 'Building Peace and Climate Resilience: Aligning Peacebuilding and Climate Adaptation in Fragile States' Op Cit

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Toulmin. C., & Barrett. S., 'Climate Action and Conflict' Op Cit

⁸⁹ Ibid

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action by reducing vulnerability, ensuring the availability of strong institutions and governance mechanisms, and allowing access to climate-sensitive areas for appropriate responses⁹⁰. Climate action cannot be effective in conflict situations as a result of breakdown of institutions and lack of access to critical climate services⁹¹. Effective conflict management is therefore necessary in order to strengthen climate action in conflict situations for development. It has been noted that for effective conflict management in such settings, interventions need to recognise past patterns of conflict and reconciliation by monitoring warning signs, defusing tensions and addressing grievances at the earliest⁹². This can be achieved by applying collaborative approaches towards conflict management⁹³. Collaborative conflict management refers to the use of a wide range of informal approaches where competing or opposing stakeholder groups work together to reach an agreement on a controversial issue⁹⁴. This style of conflict management encourages parties to conflicts to work through disagreements through empathy, listening, and mutually beneficial solutions⁹⁵. It has the potential to identify the root causes of conflicts, pinpoint the underlying needs of the parties involved, and come to a win-win outcome for everyone⁹⁶. Collaborative conflict management envisages 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 parties⁹⁷. ADR processes are therefore ideal in strengthening climate action in conflict situations for development by promoting collaboration in the management of vital natural resources such as

⁹⁰ Ibid

⁹¹ Organisation for Economic Co-operation and Development., 'INCAF Common Position on Climate Change, Biodiversity and Environmental Fragility' Op Cit

⁹² Toulmin. C., & Barrett. S., 'Climate Action and Conflict' Op Cit

⁹³ Muigua. K., 'Applying Collaborative Approaches towards Conflict Management' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Applying-Collaborative-Approaches-towards-Conflict-Management-.pdf> (Accessed on 17/04/2024)

⁹⁴ Food and Agriculture Organization., 'Collaborative Conflict Management for Enhanced National Forest Programmes (NFPs)' Available at <https://www.fao.org/3/i2604e/i2604e00.pdf> (Accessed on 17/04/2024)

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

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land and water while simultaneously ensuring conflict resolution and prevention⁹⁸. These mechanisms should therefore be embraced.

Finally, it is vital to unlock climate finance in conflict situations⁹⁹. It has been noted that international support in form of climate finance to help people adapt to a changing climate is particularly weak in places enduring conflict because of the challenges associated with long-term programming in such contexts¹⁰⁰. In addition, it has been observed that the most fragile countries tend to receive the least funding for climate action¹⁰¹. According to ICRC, conflict-affected regions are often excluded from climate finance to mitigate the impacts of climate change therefore excluding millions of people from receiving support¹⁰². In order to address this gap, it has been recommended that the criteria for accessing funding particularly for adaptation and loss and damage needs to be tailored to the specific challenges of places that are extremely fragile in order to enable affected populations to access climate finance that is key in strengthening climate action for development¹⁰³.

The COP 28 *Declaration on Climate, Relief, Recovery and Peace*¹⁰⁴ seeks to enhance financial support for climate adaptation and resilience in conflict situations through measures such as continuing to substantially scale-up financial resources for climate adaptation and resilience building in such situations, emphasizing the need for public and grant-based resources, as well as mobilizing a variety of financing sources, while recognizing the importance of environmental and social safeguards¹⁰⁵; improving access to all relevant financial resources, including by enhancing predictability, flexibility, disbursement, speed, and simplicity, and working to reducing transaction costs, including by streamlining application, accreditation, procurement, and

⁹⁸ Toulmin. C., & Barrett. S., 'Climate Action and Conflict' Op Cit

⁹⁹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ COP 28 Declaration on Climate, Relief, Recovery, and Peace., Op Cit

¹⁰⁵ Ibid

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monitoring and evaluation procedures¹⁰⁶; strengthening the technical and institutional capacity of national governments and local actors, to absorb, account for, report on, allocate, and leverage climate finance effectively; prioritizing local ownership, impact, and results where possible, including through channeling finance at the local level to respond to local needs and priorities and working with affected communities and both local government and non-government partners¹⁰⁷; and leveraging financial and technical support from the private sector and adopting tailored financial instruments to mobilize new sources of finance in support of national and local responses¹⁰⁸. It is therefore necessary to implement this Declaration in order to unlock climate finance necessary for strengthening climate action in conflict situations for development. Climate finance plays a crucial role in strengthening climate action in conflict situations for development¹⁰⁹.

4.0 Conclusion

People, communities and countries enduring conflict are extremely vulnerable to the impacts of climate change as result of the devastating effects of conflicts on societies¹¹⁰. Conflicts increase the fragility of institutions, essential services, infrastructure, governance and other capacities that are critical to help people cope with and adapt to climate change¹¹¹. Conflicts therefore increases climate vulnerability and undermine development¹¹². As a result of the vulnerability and severe capacity constraints of people, communities, and countries in conflict situations, it is necessary to strengthen climate action in such contexts for development¹¹³. However, climate action in conflict situations is often undermined by limited climate funding, challenges associated with long-term programming in these settings, and real and perceived risks and barriers

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹¹⁰ Grayson. C-L., & Khouzam. A., 'Responding to Climate Risks in Conflict Settings: In Search of Solutions' Op Cit

¹¹¹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹¹² Ibid

¹¹³ Ibid

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associated with working in such environments¹¹⁴. Strong climate action in places affected by conflict, and the finance to support it, is critical to reduce humanitarian needs, preserve development gains and avoid systemic breakdowns and lasting fragility¹¹⁵. This can be achieved through fostering climate security¹¹⁶; acknowledging the nexus between climate change and conflicts¹¹⁷; fostering effective conflict management by addressing the root causes of conflicts¹¹⁸; and unlocking climate finance in conflict situations¹¹⁹. Strengthening climate action in conflict situations for development is necessary and should be realized for peace and prosperity.

¹¹⁴ COP 28 Declaration on Climate, Relief, Recovery, and Peace., Op Cit

¹¹⁵ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹¹⁶ United Nations Development Programme., 'What is Climate Security and Why is it Important?' Op Cit

¹¹⁷ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

¹¹⁸ Toulmin. C., & Barrett. S., 'Climate Action and Conflict' Op Cit

¹¹⁹ International Committee of the Red Cross., 'The ICRC's Call To Cop28: Urgent and Ambitious Action is Needed to Mitigate Climate Change and Strengthen Climate Action in Conflict Settings' Op Cit

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Abstract

This paper critically examines how the ideal of climate justice can be realised through mediation. The paper argues that mediation is an effective tool towards fostering climate justice. It discusses some of the key features of mediation that makes it viable in promoting climate justice. Among its advantages, the paper argues that mediation can enhance the right to Free, Prior and Informed Consent (FPIC) in climate justice. The paper posits that FPIC is at the heart of climate justice since it ensures equity, transparency, fairness, participation, inclusivity and human rights in climate action. It examines how mediation can be effectively harnessed in order to promote the right to FPIC in climate justice towards effectively confronting climate change.

1.0 Introduction

Climate change is a major challenge that is affecting both developed and developing countries in the quest towards Sustainable Development. The impacts of climate change including intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed globally undermining development efforts¹. It has been argued that the links between climate change and Sustainable Development are strong². For instance, climate change impacts the availability of basic necessities like freshwater, food, and energy therefore undermining development and human well-being³. Further, climate hazards such as extreme heat, floods, droughts and wildfires affect health both directly and indirectly, increasing the risk of deaths, non-communicable diseases, the emergence and spread of infectious diseases, and health emergencies⁴. Further,

¹ United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 21/07/2025)

² United Nations., 'Climate Change' Available at <https://sustainabledevelopment.un.org/topics/climatechange> (Accessed on 21/07/2025)

³ Ibid

⁴ World Health Organization., 'Climate Change' Available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (Accessed on 21/07/2025)

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it has been pointed out that poor and developing countries, particularly least developed countries, are adversely affected and least able to cope with climate shocks to their social, economic and natural systems undermining their development efforts⁵.

In addition to its impact on development, health and human well-being, climate change is also fueling injustices. For example, while climate change is global, the poor are disproportionately vulnerable to its effects⁶. This is because they lack the resources to afford goods and services they need to buffer themselves and recover from the impacts of climate change⁷. It has been correctly observed that the impacts of climate change are felt unequally across continents, regions, communities and individuals⁸. For example, Africa is the most vulnerable region in the world to climate change and its impacts⁹. The continent is responsible for only a fraction of global greenhouse gas emissions but is suffering disproportionately from climate change and its impacts¹⁰. It has been argued that Africa's vulnerability to climate change and its consequences is driven by the prevailing low levels of socio-economic development in the continent¹¹. Further, Africa's strong economic dependency on climate-related activities such as agriculture and the continent's low adaptive capacity contribute to its vulnerability to climate change¹². Climate change is also

⁵ United Nations., 'What is Climate Change?' Op Cit

⁶ United Nations Environment Programme., 'Responding to climate change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 21/07/2025)

⁷ Ibid

⁸ Ibid

⁹ United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 21/07/2025)

¹⁰ World Meteorological Organization., 'Africa suffers disproportionately from climate change' Available at <https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change> (Accessed on 21/07/2025)

¹¹ United Nations Environment Programme., 'Responding to Climate Change' Op Cit

¹² United Nations Economic Commission for Africa., 'Vulnerability to Climate Change in Africa: Challenges and Recommendations for Africa' Available at https://archive.uneca.org/sites/default/files/PublicationFiles/policy_brief_2_vulnerability_to_climate_change_in_africa_challenges_and_recommendations_for_africa.pdf (Accessed on 21/07/2025)

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having disproportionate impacts on particular individuals and groups including indigenous peoples, women and girls due to their close dependence on local natural resources for their livelihoods¹³.

Due to its disproportionate impacts across individuals, groups, regions and continents, fostering climate justice has become a crucial goal towards effectively confronting climate change¹⁴. Climate justice focuses on the intersection between climate change and social inequalities¹⁵. It examines how climate change impacts people differently, unevenly and disproportionately and seeks to address the resultant injustices in fair and equitable ways¹⁶. It has been argued that climate justice entails looking at climate change as a social, ethical and legal issue, rather than solely an environmental one¹⁷. Climate justice seeks to promote solutions that address the root causes of climate change and in doing so, simultaneously address a broad range of social, racial, and environmental injustices caused by climate change¹⁸. It links climate change to human rights and development and seeks to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly¹⁹. Climate justice therefore seeks to ensure equity, non-discrimination, equal participation, transparency, fairness, accountability and

¹³ United Nations., 'Why women are key to climate action' Available at <https://www.un.org/en/climatechange/science/climate-issues/women> (Accessed on 21/07/2025)

¹⁴ United Nations Environment Programme., 'Climate Justice.' Available at <https://leap.unep.org/knowledge/glossary/climate-justice> (Accessed on 21/07/2025)

¹⁵ Ibid

¹⁶ Sultana. F., 'Critical Climate Justice' Available at <https://www.farhanasultana.com/wpcontent/uploads/Sultana-Critical-climate-justice.pdf> (Accessed on 21/07/2025)

¹⁷ Ibid

¹⁸ Center for Climate Justice., 'What is Climate Justice?' Available at <https://centerclimatejustice.universityofcalifornia.edu/what-is-climate-justice/#:~:text=Climate%20justice%20connects%20the%20climate,least%20responsible%20for%20the%20problem> (Accessed on 21/07/2025)

¹⁹ Mary Robinson Foundation Climate Justice., 'Principles of Climate Justice.' Available at <https://www.mrfcj.org/principles-of-climate-justice/> (Accessed on 21/07/2025)

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access to justice towards effective climate action²⁰. Fostering climate justice can their bolster climate action by upholding fairness, transparency, inclusivity and human rights.

This paper critically examines how the ideal of climate justice can be realised through mediation. The paper argues that mediation is an effective tool towards fostering climate justice. It discusses some of the key features of mediation that makes it viable in promoting climate justice. Among its advantages, the paper argues that mediation can enhance the right to Free, Prior and Informed Consent (FPIC) in climate justice. The paper posits that FPIC is at the heart of climate justice since it ensures equity, transparency, fairness, participation, inclusivity and human rights in climate action. It examines how mediation can be effectively harnessed in order to promote the right to FPIC in climate justice towards effectively confronting climate change.

2.0 Role of Mediation in Fostering Climate Justice

Mediation is a process of conflict management which involves the intervention of a third person known as a mediator who assists parties to a conflict in negotiating jointly acceptable resolution of issues in conflict²¹. Further, the United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements²². Mediation has also been defined as a structured negotiation process in which an independent person, known as a mediator, assists parties in conflict to identify and assess options and negotiate an agreement towards resolving their conflict²³.

²⁰ United Nations Environment Programme., 'UN Resolution Billed as a Turning Point in Climate Justice' Available <https://www.unep.org/cep/news/story/un-resolution-billed-turning-point-climate-justice> (Accessed on 21/07/2025)

²¹ What is Mediation?., Available at <https://www.commerce.gov/cr/reports-and-resources/eo-mediation-guide/what-mediation> (Accessed on 22/07/2025)

²² United Nations., 'Guidance for Effective Mediation' Available at https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf (Accessed on 22/07/2025)

²³ Mediation., Available at <https://www.fedcourt.gov.au/services/ADR/mediation#:~:text=What%20is%20Mediation?,parties%20than%20a%20judge's%20decision> (Accessed on 22/07/2025)

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Mediation is associated with certain attributes which makes it ideal in managing conflicts. The process is usually non-adversarial, flexible, expeditious and cost-effective making it ideal in conflict management²⁴. Further, mediation also fosters confidentiality, neutrality and impartiality in conflict management²⁵. It has been observed that mediation is being widely embraced in the management of conflicts and disputes in the contemporary world since it is a flexible, confidential, cost-effective and speedier process of resolving disputes²⁶. Mediation has been identified as an appropriate technique in conflict management, serving as a key tool for facilitating dialogue and negotiation between conflicting parties²⁷. Mediation has the potential to foster understanding and empathy among parties to a conflict²⁸. Further, mediation also encourages active listening while promoting open and respectful communication therefore helping break down barriers including cultural barriers and building trust among parties²⁹. It has been argued that mediation focuses on collaboration and cooperation among parties and is therefore suitable in preserving relationships, building trust, and promoting long term and sustainable solutions³⁰. Further, it has been argued that mediation provides a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding³¹. According to the United

²⁴ Amoh. G., 'Mediation-The Preferred Alternative for Conflict Resolution' Available at <https://www.gdrc.org/u-gov/conflict-amoh.html> (Accessed on 22/07/2025)

²⁵ Ibid

²⁶ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

²⁷ Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies (Accessed on 22/07/2025)

²⁸ Ibid

²⁹ Ibid

³⁰ Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests> (Accessed on 22/07/2025)

³¹ Unlocking Collaboration: The Power of Mediation., Available at <https://www.linkedin.com/pulse/unlocking-collaboration-power-mediation-jharna-jagtiani-g7kxc> (Accessed on 22/07/2025)

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Nations, the premise of mediation is that in the right environment, parties in conflict can improve their relationships and move towards cooperation³².

The foregoing attributes of mediation makes it a viable mechanism in promoting climate justice. For example, climate justice focuses on promoting access to information, public and community participation and access to in decision making processes including the design and implementation of projects and formulation of laws, policies and guidelines concerning climate change³³. Mediation is suitable in achieving these goals due to its focus on inclusivity and participation and can therefore create opportunities for dialogue and negotiation around shared understanding and responses on climate change³⁴. It has been observed that mediation provides incentives for different parties and stakeholders to come together to discuss common responses towards climate justice³⁵. By embracing mediation, it is possible to bolster the participation of people and communities most impacted by climate change including developing countries, indigenous peoples and communities, women and the youth as part of the climate solution in order to achieve justice and inclusivity for all³⁶.

Climate justice also focuses on access to justice in climate matters³⁷. By fostering access to justice, vulnerable people and communities can challenge climate related policies and decisions, hold decision-makers accountable for their acts and omissions, and enforce their rights including the right to a clean, healthy and sustainable environment³⁸. Mediation is a viable process in enhancing

³² United Nations., 'Guidance for Effective Mediation' Op Cit

³³ Brower. A., 'Fighting Climate Injustice: 10 Strategies for Action.' Available at <https://www.gensler.com/blog/fighting-climate-injustice-10-strategies-for-action> (Accessed on 22/07/2025)

³⁴ United Nations., 'Climate Change and Mediation' Available at <https://peacemaker.un.org/en/areas-of-work/climate-change-mediation> (Accessed on 22/07/2025)

³⁵ Ibid

³⁶ Muigua. K., 'Fostering Climate Justice for Sustainable Development.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Fostering-Climate-Justice-for-SustainableDevelopment.pdf> (Accessed on 22/07/2025)

³⁷ United Nations Development Programme., 'What is climate justice and why does it matter?' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 22/07/2025)

³⁸ Ibid

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access to justice in climate matters towards climate justice. It has been argued that mediation enhances collaboration and cooperation towards effective management of environmental and climate change conflicts³⁹. According to the United Nations, climate-informed mediation provides a platform to engage and better support the efforts of conflict parties to find a peaceful and sustainable solution to their dispute⁴⁰. It brings parties in conflict together to discuss shared responses to common climate-related threats⁴¹. It has been argued that mediation can also serve as a platform for the integration of women and marginalized groups, who face particular climate risks, as well as environmental defenders and, where applicable, indigenous peoples and communities, whose expertise can help identify key issues and priorities towards effectively managing climate change conflicts⁴².

Embracing mediation is therefore key towards promoting climate justice for Sustainable Development.

3.0 Promoting the Right to FPIC in Climate Justice through Mediation

FPIC has been described as a fundamental right of self-determination that ensures participation by all people with a particular focus on indigenous peoples and local communities in development projects in order to ensure that such projects are conducted in a sustainable manner taking into account their economic, social and cultural impact⁴³. It has been argued that FPIC focuses on obtaining consent from indigenous peoples for any activities undertaken on

³⁹ Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at <https://www.eli.org/environmental-governance/community-guideusing-alternative-dispute-resolution-secure-1> (Accessed on 22/07/2025)

⁴⁰ United Nations., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/default/files/document/files/2024/03/dppapracticenote-theimplicationsofclimatechangeformediationandpeaceprocesses.pdf> (Accessed on 22/07/2025)

⁴¹ Ibid

⁴² Ibid

⁴³ Owen, J.R. and Kemp, D., "Free Prior and Informed Consent', Social Complexity and the Mining Industry: Establishing A Knowledge Base," *Resources Policy*, Vol.41 (2014): 91-100

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their lands⁴⁴. It provides that governments and private entities cannot implement a policy or programme on or concerning indigenous peoples' lands unless there is prior consultation and consent from the indigenous community⁴⁵.

According to the United Nations, FPIC allows indigenous peoples to give or withhold consent to a project that may affect them or their territories⁴⁶. Further, once indigenous peoples have given their consent, FPIC allows them to withdraw it at any stage⁴⁷. In addition, FPIC enables vulnerable groups including indigenous peoples to negotiate the conditions under which a project will be designed, implemented, monitored and evaluated⁴⁸. It has been argued that FPIC is a key approach towards protecting the rights (human, environmental, land and customary) of all affected communities, especially the most vulnerable ones⁴⁹.

In order to promote the right to FPIC, it has been argued that *free* implies that the consent of indigenous peoples is obtained without coercion, intimidation or manipulation⁵⁰. *Prior* implies that consent is to be obtained sufficiently in advance of any authorization or commencement of development activities and respect is shown to time requirements of indigenous peoples' consultation/consensus processes⁵¹. *Informed* on the other hand implies that

⁴⁴ What is Free, Prior and Informed Consent (FPIC)?., Available at <https://www.ihrb.org/resources/what-is-free-prior-and-informed-consent-fpic> (Accessed on 22/07/2025)

⁴⁵ Ibid

⁴⁶ United Nations., 'Free Prior and Informed Consent - An Indigenous Peoples' right and a good practice for local communities - FAO' Available at <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/> (Accessed on 22/07/2025)

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Office of the United Nations High Commissioner for Human Rights., 'Consultation and Free, Prior and Informed Consent (FPIC)' Available at <https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic> (Accessed on 22/07/2025)

⁵¹ Ibid

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information is provided that covers a range of aspects, including the nature, size, scope, purpose, location, duration and environmental, economic, cultural and social impacts of the project(Emphasis added)⁵².

Promoting the right to FPIC is key towards achieving climate justice. For example, indigenous peoples and local communities are highly vulnerable and disproportionately affected by climate change and its impacts. It has been argued that indigenous peoples are among the first to face the direct consequences of climate change, due to their dependence upon, and close relationship, with the environment and natural resources⁵³. According to the United Nations, climate change worsens the difficulties already faced by indigenous peoples including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment⁵⁴. FPIC ensures the meaningful participation of indigenous peoples and local communities in climate action towards fostering equity and tackling inequalities⁵⁵. Further, it has been argued that FPIC ensures that climate policies and projects uphold the human rights, cultural diversity, and the sovereignty of indigenous peoples and local communities⁵⁶. Through FPIC, it is possible to obtain authentic and meaningful community engagement and involvement that is vital for the success and long-term viability of any project, especially those impacting indigenous peoples and local communities⁵⁷.

FPIC is therefore an important tool for achieving climate justice. It ensures that climate action is equitable and respects the rights of indigenous peoples and

⁵² Ibid

⁵³ United Nations., 'Climate Change' Available at <https://www.un.org/development/desa/indigenouspeoples/climate-change.html> (Accessed on 22/07/2025)

⁵⁴ Ibid

⁵⁵ Safeguards: The Importance of Robust Free, Prior, and Informed Consent (FPIC) For Climate Justice., Available at <https://nature4justice.earth/safeguards-the-importance-of-robust-free-prior-and-informed-consent-fpic-for-climate-justice/> (Accessed on 22/07/2025)

⁵⁶ Ibid

⁵⁷ Ibid

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local communities⁵⁸. For instance, when climate mitigation and adaptation projects, such those involving renewable energy and carbon projects are planned without the consent of indigenous peoples, this can lead to displacement, loss of livelihoods, loss of cultural identity and further marginalization⁵⁹. FPIC therefore empowers indigenous peoples and local communities to protect their rights and interests in the face of climate-related developments⁶⁰.

Mediation is suitable in promoting FPIC towards climate justice. For example, harnessing mediation is key towards engaging with indigenous peoples and local communities to reach shared agreement and allowing people to have a meaningful voice in deliberative decision-making processes related to their own development⁶¹. It has been argued that mediation can ensure that FPIC is obtained before development projects, such as those involving renewable energy, are implemented therefore minimising the likelihood of disputes and fostering climate justice⁶². Mediation is suitable in enhancing the participation of indigenous peoples and local communities in climate action including energy and carbon projects therefore granting investors a ‘*social licence to operate*’ (Emphasis added)⁶³. It has been argued that implementing a project without the participation of indigenous peoples and local communities can lead to operational delays, disputes, financial costs and litigation, project closure, violence and loss of life⁶⁴. Further, mediation is also suitable in managing climate change disputes involving investors and local communities

⁵⁸ How Does FPIC Relate to Climate Justice?., Available at <https://energy.sustainability-directory.com/question/how-does-fpic-relate-to-climate-justice/> (Accessed on 22/07/2025)

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Buxton. A., & Wilson. E., ‘FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects’ Available at <https://www.iied.org/16530iied> (Accessed on 22/07/2025)

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

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ensuring inclusivity and collaboration in decision making processes and fostering the right of local communities and indigenous peoples to FPIC⁶⁵.

Utilising mediation is therefore key towards promoting FPIC in climate justice.

4.0 Conclusion

Climate change is having disproportionate impacts on vulnerable individuals and groups including indigenous peoples and local communities. Fostering climate justice is therefore crucial in protecting human rights and ensuring equity, non-discrimination, equal participation, transparency, fairness, accountability and access to justice towards effective climate action⁶⁶. Mediation is suitable in enhancing climate justice by creating opportunities for dialogue, negotiation and collaboration around shared understanding and responses on climate change⁶⁷. It can also ensure access to justice in climate matters thus promoting climate justice⁶⁸. Embracing mediation can enhance FPIC in climate justice by ensuring the meaningful involvement of indigenous peoples and local communities in climate action and providing a suitable platform for access to justice in climate change disputes⁶⁹. Promoting the right to FPIC in climate justice through mediation is therefore possible. It is vital to widely embrace mediation and involve indigenous peoples and local communities in mediation process towards upholding the right to FPIC for climate justice and Sustainable Development.

⁶⁵ United Nations., 'Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities – FAO' Op Cit

⁶⁶ United Nations Environment Programme., 'UN Resolution Billed as a Turning Point in Climate Justice' Op Cit

⁶⁷ United Nations., 'Climate Change and Mediation' Op Cit

⁶⁸ Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Op Cit

⁶⁹ Ibid

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Abstract

This paper critically discusses the need for effective conflict management in Africa. The paper argues that Africa is highly susceptible to conflicts which undermine peace, security, and development in the continent. In addition, the paper notes that Africa has an opportunity to harness collaboration, harmony and ubuntu for effective conflict management. The paper argues that collaboration, harmony and ubuntu have been part and parcel of conflict management in Africa since time immemorial and can be utilised for effective conflict management in the continent. It proposes ideas towards fostering collaboration, harmony and Ubuntu for effective conflict management in Africa.

1.0 Introduction

A Conflict refers to a situation where two or more parties, however defined or structured, perceive that they possess mutually incompatible goals¹. According to this definition, any conflict consists of three essential parties: incompatibility of goals, attitudes and behaviour². Conflict has also been described as a process of social interaction involving a struggle over claims to resources, power and status, beliefs, and other preferences and desires³. According to the United Nations, a conflict arises when two or more groups believe their interests are incompatible⁴. The term conflict has also been conceptualised as a clash between individuals arising out of a difference in thought process, attitudes, understanding, interests, requirements and even sometimes perceptions⁵. It usually entails some form of friction, disagreement, or discord arising within a group when the beliefs or actions of one or more members of the group are

¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya' Glenwood Publishers Limited, 2015

² Ibid

³ Ibid

⁴ United Nations., 'Land and Conflict' Available at https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Land%20and%20Conflict.pdf (Accessed on 27/01/2025)

⁵ Khan. A., 'Understanding Conflict' Available at <https://mgcub.ac.in/pdf/material/20200407005750d5d6d7633c.pdf> (Accessed on 27/01/2025)

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either resisted by or unacceptable to the others⁶. It has been noted that conflicts can occur in various levels including intrapersonal (within an individual), interpersonal (between individuals), intragroup (within a group), intergroup (involving two or more groups), and intraorganizational (within organizations)⁷.

Conflicts have been identified as a common phenomenon in human relationships and interactions⁸. They are an inevitable part of living because they are related to situations of scarce resources, division of functions, power relations and role-differentiation⁹. According to the United Nations, conflict is not in itself a negative phenomenon¹⁰. For example, non-violent conflict can be an essential component of social change and development, and is a necessary component of human interaction¹¹. It has been noted that non-violent resolution of conflict is possible when individuals and groups have trust in their governing structures, society and institutions to manage incompatible interests¹². Non-violent conflicts are therefore necessary in human interactions and their resolution is key in defining and strengthening human relationships¹³.

⁶ What is Conflict?., Available at <https://mariancrc.org/wp-content/uploads/2014/08/CONFLICT-AND-PEACE.pdf> (Accessed on 27/01/2025)

⁷ Conflict Management., Available at https://healthnet.org.np/downloads/manual/Conflict_management.pdf (Accessed on 27/01/2025)

⁸ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <https://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-EastAfrican-CommunityMoving-from-Alternative-to-Appropriate-Dispute-Resolution> (Accessed on 27/01/2025)

⁹ 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 27/01/2025)

¹⁰ United Nations., 'Land and Conflict' Op Cit

¹¹ Ibid

¹² Ibid

¹³ Ackerman. P., & Kruegler. C., 'Summary of "The Principles of Strategic Nonviolent Conflict' Available at <https://www.beyondintractability.org/artsum/ackerman-principles> (Accessed on 27/01/2025)

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However, in some circumstances, conflicts can be an undesirable occurrence and can affect peace, sustainability and development in any given society¹⁴. Conflicts become problematic when societal mechanisms and institutions for managing and resolving them break down, giving way to violence¹⁵. Societies that are characterized by weak institutions, fragile political systems and divisive social relations can be drawn into endless cycles of conflict and violence threatening peace and development¹⁶. For instance, armed conflicts that occur in various parts of the world including in Africa place heavy burdens on the social development of countries, by decreasing revenues, increasing defense expenditure, and diverting funds away from social and development initiatives¹⁷. They also cause human suffering in terms of loss of lives, displacement of populations and increased levels of poverty¹⁸. It has been noted that the Sustainable Development Goals (SDGs) have an intrinsic relationship to peace and stability¹⁹. Effective management of conflicts is therefore necessary to spur peace, stability, and development.

This paper critically discusses the need for effective conflict management in Africa. The paper argues that Africa is highly susceptible to conflicts which undermine peace, security, and development in the continent. In addition, the paper notes that Africa has an opportunity to harness collaboration, harmony and ubuntu for effective conflict management. The paper argues that

¹⁴ Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Op Cit

¹⁵ United Nations., 'Land and Conflict' Op Cit

¹⁶ Ibid

¹⁷ United Nations Economic Commission for Africa., 'Socioeconomic Impact of Conflict in Africa' Available at <https://repository.uneca.org/handle/10855/50100#:~:text=It%20places%20onerous%20burdens%20on,from%20social%20and%20development%20initiatives> (Accessed on 27/01/2025)

¹⁸ Swedish International Development Cooperation Agency., 'Conflict Prevention: Opportunities and Challenges in Implementing Key Policy Commitments and Priorities' Available at https://cdn.sida.se/app/uploads/2020/12/01125316/s209461_thematicoverview_conflict_prevention_webb_final.pdf (Accessed on 27/01/2025)

¹⁹ 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 27/01/2025)

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collaboration, harmony and ubuntu have been part and parcel of conflict management in Africa since time immemorial and can be utilised for effective conflict management in the continent. It proposes ideas towards fostering collaboration, harmony and *Ubuntu* for effective conflict management in Africa.

2.0 The Need for Effective Conflict Management in Africa

Effective management of conflicts is a key priority for Africa. The continent has been highly susceptible to intra and inter- state wars and conflicts for many years²⁰. It has been pointed out that Africa comes second in the number of armed conflicts per region with more than 35 non-international armed conflicts taking place in various African countries including Burkina Faso, Cameroon, the Central African Republic (CAR), the Democratic Republic of the Congo, Ethiopia, Mali, Mozambique, Nigeria, Senegal, Somalia, South Sudan and Sudan²¹. Several armed groups fighting against government forces and/or against each other are involved in these conflicts²². Frequent conflicts are being experienced across the African continent, which are fueled by various factors, including but not limited to natural resources, fight for political control, poverty, negative ethnicity, religion, environmental causes, and external influence, among others²³.

A majority of the conflicts in Africa have been political in nature resulting in civil wars, military coups, and genocide as was in the case of Rwanda²⁴. In addition, natural resource- based conflicts have been a common occurrence in

²⁰ Olaosebikan. A., 'Conflicts in Africa: Meaning, Causes, Impact and Solution.' *African Research Review*, Volume 4, No. 4 (2010)

²¹ Geneva Academy of International Humanitarian Law., 'Today's Armed Conflicts' Available at <https://geneva-academy.ch/galleries/today-s-armed-conflicts> (Accessed on 27/01/2025)

²² Ibid

²³ Muigua. K., 'Towards Effective Peacebuilding and Conflict Management in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2021/05/Towards-Peacebuilding-and-Conflict-Management-in-Kenya.docx-Kariuiki-Muigua-MAY-2021x.pdf> (Accessed on 27/01/2025)

²⁴ Africa Center for Strategic Studies., 'African Conflicts Displace Over 40 Million People.' Available at <https://africacenter.org/spotlight/african-conflicts-displace-over-40-million-people/> (Accessed on 27/01/2025)

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Africa for many decades²⁵. It has been observed that the abundance of natural resources has motivated and fueled armed conflicts in Africa threatening peace, security, and stability²⁶. Despite being a blessing for the continent, natural resources have also provided a parallel political economy for fueling wars and conflicts in Africa²⁷. This is evidenced by the illegal exploitation of diamonds during the civil war in Sierra Leone and the use of the profits from illicit diamond sales to procure small arms and light weapons and thus sustain armed conflict during Liberia's civil war²⁸. Africa therefore continues to experience the 'resource curse' which refers to the paradox that countries endowed with natural resources tend to be embroiled in conflicts and have incidences of poverty²⁹. Many African countries that are rich in natural resources including oil, gas, and minerals have been caught up in vicious cycles of conflicts undermining the potential of these resources to spur development³⁰.

Climate change is also a major cause of conflicts in Africa³¹. It has been noted that the environmental impacts of climate change, especially the depletion of natural resources creates conditions that increase the risk of violent conflict globally³². The adverse effects of climate change and environmental degradation extend far beyond the environmental realm and increasingly shape human activity by causing and worsening conflicts at the global,

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

²⁶ Mwanika. PAN., 'Natural Resource Conflict: Management Processes and Strategies in Africa' Available at <https://www.files.ethz.ch/isn/136685/PAPER216.pdf> (Accessed on 27/01/2025)

²⁷ Ibid

²⁸ Ibid

²⁹ Henri. A., 'Natural Resources Curse: A Reality in Africa.' *Resources Policy* , Volume 63, 2019

³⁰ Ibid

³¹ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf (Accessed on 27/01/2025)

³² Ibid

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regional, national, and even local levels³³. For example, rising temperatures, more severe and frequent extreme weather events, and erratic rainfall patterns cause or exacerbate volatile food prices, insecure livelihoods, and large-scale displacement therefore posing the risk of conflicts³⁴. Further, the adverse environmental impacts of climate change create conditions which increase the risk of violent conflicts including water scarcity, crop failure, food insecurity, migration, and displacement of populations³⁵. It has been observed that the effects of climate change including prolonged droughts are fueling land use conflicts and displacing populations thus causing and worsening conflicts in the continent³⁶. It has been noted that climate shocks such as droughts can magnify local tensions or conflict, particularly harming those who earn an income through agriculture³⁷. Further, droughts and floods also accelerate environmental degradation, which in turn intensifies disputes over land and water³⁸. Addressing climate change and its impacts is thus a key conflict prevention and management strategy in Africa.

Conflicts are therefore prevalent in Africa. These conflicts have been attributed to various factors including poverty, human rights violations, bad governance and corruption, ethnic marginalization and small arms proliferation³⁹. Natural resource-based conflicts are also being witnessed all over Africa⁴⁰. Climate change is also a major source of conflicts in Africa compounding existing risk

³³ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNote-TheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 27/01/2025)

³⁴ Ibid

³⁵ Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

³⁶ International Crisis Group., 'Absorbing Climate Shocks and Easing Conflict in Kenya's Rift Valley' Available at <https://www.crisisgroup.org/africa/east-and-southern-africa/kenya/b189-absorbing-climate-shocks-and-easing-conflict-kenyas-rift> (Accessed on 27/01/2025)

³⁷ Ibid

³⁸ Ibid

³⁹ Annan. N., 'Violent Conflicts and Civil Strife in West Africa: Causes, Challenges and Prospects' *International Journal of Security & Development.*, Volume 3, Issue 1, (2014)

⁴⁰ Mwanika. PAN., 'Natural Resource Conflict: Management Processes and Strategies in Africa' Op Cit

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factors such as scarcity of natural resources and rise in geo-political tensions over sharing of such resources⁴¹. The prevalence of conflicts in Africa is an undesirable phenomenon. According to the United Nations, conflicts and wars have been a major hindrance in the achievement of Sustainable Development in Africa⁴². Conflicts have adverse impacts on every aspect and corner of the African family, community and nation-state, with economic, cultural, political, social, and environmental costs⁴³. As a result, it is imperative to foster effective management of conflicts in the Africa for peace and development.

3.0 The Role of Collaboration, Harmony and Ubuntu in Conflict Management in Africa

The concept of conflict management seeks to resolve disagreements or conflicts with positive outcomes that satisfy all individuals involved or is beneficial to a whole group⁴⁴. It involves processes and techniques adopted towards stopping or preventing overt conflicts and aiding the parties involved to reach a durable and peaceful solution to their differences⁴⁵. Conflict management therefore involves handling all stages of a conflict as well as the mechanisms used in the management of conflicts⁴⁶. Conflict management has been described as an ongoing process by which conflicts are identified and handled, fairly and efficiently⁴⁷. The goal of conflict management is to minimise the potential negative impact that can arise from disagreements and encourage agreement

⁴¹ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Op Cit

⁴² United Nations., 'Promotion of Durable Peace and Sustainable Development in Africa.' Available at https://www.un.org/osaa/sites/www.un.org.osaa/files/docs/2109875_osaa_sg_report_web_new.pdf (Accessed on 28/01/2025)

⁴³ Uwazie. E., 'Alternative Dispute Resolution and Peace-building in Africa.' Available at <https://www.cambridgescholars.com/resources/pdfs/978-1-4438-5707-9-sample.pdf> (Accessed on 28/01/2025)

⁴⁴ Ronquillo. Y., Ellis. V., & Toney-Butler. T., 'Conflict Management' Available at <https://www.ncbi.nlm.nih.gov/books/NBK470432/> (Accessed on 28/01/2025)

⁴⁵ Leeds. C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners.' *International Journal of Peace Studies*, Volume 2, No. 2, 1997

⁴⁶ Ibid

⁴⁷ Institute of Directors., 'Conflict Management' Available at <https://www.iod.com/resources/business-advice/conflict-management/> (Accessed on 28/01/2025)

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and positive outcomes⁴⁸. It has been noted that various approaches and techniques can be adopted towards managing conflicts ranging from the most informal negotiations between the parties themselves through increasing formality and more directive interventions from external sources to a full court hearing with strict rules of procedure⁴⁹.

There is a range of conflict management mechanisms available to parties in conflict. For instance, the *Charter of the United Nations*⁵⁰ outlines various conflict management mechanisms that parties to a conflict or dispute may resort to. The Charter stipulates that '*parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, 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*' (Emphasis added)⁵¹.

Collaboration, harmony and *Ubuntu* have been identified as core tenets towards effective management of conflicts in the African context⁵². The idea of collaboration in conflict management aims to resolve the root causes of a disagreement and develop a mutually acceptable solution that benefits all parties involved⁵³. Under this approach, all parties involved in a conflict are brought together and work towards resolving the underlying conflict through active listening and respectful communication⁵⁴. Collaboration encourages parties in conflict to work through disagreements through empathy, and listening towards mutually beneficial solutions⁵⁵. It has been identified as powerful approach to conflict management built on cooperation, open

⁴⁸ Ibid

⁴⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁵⁰ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁵¹ Ibid, article 33 (1)

⁵² Akinola. A., & Uzodike. U., 'Ubuntu and the Quest for Conflict Resolution in Africa' *Journal of Black Studies.*, Volume 49, No. 2., (2018) pp 91-113

⁵³ Collaborating Conflict Resolution Style: Everything You Need to Know., Available at <https://conflict-resolution-training.com/blog/collaborative-conflict-resolution-style/> (Accessed on 28/01/2025)

⁵⁴ Ronquillo. Y., Ellis. V., & Toney-Butler. T., 'Conflict Management' Op Cit

⁵⁵ Miroslavov. M., 'Mastering The Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaborating-conflict-style/> (Accessed on 28/01/2025)

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communication, and finding win-win outcomes⁵⁶. Collaboration aims to preserve relationships, build trust among parties, and foster long-term positive change⁵⁷. Collaboration therefore fosters cooperation in conflict management⁵⁸. Through this, parties in conflict are able to reach a solution that satisfies everyone therefore strengthening relationships in the process⁵⁹. It leads to more lasting outcomes therefore minimising the likelihood of conflicts reemerging in future⁶⁰.

Harmony is a human value that involves compatibility and accord in feelings, actions, relationships, opinions, and interests⁶¹. Harmony has been described as a state of balance, peace, and coherence within individuals⁶². It has been noted that harmony is vital for successful cooperation, survival, longevity, and prosperity for humanity⁶³. Achieving harmony is fundamental in effective management of conflicts⁶⁴. It has been observed that by fostering open communication, empathy, and understanding, conflicts can be resolved in a harmonious and productive manner⁶⁵. Effective conflict management is vital in building positive relationship and fostering harmony⁶⁶.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Collaborating Conflict Resolution Style: Everything You Need to Know., Op Cit

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Chen. S. X., 'Harmony' Available at https://www.researchgate.net/publication/256649929_Harmony#:~:text=Harmony%20is%20usually%20identified%20as,and%20even%20opposing%20one%20another. (Accessed on 28/01/2025)

⁶² Hegde. S. B., 'Universal Human Values: Understanding Harmony and Ethical Human Conduct' Available at <https://www.jcethbl.edu.in/UNIVERSAL%20HUMAN%20VALUES%20II.pdf> (Accessed 28/01/2025)

⁶³ United Nations., 'The Philosophy of True Harmony in Global Citizenship' Available at <https://www.un.org/en/chronicle/article/philosophy-true-harmony-global-citizenship> (Accessed on 28/01/2025)

⁶⁴ The Art of Harmonious Coexistence: Conflict Management., Available at <https://hrme.org/the-art-of-harmonious-coexistence-conflict-management/> (Accessed on 28/01/2025)

⁶⁵ Ibid

⁶⁶ Ibid

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Ubuntu has been described as an African philosophy that places emphasis on 'being self through others'⁶⁷. It is a form of humanism which can be expressed in the phrases 'I am because of who we all are'⁶⁸. *Ubuntu* also referred to as *Utu* in some parts of Africa especially in East Africa is an African philosophy geared towards upholding values for the greater good of the all community including sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus⁶⁹. *Ubuntu* emphasizes the interconnectedness of all humanity⁷⁰. The concept of *Ubuntu* stresses the importance of community and the interdependence of people⁷¹. It has been noted that *Ubuntu* rejects the Western emphasis on individualism but rather stresses collaboration and teamwork⁷². It stresses the fact that we are all connected, and that one can only grow and progress through the growth and progression of others⁷³.

Collaboration, harmony and *Ubuntu* have been utilised in conflict management in Africa since time immemorial⁷⁴. The process of conflict management is

⁶⁷ Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Available at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4272&context=sspapers&httpsredir=1&referer#:~:text=Ubuntu%20can%20best%20be%20described,ngumuntu%20ngabantu%20in%20Zulu%20language>. (Accessed on 28/01/2025)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Omodan. B., 'Ubuntu Politics of Process: An Alternative Conflict Management Culture in Universities' Available at https://www.researchgate.net/publication/364033950_Ubuntu_Politics_of_Process_An_Alternative_Conflict_Management_Culture_in_Universities (Accessed on 28/01/2025)

⁷¹ Ibid

⁷² Embodying the African Spirit of Ubuntu at Work., Available at <https://ebsedu.org/blog/embodying-the-african-spirit-of-ubuntu-at-work/#:~:text=The%20book%20describes%20how%20leaders,partisanship%2C%20pogony%2C%20and%20production>. (Accessed on 28/01/2025)

⁷³ Ibid

⁷⁴ Akinola. A., & Uzodike. U., 'Ubuntu and the Quest for Conflict Resolution in Africa' Op Cit

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largely influenced by culture⁷⁵. Difference in cultural aspects such as belief systems, attitudes, religious practices, social stratification, language and economic practices mean that conflicts could potentially take different forms in each culture⁷⁶. As a result, culture has been identified as an essential component of conflicts and the conflict management process⁷⁷. For instance, all conflicts entail interpersonal interactions that occur in the context of cultures⁷⁸. In addition, culture shapes not only the possibilities for conflict resolution or transformation, but also the naming, interpretation, enactment and course of conflicts⁷⁹. Therefore, whether a conflict exists at all and the mechanisms adopted towards managing such conflicts are issues that are largely determined by culture⁸⁰. Therefore, culture is an essential part of conflict and conflict management.

It has been noted that African societies have since time immemorial ascribed to values aimed at promoting social cohesion⁸¹. These values include peaceful coexistence, harmony, truth, honesty, unity, cooperation, forgiveness and respect⁸². They are embedded in the culture and customs of the African people. These values are the foundation of African societies and cultures and are inextricably bound together in order to foster social harmony and cohesion⁸³.

⁷⁵ Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' *International Journal of Intercultural Relations* 30 (2006) 579-603

⁷⁶ Ibid

⁷⁷ LeBaron. M., 'Culture and Conflict.' Available at https://www.beyondintractability.org/essay/culture_conflict (Accessed on 28/01/2025)

⁷⁸ Weiss, A., 'Power and Difference: An Extended Model for the Conflict Potentials in the Negotiation of Intercultural Conflicts'. 2000, Berlin: Berghof Institute. Available at <http://www.berghof-center.org/> (Accessed on 28/01/2025)

⁷⁹ LeBaron. M., 'Transforming Cultural Conflict in an Age of Complexity' Available at <https://researchers.allard.ubc.ca/ws/portalfiles/portal/39713135/Transforming%20Cultural%20Conflict%20in%20an%20Age%20of%20Complexity.pdf> (Accessed on 28/01/2025)

⁸⁰ Ibid

⁸¹ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

⁸² Ibid

⁸³ Idang. G., 'African Cultures and Values.' Available at https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1561-40182015000200006 (Accessed on 28/01/2025)

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They influence every aspect of African societies including conflict management. Conflicts in Africa are viewed as a threat to peaceful existence and harmony. As a result, there is emphasis on amicable management of conflicts in order to preserve the social fabric which tied such communities together⁸⁴.

Conflict management in Africa is anchored in the values of collaboration, harmony and *Ubuntu*⁸⁵. It has been noted that the process of conflict management in African societies is well-entrenched in the traditions, customs, norms and taboos of the people⁸⁶. Conflict management is based on the principles of equity and justice, which are well entrenched in African customs and traditions⁸⁷. In order to preserve harmony, African communities have therefore developed and embraced conflict management strategies that are aimed towards effectively dealing with conflicts⁸⁸. These mechanisms give prominence to communal needs over individual needs⁸⁹. It has been observed that conflict management in African societies is premised on the values that are held sacrosanct including peace, harmony, truth, honesty, unity, cooperation, forgiveness, reconciliation, and respect⁹⁰. The philosophy of *Ubuntu/Utu* is essential in fostering social harmony and has been effectively incorporated in conflict management strategies⁹¹.

Collaboration, harmony and *Ubuntu* are thus part and parcel of conflict management in Africa. These values fit well within the notion of justice in Africa and are aimed at creating consensus, facilitating reconciliation, fostering peace and cohesion and giving prominence to communal needs over

⁸⁴ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

⁸⁵ Ibid

⁸⁶ Ademowo. A., 'Conflict Management in Traditional African Society.' Available at https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society (Accessed on 28/01/2025)

⁸⁷ Ibid

⁸⁸ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' Op Cit

⁸⁹ Ibid

⁹⁰ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' Op Cit

⁹¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

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individual needs⁹². Therefore by adopting and internalising the principles of collaboration, harmony and *Ubuntu*, it is possible to create healthy relationships based on the recognition that within the web of humanity everyone is linked to everyone else⁹³. These values are ideal in fostering cooperation, forgiveness, and reconciliation for effective conflict management and peacebuilding in Africa⁹⁴. They emphasise restorative justice (harmony in the community), rather than punitive justice⁹⁵. Collaboration, harmony and *Ubuntu* are rooted in reconciliation, sharing, compassion, civility, responsibility, trust, and reconciliation, and cooperation⁹⁶. They are therefore anchored in the culture and customs of the people of Africa and can be utilised for effective conflict management in Africa.

It has been noted that many postcolonial African states have experienced and continue to experience violent conflicts, prompting the quest for viable approaches to conflict resolution and peace-building⁹⁷. The desire by certain individuals and groups to control power and resources at the expense of others lies at the heart of the frequent civil wars, armed insurrections, terrorism, ethnic conflict, genocide, xenophobia, and intracommunity and domestic conflict prevalent in Africa⁹⁸. The role of collaboration, harmony and *Ubuntu* in conflict management in Africa has been heavily undermined at the expense of formal justice systems and their emphasis on Western notions of justice⁹⁹. It

⁹² Ibid

⁹³ Murithi. T., 'African Approaches to Building Peace and Social Solidarity' Available at <https://www.accord.org.za/ajcr-issues/african-approaches-to-building-peace-and-social-solidarity/> (Accessed on 28/01/2025)

⁹⁴ Ibid

⁹⁵ Van Norren. D., 'African Ubuntu and Sustainable Development Goals: seeking human mutual relations and service in development' Available at <https://www.tandfonline.com/doi/full/10.1080/01436597.2022.2109458#abstract> (Accessed on 28/01/2025)

⁹⁶ Ibid

⁹⁷ Akinola. A., & Uzodike. U., 'Ubuntu and the Quest for Conflict Resolution in Africa' Op Cit

⁹⁸ Ibid

⁹⁹ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at https://www.researchgate.net/publication/228182138_Alternative_Dispute_Resolutio_n_ADR_in_Sub-

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is therefore necessary to reinvigorate collaboration, harmony and *Ubuntu* for effective conflict management in Africa.

4.0 Conclusion

Africa is highly susceptible to conflicts and wars. The continent has witnessed intra and inter- state wars and conflicts for many years¹⁰⁰. These conflicts and wars are often caused or worsened by a number of factors including poverty, human rights violations, bad governance and corruption, ethnic marginalization and small arms proliferation¹⁰¹. Natural resources and environmental factors including climate change are also fueling conflicts in Africa¹⁰². These conflicts undermine peace, stability and development in Africa¹⁰³. Effective management of conflicts is therefore necessary in order to spur Sustainable Development in Africa.

Collaboration, harmony, and *Ubuntu* are key tenets that can enhance effective management of conflicts in the African context. These values are well-entrenched in the traditions, customs, norms and taboos of the African people¹⁰⁴. They are part and parcel of the African culture and fit well within the concept of conflict management in Africa and its core values including consensus, facilitating reconciliation, fostering peace and cohesion and giving prominence to communal needs over individual needs¹⁰⁵. It is therefore necessary to foster collaboration, harmony and *Ubuntu* for effective conflict management in Africa. These values can be effectively harnessed by fostering compassion, understanding, reconciliation, forgiveness, and respect towards

[Saharan Africa The Role of Customary Systems of Conflict Resolution CSCR](#)
(Accessed on 28/01/2025)

¹⁰⁰ Olaosebikan. A., 'Conflicts in Africa: Meaning, Causes, Impact and Solution.' Op Cit

¹⁰¹ Annan. N., 'Violent Conflicts and Civil Strife in West Africa: Causes, Challenges and Prospects' Op Cit

¹⁰² International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Op Cit

¹⁰³ United Nations., 'Promotion of Durable Peace and Sustainable Development in Africa.' Op Cit

¹⁰⁴ Ademowo. A., 'Conflict Management in Traditional African Society.' Op Cit

¹⁰⁵ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

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each other¹⁰⁶. By embracing collaboration, harmony and *Ubuntu*, it is possible to prevent conflicts while also ensuring that conflicts are managed effectively in manner that promotes reconciliation and fosters social cohesion¹⁰⁷. Through collaboration, harmony and *Ubuntu*, it is possible to build a more just and equitable society for all¹⁰⁸. These values including *Ubuntu* promote peaceful coexistence, tolerance and cooperation serving as a moral compass in interpersonal relationships and community engagements¹⁰⁹. Fostering collaboration, harmony and *Ubuntu* is therefore vital for peaceful co-existence in Africa.

Further, it is imperative to embrace effective conflict management strategies including the use of Alternative Dispute Resolution (ADR) processes such as mediation and negotiation. It has been noted that conflict resolution in the traditional African societies involves the use of mechanisms such as mediation, adjudication, reconciliation, arbitration and negotiation¹¹⁰. These techniques fit comfortably within traditional concepts of African justice, particularly its core value of reconciliation¹¹¹. These processes especially negotiation and mediation provide opportunities for dialogue, collaboration, cooperation towards mutually satisfactory and long-lasting outcomes¹¹². They are therefore suitable

¹⁰⁶ Ubuntu Philosophy and Nelson Mandela: A Connection., Available at <https://medium.com/@ubuntusoul/ubuntu-philosophy-and-nelson-mandela-a-connection-3483acb57a17#:~:text=In%20his%20autobiography%2C%20Long%20Walk,we%20share%20a%20common%20humanity.%E2%80%9D> (Accessed on 28/01/2025)

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ What is the Spirit of Ubuntu? A Journey Into African Philosophy., Available at <https://www.communication-generation.com/what-is-the-spirit-of-ubuntu-a-journey-into-african-philosophy/#:~:text=Introduction-,%E2%80%9CUbuntu%E2%80%9D%20is%20not%20just%20a%20word%3B%20it's%20a%20deeply,interconnectedness%20of%20all%20human%20beings.> (Accessed on 28/01/2025)

¹¹⁰ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society.' Op Cit

¹¹¹ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

¹¹² Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at

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in fostering effective management of conflicts through collaboration, harmony and *Ubuntu*¹¹³.

Africa has an opportunity to foster effective management of conflicts for peace and prosperity. It is therefore necessary to explore collaboration, harmony and *Ubuntu* for effective management of conflicts in the African context.

https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies (Accessed on 28/01/2025)

¹¹³ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

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Abstract

This paper explores the need to infuse Environmental, Social, and Governance (ESG) tenets into arbitration and Alternative Dispute Resolution (ADR). It argues that ESG factors are pertinent in arbitration and ADR. The paper critically discusses the link between ESG and ADR mechanisms including arbitration. It also examines some of the ESG concerns in arbitration and ADR. The paper further offers ideas towards infusing ESG tenets into arbitration and ADR for sustainability and effective conflict management.

1.0 Introduction

Environmental, Social, and Governance (ESG) is a concept that entails three central tenets that are used to measure the sustainability and ethical impact businesses and investments¹. ESG has also been defined as a framework that helps stakeholders understand how an organization is managing risks and opportunities related to environmental, social, and governance criteria (sometimes called ESG factors)². The idea of ESG takes the holistic view that sustainability extends beyond just environmental issues; it also seeks to incorporate social and governance criteria in the sustainability agenda³. ESG seeks to achieve sustainable, responsible and ethical investment by incorporating environmental, social and governance factors in corporate decision making⁴. ESG is usually a standard and strategy used by investors to

¹ Kiehne. D.O., 'Environmental, Social and Corporate Governance (ESG) -Also an Innovation Driver?' Available at [https://www.researchgate.net/publication/334398123 Environmental social and corporate governance ESG -also an innovation driver](https://www.researchgate.net/publication/334398123_Environmental_social_and_corporate_governance_ESG_-_also_an_innovation_driver) (Accessed on 26/04/2024)

² Peterdy. K., & Miller. N., 'ESG (Environmental, Social, & Governance)' Available at <https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/> (Accessed on 26/04/2024)

³ Ibid

⁴ Stuart. L.G et al., 'Firms and social responsibility: A review of ESG and CSR research in corporate finance.' *Journal of Corporate Finance* 66 (2021): 101889

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evaluate corporate behaviour and to determine the future financial performance of businesses based on how they handle sustainability issues⁵.

ESG therefore seeks to incorporate environmental, social, and governance tenets into investment and business decision-making processes in order to foster sustainable, responsible, and ethical investments and business practices⁶. This concept urges businesses to embrace environmental factors including environmental sustainability and climate change concerns such as climate resilience and low carbon development⁷; social tenets such as improving social welfare and fostering inclusive participation with stakeholders⁸; and governance factors including fostering good governance practices internally and externally in order to realize sustainability⁹. It has also been noted that the main drivers of ESG are concerns regarding the environment such as climate change, energy conservation, waste management and sustainability in general¹⁰; social concerns like diversity, human rights, consumer protection or animal welfare¹¹; and corporate governance concerns including management structure, employment relations, compensation of staff and executive as well as questions of responsible investments¹².

The United Nations Development Programme (UNDP) notes that 'E' tenet in ESG focuses on businesses' impact on the environment through their consumption of energy and raw materials¹³. These standards cover many

⁵ Li. T.T et al., 'ESG: Research Progress and Future Prospects.' *Sustainability*, No. 13, 2021.

⁶ Stuart. L.G et al., 'Firms and social responsibility: A review of ESG and CSR research in corporate finance.' Op Cit

⁷ African Development Bank Group., 'Environmental, Social and Governance (ESG).' Available at <https://www.afdb.org/en/topics-and-sectors/topics/environmental-social-and-governance-esg> (Accessed on 26/04/2024)

⁸ Ibid

⁹ Ibid

¹⁰ Kiehne. D.O., 'Environmental, Social and Corporate Governance (ESG) -Also an Innovation Driver?' Op Cit

¹¹ Ibid

¹² Ibid

¹³ United Nations Environment Programme., 'Building a Sustainable Future: ESG Business Handbook' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2023->

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factors, including how businesses contribute to climate change, pollution, waste, and natural resource depletion¹⁴. In addition, the 'S' tenet focuses on the impact businesses make on society¹⁵. These factors are related to labour and human rights, inclusion, equality, and community development¹⁶. Further, the 'G' tenet concerns practices and procedures adopted and implemented within a business to ensure it follows the laws and standards set out by its relevant stakeholders¹⁷. These standards are measured by actions business takes to ensure fair and transparent management, information disclosure, prevention of corruption, enabling diversity, transparent decision-making processes, cybersecurity, and privacy among others¹⁸.

ESG tenets evaluate businesses' sustainability and impact on environmental, social and governance issues far beyond their financial performance¹⁹. Businesses are therefore embracing the idea of ESG to measure their impact on the environment, society, and the economy²⁰. It has been noted that some of the ESG standards are imposed by laws and regulations of the country where the business operates, and others result from stakeholders' expectations and investors' pressure due to growing concerns regarding human rights and environmental issues²¹. ESG tenets apply not only to the investment community but also to customers, suppliers, and employees, all of whom are increasingly interested in how sustainable an organization's operations are²².

[08/building_a_sustainable_future_esg_business_handbook.pdf](#) (Accessed on 26/04/2024)

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ ESG., 'The Link Between ESG and Community Engagement: Building Stronger Relationships.' Available at <https://vakilsearch.com/blog/the-link-between-esg-and-community-engagement/> (Accessed on 26/04/2024)

²¹ United Nations Environment Programme., 'Building a Sustainable Future: ESG Business Handbook' Op Cit

²² Peterdy. K., & Miller. N., 'ESG (Environmental, Social, & Governance)' Op Cit

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The concept of ESG is pertinent in the sustainability agenda and achievement of the United Nation's 2030 Agenda for Sustainable Development²³. The rise of ESG has been necessitated by global sustainability problems including climate change, corporate corruption and financial inequality²⁴. ESG includes key elements around environmental and social impact, as well as how governance structures can be amended to maximize stakeholder well-being towards sustainability²⁵. Realizing ESG tenets is therefore necessary in order to achieve sustainability.

This paper explores the need to infuse ESG tenets into arbitration and Alternative Dispute Resolution (ADR). It argues that ESG factors are pertinent in arbitration and ADR. The paper critically discusses the link between ESG and ADR mechanisms including arbitration. It also examines some of the ESG concerns in arbitration and ADR. The paper further offers ideas towards infusing ESG tenets into arbitration and ADR for sustainability and effective conflict management.

2.0 Overview of Arbitration and ADR

ADR is an all-encompassing term that entails multiple non-judicial methods of managing conflicts²⁶. It refers to a set of processes that are used to manage conflicts without resort to courts²⁷. ADR mechanisms may be linked to but function outside formal court litigation processes²⁸. The United Nations notes that ADR (sometimes also referred to as "Appropriate Dispute Resolution") is a general term, used to define a set of approaches and techniques aimed at

²³ Barbosa. A., et al., 'Integration of Environmental, Social, and Governance (ESG) Criteria: Their Impacts on Corporate Sustainability Performance.' *Humanities & Social Sciences Communications.*, 2023

²⁴ CMS., 'Putting the 'S' in 'ESG'- a Corporate Guide.' Available at <https://cms.law/en/int/publication/social-aspect-of-esg-lexicon-of-most-important-terms-and-phrases> (Accessed on 26/04/2024)

²⁵ Peterdy. K., & Miller. N., 'ESG (Environmental, Social, & Governance)' Op Cit

²⁶ Block. M. J., 'The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes.' *Rutgers Law Record.*, Volume 44, 2016-2017

²⁷ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

²⁸ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

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resolving disputes in a nonconfrontational way²⁹. ADR techniques include negotiation, mediation, arbitration, adjudication, neutral evaluation, enquiry, expert determination, Traditional Dispute Resolution Mechanisms (TDRMs) and conciliation among others³⁰.

The concept of ADR is embraced at the global level under the *Charter of the United Nations*³¹. 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 choice*³²(Emphasis added). This idea has also been embraced in Kenya under the Constitution which mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and TDRMs³³.

It has been noted that ADR processes are ideal in realizing access to justice³⁴. These mechanisms are characterized by key attributes such as informality, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost effective management of disputes³⁵. ADR techniques can therefore cure challenges in formal justice systems including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow and ensure access to justice³⁶.

Arbitration as an ADR process refers to a private and consensual process where parties in dispute agree to present their grievances to a third party for

²⁹ United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_backgroud_paper.pdf (Accessed on 26/04/2024)

³⁰ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

³² Ibid, article 33 (1)

³³ Constitution of Kenya., 2010., article 159 (2) (c), Government Printer, Nairobi

³⁴ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³⁵ Ibid

³⁶ 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

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resolution³⁷. It has also been defined as a dispute management mechanism where parties through an agreement submit their dispute to one or more neutral third parties who make a binding decision on the dispute³⁸. Arbitration has a number of key attributes that makes it ideal in managing disputes including privacy, confidentiality, party autonomy, flexibility, and finality³⁹. Arbitration also has a transnational applicability which means that it applies across different jurisdictions and therefore guarantees neutrality in the determination of disputes by addressing differences that may arise as a result of multiple legal systems⁴⁰. It also guarantees enforcement of decisions through the *New York Convention*⁴¹ which provides a harmonized legal framework for the recognition and enforcement of foreign awards in arbitration.

3.0 The Place of ESG in Arbitration and ADR

Despite the growing importance of ESG, some key concerns need to be addressed. One such challenge relates to the management of ESG disputes that may arise from time to time among stakeholders such as shareholders, investors, regulators, and communities⁴². The growth of ESG requirements has seen businesses being increasingly required to embrace ESG tenets in their corporate practices⁴³. ESG factors have become a critical aspect of business

³⁷ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

³⁸ World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed on 26/04/2024)

³⁹ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

⁴⁰ Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press

⁴¹ United Nations Commission on International Trade Law., 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards.' (New York, 1958)

⁴² Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Available at <https://www.mondaq.com/india/arbitration--dispute-resolution/1375770/cracking-the-esg-conundrum-is-arbitration-the-key-to-resolution-of-esg-disputes#:~:text=ESG%20issues%20usually%20involve%20multiple,arbitral%20awards%20across%20multiple%20jurisdictions> (Accessed on 26/04/2024)

⁴³ Muigua. K., 'The Place of Environmental, Social and Governance (ESG) in Arbitration' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/The-Place-of-Environmental-Social-and-Governance-ESG-in-Arbitration-2.pdf> (Accessed on 26/04/2024)

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operations and investment decisions in the corporate world around the globe⁴⁴. Corporations are under immense pressure to ensure that their operations remain sustainable, socially responsible, and governed ethically⁴⁵. As a result, ESG clauses are being adopted in commercial and investment contracts⁴⁶. In case of violation of such clauses, ESG related disputes are bound to occur⁴⁷. It has been asserted that the increasing adoption of ESG related practices into pre-existing environmental, social and governance models adopted by corporations is going to be disruptive⁴⁸. The inclusion of ESG clauses in commercial contracts not only points to the importance of ESG concerns to companies but it also serves as potential source of disputes where such considerations are not complied with⁴⁹. ESG issues are therefore not only reshaping sustainability and corporate behavior across the globe but can also be a potential battleground in international disputes⁵⁰.

ESG disputes encompass private law claims where claimants seek to recover damages against companies⁵¹. In such instances, the damages sought may be for environmental damage, violation of human rights, personal injury or damage to property, or secondary claims arising from a company

⁴⁴ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Op Cit

⁴⁵ Ibid

⁴⁶ International Arbitration in 2022., 'The Rising Significance of ESG and the Role of International Arbitration' available at <https://www.freshfields.com/en-gb/our-thinking/campaigns/internationalarbitration-in-2022/the-rising-significance-of-esg-and-the-role-of-international-arbitration/> (Accessed on 26/04/2024)

⁴⁷ Muigua. K., 'The Place of Environmental, Social and Governance (ESG) in Arbitration' Op Cit

⁴⁸ The ALP Review., 'The Importance of ESG and its effect on International Arbitration' available at <https://www.alp.company/sites/default/files/ALP%20Review%20-%20The%20Importance%20of%20ESG%20and%20its%20effect%20on%20International%20Arbitration.pdf> (Accessed on 26/04/2024)

⁴⁹ Ibid

⁵⁰ Hamilton. J & Coulet-Diaz. M., 'Arbitration & the ESG Era' available at <https://www.whitecase.com/news/media/arbitration-esg-era> (Accessed on 26/04/2024)

⁵¹ Ashurst., 'Global Trends in ESG Disputes' Available at <https://www.ashurst.com/en/insights/global-trends-in-esg-disputes/> (Accessed on 26/04/2024)

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misrepresenting its sustainability credentials to customers or investors⁵². In addition, it has been noted that ESG tenets also inspire contractual disputes⁵³. As ESG becomes ever more important, ESG standards are being incorporated into supply contracts, manufacturing contracts and joint venture agreements, resulting in increased inter-company disputes in relation to the application of such standards⁵⁴. Due to the breadth of subject matter covered by ESG, the range of disputes that can arise is expansive⁵⁵. ESG disputes can encompass conduct arising out of, for instance, a corporate governance dispute, to a labour matter involving the breach of a worker's human rights, to a mass tort claim arising out of an environmental damage among others⁵⁶.

Effective management of ESG disputes is key in fostering sustainability and preserving the reputation and profitability of businesses⁵⁷. It has been correctly noted that litigation may not be well suited for addressing the unique issues that may arise in ESG disputes since they often involve multiple legal, social, and ethical issues⁵⁸. In addition, it has been pointed out that since ESG disputes often involve multiple parties and stakeholders with different perspectives, it may be difficult to arrive at a satisfactory resolution through litigation⁵⁹. Arbitration and ADR therefore have a key role to play in managing ESG disputes.

ADR mechanisms such as mediation and arbitration are ideal in managing ESG disputes by fostering privacy, confidentiality, cost effective and expeditious management of disputes while also allowing parties to select experts to hear

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ International Bar Association., 'Report on Use of ESG Contractual Obligations and Related Disputes' Available at <https://www.ibanet.org/document?id=report-on-use-of-ESG-contractual-obligations> (Accessed on 26/04/2024)

⁵⁶ Ibid

⁵⁷ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Op Cit

⁵⁸ Ibid

⁵⁹ Ibid

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and determine contentious ESG matters⁶⁰. It has been observed that businesses would normally prefer to have their disputes managed in a private manner in order to prevent ruining their image in public and also in an expeditious and cost-effective manner in order to protect business interests⁶¹. ADR techniques such as arbitration and mediation allow businesses to attain these benefits by ensuring privacy, confidentiality, cost effectiveness and expeditiousness in management of disputes and further promoting the enforceability of decisions⁶².

Arbitration is a viable mechanism for managing ESG disputes. Some of the key advantages of utilizing arbitration in managing ESG disputes is that arbitral awards are likely to be recognized and enforced (almost) globally pursuant to the New York Convention⁶³; injunctions can (in principle) be obtained quickly in cases of irreversible environmental damage or gross human rights violations⁶⁴. Arbitration also ensures neutrality of forum and flexibility as to where proceedings are held in addition to flexibility of procedure and availability of specialized procedural rules on ESG disputes⁶⁵.

Arbitration is also viable in managing ESG disputes since parties have the ability to appoint independent arbitrators with specific expertise in ESG issues, such as climate change and human rights⁶⁶. Arbitration allows parties to select experts to hear and determine contentious and technical ESG matters⁶⁷. ESG

⁶⁰ Thailand Arbitration Center., 'Alternative Dispute Resolution: Significance of ESG in Arbitration.' Available at <https://thac.or.th/alternative-dispute-resolution-significance-esg-arbitration/> (Accessed on 26/04/2024)

⁶¹ Ibid

⁶² Moses, 'The Principles and Practice of International Commercial Arbitration' Op Cit

⁶³ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Available at <https://www.taylorwessing.com/en/insights-and-events/insights/2023/07/here-we-go-esg-disputes-in-international-arbitration> (Accessed on 26/04/2024)

⁶⁴ Ibid

⁶⁵ Gaffney. J., 'In Praise and Criticism of Arbitration as a Means of Resolving ESG Disputes' Available at <https://arbitrationblog.kluwerarbitration.com/2023/04/18/in-praise-and-criticism-of-arbitration-as-a-means-of-resolving-esg-disputes/> (Accessed on 26/04/2024)

⁶⁶ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Op Cit

⁶⁷ Thailand Arbitration Center., 'Alternative Dispute Resolution: Significance of ESG in Arbitration.' Op Cit

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disputes may involve complex scientific and technical issues⁶⁸. For example, in climate change disputes, there may be need to determine whether the carbon emission of a company is in adequate compliance with the international climate targets⁶⁹. The principle of party autonomy allows parties to select arbitrators with capacity and knowledge in such matters therefore ensuring effective and efficient management of ESG disputes⁷⁰.

Arbitration is also suitable in managing ESG disputes based on international trade and investment treaties⁷¹. It has been noted that international trade and investment treaties are increasingly incorporating ESG protections with the purpose of ensuring that contracting parties promote and effectively achieve their ESG objectives⁷². Consequently, host states are more likely to bring claims or counterclaims against foreign investors for failure to meet their ESG-related obligations or in situations where investor protection clauses frustrate a host state's ESG objectives⁷³. Investors and states may be subject to arbitration proceedings pursuant to existing investment treaties or pursuant to ESG clauses in investment treaties⁷⁴. The activities of investors such as Multinational Corporations especially those involved in the exploration of natural resources in the global south have resulted in environmental concerns such as environmental degradation, extinction of biodiversity, contamination and destruction of soil and air pollution affecting the socio-economic lives of indigenous populations⁷⁵. They have also been accused of flouting human rights through bad labour practices, displacement of people and land injustices against the neighbouring communities while undertaking investment activities

⁶⁸ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Op Cit

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Available at <https://www.taylorwessing.com/en/insights-and-events/insights/2023/07/here-we-go-esg-disputes-in-international-arbitration> (Accessed on 26/04/2024)

⁷² Ibid

⁷³ Ibid

⁷⁴ International Bar Association., 'Report on Use of ESG Contractual Obligations and Related Disputes' Op Cit

⁷⁵ Ajibade, L.T & Awomuti, A.A. 'Petroleum Exploitation or Human Exploitation? An Overview of Niger Delta Oil Producing Communities in Nigeria' *African Research Review*, Vol. 3 (1), 2009. Pp. 111-124

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in developing countries⁷⁶. As a result, there has been rise in investment treaty arbitration across the globe including Africa where MNCs are contractually bound through investment treaties to comply with ESG standards such as environmental governance and respect for human rights and are further subjected to ADR mechanisms especially arbitration when they violate ESG requirements stipulated in investment treaties⁷⁷.

International commercial arbitration is also crucial in managing cross-border ESG disputes⁷⁸. It has been noted that cross-border ESG disputes may be managed via international commercial arbitration if the underlying business agreements contain arbitration clauses⁷⁹. The advantages of international commercial arbitration over litigation such as providing faster, more efficient and less expensive solutions are especially important in ESG disputes⁸⁰. International commercial arbitration also ensures confidentiality and allows for the application of interim measures, which are often very important in ESG disputes⁸¹. Further, in international commercial arbitration, parties can also engage their own experts or allow third parties to join the arbitration proceedings, such as environmental or compliance specialists, human rights practitioners among others therefore ensuring the viability of the process⁸².

The use of arbitration in managing ESG disputes can also ensure grant of interim reliefs in instances like irreversible environmental damage or gross

⁷⁶ Ibid

⁷⁷ Dagbanja. D., 'The Environment, Human Rights, and Investment Treaties in Africa: A Constitutional Perspective.' *Handbook on International Investment Law and Policy*, 2020, P 1-30

⁷⁸ Muigua. K., 'Linking Alternative Dispute Resolution (ADR) and Environmental, Social and Governance (ESG) Tenets for Sustainable Development' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Linking-Alternative-Dispute-Resolution-ADR-and-Environmental-Social-and-Governance-ESG-Tenets-for-Sustainable-Development.pdf> (Accessed on 26/04/2024)

⁷⁹ ESG-Related Arbitrations: A New Kid on the Block., Available at <https://www.schoenherr.eu/content/esg-related-arbitrations-a-new-kid-on-the-block> (Accessed on 26/04/2024)

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

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violation of human rights⁸³. It has been observed that in arbitration proceedings, injunctive reliefs can be obtained in an expedited manner, and since ESG disputes usually require initial adjudication that cannot be delayed, injunctive reliefs from arbitration proceedings are best suited for such purposes⁸⁴. For example, in the event that a business practice could cause irreparable environmental damage, the parties concerned could take advantage of emergency arbitration procedures before the constitution of the arbitral tribunal⁸⁵.

Arbitration is therefore a key approach for effective management of ESG disputes. Other ADR processes are also vital in the ESG debate. For example, utilizing mediation in managing ESG related disputes can offer a quick, flexible, consensual, and win-win solution based on the mutually accepted interests of the parties therefore enhancing a sustainability-oriented business culture⁸⁶. Mediation has been described as an ESG tool and its use adds ESG value to businesses⁸⁷. It is therefore ideal in managing ESG disputes where there is need to preserve consumer and business relationships⁸⁸. Mediation plays a key role by offering an efficient and collaborative means to resolve disputes quickly and fairly⁸⁹. By opting for mediation, companies can avoid protracted litigation, reduce legal costs, and preserve valuable business

⁸³ Mondaq., 'International Arbitration and ESG: A New Trend in Dispute Resolution.' Available at <https://www.mondaq.com/pdf/1273354.pdf> (Accessed on 26/04/2024)

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Gramatidis.B & Emvalomenos. D., 'Sustainability in Dispute Resolution -Mediation as an ESG Practice.' Available at <https://www.bahagram.com/sustainability-in-dispute-resolution-mediation-as-an-esgpractice/> (Accessed on 26/04/2024)

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Maia. A., 'The Importance of Mediation in ESG: Promoting Sustainability in Corporations' Available at [https://mediationblog.kluwerarbitration.com/2024/03/08/the-importance-of-mediation-in-esg-promoting-sustainability-in-corporations/#:~:text=The%20Importance%20of%20Mediation%20in%20ESG%3A%20Promoting%20Sustainability%20in%20Corporations,-Andrea%20Maia%20\(Mediar360&text=Environmental%2C%20Social%2C%20and%20Governance%20,to%20align%20with%20ESG%20principles.](https://mediationblog.kluwerarbitration.com/2024/03/08/the-importance-of-mediation-in-esg-promoting-sustainability-in-corporations/#:~:text=The%20Importance%20of%20Mediation%20in%20ESG%3A%20Promoting%20Sustainability%20in%20Corporations,-Andrea%20Maia%20(Mediar360&text=Environmental%2C%20Social%2C%20and%20Governance%20,to%20align%20with%20ESG%20principles.) (Accessed on 26/04/2024)

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relationships⁹⁰. Mediation also promotes transparency and accountability, two essential pillars under the 'G' tenet of ESG⁹¹. By resolving disputes in an open and transparent manner through mediation, companies demonstrate their commitment to good governance and accountability⁹². Utilizing mediation also fosters participation therefore allowing companies to build stronger and long-term relationships with their stakeholders and to promote corporate social responsibility⁹³.

Another key ADR process that is applicable in ESG is negotiation. This technique is an informal process that involves the parties meeting to identify and discuss issues at hand so as to arrive at a mutually acceptable solution without the help of a third party⁹⁴. It can facilitate parties in coming up with creative solutions in various contexts including the workplace⁹⁵. Negotiation can therefore be utilized to achieve ESG requirements at workplaces such as fair labour practices that entail the right to equal pay, workplace safety and leave among other entitlements⁹⁶. Fair labour practices are a crucial component of the 'Social' pillar in the ESG debate⁹⁷. Negotiation is a big part of life and can be used effectively at workplaces by employees to negotiate with their employers for favorable working terms and conditions including fair labor practices which are vital in the ESG agenda⁹⁸.

It is therefore evident that arbitration and other ADR processes such as mediation and negotiation have a key role to play in realizing ESG tenets. Due to the increased integration of ESG tenets into commercial contracts, international trade and investment treaties, laws and regulations, it is

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

⁹³ Ibid

⁹⁴ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁹⁵ ESG., 'The Path to Equal Pay is Through Negotiation.' Available at <https://esgnews.bg/en/the-path-to-equal-pay-is-through-negotiation/> (Accessed on 26/04/2024)

⁹⁶ Ibid

⁹⁷ Stuart. L.G et al., 'Firms and social responsibility: A review of ESG and CSR research in corporate finance.' Op Cit

⁹⁸ ESG., 'The Path to Equal Pay is Through Negotiation.' Op Cit

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inevitable that ESG disputes will be majorly be managed through arbitration and other ADR processes⁹⁹. The attractive features of arbitration and ADR makes these processes appropriate means of managing ESG disputes¹⁰⁰. It is therefore necessary to infuse ESG tenets into arbitration and ADR for sustainability. It is also vital to address some of the key concerns in arbitration and ADR that affect the suitability of these processes in managing ESG disputes. These include enforceability challenges, court intervention, difficulties in quantification of damages in ESG disputes, power imbalances, and complexity of evidence¹⁰¹.

4.0 Infusing ESG tenets into Arbitration and ADR

It is necessary to infuse tenets into arbitration and ADR for sustainability and effective conflict management. This goal can be realized by integrating ESG clauses in commercial and investment contracts including clauses concerning respect for human rights, environmental conservation, fair labour practices and climate action¹⁰². This can ensure enforcement and compliance with ESG requirements by businesses¹⁰³. It has been observed that one way in which companies can embrace sustainable business practices is through incorporating ESG factors into commercial contracts¹⁰⁴. Such clauses can be incorporated into many different types of contracts including supply contracts, transactional documents, public sector contracts, employment agreements, shipping agreements, and insurance agreements among others¹⁰⁵. By introducing these commitments into contracts, businesses seek not only to avoid harmful business practices, but also to improve stakeholder

⁹⁹ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Op Cit

¹⁰⁰ Ibid

¹⁰¹ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Op Cit

¹⁰² Millar. L., 'Reviewing and Negotiating Climate Change and other ESG clauses in Commercial Contracts.' Available at <http://in-houseblog.practicallaw.com/reviewing-and-negotiating-climate-change-and-other-esgclauses-in-commercial-contracts/> (Accessed on 27/04/2024)

¹⁰³ Ibid

¹⁰⁴ International Bar Association., 'Report on Use of ESG Contractual Obligations and Related Disputes' Op Cit

¹⁰⁵ Ibid

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relationships, achieve wider reputational benefits and ensure regulatory compliance¹⁰⁶. In addition, businesses may be held accountable for breach of such commitments through arbitration and ADR¹⁰⁷. By integrating ESG clauses into contracts, organizations can demonstrate their commitment to comply with ESG standards while also subject themselves to dispute management processes that may flow from failure to comply with such standards¹⁰⁸. Arbitration and ADR may be utilized in such circumstances.

It is also necessary to uphold human rights in arbitration and ADR¹⁰⁹. Human rights standards are integral in the ESG agenda¹¹⁰. The 'S' tenet of ESG seeks to foster human rights among other social factors¹¹¹. Human rights are pertinent in arbitration since they may apply to arbitral proceedings through procedural safeguards in relation to impartiality and independence of the tribunal¹¹²; recourse to arbitration may come into tension with human rights norms guaranteeing the right of access to court, due process and the right to a public hearing¹¹³; and human rights can be considered in commercial arbitration as established trade practices involving the corporate responsibility to respect human rights¹¹⁴. They can also apply in the form of business and human rights arbitration, specifically designed to arbitrate human rights impacts or failures to respect human rights in the global supply chain¹¹⁵. In addition, human rights are often invoked in arbitration between states and foreign investors, through

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Muigua. K., 'Reflections on Human Rights in Arbitration' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reflections-on-Human-Rights-in-Arbitration.pdf> (Accessed on 27/04/2024)

¹¹⁰ Ibid

¹¹¹ Kiehne. D.O., 'Environmental, Social and Corporate Governance (ESG) -Also an Innovation Driver?' Op Cit

¹¹² Agius. M., 'Human Rights in International Arbitration' Available at <https://globalarbitrationreview.com/review/the-european-arbitration-review/2023/article/human-rights-in-international-arbitration> (Accessed on 27/04/2024)

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Ibid

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allegations of either state or investor infringements of such rights¹¹⁶. Human rights are therefore key in arbitration and ADR. The *United Nations Guiding Principles on Business and Human Rights*¹¹⁷ provide a framework for realizing Environmental, Social and Governance standards by enshrining the corporate responsibility to respect human rights towards attaining the ESG pillars through sound environmental management, protection of human rights and good corporate governance. In addition, the *Hague Rules on Business and Human Rights Arbitration*¹¹⁸ flow from the UN Guiding Principles on Business and Human Rights and provide a framework through which business entities can be compelled to comply with ESG standards including human rights through arbitration. It is therefore necessary to foster human right in arbitration in order to realize ESG factors especially the 'S' tenet that covers human rights.

In addition, it is vital to foster good corporate governance through ADR processes¹¹⁹. These mechanisms can promote good corporate governance by fostering effective management of governance conflicts¹²⁰. For example, it has been noted that mediation is often more appropriate where interests of the disputing parties need to be addressed and where commercial relationships need to be preserved and even enhanced¹²¹. It can therefore promote good corporate governance by fostering collaboration, cooperation and preserving relationships among various stakeholders in an organization¹²². Arbitration is

¹¹⁶ Ibid

¹¹⁷ United Nations Guiding Principles on Business and Human Rights., Available at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed on 27/04/2024)

¹¹⁸ The Hague Rules on Business and Human Rights Arbitration., Available at https://www.cilc.nl/cms/wp-content/uploads/2019/12/The-Hague-Rules-on-Business-and-HumanRights-Arbitration_CILC-digital-version.pdf (Accessed on 27/04/2024)

¹¹⁹ Muigua. K., 'Managing Governance Conflicts Through Alternative Dispute Resolution in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2020/08/Managing-Governance-Conflicts-Through-Alternative-Dispute-Resolution-in-Kenya-3.pdf> (Accessed on 27/04/2024)

¹²⁰ Ibid

¹²¹ King Report on Governance for South Africa, available at https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/king_iii/King_Report_on_Governance_fo.pdf (Accessed on 27/04/2024)

¹²² Ibid

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also applicable in managing governance conflicts between organizations and third parties¹²³. Negotiation is also suitable in managing governance conflicts such as conflicts between board members or board members and shareholders¹²⁴. ADR techniques can therefore foster good corporate governance by providing an avenue for effective management of governance conflicts¹²⁵. It has been noted that good corporate governance cannot thrive in an environment of conflicts¹²⁶. Good corporate governance is one of the fundamental factors in the ESG agenda under the 'G' pillar¹²⁷. Arbitration and ADR are vital in enhancing good corporate governance and it is therefore necessary to embrace these processes.

Finally, it is imperative for ADR practitioners including arbitrators and mediators to build capacity in relation to ESG tenets¹²⁸. ADR practitioners should enhance their capacity on ESG-related trends, regulations and standards, and ensure that they are proactive in complying with ESG best practices so as to promote appropriate ADR procedures for ESG-related disputes¹²⁹. Institutional capacity can also be strengthened by ADR institutions adopting specialized procedural rules for ESG disputes and further developing training and certification programmes in ESG dispute management¹³⁰. Capacity building is a crucial technique in infusing ESG tenets into arbitration and ADR.

5.0 Conclusion

The increasing adoption of ESG related practices into pre-existing environmental, social and governance models adopted by corporations is

¹²³ Muigua. K., 'Managing Governance Conflicts Through Alternative Dispute Resolution in Kenya' Op Cit

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Kiehne. D.O., 'Environmental, Social and Corporate Governance (ESG) -Also an Innovation Driver?' Op Cit

¹²⁸ Mondaq., 'International Arbitration and ESG: A New Trend in Dispute Resolution.' Op Cit

¹²⁹ Ibid

¹³⁰ Ibid

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resulting in ESG disputes¹³¹. ESG issues are therefore not only reshaping sustainability and corporate behavior across the globe but can also be a potential battleground in international disputes¹³². Effective management of ESG disputes is key in fostering sustainability and preserving the reputation and profitability of businesses¹³³. Arbitration and ADR techniques are ideal in managing ESG disputes. They can enhance privacy, confidentiality, efficiency, and flexibility while also fostering cost effective and expeditious management of ESG disputes¹³⁴. Arbitration also allows parties to select tribunals with expertise in ESG while its transnational applicability is relevant in cross-border ESG disputes¹³⁵. It is therefore necessary to infuse ESG tenets in arbitration and ADR. This ideal can be realized through integrating ESG clauses in commercial and investment contracts¹³⁶; upholding human rights in arbitration and ADR¹³⁷; fostering good corporate governance through ADR processes¹³⁸; and building capacity on ESG and ADR¹³⁹. Infusing ESG tenets into arbitration and ADR is integral in realizing sustainability and effective conflict management. This ideal should therefore be accelerated.

¹³¹ The ALP Review., 'The Importance of ESG and its effect on International Arbitration' Op Cit

¹³² Hamilton. J & Coulet-Diaz. M., 'Arbitration & the ESG Era' Op Cit

¹³³ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Op Cit

¹³⁴ Thailand Arbitration Center., 'Alternative Dispute Resolution: Significance of ESG in Arbitration.' Op Cit

¹³⁵ Akeb. S., 'Here We Go: ESG-Disputes in International Arbitration' Op Cit

¹³⁶ Millar. L., 'Reviewing and Negotiating Climate Change and other ESG clauses in Commercial Contracts.' Op Cit

¹³⁷ Muigua. K., 'Reflections on Human Rights in Arbitration' Op Cit

¹³⁸ Muigua. K., 'Managing Governance Conflicts Through Alternative Dispute Resolution in Kenya' Op Cit

¹³⁹ Mondaq., 'International Arbitration and ESG: A New Trend in Dispute Resolution.' Op Cit

Are Reparations Sufficient? Realising Real Justice for People of African Descent

Abstract

This paper critically examines the need for sufficient reparations for people of African descent. It argues that fostering reparatory justice is a key agenda towards advancing human rights for people of African descent globally due to the legacies of slavery and colonialism. Further, the paper posits that reparatory justice is necessary due to systemic racism, racial discrimination, economic injustices, xenophobia and related intolerance among other human rights violations currently being experienced by people of African descent globally. The paper examines the progress made towards fostering reparatory justice for people of African descent. It argues that the current framework of reparations is insufficient and disproportionate to the human rights violations and inequality experienced by people of African descent. In light of these concerns, the paper suggests approaches towards realising real justice for people of African descent towards human rights and prosperity.

1.0 Introduction

The concept of reparations has been embraced under international law towards acknowledging and repairing the causes and consequences of human rights violations and inequality in countries emerging from dictatorship, armed conflict, and political violence, as well as in societies dealing with racial injustice and legacies of colonialism¹. Reparations are recognized as part of the right to a remedy under international law for victims of serious violations of International Humanitarian Law (IHL) and human rights². It has been argued that victims of violations of IHL and human rights have a right to reparation³. This right entails measures

¹ International Center for Transitional Justice., 'Reparations' Available at <https://www.ictj.org/reparations> (Accessed on 24/06/2025)

² Ibid

³ Office of the United Nations High Commissioner for Human Rights., 'Reparations: OHCHR and Transitional Justice' Available at <https://www.ohchr.org/en/transitional-justice/reparations> (Accessed on 24/06/2025)

to redress violations of human rights by providing a range of material and symbolic benefits to victims, their families as well as affected communities and societies⁴. It has been pointed out that reparations must be adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered⁵.

It has been argued that states have an obligation under international law to provide reparations to victims for acts or omissions which can be attributed to a particular state and constitute gross violations of international human rights law or serious violations of IHL⁶. Further, in cases where a person or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the state if the state has already provided reparation to the victim⁷. Reparations can take various forms including compensation for any economically assessable damage, loss of earnings, loss of property and loss of economic opportunities⁸; rehabilitation including medical and psychological care, legal and social services⁹; restitution which involves returning victims to their original condition before violations occurred which can be through return of property, reinstatement of employment, returning victims to their original place of residence, and restoration of liberty¹⁰; and satisfaction which can be through public apologies to victims, cessation of continuing violations, truth-seeking, judicial sanctions, reburial of remains and commemoration of victims¹¹.

⁴ Ibid

⁵ Ibid

⁶ What are Reparations?., Available at <https://www.sierraclub.org/sites/default/files/M4BL%20Reparations%20Fact%20Sheet-compressed.pdf> (Accessed on 24/06/2025)

⁷ Ibid

⁸ Office of the United Nations High Commissioner for Human Rights., 'Reparations: OHCHR and Transitional Justice' Op Cit

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

Reparatory justice has been identified as key ideal towards advancing human rights and the Sustainable Development agenda¹². Ensuring adequate, effective and prompt reparations is vital towards addressing systematic and structural injustices that are prevalent globally, rectifying legacies of human rights violations including slavery and colonialism, and ensuring full and equal enjoyment of human rights for all towards Sustainable Development¹³.

This paper critically examines the need for sufficient reparations for people of African descent. It argues that fostering reparatory justice is a key agenda towards advancing human rights for people of African descent globally due to the legacies of slavery and colonialism. Further, the paper posits that reparatory justice is necessary due to systemic racism, racial discrimination, economic injustices, xenophobia and related intolerance among other human rights violations currently being experienced by people of African descent globally. The paper examines the progress made towards fostering reparatory justice for people of African descent. It argues that the current framework of reparations is insufficient and disproportionate to the human rights violations and inequality experienced by people of African descent. In light of these concerns, the paper suggests approaches towards realising real justice for people of African descent towards human rights and prosperity.

2.0 The Need for Reparatory Justice for People of African Descent

People of African descent comprise a heterogeneous group with extremely diverse histories, experiences and identities¹⁴. This group

¹² McEachrane. M., 'Reparatory Justice and Sustainable Development: A Way Forward?' Available at https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forum_s/forum-african-descent/sessions/session1/statements/2023-01-23/Michael-McEachrane-Reparatory-Justice.pdf (Accessed on 24/06/2025)

¹³ Ibid

¹⁴ United Nations Educational, Scientific and Cultural Organization., 'International Decade for People of African Descent (2015-2024),' Available at

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include descendants of Africans that were sold to the Americas during the transatlantic slave trade and recent migrants who have journeyed to the Americas, Europe and Asia in such of opportunities¹⁵. It has been pointed out that people of African descent live in many countries of the world, either dispersed among the local population or in communities¹⁶. The United Nations estimates that nearly 200 million people identifying themselves as being of African descent live in the Americas¹⁷. Further, many millions more live in other parts of the world, outside of the African continent¹⁸.

For many centuries, people of African descent have endured the worst forms of human rights violations. For instance, the transatlantic slave trade led to the capture and shipment of between 10 million and 12 million enslaved Africans across the Atlantic Ocean to the Americas from the 16th to the 19th century¹⁹. During the transatlantic slave trade, millions of people from Africa were kidnapped, forced onto European and American ships, and trafficked across the Atlantic Ocean to be enslaved, abused, and forever separated from their homes, families, ancestors, and cultures²⁰. It has been pointed out that the transatlantic slave trade represents one of the most traumatizing and horrific eras in human history that was characterized by gross human rights

<https://www.unesco.org/en/decades/people-african-descent/about> (Accessed on 25/06/2025)

¹⁵ Office of the United Nations High Commissioner for Human Rights., 'People of African Descent' Available at <https://adsdatabase.ohchr.org/UN%20Documents/Fact%20sheet%20on%20people%20of%20African%20descent.pdf> (Accessed on 25/06/2025)

¹⁶ Ibid

¹⁷ United Nations., 'People of African Descent' Available at <https://www.un.org/en/fight-racism/vulnerable-groups/people-of-african-descent> (Accessed on 25/06/2025)

¹⁸ Ibid

¹⁹ Transatlantic slave trade., Available at <https://www.britannica.com/topic/transatlantic-slave-trade> (Accessed on 25/06/2025)

²⁰ Equal Justice Initiative., 'The Transatlantic Slave Trade' Available at <https://eji.org/report/transatlantic-slave-trade/> (Accessed on 25/06/2025)

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violations²¹. For instance, millions of Africans died during the passage across the Atlantic Ocean²². Those who survived the passage were reduced to property in North and South America and the Caribbean Islands where they were subjected to forced labour, abuse and violence²³.

The African continent suffered significant costs due to the transatlantic slave trade. For instance, Africa was not only deprived of manpower and income, but also creativity, innovation, and relationships undermining the continent's development²⁴. As a result of the transatlantic slave trade, Africa was left destabilized and vulnerable to conquest and violence for centuries²⁵.

Further, the colonial era saw grave human rights violations against people of African descent. During the colonial era, Africans and people of African descent living outside Africa were forcibly evicted from their lands and subjected to oppressive colonial laws and policies²⁶. Africans and people of African descent endured several atrocities including torture, imprisonment and death as they valiantly stood against oppressive colonial regimes²⁷. Colonialism has had a lasting impact on

²¹ Ibid

²² Ibid

²³ Chutel. L., 'What Reparations are owed to Africa?' Available at <https://qz.com/africa/1915182/what-reparations-are-owed-to-africa> (Accessed on 25/06/2025)

²⁴ Ibid

²⁵ Equal Justice Initiative., 'The Transatlantic Slave Trade' Op Cit

²⁶ Office of the United Nations High Commissioner for Human Rights., 'Racism, discrimination are legacies of colonialism' Available at <https://www.ohchr.org/en/get-involved/stories/racism-discrimination-are-legacies-colonialism> (Accessed on 25/06/2025)

²⁷ Wasike. A., 'Kenya's Mau Mau Demand 'Justice, Recognition and Reparations' for Britain's Colonial Atrocities' Available at <https://www.aa.com.tr/en/africa/kenya-s-mau-mau-demand-justice-recognition-and-reparations-for-britain-s-colonial-atrocities/3121678> (Accessed on 25/06/2025)

people of African descent²⁸. For example, the weight of colonialism is still being carried today, most predominantly in the Global South, where political independence and decolonization have not been matched by Sustainable Development and the full enjoyment of human rights, including the right to development and socioeconomic rights²⁹. It has been pointed out that colonialism is responsible for a multitude of issues currently being witnessed in Africa, including persistent political instability and economic underdevelopment³⁰.

The legacies of slavery and colonialism had severe and long-lasting impacts on human rights and economic development for Africans and people of African descent. For example the transatlantic slave trade and colonialism while establishing the economic dominance of the west and colonial powers, profoundly disrupted societal structures in Africa resulting in the continent's development problems that continue to be experienced today³¹. It has been pointed out that the history of enslavement has shaped our modern world and still impacts us as evidenced by pervasive and systematic racism against people of African descent that is still prevalent globally³². Slavery shaped race relations and the development of racism as a philosophy for social organization, where most societies where it has touched are now structured in such a way that people of African descent are considered the most

²⁸ Office of the United Nations High Commissioner for Human Rights., 'Racism, Discrimination are Legacies of Colonialism' Op Cit

²⁹ Ibid

³⁰ Wu. Y., 'Colonial Legacy and Its Impact: Analysing Political Instability and Economic Underdevelopment in Post-colonial Africa' Available at https://www.shs-conferences.org/articles/shsconf/pdf/2024/13/shsconf_apmm2024_04016.pdf (Accessed on 25/06/2025)

³¹ United Nations Educational, Scientific and Cultural Organization., 'The deep legacy of Slavery' Available at <https://courier.unesco.org/en/articles/deep-legacy-slavery> (Accessed on 25/06/2025)

³² Ibid

marginalised people, and the descendants of the enslaved people still continue to suffer racism³³.

Due to slavery and colonialism, people of African descent continue to experience contemporary forms of racism, racial discrimination, xenophobia and intolerance³⁴. For instance, it has been pointed out that people of African descent are amongst the groups of poorer and most marginalized people all over the world³⁵. They are also poorly represented in education curricula, political positions, national cultures and the media, perpetuating the prejudices initiated and continued for centuries during the period of slavery and colonialism³⁶. Further, it has been observed that there are striking racial disparities in the level of enjoyment of human rights by people of African descent in all areas of life including health, education, employment, housing, access to justice and interactions with law enforcement³⁷. People of African descent continue to face racism and discrimination in all spheres of life including economic opportunities, political representation, access to justice enjoyment and the enjoyment of fundamental human rights including access to quality education, health, employment, and housing, which results in the intergenerational transmission of poverty³⁸.

In light of the foregoing challenges, reparatory justice has become a key ideal towards addressing the legacies of slavery and colonialism and

³³ United Nations., 'Unravelling the Legacies of Slavery' Available at <https://news.un.org/en/story/2024/04/1148166> (Accessed on 25/06/2025)

³⁴ Office of the United Nations High Commissioner for Human Rights., 'Racism, discrimination are legacies of colonialism' Op Cit

³⁵ United Nations Educational, Scientific and Cultural Organization., 'International Decade for People of African Descent (2015-2024),'Op Cit

³⁶ Ibid

³⁷ Office of the United Nations High Commissioner for Human Rights., 'Disaggregated Data to Advance the Human Rights of People of African Descent' Available at <https://www.ohchr.org/en/events/meetings/2023/disaggregated-data-advance-human-rights-people-african-descent> (Accessed on 25/06/2025)

³⁸ Office of the United Nations High Commissioner for Human Rights., 'People of African Descent' Op Cit

their role in perpetuating racism and injustices being experienced by people of African descent globally³⁹. It has been argued that reparatory justice for people of African descent is both a development priority and a moral imperative⁴⁰. Despite its vital importance, the quest for reparatory justice for people of African descent is yet to be attained. In the continuing pursuit of justice and equity for people of African descent, reparatory justice has emerged as a critical and transformative dialogue that requires the collective attention and action of all actors including Africans, people of African descent, and the wider international community, including state and non-state actors in order to address past wrongs and current discrimination and inequalities being experienced by people of African descent⁴¹. Historical injustices perpetuated against people of African descent due to slavery and colonialism have resulted in persistent inequalities in global financial systems, trade structures, and governance institutions⁴². Therefore, for reparations to be sufficient, they must go beyond financial compensation to address systematic and deep-rooted injustices and inequalities being experienced by people of African descent across all spheres of life⁴³.

3.0 Realising Real Justice for People of African Descent

It is imperative to foster real justice for people of African descent. For centuries, people of African descent were marginalized as part of the legacy of slavery and colonialism and subjected to some of the worst forms of human rights violations including murder, torture, and forced

³⁹ McEachrane. M., 'Reparatory Justice and Sustainable Development: A Way Forward?' Op Cit

⁴⁰ United Nations., 'Justice for Africans and People of African Descent Through Reparations' Available at https://www.un.org/osaa/sites/www.un.org.osaa/files/global_concept_note_final_15.05.25.pdf (Accessed on 25/06/2025)

⁴¹ Ibid

⁴² United Nations Economic Commission for Africa., 'Reparative justice for Africa and people of African descent must go beyond financial compensation - ECA Chief' Available at <https://www.uneca.org/stories/reparative-justice-for-africa-and-people-of-african-descent-must-go-beyond-financial> (Accessed on 25/06/2025)

⁴³ Ibid

labour⁴⁴. Further, it has been observed that whether as descendants of the victims of the transatlantic slave trade or as more recent migrants, people of African descent constitute some of the poorest and most marginalized groups globally⁴⁵. The legacy of slavery and colonialism has been attributed to the current human rights violations being experienced by peoples of African descent including racism, racial discrimination, xenophobia, inequality and intolerance⁴⁶.

Reparatory justice is therefore vital in addressing the legacies of slavery and colonialism and their role in perpetuating racism, discrimination, inequality and injustices being experienced by people of African descent globally⁴⁷. The *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁴⁸ sets out the international legal framework on reparations. The Principles stipulate that states are under legal obligation to provide reparations for gross violations attributable to them, as are persons found liable for relevant war-time violations⁴⁹. The Principles recognise various forms of reparations including *restitution* which involves restoration of victims' rights, property, and citizenship status; *rehabilitation* through psychological and physical support; *compensation* which can be in monetary form; *satisfaction* through acknowledgement of guilt, apology, burial of victims, and construction of memorial sites among other measures; and *guarantee of non-repetition* through

⁴⁴ United Nations., 'People of African Descent' Op Cit

⁴⁵ Ibid

⁴⁶ Office of the United Nations High Commissioner for Human Rights., 'Racism, discrimination are legacies of colonialism' Op Cit

⁴⁷ McEachrane. M., 'Reparatory Justice and Sustainable Development: A Way Forward?' Op Cit

⁴⁸ United Nations General Assembly., 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' A/RES/60/147., Available at <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf> (Accessed on 25/06/2025)

⁴⁹ Ibid

reformation of laws and civil and political structures that led to or fueled human rights violations (Emphasis added)⁵⁰.

It is therefore necessary to advance the reparations agenda for people of African descent. It has been argued that reparations in form of monetary compensation alone is not sufficient since slavery and colonialism fueled historical injustices that resulted in persistent inequalities in global financial systems, trade structures, employment, education systems, social services and governance institutions that continue to affect people of African descent⁵¹. Reparatory justice must therefore go beyond financial compensation in order to realise real justice for people of African descent⁵². In order to achieve this goal, it is vital to establish and implement a comprehensive reparations framework globally for people of African descent that includes a formal apology for human rights violations, repatriation support for people of African descent wishing to return to Africa, support and investment in indigenous communities globally, cultural and institutional rebuilding, ensuring adequate investments in people of African descent in key sectors including education and healthcare and economic empowerment for people of African descent⁵³.

In particular, it is vital for all countries to tackle racism, racial discrimination, intolerance and xenophobia against people of African descent including through reforming their laws and policies to foster human rights, equality and non-discrimination for all⁵⁴. Fostering

⁵⁰ Ibid

⁵¹ United Nations Economic Commission for Africa., 'Reparative justice for Africa and people of African descent must go beyond financial compensation - ECA Chief' Op Cit

⁵² Ibid

⁵³ International Services for Human Rights., 'ACHPR83: Advancing justice for Africans, people of African descent through reparations' Available at <https://ishr.ch/latest-updates/achpr83-panel-on-justice-for-africans-and-people-of-african-descent-through-reparations/> (Accessed on 25/06/2025)

⁵⁴ Office of the United Nations High Commissioner for Human Rights., 'Türk welcomes 2nd International Decade for People of African Descent, calls for bold action to deliver real change' Available at <https://www.ohchr.org/en/press->

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economic empowerment for people of African descent by ensuring equity and equality in economic access and opportunities can also enable them to exercise and enjoy their human rights towards real justice⁵⁵. Establishment of a Global Reparation Fund can also enhance access to effective and adequate compensation as a form of reparations for people of African descent⁵⁶. Further, it has been suggested that establishment of an international tribunal on atrocities related to the transatlantic trade and colonialism among other human rights violations faced by people of African descent throughout the years can foster real justice for people of African descent beyond financial compensation⁵⁷. It is also necessary to reform the global financial architecture to ensure equitable representation for Africa and people of African descent in shaping global economic policies in order to enhance inclusive and equitable development for all people in all countries⁵⁸. Fostering partnerships between Africa and the African diaspora can also promote economic and cultural collaboration towards advancing the well-being of people of African descent globally⁵⁹.

[releases/2024/12/turk-welcomes-2nd-international-decade-people-african-descent-calls-bold](#) (Accessed on 25/06/2025)

⁵⁵ United Nations General Assembly., 'Economic Empowerment of People of African Descent: Report of the Working Group of Experts on People of African Descent' A/HRC/54/67., Available at <https://documents.un.org/doc/undoc/gen/g23/134/27/pdf/g2313427.pdf> (Accessed on 25/06/2025)

⁵⁶ Kokutse. F., 'Ghana Reparations Summit Calls for Global Fund to Compensate Africans for Slave Trade' Available at <https://apnews.com/article/accra-slavery-reparation-conference-08f10f083359e9be57b74d6f6e983a8f> (Accessed on 25/06/2025)

⁵⁷ The East African., 'Slavery Tribunal? African, Caribbean Countries Unite on Reparations' Available at <https://www.theeastafrican.co.ke/tea/news/world/slavery-tribunal-africa-caribbean-unite-on-reparations-4578630> (Accessed on 25/06/2025)

⁵⁸ United Nations Economic Commission for Africa., 'Reparative justice for Africa and people of African descent must go beyond financial compensation - ECA Chief' Op Cit

⁵⁹ Ibid

4.0 Conclusion

Reparatory justice is key towards acknowledging and addressing the human rights violations against people of African descent flowing from slavery and colonialism and the resultant racism, racial discrimination, intolerance and inequalities they face. However, it is imperative to ensure that reparations are sufficient and go beyond monetary compensation. In order to realise real justice for people of African descent, it is vital to foster their economic empowerment, eliminate racism, racial discrimination and intolerance, reform the global financial architecture to ensure equity and inclusivity, and enhance partnerships and collaboration between Africa and people of African descent globally⁶⁰.

⁶⁰ Ibid

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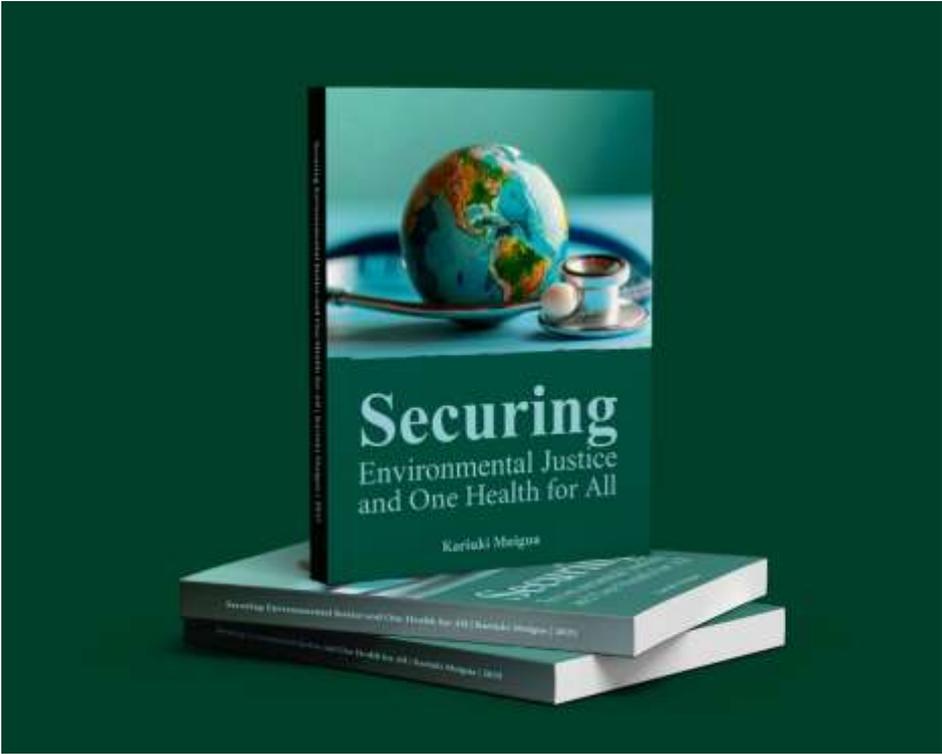
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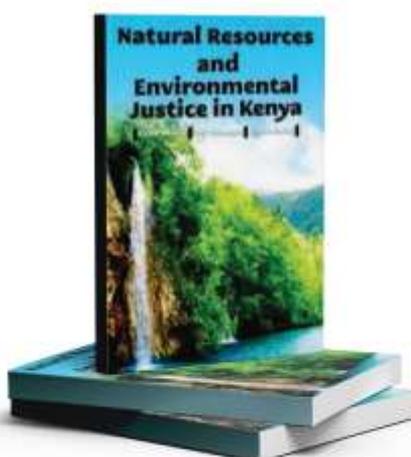
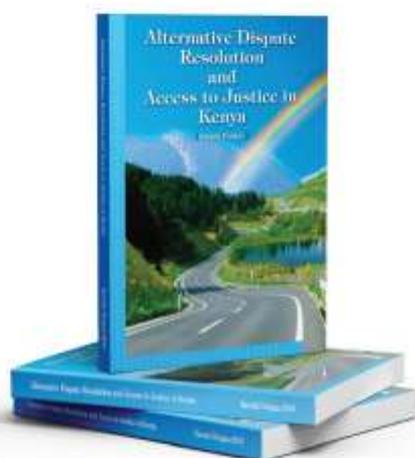
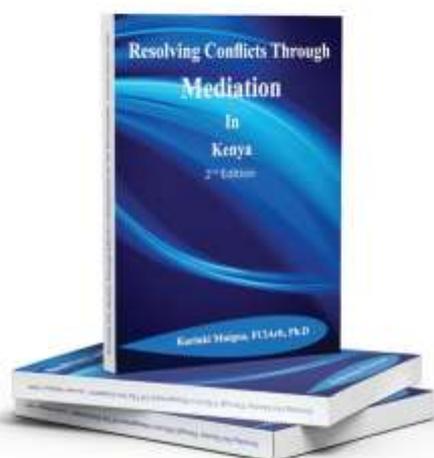
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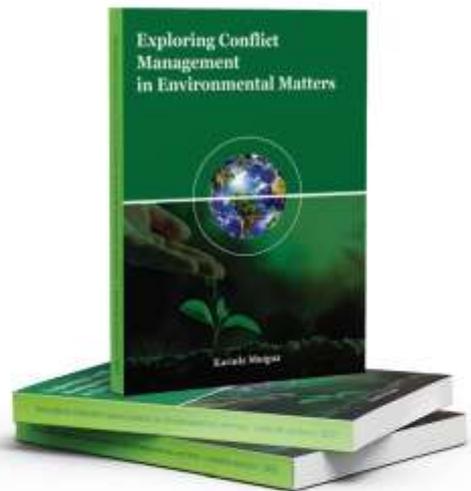
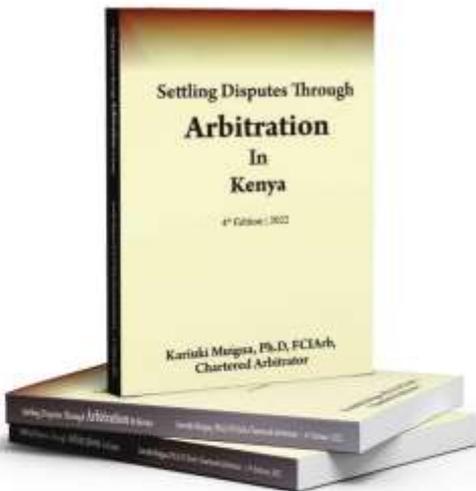
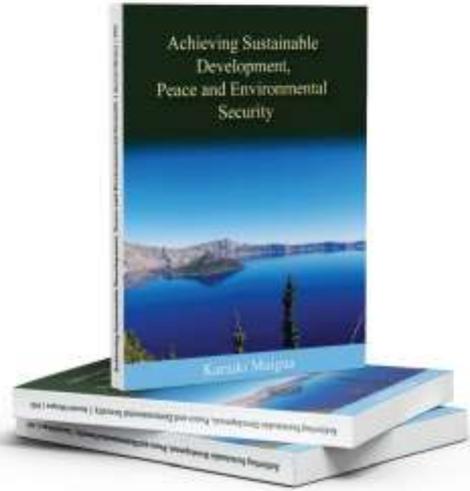
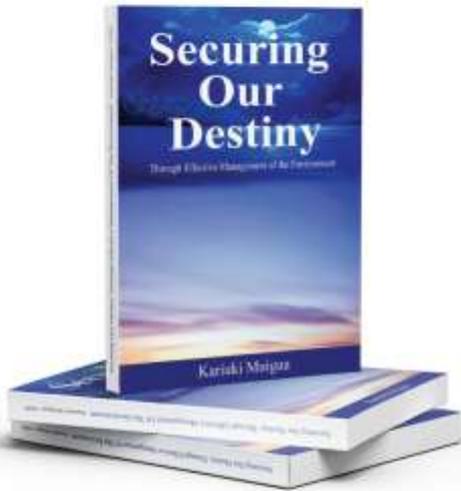
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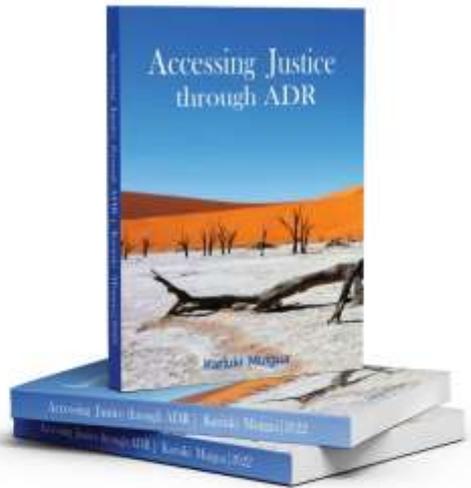
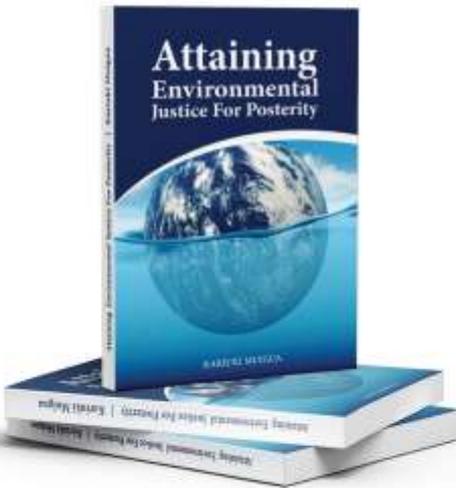
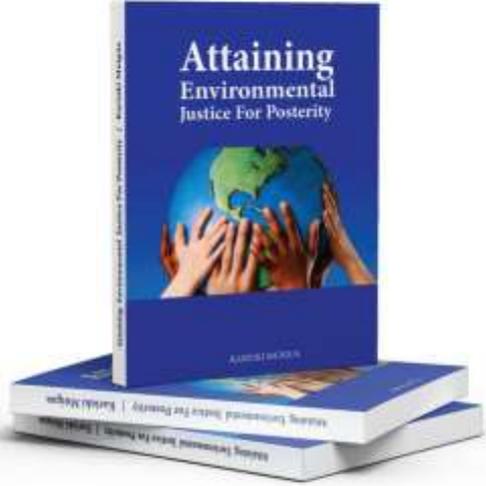
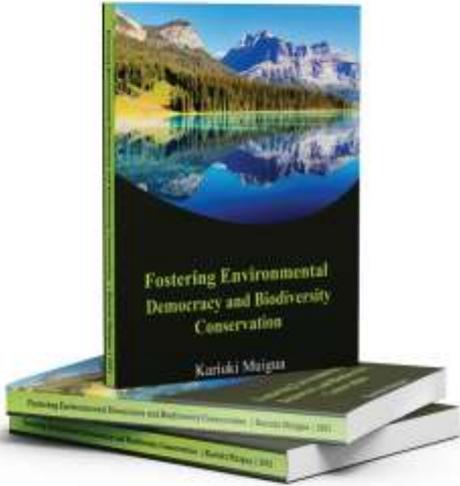
Other books by Kariuki Muigua

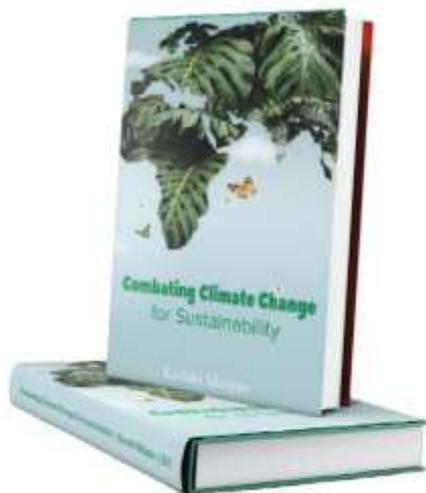
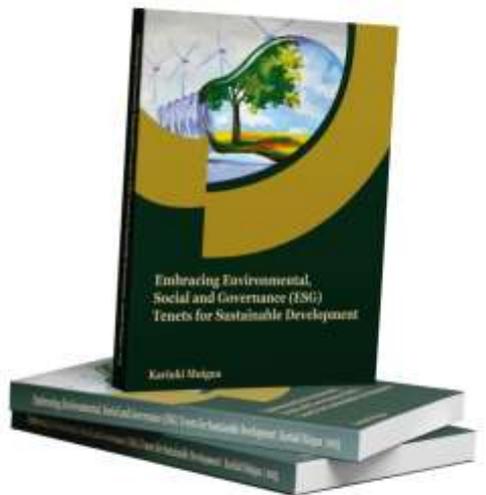


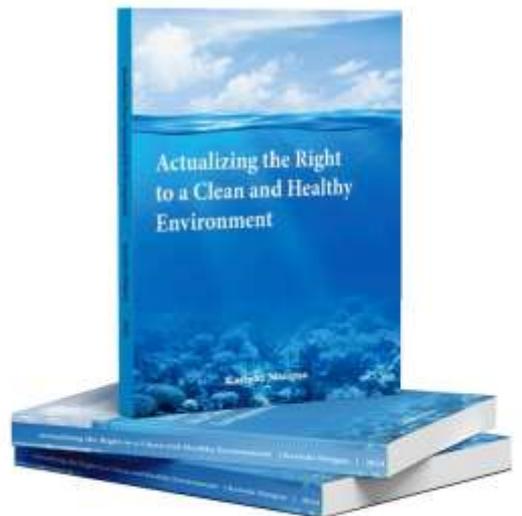
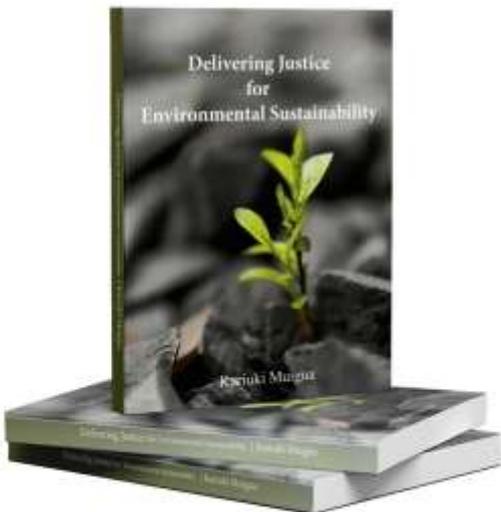
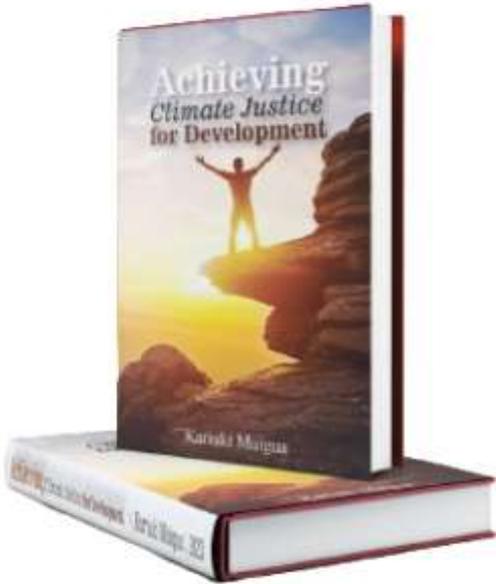


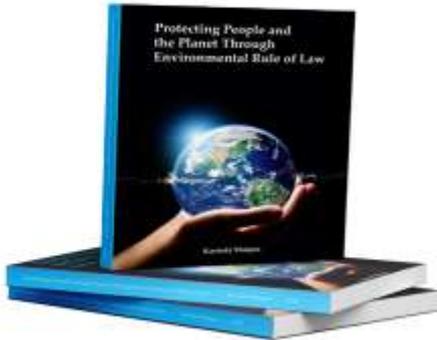
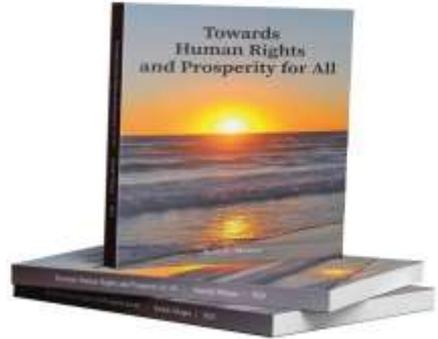
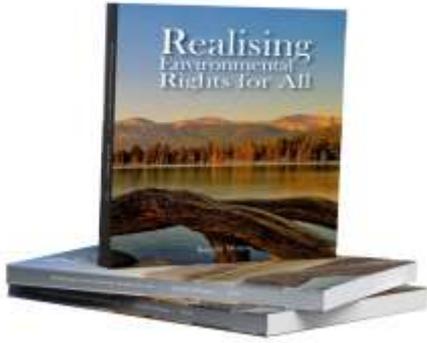












Towards Sustainability: Attaining Effective Conflict Management in Environmental Governance is a compendium that examines various themes.

The topics covered include: Sustainability; Conflict Management; Effective Environmental Governance; Conflict Management Mechanisms; Carbon Disputes; Peace Building; Clean & Healthy Environment; Environmental and Social Governance (ESG).

The emphasis is on Sustainability and Effective Management of Conflicts for the sake of the unborn, the present and future generations.

This book is aimed at Researchers, Students, Teachers, Environmentalists and the general reader.

It is hoped that the ideas within this book will ignite a spark and inspire the young and old ones to carry some ideas forward and grow the Climate Action movement to another level.

Author's Bio-data

Hon. Prof. Karuki Mugua Ph.D. FCIArb; OGW; C. Arb is a holder of a Doctor of Philosophy (Ph.D.) degree in law from the University of Nairobi attained in 2011. He also holds a Master of Laws (LL.M) degree attained in 2005 and Bachelor of Laws (LL.B) degree awarded in 1988 both from the University of Nairobi.

He is a Professor of Environmental Law and Conflict Management in the University of Nairobi Faculty of Law and the Centre for Advanced Studies in Environmental Law and Policy (CASELAP). He also teaches at the Wangari Maathai Institute for Peace and Environmental Studies. He is a Member of the Permanent Court of Arbitration (PCA) nominated by the Republic of Kenya and served as a Member of the National Environment Tribunal. He is a distinguished law scholar, Environmental Consultant, an accredited mediator and a Chartered arbitrator. He has widespread training and experience in both international and national commercial arbitration and mediation. He has received numerous awards and honours due to his exemplary work in academia and Alternative Dispute Resolution.

He was appointed as a member of the Protest Committee for the Asian International Arbitration Centre (Malaysia) (AIAC) Court of Arbitration, Chambers and Partners Global Guide 2024 ranked him in Band 1 of Dispute Resolution (Arbitrators), the ranking which recognizes the Top 6 Arbitrators in Kenya noting that he is "highly recommended as a leading lawyer". He was awarded the 'Academic Champion of ADR' at the inaugural Women in ADR Awards 2024. He was also awarded the Outstanding Mentor Award by his mentees in recognition of his guidance, care and support. He was recognized and awarded for his role as the Chartered Institute of Arbitrators (CIArb) Africa Trustee from 2019 to 2022 by CIArb Kenya Branch at the CIArb Kenya Branch ADR Excellence Awards 2022. Chambers and Partners Global Guide 2023 ranked him in Band 1 of Dispute Resolution (Arbitrators), the ranking which recognizes the Top 6 Arbitrators in Kenya noting that he is "highly recommended as a leading lawyer". His book, *Settling Disputes through Arbitration in Kenya*, 4th Edition, Glenwood publishers 2022, was awarded the Publication of the Year Award 2022 by CIArb Kenya Branch at the CIMB Kenya Branch ADR Excellence Awards 2022. He is the winner of ADR Practitioner of the Year Award at the AIAA Awards 2022. He is also the winner of the African Arbitrator of the Year 2022 award at the 3rd African Arbitration Awards held at Kigali Rwanda beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. In 2022, Chambers and Partners ranked him in Band 1 of Dispute Resolution (Arbitrators) noting that "He has been involved in several ground-breaking arbitrations," "has an acute understanding of arbitration" and "is respected for litigation". He was awarded the Chartered CIArb (Kenya Branch) ADR Lifetime Achievement Award 2023 as well as the ADR Publication of the Year Award 2021 by the Chartered Institute of Arbitrators (Kenya Branch). He also received the ADR Practitioner of the Year Award 2021 by the Law Society of Kenya, Nairobi Branch at the Nairobi Legal Awards. He is a recipient of the 8th C.B. Madan Prize of 2020 for commitment and outstanding scholarly contribution to constitutionalism and the rule of law in Kenya.

Hon. Prof. Mugua Ph.D. has on various occasions been appointed by leading arbitral institutions including the Chartered Institute of Arbitrators (CIArb-Kenya), the Nairobi Centre for International Arbitration (NCIA), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) among other institutions, as both a sole arbitrator and a member of an arbitral tribunal in arbitrations involving commercial disputes.

He is a Fellow of Chartered Institute of Arbitrators (CIArb-Kenya chapter). He is a member of the International Bar Association (IBA), the International Commission of Jurists, Human Rights Institute of the International Bar Association, the London Court of International Arbitration (LCIA), Chartered Institute of Arbitrators (UK) and Kenya Branch, Member of Commonwealth Lawyers Association and fellow of the Institute of Certified Public Secretaries of Kenya. He served as the Branch Chairman of CIArb-Kenya from 2012 to 2015. He was elected (opposed) to the Chartered Institute of Arbitrators (CIArb) Board of Trustees as the Regional Trustee for Africa, for the term beginning 1st January 2019 for a term of four years until 31st December 2022.

Hon. Prof. Mugua Ph.D. also serves as the Editor in Chief of three leading peer reviewed journals in East Africa, the *Alternative Dispute Resolution Journal*, the *Journal of Conflict Management and Sustainable Development* and *Journal of ADR & Sustainability*. The three journals have been hailed as leading publications in the fields of ADR, Conflict Management and Sustainable Development. The *Alternative Dispute Resolution Journal* was awarded the Arbitration Publication of the Year Award 2020 at the Africa Arbitration Awards.

He is an Advocate of the High Court of Kenya of over 35 years standing and practicing at Karuki Mugua & Co. Advocates, a firm that specializes in environmental and commercial law litigation and Alternative Dispute Resolution. The firm is also listed as a leading Kenyan commercial law firm in the distinguished *Manindile Hubbell Directory*.

He has authored the following books: *Alternative Dispute Resolution and Access to Justice in Kenya*, (Glenwood Publishers, Nairobi, 2015); *Resolving Conflicts through Mediation in Kenya*, (Glenwood Publishers, Nairobi, 2013); *Natural Resources and Environmental Justice in Kenya*, (Glenwood Publishers, Nairobi, 2015); *Nurturing Our Environment for Sustainable Development*, (Glenwood Publishers, Nairobi, 2016); *Settling Disputes through Arbitration in Kenya* (Glenwood Publishers, Nairobi) 1st Edition (2012); 2nd Edition (2012); 3rd Edition (2017); and 4th Edition (2022).

His other works include: *Securing Our Future through Effective Management of the Environment*, (Glenwood Publishers, Nairobi-2020); *Achieving Sustainable Development, Peace and Environmental Security* (Glenwood Publishers, Nairobi, 2021); *Fostering Environmental Democracy and Biodiversity Conservation*, (Glenwood Publishers 2021); *Exploring Conflict Management in Environmental Matters* (Glenwood Publishers 2022); *Attaining Environmental Justice for Poverty*, Volume 1 and 2, (Glenwood Publishers 2022); *Attaining Justice Through ADR*, (Glenwood Publishers 2022); *Nurturing our Environment for a Green Tomorrow*, (Glenwood Publishers 2023); *Resolving Trade Sustainable Development*, (Glenwood Publishers 2023); *Embracing Environmental Social and Governance (ESG) Issues for Sustainable Development*, (Glenwood Publishers 2023); *Combating Climate Change for Sustainability*, (Glenwood Publishers 2023); *Attaining Climate Justice for Development*, (Glenwood Publishers 2023); *Promoting The Rule of Law for Sustainable Development*, (Glenwood Publishers 2024); *Attaining the Right to a Clean and Healthy Environment*, (Glenwood Publishers 2024); *Delivering Justice for Environmental Sustainability* (Glenwood Publishers 2024); *Realizing Environmental Rights for All* (Glenwood Publishers 2024); *Towards Human Rights and Prosperity for All* (Glenwood Publishers 2024); *Protecting People and the Planet through Environmental Rule of Law* (Glenwood Publishers 2024); *Securing Lasting Peace and Justice in Africa through Appropriate Dispute Resolution* (Glenwood Publishers 2025); *Attaining Gender Equity for Inclusive Development in Africa* (Glenwood Publishers 2025); *Nurturing Healthy Ecosystems for People and Planet* (Glenwood Publishers 2025); *Integrating Sustainability into Arbitration & ADR for Justice & Development* (Glenwood Publishers 2025); and *Securing Environmental Justice and Our Health for All* (Glenwood Publishers 2025).

ISBN 9789966046482



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