

**Achieving Environmental Justice through
Alternative Dispute Resolution and the Court
Process**

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Achieving Environmental Justice through Alternative Dispute Resolution and the Court Process

Kariuki Muigua*

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.

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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->

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

[efficiency/environmentally-sound#:~:text=Rational%20environmental%20management%20means%20making,regenerative%20capacity%20of%20natural%20systems.](#) (Accessed on 14/09/2024)

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)

and Sustainable Development⁹. In 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

⁹ Ibid

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)

triple planetary crisis of climate change, biodiversity loss and pollution, the concept of justice increasingly embraces environmental justice¹⁴.

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

¹⁴ Ibid

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)

same degree of protection from environmental and 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, and pollution in

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

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/rollhr/human-rights/environmental-justice> (Accessed on 14/09/2024)

³⁴ Ibid

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 by environmental challenges such as pollution can use ADR techniques such as negotiation and mediation with the party most able to resolve the

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

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.

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

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

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

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.

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

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

⁵⁷ JAMS ADR., 'What is ADR' Op Cit

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 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

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

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.

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

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

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

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

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

⁸⁰ Ibid

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 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.

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)

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)

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 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*

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)

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)

*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 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.

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

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

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.

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

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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