

Best Practices in Environmental Conflicts Management: Developing World Perspectives

Kariuki Muigua

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Abstract

This paper offers a discussion on developing world perspectives as far as management of environmental conflicts is concerned. The argument is that while environmental conflicts occur the world over, the stakes are usually high in ~~the~~ the developing world as the communities have a closer relationship and interest in these resources due to high dependence on them for their livelihoods. These economies also largely rely on these resources for their development needs. The third world economies also face the greater challenges of high population, poverty, illiteracy and corruption, all of which make the environmental resources all the more critical and thus increasing chances of conflicts related to access and control of environmental resources. The author argues that the foregoing issues call for a unique approach to management of these resources and the conflicts that arise in order to take into account the unique circumstances that face the third world countries. This, the paper argues, is important if these countries are to achieve the global goals on sustainable development agenda.

1. Introduction

The conservation of biodiversity and sustainable development are two global objectives that are significantly threatened by the pervasive problem of conservation conflicts. Conflicts are expected to become more frequent and more intense as the human population grows and more **serious** environmental problems, such habitat destruction and climate change, become more serious.¹ It has rightly been pointed out that in the twenty-first century, our ability to sustain development will depend on two converging threats to humanity: rising inequality between and within nations, and the complex risks from environmental change as we continue to push Earth's planetary boundaries. This is highlighted by global dialogues around the Sustainable Development Goals (SDGs) in the

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¹ Hodgson ID, Redpath SM, Sandstrom C & Biggs D (2020) The State of Knowledge and Practice on Human-Wildlife Conflicts. O'Neill M (Editor) & Villat J (Editor) The Luc Hoffman Institute. Gland, Switzerland. <https://luchoffmanninstitute.org/the-surprising-new-way-to-approach-human-wildlife-conflict-a-new-report/> [Accessed on 10 August 2022].

context of the post-2015 development agenda and the UN Conference on Sustainable Development (Rio+20).²

This ~~paper~~^{chapter} highlights the emerging global best practices as far as environmental conflict management is concerned but also has a specific focus on the developing world's approaches to environmental conflicts management.

2. International Environmental Law Framework and Environmental Conflict Management

A complex ecosystem of international environmental law has resulted from state efforts to manage shared environmental resources, protect natural ecosystems, and lessen environmental impact.³ There are many instances of environmental harm that give rise to duty and potential liability in times of peace, and international environmental law (IEL) covers these situations.⁴ Due to the potential catastrophic harm that armed conflict may have to the environment and its long-term effects on the environment and human health, international environmental law is also crucial to take into account during times of war.⁵

This is achieved through application of multilateral environmental agreements and principles of IEL; Customary international environmental law and soft law instruments; and scholarly commentaries.⁶ The majority of multilateral environmental accords is built upon and makes reference to certain international environmental law concepts. The *Rio Declaration on Environment and Development*, which was approved during the *Rio Conference* in 1992, codified

² Khoday, K., Inglis, S., Hussein, S., Scott, T. and Raine, A., *Environmental Justice: Comparative Experiences in Legal Empowerment.* United Nations Development Programme: New York, NY, USA (2014), p.5. <<https://www.undp.org/sites/g/files/zskgke326/files/publications/Environmental-Justice-Comparative-Experiences.pdf>> [Accessed on 10 August 2022].

³ Mitchell, R.B., Andonova, L.B., Axelrod, M., Balsiger, J., Bernauer, T., Green, J.F., Hollway, J., Kim, R.E. and Morin, J.F., "What we know (and could know) about international environmental agreements." *Global Environmental Politics* 20, no. 1 (2020): 103-121, p. 103 <https://rmitchel.uoregon.edu/sites/rmitchell.uoregon.edu/files/resume/articles_refereed/2020-globalenvlpolitics-introductiontoieadb.pdf>

⁴ Mrema, E., Bruch, C. and Diamond, J., *Protecting the environment during armed conflict: an inventory and analysis of international law.* UNEP/Earthprint, 2009, p.34 <https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&isAllowed=> Accessed 3 September 2022.

⁵ Leins K (ed), 'International Environmental Law and Principles', *New War Technologies and International Law: The Legal Limits to Weaponising Nanomaterials* (Cambridge University Press 2022) <<https://www.cambridge.org/core/books/new-war-technologies-and-international-law/international-environmental-law-and-principles/E5DC37DB202991EF3959FD5535429ED7>> accessed 3 September 2022.

⁶ Ibid, p.34.

many of these, including state sovereignty over own resources and the notion of common but differentiated responsibilities. International environmental law principles can serve a variety of purposes.⁷ It is usually challenging to determine the bounds or the precise international legal status of any general concept or rule in the absence of unambiguous judicial authority and in light of the contradictory interpretations under state practice. The application of each principle in relation to a specific action or incident, and its ramifications, must be taken into account on the facts and circumstances of each case, taking into account a number of factors, such as the principle's origin, the text's content and language, the specific action at issue, the activity's environmental and other consequences, and the circumstances under which it occurs (including the actors and the geographical region).⁸ The legal position of certain broad concepts or norms may be less established than that of others, while others may indicate growing legal duties. In each instance, the concept or rule enjoys widespread acceptance and is reflected in widespread state practice by frequent usage or citation in a framework of international law.⁹

Pacta sunt servanda, which literally translates to "agreements must be respected," is the foundational concept of international law. A State is obligated by the conditions of a multilateral environmental agreement once it joins as a Party and must concentrate on its implementation. States frequently have to develop or modify policies and laws in order to carry out the obligations of multilateral environmental accords. Institutional setup or reorganization, as well as being ready for routine reporting on implementation, may be additional duties. Multilateral environmental

⁷ Vietnam Ministry of Natural Resources and Environment. Department of Legal Affairs (2017) *International Environmental Law: Multilateral Environmental Agreements*, p. 20. Available at: <https://wedocs.unep.org/20.500.11822/21491> (Accessed: 3 September 2022).

The other principles include:

- (1) *the principle of preventive action;*
- (2) *the principle of co-operation;*
- (3) *the principle of sustainable development;*
- (4) *the precautionary principle; and*
- (5) *the polluter pays principle.*

(Peel J and Sands P (eds), 'General Principles and Rules', *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) <<https://www.cambridge.org/core/books/principles-of-international-environmental-law/general-principles-and-rules/FCABFE1A87CAC34F18C0C0F80C706F>> accessed 3 September 2022).

⁸ Peel J and Sands P (eds), 'General Principles and Rules', *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) <<https://www.cambridge.org/core/books/principles-of-international-environmental-law/general-principles-and-rules/FCABFE1A87CAC34F18C0C0F80C706F>> accessed 3 September 2022.

⁹ *Ibid.*

accords can include compliance checks and dispute resolution processes. If the Parties fail to carry out their **obligatory** obligations, the compliance mechanism may be utilized to facilitate compliance and the dispute resolution processes may be applied to address disagreements that may arise between the Parties.¹⁰

One of the most significant changes in recent decades has been the rise in environmental awareness among people all around the world. More than ever before, globalization has aided in bridging the gap between societies and the state of their environments. At the same time, environmental issues are spreading beyond national borders and have a significant influence on Earth's health. Thus, it has become crucial to change economic development and progress to a route toward environmental sustainability that more effective environmental laws and legal frameworks be developed across the globe.¹¹

Environmental law serves as a cornerstone for environmental sustainability, and it is increasingly important that its goals be fully realized in light of mounting environmental pressures.¹² Around the world, both urban and rural populations rely heavily on informal systems to administer justice. In the *Declaration of the High-level Meeting on the Rule of Law*¹³, Member States acknowledged that everyone, including women and members of vulnerable groups, should have full and equal access to informal judicial systems where they are in conformity with international human rights law.¹⁴

The *Declaration* emphasizes the ‘importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding, **stress**es that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations, and **stress** the need for the international community, including

¹⁰ Vietnam Ministry of Natural Resources and Environment. Department of Legal Affairs (2017) *International Environmental Law: Multilateral Environmental Agreements*, pp. 16-17. Available at: <https://wedocs.unep.org/20.500.11822/21491> (Accessed: 3 September 2022).

¹¹ Anshu Singh, “Principles and Development of International Environmental Law”, *Pen Acclaims*, Volume 10, May 2020, ISSN 2581-5504, pp.1-2. < <http://www.penacclaims.com/wp-content/uploads/2020/06/Anshu-Singh.pdf>>

¹² Norul Mohamed Rashid, ‘Environmental Law’ (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/land-property-environment/environmental-law/>> accessed 3 September 2022.

¹³ UN General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels: resolution / adopted by the General Assembly, 30 November 2012, A/RES/67/1.*

¹⁴ Norul Mohamed Rashid, ‘Informal Justice’ (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/informal-justice/>> accessed 3 September 2022.

the United Nations, to assist and support such countries, upon their request, as they may face special challenges during their transition'.¹⁵

In recognition of the place of both formal and informal mechanisms in global conflict management framework, and in line with paragraph 15 of the above mentioned *Declaration*, it has been observed that in many developing countries, almost 80% of cases are settled through informal systems, which are also sometimes referred to as "traditional," "indigenous," "customary," or "non-state" justice systems. The protection of land, property, and cattle; the settlement of family and community disputes; and the preservation of entitlements, such as access to public services, are all topics that informal justice systems frequently deal with. They also handle personal security and local crime.¹⁶ Despite the fact that delivering accessible justice is a state duty mandated by international human rights standards, this duty does not call for all justice to be delivered by means of formal court institutions. The provision of justice through informal justice systems is not against human rights standards if done in a manner that respects and upholds human rights. In fact, it can be a way to better fulfil human rights obligations by providing accessible justice to people and communities where the formal justice system is unable to do so due to capacity issues or geographical limitations.¹⁷ The use of non-combative approaches to conflicts and disputes is also reflected in various international environmental law regulatory instruments. For instance, through its Non Compliance procedure, which aims to provide a multilateral mechanism for non-confrontational discussion rather than adjudication and aid parties in seeking an amicable resolution to protocol-related problems, the Montreal Protocol offers an effective method for resolving ~~conflicts~~disputes.¹⁸

The main driver of innovation in international environmental law has been close interaction with national laws and policies, to the point where economists have noted the "non-ergodic world" of environmental regimes, which is teeming with regulatory approaches that are new, frequently

¹⁵ Para. 18, UN General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels: resolution* / adopted by the General Assembly, 30 November 2012, A/RES/67/1.

¹⁶ Norul Mohamed Rashid, 'Informal Justice' (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/informal-justice/>> accessed 3 September 2022.

¹⁷ 'Informal Justice Systems | United Nations Development Programme' (UNDP) <<https://www.undp.org/publications/informal-justice-systems>> accessed 3 September 2022.

¹⁸ Siang E, 'Main Principles of International Environmental Law' <https://www.researchgate.net/publication/318125898_Main_principles_of_International_Environmental_Law> accessed 3 September 2022.

divergent, and competing. This world is subject to unforeseeable natural and technological changes as well as being subject to unforeseeable natural and technological changes.¹⁹

Rapid environmental change poses challenges to the global order that are becoming acknowledged as defining characteristics of our time. Some academics have argued that it is necessary to investigate normative and institutional responses in international law to such environmental change by focusing on two central issues: first, whether law can foresee, prevent, and adapt to environmental transformations; and second, whether international legal responses to social, economic, and technological innovation can adequately reflect the evolving needs of contemporary societies at national and international scales.²⁰ There is a need for continued discussions around these issues as they not only affect the realization of sustainable development agenda but also the effective responses and management of related environmental conflicts. Africa must also strive to be part and parcel of these debates in its efforts to achieve 2030 Agenda on Sustainable Development Goals.

3. Peacebuilding and Conflict Management in Africa: Continental Status

Conflicts have occurred often throughout Africa, which has been caused by a number of factors, including but not limited to natural resources, the struggle for political dominance, poverty, negative ethnicity, religion, environmental causes, and outside pressure, among others.²¹ It is also important to note that some of the frequent ethnic conflicts have been linked to the former colonial rulers in Africa, where colonial authorities drew local and national territorial boundaries based on a rather simplistic understanding of the nature of ethnic communities, forcing people who previously lived apart into political entities and dividing those who previously lived together,

¹⁹ Sand P, 'The Evolution of International Environmental Law', *The Oxford Handbook of International Environmental Law* (2007)

<https://www.researchgate.net/publication/288662385_The_Evolution_of_International_Environmental_Law/link/56c8689b08aee3cee53d619e/download> accessed 3 September 2022.

²⁰ Craik, Neil, Cameron Jefferies, Sara Seck, and Timothy Stephens. "Global Environmental Change and Innovation in International Law." *Articles, Book Chapters, & Popular Press*, January 1, 2018.

https://digitalcommons.schulichlaw.dal.ca/scholarly_works/248. Accessed on 3 September 2022.

²¹ 'The Environmental Challenges in Sub Saharan Africa'

<<http://web.mit.edu/africantech/www/articles/EnvChall.htm>> accessed 3 June 2022; Macartan Humphreys, 'Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms' (2005) 49 *Journal of conflict resolution* 508; AJ Olaosebikan, 'Conflicts in Africa: Meaning, Causes, Impact and Solution' (2010) 4 *African Research Review* 549; Huma Haider, *Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report*36. Brighton, UK: Institute of Development Studies, 15

<https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15570/EIR%2036_Conflict_analysis_of_North_Eastern_Kenya.pdf?sequence=1&isAllowed=y> accessed 3 June 2022.

undermining the normal process of state creation and nation building.²² This has arguably been a major source of conflict among communities in some African countries, such as Nigeria.²³

According to the African Union, "in 2013, during the 50th Anniversary of the OAU/AU, African Heads of State and Government made a Solemn Declaration committing to tackle head-on the scourge of violent conflict in Africa and pronounced their firm determination to achieve the noble goal of a conflict-free Africa, thereby making peace a reality for the African people, ridding the continent of wars, violent conflicts, human rights violations, humanitarian crises, as well as preventative measures."²⁴

African Union's *Agenda 2063*, Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future²⁵, seeks to achieve a peaceful and secure Africa.²⁶

It is noteworthy that the continent will not make any tangible progress in peacebuilding unless individual states commit to work towards achieving sustainable peace in their territories using both indigenous and contemporary approaches that are effective.

4. African Approaches on the Management of Environmental Conflicts

In order to present the African tale as viewed through the eyes of the African people, it is important to not only emphasize on the difficulties and challenges facing the African continent but also how they may be overcome utilizing indigenous solutions.

The assertion that African issues may be solved locally is supported by the continent's abundance of natural resources, which has led to many exploration and exploitation efforts across the whole of the continent.²⁷ Africa has a large quantity of natural resources like oil, gold, diamonds, iron, cobalt, copper, bauxite, silver, uranium, titanium, petroleum among others.²⁸

²² Lillian Mworira and J Ndiku, 'Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies', 162.

²³ Ibid, 162-163; see also Simone Datzberger, 'Civil Society as a Postcolonial Project: Challenging Normative Notions in Post-Conflict Sub-Saharan Africa', *Negotiating Normativity* (Springer 2016).

²⁴ African Union, 'Silencing the Guns: Creating Conducive Conditions for Africa's Development' (*The East African*) <<https://www.theeastafrican.co.ke/tea/sponsored/silencing-the-guns-creating-conducive-conditions-for-africa-s-development-1435754>> accessed 3 June 2022.

²⁵ 'Agenda 2063: The Africa We Want. | African Union' <<https://au.int/en/agenda2063/overview>> accessed 3 June 2022.

²⁶ African Union, *Agenda 2063*, 2 <https://au.int/sites/default/files/documents/33126-doc-03_popular_version.pdf> accessed 3 June 2022.

²⁷ Rajaram, A., "Rich Countries, Poor People; Will Africa's Commodity Boom Benefit the Poor", available on <http://blogs.worldbank.org/african/rich-countries-poor-people-will-africa-s-commodity-boom-benefit-poor> [Accessed on 3 May 2022].

²⁸ World Resources, 'Natural Resources of Africa',

The people of Africa are entitled to the richness of the continent's natural resources. Governments in African nations are in charge of protecting these resources. Utilizing Africa's resources should assist in achieving the economic rights of its citizens as outlined in different international legal agreements and state legislation.²⁹

While a quick glance would suggest that Africa is a wealthy continent with a population that is expected to have a high standard of living and excellent development, as well as good infrastructure, high employment rates, high-quality education, good health, and a long life expectancy, as well as a conflict-free region where everyone is at ease with life due to the abundance of resources, the reality in Africa is ironically glaringly the opposite.³⁰ Instead of being used to solve African people's problems, Africa's resources are fueling the world economy while Africa itself remains economically crippled; exploited and neglected.³¹

This unfortunate state of affairs may be largely attributed to national leaders who, despite being entrusted with the responsibility of protecting natural resources for the benefit of the populace, have betrayed that trust by engaging in high levels of corruption in the application of natural resource revenues and by not having the interests of the populace at heart when they enter into resource extraction contracts. In actuality, Africans have been denied their right to profit from and have control over how their natural resources are used. There is a large majority of poor people and a very small percentage that are highly affluent.³²

At the continental level, the *Africa Mining Vision 2009*³³ was expected to address most of these challenges including: exploitative multinational corporations, lack of expertise and corruption, and African countries negotiating unfavourable mining development agreements. The *Africa Mining Vision* was formally established in 2009 by the African Union (AU), to promote equitable, broad-based development through the prudent utilization of the continent's natural

available at www.worldresources.envi.org/natural-resources-africa/ [Accessed on 3 May 2022].

²⁹ Muigua, K., *Nurturing Our Environment for Sustainable Development*, p. 107.

³⁰ Ibid.

³¹ Ibid.

³² *World Bank, Economic Survey for Sub-Saharan Africa, 2013, Africa Pulse October, 2013 Vol.8* available at http://www.worldbank.org/content/dam/Worldbank/document/Africa/Report/Africas-Pulse-brochure_Vol8.pdf [Accessed 3 June 2022].

³³ African Union, *Africa Mining Vision: "Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development"*, (United Nations Economic Commission for Africa (ECA), February, 2009). Available at https://www.uneca.org/sites/default/files/PublicationFiles/africa_mining_vision_english.pdf [Accessed on 3 June 2022].

wealth.³⁴ However, African countries still struggle with making the mineral resources work for them, in uplifting the lives of their people.³⁵ For instance, this is demonstrated in the case of Nigeria where it has been reported that, despite the enactment of various Aacts, the culture of impunity

³⁴ African Union, *Africa Mining Vision, February 2009*. Available at https://au.int/sites/default/files/documents/30995-doc-africa_mining_vision_english_1.pdf [Accessed 3 June 2022].

This shared vision will comprise:

- *A knowledge-driven African mining sector that catalyses & contributes to the broad-based growth & development of, and is fully integrated into, a single African market through:*
 - *Down-stream linkages into mineral beneficiation and manufacturing;*
 - *Up-stream linkages into mining capital goods, consumables & services industries;*
- *Side-stream linkages into infrastructure (power, logistics; communications, water) and skills & technology development (HRD and R&D);*
 - *Mutually beneficial partnerships between the state, the private sector, civil society, local communities and other stakeholders; and*
 - *A comprehensive knowledge of its mineral endowment.*
- *A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities;*
- *A mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy;*
- *A mining sector that has helped establish a competitive African infrastructure platform, through the maximisation of its propulsive local & regional economic linkages;*
- *A mining sector that optimises and husbands Africa's finite mineral resource endowments and that is diversified, incorporating both high value metals and lower value industrial minerals at both commercial and small-scale levels;*
- *A mining sector that harnesses the potential of artisanal and small-scale mining to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development; and*
- *A mining sector that is a major player in vibrant and competitive national, continental and international capital and commodity markets.*

³⁵ See generally, Abuya, W.O., "Mining Conflicts and Corporate Social Responsibility in Kenya's Nascent Mining Industry: A Call for Legislation," *In Social Responsibility, IntechOpen, 2018*; African Union, *Assessment of the Mining Policies and Regulatory Frameworks in the East African Community for Alignment with the Africa Mining Vision, op cit.*; Kimani, M., "Mining to profit Africa's people," *Africa Renewal 23, no. 1 (2009): 4-5*; Bush, R., "Conclusion: mining, dispossession, and transformation in Africa," *In Zambia, mining, and neoliberalism*, pp. 237-268. Palgrave Macmillan, New York, 2010. Available at https://www.sahistory.org.za/sites/default/files/file%20uploads%20alastair_fraser_miles_larmer_zambia_mining_anbook4you.pdf#page=260 [Accessed 3 June 2022]; Murombo, T., "Regulating mining in South Africa and Zimbabwe: Communities, the environment and perpetual exploitation," *Law Env't & Dev. J. 9 (2013): 31*.

and corruption has continued to occupy the country's oil industry and poverty reduction remains elusive.³⁶

Kenya is no exception as it has a number of mineral deposits albeit in smaller amounts, which, as already pointed out, have not contributed much to the country's GDP as would be expected. The communities are also yet to boast of any significant benefits from the mining activities going on within their regions.³⁷ The challenges affecting the extractives sector in Kenya are not only limited to those related to modes of benefit sharing. There has been a general lack of openness, transparency and accountability as far as the mining activities are concerned.

Kenya and many other African nations have yet to see the effects of the Africa Mining Vision, which was launched in 2009 and aims to promote transparent, equitable, and optimal exploitation of mineral resources. This is because there are still many instances of illicit financial flows, a lack of mineral value addition, and poverty among communities living in mining areas.³⁸

The extractives industry in Kenya holds high hopes for the Kenyan people with not only increased revenues but also lowered cost of living as the prices of petroleum products have a significant effect on the cost of essential commodities in the country.³⁹ Some of the mechanisms that are meant to enhance the economies of the national, county governments and communities through benefit sharing include but not limited to: direct investment in projects that benefit the people, jobs and employment creation and technology transfer amongst others. Notably, this is in line with one of the [\(Extractive Industries Transparency Initiative \(EITI\)\)](#) principles that the prudent

³⁶ Poncian, J., & Kigodi, H. M., "Transparency initiatives and Tanzania's extractive industry governance," *Development Studies Research* 5, no. 1 (2018): 106-121, p. 108.

³⁷ Ndemo, B., "Kenya's mineral resources could pull millions out of poverty," *Daily Nation*, Monday June 24 2019. Available at <https://www.nation.co.ke/oped/blogs/dot9/ndemo/2274486-5169428-990fwj/index.html> [Accessed 3 June 2022]; Economic and Social Rights Centre (Hakijamii) (Kenya), *Titanium mining benefit sharing in Kwale County: HAKIJAMIIA comprehensive analysis of the law and practice in the context of Nguluku and Bwiti*, September, 2017. Available at <http://www.hakijamii.com/wp-content/uploads/2017/09/Titanium-mining-benefit-sharing.pdf> [Accessed on 3 June 2022]; cf. Base Titanium, "Response to Hakijamii's Draft Report on Base Titanium's Impacts on the Community," 25th August, 2017. Available at https://www.business-humanrights.org/sites/default/files/documents/Hakijamii%20Base%20Response%20Final%20-%202017%2008%2028_0.pdf [Accessed on 3 June 2022; see also Masinde, J., "Are Kwale residents expecting too much?" *Daily Nation*, Tuesday February 12 2013. Available at <https://www.nation.co.ke/lifestyle/smartcompany/Are-Kwale-residents-expecting-too-much/1226-1690904-nb7rqyz/index.html> [Accessed on 3 June 2022.

³⁸ Kitimo, A., "Call to adopt mining values and principles in East Africa," *The East African*, Saturday July 27 2019. Available at <https://www.theeastafrican.co.ke/business/Call-to-adopt-mining-values-and-principles-in-East-Africa/2560-5212362-hwctkgz/index.html> [Accessed on 3 June 2022.

³⁹ Munyua, J., & Ragui, M., "Drivers of instability in prices of petroleum products in Kenya," *Prime Journal of Business Administration and Management (BAM)* 3, no. 3 (2013): 919-926.

use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction.⁴⁰

While the current legislation on the extractives industry in the country has several requirements on disclosure and reports touching on various aspects, Kenya cannot currently pride itself as having transparency by governments (both national and counties) and companies in the extractive industries and thus, there is the need to enhance public financial management and accountability. There is hardly any publicly available information on the important aspects that shed light on the status of the revenues from the extractives industry. Its only recently when the President mentioned that the first batch of oil had been exported, and there was mention of the amount exported or its value.⁴¹ The details of such deals remain few.

Kenya's scenario is not unique to this country but is also reflected across many African countries, to the detriment of the local communities.⁴²

In the spirit of ensuring that African countries and especially Kenya only adopts what works for them, while we push for adoption of best practices in management of revenues from the extractives sector in Kenya, and considering that Kenya has had no previous experience in oil production, there is a temptation to adopt frameworks from other countries despite the contextual differences between countries.⁴³ It is therefore recommended that the Government of Kenya has a responsibility to adopt frameworks that are consistent with the prevailing social, economic, political and cultural circumstances in the country so as to facilitate the development of the oil and gas industry.⁴⁴

This does not however mean that all is lost within the African continent as there are some success stories within the continent. For instance, Botswana has extractive mineral industries that

⁴⁰ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

⁴¹ Presidential Strategic Communication Unit, "Kenya in Sh1.3bn oil export deal," *Daily Nation*, Thursday, August 1, 2019. Available at <https://www.nation.co.ke/news/Kenya-joins-list-of-oil-exporters/1056-5219572-qkp633z/index.html> [Accessed 3 June 2022].

⁴² Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

⁴³ Kenya Civil Society Platform on Oil & Gas, "Setting the Agenda for The Development Of Kenya's Oil And Gas Resources – The Perspectives Of Civil Society," Aug 11, 2014. Available at <http://kcspeg.org/setting-the-agenda-for-the-development-of-kenyas-oil-and-gas-resources-the-perspectives-of-civil-society/> [Accessed on 3 June 2022].

⁴⁴ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

have played a crucial role in the development of the country. Through proper management of its resources and thus achieving a mineral-led economic growth, the country has been transformed from one of the poorest countries in the world at the time of independence in 1966 to an upper-middle income country.⁴⁵ Botswana mainly exports diamonds, as the world's largest producer in value terms, as well as copper and nickel.⁴⁶ Botswana's record of mineral-led development is remarkable and the country is also considered to be relatively free of the corruption and environmental damage that is often associated with mining industries. Public finances are strong, debt is minimal, and the country enjoys investment-grade credit ratings.⁴⁷

Thus, Kenya and the African continent in general, stands to benefit greatly from its oil, gas and mineral resources but only if the same are well managed through accountability and transparency in revenues declaration and ultimately, proper utilization of such revenues in promoting growth, development and investment in other sectors of the economy.⁴⁸

Natural resources and the fight for control of these resources inevitably come with conflicts. The risks of violent conflict increase when exploitation of natural resources causes environmental damage, loss of livelihood, or unequal distribution of benefits.⁴⁹ Sudan, DRC and Nigeria are just but few examples of African states that have gone on internal armed conflict because of their rich natural resources. There are natural resources in Democratic Republic of Congo in the tropical rain forest which covers more than 100 Million hectares. However, there have been recorded cases of terrible violence and immense human suffering.⁵⁰ The war has largely impacted on the environment and native wildlife. Parties to armed conflicts have resorted to occupying natural habitats thereby scaring animals away.⁵¹ Indigenous conflict management

⁴⁵ Jefferis, K., "The role of TNCs in the extractive industry of Botswana," *Transnational corporations* 18, no. 1 (2010): 61-92 at p.61.

⁴⁶ Ibid, p.61.

⁴⁷ Ibid, p.61; See also International Monetary Fund, Botswana: 2017 Article iv Consultation—Press Release; Staff Report, August 2017, IMF Country Report No. 17/249. Available at <https://www.imf.org/~media/Files/Publications/CR/2017/cr17249.ashx> [Accessed 3 June 2022].

⁴⁸ Ibid.

⁴⁹ United Nations, "Environmental Rule of Law," available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0> [Accessed on 3 June 2022].

⁵⁰ Samndong, R.A. & Nhantumbo, I., *Natural resources governance in the Democratic Republic of Congo: Breaking sector walls for sustainable land use investments*, (International Institute for Environment and Development Country Report, February 2015), p. 11. Available at <http://pubs.iied.org/pdfs/13578IIED.pdf> [Accessed on 23 March 2022].

⁵¹ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

mechanisms can be utilized alongside the judicial systems to address the many conflicts that have ravaged the continent for long.

Natural resources are a source of livelihood for many, and any development activities that affect the same in any way ought to seek the social licence through engaging the affected communities through public participation. Competition for scarce resources may lead to a 'survival of the fittest' situation.⁵² In such circumstances, environmental degradation poses a higher potential for conflict, as every group fights for their survival.⁵³ Even where resources are abundant, conflicts can arise when one group controls a disproportionate portion of the same ("Resource capture"). Resource capture occurs when the supply of a resource decreases due to either depletion or degradation and/or demand increases (due to population and/or economic growth).⁵⁴ This encourages the more powerful groups in a society to exercise more control and even ownership of the scarce resource, thereby enhancing their wealth and power.⁵⁵ For instance, land has been an emotive issue in Kenya as it is in the hands of a few people in the country, and this has often led to tribal clashes.⁵⁶

Considering that most of these conflicts have underlying issues that may not be fully addressed through the adversarial court system, the use of Alternative Dispute Resolution (ADR) and Traditional Dispute Resolution (TDR) mechanisms such as negotiation and mediation processes can cure this as they can help them in playing a more meaningful and active role in conflict management and decision-making processes. Having forums for negotiation and mediation between the stakeholders and communities can go a long way in averting conflicts and allowing proposed and ongoing developmental activities enjoy social acceptance in the community since concerns and expectations are more likely to be managed through such forums. Conflict resolution mechanisms such as negotiation and mediation are recommended because they afford the affected communities or sections of the public an opportunity to negotiate and reach a

⁵² See generally, "Chapter 5: Survival at Stake: Violent Land Conflict in Africa," *Small Arms Survey 2013*, available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2013/en/Small-Arms-Survey-2013-Chapter-5-EN.pdf> [Accessed on 23 March 2022].

⁵³ See Bowman, K., et al, "Chapter 1: Environment for Development," (United Nations), available at http://www.unep.org/geo/geo4/report/01_Environment_for_Development.pdf [Accessed on 23 March 2022].

⁵⁴ Khagram, S., et al, "From the Environment and Human Security to Sustainable Security and Development," *Journal of Human Development*, Vol. 4, No. 2, July 2003, pp. 289-313, p. 295.

⁵⁵ *Ibid.*

⁵⁶ See the Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya', (the 'Akiwumi Commission'), (Government Printer, Nairobi, 1999).

compromise agreement, where all sides get satisfactory outcome.⁵⁷ ADR and ~~TDR~~~~Traditional dispute resolution~~ mechanisms, especially negotiation and mediation, still have relevance in natural resource conflicts management, a role recognized in the Constitution of Kenya.⁵⁸ This is the true essence of environmental democracy; affording communities guaranteed and meaningful participation in the decision making process by presenting proof and reasoned arguments in their favour, as tools for obtaining a socio-economic justice.⁵⁹

These processes have been indigenous to the African continent for centuries and they hold a key in addressing these conflicts with a relatively high degree of success.⁶⁰ These processes have social acceptance and using them alongside the formal mechanisms can go a long way in not only enhancing management of environmental resources but also managing and even possibly eradicating the conflicts that attach to access and control of these resources.

5. Conclusion

Since the advent of international environmental law, there have been continuous changes occasioned by both practice and law. Domestic laws must bear this in mind at all times. Such principles as public participation, environmental democracy, public awareness and sustainable development must take root in all spheres of environmental law, including management of environmental conflicts. Embracing and engaging communities in conflict management approaches that work for them in their various contexts is also critical if the people are to identify with governments' efforts in managing environmental resources and conflicts that arise within their localities.

⁵⁷ Warner, M., 'Conflict Management in Community-Based Natural Resource Projects: Experiences from Fiji and Papua New Guinea,' Working Paper No. 135, (Overseas Development Institute, April 2000), p. 16.

⁵⁸ See Art. 60(1) (g); Art. 159.

⁵⁹ Ristanić, A., 'Alternative Dispute Resolution and Indigenous Peoples: Intellectual Property Disputes in the Context of Traditional Knowledge, Traditional Cultural Expressions and Genetic resources,' (Lund University, April 2015), available at [https://www.law.lu.se/webuk.nsf/%28MenuItemById%29/JAMR32exam/\\$FILE/Alternative%20Dispute%20Resolution%20and%20Indigenous%20Peoples.%20Intellectual%20Property%20Disputes%20in%20the%20Context%20of%20Traditional%20Knowledg.pdf](https://www.law.lu.se/webuk.nsf/%28MenuItemById%29/JAMR32exam/$FILE/Alternative%20Dispute%20Resolution%20and%20Indigenous%20Peoples.%20Intellectual%20Property%20Disputes%20in%20the%20Context%20of%20Traditional%20Knowledg.pdf) [Accessed on 15 February 2022].

⁶⁰ Muigua, K., *Settling Disputes through Arbitration in Kenya*, 3rd Ed., Glenwood Publishers, Nairobi – 2017; Muigua, K., *Alternative Dispute Resolution and Access to Justice in Kenya*, Glenwood Publishers, Nairobi – 2015; Muigua, K., *Resolving Conflicts through Mediation in Kenya*, Glenwood Publishers, Nairobi – 2013; Muigua, K., "Chapter 25: Natural Resource Conflicts in Kenya: Effective Management for Attainment of Environmental Justice", in Patricia Kameri-Mbote and Collins Odote, eds., *Blazing the Trail - Professor Charles Okidi's Enduring Legacy In The Development of Environmental Law* (University of Nairobi, March, 2019).

Technological developments must also be embraced in not only addressing environmental conflicts but also enhancing environmental management and governance to prevent occurrence of these conflicts in the spirit of the principle of preventive action and the precautionary principle. If Africa and other third world regions are to move in tandem with the rest of the world in achieving sustainability and also effectively managing conflicts that come with access and control of environmental resources, there is a need for them to adopt approaches that meaningfully and effectively address the unique challenges that face these economies.

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