

# **Mediating Natural Resource- Based Conflicts for Peace and Prosperity**

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**Kariuki Muigua**

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## **Mediating Natural Resource Based- Conflicts for Peace and Prosperity**

**Kariuki Muigua\***

### **Abstract**

*This paper critically explores the role of mediation in managing natural resource- based conflicts. It argues that mediation is an effective mechanism for managing natural resource- based conflicts. The paper discusses some of the salient attributes of mediation that makes it ideal in managing natural resource based conflicts. It also examines the progress made towards mediating natural resource- based conflicts and challenges thereof. The paper further puts forward suggestions towards enhancing the role of mediation in managing natural resource- based conflicts for peace and prosperity.*

### **1.0 Introduction**

Mediation has been 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, and thus aiding in the process of reaching an agreement<sup>1</sup>. Mediation has also been defined as a process wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences<sup>2</sup>. The United Nations describes mediation as a voluntary process whereby a third party assists two or more parties, with their consent, to prevent,

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\* PhD in Law (Nrb), FCIArb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [January, 2024].

<sup>1</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition., 2017

<sup>2</sup> JAMS Mediation Services., 'Mediation Defined: What is Mediation?' Available at <https://www.jamsadr.com/mediation-defined/> (Accessed on 20/01/2024)

manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>3</sup>.

Mediation is normally a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock<sup>4</sup>. Parties therefore involve a third party known as a mediator to assist them continue with the negotiations and ultimately break the deadlock<sup>5</sup>. A mediator does not have the power to impose a resolution, 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 agreement<sup>6</sup>.

Mediation is one of the processes that are commonly referred to as Alternative Dispute Resolution (ADR)<sup>7</sup>. These are mechanisms that are applied in managing disputes that may be linked to but function outside formal court litigation processes<sup>8</sup>. They include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others<sup>9</sup>. Mediation alongside other ADR mechanisms are recognized at both global and national levels. At the global level, the *Charter of the United Nations*<sup>10</sup> encourages parties to disputes to seek solutions by negotiation, enquiry, *mediation*, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements,

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<sup>3</sup> 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 20/01/2024)

<sup>4</sup> Bercovitch, J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>8</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>9</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>10</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

or other peaceful means of their own choice (Emphasis added)<sup>11</sup>. At a national level, the Constitution of Kenya requires courts and tribunals to promote ADR mechanisms including reconciliation, *mediation*, arbitration and TDRMs (Emphasis added)<sup>12</sup>.

ADR mechanisms including mediation are viewed as ideal in enhancing access to justice due to their key attributes<sup>13</sup>. It has been argued that mediation has certain advantages which makes the process viable in managing disputes<sup>14</sup>. Its key features towards this end include informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost effective management of disputes<sup>15</sup>. It has also the ability to preserve relationships due to its potential to address the root causes of the conflict thus negating the need for future conflict or conflict management<sup>16</sup>. In light of these advantages, it has been argued that mediation is a viable tool for managing natural resource- based conflicts for peace and prosperity<sup>17</sup>.

This paper critically explores the role of mediation in managing natural resource- based conflicts. It argues that mediation is an effective mechanism for managing natural resource based conflicts. The paper discusses some of the salient attributes of mediation that makes it ideal in managing natural resource based conflicts. It also examines the progress made towards mediating natural resource- based conflicts and challenges thereof. The paper further puts forward suggestions towards enhancing the role of mediation in managing natural resource- based conflicts for peace and prosperity.

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<sup>11</sup> Ibid, Article 33 (1)

<sup>12</sup> Constitution of Kenya, 2010., Article 159 (2) (c) Government Printer, Nairobi

<sup>13</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>14</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/9294/-Natural\\_resources\\_and\\_conflic.pdf?sequence=2&amp%3BisAllowed](https://wedocs.unep.org/bitstream/handle/20.500.11822/9294/-Natural_resources_and_conflic.pdf?sequence=2&amp%3BisAllowed) (Accessed on 20/01/2024)

## **2.0 Role of Mediation in Managing Natural Resource Based Conflicts**

It has been argued 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 forests<sup>18</sup>. Natural resources such as land, water, forests, minerals, and oil are important sources of livelihoods, income and influence for countries and communities around the world<sup>19</sup>. However, when these resources are poorly managed or inequitably shared, or when business operations are implemented without due consideration for context and communities, they can contribute to tensions that can escalate into violent conflict, or worsen pre-existing conflict dynamics<sup>20</sup>. According to the United Nations Environment Programme (UNEP), while natural resources are key to achieving Sustainable Development, they are also increasingly acting as drivers of fragility, conflict and violence<sup>21</sup>. It further asserts that as the global population continues to rise, the global demand for natural resources continues to grow, and the impacts of climate change begin to materialize, and therefore competition over natural resources is set to intensify, a situation that could spiral into more natural resource based conflicts<sup>22</sup>. It has been asserted that population growth and environmental degradation are intensifying competition over already scarce resources, such as land and water, and climate change threatens to increase such competition even further<sup>23</sup>. As a result, it has been contended that natural resources will increasingly become key drivers in a growing

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<sup>18</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Available at <https://kmco.co.ke/wp-content/uploads/2022/09/EnvironmentalConflict-Management-Institutions-and-Approaches.pdf> (Accessed on 21/01/2024)

<sup>19</sup> ReliefWeb., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Available at <https://reliefweb.int/report/world/natural-resources-and-conflict-guide-mediation-practitioners-0#:~:text=One%20of%20the%20prerequisites%20to,by%20an%20independent%20third%20party> (Accessed on 21/01/2024)

<sup>20</sup> Ibid

<sup>21</sup> United Nations Environment Programme., 'Environmental Cooperation and Peacebuilding.' Available at <https://www.unep.org/topics/fresh-water/disasters-and-climatechange/environmental-security/environmental-cooperationand#:~:text=International%20law%2C%20environment%20and%20conflict,and%20reliance%20on%20conflict%20resources> (Accessed on 21/01/2024)

<sup>22</sup> Ibid

<sup>23</sup> ReliefWeb., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

number of disputes, with potentially significant consequences for international, regional, and national peace and security<sup>24</sup>. In addition, it has been contended that natural resource- based conflicts also are, directly and indirectly connected to and/or impact human development factors and especially the quest for social-economic development<sup>25</sup>. It has been argued that natural resources have been at the heart of many international conflicts over the past decades and this situation is likely to continue in the coming years<sup>26</sup>. As a result, it is imperative to embrace effective management of natural resource based- conflicts in order to promote Sustainable Development.

Mediation has been advanced as an ideal mechanism in managing natural resource-based conflicts<sup>27</sup>. It has been argued that mediation processes which are voluntary and consensus-based tend to lead to resolution and outcomes that are longer lasting and more sustainable than adversarial processes or otherwise imposed outcomes<sup>28</sup>. In natural resource- based conflicts, sustainable outcomes are more desirable because the shared benefits of these resources often cross tribal, societal, communal, and national boundaries<sup>29</sup>. Collaboration over the ownership, management, and use of such resources is therefore critical to peace and stability<sup>30</sup>.

It has been argued that mediation can promote effective management of natural resource based- conflicts by fostering collaborative approaches towards management of natural

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<sup>24</sup> Ibid

<sup>25</sup> Muigua. K., 'Managing Environmental Conflicts through Participatory Mechanisms for Sustainable Development in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/ManagingEnvironmental-Conflicts-through-Participatory-Mechanisms-for-Sustainable-Development-in-KenyaKariuki-Muigua-August-2018.pdf> (Accessed on 21/01/2024)

<sup>26</sup> International Organization for Peace Building., 'Natural Resources and Conflict: A Path to Mediation.' Available at <https://www.interpeace.org/2015/11/natural-resources-and-conflict-a-path-to-mediation/> (Accessed on 22/01/2024)

<sup>27</sup> Ibid

<sup>28</sup> ReliefWeb., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>29</sup> Ibid

<sup>30</sup> Ibid

resources and conflicts related to such resources<sup>31</sup>. Collaborative natural resources management has been defined as a partnership by which various stakeholders agree on sharing among themselves the management functions, rights and responsibilities for a territory or a set of resources<sup>32</sup>. It involves a number of processes that help establish and maintain mutually agreeable principles and practices for managing natural resources including conflict management<sup>33</sup>. The main objective of collaborative management approaches is to manage natural resources such as lands, forests, marine areas and their products through negotiating mutually agreeable principles and practices among stakeholder and establishing ways of sharing among stakeholders the power to make decisions and exercise control over resource use<sup>34</sup>. It has been argued that mediation can foster effective management of natural resource- based conflicts by building consensus and collaboration<sup>35</sup>. Mediation can help stakeholders of natural resources to identify ways to maximize shared benefits and address common problems and challenges together<sup>36</sup>. Through mediation alongside other collaborative approaches including negotiation, natural resources can be treated as a platform for cooperation that transcends religious, ideological, political, or tribal differences, which can be leveraged to tackle more challenging problems down the line<sup>37</sup>. Mediation is therefore an effective mechanism for managing natural resource based conflicts due to its potential to build peace and bring people together, binding them towards the common goal of sharing resources<sup>38</sup>.

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<sup>31</sup> Food and Agriculture Organization., 'An introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods.' Available at <https://www.fao.org/3/a0032e/a0032e04.htm> (Accessed on 21/01/2024)

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Antonia. E., & Benedikt. K., 'Negotiation and Mediation Techniques for Natural Resource Management.' Available at <https://iwrmaactionhub.org/node/1988/printable/pdf> (Accessed on 21/01/2024)

<sup>36</sup> United Nations Department of Political Affairs., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Available at <https://gsdrc.org/document-library/natural-resources-and-conflict-a-guide-for-mediation-practitioners/> (Accessed on 21/01/2024)

<sup>37</sup> Ibid

<sup>38</sup> International Organization for Peace Building., 'Natural Resources and Conflict: A Path to Mediation.' Op Cit

The features of mediation including flexibility and party autonomy also make the process ideal in managing natural resource based conflicts<sup>39</sup>. Mediation has been identified an extremely flexible approach to dispute resolution that puts a wide range of tools, techniques, and processes in the hands of the mediator and the parties<sup>40</sup>. This flexibility provides plenty of room to bring in technical information and experts that can be seen as impartial and fair to all sides, or to use collaborative approaches to data collection, analysis, or monitoring<sup>41</sup>. It also gives parties the freedom to come up with their own creative and long-term solutions to natural resource based problems<sup>42</sup>. In addition, attributes of mediation including voluntary participation and agreement, confidentiality of exchanges among parties, the search of mutually satisfactory solutions have been identified as well suited for the multi-party complex context of natural resource based conflicts<sup>43</sup>. These features make mediation a viable tool in managing such conflicts by focusing on a broad range of benefits tied to natural resources, including employment opportunities, revenue, services, access and infrastructure<sup>44</sup>.

Mediation can also foster effective management of natural resource- based conflicts by promoting participatory approaches towards conflict management<sup>45</sup>. It has been pointed out that mediation can foster community involvement in the conflict management process through the use of peace committees, Non-Governmental Organisations,

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<sup>39</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

<sup>40</sup> Bennett. L., 'Mediation in Natural Resources and Land Conflicts.' Available at <https://climate-diplomacy.org/magazine/cooperation/mediation-natural-resources-and-land-conflicts> (Accessed on 21/01/2024)

<sup>41</sup> Ibid

<sup>42</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

<sup>43</sup> Kaufman. S., 'Mediation in Environmental Disputes.' Available at <https://www.eolss.net/samplechapters/c14/E1-40-03-03.pdf> (Accessed on 22/01/2024)

<sup>44</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Available at <https://www.unep.org/news-and-stories/pressrelease/mediation-can-prevent-resolve-natural-resources-disputes-new-un> (Accessed on 22/01/2024)

<sup>45</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-throughAlternative-Dispute-Resolution.pdf> (Accessed on 22/01/2024)

religious bodies, among other bodies within communities<sup>46</sup>. This process can facilitate effective management of conflicts by addressing the root causes of such conflicts<sup>47</sup>. Therefore, in case of environmental conflicts, mediation affords parties an opportunity to sustain or improve their relationships<sup>48</sup>. By encouraging participation and consensus building, mediation encourages amicable management of environmental conflicts and provide the basis for sustained relationships which is especially important where environmental projects are involved<sup>49</sup>. Mediation is therefore vital in managing natural resource- based conflicts due to its ability to support the capacities of societies to manage their own conflicts<sup>50</sup>. It fosters the participation of all parties at all levels, including the elites and grassroots towards effective management of natural resource- based conflicts<sup>51</sup>. It has been argued that mediation is a people centred and participatory process<sup>52</sup>. It therefore shifts focus from resources to people and encourages their participation in conflict management in a manner which respects their views<sup>53</sup>. Mediation therefore fosters participatory approaches towards conflict management by encouraging community-based and collaborative approaches to resource management which enable different stakeholders to participate in decision-making in order to develop and manage their resources<sup>54</sup>.

From the foregoing, it is evident that mediation can be effective strategy for managing natural resource- based conflicts. According to the African Union, national and trans-

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<sup>46</sup> Muigua. K., 'Natural Resource Conflicts: Addressing Inter-Ethnic Strife through Environmental Justice in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2019/09/Natural-ResourceConflictsAddressing-Inter-Ethnic-Strife-Through-Environmental-Justice-in-kenya-Kariuki-Muigua7th-September2019.pdf> (Accessed on 22/01/2024)

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> International Organization for Peace Building., 'Natural Resources and Conflict: A Path to Mediation.'

Op Cit

<sup>51</sup> Ibid

<sup>52</sup> Food and Agriculture Organization., 'An introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods.' Op Cit

<sup>53</sup> Ibid

<sup>54</sup> Ibid

boundary resource dispute management and mediation mechanisms are important ways to help different parties move from a position of conflict to one of cooperation<sup>55</sup>. It further asserts that cooperating over shared resources or common challenges can help build confidence between divided groups and maintain a degree of communication<sup>56</sup>. Over time, this cooperation over the environment and natural resources can have important spillover effects, further binding the parties into sharing mutual benefits and diminishing the possibility of a return to conflict<sup>57</sup>. Further, according to UNEP, natural resource based conflicts are often more amenable to mediation than other dispute management processes<sup>58</sup>. UNEP points out that finding consensus and building alliances over natural resources is often easier because natural resources shape economic incentives that transcend other areas<sup>59</sup>. In addition, it has been argued that mediation over natural resources can effectively help parties identify ways to maximize and share benefits, and ultimately unlock entrenched or zero-sum positions, allowing parties to develop cooperative and constructive relationships that can be carried over to other areas<sup>60</sup>.

Despite its potential to foster effective management of natural resource based conflicts, it has been pointed out that mediation has not been given an adequate chance within the framework of natural resource based conflict management<sup>61</sup>. According to UNEP, despite mediation being a vital tool in preventing and resolving conflicts, it is often underutilized in the context of conflicts involving natural resources<sup>62</sup>. This has been attributed to several

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<sup>55</sup> African Union., 'Report of the African Union Panel of the Wise on Improving the Mediation and Resolution of Natural Resource-Related Conflicts Across Africa.' Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/31043/AUP.pdf?sequence=1> (Accessed on 22/01/2024)

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/9294/-Natural\\_resources\\_and\\_conflic.pdf?sequence=2&amp%3BisAllowed](https://wedocs.unep.org/bitstream/handle/20.500.11822/9294/-Natural_resources_and_conflic.pdf?sequence=2&amp%3BisAllowed) (Accessed on 22/01/2024)

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

<sup>62</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

reasons including the technical nature of natural resource- based conflicts, laxity by countries to identify or act on opportunities for proactive use of mediation as a tool for conflict prevention and peacebuilding, and the political dimension of natural resource-based conflicts<sup>63</sup>. It is necessary to address these concerns in order to enhance the use of mediation in managing natural resource based conflicts. It is also imperative to deal with some of the challenges inherent in mediation such as power imbalances, enforceability challenges and lack of urgent protection measures such as injunctions in order to strengthen its role in managing natural resource- based conflicts<sup>64</sup>.

### **3.0 Way Forward**

There is need to embrace mediation in order to foster effective management of natural resource based conflicts. It has been contended that with climate change, rapid population growth and environmental degradation placing new pressures on environmental and social systems, effectively preventing and resolving resource natural resource- based conflicts has never been more urgent<sup>65</sup>. Mediation can be particularly effective in helping parties identify ways to maximise and share resource benefits therefore preventing and fostering effective management of natural resource- based conflicts<sup>66</sup>.

In order to improve the practice of mediating natural resource- based conflicts, it is imperative to consider the context of the natural resource in question<sup>67</sup>. It has been argued

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<sup>63</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>64</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution.' Op Cit

<sup>65</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

<sup>66</sup> Ibid

<sup>67</sup> Humphreys. M., 'Natural Resources, Conflict, and Conflict Resolution : Uncovering the Mechanisms.' Available at [https://d1wqtxts1xzle7.cloudfront.net/30923495/ch\\_8\\_-\\_humphreys-libre.pdf?1392206230=&response-content-disposition=inline%3B+filename%3DNatural\\_resources\\_conflict\\_and\\_conflict.pdf&Expires=1705927305&Signature=Es-678uwVqTDUhNcfVqepokgpEsPjTMj55OkqsXCU8zVv6guYZwWP-ZA0SYWEgRPhkzHFnPpfQSS3B4V9-wkytt3Cleh0gUG15C9xgmorrPGeQ1LQeA1e7P~rqya0h6T-CdQwIxxSSj8ePNyY8Q8tDWzcDB9PuOr5-](https://d1wqtxts1xzle7.cloudfront.net/30923495/ch_8_-_humphreys-libre.pdf?1392206230=&response-content-disposition=inline%3B+filename%3DNatural_resources_conflict_and_conflict.pdf&Expires=1705927305&Signature=Es-678uwVqTDUhNcfVqepokgpEsPjTMj55OkqsXCU8zVv6guYZwWP-ZA0SYWEgRPhkzHFnPpfQSS3B4V9-wkytt3Cleh0gUG15C9xgmorrPGeQ1LQeA1e7P~rqya0h6T-CdQwIxxSSj8ePNyY8Q8tDWzcDB9PuOr5-)

that each natural resource sector generates multiple forms of conflict, which require different approaches to mediation<sup>68</sup>. As a result, it is important for the mediation process to take into account the characteristics and functionality of the resource in question, together with mechanisms for dealing with uncertainties<sup>69</sup>. It has been argued that for mediation to be effective in managing natural resource based conflicts, there is need to understand the root cause of the conflict, the interaction of natural resources with other conflict drivers, the broader political economy, and the entry-points for a mediated solution<sup>70</sup>.

It is also necessary to enhance access and dissemination of information in order to strengthen the role of mediation in managing natural resource based conflicts<sup>71</sup>. Access to information can foster the participation of all stakeholders including the public in the mediation process<sup>72</sup>. It has been argued that one of the requirements for an effective mediation processes over natural resources is for all parties to have equal access to impartial scientific and technical information about the resource in dispute<sup>73</sup>. Access to information has confidence building benefits and ensures effective participation of all stakeholders in the mediation process towards mutually acceptable and long lasting solutions<sup>74</sup>.

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[elHNoYc1XGewuiAg3FURjsscrctTgehuWILKkuKfu9K4yxQzi~XWvB3yFYzvsbCajtvQh9BcPEVlxhn9vedLSD9SBYB01Sy04CZ5X2Rf8BtfoDF73SwmsCUKehWQ-cdVhhVLDivUOhe1VfieG4-Q0mAuYsVGvW60pU3WQjL~eQnctbMwqKFO\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA](https://www.unep.org/mediation/practitioners) (Accessed on 22/01/2024)

<sup>68</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Muigua. K., 'Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Managing-Natural-Resource-Conflicts-in-Kenya-through-Negotiation-and-Mediation.pdf> (Accessed on 22/01/2024)

<sup>72</sup> Ibid

<sup>73</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>74</sup> Ibid

In addition, there is need to ensure that mediation embraces collaborative approaches towards managing natural resource based conflicts<sup>75</sup>. Collaborative approaches can help stakeholders of natural resources to identify ways to maximize shared benefits and address common problems and challenges together<sup>76</sup>. In addition, natural resources can be treated as a platform for cooperation that transcends religious, ideological, political, or tribal differences, which can be leveraged to tackle more challenging problems down the line<sup>77</sup>. It has been contended that in order to effectively mediate natural resource-based conflicts, mediation should aim for collaboration over shared benefits, which can generate the trust needed to tackle other issues<sup>78</sup>. In addition, it has been suggested that while when managing natural resource- based conflicts, mediators should try to help parties move past zero-sum, win-lose positions by identifying ways that stakeholders can maximize shared benefits and address common problems and challenges together<sup>79</sup>. Embracing collaborative approaches can enhance the effectiveness of mediating natural resource based conflicts.

It is also vital to ensure the participation of all stakeholders in the mediation process<sup>80</sup>. Mediation has the ability to promote effective management of natural resource based conflicts by encouraging consensus building and participatory approaches towards conflict management<sup>81</sup>. It can foster community involvement in the conflict management process through the use of peace committees, Non-Governmental Organisations, religious bodies, among other bodies within communities<sup>82</sup>. It is therefore necessary to

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<sup>75</sup> Antonia. E., & Benedikt. K., 'Negotiation and Mediation Techniques for Natural Resource Management.' Op Cit

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>79</sup> Ibid

<sup>80</sup> Muigua. K., 'Managing Environmental Conflicts through Alternative Dispute Resolution.' Available at <https://kmco.co.ke/wp-content/uploads/2024/01/Managing-Environmental-Conflicts-through-Alternative-Dispute-Resolution-1.pdf> (Accessed on 22/01/2024)

<sup>81</sup> Ibid

<sup>82</sup> Ibid

embrace the participation of all stakeholders when mediating natural resource- based conflicts in order to address the root causes of conflicts and afford parties an opportunity to sustain or improve their relationships<sup>83</sup>. Despite the importance of inclusivity and participation in mediating natural resource based conflicts, it has correctly been pointed out that inviting the participation of all stakeholders may prove too difficult or fragmented to produce consensus<sup>84</sup>. Therefore, understanding which actors to include in mediation, and the potential political impacts of including some and excluding others, is essential<sup>85</sup>. However, ensuring consultation with a sufficiently wide set of stakeholders is crucial to establish and maintain the legitimacy of the process and foster effective mediating of natural resource based conflicts<sup>86</sup>.

Finally, it is imperative to strengthen the legal, policy, institutional and human capacity in order to effectively mediate natural resource- based conflicts<sup>87</sup>. It has been suggested that there is need to enhance capacity building within communities in order to develop a level-playing field that will enable less powerful stakeholders to participate equitably in a process of consensual negotiation and mediation<sup>88</sup>. It is also important for mediators to enhance their capacity to mediate natural resource- based conflicts through education and training and seeking expert evidence in technical aspects related to natural resources<sup>89</sup>. It is also pertinent to strengthen the legal, policy and institutional framework on mediation at all levels including national levels in order to enhance its suitability in managing natural resource based conflicts<sup>90</sup>.

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<sup>83</sup> Ibid

<sup>84</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>85</sup> Ibid

<sup>86</sup> Ibid

<sup>87</sup> Muigua. K., 'Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation.' Op Cit

<sup>88</sup> Ibid

<sup>89</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners.' Op Cit

<sup>90</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

The foregoing among other measures are important towards improving the practice of mediating natural resource based conflicts for peace and prosperity.

#### **4.0 Conclusion**

Mediation is an ideal mechanism in managing natural resource- based conflicts<sup>91</sup>. It can promote effective management of natural resource based conflicts by fostering collaborative approaches towards management of natural resources and conflicts related to such resources<sup>92</sup>. It also gives parties the freedom to come up with their own creative and long-term solutions to natural resource based problems<sup>93</sup>. Despite mediation being a vital tool in preventing and resolving conflicts, it is often underutilized in the context of conflicts involving natural resources<sup>94</sup>. It is imperative to embrace mediation in order to effectively manage natural resource based conflicts in light of growing global challenges including climate change, rapid population growth and environmental degradation<sup>95</sup>. In order to improve the practice of mediating natural resource based conflicts, it is imperative to consider the context of the natural resource in question, enhance access and dissemination of information, embrace collaborative approaches towards managing natural resource based conflicts, ensure the participation of all stakeholders in the mediation process, and strengthen the legal, policy, institutional and human capacity on mediation at all levels<sup>96</sup>. Mediating natural resource- based conflicts for peace and prosperity is a goal that can be achieved by all countries.

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<sup>91</sup> International Organization for Peace Building., 'Natural Resources and Conflict: A Path to Mediation.' Op Cit

<sup>92</sup> Food and Agriculture Organization., 'An introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods.' Op Cit

<sup>93</sup> Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit

<sup>94</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

<sup>95</sup> United Nations Environment Programme., 'Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.' Op Cit

<sup>96</sup> Ibid; Muigua. K., 'Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation.' Op Cit; Muigua. K., 'Environmental Conflict Management Institutions and Approaches.' Op Cit; and <sup>96</sup> Muigua. K., 'Managing Environmental Conflicts through Alternative Dispute Resolution.'

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