



UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**A CRITICAL ANALYSIS OF THE COOPERATIVE FRAMEWORKS ON SHARED
NATURAL RESOURCES IN EAST AFRICA COMMUNITY: A CASE STUDY OF
LAKE VICTORIA**

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**A RESEARCH PROPOSAL SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL
STUDIES OF THE UNIVERSITY OF NAIROBI.**

DECLARATION

This research project is my original work and has not been presented for the award of a degree in masters in this University or any other Institution of higher learning.

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DEDICATION

I wish to dedicate this work to my dear family for their support, patience, understanding and sacrifice during my study.

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Table of Contents

| | |
|---|-----|
| DECLARATION | iii |
| DEDICATION | iii |
| ACKNOWLEDGEMENT | iv |
| ABSTRACT..... | iv |
| LIST OF ABBREVIATIONS..... | vi |
| CHAPTER ONE | 1 |
| INTRODUCTION AND BACKGROUND TO THE STUDY | 1 |
| 1.2 STATEMENT OF THE RESEARCH PROBLEM | 5 |
| 1.3 RESEARCH QUESTIONS..... | 8 |
| 1.4 OBJECTIVES OF THE STUDY..... | 8 |
| 1.5 LITERATURE REVIEW | 9 |
| 1.5.1 Introduction..... | 9 |
| 1.5.2 Background of conflicts over shared natural resource with a focus on Lake Victoria..... | 9 |
| 1.5.3 Causes of conflicts over Lake Victoria as a shared natural resource among states in the EAC | 13 |
| 1.5.4 Global principles on shared natural resources | 14 |
| 1.5.4 Regional Principles on Shared Natural Resources in the EAC..... | 17 |
| 1.6 JUSTIFICATION OF THE STUDY | 18 |
| 1.6.1 Academic Justification..... | 18 |
| 1.6.2 Policy Justification..... | 19 |
| 1.7 THEORETICAL FRAMEWORK..... | 20 |
| 1.7.1 Liberalism Theoretical Framework..... | 20 |
| 1.8 HYPOTHESES | 22 |
| 1.9 METHODOLOGY | 22 |
| 1.9.2 Data Collection | 22 |
| 1.9.5 Target Population..... | 23 |
| 1.10 CHAPTER OUTLINE | 23 |
| CHAPTER TWO | 25 |
| LITERATURE REVIEW | 25 |
| THE DYNAMICS OF SHARED NATURAL RESOURCES: AN OVERVIEW OF LAKE VICTORIA | 25 |
| 2.1 Introduction..... | 25 |
| 2.2 Overview of Lake Victoria | 25 |

| | |
|---|----|
| 2.3 Figure 2.3. Map of Lake Victoria showing the study area..... | 27 |
| 2.2 Dynamics of Conflicts over Shared Natural Resources..... | 27 |
| 2.3 International Legal Perspectives on shared water resources..... | 31 |
| 2.4 Peaceful Settlements of Disputes..... | 34 |
| 2.6 The link between Natural Resources, Poverty and Environment | 36 |
| CHAPTER THREE: | 40 |
| THE EAC LEGAL AND POLICY FRAMEWORKS FOSTERING COOPERATION ON THE SHARING OF LAKE VICTORIA | 40 |
| 3.1 Introduction..... | 40 |
| 3.2 Overview of EAC | 40 |
| 3.3 Legal Framework of EAC..... | 41 |
| 3.4 Institutional Structure..... | 42 |
| 3.5 Management of natural resource conflict in East Africa | 47 |
| CHAPTER FOUR..... | 50 |
| ANALYSIS OF THE LEGAL AND POLICY FRAMEWORKS ON MANAGEMENT OF LAKE VICTORIA AND THE CHALLENGES AND PROSPECTS FACED BY EAC STATES IN MANAGEMENT OF LAKE VICTORIA AS A SHARED NATURAL RESOURCE | 50 |
| 4.1 Introduction..... | 50 |
| 4.2 Analysis of the Legal and Policy Frameworks on Management of Lake Victoria | 50 |
| 4.2.1 United Nations Environment Assembly..... | 50 |
| 4.2.2 East Africa Community | 51 |
| 4.2.3 Lake Victoria Fisheries Organisation..... | 52 |
| 4.2.4 East Africa Legislative Assembly..... | 52 |
| 4.2.5 East African Court of Justice | 52 |
| 4.2.6 East African Network for Environmental Compliance and Enforcement..... | 53 |
| 4.2.7 Nile Basin Initiative | 53 |
| 4.2.8 Beach Management Units | 54 |
| 4.2.9 Lake Victoria Basin Commission | 54 |
| 4.3 Presentation of Research Findings..... | 55 |
| 4.4 Challenges faced in management of Lake Victoria as Shared Natural Resource in EAC | 57 |
| 4.4.1 Inclusive decision-making | 57 |
| 4.4.2 Land and resource rights..... | 59 |
| 4.4.3 Devolution..... | 60 |
| 4.4.4 Conservation and Equitable Benefit Sharing | 63 |

| | |
|---|----|
| 4.4.5 Diversity of Cultures and Knowledge..... | 65 |
| 4.4.6 Migingo Island Dispute..... | 67 |
| 4.4.7 Slow Consensus and Decision Making..... | 68 |
| 5.1 Prospects of Lake Victoria as a Shared Natural Resource | 69 |
| 5.1.1 Introduction..... | 69 |
| 5.2 Employment Opportunities..... | 69 |
| 5.3 Economic Growth, Domestic Use and source of Foreign Direct Investment | 69 |
| 5.4 Improved Infrastructure | 71 |
| CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS..... | 72 |
| 5.1 Introduction..... | 72 |
| 5.2 Recommendations and Summary..... | 72 |
| 5.3 Conclusion | 78 |
| REFERENCES | 80 |
| APPENDIX 1 | 91 |

ABSTRACT

Over the past decades, international relations have adversely experienced increase in cooperation among different states in form of agreements and policies. The move towards greater common understanding and cooperation has become a global aspect driven by trade forces, shared natural resources, human rights issues, migration policies and politics, as they open opportunities for cooperation and integration. The goal for cooperation is to create common economic, social, political and cultural space among the participating countries. Cooperation evolves from economic links, historical or cultural ties. Different natural resources exist around the world and have helped to shape the society. In history, man has managed to earn a living through natural resources, thus, it is through the same natural resources which can bring cooperation among states and bring conflict between states, to examine the impact of shared resources as a source of conflict and a hindrance to state cooperation in the EAC To assess the effectiveness of legal and policy frameworks established in the EAC that foster cooperation within the EAC states, and to evaluate the prospects and challenges faced by states in the EAC in management of Lake Victoria as a shared natural resource and provide recommendations on strengthening capacity of the key institutions and frameworks on Lake Victoria as a shared natural resource in the region. The most serious environmental problems in Lake Victoria Basin relate to land use especially agricultural practices; destruction of protected areas in terrestrial and aquatic ecosystems particularly to destruction of forests and depletion of fishery resources respectively; and discharge of municipal and industrial wastes which cause pollution. It has been demonstrated in this paper that without exception, there are legal and institutional arrangements in the books to deal with these problems. In reality, the hopes may remain frail, if the Ministry of Water and Irrigation together with the Authority do not depart from the traditional lethargy of line ministries or agencies to date. That

lethargy also characterized the conduct of the office of the attorney general, the supposed defender of the public good, at least as far as environmental matters are concerned. It is therefore curious that the protocol for sustainable development of the Lake Victoria Basin made no provision at all on access to environmental justice. The framework treaty, similarly, makes no such specific provision. Here, the Partner States agree to grant rights of access to the nationals or residents of other partner states to their judicial and administrative machineries to seek remedies for transboundary environmental damage, there is a uniform agreement that deliberate action be taken to develop and harmonize laws in the main problem areas. There are at least two primary aspects to this. On the one hand there is an urgent need to bring the national sectoral statutes in harmony with the framework statute. It was pointed out earlier that where any statute is in conflict with the framework law then the latter prevails. Thirdly, all the instruments call for strengthening of enforcement machineries and procedures, a matter which is grossly wanting in Kenya. We have recognized the overwhelming lethargy in the sectoral agencies as far as enforcement of environmental laws are concerned, all the instruments urge for public participation in development and enforcement of environmental law. As pointed out earlier the Kenyan framework environmental law has abundant and appropriate provisions for public participation and access to environmental justice. The fifth basic matter recognized by the regional instruments is capacity building and awareness creation. Beyond these levels, it is essential to introduce and intensify continuing education in environmental law. Judges, legal practitioners, parliamentarians, policy makers and civil society groups should be targeted.

LIST OF ABBREVIATIONS

| | |
|--------|---|
| COMESA | Common Market for Eastern and Southern Africa |
| EAC | East African Community |
| EACJ | East African Court of Justice |
| EACJ | East African Court of Justice |
| EALA | East African Legislative Assembly |
| EALA | East African Legislative Assembly |
| EANECE | East African Network for Environmental Compliance and Enforcement |
| LVBC | Lake Victoria Basin Commission |
| LVFO | Lake Victoria Fisheries Organization |
| MOU | Memorandum of Understanding |
| NBI | Nile Basin Initiative |
| NBI | Nile Basin Initiative |
| SADC | Southern Africa Development Community |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNEP | United Nations Environment Programme |
| UNGA | United Nations General Assembly |

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

Over the past decades, international relations have adversely experienced increase in cooperation among different states in form of agreements and policies. The move towards greater common understanding and cooperation has become a global aspect driven by trade forces, shared natural resources, human rights issues, migration policies and politics, as they open opportunities for cooperation and integration. The goal for cooperation is to create common economic, social, political and cultural space among the participating countries. Cooperation evolves from economic links, historical or cultural ties. Different natural resources exist around the world and have helped to shape the society. In history, man has managed to earn a living through natural resources, thus, it is through the same natural resources which can bring cooperation among states and bring conflict between states.

There are several natural resources shared by countries around the world. Sharing of these resources has become a necessity because they are categorized as resources provided for by nature, hence, some of them cannot be depleted.¹The shared natural resources include: water, air, oil, land, natural gas, minerals, wildlife and forest. These resources are located around the world and the need to share them by all countries in the world often brings conflict².As such, there is great need to cooperate in international basin resources as water is the largest resource available to man given the many number of water bodies around the world. The United Nations 1997 convention on the Law of the Non-Navigational Uses of International Watercourses indicates that most countries agree on cooperation. It represents an important contribution to the strengthening of the rule of

¹ Judith Rees, *Natural Resources: Allocation, Economics and Policy*. (Routledge, 2017).

² Michael Carley And Phillipe Spapens: *Sharing the World: Sustainable Living & Global Equity in the 21st Century*. (Routledge 2017)

law in this increasingly critical field of international relations and to the protection and preservation of international watercourses in an era of increasing water scarcity.³

The study will focus on fresh water natural resources which have been deduced to be finite, unevenly distributed in the world and are often shared by more than one country. Thus, fresh water can be a trigger for conflict, but it can also become a reason for cooperation⁴. Many countries in the world continue to face challenges in the management of shared general natural resources. In Africa, conflicts have often emanated from shared natural water resources among countries with a good example being that of the world's longest river – The Nile River⁵. The Nile is the second most shared river in the world with a combined population of 437 million⁶. For centuries, the Nile basin's inhabitants have tapped the river for hydropower, fish and drinking water, as well as used it for recreation and tourism. Most critically, though, they have drawn upon it to irrigate farmland⁷. As populations grow and climate change makes water supply increasingly erratic, battles for control of its waters, always a factor in shaping relations among riparian countries, have grown severer. The Nile River Basin Initiative (NBI) - a multilateral forum established in 1999 for all eleven riparian states which include: Egypt, Ethiopia, Sudan, Uganda, Kenya, Rwanda, Burundi, the Democratic Republic of Congo, Tanzania, South Sudan and Eritrea, aims to ensure that Nile Basin countries work together to unlock the huge potential to bring a vast range of benefits to Nile

³ United Nations. Agenda 21: Program of Action for Sustainable Development; Rio Declaration on Environment and Development; Statements of Forest Principles; The Final Text of Agreements negotiated by Governments at the United Nations Conference on Environment and Development (UNCED), 3-14 June 1992, Rio De Janeiro, Brazil. United Nations Department of Public Information.1997.

⁴ Zeidan Bakenaz: *Water Conflicts in the Nile River Basin: Impacts on Egypt Water Resources Management and Road Map*, 10.13140/RG.2.1.4414.3849. 2015.

⁵ Robert O. Collins, *The Nile*, Yale University Press, (New Haven, 2002)

⁶ Ibid

⁷ Cooperation on the Nile”, Nile Basin Initiative, November 2013. Available at <https://www.nilebasin.org/images/docs/Cooperation on the Nile-low res FINAL.pdf>

Basin citizens including increased hydropower, food production and management of watersheds and better access to water for domestic use, among others⁸.

All over the world, water resources have continued to play vital roles in the livelihood and prosperity of mankind. Their uses include but not limited to: domestic and industrial use, irrigation and agricultural development, fishing grounds, modes of transport and a medium for sporting and recreation. Besides, their aesthetic appeal and beauty, they provide a serene environment for meditation and recreation.⁹ In East Africa region, there have been conflicts over shared natural resources with a good example being that of Lake Victoria¹⁰.

Lake Victoria is the second largest freshwater lake in world with a surface area of about 68,000 square kilometers spanning over Kenya (6%), Uganda (41%) and Tanzania (45%)¹¹. For the longest time, it has been a center of debate and has helped in shaping the political histories of notably Kenya, Uganda and Tanzania which the study focuses. Kenya, Uganda and Tanzania are also part of the Lake Victoria Basin (LVB) Countries, are part of the Nile River Basin (NRB) and are member states of the East Africa Community (EAC) alongside other African countries with access to the lake¹². The Lake basin is one of the main focal areas of cooperation among the states in EAC¹³.

Lake Victoria is a shared water resource that offers varying degrees of importance among riparian territories. In the past decade for example from 2008 to 2019, the lake region has

⁸ Nile Basin Initiative Cooperative Report 2015

⁹ N. S. Wangai, *The Biology and Impact of Neochetina Weevils on Water Hyacinth, Eichhornia crassipes in the Lake Victoria basin*, Kenya, p.2, PhD Thesis (unpublished), Moi University

¹⁰ Andrew Carlson, 'Who Owns the L. Victoria? Kenya, Uganda and Tanzania History- Changing Dam' *Origins* 6 NO.6. 2003.

¹¹ Joseph L. Awange and Obiero Ong'ang'a, *Lake Victoria (Kenya) and its environs: Re-source, Opportunitites and Challenges*, Africa Herald Publishing House, Kendu Bay, Kenya, 2003.

¹² Andrew Carlson, 'Who Owns the L. Victoria? Kenya, Uganda and Tanzania History- Changing Dam' *Origins* 6 NO.6. 2003.

¹³ Ibid.

experienced political strife, violent conflicts and population displacements which makes it a subject of debate. While these events have clearly revolved around political struggles for the control of the states within the EAC, recent research points to the shared natural resources in the region as structural causes of violent conflicts in the region¹⁴. The Lake Victoria is facing several challenges that would impinge on the socioeconomic fabric of the riparian states and their communities despite presence of cooperative frameworks like the Agreement on the Nile River Basin Cooperative Framework and institutional agreements on the Lake Victoria Basin which have been established with the aim of achieving sustainable socio-economic development through equitable utilization of, and benefit from, the common water resource of Lake Victoria¹⁵. Moreover, the ecological functioning of the lake and its processes are at the verge of collapsing if these challenges are not addressed¹⁶.

Limited access to natural resources in the lake region, exacerbated by their inequitable distribution, and by land tenure insecurity brought about by frequent episodes of population displacement and subsequent re-distribution of land by the state is also a contributing factor to conflict within the EAC region¹⁷. According to the Lake Victoria Environment Management Project (LVEMP) Literature, the Lake lies in one of the most populous areas in the world, serving as a source of livelihood for some thirty million people in Kenya, Tanzania and Uganda¹⁸. It is important to the riparian states for food, agricultural, industrial and domestic water supply, marine transport, biodiversity conservation, tourism and recreation. Current estimates show that annual

¹⁴ Brown, Oli; Keating, Michael (2015), *Addressing Natural Resource Conflicts*, Chatham House, The Royal Institute of International Affairs, London

¹⁵ Agreement on the Nile River Basin Cooperative Framework, Part II, Article 4,5,6.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ www.eac.int/lvdp

fish catch from Lake Victoria is between 400,000-500,000 metric tonnes¹⁹ making it a great source of socio-economic development to the peoples of East Africa. In Uganda, the Lake is considered as the source of the Nile and provides the waters to generate electricity at the Owen Falls. The Nile then continues as a lifeline to Sudan and Egypt before emptying into the Mediterranean Sea²⁰.

Lake Victoria also represents an obstacle in the pursuit of future peace. Every country has its interests in Lake Victoria and so access to this natural resource has brought about tensions within the region. It is therefore necessary for the three states to develop a collective approach in the management of the shared water resource that would not only roll back the threats that hang over the Lake but also further unlock the vast potential of the Lake for the benefit of the people within the lake region.²¹

1.2 STATEMENT OF THE RESEARCH PROBLEM

Natural resources play a significant role throughout the world. Indeed, resource abundant economies thrive more than those with fewer resources as demand from rapidly growing economies increases amidst declining supply of non-renewable resources²². Lake Victoria is turning out to be a source of conflict between nations bordering the lake who have different interests which could potentially threaten regional and international stability. In the past decade, there have been several incidents like the continued arrests by fishermen from Kenya, Uganda and Tanzania which has heightened tensions among these countries²³. It is now apparent that the main

¹⁹ Kenya Marines and Fisheries Research Institute Website. www.kmfri.co.ke

²⁰ Lake Victoria Environmental Management Programme Website. www.lvemD.org/waterhvacinth

²¹ J. Kikwete. Ministry of Foreign Affairs and international cooperation, Tanzania as quoted in the Regional Task Force et al. *The Vision and Strategy Framework for Management and Development of Lake Victoria Basin*, Main Report, September 2003, p.4

²² Pinilla, Vicente, Marc Badia-Miro, and Herny Willwbaid, "Introduction: Natural Resources And Economic Development – What Can We Learn From History?" *Natural Resources and Economic Growth*. Routledge 2015. Pg 1-25.

²³ Article on Tanzania frees six Kenyan fishermen after four months detention.

<https://www.standardmedia.co.ke/article/2001312713/tanzania-frees-six-kenyan-fishermen-after-4-months-detention>

source of these conflict that leads to the constant arrests is the lack of a clearly delimited and demarcated borders between the three countries sharing Lake Victoria because each of these countries bordering the lake claim that fishermen from each of the three countries fish outside their water border lines in the Lake Victoria²⁴. Besides, Lake Victoria contains a vast amount of resources including water and fish which serve as an important economic factor for the three countries and conflict over this natural resource still emerges over ownership and fair use of the natural resource with the notion that some nations lack equitable access, consequently, leading to increased tensions that might spread economic, social and political instability in the region. For instance, Uganda believes that their interest in the shared water is undermined by activities of Kenya with fears that Kenya may exploit Uganda's waters without its consent. Kenyan fishermen continue to be arrested and their boats and equipment confiscated by either Tanzanian or Ugandan authorities for "illegally crossing the common borders." These incidents have exacerbated the already strained relations between these three countries²⁵.

In principle, the countries of the Lake region believe that the resource, including water should be shared equitably which is one reason why there have been various institutions established under the EAC such as the Lake Victoria Basin Commission (LVBC)²⁶ and the Lake Victoria Fisheries Organization (LVFO)²⁷ with a mandate to coordinate sustainable development of the Lake Victoria Basin and control activities of various stakeholders operating the basin. Through these institutions, EAC states have come together to seek legal and acceptable

²⁴ Article on Ugandan authorities arrest 30 Kenyan fishermen in Lake Victoria, The Standard, 28 July 2019, accessed in August 2019

²⁵ Ibid

²⁶ Protocol for Sustainable Development of the Lake Victoria Basin (the "LVBC Protocol") signed on 29 November 2003 and ratified in December 2004.

²⁷ Convention for the Establishment of the Lake Victoria Fisheries Organization (the "LVFO Convention") signed on 30 June 1994, entered into force on 24 May 1996 and was amended in 1998.

frameworks for equitable management of the resources to manage on-going and emerging conflicts and prevent future conflicts although these frameworks are still wanting and need mechanisms to strengthen their capacity and involvement in controlling of the Lake Basin activities. Indeed, natural resources have been known to be a familiar source of conflict mostly over control and usage and are primarily expected to escalate when shared among diverse parties²⁸. In addition, the EAC states constantly flout the frameworks established for cooperation in sharing this common resource and sometimes opt for their own domestic laws which serve their national interests which is often against the international laws.²⁹ The desire by member states to maintain their territories in the Lake Region is also a major factor that has brought about conflicts within the region, bringing in the concept of state sovereignty.³⁰

Over the years, Lake Victoria has been viewed as a lucrative fuel for growth and alternatively a vital source of conflicts among the three countries due to increased human activities³¹. These activities include overfishing, illegal fishing, deforestation, soil erosion, growing population, pollution from industrial (i.e. chemicals from manufacturing plants) and human activities (i.e. human and animal waste) discharged into rivers that eventually flow into the Lake basin contaminating it³². On the contrary, considering the Lake basin as a shared natural resource could mean it has instigated cooperation among the three states as seen through increased efforts to nurture equitable and sustainable use of this common resource. Therefore, this study will evaluate the challenges facing implementation of best practices in the already established

²⁸ Wilson, C. & Tisdell, C., 'Conflicts over Natural Resources and the Environment: Economics and Security,' *Working Papers on Economics, Ecology and the Environment, Working Paper No. 86*, September 2003; Lumerman, P., et al, 'Climate Change Impacts on Socio-environmental Conflicts: Diagnosis and Challenges of the Argentinean Situation,' (Initiative for Peacebuilding 2011).

²⁹ I. Brownlie, 2008, *Principles of Public International Law*, Oxford University Press 7th edition

³⁰ Malcom. N. Shaw, 2008 *International Law* Cambridge University Press 6th Edition Pg. 72-79

³¹ <https://www.worldbank.org/en/news/feature/2016/02/29/reviving-lake-victoria-by-restoring-livelihoods>

³² Ibid

frameworks and institutions for cooperation of shared natural resources and recommend policies aimed at strengthening these institutions and promoting increased cooperation among states sharing the Lake Victoria resource³³.

1.3 RESEARCH QUESTIONS

- i. What are the mechanisms and institutions on shared resources in the EAC with a focus of Lake Victoria?
- ii. What are the EAC legal and policy frameworks fostering cooperation on the sharing of Lake Victoria?
- iii. What are the legal and policy frameworks on management of Lake Victoria, the prospects and challenges faced by Kenya, Uganda and Tanzania in managing the sharing of Lake Victoria?

1.4 OBJECTIVES OF THE STUDY

The following are the study's objectives:

- i. To analyze the mechanisms and institutions on shared resources in the EAC with a focus on Lake Victoria.
- ii. To examine the EAC legal and policy frameworks fostering cooperation on the sharing of Lake Victoria.

³³ Ibid

- iv. To evaluate the legal and policy frameworks on management of Lake Victoria, the prospects and challenges faced by Kenya, Uganda and Tanzania in managing the sharing of Lake Victoria?

1.5 LITERATURE REVIEW

1.5.1 Introduction

The literature in this study will be divided into five sub-sections. Section one will review literature on background of conflicts over shared natural resources with a focus on Lake Victoria. Section two will examine the causes of conflicts over shared natural resources among states in the EAC. Section three will review literature on global principles on shared natural resources. Section four will review literature on regional principles on shared natural resources in the EAC and finally the literature review will study the role of established cooperative frameworks on shared natural resources in the EAC with the aim of obtaining analysis useful in addressing emerging issues, conflicts and sustainable management of the Lake Victoria among the three EAC member states. Many scholars in the past have focused on conflict over the Lake Victoria resource and there is limited literature on the cooperative frameworks on shared natural resources which are significant in promoting sustainable use of the resource to avoid conflict within the EAC region. The literature review is qualitative as it will focus on available literature on books, articles and journals and Treaties.

1.5.2 Background of conflicts over shared natural resource with a focus on Lake Victoria

There is a formidable amount of literature touching on emerging conflicts around Lake Victoria contained in books and journals that address the issues raised but most of the writings are

anchored on the Lake Victoria Treaties³⁴. Various ways of interpreting the Treaties have been explored and there is no unanimous agreement on how to interpret the International Treaties³⁵. Cooperation among states is a process of large-scale territorial differentiation where internal boundaries are lowered as member states integrate to create new external boundaries. It is also the process where states enter into a regional agreement to enhance and improve regional cooperation through regional institutions and rules. Even the strongest riparian states sharing international basins are sometimes compelled to seek some form of cooperation with their weaker neighbors³⁶.

States first turn to unilateral means to deal with their growing needs for water but when these means have been exhausted and shortages persist, or new demands develop, States are forced to recognize their hydrological interdependencies. A case in point is in the Parana-La Plata basin whereby Brazil had historically preferred to construct water projects within its own territory to deal with its growing need for water and energy. However, having exhausted the more easily available and cost-effective solutions, Brazil was impelled to seek cooperation with its neighbors resulting in the Itaipu Project with Paraguay.³⁷ Cooperation among states that share international waters is never easy to achieve due to principles of general international law such as sovereignty and territorial integrity³⁸. Other issues include security, political, economic, technical and strategic impediments that are the core concerns of states therefore hindering cooperation³⁹. For example, cooperation challenges over the Lake Victoria basin are not only among Kenya, Uganda and Tanzania but rather extends to the upper riparian States particularly Egypt. The problem lies in

³⁴ Convention for the Establishment of the Lake Victoria website: www.lvfo.org

³⁵ Malcom. N. Shaw, *International Law*, Cambridge University Press, 6th Edition, 2008. Pg.932

³⁶ Espey, M., and B. Towfique, *International bilateral water treaty formation*, Water Resource. (2004), Res.,40, W05S05,doi:10.1029/2003WR002534.

³⁷ Ibid, P,234

³⁸ Espey, M., and B. Towfique, *International bilateral water treaty formation*, Water Resource. (2004), Res.,40, W05S05, doi:10.1029/2003WR002534

³⁹ JA. P. Elhance, *Hydro-Politics in the 3rd World, Conflict and Cooperation over essential and Scarce Natural Resources*, op.cit

their diametrically opposed theories of water rights whereby the upper riparian states assert claims to individual property rights in the part of rivers and lake in their territory. According to the doctrine of Absolute territorial sovereignty, a state has the right to do whatever it chooses with the waters that flow through its boundaries, regardless on its effect on any other riparian state⁴⁰. On the contrary, upper riparian states especially Egypt makes the opposite claim insisting on the principle of non-interference with the natural flow of the rivers in their territory that flow into Lake Victoria.⁴¹ For states to successfully cooperate in the management of the Lake Victoria, they must according to the World Bank, take the fundamental step of accepting the principle of equitable and sustainable use. Upstream and downstream states must acknowledge each other's rights to use water resources for national development as well as each nation's responsibility to prevent the pollution and degradation of water. Once this step is taken, the World Bank researchers argue that state relations will yield higher benefits for all parties and conflict is minimal⁴².

The principle of 'community of interests treats the entire lake as a single hydrological unit that should be managed as an integrated whole such that no State may affect the resource without the cooperation and permission of neighbors of Kenya, Uganda and Tanzania. They conclude that while this concept of managing a resource based upon its hydrological features as opposed to its political boundaries could have positive environmental benefits, such co-operation among States has, in practice, been difficult to achieve⁴³. It therefore means that the EAC countries together with

⁴⁰ Stephen C. Mccaffrey, "The Harmon Doctrine One Hundred Years Later: Buried, Not Praised". *Natural Resources Journal*, Vol. 36, No. 4, 1996, pp. 965–1007. 1996)

⁴¹ A. Okoth-Owiro, Occasional Papers, East Africa No. 9, The Nile Treaty, State Succession and International Treaties Commitments: A case Study of the Nile Water Treaties, 2004, Konrad Adenauer Foundation and Law and Policy Research Foundation, Jacaranda Designs Ltd., Nairobi, Kenya, pp 28-29

⁴² World Bank, *African Water Resources, Challenges and Opportunities for Sustainable Development*, Technical Paper 331, African Technical Department Series, 1996, World Bank, Washington D.C, U.S.A, p. 57

⁴³Kumar Anjali, et al, Mobilizing Domestic Capital Markets for Infrastructure Financing: International Experience and Lessons for China (World Bank, Washington D.C, 1997)

other countries depending on the Lake Victoria resource are under an obligation to cooperate in the usage and sustainable management of this shared resource⁴⁴.

On the question of co-operation between countries sharing natural resources, these States express the view that co-operation on shared natural resources represents an important tool to mitigate the adverse environmental impacts on the economy and health of affected communities and to explicitly create trust and confidence among nations which previously experienced political tensions and violent conflict.⁴⁵ Although the article is only limited to a case study of Europe, it provides an insight on the implications of states shared natural resources although in the European context. This, however, may be compared to the East African scenario ⁴⁶.

Regarding co-operation as alluded to above, positive shared natural resources often make co-operation arrangements a strategic choice for neighboring countries to optimize benefits from such public goods and natural resources. A promising alternative may be for a group of countries to devise development objectives and coordinate activities that generate public goods with assistance from a regional institution. Considering this argument, benefits enjoyed by riparian states from the Lake Victoria resource may be viewed as a public good and hence the need to ensure co-operation in its conservation and management to accrue much benefits to all countries⁴⁷.

The Nile Basin as a shared resource presents the argument that the problem of achieving effective cooperation between relevant parties represents one of the greatest obstacles to ensuring the equitable and sustainable management of shared resources. They are of the view that it is

⁴⁴ Rahaman, M.M., 'Principles of Transboundary Water Resources Management and Ganges Treaties: An Analysis,' *International Journal of Water Resources Development*, available at <http://www.tandfonline.com/doi/pdf/10.1080/07900620802517574> (Accessed on 24/11/2018).

⁴⁵ Massimiliano Montini and Slavko Bogdanovic (eds) *Environmental Security in South-Eastern Europe: International Agreements and their Implementation* (Springer Publishers, Netherlands, 2011)

⁴⁶ Ibid

⁴⁷ Rahaman, M.M., 'Principles of Transboundary Water Resources Management and Ganges Treaties: An Analysis,' *International Journal of Water Resources Development*, available at <http://www.tandfonline.com/doi/pdf/10.1080/07900620802517574> (Accessed on 24/11/2018).

unfortunate that effective cooperation may easily be eclipsed by outright conflict over natural resources, and this reality is particularly evident in the case of trans-boundary natural resources⁴⁸.

Regional cooperation is therefore vital in the management of shared water resources if states are to meet their priority challenges for sustainable water resource management⁴⁹. This is because shared freshwater resources link the challenges of pollution, environmental degradation and national security across co-riparian states. The externalities of uncoordinated basin management can increase localized poverty, negatively impact entire sectors on national economies for example, agriculture, energy and industry and even destabilize the political situation of an entire region. Thus, countries which are highly reliant upon the shared freshwaters and which face the threat of water scarcity, pollution and degradation of freshwater resources must overcome the challenges posed by regional cooperation in the management of freshwater resources⁵⁰.

1.5.3 Causes of conflicts over Lake Victoria as a shared natural resource among states in the EAC

For many decades now, there has been increased tensions and conflict because of growing demand for water in the Lake Victoria basin, which is used for drinking, food through fishing, to generate hydroelectric power and irrigation for communities farming around the basin⁵¹. There is increased concern and fear that water in the Lake Victoria basin is dwindling amid acute poverty, increased population, food insecurity, cycles of drought, environmental degradation, and the desire

⁴⁸ Zewdineh Beyene and Ian L Wadley, (2004) 'Common Goods and the Common Good: Transboundary Natural Resources, Principled Cooperation, and the Nile Basin Initiative'

⁴⁹ Environmental Management and Co-ordination (Amendment) Act, No.5 of 2015, ss.2.3.

⁵⁰ World Bank, *African Water Resources, Challenges and Opportunities for Sustainable Development*, Technical Paper 331, African Technical Department Series, 2016, World Bank, Washington D.C, U.S.A, p. 87

⁵¹ Lake Victoria Basin Aquatic Biodiversity Meta-Database, available at <http://lvbcom.org/aquatic/index.html> (Accessed on 22/11/2018).

by states within the region to control the resource⁵². Initially, the contestation over the waters of Lake Victoria was mainly between Egypt and the main riparian states, Tanzania, Uganda and Kenya. However, recently the contestation has become more localized, with the riparian states finding it difficult to share the lake due to increased exploitation of its resources and demands for more water from Egypt and Sudan. These disputes can be located within the broader discourse of disputed borders in Africa and of exploitation of natural resources in the borderlands⁵³.

Demarcation has never been clear on the Lake Victoria segment of the border between the three East African countries. The lake is the main source of livelihood for close to 40 million people who live around it and rely heavily on the Lake Victoria for subsistence production. The high levels of illiteracy population living around the lake, inappropriate skills for production and the lack of socio-economic incentives to meet the challenges of management and development⁵⁴. Fishermen in the region have disparities in their income which often leads to smuggling and illegal fishing activities which have significantly led to conflicts⁵⁵.

1.5.4 Global principles on shared natural resources

International law creates legal obligations for States, non-binding legal regimes in the form of principles and guidelines, arguably it creates community expectations which influence State behavior, thus paving way for concordant State practice in the use and management of natural resources globally⁵⁶. Law is that element which binds the members of the community together in

⁵² Water Related Conflicts in the Eastern Africa Region, IPSTC, 23 September 2010.

⁵³ Gilligan, K. & James, P. *Preventing Violence: Prospects for Tomorrow*. New York: Thames & Hudson, 2001.

⁵⁴ EAC Secretariat (2002), *The Treaty for Establishment of EAC*, Arusha, EAC Secretariat

⁵⁵ D. Charles Phillipe and G. Jean-Francois, *Natural Resources, as a Source of Conflict?* (International Journal, Vol. 62, Natural Resources and Conflict, 2006/2007), pp 5-17.

⁵⁶ Malcolm N. Shaw, *International Law*, Cambridge, P. 1

their adherence to recognized values and standards⁵⁷. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts, and coercive, as it punishes those who infringe its regulations⁵⁸. Law consists of a series of rules regulating behavior, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions⁵⁹. This State practice can then give rise to a customary norm of international law or to the eventual adoption on a convention on the subject. In this vein, the UNEP developed several sets of non-binding principles and guidelines on the Conservation and Harmonious use of Shared Natural Resources such as the decision 6/14 of the Governing Council of UNEP, 1978.⁶⁰ Paragraph 2 of the UNGA Resolution on Environmental Co-operation Concerning Natural Resources shared by two or more States declares that: “Considers further that co-operation between countries sharing such natural resources and interested in their exploitation must be developed on the basis of a system of information and prior consultation within the framework of the normal relations existing between them⁶¹

Other key instruments that make provisions in relation to shared natural resources include: The Charter of Economic Rights and Duties of States. Article three of this Convention provides that: “In the exploration of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultation in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.”; The principle on cooperation based on information and prior consultation states that international matters concerning the protection and improvement of the environment should be handled in a cooperative

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ *Ibid*

⁶⁰ Schachter Oscar and Christopher C. Joyner (eds), *United Nations Legal Order*, Vol 2 (Press Syndicate of University of Cambridge, New York, 2015)

⁶¹ UNGA Resolution on Environmental Co-operation Concerning Natural Resources shared by two or more States

spirit by all countries, big, small, on equal footing⁶² The general principle of not causing transboundary harm obligates States to have the sovereign right to exploit their own resources pursuant to the own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of la regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction⁶³.

In the same context, further norms governing such shared trans-boundary resources are stipulated in the United Nations Environmental Law Guidelines and Principles on Shared Natural Resources. Resolution 34/186 of 18th December 1979 of UNGA further requested all States to use the principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more States, on the basis of the principles of good faith and in the spirit of good neighborliness and in such a way as to enhance and not to affect adversely development and the interests of all countries, and in particular of the developing countries.⁶⁴ States ought to cooperate in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States⁶⁵. Accordingly, it is necessary that consistent with the concept of equitable utilization of shared natural resources, States cooperate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilization of such resources. Such cooperation is to take place on an equal footing and considering the sovereignty, rights and interests of the

⁶² Principle 24, Stockholm Declaration

⁶³ Principle 21 of the Declaration of the United Nations Conference on Human Environment, 1972 (Stockholm Declaration)

⁶⁴ UN Resolution 34/ 186

⁶⁵ Ibid

States⁶⁶. Principle 10 is further to the effect that States sharing a natural resource should, when appropriate, consider the possibilities of jointly seeking the services of any competent international organization in clarifying the environmental problems⁶⁷.

1.5.4 Regional Principles on Shared Natural Resources in the EAC.

The principal instrument remains the Treaty establishing the EAC which gives the overall principle under which the member States are required to cooperate in environmental matters. The Treaty provides for cooperation in environment and natural resources management in the management of Lake Victoria in the areas of food security⁶⁸, environmental issues and natural resources⁶⁹, and management of natural resources⁷⁰. The EAC Treaty also advocates for the integration of environmental management and conservation measures in all developmental activities such as trade, transport, agriculture, industrial development, mining, and tourism in the community⁷¹.

In 1998, the EAC governments adopted an MOU established under the EAC Protocol on Environment and Natural Resource Management for cooperation on Environment Management. This MOU established a regional framework for continued cooperation of the countries in the use of the countries' natural resources. Developed under the UNEP/UNDP/Dutch Initiative, the MOU is the first such instrument to be assembled and agreed in Africa⁷². The Protocol emphasizes the need to promote the management of trans-boundary ecosystems in East Africa⁷³. It also obliges

⁶⁶ 1962 General Assembly Resolution 1803 on Permanent Sovereignty over Natural Resources, Part 1.5.

⁶⁷ Ibid

⁶⁸ Article 110, Treaty for the Establishment of the EAC

⁶⁹ Ibid Article 111.

⁷⁰ Ibid Article 114.

⁷¹ Shelton Dinah, '*International Cooperation on Shared Natural Resources*' (accessed 19th May 2019)

⁷² 3GodberTumushabe, '*Public Involvement in the East African Community*' In Carl Bruch, *The New "Public": The Globalization of Public Participation* (Environment Law Institute Publication, Washington, 2012)

⁷³ Article 9 of the EAC Protocol on Environment and Natural Resource Management

Partner States to manage mountain ecosystems⁷⁴ such as critical water catchment, conservation and heritage areas and other areas of common strategic interest at local, national, regional and international levels.⁷⁵

The Revised Guidelines for Conducting Trans-boundary Environment Assessment in Shared Ecosystems in East Africa provide procedures for conducting trans-boundary environment assessment in shared ecosystems in the EAC and the roles for the key stakeholders and players during the implementation of the trans-boundary environmental impact assessment in the Partner States. The Guidelines provide for the activities to be subjected to the guidelines to include: policies, plans, programs, or projects in one Partner State or activities out of character with their surroundings involving major changes in land use and which are likely to cause trans-boundary impacts in neighboring countries.⁷⁶

1.6 JUSTIFICATION OF THE STUDY

1.6.1 Academic Justification

The study seeks to build on the knowledge available in this field. It is very important to point out that knowledge pertains facts on objective insights which must be processed by the human brain.⁷⁷As such, the research will analyze various cooperative frameworks established to within the EAC in the management of Lake Victoria as a shared natural resource, and it will focus on cooperation as a solution to management of natural resource based conflicts which is a gap in literature considering the available literature focuses on conflict rather than cooperation.

⁷⁴ Ibid Article 20

⁷⁵ Albertine Rift Conservation Society, ‘*African Mountains Regions Forum*, Edition’ 2014

⁷⁶ East African Community, ‘*Transboundary Environmental Assessment Guidelines for Shared Ecosystems in East Africa*’ (accessed 19 May 2019)

⁷⁷ Carter Michael. (2016) “Value Arguments in Science Research Articles: Making the Case for the Importance of Research.” *Written Communication* 33.3; 302-327

Furthermore, research is also important because of its contribution to knowledge development, improvement and policy information.⁷⁸ The promotion of research in huge and diverse countries in the Eastern Africa as addressed by this research will help these countries evolve as a knowledge reservoir in the international arena.

To the academia, the results obtained from this study can serve to improve on available literature. It will not only provide a better overview of the topic of study but also relate the latest information available other researchers can also use the results as points of references and the areas of further studies suggested at the end of this study will also provide them with an opportunity to expand on what was not covered by further enhancing strategies towards addressing identified gaps. This study will also assist the academic organization in elevating its academic archives on cooperation issues and bridge the knowledge gap on cooperation of States in management of emerging conflicts because of shared natural resources within the EAC rather than focusing on Conflict management. This study will also lead to increased awareness and strengthening capacity of the concerned institutions and the established frameworks for cooperation among the involved institutions.

1.6.2 Policy Justification

The study will inform policy makers of the strengths that exist, weaknesses, opportunities and threats to the Lake Victoria's ecosystem with the riparian community as the basic unit for generating quality databases and information as they interact with the lake daily. It will foster dialogue among the riparian states aimed at spearheading policies and recommendations that enhance efficient management and utilization of the Lake Victoria as a shared common resource in the EAC region. It will also improve public awareness and understanding of the key challenges

⁷⁸ Dincer Ibrahim: Importance of Research, Innovation and commercialization for Technological Success.' *International Journal of Research, Innovation and Commercialization*, 2017, 1.1: 8 -22

revolving within these shared resource and mitigation measures to be established to enhance cooperation, peace, sustainability in use of the resource for the benefit of member States governments and policy makers.

1.7 THEORETICAL FRAMEWORK

1.7.1 Liberalism Theoretical Framework

Human beings have for a long time battled with establishing liberal democracy in their undertakings, especially when politics, the rule of law and the protection of civil liberties is concerned. Over the years, this has come to be identified as liberalism. This term is largely identified as a defining feature of modern democracy and has developed into on its own in as far as international relations is concerned. It contains a variety of concepts and arguments about how institutions, behaviors and economic connections contain and mitigate the violent power of states⁷⁹.

The theory of liberalism is founded on a simple basis; that ensuring the right of an individual person to life, liberty and property is the highest goal of government.⁸⁰Liberals are of the view that the well-being of an individual is the fundamental building block of a just political system. It follows that a political system that is characterized by certain characteristics of unchecked power, including dictatorship and monarchy will certainly not protect the liberty of its citizens. Therefore, the main concern of liberalism is to construct institutions that protect individual freedom by limiting and checking political power. It should be considered that although these issues may be inherent in the states, activities that a state engages itself in abroad often have an impact on the liberty at home. For instance, militaristic foreign policies lead liberals to be

⁷⁹ Jeffrey W. Meiser, (2018) *Introducing Liberalism in International Relations Theory*

⁸⁰ Jonws, Branwen Gruffydd, Ed. (2006) *Decolonizing International Relations*; Rowman & Littlefield

concerned that while war enquires states to build up military power, having such power not only means that the state will be able to defend itself, but that it can also be used to oppress its own citizens.⁸¹ For this reason, political systems rooted in liberalism often limit military power by such means as ensuring civilian control over the military⁸².

The theory can be critiqued through the concern that liberals often raise wars of territorial expansion, which has been a major source of conflicts around the world.⁸³ When states seek to build empires by taking territory overseas or seek a natural resource, say water, several factors often come into play such as expansionist wars which strengthen the state at the expense of the people and require long-term commitments to the military occupation and political control of foreign territory and peoples⁸⁴.

Liberalism theory supports this study as it promotes the strengthening of frameworks, institutions and mechanisms aimed at promoting equality, democracy, human rights, good relations among states and eventually peace established from equal distribution of Lake basin resources which perfectly leads to state cooperation.

1.7.2 Neoliberal Institutionalism Theoretical Framework

It is a subset of liberalism also fits in to the study as it is the principal view on the role that international institutions ought to have in international relations among states, both economically and politically⁸⁵. The point is that since countries are now so connected between each other, international watchdogs are necessary to maintain the rules fair for everyone⁸⁶. The role of

⁸¹ Burley, Anne- Marie Slaughter (2017) ‘International Law and International Relations Theory: A Dual Agenda,’ *The Nature of International Law*, Routledge, 11 - 46

⁸² Ibid

⁸³ Baylis, John, Steve Smith, and Patricia Owens, Eds. (2017) *The Globalization of World Politics: An Introduction to International Relations*. Oxford University Press

⁸⁴ Ibid

⁸⁵ Grieco, Joseph M., and G. John Ikenberry. *State Power and World Markets: The International Political Economy*. New York: W.W. Norton & Co., 2003. p 116

⁸⁶ Ibid

international institutions is to be a guide for affiliated countries to promote cooperation to resolve global economic or political issues; thus, making member states better-off. If each nation had to deal with issues independently it would not only most likely result in war but would also be costly. Therefore, it is better for member states to rely in international institutions to resolve problems. International institutions enhance this by providing information and advice to member countries on economic and political matters⁸⁷.

1.8 HYPOTHESES

The following will be the study's hypotheses:

- i. Cooperative frameworks are significant instruments for cooperation among the riparian states sharing Lake Victoria.
- ii. Proper institutional structures with defined mandates and policy frameworks lead to proper management of water resources.

1.9 METHODOLOGY

1.9.1 Introduction

The study will collect qualitative data from interviews, focus group discussions and questionnaires. The study will also analyze data using content analysis.

1.9.2 Data Collection

This study will entail the use of both primary and secondary data collection method.

1.9.3 Primary Data

Primary data will be derived from telephone interviews, questionnaires, interviews with professionals and residents living within the Lake Region.

⁸⁷ Ibid

1.9.4 Secondary Data

Secondary data will be obtained from books, journals, the Treaty for the Establishment of the EAC, protocols and pre-existing materials. The researcher also intends to use graphical representations of the maps of Lake Victoria as the study area and the riparian states surrounding this common resource.

1.9.5 Target Population

The target population is very wide since the EAC partner states located in six different locations. Ideally the researcher will want to travel to all the EAC States to be able to get access to a bigger sample group. However, due to time and resource constraints this will not be possible. The study location has for this reason been limited to Lake Victoria, Kenya where the researcher is based. The researcher will target professionals in leadership positions in various government and non-governmental organizations in the EAC and residents living within the Lake Victoria region because individuals in these organizations are best placed in answering questions presented to them through interviews and questionnaires.

1.10 CHAPTER OUTLINE

This study is divided into five chapters: Chapter one includes the background of the study, the statement of the research problem, objectives of the study, the literature review, the justification of the study, the theoretical framework, the hypotheses, and the methodology; Chapter two will outline the dynamics of shared natural resources with an overview of Lake Victoria; Chapter three will detail the EAC legal and policy frameworks established in fostering cooperation on the sharing of Lake Victoria; Chapter four will analyze the EAC legal and policy frameworks on Lake

Victoria, the prospects and challenges of shared Natural resources focusing on Lake Victoria and Chapter five will consist of the summary, conclusions and recommendations aimed at improving frameworks and institutions on shared resources in the EAC.

CHAPTER TWO

LITERATURE REVIEW

THE DYNAMICS OF SHARED NATURAL RESOURCES: AN OVERVIEW OF LAKE VICTORIA

2.1 Introduction

This chapter will focus on the dynamics of sharing natural resources with an overview of Lake Victoria as a shared natural water resource in the East Africa region, international legal perspectives on shared water resources, peaceful settlement of disputes emanating from shared natural resources, the link between natural resources and conflict, the link between natural resources, poverty and the environment. The study intends to use qualitative analysis citing what scholars have written on conflicts over shared natural resources as such literature review of this study fills in the missing gaps in literature of using cooperation as a preventive mechanism to conflict rather than focusing only on conflict. The approach will use books, scholarly articles and what authors have written on conflicts of shared natural resources focusing on Lake Victoria which is situated in the EAC region.

2.2 Overview of Lake Victoria

Lake Victoria is the second largest freshwater lake in world with a surface area of about 68,000 square kilometers spanning over Kenya (6%), Uganda (41%) and Tanzania (45%)⁸⁸. Lake Victoria has more than 200 species of fish, of which the Tilapia is the most economically important. In the 20th and 21st centuries, the Lake Victoria has been a center of debate and has

⁸⁸ Joseph L. Awange and Obiero Ong'ang'a, (2003) Lake Victoria (Kenya) and its environs: Re-source, Opportunitites and Challenges, Africa Herald Publishing House, Kendu Bay, Kenya.

helped in shaping the political histories of notably Kenya, Uganda and Tanzania⁸⁹. The lake and its surrounding have been threatened by the consequences of overfishing as well as by ecological damage from pollution and new species such as the Nile perch and water hyacinth⁹⁰. The Lake Victoria region is one of the most densely populated in Africa; within 50 miles (80 km) of its shores live several million people, nearly all Bantu-speaking. There are local steamer services around the lake⁹¹.

The Lake Victoria basin is used as a source of food, energy, domestic drinking and irrigation water and agricultural production, for shelter and transport, recreation and as a repository for human, agricultural and industrial waste. It is also a biodiversity conservation and tourism site. The basin supports large populations that depend on it for farming activities and fishing for subsistence, sale and export, and industrial development⁹².

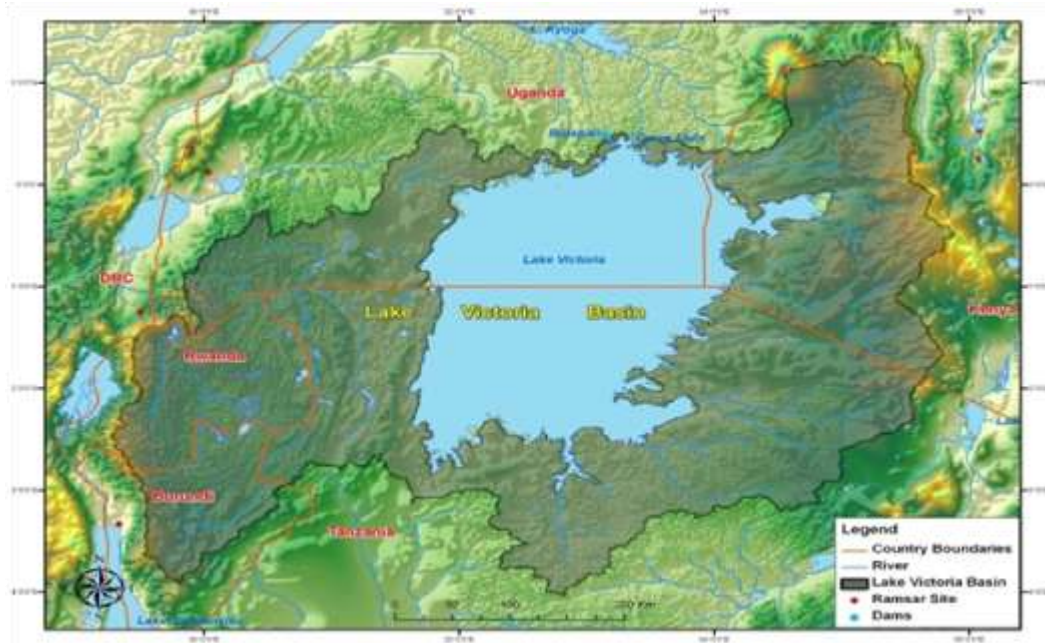
⁸⁹ Carlson, Andrew (2013) ‘Who Owns the L. Victoria? Kenya, Uganda and Tanzania History- Changing Dam’
Origins 6 NO.6

⁹⁰ OSIENALA (Friends of Lake Victoria), Dying Lake Victoria (Ed. by S. O. Aketch), 96p

⁹¹ Ibid

⁹² J.O. Okungu, S. Njoka, J.O.Z. Abuodha, and R. E. Hecky, Lake Victoria Environment Report, Water Quality and Ecosystem Status (2005), page.1

2.3 Figure 2.3. Map of Lake Victoria showing the study area.



Source: Lake Victoria Basin Commission

2.2 Dynamics of Conflicts over Shared Natural Resources

Natural resources have always been linked to conflicts both directly and indirectly⁹³. The control over valuable renewable and non-renewable natural resources has induced acute conflicts⁹⁴. The underlying causes of this resources conflict are poverty, the policy choice that states have pursued over the years and the inefficiency of institutional frameworks for management of the resources, and where they exist, and the lack of conflict resolution and prevention mechanisms⁹⁵. Resource based conflicts have always been explained in terms of scarcity which views the conflicts as borne out of struggle for the scarce resources, often induced by population

⁹³ Ibid

⁹⁴ Kahl, Colin. "Demographic Change, Natural Resources and Violence: The Current Debate." *Journal of International Affairs* 56, no. 1 (2002): 257-82. <http://www.jstor.org/stable/24357892>.

⁹⁵ EAC (2004); The Vision and Strategy Framework for the Management and Development of the Lake Victoria Basin

pressure⁹⁶. Several characteristics associated with natural resource conflicts contribute to their complexity and, in turn, influence approaches to their resolution. The scarcity or abundance of a specific natural resource fundamentally influences the conflict dynamics at play and the mediation opportunities available. In addition, one or more of the following characteristics may influence the dynamics of a resource conflict: Many resources are influenced by a range of natural and social factors leading to a high level of complexity and uncertainty in their availability, quality, and value⁹⁷.

Resources involved in disputes are often ascribed with highly sensitive historic and symbolic values that may be linked to national or group identity, or to a specific livelihood; Natural resource conflicts often occur at different scales or levels in ways that interconnect at local, regional, national, transboundary, or international levels.⁹⁸ Resource disputes often involve uneven geographic patterns of resource distribution that can be particularly salient when they occur along ethnic, religious, or linguistic lines; Tensions between competing livelihood groups over scarce natural resources often occur in seasonal cycles, which can escalate into violent outcomes following sudden shocks or stresses to the system⁹⁹.

Furthermore, natural resources can play a number of different roles in the generation and escalation of tensions between stakeholders, ranging from triggering and intensifying conflicts to prolonging them; Resource conflicts can involve a wide range of actors and stakeholders, including nation-states, local governments, ethnic groups, communities, civil society organizations, and private companies; Natural resources frequently play a key role in the broader political economy,

⁹⁶ P.H.Gleick, *Water and Conflict I, Freshwater Resources and International Security*(International Security 18,1993) pp.79-112.

⁹⁷ Report on Natural Resources and Conflict, United Nations Department of Political Affairs and United Nations Environment Programme, Series Report No. 6, ISBN:978-92-807-3433-1 Job No.:DEP/1874/GE

⁹⁸ Ibid

⁹⁹ Ibid

often reinforcing the power of elite actors; Resource disputes are sometimes associated with significant power imbalances and asymmetries between the parties such as international corporations versus local communities, or lack of formal representation of a specific livelihood group in a decision making process¹⁰⁰

The past decade, however, has seen scholars and policy makers focus on the economic dimensions of contemporary armed conflict and have made a prompt consideration on conflict promoting aspects of resource abundance¹⁰¹. In most parts of Africa, natural resource-based conflicts are characterized by violence and like other social activities, wars require financial and other resources to proceed, a fact that has been used to explain many intrastate conflicts in Africa¹⁰². The underlying historical causes for conflict attributed to domestic grievances or circumstances that may prompt warfare are conflict over natural resources which cause instability as in the DRC, Angola, Sudan and Liberia and religion as a political tool in mobilizing warfare as in Sudan where Muslims and Christians are involved in conflict¹⁰³.

Conflicts over sharing of Lake Victoria resource in the East Africa region have often emerged between Kenya, Uganda and Tanzania leading to increased tensions and conflict because of growing demand for water in the Lake Victoria basin¹⁰⁴. The greatest development challenges facing Lake Victoria basin are its socioeconomics and ecological problems, with a close correlation between poverty and environmental degradation. The ecosystem of Lake Victoria has

¹⁰⁰ Ibid

¹⁰¹ M.Klare, Resource Wars, The New Landscape of Global, New York, (Metropolitan Books, 2001) pp. 43

¹⁰² bAC (2004); The Vision and Strategy Framework for the Management and Development of the Lake Victoria Basin

¹⁰³ Ibid

¹⁰⁴ Olivia Odhiambo (2018) The Standard Article on Kenya, Uganda officials meet to resolve conflict on Lake Victoria,

undergone substantial negative changes over the last thirty years and one of the driving factors is the nutrient enrichment of the lake, which has altered its ecological balance¹⁰⁵.

The Lake and its natural resources are environmentally threatened and so are the livelihoods of the people living in the catchment area. Intense population growth and unsustainable exploitation of the natural resources in and around the lake are eroding the livelihoods of the people. Environmental deterioration is increasing poverty, and poverty is exacerbating the environmental degradation. About half the population has an income per capita of less than one US dollar per day¹⁰⁶. Its highly productive fisheries of about 500,000 metric tonnes per year supports a significant proportion of the basin's 30 million inhabitants and makes substantial contributions to the national economies of the Partner States through export earnings valued at US\$ 600m annually¹⁰⁷. The fishery of Lake Victoria consists of 3 major commercial species namely, Nile perch, Tilapia and Silver Cyprinid with scientific name of *Rastrineobola argentea* also known as *dagaa*¹⁰⁸.

Though highly productive, Lake Victoria fishery is faced with a number of threats and challenges among them decline in fish catches; deterioration of fish habitat; excessive fishing efforts; use of destructive fishing gears and methods; absence of fully harmonized fisheries regulations among the Partner States as well as non-uniformity between the Partner States in who the law enforcement authorities on the lake are; the water hyacinth and inadequate institutions and

¹⁰⁵ Ibid

¹⁰⁶ Odada, E.O., Olago, D.O. and Ochola, W., Eds., 2006. Environment for Development: An Ecosystems Assessment of Lake Victoria Basin, UNEP/PASS

¹⁰⁷ Lake Victoria Fisheries Organisation (1999)

¹⁰⁸ Caroline T. Kirema-Mukasa (2012). "Regional Fish Trade in Eastern and Southern Africa Products and Markets A Fish Traders Guide"

institutional processes especially at local level for the involvement of local people in fisheries management¹⁰⁹.

2.3 International Legal Perspectives on shared water resources.

The various uses to which the shared waters of international river basins are put create problems of both technical and juridical nature¹¹⁰. Traditionally, international water law recognizes five main theories that attempt to define and delineate the rights of basin states to use water from a shared river system¹¹¹. These are:

The theory of absolute territorial sovereignty¹¹²; according to this theory, a state, as 'master of its territory', may adopt to a watercourse within its national territory all measures deemed suitable to its national interest, irrespective of their effects beyond its borders¹¹³. In other words, a state can do as it pleases and is entitled to do as it chooses with its waters within boundaries ignoring the effects of its actions on neighboring states. Obviously, this theory is favorable to upper basin states which has been opposed to by downstream states¹¹⁴.

The theory of absolute territorial integrity¹¹⁵; this theory, which is also known as the theory of natural flow of river, is the direct opposite of that of absolute territorial sovereignty. It expounds the old common law doctrine of water rights whereby a lower riparian (basin state) claims the right to the continued, uninterrupted (or natural) flow and unaltered condition of the water from the

¹⁰⁹ Lake Victoria Fisheries Organisation (1999)

¹¹⁰ David Booth, Diana Cammack, Thomas Kibua and Josaphat Kwek (2007) East African integration: How can it contribute to East Africa

¹¹¹ Ibid

¹¹² Mccaffrey, Stephen C. "The Harmon Doctrine One Hundred Years Later: Buried, Not Praised." *Natural Resources Journal* 36, no. 4 (1996): 965-1007. <http://www.jstor.org/stable/24885775>.

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Muhamand Rahaman, Principles of international water law: creating effective transboundary water resources Management, Int. J. Sustainable Society, Vol. 1, No. 3, 2009

territory of the upper riparian state Godan¹¹⁶. According to this theory, ‘a riparian state may not proceed with the harnessing of a section of an international waterway traversing its territory if it is of a nature to cause injury to the interests of other basin States. This theory is thus favorable to the lower-basin state(s) and awards a veritable right of veto to downstream states¹¹⁷.

The theory of limited territorial sovereignty and of limited territorial integrity in practice complement each other and are even identical. They state that every state is free to use the waters flowing on its territory, on condition that such utilization in no way prejudices the territory or interests of other states. Permitting use of rivers as far as no harm is done to other riparian States; these theories are a foundation of where the concept of reasonable use originated¹¹⁸. To advance and improve on the doctrine of limited territorial sovereignty and integrity, this theory insists on a ‘community approach’. This approach suggests that all basin states have a common interest in developing the basin. Under this theory, state boundaries should be ignored, and drainage basin is regarded as an economic and geographic unit. This doctrine represents a more balanced approach that seeks to contribute to the joint development of riparian states within a shared basin through equitable division and sharing of benefits¹¹⁹.

Each of these theories reflect different historical and judicial approaches to solving the problems experienced by riparian States and reflects an important change from rights to ownership of water, to one which strives to ensure that the interests of all parties are met equitably and

¹¹⁶ Christine Pendzich, Gary Thomas and Tim Wohlgenat, *The Role of Alternative Conflict Management in Community Forestry*, RESOLVE and FAO { 1994), p. 1

¹¹⁷ Ibid

¹¹⁸ Muhamand Rahaman, *Principles of international water law: creating effective transboundary water resources Management*, *Int. J. Sustainable Society*, Vol. 1, No. 3, 2009 and Okoth-Ogendo, *Tenants of the Crown : Evolution of Agrarian Law and Institutions in Kenya*, ACTS Press, Nairobi, 1991

¹¹⁹ Falkenmark, Malin, 1997. *Meeting Water Requirement of an Expanding World*. *Philosophical Transactions of the Royal Society Biological Sciences*. vol 352. The Royal Society, London, pp.929.

efficiently¹²⁰. International law as an instrument of regulations on the transboundary freshwater issues has been regarded as inconclusive and weak¹²¹. Management of international river basins might be possible only if the affected and concerned countries accept the limitation to their sovereignty over the common water resources. It requires agreements to define this limitation¹²².

Law is an instrument that can be used to resolve conflicts of interest generated, for instance, in the sharing of water resources. However, the utilization and management of shared resources is subject to man-made laws and the natural laws, which do not recognize the political and geographical boundaries¹²³. It is necessary for States to co-operate in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States. Accordingly, for equitable utilization of shared natural resources to be realized, States need to cooperate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilization of such resources¹²⁴. States sharing water need first to settle their inter-State disputes over the water in question on a legal basis to form a framework for cooperation amongst States¹²⁵.

¹²⁰ Ong or, D. O., Ogwae, T.A., Omondi, M.O and Kapiyo, R. J (2001). Community conservation initiatives towards livelihood security in the lake Victoria Basin: Issues, problems and opportunities. *A Proceedings report*; Uhai Lake Forum.

¹²¹ Valestous Juma, Albert Mwangi and Cleophas Torori, Kenya Natural Resource Management Assessment, Vol. 2: Policies, Institutions and Capabilities, USAID KENYA, Nairobi, 1995

¹²² Ong or, D. O., Ogwae, T.A., Omondi, M.O and Kapiyo, R. J (2001). Community conservation initiatives towards livelihood security in the lake Victoria Basin: Issues, problems and opportunities. *A Proceedings report*; Uhai Lake Forum.

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Environmental Law Guidelines and Principles, United Nations Environment Programme Governing Council Decision 6/14, 19 May 1978.

2.4 Peaceful Settlements of Disputes

Exploitation of resources is coupled with conflicts between countries¹²⁶. Considering this, what is important is the need to ensure that when conflicts arise they are settled amicably and must resort to some dispute settlement procedures. So, before parties or countries sharing a water system go into a conflict, there are three main procedures and methods used to find a solution to the problem¹²⁷. These are (1) negotiation and consultation; (2) mediation and conciliation; and (3) arbitration and adjudication¹²⁸. Dispute over shared water bodies can normally arise at least under two different circumstances, one can be riparian states that have never entered into a treaty or agreement, while the other can be an existing agreement which can provide a binding decision to problem in dispute¹²⁹.

The UN Convention on the law of non-navigational uses of international water courses is, however, an international framework instrument, which may apply in the absence of agreement over shared freshwaters. Cooperation through joint mechanism in the form of commission is also a vital necessity if the aims are to achieve equitable, reasonable and non-harmful utilization of the international watercourse¹³⁰.

2.5 The Link between Natural Resources and Conflict

Conflict can be violent or non-violent, the former being associated with the use of force as a solution to end the conflict while the later involves peaceful negotiation between conflicting

¹²⁶ Tignino, M., "Water, international peace and security" *International Review of the Redcross* 92,no.879(2010):647-674; Vinogradov, S., "Transboundary water resources in the former Soviet Union: between conflict and cooperation, *Natural Resources Journal*(1996): 393-415

¹²⁷ Carlson Ingvar, 1999. *National Sovereignty and International Watercourses*. High level Panel Debate at 9th Stockholm Water Symposium, SIW1. Stockholm. Mr. Carlson was Prime Minister of Sweden during the period between 1986 and 1995.

¹²⁸ Malcolm N. Shaw, *International Law*, Cambridge

¹²⁹ Ibid

¹³⁰ W. Zartman, *Ripe for Resolution: Conflict and intervention in Africa*, New York: Oxford University Press, 1985 and 1995. page 8.

groups¹³¹. Galtung argues that conflict occurs where there is injustice in the structural system and because one party has organizational structures in place while the other party does not, making it weaker and more vulnerable to violence and conflict. It is the deep-rooted structural anomalies that are responsible for conflict rather than the subjective elements in the relationship¹³².

In Africa, countries that are faced by specific environmental circumstances, scarcity or abundance are often unable to address the problem of resource management without using violence¹³³. Violent distributional struggle over the abundant resource results from a debilitating effect on economies and governing institutions¹³⁴. Violence can be viewed as a means through which groups create and sustain profitable patterns of resource exploitation and wealth distribution¹³⁵. The nature of violence will change if resources involve production or extraction of subterranean minerals where violence will take the form of a battle for territorial or state control¹³⁶.

Conflict depends on incompatibilities and is formed in three parts namely incompatibility, actions and actors¹³⁷. Conflict is therefore a social situation in which a minimum of two actors or parties strive to acquire at the same moment in time an available set of scarce resources¹³⁸.

¹³¹ M. Mwangi, *Conflict: Theory, Processes and Institutions of Management*, op. Cit.

¹³² W. Burton, "World Society and Human Needs" in I. Margot and A. J. R. Groom (eds.)

¹³³ M. Mwangi, *The international Management of Internal Conflicts in Africa*, Uganda Mediation, 1985, op. cit. p. 28.; D. Keen, *The Economic Functions of Violence in Civil Wars* (Adelphi Papers, No 320, Routledge,

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Wallerstein, P., *Understanding Conflict Resolution*, (London: Sage, 2007), p. 34; K. Webb, "Structural Violence and Definition of Conflict", *World Encyclopedia of Peace*, Vol. 2, Oxford Pergamon Press, 1986, pp. 431 -434.

¹³⁸ Ibid

2.6 The link between Natural Resources, Poverty and Environment

Poor people rely more heavily and directly on local natural resources for their livelihoods than other socio-economic groups due to lack of alternative livelihood options that they may venture into or are accessible to them. Water availability largely determines when and where development can take place. Majority of the rural people who practice rainfed agriculture live in fear of delayed or failed rains. Access to surface or groundwater is therefore of paramount importance and may be determined by how rights to land are contested and exercised. Effective development and management of water and other resources is therefore necessary for sustainable growth and poverty reduction in the Lake Victoria basin¹³⁹.

The local communities in the lake region face serious threats to their livelihood due to several factors and processes including abuse of resources and environmental degradation, rapid population growth, economic liberalization, HIV/AIDS and poor health, poor governance, unfair resource distribution and gender discrimination. Abuse of resources has taken the form of deforestation and pollution of the river waters¹⁴⁰. Flooding during the rainy seasons, inadequate access to irrigation and drinking water, rapid population growth, prevalence of weeds such as water hyacinth on the lake and poor governance continue to affect inhabitants of this region contributing to the state of general poverty in the region. The benefits of water either directly or indirectly may greatly improve welfare and income of the households within the basin. Many poor people around the lake use poor quality water that negatively affects their health and welfare. Investing in more reliable, higher quality, and more conveniently located domestic water or more reliable irrigation can quickly and significantly improve the lives of the poor¹⁴¹.

¹³⁹ C- R. Mitchell, *The Structure of International Conflict*, (London: Macmillan, 1998), PI 5-25

¹⁴⁰ A- Kofi, *Causes of Conflict in Africa*, UN secretary General Report, (New York: 1998), PI 13.

¹⁴¹ Ibid

The poor are disproportionately affected by the high variability in the availability of water, as they are the most vulnerable to water related hazards such floods, droughts and pollution because of where they live (e.g. slums and hillsides), their limited access to appropriate technology, and other factors. Some water sources such as springs tend to be seasonal, leaving households prone to water shortages during certain times of the year¹⁴². Vulnerability can undermine efforts to break the poverty trap and push even the not so poor into destitution by destroying their livelihood through shocks. Hazards including floods and drought can be a formidable source of vulnerability to the poor as they destroy crops, property and life. Better water management can reduce vulnerability of rural production systems through ameliorating the impact of uneven rainfall distribution (e.g. through better water storage) and providing protection against hazards (e.g. through flood protection or pollution control) and can also indirectly provide more secure livelihoods¹⁴³.

But the contribution of water resources to sustainable livelihoods depends on how it is accessed and managed which may be influenced by the laws and policies. Degradation of natural resources that adversely affects livelihoods not only results from improper use of resources but from poor policies as well. Within the basin, agriculture has been given prominence over other forms of land use to the extent that areas that have been traditionally used by pastoralists are being subdivided and taken over by the farming communities¹⁴⁴.

Pastoral areas have been converted to wheat growing zones in both Kenya and Tanzania. These lands were formerly held communally and ensured the survival of pastoral groups in water

¹⁴² Thomson, J, Porras 1 T, Wood, E., Tumwine J K., Mujwahuzi, M R, Katui-Katua, M and Johnstone, (2001). Waiting at the tap: Changes in urban water use in East Africa over three decades. 11 ED; M. Mutagamba, on Africa's River and Lake Basin Organization, (Uganda, Volume one, May 2007)

¹⁴³ Ibid

¹⁴⁴ John, C (1997), "Regional Integration is not Enough", Quarterly Review, Centre for Research into Economics and Finance in Southern Africa, London School of Economics (April).

deficit areas. Women are the main managers of many water resources; they face the burdens of fetching water for domestic use and face challenges of coping when there is not enough water¹⁴⁵. Empowering women is critical to achieving more focused and effective water management. Women typically develop and maintain rural water supplies as an integral part of their agricultural and domestic management responsibilities. Valuing water as a commodity to be put to productive use tends to minimize the interests of women in water resources management because most financially productive uses of water which can be quantified are in irrigation, livestock and industry -all areas which provide cash output and are mainly managed by men¹⁴⁶. Other important water uses including washing children, clothes and health benefits which are not 'valued' and are difficult to quantify in financial terms¹⁴⁷. Providing water at a fee might limit women's usage since they generally have less access to cash than men. Privatization and valuing of water as a commodity and selling to whoever who can afford may further disadvantage women and other marginalized groups¹⁴⁸.

Broad conceptions of conflicts recognize that in all social contexts, conflicts stem from incompatible goals and differences over access and control of valuable resources such as water, oil and mining of minerals such as diamonds. Given their universality, conflicts, however, can be creative and constructive, forcing the construction of institutions to manage the efficient and orderly allocation of resources while also minimizing incompatible objectives. Conflict mitigation institutions are also necessary to reduce violent conflicts, which epitomize the destructive and

¹⁴⁵ Ibid

¹⁴⁶ Maganga, F. 2002 Incorporating Customary Laws in Implementation of IWRM: Some Insights from Rufiji River Basin, Tanzania. *Paper presented at 3rd WaterNet Symposium, 'Water Demand Management for Sustainable Development', Dar es Salaam, 30-31st October 2002*

¹⁴⁷ Ibid

¹⁴⁸ Ibid

extreme forms of competition.¹⁴⁹

Finally, even where resource rights are clarified, and collaborative management systems are in place, disagreement over access, management objectives and information can emerge. In this regard, building local-level capacity for conflict management and dispute resolution is often a key need. While most communities have some capacity for formal or informal conflict management, many disputes remain unresolved because the mechanisms in place to manage them are inadequate, or because the parties in conflict do not have the skills needed to negotiate effectively. This is especially true of multi stakeholder conflicts and those where accessibility is an issue for politically or socially marginalized groups and remote communities because of cost, distance or language barriers. Some form of capacity-building for local stakeholders is therefore needed as part of conflict prevention strategies¹⁵⁰.

¹⁴⁹ Castro, P. (2001). Indigenous people and co-management: implications for conflict management. *Environmental Science Policy* 4: 229-239.

¹⁵⁰ Ibid

CHAPTER THREE:
THE EAC LEGAL AND POLICY FRAMEWORKS FOSTERING COOPERATION ON
THE SHARING OF LAKE VICTORIA

3.1 Introduction

This chapter discusses the EAC legal and policy frameworks fostering cooperation within the EAC states.

3.2 Overview of EAC

The EAC is a regional intergovernmental organization comprising of Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan with its headquarters in Arusha, Tanzania. The objectives of the EAC are to “develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs for mutual benefit¹⁵¹”

The EAC Treaty of 2000 notes connections between the original partner-states and stipulates the reasons for establishing the EAC and its mission. The original parties to the treaty which are Tanzania, Uganda, and Kenya, had distinct aspirations for their part in the EAC. Kenya’s intent was on exporting surplus capital, Uganda sought an outlet for its surplus labor, and Tanzania hoped to realize a Pan-African vision¹⁵². Thereafter, the possibility of a customs union convinced Rwanda and Burundi to join in to the EAC because such a regional alliance would be useful because both countries are topographically landlocked and rely on ports in Kenya and Tanzania for imports and exports. The EAC Treaty was signed on 30 November 1999.

¹⁵¹ Article 5, EAC Treaty

¹⁵² Singer, H.W. (1967): ‘Preconditions for Regional Economic Integration; International Development Review, IX September pp 19-20.

Mwasha describes other advantages of regional economic integration. For example, the countries rely on some level of economic incorporation; therefore, closer partnerships result in greater advantages to partner-states. The degree of combination also relies on the readiness and commitment of these sovereign states to share their influence, but that willingness and commitment have been tempered because the partner-states bring significant differences to the community that would result in a second collapse of the community¹⁵³. These differences can be traced back to key negotiations where it became apparent that the partner-states harbored specific fears and concerns.

3.3 Legal Framework of EAC

The EAC's legal framework consists mainly of: The Treaty for the Establishment of the EAC; the 2001-05 EAC Development Strategy; the EAC Protocols; and the EAC Customs Management Act. The EAC is thus to be an economic area (including customs and monetary unions, with harmonized macroeconomic policies, and ultimately a political federation), although no timetable has been established¹⁵⁴.

The EAC's specific objectives include: (a) promoting sustainable growth and equitable development for its members, including rational use of the region's natural resources and protection of the environment; (b) strengthening and consolidating the long-standing political, economic, social, cultural, and traditional ties of its members; (c) enhancing the participation of the private sector and civil society; (d) mainstreaming gender in all its programmes and enhancing the role of women in development; (e) promoting good governance, including adherence to the

¹⁵³ Edozien, E. C. & Osagie, E. (1982): Economic Integration of West Africa; Ibadan University Press

¹⁵⁴ c-linger, H.W. (1967): 'Preconditions for Regional Economic Integration; International Development Review, IX September pp 19-20.

principles of democratic rules of law, accountability, transparency, social justice, equal opportunities, and gender equality; and (f) facilitating peace and stability within the region¹⁵⁵.

The 2001-05 EAC Development Strategy identifies twelve areas of cooperation: macroeconomic policies, including monetary and fiscal; trade liberalization and development; promotion of key economic sectors (i.e. agriculture and food security, investment and industrial development, tourism and wildlife, and environment and natural resources); infrastructure and supportive services; human resource development, science, and technology; social sectors, immigration, and labour policies; legal and judicial affairs; political matters, including peace, security, and defense; broad participation of women, private sector and civil society; relations with other regional and international organizations (e.g. COMESA and SADC) ; institutional arrangements at the level of member states, the EAC Secretariat; and managing distribution of benefits and costs as a cross-cutting issue¹⁵⁶.

3.4 Institutional Structure

The main institutions of the EAC are: The Summit of Heads of State and/or Government; Council of Ministers; Coordination Committee; sectoral committees; the East African Court of Justice; East African Legislative Assembly; and the EAC Secretariat¹⁵⁷. In addition, article 24 of the EAC protocol on establishment of the EAC Customs Union resulted to formation of the EAC Committee on Trade Remedies to handle: rules of origin; contingency trade remedies; dispute settlement mechanism; and any other matter referred to the Committee by the Council. Other key institutions include: the Lake Victoria Development Programme (LVDP)¹⁵⁸; the East African

¹⁵⁵ Trade Policy Review Report by the Secretariat of the East African Community (2006)

¹⁵⁶ Wu, 1 (2005) 'Trade agreements as self protection', *Review of International Economics*, 13:3, 472- 84, Oxford: Blackwell Publishing.

¹⁵⁷ Article 9, Treaty for the Establishment of the East African Community

¹⁵⁸ East African Community Secretariat online information. Available at: www.eac.int/programme

Development Bank (EADB)¹⁵⁹; Lake Victoria Fisheries Organization (LVFO)¹⁶⁰, Lake Victoria Basin Commission (LVBC)¹⁶¹ and the Inter-University Council for East Africa (IUCEA)¹⁶²;

The Summit is responsible for, inter alia: the overall policy direction and functioning of the EAC; considering the annual progress reports and other reports submitted to it by the Council; and reviewing the state of peace, security, and good governance within the EAC, and the progress achieved towards the establishment of a political federation. Subject to the Treaty, the Summit may delegate the exercise of any of its functions to one of its members, to the Council or to the Secretary General. The Summit meets at least once a year and may hold extraordinary meetings at the request of any member state. It is chaired in turn by each member state for one year. The decisions of the Summit are taken by consensus¹⁶³.

The Council of Ministers is the main policy decision-making institution. It initiates and submits bills to the Assembly; gives directions to the member States and to all other organs of the EAC other than the Summit, Court, and the Assembly; makes regulations, issues directives, takes decisions, and gives opinions in accordance with the provisions of the Treaty; considers the budget; submits annual progress reports to the Summit, for which it prepares the meetings agendas; establishes sectoral committees provided for by the Treaty; and implements the decisions and directives of the Summit. The Council consists of ministers responsible for regional cooperation and any other ministers' members may designate. It meets twice a year, immediately after the

¹⁵⁹ EADB online information. Available at: www.eadb.org/background

¹⁶⁰ LVFO online information. Available at <https://www.lvfo.org/>

¹⁶¹ East African Community - Lake Victoria Basin Commission (LVBC), *available at* <http://www.eac.int/lvdc.html>

¹⁶² Mwasha, O. N. "The Benefits of Regional Economic Integration for Developing Countries in Africa: A Case of East African Community (EAC)." *Korea Review of International Studies* (2005): 74. & IUCEA online information. Available at. www.iucea.org

¹⁶³ Ibid

Summit, or at the request of a member state or the chairperson of the Council. It is chaired in turn by a minister of each member state. The decisions of the Council are taken by consensus¹⁶⁴.

The Coordination Committee is responsible for regional cooperation and coordinates the activities of the sectoral committees. It also, inter alia, submits reports and recommendations to the Council either on its own initiative or upon the Council's request; implements the decisions of the Council; receives and considers reports by the sectoral committees; and may request a sectoral committee to investigate any matter. The CC consists of the permanent secretaries responsible for regional cooperation and any other permanent secretaries' members may designate. It meets at least twice a year (before the meetings of the Council) and may hold extraordinary meetings at the request of the chairperson of the Committee. It is chaired in turn by a permanent secretary from each Member State¹⁶⁵.

The Sectoral Committees formulate programmes and monitor their implementation. They as often as necessary and are responsible for setting out sectoral priorities; and submit, from time to time, sectoral reports and recommendations to the Coordination Committee which recommends to the Council the composition of the sectoral committees¹⁶⁶.

The EACJ, established under Article 9 of the Treaty for establishment of EAC, ensures that EAC law is interpreted and implemented in line with the Treaty. The Court has jurisdiction to hear and determine disputes between member states on the interpretation and application of the Treaty (if the dispute is submitted to it under a special agreement), and between the Community and its employees. The Court became operational on 30 November 2001, and is temporarily located in Arusha, until the Summit determines its permanent seat. The six judges, two from each member,

¹⁶⁴ Ibid

¹⁶⁵ Ibid

¹⁶⁶ Ibid

are appointed by the Summit from among sitting judges of any national court of judicature or from recognized jurists, while the Registrar is appointed by the Council¹⁶⁷.

The EALA provides a democratic forum for debate. It has a watchdog function, and ultimately is responsible for the legislative process. The Assembly interacts with the national assemblies of member states on EAC matters; debates and approves the EAC budget; considers annual reports, annual audit reports, and any other reports referred to it by the Council; makes recommendations to the Council on the implementation of the Treaty; and recommends to the Council the appointment of the Clerk and other officers. The Assembly has 27 elected members, and five ex-officio members consisting of the three ministers for regional cooperation, the Secretary General and the Counsel to the Community¹⁶⁸.

The Secretariat, based in Arusha, is the executive organ of the EAC. As the guardian of the treaty, it ensures that regulations and directives adopted by the Council are properly implemented. It is responsible for: the day-to-day administration of the Treaty; coordinating and monitoring the implementation of Council and Community decisions; arranging meetings, disseminating information, and keeping minutes of meetings of the EAC institutions (it is the depository of all records of EAC); assisting in the harmonization of national policies and strategies of member states in so far as they relate to EAC; and assisting in the negotiation of trade agreements with third parties. The Secretariat is headed by a Secretary General, who is a citizen of a member State, and serves a fixed five-year term. The core budget of the Secretariat is funded by equal contributions from the member states¹⁶⁹.

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Ibid

The LVBC¹⁷⁰, a specialized institution of the EAC is mandated to coordinate various interventions in the Lake Victoria Basin region and to turn the Basin into an economic growth zone. The EAC has designated Lake Victoria and its Basin as an area of common economic interest and a regional economic growth zone to be developed by member states.

The LVFO¹⁷¹, another specialized institution of the EAC, was formed through the signing of the Convention for the Establishment of the Lake Victoria Fisheries Organization with a purpose of collaborating with member states in the development and management of the fisheries of Lake Victoria. It is mainly mandated to promote Sustainable Management and Development of Fisheries and Aquaculture in the EAC for Food Security and Wealth creation¹⁷².

Apart from the agreements governing the LVBC and the LVFO, there are several other agreements affecting the Lake Victoria Basin which include: The Lake Victoria Environmental Management Project (LVEMP), signed in 1994 between Kenya, Tanzania, Uganda and the World Bank; The Partnership Agreement on the Promotion of Sustainable Development in Lake Victoria between the EAC and the governments of Sweden, France and Norway, the World Bank and the EADB; The Nile River Basin Initiative (NBI) memorandum signed in 2006 to ensure efficient management of the Lake Victoria Basin since it originates from Lake Victoria.

There are also several other regional and local partnerships focusing on sustainable development of the Basin, such as OSIENALA (Friends of Lake Victoria)¹⁷³, a Kenyan non-governmental organization (NGO) that collaborates with other NGOs and institutions in the region in the regional management and conservation of the Lake Victoria resources.

¹⁷⁰ East African Community - Lake Victoria Basin Commission (LVBC), available at <http://www.eac.int/lvdc.html>.

¹⁷¹ Lake Victoria Fisheries Organization, available at <http://www.lvfo.org/>

¹⁷² <http://repository.eac.int/handle/11671/7>

¹⁷³ Osienala – Friends of Lake Victoria, available <http://www.osienala.net/>

3.5 Management of natural resource conflict in East Africa

Each of the countries that comprise the Eastern Africa region, has had a political history with significant implications for natural resource management. Indeed, natural resource issues have been central to the history of the countries discussed here. Some of the situations arising from this history have to a large extent caused conflicts which has been acknowledged as an integral part of the process of human interaction¹⁷⁴. With respect to natural resources, conflict is bound to arise from competing demands placed on resources by different claimants. Even within a cohesive community of people, conflict may arise over resources as population increases causing demand to exceed supply. Moreover, in Eastern Africa, with its diversity of tribes each with its own culture, a major source of conflict is the ethnic diversity of resource users, which has implications for resource demands¹⁷⁵.

Political changes resulting from the democratization process that has swept across the region and the continent have brought new opportunities for the empowerment of civil society. Community-based associations are being reactivated all over the region, with a commitment to empowering the local communities to participate effectively in the decision-making process relative to their governance. Though they are not strictly speaking resource management associations, these community-based civil organizations are bound to get involved in resource management issues at the local level¹⁷⁶.

Legal systems and institutions introduced during the colonial era have become formal structures governing resource management in most of Eastern Africa, their traditional counterparts continue to operate both formally and informally. In Kenya, Uganda, and Tanzania, recognition is

¹⁷⁴ EAC. "Report of The Committee on Fast Tracking East African Federation." East African Community Secretariat, 2004.

¹⁷⁵ Ibid

¹⁷⁶ Ibid

given to customary law in the statute books, although in practice the governments and the courts have tended to ignore the customary laws and to institutionalize the imported law. This is virtually inevitable given the limitations on the applicability of customary law. There appears to be a tacit understanding at the formal governmental levels, in all the three former colonies, that the evolution of these societies is from traditional systems to imported, formalized systems. So, even where customary laws are applied, this is done as a temporary measure pending the adoption of statutory systems¹⁷⁷.

Nevertheless, in most of rural Eastern Africa, most people continue to relate with each other and with their natural resource base based on customary laws and norms¹⁷⁸. Access to natural resources in these rural areas is governed by customary rules applied by traditional institutions, even though the statute books provide a different basis for such rights founded on the regime of property laws that were imposed by the colonial system. This legal environment creates an abiding conflict situation that is both institutional and systemic¹⁷⁹.

The customary legal arrangement has its own institutional resource management framework that allocates resources, settles disputes when they occur, exacts penalties and inflicts punishment on offenders, and otherwise governs the resource use. It is a framework that is not necessarily within the formal statutory system, and which, in certain instances, is informed by ideals that are contradictory to ideals that are the basis of the formal system. The traditional framework derives its legitimacy not from the policy and legislative actions of the governments, but from the customary norms of traditional society. The sanctions applied within this framework are equally legitimated not by the formal structures of government but by the same customary

¹⁷⁷ Ibid

¹⁷⁸ EAC. "Treaty for the Establishment of the East African Community." Amended 14 December, 2006 and 20 August, 2007. Available from: . Retrieved November 29, 2013.

¹⁷⁹ Ibid

norms and beliefs. Given the political systems discussed above, these legitimization processes that exist outside the formal policy and legal framework are bound to be a source of serious conflicts¹⁸⁰.

Water is a major natural resource in Eastern Africa. The Nile, Lake Victoria, the Indian Ocean, and a host of rivers and lakes provide a steady supply of this resource in the area. Conflict situations relative to water arise because of competing demands for the resource by different persons and sectors of the economy. Apart from domestic or household use, water is important for the provision of hydroelectric power, for industrial and domestic effluent treatment, for transportation, and as a source of fish and other aquatic life used and traded as food¹⁸¹.

The realization of these competing demands create competition and therefore conflicts between the various claimants. Such conflicts arise both within and across sectors. For example, government funded hydroelectric power projects and irrigation schemes may affect the flow of water and the availability of fish thereby impacting on the sources of food, trade and livelihood for local peoples. Elsewhere an industrialist discharging toxic effluent into the Lake Victoria resource may thereby adversely affect the fish life¹⁸².

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² Ibid

CHAPTER FOUR

ANALYSIS OF THE LEGAL AND POLICY FRAMEWORKS ON MANAGEMENT OF LAKE VICTORIA AND THE CHALLENGES AND PROSPECTS FACED BY EAC STATES IN MANAGEMENT OF LAKE VICTORIA AS A SHARED NATURAL RESOURCE

4.1 Introduction

The vision of the EAC is a prosperous, competitive, secure, stable and politically united East Africa while its mission is to widen and deepen economic, political, social and cultural integration to improve the quality of life of the people in the region through increased competitiveness, value added production, trade and investment.

4.2 Analysis of the Legal and Policy Frameworks on Management of Lake Victoria

4.2.1 United Nations Environment Assembly

The United Nations Environment Assembly (UNEA) is one of the major international bodies with its headquarters in Africa and more in particular a developing country, Kenya. Although critics have argued that the location is not suitable as it is not close to the other UN bodies and hence coordination of the activities with other such bodies has posed a great challenge in terms of logistics among others. However, according to Munang (2019), the location of the UNEA in Kenya offers a perfect opportunity for Kenya to have an added advantage in terms of its environmental protection and conservation measures as it enjoys first hand assistance and contact with the main international environment governing body¹⁸³. Where institutional mechanisms for addressing common environmental problems or managing shared natural resources already exist but have insufficient capacity, it provides targeted legal and policy support to make their operations

¹⁸³ Richard Munang is currently the Africa Regional Climate Change Coordinator at UNEA who was interviewed during the field research at UNEP Headquarters in Nairobi, 23 August 2019

more effective and sustainable.¹⁸⁴ East African countries have borrowed most of the principles with an example of Kenya which has implemented some of the principles in the National Environmental Management Authority which is the principal instrument of Government for the implementation of all policies relating to environment.

4.2.2 East Africa Community

The EAC was revived in 2001 after its collapse in 1977¹⁸⁵. EAC has provided a new regional framework for discussion of water issues. Its original member States included Kenya, Uganda and Tanzania. The use of the resources of Lake Victoria and its catchments areas has been a prime concern for the three countries which has seen them try to end internal divisions within East Africa and forge unity in tackling these issues. Problems such as water pollution, biodiversity loss, land degradation, deforestation, and damage to wetlands in the Lake's catchments areas.

The signing in 1994 of a tripartite agreement on the Lake Victoria Environmental Management Programme, was a forum aimed at using resources within the basin to generate food, employment and income, supply safe water, and sustain a disease-free environment and to conserve biodiversity and genetic resources¹⁸⁶. EAC has developed specific institutions applicable to all member states regarding the management of environmental and natural resources such as LVBC and LVFO.

¹⁸⁴ United Nations Environment Programme, *Institutional Arrangements for the Governance of Shared Natural Resources and Transboundary Environmental Issues* (Institutional Mechanisms) (accessed 19 May 2019)

¹⁸⁵ EAC Secretariat, Treaty for the Establishment of the EAC, Article 5(I)

¹⁸⁶ Peter Kagwanja (2007) Calming the Waters: The East African Community and Conflict over the Nile Resources, *Journal of Eastern African Studies*, 1:3, 321-337.

4.2.3 Lake Victoria Fisheries Organisation

LVFO was established through a Convention signed by Kenya, Uganda and Tanzania in 1994¹⁸⁷. The objective of this institution is to foster cooperation among Partner States through harmonization and development of national measures aimed at conservation, management and utilization of the living resources of Lake Victoria in a coordinated and sustainable manner.

4.2.4 East Africa Legislative Assembly

EALA is a legislative organ of the EAC with the overall responsibility of enacting laws on behalf of the EAC. Section 49 of the EAC Treaty provides for its functions to include: liaising with the member States national assemblies on matters pertaining to the community; debating on the budget of the community; considering annual reports on the activities of the community; discussing matters pertaining to the community and make recommendations where necessary. The institution is vital in formation of laws that bind states to act in accordance with the laid down rules and procedures of management of shared natural resources.

4.2.5 East African Court of Justice

EACJ was established pursuant to Section 23 of the EAC Treaty. It is an institutional body concerned with the resolution of disputes arising within the community. Section 23 provides that the court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with the Treaty. This Court is instrumental as it offers a platform for the resolution of any disputes within the community. EAC Treaty provides that a Partner State which considers that another Partner State or organ or institution of the community has failed to fulfil an obligation under the Treaty or has infringed a provision of this Treaty may refer the matter

¹⁸⁷ Convention for the Establishment of the Lake Victoria website: www.lvfo.org

to the court for adjudication¹⁸⁸. It is a viable platform for the enhancement of environmental standards by individuals where a Partner State goes against the norms of conservation and management.

4.2.6 East African Network for Environmental Compliance and Enforcement

EANECE is an informal network of government agencies which have in their mandate environmental management, compliance and enforcement responsibilities. It currently has an active membership of over fifty government agencies in the five East African Nations. Whereas the Network membership is restricted to government regulatory agencies, it is open to co-operation and collaboration with other entities. The secretariat is currently hosted by the National Environmental Management Authority (NEMA) - Kenya. The goals of this institution include: building capacity of environmental management agencies in East Africa on environmental compliance and enforcement, and creation of awareness on the importance of environmental compliance and enforcement.¹⁸⁹

4.2.7 Nile Basin Initiative

The NBI is a regional intergovernmental partnership led by ten Nile riparian countries namely; Burundi, DR Congo, Egypt, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania and Uganda. The Nile Basin Initiative provides riparian countries with the only all-inclusive regional platform for multi stakeholder dialogue, information sharing as well as joint planning and management of water and related resources in the Nile Basin. The objective is to achieve sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources.¹⁹⁰

¹⁸⁸ Article 28, Treaty for the Establishment of the EAC

¹⁸⁹ EANECE, 'East African Network for Environmental Compliance and Enforcement' (accessed 8 June 2015)

¹⁹⁰ Nile Basin Initiative, 'Nile Basin Initiative' (accessed 22 May 2019)

4.2.8 Beach Management Units

Beach Management Units are also key institutions within the EAC that play a key role in the governance of shared fisheries resources.

4.2.9 Lake Victoria Basin Commission

LVBC is a specialized institution of the EAC that developed from the EAC's Lake Victoria Development Programme (LVDP), a mechanism established in 2001 to coordinate various interventions in the Lake Victoria Basin region and to turn the Basin into an economic growth zone. The EAC has designated Lake Victoria and its Basin as an area of common economic interest and a regional economic growth zone to be developed by the Member States¹⁹¹.

Under Article 114(2)(b)(vi) of the EAC Treaty, the Member States agreed to establish a “body for the management of Lake Victoria.” The relationship between the LVBC Protocol and the EAC Treaty is governed by Article 47 of the LVBC Protocol, which states that the LVBC Protocol is “an integral part of the Treaty and in case of an inconsistency between [the] Protocol and the Treaty, the Treaty shall prevail.” The LVBC Protocol also states that the provisions of the LVBC Protocol “shall take precedence over any other existing agreements relating to Lake Victoria and in case any other agreement is inconsistent with [the] Protocol, it shall be null and void to the extent of its inconsistency.”

¹⁹¹ Protocol for Sustainable Development of the Lake Victoria Basin (LVBC Protocol), signed in 2003 and ratified in 2004.

4.3 Presentation of Research Findings

The section provided results on the discourse on the EAC cooperative frameworks on shared natural resources focusing on sustainable use and management of Lake Victoria as a common resource in the region. Primary data was collected with the use of a questionnaire from individual persons living within the Lake Victoria region and through telephone interviews with professionals who are conversant with sustainable use and management of shared natural resources policies.

The questionnaire had two parts. The first part sought information on the respondent's profile such as gender, age and location. The second part addressed issues related to the study objectives and research questions and the responses received were used to address the objectives of the study and answer the research questions. The questionnaire was circulated to the individual respondents with the assurance that the information gathered would be confidential and only for the purposes of research. Key interviews were undertaken with identified community leaders and officials from stakeholder institutions to gain a deeper understanding of the issues under investigation. The key informants were selected purposively, from the relevant institutions such as EAC, Ministries of Fisheries in Tanzania, Kenya and Uganda and friends of the Lake Victoria (OSIENALA).

The respondents were asked to give their opinions on the extent to which they agreed or disagreed with the statements on the questionnaire. The outcome of the data collected indicated that most of the respondents agreed that there are cooperative frameworks and institutions on sharing of Lake Victoria as a natural resource in the EAC which need to be strengthened to enable them carry out their mandate successfully. While some institutions have been played significant roles and remain existent to date, some are on the verge of collapse because of the stringent

government placed on them as Non-Governmental Organizations and may not continue to take part in the management and sustainable use of the Lake Victoria resource¹⁹². Most of the respondents agreed that fishing was a major factor of conflict within the Lake Victoria region, water resources are scarce, are a source of conflict but can be a source of cooperation as well evident in the various established cooperative frameworks on sharing of the resource such as the EAC.

In addition, the respondents agreed that promoting awareness campaigns on the importance of peaceful co-existence and cooperation on the sustainable use of the Lake Victoria resource was significant in ending conflicts between Kenya, Uganda and Tanzania. They also agreed that the Lake Basin needs to be decongested as it is currently densely populated and pollution from domestic use and industrial chemicals and waste draining into the Lake Victoria through its tributaries is harmful to the aquatic ecosystem. The respondents also agreed that there was need for Kenya, Uganda and Tanzania to cooperate in implementation of and harmonization of policies on sustainable use of the Lake Victoria resource, residents living within the Lake Victoria region in Kenya, Uganda and Tanzania to diversify their sources of income by venturing into other income generating activities like farming, tourism, recreation and employ best practices in use of water hyacinth to produce mats, chairs, charcoal for business to avoid income inequalities around the Lake region which have been and are a potential cause of conflicts since fishermen around the region often depend entirely on fishing as their main income. There is need to diversify sources of income and not to pile pressure on the increasingly scarce resource of the Lake Victoria. However, there were other respondents who were neutral on whether there is political influence on established institutions that manage the sustainable use of the Lake Victoria water resource, if poor

¹⁹² Telephone Interview on 25 October 2019 with Mr. Fofona, Media Relations Officer, OSIENALA.

demarcation of territorial waters and high population growth rate was a cause of conflict and if regional institutions were instrumental in promotion of cooperation within the region.

4.4 Challenges faced in management of Lake Victoria as Shared Natural Resource in EAC

There are several challenges faced by states in the EAC in management of Lake Victoria. They include issues associated with; a) inclusive decisions making; b) large-scale land acquisitions; c) land and resource rights; d) devolution and community based natural resources management; e) conservation and equitable sharing of benefits; f) locally -driven strategic vision and direction and g) diversity of cultures and knowledge; h) Migingo Island Dispute; i) slow consensus and decision making.

4.4.1 Inclusive decision-making

Inclusive decision-making is premised on the understanding that different stakeholders including state and non-state institutions, local communities, indigenous peoples, international institutions, men and women perceive and interact with natural resources in different yet equally valuable ways. This dynamic complexity and variation within and among different levels of actors and ecosystems requires a move away from excluding relevant knowledge bases and institutional rigidity that are common problems to natural resource management. “This requires overcoming constraints on local conservation and development that have to do with the regional, national, and international contexts and are shaped by a variety of forces, processes and instruments”¹⁹³. A policy environment that enables the empowerment of local communities and institutions and allows for continuous adaptation and change can resolve this matter.

A focus of the natural resource management is to deliberately increase the voice and participation of youth, women, indigenous peoples and local communities in decision-making.

¹⁹³ Barrow E. and Karaba M. (2004) Community Based Natural Resource Management in the IGAD region

This calls for changing the previously held narrow lenses of political, policy and programmatic processes to acknowledge and build on the importance of indigenous knowledge, minority views and rights, resource-dependence, and ensure that enough transfers of decision-making powers to local levels are promoted. Political choices and processes are central to promoting such desired changes and they cannot be addressed without making significant and durable changes in the distribution of natural resource governance processes in society.

The engagement and shaping of power relations lies at the core of attaining meaningful inclusive decision making in natural resources management. For most parts of Eastern and Southern Africa, this implies having to deal with structural and institutional barriers, which continue to frustrate achievement of inclusive processes and instead bear elements of competition between local, national and transnational actors and forces. Issues of lack of inclusive decision-making are reflected in the management of all ecosystems; land, forest, water/fisheries, wildlife and rangelands. The extent of the problem will depend on the historical context of countries and of respective ecosystems. Nonetheless, the management of most ecosystems in East and Southern Africa was transformed from indigenous, collective management arrangements to various levels of state-controlled systems during colonial and post-colonial rule and then in the 1990s they underwent reforms aimed at re-inclusion of local people in the state controlled natural resources management¹⁹⁴. However, despite the wide spread reforms in place, they have only been partly implemented¹⁹⁵. Power transfers, accountability relations, representation and citizen engagement remain conditional or poorly institutionalized while natural resources management and administration requirements are excessive and inconsistent with community needs and aspirations.

¹⁹⁴ Hulme D. and M. Murphree (1999) *Communities, Wildlife and the 'New Conservation' in Africa*, John Wiley & Sons, Ltd.

¹⁹⁵ Edmund B, J. Kamugisha-Ruhombe, I. Nhantumbo, R. Oyono, and M. i Savadogo (2009) *Customary Practices and Forest Tenure Reforms in Africa—Status, Issues and Lessons*, IUCN

For the region, the key past and current structural and institutional barriers create underlying challenges for achieving inclusive decision making in relation to the history of natural resources has led to a mix of governance systems with varied impacts on the rights of vulnerable people. These include Protected Areas which are a key conservation model representing the legacy of exclusions and centralised control established during colonial rule.

4.4.2 Land and resource rights

A shift has occurred over the last decade and a half with the incorporation of a human rights discourse within the global agenda on natural resources in the contexts of sustainable livelihoods, rural development, food security and devolvement of control of natural resources. Indeed, it is a considered emphasis of natural resource management that the recognition and respect of legitimate tenure rights especially of indigenous peoples, local communities and women be central in the governance of natural resources. This calls for the promotion of institutional and practical arrangements and/ or reforms that are transparent, participatory and context-specific so that they advance sustainable use of natural resources while at the same time being supportive of livelihoods and economic growth.

Much of sub-Saharan Africa has undergone various reforms, in land and natural resources management; that is, there has been a move from indigenous, community and collective tenure to state policies for control of land and resources. Following the contestations of state rule, reforms in the 1990s aimed to formalise and secure land rights of local communities¹⁹⁶. Many countries in the region have turned management of public land to community control and have tried to integrate customary and statutory rights. However, there are still significant limitations in the recognition of customary rights, and conflicts between statutory and customary tenure systems. A common

¹⁹⁶ Nelson F. - Ed (2010) Community Rights, Conservation and Contested Land: The Politics of Natural Resource Governance in Africa, Earth scan, New York

feature in many countries is the reluctance of those in authority to devolve rights over land ownership.

4.4.3 Devolution

Devolution is closely linked to inclusiveness in decision making. There is wide recognition that the effective and efficient governance of natural resources is greatly undermined by retention of authority of control and usage by remote and usually unaccountable central government agencies. Over the decades that such a regime of power in natural resource management has been existence, “the result has been extensive conflicts over rights and tenure amongst different local, national, and global resource users, as well as widespread degradation of renewable natural resources such as forests and wildlife”¹⁹⁷. This therefore highlights the importance of subsidiarity – where accountability is at the lowest appropriate level.

In response to the above scenario, there are various processes of decentralisation of natural resource management that characterise most of East African Community. Concern has, however, been shown in the examination of “the extent to which policy and legislation devolve significant control over decision making and flows of benefits to communities; the legitimacy and power of different community institutions and their relationship with other stakeholders such as local authority structures, NGOs, donor agencies, and the private sector; and lastly, the relationship and divisions between different actors and groupings in the community”¹⁹⁸.

In a review of decentralisation of natural resource management including through community-based natural resource management organisations, Roe and Nelson concur with Ribot that devolution is “any act by which central government cedes powers to actors and institutions at

¹⁹⁷ Nelson F. (2011) Conservation and Citizenship: Democratizing Natural Resource Governance in Africa (Article in Exploring the Right to Diversity in Conservation Law, Policy, and Practice)

¹⁹⁸ Kachika T (2015) Land Grabbing in Africa: A review of the Impacts and Possible Policy Responses, Pan Africa Programme of Oxfam

lower levels in a political-administrative and territorial hierarchy.” It, thus, includes the various forms of CBNRM and their many locally-specific adaptations adopted in the region in the period between 1985 and 1995 when widespread policy reform processes heavily backed by foreign donors were taking place¹⁹⁹. However, by the end of the 1990’s the political space for meaningful devolution or decentralisation of natural resources to local communities had generally waned, just as political authority has often been progressively re-centralised across much of the region since the initial reform moments of the 1990s. And so devolution merely became deconcentrating as the state still holds the power but it is vested in state functionaries who are at the local level.

The significance of their weaknesses notwithstanding (i.e. corruption and weak capacity, competition from projects and conflict that undermines their potential), decentralized governance systems enable the attainment of two key objectives that most programs seek to achieve²⁰⁰. First, they enhance sustainability due to their potential to include all categories of people in decision-making. Second, they enable the achievement of results at scale given their reach and mandates. Overall, they are a structure that provide the potential to attain both collective and individual benefits from any program at scale. Nonetheless, weaknesses in their implementation have to be checked in order to achieve these results. Madondo and Jusrut show that across Africa where efforts of decentralisation have been made, outcomes were undermined by subversions of funds by representatives, elite capture, transfer of limited power over lucrative projects. The challenge for natural resource management is to determine how to address these challenges²⁰¹. The natural resource management handbooks provide a good basis and lessons to consider.

¹⁹⁹ Kelly, A (2013), Conservation practice as primitive accumulation in Peluso and Lund New Frontiers of land control

²⁰⁰ Madondo A and P. Jusrut (2015) Waiting for Democracy in Africa’s Social Forests , RFGI working paper 24, CORDESRIA .

²⁰¹ PLAAS (2016) Models of Commercial Agriculture in Kenya, LACA Policy Brief 85

Insufficient Transfer of Power: The first challenge facing Devolution efforts is that the wide failure to transfer enough decision-making powers and mandates to the local level “turn most decentralization reforms into charades”²⁰². Many studies such as those under natural resource management, WRI and Nelson et al, concur that valuable natural resources create incentives for central actors to retain control over them, even when these actors, sometimes, claim to decentralize control (for example high value timber, hunting)²⁰³. It was further shown that natural resource governance changes in the East African region have, sometimes, worked to recentralize authority over valuable resources even while formal policy and donor rhetoric espouses devolution and decentralisation. Tanzania, for example, is increasingly designating more areas under PA systems to centralise their management. Kilimanjaro PA devolution has been reversed and now managed by the TANAPA and community participation replaced by anti-poaching and paramilitary control²⁰⁴. Uganda is floating the idea of creating wetland PAs for critical ecosystems under threat from development. In Rwanda, since the 1994 genocide, the government has increasingly centralised authority over natural resources considered significant for biodiversity and other ecosystem services. Similarly, in Southern African countries such as Botswana, political commitment to local control over wildlife has been erratic and recentralization characterizes debates over natural resource management. Overall, it is state modernization discourses and elite interests over the value of resources that play a vital role in this policy reversal²⁰⁵.

²⁰² Namara A (2015) at the Expense of Democracy; Payment for Ecosystems services in Hoima District, Uganda working paper RFGI 14 CORDESRIA

²⁰³ RFGI 2010, proposal to SIDA - <https://portals.iucn.org/library/node/45312>

²⁰⁴ Chomba S. J Kariuki, JF Lund, F Sinclair (2016) Of Mice and Men: Why the unintended consequences of carbon matter Land Use Policy (61) 99-102

²⁰⁵ Cruz L. and M. Vidar (2014) Natural Resources Governance and the Right to Adequate Food Thematic Study 4, FAO, Rome

Competition for Legitimacy: RFGI research in the region (Kenya, Tanzania, Uganda) showed that a key challenge for decentralized management was that central agencies and donors choose to work with multiple partners (CBOs and Private sector) causing and leading to competition for legitimacy with elected leaders²⁰⁶. The plethora of players in the local government undermines and fragments authority and hence causes weaknesses in accountability. This is made worse when projects limit or fail participation of local people by providing insufficient information, resources and skills to hold those with authority on projects accountable, and yet accountability is the main attribute that empowers citizens to participate in influencing decisions that matter to them²⁰⁷. Generally, it was determined that limited resources and time are allocated to processes because projects prioritise tangible outputs over processes which are considered time consuming.

Bureaucratic Disincentives: It has been argued that bureaucracy is a deliberate tool used by central level actors to fail devolution²⁰⁸. For instance, in Uganda, collaborative management is preferred to full devolvement of management of PAs, while in Tanzania, the extent of vested interests in central government and the private sector and the procedures involved are potentially able to undermine local opportunities in using communal land aimed at generating benefits from non-consumptive tourism²⁰⁹.

4.4.4 Conservation and Equitable Benefit Sharing

One of the biggest challenges facing conservation and governance is the relation between conservation and livelihoods. Most conflicts around conservation as a concept are over access and

²⁰⁶ IUCN (2013) Strengthening natural resource governance in Garba Tula, ESARO Regional Drylands Programme

²⁰⁷ Borras, J.S. and Franco, J (2012) Global Land Grabbing and Trajectories of the Agrarian Change : A preliminary Analysis . *Journal of Agrarian Change* 12, 1, 34-59

²⁰⁸ FAO (2016) Improving governance from pastoral lands; Governance of Tenure, Technical Guide 6

²⁰⁹ Fisher R, S. Maginnis, W. Jackson, E. Barrow and S. Jeanrenaud (2008) Linking Conservation and Poverty Reduction: Landscapes, People and Power, Earthscan/Routledge, London

sharing of resources. As already mentioned, two main drivers of conflicts in the region are enduring colonial legacy that denies access to resources, coupled with dispossession by powerful economic interests and now climate change induced limits which are creating new challenges for industry.

Establishing equitable benefit-sharing: The main challenge around natural resource management, decentralisation reforms today is that of establishing equitable benefit-sharing frameworks that link with sustainable use in the face of growing population and, competition for resources in addition to inequality. Therefore, the various initiatives that are being piloted to improve livelihoods around various natural resources need to provide a firm foundation and facilitate the strengthening of benefit-sharing schemes that link with overall natural resources governance of an ecosystem. The context is such that for many countries in Eastern and Southern Africa, the implementation of the rule of law tends to be weak, with governance processes strongly influenced by informal or personal interests and networks²¹⁰. In such contexts, rights as defined by laws or constitutions can be, in practice, of limited meaning. As a result, efforts to strengthen local rights and tenure in relation to natural resources, as well as equitable sharing of benefits derived from them, are widely constrained. Moreover, current political and economic trends in sub-Saharan Africa, particularly the growing market value of many natural resources, create incentives for policy-makers and political elites to further weaken local rights rather than strengthen them.

Power of the private sector: The relationship between powerful state and private sector may sometimes lead to the application of the law selectively or at worst circumnavigate it. The advance of extractive industry in the region, particularly within development corridors is seen to operate “above” national law and human rights considerations. This is because investments, and related

²¹⁰ Ibid

transportation of goods including natural resources, take precedence over other considerations. Yet, these initiatives provide a very important entry point for demonstrating inclusive participation and for discussion of benefit sharing schemes.

Underfunding: A related challenge across the region is that natural resources management is mostly underfunded. Where they exist, valuable resources are moved out of control of natural resources managers and communities to central government economic planners and private sector with very little returns ploughed back to the sector if at all. Operationalizing the various governance structures requires sustainable financing. Further, it is around financing and benefit-sharing that various governance systems are developed and operationalised. The main funding streams for community based natural resources management being developed in the region are trust funds and market-based systems which provide plausible and relatively sustainable funding to the sector. However, the market-based framework has been flagged as a potential risk which can undermine community rights by prioritizing interests of private sector²¹¹. In all, the key challenge for the region is how to support the funding and hence operationalizing of the various natural resources governance institutions that will support equitable benefit-sharing on a sustainable basis.

4.4.5 Diversity of Cultures and Knowledge

The complementarity of different cultures and knowledge in the management of changing realities of nature and its resources underscores this principle. Thus, the realisation that different worldviews (traditional and biological ecological knowledge) in the governance of natural resources may combine has the potential to provide valuable information if not useful models that

²¹¹ Herrera Pedro M., J. Davies and P.o# Manzano Baena (2014) *The Governance of Rangelands: Collective Action for Sustainable Pastoralism*, Earthscan/Routledge, London

can be adopted for resource management today. The United Nations Convention on Biological Diversity (1992) urges us to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”²¹².

Throughout human history, different cultures have had different views on nature. He further notes that the systems of managing the environment constitute an integral part of the cultural identity and social integrity of many indigenous populations²¹³. He argues that at the same time the knowledge embodies a wealth of wisdom and experience of nature gained over millennia from direct observations and transmitted—most often orally— over generations. In combination with modern biological knowledge and varying worldviews, therefore, the emerging dialogue in studying biological, ecological and social phenomena that include different levels of complexity may well contribute to the realisation of global objective of sustainable development²¹⁴.

Strong local and national civil society organisations can drive the much-needed reform because they hold a rich body of knowledge, but their critical role has yet to be widely recognised or effectively supported²¹⁵. Similarly, traditional and indigenous knowledge is seldom explored with heavy reliance on the biological science knowledge. In the process, the interconnectedness of humans and nature is seldom brought to the fore²¹⁶.

²¹² Hulme D. and M..Murphree (1999) *Communities, Wildlife and the `New Conservation` in Africa*, John Wiley & Sons, Ltd.

²¹³ Chomba S. J Kariuki, JF Lund, F Sinclair (2016) *Of Mice and Men: Why the unintended consequences of carbon matter* Land Use Policy (61) 99-102

²¹⁴ Ibid

²¹⁵ Cousins, B and Borrás, J (2016) *The political economy of global and regional agro-food system change: Key questions and issues* Working Paper 20 of BICAS Conference, Open Society Foundation

²¹⁶ Ibid

4.4.6 Migingo Island Dispute

Migingo Island is a barren one-acre-piece of land in the middle of Lake Victoria and inhabited by less than 1,000 people, over which Uganda and Kenya have locked horns over its ownership. According to Fofona, OSIENALA, conflict on this island has constantly put a strain on the relations between Kenya and Uganda²¹⁷. Located 10km off Kenya's Sori bay in Karungu division, Migori district, Kenyans are said to take their closer proximity to the island to imply ownership while on the other hand, Ugandan authorities say the island falls within the boundaries of its eastern district of Bugiri, according to the Google earth map²¹⁸.

Over the years, Kenyan fishermen continue to be arrested and their boats and equipment's are confiscated by Tanzania and Ugandan authorities for allegedly crossing the common borders²¹⁹. According to the fisheries departments of both Kenya and Uganda, territorial differences aside the bone of contention is the fishing rights in the surrounding waters of the rocky island and that the Kenya and Uganda want to control the millions of shillings generated there from fishing. The island not bigger than a football field, sits atop the lake's most fertile fishing ground and serves as a strategic offshore port straddling the water border between Uganda and Kenya. It records landings of about 10 tonnes of Nile perch daily worth over KSh1 million. Since the start of the conflict, there have been consultations and on-going discussions between Kenya and Uganda governments aimed at resolving the dispute until recently, on 6 November 2019, there was a signing of a Memorandum of Understanding (MOU) between the Kenya Foreign Affairs Cabinet Secretary²²⁰ with Ugandan authorities on the Migingo island. The MOU entailed the sharing of the

²¹⁷ Fofona, Media Relations Officer at OSIENALA, who was interviewed during the fieldwork research in Kisumu, in October, 2019

²¹⁸ Independent Article on Politics of Fish in Migingo Island Dispute accessed on 7 November 2019

²¹⁹ The Star Article on Kenyan Fishermen Seized in Homabay, boats confiscated, accessed on 31 July 2019

²²⁰ Ambassador Monica Juma

island between Kenya and Uganda, to enable fisherman and other Lake Victoria users access either side of the boundary located in Lake Victoria²²¹.

Despite this agreement, the government of Kenya's Foreign Affairs Cabinet Secretary maintained that the island is in Kenya and stated there were ongoing negotiations to establish a mechanism that will determine the modalities for management, sharing and exploitation of the shared resources within the Lake Victoria basin²²².

4.4.7 Slow Consensus and Decision Making

This has perhaps stemmed from the provisions of the Treaty for the Establishment of the EAC which according to article 63 provides that: 1) The Heads of State may assent to or withhold assent to a Bill of the Assembly; 2) A Bill that has not received assent as provided for in paragraph (1) within three months shall be referred back to the Assembly, giving reasons and with a request that the Bill or a particular provision thereof be considered by the Assembly; 3) If the Assembly discusses and approves the Bill, the Bill shall be resubmitted to the Heads of State for assent; 4) If a Head of State withholds assent to a re-submitted Bill, the Bill shall lapse. Article 12, (3), also states that decisions by Heads of States shall be by consensus. This process often leads to slow consensus and delays decision making on key issues touching on the Lake Victoria resource that may be useful in promotion of cooperation and sustainable management. For example, there continued conflicts over fishing rights by the three EAC countries has never been resolved despite even with the annual meetings of the Heads of States held annually for all Heads of State.

²²¹ Article published by Mwananchi Newspaper, 7 November 2019 '*Kenya, Uganda zakubaliana kutumia pamoja Kisiwa cha Migingo*' available online at <https://www.mwananchi.co.tz/habari/kitaiifa/Kenya--Uganda-zakubaliana-kutumia-pamoja-Kisiwa-cha-Migingo/1597296-5339720-106ti7dz/index.html>

²²² Nation Media Group Broadcast, 6 November 2019, CS Juma explains Kenya, Uganda deal on Migingo

5.1 Prospects of Lake Victoria as a Shared Natural Resource

5.1.1 Introduction

The Lake Victoria resource contributes immensely to the socio-economic development of the riparian states. The EAC has designated the lake basin as an ‘economic growth zone’, with the potential to develop into a major economic region²²³.

5.1.2 Employment Opportunities

The establishment of various key institutions and organisations mandated to provide oversight in management and sustainable use of the Lake Victoria as a shared natural resource and promote cooperation among member states in the EAC within the region has resulted to creation of employment opportunities within and outside the region. The employment opportunities which range from careers in the fishing sector, management, regional organisations, small business enterprises, government ministries, non-governmental organisations, tourism departments, recreational facilities, transport, policy experts, security, and manufacturing industries are and have been significant since they have resulted to economic empowerment of people leading to stable and increased incomes and a stable economy for the three EAC countries sharing the Lake Victoria resource²²⁴.

5.1.3 Economic Growth, Domestic Use and source of Foreign Direct Investment

The fish industry contributes to Gross Domestic Product (GDP)²²⁵ of the riparian states and has continued to be an important source of foreign exchange earnings through fish exports to the

²²³ Lake Victoria Basin Commission, Website available at <https://www.lvbcom.org/Who%20we%20are>

²²⁴ Lukania Oluchina, Country Director, The Nature Conservancy ‘ Telephone Interview on Prospects on Shared Natural Resources focusing Lake Victoria’, Nairobi, on 3 May 2019

²²⁵ Lynphoid Arori, Economics Student, Technical University, who was interviewed during field work research stated that GDP is the final value of the goods and services produced within the geographic boundaries of a country

regional and international markets. Besides, the fish industry contributes to the national and local government revenues through the various taxes, levies and license fees. Lake Victoria is estimated to produce 500,000 tonnes annually, valued at US\$ 600 million, with export value of US\$217 in 2001²²⁶. Based on current stock estimates, the Lake Victoria has the potential to yield fish valued at over US\$ 800 million annually on a sustainable basis. Further processing and marketing of this fish in the local and export markets can generate an additional value of about US\$ 57 million.

For domestic use, the Lake Victoria basin is used as a source of food as fish is rich source of animal protein for human consumption and provides raw material (fishmeal) for processing animal feeds. The basin also is used as a source of water for drinking and irrigation, for shelter and transport, recreation and as a repository for human, agricultural and industrial waste. It is also a biodiversity conservation and tourism site. The basin supports large populations that depend on it for farming activities and industrial development²²⁷.

Lake Victoria has numerous wetlands on the edges of its shore as well as open beaches and islands. Its scenic beauty makes the riparian countries important tourists' destinations which leads to increased foreign exchange earnings and improved economic welfare of the EAC countries. For Kenya, Kisumu has an important ship-loading facility, which makes it one of the major ports in East Africa. The Kenyan basin has a high potential for hydropower development; however, this is still underutilized²²⁸.

during a specified time, normally a year and it is an important indicator of the economic performance of a country, Kisii, 7 August 2019.

²²⁶ Lake Victoria Fisheries Organisation, 2005

²²⁷ Ibid

²²⁸ Personal Communication from Ivan Atuyambe, East African Community Youth Representative, Arusha, Tanzania, 8 November 2019.

5.1.4 Improved Infrastructure

The sector has also contributed directly and indirectly to the improvement of physical infrastructure and social facilities, such as roads, schools and hospitals, particularly in remote fishing communities. Various goals have been considered to guide the utilization of Lake Victoria's fisheries resources²²⁹.

²²⁹ Personal Communication from Franklin Mireri, East African Community Youth Representative, Kisumu, Kenya 10 October 2019.

CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This chapter gives an overview of the findings in relation to the study objectives or the assumption on the research topic and gives a conclusion on the actual position. The goal of EAC is to improve the standard of living for its citizens through increased competitiveness, value added production, trade creation and increased investment.

6.2 Recommendations and Summary

The most serious environmental problems in Lake Victoria Basin relate to land use especially agricultural practices; destruction of protected areas in terrestrial and aquatic ecosystems particularly to destruction of forests and depletion of fishery resources respectively; and discharge of municipal and industrial wastes which cause pollution. It has been demonstrated in this paper that without exception, there are legal and institutional arrangements in the books to deal with these problems.

Granted, some of the laws may have weaknesses which may include overly lenient and outdated penal provisions which were enacted during colonial times and which have lost meaning and effectiveness because of inflation. These include the legal arrangements under the Agriculture Act where existing institutional mechanisms allow for enforcement measures that respond to contemporaneous economic situations. They also include provisions under Public Health and Factories Acts where public officers have immense powers, including authority to close operations. The fines may be neither huge nor deterrent. But the effect of frequent action and penalties combined with closure option would no doubt lead to some deterrence.

That the continued environmental degradation in Lake Victoria Basin is an expression of lack of political will to ensure that public officers protect the environment is forcefully expressed

in deforestation and destruction of forests. It has been repeatedly stressed that destruction of forests in Mau and Cherengany hills will result in destruction of catchments and thus endanger rivers flowing into Lake Victoria and Kerio Valleys. Yet the practice has continued unabated. If there was political will to protect the catchments it is conceivable that the government could have possibly invoked its powers under Land Acquisition Act, Cap 295 Laws of Kenya Section 6 (1) which empowers the minister to acquire land compulsorily to promote public good or benefit. The option of compulsory acquisition under this Act may not be necessary if the area is gazetted forest in Mau area, unless the land had been allocated to political protégés. Extraordinary situations such as the danger to the catchment, the rivers and the lake justify extraordinary measures, accompanied by massive reforestation.

In more recent times the Water Act (2002) empowers the Water Resources Management Authority, after consultation with the Minister to declare a “protected area” and impose specific regulations or prohibit conduct of activities which may jeopardize a catchment for which provisions or strategies for catchment management exist. The Water Act (2002) and Gazette Notice (2002) states that the authority assumed its responsibility only with the date of the gazettelement, which means that it has not had time to operate²³⁰. But subsequently, the Authority can be expected to commence operation by invoking rules which will safeguard the reasons for its existence, namely water resources and their catchments areas. The hopes may remain frail, if the Ministry of Water and Irrigation together with the Authority do not depart from the traditional lethargy of line ministries or agencies to date. That lethargy also characterized the conduct of the office of the attorney general, the supposed defender of the public good, at least as far as environmental matters are concerned.

²³⁰ Gazette Notice No. 10340 of 31st December 2002, National Council for Law Reporting

It is therefore curious that the protocol for sustainable development of the Lake Victoria Basin made no provision at all on access to environmental justice. The framework treaty, similarly, makes no such specific provision. However, its Article 30 provision on locus standi that allows any person to challenge the legality of conduct by a partner state or its institution before the East African Court of Justice may someday be found to include environmental cases. Jurisprudence on such matters will still evolve with time and the vibrance of local legal practitioners. There are, however, two novel provisions in the MOU which, it will be recalled, was incorporated into the framework treaty under its Article 142. Both provisions are in Article 16 of the MOU; in paragraph 2 (d) the partner states agree to develop measures, policies and laws which grant access, due process and equal treatment in administrative and judicial proceedings to all persons who are affected by environmentally harmful activities in the territory of any of the partner state. That is, of course only a statement of policy not enforceable as such. On the other hand, paragraph 3 is forthright. Here, the Partner States agree to grant rights of access to the nationals or residents of other partner states to their judicial and administrative machineries to seek remedies for transboundary environmental damage.

For the reasons explained above we put emphasis on statutory rights bestowed on individuals to seek administrative or judicial order on behalf of environment. Courts have not been consistent, when action is based on common law principles. In Uganda, where individuals have relied on both the constitutional and statutory authority the results have been impressive. This is particularly so because of prevalence of public-spirited lawyers. Uganda enacted the framework statute in 1995 shortly after adoption of the new Constitution. In Tanzania individuals relying on common law, and in the absence of both framework statute and a direct constitutional authority,

have faced problems with sensitive cases. Now with a new framework statute adopted in 2004, some changes may occur.

In Kenya, reliance on common law led to very erratic court decisions. But now Section 3 of the framework statute opens a new avenue for individuals to close the gap left by government agencies. The provisions of the framework treaty, the MOU and the Protocol and the fisheries convention open a new vista in environmental management, to complement the national framework statutes and sectoral and functional laws. All the instruments concur on five basic factors that determine improvement of environmental governance in the Lake Victoria Basin and on which we base recommendations for the future. First, all the instruments agree on the nature of the environmental problems which should be addressed urgently. These include land use practices; catchment protection; protected areas and ecosystems conservation; protection of biodiversity including terrestrial and aquatic resources, and control including proper disposal of wastes. All these are basic concerns at regional level and are in the national statutes with corresponding institutions but there is total failure to enforce. Admittedly, there may still be weaknesses in the normative and institutional arrangements. However, there should first be bona fide efforts at implementations to allow for recognition of the gaps in the law or institutions.

Secondly, there is a uniform agreement that deliberate action be taken to develop and harmonize laws in the main problem areas. There are at least two primary aspects to this. On the one hand there is an urgent need to bring the national sectoral statutes in harmony with the framework statute. It was pointed out earlier that where any statute conflicts with the framework law then the latter prevails. Therefore, it is essential that deliberate efforts be made to harmonize the statutes with the framework law. Uganda has made some efforts in this direction. Kenya has clearly done so for the Water Act, 2002. It is timely to raise the issue for Tanzania. Methodology

for such an activity was evolved through the UNEP/UNDP Joint Project in late 1990's and can be improved upon. This process is urgent for Kenya where many of the sectoral statutes are outdated and may not respond easily to the requirements of the framework statute, let alone the requirements of the modern regional instruments. There could for instance be harmonized codes for public or fisher-folk participation in fishing regulation especially through beach Management units (BMUs) which may be analogous to port state control in fishing in marine environments.

Thirdly, all the instruments call for strengthening of enforcement machineries and procedures, a matter which is grossly wanting in Kenya. We have recognized the overwhelming lethargy in the sectoral agencies as far as enforcement of environmental laws are concerned. On the other hand, NEMA, the agency in which Kenya has invested hope, has been active for only two years, having wasted the first two. So, it may not have confronted as many challenges as has Uganda's NEMA. Although it has taken several decisions before, the first true test will be Kaputuei settlement proposal being fallaciously touted as wildlife versus the poor controversy. The Director General has rejected the proposed settlement and if he has relied on respectable legal and scientific arguments to advise his decision, he must wait for available procedures to test the decision. For he must not be seen to have made a capricious decision which would undermine his credibility. His Ugandan counterpart faced such a challenge over decision to reject use of herbicides to destroy water hyacinth on Lake Victoria. The decision was sustained against contrary position of many powerful voices.

Fourth, all the instruments urge for public participation in development and enforcement of environmental law. As pointed out earlier the Kenyan framework environmental law has abundant and appropriate provisions for public participation and access to environmental justice. The mechanisms of environmental impact assessment, environmental tribunal, public complaints

committee, and courts of law with the open provision for locus standi have barely been used in the four years. The civil societies were active, sometimes violent, in seeking environmental protection at a time when only common law remedies were available. When the framework law came into effect in January 2000 many observers feared that there would be a floodgate of litigations. Unfortunately, there has been deafening silence. Even lawyers who have been sensitized on the issues through national and regional workshops on access to environmental justice have largely remained inert. The situation in Tanzania and more so, Uganda has been vibrant. A way must be found to stimulate public participation in development and enforcement of environmental law in Kenya. NEMA cannot be expected to stimulate a source of challenge to their work.

The fifth basic matter recognized by the regional instruments is capacity building and awareness creation. This is particularly necessary because environmental law is a new field of study and a practice. This necessitates a systematic, deliberate, massive and sustained capacity building initiative. At the basic level, it is necessary to make environmental law one of the foundation courses that should be taken by all law students. It is also essential to demystify environmental law by making courses available to students other than those studying law in the university. Both approaches will create significant literacy in the field.

Beyond these levels, it is essential to introduce and intensify continuing education in environmental law. Judges, legal practitioners, parliamentarians, policy makers and civil society groups should be targeted. It would be particularly desirable to conduct these short courses at the regional, East African level. It should be possible to have a rapid and harmonious development of regional environmental jurisprudence through judicial decisions and practice, which is also advised by global comparative decisions. The EAC's environment or legal office could play a coordinating role or simply to find mechanisms for the functions being conducted. Through the

Commission, the Sectoral Council and Committee this initiative can be pursued ensuring development, harmonization and enforcement of environmental law. The “peer pressure” effect would possibly help Kenya to move faster and Tanzania to commence early implementation of their new framework statute.

5.3 Conclusion

If environmental justice and democracy are to be achieved, then there is need to adopt an integrated approach to both conflict resolution and dispute settlement mechanisms to promote peace, coexistence, justice for all and participation by all the involved parties. Environmental justice entails promotion of equitable treatment of people of all races, incomes and cultures with respect to environmental laws, regulations, policies and decisions. One of the fundamental components of environmental justice is that it seeks to tackle social injustices and environmental problems through an integrated framework of policies. There is need for increased integration of principles of sustainable development into the national legal frameworks of the East African countries, increased cooperation by States in promoting sustainable use of the Lake Victoria as a shared natural resource and there is need of employing the principle of public participation in formulation of policies aimed at protecting this resource.

Courts have played a useful role in promoting and securing the environmental rights of persons as well as in environmental conservation and are therefore useful in achievement of peace, sustainable development and environmental justice for all. However, Alternative Dispute Resolution mechanisms such as negotiation, fact finding facilitation and mediation have the potential to enhance environmental justice since they allow parties to enjoy autonomy over the process and outcome; they are expeditious, cost-effective, flexible and employ non-complex

procedures. They greatly enhance the principle of public participation in natural resources management. They result in mutually satisfying outcomes which essentially resolves the conflict thus achieving lasting peace among the previously conflicting parties. These mechanisms are also useful in achieving environmental democracy in Kenya and East Africa as a region. There is a need to manage natural resource-based conflicts for the sake of peace, prosperity and sustainable development.

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APPENDIX 1

A. SECTION 1:

1. Name of Respondent

2. Location

3. Sex: Female

Male

Age

Location

B. SECTION 2:

4. What do you think about Lake Victoria as common shared natural resource?

5. What are the available mechanisms in place useful in management of Lake Victoria?

6. Explain the mechanisms

7. How are countries implementing the available mechanisms in management of Lake Victoria as shared resource?

8. Are the mechanisms working?

Yes

No

9. What are the challenges faced by these mechanisms in management of Lake Victoria?

10. How best do we deal with the challenges?

11. How do the available mechanisms deal with conflict?

12. Are shared natural resources a source of cooperation?

Yes

No

13. What are the regional principles on shared natural resources?

14. Are the regional principles on shared natural resources useful in promoting sustainable use of Lake Victoria and cooperation between Kenya, Uganda and Tanzania?

Yes

No