

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES



***THE IMPLICATIONS OF THE SHARED NATURAL RESOURCES ON INTERSTATE
RELATIONS IN THE EAST AFRICAN COMMUNITY: A CASE STUDY OF
MAASAI/SERENGETI NATIONAL PARKS***

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DECLARATION

I Maimuna Hassan Omar do hereby declare that this is my original work and has not been submitted in any other institution for examination or award of any degree.

Date

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Maimuna Hassan Omar

This research project has been submitted for examination with my approval as University

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DEDICATION

I hereby dedicate this paper to my family. Thank you for your patience, understanding and the endurance that you showed during the whole time I was working on this script. I love you all.

ACKNOWLEDGMENT

My sincere appreciation goes to God almighty for guiding me through this paper and for the strength and support to get this far.

I also wish to express my gratitude to my supervisor Dr.KizitoSabala for guiding me and being there for me throughout the writing of this paper. Thank you Sir.

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ABSTRACT

Shared natural resources are a major point of conflict between different states worldwide. This research has been undertaken with an objective of getting an understanding of interstate relations in the East African Community (EAC): the case study being Maasai Mara/ Serengeti National Parks, in regard to this major conflict point. Further to the case study, the research employs in depth analysis of secondary data sources by examining books, reports, existing statutes and international instruments, journals, newspapers articles etcetera, that have previously covered this subject. It hypothesizes that conflict of interest is the major cause of interstate conflicts in this region which is compounded further by a weak and insufficient institutional and legislative framework. It examines the challenges and opportunities relating to shared resources of states involved. The research makes interesting findings in that a lot has been done to address this major diplomatic issue in the region e.g. the passage of the EAC trans-boundary shared resources law but many are challenges that still abound. Further it proceeds to offer various recommendations towards the improvement of the norms and institutions in this core aspect of diplomatic relations in the region including proposing for harmonization of laws n policies governing natural resources and the speeding up and strengthening of the ongoing integration of the EAC.

LIST OF ABBREVIATIONS

EAC	East African Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
EANECE	East African Network for Environmental Compliance and Enforcement
IGAD	Inter-governmental Authority on Development
UN	United Nations
UNEP	United Nations Environment Programme

Chapter One

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 General Introduction and Background

Many States in the world find themselves in awkward situations of having to share certain resources that run across their respective boundaries. In such circumstances, it is important for such States to establish norms and institutions to facilitate proper and peaceful utilization of such resources. It is not uncommon for conflicts to arise on a number of occasions pertaining to such shared resources.

One author argues that disputes over resource development is a territorial dispute which aims at changing the position of a boundary from being exclusionary, moreover, where there is a natural feature; river, grazing ground or lands which the country, State or community initiating the dispute too share in the use of and as such, this conflict merely seeks to change the boundary in question from its exclusionary role so that the party initiating the dispute can share in the resources astride the boundaries.¹

In addition to the above, the shared resources may bring various conflicts of the States in question more so in terms of each State seeking to expand its developmental goals and ambitions and this may have an overall negative implication on the shared resources. Furthermore, activities by one State may jeopardise the whole shared resource with one State benefiting while the other suffering some detriments. It is important that States which find themselves in situations where they have to share resources co-operate jointly; for the benefits of co-operation cannot be gainsaid and as it has been noted that Co-operation between States in many cases is required in order to comply with the duty of due diligence, and as such, State

¹Celestine Bassey and Oshita O. Oshita, *Governance and Border Security in Africa* (Malthouse Press Ltd, Lagos, 2010)

sovereignty and State sovereign rights in these cases have been qualified by the duty to co-operate.² Shared resources also prove to be a challenge especially in light of growing populations which in turn increases to the developmental demands of States and the need to have more land to accommodate such stretched populations.

The East African region enjoys a number of shared resources, with the most common one being Lake Victoria. East Africa is geographically diverse (for example, geology, topography and climate) and culturally diverse (hunters-gatherers, pastoralists, agro-pastoralists, and cultivators with banana, root and grain cultures). The same range of diversity is found in each country and so the region is no more diverse than its separate components. The region is however bonded together by a past administrative structure, common resource problems and a belief that some level of regional co-operation can help alleviate these problems.³ It is against this background that this study seeks to analyse the implications of inter-state shared natural resources and more specifically, the Maasai-Mara Serengeti ecosystem which is shared between Kenya and Tanzania. The Maasai Mara is located in Kenya whereas the Serengeti lies in Tanzania.

1.2 Statement of the Problem

The question of shared natural resources is quite sensitive in light of the dictates of international law which proposes that every state enjoys absolute sovereignty over natural resources within its territory. It becomes crucial as in the present case when there exist such resources transcending beyond two countries. The Serengeti/Mara ecosystem is faced with a mirage of challenges owing to the fact that each State, Kenya and Tanzania, has their interests on each of its side. Such a scenario presents some challenge especially when one State

²Hey Hellen, *The Regime for the Exploitation of Transboundary Marine Fisheries Resources* (MartinusNijhoff Publishers, Netherlands, 1989)

³Wan.A Rodgers, 'Transboundary Issues and the Management of the Natural Resources of Mount Kilimanjaro Ecosystem' (accessed 27 April 2015)

decides to undertake unilateral action such as undertaking any developments that may impact on the ecosystem. In regard to the ecosystem and as such, these actions have direct or indirect implications on the whole ecosystem which in turn affects the other State.

The East African Community has a myriad of shared resources but however, there exists a number of challenges in regard to their management and utilization. This primarily stems from the fact that there is no complete harmonization of laws within the region and as such, each State has adopted its own laws to promote its interests pertaining to the said resources. Furthermore, the existing harmonized conservation efforts are not sufficient towards the full conservation and utilization of the shared resources. This scenario has manifested itself well in the Serengeti/Mara ecosystem and hence there is need to propose suggestions towards the improvement of the management and utilization of this ecosystem.

1.3 Objectives of the Study

The overall objective of this study is to examine how the shared resources affect inter-state relations in the EAC.

The study's objectives include:

- 1.3.1 A review of the norms and institutions on shared resources in East African Community.
- 1.3.2 The implications of the shared natural resources on interstate relations in the East African community: A case study of Maasai/Serengeti National Parks
- 1.3.3 To examine the Challenges and Opportunities relating to shared resources in the EAC.
- 1.3.4 To make recommendations towards the improvement of the norms and institutions on shared resources in the EAC.

1.4 Research Questions

This study shall seek to answer the following questions namely

- 1.4.1 What are the norms and institutions on shared resources in the EAC?
- 1.4.2 Are there any norms and institutions on shared resources in other jurisdictions that can be compared to the EAC?
- 1.4.3 What are the implications of the Maasai/Serengeti National Parks shared natural resources on interstate relations between Kenya and Tanzania?
- 1.4.4 Are there any best practices that can be adopted to improve the norms and institutions on shared resources in the EAC?

1.5 Study Hypotheses

This study proceeds on the following two hypotheses:

- 1.5.1 Conflict of interest is the major drive in the conflict between the two States over the Maasai-Mara Serengeti ecosystem.
- 1.5.2 Weak and insufficient institutional and legislative framework also hampers the harmonious co-operation between the two States in regard to the Maasai-Mara Serengeti ecosystem.

1.6 Study Justification and Significance

1.6.1 Academic Justification

The study firstly seeks to build on the limited literature in this field of study. Not many materials exist especially in regard to the Maasai-Mara Serengeti ecosystem. The existing literature does not pay specific attention to this ecosystem; and to provide a broad understanding of the concept of inter-state shared resources and their implications. This is mainly through the conduct of the case study herein.

In addition to the above, this study seeks to highlight on the situation pertaining to the Mara and Serengeti game reserve whilst linking the same to the international law context. The existing literature mainly composed of reports only highlighting on the situation at the Maasai-Mara ecosystem without paying much attention to the international law context in regard to inter-state shared natural resources.

1.6.2 Policy Justification

This study aims to make suggestions that if adopted may see to the improvement and efficient utilization of the shared natural resources at the Maasai-Mara Serengeti ecosystem. A report observed that biodiversity of the Mara River Basin continues to decline and there is need for an integrated trans-boundary approach for conservation and that it is therefore necessary to build a wide range of strategic planning into conservation, and to find ways for different groups, including local, national and international agencies, academic institutions, private landowners and organizations, and public groups to network and collaborate to bring the separate approaches in a complementary way.⁴ In this regard therefore, this paper acts as an important tool to the stakeholders involved in formulation of laws and policies in the management and conservation of this ecosystem as it provides a vital tool of source of information that can be utilized and as such, this is one of the complementary contribution as suggested above.

The study, by conducting an analysis of the implications of the inter-state shared Maasai-Mara Serengeti ecosystem, also seeks to present a policy paper that may be used in identifying any negative implications of the ecosystem and finding solutions to the conflict in question and the lessons learnt from this case study applied to future conflicts between the two states or between any other states. This may be useful as one author has pointed out that

⁴Lake Victoria Basin Commission of East African Community and WWF Eastern and Southern Africa Regional Programme Office, 'Biodiversity Strategy and Action Plan for Sustainable Management of the Mara River Basin' April 2010 (accessed 28 April 2015)

most of the literature available in the field has not delineated the affected areas with regards to where, when and to what extent vegetation loss has occurred in the Mara and further that it is important to make park management aware of such critical issues.⁵

Further to the above, the paper endeavours to promote and encourage continued tourism activities within the region and more in particular in regard to the Mara and the Serengeti National Park by providing recommendations that if adopted shall facilitate better and enhanced protection and conservation measures.

1.7 Literature Review

The subject of inter-state shared resources has received academic attention over the years. It may be argued that this is so because the question of States and resources is sensitive more so in the international community. A few existing literature relevant to this study are highlighted below.

According to David and his colleagues, among the legal principles on the degree of sovereignty exercised by a State over the use of river- resources, the Harmone doctrine was probably the earliest formulation for it states that countries should exercise absolute sovereignty over the use of rivers and other natural resources located within their territory, no matter what the effects of the resource use on neighbouring countries. They hypothesize further that the doctrine rejects any claim of international law upon the actions of a government with regard to natural resources, casting the matter rather as a political one to be decided between the nations. In that context they argue that this legal stance has since fallen into disfavour and is viewed as an inadequate doctrine for reconciling opposing interests with regard to shared natural resources.

⁵BhandariMedani, 'Tourism Raised Problems in Masai Mara National Park Narok, Kenya' 1999 (accessed 28 April 2015)

Similarly they advance the argument that the principle of ‘community of interests’ treats the entire river 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 its neighbours. 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 achieve.⁶In light of their argument, it therefore means that East African countries are under an obligation to co-operate in the usage of the various resources and more specifically, Tanzania and Kenya need to co-operate in the usage of Mara River which is a shared resource in this ecosystem. The authors’ perception is quite insightful as it emphasises the need for ecosystem. The authors’ analysis is however limited to rivers as shared resources. They do not examine other shared resources like wildlife as this study shall seek to do.

Vaughan and Tom⁷ while emphasising on the sensitivity of trans-boundary shared resources opine that trans-boundary issues and challenges involving shared spaces between countries are among the high priority foreign policy issues for national governments. These issues not only present unique foreign policy challenges because of their proximate nature, but, given the strong domestic components, they have active and vocal domestic constituencies.

Additionally, that these issues are often set in the context of the natural world, as is reflected in the adage “nature knows no boundaries” whether it is aquatic or terrestrial ecosystems, outer space, or the shared air. Moreover, especially with spaces that involve neighbouring countries, the relationships tend to be complex and multi-faceted involving

⁶Kumar Anjali, et al, *Mobilizing Domestic Capital Markets for Infrastructure Financing: International Experience and Lessons for China* (World Bank, Washington D.C, 1997)

⁷Vaughan c. Turekian and Tom C. Wang, ‘Transboundary Issues and Shared Spaces: An Education Resource’ (accessed 11 April 2015)

multiple stakeholders, including advocates, businesses, and governments. As such, politicians, diplomats, regulators and the science and technology community are all stakeholders in this important aspect of science diplomacy.

Their study basically points out to the impacts of such trans-boundary shared resources on a number of players both in and out of the States concerned. In that regard, this study shall endeavour to make propositions that may touch on a number of stakeholders and further urge these stakeholders to actively co-operate in the conservation measures in the East African Region. The authors' study is however limited to the generalisation of the concept of trans-boundary resources and does not conduct a particular case study as this study.

Massimiliano and Slavko on their part, argue that watercourses are the main vector for trans-boundary pollution, whether it is ongoing and chronic, or infrequent and accidental. Many waterways cross the borders and as the countries are relatively small, many sites are located close to a neighbouring State. Europe is characterized by many borders that cut across ecosystems and areas of high natural values, often dividing the continent along natural barriers like mountain ranges or rivers. Border areas are often the most favoured regions in terms of biodiversity, partly as a result of their peripheral location or political factors banning in the past the development of areas adjacent to political borders. However, natural areas shared by neighbouring countries are not only a common treasure, but also a common responsibility. Therefore, achieving the ecological coherence of Europe, protecting and managing its natural resources in a sustainable way, as well as preventing or mitigating environmental threats cannot be achieved by one country alone and require inter-regional and trans-boundary co-operation.

On the question of co-operation between countries sharing natural resources, they express the view that trans-boundary 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.⁸ Although the article is only limited to a case study of Europe, it provides an insight on the implications of inter-state shared natural resources although in the European context. This however may be compared to the East African scenario.

Peter presents the notion of sovereignty more so in regard to natural resources. He presents the argument that traditional forms of national sovereignty are increasingly challenged by ecological and economic inter-dependence and that such inter-dependence is apparent in the cases of deteriorating global commons (atmosphere/climate, outer space, oceans and the Antarctica), use of shared natural resources and trans-boundary pollution. The maintenance of natural assets in sustainable economic growth applies at the international level to assets which are shared by neighbouring countries, for example; in the case of cross-boundary freshwater or marine resources, owned by all nations in the case of global commons, substituted by natural resources imports in particular from countries with less stringent environmental standards; or affected by cross-boundary environmental effects, for example, from acid precipitation or waste dumping outside the national territory.⁹

The gist of his argument is mainly that every act by every State has an impact directly on such shared natural resources. The author in the instant study shares almost similar sentiments with Peter thus any act by any government in the East African Region automatically impacts on the ecosystem. From the foregoing therefore, it is imperative that the East African countries co-operate for efficient utilisation and management of the ecosystem.

⁸Massimiliano Montini and Slavko Bogdanovic (eds) *Environmental Security in South-Eastern Europe: International Agreements and their Implementation* (Springer Publishers, Netherlands, 2011)

⁹Bartelmus Peter, *Environment, Growth and Development: The Concepts and Strategies of Sustainability*, 2nd Edition (Routledge Publishing Co., New York, 2003)

In regard to co-operation as alluded to above, Antoni and his colleagues are of the view that positive spill over effects of public goods, based on geographic proximity or shared natural resources, would make co-operation arrangements a strategic choice for neighbouring countries to optimize benefits from such public goods and natural resources. The “free-rider” problem often associated with providing public goods helps to explain why some countries are disinclined to bear the costs of providing, protecting or preserving common and natural resources on an individual basis. 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, such as a regional multilateral development bank.¹⁰ In light of this argument, tourism emerging from the Maasai-Mara Serengeti ecosystem and other shared resources in the East African region may be viewed as a public good and hence the need to ensure co-operation in its conservation and management in order to accrue much benefits which shall in turn be of benefit to both countries.

Zewedineh and Ian in their case study of the Nile Basin as a shared resource present 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 trans-boundary resources. They are of the view that it is 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 resources.

Furthermore, that in order to prevent disputes over trans-boundary natural resources escalating into threats of the use of force, States must look for common principles and accepted international norms and standards by which these trans-boundary natural resources may be equitably and efficiently utilized, without causing significant harm to the environment

¹⁰Estevadeordal Antoni, et al, Regional Public Goods: From Theory to Practice (Inter-American Development Bank, Washington D.C, 2002)

or to other users of the resource.¹¹ Their article offers a nice case study that is of great relevance to the instant study. The article however, only focuses on the Nile Basin without offering any comparisons with other areas with shared natural resources.

1.8 Theoretical Framework

The sustainable use and management of environmental resources such as water, forests and wetlands has become a challenging task for policy makers due to the public good/common property nature of such resources.¹² In this regard, common property resources are those to which no individual has exclusive property rights and they include a wide range of natural environments.¹³ It therefore follows that the Maasai-Mara Serengeti ecosystem is a shared common property resource between Kenya and Tanzania.

In the above context, this study advances the common property theory which refers to a body of cross-disciplinary literature that deals with the historical and contemporary institutional governance and management of valued resources ranging from fisheries and forests to atmospheric sinks, oceans, and genetic materials.¹⁴ The common property thinking emerged and has developed largely within the context of opposing the rational actor and related “tragedy of the commons” models in natural resource management.¹⁵ It has been observed that a wide variety of research on common-pool resources has demonstrated that common property theory provides a useful perspective for examining social exchanges among collaborative actors and interest groups.

¹¹ZewdinehBeyene and Ian L Wadley, ‘Common Goods and the Common Good: Transboundary Natural Resources, Principled Cooperation, and the Nile Basin Initiative’ 2004 (accessed 28 April 2015)

¹²Gamini Health, ‘Game Theory Applications in Natural Resource Management: Review of Evidence, Problems and Potential’ 2006 (accessed 12 April 2015)

¹³Food and Agriculture Organization, ‘Common Property: Cause or Remedy of Poverty for Small-Scale Fisheries’ (accessed 29 April 2015)

¹⁴Pokrant Bob, ‘Common Property Theory’ in Dustin Mulvaney and Paul Robbins (eds) Green Politics: An A-to-Z Guide (Sage Publications, 2011)

¹⁵Bradley Walters, ‘Muddy Intertidal Mangroves and Marky Common Property Theories’ (accessed 11 April 2015)

Additionally, that viewing benefit sharing as a collective, iterative and adoptive process of creating and facilitating opportunities for dialogue leads to building understanding of how user groups transform common interests into on-the-ground actions. Thus a common property perspective offers better heuristics for understanding of how to better manage human behaviour in benefit sharing schemes.¹⁶In addition, the common property theory addresses the use and abuse of resources often held in common, such as pastures, forests, fisheries, groundwater and even global atmosphere.¹⁷ It therefore denotes that the Maasai-Mara Serengeti ecosystem being common property calls for a collaborative approach in its management and utilization by both countries.

1.9 Research Methodology

1.9.1 Case Study

The study conducts a case study of the Kenyan Maasai-Mara and the Tanzanian Serengeti. It has been argued that the case study method is increasingly being used and with a growing confidence in the case study as a rigorous strategy in its own right further that this method allows investigators to retain the holistic and meaningful characteristics of real-life events.¹⁸ Case studies in social science research are quite advantageous as they allow researchers to examine a particular area and use it as a representation of the situation of a greater area. For instance, in this paper, the study of the Serengeti/Mara ecosystem will be representative of the greater East African Community pertaining to the situation concerning trans-boundary shared resources.

¹⁶Bimo Abraham Nkhata, et al, 'Engaging Common Property Theory: Implications for Benefit Sharing Research in Developing Countries' Vol 6, 2012, pg 52-69 International Journal of the Commons (accessed 29 April 2015)

¹⁷Klooster Dan, Common Property Theory, Encyclopedia of Environment and Society, (Sage Publications)

¹⁸Kohlbacher Florian, The Use of Qualitative Content in Case Study Research' Vol 7, No 1, Art 21, 2006, Qualitative Social Research (accessed 13 April 2015)

1.9.2 Data Collection

The study adopts the qualitative method of data collection. This study mainly relies on secondary data by examining books, reports, journal articles, online materials and newspaper material and articles. Further to this, the study relies on graphical representations of maps showing the shared resources in the EAC and the Serengeti/Mara ecosystem.

1.9.3 Data Presentation

The data that was gathered was presented in narrative form through comparisons and analysis. No graphs or tables have however been used in the presentation of the findings of the study.

1.10 Chapter Outline

Chapter One: Introduction and Background to the study. This contains the problem statement, questions that the research sought to answer, the methodology adopted and the theoretical framework of the study.

Chapter Two: An overview of norms and institutions on shared resources in the EAC region and implication on inter-state Relations. It reviews the international and regional norms governing the shared resources in the EAC. Furthermore, it also identifies the inter-state shared resources in the EAC and examines their implications therein.

Chapter Three: The case study- it examines the Serengeti/Mara National Parks. This contains a description of the ecosystem, and conservation measures adopted by the two countries.

Chapter Four: Challenges and Opportunities relating to shared resources in the EAC. In this, the study continues the discussion on the shared resources of the EAC by examining the challenges experienced and the opportunities to be realised from the conservation and preservation of these resources by the East African Community.

Chapter Five: This concludes the study. It has a summary of the findings, conclusions and recommendations towards the improvement of the norms and institutions on shared resources in the EAC. This proposes ways in which the challenges discussed in the previous chapters may be addressed.

Chapter Two

AN OVERVIEW OF NORMS AND INSTITUTIONS ON SHARED RESOURCES IN THE EAST AFRICAN COMMUNITY REGION AND IMPLICATIONS ON INTER-STATE RELATIONS

2.0 Introduction

EAC is a regional cooperation that comprises Tanzania, Uganda, Kenya, Burundi and Rwanda. The Treaty for Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three Partner States; Kenya, Uganda and Tanzania. The Republic of Rwanda and Burundi acceded to the Treaty on 18th June 2007 and became full members of the Community with effect from 1st July, 2007.¹⁹

This chapter highlights on the norms and institutions governing shared resources within the East African Community and the implications of such shared resources on interstate-relations. As it is commonly known that international law plays a major role in inter-state matters, this chapter firstly examines the international norms and institutional regimes pertaining to the field of trans-boundary shared natural resources.

The role of international law remains vital in examining matters touching on State affairs. With the cardinal principle of State sovereignty over its own natural resources, it therefore follows that inter-states shared natural resources cannot escape the scrutiny of the international community and as one author acknowledges thus: international law shapes the underlying framework of the international system for allocating resources, by establishing basic rules about circumstances under which nations can assert property rights in resources. Furthermore, international law also provides a process set of techniques and a body of

¹⁹ African Union, 'The East African Community' (accessed 4 May 2015)

Elgon also stretches between Kenya and Uganda with the Laikipia plains stretching through to Sudan while Lake Trukana basin covering the southern parts of Ethiopia.

EAC is endowed with abundant natural resources such as land, water resources, biological resources (animal, plant resources and ecosystems) and energy and mineral resources. The EAC region is endowed with some of the best wildlife area in the world, a variety of sceneries with huge potential for nature reserves of high biological resources, important birds' areas and ecotourism.²¹ Among the shared aquatic ecosystems include; Lake Victoria shared by Kenya, Tanzania and Uganda; Lake Jipe shared by Kenya and Tanzania; the Minziro-Sango Bay Swamp Forest located in south-western Uganda and north-western Tanzania beside Lake Victoria, it is a swamp area with extensive flood-plain grassland surrounding closed evergreen forest stands²²; and Marine coastal strip of the western Indian Ocean in Kenya and Tanzania.²³

Similarly, there is the Uмба River, a trans-boundary river ecosystem along the north-eastern border of Tanzania and Kenya. It is documented that the water in Uмба originates from a number of streams in the Usambara Mountains north of Tanzania and ends up in the Indian Ocean on the Kenyan Coast south of Mombasa. It is estimated that River sub-catchment covers about 8070 km². About 40% of this lies in the Republic of Kenya, making the ecosystem one of the shared water resources between these two countries.²⁴

On the other hand, there is also the Nile River Basin with an area of about 3 million km², is geographically shared by ten countries: Burundi, Democratic Republic of Congo,

²¹NyamajejeWeggoro and Timothy Wesonga, 'Utilization of Natural Resource Endowment in the EAC for the Development of Agriculture: How Adding Oil and Gas on Top of all these Resources will Affect the Agriculture Sector' EAC International Symposium on Agriculture, 5th November-8th November, 2013 at Serena Hotel, Kampala Uganda (accessed 1 May 2015)

²² Wan A Rodgers, et al, 'Community Conservation of Closed Forest Biodiversity in East Africa: Can it Work?' Food and Agriculture Organization Paper (accessed 4 May 2015)

²³Eldis, 'Shared Aquatic Ecosystems of East Africa: Status and Trends. A Cross-border Survey of Aquatic-resources Management in East Africa' 2002 (accessed 4 May 2015)

²⁴Lerise Fred Simon, 'Facilitating Cross-Border Dialogue: The Case of Uмба River Ecosystem in Kenya and Tanzania' Vol 3, FWU, Topics of Integrated Watershed Management Proceedings, 2005 (accessed 4 May 2015)

Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda.²⁵ Further to the foregoing Rwanda and Burundi share a number of resources for instance, Lakes Rweru and Cyohoha and Akanyaru marshlands which are shared by both countries as well as their watersheds.²⁶ Lake Rweru forms the part of Rwanda and Burundi and has the total surface area of 100 Km², of which 80 Km is in Burundi and 20 Km in Rwanda. River Kagera which begins in Burundi flows out of Lake Rweru. The River then flows east along the Rwanda-Burundi and Rwanda-Tanzania borders until it joins Ruvubu.²⁷ The Kagera River flows about 250 miles north and east. In its middle course northward it is the boundary between Tanzania and Rwanda, turning eastward, it forms the boundary between Tanzania and Uganda and then crosses Tanzania to enter Lake Victoria 25 miles north of Bukoba.²⁸ The Akanyaru wetlands are located in the south of Rwanda, north-east of Butare, on the international border with Burundi, and lie close to Rwihinda Lake Nature Reserve in Burundi.²⁹

2.2 Norms on Shared Natural Resources in the East African Community

The norms governing shared natural resources are generally contained in various international law instruments such as treaties, conventions, customary practices that have been taken to be customary law, international agreements entered into by States among them and various laws, principles and policies established by individual States.

2.2.1 Relevant International Norms on Interstate Shared Natural Resources

While conventional international law creates legal obligations for States, non-binding legal regimes in the form of principles and guidelines arguably create community

²⁵ Abdullahi Elmi Mohammed and Hussien M. Iman 'Trans-boundary River Basins: Hydropolitics in the Horn of Africa: Conflicts and Cooperation in the Juba and Shabelle Rivers', In Bernard Calas and C.A. Mumma Martinon (eds), *Shared Waters, Shared Opportunities: Hydropolitics in East Africa* (Mkukina Nyota Publishers Ltd, Dar es Salam, 2010)

²⁶ African Development Bank, 'Bugesera Natural Region Rural Infrastructure Support Project: Multinational Rwanda-Burundi' Project Appraisal Report, 2009 (accessed 25 May 2015)

²⁷ Fortune of Africa, 'Lake Rweru' (accessed 25 May 2015)

²⁸ 'Kagera River' Encyclopedia Britannica (accessed 26 May 2015)

²⁹ BirdLife International, 'Important Bird Areas Factsheet: Akanyaru Wetlands' 2015 (accessed 27 May 2015)

expectations which influence State behaviour, thus paving way for concordant State practice. 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 United Nations Environment Programme has developed several sets of non-binding principles and guidelines. The main one being the UN Principles on the Conservation and Harmonious use of Shared Natural Resources of 1978.³⁰

Paragraph 2 of the United Nations General Assembly 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 them.”

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.”

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. The General Assembly of the United Nations by resolution 34/186 of 18th December 1979 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

³⁰Schachter Oscar and Christopher C. Joyner (eds), United Nations Legal Order, Vol 2 (Press Syndicate of University of Cambridge, New York, 1995)

spirit of good neighbourliness 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.³¹

Principle 1 of the Guidelines stipulates that it is necessary for States to cooperate in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States. 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 taking into account the sovereignty, rights and interests of the States.

Principle 2 of the Guidelines provides that States sharing such natural resources should endeavour to conclude bilateral or multilateral agreements between or among themselves in order to secure specific regulation of their conduct.

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 problems.

2.2.2 The Regional Norms 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 providing, in this catchment management, food security, and wildlife management (Articles 109, 110 and 116). It also advocates for the integration of environmental management and conservation measures in all developmental activities such as

³¹ UN Resolution 34/ 186

trade, transport, agriculture, industrial development, mining, and tourism in the community (Article 112, 1 (e)).³²

In 1998, the EAC governments adopted a Memorandum of Understanding 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 Africa.³³

Management of mountain meant ecosystems within the region is provided for under Article 19 of the Treaty Establishing the East African Community. Partner States agreed to cooperate in the management of shared natural resources and to take concerted measures to foster cooperation in the joint and efficient management and sustainable utilization of natural resources within the Community for the mutual benefits of the Partner States.

Article 9 of the EAC Protocol on Environment and Natural Resource Management emphasises the need to promote the management of trans-boundary ecosystems in East Africa, while under Article 20, the Partner States are under an obligation to protect mountain ecosystems such as critical water catchment, conservation and heritage areas and other areas of common strategic interest at local, national, regional and international levels.³⁴

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 East African Community 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

³²Shelton Dinah, 'International Cooperation on Shared Natural Resources' (accessed 29 April 2015)

³³GodberTumushabe, 'Public Involvement in the East African Community' In Carl Bruch, *The New "Public": The Globalization of Public Participation*(Environment Law Institute Publication, Washington, 2002)

³⁴ Albertine Rift Conservation Society, 'African Mountains Regions Forum, Edition' 2014

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 neighbouring countries.³⁵

2.3 The Institutional Framework on Shared Resources in the East African Community

The international law regime mainly works through various established institutions in various fields. As it can be observed from various international instruments, there are certain institutions established in various fields. These are usually specialised bodies charged with the mandate of undertaking certain obligations in the field in question. As such, the area of shared natural resources similarly has various institutions set up to oversee cooperation in this field. As shall be shown shortly in this paper, it is common for States with shared trans-boundary resources to establish a particular institution to oversee the joint conservation and management of the shared resource in question. The key institution is to be found at the international level with various regional or inter-state institutions as established by various States and regional bodies.

2.3.1 The International Institutional Frameworks

The key institutional framework governing shared trans-boundary natural resources in the international community is the United Nations Environment Programme. One unique thing about the UNEP is that it 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, this study argues that the location of the UNEP in Kenya

³⁵ East African Community, 'Transboundary Environmental Assessment Guidelines for Shared Ecosystems in East Africa' (accessed 30 March 2015)

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 body.

The UNEP acknowledges that its convening power at the sub-regional and regional levels gives it a unique position to support countries in enhancing trans-boundary cooperation linked to the environment. Furthermore, where no trans-boundary institutional mechanisms exist, it will support dialogues among governments that share natural resources or are faced with common environmental challenges. 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 more effective and sustainable.³⁶

Other sector specific institutions have thus been put in place and as one author points out that: in the realm of water resources management, for example, formal institutions include State run water Committees. The author further points out that the last decades have seen a growth in the influence of supra national and international institutions of governance, treaty organizations, trading blocks, conventions, standard setting and monitoring organizations, donor consortia, which are increasingly embedded in a large set of globalised economic and political processes.³⁷ Sussanne notes that given the number of River Basin Organizations that have been established and more broadly, the importance of international institutions in

³⁶ United Nations Environment Programme, 'Institutional Arrangements for the Governance of Shared Natural Resources and Transboundary Environmental Issues (Transboundary Institutional Mechanisms) (accessed 6 May 2015)

³⁷ Mehta Lyla, et al 'Exploring Understandings of Institutions and Uncertainty: New Directions in Natural Resource Management' Institute of Development Studies Discussion Paper 372 (accessed 2 May 2015)

contemporary international politics, we assume that for effectively governing shared watercourses, the River Basins Organizations matter.³⁸

2.3.2 The Regional Institutional Frameworks

Within the EAC various sector specific institutions have been established in regard to the trans-boundary shared resource in question. Perhaps the key regional institution is the East African Legislative Assembly. This is the key legislative organ of the community with the overall responsibility of enacting laws on behalf of the community. 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.

Closely related to the EALA, is the East African Court of Justice. This is established pursuant to Section 23 of the EAC Treaty. The court is the 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. Article 28 of the 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 to the court for adjudication. Furthermore, Article 30 gives natural persons who are resident in any of the Partner States the right to refer for determination by the court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that

³⁸SchmeierSussanne, *Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes*, (Routledge Publishers Ltd, Park Square, 2013)

such Act, regulation, directive or action is unlawful or is an infringement of the provisions of the Treaty. The effect of the foregoing is that the EAC has within it established mechanisms for dispute resolution which has further accorded natural persons the right to institute proceedings claiming a breach by any Partner State or organ of the Community. This accordingly, offers a unique opportunity to the natural persons within the Community to enforce the Community standards. This may be a viable platform for the enhancement of environmental standards by individuals where a Partner State goes against the norms of conservation and management.

There is also the East African Network for Environmental Compliance and Enforcement, which 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-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.³⁹

Other institutions in place include: the Lake Victoria Fisheries Organization which was established through a Convention signed by Kenya, Uganda and Tanzania in 1994. 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. The headquarters is in Jinja, Uganda; The Lake Victoria Basin Commission was established

³⁹ EANECE, 'East African Network for Environmental Compliance and Enforcement' (accessed 8 June 2015)

by the Protocol on the Sustainable Management of Lake Victoria as an apex institution of the Community responsible for the coordination and management of the sustainable development of the Lake Victoria Basin. Signed in November 2003, the Protocol provides for the scope of cooperation, the principles and objectives as well as the functions and institutional framework of the Commission. The headquarters is in Kisumu, Kenya.⁴⁰ It has been pointed out that the sustainability of fisheries resources in most water bodies in East Africa is a threat and such situations has necessitated the use of alternative management approaches like Beach Management Units, which promote more community involvement in the fisheries resource management.⁴¹ In this regard, the Beach Management Units can also be said to be institutions within the EAC that play a key role in the governance of shared fisheries resources.

Similarly, there is established the Intergovernmental Authority on Development which was founded in 1986 as an intergovernmental Authority on Drought and Development. The IGAD countries include: Djibouti, Eritrea, Ethiopia, Kenya, Sudan, Somalia and Uganda. The mandate of the Authority is to coordinate the efforts of Member States to advance their development goals in priority areas of economic cooperation, political and humanitarian affairs, food security, natural resources and environmental protection.⁴² Although not all the members of the EAC are members of IGAD, this institution's mandate also influences some aspects of the EAC more so in the field of shared trans-boundary resources.

The Nile Basin Initiative 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

⁴⁰ East African Community Secretariat, 'EAC Sub-regional Input to the Tenth Session of the United Nations Forum on Forests (UNFF)' 2012 (accessed 1 May 2015)

⁴¹ Institute of Law and Environmental Governance, 'Legal Framework for Beach Management Units in East Africa' (accessed 1 May 2015)

⁴² WWF Eastern Africa Regional Programme Office, 'Water Towers of Eastern Africa: Policy, Issues and Vision for Community-based Protection and Management of Montane Forests' 2007 (accessed 2 May 2015)

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.⁴³

2.4 Implications of Shared Resources on Inter-State Relations

It is no doubt that where there is trans-boundary natural resources, the shared resource will have some influence over the relations between the States involved. The implications may be positive or negative or may be positive or negative in some aspect of interactions between the States. Some of the implications are reviewed herein below.

2.4.1 Unification of States

The existence of trans-boundary shared resources results to the unification of States. Such resources bring into fore a situation whereby States have to work together in order to manage and enjoy the full benefits of such shared resources. A key example is the Mara-Serengeti ecosystem which is shared by Kenya and Tanzania, has brought the two States together with a common purpose of enjoying the benefits of tourism among others. Another example is that of Minziro Sango Bay Swamp forest which as a shared resource has brought Tanzania and Uganda close with the common aim of enjoying the benefits of utilizing the products of the Forest to the maximum.

Another example in this context is the Nile River Basin Initiative which was established in 1999 to help reach consensus originally designed as a way to share scientific information and as it stands today, this initiative brings together ministers from the Basin countries to achieve sustainable socio-economic development through equitable utilization of, and benefiting from the common Nile Basin water resources. KameriMbote opines that as

⁴³Nile Basin Initiative, 'Nile Basin Initiative' (accessed 28 May 2015)

such, by coming together to jointly manage their shared water resources, countries build trust and prevent conflict.⁴⁴

2.4.2 Promoting Integration

Further to the unification of States involved as discussed above, it may be argued that such trans-boundary resources promote integration and formation of regional bodies. This mainly occurs where a resource is common property to a number of States and as such, they deem it fit to form a regional body or block.

2.4.3 Promoted Harmonization and Unification of laws on Shared Resources

Additionally, trans-boundary resources impact on State laws. This comes about wherein such States agree to harmonise some of their legislation and institutional frameworks so as to have one uniform legislative and institutional framework that shall facilitate proper management and utilization of the shared resource in question. This may be observed from the EAC where the treaty requires that the Member States adopt and harmonise their respective laws so as to accord to the principles and aims of the EAC.

2.4.4 Conflict over Resource Use among States

It has been reported that trans-boundary resources are a major source of conflict among the States in question. This arises on most occasions where one State seeks to advance its interests over the resource. On most occasions, one State may seek to acquire the resource in question and deny usage by the other States. A key example is the conflict pertaining to Migingo Island which is located in the Lake Victoria. Here a conflict arose between Kenya and Uganda over the ownership of the Island. Recent examples of resource use conflict in the region have been observed amongst Kenyan/Ugandan/Tanzanian fishers on Lake Victoria,

⁴⁴ Patricia KameriMbote, 'Water, Conflict, and Cooperation: Lessons from the Nile River Basin' No 4, 2007 (accessed 19 April 2015)

conflicts for grazing grounds among Ugandan and Tanzanian cattle keepers in the cattle corridor between Ankole/Rakai in Uganda and Minziro/Kagera area of Tanzania; conflict in wetland fish and forest resources of Minziro/Sango Bay area. Additionally, it has been reported that land use conflicts are particularly severe in Rwanda, Burundi and along the Kenyan Basin of the Lake.⁴⁵

2.5 Conclusion

Wildlife laws and policies for most countries take the same approach and have similar objectives. The general approach is to provide for protection and management of wildlife resources through constitutional provisions, in Framework Environmental legislation and specific sectoral legislation. The legislation takes a command and control approach entailing heavy presence of the government to ensure compliance with the set standards.⁴⁶ Without international regulation, particularly for areas beyond national jurisdictions, shared natural resources are vulnerable to the 'tragedy of the commons' becoming depleted or exhausted as each State seeks to maximize its own benefit by exploiting the resource.⁴⁷

As has been discussed above, shared resources impact on State relations on various ways. The two main implications are that such shared resources can either be a unifying or a dividing factor. In this regard, the norm that runs across various international and regional instruments is that States should endeavour to cooperate so as to facilitate the enjoyment of such resources. It therefore follows that harmonised norms and proper institutional framework need to be established in order to achieve this goal.

⁴⁵ School of Economics and Commerce Law, Goteborg University, Department of Environmental Economic Unit, 'Environmental Policy Brief for Lake Victoria Basin' November 2007 (accessed 6 May 2015)

⁴⁶ Patricia KameriMbote, 'Sustainable Management of Wildlife Resources in East Africa: A Critical Analysis of the Legal, Policy and Institutional Frameworks' International Environmental Law Research Centre Working Paper 2005-5 (accessed 5 May 2015)

⁴⁷ *ibid* 8, (Dina Shelton)

Chapter Three

THE IMPLICATIONS OF SHARED NATURAL RESOURCES ON INTERSTATE RELATIONS IN THE EAST AFRICAN COMMUNITY: A CASE STUDY OF MAASAI/SERENGETI NATIONAL PARKS

3.0 Introduction

The chapter contains a case study of the Maasai-Mara Serengeti ecosystem as a shared resource between Kenya and Tanzania.

Map 3.1 The Serengeti/Mara Ecosystem



Fig 3.1 Source [www.http://:googlemapsmaraserengetie.com](http://googlemapsmaraserengetie.com)

The above picture is a representation of the Mara Serengeti ecosystem.

The Maasai Mara National Reserve is located in southern Kenya, adjacent to the Serengeti National Park across the national border in Tanzania. Together these two protected areas cover more than 1.6 million hectares (approximately 373,000 acres) both share a grassland ecosystem that extends into surrounding areas.⁴⁸ While the Mara River Basin is a logical unit to consider from the standpoint of water resource management, its boundaries (which relate to the national water-shade) are not contiguous to which those of the whole eco-region to which both the Serengeti and Mara grasslands belong. Also, the Serengeti extends well beyond the basin; the Serengeti Maasai Mara Plains are internationally famous for having the highest density and most diverse combination of large herbivores on earth.⁴⁹

The Serengeti-Mara Ecosystem is an area of some 25000 km spanning the border between Tanzania and Kenya (34-36 degrees East, 1-3 degrees, 30's) the Kenyan part of the ecosystem lies in the South-West of the country in the Rift Valley Province, forming part of two Districts, Narok and TransMara. It comprises approximately 6000 km of which 25% represents Maasai Mara National Reserve and 75% unprotected land inhabited by Maasai and other agro-pastoral communities.⁵⁰

The Maasai Mara National Reserve and adjoining group ranches in Kenya form the northern portion of the Serengeti-Mara ecosystem to which wild animals (especially wildebeest and zebra) migrate annually. The wildebeest and zebra from Serengeti National Park migrate and stay in the Maasai Mara ecosystem between June and November.⁵¹

Serengeti National Park in Tanzania encompasses 5,700 square miles. The total Serengeti ecosystem includes Kenya's Maasai Mara Reserve and the Ngorongoro Crater

⁴⁸Democracy and Environment, 'Maasai Mara National Reserve' 2010 (accessed 8 April 2015)

⁴⁹ Retouch Africa International, 'Serengeti-Maasai Mara Ecosystem Transboundary Protection and Monitoring Plan' 2012 (accessed 8 April 2015)

⁵⁰Matt Walpole, et al: Conflict and Conservation in Maasai Mara, Kenya' 2003, International Institute for Environment and Development (accessed 9 April 2015)

⁵¹Ottichilo Wilber, E. et al, 'Population Trends of Resident Wildbeast and Factors Influencing them in the Maasai Mara Ecosystem, Kenya' 2001, Biological Conservation Issue 97 (accessed 10 April 2015)

among others. The most famous feature of Serengeti is the Great Migration, the largest land mammal migration on earth. Each year, more than two million animals, wild beast, zebras, antelopes, and other herbivores, make a long journey from the eastern plains through Central Serengeti and northward to the Maasai Mara in search of water and fresh grasses and then return in a yearly cycle, this has been going on for years. It is an amazing spectacle, grazers, predators, and all the other animal life woven into the fabric of this intricate ecosystem.⁵²

A number of literatures exist pertaining to this ecosystem. It has been noted that the ecosystem contains a stunning array of animals, including vast-herds of wildebeest, zebras and Thompson's gazelles and smaller populations of elephants, rhinos, giraffes, crocodiles, warthogs, hyenas and over four hundred and seventy species of birds-not to mention all the lizards, snakes, insects and other small animals. The system also includes all of the plant life in the area.⁵³ One commentator interestingly opines that the equator may be only some hundred miles away from the Kenya-Tanzania border, but the Mara-Serengeti's savannah, with their billowing grasses and flat-topped acacia trees, sit at elevations of 6000 feet, making for low humidity and blissful temperatures, hot by day, cool by night. The Mara comprises only a quarter of the total ecosystem, but in terms of concentrated, easy-to-view animals, its hallowed grounds, and the greatest wildlife real estate on earth.⁵⁴

3.2 An Overview of Conservation Strategies of Kenya and Tanzania

3.2.1 Kenya

Article 60 of the Constitution of Kenya, 2010 outlines the principles upon which land in Kenya is to be used. It is stated that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the

⁵² Boyd Norton, 'Serengeti Watch' 2012, Earth Island Journal (accessed 11 April 2015)

⁵³ Joshua Anderson, 'The Serengeti-Mara Ecosystem' (accessed 12 April 2015)

⁵⁴ Dackman Brian, 'Unraveling the Mara-Serengeti: Navigating East Africa's Greatest Wildlife Show' (accessed 12 April 2015)

following principles: equitable access to land; sustainable and productive management of land resources; sound conservation and protection of ecologically sensitive areas. The Constitution further provides that these principles are to be implemented through a national land policy developed and reviewed regularly by the national government and through legislation. From the foregoing, what emerges is that in Kenya, the recognition of conservation of the environment in the Constitution underscores the importance attached to the environment and moreover the protection of the environment. This position is furthermore evidenced by the constitutional provisions under Article 69 which is to the effect that the State shall: ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; encourage public participation in the management, protection and conservation of the environment; establish systems of environmental impact assessment, environmental audit and monitoring of the environment; and eliminate processes and activities that are likely to endanger the environment. Furthermore sub-clause 2 of the provision obligates every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

Other than the Constitution, there are a number of sector specific legislations for instance the Kenya Wildlife Act, the Kenya Forest Act, the Environmental Management and Conservation Act among others. All these statutes are concerned with environmental management and conservation.

The national body charged with the conservation and preservation matters is the National Environment Management Authority. Other bodies charged with conservation include the Kenya Wildlife Service which primarily focuses on wildlife conservation. In this particular context, the Maasai Mara National Reserve is managed by the Narok County Government. This State organ works closely with the Kenya Wildlife Service and other

bodies in an aim of conserving the Mara National Park. This in essence therefore means that the management of the National Reserve vests wholly on the aforesaid County entity. Other than the above alluded to legislative regime, various conservation measures have also been adopted and the common one being the division of particular areas as conservation areas. This primarily involves the partitioning of various areas into such blocks or units which are then referred to as conservation areas. For instance, there is the Mara Conservation area which surrounds the main Maasai Mara Reserve. This land is owned by a series of different communities (although much of it falls under conservation partnership agreements with the private companies). The Maasai to whom this is home are allowed to use this area to graze their cattle, and because it lies outside the main reserve, walking is allowed in this area.⁵⁵

On other conservation areas, it is worthy of note that agricultural activities have been permitted to be undertaken. Reports suggest that large-scale farms with fields of wheat, maize, barley and soya beans sorghum already spot the landscape towards north, in Lamek and Olkinyei, and there are now farms within 10 km of the reserve boundary. It has been observed that there has been little consideration of how many tourist facilities the area can support, and the proliferation of accommodation puts severe pressure on resources, particularly wood-fuel and water. Furthermore that uncontrolled dry-season grass fires, poaching for meat both for subsistence and on a commercial scale, especially along the western boundary, invasion of the reserve by livestock, rampant off-track driving, and chronic harassment of animals.⁵⁶ The Kenyan government has also prohibited hunting in this National Reserve as a conservation measure.

It may be argued that the mode of having conservation areas is quite efficient and easily manageable as it brings a number of key participants and players in the conservation

⁵⁵Natural High, 'Masai Mara Conservation Area: Kenya' (accessed 12 May 2015)

⁵⁶ Kenya Wildlife Service, 'The African Great Rift Valley: The Maasai Mara' (accessed 8 May 2015)

arena. This may however prove expensive as it requires much resources and empowerment of the various groups in charge of such conservation areas. Additionally, it may result to different outcomes since the different conservation areas are not managed in sync or in unison and as such, there is likelihood that one area is well managed and one not so well managed and conserved.

Other conservation strategies adopted by the Government include collaboration with various international bodies and non-governmental organizations. For example, the African Conservation Centre, has been committed to the Mara and has been one of the main players promoting conservation. African Conservation Centre US and affiliates supports the Mara as they build knowledge-base to better understand and sustain the ecosystems between Amboseli National Park and the Maasai Mara National Reserve. ACC has active research programs that combine a hybrid of the best science and indigenous knowledge. The programs include: long-term wildlife and ecological monitoring programs, community interviews and participation, assessment of land-use change, rangeland management, and water monitoring. The information gathered is recorded and disseminated to stakeholders including communities, scientists, and governments who need to synthesize biodiversity information and support decision-making for conservation action at local and national levels.⁵⁷ In the same context, BaseCamp Foundation, an NGO that has partnered with 500 landowners to form the Mara Naboshio Conservancy with the aim of conserving a 50,000 acre wildlife refuge. Its program includes: Mara Naboshio Conservancy; Big Cat monitoring; and Elephant monitoring. At the moment, the Foundation boasts of having achieved 50,000 acres put under conservation for 15 years and protection of more than 70 lions in Naboshio area. It has also adopted a climate program to mitigate the effects of climate change on the Maasai Mara region. The program

⁵⁷ African Conservation Centre-US, 'Ecosystem Conservation' (accessed 4 June 2015)

has three projects at the moment: tree planting; solar energy; and alternative livelihoods less dependent on land.⁵⁸

3.2.2 Tanzania

In Tanzania on the other hand, the Government has adopted a socialism policy. This is well captured under Article 9 of the Constitution of Tanzania. The Article provides that the object of the Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and self-reliance which emphasizes the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring: that human dignity and other human rights are respected and cherished; that the laws of the land are upheld and enforced; activities of the Government are conducted in such a way as to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another; and the use of national wealth places emphasis on the development.

Although not specifically addressed in the Tanzanian Constitution, it may be inferred that natural resources and the environment fall within the ambit of the above Article namely, national wealth and heritage which are to be harnessed, preserved and applied for the common good. This underscores the importance of such national heritages that have been given constitutional recognition and as such, every person is under an obligation to preserve.

In addition, the Government of Tanzania has adopted various conservation measures. The Arusha Manifesto was adopted as a policy framework for the conservation of natural resources. Additionally, conservation is governed by the Wildlife Conservation Act of 1974

⁵⁸BaseCamp Foundation, 'BaseCamp Projects: Conservation and Land Management' (accessed 7 June 2015)

which allows the Government to establish protected areas and outlines how these areas are to be organized and managed. The key organisation in charge of conservation is the Tanzania National Parks Authority (TANAPA). Conservation of eco-systems in all areas designed as national parks is the core business of the organisation. According to studies by international development organizations, TANAPA is one of the most efficient and productive bureaucracies in Africa. The personnel structure is streamlined with a workforce of only 1650 staff operating 15 national parks and one additional proposed national park.⁵⁹

It has been observed that Serengeti benefits from a strong policy and legislative environment which enables the TANAPA to raise revenues from a rapidly growing number of visitors. Funds generated at Serengeti have been used to strengthen protection and management of the park, as well as other Tanzanian parks. Although there are still some shortcomings, this is one of the best managed parks in Africa, maintaining a high degree of ecological integrity.⁶⁰

Similarly, zoning has been adopted as a common method for conservation. Zoning of the Serengeti and adjacent buffer zones into national parks, reserves, Ngorongoro Conservation Area and Loliondo Game Controlled Area has played a crucial role in conserving the Tanzanian system. In addition to the zoning, the restrictions on the mode of usage of the land adjacent to the Serengeti have also been adopted as a conservation measure. Wildlife tourism is the only land use allowed in the Serengeti part of the ecosystem. The core areas are surrounded by a ring of buffer zones; inner and outer group ranches in Kenya; Griumet; Ikorongo game reserves in Tanzania and only hunting is forbidden. Tanzania game reserves allow only tourism and licensed hunting enterprises, with no settlement.⁶¹

⁵⁹The Arusha Manifesto (accessed 28 March 2015)

⁶⁰Africa Natural Heritage, 'Serengeti National Park-Tanzania' (accessed 28 May 2015)

⁶¹Homewood K., E.F Lambin, E. etal, 'Long-term Changes in Serengeti-Mara Wildebeest and Land Cover: Pastoralism, Population, or Policies' (accessed 28 March 2015)

Another conservation strategy in place is the collaboration with the international community and more in particular, the European Union. The European Union has long-standing partnership with Tanzania and currently funds a EUR 100 million support programme, financed from the European Development Fund and from the EU Budget. The EU works at the grass roots level by co-financing over 40 projects with NGOs in Tanzania. The funding of a visitor centre in the Serengeti was just one of a range of environmental and conservation projects that the EU has supported in Tanzania. Similar collaborations are between the Government of Tanzania and Frankfurt Zoological Society, a German Foundation concerned with conservation of the environment and natural resources. It has been noted that what sets Frankfurt Zoological society apart from other conservation agencies is its long-term commitment to areas, particularly in Tanzania. This is made possible, in part, through the interest generated from the Trust Fund Grzimek set up, along with private and government donations. FZS has been supporting TANAPA and the Serengeti for over nearly 50 years in a close relationship. The Society's annual budget for Tanzania currently exceeds one million Euros, with approximately half of that spent in the Serengeti Ecosystem. The Society provides infrastructure and equipment, operating costs, training of all levels of park employees, and provides funds for park planning.⁶²

3.5 Conclusion

The Mara Serengeti ecosystem remains a crucial resource in the EAC. What comes out clearly from the above analysis is that the two countries have not adopted a common conservation strategy. While the Kenyan government has allocated areas next to the reserve as conservation areas; allowed the surrounding areas and some of the conservation areas to be used by the local communities for pastoralism and agricultural activities, the Tanzanian government has segregated the areas around the ecosystem as zones with national parks and

⁶²Dagar (infra)

game reserves; restricted the usage of the lands adjacent to the ecosystem by permitting only wildlife tourism to be undertaken on such lands; and forbidden hunting but only allow licensed hunting with no settlements permitted near the parks. Such acts confirm the hypothesis of this study that each State has sought to advance their own interests for the benefit of their own nationals.

The growth potential and the benefits to be derived from the Mara Serengeti ecosystem cannot be underestimated. The Kenyan and Tanzanian governments should work together and close with the EAC and foster stronger integration so as to adopt harmonious conservation measures and strategies in an aim of achieving efficient protection and conservation of the ecosystem so as to enjoy full benefits.

Chapter Four

CHALLENGES AND OPPORTUNITIES RELATING TO SHARED NATURAL RESOURCES IN THE EAST AFRICAN COMMUNITY

4.0 Introduction

At the end of 2013, all the East African countries had marked 50 years of independence. The last decade of the half century was characterized by efforts to achieve greater economic and political cooperation and to deepen a sense of regional identity. All five countries face similar challenges: rapidly growing young population; weak governance and institutional capacity; food security; growing inequality; rapid and unplanned urbanization; inadequate infrastructure (energy, roads, railway and ports); threats to population health and human development and shared natural resources management challenges.⁶³ This chapter continues the discussion by evaluating the opportunities and challenges in shared natural resources in the East African Community. It is common knowledge that indeed where there are shared resources among States challenges are bound to occur. With the resources too, there are also opportunities and good tidings to be realised from their proper utilisation.

4.1 Challenges of Shared Natural Resources in the East African Community

The key challenges facing the EAC have been reported to include: inadequate and poor regional infrastructure network, water scarcity and difficulty in managing shared water resources, weak institutions and human capacity, and insecurity and political instability. The availability of abundant natural resources offers opportunities for productive activities. Rising population exacerbates perennial water shortage.⁶⁴ Herein below, the study discusses some of the challenges.

⁶³International Development Research Centre Canada, 'The East African Dialogue Series' (accessed 13 May 2015)

⁶⁴ African Development Bank, 'Eastern Africa Regional Integration Strategy Paper 2011-2015' 2011

4.1.1 Conflict and Political Instability

Conflict has been acknowledged as an integral part of the process of human interaction. Studies have shown that natural resources play a key role in the conflicts that have plagued a number of African countries over the last decade, both motivating and fuelling armed conflicts.⁶⁵ 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 demands.

In East Africa, politics plays a very significant role in the allocation of natural resources and is therefore a major cause of natural resource conflicts. When the three East African Countries that had been under colonial rule attained political independence in the early 1960s, they inherited structures with specific resource management orientations. The political dimension of natural resource conflicts in East Africa is most clearly manifested in the distribution of power between the central governments and the local community based institutions.⁶⁶

Another example of the conflict instigated by such shared resources is the case of the conflict between fishermen and farmers around Lake Jipe. This substantial lake straddles the border between Kenya and Tanzania in southern part of Taita-Taveta. Small-scale farmers in search of arable land are moving increasingly close to the Lake shores, and some are drawing water from the wetland and its feeder river for irrigation purposes. This has led to concerns

⁶⁵ United Nations, 'Natural Resources and Conflict in Africa: Transforming a Peace Liability into a Peace Asset, 2006 (accessed 3 June 2015)

⁶⁶ Ochieng Michael Odhiambo, 'Addressing Natural Resource Conflicts through Co-Forestry: The Case of Eastern Africa' Centre for Environment Policy and Law in Africa' (accessed 25 May 2015)

among local fishermen, who fear that the Lake is being drained and that fish stocks are being polluted by the use of agrochemicals by some farmers.⁶⁷

4.1.2 Conflict Prone Zone- Insecurity and Terrorism

Insecurity is endemic to the region. The overall region lies in a broader zone of instability. The emergence of Somali-based pirates and terror groups operating largely is the biggest challenge to security in the region. The open waters of the Indian Ocean and the piracy that has expanded far beyond Somalia's territorial borders constitute an ungoverned space of potential penetration by terrorists groups.⁶⁸ Furthermore, security threats vary across the region. Several countries including Sudan, Somalia and Ethiopia are dealing with ongoing insurgences within their borders; tensions and the risk of renewed hostilities remain between the Government of Sudan and that of South Sudan.⁶⁹ The stalemate between south Sudan and Sudan over the border demarcation is occasioned by each country's desire to have the oil deposits on its side. From the foregoing therefore, conflict remains a key obstacle in the conservation and preservation of shared natural resources within the region.

4.1.3 Environmental Degradation

It has been noted that the need for common Environmental Impact Assessment guidelines arose at a time when the causes of environmental degradation and the destruction of the ecosystem in the region are many, varied, complex and interrelated. These include; rapidly growing population densities in an around fragile systems, national environmental policies and programmes that have not explicitly provided for regional management of shared

⁶⁷Funder Mikkeland Martin Marani, 'Local Bureaucrats as Bricoleurs: The Everyday Implementation Practices of County Environment Officers in Rural Kenya' Vol 9, No 1, 2015, International Journal of the Commons (accessed 23 May 2015)

⁶⁸Grossman Ritta, et al, 'Minimizing Threat Convergence Risks in East Africa and the Horn of Africa: Prospects for Achieving Security and Stability' 2010 (accessed 18 May 2015)

⁶⁹Ornert Anna, 'GFN-SSR Regional Guide Africa' (Updated in 2010 by Shiv Bakrania) (accessed 18 May 2015)

ecosystems and limited knowledge on structures and productive potentials of many of the shared ecosystems.⁷⁰

The low forest cover in the region prompted one Member of the East African Legislative Assembly to introduce a Private Member's Bill that seeks to curtail encroachment on forests. During an interview, Christophe Bazivamo acknowledged that forest depletion in the EAC is on a high rate and as such the Bill aims to provide for better management of trans-boundary ecosystems and be a guideline for forest management.⁷¹ The continued degradation of the environment at different sides in each of the EAC countries has a negative impact on the whole of the EAC. The different levels of environmental destruction impact negatively the EAC ecosystem and as such poses a risk and to shared resources.

The major abiotic factors affecting the Mara Serengeti ecosystem are fire and rainfall. In Serengeti, fire is caused by humans; no lightning caused fires have been recorded.⁷² Frequent fires started early in the dry season on still-green grass are not intense enough to destroy woody vegetation. By clearing under-bush, these fires promote tree growth. Fires started late in the dry season however are more severe, destroying woody vegetation and maintaining open grasslands. Some fires occur naturally; others are set by man, either for management reasons or illegally by poachers and cattle thieves.⁷³

Climate changes have also negatively impacted on this ecosystem. There is a direct link between climate change and biodiversity loss and species diversity loss. Organisms are habitat specific, whenever there are changes in climate: particular species will disappear from their current habitats. Ecosystem changes triggered by climate change are seen in the sharp

⁷⁰ University of Dar es Salaam, Institute of Resource Assessment, 'Annual Report' July 2003-June 2004 (accessed 24 May 2015)

⁷¹ Karuhanga James, 'How Resolute are Efforts to Save EAC Forest Cover? Interview with Christophe Bazivamo, Member of EALA (accessed 23 May 2015)

⁷² Sinclair A.R. E. et al, 'Long-term Ecosystem Dynamics in the Serengeti: Lessons for Conservation' (accessed 9 May 2015)

⁷³ Dagmar Andres-Brummer (ed) A land of Variety and Abundance: Serengeti National Park (2005, Tanzania)

decline in the African lion population, due to climate variability (such as prolonged droughts and unusually heavy rainfalls) that have triggered the outbreak of diseases and pests leading to ecosystem imbalance.⁷⁴

The survival of the Mara-Serengeti ecosystem is threatened by deforestation of the Mau Forest in Kenya, increased extraction of Mara River water for irrigation and a proposed hydroelectric project also in Kenya. With the on-going deforestation and an apparently uncontrolled (and not monitored) extraction of Mara River for commercial-scale and artisanal irrigation upstream of the Serengeti, the flows of the river keeps declining.⁷⁵ Such acts have been reported to be a major threat to the continued existence of the Mara Serengeti ecosystem. Land use change threatens the persistence of the abundant wildlife, through loss of wildlife grazing and disturbance of wildlife around human settlements.⁷⁶

Furthermore it has been noted that the construction of various lodges in the ecosystem has negatively impacted on the area. Hotels that are built inside the reserve area require daily support from outside; large amounts of waste are created from the hotels and camps inside the reserve; tracks and vans that carry fresh food, souvenirs, employees and tourists that are driven on a daily basis also have major impacts on animal lives; power lines built to support the reserve and hotel services inside the reserve cause nest and habitat loss for vultures and raptors.⁷⁷ Similarly, In East Africa, wildebeest migrations are in decline due to a number of land use activities causing habitat loss and fragmentation in their wet season dispersal areas. These land use activities, which include cultivation, land subdivision, settlements, fencing and other infrastructure, disrupt migratory movements and cause wildebeest populations to

⁷⁴Mburia Robert, 'Climate Change and Species Loss: Climate Change and Threatens Serengeti' 2012, Climate Emergency Institute Climate Science Library (accessed 7 June 2015)

⁷⁵Gereta Emmanuel, et al, Vol 9, No1, 115-124, 2009, UNESCO IHP Demonstration Projects in Ecohydrology (accessed 12 May 2015)

⁷⁶ International Livestock Research Institute, 'Payment for Wildlife Conservation in the Maasai Mara Ecosystem' ABCD Series Policy Brief No 2 (accessed 13 May 2015)

⁷⁷Green Jessica and Ann Womack, 'Balance Between Recreation Service and Biodiversity? Case Study of Masai Mara National Reserve' (accessed 11 May 2015)

decline. Fences obstruct migratory routes and have deleterious impacts on wildlife population.⁷⁸

Further to the above, poaching remains a great challenge in the Serengeti-Mara ecosystem. A recent aerial report revealed a worrying number of elephants' carcasses in the Mara-Serengeti ecosystem. A total of 192 carcasses were counted, of which 117 were on the Kenyan side and 75 on the Tanzanian. More shocking is that all the carcasses found in Kenya, 84% were outside of the Maasai Mara National Reserve, and each had its tusks missing.⁷⁹ This revelation points out to the gravity of poaching as a threat in the Mara Serengeti ecosystem.

In the recent years the government of Tanzania has allowed and has intended to implement large-scale projects aiming at promoting its social and economic development. One such project is the proposed road that would link Arusha with Musoma, cutting directly through a narrow section of the northern Serengeti, which is a critical corridor for annual migration of wildebeests. Other controversial projects with potential risk to ecological integrity of the Serengeti include unsustainable growth of tourism and associated developments. Construction of five-star hotels inside the park and the airport in the Western Serengeti by a United States based game hunting firm, Grumuti Reserves Limited, is one such project. Other projects with similar impacts include: construction of a Soda ash plant in the Loliondo area, the establishment of a wheat plantations in Lobo.⁸⁰

It has further been observed that the sale of private land; and inward migration by neighbouring agricultural groups has resulted in significant land transformation. This particularly being prevalent on the northern and western borders of the ecosystem where there

⁷⁸UNEP, 'Saving the Great Migration: Declining Wildebeest in East Africa?' (accessed 3 June 2015)

⁷⁹ World Wildlife Fund, 'Massive Loss of Elephants in the Mara Serengeti Ecosystem Concerns Conservationists' (accessed 13 May 2015)

⁸⁰KidegheshoJafari, "'Serengeti Shall Not Die': Transforming an Ambition into a Reality' Available at Vol 3 (3) 228-248, 2010, Mongabay.com Open Access Journal – Tropical Conservation Science (accessed 7 May 2015)

is wide spread mechanised wheat production and intensive small-scale agriculture.⁸¹ On the Kenyan part, the de-gazettement of the Mau forest, irrigation of large-scale farms, and the development of the Amala Weir Hydropower project in the Mara River have been reported as conservation challenges.⁸²

Additionally, the trans-boundary nature of the network of protected areas within the ecosystem is another conservation challenge that affects the protected area management authorities, detracting from their management goals on resource protection and monitoring. The absence of a mechanism to reconcile various sectors and institutions in joint protection and monitoring activities that are backed by a joint Regional Institution and harmonized legal framework is itself a potential threat to the integrity of the Serengeti-Maasai Mara Ecosystem.⁸³

4.1.4 Weak Policy Implementation

According to the UNEP, within the EAC, policy responses have largely been based on ecosystems rather than political and economic groupings. Further that a number of sub-regional initiatives have been developed and implemented including: the Eastern Africa Biodiversity Support Programme; Nile Basin Initiative, Eastern Africa Wetlands Programme; Integrated Coastal Zone Management and Lake Victoria Global Environment Facility Project. Despite the presence of the East African Economic Community, regional integration and cooperation has been weak with weak policy implementation measures.⁸⁴ It is further observed that within the region, while environmental laws exist, there is inadequate implementation for State institutions such as environmental authorities and environmental ministries are weak, and their staff members are only partially functional due to lack of equipment as well as

⁸¹ Walpole, et al, 'Wildlife and People: Conflict and Conservation in Maasai Mara, Kenya' IIED Wildlife and Development Series No 14, 2003, (accessed 6 May 2015)

⁸² Ibid (Walpole)

⁸³ ibid 2 (Retouch Africa)

⁸⁴ UNEP, 'Africa Environment Outlook: Past, Present and Future Perspectives' (accessed 24 May 2015)

specialised knowledge and skills.⁸⁵ The weak policy implementation within the region poses a challenge to the joint efforts in the conservation of shared natural resources. This may be argued to be dependent maybe on the various needs of each States wherein they have different priorities and capabilities and that is why policy implementation is hampered.

4.1.5 Slow Consensus and Decision Making

This has perhaps stemmed from the provisions of the EAC Treaty. This can be deduced from the provisions of the EAC Treaty. 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.

It may be argued that the above process is one of the factors leading to slow decision making within the EAC. For example, when the Trans-boundary Ecosystem Bill, 2010 was to be enacted by the East African Legislative Assembly, in 2011, the debates pertaining to the passage were suspended. The Council of Ministers had in September during the first meeting of the 5th Session requested more time to consult. The adjournment was further stayed in November of the same year during a subsequent 2nd meeting of the 5th Session.⁸⁶

⁸⁵ Heinrich Bell Stiftung: The Green Political Foundation, 'East Africa/Horn of Africa: Environment' (accessed 24 May 2015)

⁸⁶ East African Community, 'East African Legislative Assembly Passes Bill on Trans-boundary Ecosystems' (accessed 26 May 2015)

4.1.6 Selfish Interests leading to Overexploitation

The tragedy of the commons ‘the inherent logic of the commons remorselessly generates tragedy’ this tragedy is a dilemma arising from the situation in which individuals, driven independently by the power of their own self-interests, ultimately deplete a shared limited resource without considering future sustainability of the same resource. Due to overexploitation, fish stock sizes, catches and landings in beaches have drastically declined within the last two decades and many species are close to extinction. Destructive fishing gears are used in fish harvesting, which severely harms the lakes ecosystem and fish habitats. The growing demand for fish has led communities including fishermen cannot afford to buy freshly landed fish. Under such conditions, every fisherman strives to maximise his/her benefit oblivious to the damages caused to the future fisheries stock.⁸⁷ Henry argues that the fisheries sector within the East African Region has weak or ineffective institutional and legal framework: low control and enforcement capabilities, insufficient monitoring, control and surveillance of fishing activities, poor enforcement of fishing activities; poor enforcement systems with inadequate human and financial resources deployed, relevant and timely information for people involved in fisheries management; poor marketing infrastructure and inefficient production and processing methods which limit accessibility to both internal and external markets; and impacts of climate change.⁸⁸

It may be argued that it is for selfish a reason that each partner State has chosen to implement policies and regulations that are favourable to it and that is why the fishing sector manifests the different approaches by the countries. This exhibits the urge for self-interests by the EAC Member States. This has remained a key challenge in the proper conservation of

⁸⁷Ochieng Eric Ogello, et al, ‘Lake Victoria and the Common Property Debate: Is the Tragedy of the Commons a Threat to its Future? Vol 7 (2), 101-126, 2013, Lakes, Reservoirs and Ponds

⁸⁸Mwima Henry, ‘Regional Assessment of Fisheries Issues, Challenges and Opportunities for Eastern Africa Region: Towards the formulation of the Policy Framework and Reform Strategy for Fisheries and Agriculture in Africa’ African Union Inter-African Bureau for Animal Resources Regional Evaluation Report, 2012 (accessed 23 May 2015)

shared natural resources within the EAC. One author observes that the integration of the East African Community has helped country members to bring environmental issues at the fore in their national development plans. But increased consumption patterns per capita have accelerated tremendous pressure on biological resources due to inadequate biological knowledge about its importance and value. This has led to unsustainable exploitation of earth's biological diversity.⁸⁹

4.1.7 Lack of fully Harmonized Laws on Resource Conservation

According to the Bureau of Industrial Cooperation, Tanzania, Uganda and Kenya differ less in their environmental legislation and policies partly due to historical reasons and the Memorandum of Understanding on environment which they signed in 1998. It is however noted that there is disparity among the Partner States' legislation firstly on the establishment of institutions charged with environmental functions for instance with Kenya and Tanzania having a fairly long list of institutions compared to the other EAC States; and secondly, the distribution of functions among the various organs or institutions also varies from one Partner State to the other. Additionally, that the States are at different levels in terms of the development of environmental regulations standards on pollution and guidelines for the environment.⁹⁰ The lack of full harmonization of the laws poses a challenge as there are no uniform conservation measures adopted in different sectors. This has thus created a challenge in terms of protection and conservation measures adopted.

Perhaps another key challenge in the EAC concerning environmental and resource conservation is the insufficient utilization and management norms and institutional frameworks. As this study had pointed out earlier, the existing norms are not adequately

⁸⁹Katebaka Raymond, 'Effective Biodiversity Conservation Challenges in Africa: A Case of East Africa' Vol 52 (accessed 27 May 2015)

⁹⁰ Bureau for Industrial Cooperation, 'Harmonisation of Environmental Policies, Laws and Regulations' Working Paper 2.1, Preparation of the East African Transport Facilitation Strategy (accessed 22 May 2015)

tailored to ensure full conservation and protection of the shared resources. This is evidenced by the diverse measures adopted by each State as can be seen from the Mara Serengeti ecosystem.

As regards the Mara, it has been observed that it embodies many of the current issues in biodiversity conservation and despite being a vast area incorporating a major protected area, its considerable large wildlife species require access to large, unprotected dispersal ranges inhabited, and increasingly transformed, by agro-pastoral human communities; expanding commercial farming; tourism and other human activities on land within and adjacent to the national reserve is threatening the sustainable coexistence of the region's pastoral people with the wildlife populations. A number of factors may be responsible for the encroachment of agricultural practices into areas used solely for livestock and wildlife. Some of the main ones include the government policy that is increasingly discouraging nomadic pastoralism in favour of permanent settlement, changing land ownership policies from communal ownership to individual ownership.⁹¹ As a result of draught in 2009, the Narok County Council authorised the entry of cattle into the Mara reserve, first around the Talek River and at Musiara. Since then, this concession has become law and herds now invade the landscape.⁹²

Further to the above, it may be argued that the EAC lacks the full capacity to deal with problems such as poaching. This is evidenced by the continued occurrences of poaching of wild animals. This moreover, as it has been shown in this study, occurs at varying degrees within the Partner States.

⁹¹Ndegwa Charles and Yuji Murayama, 'Analysis of Land Use/Cover Changes and Animal Population Dynamics in a Wildlife Sanctuary in East Africa' 2009, Vol 1, 952-970, Remote Sens

⁹²TENDUA Association for Biodiversity Conservation, 'The Kenyan Savannah: The Silent Drama of the Maasai Mara' (accessed 10 May 2015)

4.2 Opportunities of Shared Natural Resources

4.2.1 Increased Regional Tourism Potential

The Serengeti has been identified as one of the largest remaining tropical savannahs and still retains an almost complete set of plant and animal species. Rhinoceros and hunting dogs that almost became locally extinct at the end of the last century have now either been reintroduced, or have naturally re-colonized.⁹³ The Mara Serengeti ecosystem has been branded a UNESCO World Heritage Site and Biosphere Reserve with 28 species of ungulates, 26 species of predators with the wildebeest migration being the defining feature of the ecosystem.⁹⁴ The Nile River Basin is endowed with a rich cultural history, world class environmental assets such as the Sudd in South Sudan, which is one of the world's largest fresh water wetland; the world's second largest inland Lake, Lake Victoria and associated unique endemic flora and fauna. It hosts some of the world's largest congregations of large mammals and flocks of migratory birds from Eurasia and other regions of Africa.⁹⁵ Uganda has more species of primates than anywhere else on earth of similar area.⁹⁶ Patterns of vegetation change suggest that the Serengeti-Mara ecosystem is dynamic and may be subject to long-term vegetation cycles or transitions between stable States following ecological perturbations.⁹⁷

The Mara-Serengeti ecosystem offers the opportunity of continued growth and increase of sources of income for the two countries. The ecosystem remains a big tourist attraction site in the EAC. The migration of the wildebeest has been documented to be an

⁹³Dobson Andy, *Food-web Structure and Ecosystem Services: Insights from the Serengeti*, Vol 364, Issue 1524, (The Royal Society Publishing Co, 2009)

⁹⁴Anderson Michael, 'Conservation and Management of the Serengeti Ecosystem: Successes, Failures and Future Challenges' (accessed 22 May 2015)

⁹⁵ Nile Basin Initiative, 'Understanding the Nile Basin' (accessed 19 May 2015)

⁹⁶ UNEP, 'Securing Biodiversity Outside Protected Areas through a Payment for Ecosystem Services Scheme in Hoima District, Western Uganda' (accessed 26 May 2015)

⁹⁷Sinclair A.R.E and Peter Arcese, *Serengeti II: Dynamics, Management, and Conservation of an Ecosystem*, (University of Chicago Press, London, 1995)

amazing site of the world. This and the diverse flora and fauna species have attracted visitors from all over the world. The overall effect has been the increased collection of revenues from tourists who visit the Park. This in turn has led to the generation of income to both countries. This income generated by the ecosystem may be channelled towards a joint conservation fund for the ecosystem which may as well be used to boost conservation measures.

The above findings confirm that indeed the EAC is endowed with a plethora of resources that are attractive to tourists all over the world. The proper management and utilization of such resources within the community carries the potential of making EAC a regional tourism hub.

4.2.3 Employment Opportunities

With proper conservation and management of the shared natural resources in the EAC, there is the potential for growth in terms of creation of more job opportunities and hence economic empowerment of the people. The proper utilisation of these resources will promote their continued subsistence and thus increase in common benefits. The EAC Member States stand to benefit from continued revenue collection through the imposition of various taxes and rates on the resources in question. The benefits of tourism cannot be underestimated an employment is one among millions.

4.2.4 Fast Growing Economies

According to an International Monetary Fund report for 2010, Ethiopia, Rwanda, the United Republic of Tanzania, and Uganda were among the fastest growing economies in the world. Rapid economic growth was achieved thanks to a telecommunications in Kenya, infrastructure development in Ethiopia, Rwanda and Uganda and a robust mining sector in

Tanzania.⁹⁸The proper utilisation and conservation of shared resources within the EAC poses the potential of further growth to the East African countries' economies. Has it has been reported, the countries have fast growing economies, this may be strengthened further by proper utilization and conservation the common benefit of the community.

Further to the above, there is much awareness at the national, regional and international levels on the importance of conserving the environment. This is evidenced by the fact that the international and regional community has come up with key measures both in terms of institutions and legislation with the aim of promoting environmental conservation. This has promoted the awareness at all levels on the importance of preserving the environment and natural resources. In addition, this has prompted the involvement of various key players and stakeholders on matters pertaining to environmental conservation. In this regard, the role of non-state actors in keeping state actors on their toes on environmental matters cannot be underestimated.

4.2.5 The existence of International and Regional Norms and Institutions

The existence of international and regional norms and institutions not only provides an opportunity to deal or address any differences that may arise between the two states but also improve the utilization of shared resources. Further, the question of shared resources is high on the international agenda which therefore implies there are prospects of new measures and proposals towards the development of better regulatory systems to ensure proper utilization and cooperation among States towards sustainable usage of shared resources.

⁹⁸Economic Commission for Africa, Progress Towards Sustainable Development in East Africa (ECA Publications and Conference Management Section, 2012)

4.2.6 Development of Infrastructure

Development of localities of the ecosystem, in Kenya towns surrounding the Mara have grown and developed as a result of the Park. The same is reflected in the Tanzanian part. On the Kenyan part, the Counties adjacent to the reserve have benefited immensely by developed infrastructures including roads. Such an example perhaps manifested itself in June 2014 when the Government of Kenya allocated 1 billion Kenyan shillings for the purpose of paving the Narok Mara road.⁹⁹

4.3 Conclusion

Revised Constitutions of various countries stress the importance of forests, and other natural resources, especially as a heritage to be harnessed, preserved and applied towards a common good. There is also recognition of the need for citizens to safeguard and protect resources, and to provide guidelines for their management under various institutions.¹⁰⁰ Integration of the EAC remains to be the key solution to the major challenges being experienced as discussed above. The countries should seek for ways of addressing the aforesaid challenges.

⁹⁹ Media Report

¹⁰⁰ Fred Kigenyi, et al, Practice Before Policy: An Analysis of Policy and Institutional Changes Enabling Community Involvement in Forest Management in Eastern and Southern Africa (International Union for Conservation of Nature and Natural Resources Publication, 2002, Nairobi)

Chapter Five

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.0 Summary of Findings

The key objective of this study was to examine the nexus between shared natural resources and interstate relations in the East African Community with a specific focus on the Mara Serengeti national parks. The study sought to review of the norms and institutions on shared resources in East African Community and to examine the challenges and opportunities.

First, this study has identified shared resources in the EAC to include: Lake Victoria, River Kagera, Mt. Elgon, Laikipia Plains, Lake Turkana, Lake Jipe, Minziro-Sango Bay Swamp Forest, Marine Coastal strip of Western Indian Ocean, Umbra River, River Nile and the Nile River Basin, Lake Rweru, Lake Cyohoha and the Akanyary Marshlands. On norms governing shared natural resources, this study established that there exist norms at two levels, namely: the international and the regional level that is, within the East African region. In this regard, the regional norms denote the norms adopted under the auspices of the EAC. These said norms are to be found in statutory enactments such as the UNEP Principles and Guidelines; the Charter of Economic Rights and Duties of States; the EAC Treaty, the EAC Memorandum of Understanding for Cooperation on Environment Management Guidelines for Conducting Trans-boundary Environment Assessment in Shared Ecosystems in East Africa.

On the question of the existing institutional frameworks, the study noted that there exist institutions both at the regional and international level that are concerned with the shared natural resources. At the national level, there exists state Constitutions and other supportive statutory enactments pertaining to shared natural resources. At the global level, it was established that it is the UNEP which is primarily concerned with environmental matters and hence shared resources too. The study also found out that the UNEP works in collaboration

with other UN bodies such as the UN General Assembly which legislates on international matters. At the regional level, the study established the existence of the East African Legislative Assembly which is the key legislative organ in the EAC that enacts laws touching on environmental matters and such shared resources. Similarly, the study also found that there is the EACJ which is the dispute adjudicating body within the EAC that is primarily concerned with hearing and determining disputes relating to breach of obligations imposed by the EAC Treaty. Furthermore, various institutions are in place primarily to deal with specific shared resources for instance, the Intergovernmental Authority on Development whose aim among others is to coordinate the efforts of Member States to advance development goals in priority areas including natural resources and environmental protection; the Nile Basin Initiative which is primarily concerned with the conservation of the Nile River and its basin.

On the question of the implications of inter-state shared resources, this study found that shared resources have the effect of unifying States by bringing them together through their joint conservation efforts among others; promoting further integration through such cooperation; promotion of harmonization and unification of laws pertaining to various shared resources and such shared resources on many occasions lead to conflict between States sharing such.

On the study of the Mara Serengeti ecosystem, the study was able to establish that this ecosystem is rich in resources and as such has been acknowledged as a UNESCO Heritage site. However, the study shows that the ecosystem faces a number of challenges for instance: natural causes such as fires and harsh weather conditions negatively impact on the ecosystem; human induced activities such as poaching, deforestation, over-exploitation of resources within and outside the park, constructions and developments and encroachment among others. Another key challenge was the lack of unified conservation measures adopted by both the Kenyan and the Tanzanian Government. Despite the challenges, this study discovered the

ecosystem on which the parks stand have a huge potential and opportunities like: the existence and regional norms on shared natural resources conservation which offers the first step towards the addressing of the challenges faced in the ecosystem; the ecosystem furthermore bears the potential of being a source of Government revenue and income; source of employment through continued tourism activities; and development of infrastructure in and within the areas surrounding the ecosystem.

Furthermore it was established that the above challenges and opportunities of the Mara Ecosystem are a representation of the greater East African Region with the main challenge however being the lack of harmonized laws on conservation and capacity to address and implement conservation measures and laws. Similarly, another threat to the conservation and preservation of shared resources in the EAC was identified to be conflict and political instability in the region. This moreover is fuelled by the fact that the EAC is located in a conflict prone region. On the opportunities perhaps it is worthy to note that the EAC bears a far much bigger opportunity as an epitome of tourism potential in Africa with its diverse and unique biodiversity.

This study was premised on the hypotheses that conflict of interests is the key obstacle to effective cooperation between Kenya and Tanzania in terms of the proper management and conservation of the Mara Serengeti ecosystem. The hypotheses of this study have thus been confirmed that indeed conflict of interest between Kenya and Tanzania poses the greatest threat to the conservation and management of the Mara Serengeti ecosystem. The study demonstrates that Tanzania and Kenya have different conservation strategies in regard to the Mara Serengeti ecosystem. This has turned out to be a conservation challenge as the actions by the two countries have not been harmonized. On the other hand, ongoing developments and proposed developments remain a key threat to the ecosystem. The different conservation

strategies adopted by each State too shows that there is not uniform strategy in place in regard to the conservation.

Within the theory of common property which stipulates that common property resources are those to which no individual has exclusive property rights, and they include a wide range of natural environments,¹⁰¹ demands that the EAC work together in harmony with an aim of protecting and conserving the common pool of shared resources. This would lead to the betterment and maximization of benefit sharing by all the Partner States, for as was stated earlier in this study, the common property perspective offers better heuristics for understanding of how to better manage human behaviour in benefit sharing schemes.

5.1 Conclusions

Shared natural resources remain a key factor in influencing inter-state relations. As this study has shown, there exist a number of challenges within the EAC and most of them are as a result of human activities. It thereby follows that the same humans are the ones who can play a role in averting the challenges, namely the residents within the East African Community. Whether one considers the global or the very local scale, finding a balance between development and the conservation of natural resources is perhaps the greatest dilemma of today's human societies. When communities directly depend on natural systems that are shared by two or more countries, the issue becomes even more complicated, and cooperation across national borders becomes a factor of key importance.¹⁰²

Organizing a common pool of genetic resources under the EAC seems to be the best option for the Eastern Africa Region. The EAC already has structures in place that could be

¹⁰¹Food and Agriculture Organization, 'Common Property: Cause or Remedy of Poverty for Small-Scale Fisheries' (accessed 28 May 2015)

¹⁰²OrsMarczin (ed), 'Trans-Boundary Cooperation through the Management of Shared Natural Resources: Experience and Lessons from Six Years of Work in Three Pilot Areas; the Neretra Delta, Skadar/Shkodra Lake and West StaraPlanina' 2007 (accessed 30 May 2015)

used to organize a common pool of genetic resources which include institutions and legal instruments.¹⁰³

A ray of hope exists with the recent passage of the EAC Trans-boundary shared resources law. The objective of this legislation is to promote joint conservation and preservation measures of shared resources within the EAC. As was pointed out in this study, wildlife laws and policies for most countries take the same approach and have similar objective which is to provide for protection and management of wildlife resources through constitutional provisions, in Framework Environmental legislation and specific sectorial legislation. Furthermore, international regulation, particularly for areas beyond national jurisdictions, shared natural resources are vulnerable to the 'tragedy of the commons' becoming depleted or exhausted as each State seeks to maximize its own benefit by exploiting the resource. As has been discussed elsewhere in this study, shared resources impact on State relations on various ways. The two main implications are that such shared resources can either be a unifying or a dividing factor. In this regard, the norm that runs across various international and regional instruments is that States should endeavour to cooperate so as to facilitate the enjoyment of such resources. It therefore follows that harmonised norms and proper institutional framework need to be established in order to achieve this goal.

It goes without saying that shared natural resources may determine the continued existence and integration of the EAC. These resources may either make or break the EAC. It therefore follows that having streamlined legislative and institutional framework for harmonized conservation and preservation of these resources is a fundamental step.

The Mara Serengeti ecosystem remains a crucial resource in the EAC. The growth potential and the benefits to be derived from the Mara Serengeti ecosystem cannot be

¹⁰³ChegeEvansonKamau and Gerd Winter (eds), *Common Pools of Genetic Resources: Equity and Innovation in International Biodiversity Law* (Routledge, 2013, New York)

underestimated. Although there exists a number of challenges pertaining to this ecosystem, this should not be seen as hindrance to the growth of this ecosystem. The Kenyan and Tanzanian governments together with the collaboration with the EAC Partner States should work together to foster stronger integration so as to adopt harmonious conservation measures and strategies in an aim of achieving efficient protection and conservation of the ecosystem so as to enjoy full benefits.

There is also recognition of the need for citizens to safeguard and protect resources, and to provide guidelines for their management under various institutions. Integration of the EAC remains to be the key solution to the major challenges being experienced as discussed above. The countries should seek for ways of addressing the aforesaid challenges with the key aim being cooperation among the Partner States.

5.2 The Way Forward

5.2.1 Harmonization of Laws and Policies

This study recommends that the EAC jointly works towards the harmonisation of regional and national laws and policies. As was earlier on pointed out, the Constitutions of the Partner States remain the key national legislative framework. Whereas each State has adopted its own policies and laws on various conservation strategies, the laws are not uniform as each is tailored for each States' needs. In this context, the harmonization should take place both at the regional and national levels. This will have an overall impact of ensuring proper coordination and cooperation of conservation measures and activities. It is prudent that the EAC endeavours to have the various national laws in different sectors harmonized so as to promote uniform conservation and protection agendas. This will avert situations of conflicting ideologies and policies. Over and above, harmonisation of laws carries with it the benefit of adopting joint implementation measures and as such beneficial to the whole of the EAC. This

may be achieved through joint collaborations with the international community so as to enhance more donor funding and donations so as to promote capacity building for all the Partner States. This will at least bring the Partner States at par in terms of capacity and as such it would be easy to enact and implement harmonized laws. It has been thus acknowledged that conservation policies and related collaborative schemes and tourism programmes play a crucial role in developing intervention measures to protect these nationally and internationally significant resources.¹⁰⁴

5.2.2 Strengthening the Integration of the East African Community

To this end, the study proposes that the EAC adopts measures that seek to build a strong integrated community. This study acknowledges that there are challenges to integration but these should not be dividing factor to weaken the bonds of the EAC integration. Joint cooperation and coordination of activities will go a great way towards building a stronger EAC. Furthermore, this may be promoted through the collaborative involvement of the members of the Partner States for instance through inter-state sporting competitions, singing and dancing, EAC schools, colleges, universities drama and music festivals and sports activities.

5.2.3 Inter-community marriages to avoid conflict and to promote further integration

The Protocol on the movement of persons/ labour within the EAC is a useful tool in terms of promoting further integration. Such movements will increase the interaction between the members of the EAC and as such would even lead to inter-marriages. Such inter-marriages play a key link in averting situation of inter-community and cross-border community conflicts over resources. Such may promote proper use of resources for all thereby avoiding the propagation of self-interests.

¹⁰⁴ John Akama, et al, 'Wildlife Conservation, Safari Tourism and the Role of Tourism Certification in Kenya: A Postcolonial Critique' Vol 36 (3), 2011, 281-291, Tourism Recreation Research

5.2.4 Collaboration with the Global Community

Although sustainable development is primarily a national responsibility, major challenges facing African countries have a global dimension. Thus developed countries have some responsibility in the international pursuit of sustainable development, particularly in view of the pressures their societies place on global environment and of the technologies and financial resources they command.¹⁰⁵In this context, the East African Community should continue its cooperation and collaboration with the global community. This will have the effect of improving and increasing its capacity and will further benefit the community in terms of technical assistance in terms of conservation and preservation of shared natural resources.

5.2.5 Wider Participation including of the Local Communities

The participation of formal/informal actors and government/community actors in the management of natural resources is essential to the sustainable management of natural resources. The participation of these actors implies the existence of interplay between the formal and informal institutions that govern the practices and decisions of actors in natural resource management in socio-ecological system.¹⁰⁶The communities should be educated and trained on the benefits of conservation more so in light of the common use of shared resources. This will go a long way in saving such resources from over-exploitation. It has been acknowledged that the dynamic nature of water and living things in Lake Victoria system defies respect for sovereign State boundaries. Human activities on both land and water in any of the States sharing the Lake Victoria ecosystem impact on the other riparian States in a number of ways. In a regional perspective the endeavour would entail harmonisation of sectorial activities and legislation already in place in Kenya, Uganda and Tanzania and

¹⁰⁵ UNEP, 'Policy and Legal Response for Responses for Sustainable Development in Africa' 2008 (accessed 30 May 2015)

¹⁰⁶ Christopher P.I Mahonge, *Co-managing Complex Social-ecological Systems in Tanzania: The Case of Lake Jipe Wetland*, Vol 2 (Wageningen Academic Publishers, Netherlands, 2010)

compatible with regional nature of the Lake where such instruments do not exist. As a result of the present use of the lake as a source of food, energy, drinking and irrigation water, shelter, transport and as a repository of human agricultural and industrial wastes, Lake Victoria is facing major ecological and environmental threats. As the populations of the riparian communities continue to grow at a rate believed to be one of the highest in the world, thus making the Lake environmentally unstable.¹⁰⁷

5.2.6 Areas for Further Research

It is prudent that further research be conducted in this area of study. The present study only limited itself to a case study of the Maasai Mara Serengeti ecosystem. What is the situation in the other shared ecosystems within the EAC? What are the challenges and the opportunities therein? Such and many other questions need to be answered through further research. Additionally, there is need for a deeper examination of the national laws and policies that relates to shared resources in each partner states with a view of identifying the gaps if any and making appropriate recommendations.

¹⁰⁷ UNEP, The East African Sub-regional Project Development and Harmonisation of Environmental Laws, Vol 1, Report on the Legal and Institutional Issues in the Lake Victoria Basin (UNEP Publication, 1999)

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