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Book Review: Actualizing the Right to a Clean and Healthy Environment

*By: Anne Wairimu Kiramba **

The new book by Hon. Prof Kariuki Muigwa, OGW, PhD, C. Arb, FCI Arb titled 'Actualizing the Right to a Clean and Healthy Environment' aims at informing the debate on the right to a Clean and Healthy Environment following the adoption by the UN General Assembly of 'The human right to a Clean, Healthy and Sustainable Environment' on 28th July 2022. The UNGA resolution re-affirmed the Universal Declaration of Human Rights and recalled among others the Declaration on the Right to Development; the Vienna Declaration and programme of action; the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration; the Rio Declaration and noted other Human Rights instruments).

The Resolution adopted by the General Assembly on 28th July 2022 is also a reaffirmation 'that all rights are universal, indivisible, independent and interrelated.' It also recalls the earlier Human Rights Council Resolution 48/13 of 8th October 2021 entitled "The Human Right to a Clean and Healthy Environment'. The Resolution touches on other pressing and threats to the ability of the present and future generations to effectively enjoy their human rights.

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The themes covered in this book include: Sustainable Development; Environmental Justice; Human rights; Environmental Governance; Conflict Management; the Blue Economy; Climate Diplomacy; Sustainability; Restoring Landscapes; Indigenous knowledge; Climate change; Poverty eradication; Peace building and Actualizing the right to a Clean, Healthy and Sustainable environment. There is also discussion on Environmental, Social and Governance (ESG) which is considered relevant and necessary in so far as it relates to the theme of actualizing the right to a Clean, Healthy and Sustainable Environment.

The papers published in this latest book have been unpublished articles as well as articles published in various journals and one or two that have appeared in previous book chapters. In sum, the book brings together a collection of Prof. Kariuki Muigua's peer-reviewed, published and unpublished papers and articles touching on the theme of the Right to a Clean and Healthy Environment and its actualization today. The collection has been brought together in one volume under the thematic area of the right to a Clean, Healthy & Sustainable environment in a quest to help move forward the discussion and scholarship in the emerging area.

The paper "Realizing the Right to a Clean, Healthy and Sustainable Environment" critically discusses realization of the right to a clean, healthy and sustainable environment. It conceptualizes this right and examines competing views on whether it should be considered a human right. The paper further explores attempts to recognize the right to a clean, healthy and sustainable environment as a human right at the global, regional and national levels. "Recognising a Human Right to Safe, Healthy and Sustainable Environment" makes a case for the need to recognise the human right to safe, healthy and sustainable environment as an independent right capable of being enforced without necessarily

making reference to the other human rights, as part of laying the ground for achieving the Sustainable Development agenda.

“(Re) Examining Environmental, Social and Governance (ESG) and Human Rights” critically examines the place of human rights in the Environmental, Social and Governance (ESG) agenda. It argues that human rights occupy a central role in all the ESG factors. The paper discusses the progress made towards integrating human rights within the ESG framework. It also highlights some of the challenges related to ESG and human rights. In addition, the paper offers proposals towards embracing human rights in the ESG debate. “Actualizing Gender Equity for Environmental Sustainability” critically appraises the role of gender equity in fostering environmental sustainability. It examines the disparities between men and women in environmental governance and management and how these differences have hindered realization of environmental sustainability.

“(Re) Establishing Harmony between Nature and Humanity Abstract” examines the need to (re) establish harmony between nature and humanity. It argues that nature and humanity are interdependent and need each other for survival. The paper highlights some of the factors that are affecting the relationship between nature and humanity. It also suggests solutions towards (re) establishing harmony between nature and humanity towards sustainability. “(Re) Invigorating Environmental Multilateralism for Sustainability” critically explores the role of environmental multilateralism in the sustainability debate. It argues that environmental multilateralism can play a key function in unlocking sustainability. It also examines challenges facing environmental multilateralism and proposes measures towards (re) invigorating environmental multilateralism for sustainability.

The Paper “Actualizing Africa’s Green Dream” critically discusses the concept of ‘green economy’ in Africa. It argues that green growth is vital in Africa in the wake of the threat of climate change among other concerns. It further asserts that green growth in Africa can aid in achieving Sustainable Development by striking a balance between human development, environmental conservation and economic development. “Addressing Noise Pollution for a Clean and Healthy Environment in Kenya” discusses the legal and institutional framework on noise regulation, with a view to identifying the key players and stakeholders in tackling the vice. The author argues that unless this problem is effectively addressed, realisation of a clean and healthy environment for the Kenyan people will remain a mirage.

“Combating Environmental Degradation for Posterity” posits that combating environmental degradation is vital for posterity of both humanity and nature. It examines some of the measures adopted towards combating environmental degradation at global, regional, and national levels and related challenges. The paper further offers suggestions towards combating environmental degradation for posterity. “Enhancing Food Security in Africa” critically interrogates the need to enhance food security in Africa. The paper explores the progress made towards enhancing food security in Africa. It also examines some of the obstacles facing the realization of food security in Africa. The paper further suggests initiatives which can be adopted towards enhancing food security in Africa.

“Conserving Ecosystems for Our Health and Well-Being” discusses the need to conserve ecosystems. It argues that conserving ecosystems is vital for our health and well-being since it ensures the sustainable and continuous supply of ecosystem services. The paper interrogates the efficacy of measures adopted towards conserving ecosystems at the global, continental, and national levels. “Embracing Environmental,

Social and Governance (ESG) Principles for Sustainable Development in Kenya critically examines the extent to which Environmental, Social and Governance (ESG) principles have been embraced in Kenya. It argues that ESG has emerged as arguably the most important tool of corporate governance. The paper further addresses some of the ESG challenges in Kenya and suggests the way forward towards embracing ESG principles for sustainable development in Kenya.

"Achieving Net Zero Emissions- A Reflection" critically discusses the need to achieve net zero emissions. It argues that achieving net zero emissions is vital in confronting climate change and fostering Sustainable Development. The paper further discusses some of the challenges facing the attainment of net zero emissions and proposes measures towards achieving net zero emissions. *"Embracing Sustainability Audit for Enhanced Corporate Environmental Compliance in Kenya"* examines the concept of sustainability audit as a means of increasing the percentage of businesses that comply with environmental regulations in Kenya. *"Enforcing the Right to Clean and Healthy Environment in Kenya Through the Polluter Pays principle"* makes a case for the enforcement of the right to clean and healthy environment in Kenya through the internationally recognised polluter pays principle. The author argues that though this right has been legally recognised, placing the obligation to enforce it solely on the state agencies may delay the full realisation of this right for all persons.

"Enhancing Access to Justice for Sustainable Development in Kenya" critically discusses the role of access to justice in the Sustainable Development agenda. It argues that access to justice is vital in achieving Sustainable Development. The paper explores how access justice can foster the Sustainable Development agenda in Kenya. *"Fostering Environmental, Social and Governance (ESG) Litigation for Sustainability"* discusses the role of ESG litigation in promoting

sustainability. The paper further examines the emerging trends and practices in ESG litigation and their place in the sustainability agenda. It also explores some of the concerns in ESG litigation. The paper further offers proposals towards fostering ESG litigation for sustainability.

“Fostering the Blue Economy for Sustainability” discusses the role of the blue economy in the sustainability agenda. It argues that the blue economy has the potential to unlock Sustainable Development throughout the world. The paper examines specific ways through which the blue economy contributes to Sustainable Development. It also examines some of the challenges facing the blue economy. The paper also suggests measures aimed at fostering the blue economy for sustainability. “Harnessing Indigenous Knowledge for Climate Action in Africa” discusses the role of indigenous knowledge in addressing the impacts of climate change in Africa. The paper examines the progress made towards utilizing indigenous knowledge for climate action in Africa and challenges thereof. It also offers suggestions towards harnessing indigenous knowledge for climate action in Africa.

“Managing Disputes in Carbon Markets” analyses the nature and causes of disputes in carbon markets. It argues that these disputes can hinder the fight against climate change and the attainment of Sustainable Development hence the need to effectively manage them. The paper explores some of the available mechanisms for managing disputes in carbon markets and their efficacy. It also proposes measures towards effective management of disputes in carbon markets for enhance climate action. “Applying Collaborative Approaches towards Conflict Management” critically examines collaborative approaches towards conflict management. It argues that these techniques can ensure efficient and effective management of conflicts towards peace and sustainability. The paper highlights and discusses some of the collaborative approaches towards conflict management.

“Nurturing our Wetlands for Biodiversity Conservation” examines the role of wetlands in biodiversity conservation and how these wetland resources might be managed to improve biodiversity conservation. “Promoting Human Rights Impact Assessment in Environmental Governance for Sustainable Development” critically discusses the place of human rights in environmental governance, gives an overview of the concept of environmental governance and examines various approaches adopted towards achieving it. “Realising Environmental, Social and Governance Tenets for Sustainable Development” discusses the Environmental, Social and Governance (ESG) aspects of sustainable development agenda and how the same affect sustainability.

“Reconceptualising the Right to Clean and Healthy Environment in Kenya” examines the right to clean and healthy environment as envisaged in the Constitution of Kenya 2010, its legal underpinnings and the extent to which the same has been realised for the Kenyan people. The paper argues that there is need to redefine the right to clean and healthy environment as a fundamental right, classify it with the other basic rights as opposed to the existing notion that it is a third generation right. “Reconceptualizing Corporate Governance for Sustainable Development” critically explores the role of Corporate Governance in the Sustainable Development agenda. The paper highlights some of the corporate governance practices that have fostered Sustainable Development including the concepts of Corporate Social Responsibility (CSR) and Environmental, Social and Governance (ESG).

“Reinforcing Climate Diplomacy for Development” examines the role of climate diplomacy in the global fight against climate change. It defines climate diplomacy and analyses its salient components. The paper further discusses progress made towards embracing climate diplomacy and responding to climate change. It also points out some of the key concerns in the area of climate diplomacy. The paper further suggests proposals

towards reinforcing climate diplomacy for development. “Restoring Landscapes and Ecosystems for Climate Mitigation” explores the opportunities and progress made towards restoring landscapes and ecosystems for climate action. It also highlights some of the setbacks facing the utilization of this concept in climate mitigation. In addition, the paper proposes measures towards embracing the idea of restoring landscapes and ecosystems for climate action.

“Safeguarding The Environment During and After Armed Conflict” critically delves into the need to safeguard the environment during and after armed conflict. The paper also probes the progress made towards safeguarding the environment during and after armed conflict. Finally, the paper offers ideas towards safeguarding the environment during armed conflict. “Streamlining Water Governance in Kenya for Sustainable Development” assesses the current measures and attempts by the state to achieve the constitutionally guaranteed right of access to clean and safe water in adequate amounts, the paper offers an overview and analysis of the provisions of Water Act 2016 in light of the international best practices in water governance and the sustainable development agenda.

“Strengthening Environmental Rule of Law for Sustainability” discusses the concept of environmental rule of law. The paper further examines progress made towards promoting environmental rule of law at the global, regional and national levels. It also explores some of the challenges facing the realization of environmental rule of law and suggests measures towards strengthening environmental rule of law for sustainability. “The Place of Environmental, Social and Governance (ESG) in Arbitration” critically discusses the relationship between Environmental, Social and Governance (ESG) and arbitration. The paper argues that arbitration represents a viable mechanism for managing ESG related disputes while simultaneously promoting ESG tenets.

“Transitioning from Fossil Fuels to Clean Energy” discusses the need to transition from fossil fuels to clean energy and examines the role of fossil fuels in the global threat of climate change. The paper further discusses the efficacy of initiatives adopted at national, regional, continental and global levels towards transitioning from fossil fuels to clean energy. “Managing Environmental Conflicts through Alternative Dispute Resolution” discusses the role of Alternative Dispute Resolution (ADR) mechanisms in managing environmental conflicts. The paper argues that ADR mechanisms can be a viable tool in managing environmental conflicts and fostering sustainability. It proposes initiatives towards strengthening the role of ADR mechanisms in managing environmental conflicts.

“Adopting Environmental, Social and Governance for Sustainable Investment in Africa” critically examines the role of ESG in fostering sustainable investments in Africa. The paper highlights some of the factors hindering the realization of sustainable investments in Africa. It further proposes reforms aimed at adopting ESG tenets for sustainable investments in Africa. “Abating Air Pollution for a Healthy Environment” discusses air pollution as a key threat to Sustainable Development and good health and well-being of humanity. The paper critically examines some of the measures adopted towards addressing air pollution noting to highlight their strength and weaknesses. “Embracing Sound Environmental Governance in Africa” critically explores the need to embrace sound environmental governance in Africa. The paper examines the progress made towards realizing good environmental governance in Africa and suggests reforms towards embracing sound environmental governance in Africa for sustainability.

“Mediating Natural Resource Based- Conflicts for Peace and Prosperity” critically explores the role of mediation in managing natural resourcebased conflicts. It argues that mediation is an effective

mechanism for managing natural resource- based conflicts. The paper discusses some of the salient attributes of mediation that makes it ideal in managing natural resource-based conflicts. “Placing Health at the Centre of Climate Action” argues that climate change is a major threat to human health and well-being. It examines the impacts of climate change on human health and well-being as well as global health systems. The paper proposes measures towards placing health at the centre of climate action in order to ensure good health and well-being for all.

The author, Hon. Prof. Kariuki Muigua Ph.D; FCIArb; OGW; C. Arb, is the holder of a Doctor of Philosophy (Ph.D.) degree in law from the University of Nairobi attained in 2011. He also holds a Master of Laws (LL.M) degree attained in 2005 and Bachelor of Laws (LL.B) degree awarded in 1988 both from the University of Nairobi. He is a Professor of law at the University of Nairobi Faculty of Law and the Centre for Advanced Studies in Environmental Law and Policy (CASELAP). He also teaches at the Wangari Maathai Institute for Peace and Environmental Studies. He is a Member of the Permanent Court of Arbitration (PCA) nominated by the Republic of Kenya and has served as a Member of the National Environment Tribunal. He is a Senior Advocate of the High Court of Kenya of over 35 years standing and the Managing Partner of Kariuki Muigua & Co. Advocates, one of Kenya’s leading commercial law firms, where he specialises in environmental and commercial law litigation and Alternative Dispute Resolution.

Prof Kariuki Muigua is a distinguished law scholar, Environmental Consultant, an accredited mediator and a Chartered arbitrator. He has widespread training and experience in both international and national commercial arbitration and mediation. He has received numerous awards and honours due to his exemplary work in academia and Alternative Dispute Resolution. Chambers and Partners Global Guide 2024 ranked him in Band 1 of Dispute Resolution (Arbitrators), the ranking which

recognizes the Top 6 Arbitrators in Kenya noting that he is “highly recommended as a leading lawyer”. He was awarded the ‘Academic Champion of ADR’ at the inaugural Women in ADR Awards 2024. He was also awarded the Outstanding Mentor Award by his mentees in recognition of his guidance, care and support. He was recognized and awarded for his role as the Chartered Institute of Arbitrators (CIArb) Africa Trustee from 2019 to 2022 by CIArb Kenya Branch at the CIArb Kenya Branch ADR Excellence Awards 2022.

Prof. Kariuki Muigua is a prolific author of many leading textbooks including East Africa’s leading Arbitration Law textbook, *Settling Disputes through Arbitration in Kenya*, 4th Edition; Glenwood publishers 2022, which was awarded the Publication of the Year Award 2022 by CIArb Kenya Branch at the CIArb Kenya Branch ADR Excellence Awards 2022. He has authored the following other books: *Alternative Dispute Resolution and Access to Justice in Kenya*, (Glenwood Publishers, Nairobi, 2015); *Resolving Conflicts through Mediation in Kenya*, (Glenwood Publishers, Nairobi, 2013); *Natural Resources and Environmental Justice in Kenya*, (Glenwood Publishers, Nairobi, 2015); *Nurturing Our Environment for Sustainable Development*, (Glenwood Publishers, Nairobi, 2016); *Settling Disputes through Arbitration in Kenya* (Glenwood Publishers, Nairobi) 1st Edition (2012); 2nd Edition (2012); 3rd Edition (2017); and 4th Edition (2022).

Prof. Kariuki Muigua’s other works include *Securing Our Destiny through Effective Management of the Environment*, (Glenwood Publishers, Nairobi-2020); *Achieving Sustainable Development, Peace and Environmental Security* (Glenwood Publishers, Nairobi, 2021); *Fostering Environmental Democracy and Biodiversity Conservation*, (Glenwood Publishers 2021); *Exploring Conflict Management in Environmental Matters* (Glenwood Publishers 2022); *Attaining Environmental Justice for Posterity*, Volume 1 and 2, (Glenwood

Publishers 2022); Accessing Justice Through ADR, (Glenwood Publishers 2022); Nurturing our Environment for a Green Tomorrow, (Glenwood Publishers 2023); Realizing True Sustainable Development, (Glenwood Publishers 2023); Embracing Environmental Social and Governance (ESG) tenets for Sustainable Development, (Glenwood Publishers 2023); Combating Climate Change for Sustainability, (Glenwood Publishers 2023); Achieving Climate Justice for Development, (Glenwood Publishers 2023); and Promoting The Rule of Law for Sustainable Development (Glenwood Publishers 2024).

Prof. Kariuki Muigua was awarded Africa's ADR Practitioner of the Year Award by AfAA in 2022. In the same year, he won the African Arbitrator of the Year 2022 award at the 3rd African Arbitration Awards held at Kigali Rwanda beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. In 2021, Prof Muigua was the winner of the Inaugural CIArb (Kenya Branch) ADR Lifetime Achievement Award 2021 as well as the ADR Publication of the Year Award 2021 by the Chartered Institute of Arbitrators (Kenya Branch). He also received the ADR Practitioner of the Year Award 2021 by the Law Society of Kenya, Nairobi Branch at the Nairobi Legal Awards. He is a recipient of the 8th C.B. Madan Prize of 2020 for commitment and outstanding scholarly contribution to constitutionalism and the rule of law in Kenya.

Hon. Prof. Muigua has on various occasions been appointed by leading arbitral institutions including the Chartered Institute of Arbitrators (CIArb-Kenya), the Nairobi Centre for International Arbitration (NCIA), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) among other institutions, as both a sole arbitrator and a member of an arbitral tribunal in arbitrations involving commercial disputes. He is a Fellow of Chartered Institute of Arbitrators (CIArb)-Kenya chapter. He is a member of the International Bar Association (IBA), the International Commission of Jurists, Human Rights

Institute of the International Bar Association, the London Court of International Arbitration (LCIA), Chartered Institute of Arbitrators (UK) and Kenya Branch, Member of Commonwealth Lawyers Association and fellow of the Institute of Certified Public Secretaries of Kenya. He served as the Branch Chairman of CIArb-Kenya from 2012 to 2015. He was elected (unopposed) to the Chartered Institute of Arbitrators (CIArb) Board of Trustees as the Regional Trustee for Africa, for the term beginning 1st January 2019 for a term of four years until 31st December 2022.

Hon. Prof. Muigua also serves as the Editor in Chief of three leading peer reviewed journals in East Africa, the Alternative Dispute Resolution Journal, the Journal of Conflict Management and Sustainable Development and Journal of ADR & Sustainability. The three journals have been hailed as leading publications in the fields of ADR, Conflict Management and Sustainable Development. The Alternative Dispute Resolution Journal was awarded the Arbitration Publication of the Year Award 2020 at the Africa Arbitration Awards.



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