# Redefining the Role of Lawyers in Climate Justice

# Kariuki Muigua

# **Table of Contents**

Abstract	3
1.0 Introduction	4
2.0 Conceptualizing Climate Justice	5
3.0 Legal Framework on Climate Justice	7
3.1 International Legal Framework	7
3.2 Regional Legal Framework	10
3.3 National Legal Framework	11
4.0 The Role of the Legal Profession in Climate Justice in Kenya	13
4.1 Climate Change Litigation	13
4.2 Promoting Public Awareness and Education	14
4.3 Climate Finance	14
4.4 Climate Change Laws and Policy Formulation	15
4.5 Greening the Legal Profession	15
5.0 Conclusion	16
References	17

# Redefining the Role of Lawyers in Climate Justice

# Kariuki Muigua\*

#### **Abstract**

The paper critically explores the role of lawyers in promoting Climate Justice. The paper conceptualizes Climate Justice and posits that it is a fundamental element of the Sustainable Development agenda. It analyzes the enabling legal framework for Climate Justice at the global, regional and national levels. The paper then delves into practical ways through which the legal profession can contribute towards promoting the ideal of Climate Justice as a precursor of Sustainable Development. The overall argument in the paper is that achieving Climate Justice is crucial in attainment of the ideal of Sustainable Development.

<sup>\*</sup> PhD in Law (Nrb), FCIArb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, Faculty of Law [June, 2023].

#### 1.0 Introduction

Sustainable Development has been widely embraced as the global blueprint for development. It has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>1</sup>. The 2030 Agenda for Sustainable Development which was adopted by member states of the United Nations in 2015 represents a shared blue print for peace and prosperity for people and the planet in the quest towards the ideal of Sustainable Development<sup>2</sup>. At the heart of the 2030 Agenda for Sustainable Development are 17 Sustainable Development Goals that seek to achieve various targets including ending extreme poverty and hunger; promoting good health and well-being for all people; achieving gender equality; promoting access to affordable and clean energy and combating climate change<sup>3</sup>. However, several factors pose a threat to attainment of the ideal of Sustainable Development. Key among them is climate change<sup>4</sup>.

Climate change has been defined as change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods<sup>5</sup>. Climate change hinders attainment of the Sustainable Development agenda since it results in food insecurity, water scarcity, depletion of natural resources, displacement of people, health hazards, social inequity and unemployment<sup>6</sup>. The effects of climate change have often resulted in justice concerns. Indeed, it has been observed that communities that have contributed the least to climate change are the ones that are the most affected

<sup>&</sup>lt;sup>1</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>&</sup>lt;sup>2</sup> United Nations., 'Sustainable Development Goals.' Available at <a href="https://sdgs.un.org/goals">https://sdgs.un.org/goals</a> (Accessed on 14/06/2023)

<sup>&</sup>lt;sup>3</sup> Ibid

<sup>&</sup>lt;sup>4</sup> Ibid

<sup>&</sup>lt;sup>5</sup> United Nations Framework Convention on Climate Change (United Nations, 1992), Article 1 (2), Available at <a href="https://unfccc.int/resource/docs/convkp/conveng.pdf">https://unfccc.int/resource/docs/convkp/conveng.pdf</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>6</sup> Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

by its impacts<sup>7</sup>. The concept of Climate Justice has thus emerged to deal with the justice concerns brought about by climate change. Climate Justice seeks to address the causes and impacts of climate change in a manner that recognizes and fosters the rights and concerns of vulnerable people, communities and countries<sup>8</sup>.

The paper seeks to critically discuss the role of the legal profession in promoting Climate Justice in Kenya. It has been rightly observed that responding to climate change requires involvement of all sectors including the legal profession<sup>9</sup>. The paper conceptualizes Climate Justice and analyzes its enabling legal framework at the global, regional and national levels. It further highlights practical ways through which the legal profession can contribute towards promoting Climate Justice in the quest for Sustainable Development.

# 2.0 Conceptualizing Climate Justice

The concept of Climate Justice is a subset of Environmental Justice<sup>10</sup>. Environmental Justice refers to the right to have access to natural resources; not to suffer disproportionately from environmental policies, laws and regulations; and the right to environmental information, participation and involvement in decision-making<sup>11</sup>. It has also been defined as the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies<sup>12</sup>. Environmental Justice is attained when every person enjoys

<sup>&</sup>lt;sup>7</sup> Sultana. F., 'Critical Climate Justice' Available at <a href="https://www.farhanasultana.com/wp-content/uploads/Sultana-Critical-climate-justice.pdf">https://www.farhanasultana.com/wp-content/uploads/Sultana-Critical-climate-justice.pdf</a> (Accessed on 14/06/2023)

<sup>&</sup>lt;sup>8</sup> Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' WIREs Clim Change 2014

<sup>&</sup>lt;sup>9</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' *Alternative Law Journal* (47) 3 pp 199-203

<sup>10</sup> Ibid

<sup>&</sup>lt;sup>11</sup> Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at <a href="https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml">https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.xml</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>12</sup> United States Environmental Protection Agency; 'Environmental Justice.' Available at <a href="https://www.epa.gov/environmentaljustice">https://www.epa.gov/environmentaljustice</a> (Accessed on 12/06/2023)

the same degree of protection from environmental and health hazards and has access to the decision-making process to have a healthy environment<sup>13</sup>. Environmental Justice thus seeks to address distributive inequity, lack of recognition, disenfranchisement and exclusion in environmental matters<sup>14</sup>. It seeks to achieve the ideal of access, participation and procedural justice in environmental decision making<sup>15</sup>. Environmental Justice is a key pillar of Sustainable Development.

Climate Justice flows from Environmental Justice and seeks to promote justice in climate related concerns. It entails understating climate change as an issue that relates to equity, fairness, ethics and human rights and not just an environmental phenomena<sup>16</sup>. Climate Justice is a framework that focuses on the intersection between climate change and social inequalities. This is achieved by linking the effects of climate change to the notions of justice particularly environmental and social justice by examining the concepts of equality and human rights within the lens of climate change<sup>17</sup>. It focuses on how climate change impacts people differently, unevenly and disproportionately and seeks to address the resultant injustices in fair and equitable ways<sup>18</sup>.

Climate Justice encapsulates various facets of justice including distributive justice, procedural justice and justice as recognition<sup>19</sup>. Distributive justice concerns itself with the disproportionate impact that climate change has on the people, communities and countries that are least responsible for climate change and its impacts<sup>20</sup>. It has been argued that communities that have contributed the least to climate change are the ones are the most affected by its impacts<sup>21</sup>. Procedural justice on the other hand is aimed at

<sup>13</sup> Ibid

 $<sup>^{14}</sup>$  Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

<sup>15</sup> Ibid

<sup>&</sup>lt;sup>16</sup> United Nations Environment Programme., 'Climate Justice.' Available at <a href="https://leap.unep.org/knowledge/glossary/climate-justice">https://leap.unep.org/knowledge/glossary/climate-justice</a> (Accessed on 12/06/2023) <sup>17</sup> Ibid

<sup>&</sup>lt;sup>18</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>&</sup>lt;sup>19</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Op Cit

<sup>&</sup>lt;sup>21</sup> Sultana. F., 'Critical Climate Justice' Op Cit

addressing distributive climate injustices by creating processes that are participatory, fair, inclusive and accessible<sup>22</sup>. Procedural justice requires that citizens be informed about and involved in decision-making on climate change matters. Justice as recognition on its part seeks to give a voice to people who have been traditionally marginalized in climate change matters as a result of structural inequality<sup>23</sup>.

Climate Justice is thus a multidimensional idea that requires the various facets of justice to be recognized and upheld simultaneously<sup>24</sup>. In order to effectively respond to climate change and promote Climate Justice there is need for involvement of all sectors of the society<sup>25</sup>. The legal profession has an important role to play in promoting Climate Justice.

### 3.0 Legal Framework on Climate Justice

Various laws, treaties, conventions and policies have been adopted towards attaining climate justice at the international, regional and national level.

#### 3.1 International Legal Framework

The *Rio Declaration on Environment and Development*<sup>26</sup> encapsulates key principles towards attaining Environmental Justice and Climate Justice. The Declaration provides that human beings are at the centre of all concerns for Sustainable Development<sup>27</sup>. This calls for the need for involvement of all human beings in all matters concerning Sustainable Development such as combating climate change. Towards this end, the Declaration calls of the co-operation of all states and all people in achieving Sustainable Development

<sup>&</sup>lt;sup>22</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Op Cit

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>&</sup>lt;sup>25</sup> Knight. S., 'System Change for Climate Justice: Legal Actions and Activist Lawyers.' Available at <a href="https://www.scienceopen.com/document\_file/404a2b47-e68d-40b7-8d15-05f22ded4707/ScienceOpen/socialistlawyer.84.0024.pdf">https://www.scienceopen.com/document\_file/404a2b47-e68d-40b7-8d15-05f22ded4707/ScienceOpen/socialistlawyer.84.0024.pdf</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>26</sup> Report of the United Nations Conference on Environment and Development., 'Rio Declaration on Environment and Development.' A/CONF.151/26 (Vol. I)

<sup>&</sup>lt;sup>27</sup> Ibid, Principle 1

through measures such as environmental protection<sup>28</sup>. The Declaration further acknowledges that environmental issues are best handled with the participation of all concerned citizens at the relevant level<sup>29</sup>. It calls for access to information, participation in decision making and access to effective remedies in all environmental matters including those concerning climate change<sup>30</sup>. The Rio Declaration thus captures and seeks to promote key elements of Climate Justice.

The United Nations Framework Convention on Climate Change (UNFCC) is geared towards combating climate change by achieving stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system<sup>31</sup>. In order to achieve this goal, the UNFCC calls for *cooperation* and participation by all countries which are key components of Climate Justice<sup>32</sup>. The Convention also calls upon state parties to promote and facilitate public access to information on climate change and its effects and public participation in addressing climate change and its effects and the development of adequate responses<sup>33</sup>. The UNFCC thus upholds the pillars of access to information and public participation which are key elements of procedural justice in the climate justice debate.

The Paris Agreement<sup>34</sup> is aimed at strengthening the global response to the threat of climate change towards Sustainable Development. The Agreement affirms the importance of public awareness, public participation, public access to information and cooperation at all levels in combating climate change<sup>35</sup>. These are fundamental components of procedural justice. The Agreement further recognizes the specific needs

<sup>&</sup>lt;sup>28</sup> Ibid, principle 5

<sup>&</sup>lt;sup>29</sup> Ibid, Principle 10

<sup>30</sup> Ibid

<sup>31</sup> United Nations Framework Convention on Climate Change., Available at https://unfccc.int/resource/docs/convkp/conveng.pdf (Accessed on 12/06/2023)

<sup>32</sup> Ibid, Preamble

<sup>&</sup>lt;sup>33</sup> Ibid, Article 6 (a)

<sup>&</sup>lt;sup>34</sup> United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at https://unfccc.int/sites/default/files/resource/parisagreement\_publication.pdf (Accessed on 12/06/2023)

<sup>35</sup> Ibid, Preamble

and special needs of developing countries which are most vulnerable to the adverse effects of climate change<sup>36</sup>. It thus calls for equity and the promotion of the principle of Common but Differentiated Responsibilities and capabilities in light of different national circumstances in combating climate change<sup>37</sup>. This is key towards promoting distributive justice in climate change matters.

The United Nations 2030 Agenda for Sustainable Development<sup>38</sup> is a global commitment by member states of the United Nations to achieve Sustainable Development across the globe. It sets out 17 goals towards achieving the ideal of Sustainable Development<sup>39</sup>. Sustainable Goals 13 is geared towards climate action through measures such as strengthening the resilience and adaptive capacity to climate-related hazards and natural disasters in all countries; integrating climate change measures into national policies, strategies and planning; and Improving education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning<sup>40</sup>. The 2030 Agenda for Sustainable Development calls for partnership by all states towards attaining Sustainable Development<sup>41</sup>. The 2030 Agenda for Sustainable Development thus sets the global blueprint for combating climate change and achieving Climate Justice.

<sup>36</sup> Ibid

<sup>&</sup>lt;sup>37</sup> Ibid, Article 2 (2)

<sup>&</sup>lt;sup>38</sup> United Nations., 'The 2030 Agenda for Sustainable Development.' Available at <a href="https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainablew20Development%20web.pdf">https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainablew20Development%20web.pdf</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>40</sup> UNDP., 'Sustainable Development Goals: Goal 13.' Available at <a href="https://www.undp.org/sustainable-development-">https://www.undp.org/sustainable-development-</a>

 $goals?gclid=CjwKCAjwhJukBhBPEiwAniIcNWyEJw2ovpllJMb43W5y2\_2kwXeZbt25GeRmoepAzlh2yjA\\RP3D5VhoCn-oQAvD\_BwE \ (Accessed on 12/06/2023)$ 

<sup>&</sup>lt;sup>41</sup> Ibid, Goal 17

#### 3.2 Regional Legal Framework

While Africa contributes negligibly to global green -house gas emissions at an average of two to three percent, it stands out disproportionately as the most vulnerable region in the world<sup>42</sup>. This highlights the distributive justice concerns inherent in the climate justice debate. Climate Justice is thus a fundamental concern in Africa. Various attempts have been made towards achieving this goal in Africa.

The Africa Union *Agenda* 2063<sup>43</sup> seeks to achieve Sustainable Development and transform Africa into a prosperous and peaceful continent representing a dynamic force in the international arena by the year 2063. It seeks to promote *inter alia* environmental sustainability and climate resilience in Africa by the year 2063. It seeks to promote environmentally sustainable and climate resilient economies and communities through sustainable natural resource management; biodiversity conservation; promoting renewable energy and climate resilience and natural disasters preparedness and prevention. Attaining the vision of Agenda 2063 is key in promoting climate justice in Africa.

Further, the *East African Community Climate Change Policy*<sup>44</sup> represents a regional attempt towards combating climate change and attaining climate justice at the East African level. The Policy aims at addressing the adverse impacts of climate change in the East African region<sup>45</sup>. The Policy sets out certain objectives that are crucial in achieving Climate Justice including promoting public awareness and socio-economic importance of climate change and promoting capacity building efforts through education, training, research,

<sup>-</sup>

<sup>&</sup>lt;sup>42</sup> United Nations Environment Programme., 'Responding to Climate Change.' Available at <a href="https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change">https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>43</sup> African Union., 'Agenda 2063: The Africa We Want.' Available at <a href="https://au.int/sites/default/files/documents/33126-doc-framework\_document\_book.pdf">https://au.int/sites/default/files/documents/33126-doc-framework\_document\_book.pdf</a> (Accessed on 12/06/2023)

<sup>&</sup>lt;sup>44</sup> East African Community., 'EAC Climate Change Policy' Available at <a href="http://repository.eac.int/bitstream/handle/11671/538/EAC%20Climate%20Change%20Policy\_April%202011.pdf?sequence=1&isAllowed=y">http://repository.eac.int/bitstream/handle/11671/538/EAC%20Climate%20Change%20Policy\_April%202011.pdf?sequence=1&isAllowed=y</a> (Accessed on 12/06/2023)

technology development and transfer<sup>46</sup>. It calls for the collaboration of various stakeholders including the government, private sector, civil society and vulnerable communities and populations including the youth and women in achieving the ideal of Sustainable Development and Climate Justice in East Africa<sup>47</sup>. The Policy is thus crucial in promoting climate justice in East Africa.

#### 3.3 National Legal Framework

Various attempts have been made towards domesticating the concept of climate justice in Kenya. The *Constitution of Kenya*, 2010 sets out national values and principles of governance that bind all persons in matters such as application and interpretation of the Constitution; enactment, application and interpretation of laws and implementation of public policy decisions<sup>48</sup>. These values and principles include Sustainable Development and public participation which are key pillars of climate justice<sup>49</sup>. The Constitution further enshrines the right of every person to a Clean and Healthy Environment which includes the right to have the environment protected for the benefit of the present and future generations<sup>50</sup>. Promoting the right to a Clean and Healthy Environment is critical in attaining Climate Justice in Kenya. The Constitution also sets out certain obligations in respect of the environment. This includes the role of the state to encourage public participation in the management, protection and conservation of the environment<sup>51</sup>. Promoting this role in climate change matters is an important step in attaining Climate Justice in Kenya.

The *Climate Change Act*<sup>52</sup> is an Act of Parliament that provides a regulatory framework for enhanced response to climate change and sets out mechanisms and measures to

<sup>&</sup>lt;sup>46</sup> Ibid, Article 2.2

<sup>&</sup>lt;sup>47</sup> Ibid, Article 2.4

<sup>&</sup>lt;sup>48</sup> Constitution of Kenya, 2010., Article 10 (1)., Government Printer, Nairobi

<sup>&</sup>lt;sup>49</sup> Ibid, Article 10 (2)

<sup>&</sup>lt;sup>50</sup> Ibid, Article 42

<sup>&</sup>lt;sup>51</sup> Ibid, Article 69 (1) (d)

<sup>&</sup>lt;sup>52</sup> Climate Change Act., No. 11 of 2016, Government Printer, Nairobi

achieve low carbon climate development. Among the objects and purpose of the Act is to facilitate capacity development for *public participation* in climate change responses through awareness creation, consultation, representation and access to information<sup>53</sup>. The Act further seeks to mainstream the principle of *Sustainable Development* into the planning for and decision making on climate change response<sup>54</sup>. Promoting the vision of the Climate Change Act is integral in attaining Climate Justice in Kenya.

Further, the *National Climate Change Policy* was developed to facilitate a coordinated, coherent and effective response to the local, national and global challenges and opportunities presented by climate change<sup>55</sup>. It further seeks to enhance adaptive capacity and resilience to climate change, and promote low carbon development for the Sustainable Development of Kenya<sup>56</sup>. The Policy sets out several measures towards achieving its aim which include facilitating widespread public awareness, participation, ownership and oversight of Kenya's climate change response efforts and action plans<sup>57</sup>. The Policy further enshrines several principles that are crucial in the Climate Justice debate including *Sustainable Development*; *Equity and Social Inclusion and special needs and circumstances* of vulnerable people and communities<sup>58</sup>.

\_

<sup>&</sup>lt;sup>53</sup> Ibid, S 3 (2) (h)

<sup>&</sup>lt;sup>54</sup> Ibid, S 3 (2) (k)

<sup>&</sup>lt;sup>55</sup> Sessional Paper No. 5 of 2016., 'National Climate Change Framework Policy.' Available at <a href="http://aiap.or.ke/wp-content/uploads/2018/10/Climate-Change-Framework-PolicyMay2017.pdf">http://aiap.or.ke/wp-content/uploads/2018/10/Climate-Change-Framework-PolicyMay2017.pdf</a> (Accessed on 13/06/2023)

<sup>56</sup> Ibid

<sup>&</sup>lt;sup>57</sup> Ibid, S 3.2 (v)

<sup>&</sup>lt;sup>58</sup> Ibid, S 3.3

### 4.0 The Role of the Legal Profession in Climate Justice in Kenya

Climate change continues to have adverse impacts in developing countries such as Kenya where populations are most vulnerable and least likely to adapt to it<sup>59</sup>. The impacts of climate change as drought, food insecurity, biodiversity loss and extinction, water scarcity and rising sea levels cut across sectors and can potentially affect development<sup>60</sup>. Climate change can thus result in social justice concerns such as unemployment, poverty, displacement of people, food insecurity and health hazards<sup>61</sup>. From the perspective of the legal profession, climate change is a fundamental legal disruptor that threatens legal stability and coherence<sup>62</sup>. Responding to climate change requires involvement of all sectors of the society including the legal profession. Lawyers can respond to climate change and promote Climate Justice through the following ways.

### 4.1 Climate Change Litigation

Climate change litigation entails filing of lawsuits pertaining the causes and consequences of climate change<sup>63</sup>. It involves cases before judicial and quasi-judicial bodies that involve material issues of climate change science, policy, or law. Through such law suits, lawyers are able to help courts and tribunals adjudicate upon pertinent issues in climate change such mitigation and adaptation measures as well as climate change-related loss and damage<sup>64</sup>. Lawyers can thus shape the climate change agenda and influence the outcome and ambition of climate governance through litigation<sup>65</sup>. Climate change litigation has consequently become a tool to enforce or enhance climate

\_

 $<sup>^{\</sup>rm 59}$  Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

<sup>60</sup> Ibid

<sup>&</sup>lt;sup>61</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>&</sup>lt;sup>62</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Op Cit

<sup>&</sup>lt;sup>63</sup> Setzer. J., 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance.' Available at <a href="https://www.researchgate.net/profile/Joana-">https://www.researchgate.net/profile/Joana-</a>

Setzer/publication/331499727 Climate\_change\_litigation\_A\_review\_of\_research\_on\_courts\_and\_litigants\_s\_in\_climate\_governance/links/5e89690d92851c2f527f820d/Climate-change-litigation-A-review-of-research-on-courts-and-litigants-in-climate-governance.pdf (Accessed on 13/06/2023)

64 Ibid

<sup>&</sup>lt;sup>65</sup> Setzer.J & Higham. C., 'Global Trends in Climate Change Litigation: 2022 Snapshot' Available at <a href="https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation-2022-snapshot.pdf">https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation-2022-snapshot.pdf</a> (Accessed on 13/06/2023)

commitments by governments across the globe<sup>66</sup>. Governments are thus able to be held accountable in respect of laws and policies on climate change through climate change litigation. Lawyers can contribute to Climate Justice in Kenya through climate change litigation.

### 4.2 Promoting Public Awareness and Education

One of the essential features of climate justice is public awareness, public participation and public access to information on climate matters. This has been enunciated in various legal instruments on climate change and climate justice<sup>67</sup>. Lawyers play an important role in the society of extending legal literacy and awareness to members of the public<sup>68</sup>. The legal profession can therefore spearhead Climate Justice by promoting public awareness, access to information and education on climate issues through avenues such as legal aid clinics and forums. Through this, the public will be better informed and able to effectively participate in the climate change discourse towards attaining Climate Justice.

#### 4.3 Climate Finance

Climate finance refers to local, national or transnational financing drawn from public, private and alternative sources of financing that seeks to support mitigation and adaptation actions that will address climate change<sup>69</sup>. Climate finance is integral to climate change mitigation and adaptation since financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate<sup>70</sup>. The success of low-carbon and climate-resilient development depends on the quantity and type of finance

70 Ibid

<sup>66</sup> Ibid

<sup>&</sup>lt;sup>67</sup> See for example the Preamble of the Paris Agreement and S 3 (2) (h) of the Climate Change Act No. 11 of 2016, Laws of Kenya

<sup>&</sup>lt;sup>68</sup> Law Society of Kenya., 'Legal Awareness Week.' Available at <a href="https://lsk.or.ke/public/legal-awareness-week/">https://lsk.or.ke/public/legal-awareness-week/</a> (Accessed on 13/06/2023)

<sup>&</sup>lt;sup>69</sup> United Nations Climate Change., 'Introduction to Climate Finance.' Available at <a href="https://unfccc.int/topics/introduction-to-climate-finance">https://unfccc.int/topics/introduction-to-climate-finance</a> (Accessed on 13/06/2023)

made available to support these efforts<sup>71</sup>. The private sector plays an important role in climate finance and has been shown to contribute more towards climate finance initiatives than the public sector<sup>72</sup>. The legal profession can thus contribute towards Climate Justice in Kenya by participating in climate finance initiatives. Such funding can be used to support mitigation and adaptation measures such as planting trees, restoring ecosystems, promoting food security, greening infrastructure and the move towards renewable energy which are essential in attaining Climate Justice.

# 4.4 Climate Change Laws and Policy Formulation

Lawyers can contribute towards attaining Climate Justice in Kenya by participating in the formulation of laws and policies on climate change in Kenya. Under the Climate Change Act, lawyers can serve in various bodies mandated in shaping the climate change agenda in Kenya such as the Climate Change Council and the Climate Change Directorate<sup>73</sup>. Through such representation, lawyers can participate towards attaining Climate Justice through implementation of efficient programmes, policies and plans towards climate change mitigation and adaptation. Lawyers can also be involved in formulation of laws and policies on climate change through law reform and public participation forums. This will be integral in promoting Climate Justice in Kenya.

#### 4.5 Greening the Legal Profession

Lawyers can contribute to the Sustainable Development and climate change agenda by adopting practices and procedures that lessen the impact that the legal profession has on the environment<sup>74</sup>. Lawyers and law firms can adopt practical measures to reduce the

<sup>&</sup>lt;sup>71</sup> Climate Policy Initiative., 'The Landscape of Climate Finance.' Available at <a href="http://climatepolicyinitiative.org/wp-content/uploads/2011/10/The-Landscape-of-Climate-Finance-120120.pdf">http://climatepolicyinitiative.org/wp-content/uploads/2011/10/The-Landscape-of-Climate-Finance-120120.pdf</a> (Accessed on 13/06/2023)

<sup>72</sup> Ibid

<sup>&</sup>lt;sup>73</sup> Climate Change Act, No.11 of 2016., Part II

<sup>&</sup>lt;sup>74</sup> Muigua. K., 'Green Arbitration: Aligning Arbitration with Sustainable Development.' Available at <a href="http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf">http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf</a> (Accessed on 13/06/2023)

environmental impact of their business and policies which mitigate their contribution to the climate crisis<sup>75</sup>. Such measures include adopting the use of electronic correspondence; electronic filing of court documents; use of electronic bundles at hearings; encouraging the use of videoconferencing facilities for client interviews and virtual court sessions as an alternative to travel, where appropriate and selecting suppliers and service providers that are committed to the Sustainable Development agenda<sup>76</sup>. Through such measures, lawyers can contribute to climate change mitigation and adaptation as essential pillars of Sustainable Development while simultaneously contributing to the attainment of Climate Justice.

#### 5.0 Conclusion

Climate change is fundamental challenge in the 21st Century that raises justice concerns<sup>77</sup>. Climate change further hinders the attainment of Sustainable Development<sup>78</sup>. Responding to climate change requires involvement of all sectors of the society including the legal profession<sup>79</sup>. Achieving Climate Justice is critical to the Sustainable Development agenda since it brings on board all human beings who are at the centre of concerns for Sustainable Development<sup>80</sup>. The legal profession can contribute towards attainment of Climate Justice through climate change litigation; promoting public awareness and education; climate finance; participating in climate change laws and policy formulation and greening the legal profession. Promoting Climate Justice and redefining the role of lawyers therein are ideas whose time is now.

\_

<sup>&</sup>lt;sup>75</sup> Cracknell. J., 'The Role Lawyers Can Play in Addressing the Climate Crisis.' Available at <a href="https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis">https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis</a> (Accessed on 13/06/2023)

<sup>&</sup>lt;sup>76</sup> Muigua. K., 'Green Arbitration: Aligning Arbitration with Sustainable Development.' Op Cit

<sup>&</sup>lt;sup>77</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>&</sup>lt;sup>78</sup> Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

<sup>&</sup>lt;sup>79</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Op Cit

<sup>&</sup>lt;sup>80</sup> Rio Declaration on Environment and Development., Op Cit

#### References

African Union., 'Agenda 2063: The Africa We Want.' Available at <a href="https://au.int/sites/default/files/documents/33126-doc-">https://au.int/sites/default/files/documents/33126-doc-</a>

framework\_document\_book.pdf

Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience' Available at

https://www.elgaronline.com/display/edcoll/9781848446793/9781848446793.00011.x

Climate Change Act., No. 11 of 2016, Government Printer, Nairobi

Climate Policy Initiative., 'The Landscape of Climate Finance.' Available at <a href="http://climatepolicyinitiative.org/wp-content/uploads/2011/10/The-Landscape-of-Climate-Finance-120120.pdf">http://climatepolicyinitiative.org/wp-content/uploads/2011/10/The-Landscape-of-Climate-Finance-120120.pdf</a>

Constitution of Kenya, 2010., Article 10 (1)., Government Printer, Nairobi

Cracknell. J., 'The Role Lawyers Can Play in Addressing the Climate Crisis.' Available at <a href="https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis">https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis</a>

East African Community., 'EAC Climate Change Policy' Available at <a href="http://repository.eac.int/bitstream/handle/11671/538/EAC%20Climate%20Change%">http://repository.eac.int/bitstream/handle/11671/538/EAC%20Climate%20Change%</a>
<a href="mailto:20Policy\_April%202011.pdf?sequence=1&isAllowed=y">20Policy\_April%202011.pdf?sequence=1&isAllowed=y</a>

Governance.' Available at <a href="https://www.researchgate.net/profile/Joana-setzer/publication/331499727\_Climate\_change\_litigation\_A\_review\_of\_research\_on\_courts\_and\_litigants\_in\_climate\_governance/links/5e89690d92851c2f527f820d/Climate\_change-litigation-A-review-of-research-on-courts-and-litigants-in-climate\_governance.pdf</a>

Knight. S., 'System Change for Climate Justice: Legal Actions and Activist Lawyers.' Available at <a href="https://www.scienceopen.com/document\_file/404a2b47-e68d-40b7-8d15-05f22ded4707/ScienceOpen/socialistlawyer.84.0024.pdf">https://www.scienceopen.com/document\_file/404a2b47-e68d-40b7-8d15-05f22ded4707/ScienceOpen/socialistlawyer.84.0024.pdf</a>

Law Society of Kenya., 'Legal Awareness Week.' Available at https://lsk.or.ke/public/legal-awareness-week/

Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Alternative Law Journal (47) 3 pp 199-203

Muigua. K., 'Green Arbitration: Aligning Arbitration with Sustainable Development.' Available at <a href="http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf">http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf</a>

Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

Report of the United Nations Conference on Environment and Development., 'Rio Declaration on Environment and Development.' A/CONF.151/26 (Vol. I)

Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' WIREs Clim Change 2014

Sessional Paper No. 5 of 2016., 'National Climate Change Framework Policy.' Available at <a href="http://aiap.or.ke/wp-content/uploads/2018/10/Climate-Change-Framework-PolicyMay2017.pdf">http://aiap.or.ke/wp-content/uploads/2018/10/Climate-Change-Framework-PolicyMay2017.pdf</a>

Setzer.J & Higham. C., 'Global Trends in Climate Change Litigation: 2022 Snapshot' Available at <a href="https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation-2022-snapshot.pdf">https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation-2022-snapshot.pdf</a>

Sultana. F., 'Critical Climate Justice' Available at <a href="https://www.farhanasultana.com/wp-content/uploads/Sultana-Critical-climate-justice.pdf">https://www.farhanasultana.com/wp-content/uploads/Sultana-Critical-climate-justice.pdf</a>

UNDP., 'Sustainable Development Goals: Goal 13.' Available at

https://www.undp.org/sustainable-development-

goals?gclid=CjwKCAjwhJukBhBPEiwAniIcNWyEJw2ovpllJMb43W5y2\_2kwXeZbt25Ge RmoepAzlh2yjARP3D5VhoCn-oQAvD\_BwE

United Nations Climate Change., 'Introduction to Climate Finance.' Available at <a href="https://unfccc.int/topics/introduction-to-climate-finance">https://unfccc.int/topics/introduction-to-climate-finance</a>

United Nations Environment Programme., 'Climate Justice.' Available at https://leap.unep.org/knowledge/glossary/climate-justice

United Nations Environment Programme., 'Responding to Climate Change.' Available at <a href="https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change">https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change</a>

United Nations Framework Convention on Climate Change (United Nations, 1992), Available at <a href="https://unfccc.int/resource/docs/convkp/conveng.pdf">https://unfccc.int/resource/docs/convkp/conveng.pdf</a>

United Nations Framework Convention on Climate Change., 'Paris Agreement.'

Available at

https://unfccc.int/sites/default/files/resource/parisagreement\_publication.pdf

United Nations., 'Sustainable Development Goals.' Available at

https://sdgs.un.org/goals

United Nations., 'The 2030 Agenda for Sustainable Development.' Available at <a href="https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20">https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20</a> for %20Sustainable %20Development %20web.pdf

United States Environmental Protection Agency; 'Environmental Justice.' Available at <a href="https://www.epa.gov/environmentaljustice">https://www.epa.gov/environmentaljustice</a>

World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)