

# **Promoting the Right to Free, Prior and Informed Consent (FPIC) in Climate Justice through Mediation**

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**Kariuki Muigua**

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**Promoting the Right to Free, Prior and Informed Consent (FPIC) in Climate Justice  
through Mediation**

**Kariuki Muigua\***

**Abstract**

*This paper critically examines how the ideal of climate justice can be realised through mediation. The paper argues that mediation is an effective tool towards fostering climate justice. It discusses some of the key features of mediation that makes it viable in promoting climate justice. Among its advantages, the paper argues that mediation can enhance the right to Free, Prior and Informed Consent (FPIC) in climate justice. The paper posits that FPIC is at the heart of climate justice since it ensures equity, transparency, fairness, participation, inclusivity and human rights in climate action. It examines how mediation can be effectively harnessed in order to promote the right to FPIC in climate justice towards effectively confronting climate change.*

**1.0 Introduction**

Climate change is a major challenge that is affecting both developed and developing countries in the quest towards Sustainable Development. The impacts of climate change including intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed globally undermining development efforts<sup>1</sup>. It has been argued that the links between climate change and Sustainable Development are strong<sup>2</sup>. For instance, climate change impacts the availability of basic necessities like freshwater, food, and energy therefore undermining development and human well-being<sup>3</sup>. Further, climate hazards such as extreme heat, floods, droughts and wildfires affect health both directly and indirectly,

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\* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, 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; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [July, 2025].

<sup>1</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 21/07/2025)

<sup>2</sup> United Nations., 'Climate Change' Available at <https://sustainabledevelopment.un.org/topics/climatechange> (Accessed on 21/07/2025)

<sup>3</sup> Ibid

increasing the risk of deaths, non-communicable diseases, the emergence and spread of infectious diseases, and health emergencies<sup>4</sup>. Further, it has been pointed out that poor and developing countries, particularly least developed countries, are adversely affected and least able to cope with climate shocks to their social, economic and natural systems undermining their development efforts<sup>5</sup>.

In addition to its impact on development, health and human well-being, climate change is also fueling injustices. For example, while climate change is global, the poor are disproportionately vulnerable to its effects<sup>6</sup>. This is because they lack the resources to afford goods and services they need to buffer themselves and recover from the impacts of climate change<sup>7</sup>. It has been correctly observed that the impacts of climate change are felt unequally across continents, regions, communities and individuals<sup>8</sup>. For example, Africa is the most vulnerable region in the world to climate change and its impacts<sup>9</sup>. The continent is responsible for only a fraction of global greenhouse gas emissions but is suffering disproportionately from climate change and its impacts<sup>10</sup>. It has been argued that Africa's vulnerability to climate change and its consequences is driven by the prevailing low levels of socio-economic development in the continent<sup>11</sup>. Further, Africa's strong economic dependency on climate-related activities such as agriculture and the continent's low adaptive capacity contribute to its vulnerability to climate change<sup>12</sup>.

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<sup>4</sup> World Health Organization., 'Climate Change' Available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (Accessed on 21/07/2025)

<sup>5</sup> United Nations., 'What is Climate Change?' Op Cit

<sup>6</sup> United Nations Environment Programme., 'Responding to climate change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 21/07/2025)

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> United Nations Environment Programme., 'Responding to Climate Change' Available at <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (Accessed on 21/07/2025)

<sup>10</sup> World Meteorological Organization., 'Africa suffers disproportionately from climate change' Available at <https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change> (Accessed on 21/07/2025)

<sup>11</sup> United Nations Environment Programme., 'Responding to Climate Change' Op Cit

<sup>12</sup> United Nations Economic Commission for Africa., 'Vulnerability to Climate Change in Africa: Challenges and Recommendations for Africa' Available at

Climate change is also having disproportionate impacts on particular individuals and groups including indigenous peoples, women and girls due to their close dependence on local natural resources for their livelihoods<sup>13</sup>.

Due to its disproportionate impacts across individuals, groups, regions and continents, fostering climate justice has become a crucial goal towards effectively confronting climate change<sup>14</sup>. Climate justice focuses on the intersection between climate change and social inequalities<sup>15</sup>. It examines how climate change impacts people differently, unevenly and disproportionately and seeks to address the resultant injustices in fair and equitable ways<sup>16</sup>. It has been argued that climate justice entails looking at climate change as a social, ethical and legal issue, rather than solely an environmental one<sup>17</sup>. Climate justice seeks to promote solutions that address the root causes of climate change and in doing so, simultaneously address a broad range of social, racial, and environmental injustices caused by climate change<sup>18</sup>. It links climate change to human rights and development and seeks to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly<sup>19</sup>. Climate justice therefore seeks to ensure equity, non-discrimination, equal participation, transparency, fairness, accountability and access to

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[https://archive.uneca.org/sites/default/files/PublicationFiles/policy\\_brief\\_2\\_vulnerability\\_to\\_climate\\_change\\_in\\_africa\\_challenges\\_and\\_recommendations\\_for\\_africa.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/policy_brief_2_vulnerability_to_climate_change_in_africa_challenges_and_recommendations_for_africa.pdf) (Accessed on 21/07/2025)

<sup>13</sup> United Nations., 'Why women are key to climate action' Available at <https://www.un.org/en/climatechange/science/climate-issues/women> (Accessed on 21/07/2025)

<sup>14</sup> United Nations Environment Programme., 'Climate Justice.' Available at <https://leap.unep.org/knowledge/glossary/climate-justice> (Accessed on 21/07/2025)

<sup>15</sup> Ibid

<sup>16</sup> Sultana. F., 'Critical Climate Justice' Available at <https://www.farhanasultana.com/wpcontent/uploads/Sultana-Critical-climate-justice.pdf> (Accessed on 21/07/2025)

<sup>17</sup> Ibid

<sup>18</sup> Center for Climate Justice., 'What is Climate Justice?' Available at <https://centerclimatejustice.universityofcalifornia.edu/what-is-climate-justice/#::~:~:text=Climate%20justice%20connects%20the%20climate,least%20responsible%20for%20the%20problem> (Accessed on 21/07/2025)

<sup>19</sup> Mary Robinson Foundation Climate Justice., 'Principles of Climate Justice.' Available at <https://www.mrfcj.org/principles-of-climate-justice/> (Accessed on 21/07/2025)

justice towards effective climate action<sup>20</sup>. Fostering climate justice can then bolster climate action by upholding fairness, transparency, inclusivity and human rights.

This paper critically examines how the ideal of climate justice can be realised through mediation. The paper argues that mediation is an effective tool towards fostering climate justice. It discusses some of the key features of mediation that makes it viable in promoting climate justice. Among its advantages, the paper argues that mediation can enhance the right to Free, Prior and Informed Consent (FPIC) in climate justice. The paper posits that FPIC is at the heart of climate justice since it ensures equity, transparency, fairness, participation, inclusivity and human rights in climate action. It examines how mediation can be effectively harnessed in order to promote the right to FPIC in climate justice towards effectively confronting climate change.

## **2.0 Role of Mediation in Fostering Climate Justice**

Mediation is a process of conflict management which involves the intervention of a third person known as a mediator who assists parties to a conflict in negotiating jointly acceptable resolution of issues in conflict<sup>21</sup>. Further, the United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements<sup>22</sup>. Mediation has also been defined as a structured negotiation process in which an independent person, known as a mediator, assists parties in conflict to identify and assess options and negotiate an agreement towards resolving their conflict<sup>23</sup>.

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<sup>20</sup> United Nations Environment Programme., 'UN Resolution Billed as a Turning Point in Climate Justice' Available <https://www.unep.org/cep/news/story/un-resolution-billed-turning-point-climate-justice> (Accessed on 21/07/2025)

<sup>21</sup> What is Mediation?., Available at <https://www.commerce.gov/cr/reports-and-resources/eo-mediation-guide/what-mediation> (Accessed on 22/07/2025)

<sup>22</sup> United Nations., 'Guidance for Effective Mediation' Available at [https://unrcca.unmissions.org/sites/default/files/dpa\\_msu\\_guidance\\_english\\_web.pdf](https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf) (Accessed on 22/07/2025)

<sup>23</sup> Mediation., Available at <https://www.fedcourt.gov.au/services/ADR/mediation#:~:text=What%20is%20Mediation?,parties%20to%20judge's%20decision> (Accessed on 22/07/2025)

Mediation is associated with certain attributes which makes it ideal in managing conflicts. The process is usually non-adversarial, flexible, expeditious and cost-effective making it ideal in conflict management<sup>24</sup>. Further, mediation also fosters confidentiality, neutrality and impartiality in conflict management<sup>25</sup>. It has been observed that mediation is being widely embraced in the management of conflicts and disputes in the contemporary world since it is a flexible, confidential, cost-effective and speedier process of resolving disputes<sup>26</sup>. Mediation has been identified as an appropriate technique in conflict management, serving as a key tool for facilitating dialogue and negotiation between conflicting parties<sup>27</sup>. Mediation has the potential to foster understanding and empathy among parties to a conflict<sup>28</sup>. Further, mediation also encourages active listening while promoting open and respectful communication therefore helping break down barriers including cultural barriers and building trust among parties<sup>29</sup>. It has been argued that mediation focuses on collaboration and cooperation among parties and is therefore suitable in preserving relationships, building trust, and promoting long term and sustainable solutions<sup>30</sup>. Further, it has been argued that mediation provides a pathway to unlock collaboration and transform conflicts into opportunities for growth and understanding<sup>31</sup>. According to the United Nations, the premise of mediation is that in the right environment, parties in conflict can improve their relationships and move towards cooperation<sup>32</sup>.

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<sup>24</sup> Amoh. G., 'Mediation-The Preferred Alternative for Conflict Resolution' Available at <https://www.gdrc.org/u-gov/conflict-amoh.html> (Accessed on 22/07/2025)

<sup>25</sup> Ibid

<sup>26</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition., 2017

<sup>27</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at [https://www.researchgate.net/publication/372289839\\_Peace\\_Studies\\_Conflict\\_Resolution\\_and\\_Mediation\\_Strategies](https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies) (Accessed on 22/07/2025)

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Miroslavov. M., 'Mastering the Collaborating Conflict Style In 2024' Available at <https://www.officernd.com/blog/collaboratingconflictstyle/#:~:text=It's%20one%20of%20the%20strategies,their%20underlying%20needs%20and%20interests> (Accessed on 22/07/2025)

<sup>31</sup> Unlocking Collaboration: The Power of Mediation., Available at <https://www.linkedin.com/pulse/unlocking-collaboration-power-mediation-jharna-jagtiani-g7kxc> (Accessed on 22/07/2025)

<sup>32</sup> United Nations., 'Guidance for Effective Mediation' Op Cit

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The foregoing attributes of mediation makes it a viable mechanism in promoting climate justice. For example, climate justice focuses on promoting access to information, public and community participation and access to in decision making processes including the design and implementation of projects and formulation of laws, policies and guidelines concerning climate change<sup>33</sup>. Mediation is suitable in achieving this goals due to its focus on inclusivity and participation and can therefore create opportunities for dialogue and negotiation around shared understanding and responses on climate change<sup>34</sup>. It has been observed that mediation provides incentives for different parties and stakeholders to come together to discuss common responses towards climate justice<sup>35</sup>. By embracing mediation, it is possible to bolster the participation of people and communities most impacted by climate change including developing countries, indigenous peoples and communities, women and the youth as part of the climate solution in order to achieve justice and inclusivity for all<sup>36</sup>.

Climate justice also focuses on access to justice in climate matters<sup>37</sup>. By fostering access to justice, vulnerable people and communities can challenge climate related policies and decisions, hold decision-makers accountable for their acts and omissions, and enforce their rights including the right to a clean, healthy and sustainable environment<sup>38</sup>. Mediation is a viable process in enhancing access to justice in climate matters towards climate justice. It has been argued that mediation enhances collaboration and cooperation

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<sup>33</sup> Brower. A., 'Fighting Climate Injustice: 10 Strategies for Action.' Available at <https://www.gensler.com/blog/fighting-climate-injustice-10-strategies-for-action> (Accessed on 22/07/2025)

<sup>34</sup> United Nations., 'Climate Change and Mediation' Available at <https://peacemaker.un.org/en/areas-of-work/climate-change-mediation> (Accessed on 22/07/2025)

<sup>35</sup> Ibid

<sup>36</sup> Muigua. K., 'Fostering Climate Justice for Sustainable Development.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Fostering-Climate-Justice-for-SustainableDevelopment.pdf> (Accessed on 22/07/2025)

<sup>37</sup> United Nations Development Programme., 'What is climate justice and why does it matter?' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 22/07/2025)

<sup>38</sup> Ibid

towards effective management of environmental and climate change conflicts<sup>39</sup>. According to the United Nations, climate-informed mediation provides a platform to engage and better support the efforts of conflict parties to find a peaceful and sustainable solution to their dispute<sup>40</sup>. It brings parties in conflict together to discuss shared responses to common climate-related threats<sup>41</sup>. It has been argued that mediation can also serve as a platform for the integration of women and marginalized groups, who face particular climate risks, as well as environmental defenders and, where applicable, indigenous peoples and communities, whose expertise can help identify key issues and priorities towards effectively managing climate change conflicts<sup>42</sup>.

Embracing mediation is therefore key towards promoting climate justice for Sustainable Development.

### **3.0 Promoting the Right to FPIC in Climate Justice through Mediation**

FPIC has been described as a fundamental right of self-determination that ensures participation by all people with a particular focus on indigenous peoples and local communities in development projects in order to ensure that such projects are conducted in a sustainable manner taking into account their economic, social and cultural impact<sup>43</sup>. It has been argued that FPIC focuses on obtaining consent from indigenous peoples for any activities undertaken on their lands<sup>44</sup>. It provides that governments and private entities cannot implement a policy or programme on or concerning indigenous peoples' lands unless there is prior consultation and consent from the indigenous community<sup>45</sup>.

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<sup>39</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at <https://www.eli.org/environmental-governance/community-guideusing-alternative-dispute-resolution-secure-1> (Accessed on 22/07/2025)

<sup>40</sup> United Nations., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/default/files/document/files/2024/03/dppapracticenote-theimplicationsofclimatechangeformeditationandpeaceprocesses.pdf> (Accessed on 22/07/2025)

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Owen, J.R. and Kemp, D., "Free Prior and Informed Consent', Social Complexity and the Mining Industry: Establishing A Knowledge Base," *Resources Policy*, Vol.41 (2014): 91-100

<sup>44</sup> What is Free, Prior and Informed Consent (FPIC)?., Available at <https://www.ihrb.org/resources/what-is-free-prior-and-informed-consent-fpic> (Accessed on 22/07/2025)

<sup>45</sup> Ibid

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According to the United Nations, FPIC allows indigenous peoples to give or withhold consent to a project that may affect them or their territories<sup>46</sup>. Further, once indigenous peoples have given their consent, FPIC allows them to withdraw it at any stage<sup>47</sup>. In addition, FPIC enables vulnerable groups including indigenous peoples to negotiate the conditions under which a project will be designed, implemented, monitored and evaluated<sup>48</sup>. It has been argued that FPIC is a key approach towards protecting the rights (human, environmental, land and customary) of all affected communities, especially the most vulnerable ones<sup>49</sup>.

In order to promote the right to FPIC, it has been argued that *free* implies that the consent of indigenous peoples is obtained without coercion, intimidation or manipulation<sup>50</sup>. *Prior* implies that consent is to be obtained sufficiently in advance of any authorization or commencement of development activities and respect is shown to time requirements of indigenous peoples' consultation/consensus processes<sup>51</sup>. *Informed* on the other hand implies that information is provided that covers a range of aspects, including the nature, size, scope, purpose, location, duration and environmental, economic, cultural and social impacts of the project (Emphasis added)<sup>52</sup>.

Promoting the right to FPIC is key towards achieving climate justice. For example, indigenous peoples and local communities are highly vulnerable and disproportionately affected by climate change and its impacts. It has been argued that indigenous peoples

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<sup>46</sup> United Nations., 'Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities – FAO' Available at <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/> (Accessed on 22/07/2025)

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Office of the United Nations High Commissioner for Human Rights., 'Consultation and Free, Prior and Informed Consent (FPIC)' Available at <https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic> (Accessed on 22/07/2025)

<sup>51</sup> Ibid

<sup>52</sup> Ibid

are among the first to face the direct consequences of climate change, due to their dependence upon, and close relationship, with the environment and natural resources<sup>53</sup>. According to the United Nations, climate change worsens the difficulties already faced by indigenous peoples including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment<sup>54</sup>. FPIC ensures the meaningful participation of indigenous peoples and local communities in climate action towards fostering equity and tackling inequalities<sup>55</sup>. Further, it has been argued that FPIC ensures that climate policies and projects uphold the human rights, cultural diversity, and the sovereignty of indigenous peoples and local communities<sup>56</sup>. Through FPIC, it is possible to obtain authentic and meaningful community engagement and involvement that is vital for the success and long-term viability of any project, especially those impacting indigenous peoples and local communities<sup>57</sup>.

FPIC is therefore an important tool for achieving climate justice. It ensures that climate action is equitable and respects the rights of indigenous peoples and local communities<sup>58</sup>. For instance, when climate mitigation and adaptation projects, such those involving renewable energy and carbon projects are planned without the consent of indigenous peoples, this can lead to displacement, loss of livelihoods, loss of cultural identity and further marginalization<sup>59</sup>. FPIC therefore empowers indigenous peoples and local communities to protect their rights and interests in the face of climate-related developments<sup>60</sup>.

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<sup>53</sup> United Nations., 'Climate Change' Available at <https://www.un.org/development/desa/indigenouspeoples/climate-change.html> (Accessed on 22/07/2025)

<sup>54</sup> Ibid

<sup>55</sup> Safeguards: The Importance of Robust Free, Prior, and Informed Consent (FPIC) For Climate Justice., Available at <https://nature4justice.earth/safeguards-the-importance-of-robust-free-prior-and-informed-consent-fpic-for-climate-justice/> (Accessed on 22/07/2025)

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> How Does FPIC Relate to Climate Justice?., Available at <https://energy.sustainability-directory.com/question/how-does-fpic-relate-to-climate-justice/> (Accessed on 22/07/2025)

<sup>59</sup> Ibid

<sup>60</sup> Ibid

Mediation is suitable in promoting FPIC towards climate justice. For example, harnessing mediation is key towards engaging with indigenous peoples and local communities to reach shared agreement and allowing people to have a meaningful voice in deliberative decision-making processes related to their own development<sup>61</sup>. It has been argued that mediation can ensure that FPIC is obtained before development projects, such as those involving renewable energy, are implemented therefore minimising the likelihood of disputes and fostering climate justice<sup>62</sup>. Mediation is suitable in enhancing the participation of indigenous peoples and local communities in climate action including energy and carbon projects therefore granting investors a ‘*social licence to operate*’ (Emphasis added)<sup>63</sup>. It has been argued that implementing a project without the participation of indigenous peoples and local communities can lead to operational delays, disputes, financial costs and litigation, project closure, violence and loss of life<sup>64</sup>. Further, mediation is also suitable in managing climate change disputes involving investors and local communities ensuring inclusivity and collaboration in decision making processes and fostering the right of local communities and indigenous peoples to FPIC<sup>65</sup>.

Utilising mediation is therefore key towards promoting FPIC in climate justice.

#### **4.0 Conclusion**

Climate change is having disproportionate impacts on vulnerable individuals and groups including indigenous peoples and local communities. Fostering climate justice is therefore crucial in protecting human rights and ensuring equity, non-discrimination, equal participation, transparency, fairness, accountability and access to justice towards

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<sup>61</sup> Buxton. A., & Wilson. E., ‘FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects’ Available at <https://www.iied.org/16530iied> (Accessed on 22/07/2025)

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> United Nations., ‘Free Prior and Informed Consent – An Indigenous Peoples’ right and a good practice for local communities – FAO’ Op Cit

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effective climate action<sup>66</sup>. Mediation is suitable in enhancing climate justice by creating opportunities for dialogue, negotiation and collaboration around shared understanding and responses on climate change<sup>67</sup>. It can also ensure access to justice in climate matters thus promoting climate justice<sup>68</sup>. Embracing mediation can enhance FPIC in climate justice by ensuring the meaningful involvement of indigenous peoples and local communities in climate action and providing a suitable platform for access to justice in climate change disputes<sup>69</sup>. Promoting the right to FPIC in climate justice through mediation is therefore possible. It is vital to widely embrace mediation and involve indigenous peoples and local communities in mediation process towards upholding the right to FPIC for climate justice and Sustainable Development.

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<sup>66</sup> United Nations Environment Programme., 'UN Resolution Billed as a Turning Point in Climate Justice' Op Cit

<sup>67</sup> United Nations., 'Climate Change and Mediation' Op Cit

<sup>68</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Op Cit

<sup>69</sup> Ibid

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<https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic>

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