

Defining and Strengthening the Role of Lawyers in Climate Change Conflicts

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Abstract

In the wake of the worsening climate crisis, responding to climate change has become a matter of urgent global, regional, national, and local priority. Sustainable Development Goal 13 under the United Nations 2030 Agenda for Sustainable Development calls upon all countries to take urgent action towards combating climate change and its impacts. While confronting climate change, it is also imperative to address the nexus between climate change and conflicts. In addition to its adverse environmental, social, and economic effects, climate change is also fueling conflicts at all levels. Effective management of climate change conflicts is a key measure towards strengthening climate action and delivering climate justice. This paper critically explores the role of lawyers in climate change conflicts. The paper argues that lawyers are crucial agents in the effective management of climate change conflicts towards climate justice. The paper discusses the nature, causes, and effects of climate change conflicts. In addition, the paper highlights the opportunities and challenges for lawyers in climate change conflicts. It also proposes measures towards defining and strengthening the role of lawyers in climate change conflicts.

1.0 Introduction

The climate crisis is worsening with every person, in every country in every continent being impacted in some shape or form by climate change¹. According to the United Nations Environment Programme (UNEP), the world is in a climate emergency². UNEP points out that unless greenhouse gas emissions fall dramatically, global warming could pass 2.9°C this century, a situation that will have catastrophic consequences for life on

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¹ United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Available at <https://www.un.org/sustainabledevelopment/climate-change/> (Accessed on 06/09/2024)

² United Nations Environment Programme., 'Climate Action' Available at <https://www.unep.org/topics/climate-action> (Accessed on 06/09/2024)

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the planet³. With rising greenhouse gas emissions, climate change is occurring at rates much faster than anticipated⁴. Its impacts can be devastating and include extreme and changing weather patterns and rising sea levels⁵. The climate crisis is disrupting national economies and affecting lives and livelihoods, especially for the most vulnerable⁶. Climate change is a major global challenge that is affecting both developed and developing countries in their efforts towards realization of the Sustainable Development agenda⁷.

Responding to climate change has therefore become a matter of urgent global, regional, national, and local priority. According to the United Nations, if the climate crisis is left unchecked, it will undo a lot of the development progress made over the past years⁸. It further notes that if climate change is not addressed, it will also provoke mass migrations that will lead to instability and wars⁹. The United Nations *2030 Agenda for Sustainable Development*¹⁰ acknowledges that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve Sustainable Development. Sustainable Development Goal 13 under the Agenda calls upon all countries to take urgent action towards combating climate change and its impacts¹¹. Urgent and transformative action and policies that cover entire economies, foster climate-resilient development, while outlining a clear path to achieve net-zero emissions are therefore needed to confront climate change¹².

³ Ibid

⁴ United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

⁵ Ibid

⁶ Ibid

⁷ Muigua. K., 'Achieving Sustainable Development, Peace and Environmental Security.' Glenwood Publishers Limited, 2021

⁸ United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

⁹ Ibid

¹⁰ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 06/09/2024)

¹¹ Ibid

¹² United Nations., 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts' Op Cit

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It has been pointed out that while responding to climate change, it is imperative to address the nexus between climate change and conflicts¹³. In addition to its adverse environmental, social, and economic effects, climate change is also fueling conflicts at all levels¹⁴. Effective management of climate change conflicts has been identified as a key measure towards strengthening climate action and delivering climate justice¹⁵.

This paper critically explores the role of lawyers in climate change conflicts. The paper argues that lawyers are crucial agents in the effective management of climate change conflicts towards climate justice. The paper discusses the nature, causes, and effects of climate change conflicts. In addition, the paper highlights the opportunities and challenges for lawyers in climate change conflicts. It also proposes measures towards defining and strengthening the role of lawyers in climate change conflicts.

2.0 Climate Change and Conflicts

Climate change is fueling and contributing to increased conflict¹⁶. It has been noted that the environmental effects of climate change, especially the depletion of natural resources creates conditions that increase the risk of violent conflict¹⁷. For example, impacts such as rising temperatures, more severe and frequent extreme weather events such as droughts and extreme flooding, and erratic rainfall patterns cause or worsen volatile food prices, affect livelihoods, and result in large-scale displacement therefore posing the risk of

¹³ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf (Accessed on 06/09/2024)

¹⁴ Ibid

¹⁵ United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Available at <https://www.unep.org/news-andstories/pressrelease/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (Accessed on 06/09/2024)

¹⁶ United Nations Climate Change., 'Conflict and Climate' Available at <https://unfccc.int/news/conflict-and-climate> (Accessed on 07/09/2024)

¹⁷ International Institute for Sustainable Development., 'Climate change and conflict: Lessons from Community Conservancies in Northern Kenya' Available at https://www.iisd.org/system/files/publications/climate_change_conflict_kenya.pdf (Accessed on 07/09/2024)

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conflicts¹⁸. The environmental impacts of climate change including water scarcity, crop failure, food insecurity, migration, and displacement of populations increase the risk of conflict and violence¹⁹.

Climate change has been identified as a threat multiplier that is already increasing food insecurity, water scarcity and resource competition, while disrupting livelihoods and spurring migration²⁰. The effects of climate change are particularly destabilizing in already fragile and disadvantaged regions and communities, including least developed countries, small island developing states and dryland regions therefore increasing the likelihood of conflicts in such settings²¹. As the climate crisis intensifies in the coming years and decades in such settings, more people will be forced to leave their homes due to the impacts of climate change including desertification and rising sea levels²².

It has been noted that although climate change may not always be a direct cause of conflict, it can multiply and amplify existing risks to peace and development²³. For example, it can obstruct access to basic services including water, food, health and housing²⁴. Further, people who are already in vulnerable situations including those living in poverty or in situations of conflict may experience the impacts of climate change more acutely because they have less capacity for coping and fewer resources with which to

¹⁸ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNoteTheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 07/09/2024)

¹⁹ Froese. R., & Janpeter. S, 'The Nexus of Climate Change, Land Use, and Conflicts' (2019)

²⁰ International Crisis Group., 'Climate, Environment and Conflict' Available at <https://www.crisisgroup.org/future-conflict/climate-environment-and-conflict> (Accessed on 07/09/2024)

²¹ Grzybowski. A., & Hunnie. C., 'Mediating Peace with Climate Change' Available at <https://ecopeaceme.org/wp-content/uploads/2022/03/mediating-peace-with-climate-change.pdf> (Accessed on 07/09/2024)

²² United Nations Climate Change., 'Conflict and Climate' Op Cit

²³ United Nations Environment Programme., 'Climate Action Holds Key to Tackling Global Conflict' Available at <https://www.unep.org/news-and-stories/story/climate-action-holds-key-tackling-global-conflict> (Accessed on 07/09/2024)

²⁴ Ibid

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build climate resilience²⁵. It has been noted that people enduring conflict are among the most vulnerable to the climate and environmental crises – and they are also among those most neglected by climate action²⁶.

Climate change can therefore cause and contribute to conflict. Its impacts including extreme flooding, severe droughts, desertification, biodiversity loss and environmental degradation are displacing millions of people all over the world and intensifying competition over scarce natural resources²⁷. This in turn fuels conflict, violence, human right violations and threatens the effectiveness and sustainability of peacemaking efforts globally²⁸. Effective management of climate change conflicts is therefore crucial in strengthening the response towards climate change and delivering climate justice²⁹.

3.0 The Role of Lawyers in Climate Change Conflicts

Lawyers have been described as crucial agents in mitigating the climate crisis³⁰. It has been argued that in order to remain competitive in today's market, legal professionals should leverage the influence they have in society through lobbying, litigation, and legislation in order to accelerate the green transition towards combating climate change³¹.

Lawyers can play a vital role in mitigating climate change conflicts by strengthening environmental rule of law³². The idea of environmental rule of law integrates

²⁵ Ibid

²⁶ International Committee of the Red Cross., 'Climate and Conflict' Available at <https://www.icrc.org/en/law-and-policy/climate-and-conflict> (Accessed on 07/09/2024)

²⁷ Climate Diplomacy., 'Four Climate Frontiers: How Mediators can Make Peace and Help Protect the Planet' Available at <https://climate-diplomacy.org/magazine/conflict/four-climate-frontiers-howmediators-can-make-peace-and-help-protect-planet> (Accessed on 07/09/2024)

²⁸ Ibid

²⁹ United Nations Environment Programme., 'Climate Litigation More than Doubles in Five Years, now a Key Tool in Delivering Climate Justice' Op Cit

³⁰ Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Available at https://www.legal500.com/global_green_guide/the-role-of-lawyers-in-the-green-transition-six-ways-of-making-a-positive-impact/ (Accessed on 08/09/2024)

³¹ Ibid

³² 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Available at <https://www.bestlawyers.com/article/tackle-climate-change-environmental-law/5346> (Accessed on 08/09/2024)

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environmental needs with the essential elements of the rule of law, and provides the basis for improving environmental governance on issues such as climate change³³. Environmental rule of law highlights environmental sustainability by connecting it with fundamental rights and obligations³⁴. According to UNEP, environmental rule of law implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations³⁵. Environmental rule of law therefore seeks to apply the tenets of the rule of law to environmental governance. It has been argued that laws and their implementation are the essential link between policies aimed at reaching the goals of the Sustainable Development agenda and the actual realization of that agenda³⁶. There is a growing awareness that sustainability and Environmental and Social Governance (ESG) are not only a matter of good practice, but the subject of binding and enforceable regulations³⁷.

Environmental rule of law is therefore central to achieving the goals of the Sustainable Development agenda including confronting climate change³⁸. Lawyers can play a pivotal role in addressing climate change conflicts by using environmental law as a tool to advocate for stronger laws and regulations, holding polluters accountable and promoting sustainable practices³⁹. They can also utilize environmental rule of law in addressing the impacts of climate change including conflicts by driving climate friendly policies⁴⁰. Lawyers have the necessary knowledge and power to influence policy and legislative changes by actively engaging in advocacy and lobbying to shape environmental and

³³ United Nations Environment Programme., 'Environmental Rule of Law' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0> (Accessed on 08/09/2024)

³⁴ Ibid

³⁵ Ibid

³⁶ Stephens. C., 'An Evolving Role for Law and Lawyers in Development' Available at <https://blogs.worldbank.org/en/voices/evolving-role-law-and-lawyers-development> (Accessed on 08/09/2024)

³⁷ Ibid

³⁸ United Nations Environment Programme., 'Environmental Rule of Law' Op Cit

³⁹ 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Op Cit

⁴⁰ Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

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climate-related regulations⁴¹. Effective laws, regulations and justice systems based on the rule of law are key in confronting the effects of climate change by providing a basis for protecting environmental rights, increasing institutional capacity to enhance resilience to the effects of climate change, and empowering local communities to know and claim their rights⁴². Lawyers should therefore utilize environmental rule of law as a tool to address the impacts of climate change including conflicts.

Lawyers also have a key role to play in climate change conflicts by enhancing access to climate justice⁴³. The concept of climate justice acknowledges the unequal historical responsibility that countries and communities bear in relation to the climate crisis⁴⁴. Climate justice acknowledges that some nations and communities which due to an unfortunate mixture of economic and geographic vulnerability, continue to shoulder the brunt of the burdens of climate change despite their relative innocence in causing it⁴⁵. It has been noted that the people most vulnerable to the effects of climate change are those who already experience systematic exclusion and marginalization, and will be disproportionately affected⁴⁶. For example, people living in least-developed countries, fragile and conflict affected contexts are the most exposed, due to a combination of geographic factors, economic systems reliant on climate threatened sectors including agriculture and pastoralism, and limited institutional capacity to address climate risks⁴⁷.

⁴¹ Ibid

⁴² International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Available at https://www.idlo.int/sites/default/files/pdfs/publications/climate_justice_policy_paper_-_climate_action_-_final.pdf (Accessed on 08/09/2024)

⁴³ United Nations Development Programme., 'UNDP Launches "Climate Justice" Training for Young Lawyers' Available at <https://www.undp.org/turkiye/press-releases/undp-launches-climate-justicetraining-young-lawyers> (Accessed on 08/09/2024)

⁴⁴ United Nations Development Programme., 'Climate change is a Matter of Justice - Here's Why' Available at <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> (Accessed on 08/09/2024)

⁴⁵ Giles. M., 'The Principles of Climate Justice at CoP27.' Available at <https://earth.org/principles-ofclimatejustice/#:~:text=That%20response%20should%20be%20based,the%20consequences%20of%20climate%20change> (Accessed on 08/09/2024)

⁴⁶ International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

⁴⁷ Ibid

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In addition, women and girls, youth and children, the elderly, indigenous peoples, climate migrants and other excluded and marginalized communities bear the brunt of the impacts of climate justice⁴⁸. Lawyers have a key role to play in delivering Climate Justice to the vulnerable.

Achieving Climate Justice means putting equity and human rights at the core of decision-making and action on climate change⁴⁹. This entails linking human rights and development to tackle pre-existing vulnerabilities and inequalities contributing to and worsened by climate change⁵⁰; prioritizing the rights of the most climate-vulnerable to ensure that no one is left behind⁵¹; investing in people-centered laws and institutions⁵²; building effective justice systems that can resolve climate-related disputes, while protecting the environmental rights of people and communities⁵³; and ensuring fair and inclusive climate decision-making⁵⁴.

Lawyers can enhance Climate Justice by ensuring access to justice in climate related conflicts in order to protect the rights of the most vulnerable⁵⁵. Climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture and development, and the right to a clean, healthy, and sustainable environment especially for those in vulnerable situations⁵⁶. Lawyers can represent clients including those in vulnerable situations in litigation related to environmental damage, pollution, and breaches of environmental

⁴⁸ Ibid

⁴⁹ United Nations Development Programme., 'Climate change is a Matter of Justice – Here's Why' Op Cit

⁵⁰ International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Muigua. K., 'Promoting Climate Litigation in Kenya for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Promoting-Climate-litigation-in-Kenya-forSustainability-Kariuki-Muigua-August-2023.pdf> (Accessed on 08/09/2024)

⁵⁶ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and Climate Change' Available at <https://www.ohchr.org/en/climate-change> (Accessed on 08/09/2024)

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regulation, among others towards achieving Climate Justice⁵⁷. Climate litigation has been identified as a frontier solution to change the dynamics of the fight against climate change⁵⁸. It has been noted that children and youth, women's groups, local communities, and indigenous peoples, among others, are taking a prominent role in bringing cases to courts and driving climate change governance reform in more and more countries around the world⁵⁹. Lawyers are therefore important in ensuring access to justice for these groups. Lawyers can also foster Climate Justice and help in protecting the rights of individuals and communities that are threatened by climate change by inducing governments and companies to adopt more climate-friendly policies and practices through lobbying and advocacy⁶⁰.

In addition, lawyers can foster Climate Justice by utilizing Alternative Dispute Resolution (ADR) processes to address climate change conflicts⁶¹. ADR processes including arbitration and mediation are ideal in managing climate change conflicts and delivering Climate Justice⁶². The advantages of ADR processes in climate change conflicts include allowing parties to select a third party with requisite knowledge and experience in climate change matters, providing a platform for collaborative problem -solving approaches, enhancing the participation of all stakeholders especially in mediation, and ensuring a neutral forum for managing cross border climate change conflicts⁶³. As a result, it has been pointed out that ADR mechanisms are suitable in managing environmental and sustainability conflicts and disputes such as those concerning access

⁵⁷ Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

⁵⁸ United Nations Environment Programme., 'Global Climate Litigation Report: 2023 Status Review' Available at <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review> (Accessed on 08/09/2024)

⁵⁹ Ibid

⁶⁰United Nations Development Programme., 'UNDP Launches "Climate Justice" Training for Young Lawyers' Op Cit

⁶¹ Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 08/09/2024)

⁶² Muigua. K., 'Utilizing Alternative Dispute Resolution in Climate Change Disputes' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Utilizing-Alternative-Dispute-Resolution-in-Climate-Change-Disputes.pdf> (Accessed on 09/08/2024)

⁶³ Ibid

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to natural resources including land and water, renewable energy, carbon reduction, waste management, electrification, sustainable transport and infrastructure among others⁶⁴. Lawyers should therefore advise their clients to embrace ADR for effective management of climate change conflicts while also representing them in arbitration and mediation proceedings.

Lawyers are therefore vital for effective management of climate change conflicts towards climate justice. It is therefore necessary to strengthen the role of lawyers in climate change conflicts.

4.0 Conclusion

Climate change is causing and worsening conflicts⁶⁵. These conflicts affect appropriate climate action while also contributing to inequalities within and among nations especially for most vulnerable including the youth, women, the elderly, persons with disabilities, and indigenous peoples⁶⁶. Effective management of climate change conflicts is therefore necessary in order to strengthen the response towards climate change and achieve climate justice⁶⁷.

Lawyers are important in addressing climate change conflicts. Lawyers hold immense influence in the society which can be leveraged through lobbying, litigation, and legislation in order to accelerate the green transition towards combating climate change⁶⁸. In order to strengthen their role in climate change conflicts, lawyers should continue shaping environmental rule of law and utilizing it as a tool to address the impacts of climate change including conflicts⁶⁹. They should enhance access to climate justice by

⁶⁴ United Nations Department of Political and Peacebuilding Affairs., 'The Implications of Climate Change for Mediation and Peace Processes' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/DPPAPracticeNoteTheImplicationsofClimateChangeforMediationandPeaceProcesses.pdf> (Accessed on 08/09/2024)

⁶⁵ United Nations Climate Change., 'Conflict and Climate' Op Cit

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

⁶⁹ 9 Ways Lawyers are Addressing Climate Change through Environmental Law., Op Cit

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utilizing avenues such as litigation and ADR to uphold the rights of those in vulnerable situations⁷⁰.

Lawyers can also contribute to climate change mitigation efforts by providing legal advice to clients on climate change compliance and disclosure requirements in order to avoid worsening the climate change crisis and minimize disputes⁷¹. Further, they can help in structuring sustainable contracts that incorporate climate clauses that promote eco-friendly operations in order to minimize potential conflicts especially those involving private developers and local communities⁷². Further, in addition to structuring sustainable contracts that enhance climate change mitigation, it has been pointed out that lawyers can go a step further and choose to assist clients who are working towards decarbonisation and increased sustainability instead of those who work against it⁷³. There is also need to adopt sustainable practices in the legal profession to order to reduce its carbon footprint⁷⁴. It is also necessary to foster continuous professional development, education, and training in climate change matters in order to strengthen the role of lawyers in climate change conflicts⁷⁵.

Effective management of climate change conflicts is therefore key in tackling climate change delivering climate justice. The role of lawyers in climate change conflicts should therefore be defined and strengthened in order to make them agents of Climate Justice.

⁷⁰ International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' Op Cit

⁷¹ Sainani. M., 'The Role of Lawyers in the Green Transition: Six Ways of Making a Positive Impact' Op Cit

⁷² Ibid

⁷³ Ibid

⁷⁴ International Bar Association., 'How the Climate Crisis is Changing the Legal Profession' Available at <https://www.ibanet.org/How-the-climate-crisis-is-changing-the-legal-profession> (Accessed on 08/09/2024)

⁷⁵ Muigua. K., 'Re-imagining the Role of Lawyers in Climate Justice' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Re-imagining-the-Role-of-Lawyers-in-Climate-Justice-Kariuki-Muigua-20th-July-2023.pdf> (Accessed on 08/09/2024)

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