

# **Fostering Climate Justice for Sustainable Development**

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**Kariuki Muigua**

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## Fostering Climate Justice for Sustainable Development

**Kariuki Muigua\***

### **Abstract**

*The paper explores the concept of Climate Justice. It highlights and discusses some of the justice concerns arising from the effects of climate change. The paper further examines global, regional and national efforts towards fostering Climate Justice. It also considers the challenges affecting the attainment of Climate Justice and proposes measures towards fostering Climate Justice for Sustainable Development.*

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## 1.0 Introduction

Climate change is the defining global development challenge of our time, with significant implications for the achievement of the 2030 Agenda for Sustainable Development<sup>1</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>2</sup>. The consequences of climate change such as intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity are being witnessed across the world<sup>3</sup>. Climate change can affect human health, food security, housing, safety and work<sup>4</sup>. Further, conditions like sea-level rise and saltwater intrusion have advanced to the point where whole communities have had to relocate, and protracted droughts are putting people at risk of famine<sup>5</sup>. It is expected that the number of climate change refugees across the globe will continue to rise due to the effects of climate change<sup>6</sup>.

Climate change impacts the attainment of the Sustainable Development agenda<sup>7</sup>. It affects the availability of basic necessities like freshwater, food, and energy, while efforts to redress climate change, both through adaptation and mitigation similarly inform and shape the global development agenda<sup>8</sup>. It has also been observed that climate change results in food insecurity, water scarcity, depletion of natural resources, displacement of

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<sup>1</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Available at <https://www.idlo.int/publications/climate-justice-rule-law-approach-transformative-climate-action> (Accessed on 29/07/2023)

<sup>2</sup> United Nations Framework Convention on Climate Change (United Nations, 1992), Article 1 (2), Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 28/07/2023)

<sup>3</sup> United Nations., 'What is Climate Change?' Available at <https://www.un.org/en/climatechange/what-is-climate-change> (Accessed on 28/07/2023)

<sup>4</sup> Ibid

<sup>5</sup> European Commission., 'Consequences of Climate Change.' Available at [https://climate.ec.europa.eu/climate-change/consequences-climate-change\\_en](https://climate.ec.europa.eu/climate-change/consequences-climate-change_en) (Accessed on 28/07/2023)

<sup>6</sup> Ibid

<sup>7</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Op Cit

<sup>8</sup> United Nations Sustainable Development Goals., 'Climate Change.' Available at <https://sustainabledevelopment.un.org/topics/climatechange> (Accessed on 28/07/2023)

people, health hazards, social inequity and unemployment thus hindering the attainment of Sustainable Development<sup>9</sup>.

The global threat of climate change has led to concerted efforts through various legal instruments geared towards mitigating and adapting to its effects. *The United Nations Framework Convention on Climate Change* (UNFCCC) 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>10</sup>. The *Paris Agreement* is aimed at strengthening the global response to the threat of climate change towards Sustainable Development<sup>11</sup>. It seeks to achieve this goal through measures such as holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change and increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production<sup>12</sup>. Further, the *United Nations 2030 Agenda for Sustainable Development*<sup>13</sup> urges the global community to take urgent action to combat climate change and its impacts 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

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<sup>9</sup> Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

<sup>10</sup> United Nations Framework Convention on Climate Change., Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 28/07/2023)

<sup>11</sup> United Nations Framework Convention on Climate Change., 'Paris Agreement.' Available at [https://unfccc.int/sites/default/files/resource/parisagreement\\_publication.pdf](https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf) (Accessed on 28/07/2023)

<sup>12</sup> Ibid

<sup>13</sup> United Nations., 'Transforming Our World: The 2030 Agenda for Sustainable Development.' Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 28/07/2023)

early warning<sup>14</sup>. In Kenya, the *Climate Change Act*<sup>15</sup> is an Act of Parliament that provides a regulatory framework for enhanced response to climate change and sets out mechanisms and measures to enhance climate change resilience and low carbon climate development for the Sustainable Development of Kenya<sup>16</sup>.

However, despite these global and national efforts to respond to the threat of climate change, the effects of climate change continue to persist resulting in justice concerns<sup>17</sup>. It has been observed that some people and communities are more vulnerable to climate impacts, such as people living in small island nations and developing countries<sup>18</sup>. Further, the communities that have contributed the least to climate change are the ones that are the most affected by its impacts<sup>19</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>20</sup>.

The paper explores the concept of Climate Justice. It highlights and discusses some of the justice concerns arising from the effects of climate change. The paper further examines global, regional and national efforts towards fostering Climate Justice. It also considers the challenges affecting the attainment of Climate Justice and proposes measures towards fostering Climate Justice for Sustainable Development.

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<sup>14</sup> Ibid, Sustainable Development goal 13

<sup>15</sup> Climate Change Act, No. 11 of 2016, Laws of Kenya

<sup>16</sup> Ibid

<sup>17</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Op Cit

<sup>18</sup> United Nations., 'What is Climate Change?' Op Cit

<sup>19</sup> Sultana. F., 'Critical Climate Justice' Available at

<https://www.farhanasultana.com/wpcontent/uploads/Sultana-Critical-climate-justice.pdf> (Accessed on 28/07/2023)

<sup>20</sup> Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' WIREs Clim Change 2014

## 2.0 Defining Climate Justice

It has been pointed out that climate change has had uneven and unequal burdens across the globe with nations and communities that contribute the least to climate change suffering the most from its consequences<sup>21</sup>. Recently, Pakistan which contributes less than 1 % of global greenhouse gases which lead to climate change suffered extreme flooding which resulted in the deaths of over 1,700 people, destroyed around 2 million homes, and swept away almost half the country's cropland<sup>22</sup>. There is a general consensus in the scientific community that the flooding was made worse by climate change since global warming makes air and sea temperatures rise resulting in more evaporation taking place thus increasing the intensity of rainfall<sup>23</sup>. The melting of glaciers in the country's northern region, again due to the increase in global temperatures, compounded the problem by releasing even more water and debris into the floods<sup>24</sup>. Further, it has been observed that the Horn of Africa, a region with very little contribution to the climate change problem, is facing a severe drought following the worst performing rains in 73 years and five successive failed rainy seasons<sup>25</sup>. Further, it has been pointed out that the frequency and severity of the drought is likely to increase affecting more than 36 million people due to food insecurity, with women and girls disproportionately affected by the direct and indirect impacts of the drought<sup>26</sup>. Further, small island nations in the Caribbean and Pacific islands such as Vanuatu and the Solomon Islands have suffered from severe impacts of climate change cyclone that killed residents, displaced thousands and

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

<sup>22</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Available at <https://earth.org/principles-of-climatejustice/#:~:text=That%20response%20should%20be%20based,the%20consequences%20of%20climate%20change>. (Accessed on 28/07/2023)

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> United Nations Development Programme., 'Can Groundwater act as a Catalyst for Sustainable Development in Africa's borderlands?' Available at [https://www.undp.org/africa/africa-borderlands-centre/blog/can-groundwater-act-catalyst-sustainable-development-africasborderlands?gclid=EAlaIqobChMIpM6GnoGxgAMV1uZ3Ch0bkAPOEAMYAyAAEgLKG\\_D\\_BwE](https://www.undp.org/africa/africa-borderlands-centre/blog/can-groundwater-act-catalyst-sustainable-development-africasborderlands?gclid=EAlaIqobChMIpM6GnoGxgAMV1uZ3Ch0bkAPOEAMYAyAAEgLKG_D_BwE) (Accessed on 28/07/2023)

<sup>26</sup> Ibid

damaged infrastructure<sup>27</sup>. Despite their little contribution to climate change, sea level rise, increasing temperatures and frequency and intensity of tropical cyclones, and storm surges are some of the climate change impacts facing island nations, some of which are in low-lying areas of just 5 meters above sea level at the highest point making them more vulnerable to these impacts<sup>28</sup>.

It is thus evident that the climate change has adverse impacts especially on nations and communities that contribute the least to its threat. The concept of Climate Justice acknowledges this concern. It recognizes that some countries mainly the large industrialised economies of Europe and North America have benefitted much more from the industries and technologies that cause climate change than have developing nations in places such as Africa, Asia, the Caribbean Islands and the Pacific Islands 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 it<sup>29</sup>. It seeks to promote justice in climate related concerns. Climate justice links human rights and development 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>30</sup>. It entails understating climate change as an issue that relates to equity, fairness, ethics and human rights and not just an environmental phenomena<sup>31</sup>. Climate Justice is a framework that focuses on the intersection between climate change and social inequalities<sup>32</sup>. This is achieved by linking the effects of climate change to the notions of justice particularly environmental and social justice by

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<sup>27</sup> Bafana. B., 'Climate Change is No 'Future Scenario' for Pacific Island Nations; Climate Change is 'Real' Available at <https://reliefweb.int/report/world/climate-change-no-future-scenario-pacific-island-nations-climate-change-real> (Accessed on 28/07/2023)

<sup>28</sup> Ibid

<sup>29</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Op Cit

<sup>30</sup> Mary Robinson Foundation Climate Justice., 'Principles of Climate Justice.' Available at <https://www.mrfcj.org/principles-of-climate-justice/> (Accessed on 28/07/2023)

<sup>31</sup> United Nations Environment Programme., 'Climate Justice.' Available at <https://leap.unep.org/knowledge/glossary/climate-justice> (Accessed on 28/07/2023)

<sup>32</sup> Ibid

examining the concepts of equality and human rights within the lens of climate change<sup>33</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>34</sup>.

Climate Justice encapsulates various facets of justice including distributive justice, procedural justice and justice as recognition<sup>35</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>36</sup>. Climate Justice seeks to ensure the just distribution of the burdens and benefits of climate change among nations<sup>37</sup>. It further insists on redressing the imbalances caused by the effects of climate change by imposing what is sometimes referred to as a climate debt on those nations primarily responsible for causing climate change<sup>38</sup>. Procedural justice on the other hand is aimed at addressing distributive climate injustices by creating processes that are participatory, fair, inclusive and accessible<sup>39</sup>. Procedural justice requires that citizens be informed about and involved in decision-making on climate change matters<sup>40</sup>. 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>41</sup>. Climate Justice is thus a multidimensional idea that requires the various facets of justice to be recognized and upheld simultaneously<sup>42</sup>.

The idea of Climate justice is therefore significant for the entire world since it stands seeks to achieve an agenda that links the struggle for a prosperous, safe future for all with a

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<sup>33</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>34</sup> Ibid

<sup>35</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' *Alternative Law Journal* (47) 3 pp 199-203

<sup>36</sup> Ibid

<sup>37</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Op Cit

<sup>38</sup> Ibid

<sup>39</sup> Monica. T & Bronwyn. L., 'Community Lawyering and Climate Justice: A New Frontier.' Op Cit

<sup>40</sup> Ibid

<sup>41</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>42</sup> Ibid

fight against inequalities and exclusion<sup>43</sup>. It envisages linking human rights with development and climate action, having a people centred approach to climate action, understanding that not everyone has contributed to climate change in the same way and combatting injustices resulting from climate change social, gender, economic, intergenerational and environmental injustices<sup>44</sup>. It seeks to achieve equal access to natural resources, fair and effective solutions in response to climate change and the assigning of responsibility for those who contribute most to the global threat of climate change<sup>45</sup>. Climate Justice is thus guided by several principles including the protection and empowering of vulnerable individuals and communities, promoting public participation in decision making, fostering global collaboration in the response to climate change, achieving intergeneration equity in order to protect future generations from the effects of climate change and assigning of responsibility to nations that contribute most to global greenhouse gas emissions<sup>46</sup>. Climate Justice is thus vital in ensuring effective climate change mitigation and adaptation towards Sustainable Development.

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<sup>43</sup> Foundation for European Progressive Studies., 'United for Climate Justice.' Available at <https://fepe-europe.eu/wpcontent/uploads/downloads/publications/short%20united%20for%20climate%20justice%20-%204.pdf> (Accessed on 28/07/2023)

<sup>44</sup> UNICEF., 'What is Climate Justice? and What can we do Achieve it?' Available at <https://www.unicef.org/globalinsight/what-climate-justice-and-what-can-we-do-achieve-it#:~:text=Utilizing%20a%20climate%20justice%20approach,vulnerability%20to%20the%20climate%20crisis>. (Accessed on 28/07/2023)

<sup>45</sup> New Internationalist., 'Four Principles for Climate Justice.' Available at <https://newint.org/features/2009/01/01/principles-climate-justice> (Accessed on 28/07/2023)

<sup>46</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Op Cit

### 3.0 Fostering Climate Justice: Prospects and Challenges

Various attempts have been made towards fostering Climate Justice at the global, regional and national levels. The *Rio Declaration on Environment and Development*<sup>47</sup> encapsulates fundamental principles of Climate Justice. It enshrines the principles of access to information, participation in decision making and access to effective remedies in all environmental matters including those concerning climate change<sup>48</sup>. The Declaration is important in fostering Climate Justice at the global level. *The United Nations Framework Convention on Climate Change (UNFCCC)*<sup>49</sup> calls for *cooperation* and *participation* by all countries in combating climate change. 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>50</sup>. The UNFCC thus upholds the principles of *access to information* and *public participation* which are key elements of procedural justice in the climate justice debate. The *Paris Agreement*<sup>51</sup> also affirms the importance of public awareness, public participation, public access to information and cooperation at all levels in combating climate change<sup>52</sup>. In addition, the Paris Agreement recognizes the specific and special needs of developing countries which are most vulnerable to the adverse effects of climate change<sup>53</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>54</sup>. This is key towards promoting distributive justice in climate change matters.

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<sup>47</sup> Report of the United Nations Conference on Environment and Development., 'Rio Declaration on Environment and Development.' A/CONF.151/26 (Vol. I),

<sup>48</sup> Ibid, Principle 10

<sup>49</sup> 'United Nations Framework Convention on Climate Change.' Op Cit

<sup>50</sup> Ibid, Article 6 (a)

<sup>51</sup> 'Paris Agreement', Op Cit

<sup>52</sup> Ibid, Preamble

<sup>53</sup> Ibid

<sup>54</sup> Ibid, Article 2 (2)

At the regional level, the *Africa Union Agenda 2063*<sup>55</sup> 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<sup>56</sup>. Agenda 2063 is vital in fostering Climate Justice in Africa. In Kenya, the *Climate Change Act*<sup>57</sup> seeks to facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information<sup>58</sup>. The Act further seeks to mainstream the principle of Sustainable Development into the planning for and decision making on climate change response<sup>59</sup>. The Climate Change Act is integral in attaining Climate Justice in Kenya.

In addition to the above mentioned legal instruments, there have been various actions and decisions adopted by the global community and individual countries towards fostering Climate Justice. The United Nations Climate Change Conferences which serve as the formal meeting of the UNFCCC parties (Conference of the Parties i.e COP) have been vital in assessing global progress in responding to climate change<sup>60</sup>. At the COP 27 (Sharm El-Sheikh Climate Change Conference – 6 November-20 November 2022) held in Egypt, the UNFCCC agreed on several issues that are vital in enhancing Climate Justice<sup>61</sup>. These include establishing a dedicated fund to cater for loss and damage for vulnerable countries hit hard by floods, drought and other climate disasters; holding businesses and institutions accountable for actions which contribute to climate change; mobilizing more financial support for developing countries and implementation of climate change

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<sup>55</sup> African Union., 'Agenda 2063: The Africa We Want.' Available at [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) (Accessed on 28/07/2023)

<sup>56</sup> Ibid

<sup>57</sup> Climate Change Act, No. 11 of 2016, Laws of Kenya

<sup>58</sup> Ibid, S 3 (2) (h)

<sup>59</sup> Ibid, S 3 (2) (k)

<sup>60</sup> United Nations Framework Convention on Climate Change., 'Conference of the Parties (COP).' Available at <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> (Accessed on 28/07/2023)

<sup>61</sup> United Nations Framework Convention on Climate Change., 'Sharm El-Sheikh Climate Change Conference - November 2022.' Available at <https://unfccc.int/cop27> (Accessed on 28/07/2023)

mitigation and adaptation measures across the world<sup>62</sup>. Implementing the outcome of COP 27 will foster Climate Justice.

There has been an increase in climate change funding where developed countries, multilateral development banks and multilateral climate funds have provided funding to developing and underdeveloped countries to aid in their climate change mitigation and adaptation measures<sup>63</sup>. It has been asserted that financial resources and sound investments are needed to address climate change, to both reduce emissions, promote adaptation to the impacts that are already occurring, and to build resilience<sup>64</sup>. The World Bank which is the largest multilateral funder of climate investments in developing countries notes that climate finance is crucial in fostering Climate Justice through investments in programs that reduce or avoid greenhouse gas emissions such as clean technology, renewable energy and sustainable forestry<sup>65</sup>. Climate finance is thus essential in fostering Climate Justice by enhancing the capacity of vulnerable countries and communities to respond to the effects of climate change.

Finally, Climate Justice has also been promoted through climate change litigation. Climate change litigation entails filing of lawsuits pertaining the causes and consequences of climate change<sup>66</sup>. Through climate change litigation, courts and tribunals are able to adjudicate upon pertinent issues in climate change such mitigation and adaptation measures as well as climate change-related loss and damage<sup>67</sup>. It has been

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<sup>62</sup> Ibid

<sup>63</sup> Hong, H., 'Climate Finance.' *Review of Financial Studies*, Volume 33, No. 3, 2020

<sup>64</sup> United Nations., 'Financing Climate Action.' Available at <https://www.un.org/en/climatechange/raising-ambition/climate-finance> (Accessed on 28/07/2023)

<sup>65</sup> The World Bank., '3 Things You Need to Know About Climate Finance.' Available at <https://www.worldbank.org/en/topic/climatechange/brief/3-things-you-need-to-know-about-climate-finance> (Accessed on 28/07/2023)

<sup>66</sup> Setzer, J., 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance.' Available at [https://www.researchgate.net/profile/JoanaSetzer/publication/331499727\\_Climate\\_change\\_litigation\\_A\\_review\\_of\\_research\\_on\\_courts\\_and\\_litigants\\_in\\_climate\\_governance/links/5e89690d92851c2f527f820d/Climate-change-litigation-A-review-ofresearch-on-courts-and-litigants-in-climate-governance.pdf](https://www.researchgate.net/profile/JoanaSetzer/publication/331499727_Climate_change_litigation_A_review_of_research_on_courts_and_litigants_in_climate_governance/links/5e89690d92851c2f527f820d/Climate-change-litigation-A-review-ofresearch-on-courts-and-litigants-in-climate-governance.pdf) (Accessed on 28/07/2023)

<sup>67</sup> Ibid

used as a tool to enforce the principles of Climate Justice across the world such as public participation, access to information, access to justice and access to remedies<sup>68</sup>. Climate change litigation has consequently become a tool to enforce or enhance climate commitments by countries across the globe<sup>69</sup>. It can be used to foster Climate Justice by promoting its principles and holding countries accountable in respect of laws and policies on climate change<sup>70</sup>.

From the foregoing discussion, it is evident that there has been progress towards fostering Climate Justice across the world. However, despite these efforts, climate injustices are still prevalent. Geographical injustices are evident from the demonstrable fact that many of the countries least responsible for the current climate crisis are, nevertheless, those feeling its effects most acutely<sup>71</sup>. The studies have highlighted the example of countries of Pakistan, countries in the Horn of Africa, countries in the Caribbean and Pacific Islands among others<sup>72</sup>. Further, it has been pointed out that gender inequalities are evident in the climate change discourse with women often bearing the brunt of climate disasters since they depend more heavily on natural resources like water and firewood, meaning that if these items become scarce, they may need to travel further for them<sup>73</sup>. Further, gender inequalities within communities may leave women more vulnerable to the immediate aftermath of natural disasters occasioned by the effects of climate change, or excluded from the decision-making table when disaster risk reduction solutions and other climate change responses are designed and implemented<sup>74</sup>. Climate change has also resulted in other injustices such as economic

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<sup>68</sup> Setzer, J. & Higham, C., 'Global Trends in Climate Change Litigation: 2022 Snapshot' Available at <https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation2022-snapshot.pdf> (Accessed on 28/07/2023)

<sup>69</sup> Ibid

<sup>70</sup> Setzer, J., 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance.' Op Cit

<sup>71</sup> Concern Worldwide., '10 Climate Injustices and How to Fight Them.' Available at <https://www.concern.net/news/climate-injustices> (Accessed on 28/07/2023)

<sup>72</sup> Bafana, B., 'Climate Change is No 'Future Scenario' for Pacific Island Nations; Climate Change is 'Real' Op Cit

<sup>73</sup> Pearse, R., 'Gender and Climate Change.' *WIREs Climate Change*, 2016

<sup>74</sup> Ibid

inequalities, intergenerational injustices with future generations predicted to bear the most burden due to the effects of climate change, discrimination, environmental racism and displacement of people resulting in climate refugees<sup>75</sup>. There is need to address these problems in order to realize Climate Justice.

#### 4.0 Way Forward

In order to foster Climate Justice there is need to promote access to information and 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>76</sup>. Access to information and public participation are fundamental principles of Climate Justice and have been captured in various legal instruments on climate change<sup>77</sup>. Public participation is fundamental in climate change mitigation and adaptation since it enhances the capacity to cope with climate change risks and further ensures that decisions reflect local values<sup>78</sup>. It can also foster investment in people-centered laws and institutions to promote transformative climate action and adoption of customary, informal and indigenous approaches to protect biodiversity and promote sustainable use of natural resources<sup>79</sup>. Public participation should thus be embraced in order to realize Climate Justice.

There is also need to eliminate structural inequalities in climate action including gender and intragenerational inequalities<sup>80</sup>. It has been asserted that women often bear the brunt

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<sup>75</sup> Concern Worldwide., '10 Climate Injustices and How to Fight Them.' Op Cit

<sup>76</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 29/07/2023)

<sup>77</sup> See for example Principle 10 of the Rio Declaration; Article 6 (a) of the United Nations Framework Convention on Climate Change (UNFCCC); The Preamble to the Paris Agreement and , S 3 (2) (h) of the Climate Change Act, No. 11 of 2016 Laws of Kenya.

<sup>78</sup> Hugel. S., & Davies. A., 'Public Participation, Engagement, and Climate Change Adaptation: A Review of the Research Literature.' *WIREs Climate Change*, 2020

<sup>79</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Op Cit

<sup>80</sup> Ibid

of climate disasters since they depend more heavily on natural resources like water and firewood, meaning that if these items become scarce, they may need to travel farther for them<sup>81</sup>. However, women, youth and person with disabilities among other marginalized groups are often excluded from the decision-making table when disaster risk reduction solutions and other climate change responses are designed and implemented contributing to climate injustices<sup>82</sup>. Unequal participation in decision-making processes and labour markets by these groups compound inequalities and often prevent them from fully contributing to climate-related planning, policy-making and implementation<sup>83</sup>. Women can and do play a critical role in response to climate change due to their local knowledge of and leadership in areas such as sustainable resource management and leading sustainable practices at the household and community level<sup>84</sup>. It has also been asserted that the voice of the youth is pertinent in climate action since the younger generation, will suffer the consequences of climate change more greatly than their parents and grandparents<sup>85</sup>. In addition, people with disabilities may be severely affected by the effects of climate change due to the difficulty in accessing vital resources in case of food insecurity and water scarcity and difficulties in responding to emergencies in case of disasters associated with climate change such a floods<sup>86</sup>. It is thus imperative to foster the participation of women, youth, person with disabilities and other marginalized groups in climate action in order to realize Climate Justice.

It is also essential to increase funding to developing countries and regions of the world in order to enhance their ability to respond to the effects of climate change<sup>87</sup>. It has been

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<sup>81</sup> Pearse. R., 'Gender and Climate Change.' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> United Nations Framework Convention on Climate Change., 'Introduction to Gender and Climate Change.' Available at <https://unfccc.int/gender> (Accessed on 29/07/2023)

<sup>84</sup> Ibid

<sup>85</sup> United Nations Children's Fund., 'What is Climate Justice? And what can we do Achieve It?' Available at <https://www.unicef.org/globalinsight/what-climate-justice-and-what-can-we-do-achieve-it> (Accessed on 29/07/2023)

<sup>86</sup> Almomani. S., 'Climate Justice for People with Disabilities.' Available at <https://www.worldforgottenchildren.org/blog/climate-justice-for-people-with-disabilities/154> (Accessed on 29/07/2023)

<sup>87</sup> Hong. H., 'Climate Finance.' Op Cit

observed that developing countries in Africa, Asia, the Caribbean Islands and the Pacific Islands 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 it<sup>88</sup>. Consequently, these countries have suffered from catastrophic consequences of climate change including severe storms, tropical cyclones, flooding and drought resulting in loss of lives, destruction of property and vital infrastructure and food insecurity among others<sup>89</sup>. Due to their geographical vulnerability and low economic development, most of these countries are unable to effectively respond to the effects of climate change thus compounding the problem<sup>90</sup>. Therefore, it is imperative for developed countries and international financial institutions such as the World Bank to increase climate funding to these countries in order to enhance their climate resilience through measures such as investments in food security, clean technology, renewable energy and sustainable forestry<sup>91</sup>.

There is also need for developed countries which are the largest contributors to global greenhouse emissions to comply with their climate commitments under the Paris Agreement<sup>92</sup>. At the heart of the Paris Agreement are national pledges to contribute to global mitigation and adaptation goals<sup>93</sup>. The Paris Agreement sets out a mechanism under which each country produces a Nationally Determined Contribution (NDC), which must be submitted at a maximum of five-yearly intervals<sup>94</sup>. These NDCs are determined unilaterally and are expected to include targets for greenhouse gas emission reductions and adaptation<sup>95</sup>. Consequently, countries such as the United States of

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<sup>88</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Op Cit

<sup>89</sup> United Nations Development Programme., 'Can Groundwater act as a Catalyst for Sustainable Development in Africa's borderlands?' Op Cit

<sup>90</sup> Giles. M., 'The Principles of Climate Justice at CoP27.' Op Cit

<sup>91</sup> The World Bank., '3 Things You Need to Know About Climate Finance.' Op Cit

<sup>92</sup> Mace. M., 'Mitigation Commitments under the Paris Agreement and the Way Forward.' *Climate Law*, No. 6 of 2016, pp 21-39

<sup>93</sup> European Bank for Reconstruction and Development., 'The Paris Agreement.' Available at <https://www.ebrd.com/paris-agreement> (Accessed on 29/07/2023)

<sup>94</sup> Paris Agreement, Article 4

<sup>95</sup> Mace. M., 'Mitigation Commitments under the Paris Agreement and the Way Forward.' Op Cit

America (USA), which accounts for 12.74% of global greenhouse gas emissions have committed to reducing their net greenhouse gas emissions by 50-52 % below 2005 levels by the year 2030<sup>96</sup>. Further, China which accounts for 27.79% of global greenhouse gas emissions has set various targets under its NDC including having CO<sub>2</sub> emissions peak before 2030; achieving carbon neutrality before 2060 and lowering CO<sub>2</sub> emissions per unit of GDP by over 65% from the 2005 level<sup>97</sup>. It is important for developed countries to comply with their commitments under NDCs in order to foster Climate Justice.

Finally, it is vital to enhance climate litigation in order to realize Climate Justice. Climate litigation has become a tool to enforce or enhance climate commitments by countries across the globe<sup>98</sup>. It can be used to foster Climate Justice by promoting its principles such as public participation, access to information, access to justice and access to remedies and holding countries accountable in respect of laws and policies on climate change<sup>99</sup>. Climate litigation can also strengthen prospects for sustaining peace and stability by preventing and resolving climate-related disputes<sup>100</sup>. The public, environmental activists, Non-Governmental Organizations and members of the legal profession can foster Climate Justice through climate litigation<sup>101</sup>. Climate litigation should thus be embraced as a tool to promote Climate Justice.

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<sup>96</sup> United Nations Framework Convention on Climate Change., 'The United States of America Nationally Determined Contribution.' Available at <https://unfccc.int/sites/default/files/NDC/202206/United%20States%20NDC%20April%202021%202021%20Final.pdf> (Accessed on 29/07/2023)

<sup>97</sup> United Nations Framework Convention on Climate Change., 'China's Achievements, New Goals and New Measures for Nationally Determined Contributions.' Available at <https://unfccc.int/sites/default/files/NDC/202206/China%E2%80%99s%20Achievements%2C%20New%20Goals%20and%20New%20Measures%20for%20Nationally%20Determined%20Contributions.pdf> (Accessed on 29/07/2023)

<sup>98</sup> Setzer.J & Higham. C., 'Global Trends in Climate Change Litigation: 2022 Snapshot' Op Cit

<sup>99</sup> Setzer. J., 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance.' Op Cit

<sup>100</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Op Cit

<sup>101</sup> Muigua. K., 'Redefining the Role of Lawyers in Climate Justice.' Available at <http://kmco.co.ke/wp-content/uploads/2023/06/Redefining-the-Role-of-Lawyers-in-Climate-Justice-.pdf> (Accessed on 29/07/2023)

Through these measures, the idea of Climate Justice will be fostered.

## **5.0 Conclusion**

The effects of climate change and the ensuing mitigation and adaptation measures have resulted in justice concerns including economic inequalities, gender inequalities, inter and intra generational inequalities, discrimination, environmental racism and displacement of people resulting in climate refugees<sup>102</sup>. 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>103</sup>. It seeks to achieve the ideal of public participation, access to information, access to justice and access to remedies in climate action<sup>104</sup>. There have been efforts to foster Climate Justice through measures such as adoption of the principles of Climate Justice in laws and policies, climate funding and climate litigation<sup>105</sup>. However, in the wake of continued climate injustices, there is need to foster Climate Justice through promoting public participation and access to information, giving voice to women, youth and person with disabilities in climate action, increasing climate funding to developing countries, complying with NDCs especially for developed countries and enhancing climate litigation<sup>106</sup>. Through these measures, the ideal of Climate Justice will be fostered at the national, regional and global levels in the quest towards Sustainable Development.

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<sup>102</sup> Concern Worldwide., '10 Climate Injustices and How to Fight Them.' Op Cit

<sup>103</sup> Schlosberg. D & Collins. L., 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice.' Op Cit

<sup>104</sup> Sultana. F., 'Critical Climate Justice' Op Cit

<sup>105</sup> United Nations., 'Financing Climate Action.' Op Cit

<sup>106</sup> International Development Law Organization., 'Climate Justice: A Rule of Law Approach for Transformative Climate Action.' Op Cit

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