

**CRITICALLY EXAMINE AND DISCUSS THE UNIQUE CHALLENGES POSED BY CLIMATE CHANGE TO THIRD WORLD COUNTRIES, AS WELL HOW THE KENYAN LAW, INTERNATIONAL AND HUMAN RIGHTS LAW, POLICIES, AND PRACTICAL MEASURES COULD BETTER ADDRESS THESE CHALLENGES.**

Widespread improvements in the quality of life of many of the world's populations have gone hand-in-hand with increased demands on natural resources. The planet is struggling to keep up. Increases in the average global temperature, and the frequency of extreme weather events are transforming ecosystems around the world and threatening entire species of plants and animals. Forests are drying up because there is less rainfall and thus more fires, and the glaciers of both the North and South Poles are shrinking. The consequences of climate change affect all of us, but to react and adapt to these challenges, we must first understand them.<sup>1</sup>

Europe and the United States are mostly responsible for the current state of the atmosphere, having released more than 90 percent of the emissions that had accumulated in the atmosphere by the end of the 20th century. In recent decades, however, the rest of the world has begun to catch up. This is particularly true in the case of China, which is experiencing an unprecedented economic boom.<sup>2</sup>

CO<sub>2</sub> emissions are usually measured in terms of their production on the territory of individual states. However, this calculation does not give us a complete picture of who is truly responsible for their creation. International companies often employ cheap labor in developing countries where they process raw materials, with the resulting emissions being attributed to the place of assembly, though the products are produced for markets in richer countries, such as Europe or the USA - these countries thus "import" emissions created elsewhere. Typical "exporters" of emissions are China and Russia, while the USA, Western and Northern Europe, as well as a number of African countries are typical "importers" of emissions.

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<sup>1</sup> What is climate change – People in Need [https://climate.peopleinneed.net/climate-change?gclid=CjwKCAjwvvrOpBhBdEiWAR58-3DKmvomULkCVTbDSPkzAQJB7Rnguya4hVh1Dzzq2qR7GuGdJFTCLhoCw7sQAvD\\_BwE](https://climate.peopleinneed.net/climate-change?gclid=CjwKCAjwvvrOpBhBdEiWAR58-3DKmvomULkCVTbDSPkzAQJB7Rnguya4hVh1Dzzq2qR7GuGdJFTCLhoCw7sQAvD_BwE)

<sup>2</sup> What is climate change – People in Need [https://climate.peopleinneed.net/climate-change?gclid=CjwKCAjwvvrOpBhBdEiWAR58-3DKmvomULkCVTbDSPkzAQJB7Rnguya4hVh1Dzzq2qR7GuGdJFTCLhoCw7sQAvD\\_BwE](https://climate.peopleinneed.net/climate-change?gclid=CjwKCAjwvvrOpBhBdEiWAR58-3DKmvomULkCVTbDSPkzAQJB7Rnguya4hVh1Dzzq2qR7GuGdJFTCLhoCw7sQAvD_BwE)

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Many of the countries that bear the most responsibility for greenhouse gas emissions are the least vulnerable to their consequences. Developing countries, which generally have less capacity to react and adapt, are the first to feel the most severe effects of climate change. They deal with the consequences in both temporary and permanent ways, such as migration. Thus climate change is an increasingly important issue in relations between developing and developed countries.

First and foremost, third-world countries are the most susceptible to the impacts of climate change due to their high dependence on agriculture and natural resources. The changing climate leads to erratical rainfall patterns, prolonged droughts, and increased frequency of extreme weather events, all of which have a profound impact on food security. A report by the Intergovernmental Panel on Climate Change (IPCC) highlights that many developing nations in Africa and Asia are particularly vulnerable to these changes, as a significant portion of their populations rely on rain-fed agriculture.<sup>3</sup> This dependence makes them susceptible to crop failures and food shortages, further exacerbating poverty and malnutrition.

Lack of infrastructure and resources in third world countries hinders their ability to adapt to climate change. Many of these nations lack the financial resources and technology needed for climate-resilient infrastructure such as flood defenses, early warning systems, and clean energy alternatives. As a result, they often face significant challenges in mitigating and adapting to climate change. The United Nations Development Program (UNDP) points out that these countries face a substantial adaptation financing gap, with limited access to international climate funds.<sup>4</sup>

Climate change disproportionately affects vulnerable populations within these nations, including women, children, and marginalized communities. The impacts include reduced access to clean water and food, increased disease prevalence, and displacement due to extreme weather events. Research by World Bank indicates that climate change has a particularly adverse effect on the poorest households in developing countries, pushing them deeper into poverty.

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<sup>3</sup> The IPCC Report Will Have Profound Effects on Climate Governance <https://www.cigionline.org/articles/ipcc-report-will-have-profound-effects-climate-governance/>

<sup>4</sup> Vulnerable developing countries lead world on climate ambition: UN report | United Nations Development Programme <https://www.undp.org/press-releases/vulnerable-developing-countries-lead-world-climate-ambition-un-report>

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Another unique challenge is the threat of conflict and instability induced by climate change. Competition for dwindling resources such as water and arable land, can lead to tensions and even armed conflict. The United Nations Security Council acknowledges that climate induced displacement and resources scarcity can be significant drivers of instability in vulnerable regions. This is especially concerning in regions like sub-Saharan Africa, where countries often grapple with political fragility.

While third-world countries are among the least responsible for greenhouse gas emissions, they suffer the most from its consequences. These raises questions about climate justice and equity in international climate agreements. Developing countries argue that industrialized countries should take greater responsibility for mitigation and provide financial and technological support for adaptation in the Global South. The notion of “climate debt”, advocated by some scholars, suggests that developed nations owe reparations to developing nations for the historical emissions that have caused the current climate crisis.<sup>5</sup>

Kenyan law faces critical challenges in effectively addressing the issues posed by climate change. While there have been efforts to incorporate climate change considerations into the legal framework, several shortcomings persist.

**Inadequate Climate Legislation:** Kenyan law lacks comprehensive climate-specific legislation. While there are provisions related to the environment and natural resource management, a dedicated Climate Change Act is necessary. Such legislation can provide clear guidelines for climate mitigation and adaptation measures. The Climate Change Act 2016, acknowledges the need for climate action but requires more comprehensive provisions.<sup>6</sup>

**Weak Enforcement and Implementation:** Even when climate laws exist, their enforcement and implementation often fall short. Kenya needs to bolster the capacity of regulatory bodies, such as the National Environmental Management Authority (NEMA), to ensure that environmental regulations are strictly adhered to. This can be informed by examining the challenges and gaps in

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<sup>5</sup> Settling the Climate Debt by Clements, Gupta and Liu <https://www.imf.org/en/Publications/fandd/issues/2023/09/settling-the-climate-debt-clements-gupta-liu>

<sup>6</sup> Climate Change Act 2016

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the enforcement of environmental laws, as highlighted in reports by organizations like the African Climate Policy Centre.

**Lack of Climate Justice:** Climate change disproportionately affects marginalized and vulnerable communities in Kenya. The legal system must incorporate principles of climate justice, ensuring that those most affected have access to remedies and protection. Studying cases such as the Ogiek community's struggles for land rights and climate adaptation can provide insights into the need for a more equitable legal framework.

**Inadequate Land Use Planning:** Land use planning plays a crucial role in addressing climate change. However, in Kenya, land policies and planning are often misaligned with climate goals. Laws related to land tenure and use need to be reformed to encourage sustainable practices and resilient infrastructure. The National Climate Change Action Plan (2013-2017) can serve as a reference for aligning land use planning with climate objectives.<sup>7</sup>

**Energy Transition and Renewable Energy:** Kenya's energy sector remains heavily reliant on fossil fuels. Legal frameworks must promote a transition to renewable energy sources and encourage private investment in clean energy. This can be supported by analyzing the Energy Act and recommending amendments to incentivize renewable energy production.

**Water Resource Management:** The management of water resources is vital for climate adaptation. Current water laws need revisions to ensure equitable access, efficient use, and conservation.<sup>8</sup>

**International Agreements and Commitments:** Kenya is a signatory to international climate agreements like the Paris Agreement.<sup>9</sup> Aligning domestic laws with these global commitments is crucial. The country must continue to participate actively in international climate negotiations and incorporate their obligations into national legal frameworks.

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<sup>7</sup> Strengthening Adaptation and Resilience to Climate Change in Kenya Plus (Starck+) Programme -supporting the development and implementation of Kenya's National Climate Change Action Plan (NCCAP) - Kenya | ReliefWeb <https://reliefweb.int/report/kenya/strengthening-adaptation-and-resilience-climate-change-kenya-plus-starck-programme>

<sup>8</sup> Water Act 2016

<sup>9</sup> Paris Agreement

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**Public Awareness and Participation:** Engaging the public in climate action is essential. Legal provisions should be established to encourage public participation and awareness. The role of civil society and community-based organizations in driving climate initiatives can be explored using references from environmental NGOs like the Green Belt Movement in Kenya. By addressing these shortcomings, Kenya can more effectively address the challenges posed by climate change and work towards a sustainable and resilient future.

International and human rights law have made significant strides in addressing the challenges posed by climate change to third world countries, but there is room for improvement. First, it is essential to acknowledge that international and human rights law have recognized the intersection between climate change and human rights. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), among others, emphasize the right to a safe and healthy environment. The United Nations Human Rights Council has also issued resolutions linking climate change to human rights.

However, while these legal instruments provide a foundation, their practical enforcement remains problematic. International treaties such as the Paris Agreement aim to mitigate climate change, but they often lack the teeth to hold developed countries accountable for their historical emissions.<sup>10</sup> This results in an unequal distribution of the burden of climate change, disproportionately affecting third world countries. An enhancement to these agreements would involve mechanisms for enforcing emission reduction commitments and ensuring that those who have historically contributed to climate change bear a fair share of the responsibility.

Case law offers some insight into these challenges. The *Urgenda Foundation v. The State of the Netherlands*<sup>11</sup> case is a prime example. In this case, a Dutch court ruled that the government had a legal duty to reduce greenhouse gas emissions to protect the rights to life and a family life. This decision demonstrated the potential for human rights law to compel governments to take more ambitious climate action.

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<sup>10</sup> Paris Agreement

<sup>11</sup> *Urgenda Foundation v. State of the Netherlands*

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Furthermore, the Lhaviyani Atoll case in the Maldives serves as a compelling example of the immediate threats climate change poses to low-lying island nations. The Maldivian government filed a complaint against the UK, arguing that its emissions contributed to sea-level rise that endangered the Maldives. While the case was not successful, it underscored the need for a legal framework that could hold historically major emitters accountable.

To better address the challenges posed by climate change to third world countries, international and human rights law can take the following steps:

**Strengthen Accountability Mechanisms:** International climate agreements should establish clear enforcement mechanisms to ensure that countries meet their emissions reduction commitments. This would prevent the disproportionate impact of climate change on third world nations.

**Compensatory Mechanisms:** A global climate justice fund could be established to provide financial and technological assistance to third world countries to help them adapt to the impacts of climate change and transition to sustainable development.

**Incorporate Human Rights-Based Approaches:** Climate policies should be developed and implemented with a human rights-based approach, ensuring that the most vulnerable populations are protected and empowered.

**Dispute Resolution:** Establish an international tribunal dedicated to climate-related disputes. This would allow affected countries to seek legal remedies when their rights are violated due to climate change.

In conclusion, climate change poses significant challenges to third-world countries, including Kenya. To address these challenges, a combination of effective national policies, international cooperation, human rights principles, and community engagement is crucial. The legal framework must be strengthened, and resources allocated to address climate change's far-reaching impacts on vulnerable populations and ecosystems.