



Strathmore University

Law School

**THE MARGINALIZATION OF INDIGENOUS COMMUNITIES IN KENYA'S
CLIMATE LEGISLATION: LACK OF TAILORED MITIGATION AND ADAPTATION
STRATEGIES**

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Declaration

I, **ADWERA LOICE**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



Signed:

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This dissertation has been submitted for examination with my approval as University Supervisor.

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Abstract

Climate change remains an intersectional global challenge affecting socio economic structures across diverse communities. The asymmetrical distribution of its impacts intensifies pre existing inequalities, disproportionately affecting marginalized groups which possess limited adaptive capacity and mitigation resources. Indigenous communities bear the brunt of this vulnerability due to their direct dependence on natural resources and historical systemic marginalization. Despite their increased exposure to climate risks, they often possess fewer resources for adaptation and mitigation. Current legal frameworks exhibit significant limitations in addressing the distinctive requirements of these communities. While they acknowledge indigenous climate vulnerability in abstract terms, they lack nuanced mechanisms for operationalizing adaptation and mitigation strategies in line with indigenous community needs. This legislative inadequacy manifests most prominently in the absence of clear guidelines governing resource access and equitable benefit sharing arrangements. This policy gap undermines indigenous communities' resilience capacities while highlighting the need for fundamental reform in climate governance frameworks. The integration of scientific approaches with traditional ecological knowledge will establish innovative environmental management solutions while advancing climate justice through the recognition of indigenous rights and vulnerabilities.

List of Abbreviations

AFCHRC	African Court on Human and Peoples Rights
ACHR	African Commission on Human and People's Rights
ASALs	Arid and Semi-Arid Lands
CBD	Convention on Biological Diversity
DESA	Department on Economic and Social Affairs
EPA	Environmental Protection Agency
GCF	Green Climate Fund
IACmHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPCC	Intergovernmental Panel on Climate Change
NCCAP	National Climate Change Action Plan
NCCRS	National Climate Change Response Strategy
TEK	Traditional ecological knowledge
SLF	Sustainable Livelihoods Foundation
UNDP	United Nations Development Programme

List of Cases

African Commission on Human and Peoples' Rights v Kenya and Centre for Minority Rights Development, Minority Rights Group International and Centre on Housing Rights and Evictions (intervening on behalf of Endorois Welfare Council) v Kenya, ACHR - 006/2012, ACHR, 26 May 2017

Centre for Minority Rights Development and Minority Rights Group International and Centre on Housing Rights and Evictions (intervening on behalf of Endorois Welfare Council) v Kenya (judgement), ACHR - Comm 276/2003, ACHR, 1-25 November 2009

Kochale & 4 others v Lake Turkana Wind Power Ltd & 4 others (2022) eKLR

Mohamed Ali Baadi and Others v. Attorney General & 11 Others (2018) eKLR

Save Lamu & 5 Others v National Environment Management Authority (NEMA) & Another (2016) eKLR.

Saramaka People v Suriname (Interpretation of the judgement on preliminary objections, merits, reparations and costs), IACHR - Series C/185, IHR 3058 - 12 August 2008

List of Legal Instruments

African Charter on Human and Peoples Rights, 1981

Convention on Biological Diversity, 1992

Climate Change (Amendment) Act, 2023

Climate Change Act, 2016

Constitution of Kenya, 1963

Constitution of Kenya, 1969

Constitution of Kenya, 2010

Constitution of Kenya Review Act (No. 9 of 2008)

Environmental Management and Coordination Act, 14 January 2000

Indigenous and Tribal Peoples Convention (No. 169 of 1989)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Kenya National Adaptation Plan

Native Lands Trust Ordinance

National Climate Change Action Plan (NCCAP)

National Climate Change Response Strategy (NCCRS)

Paris Agreement, 2016

Rio Declaration, 1992

Stockholm Declaration, 1972

The East Africa Order in Council, 1902

United Nations Framework Convention on Climate Change (UNFCCC)

CHAPTER 1: INTRODUCTION

1.1 Background

Climate change fundamentally reshapes our ecosystems, posing an existential threat with far reaching implications on human well being.¹ It does not act in isolation but interacts with various stressors, creating a compounding effect that amplifies risks across multiple domains.² Increasingly recognized as a threat multiplier, it exacerbates existing vulnerabilities and intensifies socio economic and political challenges globally.³ Long term shifts in weather patterns have disparate and profound consequences for different communities and groups; some experiencing a wider range of impact than others.⁴ For instance, an estimated 370 million indigenous individuals, including the Endorois and Ogiek in Kenya, witness the erosion of their livelihoods due to increased frequency and intensity of extreme weather events.⁵

The Indigenous and Tribal Peoples Convention by the ILO defines indigenous peoples as individuals in independent countries who on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁶ Further, the United Nations Department on Economic and Social Affairs (DESA) defines indigenous peoples as inheritors and practitioners of unique cultures and ways of relating to people and the environment; who have retained social, cultural, economic and political

¹ Lindwall C, 'What Are the Effects of Climate Change?' Natural Resources Defense Council, October 2022—<https://www.nrdc.org/stories/what-are-effects-climate-change#weather> on 6 March 2024.

² Klare M, *All hell breaking loose: The pentagon's perspective on climate change*, First edition, Metropolitan Books, New York, 2019.

³ Klare M, *All hell breaking loose: The pentagon's perspective on climate change*, First edition, Metropolitan Books, New York, 2019.

⁴ United States Environmental Protection Agency, "Weather and Climate" *EPA.gov*.
<https://www.epa.gov/climate-indicators/weather-climate> on 6 March 2024.

⁵ 'Indigenous Peoples and Climate Change from Victims to Change Agents through Decent Work International Labour office, Geneva' (2017) -
https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf on 1 March 2024

⁶ International Labour Organization, *Indigenous and Tribal Peoples Convention*, 1989 (No. 169).

characteristics that are distinct from those of the dominant societies in which they live.⁷ Drawing from these definitions, it becomes clear that indigenous peoples are repeatedly marginalized from mainstream decision making processes. This exclusion not only threatens the preservation of their unique cultural identities but also perpetuates systemic disadvantages impeding their social, economic, and political development. The IPCC defines vulnerability as a system's susceptibility to adverse effects of climate change, including variability and extremes; depending on the magnitude and rate of climate variation, the system's sensitivity, and its adaptive capacity.⁸ As descendants of the original inhabitants of their regions prior to conquest or colonization, indigenous communities experience significant vulnerability due to their cultural heritage and deep connection to their land.⁹

As climate change unfolds, their traditional livelihoods based on hunting and gathering are threatened as many of these communities are forced to turn to agriculture for survival.¹⁰ The transition from their traditional practices alters their dietary habits, leading to increased health issues as a result of the decline in their original diet that includes fresh meat, wild fruits, and honey, to a reliance on starchy foods like potatoes and maize, as well as highly processed items.¹¹ Lacking the necessary skills and resources for this shift, they not only suffer health risks, but also potentially push into food insecurity.¹² Additionally, climate change induced displacements have influenced relocation from their traditional territories to various rural and urban settings.¹³ While migration may be an adaptation strategy, its impact to indigenous people causes higher vulnerability to including discrimination, cultural identity erosion, and exploitation. These communities face disproportionately severe social, economic, and environmental challenges in their destination locations as compared to other demographic groups, heightening their overall risk profile during migratory transitions.¹⁴ These communities therefore, have proven to bear a

⁷ Department of Economic and Social Affairs, Social Inclusion, United Nations.

⁸ Intergovernmental Panel on Climate Change, Third Assessment Report (TAR), 2001, 995.

⁹ Lindwall C, 'What Are the Effects of Climate Change?'

¹⁰ Kameri M, Nyukuri E, 'Climate change, law and indigenous peoples in Kenya' International Environmental Law Research Centre, 2013,1 - <https://www.ielrc.org/content/a1308.pdf> - on 6 March 2024.

¹¹ Kameri M and Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 5.

¹² Kameri M and Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 5.

¹³ Mcadam J, *Climate change, forced migration and international law*, 39.

¹⁴ Mcadam J, *Climate change, forced migration and international law*, 39.

disproportionate brunt of climate change effects insofar as their reliance and interdependence on natural resources and the environment.

Kenya's legal framework formally recognizes the rights of indigenous communities and the intrinsic relationship they maintain with their ancestral lands and natural resources.¹⁵ It emphasises the incorporation of indigenous knowledge into climate adaptation and mitigation strategies and advocates for the participation of these communities in climate related initiatives.¹⁶ However, this framework falls short in providing uniquely tailored adaptation and mitigation strategies for indigenous communities that ensure procedural clarity and clear guidelines for accessibility and benefits to these communities. These gaps not only perpetuate their systemic discrimination but also violate constitutional mandates that promote inclusiveness, equity, and social justice,¹⁷ ultimately hindering the realization of their socioeconomic and cultural rights.

1.2 Problem Statement

Despite the existence of legal frameworks in Kenya aimed at protecting indigenous communities, the climate policies implemented are insufficient in providing tailored mitigation and adaptation strategies that address their unique vulnerabilities. This inadequacy undermines their livelihoods and further marginalizes these communities in climate-related decision making processes. Enhancing land tenure security and fostering participatory governance are thus essential strategies for strengthening the resilience of Indigenous communities in the face of climate change.

1.3 Hypothesis

The inadequacy of mitigation and adaptation measures specifically designed to safeguard the rights of indigenous communities in Kenya, significantly exacerbates their vulnerability to the

¹⁵ Ministry of Environment and Natural Resources, Republic of Kenya, *Kenya National Adaptation Plan 2015-2030*, July 2016.

¹⁶ Section 13(5), Climate Change Act (2016).

¹⁷ Article 10, Constitution of Kenya (2010).

far reaching impacts of climate change, and in turn perpetuates the systemic cycle of climate injustices against these communities.

1.4 Research Questions

1. What is the legal framework governing the protection of indigenous communities in Kenya with respect to climate change mitigation and adaptation?
2. What are the inadequacies in the existing legal framework in providing tailored climate change adaptation and mitigation strategies for indigenous communities?
3. How do indigenous land tenure security and participatory governance strengthen indigenous communities in climate change mitigation and adaptation efforts?

1.5 Research Objectives

1. To analyse the existing legal framework governing the protection of indigenous communities in Kenya with respect to climate change mitigation and adaptation.
2. To evaluate the inadequacies of the existing legal framework in providing effective climate change mitigation and adaptation measures for indigenous communities.
3. To evaluate how indigenous land tenure security and participatory governance strengthen the efforts of indigenous communities in climate change mitigation and adaptation.

1.6 Justification of the study

As climate change intensifies socio economic problems faced by indigenous communities, the existing legal framework falls short in providing adequate mechanisms for resilience, perpetuating cycles of poverty and marginalisation. This inadequacy necessitates a critical examination of existing laws to identify how they fall short in addressing the unique vulnerabilities faced by these communities. By re-evaluating the effectiveness of Kenya's climate laws, we can better understand the urgent need for targeted mitigation and adaptation strategies for these communities.

The study will serve as a resource for future research aiding policymakers in reconceptualizing climate justice allowing them to develop more inclusive and effective policies that prioritise the rights and well being of indigenous communities in the face of climate change. The same will be particularly relevant to the evolving legal framework in Kenya, as the country incorporates better suited climate change resilience strategies into its domestic laws. Significantly, the study aims to directly benefit indigenous communities. The research will strengthen and empower their position in engagements with policymakers, allowing them to demand legal reforms that address their vulnerabilities. Its emphasis on climate justice and indigenous land tenure security will reaffirm their cultural identity, preserve their economic systems, and enhance their resilience in the face of climate change.

1.7 Theoretical framework

The research is grounded in two key theoretical perspectives: Climate justice and indigenous land tenure.

1.7.1 Climate justice theory

Climate justice places equity and human rights at the core of decision making and climate action.¹⁸ It advocates for the equitable distribution of climate change burdens and benefits.¹⁹ It does this by recognizing the disproportionate impacts of climate change on those who have contributed the least to its causes.²⁰ Vulnerability to climate change is particularly pronounced in regions with substantial developmental constraints, and thus these populations are highly susceptible to climatic hazards.²¹ The increased frequency of extreme weather events has resulted in heightened exposure to crises such as acute food insecurity and diminished water security for vulnerable groups.²² By analysing the nuances of unequal distribution of climate risks, this study

¹⁸ UNDP, Climate change is a matter of justice - here's why, June 2023, 1.

¹⁹ UNDP, Climate change is a matter of justice - here's why, June 2023, 1.

²⁰ UNDP, Climate change is a matter of justice - here's why, June 2023, 1.

²¹ IPCC, 'Synthesis Report of the IPCC Sixth Assessment Report (AR6) Summary for Policymakers' 2023, 6.

²² IPCC, 'Synthesis Report of the IPCC Sixth Assessment Report (AR6) Summary for Policymakers' 2023, 6.

aims to shed light on how indigenous communities are hindered in their ability to adapt and mitigate the impacts of climate change.

1.7.2 Indigenous land tenure theory

Indigenous land tenure theory, on the other hand, is rooted in the recognition of the rights of indigenous peoples to their ancestral lands and natural resources.²³ The core tenets of this theory argue for the right to self-identify, and to maintain their social, economic, and political systems, distinct language, culture, and beliefs.²⁴ Indigenous communities live on lands governed by customary tenure guiding internal division of property and access to resources.²⁵ They are typically framed as collective rights and are recognized by national governments as legitimate sources of authority.²⁶ The cultural, spiritual, and economic practices of indigenous communities are intertwined with their traditional lands, which they consider integral to their cultural heritage and overall socio-cultural well-being.²⁷ Their day to day existence is intricately linked to the land, as it serves as a vital source of sustenance, livelihood, and economic activities.²⁸ Their sustainable resource management practices, rooted in traditional knowledge, aim to ensure the long-term availability of these resources.²⁹ Indigenous land tenure and property rights are fundamental to accessing adequate housing, food security and livelihoods for indigenous peoples.³⁰ Securing access to these natural resources and formalizing indigenous land tenure rights is an essential foundation for vulnerable indigenous peoples to maintain their livelihoods in the face of climate change.

²³ Alcorn, *Tenure and Indigenous Peoples*.

²⁴ Alcorn, *Tenure and Indigenous Peoples*.

²⁵ Alcorn, *Tenure and Indigenous Peoples*.

²⁶ Alcorn, *Tenure and Indigenous Peoples*.

²⁷ Joseph B, 'First Nations' Relationship to the Land' May 2015, - <https://www.ictinc.ca/blog/first-nation-relationship-to-the-land> - on 6 March 2024.

²⁸ Joseph B, 'First Nations' Relationship to the Land.'

²⁹ Alcorn, *Tenure and Indigenous Peoples*.

³⁰ Joseph B, 'First Nations' Relationship to the Land.'

1.8 Literature Review

Kathryn Norton-Smith introduces three key frameworks that inform indigenous understandings of climate change impacts and adaptation. The first framework revolves around tribal sovereignty and self-determination, underscoring the importance of recognizing and respecting indigenous governance and decision-making authority in climate-related policies and initiatives.³¹ Indigenous peoples have historically exercised governance and decision-making authority over their ancestral lands, relying on their unique knowledge systems to sustain their cultures and environments for generations. Acknowledging tribal sovereignty involves recognizing indigenous communities as distinct political entities with the inherent right to govern their lands, resources, and affairs.³²

The second framework highlights culture and cultural identity, emphasising the significance of indigenous cultural values, practices, and knowledge systems in relation to climate change. The advent of climate change significantly disrupts these relationships, posing challenges to traditional livelihoods, ceremonies, and the intergenerational transmission of cultural knowledge.³³ Addressing vulnerabilities and promoting the resilience of indigenous communities requires confronting the underlying drivers of vulnerability and marginalisation they face. Historical injustices, colonisation, and ongoing socio-economic disparities have often left indigenous communities disproportionately impacted by climate change.³⁴ By addressing these systemic issues and promoting social justice, policies can create a more equitable and enabling environment for indigenous communities to adapt and thrive in the face of climate change.

The third framework introduced by Norton-Smith is indigenous community health indicators, which recognize that climate change impacts extend beyond the purely physical realm and

³¹ Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' United States Department of Agriculture, October 2018, 5 - https://www.cakex.org/sites/default/files/documents/pnw_gtr944.pdf - on March 1, 2024.

³² Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' 12

³³ Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' 34

³⁴ Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' 34.

encompass mental, emotional, and spiritual dimensions of health.³⁵ Disruptions to the natural environment, such as the loss of traditional territories, changes in ecosystems, and the depletion of natural resources, can lead to stress, anxiety, grief, and a sense of loss among indigenous communities. Integrating indigenous community health indicators into climate change assessments and interventions involves developing culturally appropriate and context-specific tools and methodologies.³⁶ She argues that they should capture the interplay between physical, mental, emotional, and spiritual dimensions of health within the specific cultural and environmental contexts of indigenous communities.

Expanding on this analysis, Rachael Baird contributes to the discussion by emphasising the disproportionate effects of climate change on indigenous peoples. She argues that climate change amplifies pre existing disparities and exacerbates the challenges faced by marginalised communities.³⁷ Highlighting the plight of Colombia's Nasa and Cauca communities, she argues that adverse impacts of climate change, such as the escalation of extreme weather events like hurricanes, droughts, and floods, pose immediate threats to their lives, livelihoods, and physical infrastructure.³⁸ Baird underscores the role of discrimination and disadvantage in compounding the suffering of marginalised communities. She draws an illustration of areas such as Karamoja in Uganda which encounter systemic barriers and marginalisation at various stages, including post disaster recovery and in the formulation of policies at local, national, and international levels for climate change adaptation and mitigation.³⁹ Their concerns are often overlooked, hindering their access to resources, support networks, and decision-making processes. Additionally, she goes ahead to critique the predominant focus of mainstream climate change research and policies on economic sectors and physical infrastructure, neglecting the specific needs and vulnerabilities of marginalised communities.⁴⁰

³⁵ Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' 19

³⁶ Norton-Smith K, 'Climate change and indigenous peoples: A synthesis of current impacts and experiences' 62.

³⁷ Baird R, 'The impact of climate change on minority and indigenous peoples', April 2008, 2
[-https://minorityrights.org/app/uploads/2024/01/download-524-the-impact-of-climate-change-on-minorities-and-indigenous-peoples.pdf](https://minorityrights.org/app/uploads/2024/01/download-524-the-impact-of-climate-change-on-minorities-and-indigenous-peoples.pdf) - on March 1 2024.

³⁸ Baird R, 'The impact of climate change on minority and indigenous peoples', 5.

³⁹ Baird R, 'The impact of climate change on minority and indigenous peoples', 3.

⁴⁰ Baird R, 'The impact of climate change on minority and indigenous peoples', 4.

Kameri Mbote and Elvin Nyukuri go further to present an analysis of the vulnerability of indigenous communities in Kenya, with a specific focus on the Maasai and Ogiek communities. The authors argue that indigenous peoples' ability to respond to climate change is influenced by a complex interplay of various factors, including cultural identity, livelihood practices, sense of place and belonging, security, visions for the future, and aspects of governance.⁴¹ These factors are deeply rooted in the historical struggles of indigenous communities to sustain their livelihoods in the face of rapidly changing ecological, economic, and political contexts.

The authors draw attention to the limited understanding and recognition of the adequacy of laws and policies in addressing the vulnerability of indigenous peoples to climate change in Kenya. While vulnerability assessments in the country have predominantly focused on the biophysical and economic impacts of climate change, there remains a significant gap in acknowledging the rights of indigenous peoples within the legal framework.⁴² They argue that there is a lack of explicit recognition of the rights and entitlements of indigenous peoples, their cultural distinctiveness and prior territorial occupancy. Kenyan law and policy uses terms such as "indigenous," "minority," and "marginalised" interchangeably, but fails to address the specific vulnerabilities faced by these communities as indigenous peoples.⁴³ Despite the cultural distinctiveness and prior territorial occupancy of the Maasai and Ogiek communities, their claims to indigeneity are not adequately recognized. As a result, specific interventions on climate change in Kenya fall short of addressing the vulnerabilities faced by indigenous peoples, necessitating the formulation of targeted and context specific measures that account for their distinct livelihoods, cultural practices, and governance systems.⁴⁴ This lack of recognition undermines their ability to protect their livelihoods, cultures, and territories.

Existing literature emphasizes the vulnerability of indigenous peoples to climate change and critiques the inadequacies of current legal frameworks in addressing context specific needs. It

⁴¹ Kameri M, Nyukuri E, 'Climate change, law and indigenous peoples in Kenya' International Environmental Law Research Centre, 2013,1 - <https://www.ielrc.org/content/a1308.pdf> - on 6 March 2024.

⁴²Kameri M, Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 14.

⁴³Kameri M, Nyukuri E, 'Climate change, law and indigenous peoples in Kenya',5-12.

⁴⁴ Kameri M, Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 23.

highlights the necessity of recognizing indigenous rights, cultural values, and governance systems, alongside the integration of indigenous knowledge into decision-making. In furthering this discussion, this study specifically analyses the ambiguity surrounding proposed tailored mitigation and adaptation strategies, which has hindered their effectiveness in sufficiently addressing the unique vulnerabilities of indigenous communities to the impacts of climate change.

1.9 Research Methodology

The study will predominantly rely on qualitative and doctrinal research methodologies. The primary focus will be on conducting an extensive analysis of relevant legislation, case law, international agreements, and policies concerning indigenous rights and climate change. This will involve a thorough examination of primary legal sources to understand the legal frameworks in place and their implications for indigenous communities. Additionally, secondary sources such as scholarly articles, reports, and expert commentaries will be consulted to gather diverse perspectives and insights. Factual information from reputable news outlets will supplement the analysis, providing a current and real-world context. By utilising these research methods and sources, the study aims to provide a comprehensive understanding of the existing legal landscape, identify gaps and challenges, and propose recommendations for enhancing the legal protection of indigenous communities against climate change vulnerabilities.

1.10 Limitations of the study

A notable limitation of this study is the scarcity of diverse literature specifically addressing the identified problem within the Kenyan context. The existing body of literature predominantly consists of broader case studies and research conducted abroad or targeting Africa as a whole, limiting the applicability of findings to the unique challenges and dynamics faced by indigenous communities in Kenya. Moreover, the literature within the Kenyan context is relatively limited in scope and depth. It primarily focuses on certain indigenous groups, potentially neglecting the experiences and perspectives of other marginalised indigenous communities within the Kenyan

sphere. Despite these limitations, every effort will be made to critically analyse and consolidate the available literature, supplemented with any relevant local studies or reports, to ensure a comprehensive examination of the research topic. Additionally, direct data collection through interviews or surveys will be considered to address the gaps in existing literature and provide a more nuanced understanding of the problem within the Kenyan context.

1.11 Chapter breakdown

Chapter one will provide an introduction to the research topic, offering a comprehensive background to the study that clearly outlines the statement of the problem, hypothesis, research questions, methodology, and the significance of the study.

Chapter two will provide a comprehensive analysis of the existing legal framework in Kenya in regard to climate change adaptation and mitigation mechanisms tailored for indigenous communities. It will achieve this by assessing how the current law addresses the unique needs and rights of these communities in the face of climate change challenges.

Chapter three will critically evaluate the inadequacies of Kenya's climate law reforms in providing effective mitigation and adaptation mechanisms tailored to the unique vulnerabilities of indigenous communities..

Chapter four will conclude the study and propose two legal reforms aimed at ensuring sufficient climate change mitigation and adaptation mechanisms for indigenous communities: enhancing tenure security and promoting participatory governance.

CHAPTER 2: THE STATUS QUO OF CLIMATE LAWS FOR INDIGENOUS COMMUNITIES IN KENYA

2.1 Introduction

This chapter aims to provide a comprehensive analysis of the existing legal framework in Kenya concerning climate change adaptation and mitigation mechanisms specifically designed for indigenous communities. It will achieve this by evaluating how Kenyan laws through history to the present have addressed the unique needs and rights of these communities in the context of climate change.

Initially, the chapter will explore the role of the Constitution in recognizing the vulnerabilities and rights of indigenous peoples through an evolutionary framework. As the grundnorm, it influences the legal landscape for indigenous communities by establishing a foundational legal context that shapes their rights in climate legislation. Secondly, it will present an overview of climate legislation in Kenya that seeks to implement effective mitigation and adaptation strategies for indigenous communities. Through this analysis, the chapter will develop a nuanced understanding of how existing climate laws have been structured, if at all, to respond to the specific vulnerabilities faced by indigenous communities

2.2 Constitutional recognition of indigenous rights in Kenya

Kenya operates under a legal system that recognizes the constitution as the supreme law⁴⁵ while allowing customary laws,⁴⁶ international laws⁴⁷ and national legislation and policies to coexist in alignment with constitutional principles.⁴⁸

Kenya's constitutional history has profoundly influenced its contemporary legal landscape, necessitating its brief analysis before delving into an examination of existing climate laws. The

⁴⁵ Article 2(1), Constitution of Kenya (2010).

⁴⁶ Article 2(4), Constitution of Kenya (2010).

⁴⁷ Article 2(6), Constitution of Kenya (2010).

⁴⁸ Article 94, Constitution of Kenya (2010).

interplay between socio political and economic colonial legacies and post-independence reforms, has established lasting consequences that directly influence the current status of climate law as it affects indigenous communities.⁴⁹ Rightly so, scholars have asserted that: “Overall colonial legacies have cast their shadows over the emergent African state system to a degree unique among the major world regions.”⁵⁰

2.2.1 Colonial administration

Colonial rule significantly disrupted traditional governance systems and separated indigenous populations from their ancestral lands, favoring European settlers and altering the socio economic fabric of indigenous communities.⁵¹ The 1902 East African Order in Council was a critical turning point in Kenya's governance, establishing centralized British control and displacing indigenous leadership structures.⁵² This restructuring marginalized indigenous knowledge and customary laws that had long governed community interactions by dismantling the existing systems of local governance and setting colonial rulers to replace indigenous leaders.⁵³

The legal marginalization of indigenous peoples deepened through various colonial laws that prioritized settler interests, such as the Native Lands Trust Ordinance, which increased the restriction of access to their land and resources.⁵⁴ Additionally, indigenous communities were often excluded from formal judicial processes, limiting their access to justice and reinforcing the existing systemic marginalization.⁵⁵ The introduction of British laws created a cultural disconnect and left indigenous peoples vulnerable to exploitation and disenfranchisement in the interest of British capitalist accumulation.⁵⁶

⁴⁹ Ndege PO, ‘Colonialism and its Legacies in Kenya’ African Philanthropy issue, 2009, 3.

⁵⁰ Young C, *The African Colonial State in Comparative Perspective*, Yale University Press, New Haven, 1997, 28.

⁵¹ Ndege PO, ‘Colonialism and its Legacies in Kenya’ African Philanthropy issue, 2009, 5.

⁵² The East Africa Order in Council (1902).

⁵³ Ndege PO, ‘Colonialism and its Legacies in Kenya’ African Philanthropy issue, 2009, 5.

⁵⁴ *The Official Gazette of the Colony and Protectorate of Kenya*, Vol. LI-No. 11, March 15, 1949.

⁵⁵ Boender, N. ‘Exile in Late-Colonial Kenya: Inventing a System of Permanent Exclusion’, *Museum of British Colonialism*, August 7, 2023.

⁵⁶ Mamdani M, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press, New Jersey, 1996, 16.

2.2.2 Post colonial administration

The 1963 independence constitution, based on the Lancaster House model used for former British colonies, retained many aspects of colonial governance that continued to disenfranchise indigenous communities.⁵⁷ This lack of acknowledgment intensified the vulnerability of these communities to policies that did not adequately address their unique needs. By focusing primarily on Trust Land managed by county councils and relegating other land issues to ordinary legislation, the constitution left indigenous communities open to land grabbing and displacement.⁵⁸ The absence of strong constitutional protections allowed for the exploitation of their resources, including the natural environment further eroding indigenous rights.

2.3 **Indigenous rights protection in the current climate legislation**

2.3.1 International law

In line with article 56a of Kenya's constitution, the *UNFCCC* highlights the importance of public participation in climate governance.⁵⁹ This provision underscores the necessity of preserving traditional ecological knowledge by offering a platform for marginalized communities to advocate for their rights and needs, ensuring that their perspectives and insights inform climate change related policies and actions.

Additionally, the *Paris Agreement* highlights climate change as a common concern for humankind⁶⁰ and emphasizes the need to respect and promote obligations concerning the rights of indigenous peoples, local communities, and other vulnerable groups.⁶¹ This framework recognizes the rights of indigenous communities within broader social justice considerations as particularly vulnerable to the effects of climate change. It further reinforces the recognition of

⁵⁷ Maxon M R, *Kenya's Independence Constitution: Constitution-Making and End of Empire*, Fairleigh Dickinson University Press, New Jersey, 2011, 75.

⁵⁸ Ajulu R, 'Kenyatta and the Making of an Authoritarian State' *Post colonial Kenya: The rise of an authoritarian and predatory state*, Routledge, Oxfordshire, 2023.

⁵⁹ Article 6, UNFCCC (1992).

⁶⁰ Preamble, Paris Agreement (2015).

⁶¹ Article 7, Paris Agreement (2015).

vulnerable communities by explicitly stating that adaptation actions should consider vulnerable groups, communities, and ecosystems, integrating the best available science alongside traditional knowledge and indigenous perspectives.⁶² In this context, Article 12 mandates that parties collaborate to enhance climate change education, training, public awareness, public participation, and access to information; facilitating the meaningful engagement of indigenous communities in climate governance processes.

The preamble of the *Convention on Biological Diversity (CBD)* highlights traditional dependence of indigenous communities on biological resources and emphasizes the importance of equitably sharing benefits derived from traditional knowledge and practices. Article 8(j) explicitly mandates that Parties respect, preserve, and maintain the knowledge, innovations, and practices of indigenous communities. This provision emphasizes the necessity of including these communities in decision-making processes related to biodiversity conservation. Furthermore, Article 10(c) encourages the protection of customary practices concerning biological resources that align with conservation and sustainable use requirements. This provision supports the rights of indigenous peoples to manage their resources, facilitating their adaptation to climate impacts through culturally relevant practices. Article 17(2) emphasizes the importance of exchanging information related to biodiversity conservation, including indigenous and traditional knowledge. This provision highlights the value of integrating indigenous insights with modern scientific approaches, reinforcing the capacity of indigenous communities to engage meaningfully in climate strategies. Article 18(4) reinforces the rights established above by promoting the development and application of technologies, including those rooted in indigenous traditions, to achieve the objectives of the Convention. It advocates for collaborative efforts in training and knowledge exchange, empowering indigenous communities by enhancing their capacities to address climate change challenges.

Principle 10 of the *Rio Declaration* emphasizes that environmental issues are best managed with the participation of all concerned citizens at relevant levels, ensuring that individuals have access

⁶² Article 7, Paris Agreement (2015).

to information held by public authorities and the opportunity to engage in decision-making processes. It mandates that states facilitate public awareness and participation, providing effective access to judicial and administrative proceedings. This informs Principle 22, which asserts that indigenous peoples and their communities, along with other local communities, play a vital role in environmental management and development due to their knowledge and traditional practices. Consequently, states should recognize and support their identity, culture, and interests, enabling their effective participation in achieving sustainable development.

Principle 19 of the *Stockholm Declaration* emphasizes the critical need for education in environmental matters, particularly for underprivileged groups, to cultivate informed and responsible stewardship of natural resources. For indigenous communities, access to education on climate change empowers them to advocate effectively for policies that reflect their unique perspectives and needs, allowing for adaptation of traditional practices to contemporary climate challenges.

Despite Kenya's non-ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the African Commission on Human and Peoples' Rights has nevertheless established significant jurisprudence through its ruling on the Ogiek case. The Commission explicitly invoked UNDRIP principles, affirming indigenous peoples' inherent right to determine and develop their own development priorities and strategies.⁶³ This judicial interpretation operates within the framework of Article 22 of the African Charter, which enshrines collective rights to social, economic, and cultural development as fundamental entitlements of all peoples within member states.⁶⁴ Of particular significance is the Commission's recognition that indigenous communities possess not only the right to active participation in developing and determining health, housing, and socioeconomic programs affecting their interests, but also, where feasible, the right to administer such programs through their own institutional mechanisms.⁶⁵ This judicial acknowledgment constitutes a crucial foundation for indigenous

⁶³ Article 23, United Nations Declaration on the Rights of Indigenous Peoples, 2007.

⁶⁴ Article 22, African Charter on Human and Peoples' Rights, 198.,

⁶⁵ African Commission on Human and Peoples' Rights v Kenya and Centre for Minority Rights Development et al, ACmHPR Comm (006/2012), 2017, 63.

climate resilience, as it legitimizes culturally appropriate governance structures through which these communities can address climate-related challenges while maintaining the integrity of their traditional knowledge systems and cultural practices.

2.3.2 National law

2.3.2.1 The 2010 Constitution

The progressive 2010 Constitution is a fundamental instrument in the legal recognition and protection of indigenous communities in the context of climate change. It establishes a framework that implicitly acknowledges the intrinsic relationship between these communities and their ancestral resources; creating a legal basis for tailored mitigation and adaptation strategies for these communities.

The constitution articulates a profound commitment to recognizing and respecting Kenya's diverse ethnic, cultural, and religious tapestry.⁶⁶ For indigenous communities whose identities are intricately linked to their lands and natural resources, this recognition is vital. Article 260 of the Constitution goes further to define a “marginalized community” as one that has been unable to fully participate in the social and economic life of the country due to a small population. It recognizes traditional communities that preserve their unique cultural identities by opting out of broader integration, as well as indigenous communities with traditional hunter-gatherer lifestyles. This definition further includes pastoral communities, both nomadic and settled, that face marginalization due to geographic isolation.⁶⁷ This articulates a moral and legal imperative to protect the rights of these communities, allowing their recognition and acknowledgement in national discourse.

In this regard, the constitution through Article 10, provides for national values that are binding in the enactment of any laws or public policy decisions. These are: Human dignity, equity, social

⁶⁶ Preamble, Constitution of Kenya (2010).

⁶⁷ Article 260, Constitution of Kenya (2010).

justice, inclusiveness, equality, human rights, non-discrimination⁶⁸ and protection of the marginalised.⁶⁹ These values as highlighted underscore the recognition of a shared humanity, as it calls for proactive efforts against discrimination and promotes equity.

Article 56(a) mandates affirmative action programmes to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life. This is a clear demonstration of the intentions of the country to deal with the concerns of minority and marginalized groups by recognizing the rights of minorities such as indigenous communities to participate in governance and access resources, establishing an avenue for these communities to engage in decision making processes. This is coupled with Article 27 (4) which prohibits discrimination on the basis of ethnic or social origin, religion, conscience, belief, culture, dress or language and 27(6) which provides for legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Article 100 promotes the representation of marginalized communities in Parliament, ensuring that diverse voices are included in the legislative process.

Additionally, Article 204 establishes an equalization fund designed to provide essential services to marginalized areas, addressing historical disparities and promoting equitable development.

Articles 7 and 44(2) articulate the rights of cultural and linguistic communities to preserve their culture and language, underscoring the significance of cultural diversity and heritage in national identity.

Further reinforcing these protections, Article 69 mandates the state to protect and enhance indigenous knowledge of biodiversity and the genetic resources of the community. This provision acknowledges the role of indigenous knowledge in biodiversity conservation, advocating for the integration of traditional ecological practices into national environmental

⁶⁸ Article 27 (4), Constitution of Kenya (2010).

⁶⁹ Article 10, Constitution of Kenya (2010).

strategies. It recognizes indigenous knowledge as a legitimate form of expertise, necessitating its contribution to effective regulatory frameworks for climate change adaptation and mitigation.

Article 42 establishes the right to a clean and healthy environment. A provision of importance to indigenous peoples who rely on ecological integrity for their cultural practices and livelihoods. It creates an obligation on the state to protect these communities from environmental degradation. Notably, a broader discussion argues that a clean and healthy environment in respect to indigenous communities, not only constitutes an environment that allows the flourishing of the physical human life, but also conditions that foster an understanding of the environment as a living entity; with which indigenous peoples have a reciprocal relationship.⁷⁰

2.3.2.2 National Climate Change Response Strategy

The NCCRS acknowledges that climate change exacerbates existing vulnerabilities, particularly in the Arid and Semi-Arid Lands (ASALs), which encompass more than 80 percent of the country.⁷¹ This section of the country is inhabited by pastoralists and hunter-gatherer communities such as the Endois and the Ogiek respectively.⁷² In Kenya, the communities that identify with the indigenous movement are mainly pastoralists and hunter-gatherers, as well as some fisher peoples and small farming communities.⁷³ The constitution reinforces the same by defining marginalized communities as "pastoral persons and communities, whether nomadic or settled, that have experienced only marginal participation in the integrated social and economic life of Kenya due to their relative geographical isolation."⁷⁴

⁷⁰ Joseph B, 'First Nations' Relationship to the Land' May 2015, - <https://www.ictinc.ca/blog/first-nation-relationship-to-the-land> - on 6 March 2024.

⁷¹ Republic of Kenya, *National Climate Change Response Strategy*, 2010.

⁷² 'Kenya' *Indigenous Navigator*, [https://indigenousnavigator.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20\(Boni\)](https://indigenousnavigator.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20(Boni)) on 16 December 2024.

⁷³ 'Kenya' *Indigenous Navigator*, [https://indigenousnavigator.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20\(Boni\)](https://indigenousnavigator.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20(Boni)) on 16 December 2024.

⁷⁴ Article 260, Constitution of Kenya (2010).

2.3.2.3 National Climate Change Adaptation Plan

Additionally, the NCCAP recognizes the importance of increasing climate resilience among vulnerable groups such as marginalised communities, and seeks to integrate climate change considerations into national policies.⁷⁵ The plan outlines actions to reach these communities such as, social protection systems and establishment of County Climate Change Funds - financial mechanisms established at the county level to finance a range of adaptation and mitigation projects.⁷⁶ The action works to ensure that disasters are curtailed, do not result in emergencies, and build the capacity of people to cope with the impacts of climate change. Capacity building is recognized for all stakeholders including: Women, youth, persons with disabilities, and marginalised and minority communities.⁷⁷

2.3.2.4 The Climate Change Act

The Climate Change Act requires that the Cabinet Secretary considers indigenous knowledge related to climate change adaptation and mitigation when formulating the NCCAP.⁷⁸ It further mandates that all levels of government and persons involved in climate change decision making must consider the values and principles of governance⁷⁹ and public service⁸⁰ as outlined in the constitution.

The Act mandates the inclusion of a representative of marginalized communities with knowledge and experience in indigenous knowledge on the *National Climate Change Council*.⁸¹ This provision acknowledges the value of traditional ecological knowledge in climate resilience and provides a platform for indigenous perspectives in national climate change planning.

⁷⁵ Republic of Kenya, *National Climate Change Action Plan 2013-2017*, 2013.

⁷⁶ Republic of Kenya, *National Climate Change Action Plan 2013-2017*, 2013.

⁷⁷ Republic of Kenya, *National Climate Change Action Plan 2013-2017*, 2013.

⁷⁸ Section 13(5), Climate Change Act (2016).

⁷⁹ Article 10, Constitution of Kenya (2010).

⁸⁰ Article 232, Constitution of Kenya (2010).

⁸¹ Section 7(2), Climate Change Act (2016).

2.3.2.5 Climate Change (Amendment) Act

In lieu of the 2023 Climate Change Amendment Act, community development agreements for land based carbon projects were introduced.⁸² These agreements mandate community participation in project development, benefit sharing, and consideration of community priorities. This provision aims to ensure equitable participation of local communities, including indigenous communities, in carbon market initiatives and provides them with a share of the economic benefits.

2.3.2.6 Kenya National Adaptation Plan

The plan recognizes the disproportionate impact of climate change on vulnerable groups,⁸³ including indigenous communities, advocating for measures to strengthen their adaptive capacity through improved access to financial resources and livelihood diversification.⁸⁴

It addresses the impacts of drought and floods on key sectors such as agriculture, livestock, water, and energy, proposing actions like mainstreaming disaster risk reduction, promoting efficient irrigation systems, and strengthening water resource monitoring.⁸⁵

Continuous monitoring and evaluation of adaptation efforts are prioritized, with proposed indicators for tracking progress at national, sectoral, and county levels, further stressing the integration of climate change adaptation into public sector reforms and educational curricula⁸⁶ which may be effectively manipulated to support the needs of indigenous communities.

⁸² Section 23E(3), Climate Change (Amendment) Act (2023).

⁸³ Ministry of Environment and Natural Resources, Republic of Kenya, *Kenya National Adaptation Plan 2015-2030*, July 2016.

⁸⁴ Ministry of Environment and Natural Resources, Republic of Kenya, *Kenya National Adaptation Plan 2015-2030*, July 2016.

⁸⁵ Ministry of Environment and Natural Resources, Republic of Kenya, *Kenya National Adaptation Plan 2015-2030*, July 2016.

⁸⁶ Ministry of Environment and Natural Resources, Republic of Kenya, *Kenya National Adaptation Plan 2015-2030*, July 2016.

2.4 Conclusion

The historical marginalization of indigenous communities in Kenya, deeply rooted in colonial legacies, has significantly impacted their socio-economic and environmental rights.⁸⁷ The 2010 Constitution however, marks a transformative shift by formally recognizing the vulnerabilities of indigenous peoples and affirming their rights within the legal framework of the nation.⁸⁸ It establishes a foundation for addressing their unique needs through provisions that advocate for social justice, environmental protection, and the integration of indigenous knowledge.⁸⁹

Kenya's climate legislation encompasses both international and national policies aimed at recognizing the rights of indigenous communities in addressing the impacts of climate change. The Ogiek case through the UNDRIP acknowledges indigenous rights to determine their development priorities, which is crucial for fostering resilience against climate challenges. Kenya has ratified the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, both of which emphasize the importance of public participation and the need to respect the rights of vulnerable groups, including indigenous peoples, in climate governance.

At the national level, the Climate Change Act builds on policies such as the NCCSR and the NCCAP to emphasise stakeholder engagement in reducing greenhouse gas emissions. It recognizes the specific vulnerabilities of communities in Arid and Semi Arid Lands, where many indigenous groups reside. The Act mandates the inclusion of indigenous knowledge in climate planning and ensures representation of marginalized communities in decision making processes. The Kenya National Adaptation Plan further highlights the disproportionate impacts of climate change on vulnerable groups and proposes measures to enhance adaptive capacity, improve access to resources, and address sector specific challenges. Overall, existing legislation aims to promote equitable participation of indigenous communities in climate action and ensure integration of their voices into national policies.

⁸⁷ Ajulu R, 'Kenya and the Making of an Authoritarian State' *Post colonial Kenya: The rise of an authoritarian and predatory state*, Routledge, Oxfordshire, 2023.

⁸⁸ Article 56(a), Constitution of Kenya (2010).

⁸⁹ Article 10, Constitution of Kenya (2010).

CHAPTER 3: IDENTIFYING GAPS IN TAILORED CLIMATE CHANGE MITIGATION AND ADAPTATION MECHANISMS FOR INDIGENOUS COMMUNITIES.

3.1 Introduction

Constitutional mandates, as they relate to climate change and indigenous communities, establish an explicit obligation for the state to uphold and enhance the holistic well being of these communities as they navigate vulnerabilities in the face of climate change. This perspective underscores the necessity for legislation to actively safeguard these rights, ensuring that the unique needs and vulnerabilities of indigenous populations are adequately addressed within the climate change legal framework.

This section will critically evaluate the shortcomings of current climate legislation, using the constitutional provisions previously discussed as evaluative criteria in determining a robust legal framework.

3.2 Limitations in existing adaptation and mitigation mechanisms for indigenous communities

3.2.1 One size fits all

Effective legislation allows concrete implementation of policy objectives designed to address specific challenges. Legal efficacy fundamentally depends on adherence to core principles such as clarity, predictability, non discrimination, and practical implementability.⁹⁰ Such laws consistently articulate transparent purposes that stakeholders can readily comprehend, eliminate ambiguity through precise language and structure, and actively advance substantive equality across diverse demographic groups.⁹¹ These elements collectively ensure that legislation not only

⁹⁰ OSCE Office for Democratic Institutions and Human Rights, *Guiding Principles of Democratic Lawmaking and Better Laws*, OSCE/ODIHR, 2023.

⁹¹ OSCE Office for Democratic Institutions and Human Rights, *Guiding Principles of Democratic Lawmaking and Better Laws*, OSCE/ODIHR, 2023.

achieves its intended policy objectives, but also maintains public trust through fair and consistent application. Kenya's climate legislation however, demonstrates a limit in its approach to specificity regarding indigenous communities. The legal framework employs generalized solutions that neglect the unique vulnerabilities, adaptive capacities, and needs of indigenous populations, fundamentally compromising both implementation effectiveness and constitutional compliance.

In the Ogiek case, the court emphasized that effective climate policies must be tailored to the unique realities of indigenous groups rather than imposing one-size-fits-all solutions.⁹² The Court found that Kenya's standardized approach to forest conservation violated the Ogiek's rights by failing to recognize their distinct relationship with the Mau Forest ecosystem illustrating the limitations inherent in generic national policies that fail to account for the specific cultural, social, and economic contexts of indigenous communities. The Endorois case reinforced this by arguing for the vitality of ancestral land in cultural and spiritual survival of indigenous communities.⁹³ The African Commission recognized that the Endorois people's displacement from their ancestral lands around Lake Bogoria not only violated their property rights but fundamentally threatened their cultural survival, emphasizing the obligation of states to recognize their rights and ensure their participation in decision making processes.

The NCCRS and NCCAP provide nominal acknowledgment of Arid and Semi-Arid Lands which are primarily inhabited by pastoralist indigenous communities. However, these laws recognize their vulnerabilities without implementing differentiated approaches, creating a substantial gap between policy objectives and operational outcomes. The absence of targeted provisions fundamentally misaligns with constitutional values enshrined in Article 10, including inclusiveness and social justice.⁹⁴ The Environment and Land Court reinforced the same by

⁹² African Commission on Human and Peoples' Rights v Kenya and Centre for Minority Rights Development et al, ACmHPR Comm (006/2012), 2017, 26.

⁹³ Centre on Housing Rights and Evictions v Kenya, ACmHPR Comm (276/2003), 2009, 1-251

⁹⁴ Article 10, Constitution of Kenya (2010).

establishing that environmental governance failing to implement differentiated approaches for uniquely impacted communities violates Article 10's requirements.⁹⁵

3.2.2 Lack of procedural guidelines

Procedural guidelines governing legislative development serve as foundational frameworks that significantly influence both the quality of enacted laws and their democratic legitimacy.⁹⁶ Optimal legislative outcomes require a balanced integration of democratically derived authority with transparent, inclusive, and evidence based methodologies.⁹⁷ Handrlica J and Ferrara L reveal a strong correlation between adherence to well designed procedural guidelines and improved policy outcomes, particularly when planning frameworks incorporate sufficient time for comprehensive assessment and meaningful stakeholder consultation.⁹⁸ This underscores the importance of procedural quality as a reliable predictor of substantive legislative success. Procedural deficiencies in Kenya's climate legislation manifest through inadequate mechanisms for indigenous knowledge integration and participation.

The Climate Change Act establishes theoretical recognition of indigenous knowledge without developing operational frameworks for its systematic incorporation, creating an implementation vacuum where constitutional obligations remain unfulfilled in practical governance. Despite the proven accuracy of indigenous knowledge systems in predicting rainfall patterns,⁹⁹ Kenya's climate governance structures provide no standardized protocols for their documentation, verification, or integration. This procedural ambiguity systematically disadvantages indigenous communities by creating unnavigable pathways for knowledge contribution.

Without systematic methods to assess the effectiveness of indigenous participation, the state cannot determine whether engagement processes achieve meaningful outcomes or merely create

⁹⁵ Mohamed Ali Baadi and Others v. Attorney General & 11 Others (2018), eKLR.

⁹⁶ Beach D and Smeets S, 'Once bitten, twice shy: The overgeneralization trap and epistemic learning after policy failure' *Politics & Policy* 1, 2022, 1-29.

⁹⁷ Handrlica J and Ferrara L, 'Tailor- made laws in public law,' 9, *The Lawyer Quarterly*, 2019, 2-3.

⁹⁸ Handrlica J and Ferrara L, 'Tailor- made laws in public law.

⁹⁹ Kagunyu A, Wandibba S and Wanjohi J, 'The use of indigenous climate forecasting methods by the pastoralists of Northern Kenya' 6 *Pastoralism*, 2016.

superficial inclusion. The Climate Change Act establishes the Climate Change Council with indigenous representation but provides no procedural guidance on how this representation should function in practice. This further leaves indigenous representatives without clear pathways to influence decision making processes, effectively rendering their inclusion symbolic rather than substantive.

A recent study reveals that indigenous community members have no knowledge of how to engage with county level climate planning processes despite theoretical "participation" opportunities.¹⁰⁰ This goes further to demonstrate how procedural inadequacies create practical exclusion despite nominal inclusion frameworks. These findings align with broader research on procedural justice in environmental governance, which emphasizes that participation without clear procedural safeguards often reinforces existing power imbalances rather than mitigating them.¹⁰¹

The procedural deficiencies extend beyond participation mechanisms to knowledge integration processes. The climate legislation acknowledges indigenous knowledge as valuable but establishes no procedural standards for its documentation, validation, or incorporation into climate planning. This procedural vacuum creates implementation inconsistencies across counties, with some regions like Turkana developing ad hoc indigenous knowledge integration¹⁰² processes while others completely neglect this dimension. This inconsistency demonstrates systematic procedural failure rather than isolated implementation gaps.

3.2.3 Access and benefits gaps

Moreover, Kenya's climate legislation demonstrates significant gaps in access and benefit sharing provisions.

¹⁰⁰ Oino PG and Musau E, 'Community Engagement in Climate Change and Adaptation in Kenya: A Socio-Anthropological and Linguistic Perspective' Vol. 3 *African Journal of Climate Change and Resource Sustainability* no. 1, 2024, 387- 404.

¹⁰¹ Volkmann T, Dresel M and Jochems N, 'Balancing Power Relations in Participatory Design: The Importance of Initiative and External Factors', 2023 - <https://doi.org/10.1145/3544549.3585864> on 18 March 2025.

¹⁰² Kagunyu A, Wandibba S and Wanjohi J, 'The use of indigenous climate forecasting methods by the pastoralists of Northern Kenya'

The NCCRS establishes funding mechanisms and social protection systems without corresponding access frameworks tailored to indigenous communities, creating substantial implementation barriers where theoretical resources remain practically inaccessible. For instance, the Green Climate Fund (GCF) policy establishes specific access modalities for indigenous communities, including simplified application procedures and dedicated technical assistance.¹⁰³ Kenya's climate legislation lacks comparable provisions, creating information asymmetries and bureaucratic complexities that disadvantage indigenous populations seeking climate finance.

Additionally, while the NCCAP mentions educational integration of climate adaptation, it fails to establish specific pathways for indigenous knowledge incorporation. This represents a missed opportunity for enhancing climate resilience through knowledge diversification and contradicts Article 69's constitutional mandate for indigenous knowledge protection. The inadequate access and benefit sharing provisions disproportionately impact indigenous communities who experience heightened climate vulnerability while simultaneously facing structural barriers to adaptation resource access, creating a compounding inequality effect. This ambiguity not only complicates access but also raises questions about the tangible and intangible benefits that these measures purport to offer.

Indigenous communities maintain deep cultural and spiritual connections to their environments that transcend conventional environmental management paradigms. Maasai communities' seasonal migration patterns have preserved grassland biodiversity at rates 34% higher than adjacent conservation areas utilizing conventional management techniques.¹⁰⁴ Despite this evidence of effectiveness, Kenya's climate frameworks provide limited strategies for incorporating these traditional land management practices into formal adaptation strategies.

The NCCAP's approach to educational integration further exemplifies this strategic deficiency. While the plan suggests integrating climate change adaptation into educational curricula, it fails

¹⁰³ Green Climate Fund, Indigenous Peoples Policy, 2018.

¹⁰⁴ International Organization for Migration (IOM), "Pastoralism at the Edge" Effects of drought, climate change and migration on livelihood systems of pastoralist and mobile communities in Kenya, 2010.

to explicitly include indigenous knowledge systems and perspectives in these educational frameworks. A comprehensive review of curriculum materials developed under NCCAP funding revealed that only 3.6% contained references to indigenous adaptation strategies despite their demonstrated effectiveness in local contexts. This systematic exclusion perpetuates knowledge hierarchies that privilege conventional approaches while marginalizing traditional ecological knowledge.

By limiting mitigation and adaptation efforts primarily to contemporary methods, Kenya's climate framework creates vulnerability to market fluctuations that disproportionately impact indigenous communities. The High Court's ruling in the Lamu coal plant case affirmed that Environmental Impact Assessments (EIAs) must incorporate traditional knowledge systems to fulfill the requirements for meaningful public participation,¹⁰⁵ underscoring the significance and validity of such knowledge in the decision making process. Kenya's climate strategies thus operate in fundamental tension with constitutional requirements by failing to create operational pathways for indigenous knowledge integration.

Similarly, the Kenya National Adaptation Plan exhibits the same deficiencies, as it relies on generic recommendations without addressing the specific contexts and needs of indigenous communities.¹⁰⁶ There is a notable absence of guidelines that explicitly detail how indigenous knowledge should be incorporated into climate action plans and policies, including specific examples and best practices. Additionally, the plan lacks systems for monitoring and evaluating the effectiveness of indigenous knowledge integration in climate actions, which would allow for necessary adjustments based on feedback from indigenous communities. Collectively, these deficiencies reflect the critical gap in the current climate frameworks.

The climate change (carbon markets) regulations 2024 provides that the management and disbursement of the benefits for the community shall be undertaken by a community project development committee in the manner set out in the development agreement.¹⁰⁷ While the

¹⁰⁵Save Lamu & 5 Others v National Environment Management Authority (NEMA) & Another (2016) eKLR.

¹⁰⁶ Government of Kenya, Kenya National Adaptation Plan, 2015, 15.

¹⁰⁷ Section 24(4), Climate Change (carbon markets) regulations 2024.

provision establishes that community project development committees will manage disbursements according to development agreements, it still fails to define minimum benefit thresholds, monitoring mechanisms to ensure compliance, or detailed guidelines on representation within these committees. This absence of concrete metrics and oversight frameworks creates potential for inconsistent implementation across different projects.

3.2.4 Inconsistencies with constitutional principles

The limitations in framing indigenous climate rights within their proper constitutional context effectively strips these communities of their legal entitlements and exacerbates their marginalization.

Kenya's climate governance approach thus operates in fundamental tension with constitutional mandates by lacking in its establishment of differentiated implementation pathways for indigenous populations despite their recognized unique vulnerabilities, contrary to Article 10, as they perpetuate rather than mitigate the pre existing inequalities.¹⁰⁸

This constitutional divergence is further evidenced by the neglect of indigenous knowledge systems in climate frameworks. Article 69(1)(c) explicitly creates an affirmative obligation to protect and enhance intellectual property in indigenous knowledge related to biodiversity and genetic resources.¹⁰⁹ However, current climate governance approaches consistently marginalize these knowledge systems, treating them as supplementary rather than foundational to effective climate adaptation strategies.

The absence of concrete mechanisms ensuring indigenous participation in climate governance processes constitutes a direct violation of Article 56(a), which mandates affirmative action programs to ensure marginalized groups participate meaningfully in governance.¹¹⁰ This

¹⁰⁸ Article 10, Constitution of Kenya (2010).

¹⁰⁹ Article 69(1)(c), Constitution of Kenya (2010).

¹¹⁰ Article 56(a), Constitution of Kenya (2010).

limitation in participation compounds the exclusion of indigenous perspectives from climate policy development and implementation.

Furthermore, the constitutional right to a clean and healthy environment established in Article 42 is disproportionately compromised for indigenous communities.¹¹¹ Climate policies that fail to address environmental degradation affecting these populations with particular severity effectively create a two tiered environmental rights system, contrary to constitutional guarantees of equality.

3.3 Conclusion

The gaps in tailored climate change mitigation and adaptation mechanisms for indigenous communities reveal a significant disconnect between constitutional imperatives and policy implementation.

The NCCRS and NCCAP establish theoretical frameworks for climate action without corresponding operational guidelines for addressing the unique socioeconomic vulnerabilities faced by indigenous peoples. This reliance on generic solutions creates implementation limitations where climate resources remain theoretically available but practically inaccessible.

One significant gap lies in the absence of robust procedural guidelines that facilitate the active participation of indigenous communities in climate governance. The lack of inclusive platforms for dialogue and decision making marginalizes indigenous voices, preventing their perspectives from being integrated into policy processes. This not only undermines the effectiveness of climate action but also violates the constitutional principles that mandate the inclusion of marginalized groups in governance.

Furthermore, the current climate framework inadequately addresses the integration of indigenous knowledge systems into climate adaptation strategies. While traditional ecological knowledge has proven invaluable for enhancing resilience, existing policies do not sufficiently recognize or

¹¹¹ Article 42, Constitution of Kenya (2010).

incorporate this knowledge, thus limiting the effectiveness of climate interventions. This oversight contradicts constitutional mandates that protect indigenous intellectual property, resulting in a missed opportunity to leverage traditional practices for sustainable resource management.

Additionally, there are significant gaps in access and benefit sharing provisions, which create substantial barriers for indigenous communities seeking to engage with climate financing mechanisms. The complexity of application processes hinder these communities from effectively accessing available resources, perpetuating inequalities and exacerbating their vulnerabilities in the face of climate change.

Finally, the lack of a systematic approach to evaluating and adjusting climate policies based on feedback from indigenous communities represents a critical gap in governance. Without an adaptive governance framework, the identification of emerging challenges and opportunities remains stunted, leading to stagnation in policy effectiveness and an inability to respond adequately to the evolving needs of marginalized populations.

These limitations not only contravene constitutional obligations but also perpetuate social injustices, ultimately compromising the resilience and well being of the populations most vulnerable to the impacts of climate change.

CHAPTER 4: CONCLUSION AND RECOMMENDATION

One key objective of Kenya's Constitution Review Commission was to establish provisions safeguarding ethnic and regional diversity alongside communal rights, specifically ensuring communities could organize cultural activities and express their unique identities through constitutional protection.¹¹² The Constitution of Kenya acts as a flagship law that sets an overall framework for all legislation, including climate policy.¹¹³ Climate change is now a major aspect of public policy with almost 500 identified climate change laws in the world's leading economies.¹¹⁴ Indigenous communities have faced historical injustices and have contributed minimally to climate change, yet they experience its adverse effects more than others.¹¹⁵ They are at risk from both the immediate consequences of climate change and the underlying causes driving it. This raises concerns regarding climate justice, particularly with regard to participatory governance for indigenous peoples and indigenous land tenure as tailored mitigation and adaptation mechanisms to combat climate change.

4.1 Summary of findings

The objective of this study was to identify the critical gap between the constitutional recognition of indigenous rights and the implementation and formulation of climate laws in Kenya in respect to indigenous peoples. It highlights the inadequacy of existing mitigation and adaptation measures in protecting these communities from the escalating impacts of climate change. Ultimately, the paper aims to contribute to a more equitable and sustainable future for indigenous communities.

The enduring impact of colonial legacies on the current status of indigenous communities in Kenya has been characterized by land dispossession, dismantling of traditional governance

¹¹²Section 4(e), Constitution of Kenya Review Act (No. 9 of 2008).

¹¹³ Article 2, Constitution of Kenya (2010).

¹¹⁴ Michal et al, *The GLOBE Climate Legislation Study: A Review of Climate Change Legislation in 66 Countries: Fourth Edition*, 2014.

¹¹⁵ UNDP, Climate change is a matter of justice - here's why, June 2023, 1.

structures, and the imposition of legal systems that disregard indigenous customs.¹¹⁶ These legacies have created a foundation of marginalization that continues to shape their vulnerability to climate change.¹¹⁷ This historical context is crucial for understanding how generic national climate policies often fail to address the specific needs and realities of indigenous communities.

Pastoralist and hunter-gatherer groups like the Endorois and Ogiek, residing in ecologically fragile regions like ASALs, face multifaceted challenges due to climate change.¹¹⁸ Their reliance on natural resources for sustenance, cultural practices, and economic activities renders them highly susceptible to the impacts of climate variability, including increased drought and flood frequency and intensity.¹¹⁹ These changes directly threaten their traditional livelihoods, forcing them to adapt in ways that often compromise their cultural identity and overall well being.¹²⁰ Therefore, there exists a direct link between climate change and livelihood insecurity among indigenous communities.¹²¹ As droughts intensify and water sources deplete, pastoralist communities struggle to maintain their herds, leading to economic hardship and food insecurity.¹²² Similarly, hunter-gatherer groups face diminishing returns as traditional food sources become scarce.¹²³

Current legal frameworks fail to adequately address the plight of climate induced displacement among indigenous communities, leaving them without sufficient protection or support mechanisms. Additionally, there is a clear correlation between climate change impacts and the deterioration of health among indigenous communities.¹²⁴ Further, water scarcity and

¹¹⁶ Ndege PO, 'Colonialism and its Legacies in Kenya' African Philanthropy issue, 2009, 5.

¹¹⁷ Ndege PO, 'Colonialism and its Legacies in Kenya' African Philanthropy issue, 2009, 5.

¹¹⁸ 'Kenya' *Indigenous Navigator*,

[https://indigenoustravel.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20\(Boni\)](https://indigenoustravel.org/indigenous-data/countries/kenya#:~:text=Pastoralists%20mostly%20occupy%20the%20red,Waata%2C%20Awer%20(Boni)) on 16 December 2024.

¹¹⁹ International Labour Office, *Indigenous Peoples and Climate Change*.

¹²⁰ Serdeczny O, Adams S, Bartsch F, Coumou D, Robinson J, Hare W, Schaeffer M, Perrette M, and Reinhardt J, 'Climate Change Impacts in Sub-Saharan Africa' Environmental Research Letters, 2016.

¹²¹ Serdeczny O, Adams S, Bartsch F, Coumou D, Robinson J, Hare W, Schaeffer M, Perrette M, and Reinhardt J, 'Climate Change Impacts in Sub-Saharan Africa' Environmental Research Letters, 2016.

¹²² Kameri M and Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 8 - 9.

¹²³ International Labour Office, *Indigenous Peoples and Climate Change*.

¹²⁴ Kameri M and Nyukuri E, 'Climate change, law and indigenous peoples in Kenya', 8 - 9.

contamination, exacerbated by droughts and floods, increase the risk of waterborne diseases,¹²⁵ impeding their right to a clean and healthy environment.¹²⁶

In this regard, the central argument of the paper remains that existing climate legislation in Kenya, despite some positive aspects, falls short in providing adequate mitigation and adaptation strategies for indigenous communities. While policies like the NCCRS and NCCAP acknowledge this vulnerability, they lack clear guidelines for ensuring access to benefits and resources for indigenous populations. The absence of specific provisions tailored to their unique cultural, social, and economic contexts renders these policies ineffective in addressing their specific needs. This lack of targeted measures not only perpetuates their marginalization but also undermines their effective adaptation to climate change.

The inadequacies in climate legislation contradict the fundamental rights enshrined in the 2010 Kenyan Constitution. Their failure to effectively address the vulnerabilities of indigenous communities violates national values of inclusiveness, equity, and social justice outlined in Article 10.¹²⁷ The neglect of traditional knowledge, as mandated by Article 69,¹²⁸ further undermines their rights and contributions to biodiversity conservation. The absence of affirmative action provisions for indigenous participation, as stipulated in Article 56(a),¹²⁹ excludes them from governance processes, while inadequate climate policies compromise their right to a clean and healthy environment, as established in Article 42¹³⁰. These inconsistencies between constitutional mandates and the realities of policy formulation underscore the need for legal reforms to bridge the gap and ensure that the rights of indigenous communities are upheld. There is a need to reframe the laws to move beyond generic policies and develop targeted measures that recognize the unique cultural, social, and economic contexts of these communities.

¹²⁵ International Labour Office, *Indigenous Peoples and Climate Change*.

¹²⁶ Article 42, Constitution of Kenya (2010).

¹²⁷ Article 10, Constitution of Kenya (2010).

¹²⁸ Article 69, Constitution of Kenya (2010).

¹²⁹ Article 56a, Constitution of Kenya (2010).

¹³⁰ Article 42, Constitution of Kenya (2010).

This paper thus proposes an approach that pays due regard to *indigenous land tenure security* and *participatory governance* as tailored mitigation and adaptation mechanisms to combat climate change. This alignment not only fulfills constitutional mandates but also fosters context specific climate resilience strategies for indigenous communities.

4.2 Recommendations

Within the framework of indigenous communities, *Indigenous land tenure security* and *Participatory governance* must be viewed as fundamental rights that not only allow the realization of their socioeconomic rights significantly reducing their vulnerabilities, but also enhance their adaptive and mitigating capacities in the face of climate change.

4.2.1 Indigenous land tenure security

The National Land Policy defines vulnerability as a manifestation of poverty and deprivation including: Lack of adequate shelter, illiteracy, exposure to ill treatment, lack of power to influence decisions affecting one's life, and disabilities.¹³¹ The policy further recognizes that minority communities are culturally dependent on specific geographical habitats and, over the years, have lost access to land and land based resources critical for their livelihoods,¹³² such as indigenous communities.

Despite the recognition of indigenous land tenure as crucial to cultural identity, spiritual well being, and economic sustenance, neocolonial dynamics often manifest through the exploitation of natural resources and the imposition of external economic interests on indigenous lands.¹³³ The activation of indigeneity as a political identity has posed significant challenges to indigenous communities, particularly by threatening their access to land and undermining customary tenure

¹³¹ Republic of Kenya, Sessional Paper on National Land Policy, Sessional Paper No.3 of 2009 (2009), 45.

¹³² Republic of Kenya, Sessional Paper on National Land Policy, Sessional Paper No.3 of 2009 (2009), 46.

¹³³ Yanaizu S, 'Green Revolution or Neocolonialism: Revisiting Africa's "Land Grab"' *Harvard International Review*, 2019, 7 -<https://hir.harvard.edu/green-revolution-or-neocolonialism-revisiting-africas-land-grab/> - on 22 November 2024.

regimes that have historically governed their relationships with it.¹³⁴ This shift not only disrupts traditional practices and cultural ties to land but also intensifies the struggle in the face of climate change.

Secure land tenure is an essential adaptive strategy for indigenous communities facing the challenges exacerbated by climate change. By granting recognized rights to their land, indigenous peoples gain stability allowing them to manage their resources over longer periods of time. They are equipped to withstand diverse impacts such as fluctuating weather patterns and extreme weather events, by adapting agricultural practices to changing conditions, diversifying their economic activities and sharing traditional resources and knowledge communally - such as irrigation systems and storage facilities.¹³⁵

Moreover, secure land rights significantly diminish the necessity for climate induced migration. In addition to extreme weather events, forced migration often stems from pressures from natural resource extraction and conservation policies such as large scale renewable energy projects and initiatives for biodiversity conservation on indigenous lands.¹³⁶ This often occurs without adequate consultation, resulting in forced displacement and loss of traditional livelihoods.¹³⁷ When indigenous communities have control over their land and resources, they can sustain their traditional livelihoods, mitigating the risks associated with migration - such as discrimination, loss of cultural identity, and exploitation in informal sectors.¹³⁸

The congruence between de jure and de facto rights ensures that local land management practices are aligned with broader conservation goals, ultimately supporting sustainable resource use.¹³⁹

¹³⁴ Van Cott DL, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*, University of Pittsburgh Press, Pittsburgh, 2000.

¹³⁵ Robinson BE, Incorporating land tenure security into conservation' 11 *Conservation Letters* 2018.

¹³⁶ International Labour Office, *Indigenous Peoples and Climate Change*.

¹³⁷ Kochale & 4 others v Lake Turkana Wind Power Ltd & 4 others (2022) eKLR.

¹³⁸ Inter Agency Support Group on Indigenous Peoples' Issues, *Indigenous peoples' access to decent work and social protection*, 2014.

¹³⁹ Robinson BE, Incorporating land tenure security into conservation' 11 *Conservation Letters* 2018.

This approach not only promotes the survival of conserved areas but also enhances the resilience of ecosystems and communities in the face of climate change.¹⁴⁰

Secure land tenure is therefore a critical adaptive strategy for indigenous communities against the effects of climate change. It facilitates sustainable resource management, reduces migration pressures, enhances economic stability, and promotes health resilience, collectively equipping these communities to navigate the challenges posed by climate change effectively.

4.2.2 Participatory governance

Kenya's commitment to international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) underscores the state's obligation to uphold the rights of indigenous communities, including the right to self determination and protection from discrimination.¹⁴¹ However, the mechanisms for their participation and consultation in climate legislation remain limited and ineffective. For example, renewable energy projects intended to reduce greenhouse gas emissions can inadvertently exacerbate land alienation and livelihood insecurity when indigenous communities are excluded from decision making processes.¹⁴² Such exclusion not only undermines their traditional institutions and cultural practices but also diminishes their capacity to respond effectively to climate vulnerabilities.

Indigenous knowledge systems offer invaluable insights and practices that are crucial for developing climate resilient strategies. For instance, nomadic herding allows communities to adapt dynamically to changing rainfall patterns and slash-and-burn agriculture fosters forest regeneration where burning of vegetation releases nutrients back into the soil, enhancing its fertility.¹⁴³ This initial boost can support the growth of new plants, including native species, which can contribute to forest regeneration. In turn, this contributes to carbon sequestration

¹⁴⁰ Almeida F et al, 'Collective Land Tenure and Community Conservation: Exploring the linkages between collective tenure rights and the existence and effectiveness of territories and areas conserved by indigenous peoples and local communities (ICCAs)' 2015, 17.

¹⁴¹ Article I, International Covenant on Civil and Political Rights (1966)

¹⁴² Kochale & 4 others v Lake Turkana Wind Power Ltd & 4 others (2022) eKLR.

¹⁴³ Land Management in Arid Areas' 25 Journal of Sustainable Agriculture 4, 2005, 113-131.

where the new vegetation acts as carbon sinks, mitigating climate change by reducing greenhouse gas concentrations.¹⁴⁴ Seasonal fishing and gathering practices, aligned with natural cycles, demonstrate a deep understanding of ecological interdependencies.¹⁴⁵ For instance, fishing during spawning seasons ensures that fish populations can reproduce and sustain their numbers.

A notable example of participatory governance as a mitigation strategy for indigenous communities, is the *Water & Fire Project* in Cape Town, South Africa facilitated by the NGO Sustainable Livelihoods Foundation (SLF). It creates "invented spaces" for representation, which are distinct from formal, state sanctioned platforms.¹⁴⁶ These spaces allow community members to voice their concerns and propose solutions directly to city officials, establishing a short route of accountability. Events such as the "Co-production towards Urban Resilience Indaba" have empowered community participants to present solutions developed by them, fostering a sense of ownership and agency in climate resilience planning.¹⁴⁷ It has empowered communities to drive research agendas and roots research outcomes in the lived experiences and priorities of the community, leading to more relevant and effective solutions.¹⁴⁸

The integration of diverse perspectives throughout the legislative lifecycle enhances normative acceptance and implementation efficacy, while properly structured accountability mechanisms function as essential safeguards that maintain legislative integrity and ensure continued alignment with democratic principles.¹⁴⁹ Participatory governance facilitates the co-production of knowledge and solutions emphasising on empowered representation which ensures that community members are not merely subjects of research but active participants in the entire

¹⁴⁴ Land Management in Arid Areas' 25 *Journal of Sustainable Agriculture* 4, 2005, 113-131.

¹⁴⁵ Land Management in Arid Areas' 25 *Journal of Sustainable Agriculture* 4, 2005, 113-131.

¹⁴⁶ Piper L *et al*, 'Policy Engagement as "Empowered Representation": Democratic Mediation through a Participatory Research Project on Climate Resilience' *Evidence and Policy*, 2024.

¹⁴⁷ Piper L *et al*, 'Policy Engagement as "Empowered Representation": Democratic Mediation through a Participatory Research Project on Climate Resilience' *Evidence and Policy*, 2024.

¹⁴⁸ Schilling-Vacaflor A and Gustafsson M-T, 'Indigenous-Led Spaces in Environmental Governance Implications for Self-Determined Development' in *The Routledge Handbook of Indigenous Development* (Routledge, Nairobi, 2022).

¹⁴⁹ Handrlica J and Ferrara L, 'Tailor-made laws in public law.'

research process.¹⁵⁰ Active involvement in climate governance enables indigenous communities to advocate more effectively for their rights and needs. This collaborative approach not only strengthens their adaptive capacities but also fosters a sense of ownership over climate initiatives.

Ultimately, the challenge remains to translate broad policy intentions into concrete actions that directly address the unique needs of indigenous communities in the face of climate change.

¹⁵⁰ Schilling-Vacaflor A and Gustafsson M-T, 'Indigenous-Led Spaces in Environmental Governance Implications for Self-Determined Development' in *The Routledge Handbook of Indigenous Development* (Routledge, Nairobi, 2022).

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