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CLIMATE FINANCE IN AFRICA THROUGH A HUMAN RIGHTS LENS: A CASE STUDY OF THE TURKANA PEOPLE IN KENYA

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Abstract

For decades, climate change has been perceived as a purely environmental problem, but a variety of recent events have made it clear that this is not the case. The problem has an impact on multiple areas, including finance and human rights. Although the majority of the emissions that contribute to climate change are from developed countries, it is the developing countries, especially those from Africa, that are the most vulnerable to the impacts of climate change. Despite this reality, literature on the human rights implications of climate change in Africa remains uncharted. This chapter seeks to remedy the situation by examining the effects of climate change in Africa through a human rights lens, with a special focus on the Turkana region in Kenya as it is one of the areas worst hit by climate change in Africa. The chapter explores the linkages between climate change, finance and human rights for the Turkana people.

Key words: *climate; finance; climate change; human rights; indigenous people; Turkana; Kenya*

1 Introduction

One of the severe threats facing humanity today is climate change. The impact of climate change is more visible today than it was in the past. Scientists had decades ago prognosticated the harm that the continued combustion of fossil fuels would cause to the environment and human beings. However, these warnings continue to be unheeded in search of greater profits. Until recently, climate change has been perceived to be a purely environmental problem. However, with the Planetary and One Earth Approach, it has been proven that climate change has a wider impact, including that on human rights and the economy.¹

To combat climate change, financial support and resource mobilisation are key, especially in developing countries. The aim is to enable vulnerable communities to be uplifted from poverty and enhance their human rights.

1 S Harrison et al 'EcoHealth and One Health: A theory-focused review in response to calls for convergence' (2019) 132 *Environment International* 105.

In many countries it has been observed that the top-down climate finance interventions do not include local stakeholders, resulting in the failure to sustain climate finance projects.² Local communities most often are not aware of the climate policy due to uneven access to information. Research has indicated that most of the vulnerable livelihoods, such as pastoralism and fishing, are at high risk partly due to misunderstanding, inappropriate or unfair application of laws by the state.³ It has also been observed that due to remote locations and weak community organisations, the fear factor as well as the lack of confidence make it difficult for these communities to demand their rights.⁴

Climate finance has often been an issue globally including at international climate negotiations. Climate support is formulated based on human rights, poverty and principles of development. Support for climate finance is a mechanism aimed at adapting best practices for agriculture and livestock rearing amid climate change, going green through the use of renewable energy and practising afforestation and reforestation programmes. Communities are either assisted through education and awareness, credit facilitation or reduced prices of seeds and other accessories. The Paris Agreement of 2015 acknowledges the link of human rights to climate change as follows:⁵

Acknowledging that climate change is a common concern of humankind, parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

The Paris Agreement is being linked to international laws that are already in existence and is captured into individual country laws for implementation with a special emphasis on the relationship between climate change and human rights. The Agreement reflects on the human rights elements of access to a safe and clean environment, which

- 2 H Reid et al 'Vulnerable communities: climate adaptation that works for the poor' November 2015, IIED Briefing <http://pubs.iied.org/17329IIED> (accessed 16 June 2021).
- 3 IPCC 'Fifth assessment report: Impacts, adaptation, and vulnerability' (2014), <https://www.ipcc.ch/assessment-report/ar5/> (accessed 16 June 2021).
- 4 Reid et al (n 2).
- 5 Paris Agreement under the United Nations Framework Convention on Climate Change 2015, FCCC/CP/ 2015/L.9/Rev.1. adopted by Conference of the Parties, 21st session Paris, 30 November-11 December 2015 Preamble.

include food, water, health and shelter, all of which are a component of ecosystems and depend on the climate for their functioning and continuous provision. These rights have been provided for under the international human rights instruments, including the Universal Declaration of Human Rights (Universal Declaration);⁶ International Covenant on Civil and Political Rights (ICCPR);⁷ the Constitution of the World Health Organisation;⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁹ Furthermore, the Committee on Economic, Social and Cultural Rights (ESCR Committee) has stated that the right to health 'extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.'¹⁰ At the continental level, the African Charter on Human and Peoples' Rights (African Charter) provides for the right to a safe environment,¹¹ including socio-economic rights such as the right to health.¹² The Sustainable Development Goals (SDGs) of the United Nations (UN) also reflect on climate action as a strategy to combat the inevitable changes affecting the environment and people. SDG 13 on climate action requires countries to take steps to combat the climate crisis.¹³ Target 13A highlights the importance of finance in this regard. It focuses on the implementation of the commitment undertaken by developed country parties to the United Nations Framework Convention on Climate Change (UNFCCC) to mobilise US \$100 billion by 2020 to address the needs of developing countries and to operationalise the Green Climate Fund (GCF).¹⁴

6 UN General Assembly Universal Declaration of Human Rights 217 A (III) (10 December 1948).

7 International Covenant on Civil and Political Rights 999 UNTS 171, 19 December 1966 (entered into force 23 March 1976) art 6.

8 Constitution of the World Health Organisation (1 November 1946).

9 International Covenant on Economic, Social and Cultural Rights 993 UNTS 3, 6 ILM 360, 16 December 1966 (entered into force 3 January 1976) art 12.

10 ESCR Committee General Comment 14 'The right to the highest attainable standard of health (art 4)', E/C.12/2000/4.

11 OAU African Charter on Human and Peoples' Rights CAB/LEG/67/3 rev. 5, 21 ILM 58, 27 June 1981 (entered force 21 October 1986) art 24.

12 Art 16 African Charter Charter.

13 UNDP 'Goal 13: Climate action', <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-13-climate-action.html> (accessed 16 March 2021).

14 OECD and Climate Policy Initiative 'Climate finance in 2013-14 and the USD 100 billion goal' (2015).

With the ongoing climate crisis and the certainty of the reports of the Intergovernmental Panel Climate Change (IPCC) on the anthropogenic effects of climate change, it is unacceptable that the voices of the vulnerable are not being heard. This was put across in 2007 by the then President of the Republic of the Maldives, Maumoon Gayoom, at the Royal Commonwealth Society meeting where he highlighted the plight of climate change on the vulnerable communities by asking: ‘Is there a right to a safe environment?’¹⁵ The whole predicament revolves around the way in which to bring greater resilience to climate change on vulnerable communities by keeping human rights as a lens to offer climate finance as a solution in order to help in the transition of communities that are at the forefront of vulnerability to climate change.

In line with this, the chapter discusses the link between climate finance and human rights with a focus on the Turkana people of Kenya. The Turkana people have been selected based on their location in an arid and semi-arid region and deforested area and with an economy that is mainly dependent on pastoralism, and the community’s vulnerability to climate change. The Turkana people have become victims of climate change with consistent droughts despite various measures to overcome this problem. One such measure was to provide them with water by way of boreholes. However, the reality is that this water infrastructure was provided to the community without their involvement. This has led to greater challenges as the borehole water have high levels of fluoride resulting in skeletal fluorosis.¹⁶ This is indicative of the lack of public participation in addressing their needs.

The chapter is divided into four parts. Part 1 introduces the issue. Part 2 delves into the nexus between climate change, finance and human rights. Part 3 explores climate finance in Kenya and the plight of the Turkana people. Part 4 sets out the recommendations and provides a conclusion.

2 Climate change, finance and human rights nexus

Climate change, human rights and finance are inextricably linked, owing to the fact that there is a link between climate change and finance to human rights. Climate change is related to human rights as it affects communities

15 M Gayoom ‘Speech by His Excellency Mr Maumoon Abdul Gayoom, President of the Republic of Maldives, “Is there a right to a safe environment” at the Royal Commonwealth Society’ 17 July 2007, <https://presidency.gov.mv/Press/Article/21937?term=5> (accessed 12 March 2021).

16 G Fabreau et al ‘Skeletal fluorosis in a resettled refugee from Kakuma refugee camp’ (2019) 393 *Lancet* 223.

and individuals and their basic rights such as those to food, water, shelter and health, and climate finance is needed to assist vulnerable communities with the effects of climate change by helping them to enjoy their basic rights, which are factored into human rights.

To assist in combating climate change, empower disadvantaged populations to cope with disproportionate impact of climate change and achieve human rights, finance is a key measure. Financing will help vulnerable communities to adapt to climate change and ensure that all people enjoy their human rights by obtaining the basics for a decent living. Climate finance was adopted at the Convention on Climate Change in Rio de Janeiro in 1992 where it was agreed that developed countries would contribute financially towards climate adaptation in developing countries.¹⁷ In 2009 at the Climate Change Summit in Copenhagen, developed countries promised to provide \$30 billion for the period of 2010 to 2012 and by 2020, they were expected to have contributed \$100 billion towards supporting climate finance.¹⁸ At the Paris Agreement of 2015, middle-income countries, namely, South Korea, Mexico and Chile, also joined the donor country list to financially support developing countries to combat the impacts of climate change.¹⁹ Climate finance indicates alignment with the principles of ‘common but differentiated responsibility’ and the polluter-pays principle.²⁰ International advocacy organisations and developing countries have argued that developed countries emitting large quantities of greenhouse gases into the atmosphere owe developing countries a climate debt, which can be paid through climate finance and a reduction in emissions.²¹ Hence, they ought to take the lead in climate finance. The basis for this assertion is that developed countries have emitted more than their fair share of greenhouse gas emissions into the atmosphere, which are now constraining the ability of poorer developing countries to develop, the latter being particularly vulnerable to the impacts of climate change.²² Reduced emissions and climate finance, therefore, can aid developing countries to put in place adaptation and mitigation mechanisms and technologies.²³

17 AS Kyrkan ‘International climate finance from a human rights perspective policy brief’ February 2020, https://www.svenskakyrkan.se/filer/8385_SK20032-MR-och-klimatfinansiering-eng_utskrift.pdf?id=1997150 (accessed 21 March 2021).

18 As above.

19 Gayoom (n 15).

20 J Pickering & C Barry ‘On the concept of climate debt: Its moral and political value’ (2012) 15 *Critical Review of International Social and Political Philosophy* 667.

21 As above.

22 As above.

23 As above.

Although there is no universally-agreed upon definition of climate finance, it can be described as ‘local, national or transnational financing – drawn from public, private and alternative sources of financing – that seeks to support mitigation and adaptation actions that will address climate change’.²⁴ Kenya’s Climate Change Act defines climate finance as ‘monies available for or mobilised by government or non-government entities to finance climate change mitigation and adaptation actions and interventions’.²⁵ The alternative sources of finance are key as they bring in more funds. This is mainly channelled through bilateral support from one country to the other or through multilateral support where a country channels funds to a global development bank or funds with an aim to provide climate support for developing countries. Multilateral support is done through organisations such as the UN and the World Bank that have environmental funds, such as the GCF, Global Environment Facility (GEF) and the Adaptation Fund.²⁶ The donor countries are eager to have different types of flows in the definition of climate finance which include loans, aid, export credit and guarantees. At the same time, recipient countries are pushing for the inclusion of the principle of additionality so that climate finance would consist of new funds in addition to aid.²⁷

The Paris Agreement encourages developing country parties to mobilise climate finance from different sources, instruments and channels.²⁸ Article 11 highlights facilitation of access to climate finance as an effective climate change action that developing country parties – especially those with the least capacity and greater vulnerability to the negative impacts of climate change – should take. Climate finance is essential as adaptation and mitigation measures are becoming increasingly urgent, and mobilisation of funds is required to put such measures in place.²⁹ The United Nations Environment Programme (UNEP) estimates the cost of adaptation measures in developing countries to amount to between US \$140 billion and US \$300 billion annually by 2030.³⁰

Climate finance should adhere to the notion of justice to ensure social welfare. Ibn Khaldun, a North African scholar, advocates social

24 UNFCCC ‘Introduction to climate finance’, <https://unfccc.int/topics/climate-finance/the-big-picture/introduction-to-climate-finance> (accessed 12 March 2021).

25 Sec 2 Climate Change Act 11 of 2016.

26 Kyrkan (n 17).

27 As above.

28 Art 9(3) Paris Agreement (n 5).

29 UNEP ‘The adaptation finance gap report’ (2016), <https://wedocs.unep.org/handle/20.500.11822/32865?show=full> (accessed 21 March 2021).

30 As above .

welfare through fairness and justice. In this regard, he states that ‘making decisions and dispensing justice ... in all actions brings well-being to the subjects’.³¹ Modern scholars and laws surrounding climate finance echo this proposition. Waris, for instance, includes fairness and justice in her formulation of the principles of fiscal legitimacy.³² The Kenyan Constitution sets out principles of public finance including public participation, fairness, equitable development through special provision for marginalised groups and areas, among others.³³ Similarly, some of the guiding principles under the National Policy on Climate Finance include inclusiveness, equitable access to finance, equal benefit sharing, environmental and social protection, sustainable development and special needs and circumstances.³⁴ These laws will be discussed further in subsequent parts of this chapter.

Regarding the link between finance and human rights, Waris postulates that tax scholars seldom refer to human rights, and human rights scholars largely ignore fiscal requirements for the realisation of human rights. She calls for the application of human rights in the redistribution of fiscal resources in a state.³⁵ This is an indicator that the link between finance and human rights often is ignored. Human rights require public financing, although it has been argued that social and economic rights require more funding than civil and political rights.³⁶ Socio-economic rights, which are achieved progressively and require the allocation of financial resources, are more affected by climate change. Waris and Latif assert that three major steps are necessary in the progressive realisation of socio-economic rights, namely, the enactment of legislation, the allocation of adequate financial resources, and the setting up of the required infrastructure. They further posit that states misinterpret the concept of progressive realisation as an obligation they should fulfil once they acquire adequate resources. However, they are required to take appropriate steps immediately to ensure the fulfilment of these rights.³⁷ Additionally, states must prioritise

31 I Khaldun *The Muqaddimah* (2015).

32 A Waris ‘Developing fiscal legitimacy by building state-societal trust in African countries’ (2018) 4 *Journal of Tax Administration* 103.

33 Art 201 Constitution of Kenya 2010.

34 Republic of Kenya ‘National policy on climate finance’ December 2016, <http://www.environment.go.ke/wp-content/uploads/2018/05/The-National-Climate-Finance-Policy-Kenya-2017-1.pdf> (accessed 21 March 2021).

35 A Waris *Tax and development: Solving Kenya’s fiscal crisis through human rights: A case study of Kenya’s constituency development fund* (2013).

36 A Waris ‘Taxes, tax injustice and the fight against inequality: An African perspective’ (2020) *Os Impostos e o combate as desigualdades* 43.

37 A Waris & LA Latif ‘Financing the progressive realisation of socio-economic rights in Kenya’ (2015) 8 *University of Nairobi Law Journal* 1.

protection of the poor, marginalised and disadvantaged.³⁸ According to the authors,

the Committee on [ESCR] has vide its General Comment No 3 ... reiterated the minimum core obligation of all states parties to ensure the satisfaction of, at the very least, minimum levels of each of the rights. This imposes on Kenya an immediate obligation as far as realisation of the minimum levels [of] socio-economic rights by those who are most (or totally) deprived are concerned.

The realisation of socio-economic rights, therefore, should not be disregarded due to the 'limitation of resources' argument. Fiscal discussions should engage human rights issues, as well as climate issues, as the realisation of human rights and the subsequent alleviation of the condition of groups such as the Turkana require financial muscle.

In 2017 the United Nations Human Rights Council³⁹ and the United Nations Office of the High Commissioner for Human Rights (OHCHR)⁴⁰ called for the consideration of climate finance concerns through a human rights lens. This is important as climate finance projects are not always flawless. For example, a financed renewable energy plant, which is a form of climate change response, may lead to the displacement of local communities and a breach of their rights to food and livelihood. All climate action measures, including climate finance, therefore, need to consider the impact of projects on local communities and their human rights. A human rights-based approach is important for numerous reasons: first, it assists in circumventing the risk that climate finance is used to support projects that contribute to or result in human rights violations;⁴¹ second, it ensures policy coherence as governments' obligations under the international human rights framework extend to climate action and climate finance;⁴² third, it takes into account the complete picture as it considers the impacts of projects on vulnerable and marginalised groups, which promotes equitability and sustainability as marginalised groups are not further exposed to poverty and discrimination;⁴³ fourth, it promotes

38 As above.

39 UNGA Review of progress in the implementation of the right to development 'Promoting rights-based climate finance for people and planet' A/HRC/WG.2/19/CRP.4, 18 April 2018, https://www.ohchr.org/Documents/Issues/Development/Session19/A_HRC_WG.2_19_CRP.4.pdf (accessed 21 March 2021).

40 OHCHR & Heinrich Böll Stiftung North America 'Promoting rights-based climate finance for people and planet', https://us.boell.org/sites/default/files/promoting_rights-based_climate_finance_for_people_and_planet.pdf (accessed 21 March 2021).

41 UNGA Review (n 39).

42 As above.

43 As above.

public support for climate finance projects; fifth, it fosters climate justice;⁴⁴ and, finally, it helps to unpack the rights and responsibilities of various actors with regard to climate finance.⁴⁵

3 Kenya and the Turkana people

Kenya receives international climate finance from at least 15 different public agencies, including the World Bank and the African Development Bank (AfDB).⁴⁶ The main sources under the financial mechanism of the UNFCCC include the Green Climate Fund (GCF) and the Global Environment Facility (GEF).⁴⁷ Other mechanisms under the UNFCCC include the Special Climate Change Fund (SCCF), the Adaptation Fund and the REDD+ mechanism.⁴⁸ The country is a recipient of climate finance readiness support from the Africa Climate Change Fund (ACCF) of the AfDB. There are also other bilateral financial partners supporting climate change activities in Kenya. Some major partners are the United Kingdom's Department for International Development (DFID); the German International Development Agency (GIZ); and the Swedish International Development Co-operation Agency (SIDA), among a few others.⁴⁹

At the global level, Kenya has ratified the Paris Agreement which provides a basis for climate finance.⁵⁰ Article 11 highlights the facilitation of access to climate finance as an effective climate change action that developing country parties – especially those with the least capacity and greater vulnerability to the negative impacts of climate change – should take. Kenya is one such country as 85 per cent of its land mass is vulnerable to the effects of climate change.⁵¹ At the continental level, Kenya is part

44 OHCHR 'Key messages on human rights and climate change', https://www.ohchr.org/Documents/Issues/ClimateChange/keyMessages_on_HR_CC.pdf (accessed 21 March 2021).

45 UNGA Review (n 39).

46 National Policy on Climate Finance (n 34).

47 Republic of Kenya 'National Climate Change Action Plan (NCCAP) 2018-2022: Volume I' (2018).

48 As above.

49 NCCAP (n 47) 14.

50 Ministry of Environment and Forestry 'Kenya ratifies Paris Agreement on climate change', <http://www.environment.go.ke/?p=3001> (accessed 18 November 2020).

51 P Odhengo et al 'Climate finance in Kenya: Review and future outlook' August 2019, <https://www.adaconsortium.org/index.php/component/k2/item/397-climate-finance-in-kenya-review-and-future-outlook> (accessed 21 March 2021).

of the AU which has formulated the AU-Agenda 2063.⁵² This Agenda is committed to mobilising funding streams to support member countries in their efforts to address climate change.⁵³ Regional financial bodies, including the AfDB and East Africa Development Bank, also play an imperative part by financing sustainable management of natural resources and sustainable infrastructure. The AfDB has developed a framework to engage in fostering climate action to support Africa's transition towards green growth.⁵⁴ At the regional level, Kenya is part of the East African Community (EAC) which developed a Climate Change Policy and Strategy 2010 which, among other items, explores the establishment of an alliance on climate finance.⁵⁵

3.1 Policy and legal frameworks on climate finance in Kenya

At the national level, climate finance has trickled down into a plethora of laws, policies and documents. The most important are discussed below.

3.1.1 Constitution of Kenya 2010

The Constitution of Kenya provides for principles of public finance, including openness; accountability; public participation; fairness; equitable development through special provision for marginalised groups and areas; responsible financial management; and clear fiscal reporting.⁵⁶ The application of these principles also extends to climate finance matters.

3.1.2 Climate Change Act 2016

The Climate Change Act constitutes the main legal framework to address climate change issues in the country.⁵⁷ The Act provides for the mobilisation of funds from different streams and sets out structures to devolve these funds to county level. The Act defines climate finance and provides for the Climate Change Fund as a financing mechanism for climate change actions which are approved by the National Climate Change Council.⁵⁸ The Council administers the Fund, while the principal secretary for climate change affairs manages it. The Fund is vested in the

52 Agenda 2063: The Africa we want', https://au.int/sites/default/files/documents/33126-doc-01_background_note.pdf (accessed 20 January 2022).

53 As above.

54 Odhengo et al (n 51).

55 NCCAP (n 47) 36.

56 Art 201 Constitution of Kenya.

57 Climate Change Act (n 25).

58 Secs 5 & 25 Climate Change Act.

national treasury and the following monies are directed towards it: monies appropriated from the Consolidated Fund; donations, endowments, grants and gifts; and monies under an Act payable to the Fund.⁵⁹ The Council is also responsible for the approval of funding requests and decision making on funding allocation.⁶⁰ The Act provides that the Fund can be used for the following purposes: the provision of grants for climate change research and innovation; the provision of grants and loans to various stakeholders for the development of innovative initiatives to benefit Kenya's climate change responses; financing of climate change adaptation and mitigation actions through grants and loans; and the provision of technical assistance to county governments.⁶¹

3.1.3 National Policy on Climate Finance 2018

The National Policy on Climate Finance recognises that climate finance is an imperative tool to advance Kenya's Vision 2030 by increasing adaptive capacity and resilience to climate change, and fostering low carbon growth. The policy aims to assist in the achievement of Kenya's national goals by enhancing the mobilisation of climate finance. The policy elaborates on what it constitutes – budget allocations, grants, loans, private sector investment and climate change funds – and highlights tools that the government possesses to generate carbon finance.⁶² To ensure policy coherence, it lists out guiding principles that are based on the entire legal framework surrounding climate change, including transparency and accountability; inclusiveness; equitable access to finance; effectiveness; predictability; equal benefit sharing; environmental and social protection; sustainable development; and special needs and circumstances. Human rights are expressly mentioned at only one point in the policy. Under the legal basis of the policy, the provisions of the Constitution on the rights to health, water, food and a clean and healthy environment are discussed. It is then acknowledged that climate finance investments are necessary as these rights are connected to adaptation and mitigation needs.⁶³ This reinforces the proposition discussed in part 2 that climate change, finance and human rights are interlinked.

59 Secs 25(2) & 25(3) Climate Change Act (n 25).

60 Sec 25(6) Climate Change Act.

61 Sec 25(8) Climate Change Act.

62 National Policy on Climate Finance (n 34).

63 As above.

3.1.4 National Climate Change Action Plan 2018-2022

The National Climate Change Action Plan focuses on resource mobilisation for climate finance to ensure its availability for key sectors, and for the 'Big Four Agenda'.⁶⁴ In this regard, the Plan sets out a number of priority actions on climate finance, including operationalising the Climate Change Fund to be overseen by the National Climate Change Council, linking the National Climate Change Fund (NCCF) to County Climate Change Funds (CCCFs) and capacity building of the national treasury as the national designated authority to the GCF. The Plan also states that tracking and reporting on climate finance, as well as the results of mitigation and adaptation projects, will be of assistance in ensuring that climate finance reaches those who need it the most, including women, the youth, marginalised and minority communities.⁶⁵ The Plan requires the national treasury to formulate a climate finance resource mobilisation strategy and states that climate finance reporting will be done at national level. Additionally, the Plan elucidates that the national treasury will work with financial institutions to increase their understanding of climate finance and develop a climate risk index and funding schemes in high risk areas.⁶⁶

3.1.5 Public Finance Management Act 2012

Although this statute does not expressly provide for climate finance or human rights, it contains provisions on management and control of public finances by national and county governments, which extend to climate finance. The Act ensures the efficient and effective management of all revenue, expenditure, assets and liabilities. It also regulates the budget process, public borrowing, financial reporting, accounting and debt management.⁶⁷

3.2 Turkana people and climate change

The oldest ancestors to modern human beings were found in Turkana, thus earning the region its name as the cradle of mankind. While the region is extremely rich in history, today it is no more than a barren

64 The 'Big Four Agenda' is the government's popular development blueprint established by President Uhuru Kenyatta. Under this Agenda the President has committed to execute four pillars before the end of his term. These pillars include food security, affordable housing, universal health care, and manufacturing and job creation.

65 NCCAP (n 47).

66 As above.

67 Public Finance Management Act 18 of 2012; National Policy on Climate Finance (n 25).

wasteland due to droughts, land degradation and other climate-related vagaries. At the same time it has one of the poorest and fastest-growing populations in Kenya.⁶⁸ Since the time of history, the Turkana people have been marginalised and are among the most impoverished in sub-Saharan Africa and the world.⁶⁹

Climate change has resulted in an increase of 2 to 3 degrees Celsius in the area over the past few decades.⁷⁰ This figure is significantly higher than the global mean temperature increase of around 0,8 degrees Celsius. Average rainfall levels have dropped and remain low, with the rainy seasons becoming unpredictable. However, when the rains come, they bring in violent storms causing flash floods.⁷¹ The main economic activities in the area include fishing and pastoralism, which illustrate the reliance on natural resources for livelihood. Pastoralism depends highly on the climate – pasture, water, livestock and the surroundings. As a result, the impact of climate change on the county's environment has affected the people's rights to food, water, education, health care, a clean and healthy environment and security.⁷²

Although the realisation of a wide range of rights is inhibited by climate change, socio-economic rights are those most affected. Article 43 of the Constitution of Kenya sets out a number of socio-economic rights, including the rights to the highest attainable standard of health, adequate food of acceptable quality, clean and safe water in adequate quantities, education and social security.⁷³ Climate change has impaired the realisation of the Turkana people's socio-economic rights to water, food and livelihood, health and education, as well as their right to security. Lake Turkana is the largest desert lake in the world, but the local population cannot consume water from it due to its high salinity levels. Forming part of the arid and semi-arid lands, there are very few permanent rivers in the area. These are the rivers Turkwel, Kerio, Nabwanyang and

68 Human Rights Watch 'There is no time left: Climate change, environmental threats, and human rights in Turkana County, Kenya' 15 October 2015, <https://www.hrw.org/report/2015/10/15/there-no-time-left/climate-change-environmental-threats-and-human-rights-turkana> (accessed 21 March 2021).

69 V Vemuru et al 'Refugee impacts on Turkana hosts' November (2016).

70 J Njoka et al 'Kenya: Country situation assessment' (2016).

71 These floods are worsened by the El Nino phenomenon. The El Nino phenomenon is a climate pattern in the Pacific ocean that affects the weather globally. In East Africa, it brings extreme droughts followed by violent floods.

72 Human Rights Watch (n 68); J Asaka 'Water-energy-food nexus and human security in northwestern Kenya' in A Koulouri & N Mouraviev (eds) *Policy and governance in the water-energy-food nexus: A relational equity approach* (2019) 77.

73 Art 43 Constitution of Kenya 2010.

Nawoyawoi. Thus, accessing potable water in the area is cumbersome as the locals dig riverbeds to obtain water from the seasonal rivers and walk long distances to fetch water. As seasonal rivers are also becoming scarce, the locals have resolved to digging wells and boreholes. Women and girls often spend hours walking to fetch water. Increased temperatures, prolonged droughts and unpredictable rainy seasons caused by climate change have exacerbated this already fragile situation.⁷⁴ Most of this water is not potable resulting in high chances of water-borne diseases. As of 2019, only 32,4 per cent of the population had access to safe water.⁷⁵

With Lake Turkana and the permanent rivers decreasing in size and rivers becoming seasonal due to climate change, the main economic activities of the Turkana people are adversely affected – pastoralism, as the livestock herds do not have adequate water and pasture for consumption and fishing due to the decreasing water levels in the lake and rivers. Pastoralism is the primary livelihood of the community with over 64 per cent of the population directly depending on it, and 16 per cent dependent on agro-pastoral activities for their welfare.⁷⁶ This indicates that pastoralism is the main source of employment and income for most people. With massive losses of cattle due to the vagaries of climate change, many households have been forced to move towards the western shoreline of the lake in the hope of fishing and pasture for the livestock. This is a challenge as the loss of the fish habitat around the Ferguson bay is very high due to the impact of drought, forcing people to rely on food aid or to look for alternatives.⁷⁷

Some locals are engaged in farming and have not been getting sufficient food or profits due to the droughts.⁷⁸ Inadequate water and grazing land for the livestock have resulted in reduced numbers of livestock, weaker livestock that are prone to disease, a decrease in milk production and a reduction in birth rates. Death of livestock has a huge negative impact

74 Human Rights Watch (n 68).

75 Government of Kenya & Turkana County Government 'Turkana County smart nutrition surveys' (2019), <http://www.nutritionhealth.or.ke/wp-content/uploads/SMART%20Survey%20Reports/Turkana%20County%20SMART%20Survey%20Report%20-%20June%202019.pdf> (accessed 21 March 2021).

76 REGLAP Secretariat 'Key statistics on the drylands of Kenya, Uganda and Ethiopia' (October 2012).

77 C Carr 'Turkana survival systems at Lake Turkana: Vulnerability to collapse from Omo Basin development' in CJ Carr (ed) *River basin development and human rights in Eastern Africa: A policy crossroads* (2017) 157.

78 D Welle 'Climate change threatens Kenya's Turkana communities', <https://www.dw.com/en/climate-change-threatens-kenyas-turkana-communities/a-18816731> (accessed 12 March 2021).

on the diet of the locals who rely on meat and milk from the livestock. The risk of starvation in the area is high – many parents have complained about the loss of their children due to starvation. Adults also fear that they might run out of water and food when the lake recedes and their animals die.⁷⁹ Moreover, the effects of climate change have increased cattle rustling between the Turkana and neighbouring communities. This is a further risk to the availability of food and a threat to livelihoods.⁸⁰

Due to the acute food shortage, it is not uncommon to find children having milk as a meal, straight from animals' udders. Water and food have become scarce due to changing climate patterns, making it a struggle for the Turkana people to obtain necessities. This acute shortage of food and water is expected to increase with the droughts, with the potential to cause devastating impacts on the people's rights to life, food, water and health. The Turkana people have hence become reliant on food aid.⁸¹ Records of February 2019 also indicate that the county was embroiled in a dire food insecurity situation.⁸² The effect of climate change on the right to life of the populations is well captured. According to one writing:⁸³

Droughts which before occurred every four of five years, are now almost constant ... It is becoming more and more difficult to access the grazing land and the water needed for the goats, so that herds are completely decimated, with families now possessing only two or three goats compared to the past when they used to have hundreds.

The Turkana region has a history of chronic malnutrition, poor health and modest investment in health care as the county has been neglected for a long time, as the situation is worsened by climate change. Residents face multiple health problems that have been aggravated by droughts and floods. These problems include stomach aches, diarrhoea, trachoma, malaria and malnutrition. The malnutrition levels in the county stand at 26 per cent,⁸⁴ with child deaths due to malnutrition being at 53 per cent.⁸⁵

79 Human Rights Watch (n 68).

80 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government 'Turkana County Climate Change Policy 2020 Draft I' 10 June 2020, <https://www.turkana.go.ke/wp-content/uploads/2020/06/Turkana-County-Climate-Change-Policy-Draft-2-17th-June-2020.pdf> (accessed 21 March 2021).

81 Welle (n 78).

82 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 80).

83 Welle (n 78).

84 As above.

85 Pragma 'Conflict assessment: Northern Kenya', https://www.pragma.org/doc/Conflict_Assessment_Report.pdf (accessed 21 March 2021).

To make matters worse, the local people walk long distances to receive medical assistance at the clinics, which also are very few and most people can hardly afford these. With food and water becoming even more scarce, health complications are likely to arise. Furthermore, scientists have found indications that climate change contributes to the spread of vector-borne and infectious diseases such as malaria and dengue fever, which pose a threat to health and life expectancy in Africa.⁸⁶ Poor sanitation and the use of water that is unsafe for consumption also increase the risk of outbreaks of water-borne diseases such as cholera and typhoid,⁸⁷ which can be fatal in the area due to the underdeveloped healthcare system. Water-borne diseases such as diarrhea are on the increase as open defecation among the community is at 75 per cent.⁸⁸

Climate change has aggravated security issues in the region. Decreased resources, including water, grazing land and livestock, have led to increased competition for the limited resources. Raids from other ethnic groups, including the Pokot and Daasanach, are a common occurrence, leading to a loss of livestock and insecurity. These raids have become more frequent and dangerous with the changing climate. Some residents have been displaced due to their inability to defend themselves against the raids.⁸⁹ One example is that of the Kainuk division in Turkana county which in one single month during 2011 experienced 27 attacks from the neighbouring Pokot community. Under these 27 attacks, 13 people were killed while 17 were wounded. These attacks were due to resource-based conflicts that included water and pasture for livestock.⁹⁰ Insecurity and resource-based conflicts are expected to increase with the receding of Lake Turkana as the lake acts as a barrier between the Turkana people and other ethnic groups. Kenyan security in the region, even at the Ethiopian border to prevent the entry of the Daasanach, is understaffed and under-resourced.⁹¹

86 Human Rights Watch (n 68); OHCHR 'Climate change and the full and effective enjoyment of the rights of the child' A/HRC/35/13, <https://www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/ChildrenOnePager.pdf> (accessed 21 March 2021).

87 Human Rights Watch (n 68).

88 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 81).

89 Human Rights Watch (n 68).

90 Pragya (n 85).

91 Human Rights Watch (n 68); J Asaka & T Smucker 'Assessing the role of mobile phone communication in drought-related mobility pattern of Samburu pastoralists' (2016) 128 *Journal of Arid Environments* 12.

Children are vulnerable to the impacts of climate change due to their physiology and development needs.⁹² Their rights to life, food, water, health, education, among other rights, are threatened. Climate change affects children in various ways. For example, water and food scarcity leads to stunted growth; the spread of diseases due to climate change poses risks to their health; and traumatic stress associated with climate change can lead to mental health complications.⁹³ Research reveals that the county has the highest rate of stunting globally, which is at 19,7 per cent.⁹⁴ Further, children miss out on education as they deal with more urgent issues such as obtaining water and food. This has increased school drop-outs, increased child labour and encouraged the out-migration of the youth.⁹⁵ For women pastoralists, climate change has aggravated the situation and forced them to make extensive changes to their lives. Women, even those who are close to delivery, struggle to access water and to take care of their families and their animals.⁹⁶ Girls and women face the risk of sexual assault and attacks as they fetch water. Some girls miss school as they have no time to complete their homework, which affects their right to education, while others settle for men from areas that have access to water.⁹⁷

3.2.1 Turkana County Climate Change Draft Policy (2020)

The Turkana County Climate Change Policy, although in its draft form, aims at supporting the indigenous and marginalised community to overcome problems related to climate change through climate financing.⁹⁸ The people of this county have been greatly affected by the effects of climate change on their health, water and food security and livelihoods. This has increased poverty and the socio-economic situation is worsening. Furthermore, the traditional coping strategies also are not sufficient. All this is a result of climate-related vagaries such as droughts having become intense, and since the majority of the people are pastoralists, survival

92 OHCHR (n 86).

93 As above.

94 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 80).

95 As above.

96 Human Rights Watch 'Kenya: Climate change threatens rights' 15 October 2015, <https://www.hrw.org/news/2015/10/15/kenya-climate-change-threatens-rights> (accessed 12 March 2021).

97 SB Jeffrey 'Women pastoralists feel the heat of climate change' 7 August 2019, <https://www.un.org/africarenewal/magazine/august-november-2019/women-pastoralists-feel-heat-climate-change> (accessed 12 March 2021).

98 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 80).

is difficult as pasture and water shortfall are on the increase. Moreover, the county is faced with environmental problems such as poor natural resource management, illegal firewood collection and unsustainable land management practices.⁹⁹ This is worsening the degradation of the already fragile ecosystem. Based on these facts, the policy focuses on using climate finance as a strategy to reduce the negative impact of climate change on its people.¹⁰⁰ This policy is an outcome of the National Climate Change Action Plan (NCCAP) 2013-2017,¹⁰¹ which emphasises a climate-resilient pathway. The NCCAP also calls for mainstreaming climate change actions into various sectors. Through the NCCAP, the Climate Change Act of 2016 was set up. This Act enforces the setting up of county action plans and county policies.

With climate financing, the county hopes to facilitate the social and economic well-being of its citizens by using natural resources in a sustainable manner so as to ensure a higher quality of life for the citizens. It also aims to achieve the government's Big Four Agenda which focuses on the human rights issues of housing, food, security and affordable health care. The policy has identified the involvement of micro-finance institutions at the local and national level to support livelihoods to build resilience to climate change and variability. At the same time, the policy aims to implement smart climate agriculture whereby the county would establish mechanisms to obtain affordable finances for small-scale farmers, especially women. As per the draft policy, the county aims at providing affordable finance to livestock traders and producers with a focus on women, the youth and people living with disabilities.¹⁰² To obtain the finance, the policy has recommended the establishment of the Turkana Climate Change Fund. To facilitate the Fund, the county will commit 2 per cent of its annual budget. To manage the Fund, a private-public partnership will be created. To increase the funds, the policy suggests domestic carbon taxes with the concept of the polluter-pays principle.¹⁰³ This will be critical with regard to the oil mining in the county and a good start to increase the funds from the non-renewable resources sector. This will also make the funds self-sufficient and reduce borrowing of funds in the long run.

99 Turkana County Government 'Turkana County: County Integrated Development Plan (CIDP)' (2018-2022).

100 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 80).

101 NCCAP (n 48).

102 Ministry of Water Services, Environment and Mineral Resources: Turkana County Government (n 80).

103 As above.

With climate finance, it is expected that there will be a win-win situation for the people of Turkana as the vulnerability to climate change will decrease. It will lead the county to move towards sustainable economic and social development. There are plans to have land tenure and land use for pasture and water for the livestock so that they are not affected by the constant droughts. Once this strategy is achieved, food security is automatically ensured, reducing the migration of the youth and ensuring family stability. There are donor projects to this effect, such as the Department for International Development (DFID)/ International Development Research Centre (IDRC) which have been funding the Enhancing Adaptation to Climate Change programme.¹⁰⁴ There is the Practical Action which is implementing the Resilient Pastoralist Livelihoods Project. Another example is the National Drought Management Authority (NDMA) which aims to implement the Hunger Safety Net Programme (HSNP) at household levels.¹⁰⁵ There is the Trócaire Kenya which has received funding from the DFID and is working on a project entitled Promoting Ecosystem-based Adaptation Approaches to Climate Change and Governance in Turkana County, which is geared towards the provision of food and livestock security for the people.¹⁰⁶ The UN's Food and Agricultural Organisation (FAO) is working on the Land Governance Programme which aims at improving food security through better land management practices. The foregoing climate financing helps build the capacity of the Turkana people towards better natural resource management strategies and maintain their dignity and human rights.

4 Conclusion

Climate finance has largely been perceived as funds that are to be used for adaptation and mitigation projects to address the impacts of climate change. The Turkana people have been marginalised and are among the most impoverished in sub-Saharan Africa and the world. Due to their existing vulnerabilities, they bear the brunt of climate change, with several adverse impacts on the realisation of their human rights. With climate financing, the county hopes to facilitate the social and economic well-being of its citizens using natural resources in a sustainable manner to ensure a higher quality of life for the citizens. However, the lack of consultation and participation are precipitants of exploitation of and discrimination against these populations, a development that worsens their social, economic and environmental vulnerabilities. Their needs are not always fairly represented in the political and institutional arenas. Climate finance

104 As above.

105 As above.

106 As above.

is essential to address this issue as adaptation and mitigation measures are becoming increasingly urgent, and the mobilisation of funds is required to put such measures in place. However, climate finance must be approached from a human rights lens as climate change not only has environmental, but also human rights and economic impacts. In this light, there is a need to re-think what climate finance is and what it should be. Meaningful consultation and participation of local populations in climate finance decisions is pivotal in ensuring the success of climate finance projects. There are several avenues that can be used to raise climate finance that remain untapped. These can broaden the net for the acquisition of climate finance. In addition, climate finance should involve all stakeholders and be human rights driven.