

Abstract

Indigenous peoples' strong connection to the land, together with the ongoing climate change debate, prompts analysis of their increased vulnerability and ability to respond to climate change. The ability of indigenous people to respond is widely recognized to be dependent on several factors, such as cultural identity, livelihood, sense of place, security, visions for the future, and aspects of governance, all of which have a long history. Indigenous peoples' lives are a chronicle of their struggles to sustain their livelihood in fast-changing ecological, economic, and political contexts coupled with the quest of their nation states' to change their ways of life.

The literature analyzing vulnerability to climate change has focused largely on bio-physical and economic impacts and contextual factors. There have been very few studies on the adequacy of laws and policies to address indigenous peoples' vulnerability to climate change. Yet it is evident that climate variability and change does not occur in a vacuum but in the context of political, institutional, economic, and social structures in a society which is subject to laws and policies.

Using the experiences of Maasai pastoralists and Ogiek forest dwellers, this chapter analyzes the inadequacies of Kenyan law in dealing with indigeneity and associated vulnerability. Indigeneity draws from a combination of cultural distinctiveness and prior territorial occupancy relative to a more recently-arrived population with its own distinct and subsequently dominant culture. Claims to indigeneity for Maasai and Ogiek communities are not explicitly recognized in Kenyan law and policy. In this chapter, the reference to indigenous people with respect to these communities relates more to their pastoralist and forest dwelling livelihoods and culture than to their entitlement to the status of indigeneity on the basis of recognized indicia. The terms "indigenous," "minority" and "marginalized" are used interchangeably in reference to the Ogiek and the Maasai who fall among the plains and highlands Nilotic speaking groups respectively. There are also inter- and intra-generational dynamics within these communities such as gender and age which have an influence on determining varying degrees of vulnerability to climate change.