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## The Climate Responsibility Norm Ensuring Meaningful Participation in a Budding International Norm

*Katie Lindsay\**

### ABSTRACT

States are shifting their focus from preventing climate change to lessening the potential harms and learning how to live within a harsher climate. This paper focuses on why the international community needs to focus on its climate responsibility to abate these growing concerns. Focusing on the goal, not the form, would allow flexibility and for states to adapt to climate change within their governmental and cultural norms. Developing states should not dedicate resources to monitoring greenhouse gas emissions when their national goals barely make a dent compared to developed states' total contributions. Mayer argues that a climate assessment norm is on the horizon by expanding the international environmental assessment norm. Here, I analyze Mayer's analysis through case studies of the United States, Ethiopia, South Korea, and Fiji, arguing instead that, although a climate assessment norm may be budding, the world needs to form a *climate responsibility* norm that allows all states to meaningfully participate within their traditional customs.

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\* Katie Lindsay is a third-year law student at University of California, Hastings College of the Law. This note was written for her International Environmental Law Class. Thank you to Professor Takacs for the guidance and feedback.

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## INTRODUCTION

Governments need to significantly decrease greenhouse gas (GHG) emissions to lessen the effects of climate change and protect both humans and the biodiversity that calls this planet home. The necessary changes are substantial, requiring states to embrace adaptation to our new environments and available technologies. The international community must fundamentally shift from abusive GHG practices to renewable and sustainable ways of life to successfully maintain our planet. Developed states need to alter their GHG production drastically. In contrast, developing states need to focus on adaptation solutions and avoid the trap of GHG dependence to raise their standards of living. The international community needs to push states to focus on the goal, not the form, and allow flexibility in adapting to climate change impacts within their governmental and cultural customs.

The lack of success in mitigating international GHGs to sustainable levels illustrates why governments need to start preparing for the worst effects, particularly in less affluent developing nations. Physically seeing the adaptation measures necessary will conscript humans to lessen climate impacts and allow states to rebound more effectively from climate disasters. A climate assessment would incentivize states to consider the GHG impacts of a developmental or governmental policy. This climate assessment idea builds on other agreed-upon international norms, such as the norm against transboundary harm, intergenerational equity, and environmental assessments. Mayer takes these principles and international climate change agreements to argue for a budding climate assessment norm.<sup>1</sup> Initially, the benefits of a climate assessment norm are appealing. However, the struggles developing nations have faced with environmental impact assessments illustrates the need for a climate norm that fosters compliance within each nation's different governance and cultural norms. States that are not already successfully improving the environment through environmental assessments or lack meaningful public participation will not benefit from another empty action. At the same time, developed states that institute climate assessments but not significant mitigations perpetuate another type of empty action under the climate assessment title. These distinct challenges demonstrate why a climate assessment norm must sprout from the common but differentiated responsibilities norm because different states must prepare differently for the various impacts and goals that each state must meet.

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1. Benoit Mayer, *Climate Assessment as an Emerging Obligation Under Customary International Law*, 68 BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW 271 (2020).

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This paper begins with Section I, discussing environmental assessments and Mayer's idea of climate assessments as a budding international norm. Section II describes the environmental assessments, climate assessments, and adaption case studies of the United States and California, Ethiopia, South Korea, and Fiji. Section III argues for the need to embrace a climate responsibility norm instead of pushing western values onto states without adequately addressing the abatement of climate impacts.

## **HISTORY OF ENVIRONMENTAL ASSESSMENTS AND THE BUDDING CLIMATE ASSESSMENT NORM**

### **A. ENVIRONMENTAL ASSESSMENT LEGAL HISTORY**

The National Environmental Policy Act (NEPA) of the United States is considered the genesis of international environmental assessments. This act required any federal government action to analyze the environmental impacts of the proposed action.<sup>2</sup> After other states adopted this policy, the International Court of Justice (ICJ) solidified this as an international concept in the *Pulp Mills* decision.<sup>3</sup> In *Pulp Mills*, Argentina argued Uruguay had not adequately notified Argentina before a project's initial approval that could impact the shared river of Argentina and Uruguay.<sup>4</sup> Uruguay counter-claimed that it had met its burden because although the international norm required an EA, which Uruguay completed, it did not institute any required procedures.<sup>5</sup> The Court disagreed and held that the practice had gained the required level of acceptance among the states to establish an international norm requiring the completion of an EA when there are risks of substantial environmental impacts to a shared resource.<sup>6</sup>

In *Pulp Mills*, the ICJ found that Uruguay had not fulfilled its due diligence, holding that the duty of vigilance and prevention required more than Uruguay had completed.<sup>7</sup> This case illustrates that EAs are not only enforceable internationally but that each state must enforce its specific standards and due diligence to meet the EA requirement.<sup>8</sup> Thus, the ICJ decision found that the EA norm had become an *erga omnes*.<sup>9</sup>

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2. National Environmental Policy Act §102, 42 U.S.C. 4332(C) (1969).

3. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement 2010 I.C.J. 14 (Apr. 20).

4. *Id.* at ¶ 215.

5. *Id.* at ¶ 216.

6. *Id.* at ¶ 223.

7. *Id.* at ¶ 205; Mayer, *supra* note 1, at 303.

8. *Pulp Mills*, *supra* note 3, at 32, 34; *see also* Mayer, *supra* note 1, at 305.

9. *Id.*

## B. THE BEGINNINGS OF A CLIMATE ASSESSMENT NORM

In understanding the international community's EA norm, Mayer argues for a budding international climate assessment norm.<sup>10</sup> A climate assessment (CA) is when an EA includes an estimate of the GHG emissions a development will expend and the impacts of such expenditure.<sup>11</sup> Thus, CA allows decision-makers to fully picture a project's environmental and climate change impacts, particularly the cumulative impacts of a project and whether the community should undertake such an action. CA would thus pressure states and lower governments to meet GHG targets because they will have more concrete knowledge of their GHG contributions and increase mitigation requests. After all, mitigations frequently go hand in hand with decision-makers and public knowledge of a project's impacts.

Mayer argues that CA is a budding international norm. First, numerous countries have started to study GHG impacts within their EAs, such as South Africa, Hong Kong, and the United States.<sup>12</sup> Second, many states have a desire to meet their global reduction goals.<sup>13</sup> Third, even without specific legal obligations, some states are enacting CA ideals: China has one example in its Ministry of Environmental Protection guide on environmental impact assessments.<sup>14</sup> The World Bank has also stated that estimates of GHG impacts are part of "good international industry practice."<sup>15</sup> Nevertheless, Mayer points out that not all states follow this practice. Some states bar GHG estimates, and others allow GHG estimates inconsistently, which leaves the method incomplete overall yet potentially growing in international acceptance.<sup>16</sup>

In comparison to state actions, international treaties only hint at the idea of a CA norm. No climate change treaty or agreement requires CAs, and state sovereignty reigns high. However, the United Nations Framework Convention on Climate Change states that nations should consider climate change impacts to the extent feasible, and the UN General Assembly recognized the need to integrate climate change measures into national policies.<sup>17</sup> The Paris Accords agreed to pursue domestic mitigation measures with the aim of achieving the objectives of the agreement.<sup>18</sup> However, no state

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10. Mayer, *supra* note 1, at 274.

11. *Id.* at 273.

12. *Id.* at 273, 298.

13. *See id.* at 271-72.

14. *Id.* at 285.

15. Mayer, *supra* note 1, at 286 (citing WORLD BANK, REVIEW AND UPDATE OF THE WORLD BANK'S SAFEGUARD POLICIES 21 (2016), <https://perma.cc/3JYC-U7H6>).

16. *Id.* at 288.

17. Mayer, *supra* note 1, at 289, 290; Paris Agreement, Dec. 12, 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1.

18. Paris Agreement, *supra* note 17.

specifically mentions EA as a tool for climate change mitigation. Additionally, the Minsk Declaration by the United Nations Economic Commission for European States outlined a shared vision to develop national climate change action and incorporate specific mitigation and adaptation measures into regional policies.<sup>19</sup> Lastly, states could interpret CA in both the United Nations Convention for the Law of the Sea and the Convention on Biological Diversity.<sup>20</sup> Both treaties require EAs, and Mayer argues that since climate change will impact both the oceans and biodiversity so severely, knowledge of GHG impacts is vital to meet these conventions' protections.<sup>21</sup> These obligations do not definitively find a CA requirement in international law, but they all point to a general obligation forming within the international community.

### C. INITIAL COMPLICATIONS OF A CLIMATE ASSESSMENT NORM

One initial concern is who receives the duty of CA. For EAs, the duty is due to the states potentially affected, but climate impacts are global.<sup>22</sup> It is unreasonable to require global notification and the duty to assess impacts held to all other states. Scholars have also brought up how to measure GHG impacts because every project could have a substantial impact and no significant impact based on the scale of assessment.<sup>23</sup> Nevertheless, neither of these critiques eliminates the CA potential because CA is not a results-driven commitment but a method-driven commitment.<sup>24</sup> Mayer argues that the idea is that states agree to work in good faith based on the norm of *common but differentiated responsibilities* to reduce emissions based on the climate agreements discussed above.<sup>25</sup> Therefore, CA could be accomplished by not looking at a project's global GHG contributions but instead at the total GHGs of both the proposed project and the alternatives to find a reasonable GHG level for the type of project and whether the proposed project is significantly higher than alternatives.<sup>26</sup> This process would work to find the most efficient forms of projects over time. By viewing CAs this way, it illustrates the potential for CA growth into an international customary norm, and public participation in EA can expand this norm because GHGs are arguably the most pressing environmental issue, and public participation would demand action to further prevent or lessen climate

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19. Mayer, *supra* note 1, at 291.

20. *Id.*

21. *Id.*

22. *Id.* at 292 (citing N. Craik, *Principle 17*, in THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT: A COMMENTARY 451, 458 (J.E. Viñuales ed., 2015)).

23. *Id.* at 293–294.

24. *Id.*

25. Mayer, *supra* note 1, at 301.

26. Jacqueline Peel, *Environmental Impact Assessment and Climate Change*, in ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW 348, 357 (Michael Faure ed., 2016).

impacts. However, this assumes a meaningful public participation process, and the case studies demonstrate that not all developing states have achieved or strive for meaningful participation.

## **CASE STUDIES ON ENVIRONMENTAL ASSESSMENTS EVOLVING INTO CLIMATE ASSESSMENTS**

In compiling case studies to examine a potentially budding CA norm, a stark contrast between developed and developing states became apparent. While many developed nations are beginning to institute CAs in some form within their EA requirements, many developing nations are instead hoping to embrace climate adaption strategies that will grow their economies and potentially expand GHGs but with an eye towards long-term carbon-neutrality. First, this section discusses the United States EA and CA requirements and then discusses California's CA requirements. Second, this section discusses Ethiopia's EA and its plans to leapfrog to green technology. Third, South Korea will provide a brief insight into a recently developed nation's actions. Finally, Fiji will complete the case studies by examining its past struggles with environmental standards and its current adaptation plans.

### **A. THE UNITED STATES NATIONAL ENVIRONMENTAL POLICY ACT AND GHG REQUIREMENTS**

As discussed above, the United States has an EA requirement but does not have a complete CA developed. This section will discuss the EA's legal requirements, and the successful public participation element. Lastly, this section will discuss California's successful CA requirements.

#### **i. United States Historical Goals and Legal Requirements**

NEPA protects the environment by requiring government decision-makers to know a project's full impacts before issuing approval. Congress enacted NEPA to promote the general welfare and create and maintain conditions under which man and nature could exist in productive harmony for present and future generations.<sup>27</sup> The heart of NEPA requires every major federal action that significantly affects the quality of the human environment to create a detailed statement on its environmental impacts.<sup>28</sup> NEPA creates procedural requirements for agencies to complete an EA analysis if a project may significantly impact the environment.<sup>29</sup>

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27. Congressional Declaration of National Environmental Policy Act §101, 42 U.S.C. § 4331 (1969).

28. U.S.C. 4332(C).

29. U.S.C. 4332(C).

ii. Public Participation Under the U.S. NEPA Process

The public can participate in this process both through litigation and the notice and comment process. Agencies must respond to every comment received by the public in the final rulemaking and provide a concise statement of its basis and purpose.<sup>30</sup> As long as the agency has received comments on an issue, the public has exhausted their administrative options and can litigate the issue if the public believes that the agency did not follow proper procedures or has substantive issues with the project. This process gives the public both judicial and administrative ways to participate in governmental decision-making that impacts the environment.

The current U.S. GHG regulations take a step backward for the U.S. but suggest discussing GHG impacts within the EA analysis. NEPA requires the rule of reason for determining significant impacts.<sup>31</sup> The guidance discusses that although agencies should not consider GHG impacts above other impacts, GHG impacts are still a part of the calculus if, in the agency's experience and expertise, it determines that the project's GHG emissions could cause significant impacts.<sup>32</sup> Additionally, the guidance discusses how agencies can use indirect and cumulative GHG emissions to review climate change impacts as long as there is a sufficiently close causal relationship.<sup>33</sup> However, if an agency believes the quantification of GHGs would be overly speculative, the agency can omit the discussion and explain its decision.<sup>34</sup> This assessment gives agencies several ways to discount GHG impacts but shows that there are times when an agency must analyze GHG impacts under NEPA. Thus, the U.S. is starting to require GHG impact assessments and indicates a potential future climate assessment norm. The previous U.S. administration cut back on this progress, but the new Biden administration seems likely to reverse this course.<sup>35</sup> Additionally, state progress discussed below further solidifies the United States' intention to move towards CAs despite the national volte-face.

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30. Administrative Procedure Act, 5 U.S.C. § 553(c) (1946).

31. Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, 84 Fed. Reg. 30097, 30097-98 (June 26, 2019).

32. *Id.*

33. Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304, 43331 (July 16, 2020).

34. Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304, 43331 (July 16, 2020).

35. Juliet Elprin, Brady Dennis, and John Muyskens, *Tracking Biden's Environmental Action*, WASHINGTON POST (Mar. 8, 2021); *see also* Kelsey Burger, *Biden CEQ Pick Signals NEPA Changes*, GREENWIRE (Dec. 21, 2020).

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iii. California's Increased CA Requirements Under Its NEPA Equivalent

The United States allows its states to enact their own NEPA equivalents with GHG requirements. California takes NEPA a step farther than most, requiring an EA with a GHG assessment for all state agency actions and requiring mitigation of environmental impacts when feasible.<sup>36</sup> California achieves its high standard through several state statutes to ensure analysis and consideration of GHG impacts before project approval. In 2006, the California Legislature enacted the California Global Warming Solutions Act to reduce GHGs in California to 1990 levels by 2020 and require GHG reductions that are real, permanent, quantifiable, verifiable, enforceable, and additional to other legally required GHG reductions.<sup>37</sup> In 2008, the Legislature enacted the Sustainable Communities and Climate Protection Act to require counties to plan land use and transportation systems to further assist in GHG emission reductions.<sup>38</sup> The California Legislature also amended the Global Warming Solutions Act in 2016 to further require GHG reductions to 40% below 1990 levels by 2030 and 80% reductions by 2050.<sup>39</sup> Lastly, under the 2018 update to California's NEPA equivalent, agencies must analyze the GHGs of proposed projects under the broader climate change context, not just concerning state or national emissions totals and whether there are plans to mitigate the cumulative effects.<sup>40</sup> California has already reduced its emissions and plans to be carbon-neutral by 2045, highlighting its commitment to CA and GHG mitigation requirements.<sup>41</sup> California is not alone in state CA requirements but provides a view of the possible requirements developed states could undertake within a CA norm.

B. ETHIOPIA'S ENVIRONMENTAL ASSESSMENT AND CLIMATE RESILIENT GREEN ECONOMY

Ethiopia does not have any CA requirements but has a detailed EA.<sup>42</sup> Despite legislative efforts and treaty commitments requiring sufficient EAs, the Ethiopian EA has a few flaws that severely limit its effectiveness. In understanding the EA flaws, a further CA requirement would not help

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36. Cal. Pub. Res. § 21061 (2019).

37. Cal. Health & Safety § 38562 (2018); Governor's Office of Planning and Research, *CEQA and Climate Change Through California Environmental Quality Act Review* 3 (June 19, 2008).

38. Cal. Pub. Res. §§ 21155, 21159 (2009).

39. Governor Brown and Alex Padilla, *Governor Brown Establishes Most Ambitious Greenhouse Gas Reduction Target in North America*, EXECUTIVE ORDER B-30-15 (Apr. 29, 2015).

40. Cal. Code Regs. tit. 14, § 15064.4 (2018).

41. Anne Mulkern, *California Can be Climate-Neutral in 25 Years—With Drastic Action*, SCI. AM. (Feb. 1, 2020), <https://perma.cc/A2AP-JPEY>.

42. Gedifew Yigzaw, *History of Implementation of Environmental Impact Assessment Proclamation No.299/2002*, 50 ENV'TL POL'Y & L. 81, 83 (2020).

Ethiopia reach its goal of a middle-class economy based on a climate-resilient model. This section will discuss Ethiopia's EA requirements and international commitments, Ethiopia's climate change plans, and why CA would not help Ethiopia meet its goals.

i. History of Ethiopia's EA Requirements

Ethiopia's EA requirements started to form in the 1980s with specific water resource developments that the United Nations and the World Health Organization developed.<sup>43</sup> Additional donor-funded irrigation projects expanded the use of EAs in Ethiopia.<sup>44</sup> Nevertheless, it was not until 2002 that the formal process began with the Ethiopian Environmental Protection Agency (EPA) enacting the Environmental Impact Analysis Proclamation.<sup>45</sup> The Proclamation requires any major planned development project or public policy that is likely to harm the environment to conduct an EA.<sup>46</sup> The government requires that the project proponent ensure it meets all requirements before having the relevant environmental body approve the project.<sup>47</sup> The environmental body may require additional obligations before the proponent is allowed to begin the project.<sup>48</sup> The EPA also compiles guidelines and directives for whether a type of project requires an EA.<sup>49</sup> Ethiopia's EA requires public participation in providing access to the environmental studies and the required inclusion of public comments, particularly from the affected communities.<sup>50</sup>

Ethiopia is a signatory to the United Nations Rio Declaration, the African Convention, and includes EA principles within its Constitution.<sup>51</sup> All of these international conventions implicitly require member states to institutionalize EA principles within their state.<sup>52</sup> The Federal Democratic Republic of Ethiopia's Constitution section on *Fundamental Rights and Freedoms* states explicitly that Constitutional interpretation should conform in a manner that includes all internationally agreed upon instruments adopted by Ethiopia.<sup>53</sup> This interpretation requirement shows that these Conventions and Declarations frame the debate within Ethiopia

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43. Yigzaw, *supra* note 42, at 82.

44. *Id.* at 83.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 84.

50. *Id.* at 83, 85.

51. D.G. Gidey, *The Role of Public Participation in Environmental Impact Assessments in Ethiopia: Theory and Practice*, TILBERG U. 235, 250–252 (2017).

52. *Id.*

53. *Id.*

by providing a guide for how the government is to implement its environmental laws.

ii. Regulatory and Judicial Hindrances to Meaningful Public Participation

Ethiopia's EA requirements fail to provide accountability for project impacts because the EA structure does not support meaningful public participation and oversight. First, there are no explicit requirements for public participation, except that proponents must attempt some form of participation.<sup>54</sup> Project proponents usually complete this obligation via surveys or town halls.<sup>55</sup> This allowance permits project proponents to avoid meaningful public participation by not allowing participation until the project is too far along or so early it avoids meaningful knowledge of the issues.<sup>56</sup> This lessens the value of the EA requirement. Also, governmental agencies must determine if project proponents have completed a sufficient EA but only have fifteen working days from submission to complete their findings and make a recommendation.<sup>57</sup> These institutional challenges highlight that Ethiopia does not place a high value on the EA information because project proponents can easily manipulate or avoid meaningful EA oversight and participation.

In reviewing the administrative processes, a similar issue arises under Ethiopians' ability to appeal a governmental decision. In *Radical Academy*, a school filed a grievance with the Ethiopian EPA and the Ministry of Environment and Forestry regarding a large hospital construction project adjacent to the school that did not complete the required EA.<sup>58</sup> The EPA responded by telling the construction company that when the construction permit was issued, the EPA advised against building a hospital near the school because of the environmental impacts each would cause on the other.<sup>59</sup> However, the EPA did not include an administrative order to stop construction; instead, the EPA disclaimed responsibility for any environmental problems that may arise.<sup>60</sup> This avoidance of responsibility implicitly endorses continued construction and the continued abrogation of future EAs.

The judicial system has also proved unhelpful in seeking enforcement of EA procedures. Ethiopia does not follow the common law tradition where courts have judicial review powers; instead, the Ethiopian Supreme

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54. Yigsaw, *supra* note 42, at 83.

55. Gidey, *supra* note 51, at 383, 390, 397.

56. *Id.* at 85.

57. *Id.*

58. *Id.* at 269.

59. *Id.*

60. *Id.* at 269–270.

Court has invalidated lower court appeals claiming such power.<sup>61</sup> In *Privatization and Public Enterprises Supervising Agency v. Heirs of Nur Beza Terega*, the Cassation Bench of the Federal Supreme Court stated that ordinary courts in Ethiopia have no inherent judicial power to review the decisions of administrative bodies because, per the Supreme Court, judicial power emanates from statute.<sup>62</sup> This holding shows that the public has little recourse from the courts because unless a statute explicitly allows appeals, the Supreme Court will not uphold a lower court review of agency action.

The lack of meaningful public participation and meaningful judicial recourse shows that Ethiopia's EA requirements – although appearing strong on their face – have not acquired a meaningful status. Ethiopia's most significant issue is its top-down approach.<sup>63</sup> The higher government bodies enact far-reaching environmental standards but do not provide enough enforcement and guidance to ensure success from the bottom up.<sup>64</sup> This case study shows that even when an international standard becomes a norm, that does not ensure successful implementation even if states have adopted the norm into their government and legal structures.

### iii. Ethiopia's Self-Imposed Climate and GHG Commitments

There are few CA concerns in Ethiopia because of the state's low GHG emissions. Ethiopia is a developing nation and voluntarily declared that it would limit its GHGs to one hundred and forty-five megatons of carbon dioxide under the Paris Agreement; this would be two-hundred and forty-four percent above Ethiopia's 1990 levels.<sup>65</sup> Additionally, Ethiopia has a long-term goal of becoming carbon neutral.<sup>66</sup> Ethiopia's plan is the Climate-Resilient Green Economy (CRGE), where it hopes to achieve a middle-income lifestyle for its citizens while not increasing its GHGs from 2010 levels. Ethiopia plans to accomplish this through four pillars:

1. Improving crop and livestock practices for higher food security and farmer income while reducing emissions,
2. Protecting and re-establishing forests for their economic and carbon stocks,
3. Expanding renewable sources of energy for domestic and regional markets, and

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61. Gidey, *supra* note 51, at 270–271.

62. *Id.* at 271.

63. *Id.* at 398, 405.

64. *Id.*

65. Federal Democratic Republic of Ethiopia, *Ethiopia's Climate-Resilient Green Economy: National Adaptation Plan* (May 2019), <https://perma.cc/835R-QQBV>; Federal Democratic Republic of Ethiopia, *Ethiopia's Climate-Resilient Green Economy: Green Economy Strategy 2*, 11 (Nov. 2011), <https://perma.cc/HW94-S8D3>.

66. *Ethiopia's Climate-Resilient Green Economy: Green Economy Strategy*, *supra* note 65, at 22.

4. Leapfrogging to modern and energy-efficient technologies in transport, industrial sectors, and buildings.<sup>67</sup>

Ethiopia was supposed to release its update on the CRGE in 2020, but it was delayed, presumably due to both the COVID-19 pandemic and a potential civil war.<sup>68</sup> If the CRGE fails because of similar EA struggles, it would further demonstrate the impotence of a CA norm for Ethiopia because it would require more paperwork and fail to provide meaningful enforcement standards or raise living standards.

However, presuming Ethiopia's CRGE goal succeeds, this would avoid the standard GHG-focused model, grow its economy using green technology, and sell carbon stocks to help finance its ambitious goals. Ethiopia has planted three and a half million trees; the Ethio-Wetlands and Natural Resources Association is working on how to incorporate coffee-growing onto forest floors to allow communities to profit from forests.<sup>69</sup> These actions motivate local communities to care for their forests instead of clear-cutting for raising exportable cattle. Currently, fuelwood is one of the primary energy sources satisfying the energy needs of about ninety percent of Ethiopia's rural households.<sup>70</sup> CRGE plans to disseminate fuel-efficient or alternative-fuel cookstoves to lessen forest destruction and combine this program with reforestation efforts, significantly decreasing Ethiopia's GHG emissions and increasing its forest health.<sup>71</sup> Ethiopia has also built its Grand Renaissance Dam, which it plans to use for hydropower to lessen its GHG needs further.<sup>72</sup> Unfortunately, the dam has met with international objections as Egypt worries about Ethiopia damming Egypt's only water source.<sup>73</sup> Egypt has threatened war over the dam filling, and there have been no successful agreements on how to fill the dam.<sup>74</sup> Sudan,

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67. *Ethiopia's Climate-Resilient Green Economy: Green Economy Strategy*, *supra* note 65, at 22.

68. Siobhan O'Grady, *What's Behind the Conflict in Ethiopia*, WASHINGTON POST (Nov. 23, 2020), <https://perma.cc/9VMS-MH8J>.

69. Steve Zwick, *How Ethiopia is Slowing Climate Change by Reviving its Forests – and its Economy*, ECOSYSTEM MARKETPLACE (Jan. 16, 2018), <https://perma.cc/5LBV-GCD7>; University of Huddersfield, *Preserving Coffee and Forests in Ethiopia for a Sustainable Future*, PHYS.ORG (July 28, 2020), <https://perma.cc/Q2GC-DZBT>; Eyder Peralta, *Ethiopia Plants 350 Million Trees as Part of 'Green Legacy' Program*, NPR (Jul. 31, 2019), <https://perma.cc/V9LR-FQGD>.

70. Federal Democratic Republic of Ethiopia, *Ethiopia's Climate-Resilient Green Economy: Green Economy Strategy*, 103 (Nov. 2011) <https://perma.cc/8UZP-PP7T>.

71. Federal Democratic Republic of Ethiopia, *supra* note 70, at 14.

72. Ruth Michaelson, *It'll Cause a Water War: Divisions Run Deep as Filing of Nile Dam Nears*, THE GUARDIAN (Apr. 23, 2020), <https://perma.cc/B838-KX2F>.

73. *Id.*

74. Aljazeera News, *Sudan Rejects Ethiopia Proposal to Sign Nile Mega-Dam Agreement*, ALJAZEERA (May 13, 2020), <https://perma.cc/49PL-4V83>.

the other affected state, has also recently spoken out against Ethiopia filling the dam due to environmental and social concerns.<sup>75</sup>

The CRGE plan could be an example of how developing nations can grow economies, raise living standards through technological advancements, and improve carbon sequestration by rehabilitating their local environments through local customs. Ethiopia has well-established EA requirements, yet with environmental oversight agencies abdicating responsibility and little meaningful public participation, it raises the question of whether the CRGE will be successful. If the CRGE uses a top-down approach and rare bottom-up enforcement or oversight, there could be comparable results to its failed EA process. This top-down approach is a major concern in developing nations because it pushes the western standards of EA enactment without incorporating how local populations will participate in the process to allow publicly demanded mitigations to thrive. However, tying the CRGE to economic growth and living standards increases political motivations to ensure CRGE's chance of success.

If Ethiopia enacts further CA requirements without first resolving the current EA faults, there would likely be similar failures. A developing state's politicians have no incentive to reduce their state GHGs when major social and economic problems need solving. Once Ethiopia can improve its EA public participation and potentially alter its judicial appeal processes, Ethiopia could add a CA requirement. But as it stands, CA would be another empty procedural process until public knowledge of its potential pushes agencies to require more than project proponent suggest for fear of public outcry. Conversely, the benefits of using traditional customs and values to build a green economy based on CRGE would promote a more environmentally conscious citizenry because the public would immediately see the benefits of green technology and higher standards of living in a locally recognizable way, and this would further CRGE expansion. This issue demonstrates why CA is not the norm the international community should embrace. A climate responsibility norm would welcome the CRGE process for developing nations because it allows for long-term reductions of GHGs, adaption to the impacts of climate change, all while meeting the needs of Ethiopians within their current customs and values.

### C. SOUTH KOREA ILLUSTRATES CA BENEFITS FOR RECENTLY DEVELOPED NATIONS

In contrast to Ethiopia, South Korea (Korea) has recently enacted CA requirements. Korea EA requirements began as prior consultations in 1977 under the Environmental Conservation Act, becoming formal EAs in some

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75. Aljazeera News, *Sudan Rejects Ethiopia Proposal to Sign Nile Mega-Dam Agreement*, ALJAZEERA (May 13, 2020), <https://perma.cc/49PL-4V83>.

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sectors in 1981 under the Framework Act on Environmental Policy.<sup>76</sup> In 2009, the Korean Ministry of the Environment published the first GHG impact assessment guidelines to promote climate change awareness.<sup>77</sup> CA is only a legal requirement if the environmental impact assessment scoping committee believes that the nature of the development, size, or strategic significance warrants CA requirements.<sup>78</sup> In reviewing the year 2010, after this CA requirement became official, twenty-six projects conducted EAs, with eight of these projects including a CA analysis.<sup>79</sup>

In comparing the United States, South Korea, and Ethiopia, it shows CA as a natural extension since the U.S. requirements are more established and have ample public participation and enforcement and some concrete CA requirements. Ethiopia does not require CA but has only recently begun EA requirements and still has some faults to work through. Korea falls in the middle of the spectrum. However, CA is an urgent matter that is only becoming a norm because of the imminent climate impacts that have started occurring. Korea does not face the developing nation concerns that Ethiopia faces; additionally, Korea heavily emits GHGs primarily through coal energy production while Ethiopia emits very few GHGs.<sup>80</sup> Korea has said it is committed to not approving new coal power plants, but there appear to be some loopholes in this commitment, and many plants are relatively new.<sup>81</sup>

If Korea follows the budding CA norm and requires CA for any new coal plants, as the scoping committee can require, this would be more desirable than not requiring any GHG actions. However, since Korea has significant GHG emissions, a better outcome would be to alter the state energy sources to renewables over coal. A CA could require renewables for new projects as an alternative and promote GHG mitigation similar to California's requirements. However, Ethiopia shows that not all states have robust public participation to ensure environmental protection through government reporting and analysis. By embracing a climate responsibility norm, states would take ownership of how their people interact with their government and use this process to create robust GHG emission reductions instead of a procedural reporting requirement of GHG emissions without ensuring substantive reduction efforts. For Korea, lowering GHG emissions would improve air quality, so a coal plant could include

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76. Jeonghwa Yi and Theo Hacking, *Incorporating Climate Change into Environmental Impact Assessment: Perspectives from Urban Developments in South Korea*, 21 *PROCEDIA ENG'G* 907, 908 (2011).

77. *Id.* at 909.

78. *Id.*

79. *Id.* at 910.

80. Josh Gabbatiss, *The Carbon Brief Profile: South Korea*, *CARBON BRIEF* (Apr. 6, 2020), <https://perma.cc/VD28-VVH8>.

81. *Id.*

renewables as an EA alternative to enhance air quality without considering CA.<sup>82</sup> Korea instituting a CA will bring benefits, but Korea has already established an EA system for CA to follow.<sup>83</sup> When states lack these established standards, it lessens the chance of CA successfully reducing GHGs. Climate change abatements do not have time to stumble because of differing national values.

#### D. FIJI, MOVING TOWARDS ADAPTION WITH CLIMATE ASSESSMENT

Fiji is a developing nation that has embraced the CA and adaption mentality. Nevertheless, there are challenges, particularly when examining Fiji's environmental protection efforts. Historically, a lack of respect for traditional Fijian values has been the primary cause of Fiji's environmental failures.<sup>84</sup> Fiji faces tension in its intermingling of indigenous rights and national agency oversight, leaving indigenous people to fear the new government will abrogate their rights through competing interests and overlapping duties by state agencies.<sup>85</sup> A significant reason for this conflict is the tension between the western value systems and the Fijian historical hierarchy and governance.<sup>86</sup> First, this section will discuss Fijian EA and CA history and the international obligations relating to climate change impacts. Then, it will review land control policies and Fiji's environmental protection flaws. Last, it will discuss Fiji's adaption and current CA plans and future barriers to success.

##### i. Fijian EA Requirements and International Obligations

Currently, Fiji requires an EA for all major projects and some smaller projects within the coastal zone or thirty meters of a river or stream.<sup>87</sup> The Fijian EA authority must examine a development proposal and determine if a significant environmental or natural resource impact is likely to occur.<sup>88</sup> The EA requires both assessment and feasible mitigation measures and may require public participation during the initial EA review.<sup>89</sup> Additionally, the public can view the EA within twenty-one days of submission to the

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82. Gabbittis, *supra* note 80.

83. Korea: *EIA Procedure*, ENVIRONMENTAL LAW ALLIANCE WORLDWIDE (June 8, 2020), <https://perma.cc/56SP-7NND>.

84. Jane Turnbull, *Explaining Complexities of Environmental Management, Management in Developing Countries: Lessons from Fiji Islands*, 170 THE GEOGRAPHICAL J. 64, 66 (2004).

85. Kiji Vukikomoala, et. al., *An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities*, Report 19, Fiji 26 (Sept. 2012).

86. Turnbull, *supra* note 84 at 74.

87. Fijian Islands Environmental Management Act of 2005: Part 3, LAWS.GOV.FJ (Last Accessed Dec. 22, 2020).

88. *Id.* at Part 2(12)(3).

89. *Id.* at Part 2(29)(2).

environmental authority.<sup>90</sup> If the public disagrees with the authority's decision, the public can appeal the decision within twenty-one days from the date of the decision to the Environmental Tribunal.<sup>91</sup> However, this tribunal has only heard three cases, and there is little public information about its members, procedures, or decisions.<sup>92</sup>

Fiji has only had continuous democratic control for the past six years.<sup>93</sup> Previously Fijian governance included chieftains, a British colony, and dominion by two different militaries and one civilian coup until 2014.<sup>94</sup> Despite these domestic struggles, Fiji has instituted environmental assessments, including a GHG impact assessment. Fiji has become a leader in international climate change governance, being the first nation to ratify the Paris Accords.<sup>95</sup> Fiji is a signatory to the United Nations Convention on Climate Change, the Montreal Protocol, and the Stockholm Convention.<sup>96</sup> Additionally, Fiji is a signatory to the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea.<sup>97</sup> Through all of these conventions, agreements, and legislation, Fiji is working towards becoming carbon-neutral by 2050 and has a climate adaptation strategy that includes a framework for climate migrations if sea-level rise requires Fijian communities to move.<sup>98</sup>

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90. Fijian Islands Environmental Management Act of 2005, *supra* note 87 at Part 2(30)(3).

91. *Id.* at Part 2(21)(6).

92. U.N. HRC, 43rd Sess., U.N. Doc. A/HRC/43/53/Add.1, at 8, ¶ 38 (Dec. 27, 2019).

93. Editors of Encyclopedia Britannica, *Fiji: Government and Society: Constitutional Framework*, BRITANNICA.COM, <https://perma.cc/N5P6-MXJL>.

94. *Id.*; Turnbull, *supra* note 84 at 70; see also Britannica, *Fiji Government and Society: Constitutional Framework*, <https://www.britannica.com/place/Fiji-republic-Pacific-Ocean/Government-and-society> (last accessed Mar. 13, 2021).

95. Madeline Cuff, *Fiji Becomes First Country in the World to Ratify Paris Agreement*, THE GUARDIAN (Feb. 15, 2016), <https://perma.cc/53LM-YJD2>.

96. Status of Parties: Fiji, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://perma.cc/N4C8-H556>; Status of Treaties: Montreal Protocol on Substances that Deplete Ozone Layer, U.N. Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-2-a&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2-a&chapter=27&clang=_en) (last accessed Mar. 13, 2021); Status of Treaties: Stockholm Convention on Persistent Organic Pollutants May 22, 2001, U.N. Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-15&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-15&chapter=27&clang=_en) (last accessed Mar. 13, 2021); United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

97. Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818. 1760 U.N.T.S. 79; The Fijian Government, *Fiji's Contribution to the UNCLOS Praised at 25th Anniversary of the International Seabed Authority*, FIJI.GOV (Jul. 27, 2019), <https://perma.cc/M5LK-RUBG>.

98. Fijian Ministry of Economy, *Low Emission Development Strategy 2018-2050*, GOVERNMENT OF THE REPUBLIC OF FIJI (2018); Fijian Ministry of Information, *Republic of*

Fiji's national environmental protections follow a top-down approach that historically ignored bottom-up social and community needs and faced struggles similar to Ethiopia. The Fijian Native Lands Trust Board focused on allowing indigenous people to retain control and receive compensation through tenure arrangements for the resources locals lost to environmental conservation or development.<sup>99</sup> The Fijian national government and international organizations pushed EA practices, despite Fiji's struggles to fund hospitals, schools, or roads.<sup>100</sup> When the national government promoted environmental protections while Fijians struggled for basic necessities, it created a culture of local acquiescence to environmental protections for profit, not genuine desire for the EA practices that western funding valued. Yet, the external westernized organizations frequently blame environmental enforcement struggles on a lack of education, technical deficiencies, or "institutional difficulties of an immature state."<sup>101</sup> These "immature state" arguments assume that western environmental management views are paramount and discount the tension between Fijian's basic necessity concerns and traditional environmental practices.

ii. Local Control in Conflict with National Objectives

The local chieftain rule has come into conflict with national laws and power structures. At the same time, socio-economic controls protect the rights of indigenous populations and leave in place their hierarchical customs. As the prior case studies have highlighted, public participation is required to ensure EA success. Unfortunately, Fiji has a history of restricting or discouraging public participation so that the historical elite remain in control.<sup>102</sup> The financial gains occur because the Native Lands Trust Board receives a proportion of any funds the Board distributes to indigenous populations for the use of their lands.<sup>103</sup> The indigenous chiefs distribute the remaining funds to the indigenous peoples as they deem appropriate.<sup>104</sup> These indigenous financial gains are not from a lack of environmental concern but a fundamental question of who controls the resources.

Fiji has long relied on customary governance systems and a council of chiefs for environmental protection practices, but the national laws have conflicted. The national government relies on the local community to

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*Fiji National Adaptation Plan: A Pathway Towards Climate Resilience*, GOVERNMENT OF THE REPUBLIC OF FIJI (2018).

99. Turnbull, *supra* note 84, at 72.

100. *Id.* at 70.

101. *Id.*

102. *Id.* at 74.

103. *Id.* at 73.

104. *Id.*

manage fisheries but does not grant the locals authority. This conflicting agenda forces the local chiefs to rely solely on historical customary enforcement.<sup>105</sup> The indigenous population generally respects the customary authority, but as financial gains from illegal fishing grow, the lack of legally actionable authority significantly diminishes enforcement.<sup>106</sup> The paramount Chief in Mancuta Province seized a boat that was illegally fishing to enforce national laws and local customs.<sup>107</sup> The national government arrested the Chief for larceny because he lacked the authority to seize property.<sup>108</sup> Ultimately, the government dropped the charges against him. However, it had a chilling effect on community enforcement and highlighted the need to ensure that local enforcement has proper authority under national laws.<sup>109</sup>

Initially, indigenous chiefs were the defining authority, and subsistence fishing was the local custom. However, when western governance began, there were efforts to promote artisanal fishing over subsistence fishing, leading indigenous populations to become accustomed to fishing to support themselves through sales instead of subsistence.<sup>110</sup> These governmental promotions included providing outboard motorboats and equipment, with the same government later regulating and banning said equipment when environmental protection ideals arose.<sup>111</sup> Additionally, intermediaries have moved into some villages to help fishermen sell their fish in nearby cities, allowing easy access to illegal fishing profits.<sup>112</sup> In altering the indigenous chief customary norms' processes, it devalued the Chief's role in environmental protection, yet the national government later desired such actions. This hierarchical void left the indigenous community knowing that communal norms lack power and that the national enforcement only occurs at the community level.

By instituting national measures within local community customary power frameworks and supporting local power at the national level, the most successful implementation of environmental laws can occur. When the village of Tui Kubulau allowed traditional chiefs to administer the national fishing licenses for non-subsistence fishing and matched protected zones with local needs, it transformed the current system to meet national standards through locally acceptable customs.<sup>113</sup> In a different instance, the

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105. Pepe Clark and Stacy Jupiter, *Law, Custom, and Community-Based Natural Resource Management in Kubulau District (Fiji)*, 37 ENV'T CONSERVATION 98, 101 (2010).

106. *Id.* at 102, 104.

107. *Id.*

108. *Id.*

109. *Id.* at 104.

110. Turnbull, *supra* note 84, at 73.

111. *Id.*

112. Clark, *supra* note 105, at 102, 104.

113. *Id.*

fishermen discovered that legal protections did not extend to protected areas at the national level, leading the fishermen to lose respect for the local customs and protest the nationally mandated local protected zones.<sup>114</sup> Taking national ideals and shaping them to fit local practices with national legal mechanisms places a support structure for proper enforcement. Historically, Fiji's national government has discounted traditional practices, brought in western legal standards, and required locals to enforce these new laws as the national government desired.<sup>115</sup> EA and CA call for public participation and oversight, which does not align with Fiji's traditional customs. If the public does not participate, EAs fail because EA requires the public to demand their government officials act. Without this participation, EAs lose their power and become an empty and costly procedural action.

iii. Fijian Climate Policies and Adaption Plans

These Fijian enforcement struggles have lessened the indigenous power structures for more western power dynamics from the national government. Thus, Fiji is losing its traditional environmental practices and governance but gaining EAs in the process. In some ways, the current Fijian climate adaption policy has benefited from this loss because it seeks to embrace many western norms with a top-down national approach that focuses on public participation that is now growing in Fijian acceptance because of past struggles. The vertical integration section of the Fijian National Adaptation Plan works to incorporate diverse social groups in a participatory approach to decision making, with a particular focus on gender differences in adaption needs and equitable access to financial resources.<sup>116</sup> Nevertheless, these ideals are vastly different from the Native Lands Resource Trust Board based on the male lineage chieftains. The reports so far do not discuss how these top-down approaches will ensure integration with the local customs. However, the reports are not about the bottom-up approaches. The National Adaption Plan could embrace the climate responsibility norm by focusing its efforts on access to financial resources and similar goals that could incorporate local values and customs. However, the current version's success will highlight if Fiji has embraced the western public participation process or if it requires more historical considerations in its implementation and enforcement to achieve success.

Unfortunately, the National Adaptation plan focuses heavily on education and knowledge of climate issues and adaptation necessities, such as water conservation and best farming practices.<sup>117</sup> Only one adaption

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114. Clark, *supra* note 105, at 101.

115. *Id.* at 104.

116. *Republic of Fiji National Adaptation Plan: A Pathway Towards Climate Resilience*, *supra* note 98, at 51 § 9.8.

117. *Id.* at 5, § 10.

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action addresses strengthening community-based fisheries management, while many focus on increasing knowledge and data to allow for more informed future decision making.<sup>118</sup> These statements start to point to the claim that Fiji's environmental struggles are due to their "immature state" status. In reality, Fijian historical governmental customs and knowledge is structured differently than western nations, and this difference is not about a lack of community knowledge of environmental needs. Instead of discrediting local knowledge, the National Adaption Plan needs to recognize its national value to achieve more permanent success. One example is when the Kubulau district Council of Chiefs successfully instituted protected zones and fishery rotations based on traditional customs and values prior to any national protections; this action protected the district's environment while respecting the culture through governance the population understood.<sup>119</sup>

The National Adaptation Plan approach has similarities to Ethiopia, where it hopes to move toward climate resilience and includes adaption measures, such as potential climate migrations for the island communities.<sup>120</sup> Whether this plan will be successful or repeat previous legal structures that lacked community support and participation will depend on its implementation. In April 2020, Fiji released its report on its plan for monitoring and enforcement.<sup>121</sup> It focused on collecting data, public participation, access to information, and using the data to shape future adaption policy.<sup>122</sup> Once the report on the National Adaptation Plan review is complete, it will provide a better picture of Fiji's success. But since Fiji has embraced numerous democratic politics, there is a chance the local customs are migrating towards participation and oversight. When the fishermen protested customary norms because of their lack of national enforcement, it demonstrated that Fijians are not against speaking up for their rights and a desire for public participation. Successful EA and CA policies require this kind of public outcry and national government structures to hear people's voices, which the National Adaptation Plan is hoping to provide.

Ultimately, Fiji's success in its Adaption Plan will depend on whether the local citizenry has genuinely embraced the robust public participation

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118. *Republic of Fiji National Adaptation Plan: A Pathway Towards Climate Resilience*, *supra* note 98, at §§ 12.F.3, 12.

119. Clark, *supra* note 105, at 99.

120. *Republic of Fiji National Adaptation Plan: A Pathway Towards Climate Resilience*, *supra* note 98, at 71 §14.

121. Fijian Ministry of Economy's Climate Change and International Cooperation Division, *Monitoring and Evaluation Framework for Fiji's National Adaptation Plan Process 22* (Apr. 2020).

122. Fijian Ministry of Economy's Climate Change and International Cooperation Division, *Monitoring and Evaluation Framework for Fiji's National Adaptation Plan Process 8*, § 3 (Apr. 2020).

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values of westernized states. If the Fijians do not actively participate in the environmental processes, it will lead to the continued failures not because Fiji is an “immature state” but because Fiji does not have the same values as the western states that created the EA process. In seeking to expand towards a CA norm, Fiji must first figure out how to successfully use the EA process. Conversely, a climate responsibility norm would allow Fiji to tailor its GHG emission control to the local customs to achieve success without the additional procedural hurdles that do not provide practical benefits to the Fijians.

### **SHOULD A BUDDING CLIMATE ASSESSMENT NORM TAKE HOLD?**

A CA norm is spreading, with the European Union, United States, Fiji, Western Australia, and Canada enacting some form of CA, among others.<sup>123</sup> However, there is yet to be a clear consensus on implementing this requirement between states, mainly the conflicts arise in where the significance threshold lies for GHG impacts, mitigation requirements, and consistency.<sup>124</sup> There needs to be further discussion on whether an international CA norm should require significant standards and mitigation requirements, substantially reducing climate impacts. However, these increased requirements would push back the potential implementation of a CA norm because it would further push against state sovereignty, which has been the international CA’s biggest hurdle.

The case studies highlight the struggles developing nations have faced in protecting the environment under EA standards. CA will not fulfill its goal of lessening climate impacts enough under the time constraints of impending climate catastrophes if developing states must fulfill costly empty requirements. The international community should instead seek to establish the norm of *climate responsibility*. Basing this norm on the norm of common but differentiated responsibilities would allow the developed states to continue their GHG monitoring while pushing these states to embrace their responsibilities to protect the planet from the devastation they have primarily caused. More importantly, climate responsibility would also allow developing nations flexibility to maintain their cultural and indigenous knowledge and power structures while seeking economic growth and climate adaptations that avoid GHG emissions as much as possible. Indigenous knowledge is not static, backward thinking, but

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123. European Commission, *Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessments* 13, 39 (2013); Environmental Protection Authority, *Greenhouse Gas Emissions*, ENVIRONMENTAL FACTOR GUIDELINE 1 (Mar. 2019).

124. Alexander Zaher, *Two Arguments Against Environmental Impact Assessment for Greenhouse Gas Emissions*, *DEBATING CLIMATE LAW* 1, 12 (2020).

locally specific knowledge based on centuries of use and adapted to local culture and environments.<sup>125</sup> Developing nations have many pressing issues that need addressing, and climate responsibility would allow developing states to own their climate responsibility within their cultural values and capabilities. Ethiopia and Fiji's GHG contributions are nothing compared to developed nations, and a CA requirement only takes resources away from more practical solutions and government support programs.<sup>126</sup> By embracing climate responsibility, states embrace a post-development mindset and work to incorporate indigenous knowledge and customs with more modern practices to find the best way forward and avoid conflicts between local and national governments.<sup>127</sup>

Ethiopia's CRGE is a fitting example of a developing state not doing CA but still avoiding GHG developments by seeking international funding for renewable projects to help Ethiopia raise its living standard to a middle-class economy. Although filled with other environmental consequences and political turmoil, building a dam is likely an excellent idea to support Ethiopia's energy needs without GHG consumption while providing a more reliable water source for Ethiopia. The dam has caused unrest, and Ethiopia is also currently struggling to fend off a civil war. Nevertheless, Ethiopia's struggles highlight the need for developed countries to financially pay for the GHG pollution they created, not based on charity but based on responsibility. However, the idea of state sovereignty reigns high in international negotiations, and there is little incentive to agree to pay for something without a tangible benefit to developed states. By working towards a norm of climate responsibility, it solidifies and expands the common but differentiated responsibilities norm and its relation to climate change because it allows each state to work together while resolving GHG impacts within their domestic norms and traditions.

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125. Sunday Olaluwa Dada, *Post-Development, and the Role of Tradition in the Process of Development*, EKITI STATE UNIVERSITY 75, 84 (2016).

126. Johannes Freidich et.al., *This Interactive Chart Shows Changes in the World's Top Ten Emitters*, WORLD RESOURCES INSTITUTE (Dec. 10, 2020), <https://perma.cc/KG7K-3U9X>.

127. Dada, *supra* note 125, at 88.

## CONCLUSION

The climate assessment norm, argued by Mayer, is likely growing in international acceptance from the domestic efforts to include climate assessments in EA practices. However, this norm pushes the western mindset onto non-westernized nations. By embracing climate responsibility, all nations can meet their GHG reduction targets and succeed on their terms. Further research is necessary into other states' climate adaption efforts and successes that value indigenous customs. A growing CA norm is not a negative. Developed nations are the main contributors to GHG pollution and climate impacts. If all of these nations seriously considered and established CA, preferably with significant mitigation requirements for their GHG emissions, GHGs would significantly lessen and, with this, the climate impacts that all nations face.

Nevertheless, if there are budding international norms, these norms should take a flexible approach to compliance so that all nations can benefit from their implementation. Ethiopia and Fiji have not shown many benefits from EA procedures because this norm does not consider their governance structures or cultural practices, leaving significant gaps in enforcement. Thus, the EA has avoided the environmental protections it is supposed to foster. A climate norm must do better if the international community desires the significant abatement of climate impacts that our planet desperately needs.

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