**Submission from the International Development Law Organization (IDLO) in response to the Call for input by the Special Rapporteur on the promotion and protection of human rights in the context of climate change on the subject “Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice”**

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Geneva, Switzerland

IDLO recognizes and supports the significant work of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, and welcomes the theme of the upcoming report on “Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice”, to be presented to the 78th Session of the General Assembly in 2023.

**Introduction:**

The International Development Law Organization (IDLO) is the only global intergovernmental organization exclusively devoted to promoting the rule of law to advance peace and sustainable development. IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development, gender equality, and economic opportunity. Its programmes, research and policy advocacy cover the spectrum of rule of law, from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy. Established as an intergovernmental organisation in 1988, IDLO has had United Nations Observer Status since 2001.

“Climate justice and sustainable use of natural resources” is a key objective in IDLO’s [Strategic Plan 2021-24](https://www.idlo.int/sites/default/files/documents/idlo_strategic-plan-2021-2024_english_web.pdf). IDLO recognizes that climate change is a global human rights threat multiplier, with disproportionate and unjust impacts on those who have contributed the least to climate change, and who are in positions of vulnerability that prevent them from being able to mitigate or adapt to its effects.[[1]](#footnote-1) As part of its mission and vision to promote the rule of law globally, IDLO is committed to supporting the empowerment of communities – especially women, youth, indigenous groups, and other marginalized populations – to claim environmental rights and actively participate in climate decision-making processes, promoting climate resilient development by strengthening regulatory frameworks and institutional capacity, and improving the governance of land and other natural resources to promote both customary and non-customary rights of those on the frontlines of the climate crisis. IDLO’s policy brief, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](https://www.idlo.int/publications/climate-justice-rule-law-approach-transformative-climate-action), provides guidance to policymakers on ways to advance fair, inclusive, gender-transformative and rights-based action on climate adaptation and mitigation for actors at each step of the justice chain.

Over the last half century, climate change laws, regulations and frameworks have expanded exponentially across national and international legal systems. Many recent developments in climate change jurisprudence at all levels are grounded in human rights principles. Despite this, there remain a number of challenges and barriers at all levels with regards to initiating climate change litigation and accessing courts. Furthermore, the principle of intergenerational equity has yet to be meaningfully and effectively mainstreamed into climate change laws, policies and frameworks, to the detriment of young people seeking to make their voices heard in judicial processes.

**Response to the Questionnaire:**

IDLO’s submission to the questionnaire seeks to respond to **questions 7, 8, 11, and 17.**

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| **Questions 7, 8 and 11:**7. What do you think are the major barriers to initiating climate change litigation?8. Are the barriers different in different parts of the world? What are they?11. Are there particular issues with getting access to the courts? |

Through its work, IDLO has identified several challenges and barriers to climate change litigation. Barriers to justice are highly context specific: justice seekers in different parts of the world will have different experiences and challenges when it comes to enforcing their rights – with gender, race, ethnicity, language, age, nationality, geographic location, socio-economic status all affecting, to varying extents, the ability that people have to initiate climate change litigation or access justice.

Despite this, there are many common challenges that cut across legal systems and jurisdictions. This submission will seek to address the following:

* Common barriers to justice;
* Barriers to justice for women and girls;
* Barriers to justice for Indigenous peoples and local communities.

**Common barriers to justice:**

Laws which have been specifically enacted to address climate change commonly lack clearly defined standards or enforceable provisions against which progress and violations can be effectively measured.[[2]](#footnote-2) The traditional State-centred model of international environmental law can be odds with the reality that harmful environmental activities – including resource and mineral extraction, pollution, and deforestation, are frequently carried out by multinational corporations or their agents, which poses challenges to jurisdiction, standing, and accountability. There is a pressing need in the majority of countries to bolster the capacity of the justice system to fill in the implementation gap and align domestic laws with the emerging and dynamic landscape of international and regional regulatory developments by adjudicating climate-related cases and ensuring that pathways to justice are accessible, inclusive and accountable.

Furthermore, as climate change aggravates existing inequalities, it will produce different effects for the most vulnerable and excluded constituencies. Those who are most vulnerable to climate change are often also those who are least able to access justice.[[3]](#footnote-3)

Awareness and information about both environmental rights and possible legal avenues are scarce among under-served climate-vulnerable communities, exacerbated by limited legal aid services to support justice seekers to access justice. For example, through its rule of law programming work in Kenya, IDLO has recognized that limited access to pro bono and dedicated funds for strategic litigation constitutes one of the major barriers for communities to realize their climate and environmental rights, despite existing laws and specialized environmental courts. Additionally, there is still limited knowledge and capacity among lawyers and litigators in different regions, including in the East and Horn of Africa, on how to translate complex technological and scientific climate-related issues into legal action.

Specific approaches to strengthening the capacity of the justice sector may include:

* Mainstreaming climate analysis in justice sector training, planning and evaluation practices;
* Providing support to judicial oversight bodies to incorporate analysis of climate impacts and adaptation approaches in laws, policies and standard operating procedures;
* Improving channels of consultation and platforms for ongoing dialogue for regular exchanges between justice sector institutions, environmental regulatory bodies, legal practitioners, as well as affected communities; and
* Strengthening redress mechanisms for climate justice seekers by supporting the establishment or enhancement of specialized environmental courts and tribunals – a measure already in place in around 40 countries to date.

Through its work in Kenya, IDLO has worked to mainstream human rights considerations in legal cases that concern climate and the environment – including those related to natural resource management, biodiversity, and conservation. By providing capacity-building and technical support to government agencies, IDLO enhanced climate change legislation and thus supported climate change litigation by strengthening the frameworks that enable the safeguarding and realization of environmental rights. In order to increase justice actors’ awareness of the nexus between climate change, human rights and development, IDLO also worked closely with the Environmental and Land Court to facilitate effective dispute resolution on matters relating to natural resource management, and collaborated with the Law Society of Kenya to develop the Natural Resource Management Guidelines for Practitioners and Litigants.

 **Barriers to justice for women and girls:**

Women and girls have a right to participate in and lead climate action efforts, as rights holders and agents of change. It is a fundamental principle inscribed in core international legal instruments – a right that all States have an obligation to respect, promote and fulfil. In spite of this, around the world, women continue to face broad challenges to equal justice due to systemic discrimination and diverse cultural barriers which prevent them from realizing their human rights in the face of the climate crisis.[[4]](#footnote-4) Such barriers include patriarchal practices that reinforce reliance on men for assistance, discriminatory laws that prevent women from fully and equally exercising their legal capacity, non-availability of justice services in rural and remote regions, the time and cost of pursuing legal action, and the difficulty of claiming compensation for climate-related losses. Women often have limited access to information concerning their environmental rights, or lack the legal and social standing to initiate environmental cases. Insofar as these challenges intersect with other forms of marginalization, young women and girls, indigenous women, and women affected as climate migrants face the most significant disadvantages in accessing justice.[[5]](#footnote-5)

Empowering women and girls to realize their environmental rights is key to mitigating the human rights consequences of climate change and supporting climate change litigation. This can be achieved through greater legal education, provision of paralegal and legal services, improving the social accountability of justice providers, and protecting civic space for women’s advocacy. Additionally, capacity building of lawyers paired with investment in climate and environmental strategic litigation by and on behalf of women and girls is highly needed. Adopting a feminist, intersectional approach can help address the unequal power relations within political, economic and social institutions at all levels.

In order to support women and girls’ ability to initiate climate change litigation, IDLO is currently implementing a project on *Advancing Women’s and Girls’ Action for Climate Justice through the Rule of Law*, featuring two pilot initiatives in Burkina Faso and the Philippines that assess the gender-blind or gender-discriminatory provisions in climate and environment-related legal and regulatory frameworks in both countries. Working with institutional partners, the outcome of the assessments will provide recommendations for the repeal, revision or amendment of discriminatory laws and provisions, and remove some of the barriers that stand between women and girls and the enforcement of their rights. Additionally, IDLO will also deliver capacity development workshops to women’s organizations in both countries on topics ranging from rights-based strategic litigation to advocacy for women’s substantive rights and access to land, water and other natural resources.

**Barriers to justice for Indigenous peoples and local communities:**

Indigenous peoples and local communities (IPLCs) also face broad challenges to protecting their rights in the context of climate change. By some estimates, Indigenous lands and territories account for 20 percent of the total surface of the Earth, and contain 80 percent of the planet’s remaining biodiversity.[[6]](#footnote-6) Their indispensable contribution to ecosystem conservation and nature-based solutions to climate change has steadily gained recognition at a global and regional levels since the adoption of the Paris Agreement, while the internationally-recognized principle of free, prior and informed consent (FPIC) gives IPLCs a legal foothold to protect their rights and territories. Yet, Indigenous people tend to be excluded from State decision-making processes at national and local levels, and, as the former Special Rapporteur on the rights of indigenous peoples noted in 2019, “Indigenous peoples commonly express deep alienation from systems of justice that appear to them foreign and inaccessible”[[7]](#footnote-7) – often reinforced by the colonial legacies of many formal justice systems.

Cultural and language barriers, a lack of protection of civic space, and attacks against environmental human rights defenders also stand between Indigenous people and the protection of their rights – either preventing them from receiving a favourable judgment, or from accessing justice at all. Recognizing, promoting and engaging with the plurality of legal systems in ways that increase peoples’ ability to access justice and realize their rights, consistent with international standards, can be an effective and efficient strategy for overcoming the barriers to justice that many Indigenous people face.

**Human rights, climate change, and customary and informal justice:**

In the broader context of protecting human rights in the context of climate change, it is important to note that formal climate change litigation only forms a small part of the pathways to justice that people traverse to seek remedies or redress for violations of their rights. The vast majority of justice seekers claim their rights and resolve their legal problems in customary and informal justice systems – particularly in the context of land and natural resources, where inclusive, equitable and effective governance is essential for catalyzing progress on climate adaptation and mitigation. When discussing access to justice in the context of climate change, legal pluralism must be part of the conversation.

In Somalia for example – one of IDLO’s countries of operation - access to justice for legal problems pertaining to climate and the environment through formal mechanisms is restricted, the judiciary have a more limited presence in remote areas, and the majority of people turn to CIJ systems to mediate their disputes. Severe dry conditions are deepening Somalia’s decades-long humanitarian crisis and leading to increased competition for progressively scarce land and natural resources, driving up the number of everyday justice problems that people in the region face.

In order to ensure that people have effective access to justice during a protracted and worsening climate emergency, IDLO has supported the development of alternative dispute resolution (ADR) centres in Somaliland to fill the justice gap by centralizing and improving the provision of justice through informal mechanisms. At fifteen locations throughout the region, these Centres are currently supporting the provision of free mediation and adjudication services and applying elements of both Xeer and sharia law to address climate and natural resource-related disputes in communities, while ensuring the referral of serious criminal and complex civil cases to the formal justice system for further investigation. An important component of IDLO’s work in this regard has been to strengthen the legal protection for women, youth, vulnerable or marginalized justice seekers, and seeking to incorporate international human rights standards into the administration of each centre. Between December 2022 and February 2023, the ADR centres in Somaliland administered justice responses in relation to 600 cases. In this regard, the engagement with customary, informal and indigenous justice systems and promoting complementarity and synergies with formal justice institutions is vital for ensuring access to justice for all and overcoming many of the structural barriers to justice that people face when seeking redress for climate and environmental justice issues.

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| **Question 17:**17. Can you share some good practices that allow youth to be represented in courts and have their views and concerns properly expressed in the judicial process? |

Youth and children experience specific and unique obstacles in realizing their rights, accessing governance institutions, and even obtaining a remedy when their rights are denied or violated. Due to conservative and gerontocratic cultural norms and patterns of systematic exclusion, youth and children often experience discrimination based on age. They also face constraints on their participation in civic life and political decision-making and lack the same recourse to formal and informal justice systems that adults do. Youth and children are denied of many of the most basic tools of agency and participation; as such, they are disproportionately affected by the harms of climate change and unable to make their voices heard in public decision-making, or influence policy responses.

Within this context, it is important to consider the concept of intersectionality. Young people are not a homogenous group, and in practice the effects of climate change do not affect all young people in the same way. Climate and environmental impacts are shaped by intersecting vulnerabilities and differences in – in addition to age – sex, gender, identity, race, ethnicity, disability, and socio-economic status. As climate change aggravates each of these existing inequalities, it will produce different effects on the human rights of different groups of young people. Intersectionality is therefore an important concept for understanding the matrixes of oppression that people may experience, and helps to frame many of the socio-economic barriers that can stand between millions of young people and the enforcement of their rights.

Legal education and empowerment of youth and children, the integration of youth- and child-inclusive approaches to justice in law and practice, and support for their participation in public decision-making on issues that impact their lives is vital for mitigating the human rights risks posed by climate change and opening up avenues to justice for youth and children, including in formal justice settings. Empowering youth groups and providing them with adequate channels and platforms to voice their interests is critical to overcome some of the practical, social and legal barriers that prevent young people from upholding their environmental rights and achieving climate justice.[[8]](#footnote-8) For States, integrating principles of intergenerational equity into domestic laws and constitutions can help to safeguard the rights of young people and future generations, and ensure that these issues remain justiciable. In Kenya, for example, IDLO provided technical support on capacity building and legislative drafting to ensure that the 2010 Constitution recognized the duty to preserve and protect the environment for future generations.

1. IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](https://www.idlo.int/sites/default/files/pdfs/publications/climate_justice_policy_paper_-_climate_action_-_final.pdf) (2021), page 6. [↑](#footnote-ref-1)
2. UNEP, [Environmental Rule of Law: First Global Report](https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report) (2019), page 3. [↑](#footnote-ref-2)
3. IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](https://www.idlo.int/sites/default/files/pdfs/publications/climate_justice_policy_paper_-_climate_action_-_final.pdf) (2021), page 8. [↑](#footnote-ref-3)
4. IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](https://www.idlo.int/sites/default/files/pdfs/publications/a_rule_of_law_approach_to_feminist_climate_action.pdf) (2022), p.13. [↑](#footnote-ref-4)
5. IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](https://www.idlo.int/sites/default/files/pdfs/publications/a_rule_of_law_approach_to_feminist_climate_action.pdf) (2022), p.13. [↑](#footnote-ref-5)
6. Indigenous Peoples Major Group for Sustainable Development, [Thematic Report for the High-Level Political Forum of Agenda 2030](https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/global-reports/162-ipmg-thematic-report-for-hlpf-2020/file) (2020), page 2. [↑](#footnote-ref-6)
7. Special Rapporteur on the rights of indigenous peoples, [Report of the Special Rapporteur on the rights of indigenous peoples](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/232/01/PDF/G1923201.pdf?OpenElement) (2019), page 7. [↑](#footnote-ref-7)
8. IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](https://www.idlo.int/sites/default/files/pdfs/publications/climate_justice_policy_paper_-_climate_action_-_final.pdf) (2021), page 11. [↑](#footnote-ref-8)