

**Call for inputs**

**Special Rapporteur on the promotion and protection of human rights
in the context of climate change**

**“Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice”**

**Purpose**

To inform the Special Rapporteur on the promotion and protection of human rights in the context of climate change’s report on enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice, to be presented to the United Nations General Assembly in October 2023.

**Background**

One of the thematic priorities identified by the Special Rapporteur relates to enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice.

As countries meet their commitments under the Paris Agreement, many are developing national legislation. The Special Rapporteur wishes to understand, from the perspective of his mandate, whether countries are incorporating human rights considerations in their legislation and whether they are developing elements of legislation relating to Article 8 of the Paris Agreement which relates to loss and damage.

With respect to climate change litigation, a UNEP report[[1]](#footnote-1) states that the current levels of both climate ambition and climate action are inadequate to meet the challenge. As a consequence, individuals, communities, non-governmental organizations, business entities, governments and others have brought cases seeking to compel enforcement of those laws, replace them with stronger ones (and sometimes weaker ones), extend existing laws to address climate change, or define the relationship between human rights and the impacts of climate change. UNEP suggests that climate cases to date often fall into one or more of six categories: (a) climate rights; (b) domestic enforcement; (c) keeping fossil fuels in the ground; (d) corporate liability and responsibility; (e) failure to adapt and impacts of adaptation; and (f) climate disclosures and greenwashing.

The Special Rapporteur is particularly interesting in whether climate change litigation incorporates considerations of human rights.

The principle of intergeneration equity goes back to the Stockholm Declaration 1972. This principle occurs in many agreements including the preamble to the Paris Agreement. Nevertheless, the concept of intergenerational justice does not appear to be well advanced in international or national laws. Intergenerational justice in the context of climate change and human rights is founded on the principle that people must protect current and future generations from the adverse impacts of climate change.

The Special Rapporteur wants to explore whether intergeneration justice has been incorporated into international law, national constitutions and domestic laws and how it can be anchored in these key elements of law.

**Questionnaire**

The Special Rapporteur is therefore seeking input from States, business enterprises, civil society organizations and intergovernmental organizations on how to enhance climate change legislation, how to support climate change litigation, and how to advance the principle of intergenerational justice.

The Special Rapporteur invites and welcomes your answers to the following questions:

**Enhancing Climate Change Legislation:**

1. Can you provide examples of climate change legislation that incorporates human rights elements, or a reference to obligations relating to loss and damage?

**The Czech constitutional Charter of Fundamental Rights and Freedoms guarantees the right of everyone to a favourable environment. Recently it has been interpreted by a first-instance court in the first Czech climate litigation, and the court held that the favourable environment also comprises a favourable climate conditions, thus included the right to be protected against harmful effects of climate change into the right to environment.**

**The Czech legislation does not contain any references to loss and damage**

1. How to you think climate change legislation should frame a connection to human rights obligations?
2. How do you think climate change legislation should engage the concept of loss and damage?
3. Should climate change legislation that incorporates loss and damage be different for major greenhouse gas emitting countries to those that are mostly affected by climate change? What would this difference look like?

**Supporting Climate Change Litigation:**

1. How are human rights considerations being incorporated into climate change litigation?

**In the Czech Republic, human rights considerations have been used in climate litigation and previously in a similar way in environmental litigation in the administrative justice system in the form of claims of violation of fundamental rights enshrined in the Czech Constitution, which allowed for an actual hearing on the merits of the case. These were the right to a favourable environment, to life, health, property, business, private and family life. However, the Court in the climate litigation only commented on the right to a favourable environment, not the other rights.**

1. Are there issues with making the link between human rights and climate change litigation?

**The Czech Administrative Court commented in the first instance on the right to a favourable environment in relation to climate change. It explicitly interpreted that the constitutional right to a favourable environment also includes a favourable climate. Therefore, a state that does not do enough to combat climate change violates the fundamental right to a favourable environment.**

1. What do you think are the major barriers to initiating climate change litigation?

**In the Czech legal system, it is difficult to choose the type of action that will have a chance of success when it comes to alleging inadequate mitigation and adaptation by the state, because we do not have a climate law or any special title of action. Possible but difficult routes are through an administrative action for failure to act, a constitutional complaint for violation of a fundamental right, or (rather theoretically) a civil action for liability.**

1. Are the barriers different in different parts of the world? What are they?
2. Is the judiciary in your country well equipped to understand the connection between human rights and climate change?

**Not yet. The first Czech climate action was filed in 2021 and the proceedings are still pending. It is the first time that the Czech courts have been involved in the application of climate law. At the same time, they do not have much to go on in terms of the relationship between the environment and human rights, as there have been very few such cases. The Czech courts have been rather conservative in applying human rights to the environment, and although we have had a fundamental right to a favourable environment in the Constitution since 1993, its interpretation has not gotten very far, and the cases decided have been interpreted in a strictly anthropocentric manner.**

1. How could this be improved?

**We need more climate and environmental lawsuits to bring issues to the courts repeatedly. We also need more progressive courts, better informed about environmental and climate issues. In the Czech Republic, unfortunately, there is still a very conservative opinion, and pro-climate thinking is labelled as activism. It would also help us to have a separate climate law, but so far the government is not even planning one.**

1. Are there particular issues with getting access to the courts?

**Advancement of the principle of intergenerational justice**

1. What examples do you have of how intergenerational justice, as it applies to climate change and human rights, has been incorporated into international law, national constitutions or domestic law?

**The Czech Constitution addresses the concept of intergenerational justice in its preamble (specifically in the preamble of the Charter of the Fundamental Rights and Freedoms), however, this is not sufficient.**

1. How would you best define intergenerational justice in the context of climate change and human rights?
2. Has the concept of intergenerational justice been incorporated into climate change litigation?

**Not in the Czech Republic.**

1. What options are available for enshrining the principle of intergenerational justice in international law?
2. How can States incorporate the concept of intergenerational justice in their national constitutions and legislation? What are some good practices in that respect?
3. Can you share some good practices that allow youth to be represented in courts and to have their views and concerns properly expressed in the judicial process?

**In the Czech Republic, there is no institutional representation focused on the rights of future generations. There is only a governmental Committee on the Rights of the Child in the Czech Republic, an ombudsperson or a parliamentary committee protecting the interests of future generations is missing. The Czech law does not acknowledge the institute of a guardian of youth in the proceedings nor a class action.**

**Submission of responses**

We strongly encourage you to please send your responses to the questionnaire in Word format **by email** to: hrc-sr-climatechange@un.org

We kindly request that your submission be concise and limited to a maximum of
5 pages (or 2,500 words), not including appendices or attachments. Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

**The deadline for submission is 25 May 2023.**

All submissions will be made publicly availableand posted on the Special Rapporteur’s homepage at the OHCHR website.

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1. UNEP, *Global Climate Litigation Report: 2020 Status Review* (Nairobi, 2020), https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review. [↑](#footnote-ref-1)