**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”**

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

One example of climate change legislation incorporating human rights elements of Climate Change is the Canadian Net-Zero Emissions Accountability Act, S.C. 2021, c. 22 and Greenhouse Gas Pollution Pricing Act (S.C. 2018, c. 12, s. 186) which is assented to 2021-06-29. For the text of the regulations, please see: (<https://laws-lois.justice.gc.ca/eng/acts/c-19.3/FullText.html>). Another example is the United Kingdom Act 2008 which was updated and in force on 24 April 2023. (<https://www.legislation.gov.uk/ukpga/2008/27/data.pdf>).

1. **How to you think climate change legislation should frame a connection to human rights obligations?**

It is clear that climate change has negative impacts on the enjoyment of human rights. Climate change poses a threat not only to human life but to all living species. Rising temperatures have direct adverse effects, such as floods, sea level rise, heat waves, extreme weather events, ecosystem collapse and loss of biological diversity. Furthermore, climate change violates human rights by displacing people worldwide by creating "environmental migration". Climate change threatens not only the first generation of human rights but also breaks the second generation.

Lack of legislation is one of the significant challenges facing the development of international law at the national and global levels. From this perspective, climate change legislation could address this challenge.

1. **How do you think climate change legislation should engage the concept of loss and damage?**

The concept of loss or damage to the environment is ambiguous. Some legislation recognizes environmental damage only, which refers to the damage caused to humans and property. However, climate change legislation should recognize any ecological damage, including human, property, biodiversity, and landscaping, for proper protection of the environment. As a result, climate change legislation should not base on only ecological damage to the human victim in his health, property, activities, and well-being. In this context, climate change legislation should establish mechanisms for assessing, monitoring and reporting on loss and damage, including through the use of scientific and technical data, and ensure that these mechanisms are transparent and inclusive of the views and perspectives of affected communities.

1. **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?**

According to the Polluter Pays Principle (PPP), enshrined in many national and international regulations, polluters must bear the costs of measures to prevent, reduce and combat pollution. It is one of the fundamental principles underlying environmental policies in developed and developing countries. Several pieces of legislation recognized this principle as one of the keys to combat climate change. In this perspective, it is essential to distinguish between greenhouse gas emitting countries and those primarily affected by climate change regarding the incorporation of loss and damage into climate change legislation. Greenhouse gas emitting countries have historically contributed the most to greenhouse gas emissions, which has caused the majority of the global warming we experience today. Therefore, they are more responsible for addressing climate change, including the impacts of loss and damage.

The Principle of Common but differentiated responsibilities (CBDR) in international environmental law could be significant in this issue. According to the principle, which is accepted by many legislation, all States are responsible for protecting the environment but with different types of responsibilities. Developed countries have a more significant burden due to their historical contributions to environmental degradation. For these countries, climate change legislation incorporating loss and damage should include provisions that hold them accountable for the harm caused by their emissions. This could consist of mandatory financial contributions to a global fund for loss and damage or liability for damage caused by climate change to other countries. As a result, they should assist developing countries with transferring new technologies and supporting them financially. Despite their low contribution, developing countries primarily affected by climate change are often the most vulnerable to the impacts of loss and damage.

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

The main issue here is that the lack of climate change legislation violates the right to a healthy environment and the right to life.

Human rights considerations could assist the judiciary systems at the national or international levels to interpret laws or international treaties related to climate change in favour of human rights. This interpretation will help recognize the human rights of the most vulnerable groups, such as indigenous communities, coastal populations and impoverished people.

Moreover, human rights considerations can be factored into reparations that are awarded in climate change cases. For example, courts can order restoration measures to repair harm to people and communities or award compensation for losses suffered due to loss of property or deterioration of the environment.

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

Yes, there can be issues for the judiciary systems at the national and international levels in the judgments related to human rights and climate change cases. For example, some legal systems may not recognize the direct link between human rights and climate change, which may pose problems for those seeking to use human rights arguments in related disputes.

In addition, one of the difficulties is that national courts are frequently unfamiliar with international human rights commitments in the context of climate change. In addition, the international judiciary system also could be unfamiliar with national human rights commitments.

Another issue here is that the effects of climate change are generally long-term, complex, and multi-factorial. It affects not only the current generation but also the future generations. It can also be challenging to demonstrate causation and attribution in climate change cases, mainly when there are multiple sources of greenhouse gas emissions or when the impacts of climate change are not immediately apparent.

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

One of the challenges facing climate change litigation is the lack of political support at national and international levels to take legal action to combat climate change. For example, at the national level, political authorities may be reluctant to pursue legal action against key companies or industries that significantly contribute to greenhouse gas emissions. At the global level, it is difficult to prove the responsibility of States for the damage caused by climate change. In addition, it can be challenging to establish the causal link between a state's greenhouse gas emissions and the damages caused to the environment.

Another barrier is related to financial and economic considerations. Financial costs and economic growth are other challenges which prevent states from initiating climate change litigation.

One of the solutions for these challenges is to increase public awareness and access to information about legal options to address climate change at national and global levels. When citizens are aware of their rights and the legal remedies available to deal with the negative impacts of climate change, they could push their government to initiate climate change litigation.

1. **Are the barriers different in different parts of the world? What are they?**

My response to this question is affirmative. The differences between countries include legal systems, cultural attitudes towards litigation, political climate, and level of awareness and understanding of the impacts of climate change.

In this perspective, it may be easier to bring litigation related to climate change in developed countries because there likely be a more developed legal system and more substantial legal precedent on environmental issues. However, in some developing countries, the introduction of litigation related to climate change may be more complex because there is less or no legal precedent or the legal system is less developed.

Another barrier different is related to culture. Cultural attitudes towards litigation may also play a significant role in barriers to bringing litigation related to climate change. In some cultures, litigation is considered a last resort and may not be appropriate for resolving environmental issues.

The political system may also play a role in barriers to bringing climate change litigation. For example, some governments may be less likely to support or fund such efforts.

Finally, the level of awareness and understanding of the impacts of climate change is another difference between countries. Identifying the level of awareness to make them evolve towards a better consideration of the climatic reality in the actions of each and collective decisions. The concepts through which climate change is described on a global scale are not appropriated by part of the population without a local vocabulary being deployed. The importance of social and economic issues also tends to eclipse the long-term effects of climate change, sometimes in a context of a lack of confidence in public actors. (Manon Berge, Camille Parrod, Audrey Pastel et Pascal Saffache, « Perceptions et mécanismes de compréhension du changement climatique dans le centre de la Martinique (Antilles françaises) », Études caribéennes [En ligne], 53 | Décembre 2022, mis en ligne le 15 décembre 2022, consulté le 14 mai 2023)

1. **Is the judiciary in your country well equipped to understand the connection between human rights and climate change?**

Yes, the Canadian judiciary is generally considered well-equipped to understand the link between human rights and climate change. In recent years, there have been several cases in Canada where judges have recognized the link between climate change and human rights and ruled accordingly.

One of the first cases toward recognition of the right to environment is the landmark case of Tsilhqot'in Nation v. British Columbia, 2014 (SCC 44), in which the Supreme Court of Canada recognized that Indigenous peoples have the right to use and control their lands, including for the purpose of protecting their culture and way of life. The Court recognized the impact of climate change on the environment and the importance of protecting it for the benefit of future generations.

In another case, the Supreme Court of Canada, Carter v. Canada (Attorney General) in 2015, recognized partially the right to the environment.

In addition, the Federal Court of Canada ruled in 2019 that the government has a duty to consult Indigenous communities on decisions that could affect their treaty rights, including decisions related to climate change. The Federal court recognized that climate change poses a significant threat to the environment and the rights of indigenous peoples who depend on it for their livelihood.

All these cases, including Canada's provincial legislation, demonstrate that the Canadian legal system is trying to recognize the link between human rights and the right to the environment. However, it is vital to mention that in Canada, to be well equipped to understand the connection between human rights and climate change and recognize the right to the environment needs more efforts and more initiatives to be done in the future.

1. **How could this be improved?**

First, public awareness is crucial to developing the right to the environment as a human right in Canada. In addition, education and training programs could be developed and implemented for judges and other legal professionals to increase their knowledge and awareness of climate change and its impacts on human rights.

Moreover, the engagement of the affected communities, such as Indigenous people and marginalized groups, to understand their views and experiences related to climate change impacts and human rights violations is another action to be done in Canada.

Finally, the Canadian government could provide adequate resources and support to the justice system at the federal and provincial levels to deal effectively with climate change cases and ensure that the justice system is accessible and inclusive for all.

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

Access to justice in Canada is facing challenges such as legal representation costs and court costs for low-income people. Over the past years, courts have enacted rule changes to streamline civil procedures to reduce complexity and improve access to justice, thereby reducing costs and delays. Another critical step was to consistently expand the jurisdiction of small claims courts by increasing the monetary value of claims falling within their jurisdiction. In addition, some provinces, such as Ontario, offer legal aid programs to enable low-income people to access legal representation.

**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?**

As I mentioned above, the "Principle of Common but differentiated responsibilities (CBDR)" is accepted by many legislation. All States are responsible for protecting the environment but with different types of responsibilities. Developed countries have a more significant burden due to their historical contributions to environmental degradation.

Other principles in international environmental law which be likely helpful for intergenerational justice, as it applies to climate change and human rights, are Sustainable development, International cooperation, the Precautionary Principle and the Prevention principle.

These principles should be at the forefront of efforts to realize the main goals of climate change in the context of global and intergenerational justice.

In addition, the 2015 Paris Agreement is another instrument that recognizes the importance of intergenerational equity and the need to protect human rights in climate change. It emphasizes the right of all people to live in a healthy and sustainable environment and recognizes the importance of protecting the rights of indigenous peoples and local communities.

Some countries, such as Colombia, have incorporated this concept into their national constitutions. For example, in 2019, Colombia's Constitutional Court declared that the Amazon rainforest is a subject of rights and ordered the government to protect it.

Moreover, following the adaptation of the Paris Agreement in several countries, they have implemented climate change legislation that incorporates principles of intergenerational justice and human rights.

For example, in the Netherlands, the Urgenda case (Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 (24 June 2015); aff'd (9 October 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal)) (affirmed by the Supreme Court, 20 December 2019) resulted in a court ruling that required the government of Netherlands to reduce greenhouse gas emissions to protect the human rights of its citizens and future generations.

1. **How would you best define intergenerational justice in the context of climate change and human rights?**

The definition of "intergenerational justice" in environmental law seems to be complicated. However, the principle of sustainable development could help implement intergenerational justice in the context of climate change. From this perspective, the concept of intergenerational justice could be close to the rights of current and future generations. Furthermore, sustainable development recognizes the responsibility of each generation to be "fair" by using their environment. So, "fairness" and "sustainable development" could be considered essential elements of the concept of intergenerational justice in the context of climate change and human rights.

The concept of the rights of future generations is reflected in many international instruments, both soft law and hard law. For example, the 1992 United Nations Convention on Climate Change states to the 2015 Paris Agreement and The 2030 Agenda for Sustainable Development reflect the link between sustainable development and climate change. They emphasized that States should support the climate system to benefit current and future human generations.

Some other instrument, such as the United Nations Millennium Goals, recognizes the concept of intergenerational fairness.

One of the characteristics of the current environmental law is to preserve the environment for current and future generations. In this perspective, present and future generations have the right to a healthy environment and sustainable development.

According to international environmental law, all policies and actions taken by the present generation have consequences for future generations.

In conclusion, intergenerational justice recognizes the moral obligation and shared responsibility to preserve natural resources and ecosystems for current and future generations.

1. **Has the concept of intergenerational justice been incorporated into climate change litigation?**

As mentioned earlier, there are examples of climate change litigation cases in many countries, including Canada, that incorporate the concept of intergenerational justice. These cases have argued that current actions and policies related to climate change could have severe negative impacts on future generations.

1. **What options are available for enshrining the principle of intergenerational justice in international law?**

One of the challenges facing the development of the concept of intergenerational justice in international law is the lack of legal instruments at the global level. To overcome this challenge, it is crucial to negotiate and adopt a new international treaty or convention focused explicitly on intergenerational justice and climate change. This legal instrument could include regulations requiring governments to reduce greenhouse gas emissions, protect vulnerable populations from climate change, and ensure that future generations have access to the resources they need for a sustainable future.

The international justice systems, including the European Court of Justice, could have an important role in recognizing the principle of intergenerational justice in their decisions and using it as a guiding principle in climate change and human rights cases.

1. **How can States incorporate the concept of intergenerational justice in their national constitutions and legislation? What are some good practices in that respect?**

As I mentioned above, some countries are adopting environmental laws and regulations aimed at protecting natural resources and preventing environmental damage, as well as establishing mechanisms for public participation and accountability that ensure the interests and concerns of future generations in their national jurisdictions.

In addition, the States should consider intergenerational justice in their decision-making processes.

Creating particular national institutions or bodies responsible for protecting future generations' rights and interests could be a good practice in this regard.

1. **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?**

Based on my personal and professional experiences as the president of the Canadian Institute for International Law Expertise (CIFILE), I realized that youth participation in environmental protection is crucial. They can participate well in judicial proceedings as parties or interveners or be appointed to represent the interests of young people in Court. In addition, the Court can consult with youth organizations to ensure that the voices and concerns of young people are considered in the judicial process regarding environmental protection and climate change.

 In some practices, they can create a legal clinic specializing in youth issues and provide advocacy and legal support to young people involved in the legal system.

Another good practice is creating youth advisory councils in the national or international justice systems. They can provide input and advice on youth justice issues in this context. They can also help identify issues and concerns that affect young people in environmental matters.