**Response to 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”**

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**Short bio:** Anna Berti Suman is a Marie Skłodowska-Curie fellow at the European Commission Joint Research Centre, Ispra, Italy. She is principal researcher of the project “Sensing for Justice” aimed at exploring the potential of civic monitoring as a source of evidence for environmental litigation and as a tool to foster environmental mediation. She is Qualified Barrister, admitted to the Bar of Rome, following climate and environmental cases.

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**Enhancing Climate Change Legislation:**

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

I believe climate change legislation should be connected inherently to 1) people’s right to science, which ensures that everyone can enjoy scientific progress and its application, in this case with the aim to mitigate the adverse impacts of climate change (more on the right at <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/right-benefit-scientific-progress-and-its-applications>);

2) the right to environmental information and participation in decisions over the environment as guaranteed by the Aarhus Convention for Europe (more at <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>) and the Escazú Agreement for Latin America and the Caribbean (more at <https://www.cepal.org/en/escazuagreement>), among the others.

On this second rights, with other legal, political and sociology scholars, we are advocating for the right of every person to contribute environmental information in particular on crucial matters such how to collectively tackle climate change. We identify an existing gap between the right to obtain environmental information, granted at present by existing conventions, such as the Aarhus Convention or the Escazú Agreement, and a right to *contribute* information and have that information considered by appointed institutions.

We argue that the right should operate when: 1) the matter is not duly monitored or addressed by the competent authorities; or 2) access to information obligations is not (properly) complied with by the authorities; 3) in any instance in which the data contributed by civic actors are f quality and robustness that can reasonably complement and contribute to official data. More on this at <https://theoryandpractice.citizenscienceassociation.org/article/10.5334/cstp.496/> and <https://www.nature.com/articles/s41893-023-01103-x>.

Linking this argument with that of climate change legislation, I posit that a space for climate science contributions by individuals and communities directly affected by climate impacts should be recognized as an evidence source apt to inform national and international climate policy as well as to serve as knowledge base complementing traditional sources in climate litigation.

**Supporting Climate Change Litigation:**

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

Climate change litigation is mostly based on ‘institutional’ science about the present and future effects of climate change, which is often necessary to make complex causal links and demonstrate future impacts. However, to also represent the lived experiences of individuals and communities daily exposed to the effects of climate change, increasingly environmental data gathered by individuals or communities with their own senses or through technology (civic monitoring or *citizen science*), is entering litigation. This truly realizes the participation rights in environmental matters mandated by conventions such as the Aarhus Convention or the Escazú Agreement. The lived experience of people exposed to an environmental stressor such as droughts or floods can shed light on injustices and harms even in court settings, as demonstrated by empirical evidence collected within the framework of the ongoing “Sensing for Justice” research project.[[1]](#footnote-1) We can identify this trend in some climate cases that included individuals’ experiences of a changing climate and how this affected their daily life. For example, in the “Sacchi” [[2]](#footnote-2) case an Argentinian girl shared personal observations about climate impacts. In the “Teitiota”[[3]](#footnote-3) case, a Kiribati citizen illustrated his own experience of climate impacts, for demonstrating his entitlement to asylum due to climate change that made his land uninhabitable,. In the “People’s Climate Case”[[4]](#footnote-4) case, personal impacts of climate change were illustrated to satisfy standing requirements of the plaintiffs. The “*Lliuya*”[[5]](#footnote-5) case saw indigenous Peruvian farmer discussing the impact of melting glaciers on his hometown. I expect an increase in climate litigation that will incorporate the observations of individuals as evidence for framing standing or harms. People living in climate hotspots thus will be (to a greater extent) able to have their voices heard, also in judicial fora, and this could promote their participation rights and ultimately foster epistemic justice. Legal practitioners and non-governmental organizations should be able to support affected people in this outcome.

**Advancement of the principle of intergenerational justice**

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

In my country, Italy, in 2022 a constitutional law added an express reference to intergenerational environmental and climate justice.

In particular, by amending Article 9 of the Italian Constitution, the law introduces the protection of the environment, biodiversity and ecosystems, as well as animal protection into its fundamental principles, also in the “interests of future generations.” The reform also amends Article 41 of the Constitution, stating that economic initiative may not be carried out “in such a way as to damage health and the environment”, which become additional limits to those already existing which are security, freedom and human dignity.

The express recognition of the environment as a key value protected by the Constitution can be crucial in promoting and supporting climate change litigation in Italy. More at

<https://blogs.law.columbia.edu/climatechange/2022/04/08/guest-commentary-new-italian-constitutional-reform-what-it-means-for-environmental-protection-future-generations-climate-litigation/>

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?

In my view, an excellent way to have youth represented in climate litigation is to create avenues for their knowledge and experiences to enter the judicial proceedings as evidence of environmental and climate harm. This is already occurring in some judicial cases. For example, in the “*Sacchi*” case,[[6]](#footnote-6) climate impacts were presented through the eyes of affected youth, such as a Nigerian young lady asserting to have been repeatedly hospitalized for asthma triggered by heat waves and smog. Yet, at present, systematic studies exploring how experiences of climate impacts lived by youngsters are playing or can play a role in judicial proceedings are missing.

1. “Sensing for Justice” (SensJus) is a research project that explores how civic gathered evidence can demonstrate harm in environmental and climate litigation, and also facilitate environmental conflict mediation. See <https://sensingforjustice.webnode.it/>. The project is developed with the support of the Marie Skłodowska-Curie grant n. 891513, under H2020-EU (see <https://cordis.europa.eu/project/id/891513>), and to the concluded research grant of the Dutch Research Council Rubicon fellowship n. 66202117. [↑](#footnote-ref-1)
2. *Sacchi, et al. v. Argentina, et al.*, <http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>. [↑](#footnote-ref-2)
3. *Teitiota v. The Chief Executive of the Ministry of Business (..)*, <http://climatecasechart.com/non-us-case/ioane-teitiota-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/>. [↑](#footnote-ref-3)
4. *Carvalho, et al. v. EU Parliament and Council of the EU*, <http://www.peoplesclimatecase.caneurope.org>. [↑](#footnote-ref-4)
5. *Lliuya v. RWE AG,* <http://climatecasechart.com/non-us-case/lliuya-v-rwe-ag/>. [↑](#footnote-ref-5)
6. *Sacchi, et al. v. Argentina, et al.*, <http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>. [↑](#footnote-ref-6)