**Response to call for inputs**

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

*Ahsan Qazi[[1]](#footnote-1)*

**On 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?**

Pakistan's climate change policy, as enforced by the Lahore High Court (Asghar Leghari v. Federation of Pakistan, 2018 CLD 424), incorporates human rights elements by recognizing the government's obligation to protect its citizens from the adverse impacts of climate change. This is an example of climate change legislation that incorporates human rights elements and obligations relating to loss and damage.

The court noted, *‘Fundamental* [Constitutional] *rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intragenerational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change.’*

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

Climate change legislation should frame a connection to human rights obligations by recognizing the adverse impacts of climate change as a breach of human rights. This could be achieved by incorporating provisions that explicitly link the right to a healthy environment with other fundamental human rights, such as the right to life, health, and property.

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

Climate change legislation should engage the concept of loss and damage by establishing clear responsibilities for entities (both public and private) that contribute significantly to climate change. This could involve setting up mechanisms for assessing and compensating for loss and damage caused by climate change impacts.

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?**

Climate change legislation that incorporates loss and damage should indeed be different for major greenhouse gas emitting countries compared to those that are mostly affected by climate change. For major emitters, legislation could focus more on mitigation efforts, including reducing emissions and transitioning to cleaner energy sources. For countries most affected by climate change, legislation could focus more on adaptation measures and building resilience.

**Supporting Climate Change Litigation**

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

Human rights considerations are being incorporated into climate change litigation through the "human rights turn". This refers to cases where plaintiffs argue that climate change impacts violate their human rights, such as the right to a healthy environment.

For instance, the Lahore High Court in Pakistan ruled that the government's delay in implementing the country's climate policy constituted a breach of the country's human rights obligations.

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

One of the main challenges in linking human rights and climate change litigation is establishing causality. It can be difficult to prove that specific climate change impacts directly violate certain human rights.

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

Major barriers to initiating climate change litigation include the lack of awareness and understanding of the legal avenues available, the high costs associated with litigation, the difficulty in establishing causality, and the lack of political will or support.

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

The barriers to climate change litigation can vary significantly across different regions. In some countries, the judiciary may not be well-equipped to handle complex climate change cases, or there may be legal or institutional barriers that make it difficult to bring such cases to court.

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

The capacity of the judiciary to understand the connection between human rights and climate change can vary widely. In some cases, such as the Lahore High Court case in Pakistan, the judiciary has shown a clear understanding of this connection.

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

Improvements could be made through training and capacity-building for the judiciary, raising awareness about the legal avenues available for climate change litigation, and strengthening the institutional and legal frameworks that support such litigation.

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

Access to courts can be a challenge due to various factors, such as the high costs associated with litigation, procedural barriers, and the lack of legal aid or support. One significant procedural barrier at the international level is the principle of 'exhaustion of local remedies'. This principle requires that individuals must first use all available legal avenues in their own country before they can bring a complaint to an international body. In the context of climate change litigation, this can present a significant barrier, particularly for individuals or communities affected by the actions of a third state. The process of exhausting local remedies can be lengthy, costly, and may not result in effective redress, hindering access to justice in the context of climate change. Therefore, while the principle of exhaustion of local remedies is an important part of the international human rights system, there may be a need for reforms or exceptions to this principle to ensure that individuals and communities can effectively seek redress for the impacts of climate change, particularly when these impacts are caused by the actions of third states.

**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 concept of intergenerational justice has been incorporated into several international agreements, including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. However, the practical implementation of this principle in national laws and constitutions is still a work in progress.

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

Intergenerational justice in the context of climate change and human rights can be defined as the principle that current generations should act in ways that do not deplete the Earth's resources or harm the environment, thereby ensuring that future generations have the same access to resources and a healthy environment.

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

There are emerging examples of intergenerational justice being incorporated into climate change litigation. For instance, in the case of Juliana v. United States, a group of young people sued the U.S. government for its role in causing climate change, arguing that the government's actions infringed on their constitutional rights to life, liberty, and property, and failed to protect essential public trust resources.

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

There are several options for enshrining the principle of intergenerational justice in international law. These could include incorporating the principle into international treaties and agreements, developing international standards or guidelines on intergenerational justice, or establishing international courts or tribunals to adjudicate cases related to 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?**

States can incorporate the concept of intergenerational justice into their national constitutions and legislation by explicitly recognizing the rights of future generations to a healthy environment. This could involve, for example, implementing laws that require environmental impact assessments to consider long-term effects and the interests of future generations.

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?**

There are several examples of youth being represented in court cases related to climate change. For instance, in the Netherlands, a group of young people successfully sued their government in the Urgenda case, leading to a landmark ruling that the government must reduce greenhouse gas emissions. Similarly, in the Juliana v. United States case, young people were able to bring their case before the court, although the case was ultimately dismissed. These examples show that it is possible for youth to be represented in courts and for their concerns about climate change to be heard.

1. Director, Centre for Law, Justice & Policy at Karachi, Pakistan. [↑](#footnote-ref-1)