

**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.”**

The Group Development Pakistan submits the following input in the context of Pakistan's existing climate change situation informed by recommendations based on its collaborative efforts with state and child-led initiatives on protecting and promoting child rights and strengthening child protection and justice with children across Pakistan.

**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 is lacking in having a comprehensive legislative framework related to climate change, but the human rights-based approach to climate change is increasingly being recognized as essential for effective climate action.

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

Climate change legislation should engage the concept of loss and damage by acknowledging the reality of irreversible climate impacts and providing mechanisms for assessing, addressing, and compensating for the losses and damages suffered by affected communities and individuals in a dignified manner. This includes recognizing both tangible and intangible losses, such as the violation of human rights, mental health impacts, and the equitable delivery of relief and assistance.

For example, in the context of floods in Pakistan, the legislation should consider the specific vulnerabilities and challenges the affected communities face, especially the poorest and most marginalized. It should address issues such as equitable distribution of aid, prevention of theft and exploitation during relief operations, and the provision of mental health support to those affected.

Lessons learned from past flood events in Pakistan highlight the importance of establishing robust systems for risk assessment, risk reduction, resilience-building, and monitoring to minimize the adverse effects of climate change. Additionally, a centralized and comprehensive aid distribution system managed by an authorized body can ensure equitable and dignified support to those in need.

Framing the connection between climate change legislation and human rights obligations reinforced the understanding that addressing climate change is not solely an environmental issue but also a matter of social justice, equity, and human well-being. It helps ensure that climate actions are carried out in a manner that respect, protects, and fulfills human rights for all.

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 incorporating loss and damage should recognize the differentiated responsibilities of major greenhouse gas-emitting countries and those most affected by climate change. This difference should be reflected in the financial and technical support level provided to vulnerable countries to address loss and damage. Major emitting countries should bear a greater burden on emission reductions and assisting those disproportionately affected.

Environmental and Energy Policy and the Economy (Book: Volume 2) points out that less legislative activity decreases in times of economic difficulty, which directs of our focus towards supporting underdeveloped economies. Financial Mechanisms and Data Collection and Monitoring Systems should be established under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM) to support such economies and be responsible for exploring innovative financing options such as climate insurance and risk pooling mechanisms.

Otherwise, it would be an injustice to the countries that contribute insignificant amounts of global greenhouse gases, but their geographical location makes them extremely vulnerable to climate change: for example, Pakistan contributes less than 1% to the global greenhouse gas emissions, and yet its one-third was submerged in water - affecting mostly the poorest communities living in low-lying areas.

**Supporting Climate Change Litigation:**

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

In underdeveloped countries like Pakistan, there are challenges that may hinder the initiation of climate change litigation. Many affected populations, particularly the poor and uneducated, may be unaware of their rights and lack financial support to pursue legal action. Additionally, specific human rights issues can arise in the context of climate change-related events, as seen during the 2022 floods in Pakistan. The affected population faced numerous human rights violations, including looting, preferential treatment of aid, harassment, sexual abuse, and exploitation of vulnerable groups. These interconnected issues, often unaccounted for, demonstrate the need to consider the broader spectrum of human rights violations linked to climate change.

Climate change litigation in underdeveloped countries is still in its early stages, with a relatively limited number of cases compared to developed countries. Resource constraints, limited legal infrastructure, and awareness gaps pose challenges to widespread litigation. However, as climate change increasingly affects vulnerable communities, it is possible that more cases will emerge in the future, seeking remedies and justice for those impacted by climate change.

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

There can be certain issues while linking human rights and climate change litigation. Such issues mostly arise due to the complex nature of both human rights and climate change. The issues include:

Lack of understanding of climate change and its impacts: Limited awareness and comprehension of the scientific basis of climate change may hinder the recognition of its connection to human rights violations.

Difficulty in attributing human rights issues to climate change: Establishing a direct causal relationship between specific human rights violations and the broader consequences of climate change can be complex due to the multitude of contributing factors.

Complex legal standing and jurisdictional issues: Determining who has the legal authority and standing to bring climate change-related human rights claims can be challenging. Courts may face difficulties in defining their jurisdiction and determining the scope of their authority in addressing such global and interconnected issues.

Balancing conflicting rights and interests: Climate change mitigation and adaptation efforts often involve trade-offs and conflicts between different human rights or between human rights and other societal interests. Striking the appropriate balance between these competing rights and interests can be complex.

Identifying effective remedies: Even if a court recognizes the link between human rights and climate change, ensuring effective remedies and enforcement can be difficult. Implementing and monitoring court orders, especially when multiple actors are involved, presents practical challenges.

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

There are several major barriers to initiating climate change litigation. These barriers can vary across jurisdictions and contexts, but some common challenges include:

One of the primary barriers is establishing legal standing or the right to bring a lawsuit. Courts often require a direct connection between the plaintiff and the harm suffered, making it challenging for individuals or communities to demonstrate their eligibility to initiate a climate change lawsuit.

Establishing a direct causal link between specific actions or omissions of defendants and the climate change impacts can be complex. Climate change is a global phenomenon influenced by multiple factors, making it difficult to attribute responsibility to individual parties.

Climate change litigation often relies on scientific evidence to prove causation and establish the connection between the defendant’s actions and the harm suffered. The complexity and technical nature of climate science can pose challenges in presenting evidence that is accessible and understandable to courts.

* Litigants in climate change cases often face a high burden of proof, requiring strong and compelling evidence to demonstrate the harm suffered, the defendant’s responsibility, and the causal link between their actions and the impacts. This can be challenging, particularly when dealing with the long-term and diffuse impacts of climate change.
* Climate change litigation can be financially and resource intensive. The costs associated with legal representation, expert witnesses, scientific research, and gathering evidence can be substantial, making it difficult for individuals and communities, particularly those from marginalized or low-income backgrounds, to pursue legal action.
* Climate change litigation can face resistance from powerful actors, including governments and corporations, who may seek to challenge or delay legal proceedings. Political and institutional factors can influence the willingness of courts to take up climate change cases and the enforcement of court decisions.
1. Are the barriers different in different parts of the world? What are they?

The barriers to initiating climate change litigation can differ worldwide due to varying legal systems, socio-economic contexts, and political landscapes. While some barriers may be common, specific challenges can be more distinct in certain areas, including the level of awareness, legal frameworks, access to justice, political and institutional factors, socio-economic disparities, and cultural and social factors. It requires collaboration between stakeholders, including legal experts, civil society organizations, and policymakers, to identify and overcome these challenges in each particular region.

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

It is difficult to provide a definitive assessment of the capacity of the judiciary on climate change issues without any data. However, considering the insignificant number of climate litigations in the news in Pakistan, we may surmise that the judiciary may require exposure, capacity-building training, and resources.

1. How could this be improved?

A comprehensive capacity-building program should be implemented to enhance the judiciary’s understanding of the intersection between human rights and climate change. Promoting interdisciplinary collaboration and raising awareness about this connection will contribute to a better-equipped judiciary in Pakistan, enabling the effective dispensation of justice for climate justice litigants.

To complement the capacity-building program, a monitoring exercise should be conducted to assess the judicial system's knowledge, attitude, and practices and gather litigants' perceptions and experiences. Quarterly monitoring reports should be submitted to a centralized international body, such as the WIM (Warsaw International Mechanism for Loss and Damage), to evaluate and address any deviations.

The quarterly reports from each country should be compared, and best practices and lessons learned should be identified and shared publicly.

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

Yes, there are specific issues that can hinder access to courts in Pakistan that, includes lack of awareness about rights, financial constraints/lack of legal aid, justice procedure delays, fear of dispute with institution/government and harassment, and lack of judicial expertise to handle such cases effectively.

**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 United Nations Framework Convention on Climate Change (UNFCCC) is a key international treaty addressing climate change and recognizes the principle of intergenerational justice. It states that the parties should protect the climate system for the benefit of present and future generations. The UNFCC was adopted by the Paris Agreement, which also emphasizes the importance of intergenerational justice.

The UNFCCC and Paris Agreement were ratified by 190 countries in 2016, including Pakistan. The Pakistan Climate Change Act 2017 was drafted and passed on the international treaty and agreement principles to ensure intergenerational justice. Pakistan Climate Change Council, under the law, was also established to ensure the effective implementation of the law and monitoring of its objectives.

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

Intergenerational justice recognizes that the actions and decisions of the current generation have significant consequences for future generations. It highlights the present generation’s responsibility to mitigate greenhouse gas emissions, promote sustainability, and protect the environment. By doing so, the present generation ensures that future generations can live in a world that is not significantly compromised by the impacts of climate change.

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

The most famous cases that became limelight included the concept of intergenerational justice in climate change litigation. For example, Urgenda Foundation Vs. The Netherlands. However, the percentage of such cases is insignificant.

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

Enshrining the principle of intergenerational justice in international law can be pursued through options such as international treaties, declarations/resolutions, customary international law, regional agreements, domestic legislation, and judicial interpretation.

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

The states can incorporate the concept of intergenerational justice in their national constitutions and legislations to ensure the long-term protection of the environment, natural resources, and the rights of future generations by adopting the following best practices around the world. For example:

* Align national constitution and legislation with the UNSDGs, particularly Goal 14 (Climate Change) and Gola 15 ( Life on Land)
* Environmental education and awareness programs in schools, universities, and the public to foster a sense of responsibility toward future generations and to develop a culture of sustainable development.
* Establishment of environmental courts or tribunals to address intergenerational justice concerns and hear environmental protection and sustainable development cases.
* Recognize the rights to a healthy environment or environmental rights in the constitution or national legislation.

15. 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?

The following are some of the good practices that allow youth to be represented in courts and to have their views and concerns properly expressed in the judicial process as are follows:

* Youth Advisory Councils: Establishing youth advisory councils or similar bodies can provide a platform for young people to voice their opinions and concerns in legal matters. These councils can serve as consultative bodies, advising courts and judicial institutions on issues related to youth and representing youth perspectives. An example is the Scottish Youth Parliament’s participation in the Children’s Hearings System in Scotland. Scottish Youth Parliament: <https://www.syp.org.uk/>
* Youth Court Programs: Implementing youth court programs allows young people to actively participate in the judicial process. These programs involve youth serving as jurors or advocates in specially designated courts that handle cases involving youth offenders. Youth courts aim to involve young people in decision-making and promote a restorative justice approach. An example is the Teen Court program in the United States. National Association of Youth Courts: <https://youthcourt.net/>
* Youth Legal Clinics: Establishing youth legal clinics provides young people with access to legal advice and representation. These clinics can focus on youth-specific legal issues and ensure that youth voices are heard and considered in the legal process. The Youth Law Center in Australia is an example of a legal clinic that offers free legal services to young people. Youth Law Center : <https://youthlaw.asn.au/>
* Youth Ombudsman: Appointing a youth ombudsman or commissioner can advocate for the rights and concerns of young people within the judicial system. The youth ombudsman acts as an independent authority that monitors and investigates issues affecting youth, ensuring their voices are heard and considered in legal processes. An example is the Children’s Ombudsman in the Netherlands. Dutch Children’s Ombudsman: <https://www.dekinderombudsman.nl/>

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