1. **Enhancing Climate Change Legislation:**
2. Can you provide examples of climate change legislation that incorporates human rights elements, or a reference to obligations relating to loss and damage?
3. How do you think climate change legislation should frame a connection to human rights obligations?
4. How do you think climate change legislation should engage the concept of loss and damage?
5. 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?

Cumulative Response

Art. 20a of the German Constitution requires the State to protect the natural foundations of life and animals. The obligation to reduce greenhouse gas emissions stemming from this provision but also from the signing of the Paris Agreement has been translated into the Federal Climate Change Act. The Act has been introduced in 2019 to include national climate targets into German legislation. The Federal Constitutional Court ruled in 2021 that the provisions in Germany’s Federal Climate Change Act of 12 December 2019 (Bundes-Klimaschutzgesetz – KSG) were not compatible with the Fundamental Rights of the Basic Law (the German constitution)

The Federal Constitutional Court held that the provisions of the Climate Change Act of December 2019 governing national climate targets and the annual emission amounts allowed until 2030 are incompatible with fundamental rights insofar as they lack sufficient specifications for further emission reductions from 2031 onwards.

The Federal Constitutional Court further argued that the efforts required under constitutional law to reduce greenhouse gas emissions after 2030 would be considerable. These future efforts would have an impact on practically every type of freedom because virtually all aspects of human life still involve the emission of greenhouse gases and are thus potentially threatened by drastic restrictions after 2030. It would therefore be required to initiate the transition to climate neutrality in good time.

The ruling of the Federal Constitutional Court clearly proved the connection between the Federal Climate Change Act and Human Rights aspects.

The German Government thereafter revised the Federal Climate Change Act. The amendment was passed in June 2021. It includes the aim to reduce emissions by 65 percent of 1990 levels by 2030. This goal is more ambitious goal than in the previous act and was raised by 10 percentage points. It also enshrines in law the goal of achieving greenhouse gas neutrality by 2045 as well as further interim goals for the years 2031 to 2040.

1. **Supporting Climate Change Litigation:**
2. How are human rights considerations being incorporated into climate change litigation?
3. Are there issues with making the link between human rights and climate change litigation?
4. What do you think are the major barriers to initiating climate change litigation?
5. Are the barriers different in different parts of the world? What are they?
6. Is the judiciary in your country well equipped to understand the connection between human rights and climate change?
7. How could this be improved?
8. Are there particular issues with getting access to the courts?

Cumulative Response

Human rights may be invoked before all national courts in Germany under the current legislation. The national judiciary is aware of climate change issues and able to understand the impact of climate change on human rights. The judgment of the Federal Constitutional Court referred to under 1. has brought the issue to the attention of all national courts. There are no particular barriers for applicants to get access to national courts. However, the German government is examining whether changes in international and national law might be useful for even more effective enforcement of climate change legislation.

1. **Advancement of the principle of intergenerational justice**
2. 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?
3. How would you best define intergenerational justice in the context of climate change and human rights? A
4. Has the concept of intergenerational justice been incorporated into climate change litigation?
5. What options are available for enshrining the principle of intergenerational justice in international law?
6. How can States incorporate the concept of intergenerational justice in their national constitutions and legislation? What are some good practices in that respect?
7. 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?

Cumulative Response

The Federal Constitutional Court’s ruling from 2021 (as addressed in section 1 of this response) was in large parts based on intergenerational justice principles.

The Federal Constitutional Court held that the Federal Climate Change Act was in violation of fundamental rights because the emission amounts allowed for until 2030 would have substantially narrowed the scope of possible measures for reducing emissions after 2030, thereby jeopardising practically every type of freedom protected by fundamental rights. As intertemporal guarantees of freedom, fundamental rights afford protection against comprehensive threats to freedom caused by greenhouse gas reduction burden being unilaterally offloaded onto the future. Instead, the principle of proportionality requires that the reduction in CO2 emissions to the point of climate neutrality be distributed over time in a forward-looking manner that respects fundamental rights.

The amendment of the Federal Climate Change Act in 2021 addressed these issues. The revised law sufficiently satisfies the requirements of the German Constitution with clear climate goals, including for the time after 2030, and the objective to reach climate neutrality by 2045.