



Climate Analytics-Caribbean

Climate Legislation Submission

25 May, 2023

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”

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

Regarding human rights, common provisions are those that reference rights engrained in national constitutions. For example, in the [Fiji Climate Change Act, No. 31 of 2021](#) Part 11 Section 5, references human rights by stating:

This Act recognizes that climate change is a threat to the rights and freedoms recognized in Chapter 2 of the Constitution, and in particular—

(a) the right to a clean and healthy environment;

(b) the right to adequate food and water;

(c) the right to health;

(d) the rights of children and persons with disabilities;

(e) the right to housing and sanitation; and (f) the right to reasonable access to transportation.

Another example is taken from draft legislation that Climate Analytics Caribbean supported the drafting process for Saint Lucia’s Climate Change Bill, which is currently undergoing national legislative review. The draft provision makes reference to the principle of constitutional supremacy and the recognition of the rights and freedoms of chapter one of the Constitution.

In Kenya's Climate Change Act No. 11 of 2016, a novel provision exists in that a person has the right to pursue legal action against a defendant who is in violation of the country's climate change laws.

23. Enforcement of rights relating to climate change

(1) A person may, pursuant to Article 70 of the Constitution, apply to the Environment and Land Court alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change.

(2) Where an application is made under sub-section (1), the Court may make an order or give directions that it considers appropriate to—

(a) prevent, stop or discontinue an act or omission that is harmful to the environment;

(b) compel a public officer to take measures to prevent or discontinue an act or omission that is harmful to the environment; or

(c) provide compensation to a victim of a violation relating to climate change duties.

(3) For the purposes of this section, an applicant does not have to demonstrate that a person has incurred loss or suffered injury.

Another unique and important consideration in climate change law can be seen in Antigua and Barbuda's Environmental Protection and Management Act, No. 10 of 2019 that recognizes sovereign rights over biodiversity in their lands.

Sovereign Rights over Biodiversity

67. It is noted under this Act that the Government of Antigua and Barbuda together with the civil society exercises sovereign rights over the biological resources existing in the country and recognises that it is the duty of the state and its citizens to regulate the access to biological resources as well as related use of community knowledge and technologies. The Government also recognises the need to promote and support the traditional and indigenous technologies that are important in the conservation and sustainable use of biological resources and to complement them by modern technologies so as to ensure the implementation of the relevant provisions of the Convention on Biological Diversity, in particular Article 15 on access to genetic resources and Article 8(j) on the preservation and maintenance of knowledge, innovations and practices of indigenous and local communities.

On Loss and Damage, Fiji's Climate Change Bill principles section includes a clause that reads:

*This Act must be implemented in accordance with the following principles—
the importance of averting, minimising and addressing loss and damage associated with
the adverse effects of climate change in light of Fiji’s national circumstances as a small
island developing State that is highly vulnerable the impacts of climate change;*

While supporting Saint Lucia in its drafting of a Climate Change Bill, a Loss and Damage Framework provision was included. The provision is intended to establish a Loss and Damage Sub-Committee, to provide guidance on a range of issues relating to loss and damage.

While doing our research, we found that loss and damage provisions are quite rare. In fact, we were unable to track any loss and damage-specific provisions other than the principle on loss and damage in Fiji’s law referenced above.

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

Most importantly, climate change legislation should recognize the inextricable link between living (the right to life) and correspondingly, the absolute need for place—like land and other natural resources to sustain said life. Life and place, as we know, are directly impacted by climate change and continue to worsen with some countries and populations being more vulnerable than others. In the same vein, this right should unequivocally recognize and respect the fundamental requirement to preserve national sovereignty.

Additionally, when framing climate change legislation, it is important to recognize the connection between climate change and human rights obligations. This has been reflected in existing legislation, although not in detail. Some key considerations for integrating human rights into climate change legislation include:

- **Right to Life and Health:** Climate change poses significant risks to human life and health, making it relevant to prioritize these rights in legislation. The inclusion of the right to life and health in legislation could contribute to actions that aim to mitigate climate change impacts and protect vulnerable populations from immediate and long-term health risks associated with climate-related disasters, such as sea level rise, king tides, loss of biodiversity, heatwaves, storms, and the spread of diseases.
- **Right to Food and Adequate Standard of Living:** Climate change impacts agriculture, fishing, food security, and livelihoods, jeopardizing the right to food and an adequate standard of living. Legislation may have a role to play in promoting sustainable agricultural practices, resilient food systems, and social protection mechanisms to ensure food security, especially for vulnerable populations.
- **Right to Water and Sanitation:** Climate change affects the availability and quality of water resources, which can undermine the right to clean water and sanitation. Legislation

can have a role to play alongside policy frameworks and other legal instruments in addressing equitable access to safe drinking water, sanitation facilities, and hygiene services, especially for marginalized communities that are disproportionately affected by water scarcity.

- **Right to Housing and Shelter:** Climate change exacerbates the frequency and intensity of extreme weather events, leading to displacement, loss of homes, and inadequate shelter. Legislation may include provisions that support prioritizing the right to housing and addressing the needs of climate-vulnerable populations, including ensuring access to safe, affordable, and sustainable housing options.
- **Right to Participation and Access to Information:** Climate change legislation can play a role in emphasizing the rights of individuals and communities to participate in decision-making processes and access relevant information relevant to climate change. Public participation and transparency in policy development, implementation, and monitoring can help ensure that the voices of affected communities are heard and their rights are protected.
- **Just Transition and Labor Rights:** Climate change mitigation efforts, such as transitioning to a low-carbon economy, should consider the rights of workers. Legislation can incorporate provisions for a just transition that safeguard workers' rights, provide training and employment opportunities in emerging green industries, and support affected communities during the transition process.
- **Intersections with Indigenous Rights:** Climate change legislation should recognize and respect the rights of Indigenous peoples, who often have unique relationships with the environment and traditional knowledge systems. Indigenous rights, including land rights, cultural heritage, and self-determination, should be protected and integrated into climate policies, ensuring meaningful engagement and collaboration.
- **Climate Justice and Equity:** Climate change disproportionately impacts marginalized communities, exacerbating existing inequalities. Legislation should prioritize climate justice and equity, addressing the root causes of vulnerability and ensuring that the burden of climate action and its benefits are distributed fairly across society.

By incorporating human rights obligations into climate change legislation, policymakers can foster a rights-based approach to climate action that not only addresses the urgent need for environmental protection but also promotes social justice and equity.