**ASEAN Youth Forum - Environment Working Group**

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**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?**

An article from Maria Antonia Tiger provides several examples of climate change legislation that could be adopted. They are:

1. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean: The Escazú Agreement is a regional treaty for Latin America and the Caribbean that promotes access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. It was adopted on March 4, 2018, in Escazú, Costa Rica, and is the first treaty to include specific provisions for the protection of environmental defenders.
2. [The Human Rights Council's Resolution 48/13](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/) recognizes the right to a safe, clean, healthy, and sustainable environment as a human right, and emphasizes that each state has duties to address climate harm outside its own territory.
3. The Paris Agreement, adopted in 2015, recognized the human rights dimensions of climate change. Since its adoption, over 90% of cases brought outside the United States have been argued on human rights grounds​[3](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/)​.
4. The Dutch Supreme Court, in Urgenda Foundation v. State of the Netherlands, found an obligation of the Dutch government to protect the rights to life, private and family life from the threat of climate change​[4](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/)​.
5. In Leghari v. Federation of Pakistan, the Lahore High Court found that the citizen’s fundamental rights, such as the right to life (which includes the right to a healthy and clean environment and the right to human dignity), were infringed by the government’s climate inaction​[5](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/)​.
6. In Future Generations v. Ministry of the Environment and Others, the Colombian Supreme Court found that deforestation of the Amazon rainforest and its contribution to climate change infringed the constitutional right to a healthy environment of present and future generations​[6](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/)​.
7. In Shrestha v. Office of the Prime Minister et al., the Nepalese Supreme Court found that the absence of a climate change law infringed the constitutional right to a clean environment, requiring the Nepal government to take climate mitigation and adaptation action​[7](https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/)​.
8. **How do you think climate change legislation should frame a connection to human rights obligations?**

First, the policy maker should incorporate social justice perspectives in protecting, fulfilling, and respecting people’s rights from any crisis caused by climate change. Commonly, each community of women (transgender and cisgender), persons with disabilities, LGBTQIA+ folks, other persons of diverse SOGIESC, indigenous peoples, the youth and children, sex workers and other informal and formal workers, migrants and refugees, people in conflict areas, people in the academe including professionals and students, out of school youth, and groups with intersecting identities and backgrounds struggle with accessibility caused by the climate injustice. This accessibility is usually in healthcare services and amelioration programs that practice inequity and inequality which furthers the discrimination, violence, abuse, and marginalization of these communities and groups.

To connect human rights obligations in the legislation for climate justice, legislators have to (1) start on acting for and with these most marginalized and vulnerable communities, (2) acknowledge these communities and groups in every writing, reading, and statements which will be made or are already in the making.

These could be served by people-centered, inclusive, and ambitious climate change laws that bring justice to the people. For instance, the laws should protect youth and indigenous communities from large scale industrialisation and other extractive activities that cause them suffering from the climate crisis and deprive them from exercising their human rights. The law should also guarantee fulfillment rights to justice and remedies mechanisms for those affected-marginalised communities. Policy makers should also fulfill and respect youth and climate activist’s freedom of expression. There should be laws that protect them from any attempt of criminalisation. Regarding this, access to justice systems such as lawyers, education resources, information rights, financial support, et cetera should be accessible and fit to their needs.

Talking about human rights and climate change also covers enforcing accountability for those parties who are responsible for environmental damage, including the business sector.

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

By incorporating them into the adaptation and mitigation regulation, and most importantly it should be adopted into the environmental law under protection and preservation sections. These approaches will be important to ensure that loss and damage as the new condition can be adjusted in the respective national law of the member state.

The drafting of the legislation should also meaningfully engage marginalized groups who will eventually be supported by loss and damage mechanisms. We found Santiago Network, who is developing the details of this mechanism, could be referenced. Full article about the process in Santiago can be found through [this link](https://unfccc.int/santiago-network).

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?**

We found the treatment above is wise. However, it does not mean that the climate perpetrator is only obliged to compensate only for one sector, we need to recognize other sources of emission that they produce and need to be responsible too.

The largest emitters, most often "wealthier nations" in the global north, should be responsible for both: their own proven and biggest emission, and for other common emissions that become shared-responsibility for those who contribute the most in climate change.

The global north are supposed to pay monetarily and act to solve the climate crisis and its effects on the global south. Data shows that the most affected people and areas are in the global south while being the least contributor of this injustice.

In detail, these reparations should also be in the form of waiving the debts of the countries in the global south from international banks. This will help solve the climate crisis and its effects on the global south while also empowering nations to act urgently on the calls of the climate activists and environmental defenders locally and regionally.

Loss and damage should also include asking accountability on government leaders, private companies and infrastructures that continue to support and create projects that produce more emissions and more direct damage to local citizens. This should include those that continue to support and create the use of fossil fuel.

**Supporting Climate Change Litigation:**

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

What makes it possible is to acknowledge the relation of climate change and human rights in our constitutions. There should be a statement within the constitution that promotes the protection and conservation of the environment as part of responding to climate crises that (1) threatens human and other creature beings, (2) and deprives people from exercising their human rights.

To Include these in our constitutions is necessary to mandate the government as a duty bearers in doing their roles progressively in terms of protecting the environment and people’s rights. By including acknowledgement of climate change and its relation to human rights, to our constitutions, people are able to challenge their government at national or regional level or bring them to court as an accountability mechanism. It also allows countries to have more specific laws related to specific climate issues and provide just and equitable litigation mechanisms for climate trials.

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

We think it is clear enough that human rights are linked to climate change litigation. Climate change intersects with fundamental rights such as basic human rights to clean water, sanitation, clean air, livelihood etc.

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

Actually, the barriers to initiating climate change litigation mostly come from the government's political will (executive and legislative body) and law enforcements’ perspective. We are not sure yet that the majority of law enforcement have adequate perspective and lens both in human rights and environment. We found several cases where climate activists were

prosecuted to the court because of advocating their rights. In this case, the lack of legal assistance is one of other problems related to rights of fair trial. First, only a few lawyers are accessible and willing to give their assistance in this kind of case. Second, there are only a few lawyers who have sufficient perspective on human rights and environment issues.

This becomes more complicated when the business and corporate sector intervene in the process. Most of the cases, the ones who are legally responsible for the climate damage caused by corporations are low-level workers. Their low-level workers are sentenced by the court for the offense that is actually supposed to be the corporate's responsibility. This kind of fallacious litigation is legally possible under several countries’ laws.

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

For developing countries, enforcement is a huge barrier. Despite well-established legal mechanisms, there is an issue of funding and enforcement to see implementation through. Establishing climate change litigation must come part in parcel with implementation and enforcement plans.

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

We are not sure if the judiciary and law enforcement are well equipped to understand human rights and its relation to climate change. For Malaysia, there has been less discussion on human rights - rather focusing more on conservation.

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

By conducting training and campaigns targeted public and law enforcements. Specifically, developing capacity on how to reach out for legal assistance, managing the ropes of litigation within each country’s context. In addition, developing funding mechanisms to support enforcement and implementation of climate change litigation is necessary.

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

As we mentioned above, limited access to legal aid is one of the problems faced by climate activists. Outside of the court process, in general, climate activists receive many threats for their work. Security issues are their daily challenges.

**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?**

We have not found it yet.

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

Intergenerational justice means that the future generations will be able to fully enjoy the same benefits of our environmental resources without a burden on their shoulders to overcome the climate crisis that the current and past generations inherit to them.

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

No, it has not. There are many climate justice litigations that occur but none realistic step to formalize it into specific litigation for intergenerational justice. Most of the cases are still under a general umbrella that consists of such a combination between conflict with local people, indigenous right violation, then climate-related disaster effects, and/or intergenerational justice.

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

First, we need more opportunities that allow intergenerational dialogue at international level to happen. To produce significant discussion, it required awareness and willingness to learn from each generation, as well as open for critiques and suggestions during identifying problems and finding solutions. This could be achieved if younger generations from various backgrounds are entrusted to talk about very substantive issues.

Secondly, the result of these discussions must be formalised into a legally-binding agreement that binds to all of the state members.

Last but not least, the discourses regarding intergenerational justice principle and the struggle to attain that, should be narrated continually to the future younger generation. So, they will not take it for granted.

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

One of the best ways to mainstream the concept of intergenerational justice is through the incorporation of that concept into the national treaty of environmental protection and child convention according to the respective states.

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?**

Financial support and law assistance need to be provided for youth to be able represent themselves in the court, these two challenges basically the general challenges that most of the environmental/human right defenders encounter during their fight at the court.

In addition, youths need to enhance their capacity regarding the procedural customs, what to expect, say in spaces like these.