

**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”**

**Purpose**

To inform the Special Rapporteur on the promotion and protection of human rights in the context of climate change’s report on enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice, to be presented to the United Nations General Assembly in October 2023.

**Background**

One of the thematic priorities identified by the Special Rapporteur relates to enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice.

As countries meet their commitments under the Paris Agreement, many are developing national legislation. The Special Rapporteur wishes to understand, from the perspective of his mandate, whether countries are incorporating human rights considerations in their legislation and whether they are developing elements of legislation relating to Article 8 of the Paris Agreement which relates to loss and damage.

With respect to climate change litigation, a UNEP report[[1]](#footnote-1) states that the current levels of both climate ambition and climate action are inadequate to meet the challenge. As a consequence, individuals, communities, non-governmental organizations, business entities, governments and others have brought cases seeking to compel enforcement of those laws, replace them with stronger ones (and sometimes weaker ones), extend existing laws to address climate change, or define the relationship between human rights and the impacts of climate change. UNEP suggests that climate cases to date often fall into one or more of six categories: (a) climate rights; (b) domestic enforcement; (c) keeping fossil fuels in the ground; (d) corporate liability and responsibility; (e) failure to adapt and impacts of adaptation; and (f) climate disclosures and greenwashing.

The Special Rapporteur is particularly interesting in whether climate change litigation incorporates considerations of human rights.

The principle of intergeneration equity goes back to the Stockholm Declaration 1972. This principle occurs in many agreements including the preamble to the Paris Agreement. Nevertheless, the concept of intergenerational justice does not appear to be well advanced in international or national laws. Intergenerational justice in the context of climate change and human rights is founded on the principle that people must protect current and future generations from the adverse impacts of climate change.

The Special Rapporteur wants to explore whether intergeneration justice has been incorporated into international law, national constitutions and domestic laws and how it can be anchored in these key elements of law.

Input may be sent by e-mail. They must be received by **25 May 2023 18:00 CET**.

**Email address:**hrc-sr-climatechange@un.org

**Email subject line:**Input for GA report

**Word limit:**2500 words

**File formats:**Word

**Accepted languages:**English, Spanish, French

**Submitted by:** Center for Environmental Concerns - Philippines Inc. (CEC) and Climate Change Network for Community-based Initiatives (CCNCI)

**Contact person:** Lia Mai Torres, Executive Director, CEC

**Contact details:** info@cecphils.org, ccnci.inc@gmail.com

**Questionnaire**

The Special Rapporteur is therefore seeking input from States, business enterprises, civil society organizations and intergovernmental organizations on how to enhance climate change legislation, how to support climate change litigation, and how to advance the principle of intergenerational justice.

The Special Rapporteur invites and welcomes your answers to the following questions:

**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?

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| 1. [Republic Act No.9729: Climate Change Act of 2009](https://faolex.fao.org/docs/pdf/phi100134.pdf) and [Republic Act No.10174: Establishing the People’s Survival Fund to provide long-term financing to enable the Government to effectively address the problem of Climate Change.](https://faolex.fao.org/docs/pdf/phi160804.pdf)- Section 2: Declaration of Policy:
* “It shall also be the policy of the State to incorporate a **gender-sensitive, pro-children and pro-poor perspective** in all climate change and renewable energy efforts, plans, and programs.”- (Enshrined in the Philippine Constitution): “It is the policy of the State to afford full protection and the **advancement of the right of the people to a healthful ecology in accord with the rhythm and harmony of nature**.”
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1. How do you think climate change legislation should frame a connection to human rights obligations?

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| The language of framing human rights provisions in future climate legislation policies must: 1. Ensure that no climate initiatives or projects from the state and private sector violate any human rights;
2. It must ensure that human rights are fulfilled, secured, and protected as a parallel goal alongside climate mitigation and adaptation goals, and;
3. Realize that human rights and climate change issues and solutions continuously evolve and warrant flexibility to address their complexity.
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1. How do you think climate change legislation should engage the concept of loss and damage?

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| Climate change legislation should ensure that the concept of loss and damage is grounded on the following: 1. Realizing and accepting that the loss and damage incurred in developing and underdeveloped nations are caused by the extractive activities of developed nations;
2. Therefore, loss and damage financing must come from developed nations;
3. Any loss and damage mechanisms and provisions inserted into climate change legislation must ensure that affected populations will be one of the key authors in framing the language alongside government institutions and;
4. The operationalization of global climate change legislation involving loss and damage must also be spearheaded by affected communities, indigenous groups, and civil society (non-government organizations) with the aid of the government and its scientific institutions.
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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?

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| **Loss and damage legislation for the biggest carbon emitting countries must:** * Admit responsibility as the biggest factor for the current climate crisis
* Shoulder the bulk of the loss and damage financing for the most impacted communities and ensure timely and appropriate dissemination of funds without stipulations and unnecessary technicalities to avoid increasing the burden to its recipients.
* Ensure they guarantee non-repetition of their carbon-emitting activities that have contributed to the climate crisis and, therefore, must also guarantee provisions to decrease their reliance on fossil fuels and ramp up their transition to clean energy.
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**Supporting Climate Change Litigation:**

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

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| Human rights have been used extensively in the Philippines' three climate change litigation cases. In all cases, the plaintiffs used the cases of human rights violations arising from state and private sector activities and inaction as one of the primary legal circumstances for the case filing. The cases sought remedy, relief, accountability, and justice for the most impacted communities.[Global Legal Action on Climate Change v. The Philippines Government](http://climatecasechart.com/non-us-case/global-legal-action-on-climate-change-v-the-philippines-government/): The suit used the Writ of Mandamus to compel relevant government agencies to fulfill their specific duties in the wake of worsening typhoons and floods under Republic Act 6716: the Rainwater Collector and Springs Development Law and the Republic Act 7160 or the Local Code of 1991, citing that noncompliance of the two laws will bring more harm to the Philippines. The suit also used the Writ of Kalikasan to assert the Filipino’s “right to environmental protection and seek relief from infractions of that right.” The suit was settled after relevant government agencies signed an MOU and a work plan to start necessary measures. [Segovia et al. v. Climate Change Commission](http://climatecasechart.com/non-us-case/segovia-et-al-v-climate-change-commission/): indicated the government's failure to implement climate-related transport measures in the country had violated all Filipinos' right to life, health, and property. The lawsuit was dismissed. (Not a case filing) [In re Greenpeace Southeast Asia and Others (National Inquiry of the Commission on Human Rights on Climate Change)](http://climatecasechart.com/non-us-case/in-re-greenpeace-southeast-asia-et-al/): a landmark inquiry that seeks to establish the role and responsibility of the biggest carbon majors on the worsening climate in the Philippines and how it has violated the rights of Filipinos. The inquiry has been lauded and is the first of its kind and can be used as a precedent for future litigation. |

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

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| * The information regarding the impacts of climate change and human rights in litigation is difficult to empirically attribute to impacted communities as data can be interpreted differently. There is also difficulty in linking climate change impacts to the welfare of future generations as there is no current and substantial evidence yet to link the two factors.
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1. What do you think are the major barriers to initiating climate change litigation?

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| * Establishing a causal link between the activities of states and corporations as inducing climate change and its impacts on communities.
* No concrete legal framework for climate litigation in the national courts in most countries.
* There is no universal definition and framework yet, as it is an evolving discipline.
* Lack of concrete provisions in most countries' constitutions and related policies regarding the state’s responsibility in mitigating or protecting people from climate change impacts.
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1. Are the barriers different in different parts of the world? What are they?

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| * ***Cultural diversity and practices*** are significant in all countries' policy and decision-making processes. As such, what we find acceptable, appropriate and how we interpret and approach an issue will vary in different contexts.
* ***A country's political culture and political will*** also pose a barrier to any form of litigation or proactive action against a particular problem or issue. For example, corruption is rife in all government bodies and hierarchies in the Philippines. It has been proven for decades that rulings on judicial proceedings are more favorable to the elites. Also, the political will in the Philippines is mostly minimal and reactionary, resulting in short-term solutions for most social issues. This effectively ignores the necessary steps to address the root cause and tackle problems long-term.
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1. Is the judiciary in your country well equipped to understand the connection between human rights and climate change?

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| * Not yet, but they have made substantial resolutions in linking climate change and human rights. Additionally, in the past 3 administrations, they have lacked the political will to enforce landmark rulings in current petitions and proceedings regarding environmental violations caused by development aggression.
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1. How could this be improved?

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| * Better education and improved communication to justice officials on the science behind climate change, its adverse impacts on the economy and frontline communities, and how it is a barrier to fulfilling a wide array of human rights. Additionally, communicating the interconnectedness of climate change and human rights can improve the incorporation of a human rights-based approach in policy-making and enhance the protection and support for environmental human rights defenders in crafting and executing national legislation.
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1. Are there particular issues with getting access to the courts?

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| * Yes, in the Philippines, courts are very inaccessible for vulnerable, marginalized, and indigenous communities due to the lack of awareness, logistics, finances, and the threats surrounding the work of environmental human rights defenders.
* There is a particular distrust and lack of public confidence in the judicial system and process in the country. There’s an apparent bias in numerous case filings where the local and national courts side with the elites, even with substantial evidence of environmental and human rights violations linked to their activities.
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**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?

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| > [The Philippine Constitution, Sec 16, requires the government “*to protect and advance the right to a balanced and healthy ecology in accord with the rhythm and harmony of nature.”*](https://www.officialgazette.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-ii/)**Intergenerational equity in environmental litigation:**> [Oposa vs. Factoran Jr](https://home.crin.org/a2j-reports-philippines/#footnote_a2j_phil_16), a landmark judicial proceeding filed by youth plaintiffs that used intergenerational equity as one of its legal circumstances to cancel existing timber agreements and prevent new applications to save the rainforest in the Philippines. [It also mentioned the greenhouse effect through deforestation](https://voelkerrechtsblog.org/no-kidding/). The Supreme Court ruled in favor of the plaintiffs and established groundbreaking resolutions, including recognizing [intergenerational responsibility to maintain a clean environment.](https://archive.crin.org/en/library/legal-database/minors-oposa-v-secretary-department-environmental-and-natural-resources.html)  |

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

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| Intergenerational justice must be one of the guiding principles in addressing the climate crisis and its impact on our ability to fulfill basic human rights. We cannot guarantee the right to life and welfare of future generations without safeguarding the rights of the present. Therefore, intergenerational justice must be one of the means to fulfill our goals to realize just and genuine sustainable development.  |

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

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| **Not yet, however, steps have been made to establish legal precedence for climate change litigation in the Philippines:** [The Commission on Human Rights National Inquiry on Climate Change](https://chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf) * Reiterates that the activities of global carbon majors greatly contribute to the climate crisis through empirical data and public consultations
* Recommends key actions for governments to take to tackle the human rights crisis arising from climate change impacts
* Indicts carbon majors for having the foresight and knowledge of a worsening crisis arising from their activities through scientific data, yet they did not take further climate action, continued to disrespect human rights and environmental laws and principles, and participated in climate science denial campaigns to justify their business as usual activities.
* Establishes how climate change impacts conflicts with the principle of intergenerational equity
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1. What options are available for enshrining the principle of intergenerational justice in international law?

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| * Formalizing and legalizing the definition of intergenerational justice in national legislation to serve as a precedent for its incorporation in international law. It must not be used retroactively. It must be the primary guiding principle for future legally and non-legally binding frameworks on environmental and climate agreements/treaties.
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1. How can States incorporate the concept of intergenerational justice in their national constitutions and legislation? What are some good practices in that respect?

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| * Hold public consultations and [initiate inquiries](https://chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf) on the impacts of climate change on human rights and our ability to safeguard the welfare of future generations to establish the foundations to insert intergenerational equity/justice into national legislation.
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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?

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| **Intergenerational equity in environmental litigation:**> [Oposa vs Factoran Jr](https://home.crin.org/a2j-reports-philippines/#footnote_a2j_phil_16), a landmark judicial proceeding filed by youth plaintiffs which used the principle of intergenerational equity as one of its legal circumstances to cancel existing timber agreements and prevent new applications to save the rainforest in the Philippines. The Supreme Court ruled in favor of the plaintiffs and established groundbreaking resolutions which included [recognizing the idea of intergenerational responsibility to maintain a clean environment.](https://archive.crin.org/en/library/legal-database/minors-oposa-v-secretary-department-environmental-and-natural-resources.html)  |

**Submission of responses**

We strongly encourage you to please send your responses to the questionnaire in Word format **by email** to: hrc-sr-climatechange@un.org

We kindly request that your submission be concise and limited to a maximum of
5 pages (or 2,500 words), not including appendices or attachments. Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

**The deadline for submission is 25 May 2023.**

All submissions will be made publicly availableand posted on the Special Rapporteur’s homepage at the OHCHR website.

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1. UNEP, *Global Climate Litigation Report: 2020 Status Review* (Nairobi, 2020), https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review. [↑](#footnote-ref-1)