

# Climate Justice : The Judicial Measures Required for it's Integration with the Human Rights Mechanisms

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**Abstract:** *Climate change impacts, directly and indirectly, and it is an alarm to the internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.*

**Keywords:** Climate change.

## I. INTRODUCTION

“Climate change threatens our ability to achieve sustainable development, and in some cases, our very survival.”

-BanKi-moon, Secretary General of the United Nations.

Human rights are universal legal guarantees that protect individuals, groups and people against the actions and the omissions that interfere with their fundamental freedoms and entitlements. Whereas Climate justice is a type of environmental justice that focuses on the unequal impacts of the climate change on marginalized or otherwise vulnerable populations.

Climate change impacts, directly and indirectly, and it is an alarm to the internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.

There should be the provisions in law of the States to respect, protect, promote, and fulfill all human rights for all people. This includes an affirmative obligation to prevent foreseeable harms including those caused by the climate change. The UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Declaration on the Right to Development all make clear that State human rights obligations require both individual action as well as international cooperation.

The basic human rights principles of equality and non-discrimination require action to address and remedy the disproportionate impacts of climate change on the most marginalized and to ensure that climate actions benefit persons, groups and people in the vulnerable situations and to reduce in equalities. The disproportionate impacts of climate change on persons in-vulnerable situations raise concerns of climate justice, fairness, equity and access to remedy. The Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights (ICCPR) and other human rights instruments make it clear that all persons who suffer human rights harms are entitled to access to effective remedy.

### **The Essential Attributes to Integrate the Human Rights With the Climate-Change Related actions?**

A human rights-based approach should be integrated in any climate change adaptation or mitigation measures, such as the promotion of alternative energy sources, forest conservation or tree-planting projects, resettlement schemes and others. Affected individuals and communities must participate, without discrimination, in the design and implementation of these projects. They must have access to due process and to remedy if their rights are violated.

The essential attributes of a human rights-based approach are the following:

As policies and programmes are formulated, the main objective should be to fulfill the human rights.

The *rights-holders* and their entitlements must be identified as well as the corresponding *duty-bearers* and their obligations in order to find the ways for strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

Principles and standards derived from international human rights law—especially the Universal Declaration of Human Rights (UDHR) and the core universal human rights treaties, should guide all policies and programming in all phases of the process.

The Following Judicial Measures are required to be taken in all the climate action to ensure Climate justice:-

The Judicial Measures to be taken to mitigate climate change and to prevent its negative human rights impacts:

These negative impacts will increase exponentially according to the degree of the climate change that ultimately takes place and will disproportionately affect individuals, groups and peoples in vulnerable situations including, women, children, older persons, indigenous peoples, minorities, migrants, rural workers, persons with disabilities and the poor. States have an obligation to protect, respect, fulfill and promote all human rights for all persons without discrimination. Therefore, Judiciary of the state must act to limit the anthropogenic emissions of the greenhouse gases (e.g. mitigate climate change), including through regulatory measures, in order to prevent to the greatest extent possible the current and future negative human rights impacts of climate change.

The Judicial Measures to be taken to ensure that all persons have the necessary capacity to adapt to climate change:

The legislatures of the states must ensure that appropriate adaptation measures are taken to protect and fulfill the rights of all persons, particularly those most endangered by the negative impacts of the climate change such as those living in vulnerable areas (e.g. small islands, riparian and low-lying coastal zones, arid regions, and the poles). Judiciary of the state must build adaptive capacities in vulnerable communities, including by recognizing the manner in which factors such as discrimination, and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realization of the economic, social and cultural right so fall persons, particularly those facing the greatest risks.

The Judicial Measures to be taken to ensure accountability and effective remedy for human rights harms caused by climate change:

Those affected, now and in the future, must have access to meaningful remedies including judicial and other redress mechanisms. The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both inside and beyond boundaries. The Judiciary and the States should be accountable to the rights-holders for their contributions to the climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur.

The Judicial Measures to be taken to mobilize maximum available resources for sustainable, human rights-based development:

The mobilization of resources to address the climate change should complement and not compromise the other efforts of governments to pursue the full realization of all human rights for all including the right to development. Innovative measures such as carbon taxes, with appropriate safeguards to minimize negative impacts on the poor, can be designed to internalize environmental externalities and mobilize additional resources to finance mitigation and adaptation efforts that benefit the poorest and most marginalised.

The Judicial Measures to be taken for the International cooperation:

Climate change is a human rights threat with causes and consequences that cross borders; thus, it requires a global response, under pinned by the international solidarity. States should share resources, knowledge and technology in order to address climate change. International assistance for climate change mitigation and adaptation should be additional to existing ODA commitments. Pursuant to relevant human rights principles, climate assistance should be adequate, effective and transparent, it should be administered through participatory, accountable and non-discriminatory processes, and it should be targeted toward persons, groups, and peoples most in need. States should

engage in cooperative efforts to respond to climate-related displacement and migration and to address climate-related conflicts and security risks and the judiciary is to encourage the same through its orders and judgements.

The Judicial Measures to be taken to ensure equity in climate action:

While the climate change affects people everywhere, those who have contributed the least to green house gas emissions (i.e. the poor, children, and future generations) are those most affected. Equity in climate action requires that efforts to mitigate and adapt to the impacts of climate change should benefit people in developing countries, indigenous peoples, people in vulnerable situations, and future generations. Thus judiciary is to encourage such activities through its directions in the orders and judgements.

The Judicial Measures to be taken to guarantee that everyone enjoys the benefits of science and its applications:

All States should actively support the development and dissemination of new climate mitigation and adaptation technologies including technologies for sustainable production and consumption. Environmentally clean and sound technologies should be accessibly priced, the cost of their development should be equitably shared, and their benefits should be fairly distributed between and within countries. Technology transfers between the Judiciary of the state should take steps as needed and appropriate to ensure a just, comprehensive and effective international response to climate change to meet sustainable development objectives. The right of indigenous peoples to participate in decision making related to and benefit from the use of their knowledge, innovations and practices should be protected.

The Judicial Measures to be taken to protect human rights from the business harms:

The United Nations Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from harm by the businesses, while businesses have a responsibility to respect human rights and to do no harm. Thus the Judiciary of the States must take adequate measures to protect all persons from human rights harms caused by the businesses; to ensure that their own activities, including activities conducted in partnership with the private sector, respect and protect human rights; and where such harms do occur to ensure effective remedies. Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights.

The Judicial Measures to be taken to guarantee equality and non-discrimination:

The States Judiciary must have committed to guarantee quality and non-discrimination. For example, indigenous peoples' rights should be fully reflected in line with the United Nations Declaration on the Rights of Indigenous Peoples and actions likely to impact their rights should not be taken without their free, prior and informed consent. Care should also be taken to ensure that a gender perspective, including efforts to ensure the gender equality, is included in all planning for climate change mitigation and adaptation. The rights of children, older persons, minorities, migrants and others invulnerable situations must be effectively protected.

The Judicial Measures to be taken to ensure meaningful and informed participation:

The International Covenant on Civil and Political Rights and other human rights instruments guarantee all persons the right to free, active, meaningful and informed participation in public affairs. The Judiciary of the state should make early-warning information regarding climate effects and natural disasters available to all sectors of society. Adaptation and mitigation plans should be publicly available, transparently financed and developed in consultation with affected groups. Particular care should be taken to comply with relevant human rights obligations related to participation of persons, groups and peoples in vulnerable situations in the decision-making processes and to ensure that adaptation and mitigation efforts do not have adverse effects on those that they should be protecting. Human rights impact assessments of climate actions should be employed to ensure that they respect human rights. Further, the Judiciary of the States should develop and monitor relevant human rights indicators in the context of climate change, keeping disaggregated data to track the varied impacts of climate change across demographic groups and enabling effective, targeted and human rights compliant climate action.

## **II. CONCLUSION**

It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing. The human rights framework also requires

the global efforts to mitigate and adapt to climate change should be guided by relevant human rights norms and principles including the rights to participation and information, transparency, accountability, equity, and non-discrimination. Simply put, climate change is a human rights problem and the human rights frame work must be part of the solution.

As such climate change discourse should not be guided solely by environmental law, politics and, in the worst-case scenario, by economic interests. As a human-inflicted harm to other human beings, it must be addressed as bearing responsibility. Criminal law and ‘green criminology’ can serve in ensuring and restoring justice. Climate change interrupts this process and the realisation of the fundamental human rights. Human rights in essence are tamers of power and place limits and barriers to what governments and powerful corporations can do.

Therefore, it is now well established that environmental damage and environmental protection can be treated as human rights issues. What we as legal scholars need to focus on is pushing for positive change in international criminal law while at the same time work to raise the awareness of international green crimes. Climate change will be responsible for the end of human rights if the international community fail to act as fast and effectively as they did during the challenging times of the Covid-19 pandemic. The seriousness and urgency involved in this climate emergency arena is literally a matter of life and death for all stakeholders.

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