



CLIMATE JUSTICE:  
ENSURING ACCESS TO JUSTICE AND THE RIGHT TO A  
HEALTHY ENVIRONMENT

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THE HON. JUSTICE BRIAN PRESTON, CHIEF JUDGE OF THE LAND AND ENVIRONMENT COURT OF NSW

# OUTLINE OF PRESENTATION

1. What is climate justice?
2. Types of climate change issues
  - a) Climate change mitigation
  - b) Climate change adaptation
3. Components of climate justice
  - a) Distributive justice
  - b) Procedural justice
  - c) Recognition justice
4. Conclusion



# I. What is climate justice?

- Justice is a multi-faceted concept.
- In a world increasingly threatened by planetary crises, including the triple threats of climate change, loss of biological diversity and widespread pollution, the concept of justice increasingly embraces environmental justice.
- Within environmental justice, climate justice focuses on the equitable distribution of rights in the context of climate change and the efforts to mitigate and adapt to the impacts of climate change.



## A definition

- The International Bar Association adopts the following definition of climate change justice (emphasis added):
  - “To ensure communities, individuals and governments have **substantive legal and procedural rights** relating to the **enjoyment of a safe, clean, healthy and sustainable environment** and the means to take or cause measures to be taken within their national legislative and judicial systems, where necessary, at regional and international levels, to **mitigate sources of climate change** and provide for **adaptation to its effects** in a manner that **respects human rights**”.

*Justice and Human Rights in an Era of Climate Disruption* (Report, 2014) 2 <https://www.ibanet.org/MediaHandler?id=0f8cee12-ee56-4452-bf43-cfcab196cc04>

# Unpacking climate justice

- There are at least two ways of looking at climate justice:
  1. The types of climate change issues that affect climate justice; and
  2. The components of climate justice.

## 2. Types of climate change issues

- There are two main types of climate change issues:
  - a) climate change mitigation; and
  - b) climate change adaptation.



## a) Climate change mitigation

- Mitigating climate change means avoiding and reducing emissions of greenhouse gases (GHG) into the atmosphere to prevent the planet from warming to more extreme and unstable temperatures.
- Emissions reductions need to be deep and rapid to limit global warming to the agreed temperature target of well below 2°C above pre-industrial levels (Article 2(1)(a) of the Paris Agreement) by the time target of the second half of this century (2050) (Article 4(1) of the Paris Agreement).
- The goal is to achieve net zero emissions – a balance between anthropogenic emissions by sources and removals by sinks.

## b) Climate change adaptation

- The term ‘adaptation’ has been defined in various ways.
- In the 2007 National Climate Change Adaptation Framework, the Council of Australian Governments defined ‘adaptation’ as:
  - “[A] process by which **strategies to moderate, cope with, and take advantage of the consequences of climatic events** are enhanced, developed and implemented. This can include strategies to **increase the resilience of systems**, such as reducing pollution and pests for natural ecosystems.” (p 20).
- The IPCC Working Group II’s Contribution on Impacts, Adaptation and Vulnerability to the Sixth Assessment Report defines ‘adaptation’ in relation to both human systems and natural systems, as:
  - “in human systems, [...] the **process of adjustment to actual or expected climate and its effects in order to moderate harm or exploit beneficial opportunities**. In natural systems, adaptation is the **process of adjustment to actual climate and its effects**; human intervention may facilitate this”.
- Article 7 of the Paris Agreement established a global goal on adaptation, to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change. 8



# Justice in mitigation and adaptation

- The extent and manner of climate change mitigation and adaptation have justice implications.
- Too little or too late mitigation or adaptation may cause injustice to affected individuals, groups and communities.

Brian J Preston, 'The adequacy of the law in achieving climate change justice – some preliminary comments' (2016) 34(1) *Journal of Energy & Natural Resources Law* 45.

## Mitigation gap

- There is currently a mitigation gap: the aggregates of countries' NDCs and actions in implementing their NDCs are both insufficient to achieve the temperature and time targets of the Paris Agreement.

Lecocq, F., H. Winkler, J.P. Daka, S. Fu, J.S. Gerber, S. Kartha, V. Krey, H. Lofgren, T. Masui, R. Mathur, J. Portugal-Pereira, B. K. Sovacool, M.V. Vilariño, N. Zhou, 2022: Mitigation and development pathways in the near- to mid-term. In IPCC, 2022: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*

# Adaptation gap

- Adaptation gaps exist between current levels of adaptation and levels needed to respond to impacts and reduce climate risks.
- Observed adaptation is unequally distributed across regions.
- The largest adaptation gaps exist among lower income population groups.

*Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II's Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, C.1.2.*

## Mix of mitigation and adaptation

- The mix of mitigation and adaptation also has justice implications.
- Too little or too late mitigation increases the impact of climate change and increases the need for greater adaptation.

Brian J Preston, 'The adequacy of the law in achieving climate change justice – some preliminary comments' (2016) 34(1) *Journal of Energy & Natural Resources Law* 45.

### 3. Components of climate justice

- Whilst climate change mitigation and adaptation provide some insight into climate justice, the concept can be best understood by looking at the *components* of environmental justice, in the context of mitigating and adapting to climate change.
- Environmental justice includes at least three components:
  - a) distributive justice;
  - b) procedural justice; and
  - c) recognition justice.
- Unpacking each of these *components* of environmental justice elucidates the nature and scope of climate justice.
- Guidance can also be obtained from consideration of the substantive and procedural content of the right to a safe, healthy and sustainable environment.



## a) Distributive justice

- Distributive justice is concerned with the distribution of environmental goods or benefits and environmental bads or burdens.
- Environmental benefits include clean air, water and land, green space, biological diversity and a healthful ecology.
- Environmental burdens include polluted air, water and land, and loss of green space, biological diversity and ecological integrity.
- Distributive justice involves substantive justice in that it is concerned with the environmental benefits and burdens that are received by the members of the community of justice.

## Elements of distributive climate justice

- David Boyd, the current Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, has published a series of thematic reports identifying at least six substantive elements of the right to a healthy environment:
  - a safe climate, clean air, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and non-toxic environments.
- Distributive climate justice entails a sufficient and equitable distribution of not only a safe climate but all the other elements of a healthy environment in mitigating and adapting to the climate crisis.

## (i) A safe climate for humanity

- Climate change is already having severe impacts on human health, livelihoods and human rights.
- The achievement of all human rights depend on there being a safe climate for all.
- *Waratah Coal v Youth Verdict (No 6)* [2022] QLC 21:
  - The Queensland Land Court held that approving the proposed project for a large open-cut coal mine would contribute to “foreseeable and preventable life-terminating harm”: at [1512].
  - The Court found that the release of GHG from the mining and burning of the coal would increase climate change impacts and breach the right to life, the rights of First Nations people, the rights of children, the right to property, the right to privacy and home, and the right to equal enjoyment of human rights: at [1514]-[1649].

David Boyd, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019).



## (i) Ensuring a safe climate

- To achieve distributive climate justice, states must phase out the use of fossil fuels and transition towards renewable energies to mitigate the impacts of climate change.
- *The State of the Netherlands v Urgenda Foundation*:
  - The Hague Court of Appeal and the Supreme Court of the Netherlands held that Article 2 and Article 8 of the European Convention on Human Rights (ECHR) impose substantive obligations on the state to take positive measures to reduce GHG emissions.
  - The Courts ordered the state to implement more ambitious targets for the reduction of GHG emissions in the Netherlands.
- *VZW Klimaatzaak v Kingdom of Belgium & Others*:
  - the Brussels Court of Appeal similarly upheld that the state authorities had failed to enact sufficient climate policies in violation of articles 2 and 8 of the ECHR and the French Civil Code, and ordered the state to reduce GHG emissions by 55% by 2030.

David Boyd, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/74/161 (15 July 2019); ECLI:NL:GHDHA:2018:2610 (The Hague Court of Appeal) [5.9.1]; ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands) [8.2.2, 8.3.4]. 2021/AR/1589, 2022/AR/737 and 2022/AR/891 (Brussels Court of Appeal, 27 November 2023).



## (ii) Clean air

- Air pollution is the most significant environmental risk globally, contributing to 7 million premature deaths annually.
- In 2019, the Supreme Court of Chile held that a major air pollution incident in an industrial area, which caused serious illness to local children, was a violation of the right to a pollution-free environment and ordered the Government to address the egregious air pollution in the area.
- GHG emissions are a form of air pollution, causing climate change.
- States have an obligation to improve air quality by reducing air pollution and mitigating climate change.

David Boyd, Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/HRC/40/55 (8 January 2019).

*Francisco Chahuan contra Empresa Nacional de Petroleos, ENAP SA*, Case No. 5888-2019, 28 May 2019.



### (iii) Safe and sufficient water

- Water is indispensable for leading a life in human dignity.
- Over 2 billion people lack access to safely managed drinking water and over 4 billion people lack access to safely managed sanitation. Waterborne diseases cause nearly 2 million preventable deaths each year.
- The human rights to water and sanitation have been recognised by the UNGA, and are encapsulated in SDG 6.
- Climate change is severely impacting on the availability of and access to water.
- In adapting to climate change, states need to ensure substantive distribution of safe and sufficient water and sanitation.



#### (iv) Healthy and sustainable food

- Food is a necessity of life. It must be safe and “free from adverse substances”.
- Industrial food systems, unhealthy diets, food waste and pollution have severe environmental and health consequences.
- In *Portillo Caceres v Paraguay*, the UN Human Rights Committee determined that the State of Paraguay’s failure to properly regulate the use of pesticides on agricultural crops violated the right to life for members of the local community.
- Climate change is severely impacting on the availability of and access to food.
- In adapting to climate change, states need to ensure sufficient supplies of healthy and sustainable food for all communities and individuals.

United Nations Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2751/2016, UN Doc CCPR/C/126/D/2751/2016 (20 September 2019); David Boyd, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/76/179 (19 July 2021).



## (v) Non-toxic environment

- The ongoing toxification of people and the planet is causing unconscionable environmental injustices and creating “sacrifice zones”.
- “Sacrifice zones” are extremely contaminated areas where vulnerable groups bear a disproportionate burden of environmental harms and the consequences of exposure to pollution and hazardous substances.
  - In La Oroya, Peru, 99% of children have elevated blood lead levels from a nearby lead smelter.
- In mitigating and adapting to climate change, states have an obligation to detoxify the planet, natural resources and people’s bodies, particularly those most vulnerable living in “sacrifice zones”.

David Boyd, The right to a clean, healthy and sustainable environment: non-toxic environment, UN Doc A/HRC/49/53 (12 January 2022) [2], [30], [40], [57].

## (vi) Healthy ecosystem and biosphere

- Healthy ecosystems are vital to regulate the Earth's climate, filter air and water, recycle nutrients and mitigate the impact of natural disasters.
- Distributive climate justice entails minimising and restoring human damage to the biosphere, which is having severe impacts on health, livelihoods and the enjoyment of human rights.
- In 2020, the Inter-American Court of Human Rights held that the degradation of forests and biodiversity in Argentina was a violation of the local indigenous peoples' right to a healthy environment.
- *Future Generations v Ministry of the Environment and Others*: a consequence of deforestation of the Amazon is the emissions of carbon dioxide and the GHG effect, which “transforms and fragments ecosystems”.

Colombian Supreme Court, I 1001-22-03- 000-2018-00319-01, 5 April 2018; David Boyd, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/75/161 (15 July 2020); Indigenous Communities of the Lhaka Honhat Association v Argentina, Inter-American Court of Human Rights, 6 February 2020; David Boyd, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/75/161 (15 July 2020).

## b) Procedural justice

- Procedural justice is concerned with the ways in which decisions are made, including decisions for the distribution of environmental benefits and burdens, including the six elements of the right to a healthy environment, and who is involved and who has influence in those decisions.
- Procedural justice is linked to distributive justice. Broad, inclusive and democratic decision-making procedures are a precondition for achieving distributive justice.
- Conversely, procedural injustice can be a cause of distributive injustice.

## Procedural rights

- Procedural justice involves at least three elements:
  - i. access to environmental information,
  - ii. entitlement of the public to participate in environmental decision-making; and
  - iii. access to review procedures before a court or tribunal to challenge decision-making or the impairment of substantive or procedural rights.
- Principle 10 of the Rio Declaration on the Environment and Development, the Aarhus Convention, Escazú Agreement and the Maputo Protocol recognised these procedural rights.
- Previous Special Rapporteur, John Knox, developed the Framework Principles on Human Rights and the Environment (Framework Principles).



## (i) Access to environmental information

- Framework Principle 7: “States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.”
- Framework Principle 6: “States should provide for education and public awareness on environmental matters.” Such education is a means of providing access to information.
- The Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, highlights the need for education. He identifies that low levels of climate literacy, a lack of training for the judiciary on climate change and human rights matters and a limited number of environmental lawyers are some of the many barriers to climate justice.

John Knox, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/HRC/37/59 (24 January 2018) [12]; Ian Fry, Promotion and protection of human rights in the context of climate change, UN Doc A/78/225 (28 July 2023).

## (ii) Public participation in environmental decision-making

- Framework Principle 9: “States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process”.
- Adequate and meaningful consultation processes are required in mitigating and adapting to climate change.
- The consultation “must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.”

*Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (African Commission on Human and Peoples’ Rights, 4 February 2010) [289]*

### (iii) Access to the courts

- Framework Principle 10: “States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.” This right is also recognised in SDG 16.
- Denial of access to the courts is a denial of the right itself.
- Framework Principle 12: “States should ensure the effective enforcement of their environmental standards against public and private actors.”
- Government authorities need to enforce compliance with environmental laws and standards by “preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities.”
- Failure to enforce court decisions upholding rights can also be a violation of the right to a fair hearing.

## c) Recognition justice

- Environmental justice involves not only distributive justice and procedural justice, but also the recognition of members of the community of justice.
- Lack of recognition, in the social and political realms, demonstrated by various forms of insults, degradation and devaluation, inflicts damage to and constrains individuals, groups and communities.
- Lack of recognition justice leads to:
  - inhibited or ineffective participation in the polity (procedural injustice); and
  - inequalities in the distribution of environmental benefits and burdens (distributive injustice).
- Courts have recognised these recognition injustices in the context of climate change mitigation and adaptation.

# Improving recognition justice in the climate crisis

- *Santos NA Barossa Pty Ltd v Tipakalippa* (2022) 254 LGERA 25 (FCFCA):
  - An elder of the Munupi clan on the Tiwi Islands contended that NOPSEMA was required to consult him and other Indigenous people on the Islands prior to approving a Drilling Environment Plan (DEP) to Santos for the sinking of gas near the Tiwi Islands.
  - The FCA and FCFCA found that the elder was a person whose interests and traditional connections with the sea were likely to be affected and who was required to be consulted in approving the DEP.
  - The consultation must be adapted to the interests of the persons, this includes recognition that climate change impacts different communities and individuals, such as Indigenous groups, differently.
- For Indigenous people, improving recognition and procedural justice in climate change issues may include enabling them to give their evidence on lands, territories, waters and seas with which they have cultural connection:
  - *Waratah Coal Pty Ltd v Youth Verdict (No 5)* [2022] QLC 4.

## 3. Conclusion

- Climate justice focuses on the equitable distribution of environmental benefits and burdens in the context of the climate crisis and climate change mitigation and adaptation.
- Unpacking the three components of environmental justice in the context of the climate crisis provides a framework for understanding climate justice:
  - **Distributive justice:** a safe climate, clean air, safe and sufficient water, healthy and sustainable food, non-toxic environments and healthy ecosystems.
  - **Recognition justice:** access to information, public participation and access to the courts for all in relation to climate change issues.
  - **Recognition justice:** ensuring all groups are afforded adequate recognition in the social and political realms to effectively participate in the processes involved in and enjoy the benefits of climate change mitigation and adaptation.