CLIMATE CHANGE LAW: INTERNATIONAL REGIME AND BEST PRACTICES

Maria Cecilia T. Sicangco
Knowledge Management Specialist (Consultant)

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Outline of Presentation

• The Climate Crisis

• Prevailing International Climate Change Regime

• Cambodia’s Nationally Determined Contribution

• Consequences of Climate Change – Vulnerable Groups

• Climate Change Litigation
Asia at the Center of the Climate Crisis

• Some statistics:
  • By 2030 Asia’s GHG emissions will increase to 45% from 31% in 2007.
  • 6 of the 10 most vulnerable nations to climate change are in Asia-Pacific (Philippines, India, Cambodia, Pakistan, Laos PDR, and Viet Nam).
  • Climate change will result in a 10% hike in food prices, pushing 64 million people into poverty.
Asia at the Center of the Climate Crisis

• Between 1970-2010 – 1.7 million hazard related deaths in Asia-Pacific (51% of global total)
  • Average annual cost of disasters = $53.7 billion

• 41.2% of the world’s reported natural disasters between 2004 and 2013 occurred in Asia-Pacific
  • 1.5 billion people affected, over 700,000 deaths
Prevailing International Climate Change Regime

The World Taking Action
Climate Change CORE TEXTS
UN Framework Convention on Climate Change, 1992

• Overarching Goal
  • Stabilize greenhouse gas (GHG) concentrations “at a level that would prevent dangerous anthropogenic interference with the climate system”: art. 2

• Key Principle
  • Common but differentiated responsibilities and respective capabilities (CBDR-RC): art. 3.1. Developed countries therefore take the lead on combating climate change

• 197 Parties
  • Annex I (OECD + EIT) – limit GHG emissions + protect GHG sinks
  • Annex II (OECD) – financial support for developing country parties (non-Annex I Parties)
Kyoto Protocol, 1997 (commenced 2005)

- Operationalized UNFCCC
- Binding GHG emission reductions for UNFCCC Annex I parties for 2 commitment periods

Commitment Period 1: 2008-2012: 5% below 1990 levels + individual targets listed in Annex B

Commitment Period 2: 2013-2020: 18% below 1990 levels
Kyoto Protocol, 1997 (commenced 2005)

• Other Key Components

Flexible market-based mechanisms with governance procedures

Allows trade of emissions to boost green investment in developing countries

Compliance mechanism

Facilitates and enforces compliance with the commitments
Paris Agreement, 2015

#ParisAgreement

Agreement Aims

- **Strengthen the global response to climate change with**

  **Temperature**  
  Hold the increase in the global average temperature to “well below 2°C” above pre-industrial levels and “to pursue efforts to limit the temperature increase to 1.5°C...”: art. 2.1(a)

  | **GHG Peaking**   | Aim to reach global peaking of GHG emissions as soon as possible: art. 4(1) |
  | **Adaptation**    | Increase the ability to adapt to climate change and foster climate resilience and low GHG emissions: art. 2(1)(b) |
  | **Finance**       | Make finance flows consistent with a pathway towards low GHG emissions and climate resilient development: art. 2(1)(c) |
Key Principles

“Sustainable development and efforts to eradicate poverty”: arts. 2(1) and 4(1)

“Equity and common but differentiated responsibilities and respective capabilities in the light of different national circumstances”: art. 2(2)
Agreement Essential Elements

• Long-term temperature goal: art. 2
• Global emissions peak and nationally determined contributions (NDCs): art. 4
• Sinks and reservoirs: art. 5
• Mitigation – international transfer of mitigation outcomes and sustainable development mechanism: art. 6
• Adaptation goals: art. 7
• Loss and damage: art. 8
• Support – financial (art. 9), technology development and transfer (art. 10), and capacity building (art. 11)
• Transparency: art. 13
• Global stocktake: art. 14
Nationally Determined Contributions

• Outlines of the actions (domestic mitigation measures) that parties intend to achieve to address climate change

• Must
  ✓ Be ambitious and set with a view to achieving the purpose of the Agreement: art. 3
  ✓ Be registered by the UNFCCC Secretariat
  ✓ Be reported every 5 years: art. 4(9)
  ✓ Represent a progression over time – meaning each successive NDC should be more ambitious than the last: arts. 3 and 9(3)

• Not binding
Cambodia’s Nationally Determined Contributions
Cambodia’s Climate Change Policies

• Cambodia is a low emitter and highly vulnerable country to the negative effects of climate change

• Cambodia Climate Change Strategic Plan (CCCSP) (2014 – 2023)
  • Immediate term (2013-2014): institutional and financial arrangements, national monitoring and evaluation, and climate change action plans
  • Medium term (2013-2018): high priority programmes on adaptation and gradual increase in mitigation actions, and accreditation of the Adaptation Fund and Green Climate Fund
  • Long term (2019-2023): research and learning, scale up successful initiatives and to continue mainstreaming climate change

• Existing Department of Climate Change
  • General Secretariat of the National Council for Sustainable Development
Nationally Determined Contributions

• Adaptation Priority Actions include:
  • Community based adaptation actions
  • Strengthening early warning systems and information dissemination
  • Flood protection dykes and sea dykes
  • Climate-proofing agricultural systems
  • Strengthening technical and institutional capacity

• Mitigation targets and priority actions include:
  • Increase forest cover to 60% by 2030
  • Reduce emissions from industries by 3,100 Gigatimes CO2 equivalent (Gg CO2eq) compared to baseline of 11,600 Gg CO2eq by 2030
Effects of Climate Change on Vulnerable Groups
Effects of Climate Change: Violation of Rights

• Right to life
• Right to health
• Right to housing
• Right to food
• Right to water
• Right to breathe clean air
• Right to sanitation
• Right to property
• Right to self-determination
“Vulnerable people suffer first and worst.” – Ban Ki Moon

- Women
- Children
- Elderly and disabled people
- Indigenous people or extremely poor people

Women and children are 14 times more likely to die or be injured during a disaster than men.
Climate Change Litigation
What can judges do to lessen the impacts?

• Access to justice:
  • Judges’ proactive response will facilitate most vulnerable

• Judicial Response
  • As simple as:
    • EIA consultations
    • Licensing matters
    • Land entitlement issues
  • As complex as:
    • Claims for refugee status
    • Human rights - Rights to sovereignty, right to continued existence.

• Petitioner, a farmer, went to court to compel the government to act on climate change (implement its policies since its impacts have affected his agricultural livelihood)

• In citing domestic and international legal principles, the Lahore High Court determined that "the delay and lethargy of the State in implementing the Framework [for Implementation of Climate Change Policy] offend the fundamental rights of the citizens.”

• The court established a Climate Change Commission to monitor implementation by the government
Juliana v United States of America (6:15-cv-0517-TC) – pending appeal

• Case brought by 21 plaintiffs from across the US, aged between 8 and 19

• Claim: that the government is substantially causing or contributing to a hazardous concentration of CO2 in the atmosphere which dangerously interferes with climate stability.
  • Relief sought: For the government to prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and reduce excess atmospheric CO2.

• Argued on the basis of intergenerational equity.

• Judge allowed petition, stating: the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.