

NATIONAL PEOPLES TRIBUNAL ON CLIMATE CHANGE

9th November 2010, New Delhi

Introduction

The National Peoples Tribunal will develop Peoples jurisprudence on climate change. Despite the deficient legal framework on climate change laws, increasing number of action in courts in different countries prove that there are enough provisions in the Public and private international law and domestic legislations to attempt bring accountability on the national governments to protect people from the climate change impacts. The most popular case in point is Inuit's case where indigenous people bordering USA and Canada brought an action in American Commission on Human Rights. The petition sought relief from violations of the human rights of Inuit resulting from global warming caused by greenhouse gas emissions from the United States. Many similar actions on climate change might not succeed in the absence of proof of causation; however, they show a rising public and juridical opinion to seek legal redress to impacts of climate change. In the circumstances, it is only desirable that more such actions are brought to judicial, quasi judicial and peoples forum.

The National Peoples Tribunal will explore legal spaces available to generate state accountability to mitigate and protect people from climate change impacts. Besides, it would also send a strong message to the developed countries to conclude a fair and just climate deal.

Background and the context; Why the need for a Tribunal

While the final outcome of the international negotiation on climate change is still being debated and anticipated, the impacts have started affecting millions of people in developing and least developed countries and extremely vulnerable countries. The government of Tuvalu is looking to settle its entire population to save them from submergence due to impacts of climate change. It is also contemplating legal action against Australia and other developed countries to claim compensation. Even in the developing countries, the change in precipitation patterns and increased frequency of extreme climatic events is severely affecting a range of rights of people including the right to life, for which there does seem to be absolutely no responsibility on the part of the state or the international community. The UNFCCC and KP which are the main architecture of climate change law, does not provide any binding commitments on part of developed countries or developing countries to protect their populations from impacts of climate change. There is absolute dearth of legal entitlements even in the national and domestic legal framework of countries. This forms the major handicap in taking up legal action against the state of developed countries making them own the impacts of climate change.

However, despite the minimal legal framework there is an increasing no. of actions in the realm of climate change being brought in courts of different countries against the national governments or foreign governments and even against non state actors. These legal actions are aimed at compelling the national governments to reduce GHG emissions; they are also seeking to hold state, foreign country and non state actors liable for the impacts, nuisance and negligence and rights violations. While in one large case victims of hurricane Katrina have brought action against oil and coal companies and chemical manufacturers for exacerbating climate change impacts, in *Mss. Vs. EPA* a US Court admitted an action

against the EPA and ruled that “ harms associated with climate change are well recognized” and “causal connection between man made GHGs and global warming”.¹ In Canada, Friends of the Earth Canada has launched a landmark lawsuit against the Government of Canada for abandoning its international commitments under the Kyoto Protocol. Filed in Federal Court in Ottawa by Canada’s foremost environmental law organization, Sierra Legal, the lawsuit alleges that the federal government is violating Canadian law by failing to meet its binding international commitments to reduce greenhouse gas emissions. In Argentina, after the 2003 Santa Fe floods in Argentina which killed many people and caused millions of dollars of damage, citizens have successfully used Article 6 of the UN Framework Convention on Climate Change to reveal official failure to adapt to climate change. The legal action has so far revealed that infrastructure changes needed to protect people had been drawn up but not acted upon by the authorities.² In Nigeria, Communities in the Niger Delta region of Nigeria are suing the Nigerian Government and multinational oil companies (Shell, Exxon, Agip, Chevron and Total) over the continuous flaring of gas for over 40 years.

It is estimated that more than 250 cases related to climate change and global warming are lying in different courts in the US. While there are still obstacles of causation and attribution in bringing legal action against the state; the increasing number of legal actions show that there are a number of provisions which can be invoked against the state to bring an end to its inaction on climate change, identify climate change as a policy imperative and take initiatives to address violations of rights due to climate change impacts.

Purpose of the Tribunal

In view of the deficient legal framework on climate change at domestic and international level, the Tribunal will explore legal spaces available in existing framework to generate state responsibility and accountability for violations of range of rights of the people. While the Tribunal will assert the rights of developing countries to seek assistance from developed countries on account of their historical role in bringing about climate crisis, it will also look into the possibility of invoking existing legal provisions and statute for restitution of critical rights of people in the national framework and advocate for an improved legal and regulatory mechanism on climate change.

Objectives of the Tribunal

- To record evidences on impact of climate change on food security, livelihood and migration in rain fed areas and flood plains.
- To examine community based coping mechanisms and share best practices of adaptation and mitigation efforts in the area of agriculture and food security.
- To generate accountability of the state and non-state actors to address rights violations and climate change and contribute to prove that sufficient provisions exist to make the state and non-state actors liable.
- To increase pressure on key national/ state agencies to take serious actions to mitigate climate change and contribute towards adaptation needs of all especially the most vulnerable.

¹ Mass.v.EPA.USSC (Massachusetts, et al. v.Environmental Protection Agency, et al)

² Stuart M. Feinblatt and Monique Cofer, New Jersey Law Journal, March 13, 2007

- To assess the liability and responsibility of developed countries and multilateral Institutions in addressing severe impacts of climate crisis on food security, livelihood and displacement.
- To increase pressure on global actors to lay more emphasis on agriculture and food security in climate negotiations and conclude a just and equitable deal as the earliest.

Who will be the part of the Tribunal

Victims of climate change, civil society organizations, experts, scientists, media, people from judiciary and lawyers, and government officials as duty bearers will be the part of the Tribunal providing written, verbal and audio-visual evidences before the Tribunal. The victims will mainly belong to the rainfed (arid and semi-arid) states and flood plains.

The Jury

The Jury will be composed of people having vast experience in the field of science of climate change, law on environment and climate change, agriculture and food security, gender, social work, government service (Bureaucracy), Policy Planning and peoples representatives.

Tentative Jury (confirmation to be sought)

1. Justice J S Verma/Justice R C Lahoti (Retired Chief Justice of India)
2. Justice P C Jain (Retired Justice Jaipur High Court and Executive Member Association of the retire judges of the Supreme Court and High Courts of India)
3. Mr. Anil Dave (MP and Climate Change expert BJP)
4. Mr. M C Mehta /Ms. Vrinda Grover (Environmental lawyer)
5. Mr. N C Saxena (Member, NAC)
6. Ms. Syeda Hamid (Member Planning Commission)/Ms. Aruna Roy (MKSS & member NAC)/ Ms. Kamala Bhasin
7. Mr. Suresh Prabhu (Ex Minister Environment and Forests)/Mr. Raghuvansh Prasad Singh (Ex-Union Minister for Rural Development)
8. Mr. Mahesh Bhatt /Ms. Shabana Azmi
9. Mr. K G Balakrishnan (Chair, NHRC)
10. Mr. Nitin Desai/Mr. V S Vyas
11. Mr. Prafulla Bidwai/Mr. Om Thanvi

Outcomes of the Tribunal

The Tribunal will help create mobilization of civil society, key CSOs and media on the issues of climate change and thereby increase pressure on national and state governments, and non-state actors (corporate and big business) to address climate change impacts. It will also increase pressure on the COP to seal a fair and equitable deal. Besides, increasing legal action on climate change and global warming against state and companies is also envisioned as a prominent outcome of the Tribunal.

The Tribunal will produce specific deliverables such as

- Documentation of testimonies by the victims
- Paper/presentation/transcripts of presentation by expert witnesses
- Verdict of the Tribunal including instructions to central and state governments and recommendations to improve legal and regulatory mechanism on climate change
- Report of the Tribunal

What will the Tribunal achieve

The Tribunal will be akin to a moot court and will hear and record evidences on impact of climate change in order to ascertain the state responsibility and responsibility of developed countries to redress climate change impacts in developing countries. Based on the evidences recorded and opinion of expert witnesses, the Tribunal will award its verdict which will emphasize how climate change has impacted food security and livelihood and resulted in increased migration. It will also assess what substantive rights of people/victims have been affected and instruct the state to address those violations in the light of legal framework (the Constitution of India, case laws on environment and climate change, the law of tort, and the commitment made by the government of India in various international covenants related to civil and political rights, rights of women and children, rights against discrimination, and other covenants. Besides, it will also instruct the state to improve social security mechanisms and improve its implementation so that the adaptive capacity of the population which is affected the most can be enhanced.

How the verdict/award will be followed up

At the central government level

The report and verdict will be brought to the notice of the relevant Ministries and duty bearers and recommendations (viz. need for improved legal and regulatory mechanism on climate change etc., improvement in National Action Plan on Climate Change and Mission Plans, more emphasis on agriculture to ensure food security and livelihood in climate change etc.). the specific recommendations with regard to various Ministries will be followed up to ensure their attention and proper disposal of the recommendations.

The Tribunal will also explore legal action on climate change related impacts. Though success of action may be doubtful due to inadequate legal provisions and due to absence of proof on harm/injury and causation; however it will definitely bring more attention of the public, policymakers, judiciary and media and encourage legal action on climate change.

At the state level

The report and verdict of the Tribunal will be brought in the notice of the relevant duty bearers and the governments in states from where the victims will testify. The verdict and instruction to develop and improve state action Plan on climate change, improvement in social security schemes, and increased emphasis on research /impacts of climate change will be followed up with relevant Ministries and other stakeholders.

With key actors in climate change/climate change perpetrators

The Tribunal will also invite testimonies from the representatives of key actors in climate change/ major Annex I and non- Annex countries. The report and the verdict will be shared with these parties for their information and follow up action.

At COP 16

The process and the verdict of the Tribunal will be also shared with the global audience through print and audio-visual medium and side events. Tribunal related Publications will be showcased and distributed at exhibit Booths of the organizers. Media attention will be ensured though formal and informal interaction with national and global media.

The process of the Tribunal

The Jury will be provided with written submission/evidence and the available information on state responsibility in Public and Private international law, DASR, legal framework of climate change (UNFCCC and KP), and domestic legal system before the appointed date. The Tribunal will record evidences related to the impact of climate change on food security and livelihood (and gendered impacts thereof) by victims and supported by a team of expert witnesses.

Tentative schedule of the Tribunal

Session I: Inaugural

Introduction of the Jury and aims of the Tribunal

Session I: Agriculture and Food security

Witnesses/victims will provide testimonies on how climate change impacts on agriculture and food security in rain fed areas and flood plains supported by experts on the issue who will bring scientific facts and relevant data in the light of the Jury. Evidences will be provided by small and marginal farmers and farm workers, pastoralists, women, experts from agriculture universities and state agriculture departments. The evidences will also include community based solutions and case studies of best practices in coping/adaptation and mitigation.

Session II: Livelihood and migration

Witnesses and experts will provide testimonies on impact on rural livelihoods, increased migration in the wake of loss of livelihoods in the absence of farm and non farm livelihoods. The session will also include evidences on people's alternatives on proofing livelihoods from impacts.

Session III: Making out a case of liability of developed countries and generating state responsibility

The session will focus on legal framework and possibility of invoking it in cases recorded. Led by experts and having experience in laws and litigation on environmental laws, international law and constitutional law and climate change etc.

Session IV: Verdict and sentencing/valedictory

Efforts will be made to ensure presence of high level officials/representatives of the Ministry to attend the valedictory and react to the verdict in terms of making commitments for the improvement in legal and regulatory framework and improved implementation of existing policies and programmes.