

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Bench-III:**

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Athar Minallah

**Constitution Petition No.42/2022**

Public Interest Law Association of Pakistan

..... *Petitioner(s)*

*Versus*

Federation of Pakistan, etc.

....*Respondent(s)*

For the petitioner(s): Syed M. Faisal Hussain Naqvi, ASC.  
(Through V.L. Lahore Registry)

For the respondent(s): N.R.

Date of hearing: 07.03.2024

**ORDER**

**CMA 1684 of 2024**

In pursuance to the order dated 25.01.2024 passed on the administrative side, learned counsel for the petitioner has amended the memo of parties through this application which is allowed, subject to all just and legal exceptions. Office shall ensure that correct memo of parties is placed on the main file.

**Main case**

2. Learned counsel submits that climate change<sup>1</sup> is a serious existential threat to Pakistan. Considering its critical importance the Pakistan Climate Change Act, 2017 ("Act") was promulgated on 31.03.2017 with the objective of providing comprehensive adaptation and mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change and for matters connected therewith and ancillary thereto. The grievance of the petitioner is that the Act envisages the establishment of the *Pakistan Climate Change Authority* (under Section 5 of the Act) which,

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<sup>1</sup> Under Section 2(d) of the Act, climate change means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a direct or indirect consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period.

*inter alia*, has the following important functions under Section 8 of the Act:

**8. Functions of the Authority.**--(1) Functions of the Authority shall be to –

- (a) formulate, comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change and meet Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time;
- (b) establish institutional and policy mechanisms for implementation of Federal and provincial adaptation and mitigation policies, plans, programmes, projects and measures, including plans for renewable energy and clean technology measures for energy efficiency and energy conservation and awareness-raising and capacity-building programmes;
- (c) prepare suitable adaptation and mitigation projects for submission to international and local institutions for finding, including the Clean Development Mechanism, Global Environmental Facility, Green Climate Fund and Adaptation Fund;
- (d) prepare the National Adaptation Plan and its constituent provincial and local adaptation action plans, the Nationally Appropriate Mitigation Action Framework and the Intended Nationally Determined Contributions, Nationally Determined Contributions and National Communication to be submitted to the concerned Secretariat of the United Nations Framework Convention on Climate Change' and monitor implementation thereof;
- (e) carry out Technology Needs Assessment and prepare Climate Change Technology Action Plan in accordance with international best practices for seeking technical and financial support, amongst others, through the Technology Mechanism;

Therefore, it is the Authority the in effect operationalizes the Act and in the absence of such Authority, the entire Act has been rendered ineffective. It is also submitted that *Pakistan Climate Change Fund* under Section 12 of the Act has also not been set up. Further, unless the Authority is established the said Fund cannot be managed under section 13.

3. According to the Global Climate Risk Index, Pakistan is currently the fifth most climate-vulnerable country in the world. At the same time, Pakistan also faces some of the highest disaster risk levels in the world, ranking 23th out of 194 countries as per the 2024 Inform Risk Index.<sup>2</sup> This risk is driven particularly by the nation's exposure to flooding, earthquakes, tropical cyclones and their associated hazards. It is these alarming statistics which underscore the need to address climate change and mitigate its effect on people and their livelihoods. While developing countries like Pakistan may not be the primary contributors to climate change, acknowledging and confronting its fallout is indispensable, especially for combatting the high risks posed

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<sup>2</sup> European Commission, Inform Risk Index, 2024.

by climate change.<sup>3</sup> As Pakistan and other nations come to terms with the impacts of climate change, they will confront questions of adaptation, a process of adjustment to actual or expected climate and its effects. As a country which has a very low technical and financial capacity to adapt to its adverse impacts, the critical importance of adaptation and its role in reducing vulnerability, promoting equity and safeguarding economic and social stability, particularly for vulnerable populations and the marginalized communities must be underscored.<sup>4</sup> This not only aligns with Pakistan's international commitments such as the Paris Agreement but also contributes to the advancement of the United Nations' Sustainable Development Goals.

4. As Pakistan moves towards adaptation, it must be supported by greater accessibility of and access to finance. According to the United Nations Convention on Climate Change (“UNFCCC”) Standing Committee on Finance, “Climate finance aims at reducing emissions and enhancing sinks of greenhouse gases and aims at reducing vulnerability of, and maintaining and increasing the resilience of, human and ecological systems to negative climate change impacts.” The primary goal of climate finance is to facilitate the transition to a low-carbon and climate-resilient global economy. In the context of Pakistan, the economic cost of climate change is substantial and affects all sectors, including agriculture, infrastructure, trade and tourism. Developing countries like Pakistan struggle with high levels of debt, which potentially hinder their ability to invest in climate mitigation and adaptation measures.<sup>5</sup> Therefore, access to existing climate funds needs to be simplified and the issue of debt needs to be looked upon. Another way to curb this issue is the usage of loss and damage fund which could play a pivotal role in building resilience, supporting adaptation efforts, and aiding in the recovery from climate-induced losses. Loss and damage arising from the adverse effects of climate change can include those related to extreme weather events but also slow onset events, such as sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification. Article 8 of the Paris Agreement enshrines the

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<sup>3</sup> Juan D. Baron & Saher Asad, ‘Turning Concern into Action: Understanding Climate Change Attitudes in Pakistan’ World Bank.

<sup>4</sup> Alice Kaswan, ‘Adaptation Justice’ University of San Francisco Law Research Paper 2016-06 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2703631](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2703631) last accessed 11 March 2024.

<sup>5</sup> Ministry of Climate Change, National Adaptation Plan, 2023.

importance of averting, minimizing and addressing loss and damage and the role of sustainable development in reducing the risk of loss and damage.<sup>6</sup> The establishment of a loss and damage fund for highly climate-vulnerable countries like Pakistan would be a vital step towards realizing climate justice. Acknowledging that developing countries like Pakistan often contribute the least to climate change but suffer the most severe consequences, the fund underscores the moral responsibility of historically high-emitting countries. Moreover, by facilitating the implementation of climate-resilient infrastructure and community-based adaptation strategies, the fund could empower the marginalized communities to better cope with the impacts of climate change, fostering international cooperation and financial commitments essential for a sustainable and just future.

5. Pakistan's commitment to equitable and effective global climate governance is also evident in its multifaceted approach at COP-28. The nation not only emphasized the financial aspects, calling for simplified access procedures to climate finance and expressing a preference for grant-based financing, but also actively reached a historic agreement on the operationalization of the loss and damage fund and funding arrangements.<sup>7</sup> The agreement, as agreed upon by all parties at COP-28 urges developed nations to lead in financial contributions to make up for the irreversible climate change induced damages they have contributed to. This holistic commitment underscores Pakistan's leadership in navigating the complexities of climate change and its dedication to fostering a fair and transparent global response to the urgent challenges posed by a changing climate. Similarly, the implications of this fund's operationalization and dynamics can be profound for climate vulnerable countries like Pakistan which suffer from extreme weather events. The devastation caused by the catastrophic floods in 2022 is distressing proof of the same which caused a total damage of PKR 3.2 trillion (US\$14.9 billion), a total loss at PKR 3.3 trillion (US\$15.2 billion) and total needs for recovery and reconstruction at PKR 3.5 trillion (US\$16.3 million).<sup>8</sup> Against these alarming figures and background, the need for climate finance as new and additional and sustained financial resources with a transparent

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<sup>6</sup> Article 8, The Paris Agreement, 2015.

<sup>7</sup> Kiara Worth, "COP-28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era", COP-28, United Nations Climate Change.

<sup>8</sup> Province of Sindh v. Sartaj Haider, 2023 SCMR 459.

mechanism, that meets the needs to developing and vulnerable countries like Pakistan, with the speed and scale is direly needed.

6. Let notice be issued to the respondents for 21.03.2024. Notice shall also be issued to the Attorney General for Pakistan, as well as, to the Advocate Generals of all Provinces for the aforesaid date. Who will submit a detailed report regarding climate change challenges faced by them and the initiatives taken by their respective governments. We also wish to seek the opinion of independent experts in the area namely: (i) Hammad Naqi Khan, Director General/CEO, **World Wildlife Fund (WWF)**, WWF-Pakistan office, inside Ali Institute of Education, Ferozepur Road, Lahore, and (ii) Mr. Abid Qaiyum Suleri, Executive Director, **Sustainable Development Policy Institute (SDPI)**, Plot # 10 Taimur Chambers, Fazl-ul-Haq Road, G 6/2 Blue Area, Islamabad. Let notices be issued to them. To come up on **21.3.2024**.

Judge

Judge

Islamabad,  
7<sup>th</sup> March, 2024.  
Not approved for reporting  
*Iqbal*

Judge