

BEFORE THE HONOURABLE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Constitutional Petition No. _____ of 2022

Public Interest Law Association of Pakistan
through Member Executive Committee, Ahmed Rafay Alam
having its office situated at Suite No 204, Marine Pride
Plot No BC 2, KDA Scheme 5, Clifton Block-7, Karachi

... Petitioner

Versus

- 1. Federation of Pakistan**
through Secretary, Ministry of Climate Change
4th Floor, Local Government Complex,
G-5/2, Islamabad
- 2. Ministry of Finance**
through its Secretary
Constitution Avenue, Islamabad
- 3. Ministry of National Food Security and Research**
through its Secretary
Constitution Avenue, Red Zone, Islamabad
- 4. Ministry of Planning, Development and Special Initiatives**
through its Secretary
P Block, Pakistan Secretariat, Islamabad
- 5. Ministry of Energy, Power Division**
through its Secretary
Room No. 201-204, 2nd Floor,
A Block, Pak Secretariat, Red Zone
Islamabad
- 6. Ministry of Science and Technology**
through its Secretary
Constitution Avenue
G-5/2, Islamabad

- 7. Ministry of Foreign Affairs**
through its Secretary
Constitution Avenue
G-5/1, Islamabad

- 8. Prime Minister of Pakistan**
through Prime Minister Secretariat
Red Zone, Islamabad

- 9. Chief Minister Punjab**
through Chief Minister Secretariat
Chief Minister's Office, 7 & 8 Club Road
GOR 1, Lahore

- 10. Chief Minister Sindh**
through Chief Minister Secretariat
Chief Minister's Office, Civil Lines
Karachi

- 11. Chief Minister Khyber Pakhtunkhwa**
through Chief Minister Secretariat
Chief Minister's Office, Sahibzada Abdul Qayyum Road
Peshawar

- 12. Chief Minister Balochistan**
Through Chief Minister Secretariat
Chief Minister's Office, Zarghun Road
Quetta

- 13. Chief Minister Gilgit Baltistan**
through Chief Minister Secretariat
Chief Minister's Office, Chinar Baagh
Gilgit

- 14. Ministry of Environment Protection, Punjab**
through its Secretary
Gate No. 8, Hockey Stadium, Gulberg
Lahore

- 15. Ministry of Environment, Climate Change and Coastal Development, Sindh**
through its Secretary
Plot No, ST-2-1, Main Korangi Rd, Mehran Town
Sector 23 Korangi, Karachi

- 16. Ministry of Climate Change, Environment and Wildlife, Khyber Pakhtunkhwa**
through its Secretary
Khyber Road, Peshawar

- 17. Ministry of Climate Change and Environment, Baluchistan**
through its Secretary
Samungli Road, Quetta

18. Ministry of Forest, Wildlife and Environment, Gilgit Baltistan
through its Secretary
Shahrah-e-Quaid-e-Azam, Gilgit

19. National Disaster Management Authority
through its Chairman
ERRA Complex, Murree Road, Islamabad

... Respondents

**Constitutional Petition under Article 184(3) of the Constitution of
the Islamic Republic of Pakistan, 1973**

Respectfully *sheweth*:

SUMMARY

- I. That Pakistan is amongst the countries most affected by climate change, even though it contributes negligibly towards greenhouse gases and the global carbon footprint. Climate change poses various challenges to the citizens of Pakistan and can affect citizens and their core fundamental rights to life, dignity and property guaranteed under Articles 9, 14, 18 and 23 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”).
- II. That climate change requires the State to make and implement resilient and sustainable policies that help to mitigate and adapt to climate change. The Pakistan Climate Change Act, 2017 (the “**Climate Change Act**”) envisages the establishment of the Pakistan Climate Change Authority (the “**Authority**”) to *inter alia* formulate comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change. The Climate Change Act also provides for the establishment of the Pakistan Climate Change Council (the “**Council**”) to coordinate, monitor and supervise implementation of the Climate Change Act.
- III. That despite the passage of almost six years, there is no sign of the establishment of the Authority and the Council has recently met for the first time ever. The instant Petition impugns the State’s failure to establish the Authority under Section 5 of the Climate Change Act (the “**Impugned Inaction**”) and seeks appropriate directions from this Honourable Court for the immediate establishment of the Authority.

QUESTIONS OF LAW

- A. That the following, amongst other, questions of law of public importance arise in the instant case:
- a. Whether it is not the State's fundamental duty to ensure timely implementation of a duly enacted law?
 - b. Whether there is any justification for the failure of the state to establish the Authority as required by the Climate Change Act?
 - c. Whether the delay in establishment of the Authority is contrary to the concepts of sustainable development, the precautionary principle and intergenerational equity?
 - d. Whether the continued inaction on part of the State to formulate effective policies relating to climate change is violative of Articles 9, 14, 18 and 23 of the Constitution?
 - e. Whether the delay in establishing the Authority creates a significant hinderance in the formulation of comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change?
 - f. Whether the State is bound to effectively enforce and implement laws that protect fundamental human rights?
 - g. Whether the State has a duty to play a proactive role in protecting its citizens and all animal species living within its boundaries from the effects of climate change?
- B. That the aforesaid questions of law arise out of the following:

FACTS

Parties

1. That the Petitioner, Public Interest Law Association of Pakistan ("**PILAP**") is a society duly registered under the Societies Registration Act, 1860 (the "**Societies Act**") established *inter alia* to promote, support, undertake and pursue public interest litigation in Pakistan. PILAP is cognizant of the increase in global temperature and the impact of climate change being faced

by Pakistan. The instant Petition is being filed through Mr. Ahmed Rafay Alam who is duly authorized in this regard and is a member of PILAP's Executive Committee. Mr. Alam has also been notified as a Member of the Council in 2018 and 2022.

2. That Respondent No. 1 is the Federation of Pakistan through the Ministry of Climate Change, acting through its Secretary, Ministry of Climate Change. The Climate Change Division is mandated, as per Schedule II of the Rules of Business, 1973 ("**Rules of Business**") with, *inter alia*, national policy, plans strategies and programmes with regard to disaster management including climate change etc. The Minister of Climate Change is tasked under Section 5 of the Climate Change Act to establish the Authority.
3. That the remaining respondents are all ex officio members of the Council.

Climate Change in Pakistan

4. That rapid, widespread and intensifying climate change is a cause of grave concern for all of mankind, and Pakistan is particularly vulnerable to its devastating effects. Between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year across the globe. In Pakistan alone, it is reported that approximately 128,000 climate-change related deaths occur every year. Climate change has increased the risk, frequency and intensity of extreme weather events such as intense heat waves and extreme flooding and Pakistan is already feeling and experiencing the impact of climate change.
5. That the consequences of climate change are now a common experience for every Pakistani citizen. Pakistan, and particularly the Punjab, is engulfed by hazardous levels of smog for several months of the year. Hospitals in the worst-affected cities, such as Lahore, have been burdened with an ever-growing number of patients suffering from smog-related health issues like throat and chest infections, eye diseases and breathing problems. For a country with a severely underfunded and vulnerable healthcare sector, this is likely to have crippling consequences.
6. That in the year 2022, Pakistan suffered from some of the worst calamities in history, including a record-breaking heatwave in spring and catastrophic floods. Around 8 million citizens are reported to have been displaced because of the 2022 floods and around 1,700 deaths have been reported. The millions of flood victims that have lost their lives, homes and sources of livelihood continue to be deprived of their fundamental rights.
7. That the economic aftershocks of the floods were particularly acute. The agriculture sector, on which the Pakistani economy is heavily dependent, was worst hit by the floods. This has led

to economic losses and damages of more than \$30 billion and has greatly contributed to the prevailing inflation and food crisis in Pakistan.

8. That climate change clearly affects citizens and their core fundamental rights to life, dignity and property as guaranteed by Articles 9, 14, 18 and 23 of the Constitution. Substantial measures are therefore urgently needed to curb the effects of climate change. The Government needs to formulate and implement resilient and sustainable policies that will help to mitigate and cope with the effects of climate change. Acting oblivious of the effects of climate change will expose Pakistan to imminent harms and will subsequently affect the fundamental rights of its citizens thereby causing social and economic injustice.

The Climate Change Act and establishment of the Authority

9. That the National Climate Change Policy (the “**2012 Policy**”) underlined the seriousness of the existential threat and focused on climate resilience, climate adaptation and climate mitigation. The updated National Climate Change Policy 2021 (the “**2021 Policy**”) is on a similar footing. However, there has been no practical implementation of the various policies introduced by the Government.
10. That the threat posed by climate change mandates dedicated legislation. The Climate Change Act was therefore promulgated on 03.04.2017 to “*meet Pakistan’s obligations under international conventions relating to climate change and address the effects of climate change*”.
11. That Section 5 of the Climate Change Act provides that the Minister for Climate Change shall through notification in the official Gazette, establish the Authority to exercise powers and functions under the Act. Section 6 of the Climate Change Act states that the Authority shall comprise of the Chairman and members who shall have relevant experience in the field of climate change.
12. That Section 8 of the Climate Change Act lays down the various functions to be carried out by the Authority. The Authority is responsible, *inter alia*, for:
 - a. Formulating comprehensive adaptation and mitigation policies to address climate change and meet Pakistan’s international obligations.
 - b. Establishing mechanisms for the implementation of adaptation and mitigation policies including renewable energy plans, clean technology measures etc.

- c. Preparing suitable adaptation and mitigation projects.
 - d. Preparing the National Adaptation Plan and the Nationally Appropriate Mitigation Action Framework etc.
 - e. Formulating and coordinating implementation of low carbon and green growth strategies.
 - f. Formulating guidelines for the protection and conservation of resources, species and habitats affected or threatened by climate change.
 - g. Advising the Government regarding appropriate legislative, policy and implementation measures and actions in sectors affected by climate change.
 - h. Advising the Government regarding implementation of international conventions, treaties and agreements on climate change and the environment to which Pakistan is a party and fulfil reporting requirements thereunder.
 - i. Mobilizing resources for the purposes of achieving the objects and purposes of the Act.
13. That the absence of the Authority is greatly hindering any progress that may be achieved in relation to climate change. The members of the Authority are to include scientists, academics, professionals, serving or retired government servants, industrialists, agriculturists or other technocrats with at least fifteen years' experience in fields related to climate change and the environment. This adds much-needed expert knowledge to the process of making climate change policy. It is clear that even though the proposed Authority is an attempt at mainstreaming climate change concerns, no practical steps have been taken for the Authority's establishment.
14. That Section 3 of the Climate Change Act provides for the establishment of the Council. The Council is responsible under Section 4 for co-ordinating, supervising and monitoring efforts related to climate change. It is also authorised to direct government authorities and agencies to prepare and implement climate change policies.
15. That the Council's first ever meeting was held on 18.10.2022. The Council is also required to meet at least twice a year under Section 3(5) but has only met once in almost six years. As such, it is clear that the Climate Change Act is not being implemented as per law.

16. That under Section 9 of the Climate Change Act, the Authority is obligated to prepare an annual report on *inter alia*, the progress made on the implementation of major climate change actions and any difficulties relating thereto. The non-establishment of the Authority means that any progress if made has not been recorded and difficulties being faced in relation to adaptation and mitigation strategies have not been properly identified.
17. That under Sections 12 and 13 of the Climate Change Act, the Authority is also authorized to collect and manage sums that shall be paid into a Climate Change Fund (the “**Fund**”). The Fund shall be utilized to finance the various projects of the Authority aimed at combatting climate change. Given the deteriorating economic situation of Pakistan, implementing an organized and efficient system for raising funds to tackle climate change should be an urgent priority.
18. The need for an organised and transparent system for obtaining and managing climate change funds was made further evident after the 27th Conference of the Parties of the United Nations Framework Convention on Climate Change (“**COP 27**”) held in November 2022. A “Fund for Loss and Damage” was established at the COP27 to help developing countries such as Pakistan recover from the adverse impacts of climate change. While the particulars of the Fund for Loss and Damage, such as who will contribute and how the money should be distributed are yet to be decided, Pakistan must be prepared to liaise with the relevant international institutions and ensure the necessary funds are received. Most importantly, once the funds are received by Pakistan, their management and utilization must be organized in a transparent and efficient manner.
19. That in light of the aforementioned, the establishment of the Authority is essential since:
 - i. it is responsible for the formulation of mitigation, financing and adaptation policies;
 - ii. the expertise of the Authority will allow for the creation of better, more well-rounded climate change policies;
 - iii. the establishment of the Authority will facilitate co-ordination between various government departments and create a more streamlined, organised and effective system for the implementation of climate change policies; and,
 - iv. the development and effective management of a Climate Change Fund will enable the realisation of climate change policies that would otherwise lack financial viability.

20. That the promulgation of the Climate Change Act and the proposed establishment of the Authority was brought to the attention of the Honourable Lahore High Court in the case of Asghar Leghari v. Federation of Pakistan, PLD 2018 Lahore 364, wherein the Honourable Court acknowledged the importance of taking charge against climate change and give full effect to the Climate Change Act. In Raja Zahoor vs. Capital Development Authority, 2022 SCMR 1411, the Honourable Supreme Court of Pakistan held “In the face of the grave existential threat of climate change, adaptation, climate resilience and sustainability assume the role of a constitutional necessity and of an overarching constitutional obligation.”
21. That almost six years have passed since the enactment of the Climate Change Act and yet the Authority appears nowhere in sight. It is the Petitioner’s submission that the Council is not validly established and even if it was, it cannot function properly unless the Authority is established to perform its own functions. The continuous, unjustified delay in implementing the Climate Change Act is just another example of the Government’s lax attitude towards the climate emergency.
22. That in light of the rapidly deteriorating climate and economic conditions, such continued inaction on part of the Government should no longer be sustained. The Government must be directed to take urgent and meaningful steps to tackle the climate emergency and establish the Authority. In these circumstances, the interference of this Honourable Court is required on *inter alia* the following:

GROUND

- A. That the superior courts have on multiple occasions stood firmly to uphold climate justice. The catastrophic effects of climate change on Pakistan, experienced in the form of extreme weather events, water scarcity and more, continue to deprive Pakistani citizens of their fundamental rights conferred, *inter alia*, by Articles 9, 14, 18 and 23 of the Constitution. This reality has been recognised by the superior courts in cases such as D.G. Khan Cement Company v. Government of Punjab and others, It 2021 SCMR 834 and Asghar Leghari v. Federation of Pakistan, PLD 2018 Lahore 364. Consequently, the continued inaction on part of the Government to mitigate the effects of climate change is a violation of the fundamental rights of Pakistani citizens.
- B. That the superior courts have on numerous occasions directed government authorities to take urgent and decisive action to mitigate the effects of climate change and to strictly implement the necessary environmental policies. While various plans have been introduced by the federal and provincial governments to take such action, the realisation of these plans is hindered by

severe mismanagement, lack of transparency and coordination between government departments and an over-arching attitude of indifference. Most actions taken by the Government only pay lip-service to combatting climate change, as grand plans are frequently presented before the public but are rarely followed through. The establishment of the Authority on war footing is therefore necessary.

- C. That the need for streamlined and coordinated action against climate change is synonymous with the need for effective governance. This Honourable Court has explained in Muhammad Yasin v. Federation of Pakistan, PLD 2012 SC 132 that there is a nexus between efficient and effective functioning of government authorities and the fundamental rights of citizens. This explanation is applicable *a fortiori* to the instant matter, which involves *inter alia* the fundamental rights to life, liberty and dignity.
- D. That the establishment of the Authority and the Council under the Climate Change Act provides the means to ensure effective governance in the context of implementing climate change policy. As explained above, the Authority will provide the expert knowledge that is pivotal to the formation of effective climate change policies, and the establishment of the Council is necessary to ensure a co-ordinated and efficient implementation of such policies. Therefore, the unjustified delay by the Government in implementing the Climate Change Act, particularly in establishing the Authority, must be brought to an end.
- E. That it is the constitutional duty of the Federal Government to implement duly enforced laws. The fulfilment of this duty is particularly essential where fundamental rights are involved. As held by this Honourable Court in Government of Sindh through Secretary Health Department. v. Dr. Nadeem Rizvi, 2020 SCMR 1, the Federal Government has a positive duty to enforce fundamental rights and this duty can in no circumstances be abridged or curtailed.

PRAYER

In the light of the foregoing, it is respectfully prayed that this Honourable Court may be graciously pleased to:

- a. Declare that the continued inaction on part of the Government to implement effective climate change policies is violative of its constitutional duty and the fundamental rights of Pakistani citizens; and
- b. Direct the Government to immediately and fully implement the Climate Change Act and establish the Authority.

Any other relief deemed just and equitable in all the circumstances of the case may also graciously be granted by this Honourable Court.

Petitioner

through

Drawn and Settled by:

Filed by

Feisal Hussain Naqvi
Advocate Supreme Court
Bhandari Naqvi Riaz
15 Zafar Ali Road, Gulberg V,
Lahore

Ahmad Nawaz Chaudhry
Advocate on Record
Supreme Court of Pakistan
Islamabad

Certified

Certified that this is the first petition filed by the Petitioner before this Honourable Court.

Ahmad Nawaz Chaudhry
Advocate on Record
Supreme Court of Pakistan
Islamabad

Dated: _____ December 2022