

ANALYSIS OF IMPACTS OF CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION ON CHILDREN IN MALAYSIA AND ASSESSMENT OF CHILD-SENSITIVITY OF CURRENT ADAPTATION AND MITIGATION POLICIES: LEGAL PERSPECTIVE



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Garden of Knowledge and Virtue

- Environmental protection, climate change, human health and children's rights are four distinct concerns which have been expanded for the past several decades.
- In response, government has created instruments including specialized law and agencies at the national level to respond to the identified problems in each of the four areas.
- Often these have seemed to develop in isolation from one another.

- The legal research examined the Constitution and four set of legal frameworks of:
 - Environment,
 - Climate change,
 - Human health, and
 - Children.
- Main issue examined is whether **Environmental and Climate Change Legal Framework in Malaysia Child-Sensitive?**

RESEARCH OBJECTIVES:

1. to identify related legal frameworks,
2. to examine linkages among these frameworks, both in relation to environmental protection, and regarding climate change mitigation and adaptation,
3. to analyze these legal frameworks in the context of child-sensitivity,
4. to identify gap in the law.



LEGAL FRAMEWORKS EXAMINED:

- ♦ The Constitution,
- ♦ Legal Framework on Environmental protection
- ♦ Legal framework on Child Protection,
- ♦ Legal Framework on Public health Protection,
- ♦ Legal Framework on Climate Change .

RESEARCH METHODOLOGY:

- Qualitative method:
- content analysis and interviews/Focus group discussion.
- Primary materials: statutes, case law, government policy papers, reports, international conventions.
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- Secondary materials: textbooks, journal and non-journal articles, seminar papers, and other legal and non-legal literature.

- Content analysis involved:
- examine current policy and law, identify inadequacies, drawbacks and other loophole, and
- propose suggestions/improvement within the legal framework.

- Interview/Focus group discussion: Legal personnel, regulatory officers and so on.

- **THE CONSTITUTION**

Environmental protection, climate mitigation, children's issues and public health management patterns have been shaped by the constitution which is the supreme law.

Constitution's Distribution of Powers:

The Legislative Lists Under The 9th Schedule Through List I (Federal List), List II (State List) And List III (Concurrent List).

- **GAP**

There is no specific provision in the federal constitution which speaks about the recognition or protection of the public's right to a healthful environment.

No provision on environment and climate change.

Legal Framework on Public Health Protection

Policy: NIL

Main Law:
Prevention and Control of the Infectious Diseases Act 1988

Agency: Ministry of Health

- ♦ **Scope of Public Health Law**
- ♦ It relates to the prevention and control of infectious diseases and to provide for other connected matters.
- ♦ The law seeks to protect people from threats to health, preventing disease, and striving for healthy populations.

- ♦ **GAPS:**
- ♦ Public health law does not include aspects of climate change or environmental protection.
- ♦ Such as prevention and reduction of the health risk as a result of adverse effects of environmental or climate factors.
- ♦ These impacts are regulated by different sector of laws.

LEGAL FRAMEWORK ON CHILD PROTECTION

Policies:

- i) National Child Policy 2009;
- ii) National Child Protection Policy 2009;
- iii) National Action Plan on Children;
- iv) National Family Policy; and
- v) National Social Policy.

Laws: Child Act 2001

Regulatory agency: Ministry of Women, Family and Community Development

♦ SCOPE OF CHILD LAW

- ♦ The law relates to the care, protection, rehabilitation, matters connected with children under the age of 18 years.
- ♦ Section 17: Meaning of “child in need of care and protection”: abuses, neglects, abandons or exposes the child in a manner to cause him physical or emotional injury

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♦ GAPS:

- ♦ Section 31: Offences relating to health and welfare of children are confined to ill-treatment, neglect, abandonment or exposure of children.
- ♦ No specific provision on protection of children from any hazardous environment.
- ♦ The scope of ‘other person’ is not extended to those who caused harms in relation to environmental or climate change risks to children.
- ♦ The Act does not set out the punishment to offenders such as company, industry or accused person who has no relation with the child.

♦ **LEGAL FRAMEWORK ON ENVIRONMENT**

- ♦ Environmental policies:
- ♦ 11th Malaysia Plan,
- ♦ National Policy on the Environment Malaysia 2001,
- ♦ Environmental law: Environmental Quality Act 1974
- ♦ Regulatory agency: Department of Environment

♦ **SCOPE OF ENVIRONMENTAL LAW**

- ♦ EQA concerns with point-source pollution control: air, water, haze, marine and scheduled wastes.

Environmental Quality Act 1974

OPEN BURNING AND THE API

API	Air Pollution Level
0 - 50	Good
51 - 100	Moderate
101 - 200	Unhealthy
201 - 300	Very unhealthy
301+	Hazardous

- API is directly applicable for the EQA in the case of haze pollution.
- Section 29A of the EQA bans “open burning”.
- Exception to open burning in section 29AA : the Environmental Quality (Declared Activities) (Open Burning) Order 2003.
- Open burning permission of section 29AA is not absolute. When the API reading reached an unhealthy level the exemption will be withdrawn.
- During that situation, for the purpose of environmental and health protection, any open burning is not be allowed.
- In the event that the API level reaches 200, schools in the affected areas would be closed in accordance with the DOE’s National Haze Action Plan.

GAPS:

No reference to climate change and sustainable development.

Scope of pollution in section 21 is not linked to human factors.

Risk of human health vs. economic factor in the issuance of licence.

Air and water pollution standards have no explicit requirements on risks to children.

No provision on household scheduled wastes under the EQA.

EIA and public participation – no provision on children's involvement in the EIA process.

Environmental Quality Council under the EQA – its members do not include agencies concerned with children.



LEGAL FRAMEWORK ON CLIMATE CHANGE

National Climate Change Policy 2009

Mainstreaming of measures to address climate change challenges through strengthened economic competitiveness, wise management of resources, environmental conservation and enhanced quality of life for sustainable development;

Integration of responses into national policies, plans and programmes to strengthen the resilience of development from arising impacts of climate change; and

Strengthening of institutional and implementation capacity to better harness opportunities in reducing and addressing negative impacts of climate change.

- **DEFINITION OF TERMS:**
- **Adaptation** “Actions taken to help communities and ecosystems cope with actual or expected impacts of climate change”.
- **Mitigation** “Actions taken to enhance sinks and reduce greenhouse gas emissions to lessen the impacts of climate change”
- **Human Well-being** “The satisfactory state that an individual or a group of individuals should be in, that involve aspects such as happiness, health, safety, security and prosperity as well as participation in society”.
- **“stakeholders”** means “any individual, group, body or entity, directly or indirectly affected by, or interested in, or with a stake in climate change matters such as government, public bodies, private sector, non-government organisations (NGOs), community based organisations (CBOs), civil society, consumer associations and **major groups**”
- **“Major Groups”** is defined to include “farmers, women, the scientific and technological community, children and youth, indigenous peoples and their communities, workers and trade unions, business and industry, non-governmental organisation and local authorities”.

LEGAL FRAMEWORK ON CLIMATE CHANGE

- Paris Agreement and the NDC
- Mitigation: Renewable Energy Act 2011
- Adaptation: no specific law
- Regulatory agencies: varied/sector based

SCOPE OF THE LAW

- The Renewable Energy Act 2011 – deals with special tariff system on renewable energy sources.
- It provides for the establishment and implementation of a special tariff system to catalyse the generation of renewable energy and related matters.

GAPS:

- The Climate Change Policy makes a general reference to children and youth within the “Major Groups” including “farmers, women, the scientific and technological community, indigenous peoples and their communities, workers and trade unions, business and industry, non-governmental organisation and local authorities”.
- The policy is not revised since 2009.
- No holistic responses on mitigation and adaptation within the law.
- The Renewable Energy Act 2011 – no direct provision on climate mitigation and no linkages to human or child issues.

FINDINGS:

- Environmental protection, public health and children's protection are four distinct concerns which have been expanded for the past several decades.
- They are administered by different sets of legal frameworks consisted of specific policies, laws and regulatory body created by the government to respond to the identified problems in each of the sectors.
- These sectoral-based legal frameworks were developed in isolation from one another, have different objectives, and respond to different target groups despite the areas of law may relate or overlap with the same subject matter.
- Climate Change Policy has a direct reference to children, but it is not translated into explicit actions within the law.
- Mitigation and adaptation measures under the law are not adequate to protect best interests of children from actual and future harms associated with climate change and environmental harms.

UPCOMING PROJECT ACTIVITIES:

Fieldwork: Interview, Focus Group Discussion

Developing Recommendations For The Legal Framework.



THANK YOU