



Putting the law at the heart of the Paris Agreement

- Summary report -

To mark the fifth anniversary of the Paris Agreement, LRI held a one-hour webinar event on Thursday 10 December, from 2 to 3 pm GMT. The purpose of the event was to hear voices of the international legal community on priority issues that need to be addressed, specifically in the lead-up to and during COP26 in the UK in 2021, in order for the Paris Agreement to succeed.

Thirteen climate lawyers from around the globe were given 3 minutes each to raise one issue that they consider a priority in the further implementation of the Paris Agreement. A recording of the event is available at: <https://www.youtube.com/watch?v=5ayPHNSx8FQ>

The meeting was chaired by the former UK Supreme Court Justice Lord Carnwath, Associate Member of Landmark Chambers, and facilitated by Christoph Schwarte, the Executive Director of LRI. All contributions to the meeting summarized in the following were made in a personal capacity and cannot be attributed to negotiation groups with whom the speakers are affiliated:



Sharaban Tahura Zaman,
Centre for Climate Justice-
Bangladesh, North South
University Bangladesh &
Adviser to the LDC Group

Strengthening Paris Agreement mechanisms for compliance with nationally determined contributions

Nationally determined contributions (NDCs) are a key tool for the implementation of the long-term temperature goals of the Paris Agreement. The system has its shortcomings, however: it is based on a 'bottom-up' or self-assessment approach: whilst each party has a legal obligation to submit and maintain an NDC, and to provide certain information in their NDC, the decision on what action a party will take to reduce its emissions and implement its NDC is entirely at that party's discretion. There is no compliance process to assess the extent to which it has translated its NDC into action.

Article 15 of the Paris Agreement (PA), establishes an important mechanism designed to facilitate implementation and promote compliance. However, the compliance process will only consider whether a party has communicated its NDC (and other information) or not.

This and other reporting and review mechanisms under the PA should be further developed to create pressure on parties to implement their

This document is an output from a project funded by the UK Department for Business, Energy and Industrial Strategy (BEIS) for the benefit of developing countries. However, the views expressed and information contained in it are not necessarily those of or endorsed by BEIS, which can accept no responsibility for such views or information or for any reliance placed on them.



NDCs. The following recommendations could be considered: the draft Rules of Procedure of the Compliance Committee need to be carefully drafted to allow the Committee to initiate consideration of a Party's non-action concerning NDC implementation and promote compliance in a facilitative manner. Accountability measures under the enhanced transparency framework should be further strengthened and a robust MRV system developed for NDC implementation. Parties could also declare that they consider their NDC a legally binding unilateral declaration under international law.



Stephen Leonard, President, Climate Justice Programme (CJP)

A rights-based ecosystem approach for a just recovery

Phasing out fossil fuels is critical to the success of the Paris Agreement. However, we are seeing an increased reliance on 'nature-based solutions', that is, using nature to offset emissions and achieve the long-term goals. There are serious concerns that nature-based solutions linked with achieving net zero targets are being used as a smoke screen by high polluting industries and countries, to mislead the public on their climate actions. This nature-based solutions agenda is increasingly being driven by the UNFCCC.

Nature, and the role of forests, was a major stumbling block at COP25 in the context of negotiations on Article 6. Unresolved issues included how to ensure that emission reductions are not reversed in the future and that no violations of human rights are caused by the implementation of Article 6. Yet the proposed Article 6 outcome text makes no reference to human rights. This is not acceptable.

For many years concerns have been raised in relation to human rights violations and carbon projects under the Clean Development Mechanism and REDD+. In coming years, we will be confronted with the same issues related to Article 6. Therefore, there needs to be clear text included in the Article 6 decision to make sure that there will be no human rights violations in the implementation of Article 6.



Giannina Santiago Cabarcas, Coordinator, Paris Agreement and Legal Affairs Advisor - Association of Independent Latin American and Caribbean States (AILAC) Support Unit

Long term planning vs. short term action

The Paris Agreement clearly articulates short-term action with long-term goals in its Article 2, and how NDCs must relate to long-term strategies that deliver on a long term goal towards 1.5°C, enhanced global resilience and the consistency of all finance flows with a low emission climate resilient development pathway. Equally, the 1.5 C goal is not just technical jargon but reflects what the best available science tells us we must do to implement the Paris Agreement.

Yet, aligning national action with global needs is the greatest hurdle in implementing Paris. On the one hand, there is a big picture deficit: short-term action through NDCs cannot be to the detriment of long-term action or, to put it another way, NDCs will be worthless if not part of the long-term story. In this context, science is clear about both what we have to aim for long – term and what we have to do now – short term – to be able to deliver.

As lawyers we must not fail to see the forest for all the trees that are in it, and we need to speak about this: the spirit of the law is as important as the letter of the law. And endless arguments about the use of 'should' as against 'shall' may miss the big picture and provide a legal detriment towards the real objective that we are to deliver on which is the 1.5°C target and what actions have to be undertaken now to deliver on this purpose.

There is an ambition deficit and each country must revise their short-term goals if they want to deliver on the long term 2050 carbon Neutrality target that they have set, and that is imperative to the delivery in tern of the 1.5 goal. We need to lay that solid short-term foundation, based on the 1.5 goal, today, with the long-term goals in mind.



Michael Burger, Executive Director, Sabin Centre for Climate Change Law, Columbia University

Brief lessons from the US and domestic constituencies as drivers of implementation

The success of the Paris Agreement will depend not only on international coordination, but also – and primarily - on domestic implementation. As the Agreement is based on a bottom up approach, domestic constituencies will be a driving force for success. Under the Trump administration, there has been a void in leadership at the national level; it has, however, been filled by cities, sub-national governments, large corporations and innovation that has driven the price of the energy transition down.

Civil society, through litigation and advocacy, is also playing its part. Climate litigation is rising as civil society groups are keeping governments and companies to task, forcing assessments of the impacts of projects and policies and forcing governments to comply with their commitments through national legislation and policies. Lawyers can also play a role as litigators to force implementation at the national level.



Augustine Njamnshi, Chair Political and Technical Affairs Committee, Pan African Climate Justice Alliance (PACJA)

Trust building dialogue and climate change responsibility

Climate change is already affecting our people. Loss and damage, that is, climate impacts that cannot be avoided through mitigation or adaptation actions, is already happening. COVID 19 has compounded the situation. People ask themselves: "what did we do to deserve this?" This is the fundamental injustice, that people who suffer most from climate change have done little or nothing to cause it.

The North has been plundering Mother Earth without regard for consequences. Yet, there has never been an apology or recognition from the North or companies for the damage this has caused. There is, therefore, an opportunity for the UK, as COP26 president, to provide global leadership and bring a dialogue, for people to come and acknowledge past injustices. To move forward we must look at the past; not to condemn, but to help build the trust needed to forge the way forward.

In doing this, the UK does not have to accommodate the US. The US will re-join the Paris Agreement, but this should not dominate COP26. The UK can show true leadership, stand alone and chart a different path, based on trust and empathy, that will bring back the confidence lost in the negotiations over the past years.

Establishment of an independent Experts Group on equity in NDCs



Dennis van Berkel, Legal Counsel, Urgenda Foundation & Co-Director Climate Litigation Network

When discussing the level of ambition of NDCs, we must not forget that what lies at the core of the implementation of Paris is equity and the principle of common but differentiated responsibilities. Thus, although it is up to countries to determine the level of ambition of their NDCs, they must still be in line with those principles. But how do we know, when governments are setting targets, that they are in line with these principles? If inadequate targets are set and we have to wait for another 5 years for these to be raised, it will be too late.

So civil society must put pressure on governments before targets are set. We need an independent group of experts that looks at all the different interpretations of those principles and set benchmarks for emission reduction targets against which we can assess government action. Only then can we have a true bottom up process setting NDCs that are aligned to the Paris temperature target of 1.5C as well as with principles such as equity and common but differentiated responsibilities.

Future generations and zero emissions



Hitomi Kimura, Associate Professor, Otsuma Women's University

Future generations will play an important role in achieving zero emissions. Both will be highlighted as key drivers to implement the Paris agreement at COP 26. The two are deeply related simply because young people will live longer and therefore feel strongly the threat that climate change poses on their future.

Young people have taken to the streets demanding climate justice. These actions are in line with the principle of intergenerational equity, which is mentioned as an objective of the Convention: to protect the climate system for the benefit of present and future generations on the basis of equity. The principle also features in the Paris Agreement but is currently limited as a moral rather than legally effective norm. It has so far been protected by adults who have voting rights under democratic systems to represent children's rights. However, the direct actions by the youth show that this current system and the norm need reconsideration in theory and in practice.

These youth movements have led to the global wave of Fridays For Future and driven climate litigation actions. During the UN climate summit of September 2019, more than 4 million children participated in a global climate march and 16 children, including Greta Thunberg,

submitted a legal complaint to denounce the lack of government action on the climate crisis to the UN Committee on the Rights of the Child. These youth actions have also played an important role in accelerating countries' decisions to upgrade their long-term emission reductions strategies to achieve carbon neutrality by 2050.



Monica Feria-Tinta, Barrister,
Twenty Essex Chambers

Climate change as a human rights issue under international and domestic law

The Paris Agreement does not contain provisions relating to human rights in its operative part but its preamble makes clear that parties should respect and promote human rights when taking action to address climate change.

The human rights organs have widely taken up the issue and there is today an acknowledgement that climate change is a human rights issue. The obligations of states in this context were recently highlighted in a joint statement by five UN Human Rights Treaty Bodies: “Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations”.

At the international level, these bodies are looking at the obligations of states in the context of both contentious and non-contentious procedures. However, international law is always the last resort. The role of the legal community, therefore, is to make sure there are adequate domestic legal systems in place in countries to ensure these obligations are respected.



Megan Bowman
Director, Climate Law and
Governance Centre, The
Dickson Poon School of Law,
King’s College London

Operationalizing Art.2.1 c) PA and redirecting financial flows

Finance is key to incentivising and unlocking all other strategic areas for the implementation of the Paris Agreement. It is also key to the creation of a sustainable and equitable post COVID world. One of the current learnings about the climate crisis is that we need to understand and better act on systemic risk warnings.

So, in terms of priorities for COP26, finance and systemic risk must be kept front and centre. Arguably, the Paris Agreement itself mandates this in its Article 2.1 c), which calls for making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development. This provision is a call to action to ensure that all finance, including mainstream finance, is flowing in the same direction, namely towards green, sustainable and resilient development. This requires developing a mainstream finance system where every financial decision – public or private – must take into account the climate and a pathway to net zero in the context of sustainable development.

Thus all decision makers need to treat Article 2.1 c) as their North Star and bring it to life. The UK has a unique opportunity to set the tone on this at COP26.



Rueanna Haynes, Senior Legal Advisor and Team Lead Alliance of Small Island States (AOSIS) Support, Climate Analytics

The central role of science in the UNFCCC regime

As a lawyer speaking about the science, there are three key messages to convey:

The first is that science can capture the imagination and spur global action on climate. To illustrate this, one might look at the outcome of the 2013-2015 review of the long-term temperature goal, undertaken under the UNFCCC. It concluded that the 2°C goal should be seen as a defence line and that efforts must be made to push below that defence line. This formed the basis for the temperature goal in Article 2 of the Paris Agreement and for the decision to invite the IPCC to provide a special report on the impacts of 1.5°C warming. There was a spectacular fight around the 1.5°C IPCC report in 2015 that captured the imagination of the general public and helped incentivize youth activism.

The second message is that the science continues to evolve and that we must pay close attention to this, including the second review of the long-term temperature goal that is beginning today.

The third message is that lawyers are part of the science-policy interface, that is, the architecture responsible for translating science into policy messages that are capable of spurring climate action domestically.

Operationalizing the adaptation goal

The presentation focussed on the legal questions around the implementation of adaptation. We know that, even if ambitious mitigation actions are achieved, the adverse impacts of climate change will be felt due to existing GHG emissions. Thus the implementation of the PA cannot be achieved without ambitious adaptation action. The question, therefore, is how to frame legal questions to implement adaptation better.

The UNFCCC, in its Articles 2 and 4, set out clear obligations on adaptation. The Paris Agreement further provides clear guidance: the long-term temperature goal in Article 2 is linked to adaptation; Article 3 recognises that adaptation can be part of NDCs; and Article 7 establishes a global goal on adaptation.

Therefore, the questions for COP26 could be framed as follows: how can we operationalize the global goal for adaptation recognising that there is work taking place under the Adaptation Committee? How can that be



Selam Abebe, Legal Adviser, African Group of Negotiators (AGN) & Leverhulme Trust Doctoral Scholar in Climate Justice, University of Reading

linked to methodologies of needs? Do we need to quantify that goal as a temperature goal and do we need a work stream and/or political space under the CMA to advance that work?



Farhana Yamin
Founder Track 0 & Associate
Fellow at Chatham House

Standing up for human rights and rights of vulnerable communities and taking direct action

The presentation offered some ideas as to where lawyers can most contribute.

2030 is the new 2050. The global North must advance that goal, contributing its fair share for historical and wealth reasons and have 2030 as the nearer date for phasing out GHG emissions.

Restoration of nature starts with registration and reparation. We are witnessing multiple crises that are born out of centuries of colonialism, inequality and injustice. Around 40 to 65% of the world land is held collectively by indigenous peoples and local communities, yet less than 10% of that land is legally registered. We need to stand up as lawyers for human rights and for those who should have ownership of that land.

Community is the new COP. So many of us have spent weeks after weeks at COPs. We have neglected our own backyard and must make fresh bonds to help create a fairer, kinder and greener society. Sometimes, non-violent direct action outside the law is the strongest action we as lawyers can take. Examples include Mandela and Gandhi: they achieved the massive changes they did by choosing to break the law and taking non-violent direct action.



Vositha Wijenayake
Executive Director SLYCAN
Trust & Attorney at Law

Loss and damage, risk transfer and migration

Some key issues affecting developing countries that we need to focus on include:

Loss and damage and how that connects with vulnerable communities and vulnerable eco-systems, including food systems. Vulnerable communities, such as farming communities, women and children, are at the forefront of climate impacts. Risk transfer and finance play a key role in ensuring that vulnerabilities are addressed, and ensuring that socioeconomic disadvantages are not exacerbated.

Human mobility, and the related issues of migration and displacement, also connects with climate impacts and loss and damage. It may result from gaps in risk transfer and risk management and will often affect the most vulnerable communities. It is important, therefore, that we connect the dots and address these issues in a holistic manner.

As lawyers, we must ensure that laws and policies on climate are evidence based, including being based on assessments of ground level risks and vulnerabilities. An integrated approach is needed; looking at the national, but also the sub-national level, and looking not only at processes under the Paris Agreement, such as NDCs and National Adaptation Plans (NAPs), but also at other ongoing processes, such as the SDGs.

Following the presentations, contributors and other climate lawyers who participated in the meeting, discussed a number of issues. Prompted by a question from Linda Siegele (environmental lawyer and adviser to the Cook Islands) regarding COP decision 1/CP.21, para.51, which states that Article 8 of the Paris Agreement on loss and damage does not involve or provide a basis for any liability or compensation, these included the area of climate litigation and other legal approaches to hold governments, fossil fuel companies and other actors accountable for the adverse effects of climate change.

Monica Feria-Tinta drew attention to a case in the German civil courts against the utility company RWE brought by Germanwatch on behalf of a Peruvian farmer. Farhana Yamin highlighted the concept of ecocide and the potential of using criminal law in the climate change context. In her view criminal liability may flow from the outcomes of some of the civil suits that are or have taken place recently. The Climate Change Litigation Guide by Action4Justice (designed to assist communities, CSOs and lawyers to assess the viability of and take legal action to combat climate change) was mentioned by Richard Lord (barrister, Brick Court Chambers) and is available at https://action4justice.org/legal_areas/climate-change/.

Selam Abebe emphasised the relevance of public international law – the law between states – in this context and that some parties made declarations when joining the Paris Agreement to the effect that acceptance of the Agreement does not constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change. Augustine Njamnshi reiterated his call for the need to acknowledge past injustice and to take the provisions of the Paris Agreement, on for example finance, as meaningful guidance in moving forward.

Olga Hancock (Environmental lawyer and analyst at the Church Commissioners for England) enquired about possible legal mechanisms to address perceived risks of investment in climate solutions in emerging markets. Megan Bowman agreed that because adaptation related investment does not carry immediate financial rewards it is often perceived as high risk. Insurance and guarantees can, however, bridge the gap between what looks not feasible and what would work. But more government action is needed and lawyers need to educate themselves about the potential levers and policy discussions at government level.

In his closing remarks, Lord Carnwath noted that the UK, as the incoming COP presidency, had an opportunity to take the lead in developing a strong legal framework, promoting ambition and ensuring that developed countries live up to their financial commitments. He expressed the hope that in a country like the UK with a framework for participation and a commitment to the rule of law it will not be necessary to take non-violent direct action outside the law, and that young people and future generations will watch with optimism while we are living up to all the things that we have committed to doing now.