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IBA Showcase: Achieving Justice and Human Rights in an Era of Climate Disruption

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I am delighted to be here with you in Tokyo for the launch of the International Bar Association's Task Force Report, *Achieving Justice and Human Rights in an Era of Climate Disruption*. We have travelled a long way from the 2012 annual conference in Dublin when I laid down my challenge to Michael Reynolds as he started his time as IBA President to provide leadership on climate justice. I am so pleased that he took me up on the challenge to develop an IBA Task Force on climate justice to help shape a global response to climate change. The Task Force on Climate Change Justice and Human Rights has worked tirelessly and diligently to provide an assessment of the legal frameworks relevant to climate change and identify the steps needed to further develop them to respond to climate change and deliver climate justice. I thank you for your work. Quite honestly the report has surpassed my expectations and delivered an excellent contribution to the understanding of climate justice and the role of human rights law in addressing the climate challenge.

As I lawyer myself I have felt that the legal profession worldwide has been behind the curve on the negative impacts of climate change. It already poses huge challenges to human rights, to food and health in vulnerable countries, and we face the prospect of millions of climate displaced people who are not recognised as refugees and for whom there is as yet no international convention.

What might be the implications for Rule of Law when large cities are flooded, or people are displaced by persistent drought? On the opportunities side, we need new thinking about breakthrough technologies that could benefit poor countries and peoples, and help them leap frog into renewable energy. That will require new approaches to intellectual properties. I could go on and on!

That is why I believe this report is timely and significant.

The significance of this report lies firstly in its assessment that current law is inadequate to meet the challenge of climate change. As a result the legal profession has a critical role to play in strengthening and creating the laws, norms, regulations and policies needed to ensure an effective and equitable response to the climate challenge. We cannot solve the climate crisis without you, the lawyers of the world.

The report is also significant for its legal treatment of the impacts of climate change on human rights and the proposal of practical ways of using and strengthening legal frameworks and human rights law to ensure climate justice.

For too long climate change has been seen as an environmental issue and as a result the focus of only a small pool of the legal profession specialising in environmental law at domestic or international level. What this report shows is that climate change is an issue of justice with repercussions on all aspects of law, from corporate law to litigation, human rights to trade law. Whether you work to protect the interests of business, citizens or states, climate change is part of your portfolio.

The report is timely.

Less than 14 months remain before the international community adopts a new, legally binding climate agreement in Paris. 2015 is the year that will define our response to climate change, through the new climate agreement, the post 2015 development agenda including the Sustainable Development Goals and new initiatives for financing development.

Throughout this year the Intergovernmental Panel on Climate Change (IPCC) has released a series of reports showing that the impacts of climate change are being felt now and that under business-as-usual scenarios we are on a path to destructive climate change. The next step in

this work is a synthesis report for policy makers which will be negotiated next week in Copenhagen. Given the wealth of expertise in this room you are well placed to respond to the recommendations of the IPCC report by applying the rule of law and informing climate responses.

The recent work by the Calderon Commission on the New Climate Economy tells us that we can build lasting economic growth and reduce the immense risk of climate change at the same time, but the next 15 years are crucial. We have a little over a year left to secure a new legally binding climate agreement, to equitably take cooperative and ambitious action to stay as far below 2°C of warming above pre-industrial levels as possible

We have a short window of a number of years only, to make a fair transition to a carbon neutral world and to get the policies right so that in addition to mitigating and adapting to climate change they also protect human rights and contribute to a more equitable world. Law plays a role in shaping and informing these policies and in regulating the resulting actions to make sure they deliver justice.

I would like to reflect on some of the findings of the Task Force as set out in three chapters of the report.

The first chapter contributes to the understanding of climate justice, framing it in language and examples relevant to the legal profession, but with, I am glad to say, a potentially larger reach to climate, development and human rights policy makers and practitioners.

To quote the report “*climate justice encapsulates rights and obligations spanning generations, across political entities, and implicates states, corporate and individual responsibilities*”. Responsibility lies at the heart of climate justice - as does vulnerability. Climate justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable and sharing the burdens and benefits of climate change and its resolution equitably and fairly.

Climate justice is about protecting those with least capacity to protect themselves and who bear least responsibility for the causes of the problem. It is about equitably sharing the actions needed to avoid dangerous climate change and it is about equitably sharing the

benefits of the transition to a carbon neutral world. When we take climate actions, no one should be left behind, all have to make the effort and all should be able to participate in the decisions we take along the way.

Climate justice demands that we give voice to those that are marginalised and vulnerable, to understand both their realities and their solutions. We should never presume that the professionals amongst us have all the answers – many people and communities have innovative solutions they learned not from books but from felt experience. I urge you to actively create space for these voices in your work, without them we are unlikely to find effective solutions to climate change.

Human rights play a role in all aspects of climate action from procedural rights such as participation and access to information, to the substantive rights such as the rights to food and to health that we seek to protect from the impacts of climate change.

The report of Working Group 2 of the IPCC released earlier this year highlights the current and future impacts of climate change on people; the impacts it describes undermine human rights, including the right to food, to health, to water, and to shelter. It also states that while people all over the world are vulnerable to the impacts of climate change, the poor and marginalised are the most vulnerable.

The Task Force adds to this an assessment of the justice and human rights dimensions of the policies and actions we design to mitigate and adapt to climate change. The evidence presented shows that poorly designed policies and actions can have negative impacts on people's human rights and/ or can contribute to unfair and unjust outcomes. If we get climate policies wrong they risk furthering the injustice already encountered due to climate impacts. And as countries around the world are expected to scale up climate policies and investments in the coming years to avoid dangerous global warming, the imperative to make good policies that work and deliver justice increases.

On the flip side, if we design climate policies with human rights and fairness in mind they will be more effective and benefit people and the planet. With inclusive participation, a focus on gender equality and the rights of indigenous peoples, for example, we can ensure that policies have broad buy in from citizens and are truly transformative.

The Cancun Agreements agreed by Parties to the United Nations Framework Convention on Climate Change (UNFCCC) when it met in 2010 emphasised that ‘*Parties should, in all climate change related-actions, fully respect human rights*’. Unfortunately in the absence of guidance for Parties on how to systematically consider human rights in the design of climate action little progress is being made in this regard.

Research commissioned by my Foundation reveals that only 39% of country reports to the UNFCCC and 23% of reports under the Universal Periodic Review (UPR) process to the Human Rights Council (HRC) in the period since Cancun make the link between climate change and human rights. In fact only 12 countries made the link between human rights and climate change in reports to both the UNFCCC and the HRC. This demonstrates a lack of coherence and a lack of collaboration between experts working on climate change and human rights. Clearly this has to change or we risk designing climate policies that undermine human rights.

We need to do more to ensure that climate policies protect rights and deliver justice. Chapter 2 of the Task Force report shows us that the current system of international law is not well suited to addressing climate justice. This is deeply troubling. The legal system we have now at international and domestic level is not equipped to deal with the scale of the challenge posed by climate change; the biggest threat to human rights of the 21st Century. The fragmented nature of the relevant legal regimes, and their origins in most cases in a world before climate change, means that reforms are needed to enable them to respond effectively and to deliver climate justice. More effective and coherent use of existing laws, rules and norms would inform better climate responses at the international and national level and the legal reforms required to ensure fair and effective climate policies and actions.

As a result the final chapter of the report is critical, spelling out many of the steps needed to revise and strengthen the legal system. The focus of these recommendations on all actors – from individuals and communities to businesses, governments and international institutions – means that the recommendations identified are applicable to all members of the legal profession and beyond.

Picking up on some of the recommendations of the report I would like to highlight some that resonate with me and the work I do at the international level.

Firstly, the emphasis on participation, transparency and accountability that threads right through the report, and is a core principle of climate justice. The proposals related to access to environmental information, participation in decision making and access to environmental justice, echoing the Rio declaration are as pertinent now as they were in 1992. The need to include vulnerable people, especially women and the marginalised, in decision making at all levels cannot be over-emphasised and is linked to the emphasis on capacity building in the report. I absolutely encourage the IBA to establish an international network of climate change counsel to raise awareness of climate justice amongst attorneys, judges and lawmakers in developed and developing countries, and to build their capacity to use international law more effectively to respond to climate change while realising rights. The continued emphasis on transparency and accountability in the realm of trade agreements, corporate law and investment is an area where significant progress can be made, from today, without delay.

The report endorses the work of John Knox, Independent Expert on the Right to a Healthy Environment, and his proposal to request a report from the Office of the High Commissioner for Human Rights outlining a minimum core of rights and duties implicated by the right to a healthy environment – particularly as it pertains to climate change – is an important step towards ‘greening’ human rights. This step could usefully be supported by the work of the broader pool of special mandate holders who can in their individual and collective capacities collect information on human rights violations resulting from climate change and climate policies, as well as collecting examples of best practice in integrating human rights into climate actions.

This week a group of Special Mandate holders, representing all aspects of human rights law, have written a joint letter to the Parties to the Climate Change Convention who are meeting to discuss next steps towards a new climate agreement in Bonn, Germany. As independent experts of the Human Rights Council the special mandate holders have drawn attention to the unequal impacts of human rights on the enjoyment of human rights worldwide. They

emphasise the need to integrate human rights into climate action and urge parties to the UNFCCC to include language in the 2015 agreement which states that Parties shall, in all climate change related actions, respect, protect, promote and fulfil human rights for all. This language is essential to frame the new climate agreement in human rights and ensure that the climate actions it catalyses are good for the climate and good for people.

Staying with the Human Rights Council, research commissioned by my Foundation supports the call in the report for greater use to be made of the UPR in reporting on the linkages between climate change and human rights, presenting information on domestic climate justice concerns and requesting support to address the human rights impacts of climate change and climate change responses. UPR is an important tool facilitating greater accountability and transparency and has the potential to play a significant role in achieving climate justice.

A resolution adopted by the Human Rights Council this June on human rights and climate change calls for increased international dialogue on the adverse impacts of climate change, with an emphasis on those States with the greatest need of assistance from the international community. It also commits the Council to a full day discussion of these issues at its March 2015 session. The report of the Task Force is an important contribution to this international dialogue and could inform preparations for the panel.

Corporations are both contributors to the causes of climate change and important actors in the field of climate solutions. The report is emphatic in respect to corporate responsibility to date, stating that the current regulatory regime is “at best inconsistent and at worst, ineffective”. It emphasises the responsibility of states and corporations in protecting human rights and ensuring climate justice. I am pleased that the report advocates, as I have in the past, the critical contribution the UN Guiding Principles on Human Rights and Business can make to climate justice when adopted and implemented by corporations. The Protect, Respect and Remedy framework of the guiding principles can readily accommodate climate risks and further work by the IBA could develop a useful tool for climate justice.

The recommendations in the Task Force report related to the UNFCCC are solid but if anything I would have liked the Task Force to be more emphatic in calling for a legally binding, ambitious and equitable climate agreement, fully consistent with human rights. As I said before, a climate agreement based on fairness and grounded in human rights maximises the potential for climate actions that are good for the planet and good for people.

Let us be clear: The transformation we need to make of our global economic system to avoid dangerous climate change is significant. Science tells us that we have to phase out carbon emissions by the middle of this century. We have to wean ourselves off fossil fuels, fast and in a way that is fair. This transition will have implications on all areas of the legal regime and the rule of law will be tested and forced to adapt to a changing reality. The legal profession – with politicians, civil society, business and communities – needs to prepare for these changes if we are to protect the planet for the long term and for future generations while meeting the needs and protecting the rights of current generations. This means that we need a ‘just transition’ that protects workers’ rights, indigenous rights, women’s rights – human rights.

The recommendations set out in the Task Force report are valuable contributions to a just transition. Responsibility for implementing the recommendations lies with the entire legal profession. You all have a copy of the report in your bags. There is an action in this report for each one of you to take forward in your work, engaging the legal profession around the world in securing justice and rights through action to mitigate and adapt to climate change.

My challenge to you this time is to deliver the recommendations in the report and be actors in the pursuit of climate justice. You can be and must be a constituency of demand that our political leaders can be informed and supported by to take the urgent action needed on all fronts.

A few weeks ago in New York I was part of the People’s Climate March – over 400,000 people in New York and hundreds of thousands more around the world created a new wave of momentum for climate justice. Their message to political leaders was to act in the interests of their citizens and the global community, to embrace the solutions we already have, to be brave and to know that they are supported in making ambitious commitments. The IBA is now part of this momentum as we move towards the 20th session of the Conference of the Parties, or COP20, in Lima and onwards to Paris at the end of 2015. You can build and maintain the momentum through your work and through your role as engaged citizens in your own communities and institutions. The recommendations in this report are your roadmap and your timeline. Begin now, and in earnest, and you will be part of the growing momentum that will ultimately influence political decision making.

Remember we need to act on climate change to protect human rights, and we need to use human rights and the rule of law to inform effective climate responses. So climate justice is, as the Task Force demonstrates, very much part of IBA business.

Climate justice is what I work towards every day, so I am delighted to have all of you in the IBA, my fellow legal professionals, join me in my quest. I will follow your progress and look forward to working with you. This is our shared concern – we do it for our children, our grandchildren and their future.