

## **CHECK AGAINST DELIVERY**

### **PROTECTING THE MOST VULNERABLE: THE ROLE OF CLIMATE JUSTICE**

Remarks by

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It is a great pleasure to speak here today at the Institute of International and European Affairs (IIEA) with which I have had a long involvement, not least as part of the Comité d'Honneur. I last addressed the Institute when I was UN High Commissioner for Human Rights, and today I would like to continue the conversation by speaking on the topic of climate justice, which I believe is one of the most urgent human rights issues of our time.

Essentially, climate justice lies at the nexus of climate change and human rights and seeks to focus on what impacts climate change has on the most marginalised and disenfranchised in our global community. The lens of climate justice brings what can be an abstract or abstruse phenomenon into sharp and immediate focus and illuminates the real human face of suffering and devastation wrought by climate change.

I believe that climate justice can modify our collective and individual focus from the mind-set of the developed world, which is understandably concerned with issues such as competitiveness and how climate policy might impact on short-term economic growth, to one which is more people-centred and considers the needs of communities in the least developed countries and small island developing states, as well as that of our own country.

You will all be aware that the high level of global greenhouse gas emissions is the predominant driver of climate change. Climate justice incorporates the principle of corrective justice – the idea that the wealthiest nations, who have disproportionately contributed to this stock of emissions through their use of fossil fuel resources, have a moral obligation to address the problems of those nations which have, historically, made almost no contribution to the level of these emissions. This moral obligation must be used to persuade major emitters to make deep and significant absolute reductions in greenhouse gas emissions.

This is necessary as the countries and people who are most vulnerable to climate change are those who did least to cause the problem. Let us bear in mind that the 50 least developed nations of the world account for less than 1% of greenhouse gas emissions that cause climate change. They are suffering through disruption to weather patterns, changing seasonality and impacts on subsistence agriculture. Nothing brought this reality home to me more than the visit I made to Somalia and the Horn of Africa in July. As you may recall, I was asked to go there by Concern, Trócaire and Oxfam Ireland, to draw attention to the scale of the problem. On arriving there, I was conscious that this time the

situation was so much worse. Somalia had not had a proper functioning government over the past 19 years; Al Shabab, with links to Al-Qaeda, was causing internal violence; food prices were at an all-time high, and the impacts of climate change were beginning to be felt. The Horn of Africa has just had the 8 hottest years in succession ever recorded, and there has been a prolonged severe drought in parts of Kenya and Ethiopia as well as Somalia. While we were there, two regions of Somalia were declared to be suffering from famine by the United Nations, meaning that thousands of children were dying of starvation. I felt a sense of anger and outrage that famine was being declared anywhere in the world in the 21st century. I also had a sense of foreboding – that it won't be 19 years until the next severe crisis in the Horn of Africa.

It is the recognition of the human rights dimensions of climate change that inspired me to start the Mary Robinson Foundation – Climate Justice. The Foundation articulates a vision for, *inter alia*, how climate justice can influence and shape negotiations on climate change and ultimately lead to equitable burden-sharing and greater equality through financial assistance and technology transfer. The 4<sup>th</sup> Assessment Report of the Intergovernmental Panel on Climate Change, which was published in 2007, highlights a number of basic human rights that will be severely impinged upon because of climate change. The first is the **right to water**. Water volumes stored in glaciers and snow cover are very likely to decline, reducing summer and autumn flows in regions where more than one-sixth of the world's population currently live. It is likely that drought-affected areas will increase and extreme precipitation events, which may increase in frequency and intensity, will augment flood risk.

By 2020, between 75 and 250 million people in Africa are projected to be exposed to increased water stress due to climate change, particularly in the arid

regions of sub-Saharan Africa and the rangeland systems in parts of eastern Africa. Coupled with increased demand, this will adversely affect livelihoods and increase stresses on water systems. The sad reality is that this may lead to conflict and mass displacement of people.

The second is the **right to food**. Projected changes in the frequency and severity of extreme climate events, together with increases in the risks of fire, pestilence and disease outbreak, will have significant consequences on agricultural production and increase food insecurity for smallholder and subsistence farmers as well as pastoralists. The projected relative risks attributable to climate change show an increase in malnutrition and expected trends in warming are projected to decrease the availability of crop yields in seasonally dry and tropical regions. In some countries, yields from rain-fed agriculture could be reduced by up to 50% by 2020. This will increase hunger and malnutrition and affect child growth and development, particularly in those regions that are already most vulnerable to food insecurity. Ireland has been giving leadership on issues of global hunger, and we will be challenged to do so even more over the coming years.

The third basic human right is the **right to health**. By 2030, coastal flooding is projected to result in a large increase in mortality. Globally it is estimated that an additional 220 to 400 million will be at risk of malaria. By 2085, it is estimated that the risk of dengue from climate change will increase significantly. A just published report from The Climate Institute in Australia called *“A Climate of Suffering: the Real Costs of Living with Inaction on Climate Change”* warns that: “The damage caused by a changing climate is not just physical. Recent experience shows extreme weather events also pose a

serious risk to public health, including mental health and community well-being, with serious flow on consequences for the economy and wider society”.

Finally, there is the right to **preservation of territorial boundaries**. Towards the end of the 21st century, projected sea-level rise will affect low-lying coastal areas with large populations. Deterioration in coastal conditions, for example through erosion of beaches, degradation of mangroves and coral bleaching, is expected to affect fisheries and tourism. The cost of adaptation could amount to at least 5-10% of GDP. In addition, sea-level rise is expected to exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities.

A friend of mine, Ursula Rakova, is busy making arrangements to evacuate 1,500 islanders from a small Carteret Island in the South Pacific to Bougainville, a larger island that is part of Papua New Guinea. She is a member of Climate Wise Women, speaking in the United States and Europe about the delicate process of negotiating with the communities of Bougainville for land and, just as essential, the acceptance of her people within the new community. Recently MRFCJ hosted her in Dublin, where she spoke movingly of the trauma of leaving the island where the bones of her ancestors are buried.

Thus, it is becoming increasingly apparent that climate change is not just an environmental or economic issue but also a human rights issue, which creates a concomitant moral imperative to act. This human rights dimension potentially offers an avenue of hope for those who are frustrated with the incremental process (and what sometimes appears to be glacial progress) of the United

Nations Framework Convention on Climate Change (UNFCCC) negotiations and who view climate change and the intransigence of major emitters of greenhouse gases as a violation of human rights law.

Climate change is a supra-national phenomenon that does not respect national territorial boundaries. The 1948 Universal Declaration of Human Rights carries an injunction in Article 28 that: “Everyone is entitled to a social and international order in which [their] rights and freedoms ... can be fully realized”. Arguably, climate change presents a pervasive threat to the universal enjoyment of human rights, a vision that already feels like a chimera or daydream to those in vulnerable regions. In March 2009, the UN Human Rights Council adopted Resolution 10/4, which noted the effects of climate change on the enjoyment of basic human rights, and it is continuing to assess these effects. On 13<sup>th</sup> September I will participate in Geneva at a side event of the Human Rights Council on “Climate Change and Human Rights”, co-hosted by Ireland and The Maldives.

This focus on human rights and climate justice allows for an assessment of harms to actual communities as well as procedural guarantees and process rights that have evolved within human rights law. Making this link between human rights and climate change potentially allows a plaintiff or petitioner to invoke a torts-based argument and seek redress or basic compensation from corporations or governments who refuse to act and who are seen to have violated human rights.

However, this creates a number of problems. First, it is difficult to establish causality between the harm done or tortious act and direct damage suffered. Secondly, it is difficult to establish liability and apportion damages. Thirdly, it may be difficult to establish legal standing or *locus standi*. For example, in the

case of *Friends of the Earth v. Laidlaw Environmental Services* (2000)<sup>1</sup>, the US Supreme Court has held that, to satisfy standing requirements, a plaintiff must show that it has suffered an injury in fact that is: (a) concrete and particularized and (b) is actual or imminent. This can be particularly difficult to prove in long-term cumulative environmental issues such as climate change with more diffuse or insidious impacts. This issue of standing was also raised in the more recent case of *Massachusetts v. EPA* (2007)<sup>2</sup>, which concerned the regulation of greenhouse gases, the US Supreme Court held that a plaintiff must demonstrate that the injury is caused in some respect by the entity being sued, thus emphasising the issue of causality.

The link between extra-territorial climate change and human rights was explicitly made in December 2005, when an alliance of Inuit from Canada and the United States led by Sheila Watt-Cloutier filed a petition with the Inter-American Commission of Human Rights. The petition alleged that the human rights of the plaintiffs had been infringed and were being further violated due in large part to the failure of the United States to curb its greenhouse gas emissions. The case was innovative in that it not only confronted an international tribunal with the serious human rights consequences of climate change but linked the “acts and omissions” of the US government and the suffering of particular peoples. Although it did not succeed, this case is regarded as having made a breakthrough on the broad principles involved.

However, despite the litigation possibilities afforded by viewing climate change as a human rights issue, there is still the need to secure a legally-binding agreement through the auspices of the UNFCCC. Although it may be possible

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<sup>1</sup> *Friends of the Earth v. Laidlaw Environmental Services* 528 U.S. 167 (2000)

<sup>2</sup> *Massachusetts v. EPA*, 549 U.S. 127, S.Ct. 1438 (2007)

to achieve political agreement on certain issues, these are at the behest of the incumbent governments and may fluctuate in political priority.

A legally-binding agreement would ensure that richer nations provide adequate financial and technical support to enable the poorest countries to adapt to climate change and embrace low-carbon development. Furthermore, a legally-binding agreement would provide assurances for Parties to the UNFCCC that commitments to reduce greenhouse gas emissions will be met and would demonstrate symbolic value, particularly for developing countries and nations that are vulnerable to climate change, that there is a deeply-embedded international resolve to tackle the issue. Put simply, without a legally-binding international agreement, there is no obligation to act.

However, it is becoming increasingly unlikely that a legally-binding agreement will occur prior to the expiration of the first Kyoto Protocol commitment period in December 2012. This creates an acute sense of urgency in the run-in to COP-17 in Durban this December as well as the Rio+20 discussions in June next year.

The issue is technical, but the IIEA is a good forum at which to discuss it. At present, we have a situation where the first commitment period of the Kyoto Protocol is set to expire on the 31<sup>st</sup> December 2012. Although the Protocol is imperfect, not least because the US has not ratified it and the original emission reductions were not ambitious enough, the Protocol represents the only legally-binding international commitment to reduce greenhouse gas emissions. Without Kyoto, there is no legal imperative to reduce emissions and commitments will be limited to non-legally binding pledges.



We know that, for a subsequent commitment period to begin on the 1<sup>st</sup> January 2013, amendments to the Protocol must enter into force on or before that date. An amendment will enter into force 90 days after the date of receipt by the depository of an instrument of acceptance from three-quarters of the parties to the Protocol, once they complete their domestic ratification processes and deposit their acceptance of amendments by the 3<sup>rd</sup> October 2012. Thus, in order to amend the Protocol, changes would have to be made in Durban this December to allow for the required 6 month notification period, pursuant to Articles 20 and 21 of the Kyoto Protocol, before changes could be adopted at COP-18 in December 2012. Thus, a gap in commitment periods appears to be a real possibility. In the short- to medium-term, a gap in commitment periods would not directly affect the application of the Kyoto Protocol. The Conference of the Parties to the Convention and the Meeting of the Parties to the Protocol could continue to carry out their functions and decide on subsequent commitments at a later point in time. However, there would be no directly applicable emission reduction targets, which could jeopardise the validity of the reporting processes and flexible mechanisms,

If Parties do not reach an agreement on Kyoto in Durban, the only real hope for avoiding a gap between commitment periods is to make a provisional amendment to the Protocol, as provided for under Article 25 of the 1969 Vienna Convention on the Law of Treaties. An extension of the existing commitment period could also be provisionally applied before the end of 2012.

Discussions on what would happen with Kyoto after 2012 have been on-going, particularly since 2005, when the Parties established an Ad-Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol

(AWG-KP), pursuant to Article 3.9 of the Protocol, to consider Annex I commitments for the period beyond 2012.

In addition, the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) was initiated under the 2007 Bali Action Plan with the mandate of deciding upon on ‘agreed outcome’ on LCA and enhancing implementation of the UNFCCC.

This second discussion track, or LCA track, made progress but did not deliver the much hoped for and hyped legally-binding agreement at COP-15 in Copenhagen in 2009. However, the Cancún Agreements of 2010, which were the outcome of COP-16, do signal a desire to keep working under the LCA track with a legally-binding agreement still the objective. If the Kyoto Protocol is extended beyond 2012, then Parties of the UNFCCC will likely require strong assurances or guarantees that the LCA track will set a timeline for agreement on an effective outcome.

A number of legal form options have been promulgated for beyond the end of the first commitment period in 2012. The business as usual option is to continue the Kyoto Protocol with current Annex I parties agreeing to a second round of targets for the post-2012 period, as favoured by the G-77 and China. In addition, it may be possible for Parties to the Protocol to continue to apply the core principles and mechanisms of the Kyoto Protocol for a period of time or until a single legal agreement is adopted for ratification under the LCA track. This option may potentially be pursued by the EU, subject to progress under the LCA track.

Alternatively, Parties may decide to adopt a single new agreement to replace the Kyoto Protocol, which includes developed and developing countries, as favoured by Japan, Canada and Russia. The Alliance of Small Island States favours a single new agreement, which supplements the Kyoto Protocol.

There is of course also the option of a more bottom-up, incremental, ‘building-blocks’ approach based on ‘pledge and review’, while the US has advocated the introduction of an implementing agreement, which could co-exist with a legally-binding agreement and is similar to a Protocol. Finally, it may be possible to agree on political cooperation through COP decisions or Ministerial Declarations.

I do not propose at this stage to discuss the strengths or weaknesses of the various legal form options save to say that the objective must be to achieve an agreement that is above all effective, equitable and ambitious.

Notwithstanding that, and without wishing to pre-empt any agreements on legal form, a desirable outcome is likely to be a legally-binding agreement that:

- Resolves the twin-track discussion issue and ultimately seeks to streamline the parallel discussions;
- Sets the conditions necessary to engage all the major greenhouse gas emitters;
- Balances principles of symmetry for developed countries and common but differentiated responsibilities for developing countries;
- Sets top-down emission targets that are equitable and cumulatively ensure a stabilisation of greenhouse gas emissions at the 2 degrees Celsius “guardrail”;
- Contains the necessary means of implementation for mitigation *and* adaptation such as technology, finance, capacity and access to market-based instruments; and

- Includes mechanisms to ensure monitoring, reporting and verification (MRV) and compliance.

Looking ahead to Durban, it is clear that one of the major priorities for COP-17 should be to make progress in addressing the legal form for the next phase of the international climate regime. Of more immediate focus, perhaps, might also be an agreement on a transitional arrangement to bridge the increasingly unavoidable gap between the end of the first commitment period under the Kyoto Protocol and a new agreement. Furthermore, it is important that progress is made on the modalities and procedures for MRV for developed countries.

There is an important role for the EU in making progress on these matters at COP-17 and post-Durban. It is my fervent hope that the EU and Ireland, not least through its Presidency of the Council in 2013, continue to play a constructive role in discussions on climate change and that the EU offers the type of leadership in this area that the global community has come to expect.

Furthermore, I believe that the traditions in Ireland of charity and *meitheal* can be mobilised to assist those who are less fortunate and who are suffering already as a result of food and water shortages, which are exacerbated by the acute pressures of climate change. Given our history, suffering the effects of famine, a developed country without colonial baggage and our genuine commitment to development issues, Ireland is uniquely positioned to play a valuable role as a bridge between the EU and the developing world – and Africa in particular.

The Cancún agreements demonstrate that the UNFCCC process is not moribund and in fact has generated a renewed sense of momentum in the run up to

Durban. However, the time for prevarication is over. We need a legally-binding agreement, which is robust, ambitious, efficient and, above all else, effective.

MRFCJ is working to encourage and facilitate on-going discussion on climate justice and the legal form of the international climate change discussions to ensure that at all times the needs of the most vulnerable are considered and given priority. Now is the time to resolve outstanding issues and build consensus on legal form so that the global economy might evolve along a more sustainable and low-carbon trajectory.

As Al Gore has put it trenchantly in a recent article in Rolling Stone: “The truth is this: what we are doing is functionally insane. If we do not change this pattern, we will condemn our children and all future generations to struggle with ecological curses for many millennia to come.” To me, “ecological curses” translate into serious threats to all human rights. Hence the urgency of acting now, and acting decisively.

Thank you.