

Dahrendorf Symposium, Berlin 14 Nov 2013

Social and Legal Aspects of Climate Change

By Mary Robinson

CHECK AGAINST DELIVERY

This symposium is taking place under the shadow of the havoc wreaked on the Philippines by super typhoon Hayian – a portent of tragedies to come.

I welcome its timely attention on “Changing the European Debate: Focus on Climate Change”. We need to change the debate on climate change – to move beyond its construct as a scientific or environmental problem and to realise that it is in essence an issue of development and of rights – an issue of importance to people now and in the future – a phenomenon that will shape our societies in the coming years and decades.

For too long climate change has been left to scientists – and they to their credit have given us the evidence we need that climate change is happening and that it is caused by human activity. Climate change is a problem caused by people, with impacts on people, and must be solved by people. The impacts are as much social as physical, and the solutions as much legal as technical. Hence the title of the working group under which we are convened - the social and legal aspects of climate change.

It is the impacts of climate change on people and societies that first drew me to the subject. I saw first-hand the impacts of extreme weather events and unpredictable seasons and rainfall on livelihoods and lives in communities already struggling to survive. These impacts were affecting the human rights I spent so much of my life upholding and protecting. What I saw was an injustice – the negative impacts of a warming climate being felt most acutely by those who contributed least to the cause of the problem. Over and over again I heard local people say what my friend Constance Okellet said of the impacts on her village in Northern Uganda – “this is outside our experience”.

The injustice spreads beyond those currently affected by climate impacts, to the future generations who will inherit a warmer and less stable planet, home to 9 billion plus people, with resource scarcity and human security undermined by climate change. Professor Henry Shue will speak eloquently of the moral dilemma facing decision makers today, as they balance the needs of current generations with the needs of those without a voice at the table, the generations to come.

This injustice lights a passion in me, and in the other members of the High Level Advisory Committee of the Climate Justice Dialogue, a global initiative building momentum for a robust and fair climate agreement in 2015. This group of leaders published a Declaration on Climate Justice (see full text at www.climatejusticedialogue.org) this September in the margins of the UN General Assembly, which calls for transformative leadership and an emphasis on the rule of law in delivering climate justice.

I would like to focus in on these two themes as they address both the legal and social aspects of the actions needed to avoid what is potentially the greatest threat to human rights in the 21st century.

The Rule of Law:

The rule of law is critical to the achievement of climate justice. An international legally binding climate agreement is an important step in protecting the most vulnerable by reducing greenhouse gas emissions in advanced economies and avoiding dangerous climate change. A legally binding agreement would also 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.

Without a legally binding international agreement, there is no obligation to act. The rule of law – applied at the international level and translated into national policies and actions - is a key tool in delivering justice. It ensures commitment and accountability, and provides a framework for ensuring transparency and equitable action. A legally binding agreement would include measures for holding the international community and individual states, to account for their actions. Nothing short of a new international treaty can provide this level of commitment and certainty.

It is becoming increasingly evident that a Kyoto style protocol is not a likely outcome of the ongoing climate negotiations. Nevertheless it is critical to maintain the strong legal character of the instrument to be agreed in 2015 and to enter into force by 2020. Under the Durban Platform for Enhanced Action the

consensus is to “develop a protocol, another legal instrument or an agreed outcome with legal force under a Convention..... applicable to all parties.....”. It is vital to adhere to this Rule of Law approach and strive for an international climate change instrument with a strong legal character, firm commitments and a robust compliance and enforcement mechanism.

Ultimately legal character is an expression of or an extension of political will: “..... the binding character of an agreement under international law is an expression of the highest level of political will of all parties to achieve common objectives.....”¹ There is evidence from the operation of other Multilateral Environmental Agreements that legal form and strong compliance mechanisms, are more effective than voluntary political commitments.

In the Declaration on Climate Justice we stressed that ‘international and national legal processes and systems will need to evolve and be used more imaginatively to ensure accountability and justice.’ While we work towards a new climate agreement we need to look in parallel at the role other legal instruments can play – from the fields of human rights and refugee law to trade and corporate law. Climate change is not just a climate issue; it is a development issue, an economic issue, a rights issue and a legal issue. This means that our approach to finding a legal and just solution needs to be informed by all relevant aspects of law at national, regional and international level. I am encouraged by efforts to apply learning from the field of transitional justice to addressing the unavoidable impacts of climate change – referred to as loss and damage. It is this kind of creative thinking and learning across legal disciplines, that will inform a robust legal response to the climate challenge.

¹ Mehling, M., *Enforcing compliance in an evolving climate regime* in “*Promoting Compliance in an Evolving Climate Regime*” (Brunnée, Doelle and Rajamani, Eds), Cambridge University Press (2012).

Transformative leadership:

Lord Ralf Dahrendorf, whom I had the pleasure of knowing and working with in the past, warned against taking seemingly comfortable policy frames and political positions for granted. He urged academics to question the status quo and to challenge the political Zeitgeist. Never has this approach been more critical. Business as usual will not deliver climate justice, nor will it deliver sustainable development or inclusive societies. To move away from business as usual requires brave, enlightened and above all, transformative leadership.

This leadership is needed at all levels – from the grassroots farmers like Muluaem Brhane (whom I met in October in Addis) from the Amhara region in Ethiopia, are finding solutions to cope with increasingly unpredictable rainfall patters, while building the capacity of their community and giving leadership at district level – to the highest political level where increasingly leaders like President Joyce Banda from Malawi and the UN Secretary General Ban Ki Moon are recognising the need for climate justice.

Climate change affects us all – but not equally. Solving the problem will take a global effort and this global effort can yield rewards. At the conference I attended in Addis Ababa in October, the theme was *Africa on the Rise* and it posed the question ‘Can the Opportunities from Climate Change Spring the Continent to Transformative Development?’ The discussions centred on the challenge of lifting people out of poverty, creating jobs and generating economic growth in a way that meets not just the short term needs of current generations but also paves the way for a sustainable and secure future for Africa’s young population and the generations to come.

We need visionary leaders to drive the societal change required to make the leap from business as usual powered by fossil fuels to a new model of low carbon, climate resilient development with people at the centre. I think much of this leadership will come from developing countries, where the possibility of investing now - and for the first time - in the infrastructure needed to enable this transition is an attractive alternative to the expensive retro-fitting of infrastructure that will dominate in industrialised countries. But to be successful, and at the scale needed to be transformative, African leaders and investors will need the support of the private sector and international financial institutions to implement these ambitious plans. They will also need an international climate agreement which clarifies and ensures the delivery of ambitious commitments by industrialised countries – in keeping with their responsibilities.

As part of global collective action, emphasis will need to be placed on the role of diverse ‘coalitions of the working’ that are already emerging at the community, local, city, corporate and country levels, and the vital role they will play in mobilizing action. A global solution is not just an issue for decision makers working at the international level. The solutions that will fuel the changes we need are coming from entrepreneurs, small scale farmers, researchers, scientists, town planners, women, young people and those who hold indigenous knowledge. Coalitions of mayors, alliances of business leaders and women groups will play a vital role in demonstrating what can be done and inspiring the political leadership needed to deliver the political will to avoid dangerous climate change and ensure climate justice.

The phrase ringing in my ears come from the famous ‘I Have A Dream’ speech of Martin Luther King Junior, delivered 50 years ago this year; “The fierce urgency of now”.

Thank you