



In this issue

**A lawyer's role
in the climate
change debate**

Human rights and climate
change

The call for an International
Court for the Environment

The Green Climate Fund: open
for investment?

Creating a carbon cycle: pro
bono lawyers assist

editorial



A very warm welcome to the second edition of our new quarterly newsletter!

I am delighted to say that the new format of a themed approach to the newsletter has been well received as we have had many positive comments on our first edition on 'Responsible Business'.

This second edition focuses on a topic impossible to ignore and one which requires careful reflection: climate change.

The statistics for climate change are alarming. It is predicted that billions of people, especially those in developing countries will face drought, famine and greater risks to health and life as a result of climate change. Immediate action is required to enable developing countries to adapt to its effects both now as well as in the future.

While climate change is not explicitly included in the Millennium Development Goals it clearly forms part of MDG 7, to "Ensure environmental sustainability", and is therefore a development issue. From health to gender equality, countries failing to meet their MDG targets will be further hindered by the effects of a changing climate. Increasing water shortages will have a direct effect on gender equality: forcing women and girls to travel longer distances to access water, impacting on their security, limiting their opportunity for education and employment, and increasing their marginalisation. Even minor changes in temperature could increase the spread of disease from one region to another, affecting those living in extreme poverty the hardest. These impacts alone, not to mention the obvious consequences climate change will have on food security, highlight the exacerbating effects climate change has on development goals.

Although the impact of climate change can be felt in the developed and developing world alike, the particular vulnerability of low income countries, due to both geographic position and the lack of structures and policies to cope with climatic changes, must be recognised.

The trans-boundary nature of climate change means the greenhouse gas emissions of one country have the potential to harm countries on the other side of the world. Tackling climate change is therefore not only about supporting developing countries, but also about ensuring that there is an urgent reduction in global greenhouse gas emissions. The role of law and regulation is pervasive in the efforts to tackle climate change, and lawyers will play a role in advising on policy incentives to mitigate greenhouse gas emissions.

The challenge of climate change is testing our current legal institutions. With issues pertaining to climate change and human rights perhaps falling outside the remit of international environmental law, how can the international courts ensure that justice frameworks have the capacity to fulfil the promise of human rights? Is it now time to establish a specific court to determine matters relating to international environmental law?

In this newsletter we address these questions, exploring what legal developments can be made to better support vulnerable countries adapt and, importantly, considering how climate change activities are to be financed. A4ID firmly believes that the law should be used more effectively to eradicate global poverty. Climate change adds a new dimension to and increases pressure on the international development agenda; its urgency provides the opportunity to ensure legally binding commitments are made both to prevent further harm and to underpin environmentally sustainable development.

Pro bono is a key tool for tackling climate change. By engaging in pro bono, lawyers are helping development organisations make full use of the law. Whether to encourage investment or as a basis for advocacy, pro bono ensures they can continue to run effectively, even with the added pressure that climate change may have on their operations and their work in ensuring environmental sustainability.

Yasmin Batliwala

Chief Executive, A4ID
yasmin.batliwala@a4id.org

A4ID at a glance

45

legal partners committed to using law to support international development

39,000

lawyers from Europe, US, Africa, Middle East and Australasia

More than

440

development organisations and social enterprises able to access free legal advice

1,131

projects circulated to our legal network

Projects have impacted on

114

countries

Free legal advice worth more than

£24 million

provided to those furthering the aims of the Millennium Development Goals

A growing group of legal and development professionals, keen to explore how they can work together to combat global poverty

A4ID would like to thank our all our contributors for their assistance in producing content for this newsletter.

Cover image: Women searched for drinking water after cyclone Aila hits by Oxfam International. Image protected under a Creative Commons licence.

A matter of justice: a lawyer's role in the climate change debate

Nick Flynn

Can lawyers do better than scientists at persuading the public of the importance of climate change? This question was put to me recently by a respected climatologist. A concern that science is typically ignored or distorted led him to wonder if a different perspective is required.

He was not suggesting that lawyers should predict the impact of rising greenhouse gas emissions. That task will still fall to the scientists. But if a new approach to framing the issue is genuinely needed, how might lawyers make an effective contribution?

Society addresses difficult problems through its laws and whole forests have been felled to publish the rules on climate change. The fairness of those rules is a fundamental issue and lawyers have a key role in drafting, upholding and explaining them. The public may not be interested in gigatonnes per annum of carbon, but an interest in fairness is widespread.

To put fairness in context, Kofi Annan's Global Humanitarian Fund reported in 2009 that global warming was already causing 300,000 deaths and \$125 billion of economic loss per year.¹ 99% of those deaths and 90% of the losses occurred in developing countries. The victims who suffer the greatest harm from drought and flooding are, therefore, those least able to cope. They are also least responsible for emissions of greenhouse gases. And yet they struggle to be heard at the United Nations, where negotiations for another new treaty to apportion responsibility for climate change have recently restarted.

Climate change is then a justice issue that demands lawyers' immediate attention, not just a hypothetical problem for a distant future. International rules on emissions cuts, climate change finance and the attribution of responsibility are being decided today, which will have a huge impact on the lives of billions of people for decades to come.



Dry and dusty Wajir district, north eastern Kenya © Jaspreet Kindra/IRIN

Some are suspicious of such claims. They doubt the IPCC's conclusion that evidence for global warming is 'unequivocal' and that the cause is 'very likely' to be human activity.² They doubt Lord Stern's description of climate change as the greatest and widest-ranging market failure ever seen.³ Lawyers, with their appetite for argument should, of course, respect differences of opinion.

They will also, however, be interested in the background detail. The greenhouse gas effect has been accepted science for well over a century. It keeps the planet warm enough for life. What the scientists debate is the probable consequences of rising emissions; the relative likelihood of a range of temperature rises and their likely effects. This debate is in many respects about the balancing of probabilities and what is reasonably foreseeable, a concept familiar to every lawyer and law student.

It is fair to say that a broad consensus among mainstream scientists already exists which gives us an unprecedented, evidence-based warning about the reasonably foreseeable consequences of continued fossil fuel dependency. We can see the impact on the world's poorest people right now and

issues of both moral and legal negligence may await if we ignore it. Lawyers wanting to present this as an issue of justice will find many groups and organisations to support them: among them A4ID, with its Climate Change Knowledge Group examining both the law and the science; the Legal Response Initiative,⁴ supporting developing countries in the UNFCCC talks; and the ICE Coalition,⁵ a non-profit promoting an international environmental court. The debate about climate change will always be deeply rooted in hard science, and lawyers are well positioned to highlight the issues of justice and fairness which result from that fact. •

Nick Flynn is an environmental lawyer at international firm Weil, Gotshal & Manges LLP where he is head of the firm's London pro bono programme. Nick sits on A4ID's Board of Trustees. He is founder and chairman of the Legal Response Initiative, a charity providing legal support to developing countries participating in the UN climate change negotiation, and a director of the ICE Coalition.

¹ Global Humanitarian Forum 2009 Human Impact Report: Climate Change: <http://www.ghf-ge.org/human-impact-report.pdf>

² Intergovernmental Panel on Climate Change 2007 Fourth Assessment Report http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report.htm

³ The 2006 Stern Review on the Economic of Climate Change http://web.archive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/sternreview_index.htm

⁴ <http://www.legalresponseinitiative.org>

⁵ <http://icecoalition.com>

interview

Climate change adaptation: why the urgency?



Linda Siegele

Linda Siegele has provided legal advice and support to small island developing states (SIDS) and other developing countries in the global climate change negotiations since 2005, first as a lawyer at the Foundation for International Environmental Law and Development (FIELD) and currently in an independent capacity. Linda has recently joined the Legal Research Initiative's network of advisors.

You attended the Bangkok Climate Change Conference in August, could you summarise the purpose of the conference and explain your role?

The main purpose of the conference was to give several of the negotiating streams additional time to work on outcomes for Doha. The mandate of key working groups formed under both the UNFCCC and the Kyoto Protocol end in 2012 and there is still work to be done to fulfil them.

As a specialist on adaptation issues, my primary focus at the Bangkok meeting was on the process of the UN Ad-Hoc Working Group on Long-term Cooperative Action. Parties must be comfortable that the elements of the Bali mandate have been fulfilled or at the very least that any continuing work is being carried out by other bodies under the Convention. There are differing views on this, mostly split along developing /developed country lines.

In addition, the Asia regional meeting under the work programme on loss and damage was held in advance of the Bangkok session. I have been involved in the work programme since its inception. The Association of Small Island States (AOSIS) is calling for the establishment of an international mechanism on loss and damage to the adverse effects of climate change in Doha.

The first regional expert meeting of the work programme on loss and damage, focussing on Africa, took place in Addis Ababa in July this year. What approaches were proposed to reduce loss and damage?

The meeting looked at loss and damage from a distinctly African perspective. As someone with expertise in climate change impacts in SIDS, I was pleased to have the opportunity of viewing loss and damage issues through an African lens. Mozambique's response to flood damage exacerbated by

tropical cyclones is one example where SIDS could benefit from lessons learned.

One of the concerns I have after the African meeting is how easy it is to slip into discussing traditional approaches to disaster risk management. The loss and damage we are addressing under the work programme is the result of human-induced climate change. The Intergovernmental Panel on Climate Change's Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation states that: "...a changing climate leads to changes in the frequency, intensity, spatial extent, duration, and timing of extreme weather and climate events..."

Therefore, it is imperative that we, in exploring and developing approaches to address loss and damage to this changing climate, factor in the additional burden created by it.

What particular concerns were voiced by the small island developing states?

SIDS (negotiating as AOSIS) are very much involved in both mitigation and adaptation issues in the negotiating process. Agreement to a post-2012 commitment period under the Kyoto Protocol that is effective immediately is a high priority. Climate finance is another key issue, especially in the area of adaptation financing. Ensuring that climate change negotiations lead to a legally binding protocol or agreement is perhaps the long-term aim of highest priority to AOSIS.

In the face of the recent alarming predictions on the speed with which sea level rise will occur, the absence of a mechanism under the UNFCCC process to comprehensively address the loss and damage to the world's most vulnerable developing countries from human-induced climate change is a gaping hole in the international climate change regime.

Small island developing states face the direct threat of sea level rises. What are some of the approaches being taken by small island developing states to manage or address this risk?

There are a number of approaches being taken by SIDS at the national level. Example activities include: mainstreaming disaster risk management and climate change adaptation planning into sustainable development

plans, investing in hard technologies such as sea walls and considering future migration policies.

In view of your background, what legal developments do you think could be made to better support developing countries and small island states and their inhabitants cope with climatic changes and ensure sustainable development?

First, a legally binding agreement to keep global temperature rise to a maximum of 1.5C degrees.

Second, international commitments to finance the costs associated with addressing climate change impacts in the long term with

"...a holistic approach is needed, bringing together tools to address adaptation, financial risk management and risk transfer, and loss and damage in a single mechanism that can comprehensively minimise and address the impacts of climate change."

sources of financing being based on ability to pay and responsibility to pay.

Third, an international approach to address large-scale migration resulting from human-induced climate change.

Discussions have begun on what development goals should be included in the post-MDG (2015) international development agenda. How could climate change be incorporated into international efforts to reduce global poverty?

The adverse effects of climate change are an additional burden to particularly vulnerable countries in their efforts to develop sustainably. Future global development goals with the aim of reducing global poverty therefore must take this additional burden into account. Effective global goals must be far more than mere statements of political intent. •

Human rights and climate change

Dr Stephen Humphreys

This article, based on a presentation by Dr Stephen Humphreys to the A4ID Climate Change Knowledge Group, considers the human rights dimension to climate change.

The relevance of human rights in the context of climate change has been largely ignored, until recently. The glaring increase in communities affected by extreme weather conditions, as well as a more chronic, pervasive, unpredictable climate, have bolstered an increase in the acknowledgment of the potential violation of human rights arising from escalating changes in the climate.

The universality of human rights

The 1948 Universal Declaration of Human Rights promises a world in which "human beings shall enjoy freedom from fear and want", and where "everyone is entitled to a social and international order".¹ Under the International Covenant on Civil and Political Rights, "in no case may a people be deprived of its own means of subsistence";² and the International Covenant on Economic, Social and Cultural Rights states that everyone has the right to an 'adequate standard of living and to the continuous improvement of living conditions'.³ These promises remain unfulfilled. With one billion people in the world suffering from hunger⁴ - just one statistic among many that is expected to deteriorate - the under-fulfilment of human rights can only be exacerbated by the effects of climate change on an already wanting world.

Seeking justice

Dr Stephen Humphreys argues, "If some or all of the justice claims already acknowledged within the climate regime can be refined and successfully channelled through human rights [...] both disciplines will be enriched and many individuals stand to benefit."⁵

At least four justice claims can be raised in the context of climate change: corrective justice; substantive justice; procedural justice; and formal justice.

A corrective justice claim can be made where the harm results from activities that directly cause climate change. Such claims usually result in the harmful activity being



Women in Bangladesh heading for the nearby flood shelter established by the government. © Shamsuddin Ahmed/IRIN

suspended and/or in compensation being given to those harmed.

Substantive justice claims arise where regulatory changes impact on a country's development. For example, implementing a cap on carbon emissions would restrict the economic progress of a developing country thereby entitling the country to a substantive justice claim.

Allowing all countries to participate in climate change negotiations should negate the need for procedural justice claims. Under the United Nations Framework Convention on Climate Change framework the Conferences of the Parties meet annually to assess progress in dealing with climate change. At meetings, concerns of all stakeholders should be fairly heard, and decision making in matters relating to climate change subject to agreement by all those affected and who wish to be represented.

Formal justice claims view climate change in terms of existing entitlements; livelihoods dependent on carbon-intense economies have a previously recognised right, giving the polluter paradoxical power in shaping negotiations.

Despite access to justice responses, there remain barriers to addressing human rights violations in climate change litigation. At present the impact of climate change and the extent to which individuals and communities might be harmed is difficult to define. With broad, brushstroke statistics such as the estimation of 220 million to 400 million people more at risk of malaria,⁶ identifying the magnitude of climate change harm proves problematic.

Another significant complication in enforcing human rights litigation is the

impact of extraterritoriality. Climate change is international, uncontainable, and largely untraceable in terms of identifying and placing responsibility for harm, and the question remains as to the extent a state can be held responsible for actions effected within its jurisdiction that have impact on another state. Whilst progress has been made, it is still far from clear how state responsibility can be determined, and the search for an international forum in which to demand climate change justice stands.

Currently any human rights and climate change related disputes are referred to the United Nations Framework Convention on Climate Change; states then opt to submit their dispute either to the International Court of Justice or an arbitrational panel must be established. Compulsory jurisdiction to these fora is enforced only over those states that have accepted the jurisdiction of the court and there consequently remains a need for this landscape of litigation to change.

The promise of human rights is universal and the impact of climate change global. The exacerbating impact of climate change on the under-fulfilment of human rights must be addressed, and the application of human rights tools in the context of climate change harm realised. •

Dr Stephen Humphreys is a Lecturer in International Law at the London School of Economics and author of 'Human Rights and Climate Change' (Cambridge University Press, 2009).

A recording of the presentation can be downloaded from our online Resource Centre at: <http://a4id.org/resources>

¹ Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml>

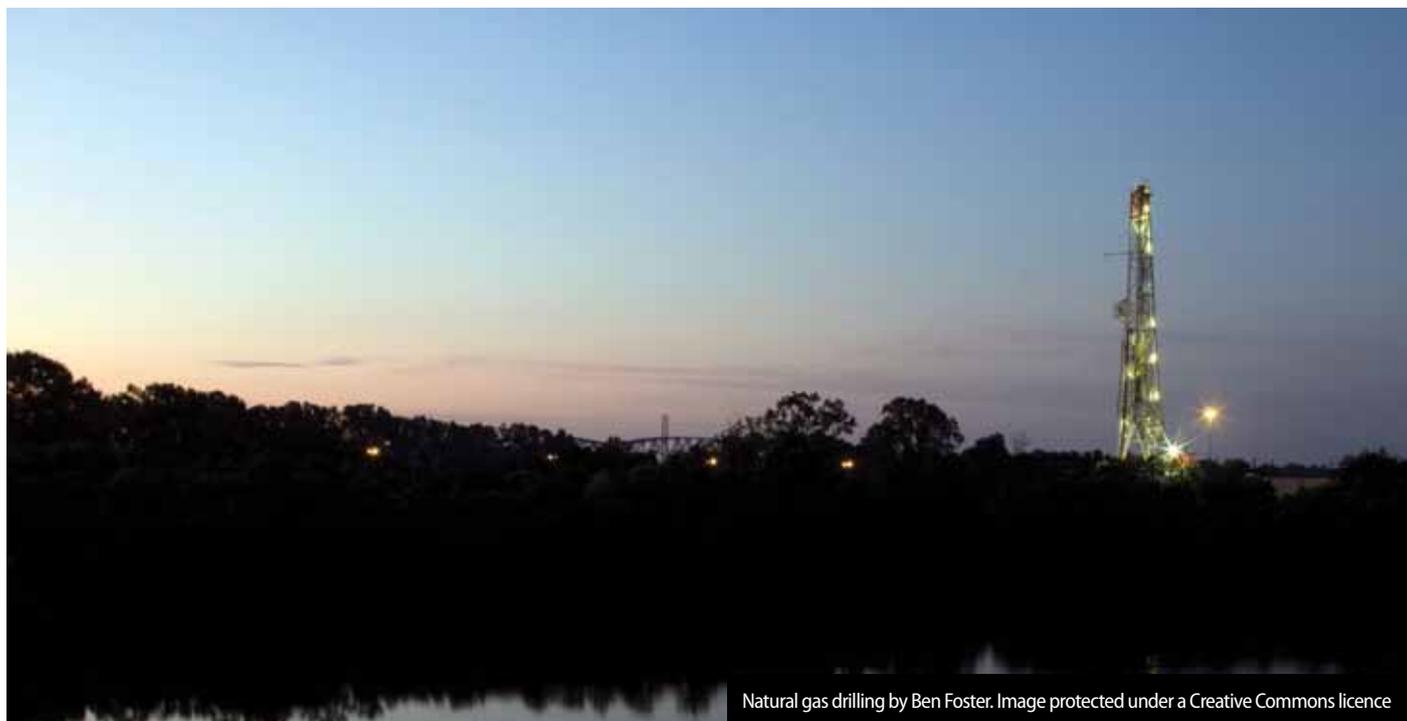
² International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm>

³ International Covenant on Economic, Social and Cultural Rights <http://www2.ohchr.org/english/law/cescr.htm>

⁴ World hunger and poverty facts and statistics <http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm>

⁵ Humphreys, Stephen, 2008. 'Climate Change and Human Rights: A Rough Guide.' Switzerland: International Council on Human Rights Policy, page 59.

⁶ Oxfam International: <http://www.oxfam.org/sites/www.oxfam.org/files/bp117-climate-wrongs-human-rights-summary-0809.pdf>



Natural gas drilling by Ben Foster. Image protected under a Creative Commons licence

case study

A4ID assists WWF-UK with research on Shale Gas exploration

Shale gas is being increasingly used as a source of natural gas. Currently used largely in the US, interest is now spreading to the UK, China and other parts of the world.

Formed in the gaps between shale formations, hydraulic fracturing ('fracking') is used to catalyse shale gas production for commercial use. However, with evidence of contamination of a significant carbon footprint, as well as concerns over seismic terrors caused by fracking, these profit-driven efforts are well deserving of debate. Many argue that finance and research should be invested into more sustainable alternatives, rather than another non-renewable resource; most agree that more evidence needs to be found before shale gas exploration goes any further ahead.

The World Wildlife Fund UK (WWF-UK) has fought for a suspension of any development in shale gas exploration due to concerns over water contamination attributed to shale gas drilling. They continue to push for this in light of the more recent findings of the effects of shale gas on the environment: WWF-UK approached

A4ID with a request for pro bono assistance in researching the laws relevant to shale gas exploration, including a detailed summary of the environmental assessment procedures required, a consideration of the relevant UK and European environmental legislation surrounding this area, and research into

opportunities for public participation or challenge where shale gas developments were permitted.

This research is to form the basis of an advocacy strategy on how WWF-UK can best engage on this issue in the UK. Having a thorough understanding of the legal framework and regulatory gaps in the law has enabled WWF-UK to decide the specific direction of campaigning and lobbying in this area.

The report has also proven impactful for the organisation internally, building their capacity and encouraging them toward their fulfilment of Millennium Development Goal 7: ensuring environmental sustainability. •



Much was flattened after the tsunami hit Meulaboh, Aceh. © Jefri Aries/IRIN

The call for an International Court for the Environment

Stephen Hockman QC and
Stuart A Bruce

The Intergovernmental Panel on Climate Change has determined it unequivocal that global warming is occurring, and it very likely that human activity has contributed to, and continues to exacerbate, climate change.

Despite considerable political dialogue over two decades, and billions of dollars spent on mitigation and adaptation, there remains no international judicial or arbitral body with general environmental competence to hear, determine and advise on disputes arising from the climate change regime, including those contributing to the abovementioned problems. While the Compliance Committee was established under the Marrakesh Accords to facilitate and enforce domestic implementation of Kyoto Protocol obligations, its competence and powers are circumscribed. The work of these committees could readily be subsumed within the remit of an International Court for the Environment (ICE), which could settle environmental disputes, provide access to justice, and galvanise environmental governance.

Environmental dispute resolution

International mechanisms to address and resolve disputes arising from international environmental obligations are notoriously underdeveloped. In fact, debate over the nomenclature of “breach” or “non-compliance” of obligations continues. It is because of the dynamic and political nature of environmental matters, that certain innovative non-compliance and dispute settlement procedures have been developed, such as those of the Montreal Protocol. However, such mechanisms are specific to a particular environmental treaty and may even contribute to dispute settlement fragmentation.

Regrettably, few avenues exist for cross-pollination and concerted, harmonised development of international environmental law jurisprudence. This is one reason why it is important that a dedicated international environmental judicial or arbitral institution be



Ice Calving from Glacier by Alan Vernon. Image protected under a Creative Commons licence

established. Another is that existing dispute resolution bodies are inadequately equipped to receive, interpret and manage scientific and environmental evidence. This may lead to a disconnection between legal decision-making and its practical impacts. For example, a lawyer and scientist may have differing views on the meaning of “precaution” as it applies to the climate change regime.

Should an institution like an ICE exist, which may commence as an informal arbitral tribunal, it could independently and impartially make decisions by judges, arbitrators and experts who understand the interface between science and law. This is surely an imperative for advancing climate change jurisprudence. Indeed, international judicial assistance has recently been sought through an Advisory Opinion on climate change from the International Court of Justice. This opinion will come from the ICJ’s general chamber, not its environmental chamber, which was disbanded for lack of use by states.

Access to justice

An ongoing impediment to effective environmental dispute resolution is a lack of standing in courts for non-state actors. This class of actors includes individuals (both natural and legal), communities and non-governmental organisations. Because international law has historically governed the legal relations between states, it has provided few avenues of redress for individuals harmed by state or state sanctioned activities. However, this has slowly changed over time, especially as protection of human and economic rights has gained prominence. Unfortunately, such evolution is less apparent in relation to harm caused by climate change and environmental degradation.

Access to justice, to a remedy, and to participation in environmental decision-making remains underdeveloped at the international level. This is particularly problematic because it is often those who are

most affected by climate change, such as the poor, that are without an international voice or remedy. While the Aarhus Convention does seek to improve access to justice, it is limited by its geographical scope of application. An ICE, however, could have global application and would allow any aggrieved person the right to bring a complaint, much like in domestic courts.

International environmental governance

The idea of an ICE is not new. Indeed support for such a body has ebbed and flowed in recent history. As international awareness and understanding of climate change increases, so does the need for more effective national and international environmental dispute settlement systems. This was tacitly highlighted at the 2012 United Nations Conference on Sustainable Development, and expressly endorsed by the 2012 World Congress on Justice, Governance and Law for Environmental Sustainability. Accordingly, an ICE can provide a crucial piece of the international environmental governance puzzle. There is no legal obstacle to its coming into existence, only political. The time is ripe for its arrival. •

Stephen Hockman QC is Joint Head of Chambers at 6 Pump Court and a former Chairman of the Bar. The focus of his practice is regulatory, environmental and health and safety law. He is also the chairman of the ICE Coalition. See www.icecoalition.com.

Stuart A Bruce is an international lawyer with a Master of Laws (International Law) from University College London. He previously practised as a commercial litigation solicitor in Australia and is a member of the ICE Coalition Steering Committee.

case study

Creating a carbon cycle

At present, human activity sends ten billion tons of carbon into the atmosphere every year. With the planet able to absorb only half that amount, action needs to be taken to slow the impact this has on our ever-weakening world. Whilst the reduction of carbon emissions is an obvious response, the likelihood of our modern society significantly reducing the extreme excess created by our lifestyles is increasingly remote.

The Ecological Sequestration Trust (EST) seek to adopt a closed-loop system, whereby every output is also an input; the mirror of natural ecology.

By implementing projects that sequester carbon from energy production, using it to replace the use of fertiliser in soils, they hope to turn the waste carbon from our power stations into a useful resource, restoring the world's ecosystem.

The Trust's five year project plan aims to achieve some ambitious objectives, including the development of a land-use computer model and new technologies, as well as the production of teaching materials to be disseminated from the demonstration programmes. They are looking to partner with patrons who will provide not only funding but also the expertise needed from their various sectors to fully realise these goals.

Having recently secured funding from its first patron for their work, the Trust needed to formalise the relationship they have with



Pollution by Ribarnica. Image protected under a Creative Commons licence

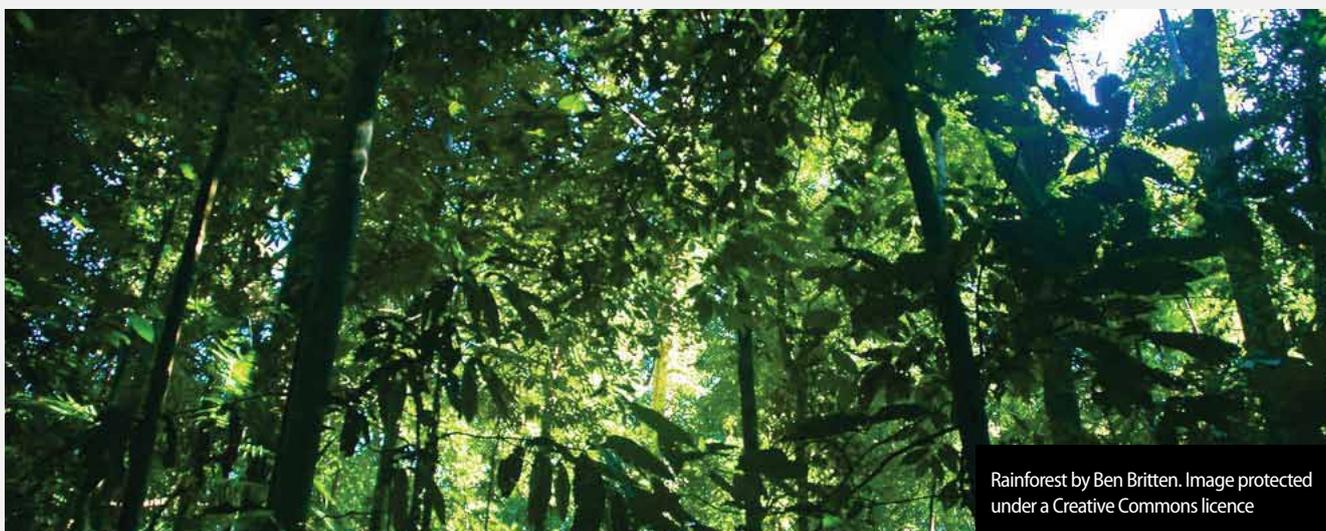
their investors in a binding agreement. This protects both the Trust and the patron, allowing them to work mutually with the most benefit for the work of the organisation and the achievement of MDG7: ensuring environmental sustainability.

Pro bono lawyers assist

In order to draw up a comprehensive binding agreement, A4ID sourced lawyers to advise and assist in drafting an agreement between the Trust and its first patron. The financial and technical aspects of the partnership were addressed, as well

as how the project would be managed, the responsibilities and liabilities of each party, the use of intellectual property, communication between the parties, termination and withdrawal, and dispute resolution.

The pro bono legal advice provided equipped EST with the tools it needed to bring together leading global experts and innovators in adopting a systemic approach to defining economically and ecologically sustainable solutions to the world's climate and resource challenges. •



Rainforest by Ben Britten. Image protected under a Creative Commons licence

Mitigation and adaptation



A Bangkok resident watches as flood waters rise around him. © Shermaine Ho/IRIN

Which international agreements govern the mitigation of and adaption to climate change?

The main agreement governing international efforts to mitigate and adapt to climate change is the United Nations Framework Convention on Climate Change (UNFCCC) which opened for signature in 1992 and has now been ratified by 195 countries. The UNFCCC aims to foster international cooperation and formulate ways for nations to adapt to a changing climate. Signatories to the UNFCCC meet annually to further these aims.

The Kyoto Protocol of 1997 gives effect to the UNFCCC principle on "common but differentiated responsibility"; that developed nations, the historic emitters of greenhouse gases, should lead in reducing emissions. Various innovative mechanisms to mitigate climate change harm have developed under the Kyoto Protocol, such as the Clean Development Mechanism.

Are the agreements legally binding?

The UNFCCC itself does not impose any legally binding obligations on to its signatories. Signatories to the Kyoto Protocol, however, are legally bound by their commitment to meet the agreed emissions targets. Even though it does not involve a legally binding commitment, the UNFCCC seeks to structure efforts to tackle climate change, effectively laying

A4ID's online resource centre hosts a wide range of legal guides written by our Legal Partners.

These guides summarise the laws and regulations underpinning

the groundwork for future legally binding agreements.

How are adaptation measures regulated and funded?

The Cancun Adaptation Framework of 2010 provides technical support and guidance on how nations can implement adaptation measures. Developing countries are recognised as being the most vulnerable and are therefore prioritised in receiving assistance with adaptation. The Green Climate Fund (see p.10 for further discussion) was made operational in 2011 and provides a financial mechanism

"Developing countries are recognised as being the most vulnerable and are therefore prioritised"

for channelling change funds in respect of mitigation and adaptation measures.

What's next?

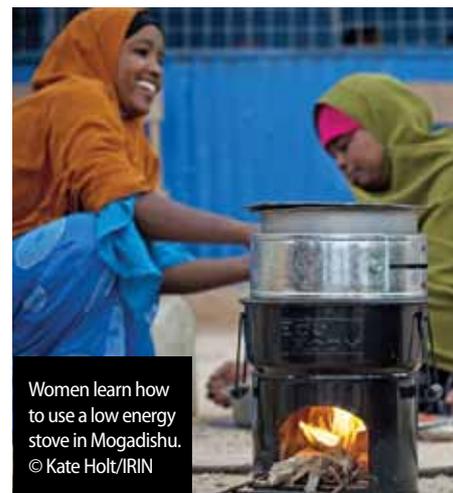
Signatories to the Convention have agreed to adopt a legally binding agreement on climate change in some form by 2015, which would come into force in 2020. The structural work already done should ease the process of negotiating the agreement, and support its implementation. •

key issues in international development. To access the guides on "Climate Change: Mitigation & Adaption" and "Clean Development Mechanisms" visit our resource centre: www.a4id.org/resource

The Clean Development Mechanism: an overview

The Clean Development Mechanism (CDM) is a tool of the Kyoto Protocol under the United Nations Framework Convention on Climate Change (UNFCCC). It establishes a system permitting developed nations to support emissions reduction projects in developing countries thereby earning Certified Emissions Reduction (CER) credits. These credits then either count towards the sponsoring nation's emissions reduction targets under the Protocol, or they can be traded on authorised carbon trading markets to enable other countries to meet their own targets.

The primary aim of the CDM is to reduce the global sum of greenhouse gas emissions. The



Women learn how to use a low energy stove in Mogadishu. © Kate Holt/IRIN

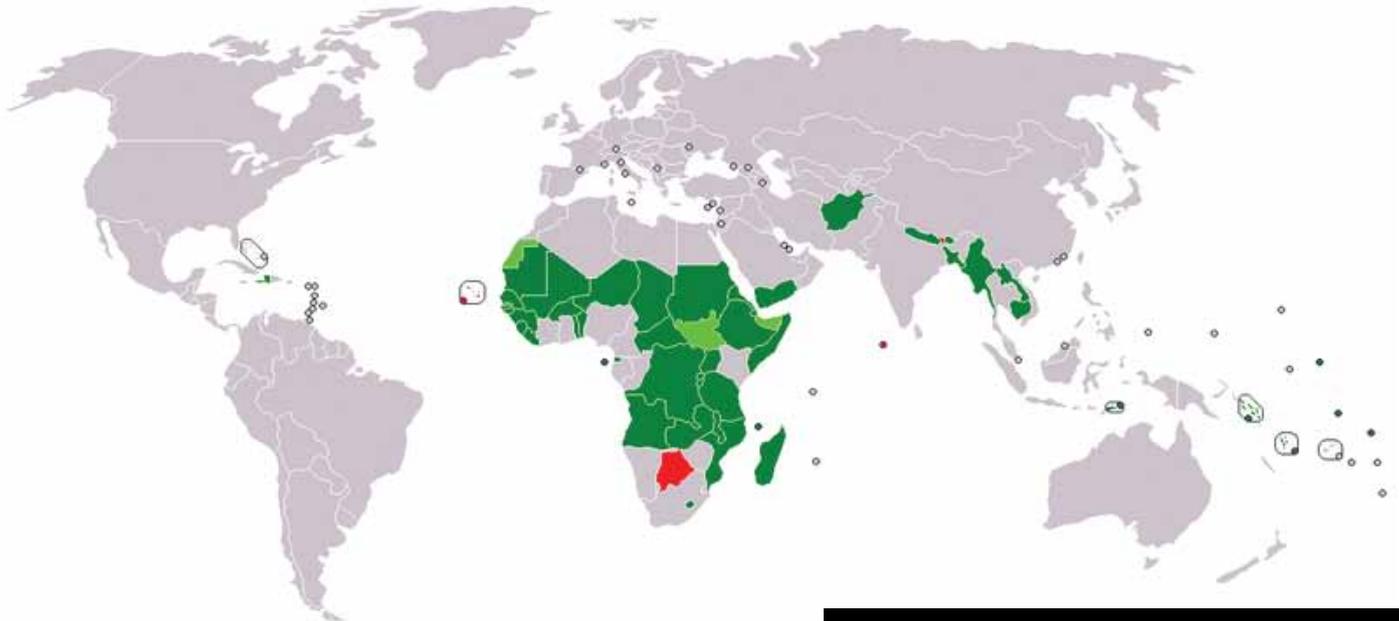
fact that nations do not actually have to cut their emissions by the full amount if they earn or purchase enough CER credits is arguably not a failure of the scheme, since those credits represent a comparable decrease in emissions elsewhere.

The rules governing the CDM are set out in the Protocol itself. To qualify as a CDM project, an approved methodology for reducing emissions must be followed. The entities participating in the project are then responsible for implementing the emissions reduction activities and monitoring the actual decrease in emissions.

The future of the CDM currently looks secure. At the 2011 climate change conference in Durban a further commitment period under the Protocol was agreed, running until at least 2017 and possibly until 2020. •

Role of legal experts in supporting the most vulnerable in the global climate change policy making process

Dr Achala Chandani Abeysinghe



Map indicating the Least Developed Countries. Image from Wikimedia Commons, protected under a Creative Commons licence

The 48 countries in the Least Developed Countries (LDC) group are considered the most vulnerable to climate change impacts because of their poverty, economic vulnerability and lack of relevant capacity to respond effectively to the impacts of climate change. The decisions on climate change made at global level have severe effects on LDCs. However, most of the important global decisions on climate change policies are being adopted and implemented without proper participation from the LDCs. This is partly because their negotiators lack resources and often the necessary capacity to effectively represent their countries in the global process.

Whilst the Group believes that the UN is the best forum for delivering fair, equitable and legally binding solutions to addressing the climate change problem at global level, to be effective in this context requires full engagement in related processes including mitigation, climate finance, adaptation and other emerging aspects of the international climate regime.

The global climate change process is now quite broad involving a proliferating set of agendas, bodies and issues. Current negotiations under the UNFCCC regime continue at an unrelenting pace with complex agendas, new bodies working in parallel, and a multitude of technically detailed and interconnected issues. Current negotiations are also characterised by frequent new emerging issues with technical jargon,

carefully crafted wording and continuous references to various legal principles and provisions. The proliferation of scientific, technical and legal issues, institutions and processes has prolonged and increased the work burden for already strained negotiators in the LDC group.

This process is expected to become more demanding and complex as it heads towards the 2015 deadline for the conclusion of a new agreement applicable to all parties. As the process becomes more complex and complicated, the number of related legal issues increases. For example, the launch of the Durban Platform in 2011 increased the complexity as the Parties agreed to work towards a protocol, another legally binding instrument or an outcome with legal force to be completed by 2015 and to enter into force by 2020. 'An agreed outcome with legal force' is a new usage for which the legal experts have yet to work out the meaning, since it has no precedence. The process after 2015, particularly the implementation of a new agreement, will also demand continuous inputs from the legal experts.

Delegates from LDCs face some of the hardest challenges in the UNFCCC process. While the delegations from other countries and groups have their legal advisors and experts, lack of legal capacity is a key constraint for the LDC group. The group often lacks trained legal capacity to understand and negotiate complicated legal matters.

LDC governments are strictly limited in terms of the number of negotiators they can afford to send to international meetings, and despite identified needs, may not be able to increase human resources to strengthen their negotiating teams. While the group is seriously outnumbered by much larger delegations from other countries, there is a constant surge of new negotiators in the group who are not very familiar with the legal and technical issues. Most of them learn on the job while the negotiations continue at an unrelenting pace. It is also clear that even the most senior negotiators require legal advice and support to keep up with the pace of continuous and complex legal information flows and issues in the process.

Strong, on-demand, real-time as well as research-based legal advice and support will help the negotiators from the LDC group to strengthen their understanding of the substantive and inter-connected legal issues in the UNFCCC process, and build and sustain their capacity to participate in, and influence, the UNFCCC process. •

Dr Achala Chandani Abeysinghe (Achala. Chandani@iied.org) is a Legal Adviser to the Chair of the LDC Group and senior researcher at International Institute for Environment.

The Green Climate Fund: open for investment?

Peter Zaman and
Pryderi Diebschlag

At the UNFCCC climate change conference in Copenhagen in 2009, developed countries committed to setting up the Green Climate Fund (GCF) with a view to providing developing countries access to finance of up to US \$100 billion per year by 2020 to help them adapt to a low carbon economy and reduce their emissions.

Conceptually, the GCF was to be funded primarily by public sources. The reality is, three years later, very little public funding has yet been committed. The debt crisis currently facing developed countries is unlikely to abate in the near future, therefore, logically requiring the GCF to increasingly rely on the private sector to achieve the desired levels of funding. Despite the formalisation of the involvement of the private sector at the last international climate change conference in Durban, there is still a lack of recognition amongst the developing community as to the significance of this sector to the success of the GCF.

A risky investment?

Private sector investors are traditionally willing to invest where a favourable balance exists between risk and return. In the context of climate change the investor will not always require a high level of return, but will want assurances that its investment is relatively safe.

Risks broadly fall into two categories: (a) those which attach to all projects in developing countries, such as currency fluctuations, or an unpredictable political or regulatory environment, and (b) those which are specific to carbon sector or climate adaptation projects, such as long term investment in unproven technologies or inexperienced operators and developers.

While risks flowing from unproven technologies or inexperienced operators are often resolved in the early stages of a project, frequently private investors are still reluctant



In the drought-ravaged Gedo region of Somalia, obtaining water can involve treks of 20km or more © Mohamed Gaaran/ IRIN

to commit at this stage. Public sector finance can be used here to entice private sector investment.

Managing risk

Pledges of funds to projects in their early stages may not need to be substantial in order to establish a project as a viable commercial investment. Any such pledge can be made as a grant or a subordinated equity, allowing the private investor to achieve recovery in priority to the public sector investment. This would allow the public sector to take the initial risk, so that the private sector investment could become viable. The focus should now therefore be on maximising the resources of the public sector in order to reduce or mitigate risk, giving the private sector the necessary safeguards it needs to encourage investment in this area.

The role of the GCF

The decisions made by the newly formed GCF board will be crucial in attracting private sector investment. There is debate to be had on whether the GCF should focus on the efficient distribution of funds from the public sector or on encouraging gross investment from the private sector.

Although half of the GCF funding is committed to adaptation, a disproportionate amount of research has been dedicated to mitigation. If carried out, this research may well conclude that allocating public funding for adaptation is more justifiable than for mitigation activities, as the former may see lower financial returns and hence attracts less private sector investment. More research is therefore required to ensure the GCF meets its mandate and uses its available financial resources most effectively.

With current levels of available public funding diminishing, it is imperative that clear

and forward looking decisions are made at the climate change conference in Qatar this year to ensure private financiers can begin to do what they do best: invest. •

Peter Zaman is a partner at Reed Smith LLP where he specializes in carbon finance, derivatives and structured products and energy trading. Peter's carbon specialization extends to all aspects of carbon finance, emissions trading, carbon funds and the voluntary markets.

Pryderi Diebschlag is a trainee at Reed Smith LLP.

The Overseas Development Institute notes that the risks associated with investments in developing countries can be mitigated by public financial institutions through the deployment of a number of tools, e.g.:

1. credit or risk guarantees that provide security to private sector lenders, ensuring that loans will be repaid despite political upheaval or other difficulties which result in borrowers being unable to service their debts;
2. policy insurance that allows recovery in the event of loss caused by policy or regulatory change, helping to ensure the long term sustainability of a project; and
3. foreign exchange or liquidity facilities that allow investors to draw down funds in case of adverse currency fluctuations, with repayment obligations that only take effect when the interest rate improves, or when the project becomes sufficiently profitable.

Environmentally friendly energy for the developing world



Masai men with solar energy products © ToughStuff International

1.4 billion people live without electricity in the developing world. ToughStuff International (TSI) is a social enterprise that aims to provide affordable solar-powered products, such as lighting, mobile phones and radios, to consumers in the developing world. These products are inexpensive and environmentally friendly, allowing individuals to enjoy a better quality of life as well as facilitating access to basic services such as healthcare and education.

To make its products as widely available as possible, TSI had to overcome several legal hurdles. A4ID's legal partners enabled it to establish itself legally as a brand and trader, make contracts with suppliers and manufacturers, and set up trade agreements within each country

TSI has sold more than 100,000 solar power kits benefiting 380,000 low income consumers in Eastern and Southern Africa. Their products were also distributed to people in Haiti following the earthquake in 2010.

TSI was named Tech Awards Laureate 2010, recognising the organisation's innovative technical solutions for critical development problems. They were also announced Winner of the 2010 British Energy and Environment Awards, and of the 2011 Ashden Award for Sustainable Energy. They continue to help hundreds of thousands of people gain access to a commodity so many take for granted: power. •

Show your support

We believe in the power of the law to bring about global changes. That is why we are committed to ensuring the law is used as a tool in the fight against poverty.

Without the protection of rights, access to justice, good governance and the rule of law sustainable international development will not be possible. Without the law the Millennium Development Goals will remain out of reach.

The law and lawyers have a vital role to play in making sure the world is fairer and that everyone, no matter where they live, has the

opportunity to build a better life.

If you share our ideas and support our work, then join us as an A4ID member.

Our members allow us to continue our work to provide free legal advice to all those working towards the eradication of poverty. They support our desire to engage the international legal community in creating innovative legal solutions that meet long-term development needs.

To join A4ID as a member please visit www.a4id.org/membership

Resources

A4ID runs six Knowledge Groups that offer lawyers, and individuals with an interest in the law, the opportunity to gain a deeper understanding of key areas of law and international development.

The Knowledge Groups meet to discuss issues related to six core development themes; climate change, responsible business, intellectual property, socio-economic rights, governance, and trade, debt and finance. All sessions are free and offer participants the chance to hear from development and legal experts and academics, as well as providing a forum for discussion.

Audio slides from recent Climate Change Knowledge Group events can be downloaded from our online resource centre.

Richard Lord QC (Brick Court Chambers) on 'Climate Change Liability', view at: <http://a4id.org/resource/talk/climate-change-liability-0>



Dr Swenja Surminski (London School of Economics) on 'Climate risks, loss & damage, and insurance: what are the legal needs?', view at: <http://a4id.org/resource/talk/loss-damage-and-microinsurance>



Christoph Schwarte (Legal Response Initiative) on 'What's the Damage? Loss, Damage, and Microinsurance', view at: <http://a4id.org/resource/talk/loss-damage-and-microinsurance>

Aaron Oxley (Results UK) on 'Climate Microinsurance: What? Who? How?', view at: <http://a4id.org/resource/talk/climate-microinsurance-what-who-how>

For all our resources please visit www.a4id.org/resources

Top image (c) Jaspreet Kindra/IRIN
Bottom image (c) David Longstreath/IRIN

Contact us

Website: www.a4id.org
Email: info@a4id.org
Telephone: +44 (0)20 3116 2799
Find us on Facebook
Follow us on Twitter @a4id