



The Bar Council

Law, climate change and welfare of the people

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"Exploring the role of Law Reform in the context of climate change"

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Ladies and Gentlemen

Thank you to the UK Bar Council for the opportunity to speak today on the role of law reform in addressing climate change.

We are convening just a few short weeks after COP26, the climate conference from which so many people expected so much. At this conference, we saw important pledges on many topics – both in the final agreement and in commitments made on the sidelines of the COP.

We saw the first concrete signs of a move towards ending coal and fossil fuel subsidies. Promises to begin tackling emissions of methane, which has great potential to slow climate change. Pledges to end deforestation – not new, yes, but this time backed with real money. A commitment to double funding to climate adaptation in developing nations. The finalization of the Paris rule book with agreement on article six around carbon markets. A shift in the engagement and role of the private sector, for example the Glasgow Financial Alliance for Net Zero.

But not everybody was happy. Inside the negotiations, the glass was half full. Outside, it was half empty. I am sure we can all understand the anger shown on the streets of Glasgow and across the world. When we add up the promises, we do not land – yet – at the required ambition to meet the 1.5 degrees Celsius goal of the Paris Agreement. We are still looking at a temperature rise well above 2 degrees C this century. Such an increase in global temperatures would be catastrophic.

What is worrying is that we are still witnessing a credibility gap. Promises are piling upon promises. Sufficient action is not following. It is this credibility gap that means many people are deeply concerned. It is this credibility gap that sends our youth to the streets. It is this credibility gap that we must now close if we are to almost halve greenhouse gas emissions over the next eight years – which we must do to take 1.5 off life support.

The task before us is clear. The world must act, not only pledge and promise. We must put words into action and up ambition. And let us not forget that climate change is only one prong of an interconnected triple planetary crisis. The climate crisis. The nature and biodiversity loss crisis. The pollution and waste crisis. We must think of, and act upon, these elements as one crisis, because they are often driven by the same unsustainable practices.

Tackling this global planetary crisis requires a whole-of-economy and a whole-of-society approach, one that reforms or recalibrates entire systems. It requires collaboration and solidarity across all sectors of society and across all nations. Failure to succeed will mean huge injustice and damage. I will not rehash the numbers and apocalyptic warnings here. You have heard them. You understand them. More and more of us are living them with every passing year.

So, let us now turn to the role of the law in getting the job done.

You have no doubt heard the maxim from Roman statesman and lawyer Cicero that the welfare of the people should be considered the highest law. This line is often quoted, including by politicians with a background in the classics. This line is often quoted for a very good reason. Even after thousands of years, the principle remains valid. The welfare of the people. Not the short-term profits of corporations. Not the personal ambitions of politicians. Not the compulsion of the super-rich to add to their fortunes. The welfare of the people.

This, in essence, is what we are trying to achieve by tackling the triple planetary crisis. The welfare, peace and prosperity of our species, humanity. The welfare of every other species, over which we exert so much influence. The welfare of our natural world. The full force of the law must be brought to bear on achieving the goals we have set out.

Environmental rule of law sets the foundation to achieve this. Since the Rio Earth Summit in 1992, there has been rapid growth in environmental laws. Over 170 countries now have environmental framework laws. Some 150 countries have established the right to a healthy environment in their domestic legal frameworks – either through their constitutions, laws, jurisprudence or participation in regional human rights treaties. At the international level, the recently adopted Human Rights Council resolution recognizing a human right to a clean, healthy and sustainable environment raises the bar even higher.

But it's just not enough. Top-level laws and rights have not been translated into specific and widespread environmental laws that are effectively implemented at all levels. This must change.

To drive action on the triple crisis, laws need to do many things at many levels. They need to be clear and effective. Inclusive. Participatory. Rights-based and capable of facilitating a just transition to greener industries. Phase out coal and other fossil fuels. Remove harmful subsidies. Regulate greenwashing.

Laws need to create enabling conditions for investment in climate-resilient and nature positive development – including clear reporting and disclosure frameworks and harmonized taxonomies for sustainable investment.

They need to facilitate the transition to net-zero pathways for the private sector, setting clear and predictable regulatory conditions. They need to clarify how carbon trading will be regulated domestically now that the Paris Rulebook is completed.

And let's be honest. There is a big difference between passing a law and implementing it. Between passing a law and enforcing it. Between passing a law and people complying with it. Environmental laws need to be implemented effectively,

complied with and enforced by capable institutions and empowered citizens. Otherwise, they are meaningless.

Friends, the law clearly needs to do some heavy lifting. The question is how to build the required muscle?

An obvious starting point is for countries to review and strengthen their legal frameworks to make them fit-for-purpose to implement their commitments under the Paris Agreement. Good framework legislation helps put the right institutions in place. Enshrines stable and ambitious targets. Creates mechanisms for realizing these targets. Ensures proper oversight and accountability.

Beyond developing national framework legislation, we need a root and branch analysis and strengthening of laws relevant to all sectors. Tax laws. Company laws. Securities laws. Trade practices laws. Environmental laws. Energy laws. Land-use and planning laws. Transportation laws. You name virtually any law, and countries likely need to climate-proof it.

I am not going to run through every single law with specific suggestions. Let us instead look at framework climate laws, which over 30 countries, including the UK, have put in place. Good framework climate laws have many elements, which we do see signs of in countries across the globe.

One, long-term emissions reduction targets for 2050 in line with science. Positive examples of this can be seen in Denmark, France, Germany, Norway, Sweden and the UK.

Two, intermediate and sectoral targets for 2030, again in line with science. In the EU, the European Climate Law sets an intermediate target of reducing greenhouse gases by at least 55 per cent by 2030 compared to 1990 levels.

Three, risk and vulnerability assessments. The UK's law requires five-year risk assessments and adaptation plans and provides for an independent evaluation of the same.

Four, climate change strategies and plans. Ireland's law requires the preparation of a national mitigation plan to 2050, to be updated every five years based on national consultation.

Five, legislative backing of key policy instruments. France's law, for example, includes a carbon tax and CO₂ emission performance standards.

Six, independent expert advice. Such as the UK's Climate Change Committee, Ireland's Advisory Council and Costa Rica's Scientific Council on Climate Change.

Seven, coordination mechanisms. For example, Kenya's law establishes a National Climate Change Council, chaired by the President.

Eight, stakeholder engagement. Colombia's National Council for Climate Change and Peru's law on the participation of indigenous stakeholders are good examples here.

Nine, the involvement of subnational government. Mexico's law mandates states and municipalities to develop local decarbonization and adaptation programmes, for example.

Ten, financing for implementation. Laws in France, Germany and Sweden connect the climate policy cycle with the annual budget process. Bangladesh's laws, meanwhile, establish climate change funds for attracting public, private, national and international finance.

Eleven, measurement, reporting and verification. Mexico's law mandates the development of a registry, methodologies and the system for monitoring, reporting, and verification of emissions.

Twelve, oversight. The UK's law requires the secretary of state to report to Parliament annually on emissions, including a response to the independent scientific advisory body's assessment on the status of implementation and further progress needed.

These twelve elements are all important, and it is heartening to see many of them emerging. But they form part of a jigsaw that must be pieced together in every framework in every nation – not scattered around the world where they do not form a full picture.

Let me now turn to strengthening implementation, compliance, and enforcement.

To take this crucial step, countries need to invest in environmental rule of law. As outlined by UNEP's International Advisory Council for Environmental Justice – in which Lord Carnwath participated – this means seven things:

Fair, clear and implementable laws, at every level, covering every sector.

Public participation in decision-making, and access to justice and information in environmental matters – in accordance with Principle 10 of the Rio Declaration.

Accountability and integrity of institutions and decisionmakers, including through the active engagement of environmental auditing and enforcement.

Clear and coordinated mandates and roles, across and within institutions.

Accessible, fair, impartial, timely and responsive dispute resolution mechanisms. This includes developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies.

Recognition of the mutually reinforcing relationship between human rights and the environment.

And, finally, **specific criteria for the interpretation of environmental law.**

Friends, this sounds like a lot of work. It is. But it is not the work of one country, one person, one branch of the law. We all have a role. If we each play our part, we can get the job done.

So, let me say the following.

To our policy makers: You know what needs to be done in terms of frameworks and legislation that gets us moving faster. It's time to drive these solutions, over and above just talking about them.

To members of the judiciary: you are all climate judges now. The tidal wave of climate litigation is growing. There have been over 1,800 cases so far, including against fossil fuel companies. They will keep growing.

To barristers and solicitors: you are all climate lawyers now. Climate change has implications for daily legal practice. Lawyers have a responsibility to adopt a climate-conscious, not climate-blind, approach in daily legal practice.

To law students: you are the people who will be hit hardest by the impacts to come. On the other hand, you are also the generation that will live much of your lives with the empowering international human right to a clean, healthy and sustainable environment. A safe climate is aligned to this right. Healthy nature is aligned to this right. A pollution-free world is aligned to this right. Your responsibility is to do whatever you can through the law to help the UK and other countries transition to a safe climate and nature positive reality.

Friends, we cannot safeguard the future of humanity without the right laws and strong enforcement.

Yes, many people want to do the right thing. Many will do the right thing. But even these people need to be guided by laws and regulations.

Equally, many people will not do the right thing – including those with the wealth and power to do great damage to the planet. History, and even the present, show this quite clearly. The law is the force for good that can shape and correct this behaviour.

And environmental rule of law will not just save us from climate disaster. It will make our lives better. It will guide us to a world of more equity and justice. A world of enough to go round. A world of greener jobs. A world of better human health. A world of trust in the government and our institutions. A world in which we preserve the wonder and diversity of nature. Fundamentally, a world of peace, security, and prosperity. A world that safeguards the welfare of the people.

Given the upheaval we are facing right now, this world may seem very far away. But I say to you that it is far closer than you may think. And you, the community that shapes and serves the law, can help the whole world to reach out and grab it.

Thank you.