



International Bar Association's Human Rights Institute Council Resolution on climate change justice and human rights

Adopted on Thursday 26 May 2016

The International Bar Association's Human Rights Institute,

Being the human rights entity of the International Bar Association, the global voice of the legal profession,

Working with the global legal community to promote and protect human rights,

Concerned about the impact of climate change on human rights,

Reiterating the recommendations – reproduced in the Annex to the present resolution – in the IBA report *Achieving Justice and Human Rights in an Era of Climate Disruption*,¹

Noting Goal 16 of the United Nations Sustainable Development Goals, which calls upon States to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels,

Noting in particular targets 16.3 and 16.5 of Goal 16 of the Sustainable Development Goals, which link promotion of the rule of law at the national and international levels, equal access to justice for all, and substantially reducing corruption and bribery in all its forms, to sustainable development,

Believing that achieving Goal 16 of the Sustainable Development Goals is a necessary precondition for achieving the other Goals,

Endorsing the acknowledgement in the Paris Agreement² that climate change is a common concern of humankind and that action to address climate change must respect, promote and consider States' obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Recognising that in addition to the United Nations Human Rights Council there are several international bodies – courts, tribunals, committees, dispute resolution mechanisms – charged with interpreting human rights treaties,

1 See International Bar Association Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (IBA, July 2014), available at www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx.

2 www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1.

Calls upon those bodies so charged to:

1. Clarify and explain how human rights obligations relate to a healthy environment.
2. Consider the effect of environmental degradation on human rights.
3. Consider particularly the specific effects on human rights that are caused by climate change.

ANNEX

Action Matrix from the International Bar Association Climate Change Justice and Human Rights Report

3.1 Legal measures

3.1.1 Climate change justice measures for individuals and communities

CLARIFICATION OF HUMAN RIGHTS OBLIGATIONS RELATING TO CLIMATE CHANGE

Short-term

- (i) The Task Force strongly endorses the findings of the Independent Expert on Human Rights and the Environment that human rights bodies, special procedures, courts, tribunals and dispute resolution bodies charged with interpreting human rights treaties *further clarify and 'green' the scope of human rights obligations relating to the enjoyment of a healthy environment*. The Task Force further urges these bodies to consider not only the human rights effects of environmental degradation, but also climate change-specific effects on human rights.
- (ii) The Task Force recommends that the Human Rights Council adopt a resolution convening the *Office of the United Nations High Commissioner to draft a report outlining a 'minimum core' of rights and duties* implicated by the right to a healthy environment, particularly as this pertains to climate change.
- (iii) The Task Force urges states to *ratify the optional protocols of core human rights treaties (in particular the ICCPR and ICESCR)* to ensure that individuals have international fora in which to seek redress for violations of their environmental rights.

Medium-term

The Task Force urges *states to work together to further strengthen regional human rights bodies and their mechanisms for enforcing the right to a healthy environment, and encourages States to work together to create new regional bodies where they do not exist or are lacking*.

Long-term

The Task Force recommends that *states consider recognising free-standing human right to a safe, clean, healthy and sustainable environment*, through the adoption or amendment of protocols to human right instruments.

Short-term

The Task Force recommends the designation of an *IBA Working Group to draft a Model Statute on Legal Remedies for Climate Change*, addressing each of the substantive and procedural obstacles, and *applicable to litigation in both domestic and international fora*, including: (i) actionable rights affected by climate change; (ii) clarification of the role and definition of legal standing; (iii) issues regarding causation, including appropriate standards for proving a legally cognisable causal link between GHG emissions and relief sought; (iv) whether knowledge, including foreseeability of harm, is relevant to liability or judicial relief; (v) development of methods for awarding remedies and relief as warranted by the circumstances, including uniform standards by which to apportion damages, and the provision of declaratory, interim and/or injunctive relief; (vi) issues regarding standards of liability; (vii) the interrelationship of competing claims from states, communities and individuals; (viii) limitation periods for claims; (ix) the availability of pre-trial and interim applications for disclosure and discovery; (x) guidelines on costs awards in climate change cases; and (xi) guidelines for the jurisdictional reach of domestic and international courts to adjudicate climate change-related claims.

Long-term

- (i) The Task Force encourages states to adopt domestic procedural and substantive law that incorporates legal principles set out in the Model Statute.
- (ii) The Task Force endorses the development of international law in accordance with the principles in the Model Statute.

3.1.2 *Climate change justice measures for states*

INTERNATIONAL DISPUTE RESOLUTION

Short-term

- (i) The Task Force encourages states to accept the jurisdiction of international judicial bodies such as the ICJ or ITLOS over environmental disputes, and to work to ensure that these bodies have the capacity and competence to engender confidence in their appraisal and adjudication of matters touching on climate justice.
- (ii) Where states have determined to pursue climate-related disputes in arbitral fora, the Task Force encourages states to consent – including through domestic legislation

and international commitments – to arbitration before the PCA, pursuant to the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment. The Task Force encourages states to apply these rules, and to take advantage of the PCA environmental expertise, in all disputes touching on climate justice and in disputes involving investors. In doing so, states should ensure that proceedings are *open and transparent*.

- (iii) The Task Force further recommends that states and international organisations mobilise dispute resolution provisions of other enforceable international instruments to *integrate international judicial and arbitral fora, including the ICJ and ITLOS (where relevant) as appropriate climate change dispute resolution fora*, and to prefer the PCA in cases of arbitration.
- (iv) The Task Force *encourages arbitral institutions to take appropriate steps to develop rules and/or expertise specific to the resolution of environmental disputes*, including procedures to assist consideration of community perspectives.

Medium-term

- (i) The Task Force encourages states to make use of the UNFCCC dispute resolution system (Article 14.2(b)) in conjunction with the PCA. *The UNFCCC COP should adopt the PCA as the UNFCCC's preferred arbitral body*, with the PCA adopting adequate rules of transparency in all such proceedings and, furthermore, *adopt the PCA Optional Rules on environmental disputes*.
- (ii) The Task Force further encourages States Parties to continue to make efforts towards making the *PCA the preferred arbitral forum for UNCLOS disputes* in cases where States Parties have not opted for the jurisdiction of the ICJ or ITLOS.
- (iii) The Task Force *endorses the move towards greater transparency in investor-state arbitrations*, including the development of the UNCITRAL Rules on Transparency in Investor-State Arbitration, and recommends that:
 - (i) *arbitral decisions and awards impacting climate change issues should be made available publicly, on a timely basis, to ensure transparency and confidence in the arbitral system; and*
 - (ii) *that the PCA and other arbitral institutions adopt the UNCITRAL Rules on Transparency in Investor-State Arbitration.*

Long-term

The Task Force supports the *gradual development of an ad-hoc arbitral body (ICE Tribunal) which would build towards a permanent formal judicial institution (ICE)*. If such institutions came to fruition, states should standardise MEAs to incorporate the ICE Tribunal into dispute resolution process.

3.1.3 Climate change justice and corporate responsibility

Short-term

- (i) The Task Force endorses the promotion of the *UN Guiding Principles on Business and Human Rights (the 'Ruggie Principles')* by multinational corporations in relation to human rights relating to climate change.
- (ii) The Task Force *endorses the findings of the UN Independent Expert on Human Rights and the Environment* that states' human rights obligations relating to the environment include substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors.
- (iii) The Task Force *encourages the OHCHR to develop a model internal corporate policy* to provide guidance on: (i) adopting a human rights policy that stipulates concrete measures to prevent and mitigate adverse climate change impacts that are linked to the corporation's operations; (ii) implementing a human rights due-diligence process to identify, prevent, mitigate and account for actual and potential climate change impacts; and (iii) implementing a remediation process to address any adverse climate change effects.
- (iv) The Task Force encourages states to *require corporations to specifically disclose GHG emissions using ISO standards already available* (as is now mandatory in some states). Such reporting should be subject to *independent verification*.

Medium-term

- (i) The Task Force encourages *corporations to incorporate ISO standards in business GHG management programmes* to ensure standardised quantification of GHG emissions and promote good practice in environmental and energy management.
- (ii) The Task Force encourages *international institutions to increasingly monitor multinational corporations* in respect of their compliance with human rights standards and green-house gas emissions limits, and to endorse corporations taking the most proactive measures.
- (iii) The Task Force encourages *states and international organisations, in consultation with corporations, to develop and subsequently adopt clear and implementable objective standards for corporate reporting in respect of human rights issues pertaining to the environment* (as promulgated in the UN Guiding Principles on Business and Human Rights and as is now mandatory in some states). Such reporting should be subject to *independent verification* in as rigorously objective a manner as practicable.
- (iv) The Task Force recommends that corporations require *full disclosure of climate change impacts* arising from the actions of all major subsidiaries and affiliates; and, as far as reasonably practicable, from the corporation's supply chain.

- (v) The Task Force encourages *sector-specific initiatives*, including initiatives in the banking and finance sector to promote environmental accountability in the provision of finance.

Long-term

The Task Force encourages states to *clarify regulation of corporations that relates to climate change, including for overseas violations*. States are encouraged to clarify that domestic legislation is applicable to corporations within its jurisdiction even in respect of their overseas activity. States should *require full disclosure of corporations' GHG emissions both at home and abroad*.

3.2 Capacity-building and transparency

3.2.1 Knowledge and skills transfer

Short-term

- (i) The Task Force recommends that the *IBA consider innovative ways of raising awareness of attorneys, judges and lawmakers in respect of climate change and its adverse implications on human rights*.
- (ii) The Task Force recommends the *establishment of an international IBA network of climate change counsel* to increase the sharing of expertise in climate change-related law, litigation and advocacy.
- (iii) The Task Force recommends that UN Member States lacking expertise or resources to address certain climate change issues *should request technical assistance in their UPR country reports*.

Medium-term

- (i) The Task Force recommends that *UPR stakeholder reports are used to highlight domestic climate change justice concerns during the reviews of each UN Member State*.
- (ii) To promote access to justice, the Task Force recommends that *the IBA integrate climate justice training and courses into its existing platform of legal education*.
- (iii) The Task Force recommends that *the IBA Human Rights Institute, together with other components of the IBA, including its Environment, Health and Safety Law Committee integrate training on climate justice and human rights issues into the support and technical assistance provided to judiciaries, newly established and/or under-resourced bar associations and law societies worldwide*.

3.2.2 Transparency

Short-term

- (i) The Task Force *endorses the UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters.*
- (ii) The Task Force endorses *the Aarhus Convention's citizen-focused compliance mechanism as a useful model in other regional agreements* promulgating environmental procedural rights and in other MEAs more generally.

Medium-term

- (i) The Task Force encourages states outside Europe to *adopt the principles recognised in the Aarhus Convention* in respect of transparency of environmental decision-making.
- (ii) The Task Force recommends that states incorporate *obligations to conduct EIA and/or strategic environmental assessment into legislation* for significant projects with potential climate change or transboundary impact.

3.3 Institutional measures

3.3.1 WTO reforms

Short-term

- (i) The Task Force recommends that the *CTE establish a notification procedure to allow states to confirm that proposed climate change measures are not in breach of WTO law.*
- (ii) The Task Force recommends that the *CTE should strengthen its relationship and collaboration with the secretariats of other MEAs* through the establishment of a series of memoranda of understanding.

Medium-term

The Task Force recommends that WTO members should consider asking the Ministerial Conference of the WTO to *adopt an interpretive decision defining and clarifying the contours and scope of application of GATT Article XX (exceptions) to measures relating to climate change.*

Long-term

- (i) The Task Force recommends that *WTO Members should work towards adopting an amendment to Article XX of the GATT to explicitly allow climate change measures.*

- (ii) The Task Force recommends *redefining and reinstating a category of non-actionable subsidies*, including a category of renewable energy and climate change subsidies. The Task Force supports the *consideration of a standalone environmental or climate change agreement* within the framework of the WTO.

3.3.2 *Bilateral and regional trade agreements*

Short-term

The Task Force encourages all states when negotiating BITs and FTAs to include *provisions supporting domestic climate change measures, including non-derogation clauses* requiring the States Parties to refrain from weakening or waiving their environmental rules in order to encourage or incentivise foreign investment.

Medium-term

The Task Force encourages states to consider including in future trade or investment agreements *a specific recognition that obligations arising under MEAs take precedence over conflicting trade measures*.

Long-term

The Task Force endorses efforts by states to ensure that *commitments to the environment and climate change justice made in separate chapters and side agreements to BITs and RTAs are subject to strong enforcement and compliance mechanisms*.

3.3.3 *UNFCCC negotiations*

Short-term

- (i) The Task Force *endorses and fully supports UNFCCC COP efforts* to develop a coherent international framework for measuring, reporting and verifying national efforts to combat climate change.
- (ii) The Task Force *encourages states to support the urgent work of the ADP* in producing a universal climate outcome by 2015 to enter into effect in 2020.
- (iii) The Task Force encourages *parties to the Kyoto Protocol to ratify the Doha Amendment*.
- (iv) The Task Force endorses adoption of safeguards in efforts to advocate for justice in *implementing Reduced Emissions from Deforestation and Degradation (REDD+)*.

Medium-term

- (i) The Task Force recommends that the CMP should consider *how best to recognise existing applicable human rights obligations for CDM projects, and adopt explicit and binding language to protect human rights during climate change-related activities.*
- (ii) The Task Force recommends the *development of a dispute-settlement mechanism or grievance procedure to address human rights contentions* concerning the CDM approval process. The Task Force endorses promoting *dispute resolution mechanisms* and *procedural rights* to all mechanisms within the UNFCCC process.
- (iii) The Task Force recommends the international community make efforts to increase funding for *NAPAs* and *national adaptation plans* through the Least Developed Countries Fund.

Long-term

The Task Force recommends that *the UNFCCC COP take account of the increasing calls for hard measures on fossil fuels, to ultimately recognise a cumulative carbon budget, including more stringent regulation of global fossil fuel reserves.*

3.3.4 Multilateral adaptation measures

Short-term

- (i) The Task Force recommends that all states abide by the *IMO Assessment Framework for Scientific Research Involving Ocean Fertilization.*
- (ii) The Task Force recommends the creation of an *IBA Working Group on the Legal Aspects of Adaptation* to develop effective and practical solutions in critical adaptation areas, including, but not limited to, climate change-related migration, food security and access to adaptation technologies.

Medium-term

- (i) The Task Force recommends that more states accede to the *1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* and its 2006 Protocol, and adopt the IMO's proposals in respect of geo-engineering of the oceans.
- (ii) The Task Force recommends that the *Human Rights Council task a special rapporteur to comprehensively research human security issues triggered by sea level rises* caused by climate change and to recommend multilateral solutions to these challenges.

Long-term

The Task Force recommends that *states work towards the creation of international legal obligations governing research, development and implementation of solar radiation management.*