

Net Zero and the Rule of Law

Environment Energy Hub

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Energy , Environment

We all now know what is needed in terms of greenhouse gas emissions reductions in order to avert the climate change catastrophe which we are currently seeing played out in real time in news reports.

If in any doubt, simply read the 42 page Summary for Policymakers produced by the Intergovernmental Panel for Climate Change as part of its August 2021 report, *Climate Change 2021: The Physical Science Basis*.^[1] Human influence has warmed the climate at a rate that is unprecedented in at least the last 2000 years and the scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented over many centuries to many thousands of years. Every inhabited region across the globe is affected. It is clear that things are going to get worse before they get better: the best that could probably be achieved is to minimise the level and duration of dangerous global warming and to reverse the trend by the end of the century. Those living through the century are going to be in for a hard time, with unfortunately the poorest and most disadvantaged probably suffering most. But at least there could be hope for the 22nd century. Even achieving that will however require a massive shift. The near-certain linear relationship between human greenhouse gas emission and temperature mean that every tonne of CO₂ emitted by humanity will add to the problem.

It is not an over-dramatisation of the situation to talk of the world being at a crunch point. There is no longer anywhere to hide from the stark reality of the situation. COP26 in Glasgow in November and Pre-COP (the final ministerial meeting before COP which will take place in Milan at the start of October) represent a crucial opportunity to harden up commitments, finalise the Paris Rulebook, and mobilise the massive funding needed. Getting near to net zero emissions by the middle of the century is an incredibly daunting goal, which will require unprecedented levels of political leadership, international trust and co-operation, and – critically – public commitment and sacrifice.

So far, the signs are not that promising. Key players are hanging back on commitments. There remain huge and perfectly legitimate pressures for development in many parts of the world, which will militate against emissions reductions. And for those such as the UK which have made commitments, there is the politically fraught challenge of translating words into action.

A key to much of this seems to me to be fairness. These measures will only be acceptable if people perceive that that the sacrifice is worth it and that the burden is being shared equitably. Political leaders need to be honest with their electorates that these goals are not going to be possible without lifestyle changes which may at least in the short term be unpalatable to the public and opposed by vested business interests. We can already see the tensions surfacing in the UK.

So where does that leave the law? Legal rules, both at the international and national levels, will surely be necessary in order to provide the basic underpinning to ensure that commitments are honoured. However, the enforcement of international environmental law is at present weak and is dependent upon nations being willing to surrender sovereignty, which plainly they are not presently willing to do. It is clear however that a well-designed and demonstrably fair system of rules is likely to have a better chance of success.

At domestic level the law needs to ensure that the commitments on reductions are followed by action plans, and that such plans are in fact implemented. Governments will almost certainly wriggle and resist when hard and unpopular decisions have to be made, and we are continually seeing that in terms of new transport infrastructure, oil and gas developments, deforestation, and so on. Further, there may be temptations to go for solutions which are politically more palatable, but maybe less effective in the long run. As we are seeing in the UK courts, adjudication on these difficult questions makes judges feel uncomfortable at being drawn into the political sphere: Parliament is after all sovereign, and if the public chooses to elect a government with a Parliamentary majority which gives low priority to climate change issues, that is the public's right. This position is however capable of evolution, as we have seen in cases in other jurisdictions. It is possible to envisage a situation where some legislation on climate change could be accorded a special and fundamental constitutional status by the courts.[2] The devil is however in the detail of how that legislation is drafted, as we can see from the controversies surrounding the Environment Bill.

It therefore is an important and opportune time for 39 Essex Chambers to be launching this new initiative of an Environment and Energy Hub, to provide up to date and pertinent comment on these issues. We hope very much that you will follow it and enjoy it, going forward.

[1] https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

[2] See the April 2021 decision of the German Federal Court in Cases no. BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, and 1 BvR 288/20, and the similar arguments being run in *La Rose et al. v. Her Majesty the Queen* before the Federal Court of Appeal of Canada

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