

# Global Climate Justice: Making the Carbon Majors Pay for Climate Action

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Given that governments were instituted to serve the interests of the public, when climate change threatens the public it is appropriate that governments take actions to protect their citizens. Given that COP-23 is officially hosted by small island nations whose existence is threatened by climate change, it is appropriate to raise the issue of global climate justice and the fossil fuel industry.

I have come not to dwell on the growing climate crisis – though this crisis is now more profound than any we have ever faced. I have come not to dwell on the injustice of climate change – though the enormity of that injustice – to young people and future generations, to indigenous people, to fellow species – cannot be overstated.

I have come to note that greenhouse gas climate forcings are accelerating, not decelerating, and sea level rise and ocean acidification are accelerating. We confront a mortal threat, now endangering, only at first, the very existence of island and low-lying nations in the Pacific and around the planet.

Accordingly, ambition must be increased and enforced. No nation should be allowed to exit. Moreover, the unrequited provisions of the SUVA Declaration, Article 19, must be revived.<sup>1</sup> Effective action must be undertaken not only to keep temperature rise below 1.5° C but, in my view, to return it to below 1° C to preserve island nations and global shorelines.

The science is clear. CO<sub>2</sub> is the principal control knob that controls global temperature. Global warming already drives increasing climate extremes. Tropical cyclones, typhoons and hurricanes left wakes of devastation in the Pacific between 2013 and 2016 and recently in the Caribbean – and there is worse to come, unless we act with resolve and without further delay.

And delayed response of climate – caused by inertia of the deep ocean and massive ice sheets – means that our actions today may hand young people a climate system out of their control. Consequences, including loss of island nations and major coastal cities, could be locked in. Subtropics in summer and the tropics year-round could become unbearable. Mass migrations could make the planet nearly ungovernable.

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Churchill once said: “The era of procrastination, of half-measures, of soothing and baffling expedients is coming to its close. In its place we are entering a period of consequences.”

Today we are well into that period; we are now in danger of being too late.

But consequences still may be limited, and irreversible catastrophes avoided, if emissions are rapidly phased out and if soil and biospheric carbon are restored.<sup>2</sup>

Carbon drawdown – via reforestation, soil sequestration, mangrove restoration and regenerative grazing – can be achieved in many nations.<sup>3,4</sup> There are limits on this natural carbon uptake, but also potential methods to increase the rate.<sup>5</sup>

Well-conceived projects – designed for efficacy, additionality and permanency – must be commenced and evaluated worldwide. In order to stabilize climate, CO<sub>2</sub> must be removed from the air.

Funding is required. As a matter of justice it should be extracted from those who benefitted most from fossil fuel burning -- the so-called Carbon Majors.

Recent legal actions for damages<sup>6</sup> – for harm to infrastructure and freshwater supplies – are warranted and may help induce a measure of accountability. However, even more effective legal action is needed, if we are to be serious about our children’s survival and wellbeing.

Authority for effective action resides in almost every member of this conference – every nation that retains a functioning independent judiciary with authority to assess liability. Legislators around the world could clarify the law related to liability for climate change,<sup>7</sup> but courts are able now to assert jurisdiction to require fossil fuel polluters to pay their fair share.

Legal scholars have outlined the path forward, and one of them is with me here today.<sup>8</sup> Domestic judicial systems with independence, integrity and strength must be brought to bear, from the Pacific Island countries to China and the United States. Where courts retain no direct authority over Carbon Major property, judgments still may be enforced – by courts in which assets are located or the corporation is domiciled. Exercise of jurisdiction by several national judicial systems may be needed, and will help guard against the capture of some of them by vested interests.

Every sovereign retains an interest in this cause. National and state governments hold our natural resources as public trust assets. As trustees, their core duty is to protect the assets from damage. They do so expressly for the benefit of their people, including future generations -- **not for the exploitation and ruination by a few.**<sup>9</sup>

As the Supreme Court of the Philippines observed nearly a quarter century ago, government’s obligation to secure the public’s fundamental right to vital natural resources, including rights to a balanced and healthy ecosystem, these “need not even be written in the Constitution for they are assumed to exist from the inception of mankind.”<sup>10</sup>

In my final minute, I return to the problem of obtaining rapid phasedown of fossil fuel emissions. Let us not sugarcoat the truth: as long as we allow fossil fuels to be cheap energy, not required to pay their costs to society, we cannot kick our fossil fuel addiction.

In my view, the climate problem will not be solved until one, or preferably both, of the two major emitting nations, the United States and China, provides real leadership, including domestic actions.

An across-the-board (oil, gas, coal) rising carbon fee at domestic mines and ports-of-entry is inescapably required. A border duty can be placed on products from nations that do not have an equivalent fee, to broaden the initiative and ensure against competitive disadvantage. Only in this way can near-global honest pricing of fossil fuels be obtained.

So let us abandon half-measures and soothing expedients – caps and offsets, politically compromised targets – which simply will not get the job done.

The period of consequence requires honesty and courage. Nothing less will do.

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<sup>1</sup> Suva Declaration on Climate Change, Sept. 4, 2015 (available at <http://pacificidf.org/wp-content/uploads/2013/06/PACIFIC-ISLAND-DEVELOPMENT-FORUM-SUVA-DECLARATION-ON-CLIMATE-CHANGE.v2.pdf>).

<sup>2</sup> Hansen, J., M. Sato, P. Kharecha, K. von Schuckmann, D.J. Beerling, J. Cao, S. Marcott, V. Masson-Delmotte, M.J. Prather, E.J. Rohling, J. Shakun, P. Smith, A. Lacis, G. Russell, and R. Ruedy, 2017: [Young people's burden: requirement of negative CO2 emissions](#). *Earth Syst. Dynam.*, **8**, 577-616, doi:10.5194/esd-8-577-2017.

<sup>3</sup> Bustamante, M., Robledo-Abad, C., Harper, R., Mbow, C., Ravindranath, N.H., Sperling, F., Haberl, H., de Siqueira Pinto, A. and Smith, P.: Co-benefits, trade-offs, barriers and policies for greenhouse gas mitigation in the Agriculture, Forestry and Other Land Use (AFOLU) sector, *Global Change Biology*, **20**, 3270–3290, doi: 10.1111/gcb.12591, 2014.

<sup>4</sup> Smith, P.: Soil carbon sequestration and biochar as negative emission technologies, *Global Change Biology*, **22**, 1315-1324, 2016.

<sup>5</sup> Taylor, L.L., J. Quirk, R.M.S. Thorley, P.A. Kharecha, J. Hansen, A. Ridgwell, M.R. Lomas, S.A. Banwart, D.J. Beerling, 2016: [Enhanced weathering strategies for stabilizing climate and averting ocean acidification](#). *Nature Climate Change*, **6**, 402-406. doi:10.1038/nclimate2882.

<sup>6</sup> See, for example, *County of Marin et. al. v. Chevron Corp., et. al*, Case. No. C17-01227, Marin County, California, Superior Court (July 17, 2017) available at <https://www.sheredling.com/wp-content/uploads/2017/07/2017-07-17-MARIN-CO-Sea-Level-Rise-Complaint-5bFINAL-ENDORSED5d.pdf>.

<sup>7</sup> See, for example, Andrew Gage and Margaretha Wewerinke, *Taking Climate Justice into Our Own Hands: a Model Climate Compensation Act* (Vanuatu Environmental Law Association & West Coast Environmental Law 2015).

<sup>8</sup> See, for example, Wood M.C. and D. Galpern, 2015: *Atmospheric recovery litigation: making the fossil fuel industry pay to restore a viable climate system*, *Environ. Law*, 45(2), 259-337. ISSN 0046-2276.

<sup>9</sup> See, for example, *Massachusetts v EPA* 549 US SC 497 (2007) 14 and *Georgia v Tennessee Copper Co.* 206 US SC 230 (1907).

<sup>10</sup> *Juan Antonio Oposa v. Fulgenio S. Factoran*, G.R. No. 101083, 224 S.C.R.A. 792 (July 30, 1993).