



Legislating the Paris Agreement

The rapid entry into force of the Paris Agreement increases the urgency for supporting developing countries in their legislative efforts to respond to climate change and implement their commitments under the Paris Agreement. In collaboration with the Climate & Development Knowledge Network (CDKN), LRI hosted a workshop in London on 28 September 2016 to develop approaches and ideas. The event combined an evening panel discussion with a hands-on legal expert workshop the following day. The full workshop report is available at: <http://legalresponseinitiative.org/further-resources/briefing-papers/>

Why legislation?

In many cases, comprehensive national strategies and policies may suffice to address immediate climate concerns while the adoption of formal legislation could hamper quick, efficient and flexible responses. However, legislation locks countries in a policy direction that cannot be easily reversed. It creates legal certainty, encourages coordination amongst government agencies and provides legitimacy to regulate citizens' activities in different areas. Enshrining nationally determined contributions (NDCs) into the law would allow for robust compliance and enforcement regimes and help civil society to hold governments accountable.

Recent research (by the Grantham Research Institute on Climate Change and the Environment) indicates that a number of elements are important for a country's ability to meet its NDCs. This includes mechanisms for stakeholder involvement, a climate-aware public and a good performance in delivering previous climate commitments. Effective rules and procedures, including comprehensive legislation and policy as well as transparent, inclusive and effective decision making processes with enough political authority to limit reversal are also important.

What legislation?

There is an ever growing body of climate and climate relevant legislation world-wide. This includes comprehensive framework acts and new or updated and revised sectoral legislation. They usually reflect a mix of command and control approaches and economic incentives. Examples from other jurisdictions can provide useful guidance for lawmakers - but simply replicating the content and transplanting a law from one country to another rarely works.

The Sabin Center for Climate Change Law at Columbia Law School maintains a comprehensive database of climate change relevant laws and policies at:

<http://web.law.columbia.edu/climate-change/resources/climate-change-laws-world>

The Grantham Research Institute on Climate Change and the Environment at LSE has a similar database at:

<http://www.lse.ac.uk/GranthamInstitute/legislation/the-global-climate-legislation-database/>

In general, a tailored approach, reflecting the specific needs, circumstances and legislative processes of a jurisdiction is needed. It is essential to take into account the sub-national context and rely on legal drafters who are trained to work in that particular jurisdiction. Draft laws created by foreign experts often end up sitting on a shelf or remain irrelevant in practice. National ownership of the process is crucial and will determine the adequate mix of laws, policies and different strategic approaches. Public awareness raising, in this connection, can help to balance climate change objectives with other societal and environmental concerns.

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Capacity building

The lack of domestic legal expertise, e.g. lawyers who can review and revise a set of complex rules in different areas, may hinder the development of adequate legislation. Special training components should, therefore, be offered to future drafters of climate change law. Existing laws will have to be reviewed and updated to meet countries' commitments under the Paris Agreement. As a result, government authorities for the environment will have to collaborate with lawyers in other departments and there may be opportunities for mentorship schemes and learning on the job.

Tools

To support the development and review of legislation, a "toolkit" could present possible modules, common elements or approaches with different variants built into them. Such a tool could include examples of good practices from different regulatory regimes. It might outline what a country's climate change legislation can potentially cover and also provide sample clauses. Law and decision makers may pick and choose according to the specific circumstances and needs of a country.

But before mainstreaming and/or developing specific legislation on climate change it is also important to understand the existing wider regulatory landscape. For this purpose and because climate change defies any legal categorisation, the tool could outline available methods and methodology to assess a jurisdiction's framework and compile the relevant laws and regulations. In addition, it may describe the range of regulatory techniques available or criteria to assess good legislation (e.g. efficiency, clarity, precision, plain language).

Action plan

During the break out group stage of the workshop, participants identified a set of potential measures to launch a wider initiative for the support of developing countries. They are:

1. The establishment of a network of relevant organisations (donors, beneficiaries, others) which would map current activities, and identify gaps and synergies;
2. Developing a common document to (a) define the scope of the cooperation, (b) help conceptualise the

cross-cutting nature of "legislating the Paris Agreement", (c) assist developing countries in understanding the nature of the challenge and in identifying potential approaches appropriate to the local context;

3. The network agrees a strategic, scalable approach to assistance;
4. It then identifies appropriate regions/countries/champions (or issues) to work with (or on);
5. A multi-disciplinary team will visit the country to meet stakeholders from government, academia, civil society and the private sector to assess the status quo and priorities;
6. In collaboration with the relevant government, the team will produce, an initial Need Analysis; and
7. The Need Analysis will provide the basis for seeking the funding necessary to implement further activities.



Marrakesh Climate Law & Governance Day 2016 with an experts' roundtable on Legal Preparedness for the Paris Agreement:

When: Friday, 11 November 2016, 14:00-15.15

Where: L'Université Privée de Marrakech Km 13, route d'Amizmiz (Route du barrage lalla Takerkoust), 42312 – Marrakech

Panel members will include:

Alina Averchenkova, Grantham Research Institute on Climate Change and the Environment, London School of Economics

Stephen Minas, Dickson Poon School of Law, King's College London

Augustine Njamshi, Pan African Climate Justice Alliance (PACJA)

Robert Ondhowe, Law Division, UN Environment



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