

## **Global Trends in Climate Legislation and Litigation**

### **Synthesis report and questions for discussion for COP26 event**

On 1 and 2 July 2021, the Grantham Research Institute for Climate Change and the Environment hosted a two-day seminar series on the role of litigation and legislation in the implementation of the Paris Agreement.<sup>1</sup> The events were held in collaboration with the Strathclyde Centre for Environmental Law & Governance (SCELG) at the University of Strathclyde Law School.

This synthesis report provides a short overview of five key themes discussed during the seminar series. These have been drawn from the presentations and panel discussions, as well as from the audience questions submitted during the event.

These five key themes constitute the basis for a follow-up event taking place during COP26: Climate Change Legislation, Litigation and the Rule of Law, **6 November 2021**, from 12:00-6:30pm, at the Technology and Innovation Centre, University of Strathclyde, Glasgow.

We invite speakers and participants to read this document and the questions in preparation for the discussions on 6 November.

#### **Theme 1: Accountability and implementation**

Accountability for climate action was a key topic during both events. The discussion focused on the implementation of the UK's Climate Change Act of 2008, and whether current UK government measures are sufficient to ensure compliance with the Act over time. Panellists highlighted the importance of the legislation in generating public and parliamentary debate about climate measures. They also noted the important watchdog role played by Independent Expert Bodies created under legislation. In the UK context, the advice of the Climate Change Committee, an expert advisory body created under the act, can now be seen to guide the parameters of the national debate in a way that aligns with both the UK's international commitments on climate and the latest science.

Panellists also emphasised the role of the courts in overcoming deficiencies in climate legislation or its implementation. Discussing problems in developing legislation that can ensure accountability for long-term action, panellists drew a connection with the findings of the German Constitutional Court in the case of *Neubauer et al v Germany*, which focused on intergenerational equity. The Court's judgment has now led to the introduction of stricter short term emissions reduction

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<sup>1</sup> Recordings of the events can be accessed via the following links: [Global trends in Climate Legislation](#) and [Global trends in Climate Litigation](#)

targets in the German Climate Protection Law and an overall increase in domestic ambition.

**Questions:**

- How can we design sufficient accountability and oversight in national legislation to ensure that targets are met?
- How should accountability mandates be shared between independent advisory bodies, parliaments, and the courts?
- What can be done about the issue of time inconsistency in policy-making, e.g. can interim targets and carbon budgets help with this issue?

**Theme 2: The private sector, capital markets, and climate finance**

Private sector actors are key players in the development of climate governance systems at both the national and international levels, and have long been responding to both climate regulation and climate litigation. Although climate litigation is dominated by cases against governments, we are now seeing an increasingly diverse group of cases brought against different types of private sector actors.

Audience members highlighted the efforts of the investment community to increase ambition on climate action, while others pointed out the major political power of the fossil fuel lobby in debates over new legislation or regulation, such as the proposed introduction of updated requirements on climate-related corporate disclosure in the US. Addressing the issue of how regulation may impact private sector activities, panellists emphasised that many existing climate laws, particularly those introducing carbon pricing mechanisms or vehicle emissions standards, have already had a significant impact on corporate emissions. However, they also noted that many early laws in countries that have achieved emissions reductions to date focused on changing the practice in particular sectors such as the energy sector. Tackling remaining emissions will rely on a broader range of actors including households and consumers and require a different set of regulatory tools.

Several questions were asked about the role of financial regulators and other financial market actors in global decarbonisation efforts. Panellists responded by emphasising new efforts by Central Banks to ensure that the markets are better placed to respond to climate-related shocks, as well as the potential for climate litigation to incentivize private and public contributions to fill the current gap in the provision of international climate finance. The need for an evolution in the way in which the insurance industry approaches the question of insurance for both physical climate impacts and potential legal liabilities associated with climate change litigation was also touched on.

**Questions:**

- How is the current focus on finance and “indirect” private sector litigation likely to develop?
- What are the chances of this litigation generating successful outcomes?
- How can we understand this litigation in the context of global efforts to mobilize private sector investment to support climate action, and what lessons are there for policy-makers acting in this space?
- How might litigation focused on climate finance – whether public or private - manifest in the Global South?

### **Theme 3: The role of subnational governments**

Subnational governments have a key role to play in reducing emissions and ensuring adaptation action is taken. In the US for example, while the passage of national climate change legislation may prove challenging because of the highly partisan nature of the political debate, subnational government action may nonetheless be the catalyst for major emission reductions. Subnational governments are often involved in climate change litigation, appearing as both claimants and defendants.

#### **Questions:**

- What is the role of sub-national governments in influencing the development of domestic legislation and how can legislation that affects these actors be designed to ensure that they are both required and supported to contribute to decarbonisation and adaptation efforts?
- What role is played by litigation between government actors?

### **Theme 4: The role of science and international cooperation**

Domestic law has a key role to play in ensuring that emissions reductions efforts are based on the latest science and ensuring transparent reporting on emissions levels and reduction efforts. This highlights the need for capacity-building of decision-makers. Questions were also asked about how to avoid “double counting” of emissions when considering voluntary carbon markets and how law can start to account for “scope 3” or “consumption-based emissions”. Panellists responded by emphasising the importance of independent advisory bodies in supporting governments to understand these issues. A connection was also made with the need to consider equity in the allocation of national carbon budgets, and how international cooperation may be a necessary element of equitable effort-sharing where developed nations cannot achieve emissions reductions with sufficient speed but can only be achieved where there is clarity and transparency in how and where emissions reductions or removals are being accounted for.

#### **Questions:**

- How can international cooperation play a role in the achievement or overachievement of domestic emissions reduction targets?
- What legal safeguards can be put in place at the national and international level to ensure that such cooperation really achieves its intended outcomes?

## **Theme 5: Human rights and the Just Transition**

The role of human rights arguments in climate change litigation against both governmental and non-governmental actors is increasingly well understood. However, in many cases the clear connection between climate impacts and human rights impacts is not yet acknowledged in climate legislation. We discussed the unsuccessful efforts by European Parliamentarians to introduce provisions relating to the right to a healthy environment into the new European framework law on climate change. The role of human rights arguments in adaptation focused litigation may also require further attention, particularly as many of these cases are brought in Global South jurisdictions and may not meet stricter definitions of “climate litigation”.

Separately, the impact that measures aimed to speed the transition to a low carbon economy can have on human rights was raised several times, particularly in the context of litigation. Panellists emphasised that ensuring a “just transition” is a fundamental aspect of the Paris Agreement. Efforts to ensure that transition measures improve lives and livelihoods, rather than damaging local economies, have now been used to good effect by the Biden administration and others to garner more support for climate action. However, the dangers of failing to consider the distributional impacts of policies remain very real, as highlighted by the example of the yellow vest movement in France and the recent rejection of a new climate law in a referendum in Switzerland.

A further dimension discussed during the events was attempts by corporate actors to use legal protections for property rights to oppose or challenge climate measures. Such litigation indicates the fundamental role that must be played by national legal systems in determining how the costs and benefits of the transition to a low-carbon economy should be distributed.

### **Questions:**

- Through what channels might the concept of the “just transition” be integrated into domestic climate law?
- We see this starting to manifest in the conscious efforts of legislators but how might litigation also play a role in shaping the governance of this issue?
- Is litigation likely to develop to include more claims regarding adaptation?
- How might these claims rely on the human rights arguments that have so far been successful in cases against states focused on mitigation?

- How might the intertemporal dimension of human rights play a role?