

# CLIMATE GOVERNANCE FUNCTIONS

TOWARDS CONTEXT-SPECIFIC CLIMATE LAWS

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POLICY BRIEF

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# Summary

In recent years, national climate governance instruments have been appearing rapidly around the world. Discussion of these developments, however, has seldom started, as we believe it should, from the perspective of the governance requirements of a climate response in given political contexts. This brief addresses the role and potential of domestic climate law in responding to climate change, based on the premise that there are shared climate governance challenges applicable in most national contexts, which can be addressed through a broad set of climate governance functions. Our analysis maps these governance functions, with a view to establishing a set of approaches that is plastic enough to reconcile existing views and adaptable to the governance needs and potentials of different political contexts.

Having mapped these functions, our analysis turns to the ambiguities in defining and approaching climate laws. We outline the different forms such laws can take, focusing on climate change framework laws and how these can be designed to respond to key governance functions. We recognise that different countries will be at various stages of satisfying each governance function and they may have different priorities that influence the design and approach adopted. For this reason, we argue that laws – and similar instruments – should be designed to serve the un-or partially- met governance functions in a given country context. This necessitates a context-based study that explores domestic governance cultures, and engages with national laws and policies and socioeconomic, geographical and political contexts.

# 1. Introduction

Recent years have seen a shift in the centre of gravity of the international climate change regime from the international to the national and local spheres (Mehling, 2015). This can be attributed to the fact that successful implementation of international commitments requires significant national action. At a national level, however, the degree of complexity in responding to climate change becomes significantly higher because the myriad causes and consequences of climate change demand a significant rethinking and restructuring of society, government and the economy. Indeed, climate change is at times referred to as an all-of-society and all-of-government problem (Dubash et al., 2021). In tackling climate change, vast sections of society have to be induced to alter entrenched practices, almost all sectors of the economy must be reoriented to low-carbon and climate-resilient futures, and the efforts of line ministries, subnational governments and provincial actors have to be relatively aligned. While climate change mitigation and adaptation, which are vital to protecting society from climate impacts, demand great transformations, governments need also to ensure that climate response measures do not create or exacerbate social injustices and instead contribute to tackling existing inequalities.

Given these challenges, the governance architecture at the national and sub-national levels needs to create an enabling and evolutionary environment. In recent years, national climate governance instruments have been rapidly appearing around the world in various forms in different political and economic contexts—from laws to regulations to policies to national plans to executive actions. The choice of approach is very likely to be shaped by national political and governance contexts, with various instruments addressing different parameters and aspects of climate governance. Notably, many countries have chosen to pass national laws focused on tackling climate change (World Bank, 2020) and their number is growing consistently.<sup>1</sup> As of 2020, 56 countries had enacted laws with greenhouse gas limitation as a direct objective, whose collective jurisdiction covered 53% of global emissions (Dubash et al., 2022).

Law, as an instrument of climate governance, offers several potential benefits in addressing climate change mitigation and adaptation. It can play a role in enhancing accountability, empowering government action, fostering social consensus, and resisting adverse political change (Mehling, 2015; Scotford and Minas, 2019; Averchenkova et al., 2021). Not only do laws make it harder for governments to revoke policy,<sup>2</sup> in democratic societies they operate as the most formalised expression of political consensus (Mehling, 2015). The development of law, especially the act of deliberation, can also unify different constituencies, increase acceptability of outcomes, provide participatory rights through deliberative processes (ibid.),

and foster coordination between governmental units. Since the signing of the Paris Agreement, governments have faced the task of reorienting national legal systems to give effect to their international commitments (Scotford and Minas, 2019; Averchenkova and Matikainen, 2017; Rajamani, 2016): this entails the duty to formulate, review, update and implement nationally determined contributions (NDCs), submit adaptation reports under the Transparency Framework, and develop a comprehensive domestic system of monitoring and reporting. Often, climate change laws also mandate the subsequent passage of mitigation and/or adaptation policies, which can facilitate their harmonious application, while also ensuring that the policies are regularly reviewed and updated to take rapidly changing circumstances into account.

Academic discussion of these developments, however, has seldom started, as we believe it should, from the perspective of the governance requirements of a climate response in given political contexts. Applying climate response measures developed to suit one political context in other contexts without appropriate interrogation, prior engagement with diverse local communities or a full assessment of the distributional impacts of such measures may exacerbate social problems, simultaneously causing harm to affected communities and threatening the likelihood of effective implementation in the long term.<sup>3</sup> As growing global attention to the concept of a ‘just transition’ demonstrates, tailoring climate change responses to the varying needs of diverse contexts, and integrating social and environmental concerns in national decision-making, is not only a moral imperative but also an essential element of success (Krawchenko and Gordon, 2021).

While this brief seeks to contribute to an understanding of the role and potential of domestic climate law in addressing climate change, our starting point is the mapping of the governance functions that should be addressed in the course of responding to climate change. This is for two reasons. First, the complexities of climate governance—the coordination of disparate actors, the high threshold of knowledge required before locking into long-term pathways, and the number of interests that must be managed and aligned before strategies can be set in motion—require far-reaching reorientation of mainstream governance approaches. Second, the global variation between traditions of governance, economic circumstances and legal culture suggests the need for an approach that is elastic enough to accommodate this diversity. Rather than a top-down imposition of an ideal template for a law, or indeed presuming the necessity of a law versus another instrument, we believe it is more fruitful initially to contemplate the problem we are trying to solve by examining some of the key governance functions that should be met—one way or another—by a state in tackling

climate change, noting that the relevance of each function will not be uniform between countries.

A breakdown of climate governance functions in this brief will thus act as a platform to explore the type, design and content of climate laws. In other words, we seek a clear definition of legal concepts in the context of climate change from the point of view of the practical needs on the ground.<sup>4</sup> By proceeding from a discussion of functions to laws, we attempt to demonstrate that climate laws can be plastic and tailored to suit the governance needs of the political context. We specifically address the encompassing framework law as, among the various types of climate law, framework laws have proliferated in recent years,<sup>5</sup> perhaps because climate transformation recruits almost all sectors of a state's central nervous system—across energy, water, land-use, urban planning, transport and waste management. Framework laws, in other words, help signal that the climate issue transcends traditional environmental regulation and involves an all-of-government approach. This brief argues that context-specificity in governance instruments can be realised in framework laws by designing them to serve the unmet governance functions of a polity.

Our method of defining the scope of climate governance instruments based on the governance functions they must solve will not only support policy makers who are considering

the most appropriate and effective domestic policy solutions to climate change, but will also, we hope, establish a potential method for the future analysis of the effectiveness of the various models in their respective countries. In this sense, our approach is primarily pragmatic. We acknowledge that there are historic and cultural backgrounds which inform the perception, practice, design, interpretation, and implementation of law. We also acknowledge that law is not necessarily the only or even the primary answer in every case, and that climate laws operate in concert with other highly effective instruments such as fiscal measures or policies of various forms; and that the choice of measures is driven by national priorities and circumstances.

The purpose of this brief is, however, to offer a tool for the rational fabrication of climate laws that meet governance functions likely to be relevant in many national contexts. We have engaged primarily with framework laws as they are a useful means of addressing these functions – but are by no means the only way of doing so. We have also deliberately limited the discussion to the content of a climate law: there are important anterior considerations ranging from the question of what a law is to the procedures followed in designing and adopting law, and the interrelationship between legal provisions and the institutions and processes used to determine their content – all of which are deeply relevant to the discussion but go beyond the scope of our analysis.

## 2. Governance functions for tackling climate change

While political context is important, the nature of the climate challenge—that it is a long-term problem that requires sustained engagement and large-scale socioeconomic transformation – will likely place certain recognisable governance demands on all countries. A prior step to formulating law, policy or executive action is, therefore, to understand the nature of the climate governance challenge, before then determining how best to resolve it within national contexts.

By climate governance functions, we refer to the necessary and desirable roles of the institutional structures and processes governments put in place in addressing the specific challenges to society thrown up by climate change. Our view is that climate governance functions have a degree of consistency across different political contexts because they derive from a mostly shared or common threat. Of course,

not all governance functions need to be performed by all instruments of policy. Functions can be operationalised and sequenced differently, and different aspects of functions may have varying degrees of relative importance in given contexts. Thus, specific clusters of functions will be germane to law and policymaking in different political contexts at various stages of their climate transformations.

Recognising and understanding the governance demands of climate change and needs of the specific country are therefore the starting points of a serious response to the climate crisis. Below, we have identified nine governance functions that we believe are areas of consideration essential for any state preparing to meet the challenge of climate change. While each governance function must be understood in the context of the social, as well as the environmental, aspects

of the climate challenge, where social justice concerns are particularly relevant, this has been highlighted in the description of each function.

### **2.1. Narrative and high-level direction-setting**

A well-constructed narrative that frames climate change objectives to suit domestic contexts can focus political attention. In laying-out the vision of a nation's climate future, as in Kennedy's space programme or Deng Xiaoping's economic one, the symbolic function of the announcement is key, as it determines the narrative with which hopes and expectations come to be allied. Narrative creates a platform on which to build support by bridging the local situation and the generic climate threat – for instance, by converting a regulation story to a 'green jobs' one. Once a reformulation of high-level narrative is successfully achieved and internalised, it is more likely to endure across successive governments.

In formulating narratives, an emphasis on the social implications of overall goals will be required in many contexts, particularly where there are major disparities in terms of the greenhouse gas emissions or climate impacts associated with specific geographies or socioeconomic groups within a polity. In countries that are particularly vulnerable to the impacts of climate change, an emphasis on adaptation and the co-benefits of adaptation measures, and in developing economies, a framing of green growth and low carbon development, are likely to be of great importance to the long-term success of a given intervention.

### **2.2. Knowledge and expert advice**

Our understanding of climate change – both the threats and solutions – is evolving constantly. Strategic climate policymaking needs to be informed by trends in technology, capabilities of emerging industries, scope for cross-sectoral linkages, and looming threats, among others. The ramifications of interventions are also important considerations to ensure that climate responses do not exacerbate other social and environmental problems. In order to build the wherewithal to safely commit to actions with long-term effects, governments must establish robust mechanisms of knowledge production, assessment and sharing. In this context, independent expert advisory bodies on climate change are gaining prominence in many countries. Credible and transparent underlying information significantly increases the legitimacy and accountability of climate policies (Averchenkova et al., 2021b). Knowledge production that is inclusive and distributed will also often have the best chances of being relevant to the full spectrum of geographical and social contexts within a polity (Fazey et al., 2020).

### **2.3. Strategy articulation**

The large-scale and long-lasting transformations demanded by climate change require strategies for stable and enduring pathways, often backed by long-term and interim targets both for mitigation and adaptation. While states must accord their strategies and plans with international promises like NDCs, it is also essential that procedures for strategy-setting are agile enough to respond to growing urgency, evolving scientific information and technological change, and other relevant indicators.

### **2.4. Integration**

As climate considerations cut across various sectors and levels of governance, climate governance must establish mechanisms for upgrading the existing regulatory architecture to ensure it enables rather than impedes the achievement of climate objectives. But climate governance instruments should also be informed by and, where appropriate, build upon time-tested processes and regulations that have performed well. Integration requires policymakers to proactively identify linkages and establish synergies, which may even result in the creation of new institutional forms beyond the synthesis of old ones.

### **2.5. Mainstreaming**

While the integration function entails the alignment of propositions and imperatives in governance instruments to complement the corresponding actions across governing institutions and bodies, mainstreaming refers to the gradual process of bringing to the fore climate considerations in the consciousness and daily workings of traditionally non-environmental sectors. Action on climate change requires interventions in many policy areas, including energy, transport, agriculture, health, building design and disaster risk reduction. This in turn requires the mainstreaming of climate concerns across an overall development strategy and specifically pertinent policy areas. Mainstreaming may thus enhance integration, for instance, by improving coherence among policies, reducing the chance of duplication and contradiction, and increasing resource efficiency, but it also has the overall effect of building capacity for significant climate action and transformation among entrenched sectors and units of government.

Mainstreaming can be achieved by, for instance, incorporating climate considerations into budgetary processes, Environmental Impact Assessments, local government planning and sectoral planning, and the

submission of climate progress reports in Parliament, all of which can assist in creating positive feedback loops that build capacity and appetite for climate transformation. Mainstreaming can be aided by nodal climate bodies that can identify potential avenues for synergy – and crossroads of conflict – between sectors and governance units.

## 2.6. Coordination

Climate change requires an all-of-government response to be effective, and the collaboration of vastly disparate entities. Horizontally, it involves a wide array of sectors and ministerial portfolios – energy, transport, infrastructure, agriculture and waste management are often the first to be conscripted. Vertically, it requires the facilitation of interaction, standardisation (where productive), and learning along national, subnational/regional and local levels. In federal systems, the vertical dynamic between the national and subnational governments is as crucial to the success of climate transformation as the cross-sectoral one because the ultimate implementation of mitigation and adaptation policies is most heavily influenced by subnational actors. Coordination between entities engaged in welfare, education and industrial policy and those developing climate-related regulations and programmes may also be beneficial.

## 2.7. Stakeholder engagement and alignment

A participative process of change strengthens the allegiance to and credibility of climate policies and actions. The major transformations across society required to address climate change necessitate building consensus on the importance of those changes and how best to bring them about. Large-scale shifts are more feasible and sustainable when potential losers from the energy transition are ameliorated and winners are encouraged. For this to occur, deliberation through regular convenings is required, in which productive dialogue is fostered between contending and collaborating stakeholders. Stakeholders also bring in ideas about the modalities of climate transformation. Industries often lead the process of innovation, but it is also important to engage the vulnerable and to find ways of translating the time-tested knowledge of indigenous and agrarian communities into practicable twenty-first century responses to climate change. Stakeholder engagement processes that incorporate a plurality of voices and perspectives will therefore often enhance the effectiveness of interventions. While it goes beyond the scope of this analysis, we note all of the above as relevant considerations not only for the content of a law but also its design and associated procedural processes.

## 2.8. Finance mobilisation and channelling

Finance considerations are essential to most aspects of climate governance – from building adaptation infrastructure and responding to loss and damage to fostering green growth to ensuring an orderly transition for high-emitting industries. The ability to mobilise foreign and domestic investment (including foreign aid) depends often on other governance functions, such as the credibility built through narrative and direction-setting, stable mechanisms articulated through short- and long-term strategies, and a strong system of accountability. For instance, mobilisation happens through strategic incentivisation of investment (e.g. through price signals and regulation) – but the alignment of private financial flows is difficult to achieve when there is confused signalling from atop about energy futures. The allocation of public budgets and the disbursement of funds by financial institutions are also pivotal to achieving other functions like stakeholder alignment and mainstreaming, and to ensuring that climate responses account for and address anticipated social costs.

## 2.9. Oversight, accountability and enforcement

A robust regime of oversight needs to be in place to close the gap between design and implementation. This in turn requires an intensive and extensive system of measurement, reporting and verification (MRV) to gain the initial information necessary for policy design, and thereafter to monitor progress and assess the effectiveness of policies. This is crucial not only for the effectiveness of NDC and strategy implementation, but also for countries to give effect to their international commitments under the Paris Agreement. However, alongside MRV systems, it is crucial to establish transparent processes by which data gathered can be carefully scrutinised by an appropriate authority, such as a council of ministers, a legislature or the courts.

In most cases, oversight and accountability may be better achieved by the introduction of multiple complementary processes of accountability. These processes or mechanisms must also be designed in such a way that it is clear what happens when goals and targets are not met or duties not carried out. Processes may also benefit from being designed to be accessible, particularly with respect to the dissemination of information. Considering accessibility in the design of accountability mechanisms, including, for example, open standing requirements for court actions, can allow for a diversity of stakeholders to become involved in climate transformations (Higham et al., 2021).

# 3. Mapping climate and framework laws

This brief suggests that climate governance institutions and instruments, including laws, should be designed to meet the climate governance functions required in a given political context. In this section, we focus on the instrument of law and canvas the broad notion of climate law. We explore the various types and forms of law contained therein and put forward a pragmatic approach to defining and categorising some of its features, acknowledging the many conceptual assumptions and terminological constraints that such an approach entails.<sup>6</sup> We underscore that while a framework law is in our view a useful instrument for realising the aforementioned governance functions, it is by no means the only one.

## 3.1. Mapping climate law

### Unpacking the ‘climate’ in ‘climate law’

Climate change has highly varied multi-sectoral and multi-scalar impacts, affecting a wide range of actors in complex relationships and acting on the law unevenly across different fields (Ruhl and Salzman, 2013). In this context, it is particularly challenging to delimit what is meant by ‘climate’ and to assign it to any particular field of existing law, or conversely to label it as a discrete body of law.

In an attempt to categorise how laws address climate change, some have identified ‘direct’ climate legislation as including laws that explicitly take climate change issues into account. These can be compared with ‘indirect’ climate legislation, which includes laws that intersect with climate change but do not address it explicitly; that is, they do not make clear that the law or provision is intended to address climate change, but it does so indirectly (Scotford and Minas, 2019). Others have categorised climate laws as framework or sectoral laws (see Nachmany et al., 2015; Rumble, 2019a). Sectoral laws are legislative regimes governing specific issue areas that have climate change requirements or considerations grafted within them, such as laws regulating environmental impact assessments, energy laws, water or forest management. Sectoral laws can be both direct or indirect; for example, a historic forestry law might contain provisions supporting forest management that indirectly support climate mitigation; alternatively, it could be amended to include specific language of how forests must be protected and preserved as part of the nation’s climate change mitigation and adaptation response. By comparison, a framework climate change law is a statute offering a unifying basis for climate change policy, addressing multiple aspects or areas of mitigation or adaptation (or both) in a holistic and overarching manner (Townshend et al., 2011; Clare et al., 2017; Fankhauser et al., 2014).

### Unpacking the ‘law’ in ‘climate law’

The functional elements of a climate change law can be embedded in different types of instruments that align best with the legal system and culture of a particular jurisdiction. Legal systems and cultures are not uniform across countries. Some follow common law systems (where case law is of paramount importance), many use a civil code (where statute becomes preeminent), some follow socialist legal systems, and others follow Islamic law or have indigenous legal systems (Banks and Baker, 2016). Each approach has implications for the importance, sources of, and processes for the development and treatment of law. For example, in common law and civil systems, climate change laws and statutes might have greater force and precedential value, while in China, policies such as the Five Year Plans developed by the Executive carry similar weight to legislation (Zhu, 2021).<sup>7</sup>

The Climate Change Laws of the World database,<sup>8</sup> for example, expressly includes both policies and laws, defining laws broadly to include documents that address policy areas directly relevant to climate change mitigation, adaptation, loss and damage or disaster risk management. In that sense, what is considered ‘law’ in a climate change context can be relatively fluid and is informed by, and should be designed and interpreted within, local legal cultures<sup>9</sup> and the wider lattice of laws and traditions within which it operates.

## 3.2. Understanding the ‘framework’ in framework laws

Almost any definitional exercise with respect to ‘framework climate laws’ will employ descriptors such as ‘overarching’, ‘unifying’ or ‘comprehensive’, and qualify them as entailing a coherent legal basis for climate action, a synthesis of relevant past legislation, a narrative for the future direction of climate policy, and an institutional architecture for essential processes (Townshend et al., 2011; Nachmany et al., 2015; Averchenkova et al., 2017; Fankhauser et al., 2018; Rumble, 2019b; Averchenkova et al., 2021a). But this broad understanding of the concept does not sufficiently equip law- and policymakers on the ground who are contemplating, proposing or designing a law to ensure that it is adequate to the multifarious governance problems thrown up by climate change. For instance, what kind of relationship do climate bodies have with existing governance structures? How do framework laws incentivise investment in low-carbon and climate-resilient growth? What is the typical division of responsibilities between central and subnational governments? If not achieving a consensus on these, a stable way of thinking through specific questions regarding the form and content of framework laws can enhance the usefulness of literature to law-making.

It is also the case that clarity on the composition of framework laws will greatly assist the analysis of their effectiveness. For a start, it will facilitate the consistent classification of framework laws among existing climate laws. Organisations often have different criteria for identifying framework laws, which results in the fact that lists of framework laws vary: for example, the International Energy Agency<sup>10</sup> lists 207 policy documents in its energy policy database in the category of ‘targets, plans and framework laws’ currently in force, while Climate Change Laws of the World identifies 53 pieces of framework legislation and a further 228 executive documents that could be considered to create some form of ‘framework’.

The definitional ambiguities reflect, in some ways, large variations in approaches to framework laws and their treatment of mitigation, adaptation, finance, and other such foundational components. Some of the variations are as follows:

- The UK’s ‘Climate Change Act’ sets long-term emission targets, mechanisms for defining shorter-term targets (or carbon budgets) and creating institutions and strategies to achieve them, while giving relatively less attention to adaptation. The latter is addressed mainly through a requirement for risk assessment and adaptation strategies (Averchenkova et al., 2021b).
- Conversely, South Korea’s recently supplanted<sup>11</sup> ‘Framework Act on Low Carbon, Green Growth 2010’ focused, as the name suggests, less on emissions targets<sup>12</sup> and more on broad socioeconomic shifts and rearrangements in infrastructure, with a particular view to inducing businesses to green growth (Jang et al., 2010). With

evolution in its governance context, South Korea, 11 years after its 2011 Framework Act, passed the Carbon Neutral Framework Green Growth Framework Act to Tackle the Climate Crisis in 2021, which is more in the mould of the UK’s climate law, designed around a net zero target.

- Kenya’s framework ‘Climate Change Act’, as with many African framework laws (Rumble, 2019a), displays as its main concern adaptation and the climate-readiness of its vulnerable population. This is unsurprising since adaptation has long been a priority of the African continent, given its high vulnerability and relatively miniscule emissions profile. On the other hand, Germany’s law, interestingly named ‘Federal Climate Protection Act’ [emphasis added],<sup>13</sup> has no provisions for adaptation—a characteristic common among European framework laws.

This variation in the origin and motivation of framework laws suggests that their study ought to proceed based increasingly on political context and the articulations of purpose therefrom. Definitional ambiguities cannot be overcome simply by positing a master formula, blueprint or template. Gaining clarity on the form and composition of framework laws will thus require an anterior discussion of functions: functions that can be fulfilled by differently assembled framework laws in diverse political contexts. By focussing on what climate and framework laws do rather than what they say, a definition of—and mode of talking about—framework laws can be wrought that is plastic enough to reconcile existing views and adaptable to the governance needs and potentials of different political contexts.

## 4. Discussion

Between the analysis of climate governance functions – and what they entail – and designing climate laws that satisfy them, there are yet two important considerations for law and policymakers:

- (i) Not all functions will need to be addressed through a new statutory instrument and not all functions are equally relevant and applicable in every context. Different legal and governance cultures and traditions will determine which functions are already being served or are not too relevant, and which ones need the attention and service of a new statute. Moreover, some functions will already be sufficiently satisfied by the very nature of the polity and institutions therein. An analysis of the given context – its existing instruments and institutions and their varying degrees of climate competence – is thus an essential preliminary step in planning climate transformations.

- (ii) The governance instrument most fit to address the un- or partially-met climate governance functions of a polity will also vary according to the socio-historical and political context of a country. A layering of policies, executive action, dispersed amendments of laws, constitutional amendments, setting up of executive commissions or agencies, framework laws, and a mix of all or some of the above, are all viable means to approach the above-listed governance functions. Upon surveying the competence of existing institutions, therefore, countries must analyse the competence of their various governance instruments for large-scale transformations.

Experience suggests that countries adopt a range of approaches as they gradually add or supply climate governance functions. China, for instance, is attempting to manoeuvre its economy to a low-carbon one through



a concerted deployment of key instruments, such as a constitutional amendment and the Five Year Plan. The constitution was amended in 2018 to delegate the duty and power of directing and managing an ‘ecological’ transformation to the executive’s State Council – the highest organ of state power.<sup>14</sup> The Five Year Plan, in laying out the ‘overall blueprint’ for low-carbon transformation, facilitates many climate governance functions (Hepburn et al., 2021) – narrative and strategy-setting, coordination, finance mobilisation and more – while leaving the status of some others, such as stakeholder alignment, more ambiguous.

Given this range of approaches, we have limited our analysis to a mapping of governance functions against the provisions of a framework law. We have not mapped how various types of laws and instruments might be better suited within different political contexts, although this is certainly an area ripe for research. We focus on law, and framework laws particularly, as they are proliferating as the instrument of choice to contend with a majority of climate governance functions. While empirical analysis of this phenomenon in an illustratively wide range of contexts is limited, it is worth speculating on the reasons behind this trend.

Due to the authority invested by the legislative process in democratic systems, laws in general are more resilient to political change. But framework laws, particularly, have gained popularity in the domain of climate law<sup>15</sup> as they adopt a unifying approach to climate change: by explicitly recognising climate change law as having its own set of recognisable, interacting and relatively consistent domains of governance (Ruhl and Salzman, 2013). They aim, in other words, to act as self-sufficient structures for the climate governance of a country.

The following is a sample of how framework laws may approach and comprehend climate governance functions:

- (i) **Narrative and high-level direction-setting:** The framing objectives of a framework law, its preamble and its principles can be instrumental in setting narrative.
- (ii) **Knowledge and expert advice:** Framework laws often create nodal and advisory climate bodies that collate and assess data (e.g. on progress with implementation), produce knowledge – and recommendations from that analysis.
- (iii) **Strategy articulation:** Framework laws often establish processes for the passage of short-term climate policies/ plans, and the setting of short-term adaptation and mitigation targets and goals or can themselves decree targets and goals around which strategies are designed, and can ensure that these strategies and targets are regularly revisited and updated. For example, they can mandate the development of National Adaptation Plans and Long Term Low GHG Emission Development

Strategies, as suggested by the Paris Agreement, and specify that these be regularly reviewed and updated, together with associated reporting frameworks.

- (iv) **Integration:** Framework laws can mandate the dispersed upgrade of environmental and sectoral laws for the consolidation and consistency of existing rules and efforts. They can also clarify the roles, responsibilities and laws of different spheres of government. For example, they can stipulate the roles and responsibilities of local or provincial/country governments; how such roles are to be incorporated within existing legislated mandates and institutional bodies; how they are to function within any local planning instruments and how these actions are to be budgeted for.
- (v) **Mainstreaming:** The procedural duties of framework laws can help mainstream climate concerns in key strategies, policies and processes (e.g. budgeting, sectoral policy development), line ministries, and subnational government bodies.<sup>16</sup> This is particularly relevant in relation to adaptation where climate responses traverse a wide array of sectoral strategies, policies and decision-making processes. Reporting duties on mitigation efforts can also bring about greenhouse gas awareness in the daily planning of traditionally non-environmental sectors.
- (vi) **Coordination:** Many framework laws, especially in countries with relatively younger climate governance systems, create mechanisms for horizontal and vertical coordination. This may involve designating an existing institution as a coordinating agency or creating a new body for coordination on climate change. Some framework laws also specify duties for the sectoral ministries to participate in the coordination mechanism.
- (vii) **Stakeholder engagement and alignment:** Many laws create mechanisms for convening stakeholders to align perspectives and efforts. In many cases, there is a distinction between independent advisory bodies, which are responsible for knowledge generation and assessment, and stakeholder consultation bodies, which are responsible for convening and facilitating social consensus.
- (viii) **Finance mobilisation and channelling:** Many laws create a climate or adaptation fund for the management of climate finance. Others may mandate the allocation of a share of budget to climate research and action within individual sectors. Some laws even tie budgetary processes to climate reports submitted to Parliament.
- (ix) **Oversight, accountability and enforcement:** Framework laws can specify both accountability processes (such as parliamentary scrutiny, oversight by regulatory agencies and the provision of related information such as MRV, and the role of the courts) and associated consequences (such as sanctions and court orders) to address questions regarding non-compliance with duties, goals and targets.

As noted above, while flexibility in the sequencing of the different governance functions described in this brief may be required to ensure an approach that is suited to national contexts, there are nonetheless some key considerations that should be factored into the processes of developing and implementing governance approaches. For example, while narrative- and direction-setting should typically be informed by some degree of knowledge creation and stakeholder engagement, the former will often be among the first to be introduced. Knowledge creation, coordination and stakeholder alignment will also be essential preliminaries to successful strategy articulation and integration. Mainstreaming and oversight, on the other hand, are likely to become increasingly important with time, as effective implementation becomes the top priority.

We also do not conceive of these governance functions as being necessarily discrete: many will overlap in practice. For example, the implementation of mainstreaming is to a large extent ensured through coordination. Similarly, oversight is closely linked to and enabled by the 'knowledge and expert advice' function. The nature and extent of each of these functions will ultimately be iterative and evolve over time, along with our understanding of climate change, the social challenges it creates, and climate governance in practice.

It is important to stress that the advantages and applications of framework laws discussed above are more likely to be realised when they are not uncritically copied from other contexts or their design determined by a normative template; climate laws must, in other words, be fitted for purpose. As discussed, the best designs will be informed by an analysis of existing competencies of institutions and identification of clusters of governance functions that are currently unmet in the given context. Despite the versatility of framework laws, in the absence of supportive politics, they may also be fragile or counterproductive. The short lifespan of Australia's Clean Energy Act amidst an intensely contested political landscape testifies to this fact (Dubash, 2021).

The diversity of experiences with respect to climate governance instruments underscores the importance of a context-based study that explores the variety of climate governance cultures, mapping forms of framework laws and other instruments onto types of socioeconomic, geographical and political contexts. While expanding our understanding of climate governance globally, a mapping exercise of this kind can greatly expedite the efforts of policy makers situated in those contexts.

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## END NOTES

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<sup>1</sup> See data from climate-laws.org, filtered by 'legislation' and all categories of 'framework'.

<sup>2</sup> By embedding climate change planning within the administrative structure of a state and by virtue of the processes required to revoke or repeal an administrative rule or law (Scotford and Minas, 2019).

<sup>3</sup> Switzerland's referendum on the government's proposed amendments to the CO<sub>2</sub> Act in 2021 provides an illustrative example. The law was rejected by voters – many from rural areas – on the basis that its reliance on carbon taxes to achieve its aims would have placed an unfair burden on middle and working class families and rural communities, while failing to address the lifestyle emissions of wealthier citizens. See further Vatakis (2021).

<sup>4</sup> Our starting point of governance functions is not grounded on a functionalist philosophy of law. In fact, this brief does not endorse any one theoretical lens through which laws ought to be analysed but attempts to create a tool for the rational fabrication of laws. The implicit assumption is that any larger view of what constitutes a law must accommodate, even feature, the sense that laws are designed for a specific purpose and should serve particular and local functional or societal roles.

<sup>5</sup> The Climate Change Laws of the World Database, maintained by the Grantham Research Institute on Climate Change and the Environment, London School of Economics and Sabin Center for Climate Change Law, Columbia University, captures more than 50 framework laws from around the world: climate-laws.org.

<sup>6</sup> See further Mehling (2015) for a discussion of the constraints of comparative analysis and a pragmatic approach to a working definition.

<sup>7</sup> The authors note that there is non-enforceable climate change legislation.

<sup>8</sup> Developed by the Grantham Research Institute on Climate Change and the Environment and Sabin Center for Climate Change Law, available at climate-laws.org. To be included, a law or policy must be demonstrably motivated by climate change concerns.

<sup>9</sup> See Scotford and Minas (2019), who identify not only the relevance of other climate relevant laws on the statute books, but also "national circumstances with respect to climate change (particularly whether a State contributes to climate change and/or feels its effects), governance frameworks that constrain or enable lawmaking (including relationships with supranational entities), political and economic realities, international policy leadership and national administrative culture."

<sup>10</sup> See IEA, Policies and measures database, available at: [www.iea.org/policies](http://www.iea.org/policies).

<sup>11</sup> South Korea's 2021 'Carbon Neutrality and Green Growth Act' sets an outcome duty, whereas previously, there was a separate decree that set emissions limits. Now, the Act itself contains both. The greenhouse gas emission reduction target for 2030 will be started in the range of 35% or more.

<sup>12</sup> For a description of legal and juridical problems arising from outcome duties, see Reid (2012).

<sup>13</sup> The 'schutz' in 'Bundes-Klimaschutzgesetz' can also suggest 'conservation' but the dominant sense is 'protection' or 'sheltering'.

<sup>14</sup> Constitution of the People's Republic of China, as amended in 2018, preamble and Articles 89(6). See Poderati and Ou (2021); and Zhu (2021).

<sup>15</sup> climate-laws.org/methodology-legislation now identifies 52 pieces of framework legislation.

<sup>16</sup> See Reid (2012) on the value of procedural duties.

### **ICEE, Centre for Policy Research**

The Initiative on Climate, Energy and Environment at the Centre for Policy Research (CPR-ICEE) aims to stimulate an informed debate on the laws, policies and institutions shaping climate, energy and environmental governance in India. Our research focuses on an improved understanding of climate, development and environmental challenges – and pathways to improved outcomes – in three key areas: climate policy and institutions, the political economy of energy transition in India, and air quality governance. For live updates on our work, follow us on Twitter or email us at [climate.initiative.cpr@gmail.com](mailto:climate.initiative.cpr@gmail.com).

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The Grantham Research Institute on Climate Change and the Environment was established in 2008 at the London School of Economics and Political Science. The Institute brings together international expertise on economics, as well as finance, geography, the environment, international development and political economy to establish a world-leading centre for policy-relevant research, teaching and training in climate change and the environment. It is funded by the Grantham Foundation for the Protection of the Environment, which also funds the Grantham Institute – Climate Change and Environment at Imperial College London. [www.lse.ac.uk/granthaminstitute](http://www.lse.ac.uk/granthaminstitute)

### **Climate Legal**

Climate Legal is a climate change legal consultancy, based in South Africa, with deep specialisation in climate change and carbon markets law and policy. It services clients across the African Continent, including national governments, multi-lateral organisations and donor agencies, providing advice on emerging climate change and energy policy and legal frameworks, climate finance, carbon markets as well as loss and damage; supporting and capacitating national delegations in the international climate change negotiations; and providing legal advice in related regulatory fields such as water and energy laws. It has served on the legal drafting teams for and provided advice in relation to national climate change legislation in South Africa, Zimbabwe, Thailand, SADC and The Seychelles. Directors Andrew Gilder and Olivia Rumble are both ranked as leading environmental lawyers for Chambers and Partners 2021 and 2022, as well as Best Lawyers 2018-2022. [www.climatelegal.co.za](http://www.climatelegal.co.za)

