

# Analysing Climate Legislation

*Dr Eloise Scotford & Stephen Minas*

*The Dickson Poon School of Law, King's College London*

# **A Methodology for Analysing Climate Legislation**

# Identifying and Aggregating Climate Legislation

---

- Challenges:
  - Climate change as a ‘wicked problem’ inevitably defies legal boundaries and established frames of legal analysis, whilst also being a ‘whole of legal system’ problem
  - Climate law operates at multiple levels of governance in countries with different national circumstances and different legal cultures
- Why would we want to map and aggregate climate legislation?
  - Various reasons but our focus is on determining how climate-relevant laws combine to create an overall legal and regulatory landscape that governs responses to climate change
- Necessarily a jurisdiction-based exercise, but multi-level laws and legal culture as important aspects of the analysis

# Methodology: Direct Legal Intersections

---

- Identify *direct* and *indirect* legal intersections between legislation within a particular legal culture and climate change
  - Imperfect distinction but a starting framework
- **Direct legal intersections** = national laws that explicitly address/consider climate change causes or impacts, including:
  - Legislation and regulations whose main purpose is to achieve climate policy objectives eg statutory climate targets, renewable energy regulation
  - Laws that explicitly take into account climate change issues or impacts within a broader framework eg planning laws with built-in climate policy

# Methodology: Indirect Legal Intersections

---

- **Indirect legal intersections** = national laws and regulations that can significantly affect GHG mitigation and climate change adaptation goals through their operation, or equally can undermine other policies in the single-minded pursuit of climate change goals
- Such intersections can provide climate ‘co-benefits’ but can also be areas of policy tension and potential (including unintentional) trade offs
- Examples
  - Land management law eg land clearing laws in Australia
  - Air pollution law eg air quality controls that do not take into account radiative forcing potential of GHGs, or biofuels incentives that do not factor in air quality controls

# Examples and Conclusions

# Global Diversity of Climate Laws: Examples

---

- Economy-wide legal obligations, e.g. UK Climate Change Act 2008 (direct)
- Energy market requirements, e.g. India's Electricity Act 2003 (direct)
- Energy efficiency regulation, e.g. Kenya's Energy Regulatory Commission (direct)
- Water management law, e.g. Zambia's Water Resources Management Act 2011 (direct – NB can also be indirect water management laws)
- Financial law, e.g. Tuvalu's Climate Change and Disaster Survival Fund Act 2015 (direct)
- Waste regulation, e.g. EU Directives 1999/31/EC & 2008/98/EC (indirect)

# Conclusions and Future Directions

---

- Qualitative rather than quantitative study required in identifying all the regulatory and legal mechanisms that are relevant in delivering climate policy
- Importance of identifying ‘hidden’ indirect climate legislation
  - Next step is to evaluate the nature of such legal intersections with climate policy within particular legal contexts
- Our aggregate method of mapping climate legislation provides a platform for framing, evaluating and comparing climate legislation across different legal, socio-political and environmental contexts



COLUMBIA LAW SCHOOL

---

SABIN CENTER FOR CLIMATE CHANGE LAW

# National Climate Change Legislation: A Brief Typology

Michael Burger

*Executive Director, Sabin Center for Climate Change Law  
Research Scholar and Lecturer-in-Law, Columbia Law School*

LRI/CKDN

September 27, 2016

# Sources

The screenshot shows a web browser window with the following elements:

- Browser Tab:** Climate Change Litigation - T1 x
- Address Bar:** wordpress2.ei.columbia.edu/climate-change-litigation/
- Navigation Menu:** HOME, U.S. LITIGATION, NON-U.S. LITIGATION, SEARCH, ABOUT, CONTACT
- Main Text:**

**The Sabin Center for Climate Change Law provides two comprehensive databases of climate change caselaw:**
- Buttons:**
  - U.S. CLIMATE CHANGE LITIGATION**
  - NON-U.S. CLIMATE CHANGE LITIGATION**
- Text:**

Cases in the databases are organized by type of claim and are searchable. In many cases, links are available to decisions, complaints, and other case documents.
- Image:** A decorative image at the bottom of the page showing water droplets on a surface, reflecting light.

## Sabin Center for Climate Change Law



### Home

### About the Center

### Environmental and Energy Law at Columbia

### Climate Law Blog

### Resources

Litigation Charts

International Resources

- > Climate Change Laws of the World
- > Legal Response Initiative
- > SCCCL at the UNFCCC
- > Offset Protocols
- > Human Rights

Federal Resources

Energy Law

Climate Risk Analysis

## Climate Change Laws of the World

Countries around the world are taking important domestic actions to help tackle the issue of climate change. This page collects the relevant laws and policies of various countries into an easily accessible database.



The database is a work in progress, with countries being added as relevant expertise becomes available. SCCCL invites and welcomes collaboration in helping to develop and keep current this expansive and rapidly changing body of laws. Please email additions and updates to [ColumbiaClimate@gmail.com](mailto:ColumbiaClimate@gmail.com).

- **Asia and Pacific**
- **Africa and the Middle East**
- **Europe and Eurasia**
- **North America**
- **Central and South America**



## The Global Climate Legislation Study



Summary for policymakers



Country profiles



Legislation database



Latest legislative developments



Events



Related research

---

# Scope & Structure of National Climate Legislation

- Comprehensive regulation
- Patchworks of old and new laws
- Policy but no laws
- Gestures toward policy only

---

# Scale of Governance & Balance of Powers

- Scale of Governance:
  - National
  - Sub-national
  - Local
- Balance of Powers
  - Executive and legislative roles
  - Courts and litigation

---

# Principal Regulatory Techniques

- Quantitative Targets
- Pricing Emissions
  - Taxes
  - Cap-and-Trade
- Command-and-Control
- Subsidies and Tax Incentives
- Information Disclosure
- Special Case: Non-Fossil Fuel GHG Emissions Sources



# Thank you!

Contact Info:

[michael.burger@law.columbia.edu](mailto:michael.burger@law.columbia.edu)

1-212-854-2372

Twitter: @profburger

Sabin Center Online:

<http://www.columbiaclimatelaw.com>

<https://www.facebook.com/ColumbiaClimateLaw>

Twitter: @columbiaclimate



# LEGISLATIVE DRAFTING FOR CLIMATE CHANGE: IS THERE A RIGHT WAY AND A WRONG WAY?

**Dr Constantin Stefanou**

*Director – Sir William Dale Centre for Legislative Studies*

*Institute of Advanced Legal Studies – University of London*

# LEGISLATIVE DRAFTING

- Certainly a term which is “wrong” in that drafters do not only draft primary legislation.
- They draft secondary legislation, regulations, in some jurisdictions they even draft ministerial decisions, Presidential decrees, we are even told that often they draft the speeches of their political masters!
- The correct term, therefore, should be the **drafting of normative acts**.



# CLIMATE CHANGE

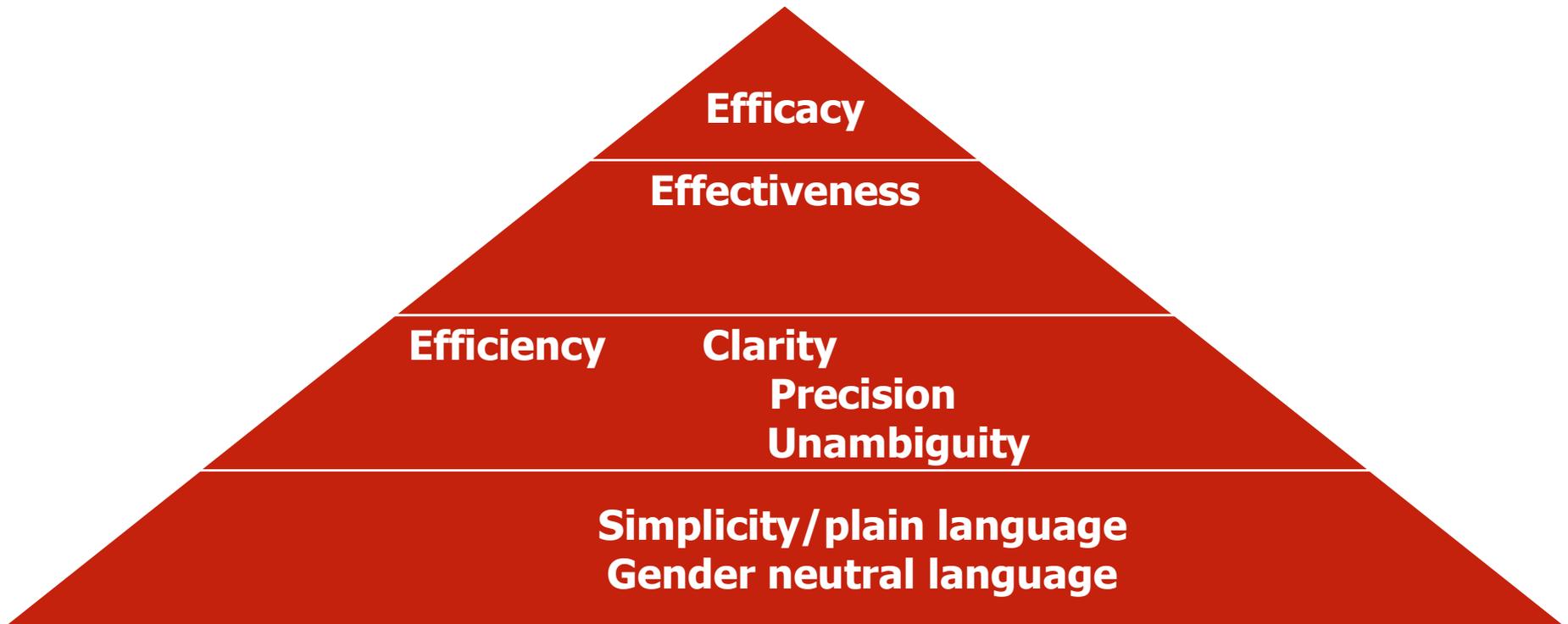
- A term which unfortunately is linked primarily to technical issues, eg greenhouse gases, ozone depletion etc
- In reality tackling Climate change is a complex issue which touches on many and varied aspects of law, eg:
  - Legislation affecting carbon marketing claims
  - Information based legislation
  - Legislation clarifying property rights in carbon & liabilities
  - Legislation to implement international commitments
  - Climate aspects of existing legislation – EIA law, Planning law, Building regulations
  - Energy legislation
  - Transport regulation
  - Major projects legislation



# HOW SHOULD LEGISLATION BE ASSESSED?

- Perhaps this is one of the most difficult questions because legislation can be assessed in different ways
- The most recent approach is to assess legislation in terms of its **effectiveness**
- The obvious question here is what exactly do we mean by “effective”? Are there criteria for effectiveness?

# CRITERIA FOR EFFECTIVENESS





# CLIMATE CHANGE: AREAS TO LEGISLATE

- Let me give you an example drawn from climate change legislation. When legislating for climate change various areas are included, ie
  - emission control
  - energy market regulation
  - land use and infrastructure
  - adaptation



## CLIMATE CHANGE: SHOULD WE START ASSESSING THE LAW?

- The problem is, especially in the developing world, that even when climate change legislation has been adopted (self developed or transplanted) it is not assessed.
- Consequently, it is impossible to assess its effectiveness and it is impossible to use best practices (indeed how could we unless we know what does or does not work)
- The existence of legislation does not necessarily alter behaviour so the existence of climate change legislation does not imply compliance with agreements.



# CONCLUSION

- Despite our best efforts it is very difficult to assess climate change legislation for two reasons:
  1. We do not have generally accepted criteria for doing so
  2. Those countries that are in dire need to assess their efforts tend to be the ones that lack the knowhow to do so
- There's a need to train drafters who draft climate change legislation.