



# Scaling up Tools for the Paris Agreement – Transparency, Markets & Compliance

## Climate Law and Governance Roundtable 2019

Held on Saturday 22 June 2019, during the Bonn UNFCCC  
Climate Change Conference (SB50) at the Ameron Hotel  
Königshof

### Findings Report

With all appreciation for the endorsement of the UNFCCC CoP22, 23 and 24 Presidencies:



With special thanks to leading international organisations for their guidance and support:



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## About the Climate Law and Governance Initiative (CLGI)

The Climate Law and Governance Initiative (CLGI) is a coalition of different members of the climate law community including think tanks, universities, international organisations, NGOs and law firms. CLGI supports and generates knowledge sharing activities, an active community of practice, and specialised climate law and governance capacity-building events and courses alongside the annual Conferences of the Parties to the United Nations Framework Convention on Climate Change. CLGI, in collaboration with partners and session hosts, coordinated Climate Law and Governance Roundtable 2019 on 22 June 2019, alongside UNFCCC Climate Change Conference in Bonn, Germany. This findings report is a product of the dialogue generated from the roundtable sessions that took place throughout the event.

## Contact Information

### Climate Law & Governance Initiative Secretariat

c/o CEENRG, University of Cambridge  
The David Attenborough Building, Pembroke Street  
Cambridge CB2 3QZ, United Kingdom

c/o CISDL, McGill University Faculty of Law  
Chancellor Day Hall  
3655 Peel Street  
Montreal, QC H3A 1A9, Canada

c/o CDA, University of Chile  
Pío Nono N°1 Providencia  
Santiago de Chile, Chile

[climatelawgovernance@cisd.org](mailto:climatelawgovernance@cisd.org)

[www.climatelawgovernance.org](http://www.climatelawgovernance.org)

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#CLGD2019

## Overview of the 2019 Climate Law and Governance Roundtable

The 2019 Climate Law and Governance Roundtable was held on 22 June 2019, alongside the meeting of the UNFCCC Bonn Climate Change Conference, and was convened by the Centre for International Sustainable Development Law (CISDL), the Centre for International Governance Innovation, and other key partners of the Climate Law & Governance Initiative (CLGI). The aim of the roundtable was to help shape the law and governance research, education, capacity building and action agendas needed for effective implementation of the Paris Agreement and NDCs.

The Roundtable addressed these challenges by reporting on research, reform and capacity projects launched during Climate Law and Governance Day (CLGD) 2018 in Katowice, Poland, and the CLGD 2018 Roundtable in Bonn, share knowledge on new education, policy and capacity building work, and identify gaps and propose themes and activities for CLGD 2019 to help networks to build synergies and scale up climate law and governance together.

Professor Marie-Claire Cordonier Segger, Executive Secretary of the CLGI, introduced the event by reminding the participating researchers, delegates and practitioners that the community of experts convened for events such as the Roundtable can provide a sounding board to help the climate governance agenda. Maitre Ayman Cherkaoui, Lead Counsel of the CLGI, emphasised the benefits of these events in bringing together a diverse audience capable of contextualising the climate governance regime within its associated fields. Opening remarks were made by Ms Hafida Lahiouel, Director of Legal Affairs, UNFCCC, and Mr. Douglas Leys, General Counsel of the Green Climate Fund (GCF). The discussion flowed over two sessions, focusing first on *Advancing Paris Agreement Innovations – Transparency, Markets & Non-Market Instruments, Finance & Compliance Rules* and second on *Scaling-up National Climate Action – Governance, Innovation, Participation, Rights & Justice*.

The discussions concluded with a series of proposed capacity building and knowledge sharing priorities for CLGD 2019 to be held alongside COP25. A brief overview of the Roundtable discussion is provided below, followed by a summary of the proposed focus areas for CLGD 2019.

### Roundtable Findings

Renowned partners of the CLGI intervened as key discussants on legal frameworks and green finance, loss and damage, compliance mechanisms and using legal means to advance human rights, gender inclusion and climate ambition over the first session of the 2019 CLGD Roundtable. A wide array of consolidated expert and emerging academics and practitioners participated in the Roundtable discussion following the opening remarks. The key findings of the discussion are presented in this section and a full list of participants can be found at the end of this report. Discussions took place under Chatham House rules.

#### ***Advancing Paris Agreement Innovations – Transparency, Markets & Non-Market Instruments, Finance & Compliance Rules.***

*Speakers and Intervenors:* Dr. Alexandra Harrington (Balsillie School of International Affairs / CISDL, online), Mr. Sébastien Duyck (Climate & Energy Programme, CIEL), Ms. Anne Barre (Women Engaged for a Common Future, WECF), Prof. Michael Mehlring (Carbon & Climate Law Review / MIT, online), Dr. Markus Gebring (University of Cambridge / CISDL, online) and Prof. Christina Voigt (University of Oslo / CISDL, online).

This session explored key advances in the Katowice Outcomes for international law and governance, as well as innovations and synergies for participation and transparency initiatives to promote more effective climate action. It featured prominent discussants on the topic of how market and non-market mechanisms, human rights, gender and rights-based strategies and instruments can incentivise higher ambition internationally, as well as the challenges and responses that could be considered to ensure compliance and strengthen implementation.

Discussion revealed several areas for further exploration, including:

- Discussants highlighted the importance of scaling up legal capacities, training lawyers and stimulating legal interest in climate finance. In most countries, an insufficiency of specialised climate personnel prevents appropriate legal frameworks from developing. Furthermore,

prioritising complementarity and coherence of climate investment funds was identified as necessary to ensure effective coordination and operation among the main climate fund institutions.

- Discussants asserted that the role of the private sector in climate finance and investment must be strengthened. The second edition of the GCF global conference on private investment for climate change, to take place in October 2019, was highlighted as an essential opportunity for scaling up the involvement of the private sector, particularly the insurance and banking communities.
- Discussants identified opportunities for law and governance reform to enable private investment, concluding that overall, regulatory frameworks play a very important role in enabling the flow of finance.
- Discussants raised the importance of participatory, transparent law development processes, highlighting the importance of lawyers and law- and policy-makers taking a bottom-up approach that engages civil society stakeholders in the law-making process. For the law to be relevant, stakeholders must feel a sense of ownership over new laws, necessitating a methodology for collating and including a multitude of views with a human rights and gender perspective.
- Importantly, it was asserted that the inclusion of social safeguards at an early stage of the decision-making processes in market mechanisms and climate financing is essential to avoid violation of human rights on the ground. It was, however, acknowledged that, at the moment, the framework does not have institutional bodies capable of supervising environmental and social safeguards. Discussants explored the possibility of establishing a specific grievance mechanism within art. 6 of the Paris Agreement that could be related to the Climate Data Records and mandated to look specifically into negative environmental and social impacts.
- Discussants also considered that one key achievement of Katowice was the identification of core legal obligations which, if not fulfilled by a party, can immediately trigger the compliance mechanism. Other important steps forward are the compliance committee's new capacity to issue findings of fact that can be made publicly available and the backstop established in the transparency framework.
- Discussants suggested further exploration of the links between compliance and markets. At the institutional level, the prospect of establishing an appeal procedure for the market mechanism — as was vaguely envisaged in Katowice — was recognised as one of the key points that should be included in upcoming negotiations on compliance. Moreover, the rules of procedure for the compliance committee were also identified as an opportunity to influence negotiations and scale up efforts on implementation.
- Discussants emphasised the sustainable development mechanism as a key element in the future of climate law and governance beyond the realms of the regime. However, it was noted that the mechanism faces critical challenges in current multilayered governance contexts, thus ensuring that market mechanisms do not undermine the domestic legal frameworks for curbing emissions remains a challenge.
- Discussants highlighted the need to examine different avenues for including human rights and participation issues in climate governance beyond the climate framework (particularly human rights mechanisms and bodies at the international and the regional levels), in order to benefit from a wider perspective on the types of mechanisms should be established within the climate change regime.
- Discussants noted that the compliance committee and the sustainable development mechanism should work with the SDGs, particularly SDG 16, since the linkages between justice, peace, security and governance can be useful for the compliance mechanism's creation and implementation framework.
- Discussants asserted that the private sector also should be held accountable, and thus the compliance mechanism should be developed to address the challenges posed by private sector contributions to climate change. The integration of social and human rights safeguards was restated as an utmost necessity to ensure that private sector activities are compatible with the aims of the climate change framework.
- Discussants suggested that further exploration of the role of markets under the Paris Agreement is needed to develop an adequate regulatory framework that allows for cost-effective allocation of scarce resources, while avoiding increases in greenhouse gas emissions.

## ***Scaling-up National Climate Action – Governance, Innovation, Participation, Rights & Justice Trends***

*Speakers and Intervenor:* Dr Hafij Khan (Centre for Climate Justice, Bangladesh), Mr. Pablo Carrasco (FUDES, University of Chile, online), Maitre Erick Kassongo (Congolese Centre for Sustainable Development / CISDL, online), Mr. Sebastian Müller (Right based on Science, online), and Maitre Christopher Campbell-Durufle (University of Toronto / CISDL, online)

This session centered on national climate action and the means through which it can be effectively supported by law, governance, innovation and public participation to ultimately scale up Paris Agreement implementation. It examined justice sector reform and governance innovations contributing to low-carbon sustainable development in key countries and regions, and the transparency tools used to incentivise and govern climate action, new financial flows and low-carbon development pathways. Finally, public participation, loss and damage, and climate migration were established as some of the main challenges that must be actively addressed by all.

This session focused on tracking recent trends and judgments in climate litigation, integrating human rights into climate action, advancing the Warsaw International Mechanism for Loss and Damage, addressing climate migration, and the roles of the courts, legal community and civil society on the ground.

Discussion revealed several areas for further exploration, including:

- Discussants highlighted the translation of international commitments to national commitments through the example of Bangladesh. Researchers explored the integration of rights-based national policies and mechanisms to address vulnerability, climate migration, loss and damage. Bangladesh is working to develop a national loss and damage framework. Questions regarding capacity-building in developing countries, adoption of adequate policies to address displacement of climate vulnerable populations, and the need to implement transparency mechanisms at the national level were analysed by participants.
- Discussants engaged with the experience of Kazakhstan, highlighting the climate governance challenges that this country faces. The concentration of the climate agenda in the Ministry of Energy, the lack of an adequate transparency policy and the absence of key environmental considerations in the national legal framework were identified as major obstacles to raising the adaptive capacity of the country. The need to enhance exchange of good practices and support among countries was emphasised.
- Discussants presented an innovative modelling tool for measuring greenhouse gas emissions of private corporations, which may help inform further research and policy-making.
- Discussants asserted that sustainable public procurement policies are key measures for protecting human rights while combating climate change.
- Discussants suggested further research into the advantages and disadvantages of bringing legal cases on ‘failure to mitigate’ vs ‘failure to adapt’. A key limitation raised for ‘failure to adapt’ cases is the restrictions on the types of parties against which cases can be brought, with polluters remaining free from litigation. Debate also raised the question of whether duty of care aspects are better suited to these ‘failure to adapt’ cases.

## **CLGD 2019 Priorities**

Participants discussed the need for CLGD 2019 to build on the research and capacity building focus areas identified during CLGD 2018, and to prioritise the Chile Presidency’s vision for COP25. The importance of enabling key government delegates, officials, and influencers to participate, and to benefit from the insights and ideas shared at CLGD, was a commonly shared priority. Finding time for delegates and their legal advisers and associated research communities to share best practices was also raised as a key concern.

Building upon the two focus topics of the Roundtable discussions, the key priority themes for knowledge sharing and capacity building during CLGD 2019 will be the following:

1. **Advancing Paris Agreement Innovations** – Transparency, Markets & Non-Market Instruments, Finance & Compliance Rules.
2. **Scaling-up National Climate Action** – Governance, Innovation, Participation, Rights & Justice.
3. **Local & Global Interlinkages & Engagement** – Climate in Regimes on Oceans, Biodiversity, Ozone, Civil Aviation, Trade & Investment, Peace & Security.

## Acknowledgements

The CLGI is particularly grateful for the support of leading law firms Baker McKenzie and Becker Büttner Held, who made generous contributions to the event. All Parties and Observers are very welcome to join the CLGI in the future as sponsors, partners, thematic leaders or participants. Senior representatives and experts from UNFCCC Parties have formed a Programme Committee to guide the growing CLGI throughout upcoming CoPs and similar events. The CLGI and its partners welcome all interested law firms, governments and stakeholders to contact us in order to help shape the next upcoming knowledge-sharing events in 2020.

With special thanks to world-leading CLGI academic collaborators institutions and past CLGD hosts:



And with grateful recognition of our law association, law journal and law firm partners:

