

# **EEAC Working Group Energy Workshop Brussels 17 June 2016**

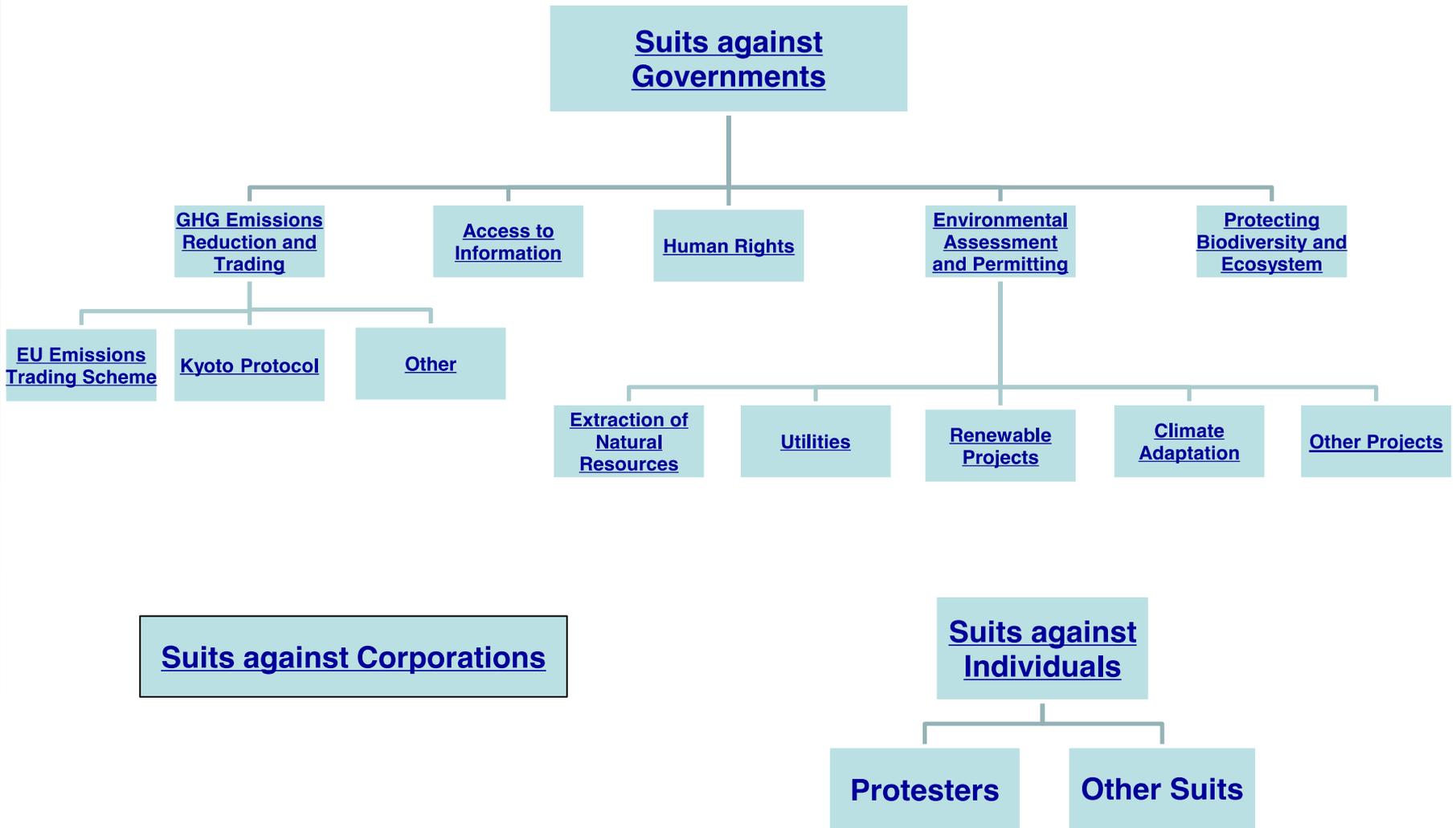
The Paris Agreement, Implementation and the  
Potential of Climate Laws

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# Non U.S. Climate Change Litigation Chart

[Click here for Climate Change Litigation in the U.S.](#)



## Paris Agreement

- Avoids legally binding emission reduction targets on individual countries
  - Overall climate change goal
  - Countries contribute to goal in accordance with principle of common but differentiated responsibilities, while avoiding simplistic distinction of developed/non-developed countries
  - Conference of Parties meet every 5 years to take stock of progress

# Framework

- **Paris Decision** (context, further work etc. etc.)
- Annex contains **Paris Agreement** made under Climate Change Convention and to 'enhance' its implementation.  
To be ratified
- Should enter into force 2020 (comes into effect with 55 parties representing at least 55% greenhouse gas emissions)
- More detail than expected but many important issues to be worked out in future meetings
- Sets a trajectory rather than precise obligations

## Overall long term temperature reduction goal

- Holding the increase in the global average temperature to well below 2 ° C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 ° C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change (Art 2(1)(a))

## Parties Aims

- “to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing countries”

Art 4.1

- “to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century” Art 4.1

# Nationally Determined Contributions

- Each party prepares and maintains successive NDCs
- “Ambitious efforts” to achieve purpose of agreement
- Successive NDC must represent a ‘progression’
- Successive NDC must reflect “*reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*”.

## Successive NDCs

- Communicate an NDC every 5 years
- Provide the information necessary for clarity, transparency and understanding in accordance with decisions of COP
- Be informed by the outcomes of the global stocktake
- First global stocktake 2023 and then every five years (art 14)

## Review and implementation (Art 13)

- ‘Transparency framework’ for action and support
- Implemented in a *‘facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and to avoid placing undue burdens on parties’* (art 13.3)
- Parties must provide information necessary to track implementation of NDCs
- Technical expert group to review
- Procedures and modalities to be adopted

## NDCs

- Paris agreement established Ad Hoc Working Group to elaborate guidelines for accounting NDCs including
    - consistent methodologies for accounting
    - methodological consistency *‘between the communication and implementation’* of NDCs
- Paris Decision (para 31)

## Cooperation/Joint Implementation (Art 6)

- Parties may pursue cooperation in implementation of NDCs
- Apply robust accounting to avoid double counting consistent with guidance to be adopted by COP
- Mechanisms to be supervised by body to be designated

## Implementation (Art 15)

- Establishes mechanism to ‘*facilitate implementation and to promote compliance*’
- Expert based committee to be ‘*transparent, non-adversarial, and non-punitive.*’
- Must play particular attention to respective capacities of parties
- Will operate under procedures to be determined by COP

## Thoughts on Implementation from a Legal Perspective

- Paris agreement contains little in the way of precise reduction obligations on parties or even a precise long term date ('second half of century')
- A process and a trajectory (one way ratchet)
- More detailed obligations likely to emerge in reporting/verification procedures
- NDCs not legally binding as such under international law

## EU Dimension

- The EU will submit an NDC for the EU as a whole
- EU intended NDC submitted March 2015 (40% reduction by 2030 (“in line with below 2° C objective))
- EU will agree with Member States how to distribute reduction targets for each MS
- Depending on terms and form, that agreement may have binding force on MS under EU law – see by analogy the *EU Effort Sharing Decision under Kyoto 406/2009/EC*

## Bottom Up approach may suggest a greater role for National Courts

- Will the national NDC have any status under national law?

The overall objective in Paris Agreement may provide point of reference for national courts (see Dutch *Urgenda* case and its reliance on IPCC reports)

## Legal Obligations

- Procedural (producing plans, reports, etc.)
- Substantive (will courts feel capable of judging content of plans?)
- Independent expert bodies (especially where advice not followed) provides reassurance for the Courts to be more interventionist)

## Types of Legal Action

- Dutch *Urgenda* case and Belgian cases based Napoleonic Civil Code – tort action against the State and its duty towards citizens.
- Public law – judicial review based on terms of national law and legal status of NDCs.
- Emerging legal issues concerning liability of third parties - oil companies, duties on trustees to divest etc.

## UK Climate Change Act 2008

- Set obligation to reduce by 80% by 2050  
*“The Government believes that we will need to take the steps of enshrining the Paris goal for net zero emissions into UK law. The question is not whether we do it but how.”* (statement in Parliament March 2016)
- Climate Change Act model had some influence on Paris approach

## LONG TERM TARGETS

- **S 1 (1) “It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.”**
- S 2 gives power to S of S to amend target or baseline up or down but restricted to where significant changes in scientific knowledge about climate change or in EU or international law

## General considerations

- What sort of legal duty is this? (no qualification, ‘*as far as practicable*’ etc.)
- Directory or Mandatory?
- Target Duty - dangers of judges getting involved in resource allocation?
- Procedural only

## Legal enforceability of core duty?

- Timeliness? (2030, 2040, 2050?)
- Remedy of court? Declaration of non-attainment?
- Political accountability provisions – can they run in parallel to judicial enforceability?

## S 20 Final Statement Duty post 2050

- (1) It is the duty of the Secretary of State to lay before Parliament in respect of the year 2050 a statement containing the following information.
- .....
- **(6) If the target has not been met**, the statement must explain why it has not been met.
- (7) The statement required by this section must be laid before Parliament not later than 31st May 2052

## Indirect Value of Law

Even where targets enshrined in law may not be easily enforceable in the courts they may still have value:

- Law of course can be changed but less easily done so than simple policy commitments – important where long term issues involved.
- Encasement in law helps secure internal government policy support particularly where there are tensions between departments
- Public resonance – a clearly intelligible target duty helps increase public pressure