Editorial

The Twenty-First Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC), represents a deeply consequential moment in the history of the international climate change negotiations. Dealing with globally complex, multi-layered and inherently variable problems, such as climate change, requires similarly diverse and mutually-reinforcing approaches, whose formal international and national articulation often necessitates political compromise. In this light, COP 21's outcome is the imperfect child of thitherto multi-lateral dysfunctionality and a resolute French Presidency, committed to achieving success in the face of (what was, then, perceived as) the negotiations' last-gasp. Consequently, the primary Paris texts, namely a UNFCCC Decision and the Paris Agreement, are characterised by equivocation, simply articulating the limited set of issues on which multi-lateral concord could be attained, in the circumstances, in a sometimes subtle, sometimes overt balance of the legally binding and non-binding.¹ It is in this context that national climate change laws play a particularly important role, in giving legal impetus to domestic climate change policy as well as international commitments and obligations under the Paris Agreement. It is within this context, that framework climate change legislation comes to the forefront as one of the key means to consolidate political support for the climate agenda, to provide the framework for implementation of the Paris Agreement and for assessing progress, as well as to enable ratcheting-up of ambition going forward.² Moreover, and as discussed elsewhere in this Special Issue, national climate change laws have a particularly important role to play in articulating, entrenching and immunising policy; mandating action and creating institutional structures; fostering horizontal co-ordination and cooperation; as well as through their inherent value as symbolic and enforceable instruments.

Against this background, this Special Issue of CCLR, drafted primarily by African legal practitioners and scholars, directly engages with how a number of African countries have sought to address climate change at a national level. It does so by providing a limited overview of, and critical reflection on, recent developments in climate change legislation and regulation in the region.

Adaptation has always been, and continues to remain, a key priority for the region and its prominence in various draft and final framework Bills, particularly those of Kenya, Uganda, Nigeria and South Africa, reflects this. In her overview of the of framework laws on the continent, Olivia Rumble's analysis engages with how these various draft and final laws have sought to regulate adaptation from an institutional, planning, monitoring and finance perspective. In doing so she identified common threads highlighting a likely cross-pollination in approach. Not only do these approaches respond to the unique priorities of the

DOI: 10.21552/cclr/2019/4/3

- 1 Bodansky, for example, views the Agreement as establishing legally binding obligations of conduct but not of result. See Daniel Bodansky, 'Reflections on the Paris Conference' <<http://opiniojuris.org/2015/12/15/reflections-on-the-paris-conference>> accessed 1 December 2019; Gilder has noted that the Agreement carves a middle path between the Kyoto Protocol's prescriptions and the Bali Action Plan's flexibility. See Andrew Gilder, 'Epilogue: The Paris Agreement and the Future of International Climate Change Governance' in Humby, Kotze, Rumble and Gilder (eds.) *Climate Change Law and Governance in South Africa* (Juta 2016) 26.
- 2 Averchenkova A 'Legislating for a Low Carbon and Climate Resilient Transition: Learning from International Experiences' Elcano Policy Paper (2019).

continent, but they potentially serve as useful points of reflection on national legal responses to adaptation, within the wider body of national framework laws, most of which are primarily mitigation focused.

Many developing countries are also looking to engage with not only the process of devising a framework law but also the considerations relevant to its implementation. In this context, the analysis by Clarice Wambua in relation to Kenya's Climate Change Act 2016 and Alexander Kibandama in relation to Uganda's Climate Change Bill, 2017, are deeply instructive. Both articles not only canvass the relevant laws, but they provide useful narratives regarding the policy and political process that underpinned their development, underscoring the wider political, institutional and policy drivers that accelerated their design. In her analysis of Kenya's Act, Wambua traces the painfully negotiated process of arriving at the draft Bill, underscoring the need for stakeholder support at multiple levels. She highlights the importance of the institutional structures it creates and mainstreaming considerations it infuses across instruments and measures, as well as the Act's gravitas for the nation. She also reflects on some of the Act's weaknesses, particularly in relation to mitigation and implementation and how this may be improved. In turn, Alexander Kibandama highlights how Uganda's Climate Change Bill evolved out of a robust and detailed policy framework which facilitated and ultimately informed the content of the Bill. His analysis illustrates how initial efforts to mainstream climate change into existing laws such as the National Environmental Act, ultimately evolved into a dedicated Framework Bill that was considerably wider in scope and object.

Lastly, in their carbon tax comparative analysis Andrew Gilder and Geoff Stiles consider legislative approaches to carbon pricing in South Africa and Canada. They draw on key similarities and differences between the respective legal regimes, identifying lessons for design and implementation of carbon taxes, particularly in light of reinvigorated international interest in carbon markets and pricing. They grapple with the complexity of the South African carbon tax legal regime, underscoring the need to balance considerations of flexibility, national circumstances, capacities and requirements, and international developments within carbon tax design.

Together, the articles collectively affirm the importance of climate change law to the African region and the considerable scope for its expansion. To date, this momentum has attracted relatively little scholarship which potentially creates the erroneous impression that little is being done in Africa at a legislative level. This edition seeks to dispel this notion by addressing some key legislative developments, primarily with a focus on climate change framework laws.

*Andrew Gilder and Olivia Rumble
Special Issue Guest Editors*