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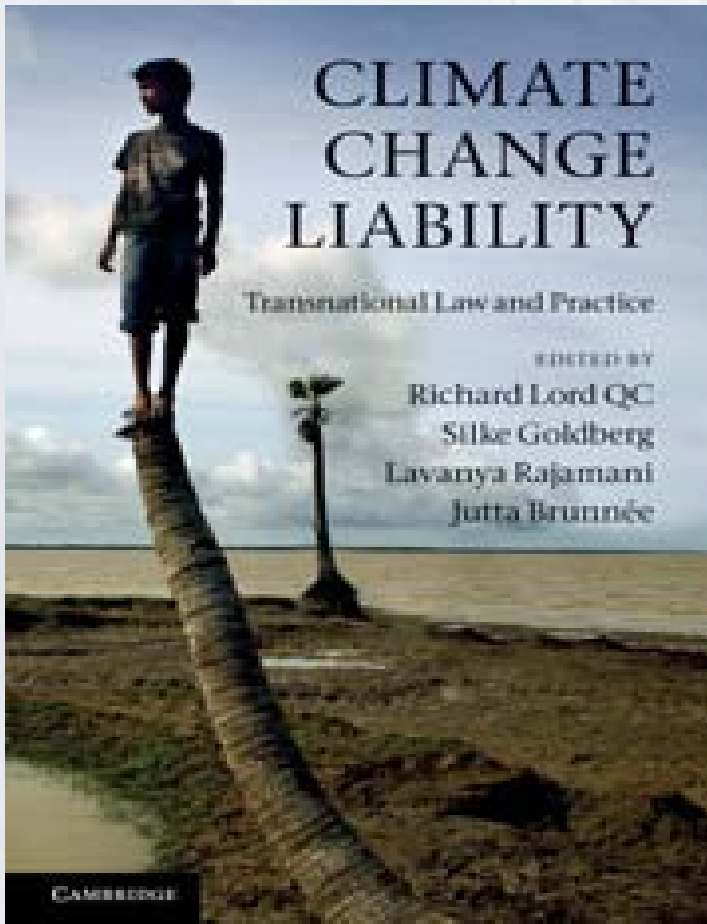
# Research on Legal Liabilities for Climate Change in China

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## The back ground of the research



- Actual or potential climate change liability implicates a growing range of actors, including governments, industry, businesses, non-governmental organisations, individuals and legal practitioners. Climate Change Liability provides an objective, rigorous and accessible overview of the existing law and the direction it might take in seventeen developed and developing countries and the European Union.



In March 2011, the coastland of Shandong province suffered from snow disaster, cold wave, storm surge and other extreme climate events because of sea level rise.

The coast erode going into worse and part of coasts collapsing and falling back in Hainan province due to the global warming and sea level rise. The local people had to migrant three times to seek refuge.



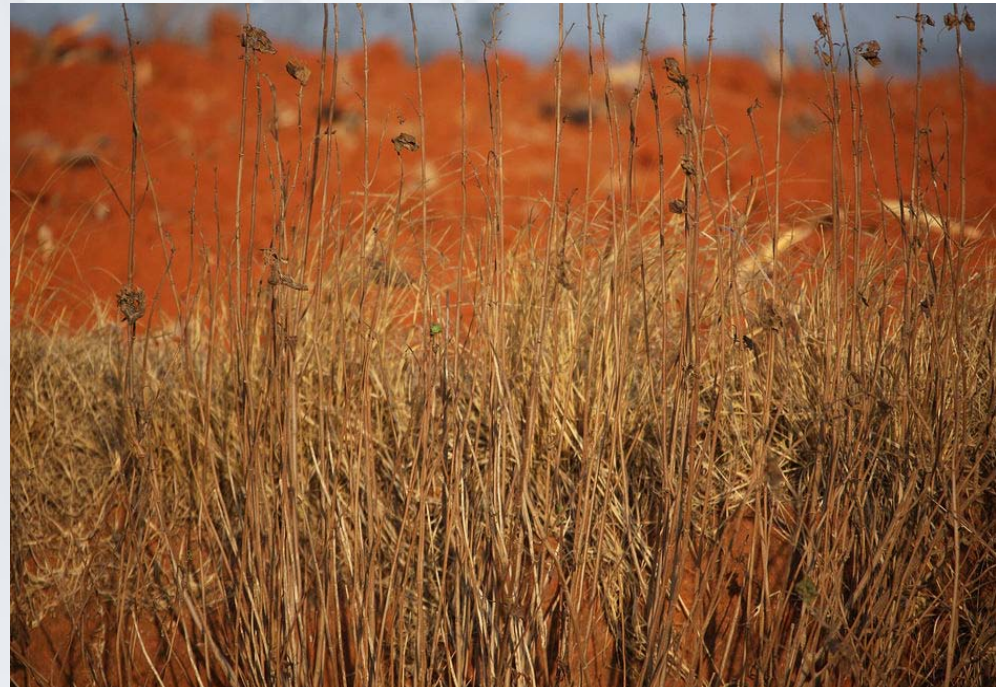


Many areas in China are suffering from disastrous floods this summer. This pictures were taken in Hunan Province in June 2012.





Five provinces in southwest of China had a serious drought in Spring, 2011. The soil was cracking up and the crops died because of the drought. This pictures were taken in Luliang, Yunnan province in April 2011.





- **China suffered grave climate damage in the past 10 years.**
  
- **China is always paying great attention to response to climate change, the legislative system on climate change in China has been established primarily.**

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# 1. Basic legislative framework on climate change in China

## (1) Basis of legislative policies on climate change

### ① National “12th Five-year Plan” on Environmental Protection

The plan added to the content on climate change, specified the target of development of environmental industry in China, and played the role of policy orientation on the legislations of addressing climate change.

### ② China’s National Climate Change Program

This is the first overall policy on addressing climate change in China, and the first national plan for addressing climate change issued by a developing country.

### ③ China's Policies and Actions on Addressing Climate Change

It introduced strategies and objectives for addressing climate change, policies and actions for mitigating and adapting to climate change, and institution and mechanism building.



## (2) Basic framework of legislations on climate change

■ There's no any special applicable law on climate change in China. But in the existing legislations, there are 5 different levels laws and regulations involved in the climate change.

### ① Constitution

Article 26: “The State protects and **improves the living environment and the ecological environment**, and prevents and controls pollution and other public hazards. The State organizes and encourages **afforestation and the protection of forests.**”

### ② Basic law on environmental protection

The **Law on Environmental Protection** clearly brings “air” into the regulating and protecting scope of environmental law. It can be used to direct the legislations and practice on climate change in China.

### ③ Laws on utilization of energy

- The reasonable utilization of energy plays an important role in energy conservation and emission reduction in China.
- The **Electricity Law**, the **Coal Law**, the **Energy Conservation Law** and the **Renewable Energy Law**.





#### ④ Specific laws on environmental protection

- Article 43 in the **Law on Prevention of Environmental Pollution caused by Solid Waste**: develop clean energy for use in urban areas.
- Article 9 in the **Law on the Prevention and Control of Atmospheric Pollution**: The State encourages and supports the development and utilization of clean energies such as solar energy, wind energy and water energy.
- Article 16 in the **Law on the Promotion of Clean Production**: Governments at all levels shall give priority to purchase products conducive to energy and water conservation, waste reuse, environmental protection and resource conservation.
- **Law on the Promotion of Circular Economy**: The system of labeling the resources efficiency; the system of eliminating the backward techniques, equipment and products.
- **Forest Law**: Forest is in favor of adjusting climate and improving environment, playing an important role in the reduction of greenhouse gas impact.

#### ⑤ Administrative regulations and rules

- **Measures for Administration of Operation of Clean Development Mechanism Projects**: the special administrative regulation on greenhouse gas emission.
- The key fields in the development of CDM projects: improvement of energy efficiency, development and utilization of new energy and renewable energy.

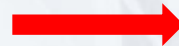


## 2. Legal liabilities for climate change in China

### (1) Liabilities on climate change in public law

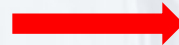
① The legal liability on climate change in the Law on the Environmental Impact Assessment.

➤ Planning and construction projects



The adopted planning might be revoked, or the issued license might be void.

➤ Public participation



The public may seek for legal remedy: Administrative Reconsideration and administrative procedure.

② The legal liability on climate change involved in energy conservation and emission reduction.

➤ The **Energy Conservation Law** and the **Renewable Energy Law**:

- Administrative liability: administrative disciplinary measure; administrative punishment.
- Criminal liability: but not directly caused by climate change.

➤ The **Plan for Implementation of Unit GDP Energy Consumption Evaluation System**:

- The evaluation results will be considered as one of internal encouragement and punishment basis for public servants.



- ③ Legal liability on climate change in the specific laws on environmental protection
  - Climate change seems to relate to the prevention and control of air pollution. But China doesn't stipulate greenhouse gases as the air pollutant.
  - Since the greenhouse gases emission is not subject to this law, the legal liability will not occur.
  
- ④ Procedural law and the legal liability on climate change
  - Environmental public interest litigation: there is no provision on public interest litigation in the procedural law in China.
  
- ⑤ Legal liability on climate change in the environmental criminal law
  - The Criminal Law establishes the “crime of violating protection of environment and resources”, involving in 9 articles and 15 kinds of crime.
  - But there is no specific crime on climate change in the Criminal Law, and no real relevant case in practice also.



## (2) Liabilities on climate change in private law

■ There are many obstacles in the confirmation of such liability:

- China doesn't stipulate greenhouse gases as the air pollutant.
- It is very difficult to identify the causality.
- The unfavorable effect on climate change is hidden, it may be exposed in possibly a very long period.

■ There is no provision on the liability in private law directly caused by climate change in the applicable law of China, and no case in practice also.

■ But there are relatively perfect provisions on environmental tort:

- The General Principles of the Civil Law, the Law on Environmental Protection, the Tort Law and others.
- The ways of bearing the civil liabilities: cessation of infringement; removal of obstruction; elimination of danger; restoration to the original status;. compensation for losses; apology.

■ **conclusion** : There's no any special applicable law on climate change in China, the civil liability, the criminal liability and the administrative liability usually indirectly caused by other provisions which are involved in climate change.



# Thanks for your attention!

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