

## Climate Law and Governance as Indicators of ‘Ability’ to implement the Paris Agreement

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### Executive Summary

Climate change laws and governance arrangements are important indicators of countries' ability to implement the Paris Agreement and their Nationally Determined Contributions (NDCs). In assessing such ability, it is helpful to consider a set of key governance functions the presence of which can underpin successful domestic mitigation and adaptation efforts in the long term. These functions include: direction-setting, strategy-setting, coordination, integration, mainstreaming, knowledge-production, stakeholder-alignment, finance mobilisation and allocation/channelling, and oversight and accountability. Although these functions will be met through various legal and policy instruments depending on political context, climate change laws offer potential for the creation of institutions and processes that effectively embed such functions in ways resilient to changing political fortunes. Consequently, it is necessary to go beyond the numerical measurement of progress made as regards emissions reductions, finance, and other such benchmarks, to more fully account for the collective ability to effectively address climate change in the critical decades to come. This can be achieved through a deeper understanding of current national legal frameworks and institutions, which can in turn serve as the basis for extrapolating best practices in domestic climate change governance.

### Key Messages

- Climate change laws and governance arrangements are important indicators of countries' ability to implement the Paris Agreement and domestic objectives under their NDCs;
- Distinct governance functions can be useful metrics for assessing ability to implement the Paris Agreement;
- Institutions like nodal climate bodies contribute significantly to effective climate governance: they enable coordination, strategy setting, and consensus-building between relevant actors;
- Effective climate planning requires knowledge creation and information gathering facilitated by climate institutions;

## **Global Stocktake Submission (19/CMA.1)**

- Effective implementation of climate change governance, including both mitigation and adaptation, involves mainstreaming of climate-based considerations, also facilitated by climate institutions;
- Climate laws can standardise Monitoring Reporting and Verification (MRV) protocols for a more accurate and efficient review process.

## Global Stocktake Submission (19/CMA.1)

### Introduction

Decision 19/CMA.1 declares that the Global Stocktake (GST) will study “the implementation of the Paris Agreement to assess the collective progress towards achieving [...] mitigation, adaptation and means of implementation and support” (Paragraph 6 (b)).

While it is important in the GST to account for mitigation and adaptation in numerical terms, successful implementation of the Paris Agreement requires strong and credible national policy frameworks aligned with the global goals of the Paris Agreement and domestic objectives expressed in NDCs (Averchenkova and Bassi, 2016). It also requires institutions that are capable of translating targets and intent into policy and action (Dubash, 2021). Credibility arises from verifiable expectations that countries will implement and enact policies and laws that convert national pledges into effective climate action.

In this context, the following observations are salient to the work of the GST:

- (a) there are key governance functions that play a significant role in fostering resilience and low-carbon development;
- (b) a useful metric for assessing the climate governance capacity of countries is the extent to which their legal frameworks enable and mandate such governance functions.

Supportive legal frameworks and governance arrangements enhance the state’s ability to manage the interaction of the myriad actors whose cooperation is essential for a country’s low-carbon and climate resilient development and transformation. The following is a list of governance functions (detailed further in Table 1 below) that will prove pivotal in states’ ability to implement the Paris Agreement: direction-setting; strategy setting; coordination; integration; mainstreaming; knowledge-production; stakeholder-alignment; finance mobilisation and channelling; and oversight and accountability.

There is a growing body of literature suggesting that a well-designed legal infrastructure enables a coherent and competent response to the large-scale and rapidly changing mitigation and adaptation challenges thrown up by climate change (Averchenkova 2021, Rumble 2019). Emerging literature also suggests that effective climate governance requires strong institutions, particularly to meet the governance challenges of coordination, strategy-setting, and building consensus (Dubash et. al. 2021).

Climate laws have proliferated globally since 2007 (Nachmany and Setzer 2018; Iacobuta et al. 2018). The prevalence of direct laws – the primary objective of which is to address climate change – and indirect laws – those that bear on mitigation and adaptation though not through primary intent – is most comprehensively captured by the “Climate Change Laws of the World” database, which documents 748 mitigation-related laws as of 2022, which can be compared to 552 in 2015 and 344 in 2010.<sup>1</sup> There are fewer instances of comparable literature dealing with the prevalence and diversity of climate institutions.

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<sup>1</sup> Data from climate-laws.org, search for mitigation focused legislation for different time frames. Accessed Feb 27, 2022.

### Enabling Progress through legal frameworks

While the literature on national climate law and governance is relatively limited, the existing research underscores several considerations relevant to the work of the GST.

Effective climate institutions must have the ability to broker the interests of various stakeholders and formulate well-informed and far-sighted mitigation and adaptation strategies (Dubash et al., 2021). The relatively novel phenomenon of framework climate laws is frequently distinguished by the establishment of bodies dedicated to the management, facilitation, and accountability of climate action in a country (Scotford and Minas 2019).

Knowledge production, also emphasized in the GST, is a central function of climate governance that is often neglected in the rush to implementation. Knowledge production is supported through mechanisms that require and mandate the exchange of information. To this end, deliberative nodal climate bodies and knowledge-sharing processes established through procedural duties in climate laws play an important role in ensuring that the requisite knowledge is produced and information is available for effective planning and policy-making (Averchenkova, 2021b).

By 2020, direct climate laws addressing mitigation had been passed in 56 countries (of 194 studied), accounting for 53% of emissions worldwide (Iacobuta et al. 2018). Many climate laws act as platforms for target-setting and implementation (Bennett 2018), and recent findings associate the passage of “each new law” with an annual reduction in “carbon dioxide (CO<sub>2</sub>) emissions per unit of gross domestic product by 0.78% nationally in the short term (during the first three years) and by 1.79% in the long term (beyond three years)” (Eskander and Fankhauser, 2020).

Depending on political context, deliberating on and passing national climate change legislation can help address the socio-political conflict that arises due to the extensive transformation – involving winners and losers – required for responding to climate change, and reconcile many different framings of the issue and standpoints on how it should be addressed (Scotford and Minas, 2019; Fisher et al., 2017). It is generally more difficult to ignore, weaken or abolish legislation than climate strategies or policies across successive governments, as the former demands significant legislative processes for amending or revoking (Nash and Steurer 2019; Iacobuta et al. 2018).

An increasing number of countries in Africa particularly, and the developing world in general, have passed climate laws that seek to identify and protect vulnerable populations (Rumble 2019b). While literature (Ruhl and Salzman 2013) has speculated on how legal systems may evolve to take account of adaptation, a tracing of climate laws’ features to governance functions can help shed light on how adaptation needs are met in practice: specifically, how laws may influence the capacity of countries to adapt.

Both the Paris Agreement and the GST decision also recognise the crucial role played by finance in climate action. The Paris Agreement seeks to make “finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” (Article 2(1)(c)). Most climate laws contend directly with the gap between low-carbon ambition and viability, and some even seek to implement mechanisms to support the mobilisation and channelling of climate finance. Climate laws enable governments to overcome some of the

## **Global Stocktake Submission (19/CMA.1)**

“barriers and challenges, including finance, technology and capacity-building gaps, faced [especially] by developing countries” (19/CMA.1, Paragraph 36(f)) by setting out budgeting processes, inducing climate risk disclosure for financial portfolios, and establishing institutions, such as climate funds, dedicated to climate finance.

Climate laws can serve several other functions as well: establish assured long-term pathways and regulatory certainty (Scotford et al. 2017); induce mainstreaming and embedding of mitigation into sectors, states, and ministries (Dubash et al. 2013); and act as one of the main indicators of coordination, or as the 19/CMA.1 phrases it, “efforts to enhance understanding, action and support, on a cooperative and facilitative basis” (Paragraph 36(e)).

### **Governance and Law as Key Metrics of GST**

We propose that a way to track states’ ability for long-term mitigation and adaptation action is by first setting out clear criteria and metrics of governance functions that should be fulfilled in a variety of political contexts. The ways in which these functions will come to be fulfilled is of course context-specific: in the UK, for instance, the Climate Change Act (2008) has been a robust instrument of change whereas in China, a 5-year plan may perform the same roles. The table below sets out a list of proposed governance functions, different combinations of which will be salient in different countries. These, we hope, will provide a basis for countries to consider the enhancement of their legal interventions, and the institutional frameworks set out therein. Fostering the development of such nationally specific and contextually relevant frameworks can also inform and enhance international support for the implementation of domestic action.

Given one of the main intended outcomes of the GST is the informational wherewithal to support countries, tracking the state of climate governance and laws and sharing information on ideal frameworks would form an essential part of the GST that is currently being overlooked. The knowledge of national abilities to respond to climate change – given the central position it is afforded in the Paris Agreement – would be greatly enhanced by the study of climate laws and the governance functions they fulfil. In subsequent submissions, we intend to lay out the types of instruments that work best in a typology of national political and economic contexts.

**Global Stocktake Submission (19/CMA.1)**

**Table 1: Functions and Corresponding Features of Climate Change Laws**

<b>Governance Functions</b>	<b>Features/Elements</b>
Narrative & high-level direction-setting	<ul style="list-style-type: none"> <li>● Title (e.g.: Low-carbon Development Act, Net Zero Accountability Act, Climate Change Adaptation Act)</li> <li>● General Principles</li> <li>● Just transition principles</li> <li>● Objectives</li> <li>● Time-span of duties (e.g., 2050 targets)</li> <li>● Provision for difficulty of repeal/back-tracking</li> </ul>
Strategy-articulation	<ul style="list-style-type: none"> <li>● Long term and interim targets for mitigation and adaptation</li> <li>● Processes for target setting</li> <li>● Sectoral targets and trading</li> <li>● Process for development of mitigation plans/strategies/policies, including approaches to a just transition.</li> <li>● Process for development of the adaptation plans/strategies/policies</li> <li>● Consultation and direction duties in relation to strategy development (between decision-making and advisory bodies)</li> <li>● Complementary or subsequent legislation</li> <li>● Specific policy instruments or process for their adoption (e.g., carbon pricing)</li> </ul>
Coordination	<ul style="list-style-type: none"> <li>● Nodal climate body (w/ convening authority)</li> <li>● Relationship duties: consultation, guidance, reporting &amp; direction</li> <li>● Institutional arrangements such as nodal and convening bodies</li> </ul>
Integration	<ul style="list-style-type: none"> <li>● Integrating climate change concerns into sectoral laws (eg: CO<sub>2</sub> as controlled pollutant; bans and moratoria on high-emitting activities)</li> <li>● Integrating sectoral law tools into climate laws (eg: flood insurance)</li> <li>● Mandating changes in sectoral laws</li> <li>● Conflict resolution (with existing laws &amp; between state and central climate laws)</li> <li>● Definitions (of climate change)</li> </ul>
Mainstreaming	<ul style="list-style-type: none"> <li>● Reporting duties (ministries to parliament &amp; states in budget session)</li> <li>● Climate advisory body (embed facts, understanding, and norms among various actors &amp; bodies)</li> <li>● Strategic evaluations (i.e., of climate impacts for new legislation or investment programmes)</li> </ul>
Knowledge & expert advice	<ul style="list-style-type: none"> <li>● Climate advisory body (staffed with experts, tied to other institutions of knowledge &amp; data-collection entities)</li> <li>● Consultation and reporting duties</li> </ul>

## Global Stocktake Submission (19/CMA.1)

Stakeholder-engagement alignment &	<ul style="list-style-type: none"> <li>● Consultation duties (with reference to indigenous peoples, sector-representatives, educational bodies, &amp; civil society in policy-making, implementation, and oversight)</li> <li>● Forum/council/assembly for debate &amp; alignment on issues</li> </ul>
Finance implementation	<ul style="list-style-type: none"> <li>● Climate fund</li> <li>● Reporting Duties (as basis for climate budget allocation to sub-national governments)</li> <li>● Companies disclose GHG emissions (to inform investors)</li> <li>● Budgeting provisions for climate</li> <li>● Revenue sharing</li> <li>● Insurance</li> <li>● Sector-specific financial incentives</li> <li>● Compensation</li> <li>● Strategic evaluations (i.e., assessments of climate impacts for new legislation or investment programmes)</li> </ul>
Oversight, Accountability, Enforcement &	<ul style="list-style-type: none"> <li>● General principles for climate litigation</li> <li>● Penalties for failure to perform duties in good faith</li> <li>● MRV (inc. expert review and external auditing)</li> <li>● Expert review and external auditing</li> <li>● Compliance monitoring</li> <li>● Provisions for parliamentary scrutiny</li> <li>● GHG registry</li> <li>● Review and revision of risk and effectiveness of policies</li> <li>● Self-reporting duties</li> <li>● Delegated legislation/regulations</li> </ul>

## Global Stocktake Submission (19/CMA.1)

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## Global Stocktake Submission (19/CMA.1)

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