

National climate change legislation: The key to more ambitious international agreements

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Key messages

- There is a correlation between strong domestic climate change legislation and high international ambition at the United Nations Framework Convention on Climate Change (UNFCCC).
- Although the factors that determine a country's negotiating position are many and complex, advancing domestic climate change legislation has a positive influence on such ambition.
- National climate change legislation is not just something that should underpin an international agreement after it has been reached, rather it is an enabler that creates the political space for a deal.
- National legislation could form the basis of an "outcome with legal force" in 2015 under the Durban Platform of the UNFCCC.
- It follows, therefore, that the advance of national legislation in key countries, combined with strengthened engagement of legislators, should be actively supported between now and 2015.

Recommendations to governments

- Support international processes for engaging legislators, to help inform the development of climate change legislation, promote good practice and develop peer groups.
- Routinely engage with legislators before, during and after the annual UNFCCC meetings (as a minimum) to exchange views and build common understanding.
- Encourage the creation of cross-party parliamentary groups on climate change, supported with policy and analytical capacity.

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“ Domestic legislation on climate is the absolutely critical, essential linchpin between action at the national level and international agreements. It is absolutely at the centre.”

Christiana Figueres, Executive Secretary of the UNFCCC
Speaking at the 1st GLOBE Climate Legislation Summit
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1. Introduction

This paper examines the links between countries' domestic ambition on climate change – in particular related to domestic legislation – and their position at the international negotiations in the United Nations Framework Convention on Climate Change (UNFCCC). It begins with a short analysis of the factors influencing countries' negotiating positions and explores how advancing domestic climate change legislation links to, and influences, international mitigation ambition.¹ Finally, this paper explores the role of legislators in influencing negotiating positions and makes three recommendations on how to maximise the positive influence of legislators on the negotiating process.

2. Factors influencing negotiating positions

Before examining how and to what extent domestic legislation and legislators can influence a country's negotiating position in the international arena, it is important to recognise how other influential factors vary in their relative importance from country to country.

National interest

National interest, or to be more accurate, perceived national interest, is the overriding factor influencing a country's negotiating position. No political leader will compromise his or her citizens' prosperity for the sake of a global good unless an international agreement is seen to be fair. National interest can include:

- **a domestic assessment of climate risk** – the extent to which a given country is considered vulnerable to climate impacts and systemic risks associated with climate change, including health, food and energy security.
- **public and parliamentary opinion** about the risks of climate change and its importance relative to other domestic challenges.
- **the carbon intensity of the economy** and, in particular, an assessment of the impact and costs/benefits to the economy of reducing greenhouse gas (GHG) emissions.
- the political **influence of high-carbon industries**, in particular where high-carbon industries play a significant part in the economy in terms of exports or employment.
- **opportunities** relating to the climate change agenda; for example, the extent to which co-benefits of mitigation action will benefit the country and the

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perceived comparative commercial opportunities related to low-carbon energy, goods and services, and adaptation technologies and services, as well as the channelling of development aid and climate finance.

Competitiveness

Competitiveness is a key factor in international climate change positions, particularly in times of economic hardship when the performance of a country's economy is usually the overriding political concern. Therefore, the positions of key trading partners and competitors are likely to have a significant influence on a country's negotiating position. For example, Canada's position has, to date, been closely aligned to the US, with whom it also has strong economic ties. Similarly, South Korea's Framework for Low Carbon Green Growth legislation was driven, at least in part, by the risk of US legislation on climate change imposing import tariffs on countries considered by Congress not to be pulling their weight. (All of the draft bills in 2008/2009 included automatic 'on switches' for tariffs unless Congress considered a country's action comparable with the US. The US is a major export market for South Korea.)

Peers and negotiating groups

Countries tend to negotiate in groups at the UNFCCC. For example, developing countries coordinate positions and negotiate as the G77 plus China; the Alliance of Small Island States (AOSIS) coordinates positions and promotes high collective ambition given their shared extreme vulnerability to climate change impacts; the Umbrella Group is a club of non-EU developed countries that loosely coordinates positions; the EU's 27 countries negotiate as one bloc, etc. It follows, therefore, that the position of other – particularly more economically powerful – countries in a group will influence the overall group position. However, as developing countries grow and diverge, it is becoming more difficult to maintain unity within the G77+ China group, as evidenced by the increasing voice of AOSIS, the African Union and others. This suggests that peer pressure within a negotiating group only goes so far; if interests diverge too much, new alliances can be formed.

Reputation/leadership

How a country wishes to be viewed on the international stage may drive some countries to take on relatively ambitious positions at the international negotiations. Mexico sees itself as a regional leader and, according to legislators, this leadership is one reason why the Mexican government and legislature has taken on a relatively progressive position both domestically and internationally. Similarly, the Least Developed Countries (LDC) group has recently enhanced its strategy so that it is seen as more of a leader.

3. The role of domestic legislation

Domestic legislation on climate change has traditionally been viewed as something for governments to develop and pass after an international agreement has been reached to support implementation. Increasingly it is being realised that advancing domestic climate change legislation can help to create the conditions that enable an international deal to be reached. Christiana Figueres' comment, "[N]othing is going to be agreed internationally until enough is legislated domestically" demonstrates how important domestic legislation is to the negotiations under the Durban Platform between now and 2015.²

An evolving dynamic: Historical responsibility versus self-interest

Traditionally, the international climate change negotiations have been characterised by a debate around sharing a global burden (cost) to reduce greenhouse gas emissions. Under this characterisation, it is in political leaders' interest to minimise the burden placed on their own country, relative to others. The temptation is to plead that one's country is a special case and therefore deserves less of a burden, or to characterise commitments in a way that maximise positive publicity but minimise real effort (e.g. by using a favourable baseline, using carbon intensity instead of absolute numbers). At the same time, this dynamic encourages an attitude of 'historical responsibility' among developing countries towards developed countries. Over recent years it is clear that developing countries are taking a more sophisticated view: whether or not rich countries are to blame, it is in their self-interest to tackle climate change, especially given that 8 billion of the 9 billion projected population in 2050 will live in what are currently classified as developing countries. This is reflected in the increasing legislative activity in developing countries on climate change.

Equity versus self-interest: an evolving debate

In recent years there has been a notable shift in the dynamics of the climate change debate, particularly within developing countries. Given that over 85% of the world population in 2050 will be living in what are currently classified as developing countries, many of these are beginning to take responsibility for their own future, realising that it is in their self-interest to tackle emissions and make their economies more climate-resilient, even in the absence of a global deal and/or sufficient action by developed countries. This is in response to both existing climate challenges and the projected future impacts of climate change, and also to a lack of national fossil fuel reserves.

Why is this so? It is clear that there are many direct domestic benefits to passing laws that contribute to reducing GHGs. Traditionally, these were considered co-benefits of taking action on climate change. Studies show that many laws are directly motivated by these 'co-benefits', while climate benefits often become secondary.³

Some of the drivers for legislation have positive climate benefits:

- Improved **energy efficiency** (bringing lower costs and greater competitiveness) is a 'win-win' in that it reduces both the need for energy supply and energy-related emissions; 31 of the 33 countries in the 3rd GLOBE Climate Legislation Study include energy efficiency in their legislation.
- Investment in domestic low-carbon energy sources such as nuclear and renewable energy (including solar, wind and hydropower) increases **energy security** by reducing reliance on foreign imports of energy (which are often fossil-based) and increasing resilience to fuel price shocks. 32 of 33 countries include promoting diverse and more domestic sources of clean energy supply in their legislation.
- At the same time, by promoting clean energy and energy efficiency technologies, countries are investing in the technologies of the future, creating **comparative advantage in new markets** at home and abroad for low-carbon energy, goods and services. Laws in South Korea and Ethiopia explicitly refer to Green Growth.
- For many countries, **air quality** is an issue. By reducing reliance on fossil fuels and switching to cleaner sources of energy, for power generation and vehicles, air quality improves, helping to reduce the economic and social costs of respiratory-related illnesses. China is legislating on climate change, an element of which will address the issue of air pollution.

- Making **agriculture** more sustainable, for example by improving crop and livestock production practices to increase food security and farmer income while reducing emissions.⁴

All of these direct national benefits help to demonstrate that reducing energy use and incentivising domestic, low-carbon, energy sources and sustainable production are possible and often not as expensive as expected, providing 'space' to advance international negotiating positions.

The role of legislation under the Durban Platform

Going one step further, national legislation could help to form the basis of a new international agreement under the Durban Platform in 2015. Negotiators are working towards 'an agreed outcome with legal force'. 'Legal force' is open to interpretation; for example, the agreement could be legally binding domestically but not internationally.

In December 2012, **Daniel Bodansky** from Arizona University, an expert in this field, authored a paper⁵ about the possible legal format of a post-2020 agreement. One option would be the 'legalisation' of national commitments, which could be taken up as domestic legislation.

Bodansky says:

"The new instrument could require states to have domestically-binding climate change legislation, which would be inscribed in a schedule to the agreement. The rationale of such a domestically-binding approach is that national law is typically more effective than international law. So a country's national legislation to address climate change would arguably provide a greater assurance of action than an international commitment.

"In contrast to emissions targets, which are obligations to achieve a particular result, the domestically-binding variant would involve obligations of conduct, for example, to list and implement national climate change legislation. The new instrument could require countries to adopt new climate change legislation, or it could allow countries to inscribe on the schedule existing legislation related to climate change. In the latter case, the main effect would be to 'internationalise' a country's domestic legislation through listing on the schedule. To avoid rigidity and promote participation, the agreement might allow states to change their legislation, so long as the new legislation was estimated to result in a comparable or greater level of emissions reduction.

"Since the national legislation that each party listed would be domestically binding, this variant could be considered an 'agreed outcome with legal force' under the Durban Platform, even if it were adopted as a COP decision rather than a protocol or treaty amendment, if 'legal force' were interpreted to include legal force under domestic law, as some parties have suggested."

There is increasing recognition that a truly ambitious international agreement – which sets binding targets for countries – is impossible to achieve if it is purely top-down.⁶ And, depending on the interpretation of 'an agreed outcome with legal force', an international agreement involving formal recognition of national legislation is a possibility. This gives further impetus, should it be required, to the view that governments should actively support the advancement of domestic climate legislation between now and 2015.

4. Strong domestic legislation correlates with a better international negotiating position

Increased national ambition on mitigation through domestic legislation is likely to be a positive influence on the international negotiating position, although the extent to which this is true depends on the relative influence of the other factors outlined in section 2 above. Three main reasons account for the positive influence of strong domestic legislation: it leads to better competitiveness, confidence and knowledge.

Competitiveness

Countries that price carbon may put their own high-carbon industries that are exposed to international competition at a competitive disadvantage. This is because countries that do not price carbon are effectively subsidising their own carbon-intensive industries by not requiring them to pay the environmental cost of their emissions. If a country takes action to price carbon, it will be motivated to encourage others to follow suit to reduce any impacts from competition. Similarly, countries that invest in creating a comparative advantage in low carbon energy, goods and services have a direct economic interest in the rest of the world moving along the same path as the markets in which they are developing comparative advantage will be bigger and their potential economic advantage greater.

A good example of this is the UK. It was the first country to legislate an ambitious 2050 target for emissions

reductions. As a result, the UK has been one of the most vocal in pushing for an increase in the EU's ambition from a 20% emissions reduction target to 30% by 2020, as well as for an ambitious global deal. The value of the UK's investments in the low-carbon economy will increase if the EU and the world follow suit. At the same time, it becomes politically easier to defend the UK's position domestically – especially in times of economic hardship when pressure to give short-term boosts to the economy is high – if the EU, and ideally other major trading partners and competitors, adopt similar ambitions.

Confidence

Domestic legislation creates the political space for leaders to go further and faster in the international negotiations. As their populations begin to experience the co-benefits of energy security, greater efficiency and resilience, improved air quality and reduced vulnerability to price shocks, governments gain the confidence to make international commitments and to push for more in international negotiations.

Table A shows the positive correlation between the strength of national legislation and ambition in the international negotiations for 11 selected countries.

Knowledge

The process of developing and passing domestic legislation is important for informing and shaping a country's position at the international negotiations. By examining options and developing the most nationally appropriate legislation, countries develop an understanding of the costs of different levels of ambition, the costs of inaction and the extent of the opportunities available through low-carbon investment and promoting resilience. This, in turn, informs the country's negotiating position. For example, the UK's Climate Change Act 2008 was a critical signal to industry and other parts of society that the UK Government was committed to tackling climate change; this in turn gave it confidence to plan and invest for the longer term, spurring action at the national level.

It built confidence and certainty, not only at the political level but also among investors. Increased confidence at both these levels are critical in determining an international position.

The flip side of this argument is that improved knowledge can increase understanding of the inter-linkages between economies and regions, and the extent to which

competitiveness can be affected by investing early in a low-carbon path.

Finally, it should be noted that there is sometimes a time lag between advanced domestic ambition and advanced international commitments. Countries often choose to announce more ambitious international commitments at a moment when they will receive the most credit. Experience shows that announcements tend to occur in the build up to, or during, the annual Conference of the Parties to the UNFCCC, the major annual governmental meeting on climate change. By timing their announcements in this way, countries can demonstrate to the media and to their citizens that they are 'moving' at the time when the spotlight on their climate change position is most intense. This strategy also helps lower the risk of a country losing negotiating capital by showing its hand too early.

5. The role of legislators

Legislators have formal responsibilities that make them a central element of any successful strategy to tackle climate change. First, they are responsible for developing, passing and amending laws. Second, they have a scrutiny function – to oversee the implementation of laws and have a role in holding climate negotiators accountable. And third, they approve national budgets.⁷

The influence of legislators on ambition

Legislators can be a positive or negative influence on both domestic and international climate ambition. For example, on the positive side, it was Mexican legislators, through GLOBE Mexico, that proposed, built political support for and passed the General Law on Climate Change in 2012. And, in the UK, it was Parliament (with a big push from civil society) that lowered the emissions reduction target in the Government's proposed Climate Change Bill from only 60% to 80% reduction from 1990 levels by 2050, and which also forced the inclusion of emissions from aviation and shipping. Finally, it is legislators (and civil society) who are pushing to strengthen the low-carbon elements of the Energy Bill currently going through the UK Parliament.

On the negative side, it is clear that, on the whole legislators in the US have been a drag on ambition. In 1997, after Vice President Al Gore signed the Kyoto Protocol, legislators passed an almost unanimous Sense of the Senate Resolution making clear that Congress would not support an international treaty that placed obligations on the US without similar obligations

Table A: Comparison of domestic and international ambition in selected countries*

Country and negotiating group	Mitigation ambition of domestic legislation	Ambition in international negotiations (2020 pledge)
Australia (Umbrella Group)	Medium 80% below 2000 levels by 2050 Clean Energy Act passed in 2011; carbon tax introduced with emissions trading by 2015 and linking with EU Emissions Trading Scheme (ETS) by 2018. Longevity of legislation to a large extent will depend on outcome of the 2013 election	Low to Medium 5–25% below 2000 levels based on actions by other states (5% unconditional, 15% if global agreement with insufficient ambition, 25% if global agreement consistent with stabilisation at 450 parts per million carbon dioxide equivalent (450ppm CO ₂ e) or lower)
Canada (Umbrella Group)	Low No climate legislation after repeal of the Kyoto Implementation Act in 2012	Low 17% below 2005 levels by 2020; withdrew from the Kyoto Protocol in 2012
Chile (AILAC)	Low No mitigation targets in domestic legislation	High 20% below business-as-usual (BAU)
Colombia (AILAC)	Low No mitigation targets in domestic legislation	Medium Unilateral target of 77% share of renewable energy in national energy mix and zero deforestation in Amazon basin
Ethiopia (G77 plus China)	High Limiting 2030 emissions to 2010 levels (approximately 70% below BAU) under the Climate Resilient Green Economy Initiative	Medium Action in renewable and alternative energy, transportation; waste, agriculture, forestry and land sectors
Japan (Umbrella Group)	Low No comprehensive climate legislation for post-2012	Medium 25% below 1990 premised on the establishment of a fair and effective international framework involving all major economies; not participating in the second commitment period of the Kyoto Protocol
Mexico (Environmental Integrity Group)	High General Law on Climate Change passed in 2012 putting into legislation a target to reduce greenhouse gas emissions by 30% below BAU by 2020 subject to international support	High 30% below BAU conditional on financial and technical support
Russia (Umbrella Group)	Low Climate Doctrine sets out framework for action but no targets specified	Low Domestic target to reduce emissions by 15–20% from 1990 levels by 2020 (already achieved after economic collapse in 1990s) Not participating in the second commitment period of the Kyoto Protocol
South Korea (Environmental Integrity Group)	High Passed Framework Act on Low Carbon Green Growth in 2010, creating legislative framework for mid- and long-term targets, cap and trade, carbon tax and expansion of renewable energy	High 30% below BAU
UK (EU)	High Climate Change Act puts into law target to reduce emissions of GHGs by at least 80% from 1990 levels by 2050. Fourth carbon budget legislates for 50% cut by 2027	Medium UK negotiates as part of EU27. EU's 2020 pledge is 20% below 1990, moving to 30% in the event of comparable action by others
US (Umbrella Group)	Low. So far failed to pass comprehensive climate change legislation; beginning to regulate CO ₂ under existing provisions in the Clean Air Act, but proposed regulations may be subject to lengthy legal challenge	Low. "In the range of 17% below 2005 levels" dependent on passing national legislation Did not ratify the Kyoto Protocol and is advocating non-legally binding framework for post-2020

This assessment of ambition is based on the 2020 recommendation for Annex I (25–40% below 1990 levels) and non-Annex I (15–30% below BAU) in the Inter-governmental Panel on Climate Change (IPCC) Fourth Assessment Report.

Source: Globe International (2013) The 3rd GLOBE Climate Legislation Study. Globe International and Grantham Research Institute. London, UK. <http://www.globeinternational.org/index.php/legislation/studies/climate>

on major developing countries. This killed the prospect of ratification. Analysis of the situation has largely concluded that the lack of a limit on corporate donations to political campaigns is to blame fossil fuel companies, on whose substantial contributions many candidates for Congress depend.⁸

Maximising the positive influence of legislators

There are a number of ways to maximise the potential for legislators to have a positive influence on international climate ambition, and to minimise the risk of them being a negative influence. These include capacity building, engagement between the legislature and the executive, and supporting legislator peer groups.

Capacity building

In order to be most effective, legislators must develop strong and detailed knowledge of climate change in the context of a legislative agenda that is becoming ever more complex. One example that has worked in Brazil, Colombia, Japan, Mexico, South Korea, the UK and elsewhere is the formation of parliamentary groups (e.g. an All Party Parliamentary Group or equivalent, or a national GLOBE chapter). These include a cross-party groups of legislators, supported by a dedicated secretariat (in most cases one member of staff) with a programme of events including workshops with leading scientists, economists and policy-makers. This helps to create a shared understanding and evidence base which, in turn, help to de-politicise climate change as an issue, encourage positive and well-informed interventions in parliamentary debates, increase the effectiveness of their scrutiny of governments and, where appropriate, enable legislators to work towards developing national legislation that enjoys cross-party support.

Engagement with the executive

Engagement between the executive and legislators is vital if a country's negotiating position is to fully reflect the wishes of its public and if legislators are to develop national laws that are consistent with the international context. Despite this important link, at UNFCCC annual meetings governments tend to meet with businesses and non-governmental organisations (NGOs) on a more regular and frequent basis than legislators, even though legislators have a more powerful and influential role in determining the national climate change response.

For example, it is not uncommon to see UK negotiators meeting with NGOs and business groups, or speaking at side events for a wide range of civil society groups. However, there is rarely time given to meet with legislators, despite the important positions of the few who do attend (e.g. Chairs or members of parliamentary committees overseeing the performance of the government). Internationally, links between legislators and negotiators are mixed. Some countries, such as Brazil, Mexico, South Africa and the US, invite senior legislators to be part of the official delegation to the UNFCCC annual meetings. Many of these legislators receive daily updates from the negotiators about progress and, by virtue of having a 'Party' pass, they are allowed to observe many of the negotiations first-hand. This undoubtedly helps to increase the level of understanding of climate change issues among legislators. In other countries (e.g. New Zealand and the UK), legislators are forbidden from being part of the official country delegation and must register to attend through 'Observer' organisations. This not only restricts their access to the negotiations themselves, since many negotiating sessions are not open to 'observers') but also means that they struggle to secure face-time with their official negotiators as they are not allowed access to delegation offices.

For the past few years, GLOBE has offered to accredit legislators in the latter group who wish to attend UNFCCC meetings and has arranged, or attempted to arrange, meetings with negotiators to help improve communication and generate a better understanding of the progress and major issues at play. However, it should be stressed that, although GLOBE plays a role in bringing together legislators with the executive at the UN negotiations, this activity is not a substitute for sustained and nationally driven direct communication.

Engagement with other legislators

GLOBE's experience is that legislators benefit from, and are motivated by, exposure to other legislators. GLOBE's climate change forums⁹ have provided a policy-focused space for legislators to engage and learn from each other, along with opportunities to hear from legislators who have been involved with developing, passing and overseeing climate-related legislation. This experience is invaluable to legislators from other countries that are considering their own climate legislation. The forums also provide an international platform for legislators, and this a great motivator for ambitious parliamentarians.

The information contained in this paper is drawn from the 3rd GLOBE Climate Legislation Study and direct conversations and correspondence with legislators. To download the 3rd GLOBE Climate Legislation Study, go to <http://globeinternational.org/index.php/legislation-policy/studies/climate>

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Endnotes

- 1 The links between a country's adaptation legislation and its international position on adaptation have not been assessed. Since determining international ambition on adaptation was not an initial aim of the UNFCCC, the following assessments are estimations only.
- 2 In April 2013, the UNFCCC invited GLOBE to present to the Ad-Hoc Working Group examining the potential structure of a post-2020 agreement to explore how domestic legislation can be recognised and used as a foundation under the new architecture.
- 3 3rd GLOBE Climate Legislation Study (2013)
- 4 For example, see http://cdkn.org/wp-content/uploads/2013/04/CCAg_LEEI-Case-Studies-2.pdf and <http://cdkn.org/2012/04/planting-the-seeds-for-agriculture-in-a-changing-climate/>
- 5 Bodansky, D. (2012) *The Durban Platform: Issues and options for a 2015 agreement*. http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_ppt_bodansky_01122012.pdf
- 6 For example, see <http://thefutureforum.org/energy-environment/a-global-climate-change-agreement-is-impossible-when-countries-lie-about-emissions/> and <http://www.guardian.co.uk/environment/2010/feb/01/climate-change-deal-impossible-2010>
- 7 The extent to which domestic legislation is mainstreaming climate change priorities into national budgets will be addressed in a subsequent paper by GLOBE International in late March 2013.
- 8 http://www.ucsusa.org/scientific_integrity/abuses_of_science/a-climate-of-corporate-control.html and <http://www.guardian.co.uk/environment/2010/mar/30/us-oil-donated-millions-climate-sceptics>
- 9 Our forums include the 1st GLOBE Climate Legislation Summit held in London in January 2013. As a result of these forums, legislators in Mexico drew on the experience of the UK in developing its legislation; South Korea and Australia drew on the experience of the EU in developing its emissions trading law; and GLOBE has been directly involved in developing and informing legislation in China, Japan, Mexico and South Korea. Most recently, we have been invited by the President of the Senate in Colombia and senior legislators in Indonesia and Peru to help inform the development of national climate change laws.

About GLOBE International

The Global Legislators Organisation (GLOBE International) is an international organisation comprising national parliamentarians from over 70 countries that are committed to finding legislative solutions to the challenges posed by climate change and sustainable development. GLOBE supports legislators through national chapters which provide economic, political and policy capacity to develop and advance legislation as well as monitor its implementation. With headquarters in London, offices in Beijing, Bogota, Brussels, Manila, Mexico City, New Delhi, Tokyo, Rio de Janeiro, Rome and through chapters established in over 40 legislatures, GLOBE is developing a unique international network of legislators committed to practical action.

About CDKN

The Climate and Development Knowledge Network (CDKN) aims to help decision-makers in developing countries design and deliver climate compatible development. We do this by providing demand-led research and technical assistance, and channelling the best available knowledge on climate change and development to support policy processes at the country level.



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