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Institutional climate change frameworks in developing countries¹

Introduction

The adoption of the Paris Agreement in 2015 and some further rules for its implementation in 2018 (the so-called rulebook) were important milestones in the evolution of the international climate regime. Whilst the international negotiations continue, countries' focus also shifts to the national stage: in order to turn their commitments under the Paris Agreement – captured in Nationally Determined Contributions (NDCs) – into action and respond adequately to climate change, they will have to review existing laws, policies and plans. The great majority of developing countries consider their current legal and institutional framework as insufficient to adequately respond to climate change.²

In many countries, the Ministry of Environment has lead on policy development as, traditionally, climate change has been treated primarily as an environmental issue. In some instances, it has the backing of other important national organs including the Head of State and the Finance Ministry. However, the cross-cutting nature of climate change means

that, if it is to be mainstreamed in countries' domestic policies, multiple responses are required.

At the institutional level, it will mean shifting responsibility for climate change from a single ministry or agency to several ministries and engaging with other actors such as the private sector and civil society. This makes coordination of policy and legislative measures necessary if it is to be implemented effectively and suggests that institutions – understood here as formal entities designed to perform certain functions related to decision-making and implementation³ – play a key role as enabler of effective climate action.

A comprehensive overview of the wider institutional arrangements in developing countries is well beyond the scope of this paper. Instead, this briefing outlines a range of approaches adopted by some developing countries and emerging patterns, challenges faced in this process and suggests possible elements of effective governance structures.

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¹ By Pascale Bird, LRI. The author is grateful to Alina Averchenkova for her helpful comments and suggestions. ² Marie-Claire Cordonier Segger, Mirjam Reiner and Alexandra Scott (2016), 'Countries stress the importance of legal and institutional reforms and capacity building in their iNDCs', Centre for International Sustainable Development Law (CISDL), Canada. ³ Aarjan Dixit, Heather McGray, Javier Gonzales and Margaret Desmond (2012), 'Ready or Not: Assessing institutional aspects of national capacity for climate change adaptation', WRI Report, World Resources Institute, Washington DC.

What countries have done

A number of middle-and low-income developing countries have adopted framework laws or policies that address governance and establish some institutional arrangements to drive climate change responses. Some of these laws and policies establish entirely new governance structures and bodies (e.g. Papua New Guinea Climate Change and Development Authority and National Climate Change Board), others expand or clarify the mandate of existing agencies to cover climate change-related policies.⁴ For example, Mexico's Inter-Ministerial Commission on Climate Change, established in 2005, became embedded in its 2012 General law on Climate Change as the main body charged with formulating climate policies and coordinating action across the federal government. Lebanon's committee set up to coordinate the climate change agenda was entrusted with driving NDC implementation, promoting thereby continuity and efficiency of action.⁵

Similarly, Ethiopia's 2011 Climate-resilient Green Economy Strategy initially relied on existing institutions (Prime minister's Office, Ministry of Environment and Forest, Ethiopian Development Research Institute and relevant ministries) to minimize funding requirements and organisational reform, whilst providing that subsequent phases would strengthen institutions. Jordan's National Climate Change Policy and Sector Strategic Guidance Framework (2013-2020) envisages the establishment of a climate change unit within the Ministry of Environment, elaborating on the mandate of the existing National Climate Change Committee and making it more inclusive by involving representatives of local communities, gender and vulnerable groups, and the private sector.

Some countries' policies combine the two: they establish new institutions and strengthen the capacity of existing bodies. The Solomon Islands, for example, have established a National Climate Change Council to oversee the implementation, coordination, monitoring and evaluation of climate change policies, a Climate Change Working Group to provide inter-agency and stakeholder coordination for implementation and Thematic Working Groups to give technical and strategic support and advice. At the same time, they have strengthened the capacity of the Ministry of Environment, Climate Change, Disaster management and Meteorology as the government lead agency overseeing climate change, and have enhanced the role and capacity of the Environment and Conservation Standing Committee of Parliament to include climate change oversight.

Other countries have established institutional arrangements through executive orders. For example, Colombia (by Decree in 2016) set up the National Climate Change System of Colombia to coordinate mitigation and adaptation actions through collaboration between public, private and non-profit institutions. This System was intended to facilitate alignment of decision-making processes between the subnational and national levels. The Decree creates the Inter-sectorial Commission on Climate change to implement and coordinate efforts at the national level, and 'Nodos Regionales' or regional authorities for climate change to drive implementation at regional level. The 2016 Decree was followed by a 2018 Law establishing guidelines for the management of climate change in the decisions of all relevant national and sub-national agencies. The Law elaborates on the orientation and missions of the National Climate Change System and establishes the National Council on Climate Change as a permanent consultative organ to the Inter-sectorial Commission.

The Philippines was the first developing country to adopt a comprehensive framework legislation on climate change. The Climate Change Act (2009) established the Climate Change Commission as the lead policy-making body to coordinate, monitor and evaluate government programmes and action plans to ensure the mainstreaming of climate change into national, sectoral and development plans (s.4 of the Act). The Commission is chaired by the country's president and administratively located in the Office of the President. It consists of three other commissioners who must be climate change experts. It is assisted by an Advisory Board, made up of representatives from relevant government agencies, local government, academia, the private sector and civil society, as well as by the Climate Change Office, who is entrusted with the day-to-day running, and a panel of Technical Experts who provide scientific and technological advice. In addition, a Joint Congressional Oversight Committee monitors the Act's implementation.

An important part of the various governance arrangements to address climate change is the allocation of key functions such as policy formulation, coordination, mainstreaming climate change into national and sectoral development, implementation, monitoring and evaluation and oversight to different institutions. The particular setup varies from country to country and, in some cases, mandates are not very clearly defined and/or the same entity is tasked with more than one key function. Subject to this, however, there appears to be a general pattern emerging with up to five key functions:

<p>1 General policy formulation</p> <p>Formulate & review plans, policies, strategies, and laws; Engage external stakeholders</p>	<p>2 Coordination & mainstreaming</p> <p>Coordinate policy development and implementation horizontally and vertically; integrate climate change into existing development plans & sectoral policies</p>	<p>3 Implementation</p> <p>Oversee (and in some cases coordinate) implementation of mitigation and adaptation actions</p>	<p>4 Advice and expertise</p> <p>Advise on mitigation and adaptation targets and policy proposals; assess progress with implementation; prepare progress reports; carry out scientific and technological research</p>	<p>5 Oversight, monitoring & evaluation</p> <p>Monitor and assess progress in implementation of mitigation and adaptation actions; prepare and make public regular progress reports</p>
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⁴ For an overview of different approaches to regulation of climate change taken in LDCs, see Nachmany et al (2017), 'Climate change legislation in the least developed countries' in Trends in climate change legislation, edited by A. Averchenkova, S. Fankhauser, M. Nachmany, Edward Elgar Publishing Ltd, Cheltenham, p.72. ⁵ E-Discussion on NDC Implementation – National Experiences in Preparing for NDC Implementation, UNDP, 2016.

1 The institutional framework to address climate change normally includes a body whose main function will be to formulate the country's policies on climate change. This function will often fall with the Ministry of Environment or a new dedicated body set up within that Ministry. Its responsibilities might include developing and reviewing, in collaboration with other relevant government ministries and agencies, adaptation and mitigation policies, strategies and legislation, including low carbon development strategies and plans for building resilience to climate change and enhancing adaptive capacity.

2 The coordination of policy development and implementation amongst relevant ministries and across sectoral agencies is another key function that is often assigned to a separate body (e.g. the Office of Environment and Emergency Management in the Federated States of Micronesia or the Pakistan Climate Change Council). It usually consists of representatives of ministries and in some cases, e.g. Kenya and Honduras, it is chaired by the head of state (giving it additional profile). Its duties tend to include coordination of different institutions and stakeholders, and mainstreaming and integrating climate change responses into development planning, sectoral policies and plans.

Integration of the regional and local levels is key to a coherent climate change response. Some countries address this by providing for vertical coordination mechanisms and municipal and local governance arrangements. The Ministry of Local Government in Uganda's National Climate Policy, for example, plays a key coordinating role in ensuring policy implementation at district level. Further, the governance arrangements put in place at the national level are replicated at the district level. In addition, some countries, such as Mexico, also include representatives of state and municipal governments into the national coordinating bodies on climate change.

3 In many countries, the climate change coordinating body works with other institutions and government departments whose main responsibility is to oversee the implementation of climate change policies and actions (e.g. the Kenyan Climate Change Directorate, located within the Ministry of Environment and Natural Resources, or the Paraguay National Directorate on Climate Change). These can be new entities or existing government departments tasked to undertake additional duties and functions. In addition, in most cases, a climate change fund has been established as the national financial mechanism for climate change actions.

Several countries have also recognized the importance of engaging a broad range of stakeholders in formulating and implementing policies and regulations. They have therefore, formally included non-state actors in these bodies. Guatemala's National Council on Climate Change, for example, includes representatives of government agencies from national and sub-national levels, as well as civil society, indigenous peoples' organizations, private sector and academia. Others envisage their involvement in the relevant policies but do not formally integrate them in institutions (e.g. Zambia⁶).

4 A number of institutional frameworks acknowledge the important role that consultative bodies can play in strategy formulation and policy evaluation through the provision of independent and expert advice and assessment. As a result, countries have set up institutions made up of technical experts to advise the relevant agencies in charge of designing policies (e.g. Swaziland National Climate Change Research Group). In general, it appears that their mandates are not always clearly defined and the extent to which government has to seek and consider their recommendations is also unclear.

5 Finally, parliamentary oversight may ensure better accountability and effectiveness of the institutions tasked with implementing climate policy. Hence some climate change framework laws also envisage that the national authority on climate change reports regularly to parliament on the progress made in implementing policies and plans (e.g. Peru⁷).

Lessons learnt

So far a limited number of developing countries have set up comprehensive institutional frameworks to address climate change, although many have embarked on this process. Whilst the particular setup adopted will be determined by each country's own dynamics, including its sociopolitical situation, resource and capacity constraints, and no single configuration will work in every context, some initial observations can be made:

Leadership and a strong commitment at the highest level of government are key enablers of climate action. Having the head of state chair the lead policy and coordination institution will increase its status and can help drive strategy and build momentum. It will not of itself, however, necessarily translate into political will to implement climate change action.⁸ If there are competing and conflicting priorities at play (e.g. dependency on fossil fuels) climate change related programmes may be side-lined.

Climate change requires short, medium and long-term responses. The latter can be frustrated by changes in political direction which result in restructuring and realignment of key agencies with climate change no longer being viewed as a priority, as has been the case, for example, in Mozambique⁹. Continuity and stability are an essential part of the process. One approach is to include institutional design features that help insulate implementation from vested political and economic interests, such as a requirement to consult with other agencies and stakeholders.¹⁰ Independent advisory bodies, by introducing long-term perspectives and providing non-partisan technical advice, can also help promote continuity.

Engaging relevant ministries, agencies and subnational authorities in policy development and implementation, giving them a degree of ownership in subsequent climate action and emphasizing its co-benefits, will promote buy-in. Consulting and engaging with stakeholders outside

⁶ Zambia National Policy on Climate Change 2016. This and other laws and policies referred to in this briefing can be accessed via the Climate Change Laws of the World database, Grantham Research Institute on Climate Change and the Environment (<http://www.lse.ac.uk/GranthamInstitute/climate-change-laws-of-the-world/>). ⁷ Jose Pinto-Bazurco (2018), Peru passes new framework climate change law: top nine developments, Sabin Center for Climate Change Law, Columbia Law School. ⁸ Martin Oulu (2014), Climate Change Governance: Emerging Legal and Institutional Frameworks for Developing Countries, In: Leal Filho W. (eds) Handbook of Climate Change Adaptation. Springer, Berlin, Heidelberg. ⁹ R. Hunter et al (2017), Problems and solutions for climate change resilience and adaptation in Mozambique, African Climate and Development Initiative, Cape Town University and E. Mondlane University, Maputo. ¹⁰ M. Oulu, p.231.

government, including the private sector, academia and civil society, in policy formulation and strategy is also key to drive the climate agenda. More generally, ensuring that domestic constituencies see climate change as a core national interest will build authority with government ministers to act.

As climate change becomes more widely recognised as a cross-cutting issue, encompassing sometimes competing and conflicting economic, social, environmental and security interests, coordination of policy development and implementation is another central function of institutional arrangements.¹¹ Clear coordination and communication across agencies and stakeholders at all levels are critical to effective implementation. It avoids the risk of duplicating work and promotes buy-in. A clear allocation of roles and responsibilities will reduce the risk of conflicts and lead to effective resource use.¹²

Yet, the allocation of roles can be a major challenge. In a number of countries, new arrangements were introduced piecemeal and responsibility for climate change is fragmented with a proliferation of bodies with overlapping and weak mandates. A lack of cooperation between government agencies, and generally a lack of clarity in terms of allocated roles and responsibilities of stakeholders hampers implementation. In addition, poor coordination between central and local level institutions also affects implementation at local level. Accordingly, it is important to set strong mandates that clearly define responsibilities and give sufficient authority to the coordinating agency.¹³

Climate change is a relatively new and complex issue for many institutions and actors who may not have the skills and expertise to carry out activities and functions they have been mandated to perform. Thus, building capacity across government – as, for example, envisaged in Tuvalu National Climate Change Policy - to ensure core departments understand how their work areas relate to the climate agenda will be important too.

Mobilizing financial resources to operationalize institutional arrangements and implement climate policies is another key element of effective governance. Many countries have established dedicated national climate funds that pool together finance from different international and/or national as well as public and/or private sources. Given its powers of

oversight over public spending, Parliament can help mobilize actors and support implementation. The lack of a formal mandate may also undermine or weaken the authority of an institution. The Inter-Institutional Group for Climate Change of Mozambique, for example, serves as main coordinating body, ensuring oversight and alignment of proposed initiatives. Yet this Group has no formal responsibility and its functions are mainly advisory.¹⁴ Embedding responsibilities in law will help ensure institutions have a clear mandate and authority, that cannot easily be reversed.

Finally, institutions and mechanisms for monitoring and policy evaluation can be seen as essential to meet commitments under the Paris Agreement, and to allow a meaningful assessment of domestic implementation.¹⁵ An independent technical consultative body, tasked with assessing policy proposals, monitoring performance and producing progress reports to parliament, can therefore be an important part of the institutional set-up. Giving this body a clear statutory mandate and sufficient powers to hold government to account (by, for example, mandating the government to respond to a report) and adequate resources will help increase its effectiveness.¹⁶ Giving Parliament an oversight role, in addition to its legislative and budgetary control functions, through monitoring and tracking progress in implementation will also promote accountability.¹⁷

¹¹ A. Averkhenkova and M. Nachmany, Institutional aspects of climate legislation, in Trends, p. 114. ¹² M. Oulu, p.246. ¹³ A. Averkhenkova (January 2019), Legislating for a low carbon and climate resilient transition: learning from international experiences, Elcano Policy Paper, Elcano Royal Institute, Madrid. ¹⁴ R. Hunter et al, p.16. ¹⁵ A. Averkhenkova, Elcano paper, p.30. ¹⁶ A. Averkhenkova, S. Fankhauser, and J. Finnegan (2018), The role of independent bodies in climate governance: the UK's Committee on Climate Change. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and political Science, pp.2 and 24. ¹⁷ Sharaban Tahura Zaman, Subhi Barakat, Achala Abeyasinghe and Janna Tenzing, How parliamentarians can help ensure the success of the Paris Agreement, IIED Briefing, November 2016.

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