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Climate framework laws in Latin America and their alignment with the Paris Agreement - a comparative analysis¹

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

Christiana Figueres, former Executive Secretary of the UNFCCC
1st GLOBE Climate Legislation Summit London, 14 January 2013²

Summary

The Paris Agreement to combat climate change was adopted in December 2015, while a set of further rules for the Agreement's implementation was adopted in Katowice in 2018. The Agreement does not specify how Parties are to pursue their commitments at the domestic level. In practice, they will rely on a mix of policy, law

and regulations. To respond effectively to climate change and facilitate low carbon economic development, many of them will have to review their environmental and other sectoral rules and regulations, develop new legislation, and enhance national governance structures. To support developing country governments in this

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² See <https://unfccc.int/news/1st-globe-climate-legislation-summit>

process, this paper draws lessons and offers some recommendations from a comparative analysis of Latin American climate change framework legislation in Mexico, Peru, Guatemala, Honduras and Paraguay. The research involved a desktop review and in-depth analysis of the five selected laws. Researchers scored the provisions of the legislation against a list of pre-determined criteria set out in an analysis table (Annex I). The comparative analysis then assesses if and to what extent the legislation meets the requirements of the Paris Agreement and, on that basis, identifies gaps and achievements.

It indicates a moderate degree of readiness to implement the mitigation components of the Paris Agreement. Most laws provide at least a general framework to assess, address and report national GHG emissions, and to embark on a low carbon development pathway in the medium or long term. However, in the other topical areas of the Paris Agreement (adaptation and means of implementation), the legislation reviewed appears less able to implement the treaty provisions and, as a result, to enable the national economy to benefit from opportunities under the Agreement. In this context, legislation could, for example, address the systematic collection and communication of data on climate change impacts, adaptation efforts and needs for financial support and technology transfer and/or allocate distinct responsibilities to different levels of government (e.g. local, regional and/or federal depending on the national structure).

Overall, the Mexican legislation has scored highest and appears best suited to implement the Paris Agreement. The Peruvian legislation comes a close second in the scoring. The other framework laws from Guatemala, Honduras and Paraguay have a rather high-level approach that underlines general legal principles but rely heavily on further regulations and policies to be put in place over time.

Climate framework legislation is likely to provide the “legal backbone” for dealing, at the national level, with the global climate problem in decades to come. This framework should, therefore, capture the fundamental principles and values relevant in this context, as well as provide guidance on how to balance conflicting interests.

Other general conclusions that can be drawn from the analysis include:

- To facilitate national implementation of the Paris Agreement, the legislation should seek to capture all the themes of the new international treaty.
- Where framework laws rely on subsidiary instruments, their implementation should be accompanied by a degree of accountability (e.g.

clear allocation of responsibilities and timelines) and additional resources to support processes and institutions.

- Involvement of industry and civil society in the law making and implementation process is an important step towards solutions that reflect the national context.
- Copying a law from another jurisdiction (or a standardised model) rarely works and there is a risk that such laws end up ‘sitting on the shelves’.
- Capacity building and peer learning for law and policy makers as well as legal drafters are essential in creating a wider enabling environment.
- To enhance understanding of the international rules, legislators should be routinely engaged in connection with the UNFCCC process, and information should flow between the delegation in the climate negotiations and national law and policy makers.

I. Introduction and background

The Paris Agreement to combat climate change was adopted by the parties to the UN Framework Convention on Climate Change (UNFCCC) during the 21st session of the Conference of the Parties (COP) in Paris in December 2015. It entered into force on 4 November 2016 and requires all Parties to put forward their best efforts (primarily with regard to mitigation but potentially also adaptation, finance, technology transfer, capacity building and enhanced transparency of action and support) in “nationally determined contributions” (NDCs).

Subsequently, in Katowice in 2018, Parties agreed on further rules for the implementation of the Agreement (the “Katowice Climate Package”). As a result, the focus of the international community’s response to climate change is shifting from the diplomatic negotiations under the UNFCCC to domestic action. To a large extent, success or failure of the Paris Agreement will depend on the capability of countries to meet their self-set commitments under the new international treaty.

The Paris Agreement does not specify how Parties are to implement their NDCs. In practice, they will pursue a range of approaches depending on national circumstances and priorities and rely on domestic policy, law and regulations. Comprehensive national strategies and policies may suffice to address immediate climate concerns. However, only a legal framework provides the necessary transparency, certainty and legitimacy to regulate people’s and institutions’ activities. A legal framework also solidifies a policy direction and encourages the coordination of different policy

spheres across government, industry and civil society. In order to meet their national commitments under the Paris Agreement and to benefit from the provisions of the new Agreement many developing countries have, therefore, indicated a need for improvements to their legal and institutional infrastructure, and also additional capacity building in this area.³ The NDCs of various developing country Parties specifically request assistance by the international community in this respect. To respond effectively to climate change and facilitate low carbon economic development, many of them will have to review their environmental and other sectoral rules and regulations, develop new legislation and/or enhance national governance frameworks.

This paper aims to support developing country governments in this process. Through a comparative analysis of five Latin American climate framework laws – from Mexico, Peru, Guatemala, Honduras and Paraguay – it offers some conclusions and recommendations for legislative interventions in the future. The analysis assesses the five framework laws' readiness to implement the main substantive provisions of the Paris Agreement. It does not, however, assess the individual countries' general readiness to implement the Paris Agreement.

The paper first introduces the researchers' approach in carrying out the individual analyses of the legislation. Following this, each of the five laws examined is briefly introduced and summarised. The central part of the paper then consists of the comparative analysis. It examines how the different laws compare to each other when implementing the provisions of the Paris Agreement. Gaps and achievements are identified based on this comparison. The final section offers some conclusions and recommendations on how

to gradually improve the current legal frameworks and what to consider when developing new ones.

2. Approach

The research involved a desktop review and in-depth analysis of five Latin American climate change framework laws in force at the time of beginning this study in:⁴ Mexico, Peru, Guatemala, Honduras and Paraguay.⁵ Other relevant pieces of legislation or draft legislation were not part of this research due to lack of time and resources.⁶ Laws addressing climate change but not as a distinct and comprehensive piece of framework legislation, were also not considered.⁷

The researchers worked from an analysis table (Annex I). Each row of the table sets out a provision of the Paris Agreement with potential implications for domestic law. "Quality criteria" and guiding questions in the table enabled the researchers to analyse and score the provisions in the different laws. Three score levels could be allocated – 'not addressed', 'somewhat addressed' and 'satisfactorily addressed'. The scores are indicated in the analysis table. The lead author then compared the content of the different laws and their scores. Some assumptions have been made in analysing the five pieces of legislation. It has, for example, been assumed that the bodies, programs or plans outlined are in operation and no further research was carried out to determine their actual relevance in practice. The lead author also exercised a degree of discretion in highlighting particular components of a law that influenced the comparative rating. Two of the laws reviewed were enacted before the adoption of the Paris Agreement, and have not been

³ Marie-Claire Cordonier Segger, Mirjam Reiner & Alexandra Scott, *Countries stress the importance of legal and institutional capacity building in the iNDCs*, Centre for International Sustainable Development Law (CISDL), Canada, 2016.

⁴ This study was begun in October 2019.

⁵ Mexico's General Law on Climate Change, enacted in 2012 and updated (latest) in 2018 – in https://www.gob.mx/cms/uploads/attachment/file/347021/LGCC_130718.pdf Peru's Framework Law on Climate Change, enacted in 2018 and its regulation enacted in 2019 – both in Spanish: <https://busquedas.elperuano.pe/normaslegales/ley-marco-sobre-cambio-climatico-ley-n-30754-1638161-1/> <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-de-la-ley-n-30754-decreto-supremo-n-013-2019-minam-1842032-2/> Guatemala's Framework Law on Climate Change enacted in 2013 and the regulation of its National System of Information on Climate Change enacted 2016 - both in Spanish: <https://www.marn.gob.gt/Multimedios/2682.pdf> and https://web.archive.org/web/20170704061836/https://conred.gob.gt/site/documentos/decretosgubernativos/Acuerdo_Ministerial_Numero_5-2016_Reglamento_SistemaNacionaldeInformacionCambioClimatico.pdf. Honduras' Climate Change Law enacted in 2014 and its regulation the Presidential Council on Climate Change, enacted in 2018 – both in Spanish: <http://extwprlegs1.fao.org/docs/pdf/hon148582.pdf> and <http://extwprlegs1.fao.org/docs/pdf/hon179638.pdf>; Paraguay's National Law on Climate Change enacted in 2017 – in Spanish: <https://www.bacn.gov.py/archivos/8712/Ley%205875.pdf>.

⁶ For instance, the Argentinian law on Minimum Budgets for Adaptation and Mitigation to Global Climate Change (No 27.520), the Colombian law establishing guidelines for the management of climate change (No 1931), the Chilean draft climate framework law and the draft general law on climate change of the Dominican Republic.

⁷ Examples of these include the Ecuadorian executive decrees No. 1815 (declaring that climate change adaptation and mitigation are government policy) and No. 495 (creating an Inter-Institutional Committee on Climate Change), and the Brazilian Law No 12.187 (establishing the National Climate Change Policy).

amended since.⁸ Provisions in these laws might nonetheless deal with issues that countries should address under the Agreement. Where this was the case, these provisions were taken into account in the scoring given that this may indicate some level of readiness to implement the Agreement (for example if the legislation refers to reporting arrangements but not specifically of ones required under the Agreement).

The paper focuses on the selected framework laws and assesses their readiness to implement the Paris Agreement. Analysing the wider law and policy framework, the effectiveness of national or local governance as well as general societal characteristics that may all play an important role in the implementation of the Agreement was beyond the scope of this research. The conclusions reached in the paper are therefore not, by any means, meant as a criticism of Parties' efforts to address climate change but as suggestions to improve existing and develop new framework laws in the future.

3. Framework legislation analysed

3.1 Mexico

Mexico's [General Law on Climate Change of 2012 \(GLCC\)](#) was the first of its kind by a large oil-producing emerging economy. In 2015, Mexico was also the first developing country to submit an intended Nationally Determined Contribution in the lead up to the Paris Agreement. Following adoption and entry into force of the Agreement, Mexico amended some provisions of the GLCC in April 2018 with a view to make it consistent with the Agreement.

The GLCC spans 116 articles, and ten transitory provisions, over 48 pages. Article 2 of the law sets out the eight main objectives of the law, including: to guarantee the right to a healthy environment, to establish powers and responsibilities of government actors to elaborate and implement adaptation and mitigation policies, to regulate greenhouse gas emissions, to regulate mitigation and adaptation actions, to reduce population and ecosystems vulnerability to climate change, to promote the transition to a resilient and low carbon emissions economy, and to contribute to the fulfilment of the temperature goal of the Paris Agreement.

The GLCC establishes the basis for the creation of institutions, legal frameworks and financial support

to move towards a low carbon economy. The law also defines key principles, delineates policy tools and mechanisms, and sets long-term emissions targets. As a general law, it specifies the different responsibilities of the Federal, State, and municipal governments.

Article 26 stipulates that certain principles defined in the GLCC are to be observed when developing national climate change policy. These include the precautionary principle, the prevention principle, public participation, transparency, and progress. Furthermore, when adopting measures to tackle climate change, the following have to be respected unconditionally: human rights, rights of indigenous peoples, local communities, migrants, children, people with disability, and vulnerable people, as well as gender equality, the empowerment of women and intergenerational equity.

The GLCC sets out a variety of tools to mainstream climate change, including policy and planning instruments, economic and financial mechanisms, and information and monitoring mechanisms. The planning instruments of the national climate change policy are: the National Strategy on Climate Change, the Special Program on Climate Change, the National Adaptation Policy, the Nationally Determined Contribution, and the "programs of the States" (i.e. programs of the subnational entities) (Article 58).

The National Strategy represents the medium and long-term vision (10, 20 and 40 years) to transition to a competitive and sustainable low carbon economy. The Special Program on Climate Change details the mitigation and adaptation measures of each successive government (every six years) in key sectors in accordance with the National Strategy, and the national development plan (Articles 66 - 70). The programs of the States establish strategies, directives, objectives, actions, goals and indicators in line with the National Strategy, the Special Program and the GLCC to be implemented and fulfilled at the State level (Article 71).

Finally, all the planning instruments of the national climate change policy go through a formal assessment by the Evaluation Coordination group, composed of the head of the National Institute of Ecology and Climate Change and six advisors from scientific, academic, technical and industrial sectors (Articles 23 and 98). This assessment takes into account assessment reports by the IPCC and periodic assessments established by the Paris Agreement (Article 98). The results and recommendations of these evaluations are made public and have to be considered when revising or updating the National Strategy and the Special

⁸ The Guatemalan and Honduran laws. The Mexican law was also enacted before but amended subsequent to the adoption of the Agreement.

Program (Articles 103 and 105). The Second Transitory Provision sets out the targets of Mexico's NDC.

In terms of institutional framework, the GLCC establishes the 'National Climate Change System' as a key element of the institutional system to communicate, collaborate and coordinate regarding national climate change policy across Federal, State and municipal governments. The National Climate Change System is composed of the Inter-Ministerial Commission on Climate Change (pre-existing commission, now formally the institution in charge of co-ordinating climate change government actions, formulating and implementing national adaptation and mitigation policies), the Consultative Council on Climate Change (made up of representatives of the social, private and academic sectors), the National Institute of Ecology and Climate Change (INECC, pre-existing research institute of ecology, now with the added emphasis on climate change, providing technical and scientific assistance), representatives of the State and municipal governments, as well as representatives of national associations and of the Mexican Congress (Article 40).

Other key components of the GLCC include a National Emissions Inventory (Articles 74 - 75), a GHG Emissions Registry (Articles 87 - 90), and a Climate Change Information System (Articles 76 - 79). The main economic and financial instruments are the establishment of a national market for emissions trading (Articles 94 - 95) and the creation of the Climate Change Fund (Articles 80 - 86).

technology, for transparency of governmental actions in relation to climate policy and to promote an environment to enhance climate finance in the country.

Articles 2 and 3, of the Law establish the principles and approaches for the comprehensive management of climate change adaptation and mitigation measures. These include principles of transparency, public participation, traditional knowledge, and intergenerational, intercultural, human rights, and gender equality approaches.

In terms of institutional framework, the Ministry of Environment is the national authority regarding climate change (Article 5.1) and the regional and local governments act locally. The Law establishes two bodies: (i) the National Commission on Climate Change (Article 9), which is presided over by the Ministry of Environment and composed of representatives of the national, regional and local governments, communities, guilds, universities and others as a permanent body through which the public sector and civil society can monitor compliance with climate policies; and (ii) the High-Level Commission on Climate Change (Article 10), with the mandate of recommending adaptation and mitigation measures, the NDCs and issuing technical reports to be submitted to the UNFCCC Focal Point. It is presided over by the president of the Council of Ministers and the Ministry of Environment acts as the secretariat. This body was subsequently created by decree⁹ and its composition and functions set out therein.

The planning instruments envisaged by the law for the comprehensive management of climate change are: the National and Regional Strategies on Climate Change (Article 13), the NDCs (Article 14), and other related instruments – not specified (Article 12.c.). The Law states that these planning instruments are binding and mandatory for the competent authorities and must be considered in their institutional budgets (Article 12). In addition, the National and Regional strategies must have an action plan for their implementation (Article 13.1).

In accordance with its Article 2, the Peruvian Framework Law on Climate Change is governed by the principles of the Environmental General Law (Ley 28611), the Framework Law on National Environmental Governance (Ley 28245), the National Environmental Policy (Decreto Supremo 012-2009-MINAM), the United Nations Framework Convention on Climate Change (approved under the Resolución Legislativa 26185), and other principles mentioned further above.

The Law was further implemented and put into operation through the regulation of the Peruvian Framework Law

3.2 Peru

The Peruvian Framework Law on Climate Change of 2018 establishes the principles, approaches and general guidelines for public policies related to adaptation and mitigation measures. Its objectives are to "reduce the country's vulnerability to climate change, seek economic opportunities in the low carbon development, and meet the international commitments under the UNFCCC with an intergenerational approach" (Article 1). The Law is fairly short, spanning 23 articles and 12 supplementary provisions, over 10 pages.

In general terms, the Law establishes guiding principles; competent bodies; legal instruments (such as national strategies and the NDC); mitigation and adaptation measures (such as reduction of deforestation); and includes specific approaches to promote education and awareness of climate change, for the development of

⁹ Supreme Decree N° 006-2020-MINAM, in Spanish: <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-crea-la-comision-multisectorial-de-carac-decreto-supremo-no-006-2020-minam-1869809-1/>

on Climate Change enacted on 31st December 2019 (by the Ministry of Environment). It addresses the same subject areas as the law but in more detail. This regulation was not subject to an in-depth review for the current analysis, but where provisions in the regulation clearly pertain to relevant criteria for the analysis, a brief reference to the provisions in question is made and taken into account when deciding on the score.

3.3 Guatemala

The [Guatemala's Climate Change Framework Law](#) of 2013 “establishes the necessary regulation in order to prevent, plan and respond in an urgent, adequate, coordinated and sustained manner to climate change impacts on the country” (Article 1). Its objective is to ensure that the government, its institutions and the citizens adopt practices to reduce vulnerability, enhance adaptive capacity and enable mitigation of climate change (Article 2). The Law is fairly short, spanning 28 articles over 12 pages.

The Law establishes a general framework for the national response to climate change, providing definitions, guiding principles and general objectives, and creating institutional arrangements. The preamble of the Law states that “Guatemala is particularly vulnerable to the effects of climate change, of which it will have to bear an abnormal and disproportionate share, which is predicted to increase the magnitude and frequency of natural phenomena like storms and threatening droughts”. Given this context, the law has a particular focus on adaptation over mitigation. This framework law seems to have served as template for the Honduran Climate Change Law, below, given that its language and structure are closely replicated in the Honduran one and predates it. In addition to the principles contained in the Guatemalan constitution and in the international environmental treaties ratified by Guatemala, the Law sets out the guiding principles of the Law that must be observed by all entities when making decisions and acting in their respective areas of competence. These include: the “*in dubio pro natura*” principle, the precautionary principle, the polluter pays principle, the principle of ‘comprehensiveness’ – which requires consideration of cultural and ethnic relevance as well as gender perspectives in the design of plans, programs and actions – and the participation principle, among others (Article 6). Regarding the institutional framework, the Law creates the National Council on Climate Change, presided by the President and composed of the various ministries, representatives of business consortia, civil society, local government and academia. This body is responsible for the regulation, supervision and monitoring of the implementation of the law as well as for conflict resolution (Article 8). The Law also creates the National Fund for Climate Change to finance

plans, programs and projects for risk management, vulnerability reduction, adaptation and mitigation, as well as capacity building, payment for natural services for carbon fixation, production and protection of water, protection of ecosystems, and others (Article 24).

In terms of instruments, the National Adaptation and Mitigation Action Plan will be jointly developed by the National Council on Climate Change and the Presidential Secretariat of Planning and Programming, and “will be updated according to the results of the national communications on climate change” (Article 11). Local governments can adapt their territorial zoning plans to take climate change adaptation and mitigation into account, as well as “the results of the national communications on climate change” (Article 12). Methodological guides for risk management, vulnerability reduction, and improvement of adaptive capacity will be developed (Article 14).

Based on the National Adaptation and Mitigation Action Plan, relevant public institutions must develop institutional strategic and operational plans for vulnerability reduction, adaptation and mitigation to climate change. These plans will be developed with priority, at least, in the following areas: human health; coastal maritime zones; agriculture, livestock and food security; forests, ecosystems and protected areas; and infrastructure. These plans must be periodically reviewed and updated (Article 15). There are also provisions for developing policies and programmes on soil conservation and use (Article 17) as well as a National Energy Plan based on the use of renewable resources, technology efficiency, energy saving and reduction of GHG emissions (Article 18).

The Ministry of Environment and Natural Resources issued regulations for the National System of Information on Climate Change in 2016 ([Ministerial Decree 05-2016](#)). This Decree was not subject to an in-depth review for the current analysis, but where provisions in the Decree clearly pertain to relevant criteria for the analysis, a brief reference to the provisions in question is made and taken into account when deciding on the score.

3.4 Honduras

The [Honduran Climate Change Law](#) of 2014 “establishes the principles and regulations necessary in order to plan, prevent and respond in an adequate, coordinated and sustained manner to climate change impacts in the country” (Article 1). Its objective is to ensure that the government, its institutions and citizens adopt practices to reduce vulnerability, enhance adaptive capacity and enable mitigation of climate change (Article 2). This Law is also fairly short, spanning 41 articles over 9 pages.

The law establishes a general framework for the national response to climate change, providing definitions, guiding principles and general objectives, and creating institutional arrangements. It addresses mitigation, but with a focus on adaptation, for which it establishes certain priority areas. While it recognises the need for finance and capacity building, including to enable the work that it entrusts to the various bodies, it does not provide much clarity about the means of implementing the law.

The law sets out nine objectives (Article 6). The main objectives are: to guarantee the right to a healthy environment through the design and implementation of mitigation and adaptation policies, to regulate mitigation and adaptation actions, to contribute to integrate climate change and adaptation into development plans, to coordinate actions for the development and execution of national mitigation and adaptation policies, to reduce population and ecosystems' vulnerability to climate change, and to promote the transition to a competitive, sustainable and low carbon economy.

In addition to referencing the principles contained in the National Environmental Policy and in the relevant environmental regulations, the Law sets out guiding principles for the management, design and implementation of mitigation and adaptation measures. These include the precautionary principle, the need to decide "*in dubio pro natura*", the polluter pays as well as principles of participation and social equality, the need to respect planetary limits and other broad concepts and ideas (Article 4).

Regarding the institutional framework, an extensive section is devoted to establishing the main bodies and their attributions. The Ministry of Natural Resources and Environment (SERNA), especially through its National Directorate for Climate Change, has primary responsibility over the management of the national climate change regime (Articles 3, 14 – 19). The Law outlines the responsibilities of the existing Interinstitutional Committee on Climate Change (CICC), an advisory body tasked with providing advice on, and monitoring of, climate policy composed of the President, SERNA, as well as other governmental bodies and civil society representatives (Articles 8, 10 and 12).

The Law then creates the Interinstitutional Technical Committee on Climate Change, as a body for support and consultation to the National Directorate and the CICC, for matters that require more ample analysis and participation (Article 13). The composition of this body is similar and wider than that of the CICC as it includes several ministries. Finally, a financial management unit for climate change is created within the Ministry of Finance to assist with the management of financial resources for climate change programs and projects before cooperation agencies or funds (Article 16).

In terms of instruments, a National Strategy on Climate Change was approved in 2010 (stated in the preamble). In addition to referencing the principles contained in the National Environmental Policy and in the relevant environmental regulations, the Law sets out guiding principles for the management, design and implementation of mitigation and adaptation measures. Based on the National Action Plan on Climate Change Adaptation and Mitigation, relevant public institutions must develop institutional strategic and operational plans, and regularly review and update them (Article 26). These plans must be developed with priority, at least, in the following areas: human health; coastal maritime zones; agriculture and livestock; forests, ecosystems and protected areas; and infrastructure.

Finally, the Law provides that within twelve months of its enactment, a regulation regarding GHG emissions and its measuring mechanism in the transport sector (Article 34) shall be passed. At the time of writing, this regulation has not been passed.

The preamble of the Law refers to the Constitution of the Honduran Republic (article 340), the National Strategy on Climate Change (approved through the Executive Decree PCM-046-2010), the National Vision for 2010-2038 and the National Plan for 2010-2022 (approved through Decree 286-2009), the General Environmental Law and the Legislative Decree 26-95 approving the UNFCCC. It also refers to the UN Millennium Development Goals.

An additional institution, the Presidential Council on Climate Change, was created by presidential [decree](#) on 19 June 2018. This Decree was not subject to an in-depth review for the current analysis, but where provisions in the Decree clearly pertain to relevant criteria for the analysis, a brief reference to the provisions in question is made and taken into account when deciding on the score.

3.5 Paraguay

Paraguay's [National Law on Climate Change](#) of 2017 establishes the general regulatory framework that allows for "planning and responding, in an urgent, adequate, coordinated and sustained manner, to the impacts of climate change" (Article 1), and its aim is to contribute to the implementation of actions that reduce vulnerability, improve capacities to adapt and mitigate the effects of climate change (Article 2). This Law is also fairly short, spanning 19 articles over 7 pages.

Article 4 stipulates the principles that have to be considered in the interpretation and "integration"

of the Law and its regulations. The principles are not listed but rather, are said to emanate from the UNFCCC, the Rio Declaration of 1992 (as recognised by the MERCOSUR Framework Agreement on the Environment)¹⁰, the National Climate Change Policy, the National Environmental Policy and other general principles of environmental law.

In terms of institutional framework, the law mandates the creation of three institutions: (I) The National Commission on Climate Change (Articles 8-11), (II) the National Directorate on Climate Change (Articles 12-13), and (III) the Climate Change Fund (Articles 14-15). The Commission, an interinstitutional body, acts as the deliberative and consultative authority of the National Climate Change Policy. The Commission's role includes to support the Policy, to give recommendations on policies pertaining to climate change, to collaborate with the National Directorate on Climate Change to implement the Policy and to collaborate with representatives of international funds. Membership of the body is quite extensive and comprehensive.

The National Directorate on Climate Change is a body that acts as the executive authority of the Policy. The role of the Directorate is very wide and includes the enforcement of the Law, the implementation of the Policy, acting as liaison with the UNFCCC secretariat, coordinating reports and communications prepared under the UNFCCC, and all other functions "that are related to Climate Change". The Climate Change Fund is under the management of the Ministry of Environment. The Ministry has exclusive competence to identify, obtain, plan, manage and administer the financial resources in the Fund to implement actions to tackle climate change (whether they are from public, private, national or international sources). Adaptation actions are given priority when administering the Fund's resources.

The planning instruments outlined in the law are the National Climate Change Policy and the National Climate Change Plan. There is a pre-existing National Climate Change Policy that will be relied upon until the Commission develops the new one, as provided for in the Law (Article 16).¹¹ The new Policy will set out the objectives that the government of Paraguay must achieve to comply with the obligations it has committed to under the UN Framework Convention on Climate Change (Article 5). This Policy must be in line with the National Development Plan (Article 7). The Plan will detail the approach to achieve the

objectives of the Policy and outline the national strategies on adaptation and mitigation (Article 6).

The penultimate article of the Law mandates the Ministry of Environment to update Decree no. 14943/01 which implements the National Climate Change Program (Article 18). This Program is not mentioned anywhere else in the Law.

4 Comparative analysis

The Paris Agreement seeks to limit the global temperature rise by addressing mitigation primarily (in Articles 4 to 6), adaptation (Article 7) and loss and damage (Article 8) as well as the means of implementation. Means of implementation is a catch-all phrase used in the international climate change regime for finance (Article 9), technology development and transfer (Article 10), and capacity building (Article 11). The Agreement then creates an elaborate system of reporting and review of Parties' commitments to allow individual and collective progress to be tracked (Article 13 on transparency and Article 14 on the global stocktake).

The following section presents the comparative analysis of the five laws reviewed and scored against the questions in the table. Findings are presented in line with the order of provisions in the Paris Agreement. The three sub-sections, 'Mitigation', 'Adaptation' and 'Means of implementation' assess the legislation's readiness to meet the main substantive elements of the Agreement. The fourth and final sub-section ('Other issues') largely examines whether the laws seek to enhance awareness, education, training and public participation (climate empowerment) and their readiness to meet the Agreement's procedural requirements (reports and communications under the enhanced transparency framework of Article 13).

4.1 Mitigation

Climate change mitigation refers to efforts to reduce or prevent emission of greenhouse gases. The mitigation aim of the Agreement is to achieve 'carbon neutrality' in the second half of this century (Article 4.2).¹² Mitigation can be undertaken using new technologies and renewable energies, making older equipment more energy efficient, or changing societal behaviour. All the laws examined

¹⁰ MERCOSUR Framework Agreement on the Environment, 22 June 2001. MERCOSUR members are: Argentina, Brazil, Paraguay, and Uruguay.

¹¹ At the time of writing, the new policy has not yet been developed.

mention the general importance of climate change mitigation. With the exception of the Paraguayan law, they all outline priority areas for mitigation measures. What none of them seem to do, however, is to tie-in a tool to ensure compliance with these measures.

The Honduran and Guatemalan laws establish overarching principles in reducing GHG emissions. They both state that when emissions from fossil fuels exceed those that would have happened by the use of non-fossil fuels, this must be compensated through projects that reduce or absorb such emissions. In the case of the Honduran law, this provision is narrower as it only requires such compensations for emissions from fossil fuels for power generation.

However, in the absence of specific instruments to implement these provisions, their practical application is likely to be limited. For instance, to operationalise this mandate, the Honduran law only goes as far as to task the Ministry of Environment and Natural Resources to ensure compliance with vehicle emissions and fixed source emissions regulations and the Guatemalan one simply tasks the Ministry of Environment and Natural Resources to develop a program to incentivise voluntary emission reductions or absorption and to draft the corresponding regulation.

Of the laws that were enacted or amended following the adoption of the Paris Agreement,¹³ only the Peruvian and Mexican ones include a link with the NDC. The Paraguayan one merely states that the National Directorate of Climate Change is responsible for coordinating the preparation of the NDC. The Mexican law sets out the content of the NDC and makes provisions for its development, review and update. The Peruvian law specifies that the NDC is “binding and of mandatory compliance for the competent authorities” and also makes provisions for its development, update, monitoring and evaluation.

One of the features of the Paris Agreement is its ‘ratchet mechanism’. This ongoing process is designed to increase the ambition of climate action over time. Parties must communicate (mitigation) NDCs on a five-year cyclical basis (Article 4.9), each of which is expected to be progressively more ambitious than the last (Article 4.3 and 4.11). Neither the Mexican nor the Peruvian law specifically mention the cycle of communication of NDCs. However, they both set out a fairly clear basis for gradually increasing their NDCs’ ambition.

In the case of the Mexican one, the NDC’s goals have to represent “gradual progression over time” in line with what the law terms “the principle of progress”. Accordingly, the Inter-Ministerial Commission on Climate Change,¹⁴ is tasked with “reporting on the progress of the NDCs”. However, whether this reporting is to be done under the terms of the Paris Agreement is not specified. The Peruvian law stipulates that the proposed goals set out in the NDC increase progressively and progress on these goals is reported annually to Congress.

Paragraph 4.19 of the Paris Agreement states that all Parties ‘should strive’ to formulate long-term low greenhouse gas emission development strategies (LEDS). Only the Mexican and Honduran laws, mention the transition to a low emissions economy as one of their aims. Indeed, Mexico already formulated and communicated its strategy to the UNFCCC in November 2016 – well ahead of the invitation to submit mid-century (2050) LEDS by 2020 in COP Decision 1/CP.21, paragraph 35. Despite this, there are no overarching provisions in either of the aforementioned laws for how this aim is to be achieved, or whether a corresponding policy is to be developed.

Both the Honduran and Guatemalan laws include mandatory contributions by the private sector to mitigate and adapt to climate change. In the case of Honduras, by the productive, corporate and economic sectors whereas in Guatemala, by any individual or legal entity in the country. The almost identical provisions set out an obligation to consider climate change, climate variability, and traditional and ancestral knowledge, and to make the most of clean technologies, when providing services and producing goods. Furthermore, they will adopt new production methods (‘must’ adopt in the case of Honduras) adapted to the effects of climate change. In the case of Guatemala, the new production methods are also to guarantee that the country’s population has sufficient food and to minimise soil degradation. However, in the absence of guidelines on how these provisions can be implemented, they may be of little practical consequence.

Article 6 of the Paris Agreement sets out three voluntary cooperative approaches that Parties can use to achieve the ambition of their NDCs. The guidelines for their implementation are still under negotiation at the international level. However, in the meantime, countries can still advance in their

¹² A simple explanation of ‘carbon neutrality’ is the removal of as much man-made emissions of carbon dioxide from the atmosphere as we have put into it.

¹³ The Mexican, Peruvian and Paraguayan laws.

¹⁴ With the assistance of the Ministry of Environment and Natural Resources and the opinion of the Consultative Council on Climate Change.

preparations to be able to participate in these approaches once these guidelines are finalised.

For instance, countries can establish their own national carbon markets and develop the capacity of institutions to operate these markets according to the basic principles that are adopted at the international level (e.g. environmental integrity, transparency, permanence, and robust accounting rules). Countries can also develop laws and policies, review practices and regulatory frameworks to create an enabling environment that is conducive to attract investment and host sustainable development projects – for instance to reflect good governance, a secure business environment, a clear regulatory framework, etc.

Of the five acts reviewed, only three make some references to cooperative approaches. However, none of these give an indication of whether, and how, cooperative approaches would interact with the implementation of their NDC. The most comprehensive reference is found in the Mexican law which provides for a national carbon market and stipulates that participants in this market can also take part in other countries' markets and international ones.

The Mexican market's aim is to promote emissions reduction made in a measurable, reportable and verifiable manner. Regulatory provisions of the law will establish measures to avoid double counting of emission reductions, considering the international systems and methodologies available. With regard to international cooperative approaches, the law states that mitigation programs and instruments developed under the Convention, the Kyoto Protocol and the Paris Agreement are recognised – so it would seem that current and future international cooperative approaches have been considered. Indeed, the Inter-Ministerial Commission on Climate Change is tasked with, among other things, promoting, disseminating and ruling on projects of emissions reduction or capture under the Clean Development Mechanism, and under other similar instruments recognised by Mexico.

The Peruvian law makes no reference to cooperative approaches or the sustainable development market mechanism. However, the Peruvian regulation of the framework law, which sets out a comprehensive system for measuring, reporting and verification (MRV), states that one of the objectives of carrying out the MRV of emissions is to access finance from the Paris Agreement's cooperative approaches. Furthermore, it sets out the principles guiding the MRV, in accordance with the guidelines established by the IPCC and the

Paris Agreement - transparency, accuracy, comparability, avoiding double counting, etc. It therefore seems that, at least in part, the regulation envisages an enabling environment for international carbon markets.

Finally, the Guatemalan law provides that all activities that generate emission reduction certificates can access voluntary and regulated carbon markets, as well as any other bilateral or multilateral offset mechanisms and mechanisms of payment for environmental services. The country, however, does not have a national carbon market, nor does the law envisage one. Nonetheless, the law goes on to state that projects must be registered in a National Registry of Projects for the Removal and Reduction of GHG. According to the timeline provided in the law, the regulation necessary to create the registry should have been issued in 2015, but it appears that, at the time of writing, the regulation has not yet been issued.

4.2 Adaptation

Climate change adaptation refers to the process of adjusting to the actual or expected effects of climate change. The importance of considering the issue of adaptation to climate change in the international climate change regime has traditionally been voiced by developing countries. The reason for this being the unequal distribution of both the impacts of climate change and the ability of countries to respond to these impacts. While climate change impacts all countries, the most vulnerable to its impacts are developing countries, with some estimates showing they would bear some 75 to 80 percent of the costs caused by climate change impacts.¹⁵ The Paris Agreement creates, to a certain extent, a better balance than its predecessors in addressing both adaptation and mitigation.

The importance of adaptation to the countries whose framework legislation was reviewed is evident in the fact that all laws refer to some form of preparation for climate change adaptation. The Mexican law goes further than all the others examined. It sets out a framework, and responsibilities, for developing a National Adaptation Policy and for its inclusion into sectoral programs and actions. Moreover, the law stipulates that the National Strategy is to include an evaluation and a diagnosis of the vulnerability and capacity for adaptation of towns, regions, ecosystems, and in relation to key sectors of the economy.

The law also provides that adaptation goals and

¹⁵ World Bank, "World Development Report 2010: Development and Climate Change," <https://openknowledge.worldbank.org/handle/10986/4387> p. xx.

actions, climate change scenarios, and the diagnosis of vulnerability and adaptation capacity are to be included in climate change programs at the State level. Finally, all three levels of government must include sectoral adaptation actions when developing climate change policies, strategies and programs.

The Mexican law also sets out adaptation planning processes in relation to risk preparedness. “Risk Atlases” developed at all three levels of the Mexican government help to identify and assess risks and address vulnerability. Urban development plans, construction regulations and land use planning are then based on these atlases. The Special Program of Climate Change (detailing mitigation and adaptation measures of each successive government every six years in accordance with the National Strategy) must include adaptation goals for comprehensive risk-management. All three levels of government are to establish protection and contingency plans to respond to extreme weather events, and develop early-warning systems.

Article 7.5 of the Paris Agreement mentions a series of principles that countries should follow in their adaptation efforts.¹⁶ All but the Paraguayan legislation include some of the principles mentioned in this article in relation to their adaptation efforts. The two most referred principles are gender equality and public participation. However, the mere mention of these principles in the law does not guarantee they will be applied without corresponding guidance or regulation on how to do so.

With regard to communicating about adaptation, Parties should submit and update an adaptation communication in accordance with Article 4, paragraphs 10 and 11. The framing of this provision with the verb ‘should’ means that while this conduct is expected, it is not obligatory. Nonetheless, this type of communication can be useful to communicate a country’s national adaptation priorities, information on implementation and support needed, as well as plans and actions. It can also enable meaningful inputs into the global stocktake.

Importantly, this communication can help to increase the visibility of adaptation and strengthen adaptation action and support for developing countries. Therefore, including arrangements for preparing and submitting this communication in a climate change framework can benefit countries individually and collectively and should be included in their legislation. Despite this, none of the pieces of legislation reviewed that were enacted or amended following the Paris Agreement made reference to it.

Connected to the above is the fact that none of the legislation surveyed appears to indicate any substantial plans for documenting, monitoring and reporting adaptation efforts, needs and plans. Therefore, if and when a country decides to make an adaptation communication it might not have the information it needs for it readily available.

Some of the laws reviewed include provisions regarding documenting adaptation efforts. There are also references to assessments of vulnerability to climate change impacts and even monitoring and reporting on adaptation measures (the latter in the Peruvian regulation implementing the framework law). However, not one states how adaptation needs and plans are to be established. Even the Mexican law, which goes further than the others in this respect, only states that priorities for adaptation will be established in the Special Program on Climate Change. With regard to adaptation needs, and strategies, programs and actions to address them, the law just states they will be identified in the National Adaptation Policy.

The concept of loss and damage in the climate change context refers to irreversible harm caused by climate change where adaptation is no longer possible. This harm can be brought on by climate disasters such as tropical cyclones, or slow-onset processes such as sea level rise. The consequences of such harm can be economic (e.g. the cost to re-build infrastructure) or non-economic (e.g. the loss of a place of cultural significance).

While the consequences of losses and damages for the countries whose legislation was examined are potentially serious, none of them specify how the state will deal with this risk. The only country that goes a little further and includes reference to loss and damage is Guatemala. In the regulations of the National Information System on Climate Change, it is stipulated that the system can collect, organise, analyse and present information pertaining to loss and damage (at the request of the Ministry of Environment and Natural Resources). The regulations go on to state that one of the three sub-systems of information on vulnerability and adaptation is also related to the quantification of loss and damage, but not further elaborated.

To attempt to address this risk, countries should conduct climate change risk assessments. They should also put in place disaster risk reduction strategies and emergency preparedness plans and programmes. Where necessary, they should put in place migration and resettlement plans. Some of the laws are putting in place such plans

¹⁶ “adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems,...”.

and programmes and providing for assessments of climate risk. However, a key factor in their ability to implement these plans, programmes and assessments successfully will be the availability of financial support.

This financial support may be more readily available for countries that can document and demonstrate how climate change harms their people, environment, and economy; and highlight their activities in response to these harms, along with support needs. The reporting opportunities under the Paris Agreement could be used by countries as a strategy to do this. For example, as part of their adaptation communication or under the section on climate change impacts and adaptation in the modalities, procedures, and guidelines for the Article 13 transparency framework. This information can feed into the global stocktake provided for in the Agreement. None of the acts envisage assessing or documenting the economic or non-economic impacts of climate disasters or slow-onset processes.

While the topic of loss and damage remains a controversial issue at the international climate negotiations, efforts in documenting occurring harms might also be relevant outside the international climate regime, including possible rehabilitation arrangements. Therefore, it would only be prudent to record and document the adverse effects of climate change, keep track of damages and the economy-wide implications. A framework law could provide the starting blocks to enable this.

report financial needs as part of MRV systems.

None of the five laws refer to systems that demonstrate and report financial needs. Some of them outline initiatives that go in the right direction, such as creating a national climate change fund and establishing where its sources of finance will be drawn from. The framework legislation of Peru and its regulation seem to go a little further than the others examined.

In the Peruvian legislation, all public or private entities that receive finance from climate funds or from international cooperation have to monitor, evaluate and report to the Ministry of Environment, the results of the mitigation and adaptation actions executed through the use of those resources to demonstrate the efficiency and effectiveness of the expenditure. In addition, the Peruvian regulation of the framework law establishes a system to monitor and report information on financial flows received from public and private sources as well as those from international climate funds and international cooperation that contribute to the implementation of its adaptation and mitigation measures.

The Paris Agreement (in Article 10) also recognises the development and transfer of environmentally sound technologies as an important component of the international response to climate change. Many developing countries have undertaken a technology needs assessment but most of the laws reviewed barely mention technology transfer or development, if at all. For example, the Mexican law only contains a general reference that the National Strategy is to include national requirements for technology transfer. The Peruvian regulation of the framework law goes a small step further, setting out that one of the functions of the Ministry of Environment is to propose and identify priorities for the development and adoption of technologies required for adaptation and mitigation. These priorities are identified taking into account gender perspectives, and traditional and indigenous knowledge and practices.

The need to strengthen the capacity of developing countries to effectively address climate change pervades all substantive components of the Paris Agreement - mitigation, adaptation, finance, technology, climate change awareness and education, as well as the reporting in these areas. Developing countries will need systems to identify their capacity building needs. They could design programmes, plans and policies to address them and to estimate the financial implications and available support for implementation. To demonstrate the full range of capacity building efforts in line with the Paris Agreement and share lessons learned, developing countries should track all initiatives and report on progress and support needed and received.

The starting blocks for these plans and activities could be provided for in a framework law. The law could

4.3 Means of implementation

The provision of finance and the ability to access it are key to the climate change responses in developing countries. In order to fully benefit from the provisions in Article 9 of the Paris Agreement on finance, developing countries should have systems in place to demonstrate and report on financial needs in relation to mitigation, adaptation, and other climate-related actions. These systems would cost these actions in a realistic and systematic manner, providing for adequate investment planning. In turn, this would allow countries to have more clarity and provide evidence of their particular needs. As a result, countries would be able to demonstrate that there is a wider enabling environment that records and collates financial information and reports financial needs and finance support received.

In this context, framework legislation could set out plans and responsibilities to put in place strategies and processes to access available climate finance; for example, to monitor the projected and provided climate finance by developed country Parties in their biennial reports. Framework legislation could also provide for the creation of systems that

outline a clear path for how capacity building needs are established and create systems for monitoring and reporting on initiatives. This would demonstrate a level of governance and favourable circumstances for the provision of support. This, in turn, would build confidence and may attract new resources. The laws of Mexico, Peru and Guatemala mention some areas, sectors or institutions that need to build capacity. However, none of these refer to how capacity building needs are determined, even less whether monitoring and reporting on capacity building initiatives will be undertaken.

4.4 Other issues

All but one of the laws reviewed - that of Paraguay - seek to raise climate change awareness, and enhance education, training and public participation. Honduras and Guatemala, each contain a widely drafted provision promoting awareness, education and public participation (in the case of Honduras this is an obligation placed upon the Interinstitutional Committee on Climate Change). In Peru, the Ministry of Education is tasked with implementing a National Environmental Education Policy, and its plan.

With regard to public participation, the Peruvian law states that mechanisms for consultation to ensure effective stakeholder participation are not only to be established for all stages of public policies but also for private climate change investment projects. This is also the only law that specifically enshrines the government's duty to safeguard the right of indigenous people to be consulted.¹⁷

The Mexican law goes the extra mile, it promotes education, training and public participation but also specifically provides that the Climate Change Fund can finance educational and awareness programs. It also tries to operationalise public participation by making it an obligation for all three levels of government to promote it in the planning, implementation, and monitoring of the national climate change policy. Specific tasks to achieve this are allocated to the Inter-Ministerial Commission on Climate Change.

Reporting under the Paris Agreement is governed mainly by the enhanced transparency framework under Article 13. This framework builds on the existing reporting and review arrangements of the UNFCCC and the Kyoto Protocol, and will eventually replace them. It contains mandatory provisions for reporting and is key to the architecture of the Agreement which also acknowledges that developing countries will require further capacity building and institutional

support to transition to this new framework.

The Peruvian regulation of the legislation provides that a National GHG Inventory Report and other reports regarding the implementation of the objectives of the UNFCCC are to be submitted to the UNFCCC by the Ministry of Environment. These reports are also stated to show the level of progress in implementing the NDC. In addition, the regulation stipulates the creation of a monitoring system for adaptation and mitigation measures and contains numerous provisions regarding MRV of GHG emissions, removals, emissions reductions and increase in removals.

Some of the legislation reviewed contains starting points for future reporting under the Paris Agreement. For example, in provisions of the Guatemalan law, and the regulation of its National Information System on Climate Change. These provisions stipulate that the mitigation and adaptation information that is necessary for the national communications the country is obliged to provide is collected, organised and analysed through the National Information System on Climate Change.

In the Mexican law, it is stipulated that methodologies, and separate regulations, will enable the MRV of emissions and emissions reductions and, at the State level, the "programs of the States" will also include the MRV of adaptation and mitigation measures. Embedding specific reporting requirements and referencing, for example, the modalities, procedures and guidelines for the transparency framework -or parts thereof- in the law would support government institutions to meaningfully implement the Agreement.

5 Some conclusions and recommendations

The comparative analysis of climate framework laws in Latin America and their alignment with the Paris Agreement presented in this paper indicates a moderate degree of readiness to implement the national commitments mainly in the mitigation context. Although most laws were developed prior to the adoption of the Agreement, they provide at least a general framework to assess, address and report national GHG emissions and to embark on a low carbon development pathway in the medium or long term.

In the other thematic areas of the Paris Agreement (adaptation and means of implementation) the legislation reviewed appears less prepared to implement the provisions of the new Agreement and, as a result, to enable the national economy to

¹⁷ Naturally, such a right may be enshrined in other laws rather than a climate framework law, but reviewing these was outside the scope of this study.

benefit from opportunities under the Agreement. In this context, legislation could, for example, address the systematic collection and communication of data on climate change impacts, adaptation efforts and needs for financial support and technology transfer and/or allocate distinct responsibilities to different levels of government (e.g. local, regional and/or federal depending on the national structure).

Overall, the Mexican legislation has scored highest and appears best suited to implement the Paris Agreement. To a large extent, this is because it reflects a more comprehensive system than the other laws and covers several areas addressed under the Paris Agreement (including monitoring and reporting, long term strategy, markets and climate risk assessments). The Peruvian legislation comes a close second in the scoring. While it might not reflect as comprehensive a system as the Mexican legislation, the MRV provisions contained in the regulation of the legislation are very extensive and unmatched by the other laws. The other framework laws of Guatemala, Honduras and Paraguay have a rather high-level approach that underlines relevant legal principles (e.g. the principle of precaution or human rights) but relies heavily on further regulations and policies to be put in place over time.

While this study focuses on the law on the books and does not aim to assess its application in practice, the review already indicates that there may be significant delays in the adoption of further instruments to put statutory provisions and overarching value-led decisions into operation. This in turn hampers the effective implementation of the law. For instance, implementation regulations envisaged under the laws of Guatemala and Honduras have not been issued yet.

Framework laws that rely on subsidiary legislation, new policies, or on mainstreaming climate change into existing instruments should be equipped as a framing instrument to advance effective implementation. This could be done by providing for a degree of accountability (e.g. clear allocation of responsibilities and timelines) and additional resources to support processes and institutions in the framework law itself. In addition, ensuring compliance with the law by, for example, specifying compliance tools in the framework law would also contribute to the implementation of international commitments.

Climate change affects almost all areas of the law. A framework law could help to coordinate response measures across different sectors and establish the approach to review and update the relevant national instruments and governance systems. The opportunity to do the latter as part of the Honduran framework law appears to have been missed. It is a decree issued 4 years after the law that created and tasked the Presidential Council on Climate Change to achieve ‘better and effective governance’ by inter alia reviewing and updating the legal framework and existing climate change policies.

Climate framework legislation is likely to provide the “legal backbone” for dealing, at the national level, with the global climate problem in decades to come. This framework should, therefore, capture the fundamental principles and values relevant in this context as well as provide some guidance on how to balance conflicting interests. To facilitate national implementation of the Paris Agreement, it should seek to capture all the themes of the treaty.

In addition, to align national efforts with the provisions of the Paris Agreement, it appears crucial to routinely engage legislators in connection with the UNFCCC process, strengthen their understanding of the international rules and ensure a comprehensive flow of information between the delegation in the climate negotiations and national law and policy makers. Cross-party task forces or working groups involving parliamentarians, legislative drafters, UNFCCC delegates and other experts may be helpful in this context.

In general, national ownership of a law-making process is important to ensure that laws do not end up ‘sitting on the shelves’. Simply copying a law from another jurisdiction (or a standardised model) rarely works. Stakeholder involvement by industry and civil society as part of the law (as well as during the law development process) to, for example, identify technology and adaptation needs are important steps towards defining solutions that reflect the national context and ultimately ensure greater implementation of the legal framework.

Capacity building and peer learning for law and policy makers and legal drafters are other potential components in developing new climate framework legislation and building the wider enabling environment for its successful implementation. Some Latin American countries are pursuing such activities by accessing readiness resources from the financial mechanism of the UNFCCC, or other bilateral and multilateral cooperation organisations (e.g. LEDS LAC, EUROCLIMA+ or NDC Partnership etc.).¹⁸

Intergovernmental organisations such as the Organization of American States (OAS), the Community of Latin American and Caribbean States (CELAC), the Union of South American Nations (UNASUR) or the Economic Commission for Latin America and the Caribbean (ECLAC) may have a role to play in coordinating legislative interventions for the implementation of NDCs and the Paris Agreement in the region. This could be the provision of strategic support, the coordination of knowledge sharing and information exchange, mutual learning at different levels as well as capturing good practice, including safeguards to ensure the inclusiveness, transparency and justiciability of new legislation. The CAF – Development Bank of Latin America or the Inter-American Development Bank (IDB) could provide financial support.

¹⁸ For more information, see <https://ledslac.org/en/ledslac-en/>, <http://euroclimaplus.org/en/> and <https://ndcpartnership.org/>

Annex I

Paris Agreement	General "quality criteria" based on the Paris Agreement and rules	Examples of more detailed questions to reach a conclusion re criteria	Mexico 2012 & 2018	Peru 2018	Honduras 2014	Guatemala 2013	Paraguay 2017
++ Satisfactorily addressed + Somewhat addressed 0 Not addressed							
Mitigation							
Mitigation measures (Art.4.2)	Are domestic mitigation measures specified in the law?	Does the law indicate priority areas or general objectives only? Are measures linked to potential compliance tools (e.g. penalties)?	+	+	+	+	+
Mitigation NDC (Art.4, paras 2, 3, 9 and II)	Development, communication, implementation and updating of NDCs	Is there a link between the NDC and the law? Is the content of the NDC outlined in the law? Is a "chain of command" for developing and updating the NDC specified?	+	++	0	0	0
	Cycle and progression of commitments	Need for increasing ambition over time captured in law? Reference to 5-year cycles?	+	++	0	0	0
Long term strategy (Art.4.19)	Does the law or wider governance framework envisage a "long-term low emissions development strategy"? Is there a corresponding policy?	Does the law aim for carbon neutrality? Does it frame criteria, objectives or milestones for achieving this aim? Or is there a policy to this effect?	++	0	0	0	0
Monitoring and reporting (Art.13)	Are there institutional/governance arrangements for monitoring and reporting (re Paris Agreement related obligations)?	Does the law provide for the monitoring, reporting and verification of emission reductions? How is national data captured and consolidated? Are there commitments to strengthening capacity?	++	++	+	+	0
Forests/sinks (Art.5)	Does the law refer to policies, rules, activities etc. around carbon sinks and reservoirs?	In countries with significant forest cover is there, for example, a link to legislation on forest or land use?	++	++	+	+	+
Cooperative approaches and sustainable development market mechanism (Art.6)	Reference to international and/or domestic markets around carbon?	Does the law indicate specific ideas / approaches? Does it refer to the investment environment or good governance? If so, how might these tie into the implementation of the NDC and reporting on progress in implementation?	+	0	0	+	0
Adaptation							
Adaption efforts (Art.7)	Does the law include the preparation of adaptation, climate resilience, risk preparedness etc. plans and programmes?	What planning does the law require at the national and sub-national level? Does it envisage activities, policies, and responsibilities at the local and /or sectoral level?	++	+	+	+	+
Adaptation action criteria (Art.7.5)	Does the law broadly reference the criteria in Article 7.5 in the context of adaptation activities: e.g. gender-responsive, participatory, and transparent?	Are future policies or activities expected to integrate the principles mentioned in Art.7.5? Or is the general (broader) reference to human rights, participatory decision-making etc.?	+	++	+	++	0

Paris Agreement	General "quality criteria" based on the Paris Agreement and rules	Examples of more detailed questions to reach a conclusion re criteria	Mexico 2012 & 2018	Peru 2018	Honduras 2014	Guatemala 2013	Paraguay 2017
			++ Satisfactorily addressed	+ Somewhat addressed	0 Not addressed		

Adaptation (continued)

Adaptation Communication (Art.7.10)	Reference to adaptation communication (free standing or as part of the NDC, NAP or National Communication) in the law?	How is the information collected and synthesised? Does the law allocate relevant responsibilities? What timeframes are provided for, if any?	0	0	0	0	0
Documenting, monitoring and reporting of adaptation efforts, as well as, priorities and needs (Art.7.10 and 13)	If and to what extent does the law put in place or envisage processes and systems for assessing climate change impacts, establishing adaptation priorities, needs and plans?	Are there provisions on communication between different levels of government? Or systems to be established for collecting and recording activities, impacts, resulting needs? Who collects and summarises this information?	+	+	+	+	0
Loss and damage (Art.8)	Does the law provide for documentation of adverse climate change effects that lead to or might lead to loss and damage?	Does the law include reference to irreversible loss or irreparable damage? Does it envisage structured assessments of the economic (or non-economic) impacts of climate disasters (such as tropical cyclones) or slow-onset processes (such as sea level rise)?	0	0	0	+	0

Means of implementation

Finance (Art.9)	Does the law reflect an approach to systematically cost mitigation, adaptation and other climate-related needs and action taken?	Is there a system to record and collate financial information? Are there provisions for reporting on climate finance needs and climate finance received? Are there other provisions in the law related to raising climate finance?	0	+	+	+	0
Tech transfer and development (Art.10)	Does the law envisage plans, programmes etc. to identify technology needs?	Does the law envisage stakeholder consultations and / or dialogue to determine needs? Is there a reference to a technology needs assessment and related reporting (e.g. as part of NDCs, adaptation plans, policies etc.)?	0	+	0	0	0
Capacity building (Art.11)	Does the law refer to the determination of capacity building needs?	Are there relevant processes, systems, policies, and institutions? Does the law envisage the monitoring and reporting on capacity building initiatives?	0	0	0	0	0

Other issues

Empowerment (Art.12)	Does the law seek to raise awareness and enhance education, training and public participation?	Does the law envisage the availability of additional financial resources to carry out enhanced education, training and public awareness? Is there an indication if and to what extent the law itself was developed in an inclusive and transparent manner?	++	+	+	+	0
Reporting (Art.13)	Does the law refer to submission of reports such as GHG national inventory report, national communication and BTR?	Does the law refer to national systems for MRV, compliance, checks etc.? Is there a system in place to capture and synthesise information on mitigation, adaptation and means of implementation? Does it include capacity building elements for reporting under the PA?	+	+	0	+	0
International cooperation among Parties	Does the law reflect the PA's cross-cutting call for international cooperation?	Does it specify possible areas of collaboration? Does it mention joint markets, NDCs, initiatives, projects?	+	0	0	0	0