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# Post-Legislative Scrutiny of climate and environment legislation

*Guide for parliamentary practice*

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April 2021





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The publication 'Post-Legislative Scrutiny (PLS) of climate and environment legislation: Guide for parliamentary practice' was made possible through funding received from the United Kingdom's Foreign, Commonwealth and Development Office (FCDO).

The publication has been drafted by David Hirst and published in April 2021. The author appreciates the peer review comments received from Rafael Jimenez Aybar, Franklin De Vrieze, Magdalena Randall-Schab, Halyna Shevchuk, Agus Wijayanto, Alina Averchenkova, Graeme Cook and Lord Duncan of Springbank, who were members of the reference group accompanying the drafting of this publication.

The views expressed in the paper are those of the author, and not necessarily those of or endorsed by the institutions mentioned in the paper nor the UK government.

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# Foreword

The climate and environment emergency demands leadership and action from parliaments around the world. As the coronavirus pandemic has shown, a slow response is not good enough. Parliaments are in the unique position of having both privileged understanding of the interests of all citizens and prime responsibility for scrutinising the work of the executive. These roles come together when assessing legislation from the climate and environment perspective - parliaments need to see positive impacts for citizens both directly and by protecting the environment that their prosperity depends on.

Post-legislative scrutiny (PLS) is emerging as a new dimension within the oversight role of parliament. WFD works with parliaments to help expand their capacity to review how legislation has worked in practice, and has published studies and guidance on PLS that other parliaments can draw on.

WFD's Environmental Democracy Initiative focuses on strengthening the democratic tools needed to address the climate and environment emergency. People and parliaments need open data on the environment and a voice to express their views, as well as access to justice when their rights are affected. The passage and enforcement of environmental laws and treaties is the focus of many coalitions of parliamentarians, civil society, business, political parties and communities around the world, all relying on effective action by parliaments to support them in creating a growing, green economy.

Bringing together PLS and the Environmental Democracy Initiative, this new Guide for Parliamentary Practice outlines an approach to assessing the implementation and the impact of climate and environmental legislation at national level.

PLS on climate and environmental legislation poses specific challenges since national commitments and adaptation require coordination across sectors and government departments such as energy, infrastructure, agriculture and economics; and integration with climate and environmental targets across the Sustainable Development Goals.

Governments from around the world are making commitments and agreeing action plans through the UN agreements on climate and biodiversity. These commitments must be implemented nationally and locally. Parliament has a role to hold governments' feet to the fire on these commitments and to ensure that legislation is effective and implemented.

Through its country programming and knowledge products, WFD will continue contributing to the global efforts in combatting climate change and advancing environmental governance.

Anthony Smith  
Chief Executive Officer  
Westminster Foundation for Democracy



# Summary

Parliaments have a key role in responding to the clear, present danger posed by current rates of environmental decline and a warming climate through its legislative, representative and scrutiny functions. First, through scrutiny and enactment of appropriate legislation and regulatory frameworks and, second, in reviewing the implementation of those laws. Because, where legislation has been enacted, implementation has not always matched the legislative ambitions. Further, where legislation is in force, the ambitions may not match what the science demands. Parliaments therefore have responsibilities to scrutinise policy, even where not by required law, and to debate the issues of the day, thereby fulfilling their representative function.

Post-legislative scrutiny (PLS) is the practice used to monitor and evaluate the implementation of legislation, ensuring laws benefit constituents in the way originally intended by lawmakers. PLS can therefore be used to provide oversight of the implementation gap - that is, the gap between ambitions legislated for and those actually delivered. PLS can also provide a window through which legislative ambitions can be increased - to accord with what the science demands. This report provides a range of tools and examples of how parliamentarians can effectively address specific climate or environmental laws. It also details practices that can be used to supplement PLS of laws not specifically environment- or climate-focused.

## Climate and environment in all scrutiny

This report demonstrates the advantages of placing a climate and environmental “lens” over the business of legislating and PLS. Parliamentarians can use the concept of sustainable development, and the Sustainable Development Goals (SDGs), as an analytical frame for this; for example, as demonstrated in the Scottish Parliament’s sustainable development impact assessment tool. As a start, such an approach should involve parliamentarians moving beyond simply asking ‘what is the economic cost?’ to asking, ‘what is the carbon cost?’ and ‘what is the value of this resource?’, since economic decisions can have an effect on the environment, and environmental protection and resource management expenditures can have economic impacts.

Embedding questions of sustainability in everything a parliament does can benefit from both political and institutional support:

- **Political recognition** of the urgency of the climate and ecological crises is often a prerequisite to action. Whilst actions such as MPs declaring a ‘climate emergency’, parliaments amending rules of procedure to create an environment committee, and/or legislating for commitments to protect the environment and meet the SDGs are all useful; underpinning those is a requirement to have access to, understanding of, and ability to interpret, an evidence base. Reliance on good quality knowledge and expertise is necessary to allow politicians to access the best platform from which to make decisions on law or policy as was the case with the [enactment of the UK’s ground-breaking Climate Change Act in 2008](#).
- **Institutional support**, that is from parliaments themselves, and those who work in them, is needed to equip politicians with the tools to provide effective oversight of climate and environmental issues. MPs need access to the most relevant, recent and cutting-edge information and research - both through in-house resources, and in accessing the best external advice and evidence. The financial and human resources dedicated to this will determine to a large extent the quality of scrutiny. Internal expertise and research support can be complemented or added to through parliaments establishing relationships with technical or advisory bodies, academic institutions or individual experts. More than ever

the idea of participative democracy – that is, the voices of those experiencing issues first-hand or developing the solutions – is bringing greater insight and buy-in to parliamentary activities in these areas.

To deliver effective cross-cutting analysis through PLS, coordination of activities including research, stakeholder engagement, and engaging with external research agencies is key. Coordination can be embedded in the remit of a particular committee, as in the House of Commons' Environmental Audit Committee. Or, it can be embedded in the remit of all committees. Either way, communication is essential. Parliaments may consider a range of tools to ensure effective coordination:

- **Committees of Chairpersons:** Chairs of all of the committees may participate in a committee of chairpersons that considers issues of cross-cutting relevance to committee oversight practices and specific committee inquiries. This committee could:
  - take decisions on disputed issues related to the scope of work of committees
  - help to coordinate joint committee sessions, establishing procedures, processes and resource allocations
  - conduct hearings with the head of the government as is the case with the [UK House of Commons' Liaison Committee](#).
- **Official to official:** committee and research staff may meet up to regularly share information on, and help shape, committee work plans, and future areas of scrutiny in order to avoid unnecessary duplication of work – recognising that decisions over committee work will always ultimately be taken by committee members and Chairs.
- **Publishing future work plans:** committees may decide for full transparency in all of their work, including publishing future work programmes (already a commonplace activity in many parliaments). Through publishing and publicising their work programmes in this way they can highlight what issues they will focus on. This can have the added benefit of helping to direct external partners' focus onto these subjects as well, which can in turn be utilised by the committee.

Coordination is important not just to avoid duplication, but also because there could be benefits, in some cases, of committees holding joint sessions to amplify scrutiny and bring to bear the most relevant expertise in the parliament. Parliaments may consider holding wide-ranging inquiries in which individual subject committees focus in on specific sub-topics. For example, when scrutinising climate change plans, different committees may wish to consider the sectoral impacts on policies within their policy remit, as the [Scottish Parliament have decided to in 2021](#). It is crucial that parliamentarians also consider the non-climate and environmental legislation using a “sustainable development lens”. This approach can help committees to ask what the social, economic and environmental implications are, and what if any unintended consequences there have been, on issues often considered to be beyond the scope of climate and environmental committees.

However coordination is achieved, scrutiny should be focused on the areas of greatest concern and importance. Parliaments can make use of scrutiny partners in identifying these key issues. Outside of parliaments, audit institutions and regulators are important partners. Parliamentarians should look to work with their peers in the “triangle of scrutiny” to deliver complementary and additional oversight of the government. It is essential that in working with these scrutiny partners, committees are completely transparent as regulators may be either the subject of scrutiny as an implementing agency, or a supporting partner supplying evidence and data on compliance or enforcement, or both. Audit agencies meanwhile could be a rich resource of data on Natural Capital resources, sustainable finance and costs of enforcement and non-compliance. In addition, many parliaments have mechanisms to utilise directly the expertise and human resources of audit bodies, as audit institutions typically report into or coordinate with one or more parliamentary committees.

## Special factors for climate and environment laws

Significant strides have already been taken around the world to pass legislation to protect the environment and to halt climate change. But under the laws enacted, and the international treaties agreed, the world is on course to miss its target to limit warming to less than 2 degrees. PLS can therefore contribute to the scientific and ecological demands for strengthened laws and stronger outcomes through ensuring legislation in force is: effective, efficient, coherent, relevant, and accountable. To do so parliamentarians should consider:

- **International environmental treaties.** Many environmental issues that begin as matters of national concern rapidly become transboundary, often global, in scope. Such transboundary, global issues can by their very definition only be addressed effectively through international cooperation. Parliamentarians have a key role scrutinising both the enactment and the implementation of international environmental treaties. PLS can in particular provide a timely window of analysis to check on the government's commitments and adherence to such treaties. Further, delivery against international treaties can only take place at national, regional and sub-regional level. Parliaments are absolutely critical to ensure that this happens. PLS offers a window through which representative participation can take place and 'on the ground' evidence of action or inaction can be unearthed.
- **Regulatory underlap and overlap in the scope of implementing agency mandates.** The piecemeal development of environmental legislation risks regulatory overlap and underlap. PLS can promote open dialogue with stakeholders, regulated industries and civil society organisations in order to identify implementation gaps and overlap in agency mandates. There is an important role for parliamentarians to identify and review the role of implementing agencies of environmental laws, in order to consider: whether compliance and enforcement regimes exist; and their effectiveness, legality, and coherence.
- **Human rights and environmental rights together.** PLS of climate and environmental legislation can contribute to the protection and promotion of human rights, as many human rights depend upon the environment. Through adopting a rights-based approach to scrutiny, as a complement to more traditional regulatory interventions, parliamentarians may be able to identify alternative means of enhancing environmental outcomes, including through:
  - oversight of government actions pursued (or not) in fulfilling legal duties under human rights treaties and in national constitutions
  - challenging the lawfulness of decisions, acts, omissions and policies of public bodies and authorities that create environmental injustice.
- **Legislative targets for climate and environment are adequate, timely and achievable.** Enacted climate and environmental laws often utilise secondary (or delegated) legislation. This allows ministries - or other implementing agencies - to develop detailed programmes under overall strategies/aims presented in primary legislation. However, setting targets alone does not in itself help to halt climate change or improve environmental outcomes; PLS of climate and environment legislation should therefore focus its assessment on not just targets, but the material outcomes and performance against the targets - asking if the targets and actions to meet them are doing enough.
- **How it will access, use and share evidence.** Limited access to complete and accurate information from agencies, facilities, and project proponents can hamstring PLS from the outset. Many climate and environmental laws can only be scrutinised in detail with access to data (on for example environmental outcomes) and information (on for example success of compliance and enforcement regimes). It is therefore essential for parliaments to find ways to access data and evidence on the implementation of legislation and the environmental impacts or outcomes. Through advocating for access to information, parliaments can promote greater transparency.



- **How it will work with internal and external expert advisers.** Environmental and climate issues can be highly technical. Parliamentarians may find it prudent to establish effective links to expert advisory bodies as well as to regulators. These links can be formalised through legislative provisions or be made on an ad hoc basis. In any such approach transparency is critical as is an understanding of bias, conscious or unconscious. Parliamentary staff will have to manage these partnerships to ensure the technical advice and support is focused in on parliamentary timetables, parliamentarians' focus and responsive to their technical needs.



Photograph by [Patrick Hendry](#) on [Unsplash](#).



## Acronyms

CCC	Committee on Climate Change
CITES	Convention on International Trade in Endangered Species
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IBP	International Budget Partnership
IPU	Inter-Parliamentary Union
IPCC	Intergovernmental Panel on Climate Change
NDCs	Nationally determined contributions
OECD	Organization for Economic Cooperation and Development
SDGs	Sustainable Development Goals
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WFD	Westminster Foundation for Democracy

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# 1. Introduction

Post-legislative scrutiny (PLS) is the practice used to monitor and evaluate the implementation of legislation, ensuring laws benefit constituents in the way originally intended by lawmakers. Implementation is a complex task which does not happen automatically; parliament therefore needs mechanisms to effectively monitor the implementation of legislation.

WFD's [Post-Legislative Scrutiny Guide for Parliaments](#) (the "PLS Manual") provides practical advice for parliaments and parliamentarians on preparing, organising and following up PLS inquiries. It also proposes new or additional parliamentary practices with a view to enhancing the efficiency of PLS inquiries.

Building on the "PLS Manual", this guidance note focuses on the methodological challenges and major issues that arise through scrutiny of climate and environmental legislation. It also provides examples and case studies of how other parliaments are grappling with these issues, and potential lessons learned.

## 1.1 Why climate and environment?

### 1.1.1 State of the environment

Environmental decline and a warming climate present a clear, present danger to people and planet. Climate change is one of the most pressing issues of our time and we are at a defining moment. 2011-2020 will be the warmest decade on record, with the warmest six years all being since 2015. While [atmospheric concentrations of greenhouse gases continue to rise](#), we are committing the planet to further warming for many generations to come, because of the long lifetime of CO<sub>2</sub> in the atmosphere. Without drastic action today, adapting to the impacts of climate change in the future will be more difficult and costly. As of the end of 2020, around 40 countries had declared a 'climate emergency', and in December 2020, UN Secretary General, António Guterres, urged other governments to follow suit until the world has reached net zero CO<sub>2</sub> emissions.

Meanwhile, the current pace of nature's decline is 'unprecedented in human history', according to the UNEP-hosted Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). In their landmark report, the IPBES warns of an erosion of the very foundations of our economies, livelihoods, food security, health and quality of life worldwide, but the report also tells us that it is not too late to make a difference.

### 1.1.2 The benefits of acting now

Tackling climate change and protecting the environment is necessary to create a resilient and sustainable future. It also provides new economic opportunities from creating a growing, green economy. The Organization for Economic Cooperation and Development's (OECD's) 2017 report, [Investing in Climate, Investing in Growth](#) showed that bringing together the growth and climate agendas, rather than treating climate as a separate issue, could add 1% to average economic output in G20 countries by 2021 and lift 2050 output by up to 2.8%.<sup>1</sup>

Transitioning to a low-carbon society could present new economic and industrial opportunities. Early adopters of new technologies will be at an advantage and can capitalise on the potential for growth in the green economy. According to a report by [FTSE Russell](#) in 2018, a key provider of stock market indices and associated data, the green economy was worth as much as the fossil fuel sector

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1. OECD, Investing in Climate, Investing in Growth, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264273528-en>

and growing fast,<sup>2</sup> and in 2020 it described the emerging green economy as ‘perhaps the defining opportunity of the 21st century’.<sup>3</sup>

There is also the potential for avoided costs. Estimates of the costs of adapting to 2°C of warming by 2050 range from \$75-500 billion a year for developing countries.<sup>4</sup> If warming increases beyond this level, the costs of adaptation would increase significantly as well.

Failing to mitigate and adapt to climate change will also have a human cost, with those costs affecting people unevenly. The Intergovernmental Panel on Climate Change’s (IPCC’s) [2019 Special Report on Climate Change and Land](#) sets out the stark realities for the world population, noting as it does that the impacts of climate change are already affecting every country on every continent and causing unprecedented challenges for millions of people already burdened by poverty and oppression. However, the IPCC’s report also shows that there are a lot of actions that can be taken now. What many of these solutions require is attention, financial support and enabling environments.<sup>5</sup>

Acting now cannot halt all of these impacts, but it can seek to mitigate and minimise the worst case.

### 1.1.3 Role of parliament

The rationale for PLS of climate and environmental legislation – and more specifically parliaments’ key role in scrutinising these issues – is clearly set out in both the Inter-Parliamentary Union’s (IPU’s) [Parliamentary Action Plan on Climate Change](#) and in the [UN’s 2030 Agenda](#). The IPU [Parliamentary Action Plan on Climate Change](#) says:

To be credible, effective and legally enforceable [...] international agreements must be transposed into national legislation, supported by appropriate budget allocation and robust oversight of government performance. This puts parliaments at the heart of the response to climate change.

Parliaments are not only well placed to scrutinize how governments are responding to national and international climate change issues, but can also hold their executives to account over their actions, or lack thereof. Furthermore, parliamentarians bridge the gap between constituents, governments and decisions made at the global level.

The preamble to the [UN’s 2030 Agenda](#) says:

We acknowledge also the essential role of national parliaments through their enactment of legislation and adoption of budgets and their role in ensuring accountability for the effective implementation of our commitments. Governments and public institutions will also work closely on implementation with regional and local authorities, sub-regional institutions, international institutions, academia, philanthropic organisations, volunteer groups and others.

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2. FTSE Russell, [Investing in the global green economy: busting common myths Defining and measuring the investment opportunity, 2018](#)

3. FTSE Russell, [Sizing the green economy: Green Revenues and the EU taxonomy, Sept 2020](#)

4. UNEP, [The Adaptation Finance Gap Report](#), 2016

5. IPCC, [Summary for Policymakers](#). In: Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems. 2019, In press.



## 1.2 Legislating for climate change

Significant strides have already been taken around the world to pass climate legislation. A [database](#), produced by the Grantham Research Institute on Climate Change and the Environment and the Sabin Center on Climate Change Law, shows that since the Kyoto Protocol was agreed in 1997, over 1,200 climate change or climate change-relevant laws worldwide have been enacted.

The database also shows that in the latter half of the 2010s fewer new climate laws have been enacted. The researchers responsible for producing the database say this 'reflects the large amount of ground that existing climate laws already cover'. Therefore, the future challenge for climate legislation lies in 'strengthening existing laws and filling gaps' and not in 'devising new frameworks'.<sup>6</sup>

With laws already in place to address climate change in most countries, parliament's role should now turn towards implementation. PLS offers an obvious mechanism through which parliaments can respond to this challenge. However, it is important that climate legislation provides a strong mechanism for ongoing parliamentary scrutiny. Without this, parliaments and committees may be limited in the scope of their PLS work. Through reviewing climate legislation for its implementation as part of a PLS inquiry, parliaments can find the legislative gaps and provide evidence-informed solutions to strengthen those existing laws.

Although many climate change laws have now been enacted, one of the key under-addressed issues is that of adaptation. Humans have already caused major climate changes to happen. Even if we stopped emitting greenhouse gases today, global warming would continue to happen for at least several more decades, if not centuries. There is a time lag between what we do and when we feel it. Responding to climate change will therefore require a two-pronged approach: 1) mitigation - reducing emissions of greenhouse gases; and 2) adaptation - learning to live with, and adapt to, the climate change that has already been set in motion.

## 1.3 Legislating for the environment

The latter half of the 20<sup>th</sup> century saw environmental issues enter the international and intergovernmental stage for the first time. In 1972, the [first environmental summit](#) took place in Stockholm, Sweden. This UN-convened conference marked a turning point in the development of international environmental politics. It led both to the creation of the United Nations Environment Programme (UNEP) and to [commitments to coordinate global efforts](#) to promote sustainability and safeguard the natural environment.

Twenty years later, the landmark United Nations Conference on Environment and Development (known as the Rio Earth Summit) prompted a concerted effort for many countries to enact environmental laws, establish environment ministries and agencies, and enshrine environmental rights and protections in their national constitutions. The Parties to the Conference also adopted some 27 global environmental principles with the goal of sustainable development. These principles, and others adopted since, form important frameworks for environmental law (see Box 1 for some of the key environmental principles which are used to guide environmental decision making).

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6. Michal Nachmany, Sam Fankhauser, Joana Setzer and Alina Averchenkova, [Global trends in climate change legislation and litigation](#), 2017

### Box 1. Key environmental principles

Environmental principles inform legal and political frameworks that aim to minimise the ill effects of human activity on the environment. They act as guidance for judges and decision-makers, giving laws shape and meaning.

- **Precautionary principle** allows for protective measures to be taken without having to wait until the environmental harm materialises, where there is uncertainty.
- **Prevention principle** requires preventive measures be taken to anticipate and avoid environmental damage before it happens, rather than to react to it.
- **Rectification at source principle** seeks to prevent pollution at its source rather than remedy its effects.
- **Polluter pays principle** requires polluters to bear the financial cost of their actions.
- **Integration principle** requires that environmental protection is integrated into all other policy areas, in line with promoting sustainable development.

Today, legislation to protect the environment (through environmental framework laws) is in force in 176 countries. Further, 150 countries have enshrined environmental protection or the right to a healthy environment in their constitutions, and 164 countries have created cabinet-level bodies responsible for environmental protection, according to the [UNEP's first global report on environmental rule of law](#). However, while the focus in recent years has shifted to implementation of environmental laws, progress has stalled. [UN Special Rapporteur on Human Rights and the Environment, David Boyd](#) has summarised the challenge as follows, 'unless the environmental rule of law is strengthened, even seemingly rigorous rules are destined to fail and the fundamental human right to a healthy environment will go unfulfilled'.

Parliament has a clear role in strengthening implementation of environmental laws. Just as for climate legislation, PLS offers an obvious mechanism through which parliaments can respond to this challenge. Through PLS (and other oversight tools), parliament can address failures in the legislation itself - the lack of clarity or that laws are not tailored to national and local contexts - as well as looking to remedy budgetary imbalances resulting in underfunded or politically weak implementing agencies or ministries.



Photograph by [Mika Baumeister](#) on [Unsplash](#).

## 2. Post-legislative scrutiny of climate and environmental legislation

This chapter details the key issues of relevance to climate and environmental legislation. It also presents examples of existing analytical oversight tools for climate and environmental legislation. Parliamentarians reviewing laws should look to identify whether legislation in force is:

- **Effective:** has it improved environmental outcomes, for example by reducing harm from pollution or improving water quality?
- **Efficient:** has it brought about changes with as little cost to regulated industries and persons as possible?
- **Coherent:** does it align with other policies and frameworks to achieve a coherent set of aims, and not result in gaps or overlaps in responsibilities?
- **Relevant:** are the specific national and sub-national contexts accounted for?
- **Accountable:** are there clear responsibilities for all the different stakeholders? Are there targets or performance metrics parliament and/or regulators can review?

### 2.1 International treaties

**Parliamentarians have a key role reviewing both the enactment and the implementation of international environmental treaties. PLS can in particular provide a timely window of analysis to check on the government's commitments and adherence to such treaties.**

Many environmental issues that begin as matters of national concern rapidly become transboundary, often global in scope. Such transboundary, global issues can by their very definition only be addressed effectively through international cooperation.

The international community has responded to this through the elaboration, ratification, and implementation of multilateral environmental agreements. There is, however, often a disconnect between these international ambitions, and the national legislation in force. Further, ratification of treaties may not in of itself translate into action. Parliaments may therefore have a role in scrutinising the enactment of treaties in, and through, national legislation, as well as their implementation and effects. PLS has a part to play in this process (see Box 2 for more on the interactions between international and national law).

#### Box 2. Dualist and Monist Systems in international law

The interaction between international and national law is interpreted by states in two different ways:

- In states with a **monist system** international law does not need to be translated into national law. The act of ratifying an international treaty immediately incorporates that international law into national law.
- For states with a **dualist system**, international law is not directly applicable domestically. It must first be translated into national legislation before it can be applied by the national courts. Treaties are seen as automatically creating rights and duties only for the government under international law.



Through PLS inquiries, parliamentarians can assess their government's commitments and its adherence to such treaties. As part of a PLS inquiry, there are two fundamental questions for parliamentarians to ask in relation to international treaties:

- Does legislation exist to enact treaties, and is this up to date?
- Has that legislation achieved the outcomes and ambitions in the treaty?

On the first question, it is important that legislation keep pace with developments and amendments to relevant international treaties. Parliamentarians should view ratification of a treaty not as a single stand-alone event, but rather an ongoing process. For example, the [Convention on International Trade in Endangered Species \(CITES\)](#) - a multilateral treaty to protect endangered plants and animals - was opened for signature in 1973 and entered into force on 1 July 1975. The Convention has since been amended twice, once in 1979 (the [Bonn amendment](#)) and once in 1983 (the [Gaborone amendment](#)). Additionally, technical amendments are regularly published, some of which would require amendments to legislation implementing the treaty.

It is important that national legislation reflects developments at an international level. PLS provides a window of opportunity to reflect and to review developments at an international level and how they should be applied at a national level. The [LSE Policy brief on Global trends in climate change legislation and litigation \(2018\)](#) explains: 'The ability to import internationally declared targets into actionable national laws and policies, and to translate those targets into action, will have a great impact on the success of the Paris Agreement [on climate change]'. Keeping pace with developments in international treaties can be challenging (see Box 3).

### **Box 3. Key resources for monitoring Multilateral Environmental Agreements**

[InforMEA](#) is the United Nations Information Portal on Multilateral Environmental Agreements. It is a one-stop portal for information on Multilateral Environmental Agreements - or MEAs - searchable by key terms across treaty texts, COP decisions, national plans and reports, laws, court decisions and more.

[ECOLEX](#) is an information service on environmental law, operated jointly by FAO, IUCN and UNEP. The ECOLEX database includes information on treaties, international soft-law and other non-binding policy and technical guidance documents, national legislation, judicial decisions, and law and policy literature. Users have direct access to the abstracts and indexing information about each document, as well as to the full text of most of the information provided.

After enactment of a treaty comes implementation. After an appropriate amount of time, parliamentarians can review the impacts of legislation through a PLS inquiry. Treaty reporting requirements could be a key resource for this.

Many international treaties come with reporting requirements. That is, once a state has acceded or ratified a treaty, it assumes a legal obligation to report on the implementation of that treaty. The reporting system is a key tool for measuring progress - to see what has been achieved and what more needs to be done in a country. Some states incorporate parliamentary scrutiny into the process of preparing and submitting these reports (see Box 4). Others promote public participation and scrutiny of the laws and programmes incorporating engagement with civil society. This scrutiny can and should be actively encouraged, and the findings woven through PLS inquiries.

Where these practices are not common, PLS can still provide a window through which government progress is monitored. Parliamentarians may be able to access previously submitted reports to the treaty body. Alternatively, through PLS inquiries parliamentarians can prepare unofficial submissions drawing on other sources of evidence. This scrutiny can be complementary to official government reports or could provide alternative interpretations highlighting otherwise marginalised voices.

#### **Box 4. Reporting on Kyoto Protocol in Canada**

In 2007, the Canadian Federal Parliament legislated for the Kyoto Protocol Implementation Act. Under this Act, the [Commissioner of the Environment and Sustainable Development](#) was required to prepare a report for Parliament at least once every two years on Canada's progress in implementing the Climate Change Plans and meeting its obligations under the Kyoto Protocol.

Such reports were completed in 2009, 2011 and 2012.

Parliamentarians must also recognise the limits of national action. National legislation alone will not achieve the aims of an international environmental treaty, which by its very definition requires coordinated international action. Parliamentarians may therefore want to ask:

- How do the commitments made in your country compare to others in the region or to other similar sized economies? Is your country's government a leader or laggard in the international community?
- What is an equitable contribution for your country to this issue? The principle of 'common but differentiated responsibilities' enshrined in the UN Framework Convention on Climate Change (UNFCCC) endorses the asymmetrical responsibility of different states for environmental degradation.

## **2.2 Implementing agencies**

**The legislative process does not stop once a bill becomes law. This means passing environmental protection laws is just the first step. The next steps require implementation of the laws, and for agencies to develop compliance and enforcement regimes. Through PLS, parliamentarians should aim to identify and review the role of implementing agencies, and to consider first whether compliance and enforcement regimes exist and second, review their effectiveness, legality, and coherence.**

Implementation of laws does not happen automatically, and where it does happen it may not always happen effectively. Failures to implement laws typically result because of complicated legal frameworks, poor economic situations, and weak rule of law. Limited powers, scarce financial and human resources of enforcement agencies are also major causes of low effectiveness in ensuring compliance.

An important factor in implementation is that the mandates of implementing agencies are straightforward and transparent. However, it is often the case that the jurisdiction, goals, and authority of implementing agencies of environmental and climate legislation will cut across sectors and involve many ministries, agencies, and departments. This presents a risk of regulatory overlap and underlap. The UNEP's first global report on environmental rule of law explains:

Regulatory overlap occurs when more than one institution has authority over an issue, resulting in competing bureaucratic claims over that issue and potentially conflicting directives to the regulated community. Regulatory underlap occurs when no institution has clear authority over an issue, resulting in an orphan issue or cause for which there is no effective government oversight.<sup>7</sup>

The piecemeal development of environmental legislation over many years presents a particular risk of regulatory overlap and underlap. PLS can promote open dialogue with citizens, regulated industries and civil society organisations in order to identify implementation gaps and overlap in agency mandates. This analysis may lead to calls for greater inter-agency coordination, new mandates, and/or new or revised legislation.

Implementation of environmental laws typically requires enforcement. Enforcement refers to actions taken against violators to compel compliance with the law. Once implementation begins, evaluations and adjustments must be made to continually update and improve compliance and enforcement programmes. Through PLS, parliamentarians should consider the legal basis for these requirements and seek to review processes aimed at establishing compliance, and enforcement. Parliamentarians should consider the success of the different strategies employed to assure compliance, which could include: education and assistance; compliance incentives; and monitoring and inspections.

## 2.3 Environmental justice: human rights and the environment

**Many human rights depend upon the environment. Parliaments have a critical role in protecting people's human rights; reinforcing and strengthening environmental legislation through PLS can therefore offer mutual co-benefits supporting the protection of human rights. Further, through adopting a rights-based approach to scrutiny, as a complement to more traditional regulatory interventions, parliamentarians may be able to identify alternative means of enhancing environmental outcomes.**

Many rights are important to environmental protection. These can be substantive: changes in ecosystem services influence all components of human wellbeing, including the basic material needs for a good life, health, good social relations, security, and freedom of choice and action. They can also be procedural: procedural rights could include rights of access to information (see section 3.5.3), public participation, access to justice, and non-discrimination. Accordingly, [more than 100 nations](#) now recognise the right to a healthy environment in their constitutions, affording it the strongest form of legal protection available. Further, many of the procedural rights apply generally and are recognised and protected by national constitutions and laws, international human rights law, international environmental law, and other international law; and by provincial and other subnational constitutions and laws.

However, even where these protections are recognised, enforcement may not always be effective. The NGO Global Witness, for example, reported that more than three people were murdered each week in 2018 protecting environmental rights, noting many more are harassed, intimidated, criminalised and forced from their lands.<sup>8</sup> There are also inequalities in accessing these rights - with disadvantaged populations often living with higher levels of pollution.

The UNEP's first global report on environmental rule of law explains where laws are not effectively implemented or enforced 'rights and rights-based approaches become particularly important as a complement to legal duties'. A rights-based approach differs from a regulatory approach

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7. UNEP, [Environmental Rule of Law: First Global Report](#), Jan 2019

8. Global Witness, [Enemies of the State?](#), July 2019



to environmental protection: a rights-based approach to environmental protection is one that is normatively based on rights and directed toward protecting those rights. A regulatory approach to environmental protection is one in which environmental laws set forth certain requirements and prohibitions relating to the environment.

Rights-based approaches can be used to:

- Help meet environmental commitments and reinforce the importance of environmental law. When governments recognise rights, they take on accompanying duties to ensure protection of those rights. As part of PLS inquiries, parliamentarians can provide oversight of the actions governments pursue in fulfilling these duties.
- Define environmental rights. In some instances, there will be wide agreement on the existence and scope of an environment-related right, while others are more contested. Parliamentarians pursuing a rights-based approach to PLS must consider, in each particular instance, which national constitution and laws, international human rights instruments, and other international legal instruments apply (as well as subnational instruments, in certain cases).
- Challenge the lawfulness of decisions, acts, omissions and policies of public bodies and authorities that create environmental injustice. Courts can complement the actions of legislators through rulings on the implementation of existing laws. Parliamentarians may wish to review and evaluate environmental justice cases to consider:
  - Judicial decisions on whether public bodies have acted lawfully in order to inform recommendations on how and where legislation needs to be strengthened to provide a basis for environmental justice.
  - Cases in which litigants were not able to demonstrate that the courts were an appropriate mechanism through which to pursue an issue. Parliaments could play a role in circumstances where cases brought were judged to not be within the court's jurisdiction or did not meet the necessary criteria to prove liability.
- Tackle corruption. Anti-corruption measures can help to protect against the abuse of natural resources that prevent citizens, communities and society as a whole from accessing the public goods and benefits.

## 2.4 Legislative targets and oversight of secondary legislation

**Climate and environmental legislation is often regulated for extensively, through secondary legislation, so that detailed programmes can be developed by ministries under overall strategies and aims presented in primary legislation. PLS of climate and environment legislation should assess these targets for: (i) adequacy, (ii) timeliness and relevance to the situation now, and (iii) the consequences of being missed.**

Targets are an important tool in both environmental and climate legislation. They are often defined in secondary legislation. However, setting targets alone does not in and of itself help halt climate change or improve environmental outcomes:

- Targets may be inadequate or ill-defined, leaving environmental deterioration to continue.
- Targets may be too long-term and thus not capable of focusing action in the here and now.
- There may be no real or meaningful consequences for missing targets.

PLS can be deployed as one of a range of tools in a parliament's arsenal to review performance against targets – as well as to review outcomes. Assessing secondary legislation is an important component of this type of scrutiny.

Environmental laws are often written in broad terms, which set high level ambitions and/or formal targets. For example, the UK's [Climate Change Act 2008 \(as amended\)](#) sets a target of reducing targeted greenhouse gas emissions to “net zero” by 2050.<sup>9</sup>

Regulations are then made to fill in the details underneath the framework law. Underneath the Climate Change Act, [implementing Regulations](#) establish legally binding five-yearly carbon budgets, which are drafted based on independent, expert advice. But, regulations could also provide: the criteria for issuing environmental permits and licenses; how and when an agency must test for harmful substances; how the government will conduct itself in an enforcement action; and how performance targets will be set, reviewed and reported on. It is important for governments and implementing agencies to publish detailed guidance and policy statements that clarify environmental laws and their implementation, so that stakeholders understand what is required and expected.

In their consideration of environmental framework laws, parliamentarians should therefore look to assess the efficacy of both the high-level targets or ambitions and the more specific, short-term measures included in regulations. In addition, parliamentarians should seek to understand the extent to which guidance and/or policy statements promote better understanding amongst the regulated community.

Not all environmental framework laws, however, are drafted with specific, measurable targets. Where these do not exist, it will be difficult to fully assess the efficacy of the targets. If these requirements are not present in the original legislation enacted, parliamentarians may recommend this type of amendment as part of a post-legislative scrutiny inquiry.

#### **2.4.1 The Paris Agreement: legislating for national climate targets**

Legislative responses to climate change to a large extent respond to targets agreed multilaterally.

The UNFCCC and the [Paris Agreement](#) provide the framework for national climate emission reduction targets. Article 4, paragraph 2 of the Paris Agreement requires each Party to ‘prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.’ This so-called “ratchet mechanism” requires national governments to present successively ambitious targets, which should be reflected in legislation.

The ratchet mechanism is therefore a key question for parliamentarians when reviewing climate legislation. Parliamentarians reviewing climate legislation should be able to see increased ambitions globally, and on a national scale, it should result in amendments to strengthened climate legislation every five years.

The [Climate Action Tracker](#) - a collaboration of two organisations, Climate Analytics and New Climate Institute - provides an independent scientific analysis that tracks government climate action and measures it against the globally agreed Paris Agreement aim of ‘holding warming well below 2°C, and pursuing efforts to limit warming to 1.5°C’. Parliamentarians may find this tool to be a helpful guide as to the effectiveness (or otherwise) of their country’s commitments under the UNFCCC Paris Agreement.

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9. This target was originally an overall cut in greenhouse gas emissions of at least 80% by 2050. It was [amended in 2019](#) to set a ‘net zero’ target by 2050.

## 2.5 Transparency in environmental law-making: access to information

**Limited access to complete and accurate information from agencies, facilities, and project proponents can hamstring PLS from the outset. It is therefore essential for parliaments to find ways to access data and evidence on the implementation of legislation and the environmental impacts or outcomes. This could take the form of:**

- **formal powers for parliament to have access to information and data or powers to request access**
- **regular reports to parliament on progress implementing laws**
- **reliance on international standards and treaties.**

**Through advocating for access to information, parliaments can promote greater transparency.**

Evidence and information are crucial to the scrutiny function of parliament. The UK House of Commons Liaison Committee's 2019 report into the effectiveness and influence of committees explains:

The flow of information into committees is central to their scrutiny work. This information is largely gathered through written and oral submissions, which is then evaluated to form conclusions and recommendations. Through engaging with diverse voices, listening to experts and those with lived-experience and by gathering public opinion, we are able to engage with the public as well as produce well-evidenced reports. The weight and influence of committees' findings is largely due to this process.<sup>10</sup>

There are varying degrees of openness and transparency in law-making from one country to the next. Therefore, there are different approaches parliaments may wish to pursue in seeking to embed strengthened practices for exercising rights to access data, information, and evidence.

Typically, parliaments will have a range of mechanisms for accessing information from the government. PLS can make use of a mixture of these different mechanisms.

### 2.5.1 Formal powers

Formal powers may be provided for in the rules of procedure. The Australian Parliament's Standing Orders (Chapter 5; section 34), for example, provide for committees 'to send for persons and documents' and to 'summon witnesses and require the production of documents'. This provision allows committees to request written submissions and to hold public hearings as part of its oversight functions, normally as part of a public inquiry.

Sending for persons (witnesses for hearings) and documents (reports, data) should form a part of any PLS inquiry. PLS of climate and environmental legislation therefore provides an opportunity for parliament to advocate for evidence. In so doing, it can open up a space for a diverse set of people to contribute to the debates around climate and environmental policy and legislation.

Formal powers to take evidence can widen participation, but also risk entrenching existing privileges and perspectives. Parliamentarians should be particularly mindful of engaging with: youth groups, noting young people are not a homogenous group; persons with disabilities; ethnic

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10. House of Commons Liaison Committee, Fourth Report of Session 2017-19, [The effectiveness and influence of the select committee system](#), HC 1860, 9 September 2019, para. 91

and religious groups; and LGBTI communities. Parliamentarians may consider utilising some of the more innovative techniques to engage with otherwise marginalised groups so as to avoid the risk of “groupthink”:

- **Citizens' assembly:** six select committees of the UK House of Commons called a citizens' assembly in 2019 to understand public preferences on how the UK should tackle climate change because of the impact these decisions will have on people's lives. 'Climate Assembly UK: the path to net zero' considered how the UK can meet the government's legally binding target to reduce greenhouse gas emissions to [net zero](#) by 2050. Climate Assembly UK members were selected from different walks of life, shades of opinion, and from throughout the UK to form a representative sample of the UK's population.
- **Social media engagement:** many committees now use social media to engage with the public. The UK House of Commons Science and Technology Committee, for example, carried out My Science inquiries in 2017 and 2019. Using social media platforms, the public were invited, via written submissions or through video submissions using #MyScienceInquiry on Twitter, to put forward their ideas on what subject the committee should launch an inquiry into. Submissions covered a broad range of subjects and came from individuals, universities, learned societies, charities, and civil society organisations.

Alternatively, the powers may be provided individually (or collectively) as part of legislation. For example, the New Zealand Parliament legislated to create a [Parliamentary Commissioner for the Environment](#), as part of the [Environment Act 1986](#). Under this Act, the Commissioner has strong powers to obtain information (see Box 5).

#### **Box 5. New Zealand Parliamentary Commissioner for the Environment: Powers to obtain information**

- The Commissioner can **request information that is not publicly available** from any organisation or person.
- The Commissioner can **summon people to be examined under oath**, if information requests are not adhered to.
- The Commissioner can **investigate any matter** where the environment may be or has been adversely affected, advise on preventative measures or remedial action, and report to the House.

It is essential parliamentarians have access to information. At the outset of a PLS inquiry, parliamentarians must seek to understand what tools they have available and specifically whether they have adequate provision within the rules of procedure of their parliament to be able to adequately access environmental data and information. It may be that where formal powers do not exist, parliaments can exercise 'soft' - or coercive - powers.

Legislative provisions may also provide access to environmental data and information required as part of an inquiry. PLS can therefore provide a check on whether this information is routinely available as well as being a source of information on implementation of that law, and other related laws (see section 3.5.2).



## 2.5.2 Reports to parliament

In enacting legislation, parliaments can require implementing agencies - ministries, regulators and so on - to present to them regular reports. This tool can be particularly effective when parliament wishes to review progress in meeting targets and where it requires access to data on particular metrics that is otherwise unpublished.

Several parliaments have deployed this mechanism in relation to climate change legislation, and specifically emission reduction targets or carbon budgets. The Finnish [Climate Change Act 2015](#) (see Box 6) goes some way to providing a model mechanism for parliaments getting regular and timely access to data and information.

### Box 6. Finland Climate Change Act 2015

The Finnish [Climate Change Act 2015](#) requires all ministries in charge of delivering sectoral climate targets to submit a report to the Environment Ministry on an annual basis, which in turn submits this report to the Environment Committee for review. Stakeholders are welcome to provide input to the committee review.

Further, the [second annual report published under the Act in 2020](#) noted changes to the report based on debates in the Parliament (the Eduskunta) and recommendations made by the Environment Committee. This demonstrates both the value of parliamentary scrutiny to the government, but also the importance of strong relationships between parliament and the government.

## 2.5.3 Aarhus Convention

Parliamentarians may be able to rely on the [Aarhus Convention](#) to gain access to information as part of PLS, depending upon ratification. A list of parties to the agreement can be seen [here](#).

The [Aarhus Convention](#) is a form of environmental agreement which empowers the public (including individuals and NGOs) to access information and participate in environmental matters. The Convention empowers people with the rights to access information and participate in environmental matters. It broadly follows the following three pillars:

1. **Access to environmental information** held by public authorities. This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment.
2. **Public participation in environmental decision-making** to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment.
3. **Access to justice** which allows challenges to public decisions that have not complied with the first two principles.

The Convention sets out in Annex I a list of activities to which the Convention must apply. However, decisions on proposed activities not listed in Annex I which may have a significant effect on the environment are also covered; specifically included are those activities where public participation is provided for under an environmental impact assessment in accordance with national legislation.

In carrying out PLS, parliamentarians in countries party to the Convention should consider whether implementing agencies have given due regard to these principles when reviewing legislation and programmes in these areas. Countries not party to the Convention could consider these principles as good practice and note any shortcomings of legislation procedures and implementation in this context.

## 2.6 Expert advisory mechanisms

**Environmental and climate issues can be highly technical. Parliament is not always equipped with the technical knowledge to provide effective scrutiny of these laws. It is therefore important for parliamentarians to establish effective links to expert advisory bodies as well as to regulators. These links can be formalised through legislative provisions or be made on an ad hoc basis. In any such approach, transparency is critical as is an understanding of bias, conscious or unconscious.**

Developments in climate and environmental policy and legislation have characteristically relied upon on technical, scientific advice. For example, the UK's regulatory approach to setting carbon budgets is led by advice issued by the statutory advisory body, the Committee on Climate Change (CCC) (see Box 7). It is therefore essential that parliamentarians are able to access independent, technical advice as part of their scrutiny function.

### Box 7. Setting carbon budgets in the UK: expert advice

Under the UK [Climate Change Act 2008](#), the government must set five-yearly carbon budgets, twelve years in advance, from 2008 to 2050. The government is required to consider – but not follow – the advice of the [Committee on Climate Change](#) (CCC, also created under the 2008 Act) when setting these budgets.

The CCC's advice is published as a report to Parliament. For each of the carbon budgets set under the 2008 Act to date, the CCC's advice has been closely followed.

This advice could be provided in-house, via parliamentary research services, specialist scrutiny units or committee secretariats. Parliamentary budget offices may also be able to support scrutiny of sustainable finance and climate finance issues. However, it may be that the subject matter scrutinised is too technical or too complex for parliamentary staff to provide detailed analysis. In such instances, parliamentarians may need to reach out to external organisations. This could be achieved via:

- **Appointing a specialist adviser:** committees carrying out PLS may be able to appoint a specialist adviser to provide bespoke, technical analysis of the subject matter being scrutinised. [Erskine May's guide to parliamentary practice](#) (para 38.43) explains committees in the UK House of Commons are 'regularly empowered to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference'.<sup>11</sup>
- **Commissioning research:** committees may consider it prudent to commission bespoke research or analysis in connection with their PLS inquiry. This could cover the entirety of the topic being reviewed but is more likely to focus on a particular area which has been under-researched. Parliamentary research and procedural staff in consultation with committee

11. Thomas Erskine May, [A treatise on the law, privileges, proceedings and usage of Parliament](#), [online version]

members could prepare tender documents and oversee external research organisations tasked with preparing this research.

- **Agreeing Memoranda of Understanding with external research organisations:** parliament as an institution may enter into standing agreements with particular research institutions considered to possess relevant technical expertise (see Box 8).

### **Box 8. Expert advisory support for the Pakistan Standing Committee on Climate Change**

Linkages with experts are gradually gaining strength in Pakistan's parliamentary system.

In 2020, the Pakistan Parliament's Standing Committee on Climate Change, in collaboration with WFD, created a platform through which relevant experts and researchers can connect with the committee and provide evidence-based research for supporting effective policies.

Academics, experts, and researchers can use this platform to share data and raise matters they consider to be of high importance for debate and policymaking.

A recent example of the committee's engagement with experts concerns emissions from Euro 5 engines. Through the platform, the committee requested experts to submit policy briefs and research on the effectiveness of Euro 5 and its impact on the environment. The findings and suggestions were then discussed at the committee meeting and informed the committee's scrutiny.

On the international stage, policy makers also particularly depend upon information and advice provided by climate science technical advisory bodies. Parliamentarians should seek to utilise the research and expertise of these bodies as well (see Box 9).

### **Box 9. International expert environmental science advisory bodies**

The **Intergovernmental Panel on Climate Change (IPCC)** is the leading international body for the assessment of climate change. It was established by the UNEP and World Meteorological Organization to carry out policy-relevant assessments of the science, impacts and response options of climate change. It has gone on to produce five comprehensive assessments, subject to rigorous review processes. The [Sixth Assessment Report](#) is due to be published in 2021.

The **IUCN Environmental Law Programme (ELP)** is an integrated programme of activities that assists decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels.

The **International Institute for Environment and Development (IIED)** is an independent research organisation that aims to deliver positive change on a global scale. Through its research programmes it builds bridges between policy and practice, including through assisting parliamentarians in their work.

### 3. Climate and environment: cross-cutting analysis

This chapter deals with how climate and environmental assessments can be incorporated with post-legislative scrutiny of laws not specifically environment- or climate-focused.

#### 3.1 A climate and environmental “lens” to parliamentary oversight

**Parliamentarians should be encouraged to place a climate and environment “lens” over the business of legislating and post-legislative scrutiny. This “lens” should facilitate climate and environmental scrutiny to be considered as part of the work of almost all committees, and not to be left solely to an environment committee. The Sustainable Development Goals (SDGs) provide a suitable analytical frame for this.**

Across the world, nation states are facing a unique blend of myriad pressing and interconnected social, economic, environmental, and political challenges; the impacts of policy decisions, legislation and spending to tackle one problem can often have inadvertent impacts elsewhere. This makes it difficult for decision makers to formulate coherent and integrated policies. This is recognised through one of the key environmental principles: the **integration principle** (see section 1.3). This principle requires that environmental protection is integrated into all other policy areas, in line with promoting sustainable development; that is to say, all government departments have responsibilities to protect the environment.<sup>12</sup>

##### 3.1.1 Sustainable Development Goals

However, silos often exist within governments, and these tend to be replicated when parliament oversees the government. Parliaments should move away from this silo approach towards a more integrated approach to their oversight in line with the **integration principle**. Effective PLS can provide a vehicle for this type of cross-cutting analysis.

#### Box 10. Mainstreaming human rights in PLS in the Indonesian Parliament

PLS in Indonesia is mandated by Law Number 4/1999 on Parliaments. This Act was amended in 2014 to specify that the Legislation Committee was responsible for conducting the monitoring and reviews of enacted legislation. The Rules of Procedure were also revised at the same time to further explain the role of the Legislation Committee. Since then, scrutiny of human rights has been mainstreamed in the PLS processes of the Legislation Committee through the PLS Manual of the Legislation Committee, which states that:

‘The principles in conducting monitoring and review of passed Laws by the Legislation Committee of DPR must be founded on Pancasila (the Indonesian Five Principles), The Constitution 1945, and within the frame of the Unitary State of Indonesia. The use of the principles is expected to result in a unitary national legal system in accordance to the characteristics, personality and will of the Indonesian people. The principles of monitoring and review of passed Laws by the Legislation Committee must ensure that:

1. Check and Balance between the Legislative Body and Executive Branch of Government are well running; and
2. The State responsibility to respect, fulfil, and protect human rights and obligations as regulated by the Constitution of Indonesia 1945 are realized. Article 28A to 28J of the Constitution of Indonesia 1945 details human rights as follows:...

<sup>12</sup>. Client Earth, [What are environmental principles?](#), 12 March 2019



Some parliaments have already recognised the importance of incorporating cross-cutting analysis into their PLS. For example, the Indonesian Parliament's rules of procedure requires human rights to form a part of all PLS (see Box 10 above).

A similar commitment to embedding environment and climate through PLS could be tied to national commitments around the [Sustainable Development Goals](#) (SDGs). Parliaments can evaluate their preparedness for scrutiny of the SDGs using the IPU and the United Nations Development Programme's (UNDP's) [Sustainable Development Goals self-assessment toolkit for Parliaments](#) (see Box 11).

### **Box 11. IPU Parliaments and the Sustainable Development Goals: A self-assessment toolkit**

The IPU/UNDP-produced [Sustainable Development Goals self-assessment toolkit for Parliaments](#) provides parliaments with the framework to evaluate their readiness to engage with the SDGs. It further helps parliamentarians identify good practices, opportunities and lessons learned on how to effectively institutionalise the SDGs and mainstream them into the legislative process.

Finding ways to embed this focus into the work of committees can be challenging. Sectoral committees may not have expertise nor experience to provide detailed scrutiny. This can be compounded by limited financial resources; and yet for legislation, and its impacts, to be effectively scrutinised, parliament needs to have the right capability and tools. First, to select those proposals that require further attention; and second to understand the environmental implications of that legislation. The Scottish Parliament has sought to address this capability challenge through the development of an innovative [Sustainable Development Impact Assessment \(SDIA\) tool](#) (see Box 12).

### **Box 12. Scottish Parliament's Sustainable Development Impact Assessment Tool**

The Scottish Parliament has produced a [Sustainable Development impact Assessment Tool](#). It has been prepared to serve as a 'gateway' assessment tool for use by parliamentary committees and staff. It aims to equip all parliamentarians with the tools to scrutinise legislation and its impacts through the SDG lens.

The Parliament's tool is based on the UK Shared Framework for Sustainable Development. The tool is discursive: rather than using a checklist, which can result in assessments being a "tick-box exercise", this tool is based on the requirement for users to talk through the implications of any given piece of policy or legislation.

The Parliament's Non-Government Bills Unit is now routinely using the tool to help shape and assess the impact of legislation. Parliamentary officials have also sought to use the tool to better integrate sustainable development into work carried out by its parliamentary committees.

### 3.1.2 Who should be responsible for cross-cutting analysis?

There are of course different organisational approaches to conducting PLS in different parliaments. Some parliaments have established PLS committees with a specific, defined remit of examining the implementation of laws, while others rely upon sectoral committees to carry out PLS.

Other parliaments have delegated this function to a particular committee. For example, the UK House of Commons' Environmental Audit Committee provides one example of a committee established with a cross-cutting focus. Established in 1997, the Committee is modelled on the Public Accounts Committee. In carrying out its environmental audit function the Committee is supported by the National Audit Office, which provides seconded staff and research and briefing papers. This affords the Committee a wide-ranging remit that cuts across ministerial portfolios. The remit of the Environmental Audit Committee is provided for by Standing Order 152A (see Box 13).

#### **Box 13. Standing Order 152A. Environmental Audit Committee, UK House of Commons**

(1) There shall be a select committee, called the Environmental Audit Committee, to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

(2) The committee shall consist of sixteen members.

(3) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(4) The committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time; and

(b) to appoint specialist advisers to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(5) The committee shall have power to appoint a sub-committee, which shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report to the committee from time to time.

(6) The committee shall have power to report from time to time the evidence taken before the sub-committee.

(7) The quorum of the sub-committee shall be three.

### 3.1.3 Coordination of scrutiny

The breadth of environmental issues and impacts are of such scale and urgency that action from all parliamentarians and oversight across the entirety of parliament's processes and mechanisms will be necessary. Mainstreaming of climate and environmental scrutiny therefore has the potential to lead to duplication of efforts. Parliaments should aim to avoid this through *inter alia*:

- **Excellent inter-committee communications:** effective committee oversight requires good planning and preparation. As part of developing work plans, committees should ensure there is good contact and regular open channels of communication between each other. However, not all committees prepare work plans. In the Montenegrin Parliament, each committee prepares and adopts an annual plan, which is public and published on the Parliament's website. This allows everyone in the Parliament to know the focus of each different committee and to cooperate and hold joint sessions. In the UK Parliament, coordination of scrutiny tends to be managed by the Committee Secretariat in consultation with the Committee Chair. Officials speak regularly and seek to avoid duplicating other committees' work and efforts.
- **Establishing and enforcing specific coordination provisions in the rules of procedure:** coordination of scrutiny can ensure limited resources – financial and human – can be maximised. Requirements within a parliament's rules of procedure could both mandate coordination and provide committees with relevant powers to support this. [Article 44](#) in the Serbian Parliament's rules of procedure provides for this as follows:
  - Decisions on disputed issues related to the scope of work of committees shall be made by the Speaker of the National Assembly.
  - Committees shall engage in mutual cooperation.
  - Committees may hold joint sittings to discuss issues of common interest.
- **Establishing a coordination committee or secretariat:** coordination may be best organised centrally, with a body tasked to delegate issues to relevant parliamentary committees. In the 2016-20 Myanmar parliamentary session, the parliament (the Hluttaw) convened a special Commission tasked with an advisory role on legal reform. The Legal Affairs and Special Issues Commission, led by the former lower House Speaker Thura U Shwe Man, provided a focal point for the parliament's oversight of older and out of date laws. It did so by reviewing existing laws and preparing a list of laws and bills that it recommended the Hluttaw's Bill Committees revoke, enact, amend or redraft.<sup>13</sup>

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13. [Law Reform: A Daunting challenge](#), Frontier Myanmar, Aug 2016

The scrutiny of European legislation by national parliaments provides a helpful parallel for this type of mainstreaming of scrutiny. It also offers examples of different mechanisms through which parliaments have coordinated their scrutiny - to both avoid duplication and allow for those with the most relevant expertise to lead the scrutiny (see Box 14).

#### **Box 14. Scrutiny of EU legislation by national parliaments of member states**

A report by the [Institute for Government \(IfG\) highlights different practices in the scrutiny of European legislation](#). It explains, 'The actors involved in scrutiny also vary across legislatures, with some relying on a single, central EU affairs committee (or similar) to identify relevant proposals and scrutinise them; other legislatures have mainstreamed scrutiny and use the policy expertise of subject committees to identify proposals that will affect national interests.'

The Irish parliament (the Oireachtas) mainstreamed EU scrutiny to subject committees in 2011. This system provides for a centralised coordination function, and delegated scrutiny function. The [Oireachtas explains](#) how this functions as follows:

'There is a dedicated European Union Affairs Committee which plays a key role in fully considering important EU developments and initiatives affecting Ireland. Furthermore, draft legislative proposals are regularly received from the European Commission and passed to the relevant Oireachtas committee for review. If further scrutiny of the draft proposals is deemed necessary, this is initiated by the committee.'

#### **3.1.4 End-to-end scrutiny: environmental impact assessments**

Environmental assessment is a procedure that aims to ensure the environmental implications of decisions are accounted for before decisions are made. It does not simply deal with environmental projects, but is rather intended to account for the potential environmental impacts of various different policies, such as constructing a new road. The objective of an environmental assessment is not to force decision-makers to adopt the least environmentally damaging alternative, but rather to make explicit the environmental impact of the development, so that the environment is taken into account in decision-making.

The role of environmental impact assessments (EIA) is formally recognised in [Principle 17 of the Rio Declaration on Environment and Development](#):

*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.*

Requirements to carry out such assessments are becoming increasingly commonplace. However, there is no corresponding requirement that such assessments be carried out after decisions have been made; once the effects can be fully assessed. A corresponding post-legislative environmental impact assessment - conducted as a part of routine PLS inquiry - provides an opportunity to consider how policies, laws, and their implementation interact and further how those policies, programmes and plans constrain or enable future regulation.



This requires consideration of the purposes of a law and whether those purposes have been achieved. Clear policy objectives are relevant to understanding and evaluating that purpose. Thus, PLS ultimately may replicate existing pre-legislative scrutiny, demonstrating the direct and dynamic relationship between pre- and post-legislative analysis. Information that is accurate, comprehensive, and timely helps parliament know the current state of environmental conditions and, over time, the rate of change in relation to some reference point. In the absence of such basic information, it is difficult to understand annual changes within a broader risk assessment framework. In order to know whether policies and programmes are protecting the environment, reliable monitoring systems are needed to track impacts and signal the need for corrective action when measures are not working effectively.

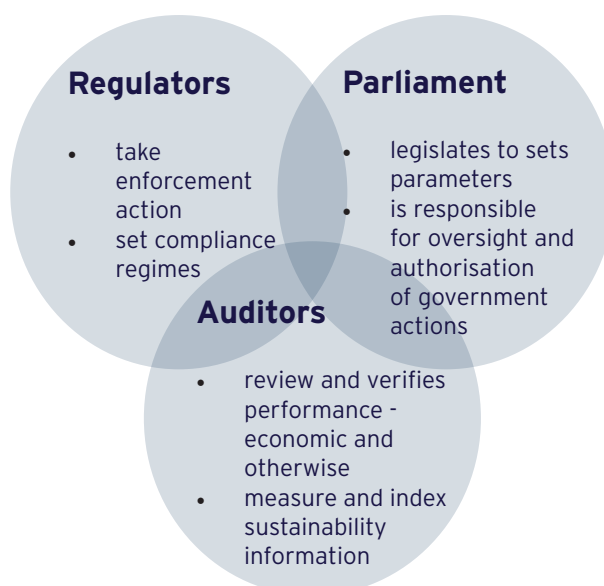
Incorporating an *ex-post* environmental impact assessment of legislation into parliament's procedures offers the chance to test assumptions in *ex-ante* legislative impact assessments. This therefore strengthens the end-to-end legislative scrutiny process.

### Box 15. A selection of questions on EIA as part of a PLS inquiry

- Do the assumptions in an initial assessment still apply?
- Could alternative policies achieve the same outcomes more efficiently?
- Have cumulative impacts been fully accounted for, for example bio-physical, socioeconomic and climate change impacts, as well as their economic implications for national wealth, on the basis of environmental economic accounting data? Impacts on air and water quality can, for example, have major impacts on human health and on the economy.
- Has monitoring and/or auditing of the policy been carried out?

## 3.2 Triangle of scrutiny: auditor, regulator, and parliament

**Beyond parliament, there are partners parliamentarians can work with to strengthen oversight. As part of a PLS inquiry, parliamentarians should look to work with their peers in the “triangle of scrutiny” - regulators and auditors - to deliver complementary and additional oversight of the government. Transparency in any such coordination will be essential so as to minimise any potential conflicts of interest where parliament must also scrutinise those organisations.**



### 3.2.1 Regulators

Regulators are intimately involved with the implementation of many laws. This can be as an agency directly tasked with implementation or as a body legally mandated to oversee enforcement. In almost every instance, therefore, regulators are heavily involved in issues parliamentarians are likely to have questions about in the course of a PLS inquiry. During an inquiry, they can be either the subject of scrutiny as an implementing agency (see section 3.2), or a supporting partner supplying evidence and data on compliance or enforcement, or both.

Environmental regulators are typically responsible for either - or a combination of - policymaking and administration and regulation of environmental protection, nature conservation, or wildlife protection. When planning a PLS inquiry, parliamentarians may therefore wish to consider some of the different functions regulators and regulatory bodies could encompass in order to assess how they *could* contribute (see Box 16).

#### Box 16. Regulators and PLS questions

Regulators may have been created under legal frameworks of laws parliamentarians may be scrutinising. Parliamentarians may wish to ask:

- Has the regulator been afforded all of the powers provided for in legislation?
- Are there regulatory gaps in the underpinning legal framework?
- Are there policy areas the regulator thinks should be incorporated within its scope?

Regulators may have been appointed as a statutory advisory body to the government for matters related to laws parliamentarians are scrutinising. It could be helpful to ask:

- Has the regulator provided the advice as mandated by the law in every circumstance? If not, why not?
- Has the advice been accepted or disregarded by the government?
- What considerations were taken into account in formulating their advice?

Regulators may have led on developing compliance and enforcement regimes for particular laws. Parliamentarians may therefore want to ask:

- What data is available on compliance and enforcement activities?
- What are the costs and benefits to the particular approach (or approaches) adopted?

### 3.2.2 Audit institutions

Alongside parliament, supreme audit institutions are among the most important organisations involved in holding governments to account. Parliaments can draw upon the expertise of audit institutions where they do not themselves have the capacity or expertise to scrutinise the use of public funds by the government. Typically, audit institutions report into, or coordinate with, one or more parliamentary committees.

With the focus of PLS on both how a law has been implemented and its impacts, audit agencies are well placed to provide support. PLS demands legal analysis and policy analysis, but it can also be strengthened through formal, in-depth financial audits of:

- **Natural Capital resources:** to monitor pressures exerted by the economy on the environment and to explore how the economy and society respond in terms of environmental protection and resource management expenditures (see section 3.3).
- **Sustainable finance:** to review how well public finance mobilised through legal instruments supports sustainable economic activities and projects (see section 3.3).
- **Costs of enforcement and non-compliance:** to understand if ineffective or poorly implemented regulation could be costing more than potential funding shortfalls.

In 2018, the provincial auditors general in Canada collaborated to assess whether the federal, provincial, and territorial governments had met their commitments to reducing greenhouse gas emissions and adapting to climate change. The offices worked together to develop a set of common questions related to climate change action to be included in the auditors' individual reports (see Box 17).<sup>14</sup> These questions are not just relevant to auditors but could also be helpful for parliamentarians in the course of a PLS inquiry.

#### **Box 17. Audit agency common questions related to mitigation and adaptation actions**

In 2018, Canadian audit offices worked together to develop a set of common questions related to mitigation and adaptation actions that could be included in their individual reports:

##### **Mitigation**

- What targets related to mitigation of greenhouse gas emissions have been adopted by the government?
- Do documented strategies or plans exist to meet these commitments?
- Is the government on track in meeting intended targets? Which ones have been met and which ones have not been met? Does the government have an adequate process to monitor progress?
- Are there regular reports to the public or to other stakeholders? What elements are being reported on? Is the reporting regular and timely?
- What policy instruments, actions, or initiatives are expected to result in significant greenhouse gas emission reductions?

##### **Adaptation**

- Has the government produced a national/provincial/territorial specific risk assessment?
- Has the government developed a policy/plan/strategy on adaptation?
- Has the government implemented their actions as outlined in their policy/plan/strategy?
- Does the government know whether they are on track to implement their policy/plan/strategy?

14. [Perspectives on Climate Change Action in Canada—A Collaborative Report from Auditors General—March 2018](#)

### 3.2.3 Other bodies

Different countries have created other scrutiny organisations to provide greater oversight of the environment. Where there are shared aims, parliaments should engage with these bodies as part of routine scrutiny work, in order to amplify each other's actions.

- **Environment commissioners:** typically, commissioners have free reign to examine and investigate any element of how public bodies are accounting for the impacts of their decisions. As such, parliamentarians may find the reports produced, the evidence uncovered and the expertise within the bodies useful in scoping out and running a PLS inquiry (see Box 18 for more on the Welsh Government's Future Generations Commissioner).
- **National Human Rights body:** where PLS inquiries touch on environmental rights-based questions, it may be prudent for parliamentarians to establish links with the National Human Rights body.
- **Anti-corruption agencies:** [INTERPOL and UNEP](#) estimate natural resources worth somewhere between \$91 and \$258 billion annually are stolen by criminals. Tackling corruption may form a key aspect of a PLS inquiry; as such, it will be important for parliamentarians to draw on the expertise of the agency's staff and potentially to follow up on annual and other reports from the agency.

#### Box 18. Future Generations Commissioner Wales

In 2015, the Welsh Parliament (the Senedd) enacted the [Well-being of Future Generations \(Wales\) Act 2015](#). This Act created a new duty on public bodies to consider the social, economic, environmental and cultural wellbeing of Wales. It also created a Future Generations Commissioner for Wales. The Future Generations Commissioner for Wales' role is to act as a guardian for the interests of future generations in Wales, and to support the public bodies listed in the Act to work towards achieving the wellbeing goals. The Future Generations Commissioner for Wales has a range of actions they can carry out: advise, encourage and promote; research; carry out reviews; and provide reports.

**Advise, encourage and promote:** the commissioner can provide advice to public bodies and public services boards. She can promote and encourage them to work to meet their wellbeing objectives.

**Research:** the commissioner may carry out research. This may include research into:

- the wellbeing goals
- the national indicators and milestones
- the sustainable development principle and how public bodies apply it.

**Carry out reviews:** the commissioner may conduct a review into how public bodies are taking account of the long-term impact of their decisions. Public bodies must take all reasonable steps to follow the recommendations made by the commissioner.

**Future Generations report:** the commissioner must publish a Future Generations report. It contains their assessment of the improvements public bodies should make to achieve the wellbeing goals. The report is published a year before each Senedd Cymru election. The first Future Generations Report 2020 was published in May 2020.

**Source:** [Welsh Government \(2015\)](#)



### 3.3 Financing green or costing the earth?

**Parliamentarians conducting PLS inquiries should move beyond simply asking ‘what is the economic cost?’ to asking, ‘what is the carbon cost?’ and ‘what is the value of this resource?’ Economic decisions can have an impact upon the environment, and environmental protection and resource management expenditures can have an impact on the economy.**

Legislative oversight of public financial management can improve both the allocation of resources, and the transparency and accountability in the use of those resources. To ensure financial decisions, policies and legislation reflect sustainability, parliaments should consider focusing elements of their financial oversight mechanisms on:

- **Financing green:** how environment and climate change have been considered in spending decisions - that is, allocation of resources - at budgets, spending reviews and in individual policy decisions.
- **Sustainable finance:** how policies and legislation are guiding financial decisions in the private sector; that is, supporting sustainable finance.
- **Climate finance oversight:** how climate finance is mobilised and spent in both donor and recipient countries.

#### 3.3.1 Financing green

The financial resources dedicated (or not) to environmental programmes, policies and plans have significant impacts upon their success. Currently, economic growth, as measured by Gross Domestic Product (GDP), dominates many policy discussions around spending decisions. This sole focus on economic growth can lead to sustainability issues.

Natural capital accounting is one way policymakers can incorporate the value and benefits derived from natural resources into their decision-making. Reports such as the UN’s landmark 2005 [Millennium Ecosystem Assessment](#) and the 2012 [System of Environmental-Economic Accounting](#) highlight the importance of incorporating the natural environment into national accounting frameworks. However, traditional national accounts do not include measures of resource depletion or of the degradation of renewable resources.

The international statistical community has developed an international statistical standard for natural capital accounting called the System of Environmental-Economic Accounting (SEEA). The system of accounts offers a means of monitoring pressures exerted by the economy on the environment and can help explore how the economy and society respond in terms of environmental protection and resource management expenditures.

Parliamentarians should draw on this existing body of knowledge and deploy it as a tool in all of its PLS. The 2010 report of the Global Legislators Organisation (GLOBE) [‘Natural Capital: The New Political Imperative’](#) details examples of the benefits natural capital accounting can bring. For example, it relays how since 1992 a number of Brazilian states redistributed some of the revenue raised through value-added tax to municipalities according to environmental indicators. It says the policy was ‘originally intended as a means of compensating municipalities for maintaining protected areas within their territories, rather than as a tool for improving environmental management. However, evidence suggests that the practice has acted as an incentive to set aside new areas for conservation, and improve management of existing protected areas.’<sup>15</sup>

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15. GLOBE, [Natural Capital: The New Political Imperative](#), 2010

### 3.3.2 Sustainable finance

Sustainable finance is a process of taking due account of environmental, social and governance considerations when making investment decisions in the financial sector. The [European Commission explains](#):

- **Environmental considerations** may include climate change mitigation and adaptation, as well as the environment more broadly, such as the preservation of biodiversity, pollution prevention and the circular economy.
- **Social considerations** may refer to issues of inequality, inclusiveness, labour relations, investment in human capital and communities, as well as human rights issues.

Sustainable finance can mobilise the investment necessary to meet the challenge of climate change and encourage greater consideration of environmental risks in financial decision-making. It can also enhance the resilience and stability of the financial system and the economy and increase the attractiveness of countries as investment destinations.

Investment decisions are ultimately driven by the views of companies and the finance sector on the risks and opportunities presented by different investments. However, well-designed and well-implemented strategies and regulation can support and enable investment in areas that require capital, particularly where governments are unwilling or unable to do so. Conversely, poorly designed and implemented strategies can create perverse incentives and/or drive unsustainable investments.

As part of PLS therefore, parliamentarians may wish to consider how the legislation they are reviewing is either constraining or enabling sustainable finance:

- Legislation may create subsidies or tax regimes that facilitate or constrain sustainable investment. For example, subsidies in the fossil fuel industry can be a critical determinant of whether a country achieves its national greenhouse gas targets.
- Legislation can create or remove barriers to investment in sustainable projects through establishing standards and labels for green financial products, developing sustainability benchmarks, and establishing a classification system for sustainability activities.

Parliamentarians may also need to consider whether legislation that establishes standards or classification systems has been implemented in line with best practice. Together, the World Bank and Principles of Responsible Investment (PRI), an international NGO working to promote sustainable investment practices, have published [A toolkit for sustainable investment policy and regulation](#). This provides a high-level overview of five foundational sustainable investment policies and could be used by parliamentarians in the course of an inquiry to assess sustainable finance questions.

### 3.3.3 Climate finance for donor countries

The climate crisis and trends in environmental degradation demand substantial resources both now and in the future. The UN Intergovernmental Panel on Climate Change (IPCC) says that [an annual investment of \\$2.4 trillion is needed](#) just to upgrade energy systems worldwide alone until 2035 to limit global temperature increases. However, the Climate Policy Initiative (CPI), an international thinktank, estimates total climate-related financing is falling short of what is needed ([\\$510-530 billion in 2017](#)).

Through the Cancun Agreement in 2010, developed country parties committed to a goal of mobilising \$100 billion per year by 2020 to address the needs of developing countries. PLS provides one potential avenue for oversight of climate finance expenditure in donor countries.

Parliaments in developed countries can review laws to ensure that they fulfil commitments to meet annual targets mobilising climate finance for mitigation and adaptation. More than that, parliaments can ask whether the financing and funding of projects is being carried out effectively and efficiently.

### 3.3.4 Climate finance for recipient countries

Climate finance can involve large sums of money. It can be mobilised through a range of instruments from a variety of sources, international and domestic. It is important for all governments and stakeholders to understand and assess the financial needs of developing countries, as well as to understand how these financial resources can be mobilised. However, in countries where climate financing is mobilised, there is often limited parliamentary oversight. This is compounded by the fact that climate financing (as part of a broader package of development funding) may make up a considerable portion of Gross National Income (GNI) and government budgets.

While there are efforts currently targeted at promoting transparency, responsibility, integrity and anti-corruption measures within climate finance governance, there is limited focus on the key role parliaments should play. PLS provides one potential avenue for oversight of climate finance. Through reviewing laws, parliamentarians in recipient countries could look at:

- Establishing processes for efficiently accessing international climate funds for the better achievement and implementation of legislation.
- Ensuring adequate funding has been allocated to implement climate change laws and policies.
- How effectively institutions or banks are functioning at enabling sustainable finance (see 3.3.2) through, for example, public-private partnerships.
- Processes to better align funding with the specific vulnerabilities, and adaptation needs, and national and sub-national priorities.



Photograph by [Obi Onyeador](#) on [Unsplash](#)

# Annex 1. A checklist for climate and environment PLS

This checklist is intended to support both MPs and parliamentary staff when they are considering conducting PLS of climate and/or environmental legislation. The checklist should be adapted and tailored to the specific legislation being reviewed and the national (or sub-national) legal and policy context.

## Planning and initiating a PLS inquiry

When initiating a PLS inquiry on climate or environmental legislation, parliamentarians should consider:

- What is the aim of the inquiry and how does it link in with timetables for achieving targets (section 2.4) and commitments under international treaties (section 2.1)?
- What impact assessments exist for the legislation as introduced to parliament, and how can the PLS inquiry support dynamic end-to-end scrutiny of legislation (section 3.1.4)?
- Who should lead the scrutiny and how can parliament (as an institution) work collaboratively to deliver effective scrutiny (section 3.1.3)?
- What other institutions (section 3.2) and/or expert advisers will parliament need to access to conduct scrutiny effectively (section 2.6)?
- What data is needed to aid scrutiny, and how will parliament access this (section 2.5)?

Having considered these questions, parliamentarians should scope out what their inquiry will - and won't - look at. By defining these parameters now, parliamentarians can ensure their scrutiny is focused on the most important issues, however this is determined. At the same time, parliamentarians should also consider how they will consult and solicit evidence for the inquiry, in particular how otherwise marginalised groups can best be heard so as to avoid the risk of "groupthink". There are a range of different mechanisms through which parliaments may wish to take evidence as part of a PLS inquiry. There is inherent value in reaching out beyond the "usual suspects" as part of these processes so as to broaden the range of perspectives and lived experiences. Section 2.5 of these guidelines details some of the innovative techniques which can engage otherwise marginalised groups. Traditional mechanisms including calls for written evidence, study visits and public hearings also have a key role to play.

## During the inquiry: specific factors to consider of climate and environmental laws

Significant strides have already been taken around the world to pass climate and environmental legislation. The future challenge lies in strengthening existing laws and filling gaps. Even seemingly rigorous rules are destined to fail - and the fundamental human right to a healthy environment will go unfulfilled - where implementation fails.

PLS offers an obvious mechanism through which parliaments can respond to this challenge. Therefore, in the course of a PLS inquiry, parliamentarians may wish to consider some or all of the following issues:

- **If and how legislation complies with international treaties**, which are a key tool used to tackle transboundary environmental issues. PLS can provide a timely window of analysis to check on the government's commitments and adherence to international environmental treaties, and their in-country effects:
  - Does legislation exist to enact treaties, and is this up to date?



- Has that legislation achieved the outcomes and ambitions in the treaty?
  - How do the commitments made in your country compare regionally or to other similar sized economies?
  - Is your country's government a leader or laggard in the international community? What is an equitable contribution for your country to this issue?
- **The performance, competence, and funding of implementing agencies**, which are key stakeholders in any PLS inquiry. The piecemeal development of environmental legislation presents a particular risk of regulatory overlap and underlap, and thus poor or absent implementation:
    - Are responsibilities for implementation of laws clearly defined?
    - How have implementing agencies sought to achieve compliance with the legislation?
    - Do enforcement regimes exist, and are they effective, legal, and coherent?
- **Has this legislation, its implementation (or lack thereof), impacted upon human rights?** Many human rights depend upon the environment. The reality is that environmental injustices often stem from systemic discrimination prohibited under international human rights law. PLS could consider questions of environmental justice (and injustices):
    - What are the impacts of this legislation - or absent implementation - on citizens' health?
    - Are there any particular groups affected by environmental issues and what harms result from living in an affected community?
    - Does legislation establish any rights for citizens, and how have these been managed and implemented?
    - What are the intersectional impacts -
      - o how are minority or indigenous groups affected?
      - o are poorer groups particularly negatively affected? If so, how?
    - Are there relevant court cases and judicial decisions that show how and where legislation needs to be strengthened to provide a basis for environmental justice?
    - Are there cases in which litigants were not able to demonstrate that the courts were an appropriate mechanism through which to pursue an issue, and where parliament is better placed?
- **What relevant targets - legislative or otherwise - apply to this issue?** Targets are an important mechanism through which governments and intergovernmental organisations have sought to arrest environmental decline and halt or slow climate change. A PLS inquiry may wish to ask the following questions:
    - What targets have been adopted by the government?
    - Do documented strategies or plans exist to meet these commitments?
    - Is the government on track in meeting intended targets? Which ones have been met and which ones have not been met? Does the government have an adequate process to monitor progress?
    - Are there regular reports to the public or to other stakeholders? What elements are being reported on? Is the reporting regular and timely?
- **Financial support for the environment.** Economic decisions can have an impact upon the environment, and environmental protection and resource management expenditures can have an impact on the economy. A PLS inquiry may wish to assess the following questions:



- How have environment and climate change been considered in spending decisions and budgets?
- Have implementing agencies been allocated sufficient resources to fulfil their legal duties?
- Do the policies, legislation and guidance developed support green financial decisions in the public and private sectors?
- Are there effective means of oversight of climate finance? Donor countries may wish to consider how the spending aligns with international best practice, national interest, and value for money. Recipient countries may wish to consider whether spending is aligned with national priorities, specific sub-national contexts and mechanisms to avoid corruption and misspending.

## Conclusions and recommendations

The outcomes of a PLS inquiry must be ambitious and realistic. At the conclusion of a PLS inquiry, armed with evidence, parliamentarians are well equipped to make stretching recommendations for governments. Effective recommendations should be:

- challenging and achievable
- evidence based
- precise, including timescales, indicators, or targets.



Photograph by [Nicholas Doherty](#) on [Unsplash](#)

## Annex 2. Bibliography of relevant literature

- Anindita K. Listya., (2017) [The Pivotal Role of Parliamentarians in Ensuring the Effectiveness of SDGs Implementation](#), GOPAC Jakarta Office UNDP.
- IPU., (2016) [Parliamentary Action Plan on Climate Change](#).
- GLOBE., (2010) [Natural Capital: The New Political Imperative](#).
- GLOBE International & UNEP., (2018) [Environmental law-making for sustainable development: A guide for Legislators](#).
- Nachmany, Michal, Byrnes, Rebecca & Surminski, Swenja., (2019) [National laws and policies on climate change adaptation: a global review](#), LSE Grantham Institute on Climate Change.
- Nachmany, Michal, Byrnes, Rebecca., (2018) [Global trends in climate change legislation and litigation: 2018 snapshot](#), LSE Grantham Institute on Climate Change.
- Puig, D., Olhoff, A., Bee, S., Dickson, B., & Alverson, K. (Eds.), (2016) [The Adaptation Finance Gap Report](#). United Nations Environment Programme.
- Setzer, Joana & Byrnes, Rebecca., (2019) [Global trends in climate change litigation: 2019 snapshot](#), LSE Grantham Institute on Climate Change.
- UNDP., (2017) [Aligning Nationally Determined Contributions And Sustainable Development Goals: Lessons Learned and Practical Guidance](#), (New York, USA).
- UNDP., (2017) [Parliament's Role in Implementing the Sustainable Development Goals](#), (New York, USA).
- UNEP., (2019) [Environmental Rule of Law: First Global Report](#) (Nairobi, Kenya)
- Various authors., (2020) [Climate Change explainer series](#), UK House of Commons Library

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