

Post-legislative scrutiny of environmental and climate legislation

A policy paper for parliaments

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Foreword

Parliaments play a critical role in shaping the legislative landscape of any nation. Not only through the scrutiny, enactment, and amendment of laws, but also by overseeing their implementation and – in the best cases – assessing legislative outcomes and whether these have served their intended purpose. The mechanisms to conduct oversight for legislation are, however, often lacking, but post-legislative scrutiny (PLS) has served as a tool offering a structured approach for conducting legislative oversight.

WFD has been instrumental in assisting parliaments to implement PLS globally and has published numerous reports and studies on the subject matter. In 2021, WFD published a seminal report, 'Post Legislative Scrutiny of Climate and Environment Legislation: A Practitioners Guide.'¹ That report outlined an approach that applies an environmental and climate lens to assessing the implementation and impact of legislation.²

Since publishing that report in 2021, several significant events have taken place, with the Global Stocktake (GST) at COP28 being of utmost importance. The GST serves as a mechanism for nations and stakeholders to assess their progress towards achieving the objectives of the Paris Agreement, identifying areas of success, and areas needing improvement.

The GST was clear that we are far from limiting global temperature increases to 1.5°C. It is

therefore imperative that policymakers, and more specifically, parliamentarians, use this opportunity to translate the outcomes of the GST into tangible actions rather than mere rhetoric. This entails enhancing national responses to the climate emergency by improving legislation that ensures implementation, as well as by informing the upcoming process of updating Nationally Determined Contributions by 2025.

This policy paper is a sequel to WFD's previous publication on PLS and climate and environmental legislation published in 2021, prior to the conclusion of the GST, and provides a critical link that can leverage the oversight function of parliaments through PLS to enhance global environmental and climate change outcomes. The policy paper issues a renewed call to members of parliaments to continue to examine and analyse their national legislative landscape against the global environmental and climate objectives, whilst keeping in mind the diverse parliamentary contexts reflective of the multifaceted nature of law-making.

We at WFD hope that this policy paper will serve as a useful tool in navigating the complexities of climate and environmental legislation for parliamentarians and stakeholders alike.

Anthony Smith

Chief Executive, Westminster Foundation for Democracy

¹ David Hirst, 'Post-Legislative Scrutiny of climate and environment legislation: Guide for parliamentary practice', (Westminster Foundation for Democracy, April 2021)
<<https://www.wfd.org/sites/default/files/2021-12/WFD%20post->

[legislative%20scrutiny%20of%20climate%20and%20environment%20legislation-%20Guide%20for%20parliamentary%20practice.pdf](#)> accessed on 1 March 2024.

² *ibid.*

List of acronyms

ACE	Action for Climate Empowerment
ACS	Africa Climate Summit
CBAM	Carbon Border Adjustment Mechanism
COP	Conference of the Parties
COP28	28th Conference of the Parties
CoP-PLS	Community of Practice on Post-Legislative Scrutiny
CSO	Civil Society Organisation
CVF GPG	Climate Vulnerable Forum Global Parliamentary Group
EU	European Union
GST	Global Stocktake
IPCC	Intergovernmental Panel on Climate Change
IPU	Inter-Parliamentary Union
NDC	Nationally Determined Contributions
OECD	Organisation for Economic Co-operation and Development
PLS	Post Legislative Scrutiny
SDG	Sustainable Development Goal
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WFD	Westminster Foundation for Democracy

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Executive summary

Parliamentarians play a crucial role in shaping, executing, and overseeing their nation's climate goals. Within the context of oversight, parliaments possess numerous avenues through which they can oversee their country's climate commitments, through inquiries to assess potential gaps and impacts of climate legislation and policies on the population; interpellations (question time) calling on ministers to provide information on climate matters; budget formulation, approval and conducting oversight on spending; public hearings; reports; motions and through post-legislative scrutiny (PLS).³

PLS is regarded as one of the most effective processes for assessing the impact of legislation.⁴ While laws sometimes include provisions relating to parliamentary oversight after enactment, most laws lack detail on the process and resources by which scrutiny is to be ensured. PLS involves the process of parliaments overseeing the execution and assessing the effectiveness of legislation since its coming into force, with the objective of confirming whether laws function and are having the impact that policymakers intended.⁵

The year 2023, at COP28, marked the conclusion of the very first global stocktake (GST) of action on climate change, an exercise that takes place every five years. It was designed to assess the collective global response to the climate emergency, by measuring the steps taken to achieve the various climate goals in pursuit of the overarching goal of the Paris Agreement to keep the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.⁶

The GST is meant to assess the trajectory of global climate commitments and whether these are ambitious enough to ensure that the Paris Agreement goals are within reach.

³ 'Parliaments and the Paris Agreement strengthening parliamentary engagement in the development and implementation of international climate commitments. An overview of emerging global experience' (September 2021)

<https://www.parlAmericas.org/uploads/documents/Global_Parliaments_and_the_Paris_Agreement_ENG.pdf> accessed on 1 March 2024.

⁴ Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies* (2020) <<https://www.tandfonline.com/doi/epdf/10.1080/13572334.2020.1780008?needAccess=true>> accessed on 20 March 2024.

⁵ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation through Post-Legislative Scrutiny: Manual for Parliaments' (Westminster Foundation for Democracy, July 2023) <<https://www.wfd.org/what-we-do/resources/parliamentary-innovation-through-post-legislative-scrutiny>> accessed 20 March 2024.

⁶ David Hirst, 'Post-Legislative Scrutiny of climate and environment legislation: Guide for parliamentary practice', (Westminster Foundation for Democracy, April 2021) <<https://www.wfd.org/sites/default/files/2021-12/WFD%20post-legislative%20scrutiny%20of%20climate%20and%20environment%20legislation-%20Guide%20for%20parliamentary%20practice.pdf>> accessed on 1 March 2024.

Parliamentary scrutiny of NDCs, in which governments commit to reducing their emissions, is becoming increasingly urgent to ensure governments live up to their promises, and to promote further ambition as the planet heats up.⁷ It has been noted that “[e]arly lessons on the challenges of NDC implementation are emerging. NDCs will not succeed without the right level of integration with national development policy and planning. Without clear financing plans, strong and enforceable requirements for Measuring, Reporting and Verification (MRV) and a high degree of political commitment, they will fail.”⁸

The GST is an inventory on where the world stands on climate action and support, identifying the gaps and charting pathways for meaningful acceleration of the climate action agenda.⁹ Parliaments have a critical role to play in ensuring that the GST’s political commitments are not merely given lip service. It is up to decision makers nationally to ensure that there is follow through on the outcomes and calls to action of the GST. Particularly as 2025 marks the due date for updated NDCs.

This policy paper looks at how the role of parliaments in enhancing climate and environmental outcomes may be influenced by a range of factors that may either stall or halt the imperative for legislative review and adaptation. Nationally, the drive to pass legislation and more specifically, climate change legislation, is often driven by political will rooted in factors ranging from election cycles, the levels of democracy, and a country’s economic priorities.

The outcomes of the IPU meeting at COP28 encouraged parliaments to “establish mechanisms for continuous, forward-looking and evidence-informed monitoring and reporting on the progress of climate-related legislation and policies, ensuring transparency and accountability in the implementation of climate commitments”¹⁰ Relatedly, in the pursuit of global climate goals, there is a need to avoid a narrow focus on international treaties as the

⁷ Inter-Parliamentary Union, ‘COP28: Parliaments take centre stage to accelerate climate action’ (*IPU*, 6 December 2023) <<https://www.ipu.org/news/press-releases/2023-12/cop28-parliaments-take-centre-stage-accelerate-climate-action>> accessed on 1 March 2024.

⁸ Katherine Cooke, Elizabeth Gogoi & Luca Petrarulo, ‘Overcoming the NDC implementation gap lessons from experience’ (*Oxford Policy Management*, October 2018) <<https://www.opml.co.uk/files/Publications/8617-action-on-climate-today-act/ndc-gap.pdf>> accessed on 1 March 2024.

⁹ UNFCCC, ‘Why the Global Stocktake is Important for Climate Action this Decade’ <<https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/why-the-global-stocktake-is-important-for-climate-action-this-decade>> accessed on 1 March 2024.

¹⁰ UNFCCC, ‘Why the Global Stocktake is Important for Climate Action this Decade’ <<https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/why-the-global-stocktake-is-important-for-climate-action-this-decade>> accessed on 1 March 2024.

sole solution. Rather, a programme of global collective action that includes a review of domestic laws to pursue climate goals should be embraced.¹¹

Recommendations

To this end, this policy paper recommends that:

Parliaments worldwide are best placed to prioritise the alignment of climate change legislation with the goals outlined in the Paris Agreement by conducting PLS of existing climate and environmental legislation. This alignment is crucial for ensuring that national laws and policies contribute to limiting global warming to below 2°C and preferably, to 1.5°C. To achieve this, parliaments must strengthen existing climate change laws to support ambitious emissions reduction targets and comprehensive strategies for climate resilience. These laws should be informed by the commitments and the review process of revised NDCs, due in 2025.

To reflect the most recent scientific findings and industry best practices in climate and environmental policy making, PLS must be data and evidence driven. Therefore, the collaboration between legislators themselves (cross party), legislators and the executive, legislators and CSOs, legislators and the public, and legislators and international climate organisations must be strengthened. This will ensure access to broader data sources, the adequate allocation of resources for climate commitments to be implemented and accelerate progress towards achieving the objectives of the Paris Agreement.

The process of conducting PLS traditionally focuses on national climate considerations, yet this paper advocates for expanding its scope to incorporate insights from international engagement, facilitating cross-learning. International platforms for parliamentary dialogue not only provide opportunities for policymakers to demonstrate leadership in climate and environmental legislation but also serve as catalysts for collaborative action. Integrating PLS into the GST process is essential to ensure that legislators evaluate the effectiveness of climate legislation through the establishment of a thematic CoP-PLS of climate change and environmental legislation. This would enhance parliamentary capacities and their external networks, supporting MPs and committees in conducting effective PLS.

¹¹ Jonas Meckling, Theda Skocpol & Christopher Marquis, 'Domestic Dynamics and International Influence: What Explains the Passage of Climate Change Legislation?' (*Grantham Research Institute on Climate Change and the Environment*, 2014) <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2014/05/Wp156-Domestic-dynamics-and-international-influence-what-explains-the-passage-of-climate-change-legislation.pdf>> accessed 10 March 2024.

1. Introduction

The global discourse on climate and environmental issues has continually evolved since the inception of the very first international agreements and treaties when nations began to recognise the interconnectedness of environmental challenges and the need for collective action. The trajectory of this discourse has been marked by significant milestones and paradigm shifts, including the adoption of the Kyoto Protocol in 1997 and the Paris Agreement in 2015.

Most recently, at COP28, the culmination of the very first GST took place, a process designed to assess the collective global response to the climate emergency, by measuring the steps taken to achieve the various climate goals aimed at achieving the goal of the Paris Agreement to limit global average temperature to well below 2°C above pre-industrial levels capped at 1.5°C.¹² In addition, in 2023, the European Union introduced the CBAM, a tool aimed at levying carbon emissions associated with the production of carbon-intensive goods entering the EU market and encouraging cleaner industrial production in non-EU countries.¹³

As a result of these developments, countries around the world are working to ratchet up their climate response through the development of more ambitious NDCs. In parallel to this, the role of parliamentary action in driving effective climate and environmental action has become increasingly imperative. Parliaments are entrusted with the ultimate responsibility of holding the executive to account by ensuring that the executive branch follows through on the promises it makes to its citizens and at international fora. Parliaments require several mechanisms and tools to be able to effectively exercise this function; one such tool is PLS.

PLS is described as the process undertaken by parliaments to ensure that laws achieve their intended effect.¹⁴ To fully understand the impact of legislation, PLS involves not only the review of primary legislation, but also secondary legislation, and allows for the assessment of cross-cutting issues, commonplace with environmental and climate change laws.¹⁵

¹² David Hirst, 'Post-Legislative Scrutiny of climate and environment legislation: Guide for parliamentary practice', (*Westminster Foundation for Democracy*, April 2021) <<https://www.wfd.org/sites/default/files/2021-12/WFD%20post-legislative%20scrutiny%20of%20climate%20and%20environment%20legislation-%20Guide%20for%20parliamentary%20practice.pdf>> accessed on 1 March 2024.

¹³ European Commission, 'Carbon Border Adjustment Mechanism' <https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en> accessed on 1 March 2024.

¹⁴ Franklin De Vrieze, 'Principles of post-legislative scrutiny by parliaments' (*Westminster Foundation for Democracy*, 2018) <<https://www.wfd.org/what-we-do/resources/principles-post-legislative-scrutiny-parliaments>> accessed on 1 March 2024.

¹⁵ *ibid.*

PLS seeks to, amongst others: ensure that there is accountability for the effectiveness of legislation and whether the outcomes intended have been achieved; provide mechanisms to evaluate the impact of climate and environmental laws on various stakeholders, including communities, businesses, and the environment itself; and allow for the adaptation of legislation to ensure that it is responsive to the findings of the GST and other emerging climate and environmental issues, such as the CBAM and to ensure that national laws are aligned with international obligations.

This policy paper builds on prior work of WFD on PLS and provides insights into the parliamentary imperative to conduct PLS of climate and environmental laws in the wake of the GST and COP28. The paper looks at parliaments using PLS to ensure that the commitments emanating from the GST and COP28 are translated into tangible action plans and enforceable measures.

1.1. State and trends of global climate change and environmental legislation

At the international level, legal frameworks have been established to address the challenges posed by climate change. These include treaties, protocols, collective agreements and conventions, such as the three Rio Conventions,¹⁶ which consist of international environmental treaties, aimed at promoting climate resilience, protecting biodiversity and combating desertification.

Article 3 of the Paris Agreement provides that “all Parties [to the Agreement] are to undertake and communicate ambitious efforts... aimed at fulfilling the Agreement's objectives. The efforts of all Parties will represent a progression over time.”¹⁷ These undertakings are represented through pledges known as NDCs. NDCs provide a roadmap on how governments intend to meet their commitments under the UN Framework Convention on Climate Change (UNFCCC).¹⁸ While these commitments provide frameworks for collective action, their effectiveness is determined at the national level. To enhance the enforceability of the commitments in the

¹⁶ These include the United Nations Framework Convention on Climate Change (UNFCCC); the Convention on Biological Diversity (CBD); and the United Nations Convention to Combat Desertification (UNCCD).

¹⁷ United Nations, ‘Paris Agreement’ (2015)
<https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed on 01 March 2024.

¹⁸ Particularly in limiting temperature increases to 1.5°C.

NDCs, many countries have enacted climate change laws¹⁹ thereby providing further impetus, at the national level, to the climate commitments contained in the NDCs.

Effective climate governance at the international and national levels, requires that the executive and the legislature collectively develop actionable climate change policies to ensure that the commitments made towards climate change by the executive do not amount to mere symbolic gestures but are rooted in action through legislation, supported by the allocation of resources through the national budget, and informed by the needs of society through representation and consultation.

The [Climate Change Laws of the World Database](#) lists thousands of climate change laws and policies in force around the world, covering various areas of competence including transportation, agriculture, energy, buildings, water, and health, amongst others. The database signals the growing body of national responses to the climate change emergency, characterised by binding and enforceable measures. The infographic below shows current climate laws and policies on the statute book of countries around the world, representing a global commitment to accountability in tackling the climate crisis.

Box 1: Climate laws and policies on the books

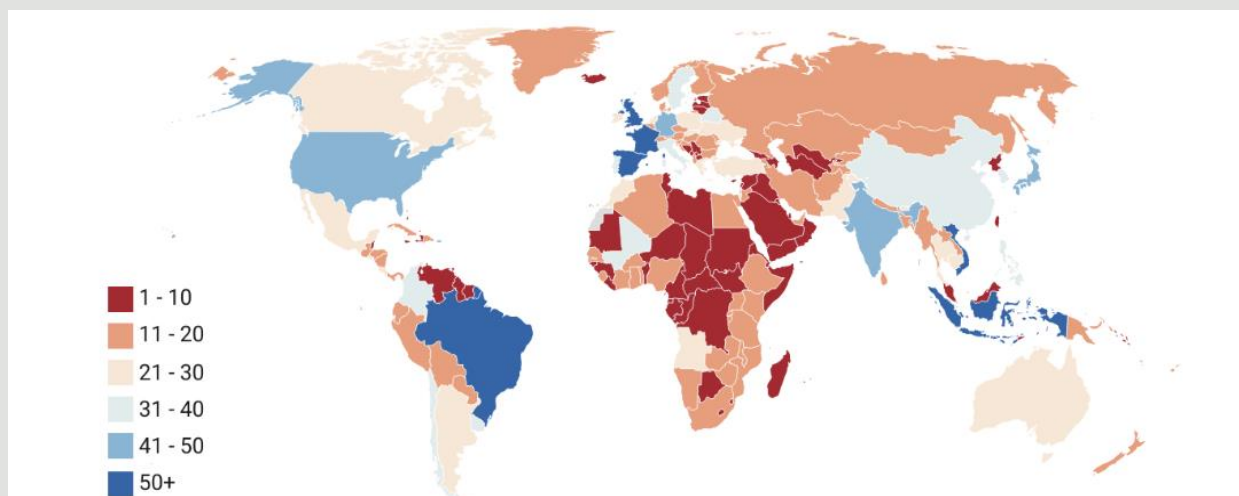


Image source: World Economic Forum²⁰

¹⁹ Arnaud Koehl, 'What is Climate Change Legislation' (The London School of Economics and Political Science, 4 October 2022) <<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/>> accessed on 1 March 2024.

²⁰ World Economic Forum, 'These laws have formed a foundation to fight climate change' (14 April 2023) <<https://www.weforum.org/agenda/2023/04/these-laws-have-formed-a-foundation-to-fight-climate-change/>> accessed 1 March 2024.

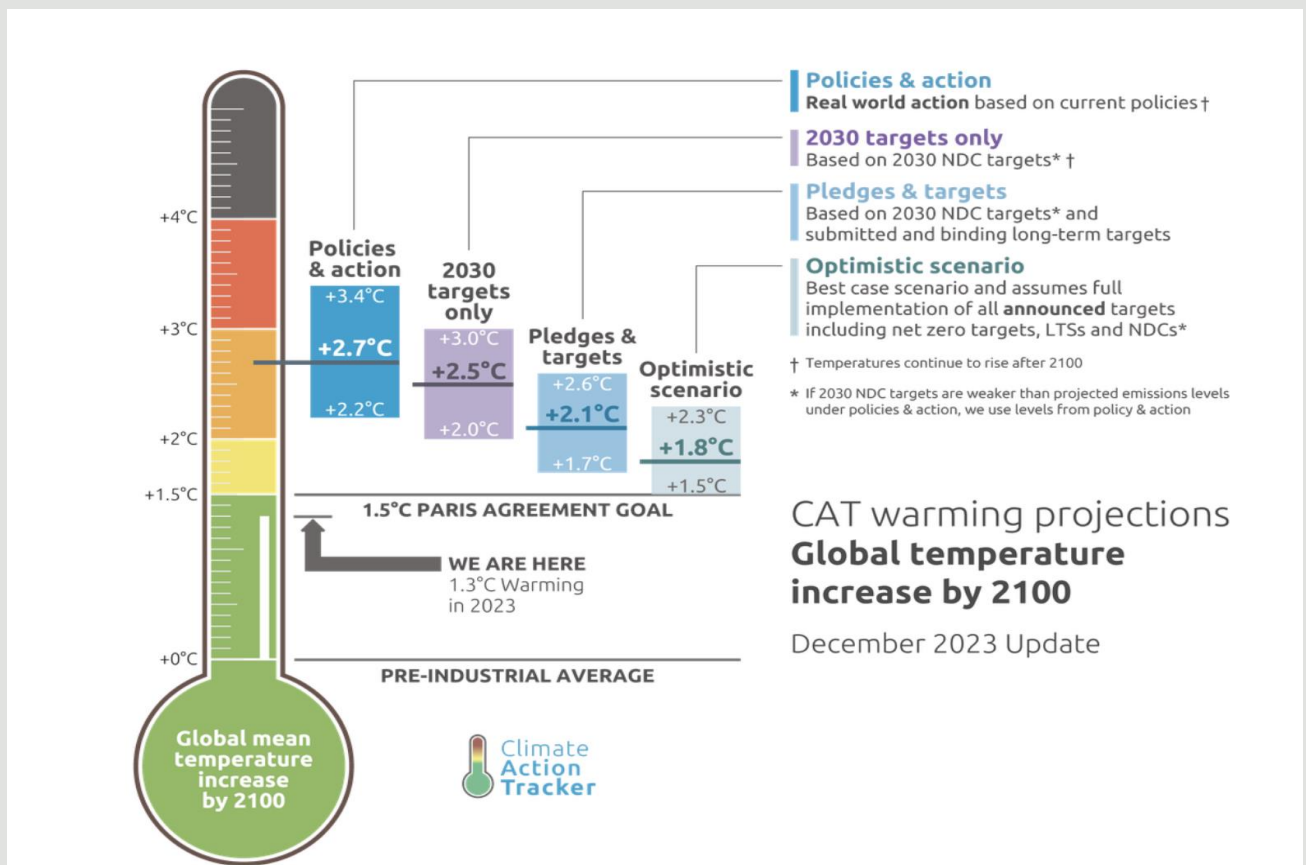
Notably, climate change laws have been categorised as either direct - laws whose main objective is to address climate change; and indirect laws - laws with a different primary focus but which may have a bearing on climate change.²¹ Despite the growing body of climate change legislation, assessments contend that most of the emissions reduction targets in existing national laws and policies will result in the world falling significantly short of limiting global warming to below 2°C.²² As a result, there is a need to re-align climate change legislation with the Paris Agreement goals.

²¹ Grantham Research Institute on Climate Change and the Environment: Explainers – What is Climate Change Legislation; available at [<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/>] retrieved on 1 March 2024.

²² *ibid.*

Box 2: Climate Action Tracker

The Climate Action Tracker Thermometer indicates there is a 50% scenario chance that warming associated with global pledges and targets exceeds 2.1°C in 2100, and the current level of government action is insufficient, with temperatures continuing to rise into the next century. Current policy will lead to a warming of 2.7°C in 2100 and will continue to rise after that date. NDC pledges and targets (as of December 2023) are likely below 2.7°C and have a 99.5% chance of exceeding 1.5°C. It is therefore imperative that countries whose NDCs and policies are not aligned with limiting global temperature increases course-correct and increase their near-term emissions reduction targets through their NDCs and national policies, including through legislation.



Source: Climate Analytics and New Climate Institute²³

²³ Climate Action Tracker, 'The CAT Thermometer Explained' (2023) <<https://climateactiontracker.org/global/cat-thermometer/>> accessed 1 March 2024.

1.2. Parliamentary imperative to conduct PLS of climate change and environmental legislation

PLS provides an opportunity for lawmakers to adapt legislation in response to changing circumstances and to identify areas of success and areas that require improvement. As with any legislation, after enactment, there is a risk that climate legislation could potentially yield adverse or unintended outcomes, or it may ultimately have little to no impact.²⁴

The outcomes of the GST and COP28 underscores that “despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals”²⁵ As a result, there is a pressing need to address the gaps towards achieving the Paris Agreement goals through targeted interventions, such as adapting national legislation.

Conversely, despite ambitious executive commitments at international climate and environmental fora, lawmakers in most jurisdictions have the power to reject proposals from the government, as exemplified by the opposition to the Kyoto Protocol in the US Congress.²⁶

Box 3: The role of the legislature - Kyoto Protocol in the US Congress

The US Congress refused to ratify the Kyoto Protocol. Prior to the conference, the US Senate passed a resolution preventing the US from agreeing to a treaty that demanded cutting greenhouse gas emissions unless it also included reductions from developing nations within the same timeframe.²⁷ “Climate change policy is not entirely determined by negotiations, but rather by domestic political opportunities and constraints,” according to the Deputy Assistant Secretary of State for Environment and Development.

²⁴ Jorum Duri, Fabiano Angélico, Cristiano Ferri and Jean-Patrick Villeneuve, ‘Overview of Parliamentary Oversight Tools and Mechanisms’ (*Transparency International*, 30 December 2022) <<https://knowledgehub.transparency.org/product/overview-of-parliamentary-oversight-tools-and-mechanisms>> accessed 1 March 2024.

²⁵ UNFCCC, 2023, Outcome of the first global stocktake, https://unfccc.int/sites/default/files/resource/cma5_auv_4_gst.pdf

²⁶ Christie Aschwanden, ‘A Lesson from Kyoto’s Failure: Don’t Let Congress Touch A Climate Deal’ (*FiveThirtyEight*, 4 December 2015) <<https://fivethirtyeight.com/features/a-lesson-from-kyotos-failure-dont-let-congress-touch-a-climate-deal/>> accessed on 1 March 2024.

²⁷ *ibid.*

This is a stark reminder of the significance of the role of legislatures in the domestication of climate change policies. Without political buy-in, at the national level, climate commitments run the risk of amounting to mere rhetoric.

As the above exemplifies, parliaments' role can either be perceived as obstructive, potentially hindering legislative efforts, or impeding progress towards meeting targets established through intergovernmental treaties. This obstructionism may arise from a variety of factors, including political differences, ideological stances, or concerns about the impact of proposed measures on constituents. On the other hand, parliaments may assert that their governments have been overly cautious or lacking in ambition when it comes to addressing pressing issues such as climate change. They may advocate for more robust action, pushing for stronger policies, targets, and commitments to effectively address environmental challenges.

The resolution of these tensions often hinges on the degree to which parliamentary ratification of treaties is permitted by executives or mandated by constitutions. In some cases, parliaments may have limited involvement in treaty negotiations or ratification processes, leading to potential conflicts between the legislature and the executive.

Furthermore, this dynamic can be particularly complex for devolved or sub-national parliaments, which may have even less defined roles in the consideration of treaties agreed upon by national governments. Despite this, they often wield significant powers in areas such as transportation, housing, and environmental regulation, all of which are critical to achieving the targets outlined in international agreements.

Addressing these challenges requires careful consideration of parliamentary roles and responsibilities within the context of treaty negotiation, ratification, and implementation. It may also necessitate mechanisms for enhancing parliamentary engagement, ensuring that legislative bodies have meaningful input and oversight in decision-making processes that impact the environment and sustainable development efforts.

Box 4: Outcomes at the IPU Parliamentary Meeting at COP28¹

The IPU meeting at COP28 emphasised the following outcomes that may require legislative interventions from parliaments. Parliaments must:

- through the legislative and oversight roles urge their governments to update and enhance NDCs in response to the first GST outcomes
- encourage their governments to engage in international co-operation for climate action, particularly focusing on technology transfer, capacity building, and knowledge sharing
- align national climate policies with international commitments through their oversight and budget making function
- actively promote innovative financing mechanisms for climate projects, integrating green budgeting practices and promoting sustainable investment and resource allocation
- adopt inclusive and equitable climate strategies that recognise the needs of different populations, including by advocating for leadership roles for women and youth in climate action
- address the climate finance gap, advocate for sufficient funding allocation and support the reform of global financial institutions to enhance accessibility to climate finance, especially for developing countries
- strengthen international co-operation on climate funding and ensure developing country parliaments can effectively manage received funds and monitor budgeting and spending
- ensure cross-sectoral collaboration within national governments and between parliaments and other bodies is essential for a holistic approach to climate action, integrating environmental, social, and economic considerations
- enhance public participation, consultation, and education, all crucial for informing the public about climate change impacts
- advocate for legislation connecting climate, biodiversity loss, and pollution, addressing ecocide
- establish mechanisms for continuous, evidence-informed monitoring and reporting on

28

²⁸ The Inter-Parliamentary Union, 'About Us' <<https://www.ipu.org/about-us> > accessed on 1 March 2024.

The IPU is the global organisation for national parliaments²⁹ and the outcomes articulated during its meeting at COP28 signify the critical role that parliaments play in aligning national climate commitments with international climate goals and more specifically, the outcomes of the GST and COP28.

It is important to acknowledge, however, that not all parliaments or parliamentarians will inherently support initiatives to combat climate change or advocate for greater ambition in tackling environmental challenges. In fact, both parliaments and citizens can sometimes act as potential blockers of efforts aimed at combating climate change. There is a greater imperative incumbent upon governments to engage parliamentarians and citizens.

This may be achieved through initiatives like ACE. ACE is a concept adopted by the UNFCCC with a goal to empower all members of society to engage in climate action through education, training, public participation, access to information, and international co-operation.³⁰ Parliaments can serve as a major delivery partner of ACE.³¹

²⁹ The Inter-Parliamentary Union: <https://www.ipu.org/about-us>

³⁰ United Nations Framework Convention on Climate Change (UNFCCC), 'Action for Climate Empowerment' <https://unfccc.int/topics/education-and-youth/big-picture/ACE#:~:text=What%20is%20ACE%3F,12%20of%20the%20Paris%20Agreement>> accessed on 1 March 2024.

³¹ Rafael Jimenez Aybar, 'Climate democracy post-COP26: Time to play the ACE' (*Westminster Foundation for Democracy*, 30 November 2021) <https://www.wfd.org/commentary/climate-democracy-post-cop26-time-play-ace> accessed on 1 March 2024.

2. The Global Stocktake and COP28

This section contextualises the outcomes of the GST and COP28 and the need to adapt legislation to those outcomes.

2.1. Contextualising the GST and COP28

Article 14 of the Paris Agreement provides that the Parties to the Paris Agreement “shall periodically take stock of the implementation of the Paris Agreement to assess the collective progress towards achieving its purpose and its long-term goals”³² This process is referred to as the Global Stocktake (GST).

The first GST took place in 2023 and is scheduled to take place every 5 years.³³ It culminated in the adoption of the [UAE Consensus](#). The main purpose of the GST is to inform parties on enhancing their actions and support of the Paris Agreement and to ratchet up international collaboration for climate action.³⁴ The GST is aimed at informing the next round of global climate action plans by 2025, known as NDCs under the Paris Agreement.³⁵

At COP28, the world rallied behind a concerted response to the GST referred to as the UAE Consensus. The UAE Consensus underscored various outcomes and responses across the climate spectrum, including the very first agreement to transition away from fossil fuels, a target to triple renewable energy by 2030, a call to reduce non-CO₂ emissions, including methane, the operationalisation of the loss and damage fund including for the transformation of international climate finance, and the adoption of the framework for the Global Goal on Adaptation, amongst others.³⁶

The first GST identified critical areas necessitating additional measures to bridge gaps and address challenges and barriers in the implementation of the Paris Agreement.³⁷ It also

³² Article 14(1) of the Paris Agreement.

³³ Article 14(2) of the Paris Agreement.

³⁴ Article 14(3) of the Paris Agreement.

³⁵ UNFCCC, 'Why the Global Stocktake is important for climate action this decade' <<https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/why-the-global-stocktake-is-important-for-climate-action-this-decade>> accessed on 1 March 2024.

³⁶ UNFCCC, 'Outcome of the First Global Stocktake' (2023) <https://unfccc.int/sites/default/files/resource/cma5_auv_4_gst.pdf> accessed on 1 March 2024.

³⁷ The GST highlighted two key gaps in achieving the targets of the Paris Agreement: 1. emissions gaps: collectively, NDC commitments are not sufficient to meet the target; and 2. implementation gaps: extant policies

highlighted specific gaps in policy and regulatory frameworks, indicating the need for targeted reforms. These include strengthening policy guidance, incentives, regulations and enabling conditions to facilitate investments into renewables; strengthening the regulatory enabling environment for the sustainable management of natural resources and the de-risking of investments; utilising up-to-date impact, vulnerability and risk assessments to inform policy and regulatory instruments; and developing policies to facilitate technology transfers and capacity development, which currently impede the effective implementation of the Paris Agreement.³⁸ In order for countries to address these findings, it is evident that parliaments have an indispensable role in facilitating the adoption of enabling legislative frameworks.

PLS provides a critical linchpin in reviewing whether the policy aims of environmental and climate legislation reflect these aims, and thereby provides recommendations for reform.³⁹

2.2. Legislative adaptation post COP28 and the GST

Climate legislation plays a vital role in climate change governance, as effective measures, such as a commitment to reducing emissions, cannot be achieved without a tenable legal framework.⁴⁰ Jurisdictions around the world have adopted laws targeted towards combating the impacts of climate change.⁴¹ It is important, however, to assess the push factors driving the passing of climate legislation, as these are not always solely rooted in the anthropogenic

and actions fall short of reaching the target. Gilbert + Tobin, 'COP28 Explainer: What is the first Global Stocktake?' <<https://www.gtlaw.com.au/knowledge/cop28-explainer-what-first-global-stocktake>> accessed on 1 March 2024.

³⁸ UN Climate Change Conference 'Technical dialogue of the first Global Stocktake, Synthesis report by the co-facilitators on the technical dialogue' (UNFCCC, 8 Sep 2023) <https://unfccc.int/documents/631600> accessed on 1 March 2024.

³⁹ Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies* (2020) 358 <<https://www.tandfonline.com/doi/epdf/10.1080/13572334.2020.1780008?needAccess=true>> accessed on 20 March 2024.

⁴⁰ Shaikh Eskander, Sam Fankhauser & Joana Setzer, 'Global Lessons from Climate Change Legislation and Litigation' (2021) *Environmental and Energy Policy and the Economy* 2021 2:, 44 <<https://www.journals.uchicago.edu/doi/epdf/10.1086/711306>> 10 March 2024.

⁴¹ Jonas Meckling, Theda Skocpol & Christopher Marquis, 'Domestic Dynamics and International Influence: What Explains the Passage of Climate Change Legislation?' (2014) *Grantham Research Institute on Climate Change and the Environment* <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2014/05/Wp156-Domestic-dynamics-and-international-influence-what-explains-the-passage-of-climate-change-legislation.pdf>> accessed 10 March 2024.

impacts of climate change.⁴² Moreover, the data reveals that global climate legislation peaked around 2009 to 2014, long before the Paris Agreement.⁴³

To understand the post adoption dynamics of legislation it is equally imperative to unpack the factors motivating legislative adoption.⁴⁴ These have been described as follows:

⁴² *ibid.*

⁴³ Shaikh Eskander, Sam Fankhauser & Joana Setzer, 'Global Lessons from Climate Change Legislation and Litigation' (2021) *Environmental and Energy Policy and the Economy* 2021 2:, 44
<<https://www.journals.uchicago.edu/doi/epdf/10.1086/711306>> 10 March 2024

⁴⁴ *ibid.*

Box 5: Factors influencing the adoption of climate legislation¹

Domestic:

- Level of democracy: where political accountability is higher, policymakers are more responsive to voter influence to either enact climate legislation where concerns are high or refrain from doing so where fossil fuel interests hold sway.
- Electoral cycles: policymakers are likely inclined to avoid controversial measures closer to an election cycle.
- Strength of the executive and form of government: the stronger and more unified the executive, the easier policymakers will find it to pass climate laws.
- Existence of a comprehensive climate policy: easier for countries with unifying legislation to pass additional measures for implementation.
- Partisanship: the passing of climate legislation may be influenced by the political orientation of the parties in power.
- Business cycle: concern for the environment may have less political traction during difficult economic times.¹ Policymakers are less likely to prioritise climate and environmental governance if their country is experiencing economic hardship, conflict, or a health crisis like the Covid19 pandemic.

International:

- Hosting summits: countries hosting international climate conferences may find themselves in a position of international leadership, motivating policymakers to pass climate legislation.
- Peer group effects: the likelihood of a country taking climate action tends to rise as more laws are enacted by other nations.
- Commitment effect: the likelihood of passing climate legislation is affected by the pledges a country has made internationally.

Source: Shaikh Eskander, Sam Fankhauser, and Joana Setzer '[Global Lessons from Climate Change Legislation and Litigation](#) Environmental and Energy Policy and the Economy⁴⁵

⁴⁵ *ibid.*

These same factors can influence the imperative for legislative review and adaptation. Nationally, the drive to pass legislation and more specifically, climate change legislation is often driven by political will rooted in factors ranging from election cycles, the levels of democracy, and a country's economic priorities.

Internationally, every COP since COP3 in Kyoto in 1997, has driven a rise in the amount of climate change legislation passed.⁴⁶ International climate summits provide impetus to the passing of climate change laws, as well as providing platforms for policymakers to engage their peers and exchange ideas. Moreover, the commitments made at these global fora also provide strong incentives for parliamentarians to not only enact climate change legislation, but to review existing climate change laws and to leverage the newfound knowledge for parliamentary interpellations during question time.

⁴⁶ 52 climate change laws existed at COP3 Climate Vulnerable Forum 'Mapping Report Climate Change Laws And Policies In Climate Vulnerable Forum (CVF) Countries' (June 2022) <<https://www.thecvf.org/wp-content/uploads/2022/06/GLOBE-CVF-Climate-Laws-Report-June-2022.pdf>> accessed on 22 March 2024.

Box 6: International summits serve as catalysts for parliamentary leadership on climate and environmental action

In 2023 the Government of Kenya hosted the ACS. Concurrently, on the sidelines of the ACS, the Parliament of Kenya hosted a Parliamentarians Dialogue aimed at charting parliamentary pathways for effective climate action on 4 September 2023.¹

In the lead up to the ACS and the Parliamentary Dialogue the Kenyan Senate on 31 August 2023 passed the Climate Change (Amendment) Bill, 2023, to amongst others, provide a legal framework for carbon trading as a vital tool to achieve emissions reduction targets and to fulfil commitments outlined in international climate agreements.¹ In the wake of the ACS, MPs championing climate change moved motions to table the outcome of the dialogue in their respective parliaments. International summits clearly serve as catalysts for parliaments to demonstrate their political leadership and commitment to climate action.



Image: Parliamentarians' dialogue at the Africa Climate Summit. Source: CVF GPG

In the wake of the GST and the conclusion of COP28, a critical inquiry looms large: is there a need for the enactment of additional climate legislation, or should the focus be redirected towards optimising the efficacy of existing regulatory frameworks?

The GST process is itself instructive in responding to this inquiry. The purpose of the GST is not to develop new measures but rather to provide an assessment to help governments track and evaluate their progress on climate action and boost climate ambition over time. This evaluation stems from the adequacy of current climate initiatives, the evolving nature of climate challenges, and the capacity of agreements like the Paris Agreement and NDCs to address them. PLS serves a similar function. Significant inroads have been made in adopting climate legislation around the world: the challenge currently lies in whether to strengthen existing laws

and fill gaps as opposed to enacting new laws.⁴⁷ Instead of developing new legislation, there is a need to assess, track, and evaluate the effectiveness of existing legislation to ensure that current laws can support progress toward achieving the Paris Agreement goals. This process would then inform whether enacting additional legislation is necessary. PLS can further produce insights on whether existing legislative frameworks have the potential to address climate issues effectively but are not being enforced or implemented fully. Measures can therefore be developed to ensure their efficacy.

The GST evaluation should therefore include a component emphasising the review of climate legislation, which can be conducted by parliaments through the process of PLS. While lawmaking is an inherent function of parliaments, in most jurisdictions, the government typically takes the lead in initiating legislation. The executive can delay or halt the introduction of legislation by members of parliament through private member bills. Once PLS is conducted by the legislature, any amendments to existing legislation must be approved by the executive.

The next chapter deals with PLS as a critical linchpin for the effective monitoring and review of climate and environmental legislation and advises decision makers, including parliaments, to conduct PLS as an integral part of the GST.

⁴⁷ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation through Post-Legislative Scrutiny: Manual for Parliaments' (*Westminster Foundation for Democracy*, July 2023) <<https://www.wfd.org/what-we-do/resources/parliamentary-innovation-through-post-legislative-scrutiny>> accessed 20 March 2024.

3. Post-legislative scrutiny

3.1. Introduction to PLS

States use legislative measures as a means to communicate citizens' rights and responsibilities regarding environmental stewardship.⁴⁸ Parliaments all over the world enact many laws and they also approve the collection, provision, and allocation of state resources but only a few of those parliaments actually know what happens after the laws are put into operation.⁴⁹ Parliaments hold a significant role in fostering transparent governance, extending beyond mere questioning of government ministers and officials in parliamentary sessions.⁵⁰ It is imperative for parliaments to adopt a more proactive stance in monitoring the implementation and effects of enacted laws, achieved through the execution or commissioning of PLS.⁵¹ The authority to conduct PLS is derived from different sources, such as ministerial undertakings, review clauses in legislation, or sunset clauses.⁵²

PLS serves as a crucial oversight mechanism aimed at evaluating the implementation gaps within legislation.⁵³ The aim of PLS is to assess, among various factors, the legislation's effectiveness in addressing climate change and safeguarding the environment, identifying both positive and negative impacts.⁵⁴ It facilitates the ongoing assessment and evaluation of laws to

⁴⁸ Herman de Jager, 'Importance of Legislation' (2000) Auditing SA <https://repository.up.ac.za/bitstream/handle/2263/14758/DeJager_Importance%282000%29.pdf?sequence=1&isAllowed=y> accessed 20 March 2024.

⁴⁹ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation through Post-Legislative Scrutiny: Manual for Parliaments' (*Westminster Foundation for Democracy*, July 2023) <https://www.wfd.org/what-we-do/resources/parliamentary-innovation-through-post-legislative-scrutiny> accessed 20 March 2024; 'What is the role of Parliament?' (UK Parliament) <https://www.parliament.uk/about/how/role/> accessed 25 April 2024.

⁵⁰ UK DA, 'Not All Scrutiny Is Equal: How Parliaments Vary in Scrutinising the Implementation of Legislation' (*Democratic Audit*, 26 March 2020) <https://www.democraticaudit.com/2020/03/26/not-all-scrutiny-is-equal-how-parliaments-vary-in-scrutinising-the-implementation-of-legislation/> accessed 20 March 2024.

⁵¹ *ibid.*

⁵² Franklin De Vrieze, 'Principles of Post-Legislative Scrutiny by Parliaments' (*Westminster Foundation for Democracy*, January 2018) <<https://www.wfd.org/sites/default/files/2022-05/principles-of-post-legislative-scrutiny-by-parliaments.pdf>> accessed 20 March 2024.

⁵³ 'Post-Legislative Scrutiny' (*Westminster Foundation for Democracy*) <<https://www.wfd.org/accountability-and-transparency/post-legislative-scrutiny>> accessed 21 March 2024.

⁵⁴ *ibid.*

determine whether they have effectively realised their intended objectives.⁵⁵ Additionally, PLS serves as a means of ensuring that legislative measures benefit the targeted population as intended, while also evaluating their broader societal impact.⁵⁶

The primary focus now is on enhancing and bridging existing legal frameworks, rather than creating new ones.⁵⁷ With established laws, the responsibility shifts to parliament to concentrate on implementation and ensuring legislation that is resilient to climate challenges.⁵⁸ By scrutinising climate legislation within the context of PLS, parliaments can identify gaps in legislation and propose evidence-based solutions to reinforce those existing laws.⁵⁹

3.2. PLS in the parliamentary structure and the means for conducting PLS

There are various approaches that may be employed to conduct PLS and parliaments employ different approaches based on their parliamentary structures. The approach employed to conduct PLS largely depends on the structures, resources, capacity, and capabilities that are available.⁶⁰ There are various institutions that initiate and conduct PLS and they can include parliamentary committees, government departments or ministries, independent regulatory bodies or international organisations or bodies.⁶¹

⁵⁵ *ibid.*

⁵⁶ OECD, *Investing in Climate, Investing in Growth* (OECD Publishing 2017) <https://read.oecd-ilibrary.org/economics/investing-in-climate-investing-in-growth_9789264273528-en> accessed 4 April 2024.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ Franklin De Vrieze & Victoria Hasson, 'Comparative study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance' (Westminster Foundation for Democracy, 2017) <<https://www.wfd.org/sites/default/files/2022-01/Comparative-Study-PLS-WEB.pdf>> accessed on 20 March 2024.

⁶¹ Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies* (2020) 358 <<https://www.tandfonline.com/doi/epdf/10.1080/13572334.2020.1780008?needAccess=true>> accessed on 20 March 2024.

Box 7: Who conducts PLS¹?

Country	Institution
UK	UK parliamentary committees (all select committees may conduct PLS as part of their routine scrutiny work). Similar processes exist for the UK's devolved legislatures where committees can also carry out PLS inquiries.
South Africa	External panel of senior experts (an external High-Level Panel on the Assessment of Legislation and the Acceleration of Fundamental Change was commissioned by parliament to conduct a systematic PLS on laws passed since the democratic transition in 1994).
Canada	Parliamentary committees (the (regular) practice of sunset legislation empowers the federal parliament to re-examine laws after an established period of time).
India	Various commissions outside of parliament, such as the Law Commission and Standing Committees of Parliament.
Lebanon	Speaker of Parliament established a Special Committee on Post-Legislative Scrutiny.
Indonesia	Parliamentary committee (standing committee on legislation is responsible for monitoring implementation of laws, including legal challenges against specific laws in a constitutional court).
Switzerland	The federal parliament set up in 1991 the Parliamentary Control of the Administration, a specialised service which carries out evaluations on behalf of Parliament.

Source: De Vrieze F and Hassen V, 'Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for Its Place in Democracy Assistance'⁶²

⁶² Franklin De Vrieze & Victoria Hasson, 'Comparative study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance' (*Westminster Foundation for Democracy*,

The nomenclature or specific entity responsible for conducting PLS of climate and environmental laws may vary from one jurisdiction to another.⁶³ The significance lies in the institutionalisation of PLS in a manner that promotes collaboration among diverse stakeholders.⁶⁴ This inclusive approach involves parliamentary committees, government agencies, independent review bodies, research organisations, and the public. The below box demonstrates how the uptake of PLS remained static and slow until PLS was institutionalised in its fifth session as a function of the Public Accounts Committee.⁶⁵

Box 8: PLS in the Scottish Parliament¹

Session	Number of PLS Focused Inquiries
Second (2003-2007)	5
Third (2007-2011)	3
Fourth (2011-2016)	5 (data only went up to 2014)
Fifth (2016-2021)	11
Sixth (2021 – Present)	8 (to date)

Source: Thomas Caygill (November 2023) Blog Post 'Institutionalising Post-Legislative Scrutiny'⁶⁶

Emerging as a distinctive type of committee, 'committees for the future' are garnering recognition for their capacity to offer crucial insights into evolving challenges, notably climate

2017) <<https://www.wfd.org/sites/default/files/2022-01/Comparative-Study-PLS-WEB.pdf>> accessed on 20 March 2024.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ Thomas Caygill, Blog Post 'Institutionalising Post-Legislative Scrutiny,' (*SPICe Spotlight*, 6 November 2023) <<https://spice-spotlight.scot/2023/11/06/institutionalising-post-legislative-scrutiny/>> accessed 5 May 2024.

⁶⁶ *ibid.*

change, and to contribute to the formulation of effective policy responses.⁶⁷ Comprising diverse stakeholders such as governmental bodies and private entities, Future Committees play a pivotal role in proactively addressing nascent issues.⁶⁸ These committees serve as invaluable platforms for policymakers to anticipate future demands and craft policies that are robust and adaptable to long-term trends.⁶⁹ By facilitating collaboration among stakeholders and fostering forward-thinking approaches, ‘committees for the future’ empower decision makers to navigate complex challenges and promote sustainable development.

The argument can therefore be made that in order to ensure a more systematic approach to PLS of environmental and climate legislation the institutionalisation thereof leads to more such scrutiny.⁷⁰

3.3. Parliaments’ role in conducting PLS of environmental and climate legislation

To conduct PLS of environmental and climate legislation effectively, it is imperative to adopt a methodological approach. While the evaluation of legislation's effectiveness is typically attributed to the body tasked with implementing the legislation,⁷¹ PLS can be undertaken by various entities, including parliaments, parliamentary committees, or independent bodies.

As previously suggested, the authority to conduct PLS is derived from different sources, such as ministerial undertakings, review clauses in legislation, or sunset clauses.⁷² PLS is described as a broader concept that takes into consideration the “idea that the results and effects of legislation can be used to correct and improve it.”⁷³ PLS may be triggered by a clause to

⁶⁷ ‘Committee for the Future’ (*Eduskunta Riksdagen*)

<<https://www.eduskunta.fi/EN/valiokunnat/tulevaisuusvaliokunta/Pages/default.aspx>> accessed 5 May 2024.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Thomas Caygill, Blog Post ‘Institutionalising Post-Legislative Scrutiny,’ (*SPICe Spotlight*, 6 November 2023)

<<https://spice-spotlight.scot/2023/11/06/institutionalising-post-legislative-scrutiny/>> accessed 5 May 2024.

⁷¹ Maria Mousmouti, *Designing Effective Legislation* (Edward Elgar Publishing 2019) 89.

⁷²De Vrieze F, ‘Principles of Post-Legislative Scrutiny by Parliaments’ (January 2018)

<<https://www.wfd.org/sites/default/files/2022-05/principles-of-post-legislative-scrutiny-by-parliaments.pdf>> accessed March 20, 2024.

⁷³ Maria Mousmouti, *Designing Effective Legislation* (Edward Elgar Publishing 2019) 89.

conduct the evaluation,⁷⁴ as exemplified by the Regulations of the European Union's CBAM.⁷⁵ The role of parliaments in conducting PLS of climate and environmental legislation is multifaceted. Parliaments are uniquely positioned to examine the responsiveness of governments to both domestic and global climate change concerns and to ensure executive accountability for their actions or inactions.⁷⁶

PLS of environmental and climate legislation can follow a structured process, encompassing 11 steps⁷⁷ aimed at efficiently organising and executing PLS inquiries of climate and environmental legislation.⁷⁸ To illustrate this, the below example aligns the evaluation process of the CBAM⁷⁹ with the 11 steps, providing insights into how parliaments can leverage the 11 steps to conduct PLS of environmental and climate legislation.

⁷⁴ *ibid.*

⁷⁵ 'Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism' (2023) Official Journal of the European Union L 130/52 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956>> accessed 22 March 2024.

⁷⁶ Inter-Parliamentary Union, 'Parliamentary Action Plan on Climate Change Scaling up Climate Action by Parliaments and the IPU' (2016) <[Http://archive.ipu.org/pdf/publications/climat16-e.pdf](http://archive.ipu.org/pdf/publications/climat16-e.pdf)> accessed on 22 March 2024.

⁷⁷ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation Through Post-Legislative Scrutiny: A New Manual for Parliaments' (2023), 28 <https://www.wfd.org/sites/default/files/2023-06/wfd_pls_guide_pls_series_4_new.pdf> accessed 22 March 2024.

⁷⁸ *ibid*

⁷⁹ 'Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism' (2023) Official Journal of the European Union L 130/52 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956>> accessed 22 March 2024.

Case Study: EU Carbon Border Adjustment Mechanism

This example provides an overview to the process of conducting PLS of environmental or climate change legislation, using the 11 steps for conducting PLS.

Steps to be undertaken when conducting climate and environmental PLS

Step 1: Define the objectives and scope of PLS

The entity conducting PLS must set clear objectives and provide a scope for conducting PLS by developing clear terms of reference. When conducting climate and environmental PLS the objectives may refer to a specific focus area, such as adaptation measures, emissions reduction targets or regulatory compliance.

Article 30 of the CBAM provides that the assessment report before the end of the transitional period of the CBAM shall include, inter alia, the following:

“2. Before the end of the transitional period... the Commission shall present a report to the European Parliament and to the Council on the application of this Regulation. The report shall contain an assessment of:

- (a) the possibility to extend the scope to...embedded indirect emissions... (b) the criteria to be used to identify goods to be included... (c) the technical requirements for calculating embedded emissions for other goods... (d) the progress made in international discussions regarding climate action;
- (e) the governance system, including the administrative costs;
- (f) the impact of this Regulation on goods listed in Annex I imported from developing countries with special interest to the least developed countries as identified by the United Nations (LDCs) and on the effects of the technical assistance given;

Step 2: Collect background information and prepare a data collection plan

The entity conducting PLS must collect background information and compile a data collection plan which they will use throughout the PLS process to collect the relevant information and data from the various sources.

Although the CBAM regulations do not explicitly provide for the development of a data collection plan, it does throughout emphasise the need to collect data. The Preamble provides that:

“During the transitional period, data should be collected for the purpose of further specifying the methodology for the calculation of indirect emissions.”

The data collected throughout the CBAM transitional period, such as the aggregated information on the emission intensity for each country of origin for the different goods, will be used to inform the assessment phase. (Article 30(6)(d)).

Step 3: Identify key stakeholders and prepare a consultation plan

It is important to identify who the relevant stakeholders are and compile a comprehensive list. The entity conducting PLS must also prepare a consultation plan that will guide the consultations with those stakeholders.

The CBAM has been criticised for potentially hindering the sustainable development endeavours of certain LDCs, particularly in Africa.⁸⁰ Efforts are currently underway to facilitate an inclusive and equitable green transition in LDCs. Specifically, the European External Action Service (EEAS) has been assigned the task of co-ordinating with the EU ambassador in Mozambique, as well as EU member state ambassadors, the Mozambique government, the local aluminium sector, and civil society. The objective is to explore how the EU can ensure that the Mozambique aluminium sector serves as a model of fair and effective collaboration in implementing the CBAM between the EU and a non-EU country.⁸¹

Article 30(2)(f) provides that; “the impact of this Regulation on goods listed... imported from developing countries with special interest to the least developed countries as identified by the United Nations (LDCs) and on the effects of the technical assistance given...

Step 4: Review implementing agencies and delegated legislation

The entity conducting PLS must assess whether the implementing agencies have effectively implemented the primary and delegated legislation.

Article 30 of the CBAM regulations on review does not provide explicit reference to reviewing implementing agencies and delegated legislation. But it does provide for the review of the (2)(e)“governance system, including the administrative costs;” and “(6)(b)an assessment of: (i) the governance system, including an assessment of the implementation and administration of the authorisation of CBAM declarants by Member States;”

Delegated legislation is an integral part of the substantive regulations and not referring to such delegated legislation does not preclude its assessment.

Step 5: Conduct consultation and public engagement activities

The entity conducting PLS must engage the public and all relevant stakeholder and gather input with the view to improving the law or way in which the law is being implemented.

Article 30(1) of The CBAM regulations provides that: “The Commission, *in consultation with relevant stakeholders*, shall collect the information necessary with a view to extending the scope of this Regulation...

The imperative to conduct consultation and public engagement activities of the CBAM is closely linked to step 3. Assessment of the CBAM must therefore identify relevant stakeholders to ensure that those affected by its implementation are consulted.

Step 6: Analyse post-legislative scrutiny findings

The entity conducting PLS analyses the information and data collected, and compiles the findings and recommendations.

Article 30(6)(a) of The CBAM regulations provides that: the assessment report must make findings on the impact of the CBAM on: (i) carbon leakage, including in relation to exports; (ii) the sectors covered; (iii) internal market, economic and territorial impact throughout the Union; (iv) inflation and the price of commodities; (v) the effect on industries using goods listed in Annex I; (vi) international trade, including resource shuffling; and (vii) LDCs.

Step 7: Draft the PLS report

The entity conducting PLS then compiles the PLS report.

Article 30(2) of The CBAM regulations provides that “2. Before the end of the transitional period..., the Commission shall present a report to the European Parliament and to the Council on the application of this Regulation. Article 30(3) provides: 3. At least one year before the end of the transitional period, the Commission shall present a report to the European Parliament and to the Council that identifies products further down the value chain of the goods listed in Annex I that it recommends to be considered for inclusion within the scope of this Regulation.”

Article 30(4) provides: “The reports referred to in paragraphs 2 and 3 shall, where appropriate, be accompanied by a legislative proposal by the end of the transitional period, including a detailed impact assessment, in particular with a view to extending the scope of this Regulation on the basis of the conclusions drawn in those reports.”

The review Article makes explicit provision for legislative proposals to improve the regulation.

⁸⁰ Nick Feris, ‘How CBAM threatens Africa’s sustainable development’ (*Energy Monitor*, 2 November 2023) <<https://www.energymonitor.ai/carbon-markets/how-cbam-threatens-africas-sustainable-development/>> accessed 4 May 2024.

⁸¹ Luka Vasilj, Celeste Gonzalez & Andrzej Ancygier, ‘Discussion Paper: CBAM: trade implications and opportunities of EU climate neutrality goals’ (*4i Traction*, 29 April 2023) <https://ca1-clm.edcdn.com/assets/4iT_Discussion_Paper_1_-CBAM.pdf?v=1698409627> accessed 4 May 2024.

Step 8: Disseminate the report and making it publicly accessible

The entity conducting PLS publishes the report and makes it publicly available.

The CBAM under Article 30 does not make explicit provision for the publication of the assessment report. It is however, common cause that reports and decisions of the assessing body are published in the Official Journal of the European Union and are accessible to the public.

Step 9: Invite a response from the government to ‘comply or explain’

Once the report is made available, the government is then invited to respond to the findings and recommendations.

In the context of the CBAM it can be inferred that the Report being made to the Council and Parliament is an imperative for response.

Step 10: Conduct follow up to the post-legislative scrutiny activities

Where government has made commitments as a result of the PLS report, the entity conducting PLS might have to conduct follow-ups to ensure that the government and other relevant agencies honour their commitments.

The review clause provides corrective measures for instances “where an unforeseeable, exceptional and unprovoked event has occurred that is outside the control of one or more third countries subject to the CBAM, and that event has destructive consequences on the economic and industrial infrastructure of such country or countries concerned, the Commission shall assess the situation and submit to the European Parliament and to the Council a report, accompanied, where appropriate, by a legislative proposal, to amend this Regulation by setting out the necessary provisional measures to address those exceptional circumstances.” (Article 30(7))

Step 11: Evaluate the post-legislative scrutiny inquiry results and process

At the end of the PLS process, the entity conducting PLS evaluates the results of the PLS, and also how the PLS was conducted, with the view to improve in the future.

This is closely linked to the example provided in Step 10 for corrective measures of any unintended consequences of the PLS process.

3.4. Data collection and diversification of data sources for the purposes of conducting evidence-based PLS

Evidence-based PLS involves using empirical data, research findings, and objective analysis to assess whether the intended outcomes of a law have been achieved.⁸² This approach evaluates the legislation's impact, effectiveness, and efficiency post-implementation.⁸³ By prioritising evidence-driven methodologies, PLS endeavours to provide objective assessments of how climate change and environmental laws have influenced society, whether they have achieved their intended objectives, and what refinements or adjustments may be necessary.

Box 9: Kenyan Parliamentary Caucus on Evidence-Informed Oversight and Decision-Making (PC-EIDM)

In 2015, the Kenyan Parliament established a non-partisan Parliamentary Caucus on Evidence-Informed Oversight and Decision-Making (PC-EIDM). The PC-EIDM was established with a view of encouraging parliamentarians to embrace evidence-informed decision making when exercising their legislative function of oversight, lawmaking, budget making and representation.

The caucus' nonpartisan nature serves as an excellent example of taking an objective approach to addressing a global and national crisis.

Source: Kenyan Parliament's Caucus on Evidence-Informed Oversight and Decision-Making (PC-EIDM) (Inter-Parliamentary Union)⁸⁴

WFD underscores the significance of gathering comprehensive background information and pertinent data as a crucial initial step in preparing for PLS inquiries within the realm of climate

⁸²Trusts TPC, 'Evidence-Based Policymaking: A Guide for Effective Government' (November 2014) <<https://www.pewtrusts.org/~media/assets/2014/11/evidencebasedpolicymakingaguideforeffectivegovernment.pdf>> accessed 21 March 2024.

⁸³David Hirst, 'Post-Legislative Scrutiny of Climate and Environment Legislation Guide for Parliamentary Practice' (Westminster Foundation for Democracy, April 2021) <<https://www.wfd.org/sites/default/files/2021-12/WFD%20post-legislative%20scrutiny%20of%20climate%20and%20environment%20legislation-%20Guide%20for%20parliamentary%20practice.pdf>> accessed 20 March 2024.

⁸⁴ Kenyan Parliament's Caucus on Evidence-Informed Oversight and Decision-Making (PC-EIDM) (Inter-Parliamentary Union, 12 Feb 2020) <<https://www.ipu.org/innovation-tracker/story/kenyan-parliaments-caucus-evidence-informed-oversight-and-decision-making-pc-eidm>> accessed 21 March 2024.

change and environmental legislation.⁸⁵ The primary objective of this data collection is to furnish insights essential for informed PLS endeavours. Effective PLS necessitates the utilisation of both quantitative and qualitative methodologies, active engagement with diverse stakeholders, and consideration of contextual variables that could influence outcomes.

There is a need to broaden data sources that can support parliaments' capacity for legislative scrutiny.⁸⁶ To this end, parliaments may draw upon a variety of sources, including news reports, local government documentation, first-hand experiences and testimonies, CSO assessments submitted to treaty bodies, opinion surveys, academic studies, disaggregated statistical data, business data, CSO reports, official sector analyses, and additional news reports or local government records.

There exists an overabundance of information, particularly for climate and environmental action on the international stage, providing a challenge for MPs to navigate the evidence in the limited amount of time within which they exercise PLS.⁸⁷ The box below describes strategies that have been developed to manage timelines for the Parliament of Finland.⁸⁸ Programmatic work and expert networks of political parties allow legislators to access evidence-based policy positions at short notice and legislators themselves can acquire expertise on thematic focus areas within the climate and environmental discourse to help them independently assess, interpret, and reflect on evidence.⁸⁹

To address the challenge of managing vast quantities of information, parliamentary bodies may employ artificial intelligence (AI) within the PLS process. The integration of AI into PLS procedures can bolster transparency, efficiency, and effectiveness in evaluating legislative outcomes.⁹⁰ AI tools, including large language models (LLMs), have the capacity to revolutionise how legislative institutions assess the societal impact of laws and regulations.⁹¹

⁸⁵ Franklin De Vrieze, 'Legislative Ex-Post Impact Assessments in Europe: Applying a New Assessment Framework for Comparative Institutional Analysis on Post-Legislative Scrutiny by National Parliaments in Europe' [2023] *The Journal of Legislative Studies*.

⁸⁶ *Ibid.*

⁸⁷ Ville Aula, 'Evidence-based policymaking in the legislatures: timeliness and politics of evidence in Finland' (2023) *Policy & Politics*, 51(4), 673-694. <<https://bristoluniversitypressdigital.com/view/journals/pp/51/4/article-p673.xml>> accessed 20 March 2024.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ 'LegisTech: Artificial Intelligence in Parliaments' (Bússola Tech News | Modernisation of Parliaments) <<https://news.bussola-tech.co/legistech-ai>> accessed 4 May 2024.

⁹¹ 'Westminster Foundation for Democracy, 'How Artificial Intelligence and Large Language Models May Impact Transparency' (Westminster Foundation for Democracy, 2023) <<https://www.wfd.org/news/how-artificial-intelligence-and-large-language-models-may-impact-transparency>> accessed 4 May 2024.

These technologies offer automated data analysis, pattern recognition, and the generation of insights from extensive legislative documentation and associated materials.⁹²

The adoption of AI holds promise for rendering PLS more data-driven, comprehensive, and timely, thereby augmenting parliamentary oversight capabilities.⁹³ Nevertheless, while AI tools offer significant potential benefits to the PLS process, parliamentary bodies must exercise caution in their usage. These tools possess the capacity to propagate misinformation, disinformation, or even generate deep fakes, necessitating vigilant oversight and responsible deployment.⁹⁴

Box 10: Strategies to manage timeliness in legislative organisation

	Programmatic work	Legislative specialisation	Expert networks
Legislator	Interpret newly acquired evidence against existing programmes. Lead crafting of new programme documents.	Specialise according to committee memberships and develop personal expertise	Maintain personal connection to expert networks to support access to timely evidence and experts who can interpret it.
Political Party	Maintain party policy platform through programme documents. Interpret when evidence warrants changes in programmes.	Maintain party policy across different policy areas. Facilitate specialisation in party staff and among legislators.	Coordinate party expert networks to support both reactive and proactive work.
Committee	Provide arena where individual bills are interpreted against programmatic policy goals	Facilitate divisions of labour within legislature, political parties and legislators	Provide arena for parties to deploy, validate and expand their expert networks

⁹² The Parliamentarian, ‘Artificial Intelligence in Parliaments’ Traditional Halls: Opportunities, Challenges and Ethical Considerations – Issuu’ (issuu, March 27, 2024) <<https://issuu.com/the-parliamentarian/docs/parl2024iss1finalonlinesingle/s/44994993>> accessed 4 May 2024.

⁹³ *ibid.*

⁹⁴ Inter-Parliamentary Union ‘The AI-Powered Parliament: Risks and Opportunities’ (Inter-Parliamentary Union, 19 April 2024) <<https://www.ipu.org/news/press-releases/2024-04/ai-powered-parliament-risks-and-opportunities>> accessed 1 May 2024.

3.5. Incorporating COP28 and GST outcomes in evaluation criteria

In 2019, a working paper was produced which looked at parliamentary oversight of the SDGs.⁹⁵ The same PLS principles were applied in that regard. It is therefore prudent that the same principles are utilised for scrutiny of COP28 and GST outcomes.⁹⁶ The principles are:

3.5.1. PLS reviews the enactment of law (secondary or delegated legislation and the primary act) and its impact on society, and hence contributes to improving the law itself and people's well-being.

In the context of climate and environmental legislation, it is acknowledged that PLS carries different interpretations among different parliaments and stakeholders.⁹⁷ On a narrower scale, PLS concerns itself with the implementation of laws, examining whether legal provisions have been put into action, how courts have interpreted these provisions, and how legal professionals and citizens have applied them.⁹⁸ On a broader scale, PLS evaluates the outcomes of legislation, considering whether the intended environmental and climate policy objectives have been achieved and their effectiveness.⁹⁹ Therefore, it is advisable for parliaments, when embarking on PLS on climate and environmental legislation, to conduct PLS on both the narrower and broader scale in order to fully examine the effectiveness of the legislation in protecting people from the impacts of climate change and contributing to limiting global warming to below 1.5°C.

Globally, many countries have made great strides in enacting climate and environment legislation in response to their international obligations. Equally, many countries are still lagging behind. For the countries whose climate and environment legislation has been enforced for some years now it is imperative that they undertake PLS exercises considering the COP28 and GST outcomes. The ultimate plan of the Paris Agreement was to reduce global

⁹⁵ Fotios Fitsilis & Franklin De Vrieze, 'Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles' (2019) SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3429635> accessed 20 March 2024.

⁹⁶ *ibid.*

⁹⁷ Fitsilis F and De Vrieze F, 'Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles' [2019] SSRN Electronic Journal

⁹⁸ *ibid.*

⁹⁹ *ibid.*

emissions by 2050 and countries need to show their commitment to that plan.¹⁰⁰ For those countries that enacted legislation in response to the Paris Agreement it's now time to take stock and evaluate the effectiveness of climate and environment legislation in meeting the objectives for which they were enacted. In this regard, taking into consideration the relationship between secondary and primary legislation, they must be reviewed together to present a holistic picture of climate and environment legislation.

3.5.2 PLS provides an opportunity to assess the impact of legislation on issues which cut across different Acts, such as gender or minorities.

One of the main goals of the Paris Agreement is to protect people from the impacts of climate change. PLS presents parliaments an opportunity to assess the strides that climate and environment legislation have taken in protecting people from the effects of climate change. The initial GST technical report, released in September 2023, declared that “the world is not progressing as required to fulfil the long-term objectives of the Paris Agreement”.¹⁰¹ The report specifically emphasised the need for systemic changes to integrate climate resilience and low greenhouse gas emissions practices into widespread adoption.¹⁰² While conducting the PLS, parliaments will examine whether the legislation that is currently in force, if any, is sufficient to lead or address the transition away from fossil fuels, that being one of the outcomes of COP28.

3.5.3 Parliament should consider whether responsibility for PLS should lie with its standing (permanent) Committees or with a dedicated body. PLS should be an inclusive process in which all party groups are able to participate.

Taking into consideration the international obligations in relation to climate and environment legislation, parliaments have an important decision to make as to the role that they will play in PLS relating to climate and environment legislation. In some parliaments, the PLS function is entrusted to a parliamentary committee and in other parliaments, PLS may be conducted by an independent body.

¹⁰⁰ Frederick Gordon, 'Climate Change Policies after the 2015 Paris Agreement' (*L'Europe en Formation*, 2016) < <https://www.cairn.info/revue-l-europe-en-formation-2016-2-page-13.htm> > accessed 20 March 2024.

¹⁰¹ Travers Smith, 'COP28: What Were the Key Outcomes?' (*Travers Smith*, 20 DEC 2023) < <https://www.traverssmith.com/knowledge/knowledge-container/cop28-what-were-the-key-outcomes/> > accessed 21 March 2024.

¹⁰² *ibid.*

Parliaments may conduct PLS through committees with a PLS-specific mandate, a joint committee of the house of parliament, or may entrust PLS in the departmental or thematic committees who then would conduct PLS on legislation in their respective thematic areas.¹⁰³ Parliament may also opt to entrust the PLS function in a completely independent body, that is a body outside of parliament. There are advantages and disadvantages to each of these models.

In instances where PLS is overseen by either the parliament itself or a designated parliamentary committee, it serves as a mechanism for holding the government accountable for the implementation and consequences of laws.¹⁰⁴ This oversight helps prevent potential abuses of power by governmental bodies or other entities. However, the effectiveness of PLS conducted by parliamentary committees can be impeded by various resource constraints, including limitations in time, manpower, expertise, and funding.¹⁰⁵

The presence or absence of political will plays a crucial role and can be perceived as both advantageous and disadvantageous. Strong political will can propel PLS forward, whereas weak political will may hinder or delay the process, potentially resulting in partial assessments and undermining the credibility of scrutiny outcomes.¹⁰⁶ Moreover, when PLS is carried out by parliamentary committees, there is a risk that these committees may rehash arguments already made during the legislative process, thereby losing focus on comprehensive scrutiny.¹⁰⁷

Alternatively, entrusting PLS to an independent body presents its own set of pros and cons. One notable advantage is that an independent body can offer unbiased assessments of legislation's effectiveness and impact, free from political influences or interests. Additionally,

¹⁰³ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation Through Post-Legislative Scrutiny: A New Manual for Parliaments' (2023), 22 <https://www.wfd.org/sites/default/files/2023-06/wfd_pls_guide_pls_series_4_new.pdf> accessed 22 March 2024.

¹⁰⁴ Franklin De Vrieze, 'A Guide to Post-Legislative Scrutiny' (*Westminster Foundation for Democracy*, November 2017) 37 <<https://www.wfd.org/what-we-do/resources/guide-post-legislative-scrutiny>> accessed 20 March 2024.

¹⁰⁵ Franklin De Vrieze & Victoria Hasson, 'Comparative study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance' (*Westminster Foundation for Democracy*, 2017)13. <<https://www.wfd.org/sites/default/files/2022-01/Comparative-Study-PLS-WEB.pdf>> accessed on 22 March 2024.

¹⁰⁶ Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies* (2020) 358 <<https://www.tandfonline.com/doi/epdf/10.1080/13572334.2020.1780008?needAccess=true>> accessed on 20 March 2024.

¹⁰⁷ Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies* (2020) 357 <<https://www.tandfonline.com/doi/epdf/10.1080/13572334.2020.1780008?needAccess=true>> accessed on 20 March 2024.

tapping into diverse expertise can lead to more informed evaluations. However, establishing and maintaining an independent body can be financially burdensome, requiring significant funding, staffing, and time investments.¹⁰⁸ Furthermore, such bodies may lack the authority to ensure the implementation of their recommendations, limiting their efficacy.

Overall, whether conducted by parliamentary committees or independent bodies, PLS serves as a critical component of democratic governance, though each approach carries its own challenges and benefits.

3.5.4 Public engagement in PLS enables access to additional sources of information, increases the credibility of the findings, and enhances public trust in democratic institutions.

One of the main goals of the Paris Agreement is to protect people from the impacts of climate change. Against this background, it is imperative that any PLS on climate and environment legislation contains a robust public engagement programme to obtain a wide range of views. The methods to be used for collecting data and conducting consultations should be crafted to ensure accessibility for stakeholders, considering their unique situations and while safeguarding where appropriate their identity and dignity.¹⁰⁹ The effectiveness of PLS is dependent on the input from stakeholders and the quality of information they offer through written, oral, or online submissions and on access to, and the quality of, information from government or state sources as it is often these bodies that hold the material on implementation.¹¹⁰ It is, therefore, imperative to determine the format and order of consultation activities to guarantee a consistent and gradual provision of information.¹¹¹

¹⁰⁸ Franklin De Vrieze & Victoria Hasson, 'Comparative study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance' (Westminster Foundation for Democracy, 2017) 13. <<https://www.wfd.org/sites/default/files/2022-01/Comparative-Study-PLS-WEB.pdf>> accessed on 20 March 2024; Franklin De Vrieze, 'A Guide to Post-Legislative Scrutiny' (Westminster Foundation for Democracy, November 2017) 37 <<https://www.wfd.org/what-we-do/resources/guide-post-legislative-scrutiny>> accessed 20 March 2024.

¹⁰⁹ Climate Vulnerable Forum 'Mapping Report Climate Change Laws And Policies In Climate Vulnerable Forum (CVF) Countries' (June 2022) <<https://www.thevcvf.org/wp-content/uploads/2022/06/GLOBE-CVF-Climate-Laws-Report-June-2022.pdf>> accessed on 22 March 2024.

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

3.6. Assessing implementation of climate and environmental legislation: effectiveness, alignment and enforcement

Legislation is said to be effective if it has achieved its purpose.¹¹² Effectiveness looks at “the capacity of the legislative text to contribute to regulatory efficacy”.¹¹³ For example, the effectiveness of climate and environmental legislation can be assessed by examining how they contribute to the decrease of greenhouse gas emissions, advancement of renewable energy usage, preservation of biodiversity, and alleviation of climate change consequences in line with the Paris Agreement and the NDCs. For it to be said that climate and environmental laws have been successful, there must be noticeable enhancements in environmental health and sustainable practices.

The box below provides probing questions that parliaments may ask when assessing the effectiveness of climate and environmental legislation.¹¹⁴

Box 11: Questions parliaments may ask when assessing effectiveness¹

1. What were the desired regulatory results pursued by means of the legislation?
2. Have the selected regulatory mechanisms led to the desired regulatory results, as evidenced by empirical data?
3. Has the problem/gap in the law been addressed by new legislation, as evidenced by data?
4. Were there any issues arising from how the legislators chose to express their ideas and intentions and how can these be addressed?
5. Is efficacy achieved?
6. If not, was the legislation effective as evidenced by 3 and 4?
7. If not, how can the issues be addressed: repeal; repeal and re-enact; amend the legislation?
8. In how many years does the legislation need to be re-evaluated?

¹¹² Xanthaki H, ‘An Enlightened Approach to Legislative Scrutiny: Focusing on Effectiveness’ (2018) 9 European Journal of Risk Regulation 431.

¹¹³ *ibid.*

¹¹⁴ *Ibid*

Box 11 source: Xanthaki H, 'An Enlightened Approach to Legislative Scrutiny: Focusing on Effectiveness'¹¹⁵

When designing climate and environmental legislation, it is vital for parliaments to align it with international agreements such as the Paris Agreement or the SDGs, scientific recommendations, and societal needs.¹¹⁶ Just as it is important to ensure that climate and environmental legislation is properly aligned, it is imperative that climate and environmental legislation clearly sets out who is accountable for the implementation of the main obligations in the legislation to avoid a situation where the intentions and the actions do not match.¹¹⁷

Enforcement mechanisms are essential for ensuring compliance with climate and environment laws.¹¹⁸ Strong enforcement measures, including monitoring, reporting, and verification systems, are necessary to deter violations and hold accountable those who do not comply with regulations.¹¹⁹ Adequate penalties for non-compliance also play a crucial role in enforcing environmental legislation.¹²⁰ In conjunction with the enforcement mechanism, co-ordination, and collaboration amongst role players tasked with the enforcement of climate and environmental legislation is important to the success of enforcement mechanisms.¹²¹

3.7. Periodic reviews for implementation progress of GST and COP28 mandates – making PLS an integral component of the GST

Periodic review of climate and environmental legislation is crucial to ensure compliance with the global Stocktake and outcomes of COP28. The review process plays a significant role in assessing whether the existing laws and regulations are effective in addressing the

¹¹⁵ Xanthaki H, 'An Enlightened Approach to Legislative Scrutiny: Focusing on Effectiveness' (2018) 9 European Journal of Risk Regulation 431.

¹¹⁶ Ian Cochran & Alice Pauthier, 'A Framework for Alignment with the Paris Agreement: Why, What and How for Financial Institutions?' (September 2019) <<https://unfccc.int/sites/default/files/resource/Aligning%20with%20the%20Paris%20Agreement%20-%20Part%201%20-%20CPI-I4CE.pdf>> accessed 20 March 2024.

¹¹⁷ Catherine Higham, Alina Averchenkova, Joana Setzer & Arnaud Koehl 'Accountability Mechanisms in Climate Change Framework Laws' (2021) Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/11/Accountability-mechanisms-in-climate-change-framework-laws.pdf>> accessed 20 March 2024.

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

environmental challenges, meeting international obligations, and achieving sustainability goals. By conducting PLS regularly, parliaments can update climate and environmental legislation to assist adapting to changing circumstances and align their legal frameworks with evolving global standards. There are several triggers that would necessitate the start of a PLS exercise, and they are contained in the box below.

Box 12: Possible triggers for PLS

- evidence brought to the attention of a committee indicating that an act needs to be reviewed due to potential adverse impact
- a report from an independent oversight institution
- a review of legislation, for example by a law reform commission
- new academic research
- sunset clause
- ministerial undertaking
- review clauses in legislation
- media reports and events in the public space
- pressure from civil society or business
- an individual case or case law
- interests of members of parliament

Source: Higham C, Averchenkova A, Setzer J and Koehl A (2021) 'Accountability Mechanisms in Climate Change Framework Laws'¹²²

However, despite these triggers and legal obligations for PLS that might exist, to aid in the international reporting obligations on climate and environmental legislation it is recommended that PLS be conducted in line with the reporting obligations. This will require periodic reviews which are focused on the progress made towards the implementation of GST and COP28 mandates. In this regard, parliaments should co-ordinate their periodic reporting schedules with the Global Stocktake process, this will ensure the prompt delivery of their findings and recommendations. Through this co-ordination, parliaments can streamline the evaluation of how their legislative efforts either support or impede advancements towards common global goals. To achieve their reporting objectives, parliaments may, if needed, establish specialised

¹²² Climate Vulnerable Forum 'Mapping Report Climate Change Laws And Policies In Climate Vulnerable Forum (CVF) Countries' (June 2022) <<https://www.thecvf.org/wp-content/uploads/2022/06/GLOBE-CVF-Climate-Laws-Report-June-2022.pdf>> accessed on 22 March 2024.

committees tasked with overseeing and assessing climate and environmental legislation. These specialised committees may engage in PLS in collaboration with key organisations who are conducting the assessment process of a country for the purposes of the global stocktake process. The specialised committee may share its PLS findings with these organisations to contribute valuable data and inform the global stocktake assessments.

4. Institutional collaboration

4.1. Enhancing inter-government co-operation and collaboration with international organisations for technical assistance

Good PLS is described as a collaborative effort led by the parliament and requires collaboration of actors from within and outside the parliament.¹²³ Outcome 9 of the IPU's Parliamentary Meeting at COP28 emphasises the need “for cross-sectoral collaboration within national governments and between parliaments and other governmental bodies to ensure a holistic approach to climate action, integrating environmental, social and economic considerations.”¹²⁴

Parliaments may lack the technical expertise to fully interrogate the effectiveness of legislation. Parliaments may, if needed, therefore engage technical experts on the practical use of the legislation including thematic experts, citizens, business sector, and CSOs as lay users of legislation.¹²⁵

¹²³ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation Through Post-Legislative Scrutiny: A New Manual for Parliaments' (2023), 14 <https://www.wfd.org/sites/default/files/2023-06/wfd_pls_guide_pls_series_4_new.pdf> accessed 22 March 2024.

¹²⁴ Inter-Parliamentary Union, 'IPU Final Outcome Document – Parliamentary Meeting at COP28' (6 December 2023) <<https://www.ipu.org/sites/default/files/Final%20Outcome%20Document-%20Parliamentary%20Meeting%20COP28-e.pdf>> accessed 20 March 2024

¹²⁵ Franklin De Vrieze & Maria Mousmouti, 'Parliamentary Innovation Through Post-Legislative Scrutiny: A New Manual for Parliaments' (2023), 14 <https://www.wfd.org/sites/default/files/2023-06/wfd_pls_guide_pls_series_4_new.pdf> accessed 22 March 2024.

Effective PLS depends on inter-government co-operation between the executive and parliamentary stages of policymaking and although the executive and parliament play distinctive roles, isolation between the two can compromise legislative quality.¹²⁶

For instance, unreliable government plans or lack of information provided to parliament hinders effective scrutiny and deliberation. Similarly, failure to communicate amendments during the legislative process limits exploration of their implications. Thus, effective evidence-based law-making necessitates continuous two-way flows of evidence and feedback between the executive and legislative branches throughout all stages of policymaking.¹²⁷

The outcomes of the IPU's Parliamentary Meeting at COP28 called for recognising the important role of the IPU and other international and regional parliamentary bodies in strengthening inter-parliamentary relations through the sharing of best practices in climate legislation.¹²⁸ The outcomes also called for active engagement of IPU committees to foster informed debates and discussions, ensuring diverse perspectives in sharing experiences, legislation, and policies related to climate change; crafting and implementing IPU climate change tools such as the 10 actions for greener parliaments; and supporting collaboration between the IPU, the UNFCCC, and UNEP to strengthen the capacities of national parliaments in addressing climate change.¹²⁹

At COP28, members of parliament convened the very first Accountability Summit hosted in parallel with the culmination of the GST. The summit sought to assess the contribution of parliamentarians in enhancing accountability to ensure that decisions and policies at both national and international levels align with the goal of limiting temperature increases to 1.5°C. It also focused on implementing the Sendai Framework to mitigate existing risks and prevent the emergence of new ones, as well as enhancing and expanding sufficient climate finance, particularly for adaptation measures.¹³⁰

¹²⁶ Bagrat Tunyan & Klaus H. Goetz, 'Parliaments and evidence-based lawmaking in the Western Balkans: A comparative analysis of parliamentary rules, procedures and practice' (2024) SIGMA Papers, No. 68, OECD Publishing, <<https://www.oecd-ilibrary.org/docserver/e95bebb9-en.pdf?expires=1712163039&id=id&accname=guest&checksum=AFA4DB7F95250CE81196457C26CF5890>> accessed 22 March 2024.

¹²⁷ *ibid.*

¹²⁸ Inter-Parliamentary Union, 'IPU Final Outcome Document – Parliamentary Meeting at COP28' (6 December 2023) <<https://www.ipu.org/sites/default/files/Final%20Outcome%20Document-%20Parliamentary%20Meeting%20COP28-e.pdf>> accessed 20 March 2024.

¹²⁹ *ibid.*

¹³⁰ Climate Vulnerable Forum 'Parliamentary Accountability Summit at COP28' (4 December 2023) <<https://www.thevcf.org/our-voice/news/parliamentary-accountability-summit-at-cop28/#:~:text=The%20Summit%20explored%20the%20role,C%2C%20ensuring%20implementation%20of%20the>> accessed 20 March 2024.

The summit recognised the inherent function of parliaments to hold governments to account for the commitments they make towards climate change and leveraged the opportunity presented at COP28 and the GST as most opportune to assess progress and demonstrate parliamentary leadership. Looking ahead, the summit presents a distinctive opportunity for parliamentarians to conduct thorough evaluations of climate change laws, building on the mechanism of PLS to assess the effectiveness and implementation of climate legislation, fostering informed decision making, and promoting greater transparency and accountability in addressing climate challenges.

In this setting, to ensure greater collaboration and co-operation of PLS of environmental and climate legislation internationally, it is beneficial for parliaments and parliamentary institutions to consider establishing a thematic CoP-PLS for climate and environmental legislation.

Box 13: CoP-PLS for climate and environmental legislation

The CoP-PLS allows for a more systematic and structured approach towards PLS anchored in these functions:

- Networking - providing an opportunity to those who work in the area to engage and build a network of associates from which collaboration, information exchange and learning can occur
- Knowledge sharing - an opportunity to exchange ideas on how PLS works in the national context, and its successes and challenges; and to explore strategies on how to overcome these challenges
- Standard setting - promote standard practices in the area of legislative evaluation
- Innovating - consider innovative work on legislative evaluation and PLS
- Communicating and advocating - increase the communication and outreach towards audiences which might not be aware of or informed about ongoing PLS work important policy developments around, for instance, SDGs or climate change policies
- a committee deciding that it will undertake regular scrutiny of the implementation of a law

Source: <https://agora-parl.org/blog/global-community-practice-post-legislative-scrutiny>

By establishing a thematic CoP-PLS for the purposes of conducting PLS of climate change and environmental legislation, parliaments can build capacities and external networks to assist MPs and committees with PLS.

5. Challenges and opportunities

5.1 Challenges on conducting PLS of climate and environmental legislation

5.1.1 Symbolic policy making¹³¹

It is said that all policy frameworks have symbolic dimensions aimed at shaping political and social discourse.¹³² The climate and environmental policy frameworks are not immune to this symbolism, often categorised by half-heartedness and delay. Symbolism may, however, maintain political momentum.¹³³ The GST is an important catalyst to move beyond symbolic gestures to achieve the Paris Agreement goals and PLS can equally catalyse the implementation of legislation and address the gaps between policy adoption and the policy outcomes for climate and environmental legislation.

5.1.2 Accountability

Tracking climate change legislation is fraught with giving credit to climate actions (including legislation) that have no tangible ability to address the impacts of climate change or reduce climate vulnerability and risk.¹³⁴ It is necessary to conduct PLS of climate laws to assess their impact.

5.1.3 Overabundance of information¹³⁵

The abundance of information available poses a significant challenge to parliamentarians tasked with conducting evidence-based PLS within limited timeframes. Despite the necessity of

¹³¹ Robbert Biesbroek & Alexandra Lesnikowski, 'Unpacking symbolic policymaking for the first Global Stocktake under the Paris Agreement'. *npj Climate Action* 2, 50 (2023) <<https://www.nature.com/articles/s44168-023-00090-1#citeas>> accessed 22 March 2024.

¹³² *ibid.*

¹³³ Megan Barry & Ingolfur Blühdorn, 'Symbolic environmental politics' in Castree N, Hulme M, Proctor JD (eds) *Companion to Environmental Studies* <https://www.wu.ac.at/fileadmin/wu/d/i/ign/Symbolic_Environmental_Politics.pdf> accessed 22 March 2024.

¹³⁴ *ibid.*

¹³⁵ Ville Aula, 'Evidence-based policymaking in the legislatures: timeliness and politics of evidence in Finland' (2023) *Policy & Politics*, 51(4), 673-694. <<https://bristoluniversitypressdigital.com/view/journals/pp/51/4/article-p673.xml>> accessed 20 March 2024.

thorough analysis, MPs often face constraints in navigating vast amounts of data to inform their scrutiny activities effectively. This challenge is further compounded by the dynamic nature of climate change legislation and the need for timely responses to emerging issues. As such, there is a pressing need to develop strategies to streamline the process of accessing and synthesising relevant evidence, ensuring that MPs can conduct comprehensive PLS inquiries.

5.2 Leveraging opportunities to strengthen legislative responses

It is argued that robust domestic laws are associated with a more favourable stance in international negotiations and a country's national legislative efforts in mitigation and adaptation elevates its international negotiating position.¹³⁶ Legislators can influence both domestic and international climate ambition, as seen by parliaments having pushed for and passed the General Law on Climate Change in 2012 in Mexico and lowering the emissions reduction target in the UK's Climate Change Bill.¹³⁷

Integrating PLS into the GST process offers a unique opportunity to align legislative evaluations with global climate goals. Establishing a thematic CoP-PLS of climate change and environmental legislation would further bolster parliamentary capacities and networks, enabling MPs and committees to conduct more comprehensive and impactful PLS activities.

¹³⁶ Globe International 'National climate change legislation: The key to more ambitious international agreements' (July 2013) <https://www.cakex.org/sites/default/files/documents/CDKN_Globe_International_final_web.pdf> accessed 20 March 2024.

¹³⁷ *ibid.*

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