

PART 2

The climate policy framework

**Examining the effectiveness and
accountability of current processes**

2.0

The climate policy framework

Examining the effectiveness and accountability of current processes

Essential climate policies are still in the making and the institutional architecture for deciding on specific policy options is vast, diverse and rapidly evolving. The contributions in this part focus on a number of key policy processes at different levels that all play a role in devising the overarching policy frameworks that will shape the global response to climate change. Process matters. The extent to which climate policy-making is organized to be transparent, accountable and inclusive determines how affected by policy capture, undue influence or corruption the eventual policies are likely to be. The analysis shows clearly that despite disproportionate attention to global climate summits, other important decisions are being taken from global to local level. This patchwork of institutions and forums for climate governance is mirrored by a proliferation of collective agreements, estimated to have surpassed 500 over the last 30 years.¹

The opening contribution by Peter Newell sets the scene and traces the evolution of the most visible segment of global climate policy-making, the series of international summits that gave rise to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and, more recently the Copenhagen Accord. Newell probes the inclusiveness of the process, the capability of different actors to engage in a meaningful way and – with a view to the events in Copenhagen – discusses the tension between inclusiveness and manageability. Important decisions on the direction of climate policies are also taken at regional level. Progressive policies at European Union (EU) level, for example, can act as pacemaker for positive change. At the same time, failure by the EU to take action offers good cover for others to shirk their responsibilities. The contribution by Anne Therese Gullberg scrutinises two important junctures in EU policy-making with regard to the relative influence that business and green non-governmental organizations (NGOs) managed

to bring to the table. Her analysis contributes hard empirical evidence to a debate often characterized by anecdotal or ideologically driven claims.

Honing in on key policy-making processes at national level, Paul Blumenthal provides key figures and a compelling case study to demonstrate how climate lobbying in the US has dramatically increased and may veer towards manipulative, illegal tactics. His contribution also highlights how much more diverse the landscape of interests and influence has become and seeks to provide a first answer to the question of whether this diversification is actually transforming established power balances.

Decision-making processes at city level are easy to underestimate, yet they play a key role in shaping the course of climate policies. The twin challenges of managing urban growth and establishing sound governance systems are evident. None of the 20 urban areas projected to grow fastest between 2006 and 2020 are ranked among the 70 countries perceived to be least corrupt according to the Transparency International (TI) Corruption Perceptions Index 2010.² David Dodman and David Satterthwaite present a fascinating account of the role that cities play in both mitigation of and adaptation to climate change, and how these challenges are interlinked with good governance and integrity in decision-making.

Dodman and Satterthwaite's contribution also highlights that, historical responsibilities notwithstanding, policy-making in developing countries assumes an increasingly important role in tackling climate change. This observation is further developed in contributions that look at two of the most important emerging actors on the climate policy scene, India and China. Very often the articulated positions of these countries are simply assumed to reflect an elusive 'national interest', but are rarely traced back to domestic configurations of interests and the decision-making processes that filter and translate these interests into policies. For India, Sudhir Chella Rajan opens this 'black box' of domestic climate policy-making by sketching out the main matrix of interests involved and gauging the prospects for public-interest oriented outcomes in the context of current governance structures. Dieter Zinnbauer, with kind support from Jie Yu, assesses the main configuration of domestic interests in China, as well as important institutional conditions and dynamics and their proneness to policy capture or public-interest accommodation.

The final contribution in this part may seem unusual at first, since it focuses on climate policy-making in a country that may not appear of comparable importance in the context of global climate policies. Yet, Austria is representative of the mitigation challenge and governance context that characterizes smaller industrialized countries. And as Shahanaz Mueller demonstrates in her interesting case study, even for this group of countries there are a series of accountability and responsibility challenges to tackle in order to make climate policies effective.

Notes

1. Frank Biermann et al., 'The Fragmentation of Global Governance Architectures: A Framework for Analysis', paper prepared for the Amsterdam Conference on the Human Dimensions of Global Environmental Change, 2–4 December 2009.
2. See www.citymayors.com/statistics/urban_growth1.html and Transparency International, Corruption Perceptions Index 2010 (2010).

2.1

From global power politics to responsible collective governance

The transparency and inclusiveness of international climate governance institutions and processes

Peter Newell¹

Issues of transparency, integrity and inclusiveness are central to the effectiveness and legitimacy of the international community's response to climate change. Amid huge disparities in wealth and power, often weak institutional structures and competing claims about rights and responsibilities (and therefore about who should be held to account for what), these issues are at the heart of many key debates about responsibility for action on climate change, even if they are not usually named in those terms.

To understand these challenges it is helpful to give a brief overview of the institutional landscape for climate governance, trace its evolution, and highlight issues of participation and accountability for one of the most pressing global challenges of our time.

The international climate change regime: the main institutions

International negotiations on climate change are organized around a number of key actors, institutions and decision-making processes. Internationally, three institutions are critical to the process of negotiating climate change policy.

The Conference of the Parties (COP) to the UNFCCC and the Kyoto Protocol is the ultimate decision-making body for climate negotiations. It meets annually to

review progress on the commitments within these treaties and update them in light of the latest scientific advice.

Second, the UNFCCC Secretariat, based in Bonn since 1996, has a key and often underestimated role to play in shaping the outcomes of the negotiations.² It organizes and oversees the negotiations, prepares the necessary documentation and is responsible for overseeing the reporting of emissions profiles and projects funded through the Kyoto Protocol. Guided by the parties to the convention, it provides organizational support and technical expertise to the negotiations and institutions, and facilitates the flow of information on the implementation of the convention. The Secretariat's executive secretary is responsible for guiding the negotiations towards a successful conclusion.

Finally, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) plus ad hoc working groups take forward negotiations on specific issues that the COP ultimately has to approve. For example there is currently an Ad Hoc Working Group on Further Commitments for Annex I parties under the Kyoto Protocol.

Climate politics in brief

Climate change has progressed from being a cause for concern among scientists to gaining recognition as an issue deserving of a collective global political effort orchestrated by the UN (box 2.1).

Box 2.1 The global governance of climate change: a chronology

1988: World Conference on the Changing Atmosphere: politicians and scientists conclude that 'humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to nuclear war'. The conference recommends reducing CO₂ emissions by 20 per cent by 2005.

1990: The Intergovernmental Panel on Climate Change (IPCC) publishes its First Assessment Report.

1991: The Intergovernmental Negotiating Committee is set up to oversee negotiations towards an international agreement.

1992: 154 countries sign the UNFCCC at the UN Conference on Environment and Development in Rio de Janeiro, which aims to stabilize emissions at 1990 levels by 2000 as part of an overall goal of stabilizing greenhouse gas (GHG) concentrations in the atmosphere at a level that will prevent dangerous interference with the climate system.

1994: The UNFCCC enters into force on 21 March.

1995: The First COP agrees in Berlin that binding commitments by industrialized countries are required to reduce emissions.

1995: The IPCC publishes its Second Assessment Report, which states: 'The balance of evidence suggests a discernible human influence on global climate.'

1996: The Second COP in Geneva sees the US agree to legally binding targets to reduce emissions as long as emissions trading is included in an agreement.

1997: More than 150 countries sign the Kyoto Protocol, which binds 38 industrialized (Annex I) countries to reduce GHG emissions by an average of 5.2 per cent below 1990 levels during the period 2008–2012.

2000: The negotiations at COP 6 in The Hague collapse amid disagreements principally between the US and Europe about the use of the Kyoto Protocol's flexibility mechanisms.

2001: US President George Bush announces that the US is to withdraw from the Kyoto Protocol.

2001: In Marrakesh the final elements of the Kyoto Protocol are worked out, particularly the rules and procedures by which the flexible mechanisms will operate.

2004: The Buenos Aires Programme of Work on Adaptation and Response Measures is agreed upon at COP 10.

2005: The Kyoto Protocol becomes law on 16 February after Russia's ratification pushes the emissions of ratified Annex I countries over the 55 per cent mark.

2005: The first meeting of the Parties to the Kyoto Protocol takes place in Montreal at COP 11.

2006: At the second meeting of the Parties (COP 12), the Nairobi Work Programme on Adaptation and the Nairobi Framework on Capacity-Building for the Clean Development Mechanism (CDM) are agreed upon.

2007: The IPCC publishes its Fourth Assessment Report.

2007: At COP 13 the Bali Action Plan is agreed upon, calling for a long-term goal for emissions reductions; measurable, reportable, verifiable mitigation commitments including nationally appropriate mitigation actions by developing countries as well as enhanced adaptation, action on technology development and transfer, and financial resources and investment to support these measures.

2009: COP 15 takes place in Copenhagen. It ends in controversy with failure to produce a binding accord as hoped. Rather, a Copenhagen Accord is agreed among small number of parties which other governments are encouraged to recognize.

2010: COP 16 takes place in Cancún. While it fails to create a binding international agreement, progress on key areas such as finance, adaptation and technology transfer is made. Decisions taken are agreed by an overwhelming majority in a concerted effort to keep the UN negotiations on track.

The UNFCCC was opened for signature at the UN Conference on Environment and Development summit in Rio de Janeiro in 1992. As the first major milestone in the history of climate diplomacy, the UNFCCC provided a framework for global action on the issue. Given the sharp differences of opinion and the relative lack of

momentum behind the issue at the time, the fact that the UNFCCC was agreed upon at all can be regarded as a considerable achievement.

The agreement set an ultimate objective of ‘avoiding dangerous interference in the climate system’, defined as aiming to stabilize concentrations of greenhouse gases (GHGs) in the atmosphere, and listed policies and measures countries might adopt to achieve this end. Acknowledging the vast differences in contributions to the problem, the convention established the principle of ‘common but differentiated responsibility’³ and recognized that developing countries were not yet in a position to assume their own obligations. The commitments of developing countries towards tackling the issue were made contingent on the receipt of financial resources and technology transfer from industrialized countries that were meant to be ‘additional’ to existing aid budgets.

Attention then turned to how to realize the general nature of the commitments contained in the UNFCCC. With scientific assessments of the severity of climate change becoming increasingly common and awareness growing of the inadequacy of existing policy responses, momentum built for a follow-up to the convention.⁴ The UNFCCC’s built-in requirement that the parties review the adequacy of parties’ commitments in light of evolving science led to the adoption of the 1995 Berlin Mandate. The COP agreed to negotiate a new set of ‘quantified emissions limitations and reduction obligations’ (QELROs) – or legally binding targets for industrialized countries to reduce GHG emissions.

The Kyoto Protocol, concluded in 1997, was the outcome of this. Signed by more than 150 countries, it binds 38 industrialized (Annex I) countries to reduce GHG emissions by an average of 5.2 per cent below 1990 levels during the period 2008–2012. It fixes differentiated targets for industrialized countries while setting in train a process to further elaborate joint implementation schemes, set up an emissions trading scheme (ETS) and create the Clean Development Mechanism (CDM).

The process for finalizing the rules and operational details of the Kyoto Protocol was agreed upon at COP 4 in 1998 as part of the Buenos Aires Plan of Action. In November 2000 parties met in The Hague at COP 6 in an effort to complete these negotiations, but they failed amid a growing rift in particular between the EU and the US.⁵ Having lobbied hard for including market-based mechanisms that would allow industrialized countries maximum flexibility, the US walked away from the Kyoto Protocol in 2001.

As discussed below, the US refused to ratify Kyoto partly because its economic competitors in the developing world were not required by the protocol to reduce their own emissions. Without US involvement, many assumed the inevitable demise

of the Kyoto Protocol. If the largest contributor to the problem and most powerful economy in the world was not on board, what incentive was there for others to sign up? Instead, the absence of the US served to galvanize the EU and the G77+China grouping into further action and, with Russia's ratification of Kyoto, the protocol entered into force in 2005.

Subsequent negotiations have focused on detailed issues concerning the implementation and enforcement of Kyoto and, increasingly, what might replace it as the end of its implementation period (2012) draws ever closer. Agreed upon at COP 7, the Marrakesh Accords established the rules and procedures for operating flexible mechanisms including the CDM, as well as details on reporting and methodologies. Importantly, they also established three new funds: the Least Developed Countries (LDC) Fund, the Special Climate Change Fund and the Adaptation Fund.

This work continued through to the Buenos Aires Programme of Work on Adaptation and Response Measures, agreed upon at COP 10 in 2004. This was followed at COP 11 in Montreal with the creation of the Ad Hoc Working Group on Further Commitments for Annex I parties under the Kyoto Protocol. At COP 12 in Nairobi, dubbed the 'Africa COP', there was significant discussion about financing issues and how to increase the number of CDM projects being hosted by the poorest regions of the world, most notably sub-Saharan Africa. The meeting produced the Nairobi Work Programme on Adaptation and the Nairobi Framework on Capacity-Building for the CDM.⁶

A year later, at COP 13, the Bali Action Plan set the path towards negotiations at Copenhagen by calling for a long-term goal for emissions reductions; measurable, reportable and verifiable mitigation commitments including nationally appropriate mitigation actions by developing countries; enhanced adaptation; action on technology development and transfer; and financial resources and investment to support these measures.⁷ COP 15 in Copenhagen in 2009 was expected to 'seal the deal' by concluding a comprehensive legally binding agreement. It failed for reasons discussed below, but did produce a Copenhagen Accord, a short text negotiated by a small number of the world's most powerful countries which other countries were then encouraged to endorse. COP 16 in Cancún in 2010 meanwhile took the accord further, outlining a process for reaching decisions on a new Green Climate Fund, on adaptation and technology transfer and further commitments by developing countries to submit their mitigation actions to international measurement and verification.

Challenges to an open, accountable and inclusive process

Issues of participation and openness in particular will be crucial to a successful outcome for future climate summits. Effective transparency and accountability in international climate politics continue to face a number of considerable challenges, however.

Long chains of delegation

First, long chains of delegation separate citizens from the climate negotiators who represent their countries. This is because, 'lacking significant information about the substance of the discussions, it is virtually impossible, for the ordinary citizen, to make informed choices about who to support, who and what to query, or who to ask for changes to their positions. With many people around the world, and first and foremost the poorest, beginning to feel the heat, or water rising in their house, the accountability gap between decision makers and people affected by climate change seems to widen to an unbridgeable gulf.⁸

The capability and influence gap

Such problems are compounded by the uneven participation of countries and civil society organizations in the international negotiations. There are inequities in capacity and participation, meaning that most governments from developing countries are not able even to be continuously present throughout the entire negotiation process, let alone adequately represent their citizens' interests in arenas where demands for legal and scientific expertise are high.

While a remarkable 194 countries attended the Copenhagen summit in December 2009, this number masks disparities in effective negotiating capability.⁹ For example, the top five polluting countries were able to field more than three times the number of delegates than the five countries considered to be most affected by climate change.¹⁰ Because the delegations of many developing countries lack capacity, they have difficulty effectively participating in the many meetings that are held simultaneously and ensuring their voice is heard. Neither do they have access to the 'informal' meetings held before and during COP meetings, where the major players and contributors to the problem come together to advance progress, but from which most smaller and less influential countries are excluded. We saw this problem come to a head in Copenhagen, where many countries felt aggrieved that the accord was produced by so few countries. Distrust was compounded when a draft accord that a select number of countries had produced was leaked during the first week of the meeting. This experience led to significant efforts by the Mexican presidency at

COP 16 to ensure that negotiations were as transparent as possible and that the texts under negotiation were the only texts on the table.

A fragmented governance landscape

Another major challenge for accountability, openness and transparency derives from the fact that the governance of climate change is highly dispersed and fragmented, reaching well beyond the key institutions introduced earlier. Responsibilities are shared among a multitude of actors operating across numerous scales and in a bewildering number of sites.

Relevant actors include global institutions such as the Intergovernmental Panel on Climate Change (IPCC) and the UNFCCC Secretariat, regional bodies such as the EU, national governments (including trans-governmental networks of environmental regulators), groupings of cities, coalitions of corporate actors and an array of civil society networks. Each is a source of governance in its own right, producing standards and regulations, creating norms of behaviour and developing reporting mechanisms to oversee the implementation of climate-related projects.¹¹ With such a wide spectrum of actors it is often difficult to specify who is accountable for the governance of which aspect of climate change responses.

In a terrain in which climate politics shifts rapidly and involves a plurality of private and public actors creating formal and informal sites of regulation, challenges of transparency and accountability are heightened – given that traditional channels of representation and participation often do not exist in private and non-state spheres, and that rights to information and consultation are not easily applied to private actors. The spectacular growth in private standards and public–private partnerships as additional important sites and sources of climate governance therefore raises important questions about participation, openness and transparency.¹² Several other articles in the *Global Corruption Report* demonstrate that some forms of private governance allow for more participation, transparency and accountability than others.¹³

A process between openness and manageability

The main negotiation process features a bewildering array of non-government, business and other organizations that are registered to participate alongside the formal negotiations. Though they do not have formal voting rights, they are allowed to intervene and are often admitted onto government delegations, giving them access to all meetings. In many ways these actors are non-governmental ‘diplomats’ who perform many of the same functions as state delegates, representing the interests of

their constituencies, engaging in information exchange, negotiating and providing policy advice.¹⁴

In principle, this means the decision-making process is considered relatively open to the participation of non-state actors. Nevertheless, what was considered by some to be an excessive degree of direct participation in the process during the plenary sessions at earlier rounds of negotiations resulted in observers being banned from the floor of the UNFCCC meeting room unless they found their way onto government delegations. This turned direct public access to the core negotiations from a general entitlement into a privilege granted by government delegations at their own discretion to a selected few.

This has not reduced demands for participation – a situation that produced a crisis during the Copenhagen summit, when the premises could not accommodate a record 900¹⁵ observer organizations and the security entourage of 196 heads of states joining the talks. Entry passes were rationed – often under chaotic circumstances – and many observers were shut out of the negotiations building, gravely undermining the ambition for an inclusive and open process, and putting into question the feasibility of such a mega-process.

The indispensable role of civil society

These access problems are particularly worrying when we consider the crucial role networks and coalitions of civil society have played in improving the transparency and openness of climate change governance.¹⁶ Some elements of civil society have succeeded in enhancing the degree of transparency of climate change negotiations by working with journalists, adopting protest strategies and publishing their own widely read summaries, briefings and analyses of the negotiations, such as the Climate Action Network's *ECO* newsletter.¹⁷

This in turn has increased the possibilities of public scrutiny of relevant officials and agencies, helped raise awareness of climate change among different publics, and increased levels of public engagement with the issue in both national and international politics. Civil society groups have led on the issue of evaluating commitments and holding governments accountable for their fulfilment. Finally, in respect of redress, recent climate activism shows a growing interest in using human rights tools as a means to obtain redress for victims of climate change.¹⁸

Despite these vital functions assumed by civil society groups, a number of concerns remain.

Disparities in effective representation between industrialized and developing countries not only affect state parties, they are also evident among observer organizations. During the Kyoto negotiations only a fourth of the organizations in

attendance came from the global South, and many of these could afford to send only one or two observers. Although by summer 2009 more than 1000 organizations from 80 countries had obtained observer status, a closer look reveals that the majority are based in Europe and North America. More than 210 organizations from the US, for example, are registered as observers, alongside 100 groups from the UK and 92 from Canada. Meanwhile, no developing country except for Brazil, China and India manage to bring more than 10 observer organizations to the table.¹⁹

Issues of internal NGO governance, transparency and stakeholder accountability are also high on the agenda. Influence comes with responsibilities and the legitimate demand for the public to know who is behind specific groups, what agenda they pursue and how well they manage the representational mandate (if any) and financial resources entrusted to them by their supporters. Many groups are not sufficiently proactive in living up to these standards, and these shortcomings have become particularly problematic with the emergence of organizations advancing narrow private interests but claiming to represent public interests in climate policy.²⁰

The growing demand for accountability

Challenges of openness, consultation and participation in the climate regime look set to deepen, intensify and evolve as the regime expands to cover more issues, sectors and actors. This is especially true when authority is deferred to new organizations and institutions to create rules and markets to deliver action on climate change. The climate governance landscape is becoming more multifaceted and multilayered and neither the importance nor scale of the accountability gap should be underestimated. As one assessment puts it:

*Mending the current disjuncture between those involved in the policy formation, negotiating and decision making process, and the citizens who are most vulnerable to climate change is to a significant extent a matter of closing the accountability gap in global climate governance. Accountability on its own will not be sufficient to adequately address the climate change challenge. It is however a fundamental and necessary condition for building a socially and environmentally effective global climate governance system that delivers for people.*²¹

Notes

1. Peter Newell is professor of international development at the University of East Anglia.
2. Joanna Depledge, *The Organization of the Global Negotiations: Constructing the Climate Regime* (London: Earthscan, 2005).

3. UN, *United Nations Framework Convention on Climate Change* (Bonn: UNFCCC Secretariat, 1992), at <http://unfccc.int/resources/docs/convkp/conveng.pdf>.
4. Michael Grubb et al., *The Kyoto Protocol: A Guide and Assessment* (London: Earthscan and Royal Institute of International Affairs [RIIA], 1999).
5. Michael Grubb and Farhana Yamin, 'Climatic Collapse at The Hague: What Happened, Why, and Where Do We Go From Here?', *International Affairs*, vol. 77 (2001), pp. 261–276.
6. Chukwumerije Okereke et al., *Assessment of Key Negotiating Issues at Nairobi Climate COP/ MOP and What it Means For the Future of the Climate Regime*, Working Paper no. 106 (Norwich: Tyndall Centre for Climate Change Research, 2007).
7. Benito Müller, 'Bali 2007: On the Road Again! Impressions from the Thirteenth UN Climate Change Conference', Oxford Energy and Environment Comment (Oxford: Oxford Institute for Energy Studies [OIES], February 2008); Jennifer Morgan, *Towards a New Global Climate Deal: An Analysis of the Agreements and Politics of the Bali Negotiations* (London: E3G, 2008).
8. One World Trust, 'Beyond Reach? Realizing Accountability in Climate Change Governance', *Accountability in Action* (October 2009), at <http://newsletter.electricputty.co.uk/TVViewEmail/r/2C4231BBECAA6E2/FF375D0D1994B87E6A4D01E12DB8921D>.
9. List of participants, Conference of the Parties, 15th session, Copenhagen, 7–18 December 2009, <http://unfccc.int/resource/docs/2009/cop15/eng/inf01p01.pdf>.
10. TI calculations based on COP 15 documentation, pollution data from 2006 (http://unstats.un.org/unsd/environment/air_co2_emissions.htm) and Climate Risk Index 2010 by Germanwatch (www.germanwatch.org/klima/cr/2010.pdf).
11. Harriet Bulkeley and Peter Newell, *Governing Climate Change* (London: Routledge, 2010).
12. Karin Bäckstrand, 'Accountability of Networked Climate Governance: The Rise of Transnational Climate Partnerships', *Global Environmental Politics*, vol. 8 (2008), pp. 74–102.
13. See for example, Thomas Marcello, section 4.3.4 in this volume.
14. Michele M. Betsill and Elisabeth Corell (eds), *NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations* (Cambridge, MA: MIT Press, 2008), p. 3.
15. See <http://unfccc.int/resource/docs/2009/cop15/eng/inf01p01.pdf>.
16. Peter Newell, *Climate for Change: Non-State Actors and the Global Politics of the Greenhouse* (Cambridge: Cambridge University Press, 2000); Lars Gulbrandsen and Steinar Andresen, 'NGO Influence in the Implementation of the Kyoto Protocol: Compliance, Flexibility Mechanisms and Sinks', *Global Environmental Politics*, vol. 4 (2004), pp. 54–75.
17. Peter Newell, 'Climate for Change: Civil Society and the Politics of Global Warming', in Helmut K. Anheier et al. (eds), *Global Civil Society 2005/6* (London: Sage, 2005), ch. 3.
18. Peter Newell, 'Civil Society, Corporate Accountability and the Politics of Climate Change', *Global Environmental Politics*, vol. 8 (2008), pp. 124–155; Peter Newell, 'Climate Change, Human Rights and Corporate Accountability', in S. Humphrey (ed.), *Climate Change and Human Rights* (Cambridge: Cambridge University Press, 2009), pp. 126–159.
19. Kathrin Dombrowski, 'Filling the Gap? An Analysis of NGO Responses to Participation and Representation Deficits in Global Climate Governance', paper prepared for the conference on the Human Dimension of Global Environmental Change, Amsterdam, 2–4 December 2009.
20. See for example, Paul Blumenthal, section 2.2.2 in this volume.
21. One World Trust (October 2009).

2.2

Essential building blocs for Kyoto and beyond

Agreeing on climate commitments at national and regional level

2.2.1

Equal access, unequal voice

Business and NGO lobbying on EU climate policy

Anne Therese Gullberg¹

The European Union (EU) has for quite some time been considered an agenda-setter in climate policy internationally. In 2007 it adopted three important climate policy aims that came to be known as the ‘20–20–20’ targets: reduce greenhouse gas emissions by 20 per cent compared to 1990 levels; increase the share of energy from renewable sources to 20 per cent; and enhance energy efficiency by 20 per cent – all to be achieved by 2020.

The reputation of the EU’s vanguard climate policies was dented somewhat during the Copenhagen negotiations in 2009, however, when EU leadership was overshadowed by other players.

Nonetheless, the fact remains: the EU is one of the most important forums for climate policy-making, with a far-reaching impact on the dynamics of international negotiations and national debates in other countries.² Risks associated with undue influence by vested interests on EU climate policies can therefore ripple out and slow down action elsewhere. An examination of EU policy-making is therefore imperative for a full understanding of the challenges of accountable climate policy-making in the global system.

How real are such risks of undue influence on EU decision-making? A number of factors shape this assessment.

Formal consultation processes: transparent and rather inclusive, but still a stronger voice for business

Stakeholder consultations have been used as a key mechanism to solicit broader public input during the development of European climate policies. A close look at two of these consultation processes shows that such a mechanism can help make policy development more transparent and inclusive. They are also characterized by disproportionate representation, however.

In 2004 the European Commission invited stakeholders to participate in a process to give input to EU climate policy after 2012. This included the central issue of setting emissions reduction commitments for the period after the expiry of the Kyoto Protocol's first commitment period. The consultation was open to all stakeholders, participation was broad and position papers were submitted by a wide spectrum of groups. The Commission also aimed to have a transparent process, and all the submitted position papers as well as the Commission's summaries of these position papers were open to the public and available online. This openness and diversity did not translate into a balanced spread of input, however. Business and industry organizations mustered resources to submit a total of 78 position papers, more than double the 30 submissions by environmental organizations.³

A similar pattern can be discerned for the stakeholder consultation for another centrepiece of EU climate policies: the

EU Emissions Trading System (ETS), which is a key instrument to achieve agreed-upon emissions cuts. Questions about which sectors to include or how to allocate permits are central to the efficacy of the entire trading system and its potential to green the European economy, but, more than this, as these questions also determine who wins and loses, they are therefore subject to intense lobbying efforts.⁴

The original ETS was adopted in 2003, and the first trading period started in 2005.⁵ As early as that year the Council of Ministers asked the Commission to review the ETS with the aim of improving the system from 2013 onwards. As a first step in the review process, the Commission conducted an internet-based survey that was open to all stakeholders. Log-in data were sent to 517 companies, government bodies, industry associations, market intermediaries and non-governmental organizations (NGOs).⁶ A total of 302 organizations responded, and business groups again dwarfed the participation of other groups. Industrial companies accounted for slightly more than a half of all responses, far ahead of associations (25 per cent), NGOs (11 per cent) and government bodies (7 per cent).⁷

The survey was followed by a consultation process that ran from

autumn 2006 to summer 2007. This process consisted of four stakeholders' meetings and the possibility of submitting written position papers. Again, the process was transparent and, on the surface, rather inclusive. Both industry and environmental groups

participated, and the agendas, participant lists and meeting summaries were made public.

As figures 2.1 and 2.2 show, however, environmental organizations were clearly outnumbered by business groups in all four rounds of consultation.⁸

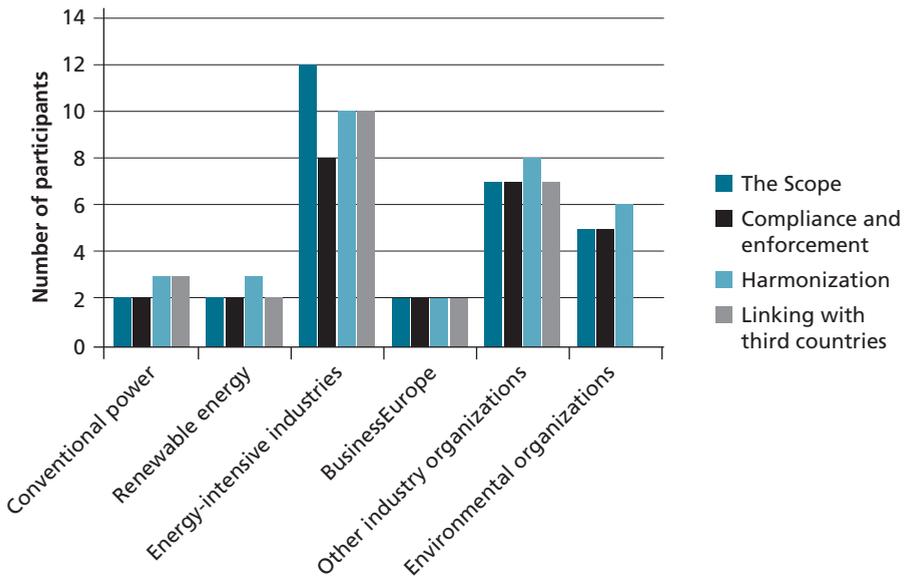


Figure 2.1 Participants from five types of industry organizations, and environmental organizations, in the four stakeholders' meetings in the EU ETS review process

Note: Colour coding refers to the four different topics of the meetings. BusinessEurope's members are 40 central industrial and employers' federations from 34 countries.

The Key Stakeholders Alliance for ETS Review, which consists of organizations representing energy-intensive industries, managed to send 8–12 representatives to each meeting.⁹ Thus, these industries alone, not including other industry groups likely to support similar causes, managed to field more representatives than environmental organizations, which sent five or six representatives.¹⁰

These examples underline the fact that

openness does not guarantee equitable representation. Lobbying is far from confined to formal consultations, however. Skewed representation in these official processes may just be a marker of more profound asymmetries in the less visible yet perhaps more informal ways of communicating positions to decision-makers and helping to shape opinions and compelling storylines to further specific interests.

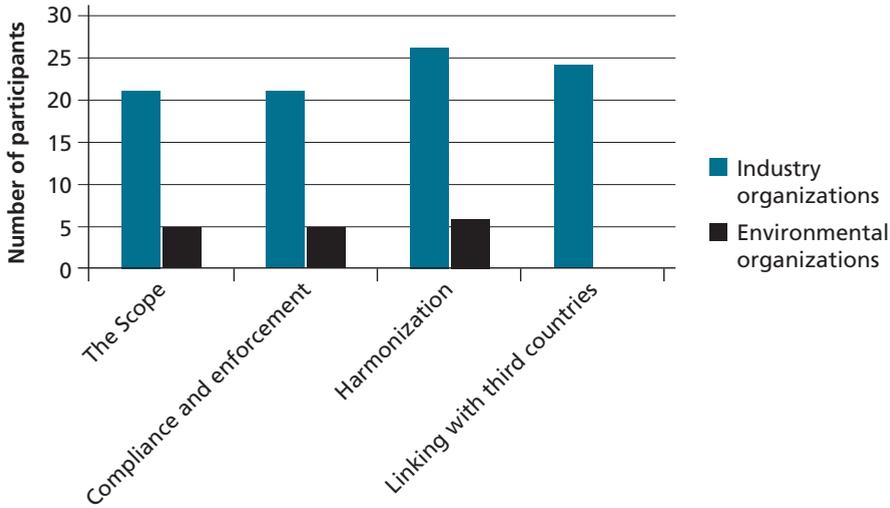


Figure 2.2 Participants from industry organizations and environmental organizations in the four stakeholders' meetings in the EU ETS review process

A multi-level decision-making process that favours well-resourced interests

EU climate policy is handled through the 'co-decision' procedure. This implies that the European Parliament (directly elected by European citizens) and the Council of Ministers (representing EU member states) are joint legislators. The Commission (the EU's quasi-executive arm and guardian of laws) has an exclusive right of legislative initiative in all areas subject to the co-decision procedure. The Commission drafts a legislative proposal and sends it to the Parliament and Council, which then discuss it. If the Parliament and the Council do not agree after a second reading, these two institutions meet in

the Conciliation Committee. If the negotiations fail, the proposal is not adopted.

This complex machinery makes influencing EU climate policies a challenging endeavour more conducive to business-style lobbying, in the form of injecting expert information and cultivating longer-term relationships, than to direct action and media mobilization – the traditional domains of NGO advocacy. Establishing a presence and building deeper relationships across all participating institutions is considered a key element for having an effective voice. Such a

strategy is expensive, however, and available only to the best-resourced players. Research suggests that environmental groups end up focusing their limited resources on specific policy issues and lobbying the Parliament and the Commission's Environment Directorate, which are both inclined to be relatively sympathetic to their cause.

Business groups, on the other hand, are able to cast a wider web of influence across different directorates. They can afford to lobby friends and foes alike, cultivate longer-term relationships and stay engaged throughout the entire policy-making cycle and related

discussions with different directorates and institutions. They therefore wield stronger influence when the essential details of broad policy principles are being thrashed out.

Interviews with all stakeholders corroborate this analysis. Business groups report that they command sufficient resources for their lobbying work. In contrast, environmental groups explicitly complain about a lack of funds, which forces them to focus on specific policy questions and does not allow them to develop more effective comprehensive lobbying strategies like their business counterparts.¹¹

Demonstrated impact

These asymmetries in voice and influence leave their mark on policy outcomes. Environmental organizations scored some successes in preventing the EU from cutting back on its relatively ambitious emission reduction targets. When it comes to less visible yet crucial details of policy design and implementation, however, business groups are more influential. Their interests were taken into account both in the Commission's proposal for a revised ETS in January 2008 and in the final decision by the Council and Parliament in December 2008. For example, while the Commission in principle supported the full auctioning of emissions allowances, energy-intensive industries

were able to secure an exemption. Industry influence on these and other important parameters are well documented.¹²

In the final analysis, resources and informal access are important to influence open, democratic processes. The resource/access disparities between different stakeholders make participation highly unbalanced, reducing the quality of the democratic processes. Although the Commission sought to address this issue of imbalances in a White Paper on European governance,¹³ the dominance of business lobbying is still a great challenge to the EU and its climate policy-making processes.

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2.2.2

US climate policies

A snapshot of lobbyist influence

Paul Blumenthal'

It was like poking a sleeping bear.

(lobbyist commenting when large anti-climate legislation lobby groups in the United States began to step up their activities)²

With the recent Supreme Court ruling, we are in a position to be able to take corporate positions that were not previously available in allowing our voices to be heard.

(letter from a US coal industry executive to other coal companies)³

The prospects for ambitious US climate change legislation have been subject to wild swings in recent years. Hope rose with an incoming president who said he was dedicated to creating a cap-and-trade system similar to that in the EU.

A first milestone was reached when the House of Representatives (the lower

chamber of the US Congress) in 2009 passed a scaled-down version of a proposed cap-and-trade law, known as the American Clean Energy and Security Act. By mid-2010, though, this effort had all but collapsed, as the bill was not even put to a vote in the Senate (the upper chamber).

A growing tide of climate lobbying: no balance in sight

The protracted battle and, for the time being, the defeat bear witness to the persistent power of lobbyists and special interests to stall climate policies, even though an outright denial of global warming is not a viable option any more.

Throughout 2009 oil, gas, coal and electricity utilities and alternative energy companies spent a record US\$403 million on lobbying the federal government.⁴ On top of this, companies from industries as disparate as footwear

and computer network server operators have also lobbied on climate policy. In total, more than 2000 lobbyists are registered to lobby on climate legislation in Washington.⁵

Meanwhile, the clean energy lobby has also established itself as a sizeable player in the US capital. In 2009, at the height of the debate on the cap-and-

trade bill, environmental groups spent a record US\$22.4 million on lobbying federal officials, double their average during the period 2000–2008.⁶ This pales in comparison to spending by oil and gas interests, however, which poured US\$175 million into influencing policies in 2009.⁷

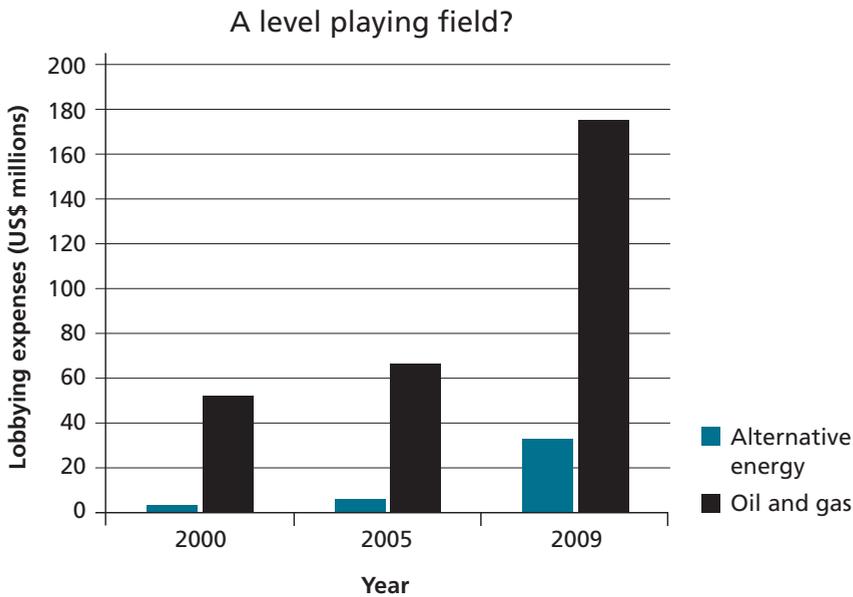


Figure 2.3 Annual lobbying expenses, US

Source: Center for Responsive Politics.

The floodgates for future spending have now been thrown wide open thanks to a US Supreme Court decision in January

2010 that handed a victory to corporations, allowing them to spend freely on election campaign advertising.⁸

A more diverse landscape, more focused on specifics

The interests involved in climate policies have become more differentiated, and coalitions more dynamic. Some major

electricity utilities and oil companies have split with traditional industry groups to support cap-and-trade

legislation, in the hope that they might benefit from a carbon market. Others have remained in their traditional pose of staunch opposition.

The initial consideration of climate legislation in Congress, for example, saw companies such as Duke Energy, BP, Conoco-Philips, Shell Oil, General Electric, Alcoa and Exelon join climate advocacy groups including the Environmental Defense Fund to create the US Climate Action Partnership, an

organization that backs legislation to create a carbon market.⁹

The results have been mixed. Numerous consumer and environmental groups protested the fact that the proposed cap-and-trade legislation gave too many concessions to too many special interests. An initial draft of 648 pages turned into a 1428-page epic brimful with special provisions and exemptions when it was passed by the House of Representatives.¹⁰

Dubious tools of the trade: feigning grassroots endorsement

Being able to demonstrate that a special interest enjoys broad citizen support is essential in the struggle for influence. At times, the means to achieve this can be very dubious.

In June 2009, for example, before an important vote on the cap-and-trade bill in a House committee, a Washington lobbying firm sent 13 letters to three lawmakers sitting on the committee urging them to oppose the bill. The letters turned out to be forgeries bearing the names of local chapters of the National Association for the Advancement of Colored People (NAACP), among other groups.¹¹ The lobbying firm was under a US\$3 million contract paid through an intermediary by the American Coalition for Clean

Coal Electricity, a major coal industry lobby. Two of three lawmakers receiving the fraudulent letters voted against the legislation. According to the implicated lobbying firm, the letters were written by a temporary worker, who was fired after the forgeries came to light. The coal lobby group instructed the lobbying firm to inform the lawmakers of the situation, but by this time the vote had already taken place.¹²

Such incidents, as well as establishing fake grassroots organizations to simulate the appearance of broad public support for a special interest issue (often called ‘astroturfing’), bode ill for a sincere debate and an honest representation of interests and viewpoints in US climate policy-making.¹³

Revolving doors: privileged access for special interests of all stripes

In November 2009 a key Senate committee approved a more ambitious

piece of climate legislation than the House of Representatives had passed in

June. The lone vote against the bill came from Senator Max Baucus, whose legislative staff exemplifies a phenomenon known as the ‘revolving door’ – whereby legislative staffers gain experience and establish contacts in Congress and then leave to work as industry lobbyists. Baucus is currently the lawmaker with the most former staffers working as lobbyists; as many as 12 of them lobby on climate and energy policy.¹⁴

As connections are the main currency in lobbying, these former staffers carry

great influence in helping industry get its voice heard in the legislative process. In the case of Baucus, his 12 former staffers who lobby on climate and energy issues represent a broad range of different industry positions. A former chief of staff represents a long list of cap-and-trade opponents, including the American Petroleum Institute and US Business Roundtable.¹⁵ On the other side, Baucus’s former policy counsel represents a number of biofuel, bioenergy and alternative energy groups.¹⁶

Brown and green – not the full spectrum of colours

There is both much to lose and much to win in climate politics, and the stakes are growing all the time. Special interest groups have become more vocal and focused on climate change issues. The days of outright, highly public denial of climate change might be over, yet lobbying has not just persisted but is gathering momentum. It is now down to influencing the arcane, technical details of laws and regulations that actually decide who wins and loses – a battle that is fought with more subtle tactics and is more difficult to monitor.

The emergence of green industry lobbyists and new coalitions makes the front lines more dynamic and the lobbying landscape more diverse. Although this may provide a

countervailing force to obstructionists, it should not detract from a number of persistent concerns. Beneficiaries of the status quo far outspend the green industry, by a large factor. In addition, the proliferation of special interest groups does not represent the public interest. The outcome of this may be the sheltering of ‘brown’ industries from the inevitable transformation of environmental policy and the economy, while dishing out precious subsidies to green players with the most clout rather than those with the greatest future potential. This does not add up to sensible, accountable climate policies in the interest of current and future generations.

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2.3

Urban governance and climate change policy

David Dodman and David Satterthwaite¹

Half the world's population lives in urban areas. This is projected to rise to 60 per cent by 2030, with almost all the growth in the world's urban population occurring in low- and middle-income countries.

The industrial activities that occur in cities, and the consumption behaviour and choices of their residents, are important contributors to global emissions of CO₂ and other greenhouse gases (GHGs). In addition, a high proportion of urban areas are very much at risk from climate change. This means that residents of towns and cities, and the municipal authorities responsible for their governance, have a vital role both in climate-related mitigation (reducing atmospheric concentrations of GHGs) and adaptation (building resilience to changing climatic threats).

Urban governance for mitigation

Many GHG-generating activities are concentrated in urban areas. Manufacturing industries, congested roads carrying fossil-fuel-burning vehicles, buildings using energy for heating, cooling and lighting, and high-consumption lifestyles are all major sources of CO₂ emissions. Emission levels vary greatly between urban centres, however; wealthy cities can have GHG emissions per person 50 to 100 times those of urban centres in low-income nations.² There are various ways that urban governments can help meet global needs for preventing dangerous climate change.

First, most urban authorities are substantial contributors to emissions, as they are large employers responsible for many buildings and extensive vehicle fleets. They can take initiatives to reduce their carbon footprints, including making buildings more energy-efficient, converting their vehicle fleets to run on electricity or 'green' fuels and improving solid waste management by encouraging waste reduction, recycling

and better management of disposal sites. In Cebu City, the Philippines, city authorities have converted their offices' air-conditioning to a more climate-friendly system. In São Paulo, Brazil, the municipal government has obtained carbon credits for reducing methane production at the main landfill site, and is investing the proceeds in social programmes for the surrounding area.

Second, local governments can influence a much broader range of activities taking place within urban boundaries. Although the extent of their powers varies from country to country, they generally have some control over land use, buildings and transportation policy. In Curitiba, Brazil, the municipal government facilitated the transformation of the city by promoting high-density development along linear axes served by more rapid and effective public transport. This helped cut private automobile use (and thus GHG emissions) and provided lower-income groups with easier access to work, among various other social and environmental benefits.

Adaptation as responsive urban governance

Concentrating people and economic activities in urban areas can also concentrate risk and vulnerability. Most of the world's urban population and most of its largest cities are now in Africa, Asia and Latin America. In most urban areas in these regions, infrastructure for water, sanitation and drainage is inadequate to cope with current climatic conditions, and much of the population does not have access to adequate shelter or basic services.³ In many cities, one- to two-thirds of the population lives in informal settlements – a powerful testament to the incapacity of city governments and/or their lack of accountability to this group of residents.

Without major improvements in drainage, heavier storms will cause increasingly serious flooding. Disasters such as the devastating floods seen recently in many cities in Africa and Asia will become increasingly commonplace. Shifting patterns of rainfall will further stress the capacities of water supply networks, and sea-level rise will cause the loss of land and property in many coastal cities. Table 2.I highlights the many sectors in which local government's responsibilities are important for reducing risks and responding effectively when a disaster occurs.

Role for city/municipal government	Long-term protection	Pre-disaster damage limitation	Immediate post-disaster response	Rebuilding
Built environment				
Building codes	High		High	High
Land-use regulations and property registration	High	Some		High
Public building construction and maintenance	High	Some		High
Urban planning (including zoning and development controls)	High		High	High
Infrastructure				
Piped water, including treatment	High	Some	High	High
Sanitation	High	Some	High	High
Drainage	High	High	High	High
Roads, bridges and pavements	High		High	High
Electricity	High	Some	High	High
Solid waste disposal facilities	High	Some		High
Wastewater treatment	High			High
Services				
Fire protection	High	Some	High	Some
Public order, police and early warning	Medium	High	High	Some
Solid waste collection	High	High	High	High
Schools	Medium	Medium		
Health care, public health, environmental health and ambulances	Medium	Medium	High	High
Public transport	Medium	High	High	High
Social welfare (including provision for child and old-age care)	Medium	High	High	High
Disaster response (over and above those listed above)			High	High

Table 2.1 The role of city/municipal governments in adapting to climate-change-related disasters

The best-governed cities are generally those most resilient to climate change. Good urban governance should support low-income groups in finding safe, legal accommodation (including acquiring land where they can build their own homes) and ensure they are provided with infrastructure and services. To do so, local political and bureaucratic systems need to be accessible and responsive to the urban poor and other disadvantaged groups.

Good urban practice as an example to the world

In many cases, urban authorities have been at the forefront of recognizing the extent of the climate challenge, and have set themselves ambitious targets for reducing GHG emissions. ICLEI (Local Governments for Sustainability) has challenged local authorities to reduce GHG emissions. More than 1500 local authorities around the world have made commitments to do so: Mexico City has pledged to reduce emissions by 12 per cent of 2000 levels by 2012, Barcelona by 50 per cent of 1990 levels by 2030 and Bangkok by 15 per cent of 2007 levels by 2012.⁴

These commitments are often greater than those agreed by their national governments, and can help to urge responsible climate responses on a much larger scale. In this regard, local authorities can encourage action by other actors, both by lobbying national governments and by developing projects that can show the costs and benefits of responding to climate change.⁵

Local government associations from around the world have also been active in the negotiations within the UN Framework Convention on Climate Change (UNFCCC), and they have developed a Local Government Climate Roadmap that advocates for a strong and comprehensive global agreement on climate change mitigation and adaptation.

The way forward: climate-responsive urban governance

Good climate change adaptation is driven by accountability to the needs and priorities of citizens, especially those most at risk. Some of the most effective adaptation programmes are being implemented by partnerships between urban poor organizations and local governments. Mitigation is also driven by accountability, although to both current and future generations. The bigger picture confirms these linkages. An analysis of more than 400 cities underlines the fact that the quality of governance, including the control of corruption, is clearly associated with better city performance in terms of access to and quality of infrastructure services.⁶

At present, most urban governments in low- and middle-income nations have little accountability to their citizens, and show little interest in reducing climate

change risks. This is especially so in the informal settlements that house a high proportion of citizens and businesses and where there are large deficits in necessary protective infrastructure and services. Here, there is the twin challenge of managing urban growth (which includes providing low-income groups with alternatives to informal settlements) and establishing sound governance.

Climate change may act as an incentive for more accountable local government, however. As citizens become increasingly aware of the risks that climate change brings, and as national governments face the need to meet new commitments to reduce emissions and support adaptation, local authorities will be called on to implement both of these agendas.

Strong local democracies and accountable urban governments have been key factors in cities that have progressed on these issues. Cities such as Durban, South Africa, have been leading the way on this front.⁷ Led by a highly motivated Environmental Management Department, Durban has developed a locally rooted climate change strategy that has succeeded in mainstreaming climate change concerns, including reducing GHG emissions and reducing vulnerability to climate change risks.

Central to this process has been the building of a recognition that responding to climate change (and, indeed, other environmental challenges) is not a constraint but, rather, an essential underpinning of development. If more urban authorities take this approach, transparent local governance can indeed become a strong force for accountable climate governance.

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2.4

The matrix of interests and influence in key emerging climate countries

2.4.1

Vested or public interest? The case of India

Sudhir Chella Rajan¹

India has evolved into the fourth largest emitter of greenhouse gases (GHGs) in the world, accounting for 5 per cent of global emissions. If current projections hold true, it will account for up to one-third of the world's energy demand by 2050. As a result, India will assume a greater role in the global climate regime, putting the spotlight on climate policy-making and on the matrix of influences and interests engaging in this process in the world's largest democracy.²

Until very recently, climate change was an obscure subject in India, relegated to the back pages of newspapers and remote from the primary concerns of both policy-makers and the general public. The issue began to attract more attention in the popular media only after high-level discussions of India's role began to dominate international summits, such as the G8 and Major Economies Forum, the country's partnering with other major CO₂

emitters to develop the Copenhagen Accord in December 2009 and its prominent role at COP 16 in Cancún in December 2010.

Some business interests and civil society groups have been quietly lobbying the government in recent years to take advantage of important new climate-related financial opportunities, however. These include, in particular, the Kyoto Protocol's Clean Development Mechanism (CDM), which encourages emissions reduction projects in developing countries. At the same time, lobbying by the energy sector, though not associated with climate policy until recently, has a longer history and carries bigger stakes, and crucially shapes the prospects for climate mitigation efforts in India.

A closer look at both these processes sheds an intriguing light on the challenges and opportunities for accountable, public interest-driven climate mitigation policies in India.

India and the Clean Development Mechanism: an interest in lax rules?

India's interest in the CDM³ was initially cautious during the negotiations over the Kyoto Protocol. Within just a few years, though, the government began to support it earnestly at the international level, and began to develop institutional arrangements to facilitate its own CDM projects. The speed, efficiency and low transaction costs of India's CDM approval process have been remarkable compared to other regulatory agencies. Even so, about 40 per cent of CDM projects rejected worldwide are based in India, raising questions about the soundness of the first-line review by India's National CDM Authority.⁴

Nevertheless, there is a widespread perception among government officials at various levels that the CDM can be an important source of income. At the time of writing, India had 527 registered CDM projects, 22 per cent of the worldwide total and second only to China's 40 per cent.⁵ Most of India's certified emissions reductions stem from projects aimed to phase out the highly potent GHG HFC-23. As detailed in Part 4,⁶ however, HFC-23 projects can be problematic, because they create perverse incentives to actually encourage the (cheap) production of this gas in order to turn a profit on its subsequent reduction under the CDM. This violates the important criterion that emissions reductions must be 'additional' to a 'business-as-usual' scenario.

As a consequence, Indian businesses that could benefit from HFC-23 projects yet that suffer from high project rejection rates have a strong incentive to lobby for lenient international and domestic interpretations of the 'additionality' rule, and they have been working to influence India's international negotiating stance in this respect. International climate negotiations, in fact, typically include a large delegation of Indian business interests – representing project developers, consultancies and financial institutions – who lobby hard to ensure that any proposed changes to CDM rules would benefit them.

While Indian industry groups are frequently consulted and have close ties to Cabinet-level decision-makers and negotiators, academics and environmental non-governmental organizations (NGOs) are largely kept outside the official realm of international negotiations. The effective influence of business on India's position is further amplified by the comparatively low profile that many Indian NGOs take with regard to international negotiations. As one observer put it: 'Indian civil society – disenchanted with the global process – is dominated by the progressive realist view. While they may be fierce critics of the government at home, they close ranks with them at international climate negotiations and defend against calls for international commitments of any sort.'⁷

This focus on industrialized country commitments is understandable in a country with huge development needs and when considering that India's overall contribution to the global stock of GHGs stands at only 2.3 per cent (compared to an almost 30 per cent US share), while per capita emissions are all but a fraction of the per capita contribution in most other countries,

including China (three times higher) and the US (14 times higher).⁸

Legitimate and important as these demands on industrialized countries to live up to their responsibilities may be, it is important to ensure that they do not become a convenient narrative for vested interests and climate polluters at domestic level to delay much-needed action.

Domestic energy reforms: interlocking special interests slow reforms

It is essential for India's coal-reliant electricity industry to become a major focus of the country's climate mitigation policies. The sector is India's largest GHG emitter by far, accounting for 38 per cent of emissions in 2007, up from 28 per cent in 1994. Continued growth potential is huge, as more than 400 million people are still without electricity. India plans to increase coal-fired energy capacity by more than 75 per cent over a 10-year period, and coal-based emissions could more than double by 2030.⁹

Lowering fossil fuel dependence and raising the sector's efficiency are recognized as key ingredients for India's energy future. A web of interlocking interests – including the oil and gas, petrochemical, fertilizer, manufacturing, agriculture and motor vehicle industries – make change to the status quo difficult to achieve, however.

The pricing of fuels and electricity, as well as the extraction of primary energy sources, have long been characterized by subsidies, both for producers and consumers. The issue of providing free or highly subsidized electricity for agricultural irrigation, for example, has received significant attention for more than two decades. Little progress has been made, however, in stemming the enormous increase in subsidized electricity use, the associated growth of groundwater depletion or financial losses for utilities.

While such consumer subsidies were intended primarily to assist the poor, the main beneficiaries, especially agricultural irrigators, have been wealthier farmers, who in large part can afford to pay market prices. In fact, many farmers are believed to pay nothing for electricity, thanks to lobbying by local politicians. Subsidized electricity for farmers alone

costs an estimated US\$6 billion a year – double the central government’s spending on health or rural development – and overall energy subsidies total about US\$20 billion.¹⁰

Reforming such a situation will not be easy, especially since the mainstream

Indian energy sector is characterized by large, state-dominated monopolies – a proximity that makes special treatment and interference by particularistic political interests more likely.

An unfinished agenda for transparency and participation

Where private sector engagement has become more prominent, as in oil and gas extraction, concerns have surfaced about undue profiteering through favourable and often less than transparent contracts and concession procedures.¹¹ A parallel set of conditions was noted in the early days of electricity reform in the 1990s, when independent power producers and distribution companies were given extraordinarily generous terms allowing for the collection of significant rents.¹²

Naturally, the question is open as to whether such arrangements could have been avoided, given the country’s infrastructure needs and the scale of the investment required. The government was obligated to err on the side of generosity towards investors with deep

pockets in order to make their projects more attractive. The lack of transparency in contracting and relatively lax oversight rules remain troubling, however.

It is encouraging to note that a detailed analysis of electricity governance in India found that significant progress has been made towards opening critical decisions to more public scrutiny, even though much remains to be done. General information about reforms is being more widely disclosed. Effective transparency, systematic engagement with the public and more integration of environmental considerations into electricity governance – all prerequisites for accountable and inclusive climate policies – are far from reality, however, as tables 2.2 and 2.3 indicate.

Indicator PP 14: Quality of public participation during reform or policy decisions	India <i>Low</i>
Public notification	X
Public registries of documents	X
Communication of decisions within one month	X
Use of diverse communication tools	X
Adequate time for public consideration	X
Opportunity for consultation	X
Clear communication on the results of public participation	X
Outreach to vulnerable communities	X
Indicator PP 15: Quality of participation by stakeholders and government responsiveness	<i>Low</i>
Quality of participation:	
Quantity of input	X
Breadth of input	X
Responsiveness of policy-maker:	
Notification of public participation by government	X
Summary of public participation	X
Response to public participation	X

Table 2.2 Indicators for quality of participation in India

Indicator ESA 9: Inclusion of environmental considerations in sector reform processes	India <i>Medium-low reform</i>
Inclusion of environmental considerations in official documents, before reform	X
Broad framing of environmental issues	X
Access to documents	
Less restrictive confidentiality rules applied to reform-related documents	✓
Adequacy of public comment period	X
Effort to reach affected and less-privileged populations	X
Mechanisms to seek public input	X
Availability of public comments	X
Communication of how public input is incorporated	X

Source: Adapted from Smita Nakhooda et al., *Empowering People, A Governance Analysis of Electricity* (Washington, DC: World Resources Institute [WRI], 2007).

Table 2.3 Indicator of the inclusion of environmental considerations in sector reform processes in India

The future: cause for hope?

The Indian government recently announced plans to reduce its carbon intensity by 20–25 per cent by 2020 compared to 2005 levels, indicating intensified efforts to improve efficiency and promote renewable energy. Proposals include building more wind, solar and geothermal facilities, expanding public transportation and instituting a tax on both domestic and imported coal that would raise money for cleaner energy and technology.

Despite these encouraging signs, India's experience with the CDM and energy reforms indicates that the escalation of energy-related investments will undoubtedly bring new opportunities for rent-seeking. It is therefore imperative that institutional design be improved and public oversight enhanced.

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2.4.2

Climate policies in China

A gradual move towards ambition, more transparency and nascent citizen involvement

Dieter Zinnbauer¹

Following several decades of rapid economic growth, urbanization and industrialization that has lifted more than 200 million people out of poverty, China is reported to have surpassed the US as the world's largest energy consumer and greenhouse gas (GHG) emitter in 2009 and 2007, respectively – several years earlier than expected.² In addition, China's overall energy demand is estimated to double by 2030.³ This transformation has catapulted China to the forefront of international climate change policy-making, although its per capita share of emissions is still far lower than in industrialized countries, with their voracious appetite for energy-intensive lifestyles.

Now standing with the US at the pivot of global climate policies, China made its role evident for the first time at the Copenhagen talks in December 2009 by expressing its interests more assertively and visibly than ever before. As a result of its heightened position, the interests and players that shape China's own stance and policies towards climate change are also shaping international climate policies. Very different moral and historical responsibilities notwithstanding, the calculus is not dissimilar to the US context: if vested interests can manage to hijack climate policies at the national level, there is a real risk they can do the same at the global level.

Hope and hurdles: can China build on its solid start?

A growing concern about energy security, pollution and the impact of climate change on its economy and society prompted the Chinese leadership to establish targets for reducing energy intensity by 20 per cent from 2006 to 2010. This target has been supported by a diverse and growing array of energy and environmental initiatives, from campaigns to shut down or upgrade outdated production technologies and fuel efficiency standards for vehicles and appliances, to cutting rural GHG emissions, household energy-saving schemes, and government support and feed-in tariffs for green technologies.

These efforts have yielded some significant results, although, at the time of writing, when the economy started recovering from the financial crisis China unexpectedly experienced some difficulties in meeting the energy intensity target. Between 2000 and 2008, however, the country more than doubled its hydropower capacity, more than quadrupled its nuclear power capacity and increased its wind power capacity by a factor of 30.⁴ China has evolved into the world's leading supplier of, *inter alia*, certain types of solar panels and water heaters. It has almost twice as much installed capacity for renewable energy production than the US⁵ and leads the world in green energy investments with US\$34.6 billion in 2009 – nearly double the second-placed

US.⁶ In addition, the government is contemplating experiments with programmes such as carbon taxes and carbon trading pilots.

At the 2010 COP 16 in Cancún, China agreed to language establishing an international reporting mechanism for national emissions. One year earlier in Copenhagen it also expressed, among its other aspirations, an intention to reduce its CO₂ emissions per unit of gross domestic product by 40–45 per cent by 2020 compared to 2005 levels, and increase the share of non-fossil fuels in energy consumption to about 15 per cent by 2020.⁷

Opinions differ, however, about the degree of commitment behind these overtures. Many observers were frustrated by what they viewed as China's unproductive insistence on avoiding absolute emissions reduction targets, as well as a stricter emissions reporting and verification mechanism. Others believe these initiatives and commitments show true ambition and signal concessions on important principles that had held up international negotiations, notably the previous resistance to any kind of numerical target or international reporting mechanism.

What experts can agree on is that the road ahead for China's climate policies will be extremely challenging. The low-hanging fruit have already been picked. New promises need to be

translated into effective action, and future efforts must be expanded even further to reconcile the country's projected surge in energy demand with requirements to mitigate climate change. It is thus more important than ever to examine the prospects that Chinese

climate policy-making can withstand policy capture by vested interests, and whether transparency, accountability and public engagement can be strengthened. At first sight, a number of factors suggest that these prospects are not overly encouraging.

Power confers power: the clout of high-emission energy producers versus environmental institutions

Dramatic improvements in green energy development notwithstanding, China continues to rely heavily on coal, a particularly polluting source of energy, to power its fast-paced development. The country holds 14 per cent of the world's known coal reserves, and in 2009 coal still accounted for 70 per cent of its primary energy needs, representing more than 40 per cent of global coal consumption.⁸ This dependence is not expected to lessen significantly in the near future. The share of natural gas, nuclear and renewable energy is expected to expand, yet, at the same time, China is building new coal-fired power plants quickly in order to meet soaring energy demand.

As a result, coal producers and coal-centred power companies, which have worked to slow down green policies in many countries, play a central role in China's energy future and stand to lose from ambitious climate policies.⁹ These strong incentives to influence policy can be aided by privileged access to policy-

makers. Many of China's large industry groups were derived from government ministries and, as state-owned companies, the major energy companies still enjoy close relationships with state agencies. As one Beijing-based observer put it, 'There don't need to be "lobbyists", when discussions can happen directly through the Party.'¹⁰

In stark contrast to these well-established coal and energy forces stand environmental policy-makers, who are still building their institutional voice and power base. China's main environmental agency was not granted enforcement powers until the early 1990s, and it was upgraded to ministry status as the Ministry of Environmental Protection (MEP) only in 2008.¹¹ The ministry has been described as understaffed and underfunded.¹² Likewise, the National Energy Administration, which is responsible for coordinating energy policy, is believed to have insufficient authority over powerful state-owned enterprises.¹³

Fragmented competences, competing policies

Because of China's uneven institutional landscape, policy-making on climate issues has been fragmented, as indicated by table 2.4.

Responsibility	Department
Macro-coordination and control	National Development and Reform Commission Ministry of Finance Ministry of Foreign Affairs
Pollution control	Ministry of Environmental Protection
Industry and construction	Ministry of Housing and Urban-Rural Development Ministry of Industry and Information Technology
Transportation	Ministry of Transport Ministry of Railways
Agriculture and forestry	Ministry of Agriculture State Forestry Administration
Industrial development	Ministry of Finance State Administration of Taxation National Development and Reform Commission Ministry of Industry and Information Technology Ministry of Agriculture
Technology	Ministry of Science and Technology Ministry of Environmental Protection National Development and Reform Commission

Source: Adapted from UNDP (2010).

Table 2.4 Departments involved in carbon policies in China

As a consequence, China's energy legislation is not fully integrated and it reflects the interests of the particular sectors concerned. China has four partially consistent energy-saving laws, but they exist alongside legislation on electricity and coal that is largely silent on issues of energy-saving and emissions reductions, and is even regarded as an obstacle to the further development of green energy and energy efficiency initiatives.¹⁴

Central ambition, local discretion

Implementing carbon policies is further complicated by the division of labour between central and local government in the context of a decentralized system that confers considerable powers in terms of implementing and enforcing central administration policies to regional and local authorities.

Climate change governance at local level not only involves environmental protection agencies but also includes a broader range of actors, such as local development and reform commissions. Nevertheless, the experience of environmental protection at local level is indicative of the challenges ahead. A lack of funding and capacity provides a first obstacle to enforcement. For example, most of the 145 energy-saving monitoring centres in China are considered to face weaknesses in staffing, budgeting, equipment and operational specifications.¹⁵

Abetted by what are often rather unspecific guidelines for implementation, there are instances in which local authorities have been unwilling to curtail the operations of polluting industries that provide significant local employment, fiscal revenues and economic growth and thus help them do well on what continue to be key indicators on which their

administrative performance is judged.¹⁶ Incentives for lax enforcement of or direct interference with environmental policies are even stronger when local authorities or individuals within them directly own stakes in these polluting industries.¹⁷

Similarly, local regulatory agencies, such as environmental protection bureaus, can face considerable conflicts of interest. Often underfunded and lacking sufficient staffing, they are typically organized as ‘little treasuries’ (*xiao jinku*) – hybrid organizations that are expected to make profits for local governments by selling services to businesses while also being tasked to independently oversee the very same industries that are their clients.¹⁸

The challenge to implement carbon policies effectively at the local level is further amplified by recent moves by polluting industries to relocate from richer regions, where capacity for enforcement is gradually growing, to poorer provinces further inland, where capacities and resources for enforcement are less adequate.¹⁹

All this does not bode well for climate policies that truly reflect the societal interest and are implemented effectively without interference from vested interests.

Strong competences and a focus on strengthening environmental authority and green incentives

On a positive note, many of China's leading policy-makers are trained as engineers, scientists or economists and are regarded as having a solid understanding of climate change issues.

Additionally, the growing recognition of energy security and climate issues was reflected by a move in 2010 by the State Council, China's top decision-making institution, to establish a National Energy Commission headed by the premier, Wen Jiabao. This can be seen as a significant effort to ensure a more authoritative voice and greater consistency between related policies and ministries with regard to climate change

issues.²⁰ Similarly, the State Council has been charged with tracking compliance with energy intensity rules. Regional and local officials are required to file progress reports every six months and are offered salary rises and promotions if they can demonstrate progress. Reaching climate-change-related objectives has entered the performance assessments of some local officials, although the strength of these incentives is questionable, since they coexist alongside well-established economic performance criteria. Additionally, Beijing cross checks reported numbers and periodically inspects major energy-using facilities.²¹

A growing embrace of information disclosure

The Ministry of Environmental Protection has pursued information disclosure strongly as a regulatory tool to shore up its enforcement powers. It issued a first batch of rather detailed environmental disclosure obligations for environmental protection departments and specific companies the same day that the national Open Government Information Regulations entered into effect, 1 May 2008.²² These requirements include proactively publishing detailed environmental information falling within 17 categories and providing a timely response to public requests for environmental information.²³

With regard to the national energy efficiency goal, performance updates are released annually on the National Development and Reform Commission's official website. Comprehensive and effective transparency is still often hampered, however, by a lack of capacity, fragmented production and maintenance of the data, limited accountability on the part of local officials and the vagueness of some guidelines. One year after the MEP implemented its regulations, a study found that average compliance levels by 113 municipal environmental protection departments were low.²⁴ Some positive examples illustrate what can be achieved, however. The city of

Ningbo, which earned the highest rank in terms of information disclosure, released more than 600 documents on environmental enforcement on its

website in 2008, including all environmental complaints received and the status of processing them.²⁵

Opening the doors: broader public engagement and recognition of environmental NGOs

The fact that Ningbo even released information about complaints attests to a gradual opening of environmental policy-making and enforcement processes to broader public involvement. Public hearings for environmental impact assessments are conducted for certain types of projects.²⁶ Moreover, in recent years draft texts of some energy- and climate-related legislation have been published online in advance and public comments have been invited via e-mail, although details of the discussion and the decision-making process were not disclosed.

On the downside, persistent gaps in effective environmental transparency and limited information on participation procedures and timelines make it difficult for people to participate meaningfully.²⁷ In addition, provisions for public input are typically less developed for many climate-relevant issues compared with conventional environmental concerns.

These obstacles notwithstanding, environmental NGOs are carefully expanding their engagement – taking on issues ranging from raising awareness on environmental accountability and working with officials and communities on pollution controls to assessing compliance with disclosure rules and assisting pollution victims. Nearly 3500 domestic NGOs are officially registered in China, and international environmental NGOs, including Greenpeace and WWF, have been gradually welcomed since the mid-1980s to undertake projects, including joint initiatives with local groups on climate-related issues.²⁸

Although NGOs must navigate burdensome registration rules, fund-raising challenges and political sensitivities, they are assuming a growing role in helping to make environmental and climate policies in China more open and accountable.

Notes

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2.5

Climate policies in Austria

Poor accountability breeds slow progress

Shahanaz Mueller¹

Austria has committed itself under the Kyoto Protocol and related EU burden-sharing agreements to reduce its greenhouse gas (GHG) emissions by 13 per cent from 1990 levels by 2012. In line with other EU countries, moreover, it has offered to expand these commitments under the Copenhagen Accord to a 20 per cent reduction by 2020 (30 per cent if other developed countries take comparable steps).

A series of related laws and policies in Austria are designed to make these goals possible, centred around a climate strategy devised in 2002 and expanded in 2007.

The success of these measures has been insufficient, however. Austria's Audit Court (Rechnungshof) has raised the alarm by stating that Austria's performance in 2008 was off-track by a significant 25 per cent and that the country is also likely to miss its Kyoto targets unless current efforts are further strengthened.²

Non-governmental organization (NGO) observers confirm this picture. Austria was singled out as a particularly poor performer on emission trends in Germanwatch's 2010 Climate Change Performance Index. Its overall performance was ranked in the bottom third of EU countries, and the index noted a particular contrast between policies and actual results.³

In short, Austria is off-track with regard to meeting its climate commitments, and a number of governance challenges hamper progress in devising effective climate policies.

Austria's climate strategy: limited coordination and unclear specifics

Austria's Climate Change Strategy 2008–2012, the cornerstone of its climate policy framework, has exhibited significant flaws in policy design. Implementing the

strategy is not just a task for the federal government – it also requires active involvement by Austria’s states. Unfortunately, ideas for an integrative implementation plan are largely absent, and more specific provisions for states and municipal communities were missing for an extended period.⁴

Similarly, the assignment of reduction targets and the designation of responsible actors are not specific enough to generate real accountability and pressure for reform. It is insufficient simply to state that either the federal government, or states or businesses are responsible for taking specific actions. This leaves open the question of who exactly is accountable if the strategy’s implementation is flawed or emissions reduction targets are missed. More broadly, neither oversight responsibilities, mechanisms for review and progress assessment, nor sanctions are spelt out in sufficient detail.⁵

Taken together, these inadequacies leave no doubt that the strategy is actually a political declaration of intent that lacks serious consideration for effective compliance mechanisms and responsibilities. A law enacted in 2008 for ecological modernization (Ökologisierungsgesetz) goes some way towards making certain measures more concrete, but it may come too late for Austria to meet its climate commitments.⁶

Climate project funding: disbursements with poor guidance

Limited clarity has also hampered the disbursement of project funding. A €500 million climate and energy fund was established that committed some €121 million in 2009 to support energy efficiency, renewable energy and other climate-related measures. With so much money at stake, the initiative has attracted considerable public attention, and the verdict is rather negative.⁷ Even a half-year after it was created, a strategic planning document, a regional development plan and an annual programme were still absent.⁸

Observers have complained about a lack of guidelines for the disbursement of funds.⁹ The availability of information about the actual impact and effectiveness of funded activities has also been judged as poor. It all increases the risk that this large-scale funding programme may end up benefiting various interest groups instead of developing renewable energies.¹⁰

Project results: poor tracking and accountability

Improving the energy efficiency of buildings is an essential element of Austria’s climate policy, yet the Audit Court has lamented, in a harsh assessment, that concrete reduction targets are being missed, guidelines are not coordinated and an efficient monitoring system is not in place.¹¹

A similar situation has unfolded with regard to another key instrument of Austria's climate strategy. Higher taxes on fossil fuels yielded €391 million in additional revenues in 2008 that were earmarked for infrastructure and climate-related projects. The Audit Court found that no specific guidelines were in place to ensure that only qualified climate projects would benefit, however. There was no transparency, neither inside the authorities nor to the public, on which projects received funding. No specific targets had been set and no mechanisms for tracking project performance and effectiveness had been put in place.¹²

Time running out for reforms?

Austria's failure to translate commitments into actual performance with regard to emissions reductions speaks very clearly to a transparency and accountability gap that hampers implementation of its climate mitigation policies. Matters are worse on the climate adaptation side, for which a national programme or strategy did not even exist as at the end of 2007.¹³

Little time is left to rectify the situation and implement climate policies with stronger governance dimensions that protect against capture by special interest groups, assign clear responsibilities and track performance in an accountable and transparent manner. Only this will help Austria avoid punitive damages for not meeting its commitments, not to mention the potential costs to its economy and society, and the world as a whole.

Notes

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