

How non-state actors can contribute to more effective review processes under the Paris Agreement

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How non-state actors can contribute to more effective review processes under the Paris Agreement

Following the celebrations surrounding the adoption and signing of the Paris Agreement, the concrete tasks of putting the new agreement into practice are becoming more urgent. Beyond offering further clarity on the substance of the nationally determined contributions (NDCs), a crucial priority for Parties to the United Nations Framework Convention on Climate Change (UNFCCC) will be to develop modalities and procedures for the agreement’s review processes.

The Paris Agreement introduces three types of review:

- An “enhanced transparency framework” to assess Parties’ implementation of their pledges and the financial and other forms of support they provide (Article 13).
- A facilitative and non-punitive implementation and compliance mechanism (Article 15).
- A “global stocktake”, starting in 2023 and occurring every subsequent five years, for assessing collective progress (Article 14), with a narrower facilitative dialogue on progress toward the long-term goal in 2018.

Together, these provisions offer a much-needed framework for reviewing how Parties, individually and in aggregate, fare in meeting and increasing their commitments under the Paris Agreement.

Non-state actors can play a key role in such review processes. In many areas of international relations, including climate change, they have helped monitor compliance with states’ obligations and pledges, provided relevant information and expertise, “named and shamed” laggards, and worked to identify and overcome key barriers to implementation, such as gaps in capacity, funding, or technical knowledge.

Through these efforts as well as a groundswell of climate actions, cities, sub-national governments, companies and non-profits are also helping to drive up ambition – a crucial need given that the Paris pledges fall far short of the effort needed to keep the global mean temperature increase “well below” 2°C, as agreed. As the Parties work to design review processes under the Paris Agreement, this policy brief explores how engaging non-state actors could help support implementation and continue to enhance ambition.

Key findings

- Non-state actors could help meet key needs as Parties develop modalities and procedures for the three main review processes of the Paris Agreement – the enhanced transparency framework, the global stocktake, and the implementation and compliance mechanism.
- Non-state actors a) offer independent and complementary insights and expertise into the progress made by Parties in implementing and enhancing the ambition of the Paris Agreement, b) help ensure that the outcomes of review processes are taken up within countries, and c) if necessary, hold Parties to account.
- The Parties can draw on previous experiences under the climate and other international regimes to identify ways to involve non-state actors in the review of Parties’ implementation and ambition.
- Along with the formal engagement of non-state actors in review processes under the Paris Agreement, there is great value in such actors continuing to play a major role in informal processes, as was highlighted in the run-up to the Paris Agreement.

Designing review processes under the Paris Agreement

The Paris Agreement and the accompanying decision by the Conference of the Parties offer the ground rules for each of the review processes, albeit in varying detail. They also explicitly note a number of modalities and procedures that will need to be developed. Table 1 summarizes the key design details, including the scope of each process, how differentiation among Parties is addressed, guiding principles, and sources of input.

In developing the rules for each of these processes, Parties can build on their experience with existing review processes under the UNFCCC. For many years, the national reports submitted by developed-country Parties under the UNFCCC and the Kyoto Protocol have been subject to a technical expert review. More recently, Parties set up two new review processes – international assessment and review (IAR) for developed countries, and international consultations and analysis (ICA) for develop-



As the Paris Climate Change Conference neared its end, many civil society groups held a demonstration on the Champs Elysees, urging world leaders to choose the right path: not to 3°C, but to 1.5°C.

Table 1: Design details of the review processes under the Paris Agreement

	Transparency framework (Article 13)	Implementation and compliance mechanism (Article 15)	Global stocktake (Article 14)
Scope	Mitigation and adaptation action, and financial, technology, and capacity-building support; individual Parties; NDCs	Provisions of the agreement	Comprehensive; global
Differentiation	On the basis of capacities; special circumstances of least-developed countries and small island developing states	Committee to pay attention to national capabilities and circumstances	Global in scope
Principles	Facilitative; non-intrusive; non-punitive; respectful of national sovereignty; avoiding undue burdens	Committee is to be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive	Comprehensive and facilitative; in light of equity and best available science
Sources of input	National reports, incl. inventories and information to track progress towards implementing and achieving NDCs	To be determined	Sources include: (1) information on overall effect of NDCs; (2) adaptation communications and reports; (3) Information on mobilization and provision of support; (4) Latest IPCC reports; (5) Reports by subsidiary bodies
Process	Review by technical experts, followed by multilateral consideration	Involving a Committee; further details to be determined	To be determined
Outcome	Process should inform stocktake	To be determined	Process shall inform Parties in updating and enhancing actions and support; enhance international cooperation

Source: Compiled by the authors, based on the Paris Agreement and Decision 1/CP.21, 'Adoption of the Paris Agreement (UN Doc. FCCC/CP/2015/10/Add.1, 29 January 2016).

ing countries – which added an additional element of multi-lateral discussions among Parties about individual countries’ performance (multilateral assessment for developed countries and a facilitative sharing of views for developing countries).

Although the Paris Agreement suggests that the enhanced transparency framework should draw on these experiences, an important difference with existing review processes is that the new framework is common for all Parties, and does not just apply to developed countries.

In addition to these review processes aimed at promoting the transparency of Parties’ actions, Kyoto Parties have gained experience with a mechanism to facilitate compliance, although the context of this mechanism was determined largely by the “targets-and-timetables” approach of the Protocol.



The city of Belo Horizonte, in Brazil, is a leader in sustainable urban transport, including bike lanes and the MOVE bus rapid transit system.

Non-state actors in the enhanced transparency framework

Following existing review processes, the transparency framework will have two elements: a technical review of national reports by a team of experts, and a multilateral consideration of the report by other Parties. Both elements can benefit from including non-state actors.

Technical reviews of national reports (including both action and support) will be carried out by teams of technical experts. Such reviews can be centralized and desk-based, or they may involve in-country visits (developing countries may opt out of these). While in existing review processes it is common for technical experts to act in their personal capacity, they are nominated by governments.

The guidelines for existing technical reviews do not specify that non-state actors can provide inputs (e.g. by submitting reports or relevant data) into the existing reviews. In practice, however, expert reviewers have often engaged with non-state actors during in-country visits as a way of gathering the necessary information.

The review processes under the Paris Agreement could build on that experience. For example, Parties could specify clearly that expert review teams, when conducting in-country reviews, may invite non-state actors to participate (e.g. through a separate meeting). For desk-based reviews, expert reviewers could invite comments or other submissions from non-state actors.

While existing multilateral elements of IAR and ICA do not provide clear roles for non-state actors, the enhanced transparency framework under the Paris Agreement could strengthen their role. This could be achieved by making the proceedings

Non-state actors in review processes outside the UNFCCC

While non-state actors have only been indirectly involved in review processes under the UNFCCC thus far, other regimes highlight their potential to make a larger contribution. For instance, the Convention on International Trade in Endangered Species of Wild Fauna and Flora depends on information provided by international non-governmental organizations, notably TRAFFIC, on wildlife trade.

Even in a field as contentious as the protection of human rights, non-state actors play an active role in the review process. The UN Human Rights Council's Universal Periodic Review was introduced in 2006 to examine countries' adherence to a range of legally binding human rights instruments, but also voluntary pledges and commitments made, with a view to improving the human rights situation, enhancing compliance with international commitments, building capacity, and sharing best practices. The review is based on information provided by states, which are encouraged to consult all relevant stakeholders at the national level in the preparations. The review further allows the reviewing body to consider credible and reliable information provided by relevant stakeholders, and non-state actors have an opportunity to make general comments before the outcome of the review is adopted.²

Non-state actors have also been able to play a role in compliance mechanisms. For example, several treaties adopted under the auspices of the UN Economic Commission for Europe – notably the Aarhus Convention and the Alpine Convention – allow non-state actors to trigger the relevant compliance procedure. Moreover, almost all multilateral development banks allow affected individuals to report alleged non-compliance with social and environmental safeguards to independent inspection panels. Similar provisions could allow non-state actors to raise questions of implementation for Parties that may otherwise not be challenged for political reasons.

accessible to the public (e.g. via webcasting the multilateral consideration, as was already done for the multilateral assessment part of IAR), making all relevant documentation available (which is by and large common practice under existing technical review processes), and allowing submissions from non-state actors to submit written and/or oral questions. As noted in Box 1, Parties to the UNFCCC have already given non-state actors this kind of role in other regimes, including in highly sensitive areas such as human rights.

Finally, given that many NDCs specifically refer to cities, sub-national governments, the private sector, civil society, and other non-Party actors, both the technical expert reviews and multilateral considerations may find it productive to engage with these actors to understand their role in implementation.



Tony Hayward, CEO of Genel Energy, speaks with other CEOs and World Bank climate chief Rachel Kyte at the 2015 Business & Climate Summit in Paris.

Non-state actors and the implementation and compliance mechanism

Article 15 of the Paris Agreement calls for a new mechanism “to facilitate implementation of and promote compliance with” the provisions of the agreement. It is to consist of a committee that “shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive”, with “particular attention to the respective national capabilities and circumstances of Parties”.

Non-state actors could potentially play a role in this mechanism as well, although much will depend on the scope and functions of the mechanism. The facilitative and non-punitive nature would likely preclude an adversarial role for non-state actors – such as challenging the information provided by a Party or “triggering” a compliance process (e.g. by filing a complaint that would require the attention of the committee). However, there may still be possibilities to draw on inputs from non-state actors.

For example, the Kyoto compliance mechanism allowed for the submission of relevant information from competent international and non-governmental organizations. Paris could follow this and guarantee non-state actors' access to documentation and proceedings (e.g. by making all documentation related to specific cases available, and webcasting all proceedings).¹ Beyond such measures, the compliance mechanisms could also actively solicit the aid of non-state actors in helping Parties tackle barriers to implementation, including, for example, technical knowledge, capacity-building, or financing.

Non-state actors in the 2018 facilitative dialogue and 2023 global stocktake

Non-state actors could make valuable contributions to the facilitative dialogue and global stocktake in several ways. First, scientific insights could feed into the work of the Intergovernmental Panel on Climate Change (IPCC), not least the report due in 2018 on the impacts of 1.5°C of global warming and relevant emissions pathways. Such insights could also inform findings on how the NDCs measure up to the 2°C goal.

Second, as the decision adopting the Paris Agreement clearly states that the mentioned inputs for the global stocktake are not exhaustive (no inputs are specifically mentioned or excluded for the facilitative dialogue), other inputs from non-state actors could be welcomed. This could include reports by credible and reliable non-state actors, including international organizations such as the United Nations Environment Programme, which publishes the very policy-relevant annual Emissions Gap Reports.

Further possibilities for involving non-state actors in the stocktake depend on the overall modalities and procedures. If the stocktake involves a multilateral discussion of the level of overall progress, a crucial step would be to open those discussions to observer organizations, and to allow them to make written and/or oral interventions.

Finally, both the facilitative dialogue and the global stocktake would benefit from assessing the crescendo of climate-related efforts that cities, companies, and other non-Party actors are making individually, with one another, and alongside states and international organizations. In aggregate, these actions and initiatives have a strong effect on global efforts to address

Policy recommendations

- The modalities and procedures developed for Articles 13–15 should explicitly harness the capacities of non-state actors to contribute to effective review under the Paris Agreement.
- Public access to discussions and all relevant documentation should be the basic rule for all review processes.
- The multilateral consideration under Article 13 and any multilateral discussions under the stocktake of Article 14 should explicitly allow for written submissions and oral interventions by non-state actors.
- Non-state actors should be able to provide inputs into the stocktake, provided that such inputs can be seen as reliable and credible.
- The informal role of non-state actors should be further supported – for instance, by providing for funding support and an explicit acknowledgement of their role.

climate. Moreover, many actions and initiatives help define the upper bound of ambition while providing concrete examples of policy options that Parties might embrace and expand in their own NDCs. For these reasons, non-Party climate action provides crucial information for Parties reviewing collective efforts under the Paris Agreement.

The informal role of non-state actors

Beyond the formal review processes under Articles 13–15 of the Paris Agreement, non-state actors can play an important informal role.³ This role was particularly visible in the assessment of intended nationally determined contributions (INDCs) submitted ahead of the Paris Climate Change Conference. A range of research and civil society organizations released initial analyses of the documents, including the underlying assumptions and data. These analyses offered useful and timely third-party perspectives on the information provided by governments. They fill an important gap, not only by assessing how individual countries are doing – something that is missing in the global stocktake – but also by reviewing Parties' pledges for ambition, equity and fairness, which are hardly ever assessed in formal processes.

Non-state actors, not subject to the same political constraints as the intergovernmental process, and with the expertise and knowledge of the conditions prevailing in individual states, can thus supplement the formal process by making visible and accessible how much progress is made. Moreover, the information provided by such assessments can be useful for the government under review – for instance, if the review points to additional mitigation potential or calls for increased financial support. It can also be useful to other governments, to enhance the credibility of the information provided by the government under review, or call their attention to key issues or questions. Perhaps most importantly, this information can help mobilize change agents at the national level, which not includes civil society organizations active domestically, but also parliamentarians or government officials (e.g. from less powerful ministries).

This policy brief was written by Harro van Asselt, of SEI and the University of Eastern Finland Law School, and Thomas Hale, of the Blavatnik School of Government at the University of Oxford. It draws on Harro van Asselt's article "The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement", *Climate Law*, 6(1–2), 91–108, as well as on discussions at the workshop "Reviewing Implementation and Compliance under the Paris Agreement", held at Arizona State University, 7–8 April 2016.

In addition to providing information independent from the formal review processes, the role of non-state actors in facilitating and promoting compliance will also continue at the national level, through outreach and by raising public awareness of the progress made by national governments (or lack thereof).

Endnotes

- 1 Duyck, S. (2014). MRV in the 2015 Climate Agreement: Promoting Compliance through Transparency and the Participation of NGOs. *Carbon and Climate Law Review*, 8, 175–187.
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- 2 UN Human Rights Council (2007). *Institution-building of the United Nations Human Rights Council*. Resolution 5/1, A/HRC/RES/5/1 (2007). Annex.
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- 3 For more detail, see van Asselt, H. (2016). The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement. *Climate Law*, 6(1–2), 91–108.

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