

## **MODEL LAW**

### **Implementing the Nationally Determined Contributions Submitted Under the Paris Agreement Through Domestic Legislation**

#### **Introduction**

At the United Nations Climate Change Conference in Paris in December 2015, 195 countries adopted a global climate agreement (“Paris Agreement”). Under the Paris Agreement, governments across the world agreed to the long-term goal of maintaining the global average temperature increase to “well below 2°C” above pre-industrial levels and to pursue further efforts to limit the temperature increase to 1.5°C (Article 2).

To reach this goal, the parties to the Paris Agreement (“Parties”) recognized that “deep reductions in global emissions will be required” (Decision 1/CP.21). They also committed to prepare, submit, and maintain successive Nationally Determined Contributions (“NDCs”) describing how each nation will reduce its greenhouse gas (“GHG”) emissions by undertaking domestic mitigation measures in order to contribute to the global temperature goal (Articles 3-4).

Before the Paris conference, Parties were called upon to submit their “Intended Nationally Determined Contributions” (“INDCs”), which were effectively interim NDCs intended to showcase what level of emission reductions would be possible.<sup>1</sup> By April 2016, a total of 190 Parties had communicated an INDC (97% of all Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”)) with a total carbon dioxide coverage of 94.6%.<sup>2</sup>

To facilitate clarity, transparency, and understanding across the Parties’ diverse national circumstances, the Paris Agreement contains some guidelines about the information the NDCs should include. Specifically, the NDCs must include the temporal reference point from which countries set their goals, time frames, and/or periods for implementation of their target, the scope and coverage of their emission reduction plans, as well as a description of the assumptions and methodological approaches used in preparing the NDCs (Article 4(8) & (13)-(14)). Guidance on NDCs is negotiated under the Ad Hoc Working Group on the Paris Agreement, Agenda Item 3 (*see* Decision 1/CP.21, paras. 27-28).

The submission of NDCs is mandatory (Article 4(2)).<sup>3</sup> NDCs must be transparent (Article 4(8)), and Parties must “account” for their NDCs (Article 4(13)). In addition, each NDC must be revised every five years “with a view to enhancing its level of ambition” (Article 4(3), (9) & (11)).

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<sup>1</sup> *See, e.g.*, Decisions of the Conference of the Parties to the United Nations Framework Convention on Climate Change, 1/CP.19, para. 2, 1/CP.20, paras. 9, 13, 14.

<sup>2</sup> INDCs are available on the INDC submission portal at <https://www4.unfccc.int/sites/submissions/indc/Submission%20Pages/submissions.aspx>.

<sup>3</sup> However, the Paris Agreement recognized the special circumstances of Small Island Developing States and Least Developed Countries, making NDC submission optional for these two groups of Parties. *See* Paris Agreement, Art. 6 (“The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances”); *see also id.* Art. 13(3) (transparency framework).

Parties who submitted an INDC prior to joining the Paris Agreement may utilize their INDC as their first NDC going forward. Parties may also submit new or revised NDCs by 2020 (Decision 1/CP.21, paras. 22-24). This document refers to all of these NDC instruments collectively as “NDCs.” Published NDCs are available on the UNFCCC website.<sup>4</sup>

In view of the long-term temperature goal, the Paris Agreement also invited Parties to communicate, by 2020, their mid-century “long-term low [GHG] emission development strategies” (Article 4(19); Decision 1/CP 21, para. 35).

The Paris Agreement also recognized climate adaptation—the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development—as a key component of the new treaty. It invited Parties to communicate their domestic adaptation plans and priorities through periodic adaptation communications, which can be submitted as a component of or in conjunction with a national adaptation plan, an NDC, or a national communication (Articles 7(9)-(11) & 13(8)).

## **Nature of the Model Law**

While the NDC framework has binding features in terms of requirements for reporting and updating, the NDCs themselves are policy pledges without the force of law. The NDCs, and the Paris Agreement itself, hold greater promise of being achieved when these pledges enjoy the support of each nation’s domestic laws.

This Model Law is intended to serve as a resource for countries seeking to implement their international pledges under the Paris Agreement by adopting domestic legislation that gives effect to their NDCs. Because a Model Law may be most useful to countries with fewer administrative resources, this template is geared towards that community, although it is not necessarily limited to their use.

The NDCs adopt a variety of approaches, so this Model Law offers several different sections intended to cover the most common approaches. Most countries’ NDCs include a specific GHG mitigation target of some kind (e.g., quantity-based, intensity-based, variable over time, etc.). Countries may achieve those goals through a variety of measures, including economy-wide or industry-specific emissions reductions, carbon pricing through cap and trade or carbon taxes, energy efficiency investments, and more. Some NDCs also include a carbon sink goal, or state their intent to include land and forest sectors in their GHG inventories. The Model Law does not attempt to provide specific provisions addressing all possible scenarios and does not prefer one approach over another. It rather simply seeks to help Parties enshrine their NDCs, whatever their form, as a domestic law commitment in order to increase their chances of being successfully implemented.

The Paris Agreement also provides for regular technical expert review of implementation of NDCs under “an enhanced transparency framework for action and support” (Article 13). In particular, it

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<sup>4</sup> United Nations Climate Change, Nationally Determined Contributions, <https://unfccc.int/process/the-paris-agreement/nationally-determined-contributions/ndc-registry#eq-1> (last visited March 25, 2019).

requires the Parties to regularly provide a variety of reports, including national inventories of anthropogenic GHG emissions and sinks (Article 13(7)(a)) and progress reports on implementing and achieving the NDCs (Article 13(7)(b)). Although not mandatory, plans for climate change adaptation are also encouraged (Articles 7(10) & 13(8)). The Agreement also urges developing country Parties to submit information on the type of external support they need to achieve their mitigation and adaptation goals and the support they have received (Article 13(10)). To help satisfy these needs, the Model Law includes provisions for reporting and information collection.

The form of national legislation and the terminology used will of course vary according to domestic legal practices, administrative and governmental structures, and other factors. The Model Law assumes the presence of complementary domestic law addressing such questions as information privilege or confidentiality (including trade secrets), public engagement (access to information and rights of participation), access to judicial review to challenge administrative decisions, standing to bring suit, recovery of costs and attorneys fees, and the like, and is not intended to supplant those laws. Where such complementary domestic law is not present, there may be a need to address these questions in the national climate change law itself so that the legal framework is sufficiently comprehensive to allow for effective implementation.

As this suggests, these model provisions are meant to be used as a starting point and adjusted based on each country's particular legal conventions, preferred implementation instrument, and NDC content. The Model Law provisions include "drafting notes" to assist countries in drafting legislation tailored to their needs; these are found in footnotes throughout the document.

## **Future UN Actions**

The Paris Agreement entered into force November 4, 2016, 30 days after the date on which at least 55 Parties accounting for at least 55% of total global GHG emissions deposited their instruments of ratification, acceptance, approval, or accession with the Secretary-General of the United Nations (Article 21).<sup>5</sup> The Conferences of the Parties since then have seen the Parties reaffirming the importance of undertaking and reporting ambitious efforts to effectuate current NDCs, according to evolving accounting guidance under Article 4(13) of the Agreement, as well as the importance of updating NDCs in accordance with the Agreement's timetable.

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<sup>5</sup> The current status of ratification is available at [http://unfccc.int/paris\\_agreement/items/9444.php](http://unfccc.int/paris_agreement/items/9444.php).

## **DRAFT MODEL LAW**

### **Act Number XX of 201X Climate Change Mitigation and Adaptation Act**

**An Act to implement [COUNTRY NAME]’s Nationally Determined Contribution to the 2015 Paris Agreement under the United Nations Framework Convention on Climate Change (“Paris Agreement”), with a view to combating climate change and meeting [COUNTRY NAME]’s obligations under the Paris Agreement.**

#### **PART 1 General**

1. This Act may be cited as the Climate Change Mitigation and Adaptation Act.
2. Definitions.<sup>6</sup> As used in this Act, the following terms shall have the following meanings:

“Carbon sink”: A natural or artificial reservoir that accumulates and stores some carbon containing chemical compound for an indefinite period.

“Greenhouse gases”: Any gas that absorbs infrared radiation and radiates heat in all directions, including carbon dioxide, methane, nitrous oxide, ozone, and any fluorocarbons.

“Internationally Transferred Mitigation Outcomes”: Market-based systems for reducing greenhouse gas emissions.

“Managing Authority”: A national administrative body designated as having primary responsibility for the implementation of this Act.

“Minister”: The senior most official of the Managing Authority.

“Nationally Determined Contribution”: [NAME OF COUNTRY]’s plan for contributing to global efforts to combat climate change, as submitted to the Secretariat on [DATE].

“Paris Agreement”: Paris Agreement adopted by Decision 1/CP.21 of the Conference of the Parties to the United Nations Framework Convention on Climate Change on its twenty-first session, held in Paris from 30 November to 13 December 2015 (FCCC/CP/2015/10/Add.1).

“Person”: An individual, group of individuals, partnership, corporation, association, trust, estate, or other non-corporate entity with its own legal existence.

“Secretariat”: United Nations Framework Convention on Climate Change Secretariat.

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<sup>6</sup> **Drafting Note:** This list of terms is not intended to be exclusive and can be modified to achieve greater precision or closer alignment with either national laws or official UNFCCC or IPCC documentation.

3. Statements included in the most recent Nationally Determined Contribution will serve as a source of interpretation of the provisions of this Act.

4. Nothing in this Act shall restrict the authority of subordinate levels of government to require more stringent mitigation activities or additional adaptation activities.<sup>7</sup>

This Act shall be effective as of the date of enactment.

## **PART 2** **Authorities**

1. The [NAME OF MINISTRY] is designated as the Climate Change Mitigation and Adaptation Managing Authority for [NAME OF COUNTRY].<sup>8</sup>

2. The specific duties of the Managing Authority shall include, but are not limited to, the following:

(a) Coordinating the preparation, submission, and maintenance of the reports listed in Part 3;

(b) Communicating with the Secretariat and other countries on scientific, administrative, enforcement, and other issues related to implementation of the Paris Agreement;

(c) Coordinating the national implementation and enforcement of this Act, and cooperating with other relevant authorities in this regard;

(d) Representing [NAME OF COUNTRY] at national and international meetings related to the Paris Agreement;

(e) Providing training, education, and information related to the Paris Agreement; and

(f) Advising the Minister on action to be taken for the implementation and enforcement of the Paris Agreement and this Act.

3. The Minister shall issue such orders, protocols, and regulations in accordance with applicable law<sup>9</sup> as necessary to enable implementation of the provisions of this Act.

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<sup>7</sup> **Drafting Note:** The choice of whether to include this provision in this form, or in modified form, will be informed by the broader distribution of law-making authority across central and subordinate levels of government, as established by constitutional or other domestic law.

<sup>8</sup> **Drafting Note:** More than one Managing Authority may be designated, in which case a lead Managing Authority should be identified.

<sup>9</sup> **Drafting Note:** Complementary domestic law may address such questions as rights of public and private stakeholders to participate in administrative decisionmaking, the opportunity to challenge ministerial orders, the standard of review that attaches to such challenges, and standing to bring suit. When not covered by existing complementary law, additional language may be needed to address these points in order to ensure effective implementation of the Act.

4. The Managing Authority is authorized to gather information from the private and public entities<sup>10</sup> to comply with its obligations under this Act, and to verify information in its possession through any reasonable and lawful means.

5. It shall be the duty of all private entities and public authorities to comply with the orders, protocols, and regulations lawfully issued by the Managing Authority to implement the provisions of this Act.<sup>11</sup>

### **PART 3** **Reporting<sup>12</sup>**

1. The Managing Authority shall at least biennially, and on a timetable consistent with reporting cycles under the Paris Agreement, calculate national anthropogenic emissions, and removals by carbon sinks, of greenhouse gases, and provide a national inventory report on the calculations to the Secretariat in accordance with the Paris Agreement, as well as to the public. The Managing Authority shall promulgate regulations to implement this requirement, which shall ensure that the emissions from all sectors of the economy are accurately captured and reported.

2. The Managing Authority shall at least biennially, and on a timetable consistent with reporting cycles under the Paris Agreement, provide a report on progress made toward implementing the Nationally Determined Contribution to the Secretariat in accordance with the Paris Agreement, as well as to the public.

3. The Managing Authority [shall]<sup>13</sup> at least biennially provide a report to the public and Secretariat describing the progress made toward implementing [NAME OF COUNTRY]'s adaptation priorities, implementation and support needs, plans, and actions.

4. The Managing Authority [shall]<sup>14</sup> at least biennially provide a report to the public and Secretariat describing the financial, technology transfer, and capacity-building support that [NAME OF COUNTRY] has received in the preceding year, and the support of that nature that will be needed in the future.<sup>15</sup>

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<sup>10</sup> **Drafting Note:** The protection of privileged information, including trade secrets, should be provided for when not covered by existing complementary law.

<sup>11</sup> **Drafting Note:** See **Drafting Note**, *supra* note 8. .

<sup>12</sup> **Drafting Note:** The biennial reporting cycles set forth in this Part track the reporting system under the Paris Agreement. A country may choose to establish interim requirements for reporting to the legislature and public as a means of helping ensure timely completion and delivery of reports required under the Agreement.

<sup>13</sup> **Drafting Note:** Adaptation Communications are not mandatory under the Paris Agreement, which observes that this element should be implemented “as appropriate” and “without creating any additional burden for developing country Parties.”

<sup>14</sup> **Drafting Note:** Financial, technology, and capacity-building reports are not mandatory under the Paris Agreement, which provides that this element should be implemented “as appropriate” and “without creating any additional burden for developing country Parties.”

<sup>15</sup> **Drafting Note:** This report is optional for developing countries. Under the Paris Agreement, “[d]eveloping country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11” (art. 13(10)).

5. The Managing Authority may exercise its discretion in combining any of the required reports, as long as, at a minimum, sufficient information about each issue is contained in the combined report to meet [NAME OF COUNTRY's] obligations under the Paris Agreement.

#### **PART 4 Mitigation**

1. [NAME OF COUNTRY] shall, at a minimum, achieve the emissions targets listed in Schedule 1 to this Act.

2. Within [XX] days of the effective date of this Act, the Managing Authority shall promulgate regulations ensuring that [NAME OF COUNTRY] will achieve the emissions in Schedule 1 as expeditiously as practicable. Consistent with Article 6 of the Paris Agreement, these regulations may include Internationally Transferred Mitigation Outcomes

3. Schedule 1 shall be considered automatically amended upon submission of a revised Nationally Determined Contribution to the Secretariat. The amendments shall be published in the [NAME OF PREFERRED PUBLICATION OR PREFERRED MODE OF PUBLICATION] as soon as possible after their submission to the Secretariat. The public registry referred to in Article 4 of the Paris Agreement is the official reference for the Schedule.

#### **PART 5 Adaptation**

1. [NAME OF COUNTRY] shall implement the adaptation measures listed in Schedule 2 to this Act.

2. Within [XX] days of the effective date of this Act, the Managing Authority shall promulgate regulations ensuring that [NAME OF COUNTRY] will implement the adaptation measures listed in Schedule 2 as expeditiously as practicable.

3. Schedule 2 shall be considered automatically amended upon submission of a revised Adaptation Communication to the Secretariat. The amendments shall be published in the [NAME OF PREFERRED PUBLICATION OR PREFERRED MODE OF PUBLICATION] as soon as possible after their submission to the Secretariat. The public registry referred to in Article 7(12) of the Paris Agreement is the official reference for the Schedule.

#### **PART 6 Management and Oversight**

1. The Managing Authority shall develop and propose an annual budget sufficient to satisfy the obligations set out in this Act.

2. Within two years of the effective date of this Act, and every two years thereafter,<sup>16</sup> the Managing Authority shall submit a report to the [LEGISLATIVE BODY] describing [NAME

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<sup>16</sup> **Drafting Note:** See *Drafting Note*, *supra* note 12.

OF COUNTRY]’s compliance with this Act, and providing recommendations for any changes to this Act that the Managing Authority has determined will meet [NAME OF COUNTRY]’s obligations under the Paris Agreement. Upon receipt of such report(s), the [LEGISLATIVE BODY] shall take such action as may be appropriate in response to recommended changes to this Act.

## **PART 7**

### **Accountability and Enforcement<sup>17</sup>**

1. Any person may commence a civil action on his or her own behalf against the Managing Authority where there is an alleged failure of the Managing Authority to perform any act or duty under this Act that is not discretionary.
2. Any person may commence a civil action on his or her own behalf against the Managing Authority to challenge a regulation or other implementing decision by the Managing Authority as unlawful or without a scientific basis.
3. Any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of this Act, or any regulation under this Act, for the relief specified in paragraph 6 of this Part.<sup>18</sup>
4. It shall be a civil offense to unjustifiably obstruct or otherwise hinder an officer of the Managing Authority in the performance of his or her duties or to fail to comply with a duly issued request for information.<sup>19</sup>
5. It shall be a civil offense for any person to fail to comply with any regulations promulgated under the authority of this Act.
6. A person who is found to have committed a civil violation of this Act shall be liable for a penalty as described in paragraph 10 of this Part and shall be subject to corrective order, as justice may warrant.<sup>20</sup>

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<sup>17</sup> **Drafting Note:** Complementary law may address the question of standing to bring suit, and the model language is not intended to supplant such law. When not covered by existing complementary law, additional language may be needed to address this question, unless the jurisdiction in question intends for standing to be open to any member of the public. Likewise, the Model Law assumes the presence of conduct-based rules that discourage the filing of frivolous or abusive litigation. If this is not the case, additional language may be needed to address this issue. Further, in the absence of complementary law addressing the recovery of court costs and fees by prevailing parties, additional language may be needed to allow for such recovery, as a means of facilitating accountability and the involvement of nongovernmental actors and the public.

<sup>18</sup> **Drafting Note:** A provision of this kind would allow anyone, including citizens, to be part of the enforcement system. While a citizen suit provision can be an important feature for ensuring accountability, local law and custom will determine whether and how it should be included in the Act.

<sup>19</sup> **Drafting Note:** See **Drafting Note**, *supra* note 8.

<sup>20</sup> **Drafting Note:** See **Drafting Note**, *supra* note 8.

7. It shall be a criminal offense for any person to knowingly or willfully<sup>21</sup> make either oral or written false or misleading statements in, or in connection with, any reporting or other activities required pursuant to this Act.<sup>22</sup>

8. It shall be a criminal offense for any person to commit any knowing or willful<sup>23</sup> violation of this Act.

9. A person who is found to have committed a criminal violation of this Act may be subject to a fine not exceeding [AMOUNT], or a term of imprisonment not to exceed [XX amount of time].<sup>24</sup>

10. In determining the amount of any financial penalty to be assessed under this Act, the Managing Authority<sup>25</sup> or the court, as appropriate, shall take into consideration the economic benefit of noncompliance, the seriousness and duration of the violation, the violator's prior compliance history, the violator's good faith efforts to comply, the violator's ability to pay a penalty, and such other factors as justice may require.<sup>26</sup>

## SCHEDULE 1

[Schedule 1 shall provide the most recent version of emissions targets in the NDC, along with either: (1) a summary of key provisions of the NDC and a link where the full text can be found; or (2) the full text of the NDC.]

## SCHEDULE 2

[Schedule 2 shall provide a link to the most recent version of the National Adaptation Communication.]

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<sup>21</sup> **Drafting Note:** Criminal liability generally requires elevated or aggravated misconduct; the descriptive language used here should, as appropriate, be adjusted to comport with national-level standards for criminality.

<sup>22</sup> **Drafting Note:** Complementary law will ordinarily guide how criminal violations are to be prosecuted, and this model language is not intended to supplant such law. When not covered by existing complementary law, additional language may be needed.

<sup>23</sup> **Drafting Note:** See **Drafting Note**, *supra* note 21.

<sup>24</sup> **Drafting Note:** Complementary law may address the question of overlapping coverage between civil and criminal authorities based on the same violation, as well as the implications of successive judgments based on the same violation. In the absence of such complementary law, additional language may be needed to ensure procedural fairness to defendants in such cases.

<sup>25</sup> **Drafting Note:** The model language acknowledges that some countries have given administrative agencies the authority to assess penalties administratively and have procedures in place to allow for this. Where such authority does not already exist, but is desired in this particular context, additional language may be needed.

<sup>26</sup> **Drafting Note:** Laws in some countries provide that financial sanctions may be assessed on a per day per violation basis, establish an upward cap on the amount of such sanctions, etc. As desired, further language can be added to these effects. It is also advisable to provide for where penalty payments are to be deposited. For example, rather than allowing private or citizen litigants to recover penalties (when such parties are authorized to engage in enforcement), most countries provide that penalties are to be paid into the general treasury or into a treasury subaccount that is dedicated to supporting government environmental program implementation.