

# GUIDE TO THE PARIS AGREEMENT

Edited by Anju Sharma

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# Preface

“Is there any Party that does not trust the Co-Chairs? I shall pause for a response.”

This was a question I reluctantly but unavoidably posed to Parties to the UN Framework Convention on Climate Change (UNFCCC) at a stocktaking meeting in Bonn in March 2014, as Co-Chair of the Ad Hoc Working Group on the Durban Platform (ADP). Pin-drop silence followed.

My question came at a crucial juncture of the highly-strung global negotiations for a new climate agreement, in response to calls for “a Party-driven process” and implicit innuendoes suggesting mistrust in the Co-Chairs. Such calls had become an unremitting mantra at this stage, driven by the fear that the agreement expected to come out of Paris the following year would exclude the concerns of some Parties.

This fear was neither surprising, nor perhaps misplaced. Parties were still recovering from the 2009 Copenhagen Climate Change Conference, where the Copenhagen Accord was negotiated by just a select group, while excluding many others. The mantra was therefore directed at the ghost of Copenhagen that continued to haunt negotiation halls. Copenhagen was seen as a failure by many, but in my view the failure was mainly procedural – Parties were excluded from decision making. Substantively, I think the Copenhagen Accord was perhaps one of the most significant outcomes from a climate change conference. It marked a turning point in international climate diplomacy and policy and pointed the direction to Paris.

The perceived “failure” of Copenhagen was accompanied by a slow and painful realisation that the Kyoto Protocol was not going to solve the climate crisis, especially since one Party that accounted for almost a third of global emissions had withdrawn from the Protocol even before the first commitment period, and other Parties were dropping unsubtle hints that they would not participate in a second commitment period.

This resulted in the careful wordsmithing of the 2011 Durban Platform for Enhanced Action, launching the Ad Hoc Working Group on the Durban Platform (ADP) to develop “*a protocol, another legal instrument or an agreed outcome with legal force*” that would, for the first time, be applicable to *all* Parties.

While the Durban Platform addressed what this future agreement should aim to achieve, and when it should be agreed, a glaring question remained: how were we going to get there? For the first time, the world was embarking on a post-Kyoto negotiating process where the sharp North-South divide was being challenged, and every country had agreed to contribute to mitigation efforts. The issue of leadership through these uncharted waters was a primary consideration.

An earlier process, the 2005 “Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention”, had already initiated a non-binding exchange of views on cooperative action by all Parties, developed and developing. This Dialogue was led by two Co-Facilitators – one from a developed country and another from a developing country – in a clear manifestation of the need for leadership from both sides to build confidence in the process.

The Dialogue eventually resulted in a precedent-setting call for developing countries to take on Nationally Appropriate Mitigation Actions (NAMAs); and in the launch of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). It was decided that instead of Co-Facilitators, the AWG-LCA would be led by a Chair and Vice-Chair – one from a developing country and the other from a developed country, alternating roles annually.

The Decision to establish the ADP, however, was silent on the question of leadership. The default rules of procedure for electing the chairs of Subsidiary Bodies were to be followed, but after a brief hiatus caused by last-minute confusion on the developing country nominee, it was agreed that the Co-Chairs (one each from a developing and developed country) would change after a year. Thus began the challenge for Co-Chairs to

manage the process leading into Paris, with the background chorus for “a Party-driven process” constantly echoing in the halls.

My own tenure as ADP Co-Chair lasted from July 2013 to December 2014. An unwritten rule that I had learnt in over two decades as a climate negotiator was that the Chair of a process commands the respect of all Parties, and is trusted to guide the process with integrity, while ensuring that the interests of all Parties are taken into account. Indeed, I had found that this was a core function for a Chair during my tenure as Chair of the Subsidiary Body for Scientific and Technological Advice (SBSTA) between 2005 and 2007. The role of Co-Chairs is to listen to all views and reflect them in a balanced manner in text for Parties to consider, comment, and ultimately agree on. The effectiveness of Co-Chairs, I had also learnt, is only as good as the chemistry between them, and a solid, mutual understanding of their role and mandate.

It came as a complete shock, therefore, when my Co-Chair and I felt we were being interrogated at the 2014 Bonn stocktaking meeting, with implications that the process was not sufficiently Party-driven. Co-Chairs are nominated and elected by Parties to facilitate consensus and agreement among Parties – already a Party-driven process. To be effective, they have to take initiative to guide Parties to consensus and agreement. To contend that they can only proffer text at the behest of the Parties was not only an affront, but also a misunderstanding of how multilateral negotiations work in practice.

While the Chairs must retain the right to offer avenues for consensus building, their suggestions can be resoundingly rejected by Parties. To say that the Chairs cannot propose such avenues or can only do so at the behest of Parties is untenable, in my view. Had that been the case, my Co-Chair and I would not have been bold and proactive enough to table a decision at our first Conference as Co-Chairs in Warsaw in 2013, and the concept of Nationally Determined Contributions – the bedrock of the Paris Agreement – would not have become a reality. In the end, however, it is Parties that agree and adopt decisions and agreements, not Co-Chairs.

In any event, we persevered, and what was annexed to the Lima Decision in 2014 as perhaps the zero draft of the Paris Agreement was representative of the views of all Parties. No Party or group of Parties could claim that their views or options were excluded. The Party-driven process triumphed (as it always has), and Parties signed on to implement the Paris Agreement. As with all multilateral agreements adopted as a result of compromise, what was agreed is still subject to their interpretation.

This *Guide to the Paris Agreement* is a welcome publication that aims to dissect the complex interlinkages of the various aspects of its provisions. I have no doubt that it will go a very long way in facilitating Parties' understanding of their Agreement. The ecbi must be commended for its indefatigable efforts to enhance understanding of the UNFCCC process and the issues under negotiation with the aim of catalysing consensus and progressing the global climate agenda through facilitating mutual trust and confidence building. Nothing is more needed now.

I will certainly be keeping a copy of this Guide close to me to enhance my own understanding of what I presided over in the initial phase of the negotiations for the Agreement.

**Kishan Kumarsingh** (*Trinidad and Tobago*),  
*Co-Chair of the ADP (2013-2014) and SBSTA Chair (2005-2007)*

# Abbreviations

ACE	Action for Climate Empowerment
ADP	Ad Hoc Working Group on the Durban Platform
AFB	Adaptation Fund Board
AGN	African Group of Negotiators
AILAC	Independent Alliance of Latin America and the Caribbean
AOSIS	Alliance of Small Island States
APA	Ad Hoc Working Group on the Paris Agreement
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-Term Cooperative Action under the Convention
BTRs	Biennial Transparency Reports
BURs	Biennial Update Reports
CBD	UN Convention on Biological Diversity
CBDR-RC	Common but differentiated responsibilities and respective capabilities
CBIT	Capacity-building Initiative for Transparency
CCS	Carbon capture and storage
CDM	Clean Development Mechanism
CER	Certified emission reduction
CGE	Consultative Group of Experts
CMA	Conference of Parties serving as the Meeting of the Parties to the Paris Agreement
CMP	Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol
COP	Conference of the Parties
CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation

CRTs	Common reporting tables
CTCN	Climate Technology Centre and Network
CTFs	Common tabular formats
ETF	Enhanced transparency framework
FMCP	Facilitative, multilateral consideration of progress
GCF	Green Climate Fund
GEF	Global Environment Facility
GGA	Global goal on adaptation
GHG	Greenhouse gas
GST	Global stocktake
IAR	International Assessment and Review
ICA	International Consultation and Analysis
ICTU	Information to facilitate clarity, transparency, and understanding
INDCs	Intended Nationally Determined Contributions
IPCC	Intergovernmental Panel on Climate Change
IPRs	Intellectual Property Rights
ITMOs	Internationally transferred mitigation outcomes
KCI	Katowice Committee of Experts on the Impacts of the Implementation of Response Measures
LEDs	Low emission development strategies
LEG	LDC Expert Group
LDCs	Least Developed Countries
LDCF	LDC Fund
LMDCs	Like-Minded Developed Countries
LULUCF	Land use, land use change, and forestry
MPGs	Modalities, procedures, and guidelines
NAMAs	Nationally Appropriate Mitigation Actions
NAPs	National Adaptation Plans
NAPAs	National Adaptation Programmes of Action
NDCs	Nationally Determined Contributions

NIR	National Inventory Report
NMAs	Non-market approaches
NWP	Nairobi Work Programme on impacts, vulnerability and adaptation to climate change
PAWP	Paris Agreement Work Programme
PCCB	Paris Committee on Capacity-building
QELRCs	Quantified emission limitation or reduction commitments
SBs	Subsidiary Bodies
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SCCF	Special Climate Change Fund
SCF	Standing Committee on Finance
SIDS	Small Island Developing States
TEC	Technology Executive Committee
TER	Technical expert review
TNAs	Technology needs assessments
UNFCCC	UN Framework Convention on Climate Change
WIM	Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts
WIPO	World Intellectual Property Organization

# Introduction

The Paris Agreement was the result of a full decade of very contentious, frequently acrimonious, unceasingly arduous, and occasionally precarious negotiations. This introduction aims to provide a brief history of the negotiations that led up to the adoption of the Agreement, and a sense of the key fault lines between countries that had to be overcome. It also includes a brief word on the purpose of this Guide.

## THE ROAD TO PARIS

The precursor to the Paris Agreement, the 1997 *Kyoto Protocol*, had succeeded in what was called a “top down” determination of greenhouse gas (GHG) emissions reductions by the international climate regime. Under the Protocol, developed countries agreed to reduce their overall emissions of six GHGs by an average of 5% below 1990 levels between 2008 and 2012 (the first commitment period), with specific targets varying from country to country.

Countries went to work on post-2012 commitment arrangements in 2005, the same year that the Kyoto Protocol entered into force, as the Protocol called for the consideration of “*commitments for subsequent periods for Parties included in Annex I*” by the Conference of the Parties serving as the Meeting of the Parties to this Protocol (CMP) at least seven years before the end of its first commitment period (Article 3.9).<sup>\*</sup> The Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) was therefore launched at CMP1 in Montreal, in 2005.<sup>1</sup>

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\* Annex I refers to the Annex to the UNFCCC, which lists the industrialised countries that were members of the Organisation for Economic Co-operation and Development (OECD) in 1992, plus countries with economies in transition (the EIT Parties), including the Russian Federation, the Baltic States, and several Central and Eastern European States.

Immediately, a question that was simmering at the surface during the Kyoto Protocol negotiations bubbled up again: will non-Annex I (developing) countries also take on mitigation commitments?

The US Senate had made “meaningful participation” by developing countries a condition for its participation in the Kyoto Protocol. However, the [1995 Berlin Mandate](#), which launched the negotiations for the Kyoto Protocol, had already made it clear that no new commitments would be introduced for non-Annex I countries. After adopting the Protocol in 1997, in 2001 the US quoted the exclusion of developing countries from mitigation commitments as a [key reason](#) for its refusal to ratify it.<sup>2</sup>

In 2005, other developed countries also took up a call for developing countries to take on reduction targets, citing rising emissions in non-Annex I countries. Despite opposition from many developing countries, a “Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention” was [launched](#) in Montreal.<sup>3</sup>

### **Bali, 2007**

While the Montreal Decision specified that the Dialogue was “*without prejudice to any future negotiations, commitments, process, framework or mandate under the Convention*”, after two years, it resulted in the creation of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention (AWG-LCA) in the 2007 [Bali Action Plan](#).<sup>†</sup> The AWG-LCA was asked to consider, among other things, “[n]ationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner”. The work of the AWG-LCA was to be completed in 2009, with an outcome to be adopted at the 15<sup>th</sup> Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) in Copenhagen.

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<sup>†</sup> The mandate of the AWG-LCA was to conduct “*a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session*” ([Decision 1/CP.13](#), §§1-2).

The Bali Action Plan was a turning point in the negotiations – for the first time, developing countries conceded to enhancing mitigation action. The Bali negotiations were *acrimonious*, with different theories on how this concession was eventually won, but the outcome clearly stated the link between developing country action and the provision of finance for this action by developed countries: the Nationally Appropriate Mitigation Actions (NAMAs) will be supported and enabled by means of implementation, “*in a measurable and verifiable manner*”.

In response to rising calls from developing countries for more balance in addressing thematic areas under the UNFCCC, which they felt was unduly focused on mitigation, the Bali Action Plan included sections on enhanced action on adaptation, technology development and transfer, and the provision of financial resources and investments for mitigation, adaptation, and technology cooperation.

### Copenhagen, 2009

The AWG-KP met nine times, and the AWG-LCA met seven times over the next two years (not counting several informal sessions), but when they met again in Copenhagen for COP15, in 2009, country positions were still far apart. In the AWG-LCA, deep divisions existed particularly on mitigation and finance. In the AWG-KP, developed and developing countries differed on whether the outcome from Copenhagen should be an amendment to the Kyoto Protocol; the continuation of the Kyoto Protocol commitments with a new agreement to cover all countries; or a single new agreement covering the work of both AWGs.

Approximately 115 world leaders had come to Copenhagen, expecting to agree on Kyoto’s successor, but agreement proved impossible. COP15 was described variously as “*acrimonious*”, “*non-transparent*”, and “*undemocratic*”.<sup>4</sup> The *Copenhagen Accord*, agreed by some heads of state and government during COP15, was not adopted. Many developing countries were unhappy that the option of a new legally binding agreement had been abandoned; and that the Accord only made reference to a 2°C target, which would spell disaster particularly for Small Island Developing States (SIDS). They also felt that they were not

involved in the negotiations for the Accord – one disgruntled head of state said countries could not be expected to simply “rubber stamp text coming out of the blue”.<sup>5</sup> Instead, the COP “*takes note*” of the Accord, which was attached to a COP Decision as an unofficial document.<sup>6</sup>

## **Cancun, 2010**

The failure of the Copenhagen COP appeared to have a sobering effect on countries. When Parties met at COP16 in Cancun in November 2010, they heeded the call for balance among the areas of mitigation, adaptation, finance, technology development and transfer, and capacity building. Key elements of the Copenhagen Accord were incorporated into COP Decision 1/CP.16, known as the Cancun Agreements. This included:

- A long-term temperature goal. The Cancun Agreements recognise that deep cuts in GHG emissions are necessary to “*hold the increase in global average temperature below 2°C above pre-industrial levels*”, and the need to consider “*strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C*”.
- A goal for developed countries to jointly mobilise US\$ 100 billion per year by 2020 to address the needs of developing countries. Developed countries also agreed to provide US\$ 30 billion as “fast-start finance” over the 2010-2012 period.
- The establishment of the Green Climate Fund (GCF), with a governance structure providing for equal representation of developed and developing countries.
- The establishment of a Standing Committee to assist the COP with respect to the operation of the UNFCCC Financial Mechanism (later renamed the Standing Committee on Finance, or SCF).
- The establishment of a Technology Mechanism.
- The establishment of the Cancun Adaptation Framework, and of the Adaptation Committee.
- The establishment of a work programme to consider approaches to address loss and damage associated with climate change impacts in particularly vulnerable developing countries.

The Cancun Agreements once again clearly stated the link between the NAMAs to be implemented by developing countries, and the provision of technology, financing, and capacity building. A NAMA registry was set up, to “*facilitate matching of finance, technology and capacity-building support for these actions*”.

As work continued under the AWG-KP and AWG-LCA in Cancun, uncertainty over the legal form of the AWG-LCA outcome was identified as a key barrier to progress.<sup>7</sup> Some countries (including from the Alliance of Small Island States or AOSIS) called for a new Protocol, while others (particularly emerging economies) preferred either a COP decision or set of decisions (which many considered as less legally binding than a Protocol). Most developed countries supported a single Protocol as an outcome from both AWGs, whereas developing countries were willing to consider the development of a new legal instrument or instruments if there was agreement that the Kyoto Protocol would continue. The US wanted all major economies (developed and developing) to take on mitigation efforts with the same legal force. The mandate of the AWGs was extended, and three further meetings took place before COP17 in Durban.

### **Durban, 2011**

The impasse on the legal form of the AWG-LCA outcome continued in Durban in 2011. Following another eventful and emotional COP, and several *indabas* (a Zulu word for meetings) by the South African COP President, it was eventually agreed to launch a process to “*develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties*”<sup>8</sup>

This ambiguous wording won over those developing countries that were opposed to a legally binding outcome, but later caused some debate among legal experts on its exact meaning. In any case, this was another key milestone in the climate negotiations: for the first time, it was agreed that the protocol, legal instrument, or outcome with legal force (whatever it may be) will be applicable to *all* Parties. An AWG on the Durban Platform for Enhanced Action (ADP) was established to

take this work forward, and instructed to finish its work by 2015, so the outcome could be adopted at COP21 and come into effect in time to be implemented from 2020. (The 2020 timeline was pushed by the US, to accommodate the scheduled date of the 2020 US presidential election).

Meanwhile, the AWG-KP continued to discuss further commitments for Annex I countries – the 2012 deadline for the first commitment period of the Kyoto Protocol was around the corner. Annex I Parties to the Kyoto Protocol had communicated their quantified economy-wide emission reduction targets for the second commitment period – with the exception of Canada, Japan, and the Russian Federation, who communicated their intention not to participate. The Annex I targets were included in an Annex to [Decision 1/CMP.7](#), but countries still disagreed on the length of the second commitment period. The EU wanted it to end in 2020, to align with the work of the ADP. Other groups, including AOSIS, wanted a five-year commitment period (2013-2017) to increase pressure to reduce global GHG emissions and close the emissions gap.<sup>9</sup>

### Doha, 2012

The work of the AWG-KP and AWG-LCA finally came to an end at COP18 in Doha, in 2012. The [Doha Amendment to the Kyoto Protocol](#) was adopted with only days to spare before the first commitment period of the Kyoto Protocol ended, establishing a second commitment period from January 2013 to December 2020.<sup>‡</sup> The remaining elements of the AWG-LCA, meanwhile, were [assigned](#) to the Subsidiary Body for Scientific and Technological Advice (SBSTA), the Subsidiary Body for Implementation (SBI), and other UNFCCC bodies (such as the Adaptation Committee, SCF etc.).

A separate, very notable, outcome of COP18 was the [Decision](#) to establish, at COP19, “*institutional arrangements, such as an international mechanism*” to address loss and damage associated with the impacts of climate change in developing countries that

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<sup>‡</sup> The Doha Amendment had not entered into force as of February 2020 – only 137 Parties have ratified it so far, while 144 ratifications are needed for it to come into effect.

are particularly vulnerable to the adverse effects of climate change. Historically, efforts to address loss and damage systematically under the UNFCCC had been heavily opposed by developed countries, but positions had evolved following the establishment of the work programme on loss and damage in Cancun. The Warsaw International Mechanism for Loss and Damage was established the next year at COP19.

The ADP, meanwhile, had started work earlier in 2012. It agreed on two workstreams: one on the 2015 agreement, and another on pre-2020 action. The latter was a major concern for larger developing economies – they feared that the slack in climate action by developed countries in the pre-2020 period would have to be picked up by them in the post-2020 period, increasing their share of the burden. Developing countries with low emissions, but subject to growing climate impacts (for instance, the Least Developed Countries and AOSIS), were also strong advocates of pre-2020 ambition – they were concerned that precious time would be lost in reducing the GHG emissions gap if the focus was solely on post-2020 action.

### **Warsaw, 2013**

At COP19 in Warsaw, the main fault lines in the negotiations for the 2015 agreement between developed and developing countries emerged, not only on the legal form of the outcome (where developing countries were also divided), but also on:

- How the principles of the UNFCCC, particularly common but differentiated responsibilities and respective capabilities (CBDR-RC) should be operationalised, primarily in the context of differentiation between the relative efforts of countries in addressing climate change. Developed countries opposed any further “firewalls” between developed and developing countries (like the Kyoto Annexes), not only for mitigation, but also for the provision of finance. Many developing countries, meanwhile, sought to maintain differentiation (as in the Kyoto Protocol) – *including* on the basis of historical responsibility for climate change.<sup>10</sup>

- How to ensure a balance, so that the focus of the outcome is not only on mitigation, but equally also on adaptation, and “means of implementation” (a catch-all phrase for finance, technology development and transfer, and capacity building). The calls for a global goal for adaptation (spearheaded by South Africa), due recognition of developing countries’ adaptation efforts, and a clear roadmap for finance came early in the ADP discussions.
- How mitigation commitments should be defined. It was in Warsaw that the term “commitments” was initially substituted with the more generic term “contributions”; and the concept of “nationally-determined” contributions took root.

COP19 issued a call “[t]o...all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions [INDCs], without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties”.<sup>11</sup>

On pre-2020 action, Warsaw urged communication and implementation of both quantified economy-wide emission reduction targets by developed countries and NAMAs by developing countries.

Three ADP meetings took place between Warsaw and COP20 in Lima, in 2014. The ADP Co-Chairs played a key role in distilling several hundred pages of text into a 23-page “Non-paper on elements for a draft negotiating text” that became the basis for negotiations in Lima.<sup>12</sup> The broad contours of the new agreement began to take shape, but the options were still wide open in this text, including for instance on whether “commitment” should be used or “contribution”, and whether there should be differentiated responsibilities for developed and developing countries. The question of the legal form of the agreement and legal character of its provisions was also, as yet, unresolved.

## Lima, 2014

At Lima, another disagreement flared up: should the INDCs, which the Warsaw COP called for, address only mitigation, or also the other elements of the ADP mandate, in particular adaptation and support? The developed countries supported the former, while a number of developing countries, especially the emerging economies, supported the latter.<sup>13</sup>

They were also *disagreements* on references to provision of finance by “Parties in a position to do so”; *ex ante* review of the provision of means of implementation; the process for consideration/ review of INDCs after submission; and even whether the focus of the workstream on pre-2020 ambition should only be on mitigation, or also on adaptation and means of implementation.<sup>14</sup>

The most significant outcome of the Lima COP, however, was the further blurring of the lines of differentiation between developed and developing countries. The CBDR-RC principle was amended, on the basis of a *joint statement* by the US and China in November 2014, to include “*in light of different national circumstances*”. This framing gives the impression of retaining the original principle, but in fact makes its interpretation more dynamic, implying that the responsibilities and capabilities of states will evolve with evolving national circumstances.<sup>15</sup>

The *Lima Call for Climate Action* reiterated the call for Parties to submit INDCs well in advance of COP21, but only provided very broad guidance on the elements to be included in the INDCs, including “*to facilitate clarity, transparency and understanding*”, and the steps to be taken after their submission.<sup>16</sup> It invited Parties to “*consider*” including an adaptation component in their INDCs. It also stated, however, that the arrangements specified for INDCs in the Decision are “*without prejudice*” to the content of the protocol, another legal instrument or agreed outcome with legal force under the Convention applicable to all Parties.

## Paris, 2015

The ADP met four times in 2015, before meeting again at COP21 in Paris. In the background, the outgoing (Peruvian) and incoming (French) COP Presidencies held several informal meetings with negotiating groups during the year. Although a heavily bracketed text was agreed as a basis for negotiations at the first ADP session in February 2015,<sup>17</sup> several other texts were generated subsequently, including a scenario note with a “Co-Chairs’ Tool” in an Annex generated in July 2015,<sup>18</sup> and a Co-Chairs’ Draft Text<sup>19</sup> generated in October 2015. This October version proved controversial – it was rejected by developing countries because they felt it did not take their positions into account sufficiently. It was therefore agreed that it would not be the basis for negotiation, resulting in a setback to the process. At the final ADP meeting during the first week of COP21, “spin-off” groups worked on each element of the agreement.<sup>20</sup> Drafts of both, an agreement and an accompanying decision, were forwarded to the French COP21 Presidency at the end of the first week.<sup>21</sup>

At this stage, with only one more week of negotiations remaining, Parties still disagreed on some fairly fundamental elements of the agreement. Differences persisted, for instance, on whether: the goal of the agreement should be to hold the increase in the global average temperature “below 1.5°C”, or “well below 2°C” above pre-industrial levels; Parties should prepare and communicate nationally determined “contributions” or “components”; adaptation should be included in the NDCs; the implementation of NDCs should be binding; there should be a separate article on loss and damage; and only developed country Parties should provide finance, or “Parties in a position to” should do so, or even “all Parties”. It was a testament to the resolve of Parties to the UNFCCC, therefore, that the Paris Agreement was adopted a week later.

Credit is also due to the French Presidency, for their diplomatic skills in pulling all the elements together into a package. A *Comité de Paris*, open to all Parties, was set up by COP President Laurent Fabius, Foreign Minister of France, to facilitate compromise. Minister-led

consultations – also called *indabas* in the style of the Durban COP – were held on key issues, including ambition, finance, differentiation, adaptation, loss and damage, cooperative approaches, and forests. The *indabas* fed back to the COP Presidency, to be turned into text. Two iterations of text were presented by the COP President in advance of the final proposal, presented on 12 December.<sup>22</sup> This became the basis of the Agreement and COP Decision adopted later that day.

## THE BRIDGES OF PARIS

The decade-long negotiations for the Paris Agreement were prolonged by “redlines” held by groups of countries, some of which were bridged only in the last week of negotiations. These were not always aligned along developed and developing country interests, although the G77/China group of developing countries did hold together on many key issues.

A number of approaches were at play in Paris to overcome these fundamental differences between countries and groups – not only old-fashioned diplomacy, but also word play, constructive ambiguity, and fall-backs to agreed language. Word play and language-based tools helped to either sidestep an issue; allow Parties to seemingly preserve their positions; or enable resolution by “*splitting the difference*” between opposing views.<sup>23</sup> This section describes some of the key fault lines between countries, and how they were bridged in Paris.

### Legal nature of the agreement and its provisions

A key disagreement in the negotiations was whether the 2015 agreement and its provisions should be legally binding. Eventually, consensus emerged that the agreement would be a legally binding instrument, based partly on the understanding that the legal form of the agreement would be distinct from the legal character of its provisions – including the achievement of NDC targets, which could be non-binding if Parties chose.

In this aspect, the Paris outcome was especially influenced by the position of the US. President Barack Obama sought an agreement that he could ratify through a Presidential Executive Order, instead of seeking ratification from the US Congress, which was likely to

reject it. For this to happen, the agreement had to be procedurally oriented, implementable on the basis of existing law, and not include legally binding emissions limits or new legally binding financial commitments.<sup>24</sup> The US therefore opposed any obligations to meet specific commitments under the Paris Agreement.

During the final plenary in Paris, a “shall” in the negotiating draft, in the context of developed countries undertaking economy-wide absolute emission reduction targets, nearly resulted in a last-minute breakdown. It had to be passed off as a technical error by the secretariat and changed to a less binding “should” before the US agreed to its adoption.

As a result, the Paris Agreement includes only obligations of conduct to achieve results, but a legally binding obligation to implement Nationally Determined Contributions (NDCs) is missing. The (more binding) “shall” provisions in Article 4.2 apply only to the preparation, communication, and maintenance of successive NDCs, and the pursuit of domestic mitigation measures with the aim of achieving the NDCs.

The legal character of obligations in the Paris Agreement vary, from mandatory obligations on individual Parties at one end, mandatory provisions that are qualified in some way (for example by the inclusion of “*as appropriate*”) in the middle, to provisions that encourage, recommend, or set aspirational goals at the other end.

## Differentiation

As a group, developing countries strongly supported the application of the principles of the UNFCCC to the new agreement, in particular CBDR-RC and equity, and opposed any attempts to “*replace, redefine, rewrite, renegotiate or reinterpret*” the UNFCCC.<sup>25</sup> Following the weakening of the Kyoto “firewall” of Annexes separating developed and developing countries, first in Bali and then in Cancun, they sought to ensure differentiation between the commitments of developed and developing countries, particularly in the context of mitigation commitments, transparency requirements, and finance provisions.

The Like-Minded Developed Countries (LMDCs), in particular, reiterated that “*universality does not mean uniformity*”, and called for the UNFCCC Annexes to remain, saying they reflect historical responsibility for GHG emissions.<sup>26</sup> The African Group advocated an ex-ante mechanism to facilitate fairness and adequacy of contributions, in accordance with CBDR-RC.<sup>27</sup> The fear of shouldering more than their fair share, according to responsibility for climate change, also made some of the larger developing countries wary of calls for a more ambitious temperature goal in Paris,<sup>28</sup> aligning with the position of the Arab Group, which feared that an ambitious temperature goal could impact oil production and harm their national economies.

Developed countries, meanwhile, sought to dilute the Annex-based differentiation of the UNFCCC and Kyoto Protocol. While the Umbrella Group (with Australia, Belarus, Canada, Iceland, Israel, Japan, New Zealand, Kazakhstan, Norway, the Russian Federation, Ukraine and the US) held a stronger position on removing differentiation, the EU broadly supported the application of the UNFCCC principles, but called for a dynamic interpretation, “*such that all Parties participate over time in accordance with their evolving responsibilities and capabilities*”<sup>29</sup>

The compromise reached in Paris was eventually borrowed from the Lima Call for Climate Action – the Agreement also refers to the modified principle of CBDR-RC “*in the light of different national circumstances*”.<sup>30</sup> Differentiation in the context of mitigation was achieved by differentiating the kind of mitigation action that developed and developing countries will take, while once again making this an evolutionary process. While developed countries should undertake “*economy-wide absolute emission reduction targets*”, developing countries should “*continue enhancing their mitigation efforts*”, but “*are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances*” (Article 4.4).

In the context of transparency, it was agreed for the first time that all countries will use the same reporting guidelines – but differentiation was operationalised through flexibility for developing country Parties “*that need it in light of their capacities*”. Flexibility is also provided for Least Developed Countries (LDCs) and SIDS in recognition of their special circumstances. Subsequently, in the implementation guidelines, it was agreed that this flexibility will be self-determined, though countries will have to clearly indicate the provision to which flexibility is applied, clarify capacity constraints, and provide estimated time frames by which the constraints will be addressed. Differentiation in the context of transparency continues to be a point of contention, however, and led to the breakdown in negotiations on common reporting format tables at COP25 in Madrid.

In the context of finance, it was agreed that developed countries “*shall*” provide financial resources to assist developing countries with respect to both mitigation and adaptation – but the firewall between developed and developing countries was weakened by encouraging “*other Parties*” to also provide such support voluntarily.

**Balance and parity for adaptation and means of implementation**

A key priority for the African Group, supported by the other developing countries, was to ensure political parity with equal attention to adaptation, means of implementation, and mitigation, including through: the inclusion of an adaptation goal; recognition of the link between the level of mitigation action and the need for adaptation; the mandatory submission of adaptation communications; recognition of the adaptation efforts of developing countries; national adaptation planning processes; and the provision of mandatory support for adaptation from developed countries.

Although the Paris Agreement establishes a global goal on adaptation in Article 7.1, it is not quantified like the mitigation goal, and not as clearly defined. On adaptation communications, meanwhile, the language in Article 7.10 implies flexibility – each Party “*should, as appropriate*” submit and update adaptation communications. And although the

requirement for national adaptation planning is a “*shall*” provision in Article 7.9, it is followed by “*as appropriate*” as a qualifier. Finally, whereas Article 7.13 states that continuous and enhanced international support “*shall*” be provided to developing country Parties for adaptation, no mention is made of who will provide this support.

### **Mandatory provision of support, with a link to mitigation action**

Developing countries wanted a clear link between mitigation action carried out by them under the Agreement, and the mandatory provision of finance for this by developed countries, as in the Bali Action Plan, and Cancun decisions. A mandatory “*shall*” provision was eventually included in Article 4.5 – but without specifying who will provide this support. However, mitigation action by developing countries is not explicitly linked to the provision of support, as in the previous agreements. Instead, Article 4.5 makes a link to Articles 9 (finance), 10 (technology development and transfer), and 11 (capacity building), and recognises that “*enhanced support for developing country Parties will allow for higher ambition in their actions*”.

### **Separate Article on loss and damage**

Developing countries, particularly AOSIS and the LDCs, called for a separate article on loss and damage to be included in the new agreement. Developed countries, meanwhile, wanted loss and damage to be addressed in Article 7 with adaptation. The issue was controversial until the very end in Paris. It was finally agreed to include a separate Article – but only if the Paris Decision included a clause stating that Article 8 on loss and damage does not involve or provide a basis for any liability or compensation (§51).<sup>31</sup>

### **Market mechanisms**

Fundamental differences on the design of market and non-market mechanisms under the Agreement included issues such as the avoidance of double counting, the fate of credits and projects generated under the Kyoto Protocol and their relationship to the new mechanisms, and ways of ensuring “overall mitigation in global emissions” (OMGE). The provisions

of Article 6 were kept rudimentary to broker agreement on the final day in Paris – the fact that the Article was included at all was described as a “minor miracle”.<sup>32</sup> However, negotiations on the implementation guidelines for Article 6 continue to be difficult after Paris.

### **Common time frames**

The lack of detailed guidance for the INDCs, called for in Warsaw and Lima before the Paris Agreement was agreed, caused a problem – the time frames of the NDCs of different countries varied, and Parties were not necessarily amenable to changing them though many recognised that “common” time frames would be needed to facilitate the global stocktake, and render the outputs of the transparency framework more comparable.

The compromise in Article 4.10 was to postpone the decision on common time frames to the first meeting of Parties, after the Paris Agreement was adopted; and to include further language in Paris Decision 1/CP.21 (§§23 and 24). The “constructive ambiguity” in these two paragraphs meant that even the negotiators came out of the negotiations with different interpretations of what they imply. Some were of the opinion, for instance, that the two paragraphs were a stopgap measure for the first cycle, and were not meant to perpetuate ten-year cycles. Instead, the mutually understood intention was to get all countries into a common cycle of five years from 2030 onwards.<sup>33</sup> Others interpreted this as meaning that countries will continue to have differing time frames in future. Significant differences in positions continue to make agreement on this issue difficult in the post-Paris negotiations.

These and many other compromises allowed the Paris Agreement to be adopted on 12 December 2015, and to enter into force in record speed eleven short months later on 4 November 2016, 30 days after the dual entry into force requirement of ratification by at least 55 countries representing at least 55% of global GHG emissions was met.

The Paris Agreement established a cycle of planning, implementing, and reviewing climate action, with the global process focused

on receiving and recording national plans in a public registry; providing clarity on climate action and support through an enhanced transparency framework (ETF) based on biennial reporting by all Parties; and taking stock of collective progress in implementing the Agreement and achieving its goals every five years, through a global stocktake.

## THE ROAD TO KATOWICE

Once the broad framework of the Paris Agreement was agreed, however, the task of agreeing the specific rules for implementing each element still remained. [Decision 1/CP.21](#) established an Ad Hoc Working Group on the Paris Agreement (APA) to prepare for the entry into force of the Paris Agreement. The task of agreeing the implementation guidelines for the Paris Agreement was carried out by the APA, SBI, and SBSTA under the [Paris Agreement Work Programme](#) (PAWP).

The early entry into force of the Paris Agreement meant that the first Conference of Parties serving as the Meeting of the Parties to the Paris Agreement (CMA1) could already convene when Parties met at COP22 in Marrakech in November 2016. Implementation could not begin, however, until the rules for implementation were agreed. It was therefore decided to “suspend” CMA1 each time it met until 2018 at COP24 in Katowice, where the implementation guidelines for the Paris Agreement would be adopted.

Meanwhile, a fundamental shift in global politics was taking place outside the UNFCCC, with repercussions for the Paris Agreement. Donald Trump was elected US President in November 2016 (even as the first week of COP22 was taking place), jeopardising US participation in the Agreement.

Trump [announced](#) on 1 June 2017 that the US will withdraw from the Paris Agreement, because of the “*draconian financial and economic burdens the agreement imposes*” on the US.<sup>34</sup> However, Article 28 of the Paris Agreement states that a country can withdraw from the Agreement only three years from the date on which it entered into force for the

Party, which for the US was on 4 November 2016. After a written notification is given to the Depository on this date (which the US administration provided), it will take 12 months to take effect. The US withdrawal will therefore take effect on 4 November 2020 – one day after the 2020 US Presidential election.

Work on the implementation guidelines continued at the Fiji/ Bonn Climate Conference in November 2017 and two further intersessional meetings were held in 2018. The cracks, where the Paris Agreement had papered over fundamental differences, began to show during the PAWP negotiations, as issues that dogged the negotiations for the Agreement resurfaced. These included, for instance: differentiation in relation to NDC guidance for developed and developing countries; operationalising the flexibility provisions of the transparency framework; whether guidance should be developed for adaptation efforts to be included in NDCs; whether loss and damage should be part of the transparency framework and the global stocktake; how equity can be operationalised in the context of the global stocktake; and a repeated call for balance in progress between the different elements of the Paris Agreement.

New rifts appeared – for instance, on the relative importance of Article 2.1(c) (which includes a goal to make “*finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*”) to finance for implementing climate action. While developed countries highlighted Article 2.1(c), developing countries highlighted other finance-related provisions in Article 9 and Decision 1/CP.21, including the new collective quantified goal described in §53 of the Decision, and the call for *ex ante* information from developed countries on financial resources to be provided in Article 9.5.

Meanwhile, as work was carried out separately on each element of the Paris Agreement, there were concerns that linkages between elements of the Paris Agreement were being missed.

The compilation of text under the PAWP after the second intersessional in September 2018 in Bangkok ran over 300 pages. In the end, ministerial negotiations during the second week of COP24 were key to resolving differences on the two issues that proved most controversial in

Katowice – differentiation and finance.<sup>35</sup> For instance, it was agreed that developing countries can self-determine where they need flexibility in the transparency framework, but will have to explain why, and provide a timetable for improved reporting.

A clear process was also agreed to assess and review the biennial communications from developed countries on *ex ante* finance (Article 9.5), and it was agreed that the discussions on the new collective quantified goal (§53) will begin in 2020.

Although the “[Katowice Climate Package](#)” containing the implementation guidelines for the Paris Agreement was adopted at the end of COP24, agreement proved impossible on a few issues – in particular, on Article 6 on cooperative approaches, and common time frames for NDCs. Some progress was made on Article 6 at [COP25 in Madrid](#), but not enough to finalise the implementation guidelines.

Like the Agreement, the Paris implementation guidelines are the result of many small compromises, which give Parties not only flexibility in implementing the Paris Agreement, but also considerable room for interpretation. The effectiveness of the Paris Agreement and its rules for implementation will therefore depend to a large extent on the political willingness of national governments to act, and to show ambition and leadership.

## **FINALLY, A WORD ON THIS GUIDE**

The European Capacity Building Initiative (ecbi) aims to level the playing field in the climate negotiations, by training new developing country negotiators to the UNFCCC. It also aims to build trust between climate negotiators from developing countries and Europe, by providing opportunities for them to interact outside formal negotiating spaces to better understand each other’s concerns and positions.

While the ecbi [Pocket Guide series](#) was initiated for use at our training workshops for new developing country negotiators, it has also become popular among senior negotiators and policy makers at the national

level. This particular Guide is not quite pocket-sized, but it is very much part of the series – it is an update of the *Pocket Guide to the Paris Agreement* that was produced soon after the Paris Agreement was agreed. The aim of the Guide is to provide accessible annotations to the Agreement and its implementation guidelines for climate negotiators to the UNFCCC and practitioners at the national level, rather than an elaborate academic analysis or commentary. It also briefly touches on implications for domestic law and policy in developing countries. We hope you will find it useful for this purpose and look forward to your feedback on how future versions can be improved to make them more useful.

**Anju Sharma,**

*Head, Communications and Policy Analysis Programme, ecbi*

# Preamble

*The Parties to this Agreement,*

*Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,*

*Pursuant to the Durban Platform for Enhanced Action established by decision I/CP.17 of the Conference of the Parties to the Convention at its seventeenth session,*

*In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,*

*Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,*

*Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,*

*Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology,*

*Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,*

*Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,*

*Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,*

*Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,*

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,*

*Recognizing the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,*

*Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change,*

*Affirming the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,*

*Recognizing the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,*

*Also recognizing that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change,*

*Have agreed as follows:*

While the preamble of an international treaty does not create rights and obligations between Parties, it normally sets the wider context for the agreement and may be used to help interpret the provisions in its operative parts.

The preamble of the Paris Agreement captures a number of familiar and new notions in 16 sentences (called recitals). It broadly reflects the objective and principles of the UN Framework Convention on Climate change (UNFCCC), albeit “*in the light of different national circumstances*” (recital 2). This framing occurs throughout the Agreement and signals a shift in the way equity and common but differentiated responsibilities and respective capabilities (CBDR-RC) are interpreted and operationalised.

The second half of the preamble mostly strengthens themes referred to under the UNFCCC such as eradication of poverty, economic development, and public participation. It incorporates a number of issues that are relatively new to the international climate negotiations:

human rights; the rights of Indigenous Peoples; local communities; migrants; children; persons with disabilities; people in vulnerable situations; gender equality; and the empowerment of women. It also notes the importance of Mother Earth and climate justice.

The diversity of issues underlines that climate change is no longer perceived as solely an environmental problem – it cuts across and affects all areas of society. Many of the new themes, in particular the focus on human rights, also highlight the severity of adverse climate change impacts. While the direct effect of the preamble is likely to remain limited, these concerns can provide further guidance in interpreting the terms of the Agreement and in its implementation via national policies and laws.

# General Articles

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## ARTICLE I: DEFINITIONS<sup>‡</sup>

I

For the purpose of this Agreement, the definitions contained in Article I of the Convention shall apply. In addition:

- (a) “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;
- (b) “Conference of the Parties” means the Conference of the Parties to the Convention;
- (c) “Party” means a Party to this Agreement.

Article 1 states that the definitions contained in the UNFCCC, such as climate change, greenhouse gases (GHGs), sinks, etc. will apply to the Paris Agreement. Earlier drafts of Article 1 included additional definitions – in particular of the terms “*developed*” and “*developing*” country Parties. While these terms are not defined, they are still used in several provisions of the Agreement. If and to what extent the existing strict binary differentiation between Annex I and non-Annex I countries under the UNFCCC influences the understanding of Parties’ roles under the Agreement (or, for instance, which Parties belong to each category or how they might move between them) remains a contentious issue in the post-Paris negotiations.

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<sup>‡</sup> Parties did not agree on Article headers during the negotiations of the Paris Agreement, and therefore the official version of the Paris Agreement does not include titles. They have been added in this Guide for ease of reference only.

## ARTICLE 2: PURPOSE

- I. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
  - (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
  - (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
  - (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 2 outlines the purpose of the Agreement. Article 2.1 seeks to enhance the implementation of the UNFCCC, in particular Article 2 – to prevent dangerous anthropogenic interference with the climate system. It aims to do so by strengthening the global response to climate change in general, including by: committing to a long-term temperature goal; enhancing adaptive capacity and climate resilience; and making finance flows consistent with low-emission development pathways.

### **Article 2.1: Goals of the Paris Agreement**

The long-term temperature goal includes two targets for limiting global warming. The well below 2°C target has been the working assumption for many nations in their planning and preparation of Intended Nationally Determined Contributions (INDCs) before Paris. The 1.5°C target was included as the result of a concerted push by an alliance of vulnerable

States, including the Least Developed Countries (LDCs), the Small Islands Developing States (SIDS), the African Group of Negotiators (AGN), and the Independent Alliance of Latin America and the Caribbean (AILAC). Some consider it a rather aspirational “add-on” to the Agreement, but it increasingly shapes the wider societal discussions.

In 2018, the Intergovernmental Panel on Climate Change (IPCC) published a Special Report on *Global Warming of 1.5°C*, which compares scenarios of 1.5°C warming and 2°C warming. The report highlights that remaining within 1.5°C compared to 2°C would reduce challenging impacts on ecosystems, and on human health and well-being. However, the report also states that there is a 10-year window in which to reduce anthropogenic global carbon dioxide emissions (by 2030) to contain warming to 1.5°C.<sup>36</sup> It remains to be seen what impact this report will have when Parties submit new or updated nationally determined contributions (NDCs) by 2020.

Article 2.1(b) identifies an adaptation objective as the second strand in which the Paris Agreement enhances the implementation of the UNFCCC. This is also captured as a “*global goal on adaptation*” in Article 7 with further guidance on how to pursue and address adaptation under the Agreement (see section on Article 7). To meet the goals in sub-paragraphs (a) and (b), large scale additional finance is needed. This includes both public finance and private investment.

Sub-paragraph (c), therefore, effectively calls for a fundamental shift in finance flows worldwide. The Paris Agreement and its implementation rules provide limited guidance on how to green finance and mainstream sustainable development. To date, the focus of Parties has been on creating a framework to better monitor and assess finance flows and their impact. This is spelt out in significant detail in Article 9 on finance and Article 13 on transparency and the rules subsequently adopted for their implementation (see sections on Articles 9 and 13).

## Article 2.2: Differentiation

Article 2.2 states that the Agreement will be implemented to reflect equity and CBDR-RC, in light of different national circumstances. This language underlines the shift away from the formal differentiation between developed and developing countries (under the UNFCCC and the Kyoto Protocol) towards a more nuanced self-differentiated model.

As a result of this approach under the Paris Agreement, there is no longer a firm separation between developed and developing countries. Some commentators have even argued that the established formal grouping of developed and developing country Parties has been abandoned. However, the Agreement still uses the terminology of “developed” and “developing” countries, and the annexes and provisions of the UNFCCC remain in place and will continue to influence the interpretation of the Agreement. The additional qualification of CBDR-RC “*in the light of national circumstances*” is also ambiguous and creates a wide-open field for different national concerns to be put forward. As a result, it may increasingly undermine the notion of historic responsibility for GHG emissions.

## ARTICLE 3: NATIONALLY DETERMINED CONTRIBUTIONS

3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

The foundation of the Agreement's structure is that all Parties will determine what actions they are able and willing to take at the national level in achieving the purpose of the Agreement. In this context, Parties can undertake and communicate their efforts on mitigation, adaptation, finance, technology transfer, capacity building, and transparency as part of their NDCs. These efforts should become progressively more ambitious over time.

While Article 3 recognises the need to support developing countries in implementing the Agreement, developing country efforts are not contingent on the effectiveness of upfront provision of support (as envisaged in previous drafts of the Paris Agreement, and articulated previously under the UNFCCC).

However, Article 3 only provides an overarching outline of the Agreement's underlying approach and uses "*nationally determined contributions*" in a wider sense than the specific reference to NDCs later in Article 4. It reflects the concern of developing countries in the negotiations that the Agreement and NDCs would become too mitigation centric. The particular measures expected of Parties with regard to the different components of the Agreement (mitigation, adaptation, etc.) and relevant arrangements are addressed in Articles 4-12.

# Main Substantive Elements and Commitments

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## ARTICLE 4: MITIGATION

4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.
5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.
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.
7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.

8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision I/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.
9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision I/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.
10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session.
11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.
13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.
15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.

16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.
17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 4 contains the main obligation under the Paris Agreement. Individually, each Party is required to prepare, communicate, and maintain successive mitigation NDCs that it intends to achieve and to pursue domestic mitigation measures for that purpose. Every five years, Parties have to submit increasingly ambitious NDCs, and they can also raise their ambition at any time. These NDCs will be housed in a public registry maintained by the secretariat. Parties' NDCs should be informed by a five-yearly "global stocktake" (GST) of their collective efforts (including an assessment of the extent to which they add up to meet the global average temperature goal of the Paris Agreement).

## Article 4.1: Mitigation goal

The mitigation aim of the Agreement is to reach global peaking of GHG emissions as soon as possible to achieve a balance between anthropogenic emissions by sources and removals by sinks in the second half of this century. This complicated wording was chosen because references to “carbon neutrality” or “net zero emissions” were deemed politically controversial at the time. But it nevertheless describes the expectation that in the long run Parties collectively remove as much carbon dioxide from the atmosphere as they put into it. Earlier drafts of the Agreement included other proposals such as reducing emissions by 70-95% by 2050 compared to 2010 levels, or 60-90% compared to 1990 levels, to encourage the peaking of emissions in the near future and steep reductions thereafter. The aim recognises that peaking will take longer for developing countries that need to develop economically and eradicate poverty.

Some developed countries have devised strategies to become carbon neutral by 2050 or earlier. To remove carbon from the atmosphere they envisage not only the enhancement of natural carbon sinks but in some cases also carbon capture and sequestration or storage (CCS) – the process of trapping carbon dioxide and storing it in such a way that it is unable to affect the atmosphere.

At least for the time being, however, these technical approaches are subject to limitations agreed under the UN Convention on Biological Diversity (CBD). The Conference of the Parties to the CBD agreed that, with the exception of small-scale studies, no climate-related geo-engineering activities should take place that may affect biodiversity until there is an adequate scientific basis and appropriate consideration of the associated risks for the environment and biodiversity and associated social, economic, and cultural impacts.<sup>37</sup>

There are also certain limitations on CCS and the use of other technologies (such as ocean fertilisation) in the seas under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and its 1996 Protocol. Overall, however,

the international community still needs to address the permissibility and use of these emerging technologies in a more comprehensive manner.

## **Article 4.2 and 4.3: Nationally determined (mitigation) contributions**

4

The driving obligation of Parties under the Paris Agreement is procedural in nature: to submit and update a mitigation NDC. The NDC captures what a Party intends to achieve but not a legally binding obligation among States of a specific outcome. They “*shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions*” but are not required to “meet” or “comply with” their commitments. As a result, the Paris Agreement does not really go beyond the expectation that Parties execute a treaty in “good faith”, do not obstruct its purpose, and act with reasonable care. Goals and objectives in an NDC may, however, be binding on government entities under their domestic (or, in the case of the EU, supranational) law.

In the lead-up to the US announcing its withdrawal from the Paris Agreement, it was argued that a Party may downgrade its commitments as long as it “maintains” an NDC.<sup>38</sup> This interpretation, however, conflicts with the Agreement’s overall expectation of progression stipulated in Articles 4.3 and 4.11 (adjustment of NDCs with a view to enhancing ambition). Article 4.3 applies to “each” Party (not to Parties in general) and the use of “will” signals a strong expectation, albeit not a mandatory obligation. Downgrading an existing NDC or “backsliding” would contravene the general spirit of the Agreement.

## **Article 4.4 to 4.6: Differentiation**

In their mitigation efforts, developed country Parties are expected to indicate and continue to apply economy-wide emission caps. In this connection, one of the final discussions amongst Parties in Paris concerned the use of “*shall*” and “*should*”. The penultimate version of the Agreement stated that developed country Parties “*shall continue taking the lead by undertaking economy-wide absolute emission reduction targets*”. The US negotiators, however, were concerned that as a result the Agreement might require the approval of Congress before the US could

join. Following discussions in a huddle, “*should*” was used instead. This and other changes were announced as mere technical errors or typos. The fact that “*should*” prevailed is indicative of the Agreement’s non-prescriptive approach.

Developing countries, in comparison, have used a range of approaches in their NDCs, including absolute economy-wide targets, reductions in emissions intensity (emissions per unit of GDP), reductions from projected “business-as-usual” emissions, and reductions in per capita emissions (see the ecbi *Pocket Guide to NDCs*). They are encouraged to move towards economy-wide targets over time and are entitled to receive support for their mitigation actions (Article 4.5). In their NDCs, many developing countries have, therefore, also indicated a “conditional” mitigation contribution that they can achieve with additional support. However, unlike under the UNFCCC, the reporting of mitigation information and action by developing countries is not contingent on the provision of additional financial resources or the transfer of technology (as it was under UNFCCC Article 4.3), but an obligation for all Parties. LDCs and SIDS are awarded additional flexibility in what their contribution may contain.

### **Article 4.7 to 4.14: Content and process for NDCs**

The diversity of mitigation contributions (for instance, relating to different sectors, base years, time frames etc.) contained in the NDCs of Parties makes it difficult to compare efforts and take stock of progress. The Paris Agreement, therefore, envisages several areas where contributions should gradually follow a common format. The Subsidiary Bodies (SBs) of the UNFCCC, in particular the Ad Hoc Working Group on the Paris Agreement (APA), were tasked with developing further rules and guidance.

Each Party must submit a (mitigation) NDC every five years (Article 4.9). Paragraph (§)25 of the COP decision which adopts the Paris Agreement (*Decision 1/CP.21*) states that these shall be submitted to the secretariat at least 9 to 12 months in advance of the relevant session of the Conference of the Parties serving as the Meeting of the Parties to

the Paris Agreement (CMA).<sup>39</sup> Prior to the entry into force of the Paris Agreement, most Parties had submitted an INDC that subsequently (either with the entry into force of the Paris Agreement or its subsequent ratification) became their NDC ([Decision 1/CP.21](#), §22).

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The mitigation contribution of Parties can include GHG emission reductions and limitations as the result of adaptation actions and/or economic diversification (Article 4.7). In this context, economic diversification may be understood as the process of shifting products, markets, and jobs toward income sources that are low-emission and more climate resilient.

Article 4.8 states that all Parties shall provide the information necessary for clarity, transparency, and understanding of their NDCs. Building on §27 of [Decision 1/CP.21](#), it was subsequently decided in [Decision 4/CMA.1](#)<sup>40</sup> of the 2018 Katowice Climate Package that for their second and further NDCs, Parties “*shall*” provide this information outlined in Annex I to the Decision as applicable to their NDC.<sup>41</sup> This includes, for example:

- Information on the reference point, time frames, or periods for implementation of mitigation measures; scope and coverage of that implementation; planning processes as well as assumptions used and methodological approaches.
- Sectors, gases, categories, or pools of emissions indicated in line with IPCC guidelines which can include mitigation co-benefits of adaptation action and/or other economic diversification plans.
- Explanations how the NDC development process was informed by the outcomes of the GST.
- Further clarifications on how their NDCs are fair and ambitious in the light of their individual circumstances, and how they help to prevent dangerous anthropogenic climate change.

The Decision also “*strongly encourages*” Parties to provide this information in relation to their first NDC, including when communicating or updating it by 2020. A review and possibly an update of the guidance for information to facilitate clarity, transparency, and

understanding (ICTU) will be initiated in 2027, with a view to adopting a decision in 2028.

To date, Parties still disagree on whether the common time frames addressed under Article 4.10 should be, for example, five years, ten years, five or ten years (based on the choice of the Party), or five years plus an indicative NDC for a second five-year period (“5+5”). They also disagree on whether time frames should be nationally driven, and whether additional flexibility should be granted to developing countries. While Parties at the 2018 Katowice Climate Change Conference decided that common time frames “*shall*” apply from 2031, the substantive discussion remains on-going.<sup>42</sup>

A Party can adjust an existing NDC upwards at any time (Article 4.11). While the language “*with a view to*” appears to allow for a degree of flexibility in the scope and content of an adjustment, a straightforward downgrading of commitments would conflict with the overall spirit of the Paris Agreement (see section on Article 4.3).

In Decision 5/CMA.1 of the Katowice Climate Package, Parties agreed that the *interim public registry* for NDCs set up by the secretariat will serve as the public registry envisaged under Article 4.12 of the Paris Agreement.<sup>43</sup> It consists of a single portal with two parts: one for NDCs, and another for adaptation communications. UNFCCC National Focal Points will upload their NDCs with technical support and security checks by the secretariat. The registry is publicly accessible and will include all previously submitted NDCs.

With regard to the accounting for NDCs (Articles 4.13 and 4.14), Article 4.13 states that Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability, and consistency in accounting for GHG emissions, while avoiding double counting. In Decision 4/CMA.1<sup>44</sup> of the Katowice Climate Package, it was further agreed that:

- Parties should account for emissions and removals in accordance with IPCC guidance adopted by the CMA. This can include natural

disturbances on managed land, harvesting of wood products, or the age-class structure in forests.

- Parties should strive to include all categories of anthropogenic emissions or removals in their NDCs. Once a source, sink, or activity is included, it should continue to be included in future NDCs.
- The accounting rules will apply to Parties' second and subsequent NDCs, but countries "*may elect*" to apply them to their first NDC too. Parties will provide information on their performance in Biennial Transparency Reports (or BTRs, described in Article 13.7 of the Paris Agreement).

The rules adopted at the Katowice Climate Conference apply to all Parties without formal differentiation between developed and developing countries. A review and possible update of the guidance for accounting will start in 2027, with a view to adopting a decision in 2028.

Parties could not agree on additional rules on the features of NDCs ([Decision 1/CP.21, §26](#)) beyond those contained in the Paris Agreement. While some Parties have sought to create a comprehensive "top down" framework on the scope and content of NDCs at the international level, others prefer a "bottom up" approach that provides significant flexibility. As a result, Parties may include other components such as adaptation in their NDCs. It was decided to continue consideration of further guidance at CMA7 in 2024.

### **Article 4.15: Response measures**

Measures to mitigate emissions and address climate change are generally referred to as "response measures". The UNFCCC explicitly recognises the potentially adverse effects of response measures on the economies of developing country Parties. These could include, for instance, increased food prices, limits on the exploitation of newly discovered natural resources, or a reduction in overseas tourism. Trade measures to incentivise renewable energy or green products have also, at times, been criticised as a new form of protectionism.

In Paris, it was agreed that the existing Forum on the Impact of the Implementation of Response Measures (established at COP17 in 2011, and mandated to meet twice a year under a joint agenda item of the SBs) will serve the Paris Agreement (Decision 1/CP.21, §33). In Decision 7/CMA.1 of the Katowice Climate Package, the modalities, work programme, and functions of the Forum were agreed.<sup>45</sup>

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The Forum will provide the single platform under the UNFCCC, the Kyoto Protocol, and the Paris Agreement to share information and make recommendations to the SBs on all matters relating to the impacts of the implementation of response measures. A key task for it is to develop modelling tools and methodologies to assess the impacts of mitigation policies. A Katowice Committee of Experts on the Impacts of the Implementation of Response Measures (KCI) was established to support the work of the Forum. It consists of 14 members, including two members from relevant intergovernmental organisations.

### **Article 4.16 to 4.18: Joint commitments**

Under the Kyoto Protocol, the EU and its Member States committed to jointly ensure a reduction in GHG emissions for the bloc as a whole (8% below 1990 levels during the first commitment period 2008-2012). This is sometimes referred to as the EU “bubble”. The national quantified emission limitation or reduction commitments (QELRCs) were determined under a burden sharing agreement reflecting the relative wealth of each EU country at the time. EU Member States were able to transfer and acquire certified Kyoto Protocol emissions reduction units from each other and established the EU carbon trading scheme.

Articles 4.16 to 4.18 ensure that the Paris Agreement allows for the EU practice to continue. However, any two or more Parties could also enter into an agreement to submit a joint NDC and pursue its objectives together. The formal process of informing the secretariat and other Parties about such an agreement is described in Article 4.16. Each Party remains severally responsible for its share of the emission level allocated in such an agreement (Article 4.17).

## Article 4.19: Low-emission development strategies

To foster low-GHG emissions development, Article 4.19 calls on all Parties, including LDCs and SIDS, to formulate long-term strategies on a voluntary basis. Low emission development strategies (LEDS) are generally used to describe forward-looking national economic development plans that enhance climate resilience and support the transition to a low-carbon economy. Parties are invited to submit mid-century (2050) LEDS by 2020 in [Decision 1/CP.21](#), §35. The LEDS are published on the UNFCCC website.<sup>46</sup>

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### National implications of Article 4 for developing countries

Article 4 has significant implications for domestic law and policy, especially in developing countries. Depending on the NDC, national context, and political priorities, countries will have to revise existing, and/or develop new, rules and regulations in various key sectors and areas, including energy, industry, agriculture, transport, pollution control, etc. They will also have to improve emissions data collection, monitoring, and reporting to track progress in implementing and achieving the mitigation contribution identified in their NDCs (Article 13.7). Countries that lack the capacity to do so will need to strengthen their capacity to comply with the reporting requirements elaborated in the Paris Agreement and the [Katowice Climate Package](#).

New governance structures and clear allocation of responsibilities to gather and process relevant information, monitor outcomes, and take decisions will be necessary. The LEDS could underpin these efforts and provide a long-term “direction of travel”. There is potentially support available for their development (for instance, via the [Global Partnership for LEDS](#) or the [European Climate Foundation](#)). In their efforts to achieve carbon neutrality, some countries may have to address the issue of carbon sequestration and other “technical fixes”.

## **ARTICLE 5: GREENHOUSE GAS SINKS AND RESERVOIRS AND REDD-PLUS**

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1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1 (d), of the Convention, including forests.
2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

### **Article 5.1: GHG sinks and reservoirs**

Article 5.1 calls on Parties to take action to conserve and enhance biomass, forests, and oceanic and other terrestrial, coastal, and marine ecosystems that absorb more GHGs than they emit. A “sink”, in this context, is defined by the UNFCCC as any process that removes a GHG, an aerosol, or a GHG precursor from the atmosphere. A “reservoir” refers to a component of the climate system where the GHG or GHG precursor is stored.<sup>47</sup> Article 5.1 encourages all Parties, in very general terms, to protect natural ecosystems for mitigation purposes. The specific mention of forests in Article 5.1 is the result of concerted political effort by some Parties during the negotiations, but is somewhat redundant.

### **Article 5.2: REDD-plus**

REDD-plus refers to (result-based) payments or other incentives to reduce emissions from deforestation and forest degradation in developing countries (REDD) and to further promote the role of

conservation, sustainable management of forests, and enhancement of forest carbon stocks.

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While the protection and enhancement of forests is generally recognised as an important contribution to mitigating climate change,<sup>48</sup> this was a contentious issue in the Paris Agreement negotiations. Parties disagreed on whether, and to what extent, avoidance of further deforestation and forest degradation (for instance, from farming) should be addressed under the Agreement. Some Parties wanted a new mechanism on forests, but they did not succeed in Paris.

Instead, Article 5.2 focuses on the implementation and support of the existing REDD-plus framework under the UNFCCC, in particular the [Warsaw Framework for REDD-plus](#).<sup>49</sup> Towards this end, this slightly confusing provision also mentions other approaches and considerations that are potentially relevant for further action under the existing framework.

### National implications of Article 5 for developing countries

The existing and evolving framework under the UNFCCC should help guide national law and policymakers in decisions on land use, land-use change, and forestry. This includes accounting and reporting guidance agreed in Paris and Katowice. Parties are, for example, expected to account for emission removals in accordance with IPCC guidance ([Decision 4/CMA.1](#), Annex II), which can include natural disturbances on managed land, harvesting of wood products or the age-class structure in forests.<sup>50</sup> Depending on emission removals included in an NDC, policy and law on forest protection, water management, and other ecosystem services may need to be reviewed and strengthened.

## ARTICLE 6: COOPERATIVE APPROACHES

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.
4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:
  - (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
  - (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;
  - (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and
  - (d) To deliver an overall mitigation in global emissions.

5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.
6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.
8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, *inter alia*, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:
  - (a) Promote mitigation and adaptation ambition;
  - (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and
  - (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.
9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

Article 6 describes two market approaches, and one non-market approach, for “*voluntary cooperation*”, which Parties can use to achieve the ambition of their NDCs:

- Bilateral or multilateral cooperative approaches, where Parties can transfer “*internationally transferred mitigation outcomes*” (ITMOs) to facilitate the achievement of their NDCs (Article 6.2).
- A centrally governed crediting mechanism to support sustainable development under the auspices of the Paris Agreement (Article 6.4). Emission reduction units can be issued for activities authorised by Parties and then be acquired by other Parties.
- A framework to promote non-market approaches (Article 6.8).

The Paris [Decision 1/CP.21](#) tasks the Subsidiary Body for Scientific and Technological Advice (SBSTA) to develop further guidance, rules, modalities, and procedures for the operation of the first two (market) approaches, and a work programme under the third (non-market) approach. To date, however, the Parties have failed to reach an agreement on these issues and the adoption of the implementation guidelines for Article 6 has now been deferred to the climate conference in Glasgow, UK, in 2020.

Frustrated by the continued lack of agreement on Article 6 rules, a group of Parties led by Costa Rica and Switzerland launched the [San Jose Principles for High Ambition and Integrity in International Carbon Markets](#) on 14 December 2019, at the Climate Change Conference in Madrid.

### **Article 6.1 to 6.3: Cooperative approaches**

Article 6.2 describes cooperative approaches, whereby Parties that achieve more than the mitigation ambition identified in their NDCs during a particular period can sell their excess to other Parties, as long as this also promotes sustainable development, environmental integrity, transparency, and does not result in any “double counting”.

Parties are potentially granted a large degree of flexibility in the design and implementation of cooperative approaches. The accounting for ITMO transfers will have to be done according to UNFCCC rules. Disagreements between Parties on these rules relate to, *inter alia*, whether a Party should be able to transfer ITMOs from sectors and GHGs that are not covered by its NDC; whether ITMOs can be used

for other purposes than towards an NDC (for instance, for the Carbon Offsetting and Reduction Scheme for International Aviation or CORSIA, or other voluntary carbon markets); or the scope and form of the “corresponding adjustments” that a Party that sells ITMOs will have to make to its own NDC, to avoid double counting.

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Matters are complicated by the fact that the NDCs vary considerably, with different types of targets (some are quantified, others are not), expressed in different metrics, and covering different sectors and gases. Remaining questions include whether ITMOs should only be achieved and expressed in carbon dioxide equivalent; can only be accounted for against an NDC emissions budget; or whether the guidance should respect the different approaches used by Parties for defining “mitigation outcomes” (for instance, renewable energy targets expressed in megawatt hours).

The modalities, procedures, and guidelines (MPGs) for the transparency framework, adopted in Katowice, contain some general guidance related to Article 6.2 in the Annex of [Decision 18/CMA.1](#).<sup>51</sup> §77(d) specifies that corresponding adjustments must be made for the use of ITMOs towards achieving NDCs and for “other purposes”. This reference to “other purposes” has been interpreted by some Parties to allow for the use of ITMOs generated outside the UNFCCC. §77(d), however, also states that this is to be done consistently with the relevant outcomes of the Article 6 discussions (see also [Decision 8/CMA.1](#), §4).

### **Article 6.4 to 6.7: Sustainable development mechanism**

Based on the experience with the Clean Development Mechanism (CDM) defined in Article 12 of the Kyoto Protocol, Article 6.4 establishes a “mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development”. This sustainable development mechanism will operate under the guidance and authority of the CMA and be governed by a Supervisory Body.

Under the existing CDM, projects such as the installation of solar panels or distribution of clean cooking stoves can earn saleable certified emission reduction (CER) credits. Each CER is equivalent

to one tonne of carbon dioxide, which can be counted towards meeting Kyoto Protocol targets. Before a project can be considered for registration, the host country must attest to its potential contribution to sustainable development.

The activity cycle of the Article 6.4 mechanism currently being discussed may share many similarities with the CDM. The Supervisory Board would approve the eligible methodologies for mitigation activities (such as calculation of baselines or determining the “additionality” of the activity). Participants may propose activities, which must be approved by the host country and validated by “designated operational entities” (DOEs), which are independent auditors accredited for this purpose. Implementers of an activity monitor the emission reductions achieved. This could be verified by the DOEs and the emission reduction units issued would be transferred into the accounts of the activity implementers.

Units can only be used once (Article 6.5) and a “share of proceeds” (percentage) for administration and adaptation purposes will be raised either at the point of issuance or international transfer (Article 6.6). Parties still disagree on the percentage and whether such a levy should be extended to transactions under Article 6.2. Some Parties want to include human rights considerations in the reading of “*sustainable development*” under Article 6.4 (a), others are keen to exclude avoided deforestation. The expectation to “*deliver an overall mitigation in global emissions*” in Article 6.4(d) could be interpreted to require the cancellation of some credits to ensure an “overall mitigation in emissions reductions” (because offsetting does not lead to further overall mitigation). The main area of contention, however, is the transfer of existing Kyoto Protocol units into the new system.

Other ongoing discussions reflect the differences between Parties under Article 6.2 (for instance, on mitigation achieved “outside” of an NDC, on corresponding adjustments, or whether Article 6.4 emission reduction units can be used outside NDCs).

## Article 6.8 and 6.9: Non-market approaches

Articles 6.8 and 6.9 further define a framework for non-market approaches (NMA). For the time being, the functions, scope, and purpose of the framework are an open question. A work programme that is being developed by SBSTA for adoption by the CMA ([Decision 1/CP.21](#), §§39 and 40) may gradually provide some clarity.

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The [draft text](#) from the 2019 Climate Change Conference in Madrid proposes the establishment of a NMA Forum under the auspices of the SB Chairs, to develop a schedule to implement the work programme. According to the draft text, the work programme would be implemented through workshops, meetings with stakeholders and experts, the elaboration of technical papers, and in coordination with other relevant ongoing processes under the UNFCCC. Activities will aim to develop and implement tools for the facilitation of NMAs, and identify and share relevant information on them. The need for further institutional arrangements will be reviewed in 2024.

A UNFCCC [technical paper](#) describes non-market approaches as “*any actions that drive cost-effective mitigation without relying on market-based approaches or mechanisms (i.e. without resulting in transferable or tradable units)*”.<sup>52</sup> The examples listed in the paper include economic and fiscal instruments such as carbon taxes or minimum feed-in tariffs for renewable energy; building, emissions control, and other regulations; voluntary agreements between industry and government; and information, education, and awareness programmes. While the paper focuses on national measures by States, the language in Article 6.8 appears wide enough to cover collective approaches by States, such as international carbon pricing and taxation mechanisms; monetary compensation schemes for climate change impacts; trade measures to discourage fossil fuel subsidies; or a levy on large fossil fuel companies.

**National implications of Article 6 for developing countries**

To benefit from future Article 6 mechanisms, Parties should mirror the basic principles adopted at the international level: environmental integrity, transparency, permanence, robust accounting rules, etc. while bearing in mind that some of these elements (such as accuracy of data and accounting) can disadvantage countries that lack adequate capacity. A national market approach should, for example, set a regulatory ceiling on GHG emissions (in line with the NDC) and issue just enough permits within the sectors covered to meet the target. To attract investment and also to host sustainable development projects, a secure business environment, a clear regulatory framework, good governance, access to justice etc. are important elements.

Policymakers can benefit from the knowledge and experience gathered by countries through the implementation of the Kyoto Protocol's market mechanisms, although these will have to be adapted to national circumstances.

## ARTICLE 7: ADAPTATION

- 7
1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.
  2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.
  3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session.
  4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.
  5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.
  6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:
  - (a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;
  - (b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;
  - (c) Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;
  - (d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and
  - (e) Improving the effectiveness and durability of adaptation actions.
8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.
9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:
  - (a) The implementation of adaptation actions, undertakings and/or efforts;
  - (b) The process to formulate and implement national adaptation plans;
  - (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;

- (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and
  - (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.
10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.
  11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.
  12. The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.
  13. Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.
  14. The global stocktake referred to in Article 14 shall, inter alia:
    - (a) Recognize adaptation efforts of developing country Parties;
    - (b) Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article;
    - (c) Review the adequacy and effectiveness of adaptation and support provided for adaptation; and
    - (d) Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article.

Article 7 provides guidance for achieving one of the primary goals of the Paris Agreement, set out in Article 2.1(b). It also aims to create a better balance in addressing adaptation and mitigation in the international climate change regime – a key objective for developing countries in the Paris Agreement negotiations. The UNFCCC refers to adaptation only laterally in the context of mitigation efforts and Party obligations to develop policies and provide financial support. Similar references occur in the Kyoto Protocol, with calls for an adaptation levy on the CDM (Article 12.8 of the Protocol).

Key features of Article 7 include a “*global goal on adaptation*” (GGA), which frames the aim of the Article in the context of the overall temperature goal of the Paris Agreement; emphasis on the country-driven nature of adaptation action; and recognition of the importance of support and international cooperation for adaptation. Article 7 also introduces the adaptation communications, which will feed into the GST under Article 14 along with other adaptation-related inputs from Parties and other actors.

### **Article 7.1: Global goal on adaptation**

Guidance in the Paris Agreement on adaptation is framed by the establishment of a global goal to enhance adaptive capacity, strengthen resilience, and reduce vulnerability to climate change. The GGA was established to ensure an adequate adaptation response in the context of the global average temperature goal referred to in Article 2. While the adaptation-related outcomes in Decisions 9/CMA.1, 10/CMA.1, and 11/CMA.1 of the Katowice Climate Package recall the relevant provisions of Article 7, they neither quantify the GGA nor expand on its qualities. Therefore, at this point in time, it remains more or less symbolic in nature.

### **Article 7.2 to 7.4: Adaptation in the context of the global response to climate change**

Articles 7.2 to 7.4 recognise that adaptation is a global challenge with multiple dimensions and that it is a key component of the long-term response to climate change. They require the adaptation efforts of

developing countries to be recognised and tie the need for adaptation action to the level of mitigation ambition, with the potential of greater adaptation needs involving greater adaptation costs.

While these provisions are general in nature, the [Katowice Climate Package](#) contains further modalities to profile and showcase the adaptation efforts of developing countries. [Decision 11/CMA.1](#) requests the secretariat to prepare a synthesis report that includes information on the adaptation efforts of developing countries for the GST.<sup>53</sup> This information should draw on, *inter alia*, adaptation communications, National Adaptation Plans (NAPs), National Communications, NDCs, other relevant reports prepared under the transparency framework, and reports of the IPCC and other relevant scientific bodies.

In the same Decision (§11), the secretariat is requested to prepare a report summarising the recognition of adaptation efforts of developing countries drawing on, *inter alia*, the synthesis report referred to above and the outputs of the high-level component of the GST. Parties are to make use of existing national, regional, and global events, including the [NAP Expo](#) and the [Adaptation Forum](#), organised by the [Adaptation Committee](#), to showcase adaptation efforts of developing countries.

Finally, more generally, the secretariat, under the guidance of the Adaptation Committee and the Least Developed Countries Expert Group (LEG) and in collaboration with relevant stakeholders, has been requested to prepare synthesis reports every two years starting in 2020 on specific adaptation themes, focusing on relevant lessons learned and good practices in developing countries (§13).

### **Article 7.5: Country-driven nature of adaptation**

Article 7.5 arguably provides the ethical grounding for the nature of adaptation action carried out by Parties to the Paris Agreement. It reiterates the provisions of the [2010 Cancun Agreements](#) with slight variations.<sup>54</sup> While the elements of Article 7.5 are not recalled in any detail in the adaptation-related decisions of the Katowice Climate

Package, [Decision 9/CMA.1](#), which provides further guidance for the adaptation communications, recognises that the communications are country-driven.<sup>55</sup> Also, information on gender-responsive adaptation action and traditional knowledge, Indigenous Peoples' knowledge, and local knowledge systems related to adaptation is included in the possible elements of adaptation communications (see sections on Articles 7.10 and 7.11).

### **Article 7.6 to 7.8: Cooperation**

These three paragraphs describe how Parties and other stakeholders should cooperate to enhance action on adaptation. The importance of support for, and international cooperation on, adaptation efforts, taking into account the needs of developing countries, is emphasised and specific areas for strengthening cooperation to enhance adaptation action are set out in Article 7.7(a) to (e).

The Cancun Adaptation Framework referred to in Article 7.7 was established in [Decision 1/CP.16](#) as part of the Cancun Agreements in 2010, to enhance action on adaptation through international cooperation. The Framework aims to support better planning and implementation of adaptation measures through increased financial and technical support, to strengthen and/or establish regional centres and networks, boost research, and promote education and public awareness. In Cancun, Parties also established the Adaptation Committee.

Article 7.8 specifically encourages UN specialised organisations and agencies to support Parties in their adaptation efforts, in keeping with Article 7.5. Based in large part on the mandate for further work in [Decision 1/CP.21](#) (§§41, 42, and 45), Katowice [Decision 11/CMA.1](#) elaborates the arrangements broadly outlined in Articles 7.6 to 7.8 in more detail.<sup>56</sup> These include, for example, the following:

- The Adaptation Committee and the LEG will serve the Paris Agreement, and any future and emerging adaptation-related work necessary for the effective implementation of the Paris Agreement will be assigned to existing institutions.

- Institutions related to finance, technology development and transfer, and capacity building are encouraged to strive for a balance between adaptation and mitigation while respecting a country-driven approach.
- Partner organisations of the Nairobi Work Programme on impacts, vulnerability and adaptation to climate change (NWP) are invited to support the work of other adaptation-related institutions.
- The Consultative Group of Experts (CGE) and the LEG are invited to work together on training for assessing vulnerability and other aspects of adaptation.
- The Adaptation Committee shall continue making recommendations in its annual report for enhancing collaboration and promoting coherence and synergies.
- Developed country Parties are urged, and other Parties invited, to provide the necessary financial support to adaptation-related institutions under the UNFCCC and the Paris Agreement.
- The World Meteorological Organisation and other organisations are invited to facilitate the development and application of methodologies for assessing adaptation needs and regularly inform the SBSTA about relevant activities.
- The Paris Committee on Capacity-building (PCCB) and others are invited to facilitate access to, and implementation of, methodologies to assess the adaptation needs of developing countries in the context of providing support for building adaptive capacity.

In addition, the Adaptation Committee was requested to develop an inventory of methodologies to assess adaptation needs by June 2020 and regularly update it. Parties and observer organisations were invited to submit their views and relevant information on the development and application of methodologies for assessing adaptation needs. Drawing on the inventory and submissions, and with the engagement of IPCC Working Group II, the Adaptation Committee has been requested to prepare a technical paper to be considered by SBSTA57 in 2022 in the context of its consideration of the report of the Adaptation Committee.

At COP25 in Madrid, Parties were unable to adopt a decision recognising the recommendations in the Adaptation Committee's Annual Report – mainly because of disagreements over the importance and role of private versus public funding – and the discussion will continue. It is not clear whether this will impact on the timetable set out above.

## **Article 7.9 to 7.11:Adaptation actions and communications**

Under Article 7.9, each Party is required, where appropriate, to engage in adaptation planning and implementation processes such as NAPs, climate change impact and vulnerability assessments, or other plans and policies listed in sub-paragraphs (a) to (e).

Articles 7.10 and 7.11 introduce a new undertaking: the voluntary submission and recurrent updating of adaptation communications. These communications can include national priorities, information on support needed, plans, and actions, and be submitted as a component of, or in conjunction with, other communications (for instance, NAPs or NDCs). Article 7.11 provides Parties with flexibility in terms of timing and with regard to the vehicle of the communication.

Decision 9/CMA.1 expands on Articles 7.10 and 7.11, noting that the purpose of the adaptation communications is, for instance, to increase the visibility of adaptation; to strengthen adaptation action and support for developing countries; provide input to the GST (see section on Article 7.14); and enhance learning and understanding of adaptation needs and actions.<sup>57</sup> Parties further agreed that adaptation communications are not a basis for comparison between Parties, and are not subject to review. They also decided that Parties choosing to submit an adaptation communication could do so as a component of, or in conjunction with, the BTRs under the enhanced transparency framework established under Article 13. The Annex to Decision 9/CMA.1 sets out potential elements that could form part of an adaptation communication:

- National circumstances, institutional arrangements, and legal frameworks.

- Impacts, risks, and vulnerabilities.
- National adaptation priorities, strategies, policies, plans, goals, and actions.
- Implementation and support needs of, and provision of support to, developing countries.
- Implementation of adaptation actions and plans, including progress and results achieved; cooperation at the national, regional, and international level; barriers, challenges, and gaps; good practices, lessons learned, and information-sharing; and monitoring and evaluation.
- How adaptation actions contribute to other international frameworks and/or conventions.
- Gender-responsive adaptation action and traditional knowledge, knowledge of Indigenous Peoples, and local knowledge systems related to adaptation.

Information, including projections for the future, can be tailored to fit the specific communication or document being used as a vehicle. Parties are, however, encouraged to clearly identify the part of the document that constitutes the adaptation communication, and to number their adaptation communications sequentially.

Decision 9/CMA.1 further requests the Adaptation Committee to develop draft supplementary guidance on adaptation communications for voluntary use by Parties, with the engagement of IPCC Working Group II, for consideration by SB57 in November 2022. The guidance will be reviewed at CMA8 in 2025.

### **Article 7.12: Public registry for adaptation**

The modalities and procedures for the operation and use of the public registry referred to in Article 7.12 are listed in the Annex to Decision 10/CMA.1.<sup>58</sup> It was decided that there will be one registry portal with two parts – one for adaptation communications and another for NDCs – operated by the secretariat (see section on Article 4.12).

The secretariat developed a prototype registry for adaptation communications, but Parties were unable to agree on substantive and

procedural issues associated with the relationship between the two registries at CMA2 in Madrid, in December 2019. As a result, neither of the two registries were finalised, and discussions will continue in 2020.

### **Article 7.13: Support to developing countries**

With regard to the enhanced international support to be provided to developing countries for the implementation of Articles 7.7, 7.9, 7.10, and 7.11, in accordance with Articles 9, 10, and 11 of the Paris Agreement, [Decision 11/CMA.1](#)<sup>59</sup> includes the following provisions:

- The Standing Committee on Finance (SCF) will consider ways to facilitate the mobilisation of support for adaptation in developing countries and include its recommendations in its annual report.
- Parties are invited to further enhance their enabling environments, policy frameworks, institutions, and national public financial management systems with a view to improving access to international public support, and to enhancing the involvement of the private sector.
- Developed country Parties are urged, and other Parties, UN entities, relevant organisations, and bilateral and multilateral agencies are invited, to assist LDCs and other developing countries with building or strengthening their enabling environments, policy frameworks, institutions, and national public financial management systems.
- Parties and relevant actors have been invited to identify and subsequently remove perverse incentives that could result in non-resilient investments and planning decisions.
- Parties are requested to report on support provided and received in line with the reporting instruments and modalities being developed under the Paris Agreement.
- The operating entities of the Financial Mechanism are invited, in line with their mandates, to seek to ensure that the provision of financial support to developing countries is balanced between adaptation and mitigation activities.
- The Technology Executive Committee (TEC) and the Climate Technology Centre and Network (CTCN) are requested to facilitate

- the provision of support for technology development and transfer for adaptation in developing countries.
- The PCCB is invited to enhance and facilitate the provision of support for capacity building for adaptation in developing countries.

### **Article 7.14: Adaptation and the GST**

The final paragraph of Article 7 specifies how adaptation will be included in the GST. [Decision 11/CMA.1](#), therefore, explicitly invites Parties that choose to submit an adaptation communication to do so in time to inform each GST (§6). The secretariat (in §9 and also §23.b of [Decision 19/CMA.1](#)) is requested to include an assessment of the support needs for adaptation of developing countries in the synthesis report prepared for the GST, drawing, amongst other things, on the most recent adaptation communications, NAPs, National Communications, NDCs or other relevant documents and reports prepared under the transparency framework (see section on Article 14).

#### **National implications of Article 7 for developing countries**

Depending on their specific climate vulnerabilities and national circumstances, countries may review and develop laws, policies, plans, and programmes in areas such as planning, building, coastal protection, disaster risk reduction, food security etc. In this context their adaptation action should aim to meet the standards and principles captured in Article 7.5 (country driven, gender-responsive, participatory, transparent etc.). The information gathering and reporting envisaged under Article 7 may provide a helpful context to formulate plans, needs, and objectives.

Developing countries should, in particular, try to strengthen processes to assess climate change impacts and adaptation needs, and to record, monitor, and evaluate adaptation efforts in all sectors and at all levels of government (national and sub-national). This should make it easier to benefit from potential financial and technical support under the Agreement and also to input effectively into the GST.

## ARTICLE 8: LOSS AND DAMAGE

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.
2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.
4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:
  - (a) Early warning systems;
  - (b) Emergency preparedness;
  - (c) Slow onset events;
  - (d) Events that may involve irreversible and permanent loss and damage;
  - (e) Comprehensive risk assessment and management;
  - (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
  - (g) Non-economic losses; and
  - (h) Resilience of communities, livelihoods and ecosystems.
5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

## Article 8.1: Loss and damage

The adverse effects of climate change (sea level rise, storms, floods, wildfires etc.) are becoming increasingly severe and frequent. The question of how the international community should deal with climate-related irreversible harm where adaptation is no longer possible is, therefore, fundamental for developing countries that are particularly vulnerable to the adverse effects of climate change. In Paris, developing countries succeeded in including a freestanding Article on loss and damage from climate change in the Agreement. This formally distances the issue from adaptation.

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Decision 1/CP.21, which adopts the Agreement, contains the vague statement that “*Article 8 ... does not involve or provide a basis for any liability or compensation*” (§51). It addresses the concern by some developed countries, in particular the US, that a separate provision on loss and damage could be construed as an admission of responsibility for climate change damages with an obligation to pay compensation for them. As a result, while signing the Agreement, several SIDS have made declarations to the effect that their ratification (or accession) does not constitute a renunciation of any rights under international law, and that no provision in the Paris Agreement should be interpreted as derogating from the principles of general international law.

## Article 8.2:WIM

Article 8.2 incorporates the existing Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM) into the institutional architecture of the Paris Agreement. The work of the WIM, which was established at COP19 in 2013, is implemented by an Executive Committee (ExCom) with 20 members from UNFCCC Parties (equally represented by developed and developing countries). The rolling (five-year) *workplan* of the ExCom includes workstreams on: slow onset events; non-economic losses; comprehensive risk management and transformational approaches; human mobility; and enhanced cooperation and facilitation in relation to action and support, including finance, technology, and capacity building.

Based on [Decision 1/CP.21](#) (§48), the ExCom launched the [Fiji Clearing House for Risk Transfer](#) at COP23, as a repository of information on insurance and risk transfer. A [Task Force on Displacement](#) was also established in line with §49 of the same Decision, to develop recommendations for integrated approaches to avert, minimise, and address displacement related to the adverse impacts of climate change. In 2018, the mandate of the Task Force was extended until the end of the ExCom's existing workplan.

The WIM was established by the UNFCCC COP, and operates on the basis of functions agreed by the COP. Article 8.2 of the Paris Agreement, however, also states that the WIM will be subject to the authority and guidance of the CMA. This resulted in a disagreement on the governance arrangements of the WIM. Some developed countries, in particular the US, contended that the WIM should be under the sole authority of the CMA, but developing countries held that it should operate under the authority of both the COP and the CMA. Making the WIM solely a body under the CMA would free the US of further commitments on loss and damage (such as support to developing countries to address loss and damage), after its impending withdrawal from the Paris Agreement.

Some developed countries appeared willing to compromise on this issue of WIM governance at COP25 in Madrid, if it was made clear that §51 of [Decision 1/CP.21](#) (that Article 8 does not involve or provide a basis for liability or compensation) is also applied to further discussions on loss and damage under the Convention. Agreement was not reached, however, and discussions will continue. Meanwhile, the substantive decision following the second review of the WIM, which was initially mandated by the COP, was taken by the CMA. During the review developing countries, in particular LDCs and SIDS, called for the establishment of an “implementation branch” for the WIM, and for new and additional finance for loss and damage. While these calls were strongly resisted by some developed countries, [Decision 2/CMA.2](#):

- Urges the scaling-up of action and support, “*as appropriate*”, including finance, technology, and capacity building, but makes no

reference to developed countries nor to the fact that finance should be new and additional.

- Tasks the WIM ExCom to establish an expert group whose mandate includes engaging with existing financial institutions within the UNFCCC to identify ways of enhancing the provision of climate finance for loss and damage and collecting and disseminating information on available sources for such support.
- Establishes a Santiago Network to catalyse the technical assistance of key stakeholders involved in the implementation of relevant approaches at the local, national, and regional levels, in developing countries.

### **Article 8.3 to 8.5: Further work**

Unlike other components of the Paris Agreement, Article 8 has no explicit links to Articles related to the provision of support (Articles, 9, 10, and 11) or the reporting and compliance framework (Articles 13-15). This has been attributed by some to the last-minute agreement in Paris on including a separate Article on loss and damage, leaving no time to negotiate and build in the linkages. However, during the three-year long negotiations for the implementation guidelines for the Paris Agreement, developing countries were able to ensure that loss and damage is integrated into the key reporting components of the Paris Agreement.

For instance, the guidance on adaptation communications ([Decision 9/CMA.1 Annex](#), and see above Article 7.9-7.11) provides opportunities to include information on climate impacts or national priorities.<sup>60</sup> [Decision 18/CMA.1](#) on the modalities, procedures, and guidelines for the Article 13 transparency framework includes a sub-section on information related to averting, minimising, and addressing loss and damage associated with climate change impacts under the section on climate change impacts and adaptation.<sup>61</sup> It states that interested Parties may provide information related to enhancing understanding, action, and support for loss and damage (on a cooperative and facilitative basis), including on:

- Observed and potential climate change impacts, including those related to extreme weather events and slow onset events, drawing upon the best available science.
- Activities related to averting, minimising, and addressing loss and damage associated with the adverse effects of climate change.
- Institutional arrangements to facilitate the implementation of the activities referred to above.

While the provision of this information is voluntary, this is an opportunity to include loss and damage in the reporting and review process under Article 13, and subsequently the GST. Loss and damage is also part of the GST – Parties may take into account efforts that avert, minimise, and address loss and damage during the technical dialogue that will take place during the second (technical assessment) stage of the stocktake ([Decision 19.CMA.1](#), §6, and see Article 14).<sup>62</sup> The WIM ExCom, with other bodies, is invited to prepare a synthesis report for this technical assessment stage of the GST, with the assistance of the secretariat. This will allow information on loss and damage to be included in the high-level consideration of outputs, which is the final phase of the GST.

It has, however, proven more difficult to promote specific funding for loss and damage in the negotiations under the Paris Agreement. Incremental progress was made at COP25, with linkages made between the WIM ExCom and other institutions, such as the funds and operating entities of the Financial Mechanism. But the CMA [Decision](#) on the review of the WIM did not include a direct and unambiguous call for additional designated finance for loss and damage from developed countries.

Articles 8.3 and 8.5 contain a general call for Parties to enhance understanding, action, and support for loss and damage in collaboration with existing bodies and expert groups under the Paris Agreement, as well as relevant organisations and expert bodies outside the Paris Agreement. This is largely what the WIM, through the ExCom, has been doing since its inception. Specific subject areas for cooperation and further work are highlighted in Article 8.4 (a) to (h).

## National implications of Article 8 for developing countries

To address the risk of loss and damage associated with climate change impacts, Parties should conduct climate change risk assessments, and put in place disaster risk reduction strategies, emergency preparedness plans and programmes, and migration and resettlement plans where necessary. To do this successfully, developing countries will need financial support, including through public-private partnerships and initiatives, and humanitarian aid.

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Strategically, they could use reporting opportunities under the Paris Agreement to show how the adverse effects of climate change cause harm to their people, environment, and economy; and to highlight their activities in response to this harm, along with support needs. Bottom-up processes that comprehensively record impacts and activities are critical for this, along with support (finance, technology, and capacity building) and comprehensive public awareness campaigns.

## ARTICLE 9: FINANCE

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
2. Other Parties are encouraged to provide or continue to provide such support voluntarily.
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.
4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.
5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.
6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.
7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the

Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.

8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.
9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

The need for additional financial support to respond to climate change was one of the main concerns of developing countries during the negotiation of the Paris Agreement. As a result, climate finance is a crosscutting issue reflected in several Articles. In addition to Article 9, this includes: Article 2.1(c) on making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development; Articles 10.5 and 10.6 (support for technology development and transfer); Article 11.1 (capacity building to facilitate access to climate finance); reporting of financial support provided and received (Article 13); and Article 14 (GST with respect to means of implementation and support). In addition, developing countries shall receive support to implement the provisions of the Paris Agreement in most subject areas (Article 4.5, 7.13, 13.14, and 15).

### **Article 9.1 to 9.3: Finance commitments**

In the climate negotiations under the UNFCCC, developing countries have been arguing for many years that developed countries, because of their historic responsibilities, have an obligation to provide additional financial resources to developing countries, including the transfer of technology. To some extent, this is acknowledged in Article 9.1. Developing country negotiators, however, did not succeed in

establishing binding financial arrangements through, for example, a burden sharing formula for developed countries in the Agreement.

Instead, more specific future financial commitments were dealt with outside the Agreement in [Decision 1/CP.21](#), in particular §§52-64. The Decision states that developed country Parties intend to continue their collective mobilisation goal of US\$ 100 billion per annum (by 2020), first announced in 2009 in Copenhagen, through to 2025. A new collective quantified goal with US\$ 100 billion as a floor will be agreed before 2025 (§53) – the language in this paragraph does not specify that the goal will be restricted to developed countries. Article 9.2 encourages other Parties that are not developed country Parties (such as emerging economies or other wealthy Parties not listed in Annex I to the UNFCCC) to provide support voluntarily.

Overall, the commitment to provide and raise climate finance is framed in broad non-committal terms (for instance, “*from a variety of sources*” and “*through a variety of actions*”). While Article 9.1 could be interpreted as referring to the provision of finance from public sources, in particular state budgets, Article 9.3 refers to a much wider “*mobilization*” and only notes “*the significant role of public funds*”. The last sentence of Article 9.3 also reflects the general expectation that the efforts of Parties in this context will represent a progression in the form of an overall increase in the funds available over time.

Katowice [Decision 14/CMA.1](#) calls for deliberations on the new quantified goal to begin at CMA3 in November 2020; and for consideration, as part of these deliberations, of the aim of making finance flows consistent with a pathway toward low GHG emissions and climate-resilient development as envisaged under Article 2.1(c) of the Agreement.<sup>63</sup>

In addition, in [Decision 4/CP.24](#), the SCF is requested to “*prepare, every four years, a report on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement*”, starting in November 2020.<sup>64</sup> This report should help in determining target amounts for climate finance mobilisation under

Article 9.3 and also Article 11.3(d) of the UNFCCC (funding necessary and available for the implementation of the UNFCCC).

### **Article 9.4: Balance between mitigation and adaptation**

Article 9.4 calls for a balance between adaptation and mitigation funding, taking into account country-driven strategies. Similar language featured in the 2009 Copenhagen Accord and the [2010 Cancun Agreements](#) but the term “*balance*” remains open to interpretation. More specific language proposed in earlier drafts of the Agreement, such as “50:50 allocation” or “equal allocation” were rejected.

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Article 9.4 also prioritises the financial needs of developing countries that are “*particularly vulnerable*” to climate change and have capacity constraints. While the UNFCCC (Article 4.8) recognises the vulnerability of various groups of countries, Article 9.4 only refers to LDCs and SIDS. The addition of “*such as*”, however, indicates that they are listed as examples and do not necessarily exclude others.

During the negotiations of the Paris Agreement, other Parties and groups also wanted their vulnerability explicitly recognised in the finance context.<sup>65</sup> The question of particular vulnerability is likely to come up again. During COP24 in Katowice, different groups and countries (AGN, AILAC, Arab Group, and countries from Asia-Pacific) proposed specific agenda items to recognise their special needs and circumstances. The issue arose once again during the adoption of the CMA2 agenda at the Madrid Climate Conference. The CMA President proposed informal consultations only on the special needs and circumstances of Africa. Other groups objected, while Nepal called for special consideration of mountainous countries.

### **Article 9.5: Ex ante reporting on finance**

Article 9.5 requires developed countries to submit biennial communications on their predicted or “*ex ante*” levels of climate finance. While there is an obligation (“*shall*”) to report such information, the information need only be “*indicative*” – not definitive. As available, Parties should indicate relevant amounts (quantitative) of climate

finance as well as their nature (for instance loans, grants, guarantees, or other financial instruments). The provision of such information is optional for other Parties.

The specific type of information that should be provided in these communications and how the information should be dealt with were hotly debated in the negotiations for the implementation guidelines. Developed countries, for example, successfully resisted attempts by developing countries to have the information provided reviewed through a facilitative multilateral consideration of progress and technical expert review of information provided and reported. In Katowice, in [Decision 12/CMA.1](#),<sup>66</sup> it was agreed that:

- The biennial communications on *ex ante* finance will start from 2020, and the secretariat will establish a dedicated online portal.
- The secretariat will prepare a compilation and synthesis of the biennial communications from 2021 onwards to inform the GST. The secretariat will also organise biennial in-session workshops from 2021 onwards and prepare a summary report on each workshop. All these documents will be considered at CMA4 (2021).
- A biennial high-level ministerial dialogue on climate finance will begin in 2021, to be informed by, for instance, the summary reports on the in-session workshops. The CMA President will summarise the deliberations of the ministerial dialogue for consideration by the CMA at its next sessions.
- The COP is also invited to consider the compilations and syntheses and the summary reports on the in-session workshops.

The Annex to [Decision 12/CMA.1](#) lists the types of information to be provided by Parties in their biennial communications (in accordance with Article 9.5 of the Paris Agreement) with regard to public and other forms of finance. This list may be updated at CMA6 (2023) on the basis of experience and lessons learned. For the time being the types of information include, among other things:

- Projected levels of public finance.
- Programmes, including projected levels, channels, and instruments.

- Policies and priorities including regions and geography, recipient countries, beneficiaries, targeted groups, sectors, and gender responsiveness.
- Purposes and types of support (mitigation, adaptation, etc).
- An indication of new and additional resources to be provided.

## **Article 9.6: Finance and the GST**

Article 9.6 makes it clear that information on finance from developed countries will be an integral part of the GST. The modalities and sources of input for the GST were agreed in Katowice. The sources of input on finance, as defined in [Decision 19/CMA.1](#), include information, at “*a collective level*” on finance flows; balance and prioritisation (Article 9.4); the support for technology development and transfer and capacity building provided (Articles 10.6, 11.3, 13.9); as well as on the financial, technology transfer, and capacity building support needed and received under Articles 9, 10 and 11 (Article 13.6 and 13.10).<sup>67</sup> According to §7 of Katowice [Decision 12/CMA.1](#), the secretariat’s compilation and synthesis of the biennial communications on *ex ante* finance is also a source of input for the GST.<sup>68</sup>

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## **Article 9.7: Ex post reporting on finance**

Article 9.7 also requires developed countries to provide information biennially on support actually provided and mobilised through public interventions. The modalities, procedures, and guidelines (MPGs) for the provision of this information were elaborated in Katowice, in the [MPGs for transparency of action and support](#) under Article 13 ([Decision 18/CMA.1](#), Annex). Other Parties that provide climate finance on a voluntary basis are “*encouraged*” to use these MPGs (see section on Article 13.9). The information submitted by Parties will undergo a technical expert review, and a facilitative, multilateral consideration of progress (Article 13.11).

Public interventions are described (in Section V of the [MPGs](#), on *Information on financial, technology development and transfer and capacity building support provided and mobilised under Articles 9-11 of the Paris Agreement*) as, for example, grants, loans, equity,

guarantee, insurance, policy intervention, capacity building, technology development and transfer, and technical assistance (§125.d).

While the information from Parties on *ex post* finance is likely to gradually provide a more detailed and comprehensive picture of international climate finance provided, Parties still have significant flexibility in their reporting and decisions about what they consider “*new and additional*”. Parties are allowed to report their financial support at face value although in the case of a partial loan, for example, it may be more relevant to indicate the grant-equivalent value.<sup>69</sup> Despite the flexibility provided, developed countries are also expected to make efforts to enhance the comparability and accuracy of information through the use of international standards or harmonisation with other countries, institutions, and international systems (§119.d).

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### **Article 9.8: Institutional arrangements**

The Financial Mechanism established under Article 11 of the UNFCCC will also serve as the Financial Mechanism of the Agreement. Its operating entities – that manage its assets and conduct other business activities – are the [Global Environment Facility](#) (GEF) and the [Green Climate Fund](#) (GCF). Decision 1/CP.21 (§58) determined that the [LDC Fund](#) (LDCF), the [Special Climate Change Fund](#) (SCCF), and the SCF will serve the Agreement (§61).

The LDCF had been established to support a work programme to assist LDCs prepare and implement [National Adaptation Programmes of Action](#) (NAPAs). Since its establishment in 2001, the SCCF has financed projects relating to adaptation; technology transfer and capacity building; energy, transport, industry, agriculture, forestry and waste management; and economic diversification. The SCF’s mandate is to advise the Parties in general on their oversight of the Financial Mechanism.

With regard to the [Adaptation Fund](#) established under the Kyoto Protocol (to finance concrete adaptation projects and programmes in developing countries through a share of proceeds from the CDM and other sources of funding), further decisions were required. Through

Decisions 13/CMA.1 and 1/CMP.14, it was decided that the Adaptation Fund will serve the Paris Agreement with respect to all Paris Agreement matters from 1 January 2019. Once the share of proceeds becomes available under Article 6.4 of the Paris Agreement, the Fund shall no longer serve the Kyoto Protocol but continue to receive the share of proceeds, if available, from activities under Articles 6, 12, and 17 of the Kyoto Protocol.

The Adaptation Fund is supervised and managed by the Adaptation Fund Board composed of 16 members and 16 alternates and meets at least twice a year. At present, this includes two representatives from Annex I Parties and two from non-Annex I Parties to the UNFCCC.

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Following the transition of the Fund to the new Agreement, Parties have yet to agree on the need to revisit the composition of the Board as well as the express references to Annex I and non-Annex I Parties (reflecting the distinction under the UNFCCC and its Kyoto Protocol). Decision 1/CMP.3 sets out the functions, composition, and operation of the Adaptation Fund Board.

### **Article 9.9:Access to finance**

In the negotiations for the Paris Agreement, Article 9.9 was probably the least controversial part of Article 9. It mandates the institutions serving the Agreement and their operational entities to develop processes and procedures for accessing support that do not put developing countries with limited resources and capacities at a disadvantage (vis-à-vis other developing countries). Decision 1/CP.21 also urges these institutions to enhance the coordination and delivery of resources (§64). As is the case for Article 9.4, LDCs and SIDS are specifically mentioned. The Adaptation Fund and the GCF offer training and support to strengthen the capacity of national and regional entities to access, receive, and manage climate finance (“climate finance readiness”).

**National implications of Article 9 for developing countries**

Developing countries may wish to consider putting in place strategies and processes to access available climate finance. These could include monitoring the biennial reports submitted by developed country Parties on projected and provided climate finance and matching them against their priorities, needs, and plans for action. Creating systems for the realistic and systematic costing of mitigation and adaptation actions over the medium- and long-term could be key to demonstrating particular needs. Developing countries who support other Parties financially may wish to report *ex ante* and/or *ex post* on their contributions. With regard to further reporting on support received, see Article 13.

## ARTICLE 10: TECHNOLOGY DEVELOPMENT AND TRANSFER

- 10
1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.
  2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.
  3. The Technology Mechanism established under the Convention shall serve this Agreement.
  4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.
  5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.
  6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.

## **Article 10.1 and 10.2:Technology transfer and development**

The development and transfer of environmentally sound technologies and know-how from one Party to another, and in particular to developing countries, is considered an important component in the international response to climate change. This is reflected in the provisions of the UNFCCC and reiterated in Articles 10.1 and 10.2 with regard to mitigation and the ability to adapt to a changing climate. Generating energy through wind turbines and solar panels can reduce GHG emissions, while drought-resistant crops or sea walls help to adapt to the adverse effects of climate change.

“Transfer” in this context, encompasses accompanying activities such as the process of learning to use technology, adapting it to local conditions, and integrating it with indigenous technologies. Hence, a new technology should be accompanied by sufficient knowledge to successfully install, operate, and maintain it. Barriers to effective technology transfer include, for example, a lack of research, capacity, communication, funding as well as intellectual property rights (IPRs). Many developing countries, therefore, tried to include provisions to deal with IPRs (patents, industrial designs, trademarks etc.) in the Paris negotiations. This was resisted by developed countries on the grounds that, at the international level, IPRs are usually dealt with under the World Intellectual Property Organization (WIPO).

## **Article 10.3:Technology Mechanism**

To accelerate technology development and transfer, a Technology Mechanism had already been established before the adoption of the Paris Agreement, in 2010 at COP16 in Cancun. It consists of a Technology Executive Committee (TEC) and a Climate Technology Centre and Network (CTCN). The TEC is the Technology Mechanism's policy arm, which analyses and provides recommendations on key technology policy issues. The CTCN (implementation arm) is tasked with supporting countries in enhancing the implementation of climate technology projects and programmes. The CTCN is hosted by the UN Environment Programme and coordinates a network of national,

regional, sectoral, and international technology centres, networks, organisations, and private sector entities.

Article 10.3 makes it clear that the Mechanism – including its CTCN and TEC – will also serve the Paris Agreement. In §§66 and 69 of [Decision 1/CP.21](#), Parties agreed to strengthen and periodically assess the effectiveness and adequacy of support to the Technology Mechanism. At the climate conference in Katowice, they subsequently adopted the scope of, and modalities for, this periodic assessment in [Decision 16/CMA.1](#).<sup>70</sup> The first periodic assessment will begin at CMA4, in November 2021, and be completed at CMA5. It was agreed that the outcomes of this assessment should serve as an input to the GST and guide improved effectiveness and enhanced support to the Technology Mechanism.

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#### **Article 10.4: Technology Framework**

To provide overarching guidance to the Technology Mechanism and improve the effectiveness and efficiency of its work, the Paris Agreement established a Technology Framework. Principles and key themes of the Framework were subsequently adopted in Katowice [Decision 15/CMA.1](#).<sup>71</sup> Coherence, inclusiveness, results-oriented, and transformational approaches and transparency should guide the implementation of the Technology Mechanism under the Paris Agreement. Five key themes for further action are: innovation; implementation; enabling environment and capacity building; collaboration and stakeholder engagement; and support.

The Framework will be implemented by the TEC and CTCN under CMA guidance. As part of Katowice [Decision 15/CMA.1](#), Parties requested the TEC and CTCN to incorporate the guidance contained in the Technology Framework into their respective work plans and programmes of work. They were also asked to report on progress, as well as challenges and lessons learned, in implementing the Technology Framework, in their joint annual reports to the COP and the CMA. It was agreed that the Framework can also facilitate the strengthening of financial support for technology development and transfer.

## **Article 10.5: Innovation**

Innovation is singled out in Article 10.5 as an important element of the international response to climate change. The Technology Mechanism and also the UNFCCC Financial Mechanism should support scientific research and development for the creation of new methods, processes, and devices. This could be done through new collaborative approaches to climate technology research, development, and demonstration; the creation and promotion of relevant enabling policies to incentivise and nurture a supportive environment for innovation; and the active engagement of the private sector, as well as closer collaboration between the public and private sectors ([Decision 15/CMA.1](#), Annex §7).

The life cycle of technology is often broken down into the research and development phase, its application, maturity, and growth and, finally, its decline. Article 10.5 highlights in particular the need to share knowledge with developing countries during the early stages of the technology life cycle. To some extent, this reflects the concern and previous experience of many developing countries aiming to leapfrog traditional economic development but only being able to access and deploy technologies already out-dated in other parts of the world.

## **Article 10.6: Support for technology transfer and development**

Article 10.6 states that support, including finance, “*shall*” be provided to developing countries to cooperate on technology development and transfer and other efforts under Article 10. However, it does not specify who must provide such support. This can be seen as a departure from the obligations under Article 4 of the [UNFCCC](#), which defines the responsible Parties (developed country Parties, including the EU, as listed in Annex II to the UNFCCC) and their commitments in some detail. According to UNFCCC Article 4.7, the extent to which developing countries implement their commitments under the Convention will depend on the effective implementation of developed country commitments related to financial resources and transfers of technology.

Unlike Article 10.5, there is no specific mention of “*early stages*” and support should benefit “*different stages of the technology cycle*”. The language in Article 9.4 (“*with a view to achieving a balance between support for mitigation and adaptation*”) is used here again. Information on support for technology development and transfer will be considered as part of the GST.

### **National implications of Article 10 for developing countries**

**10**

To prepare for enhancements in the international efforts on technology development and transfer, developing countries should continue to identify national mitigation and adaptation technology needs and priorities. The GEF provides support for developing countries to undertake technology needs assessments (TNAs). Consultations with industry and other stakeholders are an important component in identifying required specific technologies. Capturing good practice, indigenous knowledge and investing – to the extent possible – in technical capacity and skills development are important components to create a wider national enabling environment.

## ARTICLE II: CAPACITY BUILDING

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.
2. Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.
3. All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.
4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity- building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.
5. Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building.

Although climate-related capacities in developing countries have grown significantly in recent years, many NDCs still report a lack of institutional capacities and governance frameworks. They often highlight gaps in the internal coordination of climate change response measures, and the ability to mainstream climate considerations into national plans and policies. With respect to mitigation and adaptation measures, the indicated need for support includes areas such as GHG emissions accounting, research and systematic observation, data collection, risk modelling, and vulnerability assessments.

### **Article 11.1 and 11.2: Capacity building**

II

The aim to strengthen the capacity of developing countries to effectively address climate change and deal with its adverse effects is contained in the UNFCCC, the Kyoto Protocol, and the Paris Agreement. This applies to all substantive components of the Paris Agreement: mitigation, adaptation, finance, technology, climate change awareness, and education (Article 12), but also to the necessary reporting in these areas (Article 13). §84 of [Decision 1/CP.21](#), therefore, established a [Capacity-building Initiative for Transparency \(CBIT\)](#) to support developing countries in meeting enhanced transparency requirements defined in Article 13 (on transparency of action and support). The aims of the CBIT are described as strengthening national institutions for transparency in line with national priorities; providing relevant tools, training, and assistance; and assisting in the improvement of transparency over time (§85). The decision “*urges and requests*” the GEF to support the establishment and operation of the CBIT as a priority (§86).

Similar to other provisions of the Agreement (such as Article 9.4), Article 11.1 refers to the special circumstances of LDCs and SIDS amongst the developing countries. In this context, however, it seems to suggest that LDCs are primarily affected by a lack of capacity while SIDS are more exposed to the adverse physical effects of climate change. It remains to be seen whether this will have any bearing on the debate of how to determine vulnerability.

The criteria for capacity building activities, contained in Article 11.2, echo some of the principles (country-driven, needs-based, participatory, crosscutting, and gender-responsive) mentioned in other parts of the Agreement (for instance, Article 7.5 and the Preamble). They reflect the significant experience gained over the years (“*lessons learned*”) and emphasise that effective national capacity building should include local governments and communities.

### **Article 11.3 and 11.4: Support and reporting**

While recognising that “*all Parties*” should cooperate to enhance the capacity of developing country Parties, Article 11.3 states that developed country Parties “*should*” enhance support for capacity building actions in developing country Parties. Article 11.4 then requires all Parties doing so (and providing support) to report on this, while developing country Parties should regularly communicate progress made in implementing capacity building plans, policies, and measures. The scope and details of this two-way reporting process are further outlined in Article 13 and the associated CMA decisions (see section on Article 13).

### **Article 11.5: Institutional arrangements**

The final paragraph of Article 11 deals with the institutional arrangements for capacity building under the Paris Agreement. The governing body of the new Agreement is mandated to adopt a decision on the initial institutional arrangements for capacity building at its first session (CMA1), although no such decision was taken during CMA1.

Through Paris Decision 1/CP.21, however, the COP had already established the Paris Committee on Capacity-building (PCCB) as a new body to address current and emerging gaps and needs to further enhance capacity-building efforts in developing countries. The PCCB is composed of 12 members nominated by Parties and elected by the COP for a term of two years. It selects two Co-Chairs from its members and can establish working groups.

It complements other initiatives such as the Durban Forum on Capacity-building (which meets once every year during UNFCCC sessions) and

the web-based [Capacity-building Portal](#) launched in 2012. The PCCB has been tasked with managing and overseeing the capacity building workplan for the period 2016-2020 that encompasses, for example, the following activities ([Decision 1/CP.21](#), §73):

- Assessing how to increase synergies between Convention bodies that implement capacity-building activities.
- Identifying capacity gaps and needs and recommending ways to address them.
- Promoting the development and dissemination of tools and methodologies.
- Enhancing capacity building and cooperation at the global, regional, national, and subnational level.
- Identifying and collecting good practices and lessons learned.
- Guiding the secretariat on the maintenance and further development of the [Capacity-building Portal](#).

## II

In Madrid, the CMA at its second session (CMA2) [decided](#) on the initial institutional arrangements for capacity building under the Paris Agreement. It confirmed that the PCCB will serve the Paris Agreement in accordance with its mandate and terms of reference. It will report to both the COP and CMA.

In a separate [Decision](#) on the review of the Committee, Parties further decided to extend the PCCB for five years and to review its progress and need for extension again at COP30 in 2024. They requested the PCCB to develop a new work plan for this period (to be considered by the COP in 2020) on the basis of the priority areas and further activities outlined in an annex to the Decision. Priority areas include: enhancing coherence and coordination of capacity building; identifying capacity gaps and needs; and promoting awareness-raising, stakeholder engagement, and knowledge and information sharing.

## National Implications of Article 11 for developing countries

Developing countries will need systems to identify capacity building needs in all areas of the Paris Agreement. They could design programmes, plans, policies, and actions to address them, to estimate the financial implications and available financial and other forms of support for implementation. To demonstrate the full range of capacity building efforts and share lessons learned, developing countries should track all initiatives and report on progress and support needed and received. For further information see Article 13 on transparency.

## ARTICLE 12: CLIMATE CHANGE AWARENESS AND EDUCATION

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

This short Article echoes some of the more detailed content in the UNFCCC's Article 6 on education, training, and public awareness. Under the UNFCCC, the eight-year Doha Work Programme on Article 6 was [launched in 2012](#), focusing on six elements: education, training, public awareness, public access to information, public participation, and international cooperation. A review of the Doha Work Programme on Article 6 is due in 2020.

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In Paris, [Decision 1/CP.21](#) also included two paragraphs related to this Article, although they appear under the heading of capacity building (§§82 and 83). §82 calls on all Parties to ensure that education, training, and public awareness, as reflected in UNFCCC Article 6 and in Article 12 of the Paris Agreement, are adequately considered in their contribution to capacity building. §83 invites CMA1 to explore ways of enhancing the implementation of training, public awareness, public participation, and public access to information.

In Katowice, in [Decision 17/CMA.1](#) (§§1, 3, 5-11), it was agreed that efforts under Article 12 will be referred to as Action for Climate Empowerment (ACE) and to a large extent be consolidated with activities under UNFCCC Article 6.<sup>72</sup> The COP was invited to include efforts related to implementation of Article 12 when it reviews the Doha Work Programme on Article 6, and the focal points nominated under Article 6 of the UNFCCC will also serve as focal points under Article 12 of the Paris Agreement. They will be referred to as “ACE Focal Points” in the context of the Paris Agreement as well.

## National Implications of Article 12 for developing countries

Over the years, progress has been made with regard to climate change awareness-raising as well as educational activities and integration of climate-related issues in school curricula. Countries should continue their efforts and cooperate in enhancing existing and new activities related to education, training, public awareness, public participation, and public access to information related to climate adaptation and mitigation. The primary role of governments in this context is to create reliable systems that ensure the review and update of content, the provision of resources, materials, and relevant expertise.

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# Reporting, Review and Compliance

## (Articles 13-15)

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Articles 13-15 are a central element of the Paris Agreement and complement each other. They will allow individual and global progress to be tracked in an otherwise largely nationally determined regime. Countries are not legally bound to meet their NDC goals, but they are legally bound to report on progress and participate in the reviews. The overall purpose of the enhanced transparency framework (Article 13) is to build mutual trust and confidence that all Parties are contributing their share to the global effort and promoting effective implementation.

Whilst the transparency framework will scrutinise and review individual actions and support, the global stocktake (GST, in Article 14) will focus on assessing collective progress towards implementation. It is also intended to be a catalyst for ratcheting up ambition. The aim of the compliance mechanism (Article 15) is to be facilitative, not punitive. The reporting and review mechanisms provide limited scrutiny and accountability of national actions and (as with many other multilateral environmental agreements) focus on enabling and supporting the pursuit of those nationally determined actions.

## ARTICLE 13: TRANSPARENCY OF ACTION AND SUPPORT

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.
2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.
3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.
4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article.
5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.
6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of

- aggregate financial support provided, to inform the global stocktake under Article 14.
7. Each Party shall regularly provide the following information:
    - (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and
    - (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.
  8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.
  9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.
  10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.
  11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.
  12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred

- to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.
13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.
  14. Support shall be provided to developing countries for the implementation of this Article.
  15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.

Article 13 establishes an enhanced transparency framework (ETF) for action and support. The new framework builds on the existing reporting and review arrangements under the UNFCCC and Kyoto Protocol, which it will eventually supersede. Parties will continue to report every two years on their efforts and produce GHG inventories. The flexibility given to LDCs and SIDS will continue to apply.

Key ETF elements were left to be agreed after the adoption of the Paris Agreement. Amongst these was how to build on the existing processes, and if and to what extent there should be different reporting systems for developed and developing countries. The modalities, procedures, and guidelines (MPGs) for the ETF were adopted at CMA1 in Katowice in Decision 18/CMA.1.<sup>73</sup> Parties opted for a common set of rules for all, but with flexibility for those developing countries that need it in the light of their capacities.

**Article 13.1 to 13.4: Enhanced framework, with flexibility**

Article 13.1 formally establishes the new system. The term “enhanced” is not defined but suggests an intention to strengthen and improve the quality of the reporting and review, for more ambitious climate action. Articles 13.1 and 13.2 also make it clear upfront that the ETF will have

*“built-in flexibility”* which takes into account Parties’ different capacities and builds upon collective experience. In doing so, it acknowledges that the new and more onerous requirements of a common system will present a challenge for developing countries, and that Parties have different starting points and capacities. Article 13.3 highlights the special circumstances of LDCs and SIDS.

Paris [Decision 1/CP.21](#) provides limited guidance on the nature of the flexibility for developing countries: it will apply in the scope, frequency, and level of detail of the reporting, and in the scope of the review (§89). The MPG<sup>s</sup> adopted in Katowice further specify the flexibility available but also require developing countries that need it to clearly indicate the provision to which flexibility is applied, clarify capacity constraints, and provide estimated time frames for improvements ([Decision 18/CMA.1](#), Annex §6).<sup>74</sup> As part of the technical review under Article 13.12, the technical expert review (TER) teams shall not review a Party’s determination to apply such flexibility or whether the Party possesses the capacity to implement a specific provision without flexibility.

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In Paris, Parties agreed that the need for flexibility should be balanced against other objectives, such as facilitating improved reporting and transparency over time, and the need to promote transparency, accuracy, completeness, consistency, and comparability ([Decision 1/CP.21](#), §92). This is reflected in the MPG<sup>s</sup> – where if flexibility is afforded to Parties, they are often still required to meet minimum standards. The MPG<sup>s</sup> also reiterate that Parties should maintain at least the frequency and quality of reporting in accordance with their obligations under the UNFCCC ([Decision 1/CP.21](#), §92.e and [Decision 18/CMA.1](#), Annex §3.f).

The focus of the new regime is on learning and sharing comparable information, to foster improvement. In line with this approach, Article 13.3 states that it will be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing an undue burden on Parties. Article 13.4 contains a reassurance that the new MPG<sup>s</sup> will draw on the experience of the

existing transparency arrangements under the UNFCCC, including National Communications, Biennial Reports, Biennial Update Reports (BURs), International Assessment and Review (IAR), and International Consultation and Analysis (ICA).

### **Article 13.5 and 13.6: Action and support**

Article 13.5 elaborates on the purpose for reporting and reviewing Parties' climate change measures, while Article 13.6 addresses the rationale behind the provision of information on support. Unlike the Kyoto Protocol, which was mainly concerned with reporting and review of mitigation efforts, the two paragraphs reflect the general intention under the Paris Agreement to treat adaptation actions and support almost on a par with mitigations efforts.

The reference to the GST in both paragraphs illustrates the connection between the review mechanisms of the Paris Agreement: the information from individual Parties on action and support generated by the ETF will be used to take stock and assess collective progress towards achieving the Agreement's long-term goals. This, in turn, will inform Parties when they update and enhance their actions and support in their next NDCs (see section on Article 14).

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### **Article 13.7 to 13.10: Reporting requirements**

Articles 13.7 to 13.10 spell out the reporting requirements under the Paris Agreement: the National Inventory Report (NIR) of anthropogenic emissions by sources and removals by sinks of GHGs, using IPCC methodologies agreed by the CMA (Article 13.7.a), and the information necessary to track progress made in implementing and achieving NDCs (Article 13.7.b) are mandatory for all Parties. The provision of information on financial, technology transfer, and capacity building support provided to developing countries is mandatory for developed country Parties (Article 13.9); and information on climate change impacts and adaptation is optional for all (Article 13.8). Developing countries may also report on financial, technology transfer, and capacity building support needed and received (Article 13.10).

In Paris it was agreed that Parties will report biennially – except for LDCs and SIDS, who may submit information at their discretion ([Decision 1/CP.21, §90](#)). The frequency of reporting thus remains the same for other developing countries who had already agreed to report every two years through their BURs under the UNFCCC. In Katowice, it was decided that the first of these Biennial Transparency Reports (BTRs) will be submitted at the latest by 31 December 2024 ([Decision 18/CMA.1, §3](#)).<sup>75</sup>

The NIRs are due at the same time, though they can be submitted either as a stand-alone report or as a component of the BTR ([Decision 18/CMA.1](#), Annex §12). The frequency of submitting GHG inventories is therefore the same as it has been under the UNFCCC – developed countries will submit NIRs annually, and developing countries biennially but with encouragement to move to annual reporting over time. BTRs and NIRs will be transmitted via an online portal maintained by the secretariat, and posted on the UNFCCC website. The SBSTA has been tasked with developing templates for the BTR and NIR for adoption at CMA3 in November 2020.

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Other reporting requirements under the UNFCCC will remain unchanged. All Parties will continue to have to submit National Communications every four years. To avoid duplication of efforts with BTRs, Parties may submit their National Communication and BTR as a single report in accordance with the MPG included in [Decision 18/CMA.1](#), with the proviso that additional information required in the guidelines for National Communications must also be included ([Decision 1/CP.24, §43](#)).<sup>76</sup>

Guidance on the information to be provided for each of the reporting elements is included in the [MPGs](#) agreed in Katowice. Countries are, for instance, expected to use “*common reporting tables*” (CRTs) and “*common tabular formats*” (CTFs). These are being developed by SBSTA, based on existing CTFs and CRTs, and are to be adopted at CMA3 in 2020 ([Decision 18/CMA.1, §12](#)). One of the challenges will be how to accommodate the diversity of NDCs in common reporting standards. Another challenge will be ensuring that the information

in the CRTs and CTFs is complete and comparable, and that the quality of the reporting improves over time whilst giving flexibility to countries with limited capacities.

The **NIRs** consist of a national inventory document and CRTs. Developing countries that have no, or limited, experience in the use of these tables can be expected to need support in adjusting to them. The guidance includes the following:

- §39 to §46 of the **MPGs** specify the information to be reported in NIRs, including: assumptions and methods used; gases covered; description of key categories and their contributions; assessment of the uncertainty of emissions and removal estimates; excluded sources and sinks and reasons for their exclusion; and an inventory quality control plan. Areas where flexibility may be granted to developing countries that need it in the light of their capacities are also identified – for instance, they may report on fewer gases.
- The MPGs make it mandatory to use the **2006 IPCC Guidelines for National GHG Inventories** and any subsequent version agreed by the CMA. In the pre-Paris era, only developed countries used the 2006 Guidelines, while developing countries had a choice between the 1996 and 2006 Guidelines. Recognising that the move to the 2006 Guidelines may pose capacity challenges for some Parties, the MPGs allow Parties to make use of flexibility built into those guidelines and use, for instance, different (lower) methodological tiers for estimating emissions in any given category or sector.
- A Party is also allowed to use nationally appropriate methodologies “*if they better reflect its national circumstances*” and are consistent with the IPCC guidelines. Additional flexibility for developing countries includes the use of a lower threshold (85% instead of 95%) when identifying key categories, so they can focus on improving fewer categories (**Decision 18/CMA.1**, Annex §25). Categories are subdivisions of the four main sectors: energy; industrial processes and product use; agriculture, forestry, and other land use; and waste. They may be further divided into sub-categories.

- The MPG<sup>s</sup> state that Parties “*shall*” report a consistent annual time series starting from 1990. But developing countries that need flexibility may instead report data covering the reference year/period for their NDC, and a consistent annual time series from 2020 onwards, using a consistent approach for each reported year ([Decision 18/CMA.1](#), Annex §57).

**Information necessary to track progress made in implementing and achieving NDCs** is to be presented in narrative and common tabular format. The MPG<sup>s</sup> go into extensive detail about the information to be reported by each Party. This is expected to include a description of the NDC, against which progress will be tracked (hence the need for coherence between the information provided here, and that provided under Article 4.8); self-selected qualitative or quantitative indicator(s) to track progress including the most current information for these indicator(s); methodologies and accounting approaches used for the targets and how they are consistent with Article 4; construction of baselines and indicators; and an assessment of whether the NDC has been achieved. This information will then need to be presented in a structured summary as described in §77 of the MPG<sup>s</sup> ([Decision 18/CMA.1](#), Annex).

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Parties will also have to report on actions, policies, and measures that support the implementation and achievement of their NDCs, including “*to the extent possible*” estimates of expected and achieved GHG emission reductions. In addition, they will be required to report on projections of the impact of mitigation measures and policies on future trends in GHG emissions and removals. Developing countries that need flexibility are instead “*encouraged*” to report this information (§§80-90 and 92-102 of the MPG<sup>s</sup>).

Reporting of the **information related to climate change impacts and adaptation** is an addition that goes beyond the UNFCCC’s existing transparency framework. The MPG<sup>s</sup> set out the information that each Party should provide, as appropriate, including: observed and potential impacts of climate change; current and projected trends and hazards; adaptation priorities, progress, and barriers; adaptation strategies,

policies, and actions; progress on implementation; and good practices, experiences, and lessons learned (MPGs §§106-117). In this context, interested Parties “may” also report on loss and damage associated with climate change impacts.

There is potential overlap between backward looking information on climate impacts and adaptation under Article 13.8 and the adaptation communications under Article 7. Decision 9/CMA.1 addresses this by explicitly giving Parties the option of submitting their adaptation communication as part of their BTR, in addition to the options listed in Article 7.11 (as a component of, or together with, a NAP, an NDC, and/or a National Communication (see also Articles 7 and 8).

The MPGs further identify the **information on financial, technology development and transfer, and capacity building support provided and mobilised** under Articles 9-11 of the Paris Agreement that developed country Parties are expected to provide (see sections on Articles 9-11). Developing countries that provide such support should report on the support provided and are encouraged to use the MPGs when doing so. To allow for a realistic assessment and compare data with regard to climate finance, developed country Parties are, among other things, required to include the following:

- Information on the amount provided annually.
- The type of financial instrument; support (mitigation, adaptation or cross-cutting); the sector and channel (bilateral, regional, or multilateral).
- A description of underlying assumptions and methodologies including how double counting among multiple Parties involved in the provision of support was avoided.
- How private finance was assessed as mobilised through public interventions.
- A definition of public and private finance.
- An indication of what new and additional financial resources have been provided and how it has been determined that they are new and additional.

- How the information provided reflects a progression from previous levels.

On the other hand, developing countries may report on **support needed and received**. To some extent, this is already happening as part of National Communications and BURs. But there is no common reporting format and the ETF envisages a higher level of detail for those Parties who choose to report. They should, for instance, describe the underlying assumptions, definitions, and methodologies used when reporting on the use, impact, and estimated results of support (MPGs, §131). Parties are also encouraged to use a common tabular format (MPGs, §§133 and 134). Although the new reporting may be more onerous for developing countries, it may also make it easier to attract the additional support needed to implement their NDCs.

## Article 13.11 and 13.12: Review

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Articles 13.11 and 13.12 outline how the information submitted by Parties will be reviewed. The two-step review process consists of a general technical expert review (TER), followed by a facilitative, multilateral consideration of progress (FMCP) with respect to Article 9 (finance) and the implementation and achievement of Parties' NDCs. This process will play an important role in providing additional scrutiny of Parties' actions and support, enabling comparability of efforts, and ensuring that the quality of the reporting improves over time.

The TER centres on the mandatory elements of the BTR and NIR: inventories and information related to tracking progress in implementing and achieving the mitigation part of a Party's NDC (developed and developing countries), and information on support provided (developed countries). Article 13.12 sets out its scope. The TER will consider a Party's implementation and achievement of its NDC, and – as relevant – its provision of support. It will also identify areas of improvement, include a review of the consistency of the information submitted with the MPGs, taking into account the flexibility afforded to developing countries that need it, and in the case of developing countries, identify capacity building needs.

The MPG<sub>s</sub> give further guidance on the limitations of the review: the aim of the review is to help Parties improve their reporting, and it should be facilitative, non-intrusive, and non-punitive ([Decision 18/CMA.1](#), Annex §148). The TER teams will not make political judgments, nor assess the adequacy or appropriateness of a Party's NDC, the adequacy of a Party's domestic actions or support provided, or – in the case of developing countries – a decision to apply flexibility.

On the format of the TER, the MPG<sub>s</sub> provide that it may be conducted as a centralised, in-country, desk, or simplified review ([Decision 18/CMA.1](#), Annex §151). Parties will, for example, have to undergo an in-country review for their first BTR, and at least two BTRs in a 10-year period ([Decision 18/CMA.1](#), Annex §158).

There is flexibility for developing countries that need it: they are encouraged to undergo an in-country review but may choose a centralised review. A Party's NIR submitted in a year in which a BTR is not due shall be subject to a simplified review, which involves the secretariat undertaking an initial assessment of completeness and consistency with the MPG<sub>s</sub>. The MPG<sub>s</sub> further include provisions on the procedures for the TER process, nomination of technical experts, and composition of the TER team and lead reviewers (§§172-186). The outcomes of the TER will be recorded in a report which will be made publicly available on the UNFCCC website. The SBSTA has been tasked with developing the outlines of the TER report, for adoption by CMA3 in November 2020.

The FMCP will consider a Party's efforts under Article 9 and the implementation and achievement of its NDC. It will be based on the (mandatory) information in BTRs; the TER report; and any additional information provided by the Party for the FMCP ([Decision 18/CMA.1](#), Annex §190). The FMCP will take place even if a Party fails to submit a BTR or the TER report is not available ([Decision 18/CMA.1](#), Annex §198).

On the format of the FCMP, the MPG<sub>s</sub> largely build on existing approaches (the IAR and ICA processes) – they include a written

question and answer phase, followed by a working group session (§§191-196). This working group session will take place during meetings of the Subsidiary Body for Implementation (SBI) and include a presentation by the Party under consideration followed by a discussion. Only Parties are entitled to ask questions and developing country Parties that need flexibility may take extra time in submitting written responses to questions. The FCMP record (questions and answers, Party presentations, recording or working group session, etc.) will be compiled by the secretariat and published on the UNFCCC website.

### **Article 13.14 and 13.15: Support for developing countries**

These paragraphs recognise that developing countries will need additional support to meet the more stringent reporting requirements of the ETF and build their capacity. In Paris, Parties established a Capacity-building Initiative for Transparency (CBIT) to assist developing countries in meeting the ETF requirements ([Decision 1/CP.21, §84](#)) (see section on Article 11). The GEF provides finance to developing countries to help them prepare their BTRs, and for building their transparency-related capacity. The secretariat will produce synthesis reports on BTRs and NIRs and annual reports on the TER, and publish BTRs, NIRs, TER reports, and records of the FMCP on the UNFCCC website ([Decision 18/CMA.1, §6](#)).

## National implications of Article 13 for developing countries

Countries will have to scale up their efforts to meet the more stringent requirements of the ETF. Institutional arrangements at the national and sub-national level will have to be put in place or strengthened for gathering and processing data, and for coordination among relevant ministries and agencies. Depending on the national context, new data systems may need to be developed, or existing ones improved, for comprehensive data collection on emissions, mitigation, adaptation efforts, and support. Coordination with the NAPs and adaptation communication processes will also be key.

Human resources for reporting and monitoring activities will be key. Staff will have to be trained to ensure they have the requisite knowledge and expertise to comply with the MPG<sub>s</sub> – for instance, in selecting indicators, applying methodologies and accounting approaches, and in the assessment of implementation – and participating effectively in the TER process. The CBIT may assist in initiating this capacity, but additional long-term support will be needed, particularly to ensure long-term sustainability of the institutional infrastructure, capacity retention, and institutional memory.

## ARTICLE 14: GLOBAL STOCKTAKE

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the “global stocktake”). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

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While the transparency framework scrutinises and reviews the individual activities of Parties, the GST under Article 14 focuses on determining collective progress towards achieving the purpose and long-term goals of the Paris Agreement. The outcomes of the GST are to inform Parties’ future actions and support – in this way the GST aims to enhance collective ambition over time.

### Article 14.1: Features of the GST

The GST seeks to ensure that the aggregate of national-level action is on a trajectory that is consistent with the Paris Agreement’s purpose and long-term goals. Its aim is to take stock of where Parties are at collectively in implementing their commitments under the Agreement, and to understand what more is needed.

Article 14.1 specifically mentions three areas to be covered: mitigation, adaptation, and the means of implementation and support. This represents a compromise between Parties in the Paris negotiations.

While some developing countries saw the stocktake primarily as a mechanism to ensure a degree of accountability for support provided, other Parties wanted to focus on the review of collective mitigation efforts. [Decision 19/CMA.1](#) stipulates that, in addition to mitigation, adaptation, and support, the technical dialogue may consider efforts that address the impacts of response measures and loss and damage.<sup>77</sup>

Article 14.1 further clarifies the key features of the GST. It will assess collective, not individual (national), progress and take into account a wide range of information. A non-exhaustive list of inputs is identified in [Decision 19/CMA.1](#), §§35-38. It will be facilitative, and should be conducted in a way that is conducive to encouraging ambition. It should send clear messages not only on how much more needs to be done collectively to reach the long-term goals, but also how to get there (by highlighting specific concerns or needs, concrete options, and opportunities).

Despite the explicit mention of equity in Article 14.1, there is little guidance yet on how the principle will be meaningfully reflected in the inputs, technical assessment, or outputs of the stocktake. [Decision 19/CMA.1](#) on the modalities and inputs for the GST in this context includes the following references:

- Equity will be considered in a Party-driven and crosscutting manner throughout the GST (§2).
- Equity is mentioned in the context of equitable participation in the process by all Parties (§10).
- Providing adequate funding and capacity building for developing countries could be seen to ensure full and effective but also equitable participation by those countries in the GST process (§§11 and 12).
- The outputs of the components of the GST “*should summarize opportunities and challenges for enhancing action and support in the light of equity*” (§13).
- The technical assessment phase will take into account equity (§27), as will the summary reports by Co-Facilitators (§31).

- The sources of input will include fairness considerations, including equity, as communicated in NDCs (§36.h), and voluntary submissions by Parties, to inform equity considerations (§37.g).
- The expert consideration of inputs will also include equity considerations, as indicated in §5.

The need to use the “*best available science*” is reinforced by several references in Katowice [Decision 19/CMA.1](#), in particular §2 which states that the best available science will be considered in a Party-driven and cross cutting manner throughout the GST. The latest reports of the IPCC will be a key input. For that purpose, it will be important to ensure that the publication of IPCC reports is aligned with the stocktake cycle. This is particularly relevant because the technical dialogue – the second stage of the GST – will involve IPCC experts and Parties (via SBSTA-IPCC special events) to enable a focused scientific and technical exchange of information on the IPCC findings. The SBSTA-IPCC joint working group should also promote coordination between those bodies in the broader context of the GST ([Decision 19/CMA.1](#), §29).

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## **Article 14.2: The GST cycle**

The first GST will take place in 2023, and then every five years thereafter. The timing of the first GST – two years before the updating or new submission of NDCs in 2025 – will allow the stocktake to inform domestic preparations of new NDCs. The GST will be conducted by the CMA with the assistance of the SBSTA and SBI. The cycle will repeat every five years based on experience gained in the first and subsequent GSTs. The SBSTA and SBI Chairs will develop guiding questions, including specific thematic and crosscutting questions ([Decision 19/CMA.1](#), §7).

Katowice [Decision 19/CMA.1](#) describes the three phases of the GST in §§19-34: information collection and preparation; technical assessment; and consideration of outputs.

The **information collection and preparation** stage will begin one CMA session before the start of the second component (the technical assessment), and end six months before the final consideration of

outputs. The SBSTA and SBI will issue a call for inputs, which should be submitted at least three months before the technical assessment. The information to be considered will pertain – at a collective level – to overall GHG emissions, the combined effect of NDCs, the state of adaptation, financial flows, and other areas addressed by the Paris Agreement. [Decision 19/CMA.1](#) (§37) identifies a non-exhaustive list of sources of input that can be considered:

- Reports and communications from Parties.
- The latest IPCC reports.
- Reports of the SBs.
- Reports from relevant constituted bodies and forums and other institutional arrangements under or serving the Paris Agreement and/or the Convention.
- The synthesis reports by the secretariat.
- Relevant reports from UN agencies and other international organisations, which should be supportive of the UNFCCC process.
- Voluntary submissions from Parties, including on inputs to inform equity considerations under the GST.
- Submissions from non-Party stakeholders and UNFCCC observer organisations.

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While non-Party stakeholders can make submissions, they are not allowed to participate in the consideration of outputs. All inputs will be fully accessible by Parties, including online. The secretariat will then organise a webinar after the deadline for submission of inputs, to clarify methodologies and assumptions used to aggregate inputs, and prepare synthesis reports on: the state of GHG emissions and mitigation efforts undertaken by Parties; the state of adaptation efforts, experience, and priorities; the overall effect of NDCs; and financial flows. The SBSTA and SBI Chairs will identify information gaps and request additional input where necessary.

During the **technical assessment**, which can overlap with the first stage, Parties will take stock of implementation; assess collective progress; and identify opportunities for enhanced action and support. For the first GST, this component will take place during the two (or depending

on the timing of the publication of the IPCC reports, three) successive SB sessions preceding CMA6 in 2023. A technical dialogue through, for instance, in-session roundtables or workshops, will be organised on mitigation, adaptation, and means of implementation and support. The dialogue is meant to be “*open, inclusive, transparent and facilitative*” and allow Parties to engage with UNFCCC-constituted bodies and forums and experts. The dialogue co-facilitators will summarise outputs for each thematic area, taking into account equity and the best available science.

The final stage of the GST, **consideration of outputs**, will consist of high-level events to present the technical assessment findings and discuss implications to inform Parties in updating and enhancing their actions and support. For the first GST, this will take place at CMA6 in 2023.

### **Article 14.3: Outcomes of the GST**

The outputs of the GST should focus on taking stock of collective progress, with no individual Party focus. They should include “*non-policy prescriptive consideration of collective progress*” that Parties can use to inform the updating of their actions and support and enhance international cooperation for climate action (§14). Outputs should identify challenges and opportunities, as well as lessons learned and good practices.

While they should guide Parties’ planning for their NDCs, adaptation communications, and future support, there is no requirement to formally integrate the key messages of a stocktake in a CMA decision. The modalities for the GST in §34(c) only provide that they should “*be referenced*” in a decision by the CMA and/or a declaration.

## ARTICLE 15: FACILITATING IMPLEMENTATION AND COMPLIANCE

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall 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. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

### Article 15.1: Mechanism

Article 18 of the Kyoto Protocol provides for the establishment of procedures and mechanisms that will determine and address cases of non-compliance. As a result, the Kyoto Protocol's compliance mechanism has a facilitative and also an enforcement branch. In comparison, the mechanism established by Article 15.1 of the Paris Agreement is only tasked with facilitating implementation and promoting compliance. This concerns mainly binding procedural obligations (i.e. the submission of NDCs and other information and participation in their review), but not specific substantive outcomes (such as reducing emissions by a certain percentage). Like most other international agreements, the Paris Agreement is based on the expectation that Parties act in good faith and do their best to adhere to treaty provisions.

## Article 15.2: Composition and function

Article 15.2 affirms the non-punitive nature of the mechanism, which excludes outcomes that carry a notion of punishment, compensation, stigma, or shame. Provisions for the modalities and procedures for the operation of the Committee state that it cannot engage in enforcement or dispute settlement, nor can it impose penalties or sanctions (Decision 20/CMA.1, Annex §4).<sup>78</sup>

The Committee's composition was decided in Paris (Decision 1/CP.21, §102). It consists of twelve experts with recognised competence in relevant scientific, technical, socioeconomic, or legal fields, elected on the basis of equitable geographical representation. Two members are chosen from each of the five UN regional groups, and one member each is chosen from the LDCs and SIDS, while taking gender balance into account. In addition, 12 alternate members are to be elected (Decision 20/CMA.1, §6).

## Article 15.3: Modalities and procedures

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Based on Decision 1/CP.21 (§103) the Ad Hoc Working Group on the Paris Agreement was requested to develop the modalities and procedures for the effective operation of the Committee referred to in Article 15.2. These modalities and procedures were adopted in Katowice by Decision 20/CMA.1 and are to be reviewed at CMA7 in 2024 (Decision 20/CMA.1, §2).

Unless otherwise decided, the Committee will meet at least twice a year, beginning in 2020. Members (and alternate members) shall serve for a period of three years and for a maximum of two consecutive terms. The Committee has been mandated to develop rules of procedure, for adoption at CMA3 in 2020 (Decision 20/CMA.1, Annex §12 and §§17-18). The Committee should make every effort to reach agreement on any decision by consensus. If this fails, the decision may be adopted by at least three-quarters of the members present and voting (Decision 20/CMA.1, Annex §16).

Parties can refer their own implementation and compliance concerns with the provisions of the Paris Agreement by written submission (*Decision 20/CMA.1*, Annex §20) to the Committee (self-referral) – but Parties may not refer other Parties. The Committee may initiate a consideration of issues only if a Party has failed to meet its primary (procedural) obligations under the Agreement in the following cases (*Decision 20/CMA.1*, Annex §22.a.i-iv):

- Communicate or maintain an NDC under Article 4.
- Submit a mandatory report or communication of information under Articles 13.7, 13.9 and 9.7.
- Participate in the FMCP under Article 13.
- Submit a mandatory communication of information under Article 9.5 on ex-ante finance.
- In considering these issues, the Committee will not address the content of the contributions, communications, information, and reports (*Decision 20/CMA.1*, Annex §23).

With the consent of the Party concerned, the Committee may further engage in a facilitative consideration of issues in cases of “*significant and persistent inconsistencies*” of the information submitted by a Party pursuant to Articles 13.7 and 13.9 with MPGs referred to in Article 13.13 of the Paris Agreement (*Decision 20/CMA.1*, Annex §22.b). In addition, the Committee can examine “*issues of a systemic nature*” – related to implementation or compliance challenges faced by a number of Parties – and bring such issues and any recommendations to the attention of the CMA (*Decision 20/CMA.1*, Annex §32). It cannot, however, single out any individual Party (*Decision 20/CMA.1*, Annex §34).

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The Committee must attempt to engage constructively and consult with the relevant Party at all stages of the process (*Decision 20/CMA.1*, Annex §19.b). In considering which measures to take, it has to take into account the comments received from the Party concerned and pay particular attention to the Party’s national capabilities and circumstances. The Committee should also recognise the special circumstances of SIDS and the LDCs, as well as situations of *force*

*majeure* – or unforeseeable circumstances that prevent a Party from complying ([Decision 20/CMA.1](#), Annex §28).

The (non-exclusive) list of measures that the Committee can take to facilitate implementation and promote compliance includes ([Decision 20/CMA.1](#), Annex §30):

- Engage in dialogue with the Party.
- Assist the Party to engage with the appropriate finance, technology, and capacity building bodies to identify possible challenges and solutions.
- Make recommendations and communicate these recommendations to the relevant bodies (with the consent of the Party concerned).
- Recommend the development of an action plan and assist in its development.
- Issue findings of fact only in cases where a Party has not complied with its obligations under §22(a)i-iv.

# Institutional Arrangements

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## ARTICLE 16: CMA

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.
4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:
  - (a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and
  - (b) Exercise such other functions as may be required for the implementation of this Agreement.
5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the

Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article.

This Article establishes the CMA as the governing body of the Paris Agreement (Article 16.1). The CMA is mandated to keep the effective implementation of the Agreement under review and take the decisions necessary to promote its effective implementation. For that purpose, it can establish subsidiary bodies and exercise other functions deemed necessary for the implementation of the Agreement (Article 16.4).

The rules of procedure of the COP and the financial procedures applied under the UNFCCC apply to the Agreement with the necessary changes, unless the CMA decides otherwise (Article 16.5). Therefore, the [draft](#) rules of procedure of the COP, which have never been adopted because

Parties failed to agree on Rule 42 on voting, govern the proceedings of the CMA (except Rule 42), unless otherwise decided by the CMA.<sup>79</sup>

COP decisions can have a normative character for institutions and bodies of the UNFCCC process. They, for instance, direct the secretariat or mechanisms under the authority of the COP to undertake certain activities. In general, however, they are not legally binding on Parties – although scholars have identified certain potential exceptions. This also applies to the CMA. In other words, it operates in the same manner as the CMP and meetings are convened in conjunction with the COP (Article 16.6). An extraordinary session of the CMA requires the support of at least one third of the Parties (Article 16.7).

## ARTICLE 17: SECRETARIAT

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

The UNFCCC secretariat serves as the secretariat of the Agreement (Article 17.1). The secretariat's functions, and the arrangements made for its functioning under the Paris Agreement are those assigned to it under Article 8 of the UNFCCC and by the CMA (Article 17.2). This includes the preparation of meetings and reports, providing assistance to Parties, and coordinating work with other international institutions. Under the Paris Agreement, the secretariat is also required, among other things, to maintain the public registries for NDCs and adaptation communications, receive certain notifications (for instance, on collaborations and on the convening of CMA sessions), and to prepare a number of technical documents, including inputs into the GST.

## ARTICLE 18: SBI AND SBSTA

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bodies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

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The two permanent SBs of the UNFCCC, the SBSTA and the SBI, also serve the Paris Agreement. The Agreement itself does not assign any specific tasks to the SBs, and only states that their functioning is governed by the application of the relevant UNFCCC provisions (Articles 9 and 10), with the necessary changes applied. Article 18 repeats the language of the Kyoto Protocol almost verbatim. Through its decisions in Katowice and Madrid, the CMA has begun to assign a range of tasks on different issues under the Paris Agreement to the SBs.

## ARTICLE 19: OTHER BODIES AND INSTITUTIONAL ARRANGEMENTS

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

The Paris Agreement specifically identifies institutional arrangements established under the UNFCCC, in particular the WIM, the Financial Mechanism, and the Technology Mechanism that operate under the Agreement. Other subsidiary bodies than SBI and SBSTA (Article 18) or institutional arrangements of the UNFCCC may also serve the Agreement, if and when the CMA so decides. By adopting the Paris Agreement (and Article 19.1), it appears the UNFCCC COP has explicitly agreed to this.

# Final Articles

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The Agreement concludes with a set of standard Articles in international treaties that deal with procedural requirements, including among other things, rules for its entry into force, operation, subsequent amendments and withdrawal.

## ARTICLE 20: SIGNATURE AND RATIFICATION

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

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Signed the Agreement indicates a Party's intention to take further steps toward ratification, acceptance, approval, or accession (expressing its consent to be bound by the Agreement) at a later stage. Following signature of a treaty, a State is obliged to refrain from acts which would defeat the object and purpose of the treaty, unless it has clearly stated its intention to no longer be a Party to that treaty.<sup>80</sup> Parties that have missed the time frame for signature can nonetheless deposit an instrument to ratify, accept, approve, or accede to the Agreement.

The Paris Agreement enjoys almost universal participation. Out of the 197 Parties to the UNFCCC very few have yet to deposit their instruments of ratification, acceptance, approval, or accession to the Paris Agreement. The most up-to-date information on the status of the Paris Agreement is available through the [UN Treaty Collection](#) website.<sup>81</sup>

Articles 20.2 and 20.3 contain specific rules for regional economic integration organisations (such as the EU) by which they may join the Agreement.

## ARTICLE 21: ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.
2. Solely for the limited purpose of paragraph 1 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

The mandate from COP17 in Durban, in 2011, for negotiating the Paris Agreement envisaged that it would “*come into effect and be implemented from 2020*”.<sup>82</sup> However, the Agreement entered into force far earlier than planned – on 4 November 2016, 30 days after the date on which 55 Parties to the UNFCCC accounting for at least an estimated 55% of total global GHG emissions deposited their instruments of ratification, acceptance, approval, or accession with the UN Secretary-General (see section on Article 26).

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Following the early entry into force of the Paris Agreement, the CMA met formally during the climate conference in Marrakech in 2016 (CMA1). This first session of the CMA was opened and suspended to allow the SBs and the APA to continue working to prepare for the implementation of the Agreement. This work involved drafting

guidance and recommendations resulting from the relevant requests contained in Section III of [Decision 1/CP.21](#) for consideration and adoption by the CMA.

CMA1 resumed briefly during the climate conference in Bonn in 2017 (CMA1.2) and then in Katowice in 2018 (CMA1.3), where Parties adopted the majority of provisions necessary to implement the Paris Agreement. CMA2 took place in Madrid (under the Presidency of Chile) in December 2019. Parties addressed the remaining gaps in the implementation rules – including Article 6, common time frames for NDCs, and reporting tables – but made limited progress.

## ARTICLE 22: AMENDMENTS TO THE AGREEMENT

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

With regard to treaty amendments, the corresponding Article 15 of the UNFCCC applies to the Paris Agreement, incorporating the necessary changes. Consequently, the text of any proposed amendment to the Agreement must be communicated to Parties at least six months before the CMA session at which the amendment is proposed for adoption (UNFCCC Article 15.2). An amendment is adopted either by consensus or, if Parties fail to reach consensus, by a three-fourths majority (UNFCCC Article 15.3). Once adopted, an amendment enters into force, (for those Parties that have accepted it) 90 days after at least three-fourths of all Parties to the Agreement have deposited their instruments of acceptance (UNFCCC Article 15.4).

## ARTICLE 23: ANNEXES

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement.
2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

UNFCCC Article 16 provisions on the adoption and amendment of annexes apply to the Paris Agreement, with the necessary changes incorporated. The Agreement does not currently have an annex, but if the Parties were to decide to adopt one, it would form part of the Agreement and have the same legal standing as its Articles (unless explicitly decided otherwise).

## ARTICLE 24: DISPUTE SETTLEMENT

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

UNFCCC Article 14 on dispute settlement applies to the Paris Agreement, with the necessary changes incorporated. The provisions of this Article concern disputes on the interpretation or application of the Agreement (UNFCCC Article 14.1).

Upon ratification, acceptance, approval, or accession, a Party may declare in writing whether it accepts either the jurisdiction of the International Court of Justice and/or arbitration procedures to be adopted in a future annex, in relation to any other Party that has accepted the same. To date, only the Netherlands (accepting both) made such a declaration when it deposited its instrument of acceptance of the Paris Agreement. With regard to the UNFCCC, the Netherlands made the same declaration, and the Solomon Islands has accepted future arbitration procedures.\*

UNFCCC Articles 14.2 and 14.7 envisage that Parties would adopt annexes on arbitration and conciliation, although such annexes have never been adopted. UNFCCC Article 14.6 allows for the creation of a conciliation commission at the request of a Party to a dispute. The commission would deliver a recommendatory award that the Parties must consider in good faith.

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\* In addition, Cuba declared that any disputes with regard to the UNFCCC should be settled by negotiation through diplomatic channels.

## ARTICLE 25: VOTING

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 25 repeats the language of UNFCCC Article 18 and reflects the general UN principle of “one country, one vote” regardless of population size or political clout (Article 18.1 of the UN Charter). However, UN members actually vote in the UN General Assembly (where a two-thirds majority is required for important decisions). In comparison, the UNFCCC COP takes substantive decisions by consensus only. Consensus in this context does not require unanimity (in the sense of positive agreement by all) but is often understood to mean the absence of objections.

To date, Parties to the UNFCCC have failed to agree whether to take certain decisions by a two-thirds majority (Draft Rule 42). The Draft Rules of Procedure therefore apply—except the contentious rule on voting. These allow for voting on points of order (Rules 34 and 40), and voting could also be possible under Articles 22 and 23 of the Paris Agreement (to adopt amendments and annexes) (see sections on Articles 16, 22, and 23). Pending a future agreement on voting, Article 25.1 remains largely symbolic. Formally, all Parties have equal rights to make their voices heard. Article 25.2 clarifies that regional economic integration organisations, such as the EU, have one vote per member state.

## ARTICLE 26: DEPOSITORY

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

The UN Secretary-General is the Depositary of the Agreement. The Depositary is responsible for ensuring the proper execution of all treaty actions related to the Agreement (for instance, preparation of final treaty text, certifying copies, filing instruments of ratification and declarations, or notifications to and from Parties, etc.). A list of Parties, declarations, and other official procedural information related to the Agreement is available through the website of the UN treaty collection.<sup>83</sup>

## ARTICLE 27: RESERVATIONS

No reservations may be made to this Agreement.

In general, when joining an international treaty, States can declare that they want to exclude or modify the legal effect of certain provisions of that treaty when applied to them.<sup>84</sup> However, this is explicitly prohibited by Article 27. As a result, States that ratify the Agreement must accept its provisions without reservations.

## ARTICLE 28: WITHDRAWAL

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

The Paris Agreement has the same rules for withdrawal as UNFCCC Article 25. Under Article 28.3 of the Agreement, withdrawal from the UNFCCC is considered a withdrawal from the Agreement.

Articles 28.1 and 28.2 allow Parties to withdraw from the Paris Agreement by giving written notification to the Depositary. A Party can only give this notification three years after the date on which the Agreement enters into force for that Party, and it only takes effect following a minimum period of one year after the Depositary receives it. The notification to withdraw can be revoked by that Party at any time before it takes effect.<sup>85</sup>

The US notified the Depositary of its decision to withdraw from the Paris Agreement on 4 November 2019. Accordingly, this withdrawal will take effect on 4 November 2020. Until that time, the US is bound by the obligations under the Agreement.

## ARTICLE 29: LANGUAGES

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

The texts of the Agreement in Arabic, Chinese, English, French, Russian, and Spanish are equally authentic. The general rules of treaty interpretation apply if there is a difference in meaning between texts. If that does not resolve the issue, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, will be adopted.<sup>86</sup>

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