

### **Means of implementation in the Global Goal on Adaptation**

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*This advice is provided in response to **Query 66/23***

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#### **Query:**

Developed country parties are contending that Means of implementation (**MOI**) cannot be added to the Global Goal on Adaptation (**GGA**) framework. They are raising three arguments in support of this view:

- 1 Article 7, which establishes the GGA, and Article 9, which deals with finance, are two distinct provisions and as such to be treated separately (**Argument 1**).
- 2 Article 7.1, which establishes the GGA, does not have an explicit mention of developing countries (**Argument 2**).
- 3 Article 7.2 recognizes that adaptation is “a global challenge faced by all”; thus, the GGA Framework should be applicable to all countries. This means that MOI cannot apply to the framework since they have clear differentiations between countries (**Argument 3**).

Do these arguments have a sound legal basis?

#### **Advice:**

##### Summary of advice

In our view, the three arguments do not have a sound legal basis. In summary, this is because:

**Response to Argument 1:** The provisions of Article 7 and other provisions of the Paris Agreement should not be read in isolation. Article 7 does (at Article 7.13) clearly link with Article 9 (finance) and other Articles relevant to the concept of MOI (being Article 10 and 11 of the Paris Agreement on technology transfer, and capacity- building respectively). We consider that:

- (a) Article 7 of the Paris Agreement, the accompanying COP decision adopting the Paris Agreement, and subsequent decisions initiating the Glasgow–Sharm el-Sheikh work program on the GGA allow scope for the GGA to include measures for providing support for adaptation through finance, technology transfer and capacity building (i.e. MOI).
- (b) Links between adaptation and support for adaptation through finance, technology transfer and capacity building (i.e. key facets of the concept of MOI) are well established under other UNFCCC frameworks, including the Bali Action Plan and Cancun Adaptation Framework.

**Response to Argument 2:** Although Article 7.1, which establishes the GGA, does not explicitly mention developing countries as part of the GGA, Article 7.2, which reinforces the GGA<sup>1</sup> (and which is relied on in Argument 3), does explicitly take ‘into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change’. In our view, it is not correct to view Article 7.1 in isolation, but in the context of the following provisions in Article 7.

**Response to Argument 3:** as noted in response to Argument 2, there is a recognition of developing countries in Article 7.2. We note that the phrase ‘global challenge faced by all’ (or other parts of Article 7) should not be read in isolation: in accordance with Article 31 of the Vienna Convention on the Law of Treaties, terms in a treaty should be interpreted in their context.<sup>2</sup>

We have not found evidence in the Paris Agreement, or in subsequent decisions concerning the Glasgow–Sharm el-Sheikh work program on the GGA, that indicate that MOI should be excluded from the scope of the GGA.

Below we briefly define MOI, how it is dealt with in the context of the GGA, and also linkages between adaptation and MOI under other UNFCCC Frameworks.

## 1 Definition of MOI

In general, the notion of ‘means of implementation’ (**MOI**) ‘describes the interdependent mix of financial resources, technology development and transfer, capacity-building, inclusive and equitable globalization and trade, regional integration, as well as the creation of a national enabling environment required to implement the new sustainable development agenda, particularly in developing countries’.<sup>3</sup>

The elements of MOI in the international climate change regime, are generally understood as being finance, technology development and transfer and capacity building. It is broader than only the concept of ‘climate finance’ under Article 9 of the Paris Agreement. This challenges Argument 1 – that MOI should not be included in the GGA on the basis that finance is addressed separately in Article 9 – because finance under Article 9 and MOI should not be equated.

## 2 GGA and MOI under the Paris Agreement

### 2.1 MOI in the text of the Paris Agreement

The Paris Agreement explicitly mentions MOI with respect to the Global Stocktake, but not elsewhere.

Specifically, Article 14.1 provides as follows:

*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.*

Articles 9 (finance), 10 (technology) and 11 (capacity-building) of the Paris Agreement together reflect three key aspects of the concept of MOI.

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<sup>1</sup> The Paris Agreement on Climate Change: Analysis and Commentary, edited by Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham, 2017, page 204.

<sup>2</sup> Under Article 31(1), a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

<sup>3</sup> [https://sustainabledevelopment.un.org/content/documents/2079Issues%20Brief%20Means%20of%20Implementation%20Final\\_TST\\_141013.pdf](https://sustainabledevelopment.un.org/content/documents/2079Issues%20Brief%20Means%20of%20Implementation%20Final_TST_141013.pdf)

## 2.2 Key provisions relating to the GGA under the Paris Agreement

Article 7.1 of the Paris Agreement establishes the GGA. That provision and other key provisions of Article 7 are as follows:

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.

...

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.

### 2.3 Links between the GGA and finance, technology transfer and capacity building

As WRI states, the GGA is intended to serve as a unifying framework that can drive political action and finance for adaptation on the same scale as mitigation.<sup>4</sup> This entails setting specific, measurable targets and guidelines for global adaptation action as well as enhancing adaptation finance and support for developing countries.<sup>5</sup>

According to 'Paris Agreement on Climate Change' (Chapter 12), the initial five paragraphs of Article 7 set out some important understandings reached by parties; however, most of these provisions do not establish any specific obligations and are phrased in terms of recognition and acknowledgement or in passive language – they have little legal weight per se.<sup>6</sup> Their importance lies less in their legal character but in their ability to provide a political dimension that raises adaptation as a cornerstone of action under the Paris Agreement and a context for adaptation efforts. Relevantly for the purposes of this advice (taken from Chapter 12 of 'Paris Agreement on Climate Change' referenced above unless stated otherwise):

- Article 7.1 sets out the long-term goal of adaptation. This goal is centred on three dimensions in terms of adaptation: enhancing adaptive capacity, strengthening resilience and reducing vulnerability with a view to contributing to sustainable development, and ensuring an adequate adaptation response in the context of a temperature goal.
- Article 7.2 'reinforces' the GGA and builds on the growing awareness and the need to elevate the status of adaptation in the climate change regime. It 'recognizes the urgent and immediate needs of those developing country parties' that are particularly vulnerable to climate change, in this manner, echoing— almost verbatim— the formulation agreed in the Cancún Agreements'.

Although Article 7 of the Paris Agreement does not explicitly mention MOI as part of the GGA (or support for achieving the GGA through finance, technology transfer or capacity building), it clearly links adaptation efforts with the need for support, particularly through Articles 7.6 and 7.13:

- Article 7.6 recognizes the importance of support for, and international cooperation on, adaptation efforts, as well as 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. According to 'Paris Agreement on Climate Change' (Chapter 12), the mandate provided to the Adaptation Committee in Decision 1/CP.21 paragraph 42(b) (discussed below) should facilitate assessing adaptation needs communicated by developing countries which should serve as a guide for the support and international cooperation.
- Article 7.13 'puts support at the heart of adaptation action'. Although this provision is drafted in passive voice without a subject, the reference to 'in accordance with ... Articles 9, 10 and 11' provides a clear link to finance, technology transfer, and capacity-building.

The importance of support and identification of needs is also recognized in the provision on cooperation (Article 7.9), and in the provision on the adaptation communication in Article 7.10.

### 2.4 Adaptation in the Decision adopting the Paris Agreement (Decision 1/CP.21)

Paragraphs 41 to 46 of Decision 1/CP.21 (the decision adopting the Paris Agreement), deal with adaptation and provide mandates to constituted bodies of the UNFCCC to deliver on key aspects of the GGA for the CMA to consider or decide upon.

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<sup>4</sup> <https://www.wri.org/insights/global-goal-on-adaptation-explained#:~:text=The%20Global%20Goal%20on%20Adaptation%20is%20a%20collective%20commitment%20under,in%202015%2C%20the%20GGA%20is>

<sup>5</sup> WRI article, above

<sup>6</sup> 'Paris Agreement on Climate Change' (Chapter 12).

These paragraphs provide as follows:<sup>7</sup>

41. *Requests the Adaptation Committee and the Least Developed Countries Expert Group to jointly develop modalities to recognize the adaptation efforts of developing country Parties, as referred to in Article 7, paragraph 3, of the Agreement, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;*

42. *Also requests the Adaptation Committee, taking into account its mandate and its second three-year workplan, and with a view to preparing recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session:*

(a) *To review, in 2017, the work of adaptation-related institutional arrangements under the Convention, with a view to identifying ways to enhance the coherence of their work, as appropriate, in order to respond adequately to the needs of Parties;*

(b) *To consider methodologies for assessing adaptation needs with a view to assisting developing country Parties, without placing an undue burden on them;*

43. *Invites all relevant United Nations agencies and international, regional and national financial institutions to provide information to Parties through the secretariat on how their development assistance and climate finance programmes incorporate climate-proofing and climate resilience measures;*

44. *Requests Parties to strengthen regional cooperation on adaptation where appropriate and, where necessary, establish regional centres and networks, in particular in developing countries, taking into account decision 1/CP.16, paragraph 30;*

45. *Also requests the Adaptation Committee and the Least Developed Countries Expert Group, in collaboration with the Standing Committee on Finance and other relevant institutions, to develop methodologies, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session on:*

(a) *Taking the necessary steps to facilitate the mobilization of support for adaptation in developing countries in the context of the limit to global average temperature increase referred to in Article 2 of the Agreement;*

(b) *Reviewing the adequacy and effectiveness of adaptation and support referred to in Article 7, paragraph 14(c), of the Agreement;*

In our view, the above paragraphs (particularly paragraph 45) show that the needs of developing countries and mobilising support for such countries was embedded in the conception of adaptation in the decision adopting the Paris Agreement.

## **2.5 Glasgow–Sharm el-Sheikh work program on the GGA**

### **(a) Establishment and launch of the work program at COP26**

In 2021 (Decision 7/CMA.3),<sup>8</sup> the CMA agreed to ‘establish and launch a comprehensive two-year Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation’. Relevantly, in this decision, the CMA:

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<sup>7</sup> <https://unfccc.int/documents/6527>

<sup>8</sup> Available at [https://unfccc.int/sites/default/files/resource/CMA2021\\_10\\_Add3\\_E.pdf#page=4](https://unfccc.int/sites/default/files/resource/CMA2021_10_Add3_E.pdf#page=4)

- decided that the objectives of the work programme should be to, inter alia ‘strengthen implementation of adaptation actions in vulnerable developing countries’. (para. 7(g))
- agreed ‘that implementation of the work programme should reflect the country-driven nature of adaptation and avoid creating any additional burden for developing country Parties’. (para. 8)

In these ways, it could be said that the work program on the GGA was intended to develop in a manner that specifically strengthened adaptation actions in developing countries (rather than treating all countries’ adaptation needs equally).

### **(b) Development of the framework for the GGA initiated at COP27**

In Decision 3/CMA.4 in 2022,<sup>9</sup> the CMA decided to ‘initiate the development of a framework for the global goal on adaptation to be undertaken through a structured approach under the Glasgow–Sharm el-Sheikh work programme in 2023, containing the elements referred to in paragraph 10’. Relevantly, paragraph 10(a) provided that the framework may take into consideration, inter alia ‘*Dimensions (iterative adaptation cycle): impact, vulnerability and risk assessment; planning; implementation; and monitoring, evaluation and learning; recognizing that support in terms of finance, capacity-building and technology transfer is a consideration in each stage of the cycle*’.

This inclusion of finance, capacity-building and technology transfer in the considerations that the framework could consider clearly indicates that there is scope for the framework to consider MOI.

## **3 Examples of linkages between adaptation and MOI under other frameworks in the UNFCCC**

A number of COP decisions on adaptation preceding the Paris Agreement link climate adaptation with support through finance, technology and capacity building. Key examples are described below.

### **3.1 Buenos Aires programme of work on adaptation and response measures**

Decision 5/CP.7 Decides that the implementation of the following activities shall be supported through the Global Environment Facility (in accordance with decision 6/CP.7) and other bilateral and multilateral sources:

#### *(b) Vulnerability and adaptation:*

*(i) Supporting enabling activities for vulnerability and adaptation assessment;*

*(ii) Enhancing technical training for integrated climate change impact and vulnerability and adaptation assessments across all relevant sectors, and environmental management related to climate change;*

*(iii) Enhancing capacity, including institutional capacity, to integrate adaptation into sustainable development programmes;*

*(iv) Promoting the transfer of adaptation technologies;*

*(v) Establishing pilot or demonstration projects to show how adaptation planning and assessment can be practically translated into projects that will provide real benefits, and may be integrated into national policy and sustainable development planning, on the basis of information provided in the national communications from non-Annex I Parties and/or other relevant sources, and of the staged approach endorsed by the Conference of the Parties in its decision 11/CP.1;*

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<sup>9</sup> Available at [https://unfccc.int/sites/default/files/resource/cma2022\\_10\\_a01E.pdf#page=18](https://unfccc.int/sites/default/files/resource/cma2022_10_a01E.pdf#page=18)

*(vi) Supporting capacity building, including institutional capacity, for preventive measures, planning, preparedness of disasters relating to climate change, including contingency planning, in particular, for droughts and floods in areas prone to extreme weather events;*

*(vii) Strengthening existing and, where needed, establishing early warning systems for extreme weather events in an integrated and interdisciplinary manner to assist developing country Parties, in particular those most vulnerable to climate change;*

In Decision 1/CP.10, Parties decided to further the implementation of these actions under decision 5/CP.7, paragraph 7.

### 3.2 Bali Action Plan

Under paragraph 1 of Decision 1/CP.13 (**Bali Action Plan**) in 2007, the Parties decided to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session, by addressing, inter alia, enhanced action on:

- *adaptation;*
- *technology development and transfer to support action on mitigation and adaptation; and*
- *the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation, including, inter alia, consideration of: (i) Improved access to adequate, predictable and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country Parties; (ii) Positive incentives for developing country Parties for the enhanced implementation of national mitigation strategies and adaptation action; (iii) Innovative means of funding to assist developing country Parties that are particularly vulnerable to the adverse impacts of climate change in meeting the cost of adaptation; (iv) Means to incentivize the implementation of adaptation actions on the basis of sustainable development policies; (v) Mobilization of public- and private-sector funding and investment, including facilitation of climate-friendly investment choices; (vi) Financial and technical support for capacity-building in the assessment of the costs of adaptation in developing countries, in particular the most vulnerable ones, to aid in determining their financial needs;*

The Bali Action Plan provided a comprehensive framework that brought together the range of concerns and issues that parties had been raising consistently, not least with regards to the need to consolidate and address adaptation in a comprehensive manner.<sup>10</sup>

### 3.3 Cancun Adaptation Framework (CAF)

#### (a) Key provisions

Decision 1/CP.16 established the CAF. This decision lays out provisions relating to the scope and approach to adaptation, implementation at the national, regional and international levels, the institutional framework for adaptation, and support to be mobilized for implementation.<sup>11</sup>

Paragraph 14 of that Decision 'Invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances' (by implementing particular listed measures).

Paragraph 18 relevantly provides as follows:

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<sup>10</sup> 'Paris Agreement on Climate Change' (Chapter 12).

<sup>11</sup> 'Paris Agreement on Climate Change' (Chapter 12).

*18. Requests developed country Parties to provide developing country Parties, taking into account the needs of those that are particularly vulnerable, with long-term, scaled-up, predictable, new and additional finance, technology and capacity-building, consistent with relevant provisions, to implement urgent, short-, medium- and long-term adaptation actions, plans, programmes and projects at the local, national, subregional and regional levels, in and across different economic and social sectors and ecosystems, as well as to undertake the activities referred to in paragraphs 14–16 above and paragraphs 30, 32 and 33 below;*

Paragraph 20 of Decision 1/CP.16 establishes the Adaptation Committee to facilitate implementation of adaptation activities. Relevantly, one of its roles was *‘providing information and recommendations, drawing on adaptation good practices, for consideration by the Conference of the Parties when providing guidance on means to incentivize the implementation of adaptation actions, including finance, technology and capacity-building and other ways to enable climate-resilient development and reduce vulnerability, including to the operating entities of the financial mechanism of the Convention, as appropriate’*.<sup>12</sup>

(b) Comments on adaptation support under the CAF

As the above provisions indicate, although Decision 1/CP.16 did not use the term ‘MOI’, it did recognise linkages between adaptation action and finance, technology and capacity-building. Most specifically:

- Paragraph 18 of Decision 1/CP.16 requests developed country Parties to provide ‘additional finance, technology and capacity-building, consistent with relevant provisions’ to developing countries to implement adaptation actions.
- One of the roles of the AC was to provide guidance regarding incentivising implementation of adaptation actions ‘including finance, technology and capacity-building and other ways to enable climate-resilient development and reduce vulnerability’.

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<sup>12</sup> 20(d) of Decision 1/CP.16.