

Implications of including (or not) the COP gender agenda item in the CMA agenda

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This advice is provided in response to Query 77/24

Query: What would be the risks and legal implications if the COP gender agenda item is (or is not) included in the CMA agenda?

1 Advice:

This advice is structured as follows:

- a. Background - which summarises key background to this query;
- b. Annexure 1 - which summarises impacts of the COP gender agenda item being included on the CMA agenda;
- c. Annexure 2 - which summarises the COP and CMA mandates; and
- d. Annexure 3- which summarises relevant decisions on gender and climate, including in respect of the Lima Work Programme on Gender (LWPG) and its gender action plan (GAP).

2 Background:

2.1 COP and CMA

The mandates of the COP and CMA differ. Accordingly, there are different implications for a gender agenda item under the CMA as compared to the COP.

Both the COP and CMA have broad mandates in respect of the Convention and Paris Agreement (respectively). The express mandate of the COP is more detailed than the express mandate of the CMA. The mandate of the COP does not extend to the implementation of the Paris Agreement - that is the mandate of the CMA.

The Paris Agreement makes express reference to gender. The Convention does not.

2.2 Parties seeking a CMA agenda item

- The SBI 60 synthesis report on the GAP (May 2024) (SBI 60 Report)¹ states that some Parties identified the lack of consideration of gender under the CMA as a gap to the structure and substance of the enhanced LWPG and the GAP:

¹ *Progress, challenges, gaps and priorities in implementing the gender action plan, and future work to be undertaken on gender and climate change*, FCCC/SBI/2024/11 (27 May 2024), available [here](#).

139. The submissions also pinpointed the following gaps relating to the substance and structure of the enhanced LWPG and its GAP:

...

(e) Lack of consideration of gender as a standing agenda item under the CMA;²

- The SBI 60 Report indicates that some developed country Parties proposed a standing CMA agenda item on gender to enhance integration of gender considerations and its mainstreaming in the UNFCCC process:

4. Considerations for a future work programme on gender and gender action plan

...

(d) Consideration of gender and climate change by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement

161. Australia, Canada, the EU and its member States, the United Kingdom and the United States indicated that consideration by the CMA of the gender-responsive implementation of the Paris Agreement would enhance integration of gender considerations into and its mainstreaming in the UNFCCC process. They proposed that the CMA include a standing item on gender in its agenda.³

2.3 COP 29 agenda item 14 (gender and climate change) - draft text

The SBI 61 agreed to forward a draft text on this matter to the COP 29 for further consideration.⁴ At the plenary on 18 November, the COP presidency announced that discussions under the Gender agenda item of the COP will continue. Technical negotiations will be led by representatives from Canada and Antigua and Barbuda and, in addition, presidency consultations on some elements will be carried out by a senior member of presidency.

2.4 SBI 61 agenda item 17 (gender and climate change) - draft text

Version 14/11/2024 of the SBI 61 draft text included an invitation to the CMA to adopt the work programme on gender and the GAP:⁵

7. [Invites the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement to adopt the work programme on gender [and the gender action plan]—[as contained in the annex];]

However, the latest version of the SBI 61 draft text⁶ no longer includes this proposal:

7. CMA item deleted

² Ibid, p 27 (underline added).

³ Ibid, p 34 (underline added).

⁴ See DRAFT TEXT on SBI 61 agenda item 17, Gender and climate change, Version 16/11/2024 11:00 https://unfccc.int/sites/default/files/resource/gender_2.pdf?download

⁵ Draft text on SBI agenda item 17 (gender and climate change) Version 14/11/2024 11:00, available [here](#).

⁶ Version 16/11/2024 08:28, available [here](#).

Annexure 1 Summary - impact of adding gender to CMA agenda

GENDER ADDED TO CMA AGENDA	GENDER <u>NOT</u> ADDED TO CMA AGENDA
<p>1 Can leverage the mandate of the CMA to:</p> <ul style="list-style-type: none"> • make “decisions necessary to promote [the Paris Agreement’s] effective implementation”;⁷ and • “exercise such other functions as may be required for the implementation of [the Paris Agreement]”.⁸ <p>This mandate of the CMA is clearly linked to implementation of the Paris Agreement, including implementation of its express references to gender.⁹ (By contrast, the Convention does not expressly reference gender.)</p> <p>Importantly, there is an express reference to “gender equality” and “empowerment of women” in the preamble to the Paris Agreement.¹⁰</p> <p>As a matter of treaty interpretation, the preamble of the Paris Agreement can be treated as the “context” in which to interpret the Paris Agreement’s operative provisions.¹¹</p> <p>Arguably, this means that there is already scope for the CMA to exercise its functions to implement the Paris Agreement in the context of gender equality and the empowerment of women. For example, gender is dealt with as a cross-cutting issue in the CMA decision on the outcome of the first global stocktake, which makes various references to “gender”, “women” and repeats key sections of the Paris Agreement preamble.¹²</p> <p>In any event, the CMA’s specific mandate to implement the Paris Agreement</p>	<p>1 Cannot leverage the mandate of the CMA to make decisions concerning implementation of the Paris Agreement.</p> <p>Can however continue to leverage the express mandate of the COP in relation to implementation of the Convention (which, unlike the Paris Agreement, does not expressly reference gender).</p> <p>The express mandate of the COP is much more detailed than the express mandate of the CMA (see Annexure 2).</p> <p>Arguably, this means that it is easier to leverage specific mandated functions of the COP, rather than needing to argue that desired functions fall within its mandate.</p> <p>This could be helpful where the express mandated functions of the COP (see Annexure 2) align with the functions that the query requester aims to leverage for future workflows on the COP gender agenda item.</p> <p>Can also continue to leverage CMA mandate to exercise its functions to implement the Paris Agreement - in the context of preambular references to gender equality and the empowerment of women (as mentioned in left column).</p>

⁷ Paris Agreement, Art 16, para 4.

⁸ Paris Agreement, Art 16, para 4(b).

⁹ Paris Agreement, Preamble; Art 7, para 5 (adaptation); Art 11, para 2 (capacity-building).

¹⁰ “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... as well as gender equality, empowerment of women and intergenerational equity”.

¹¹ Vienna Convention on the Law of Treaties 1969, art 31(2).

¹² Decision 1/CMA.5. Other CMA decisions that refer to gender include Decision 12/CMA.1 regarding ex ante reporting on finance and Decision 9/CMA.1 regarding guidance on the adaptation communication.

GENDER ADDED TO CMA AGENDA	GENDER <u>NOT</u> ADDED TO CMA AGENDA
<p>indicates that it could be appropriate to table gender as an agenda item under the CMA, so that gender-related commitments in the Paris Agreement are effectively implemented.</p>	
<p>2 Only Parties to the Paris Agreement can participate in the proceedings and decision-making on a gender agenda item under the CMA.¹³</p> <p>Accordingly, non-Parties to the Paris Agreement (e.g. potentially the USA) will not be able to participate in proceedings/ decision-making on a gender agenda item under the CMA. Could theoretically lead to challenges in agreeing a consistent text across COP/ CMA.</p>	<p>2 Non-Parties to the Paris Agreement that remain party to the Convention (e.g. potentially the USA) may continue to participate in proceedings and decision-making on a gender agenda item under the COP.</p>
<p>3 Could create confusion around the scope of decision-making on gender between the COP and CMA, which could lead to challenges in settling future joint decisions/ progress across both the COP and CMA.</p> <p>(This could be mitigated by <u>clear language</u> that defines the limits of decision-making between the COP and CMA on the joint gender agenda item, which the draft SBI 61 text of 14 November 2024 does not do.¹⁴)</p>	<p>3 Maintains status quo on decision-making on gender agenda item under the COP only (albeit gender appears as a cross-cutting item in CMA decisions).</p>
<p>4 Offers ‘another bite at the cherry’ - by establishing another negotiating space to advance action on gender in the context of the CMA.</p>	<p>4 Does not establish additional negotiating space to advance action on gender.</p>
<p>5 Could promote greater coherence and cross-cutting of the gender topic across COP/ CMA workstreams.</p> <p>This could support the underlying intention of the GAP to:</p> <p>(a) “advance understanding of gender-responsive climate action and its coherent mainstreaming in the</p>	<p>5 Currently, the coherence and cross-cutting of the gender topic across COP/ CMA gender workstreams is less clear.</p> <p>Despite express references to gender in the Paris Agreement, the dominant remit of the COP (rather than the CMA) for the gender agenda item may be a result of the development of the gender workstream.</p> <p>As set out in Annexure 3, the gender workstream (including establishment of the</p>

¹³ Paris Agreement, Art 16, para 2.

¹⁴ Para 7 (Version 14/11/2024 11:00), available [here](#), states: “[Invites the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement to adopt the work programme on gender and the gender action plan]”.

GENDER ADDED TO CMA AGENDA	GENDER <u>NOT</u> ADDED TO CMA AGENDA
<p><u>implementation of the UNFCCC and the work of Parties</u>”;</p> <p>(b) “achieve and sustain the full, equal and meaningful participation of women in the UNFCCC process”; and</p> <p>(c) “ensure the respect, promotion and consideration of gender equality and the empowerment of women in the implementation of the Convention and the Paris Agreement.”¹⁵</p> <p>The SBI 60 Report indicates that certain developed country Parties submitted that a standing CMA agenda item on gender could enhance integration of gender considerations into, and its mainstreaming, into “UNFCCC processes” (see part 2.2 above).</p> <p>This proposal appears reasonably consistent with historical COP decisions. For example, decisions such as 3/CP.25 and 24/CP.27 refer to the importance of “mainstreaming” gender perspectives and gender-responsive climate action into the “workstreams of the UNFCCC process”, “implementation of the UNFCCC” and also to ensure gender equality and empowerment of women “in the implementation of...the Paris Agreement”.¹⁶</p> <p>The language of “UNFCCC process” in these decisions is broader than references to the “Convention” and therefore appears to refer to broader UNFCCC systems (which arguably extends to the CMA), rather than the UNFCCC Convention.</p>	<p>LWPG) was established prior to the commencement of the Paris Agreement/ the CMA.</p>

¹⁵ See Annexure 3 for details.

¹⁶ See Annexure 3 for details.

Annexure 2 Summary - COP and CMA mandates

COP MANDATE	CMA MANDATE
<p><u>Art 7(2), Convention</u></p> <ul style="list-style-type: none"> Regularly review implementation of the Convention and any related legal instruments that the COP adopts Make decisions within its mandate that are necessary to promote effective implementation of the Convention <p><u>Art 7(2)(a), Convention</u></p> <ul style="list-style-type: none"> Periodically examine Parties' obligations and institutional arrangements under the Convention - in light of the Convention objective, experience in implementing the Convention, and evolution in scientific/ technical knowledge <p><u>Art 7(2)(b), Convention</u></p> <ul style="list-style-type: none"> Promote and facilitate information exchange on measures adopted by Parties to address climate change - taking into account differing circumstances, responsibilities, capabilities and Convention commitments <p><u>Art 7(2)(c), Convention</u></p> <ul style="list-style-type: none"> Facilitate the coordination of measures adopted by Parties to address climate change (upon request) - taking into account differing circumstances, responsibilities, capabilities and Convention commitments <p><u>Art 7(2)(d), Convention</u></p> <ul style="list-style-type: none"> Promote and guide the development/ refinement of comparable methodologies for preparing inventories on GHG emissions by sources and removal by sinks - and for evaluating the effectiveness of measures to limit emission and enhance removals <p><u>Art 7(2)(e), Convention</u></p> <ul style="list-style-type: none"> Assess implementation of the Convention, overall effects of the measures taken pursuant to the 	<p><u>Art 16(4), PA:</u></p> <ul style="list-style-type: none"> Regularly review the implementation of the PA Make decisions within its mandate that are necessary to promote its effective implementation Perform functions assigned to it by the PA <p><u>Art 16(4)(a), PA:</u></p> <ul style="list-style-type: none"> Establish such SBs that are necessary for the implementation of the PA <p><u>Art 16(4)(b), PA:</u></p> <ul style="list-style-type: none"> Exercise such other functions as required for the implementation of the PA

COP MANDATE	CMA MANDATE
<p>Convention - particularly environmental, economic and social effects, and extent of progress towards the Convention objective</p> <p><u>Art 7(2)(f), Convention</u></p> <ul style="list-style-type: none"> Consider, adopt and publish regular reports on the implementation of the Convention <p><u>Art 7(2)(g), Convention</u></p> <ul style="list-style-type: none"> Make recommendations on any matters necessary to implement the Convention <p><u>Art 7(2)(h), Convention</u></p> <ul style="list-style-type: none"> Seek to mobilise financial resources in accordance with Arts 4(3), (4), (5) and Art 11, Convention <p><u>Art 7(2)(i), Convention</u></p> <ul style="list-style-type: none"> Establish subsidiary bodies that are necessary for the implementation of the Convention <p><u>Art 7(2)(j), Convention</u></p> <ul style="list-style-type: none"> Review reports submitted by SBs and provide guidance to SBs <p><u>Art 7(2)(k), Convention</u></p> <ul style="list-style-type: none"> Agree and adopt rules of procedure and financial rules for COP and its SBs <p><u>Art 7(2)(l), Convention</u></p> <ul style="list-style-type: none"> Seek and use the services, cooperation of, and information from competent IOs, IGOs, NGOs <p><u>Art 7(2)(m), Convention</u></p> <ul style="list-style-type: none"> Exercise such other functions as required to achieve the objective of the Convention and other functions assigned to COP 	

Annexure 3 Summary - relevant decisions (LWP and GAP)

DECISION	COMMENTS
<p>Decision 24/CP.27 (2022)</p>	<p>Intermediate review of the implementation of the GAP</p> <p>Decision 24/CP.27</p> <p><i>“Recognizing that the full, meaningful and equal participation and leadership of women in all aspects of the UNFCCC process and in national- and local-level climate policymaking and action is vital to achieving long-term climate goals, while noting the importance of <u>mainstreaming a gender perspective in respective workstreams of the UNFCCC process,</u>”</i></p>
<p>Decision 20/CP.26 (2021)</p>	<p>Gender and climate change</p>
<p>Decision 3/CP.25 and annex (2019)</p>	<p>Parties adopt the enhanced LWPG and its GAP</p> <p>Decision 3/CP.25</p> <p><i>“Also acknowledging the important role of the Lima work programme on gender and its gender action plan in advancing gender equality and women’s empowerment in the UNFCCC process, demonstrated by the review by the Subsidiary Body for Implementation”</i></p> <p><i>“7. Recognizes that the full, meaningful and equal participation and leadership of women in all aspects of the UNFCCC process and in national- and local-level climate policy and action is vital for achieving long-term climate goals;”</i></p> <p>Annex</p> <p><i>“1. The enhanced gender action plan sets out objectives and activities under five priority areas that aim to advance knowledge and understanding of <u>gender-responsive climate action and its coherent mainstreaming in the implementation of the UNFCCC and the work of Parties, the secretariat, United Nations entities and all stakeholders at all levels, as well as women’s full, equal and meaningful participation in the UNFCCC process.</u>”</i></p> <p><i>“5. To achieve and sustain the full, equal and meaningful participation of women in the UNFCCC process.”</i></p> <p><i>“7. To ensure the respect, promotion and consideration of gender equality and the empowerment of women in the implementation of the Convention and the Paris Agreement.”</i></p>
<p>Decision 18/CP.20 (2014)</p>	<p>Establishes LWPG</p>
<p>Decision 36/CP.7 (2001)</p>	<p>First documented decision on gender recorded on the UNFCCC webpage on gender and climate, titled:</p> <p><i>Improving the participation of women in the representation of Parties in bodies established under the United Nations Framework Convention on Climate Change and the Kyoto Protocol</i></p>