

The Paris Agreement Implementation and Compliance Committee's (PAICC) ability to address lack of funding/capacity to fulfil Parties' reporting obligations

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*This advice is provided in response to **Query 76/23***

Context:

SIDS and LDCs have requested support to comply with the Paris Agreement's enhanced transparency framework (ETF, Article 13). During COP28 negotiations, some countries challenged these requests, arguing that reporting under the ETF is voluntary for SIDS and LDCs (see LRI advice [Q 74-2023](#) regarding the applicability of the ETF's flexibility provisions to LDCs and SIDs).

Query:

Could the Paris Agreement Implementation and Compliance Committee address lack of funding/capacity-building for reporting obligations as an implementation and compliance issue affecting SIDS and LDCs?

Advice:

I. About the Paris Agreement Implementation and Compliance Committee

The Paris Agreement (PA) established in its Article 15 a mechanism (in the form of a committee) to 'facilitate implementation and promote compliance with the provisions of this Agreement'.¹ It is common for multilateral agreements, including multilateral environmental agreements, such as the Paris Agreement and the Kyoto Protocol, to have some form of mechanism to promote parties' compliance with their commitments and/or obligations.² A whole range of options are available. For example, parties can delegate enforcement or dispute resolution to a court or centralized body created for that purpose (e.g. the international tribunal created under the Law of the Sea Convention). They can choose instead to set up an internal mechanism with enforcement powers, including punitive ones (such as the Kyoto Protocol compliance mechanism), or one which is facilitative in nature, where the mechanism provides recommendations, technical or financial support, training or other forms of assistance.³

¹ Article 15.1

² Guide to the Paris Agreement, 2023 edition, p. 119, available at <https://legalresponse.org/wp-content/uploads/2023/12/Guide-to-the-Paris-Agreement.pdf#page=121>

³ The Concept of Legalization Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal, *International Organization* 54, 3, Summer 2000, pp. 401–419.

The Paris Agreement implementation and compliance mechanism is a facilitative one. Paragraph 2 of Article 15 outlines it as follows:

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.

This provision affirms the non-punitive nature of the mechanism, which has been further developed by [Decision 20/CMA.1](#), setting out the ‘Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement.’ This decision excludes functions related to punishment, compensation, stigma, or shame. It also rules out any form of delegated enforcement -through penalties or sanctions- or dispute settlement.⁴

Article 15.2 also says that the mechanism shall consist of an expert-based committee: the Paris Agreement Implementation and Compliance Committee (PAICC). Its composition was also decided at COP 21.⁵ It is formed of twelve experts with recognised competence in relevant scientific, technical, socioeconomic, or legal fields, elected on the basis of equitable geographical representation, and aiming for gender balance. This translates into two members being designated by each of the five regional groups of the UN, one member from SIDS and one from the LDCs. There are also 12 additional alternate members. The current composition of the PAICC can be found at the designated UNFCCC website.⁶

Through [Decision 24/CMA.3](#) (2021) the first part of the rules of procedure for the Committee were adopted, focusing on the institutional arrangements for its effective operation.⁷ The full set was adopted by [Decision 24/CMA.4](#) in 2022. These rules reiterate the facilitative nature of the Committee when setting out that ‘the objective of these rules of procedure is to facilitate implementation of and promote compliance with the provisions of the Paris Agreement.’⁸

Finally, it is important to note that the mechanism echoes the centrality of differentiation among countries and their circumstances that is present throughout the PA, mandating the committee to ‘pay particular attention to the respective national capabilities and circumstances of parties, recognising the special circumstances of the least developed countries and small island states, at all stages of the process (...)’.⁹

II. Reporting obligations for SIDS and LDCs

Drawing from our previous [advice](#), we note that the Enhanced Transparency Framework (ETF) established under Article 13 of the Paris Agreement (PA):

- creates a common system for all countries,
- acknowledges the challenge the more onerous requirements will present for many developing countries, and accordingly,
- provides flexibility in what and how they report.
- It also recognises that developing countries will need additional financial, technical and capacity-building support to meet the more stringent reporting requirements under the ETF.

⁴ Decision 20/CMA.1, Annex, Paragraph 4.

⁵ Decision 1/CP.21

⁶ <https://unfccc.int/PAICC#Composition-of-committee>

⁷ Decision 24, CMA.3, Paragraph 1.

⁸ Decision 24/CMA.3, Annex, Paragraph 1.

⁹ Decision 20/CMA.1, Annex, Paragraph 19 (c).

Article 13.7 creates an obligation for all Parties to submit the Biennial Transparency Reports, including LDCs and SIDS. The flexibility provisions mean that LDCs and SIDS are afforded flexibility about the scope, level and timing of reporting, but – importantly in the context of the query - not on the obligation to report (If reporting was voluntary for SIDS and LDCs as argued by some countries, then the issue of implementation and compliance (or lack of) would not arise).

III. Analysis of potential PAICC procedures

Initiation/triggering of the implementation and compliance mechanism before PAICC can occur in four ways:¹⁰

a) Initiation by a party (self-referral):

any party can bring before PAICC issues with respect to the party's own implementation of and/or compliance with any provision of the Paris Agreement, by written submission. A template for such written submission was adopted by the PAICC at its 11th meeting, find the template [here](#).

b) Initiation by the PAICC of a “consideration of issues” when a party has failed to meet its reporting obligations under the PA, that is when it has not:

- 1) communicated or maintained a nationally determined contribution (NDC), or
- 2) submitted a mandatory report or communication or information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the PA, or
- 3) participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat, or
- 4) submitted a mandatory communication of information under Article 9.5 of the PA.

c) With the consent of the Party concerned, the PAICC may engage in a “facilitative consideration of issues”:

in cases of significant and persistent inconsistencies between the information submitted by the Party pursuant to Article 13.7 and 13.9 with the modalities, procedures and guidelines (MPGs) adopted in [Decision 18/CMA.1](#). As noted in Decision 24/CMA.4 ([Chapter XIX, para. 2](#)), this consideration will be based on the recommendations made in the final technical expert review reports, prepared under Article 13.11 and 13.12 of the Agreement, together with any written comments provided by the Party during the review. In its consideration of such matters, the PAICC shall take into account Article 13.14 and 13.15,¹¹ as well as the flexibility provided in the MPGs to those developing country Parties that need it in the light of their capacities.¹²

d) Where issues of a systemic nature are faced by a number of Parties in implementing and complying with the provisions of the PA:

At the request of the CMA, the PAICC shall initiate a consideration of issues to examine these issues. The PAICC also may identify such systemic issues of its own accord but, at present, there is no guidance on what types of issues would be considered systemic, what threshold would be applied, what evidence would be needed, if/what role a Party, or a number of Parties, would have, and what the

¹⁰ Decision 20/CMA.1, paragraphs 20-22 and 32-34 read in conjunction with Rule 23: Systemic issues, Annex, [Decision 24/CMA.4](#)

¹¹ These paragraphs recognise that developing countries will need additional support to meet the more stringent reporting requirements of the ETF and to build their capacity.

¹² Decision 20/CMA.1, paragraph 22.b

possible recommendation(s) would be.¹³ The PAICC may also arguably identify such systemic issues on the basis of a number of Parties failing to comply with their reporting obligations (see b) 1)-4) above). It is not clear if/how Parties could themselves bring systemic issues to the attention of the PAICC.

Therefore, whilst on the face of it there might be a case to be made regarding the lack of finance and capacity building for reporting obligations affecting a large number of countries, for the reasons set out above, the “systemic issues” avenue appears to be a more challenging avenue for now.

Since a Party can bring issues related to its own implementation or compliance before the PAICC (self-referral, see a) above), the Party could instead try to use this avenue to highlight a challenge affecting various parties. Indeed, the PAICC’s [template](#) for written submissions from Parties states that the submissions should also contain information and supporting documentation relating to relevant capacity constraints, needs or challenges; and access to finance, technology and capacity-building support that has been sought or received to address these. A group of Parties could also raise this challenge collectively, with the consent of each country naturally.

Given that the PAICC only started operating very recently, there is not much precedent on how it is initiated/triggered and how it exercises its functions. In the absence of such precedent, we estimate that a Party or group of Parties could try to engage the PAICC to look at the issue of LDCs/SIDS finance and capacity to comply with the ETF by self-referring (see a) above), individually or collectively. As identified above, there are other ways in which the PAICC could look at the issue of LDCs/SIDS finance/capacity to comply with the ETF either of its own accord or if requested by the CMA.

IV. Analysis of potential PAICC outputs and measures

When engaging in a consideration of issues and considering potential outputs and measures, the PAICC is also guided by key principles, some of which are of particular importance for the query. First, it must engage constructively with the Party concerned, and the Party can introduce written submissions and comments throughout the process.¹⁴ This reinforces the non-punitive, facilitative nature of the PAICC. It is important to note that the PAICC’s mandate to initiate a “consideration of issues” is limited to assessing compliance with the respective obligation itself, not to assess the underlying content.¹⁵

Additionally, when exercising its mandate, and as mentioned earlier, it **‘shall pay particular attention to the respective national capabilities and circumstances of Parties, recognizing the special circumstances of the least developed countries and small island developing States...’**.¹⁶ This special consideration informs all stages of the process, including, for example, determining what assistance can be provided to the Party concerned to engage with the PAICC and what measures are appropriate to facilitate implementation and promote compliance in each situation.

In the context of the present query, if the PAICC examines the challenges affecting LDCs and SIDS in delivering on the Enhanced Transparency Framework commitments, it could take ‘appropriate measures’ to facilitate compliance, and those should consider the special circumstances of the LDCs

¹³ Rule 23: Systemic issues, Annex, [Decision 24/CMA.4](#) states that the PAICC “may further develop working arrangements for the consideration of systemic issues on the basis of experience gained in its work” .

¹⁴ Decision 20/CMA.1, paragraph 19 b)

¹⁵ Decision 20/CMA.1, para 23, ‘the consideration of the issues ... will not address the content of the contributions, communications, information and reports referred to in paragraph 22(a)(i–iv) above.’

¹⁶ Decision 20/CMA.1, paragraph 19 c)

and SIDS. Paragraph 30 of Decision 20/CMA.1 sets a non-exhaustive list of measures PAICC can employ:

- engage in a dialogue with the Party concerned aimed to identify challenges, making recommendations and sharing information;
- assist the Party in engaging with the appropriate finance, technology and capacity building bodies;
- make recommendations to the Party and communicate those to the relevant bodies with consent from the party;
- recommend the development of an action plan and if requested, assist the party in developing the plan.

In the case of a ‘consideration of issues’ procedure (see section III. b) above), the PAICC may additionally issue findings of fact in relation to matters of implementation and compliance. In fact, the PAICC has already done so. Its [last annual report to the CMA](#) (2023) includes a record of its first ‘consideration of issues’ where a Party had not communicated a NDC and where another Party had not submitted a biennial communication of information in accordance with Article 9.5 of the PA.

In the case of the PAICC examining issues of a systemic nature faced by a number of Parties, the PAICC will bring these issues and, as appropriate, any recommendations to the CMA. One can envisage that the above list of measures would be a starting point for the type of recommendation it can make. However, as this is a non-exhaustive list, it might be open to the PAICC, within its non-punitive and facilitative mandate, to recommend other measures. Indeed, one would envisage that different measures than the ones listed above would be needed to address issues of a systemic nature. However, given it only started operating very recently, there is not much precedent on how it exercises its functions, let alone speculating on additional measures it could employ.

Of note is the fact that the Party concerned can share information for the identification of appropriate measures or other output by the PAICC. This includes information “on particular capacity constraints, needs or challenges, including in relation to support received, for the Committee’s consideration...”¹⁷ This could mean that assistance is provided to the Party to engage with institutions under the PA related to finance, technology and capacity-building support. However, what this assistance would entail and whether it would help tackle the persistent/all-encompassing nature of challenges facing LDCs and SIDS to comply with the ETF is uncertain.

V. Conclusion

We have identified different ways in which a Party, or a number of Parties, could consider bringing the issue of funding/capacity to comply with the ETF to the attention of the PAICC, and summarise these below. The PAICC could instead or in addition look at the issue of LDCs/SIDS finance/capacity to comply with the ETF either of its own accord or if requested by the CMA.

Any Party experiencing issues when fulfilling its reporting obligations under the ETF (including regarding lack of funding/capacity-building for complying with such obligations) could bring this to the attention of the PAICC through the self-referral procedure explained in section III. a) above. Furthermore, if a Party does not comply with its reporting obligations, the PAICC can itself initiate a “consideration of issues” (as described in section III. b) above) and the Party concerned could raise the

¹⁷ Decision 20/CMA.1, paragraph 30

issue of lack of finance/capacity in fulfilling its obligation(s) as part of its communication with the PAICC.

In the case of PAICC engaging in a facilitative consideration of issues due to significant and persistent inconsistencies of the information with that required under the relevant MPGs (as described in section III. c) above), the Party concerned could raise the issue of lack of finance/capacity and the impact this has on its ability to comply with the MPGs as part of its communication with the PAICC and the technical expert review team.

Finally, if the issue of funding/capacity is affecting a number of Parties, e.g. some or all LDCs or SIDS, the PAICC could be requested by the CMA to examine this as an issue of a systemic nature (as described in section III. d)) and report, and make recommendations, to the CMA. Needless to say that for the CMA to make such a request it would need to have been discussed and agreed by consensus.

The PAICC itself may identify systemic issues as well; whereas if/how Parties could themselves bring systemic issues to the attention of the PAICC is unclear. At present there is no guidance on what types of issues would be considered systemic, what threshold would be applied, what evidence would be needed, if/what role a Party, or a number of Parties, would have, and what the possible recommendation(s) would be.

For the reasons set out just above, whilst on the face of it there might be a case to be made regarding the lack of finance and capacity building for reporting obligations affecting a large number of countries, the “systemic issues” avenue appears to be a more challenging avenue for now. We estimate that a Party or group of Parties could try to engage the PAICC by self-referring, individually or collectively.