
Submission by the Federal Democratic Republic of Ethiopia on behalf of the Least Developed Countries Group on APA agenda item 7: 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

The LDC Group welcomes the opportunity to submit its views on 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 (“Committee”).

In the conclusions of the APA Co-Chairs adopted by APA 1.3 at its closing plenary on 18 May 2017, Parties were invited to make targeted submissions addressing the following guiding questions, with the aim of promoting further understanding of views and to inform any technical workshop and continued consideration under this item:

- 1. How can potential linkages to other arrangements under the PA be designed to ensure that the Committee operates effectively while still preserving the independence of these arrangements?*
- 2. What kind of outputs of the Committee’s activity would effectively facilitate implementation and promote compliance, and how?*
- 3. How would the consideration of national capabilities and circumstances of Parties be operationalized in the modalities for the operation of the Art 15 Committee?*

Parties also agreed that these submissions do not restrict the consideration of any other question, element or aspect that Parties might wish to address under this agenda item, including any areas that may have not been addressed in depth so far.

This submission will address the guiding questions and provide further inputs on areas that may not have been addressed in depth so far.

General considerations and introduction

The mechanism under Article 15 of the Paris Agreement and the Committee under it have a very important role to play in ensuring the effectiveness of the Paris Agreement and the implementation of our collective efforts to address climate change under the Agreement.

In our view, the role of the mechanism and the Committee is to oversee and ensure the effective implementation of Paris Agreement by enabling an integrated operation of the review and ambition-raising processes embedded at the heart of the Paris Agreement. The three core procedural elements of the Paris Agreement – the enhanced transparency framework (to give us a better understanding of what we are individually doing on action and support), the global stocktake process (to give us a clearer picture of the global context and how we are doing collectively and overall) and the Article 15 mechanism (to help Parties implement the Agreement and encourage Parties to comply with their obligations) – must therefore work together in a

complementary and coordinated manner to achieve the most ambitious outcomes from the actions we are taking to directly address climate change and its impacts.

The modalities, procedures and guidelines (MPGs) for the Committee need to clearly reflect the added value this mechanism provides. Since the Paris Agreement was adopted, we have been working with all Parties to better identify that added value and express it in the MPGs through a number of submissions and constructive discussions.

All Parties want at least two common outcomes for the mechanism and Committee: it must contribute effectively to the implementation of the Paris Agreement, and it should not duplicate the efforts of existing mechanisms and processes in the climate change regime. Therefore, at a minimum, the added value of the Committee is to enable the actions and processes that can lead to broader implementation and compliance by all Parties; and it should do that in complementarity with other mechanisms and institutions in the climate change regime.

With that in mind, we see a Committee that is empowered to identify and assess issues of implementation and compliance in a timely manner, so that individual and collective actions can be taken to remove barriers, address challenges and enhance the effectiveness of the Paris Agreement.

We believe that most Parties are working towards this notion of added value.

The LDC Group concurs with the broad consensus of Parties that the Committee's mandate does not include any kind of sanction or enforcement action or any adjudicatory aspect. However, we also share the understanding of a majority of Parties in the sense that there is a range of actions the Committee could make use of that are consistent with its purpose and non-punitive and non-adversarial nature. For example, a Committee request for a Party to prepare an action plan to comply with the provisions of the Paris Agreement.

An overly restrictive approach to the various elements of the MPGs, including on triggers and outputs of the Committee increases the likelihood that the Committee will offer little added value in practice.

Functions of the Committee

The Committee has two general functions: facilitating implementation and promoting compliance with the provisions of the Paris Agreement. The LDC Group believes these are two distinct functions although they are interconnected and complementary.

Some Parties have suggested a continuum approach to understanding these functions. To the extent that this approach does not conflate the two functions into one, the LDC Group is open to explore how to express the continuum concept in the MPGs for the Committee.

The Committee's regular activities could involve a range of investigative, analytical and determination processes. To ensure that the Committee's work is non-punitive, non-adversarial

and non-adjudicatory, it should focus on technical aspects related to implementation and compliance through a process that involves an open and collaborative dialogue between the Committee and any Party concerned from the outset.

In facilitating implementation, the Committee should be able to help Parties facing implementation challenges, either in implementing particular provisions or in Parties' implementation towards the achievement of objectives in their NDCs and adaptation communications. In promoting compliance, the Committee's aim should be to help Parties avoid non-compliance and, where this is not possible, to work with a Party concerned in addressing difficulties with compliance.

Structure and composition of the Committee

Like most Parties, the LDC Group believes that the Committee should have a unitary structure, with one Committee dealing with both implementation and compliance aspects.

The composition of the Committee is set out in paragraph 102 of Decision 1/CP.21, but the MPGs should make explicit the understanding of Parties that Committee members are expected to serve in their personal capacity.

Alternate members should be elected to ensure the Committee can continue its work if some members are unavailable, and to avoid any potential conflict of interest or apprehension of a conflict of interest in the functioning of the Committee. Alternate members should attend the meetings only when the member is not available for the meeting.

Triggers

Self-triggering by a Party seeking to engage the Committee on implementation or compliance matters will be the main trigger. But the LDC Group believes there is scope and it is appropriate to have additional triggers in carefully considered situations.

There could be situations where it is appropriate for another Party or group of Parties to bring a situation to the Committee's attention – for example, where there is a need for a better understanding of how to implement or comply with certain provisions of the Agreement or where Parties are facing similar barriers or challenges to implementation or compliance.

Objective triggers based on the technical expert review or the facilitative multilateral consideration of progress under the enhanced transparency framework should enable the Committee to give its attention to a matter.

The Committee itself should be able to investigate, analyse and make recommendations where it is apparent that a number of Parties are facing similar challenges or barriers to implementation or difficulties in compliance.

Where Parties have identified a systemic issue of implementation or compliance, the CMA should be able to bring the issue to the Committee's attention for further consideration.

Engagement of the Party concerned

The Committee must ensure that the Party concerned is engaged throughout its process in an open, collaborative and transparent way.

Inputs by the concerned Party and its national capabilities and circumstances need to be fully considered by the Committee in carrying out its work.

Approaches or recommendations by the Committee should also be developed in a consultative way with a Party concerned and outputs should reflect the views and concerns of that Party.

Linkages

The Article 15 mechanism and Committee have clear linkages with other arrangements and mechanisms under the Paris Agreement, including those under Articles 6, 13, and 14 and the various support mechanisms under the UNFCCC and Paris Agreement.

Linkages with Article 6

The Article 15 mechanism is important for ensuring the integrity of the Paris Agreement by considering issues relating to the market mechanism under Article 6.

Where Parties fail to make proper use of the market mechanisms under Article 6, issues related to the trading and accounting of emissions units, or eligibility to participate in the market mechanisms should be addressed by the Committee. Linked to Article 6, issues related to the ensuring environmental integrity when transferring mitigation outcomes internationally can become apparent during the review process under Article 13 and should also be considered by the Committee. The Committee could provide feedback or recommendations back to the institutional arrangements under Article 6 to address these and other issues.

Linkages with Article 13

The clearest linkage is with the enhanced transparency framework under Article 13.

Where the review process shows that Parties, individually or collectively, are struggling or failing to implement or comply with the provisions of the Paris Agreement the Committee should be empowered to consider the issue and make recommendations. The outputs of the review process under Article 13 could be objective triggers for the Committee to engage with or make recommendations based on the areas of improvement identified by the expert review team.

Linkages with Article 14

Whereas the global stocktake process assesses overall progress towards the overall objectives of the Paris Agreement, the Committee can assess the broader implementation or compliance of Parties based on outputs from the global stocktake. For example, the Committee could aim to identify systemic challenges and barriers to implementation and compliance correlated to the level of collective progress of Parties. The Committee could then make appropriate

recommendations in its report to the CMA or directly to relevant mechanisms under Agreement. In the longer-term, the Committee could monitor and compare progress on implementation and compliance from one stocktake period to the next.

Linkages with support arrangements/mechanisms under the PA

To ensure no duplication of work, the Committee should only facilitate access to other arrangements related to the provision of support under the Paris Agreement, such as the Paris Committee on Capacity Building, the Technology Mechanism and the Financial Mechanism, for instance.

For example, the Committee should be able to share its recommendations and opinions with the appropriate support mechanisms when a relevant support issue arises out of its consideration of a particular matter. This can bring the attention of support mechanism to issues to avoid potential implementation or compliance issues. But the Committee should not be seen as a way to get preferential treatment or access to support mechanisms.

Outputs of the Committee

The outputs of the Committee will have a direct impact on its ability to facilitate implementation and promote compliance by all Parties.

The LDC Group considers the following guidelines important in the design of the Committee's activities and outputs.

Non-punitive and non-adversarial

The Committee must function in a non-punitive and non-adversarial manner and there are a range of outputs (some of which are suggested further below) which can make the Committee effective in executing its mandate and which should not be considered punitive or adversarial.

Technical, fact-based

The outputs of the Committee should:

- Be focused on technical issues and grounded in fact
- Relate to factual determinations on implementation or compliance or the lack thereof, the existence of barriers or challenges to implementation or compliance, and any potential options or opportunities a Party concerned may consider taking forward
- Not question or make any judgement on the adequacy or any other substantive aspect of any Party's NDC

Independent, impartial and apolitical

Any politicisation of the Committee, its membership or its functioning will raise doubts about the impartiality and independence of the Committee, and by extension its effectiveness.

The CMA should have general oversight and authority over the Committee but should not be directly involved in the Committee's day-to-day operation.

Similarly, the Committee's outputs should not need to be validated or endorsed by any other body or Party.

Open and transparent

The outputs must be open and transparent. A lack of transparency around the functioning and decision-making of the Committee will only reduce trust and confidence in the Committee and limit its effectiveness.

Outputs of the Committee, which are reasoned and based on technical analysis and conclusions, should therefore be made publicly available. This will also have a significant benefit through knowledge, experience and best-practices sharing.

Possible outputs

The Committee should be empowered to issue opinions, statements and reports and make recommendations among other possible outputs:

- **Opinions:** Preliminary opinions should be issued upon analysis of initial documentation and final opinions should be issued at the end of matters the Committee considers
- **Recommendations:** Upon request of the Party (or Parties, in case of article 6), technical-legal as well as scientific- advice regarding actions
- **Statements:** A range of statements, including, for example, declarations of non-compliance can be issued
- **Reports:** For example, to the CMA regarding particularly pressing matters of implementation, compliance or the operation of the Committee should be made on a regular basis

The Committee will forward matters for the consideration of constituted bodies under the Agreement where relevant.

National capabilities and circumstances

The provisions of the Agreement apply to all Parties but the Agreement clearly recognises that national capabilities and circumstances need to be taken account in the implementation of the Agreement as a whole, and that flexibility should be given for developing countries in general.

The approach to flexibility under the Article 15 mechanism should be an entry point for reflecting national capabilities and circumstances. In this sense, the Committee needs to carefully consider the different national capabilities and circumstances of Parties at all stages of its work in fulfilling its mandate, and the modalities and procedures for its operation should have explicit flexibility built into them where relevant.

In particular, the Committee must take adequate consideration of the special circumstances of the least developed countries (LDCs) and small island developing states (SIDS) as well as the additional support and flexibility they might need to implement the Agreement and comply with their obligations under it. The limited capabilities and special circumstances of these Parties need to be explicitly reflected in the modalities and procedures of the Committee.

The Committee also has a role in working with Parties to develop options, action plans, or other recommendations to address issues relating to implementation or compliance. Therefore, flexibility and the consideration of national capabilities and circumstances should be reflected in both the process and the outputs of the Committee.

For example, Parties needing flexibility due to their national capabilities and circumstances would require more time to submit information, respond to queries from the Committee, consider any recommendations, and take any action it considers appropriate. The Committee should recognise that different Parties will be able to provide different amounts or level of detail in any information requested – this must be taken into account in the Committee’s work. The Committee would also need to take into account the national capabilities and circumstances of the Party concerned when working with the Party to develop action plans or recommendations, in order to consider viable, realistic options and opportunities that the particular Party can consider acting on.

Conclusion

Ultimately, the Article 15 mechanism must be seen as a valuable tool to help Parties to implement and comply with the provisions of the Paris Agreement and not as one that infringes on their sovereignty or polices Parties.

The LDCs are ready to work with other Parties and think creatively on how to make the most of the mechanism and Committee to achieve this goal, and we are committed to continuing to work in that cooperative spirit at COP23 and beyond.