

Nationally Appropriate Mitigation Actions in developing countries

*An overview of the legal status of NAMA pledges, proposed financing mechanisms
and other implications for a future climate agreement*

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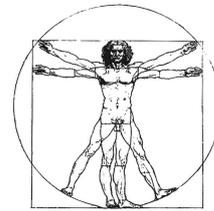
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1. Introduction and Background

The concept of Nationally Appropriate Mitigation Actions (NAMAs) emerged at the thirteenth session of the Conference of the Parties (COP 13) to the United Nations Framework Convention on Climate Change (UNFCCC) in Bali in December 2007. The Bali Action Plan (BAP) established the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) to address a number of subject areas and thus pave the way to a new agreement on climate action.⁴ These included the mandate to address enhanced national/international action on mitigation of climate change by developed and developing country Parties.⁵

With regard to developing countries, the BAP states that the Parties would consider: “*Nationally 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*”.⁶

The Copenhagen Accord, drafted by a group of countries at COP 15 in December 2009, focused significantly on NAMAs. It stated that “[n]on-Annex I Parties to the Convention will implement mitigation actions, including those to be submitted to the secretariat by non-Annex I Parties in the format given in Appendix II by 31 January 2010...”.⁷

Under the Accord, unilateral mitigation actions undertaken by developing countries are only subject to domestic measurement, reporting and verification (MRV). Results should be reported every two years as part of their national communications (on the basis of guidelines to be adopted by the COP). NAMAs seeking international support are recorded in a registry along with details of relevant technology, finance and capacity-building support. NAMAs supported by donor countries are subject to international MRV in accordance with guidelines also to be adopted by the COP.

Although the Copenhagen Accord itself did not represent a formal agreement under the UNFCCC, several developing countries and countries with economies-in-transition subsequently submitted NAMAs in accordance with the Accord.⁸ The

4 The “Bali building blocks” include shared vision, enhanced action on mitigation, adaptation, technology transfer and finance.

5 With regard to developed country Parties this includes measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives. (Paragraph 1(b) (i) of the Bali Action Plan)

6 Bali Action Plan, UNFCCC COP Decision 1/CP.13, UN Doc FCCC/CP/2007/6/Add.1, para.1 (b) (ii).

7 Copenhagen Accord, UNFCCC COP Decision 2/CP.15, UN Doc FCCC/CP/2009/11/Add.1, para.5.

8 To date, a total of 141 Parties have expressed their intention to be listed as agreeing to the Copenhagen Accord. The UNFCCC website on Appendix II – Nationally appropriate mitigation actions of developing country Parties – to the Copenhagen Accord lists NAMAs communicated from 44 Parties, available at

<http://unfccc.int/meetings/cop_15/copenhagen_accord/items/5265.php>. On the status of the Copenhagen Accord see:

Executive Secretary, Notification to Parties, Clarification relating to the Notification of 18 January 2010, 25 January 2010, available at

http://unfccc.int/files/parties_and_observers/notifications/application/pdf/100125_noti_clarification.pdf.

Cancun Agreements adopted at COP 16 in December 2010 built on the negotiations over the previous three years including the provisions of the Copenhagen Accord.

In Cancun, the Parties decided to establish a registry for matching NAMAs and support, to create a fund for financing mitigation and adaptation actions (including technology transfer) and to develop guidelines for MRV of internationally supported mitigation actions under the Convention. The creation of new market-based mechanisms as a possible option to finance NAMAs will be discussed at COP 17 in Durban in December 2011.⁹

The COP took “*note of nationally appropriate mitigation actions to be implemented by Parties not included in Annex I to the Convention as communicated by them...*”¹⁰ It also invited developing countries “*that wish to voluntarily inform the COP of their intention to implement NAMAs*” to submit further information on those actions to the secretariat.¹¹

In Cancun, the Parties further decided that in addition to their national communications under the Convention, developing countries, depending on their capabilities and the support provided, should also submit update reports every two years on national greenhouse gas inventories and mitigation actions, needs and support received. These updates will be subject to international consultation and analysis (ICA) under the Subsidiary Body for Implementation (SBI). These consultations and analysis will be purely advisory, non-intrusive and non-punitive.

A large number of Party submission containing detailed views on a work programme for the development of modalities and guidelines to facilitate support of nationally appropriate mitigation actions through a registry; MRV of donor supported actions; the biennial update reports; domestic verification of mitigation actions undertaken with domestic resources; and international consultations and analysis are available at http://unfccc.int/meetings/ad_hoc_working_groups/lca/items/4578.php.

2. Existing pledges and their legal status

To date, almost 50 Parties to the UNFCCC have communicated NAMAs to the UNFCCC secretariat. Based on the decision of the COP to take note of NAMAs, these have been compiled in UNFCCC information document FCCC/AWGLCA/2011/INF.1 (listing 49 submissions).¹²

The communications submitted by Parties differ considerably in scope, content and detail. Some notifications contain a short statement of intent to develop and undertake NAMAs (e.g. Afghanistan, Cameroon and Georgia), while others are fairly detailed lists of specific actions in different sectors of the economy (e.g. Ethiopia, FYR

⁹ The Cancun Agreements, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UNFCCC COP Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1, paras.48-67, 80.

¹⁰ Ibid. para.49.

¹¹ Ibid. para.50.

¹² AWG-LCA, Compilation of information on nationally appropriate mitigation actions to be implemented by Parties not included in Annex I to the Convention (18 March 2011) UN Doc FCCC/AWGLCA/2011/INF.1 available at <http://unfccc.int/resource/docs/2011/awglca14/eng/inf01.pdf>.

Macedonia and Morocco) and/or include possible emission reduction goals (e.g. China, Indonesia, Marshall Islands and Republic of Korea).

The UNEP Risoe Centre on Energy, Climate and Sustainable Development (URC) in Denmark (which supports the United Nations Environment Programme, UNEP), has created a web-based “NAMA Pipeline Analysis and Database” to provide an informal overview on categories, types and sub-types of activities. The site is expected to develop over the coming months as the NAMA agenda spreads and countries develop ideas for NAMAs.¹³

a) Legal status under the UNFCCC

In Cancun, the Parties did not formally adopt the pledges as part of a COP decision, but rather *took note* of them. A footnote to the relevant text states that the Parties’ communications on NAMAs “*that are included in the information document are considered communications under the Convention*”.¹⁴

UNFCCC information (or “INF”) documents are usually used to provide information. With regard to the Copenhagen Accord, the former UNFCCC Executive Secretary Yvo de Boer described the concept of taking note as “a way of recognizing that something is there, but not going so far as to directly associate yourself with it”.¹⁵ Thus the Cancun Agreements may further strengthen the political commitment (agreed in Bali) to consider developing country mitigation part of a new climate regime, but they do not necessarily give individual and specific NAMAs submitted legal standing under the UNFCCC.¹⁶

An additional COP decision that formally endorses the existing pledges and, for example, *decides* that developing country Parties shall strive to accomplish their NAMAs with the necessary support, could anchor the pledges more firmly within the UNFCCC system. In addition (or alternatively) the Parties may soon decide on a formalised process for the submission of NAMAs based on harmonised rules and a more uniform template.

If and to what extent developing country Parties will be required to implement their NAMAs in the future will also depend on further COP decisions and the operational features of the system to be established. For example: In connection with a successful matching process mutual legal obligations could be created on a contractual basis between developing countries and donor/s (to undertake a NAMA and provide

¹³ UNEP Risoe NAMA Pipeline Analysis and Database available at <<http://www.namapipeline.org/>>.

¹⁴ The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UNFCCC COP Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1, para.49 and footnote 5.

¹⁵ See Kelly Cryderman, ‘Copenhagen winds down with non-binding agreement’ (19 December 2009), National Post available at <<http://www.nationalpost.com/news/Copenhagen+winds+down+with+binding+agreement/2362917/story.html>> and also Jacob Werksman, World Resources Institute (WRI), December 2009, at <http://www.wri.org/stories/2009/12/taking-note-copenhagen-accord-what-it-means>.

¹⁶ Antonio G.M. La Vina, Lawrence Ang and Joanne Dulce, ‘The Cancun Agreements: Do they advance global cooperation on climate change?’, FIELD (March 2011) available at

<http://www.field.org.uk/files/the_cancun_agreements__lavina_ang_dulce_0.pdf>; Joy Hyvarinen, ‘Legal issues and development of the international climate regime’, FIELD (August 2011) available at

<<http://www.field.org.uk/files/fieldnoteunfccclegalissuesaugust2011.pdf>>.

support). Finally, there also remains the possibility that the pledges are integrated into a new binding agreement.

b) Legal status of pledges under general international law

Regardless of the status of NAMAs within the UNFCCC, states can also create legally binding obligations under international law through unilateral declarations, such as the promise to act in a particular way. Whether such a promise also requires acceptance is disputed.¹⁷ However, international jurisprudence and the academic literature generally agree that the state must clearly demonstrate the intention to accept obligations vis-à-vis certain other states.¹⁸

A detailed analysis of all the communications submitted to the UNFCCC secretariat would exceed the scope of this paper. But many states have explicitly emphasised that they consider NAMAs to be purely voluntary (e.g. Brazil, China, India) and that implementation will be contingent upon further international financial support.

UN information document FCCC/AWGLCA/2011/INF.1 includes communications from the following LDCs: Afghanistan, Benin, Bhutan, Cambodia, Central African Republic, Chad, Djibouti, Eritrea, Ethiopia, Madagascar, Mauritania, Sierra Leone and Togo.

These communications were made in response to the Copenhagen Accord, which explicitly refers to the voluntary nature of NAMAs by LDCs and small island developing states (SIDS). The Accord states that “*Least developed countries and small island developing States may undertake actions voluntarily and on the basis of support.*”¹⁹ Hence, these submissions cannot be interpreted as legally binding.

3. Financing NAMAs

Developing country NAMAs can be financed in different ways or a combination of these. These include:

- developing country Parties’ own domestic public funds;
- support by Annex I countries;
- domestic and international private sector finance;
- new market mechanisms generating credits to be sold on the carbon market; and
- alternative sources of finance.

In the Copenhagen Accord and Cancun Agreements, developed country Parties committed to a long-term goal of mobilizing US\$100 billion per year by 2020 to address the needs of developing countries, in the context of meaningful mitigation actions and transparency on implementation.²⁰ They also committed to provide new

¹⁷ Hugo Grotius, *The Law of War and Peace, De iure belli ac pacis* (1625), Book II, Chapter XI, para. 14 available at <www.lonang.com/exlibris/grotius/gro-211.htm>.

¹⁸ Ian Brownlie, *Principles of Public International Law* (4th edn, 1990), pp. 637-639.

¹⁹ Copenhagen Accord, UNFCCC COP Decision 2/CP.15, UN Doc FCCC/CP/2009/11/Add.1, para.5.

²⁰ Copenhagen Accord, UNFCCC COP Decision 2/CP.15, UN Doc FCCC/CP/2009/11/Add.1, para.8; Cancun Agreements, UNFCCC COP Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1, para.98.

and additional resources approaching US\$ 30 billion for 2010-2012, with a balanced allocation between adaptation and mitigation.²¹

Supporting climate finance from Annex I countries is likely to flow through various channels. Currently the most prominent of these is the Green Climate Fund (GCF). The GCF will not be the only channel for the pledged US\$ 100 billion per year. It will however be a significant channel of funds and will likely exceed the size of the existing climate funds.

The Cancun Agreements established the GCF, its governance structure and an interim trustee. They also established a Transitional Committee to design the GCF and recommend operational documents for approval at COP 17 in Durban. The Transitional Committee has met four times this year, but was unable to come to a consensus on the design of the fund.²²

Outside of the GCF, Annex I countries support developing country mitigation through other multilateral channels. These include funds administered by the Global Environment Facility (GEF), such as the Special Climate Change Fund and the climate change focal area of the GEF Trust Fund, or by the World Bank, such as the Clean Technology Fund and the Strategic Climate Fund. Support for NAMAs may also flow through bilateral channels, such as official development assistance and funds established by single governments. Examples of these include Japan's Hatoyama Initiative, Germany's International Climate Initiative, and the United Kingdom's International Climate Fund.

It is not yet clear whether and how REDD-plus activities will count as NAMAs. Annex I countries support REDD-plus projects through another set of multilateral channels, such as the UN-REDD Programme administered by the UNDP and the Forest Carbon Partnership Facility administered by the World Bank.

One of the aims of public sector finance generally is to leverage additional investment by the private sector. International business NGOs have proposed various "public-private partnerships" in which public capital and private capital are deployed together. These try to stimulate low-carbon investment by reducing the underlying risks of the investment – for example by accreditation or guarantees from international financial institutions. LDCs may need strengthened legal and financial frameworks to enable increased private sector investment.

Market-based mechanisms are another method of providing finance for NAMAs. These mechanisms, in which NAMAs generate credits for sale on the carbon market, remain controversial. Some developing countries oppose market-based mechanisms for NAMAs because additional offsetting opportunities may disincentivise Annex I countries from pursuing drastic emission reductions. But a key question is whether Annex I countries will be willing to finance NAMAs without generating credits to offset their own emissions. Based on the experience with the Kyoto Protocol's Clean

21 Copenhagen Accord, UNFCCC COP Decision 2/CP.15, UN Doc FCCC/CP/2009/11/Add.1, para.8; Cancun Agreements, UNFCCC COP Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1, para.95.

22 The Report of the Transitional Committee for the design of the Green Climate Fund will be available at http://unfccc.int/documentation/documents/advanced_search/items/3594.php?rec=j&preref=600006569

Development Mechanism (CDM), it is questionable whether market-based mechanisms alone can generate sufficient funds to meet the needs of LDCs and SIDS.

Various alternative sources of finance have also been proposed. These include, amongst others, an aviation or marine transport levy and a new global financial transaction tax.

4. Implications of using market mechanisms to fund NAMAs

A possible way to finance NAMAs is through the creation of new market-based mechanisms that would allow Parties to participate in emissions trading based on their specific actions or commitments. A country could decide to open a part of its economy to international trading or crediting.

Through implementing NAMAs, a developing country could generate tradable credits for emission reductions or removals relative to a selected target. Credits would be issued to a participating developing country and verified at the international level. Credits generated by a NAMA could then be sold onto the international carbon market. An important issue is whether these credits can be used by Annex I Parties to meet their emissions targets.

Current proposals distinguish between crediting and trading in different economic sectors:

- With **sectoral crediting**, a developing country agrees with other countries to a “no-lose” sectoral target that is substantially below business-as-usual (BAU) emissions. The developing country then takes action to meet the target. If emissions are reduced below the target, the developing country receives credits. However, there are no penalties for failing to achieve the target. Credits are issued and revenue received only after verification of emission reductions. This presents a problem for developing country governments, who must spend money upfront on sectoral schemes and run the risk of not recouping their costs.
- **Sectoral trading** tries to solve this problem. After setting a sectoral target below BAU emissions, the developing country receives tradable credits upfront. It could sell some of these to pay for the actions it wants to take. It could also devolve the sectoral target through a domestic cap-and-trade system. If the developing country reduces its emissions below the target, it would receive additional credits. If however it does not achieve the sectoral target, it must buy credits to cover the shortfall.

Credits could also be issued by NAMA and not by sector, but this would have to account for the very diverse NAMAs currently proposed.

Sectoral mechanisms face potential challenges to their environmental integrity. Establishing aggregate sectoral baselines and targets involves future projections that will be uncertain to some degree. Evaluating policy-based NAMAs could be very complicated.

Double counting must also be resolved. For example, emission reductions cannot count towards the targets of both the purchaser of credits and the seller, and a project

receiving credits from a project-based mechanism like the Clean Development Mechanism (CDM) cannot generate further credits at the sectoral level.

A new market-based mechanism that is voluntary – as opposed to mandatory – does not guarantee that mitigation objectives will be met. Under voluntary schemes, those failing to meet their targets are not penalised but have no credits to sell. Under mandatory schemes, those failing to meet their targets must purchase credits to make up the difference.

Proposals for new market-based mechanisms to fund NAMAs aim to generate far more credits and funds than existing mechanisms. Supporters hope that they will reach sectors the CDM has not yet reached, and be more environmentally robust than the project-by-project approach of the CDM.

Sectoral crediting and sectoral trading also present special challenges for LDCs. Few developing countries currently have the technical capacity to establish reliable sectoral emission inventories. The LDCs would require significant capacity building in order to implement sectoral mechanisms. At the same time, various sectors in many countries may be too small to warrant a sectoral approach. Where there are only a handful of installations, a sectoral approach offers little advantage over project-based approaches like the CDM.

For LDCs, the burdens of a sectoral mechanism may sometimes outweigh its benefits. The Cancun Agreements underline the developed country Parties' responsibility to provide enhanced financial, technological and capacity building support for the preparation and implementation of NAMAs.²³ Participation of Parties in new market-based mechanisms, however, will be voluntary, and while the mechanism should complement other means of support for NAMAs there is also little clarity about the actual sources of funding (US\$ 30 billion for the period 2010–2012, and US\$ 100 billion per year by 2020 for adaptation and mitigation).²⁴ With regard to adaptation funding, the Agreements explicitly indicate that the most vulnerable developing countries, such as the LDCs, SIDS and Africa will have priority, but there is no corresponding guarantee in connection with mitigation activities.²⁵

Thus at this point in time, if and to what extent developed country Parties will eventually make resources available for different types of NAMAs remains an open question.

5. The NAMA registry

The Cancun Agreements set up a NAMA registry, which will help match NAMAs to international support and provide updated information on developing country mitigation efforts and needs.

The registry will record NAMAs seeking international support and facilitate matching of finance, technology, and capacity-building support for them.²⁶ Information on

23 Cancun Agreements, Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1, para.52

24 Cancun Agreements, para.80.

25 Ibid. para.95.

26 Ibid. para.53.

NAMAs seeking international support, support available from developed countries, and support provided for NAMAs will be regularly updated.²⁷ The Cancun Agreement also envisages that unilateral NAMAs undertaken by developing countries on their own can be voluntarily submitted to a specific section in the registry, giving them international recognition.²⁸

In the Cancun Agreements the Parties agree to develop modalities for the facilitation of support through the registry, including any functional relationship with the financial mechanism.²⁹ This is included in a new work programme.³⁰ Many Parties support focusing on the NAMA registry as a priority. Its design is just beginning and there are still many unresolved issues.

A key issue is how matching of NAMAs to support will occur. What decision-making power over matching – if any – will the registry have? Several Party submissions imply that the registry should not have any such power. Given the great diversity of NAMAs and potential sources of support, it could also be practically difficult for the registry to automatically recommend matches. The registry's relationship with the financial mechanism also remains undecided.

How the registry will operate is another important issue. This includes the details and format of submissions from developing countries and sources of support, who can contribute to the registry, and who will establish and maintain it. Some Parties have proposed that the Secretariat prepare a technical paper setting out possible options.

So far there is no internationally defined method for demonstrating why a NAMA needs support and how much. It is likely that NAMAs seeking international support will have to detail the costs and benefits of implementation, and why financial, technological or capacity-building support is required.

Many countries including LDCs will need financial and technological support to identify and prepare NAMAs for submission to the registry. In the Cancun Agreements, developed countries agreed to provide enhanced financial, technological and capacity-building support for the preparation and implementation of NAMAs and enhanced reporting by developing countries.³¹ This support will be necessary to ensure that the registry effectively supports mitigation.

6. NAMA-related issues likely to arise in the negotiations

To date, most developing country Parties have strictly opposed the allocation of quantified emission reduction targets to them. Under the Cancun Agreements, NAMAs are clearly distinct from the mitigation commitments of Annex I Parties, and developing country Parties have repeatedly stressed their voluntary nature.

27 Ibid. para.56.

28 Ibid. para.58.

29 Ibid. para.57.

30 Ibid. para.66.

31 Ibid. para.52.

But if and to what extent some of the larger economies may be willing to take on binding obligations for specific actions (conditional on the adoption of ambitious legally binding targets by Annex I Parties) remains a crucial issue in the negotiations. Hence the question of the legal nature of NAMAs is likely to come up – often between the lines – in different contexts.

Formally the AWG-LCA negotiations on NAMAs in the run up to and in Durban have broadly focus on the following areas determined by the Cancun Agreements: the registry, MRV of supported actions and international support, biennial update reports, domestic verification of unsupported mitigation actions, and international consultations and analysis.

The registry is likely to have two main functions: to record and update information on the implementation of NAMAs and support the matching of NAMA proposals with existing available support.³² The Parties will need to continue discussions on the information that should be recorded and how it is updated. Countries, for example, disagree whether this should include estimated emission reductions targets.³³

In Bonn, some Parties stated that the NAMA pledges contained in the document FCCC/AWGLCA/2011/INF.1 could be recorded in a separate section of the registry and remain indicative until they are matched with support after which they would be recorded in the main section of the registry.³⁴ The Parties also need to have further discussions on the scope of support, including sources of funding, the precise role of the registry in assessing the need for support in the NAMA preparation process, and decision-making processes on matching (via the financial and technology mechanisms). While some countries envisage the registry to play an active role, others see it more as a reporting tool (e.g. China).

There will also be further negotiations on the MRV guidelines for internationally supported NAMAs. While verification is essential for assessing the effectiveness of pledged and implemented NAMAs, developing country Parties have also stressed the need to measure, report and verify the support actually made available by Annex I countries.

According to the Cancun Agreements, NAMAs implemented with domestic support will be verified at the national level and reported in national communications and the biennial update reports. General internationally agreed guidelines for domestic verification would help generate a comprehensive and reliable picture of actual emissions reductions and allow countries' data to be compared.

In addition, Parties have highlighted the need to adopt guidelines for non-Annex I biennial reporting at Durban. In this connection many developing countries, particularly LDCs and SIDS, may require capacity building, financial and technical

³² See above section 5 of this paper.

³³ Summaries by the co-facilitators of issues raised by the Parties in Bonn (June 2011) on the registry, biennial update reports, international consultations and analysis (ICA) etc. are available at http://unfccc.int/meetings/ad_hoc_working_groups/lca/items/6050.php.

³⁴ IISD, Earth Negotiation Bulletin, Summary of the Bonn Climate Change Conference (20 June 2011) available at <http://www.iisd.ca/download/pdf/enb12513e.pdf>.

support. This could be reflected in the guidelines through a tiered approach, or flexibility related to content and the level of detail required so that as many countries as possible may prepare and submit biennial reports (consistent with their capabilities and special circumstances). The Umbrella Group has suggested exempting LDCs and SIDS from the first round of biennial reporting.

According to the Cancun Agreements, a process of international consultation and analysis (ICA) will be conducted on the reports with the goal of increasing transparency of mitigation actions and promoting comparability. This will not include review or compliance assessment, and is distinct from International Assessment and Review (IAR) for Annex I Parties. But its precise scope, sequencing and outputs will require further clarification.

Several Parties hold that the ICA process should include not only a technical assessment by experts but also a consultative, public component open to all Parties (e.g. New Zealand). Others question are whether the consultations should be open to all Parties; if the ICA can be conducted even if a country has not submitted its biennial update report (BUR); or what relevance the summary report emerging from the ICA may have.

7. The way ahead

The first commitment period of the Kyoto Protocol ends on 31 December 2012. For a subsequent commitment period to begin on 1 January 2013, amendments to the Protocol must enter into force on or before that date. To enter into force three-fourths of the Parties would need to complete their domestic ratification processes and deposit their acceptance of amendments by 3 October 2012.³⁵

Thus it is increasingly unlikely that a second commitment period will be agreed in time (i.e. in Durban or possibly at an additional meeting). In the short term, a gap between commitment periods would not necessarily affect the application of the Kyoto Protocol. The Parties could decide on subsequent commitments at a later point, and apply their emission reduction targets on a voluntary or provisional basis.

However, as a result of the failure to agree on a new commitment period, the negotiations are likely to focus even more on the emerging pledge and review system. Several Annex I countries suggest that based on harmonised rules a clearer picture of possible emission reductions gradually emerges. As part of the biennial reporting process Parties may jointly review their commitments and eventually increase their ambitions as part of a legally binding deal by 2015.

The pledge and review system as outlined in the Cancun Agreements recognises the special needs of LDCs and SIDS. They should be given additional flexibility in the reporting of mitigation actions, their effects, and support received.³⁶ However, their primary concern - to prevent dangerous anthropogenic interference with the climate system and the resulting negative social, economic and environmental impacts - may be seriously undermined by the new timetable.

³⁵ Kyoto Protocol, Art.20 para.5

³⁶ Ibid. para.60.

8. Further Reading

Martina Jung, Katja Eisbrenner, Donovan Escalante, Rolf de Vos, Niklas Höhne, 'Cancún results pave the way for Nationally Appropriate Mitigation Actions', ECOFYS policy update (April 2011) available at <http://www.ecofys.com/com/publications/brochures_newsletters/documents/Ecofys_Policy_Update_II_04_2011.pdf>.

Lavanya Rajamani, 'The Cancun Climate Agreements: Reading the Text, Subtext and Tea Leaves', *The International and Comparative Law Quarterly*, Vol. 60, April 2011 pp. 499–519

Charlotte Streck, Leticia Guimaraes, 'Nationally Appropriate Mitigation Actions in Developing Countries: Emerging opportunities for private sector engagement', *Climate Focus* (September 2011) to be available at <http://www.climatefocus.com/documents/nationally_appropriate_mitigation_actions_in_developing_countries>.

Wolfgang Sterk, 'New Mechanisms for the Carbon Market? Sectoral Crediting, Sectoral Trading, and Crediting Nationally Appropriate Mitigation Actions', Wuppertal Institute Policy Paper (June 2010) available at <http://www.jiko-bmu.de/english/background_information/publications/doc/961.php>.

Hanna Wang-Helmreich, Wolfgang Sterk, Timon Wehnert and Christof Arens, 'Current Developments in Pilot Nationally Appropriate Mitigation Actions of Developing Countries (NAMAs)', Wuppertal Institute Policy Paper (August 2011) available at <<http://www.jiko-bmu.de/basisinformationen/publikationen/doc/1042.php>>.