

Submission by the Gambia on behalf of the Least Developed Countries (LDC) group on Ad hoc Working Group on the Durban Platform for Enhanced Action

Introduction

The Least Developed Countries (LDCs) group welcomes the establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) and the invitation to submit their views from Parties on the work plan of the ADP, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building.

The setting up of the ADP represents an overdue acknowledgement by all Parties that the Convention and the Kyoto Protocol alone are insufficient to drive action consistent with the ultimate objective of the Convention and that urgent action is needed by all Parties to prevent dangerous interference with the climate system, and in particular to stay below 2°C and keep open the possibility of limiting warming to 1.5°C above preindustrial in the long-term as called for by the most vulnerable countries. The LDC group looks forward to working with all Parties to strengthen the multilateral, legally binding and rules-based regime we currently have under the UNFCCC and the Kyoto Protocol through the adoption of a new legally binding agreement.¹ At the same time the LDC group wishes to underline that negotiations under the ADP must not detract from:

- Completion of the work needed to adopt amendments to the second commitment period of the Kyoto Protocol at Doha in 2012
- The urgent priority of rapidly raising pre-2020 mitigation actions to close the emissions gap and to get the emissions started on a pathway that can safely meet both the 2°C and a 1.5°C goal by 2020
- Scaling-up mobilization and provision of financial resources to fulfil the USD 100bn by 2020 commitment made by developed countries back in Copenhagen.

The ADP's work must be focused centrally on two key issues:

- Addressing the fact that current mitigation pledges for 2020 put us on a pathway to warming of around 3.5°C and will exacerbate the adverse impacts of climate change for LDCs which are already beginning to cause

¹ The term "legally binding agreement" is used in this submission as a short hand phrase to refer to "a protocol, another legal instrument or an agreed outcome with legal force" as set out in the Decision 1/CP.17.

irreversible damage to our fragile environments, our people and our economies.

- Shaping the post 2020 climate change regime that is to be built on enhanced mitigation and adaptation, and on adequate means of implementation, including scaling up of climate finance both pre-and post-2020

Our submission on the ADP work plan on mitigation ambition in February this year provides details of how LDCs believe all Parties can now work together to deal with the significant gap (6 to 11 GtCO₂e) between the aggregated effect of Parties' mitigation pledges in terms of global annual emissions of GHG by 2020 and aggregate emissions pathways consistent with having a likely chance of holding warming below 2°C and in the longer term limiting warming below 1.5°C above pre-industrial levels. Limiting warming below 1.5°C is critical to the long-term survival and sustainable development of the most vulnerable countries, including the LDCs

Apart from the decision to prioritize the work on mitigation ambition, the later than expected finish of the Durban conference meant that Parties had insufficient opportunities to consider how to deal with the wide range of issues set out in Decision 1/CP.17. The LDC group makes this submission to advance discussions of the work plan for ADP and its governance structure at the May meetings in Bonn. We also identify possible elements for inclusion in a new legally binding agreement, which the LDC group believes should take the form of a new Protocol under the Convention. This is put forward to advance discussion of which elements might form possible "work streams" for the ADP for 2012-2015.

ADP work plan for 2012 – 2015: sequencing, scope and milestones

The decision on ADP stipulates that it should complete its work as early as possible and not later than 2015 for adoption of a legally binding agreement. Decision 1/CP.17 gives Parties a unique opportunity in the history of the climate regime to plan holistically on a much longer time frame than the annual COP cycle normally allows.² This longer than usual deadline however, may lull Parties to postpone decisions from one year to the next leaving insufficient time at the end of the four year period to agree a legally binding agreement. This must be avoided at all costs.

² The two most significant AWGs established under the Convention (the Ad Hoc Group on the Berlin Mandate (AGBM) and the Ad Hoc Working Group on Long-term Cooperative Action (AWGLCA)) have been set approximately two years time frame for completion of their work rather than the four set out by Decision 1/CP.17.

The workplan should also be explicitly designed to accommodate the six-month rule for circulation of legal texts. This means a single negotiating text must be submitted by the officers elected to serve on the ADP by May 2015 at the very latest if the final legal agreement is to be adopted by COP 21 in 2015. The LDCs suggest a more risk averse strategy should be agreed by submitting a negotiation text for the full year, rather than six months, ahead of COP-21. This would ensure sufficient time for Parties to engage in domestic stakeholder processes as well as to ensure high level input early enough in 2015 to enable negotiations at COP 21 itself to reach agreement.

The comprehensive nature, and complexity of finalizing a legally binding agreement applicable to all Parties, means that more negotiating sessions might be needed than was the case for the AGBM and the AWG-LCA. The number and duration of future session needs to be agreed now to ensure adequate consideration of all issues. The LDCs suggest a 4-year programme of work be elaborated so that there are distinct work streams for specific issues and these are allocated clear slots of time across the four years. A broad framework might be something as follows:

- Mid-2012: organisation and definition of a four-year workplan
- Latter half of 2012: initiation of content work on highest priority work streams
- 2013 to mid-2014: deepening of content work on all work streams focused on clarifying commonly agreed options.
 - At the end of 2013 the ADP should plan to receive the output of IPCC AR5 Working Group I on the science of climate change.
 - During 2014 the ADP should plan to receive the outputs of IPCC AR5 Working Groups II (Impacts vulnerability and adaptation) and III (economics of climate change including mitigation), as well as the AR 5 Synthesis Report, which would be available for COP 20
- Last half of 2014: prepare formal negotiating text to be communicated to all parties at COP 20. The negotiating text, among others, should include the relevant initial input from 2013 to 2015 1.5°C review on emission paths consistent with 1.5 and 2° C warming goals
- Early 2015: receive input from 1.5°C review on agreed global goal and emission paths consistent with limiting warming in the long term below 1.5°C increase above preindustrial level

- 2015: full negotiating mode ensuring that agreed levels of emission action and obligations are consistent with emission paths required climate warming below 1.5°C in the long-term. Adoption of the agreement at COP21.

The ADP will take decisions that will affect the immediate prospects for the survival and sustainable development of many LDCs and the livelihoods of vulnerable communities and ecosystems. Yet LDCs and many other smaller delegations have very limited negotiating capacities to participate effectively in global decision making. Delegates are already stretched with the existing workload of negotiations as well as domestic implementation. Their situation must be addressed with sufficient additional resources and careful attention to planning and scheduling of negotiating sessions and related workshops, both formal and informal, to ensure the full participation of LDC negotiators. Sound planning by the ADP will be fundamental to ensuring the full and fair participation of all for the most vulnerable countries. For example, the work plan could specify that an issue could be subject to a sequence of steps such as the following: (i) initial submissions from Parties to decide issues relating to scope and linkages (ii) identification of analytical work and knowledge gaps (iii) identification of points of convergence/divergence (iv) elaboration of textual options by officers elected to serve on the ADP (v) identification of which issues require further technical work and under which bodies, agenda items and where high level political input may be needed.

This explicit sequencing and allocation of time to particular issues would avoid the problems of all issues having to be addressed in all meetings, a lesson we have learned from the LCA experience, and help ensure the ADP Officers are able to produce texts and materials that are party driven but also moves the ADP process forward, including helping to identify what Parties must do at each point of the process. More focused sessions and knowing that all issues will be addressed in a specific sequence will enable all Parties, especially those with limited capacities, to elaborate their submissions and views in a timely manner. It would also allow the officers of the ADP (see election of officers below) to specialize on a topic based on their expertise. At the May session, the LDC group calls for Parties to consider giving officers of the ADP explicit authority upfront to present a consolidated text at certain key “milestones” e.g. before each COP as part of the report of the ADP to the COP. For example, a compilation text/synthesis document of Parties submissions, views expressed and inputs could be agreed for presentation to COP-18; an options text by COP 19 and a final negotiating text on which final negotiations will be based must be submitted at COP 20 itself to allow Parties to have sufficient international and domestic consultations. Other input requested and agreed from officers could include

summaries and analysis of information learnt from various workshops to be held under the auspices of the ADP.

A useful output for the May meeting of the ADP might be an overview schedule for the four years with issues identified and sequenced, and milestones set for the negotiations process. Doing so will mean that all Parties are reassured that no important issue is being left “behind” or given uneven treatment and all Parties are reassured that negotiations will make even and balanced progress across the four years towards the adoption of a new legally binding agreement rather than everything being left to the latest possible meetings in 2015.

Prioritization

Parties have been invited to submit views on the work plan of the ADP, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action and support and capacity-building. As set out above, these are large issues and the May meeting might usefully break them down into more discrete topics and work streams.

In terms of mitigation, the negotiations and text of the ADP make clear that early priority be given by the ADP to the process for raising the level of mitigation ambition pre-2020. The Durban package of outcomes anticipates that *all* Parties will accelerate the process of implementation, including higher levels of mitigation action now, up to and beyond 2015, and should not wait for finalization and entry into force of the new legal instrument. Unless emissions are reduced from a present upwards trajectory there was a risk that emissions in 2020 will be too high to be scientifically consistent with limiting warming to either of the global warming goals under discussion. Hence, if emission goals to be agreed under the ADP for 2020 and beyond are to be realistically achievable and consistent with 1.5°C, it is absolutely vital that there is increased mitigation action prior to 2020. Raising mitigation action prior to 2020 needs to be seen as the *sine qua non* of a successful outcome to the ADP negotiations, and hence must be a prioritized “track” within the ADP and the workplan should reflect this prioritization in terms of timing and resources. Under this track, Parties will need to express their commitments in the form of a carbon budget using the common accounting rules based on the Measurement, Reporting and Verification (MRV) provisions of the Kyoto Protocol³ (i.e. converting commitments into units similar to Assigned Amount Units). The strength of mitigation ambition and action is closely tied to the quality and strength of MRV and this linkage should be the basis for a discussion on transparency rules in the ADP. So far in the LCA, we have seen weaker rules on MRV than in the KP.

³ The MRV provisions of the Kyoto Protocol include Articles 5, 7, 8 and 18 and their related decisions.

The discussions of what to include in the new legally binding agreement will also need to take into account that new institutions launched as a result of COP-16 and COP-17 relating to finance, technology and adaptation that are starting their work. These include the Green Climate Fund, the Standing Committee, the Adaptation Committee and the Technology Executive Committee and Climate Technology Center and Networks. Also work undertaken under the SBI and SBSTA should be fed into the ADP continuously. Furthermore, the LDCs believe that the work programme on Loss and Damages⁴ should result in an international Loss and Damages mechanism that should also be a key architectural element of the new regime.

An early discussion is needed on which issues/topics and which existing and new institutions need to be further elaborated or anchored in the new legally binding agreement and which do not. For LDCs, mitigation, and finance elements must be at the heart of the new agreement. In particular, commitments by developed countries to deliver finance in the medium and long-term and transparency of action and of support must be locked into the new legal agreement to ensure accountability, transparency, predictability of funding and to ensure the effective operation of the new institutions and avoid them becoming “empty shells.” In this context the ADB needs to build upon outcomes from the LCA on the work programme on Long-Term Finance.

The use of the terminology transparency – however should not be taken to mean a weaker MRV system than currently exists under the Kyoto Protocol, which ensures transparent, consistent, comparable, complete and accurate accounting. Furthermore, strong MRV is essential to ensure Parties meet their commitments and is therefore part of a compliance system in the new agreement. The Transparency component (MRV) should build on the Convention and enhance the provisions under the Kyoto Protocol and should include common accounting rules and a compliance mechanism.

⁴ Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity.

Election of officers: terms of office and co-chairing possibilities

Rule 27, paragraph 5 of the rules of procedure of the Convention stipulate that in the absence of a COP decision to the contrary, a new subsidiary body should have a Chair, a Vice-Chair and a Rapporteur with each serving not more than two consecutive terms of one year, unless otherwise decided by the COP.⁵ Prior to the election of such officers, the LDC group calls for Parties to discuss whether more “fit for purpose” rules for the bureau of new ADP might be needed so that the ADP can rise to the challenge of delivering a work plan that is highly complex, comprises a wide variety of topics/issues that must be dealt with in an integrated manner over a four-year period. In the view of the LDCs, these considerations speak for continuity of officers longer than the two years currently envisaged. Parties need to discuss what lessons can be learnt from the experience of previous ad hoc subsidiary bodies established under the Convention as well as the emergent operations of new bodies established by Cancun and Durban.⁶ Collectively, these experiences suggest shorter terms of one year (extendable to a maximum of two) may be suited to the completion of discrete tasks that can be undertaken within 1-2 year time horizon but may not be suited for delivering complex, integrated packages of the kind implied by the ADP’s work. Longer terms of office such as for 2 years extendable for another two may be more appropriate.

The LDC group also invites Parties to consider options for how a more even balance of responsibilities among the ADP officers can be assured for the 4 year span of the ADP’s work than envisaged by Rule 27 which sets up a small three person bureau. Options include consideration of co-chairing arrangements that are now emerging in other bodies of the Convention for the ADP.⁷

Extending the size of the bureau of the ADP

Many of the issues/topics that will be part of the ADP’s work are also part of the work plans of the SBI and SBSTA and/or may over time require input from these bodies before the ADP can finalize negotiations on particular issues. The LDC group calls for Parties to consider whether an expanded bureau for the ADP might be appropriate given the wide range of topics/work streams. A larger

⁵ FCCC/CP/1996/2

⁶ Members of the new Adaptation Committee and the Technology Executive Committee (TEC) can serve a total of four years (2 terms of 2 years); Members of the Standing Committee on Finance are elected for a minimum of a two year term extendable for a further an unspecified number of additional terms; Members of the Board of the **Green Climate** Fund (GCF) are elected for a three year terms extendable for an unspecified number of additional terms.

⁷ For example, the Board of the GCF is subject to a co-chairing arrangement. Paragraphs 9 – 24 of the rules of procedure of the TEC aim to secure continuity and a shared set of responsibilities between the Chair and the Vice-Chair over a four year period which might be well suited to the ADP.

bureau would ensure a wider pool of expertise is able to guide the ADP process than the three-person bureau envisaged for new subsidiary bodies. The experience of AGBM could be a useful model/alternative to the models of AWG-LCA and AWG-KP. The formula used in AGBM was Chair, Vice-Chair, Chairs of SBSTA and SBI and six other advisers plus the President of the COP making a total of 11 persons to which the existing COP bureau formulation was applied (2 per region plus a SIDS). The bureau of the ADP should be devised on similar lines but needs to have added to it a least developed country representative. A formal coordination process between the ADP bureau and the SBI/SBSTA chairs should be established. The officers who are Chairs of the AWG-LCA and AWG-KP could also be included in this formulation until these bodies are terminated at the end of 2012.

Rules of procedures

It is good practice for new bodies to consider whether they need more specific rules of procedure to guide the conduct of their work. In addition to the current rules of procedure for the COP which apply, *mutatis mutandis*, the LDC group calls for Parties to agree to rules of procedures upfront for adoption of the protocol by a three-quarters majority as part of the design of the process of ADP work plan. Additional rules could include clarity around the roles and responsibilities of officers as well as submissions of texts at certain pre-defined milestones.

Discussion of additional rules, and changes to the composition and terms of office of the ADP, may require a decision by COP 18. However, this can be done in ways that do not compromise the first meeting of the ADP from being an effective session as it need not preclude a Chair or acting Chair from being agreed in Bonn itself.

Timeline

Negotiations in fulfilment of the ADP mandate should begin without delay and be conducted as a matter of urgency. The LDC group wants the May session to consider what can be decided by each COP between now and 2015 and help helps accelerate action (on mitigation, adaptation and related means of support). For example, COP-18 could focus on raising ambition by all Parties, especially developed country Parties, as well as encouraging countries that have not yet put forward nationally appropriate mitigation actions (NAMAs) to put these forward so that mitigation efforts under the Convention have the widest possible coverage of global emissions as quickly as possible.

Elements of the final outcome

This section of the LDC submission sets out a framework of key elements that would need to be included in the final outcome of ADP.

Legal form: protocol

The ADP text was agreed on the basis that the end outcome would be a legally binding agreement applicable to all Parties. The LDC group believes the legal form of the final outcome of the ADP should be a new Protocol to the UNFCCC. Furthermore, the legal form of a new Protocol under the UNFCCC should build and enhance the commitments set out in the Kyoto Protocol particularly for Annex I Parties.

Principles

The new Protocol should apply to all Parties as set out in the ADP text and should take into account all of the principles of the Convention, in particular the principle of Common but Differentiated Responsibilities and Respective Capabilities.

The ADP needs to explore how to achieve universal participation and the broadest possible coverage of the new agreement but in ways that take various national circumstances into account. The aim must be to find solutions so that all countries can be encouraged to take on the highest possible levels of mitigation ambition and action commensurate with some degree of differentiation for emerging economies, middle-income countries, the most vulnerable and least developed countries based on agreed criteria. Consideration could be given to informal processes under the ADP in its early stage to bring experts together from all the different regions and countries to explore different options for finding solutions to this question, which is at the heart of finding an equitable and fair outcome.

Mitigation

As set out above, raising ambition now and up to 2015 and 2020, as well as beyond that period, for all Parties is a major pillar of the ADP's work. The submission made by the LDC group on raising the level of mitigation ambition elaborates what needs to be done. The new agreement will need to elaborate mitigation related mechanisms and incentives needed to support implementation by developing countries.

Adaptation

Additional commitments and actions relating to adaptation, including means of implementation and a new international mechanism for loss and damage, should be included in the new Protocol. These will need to be decided and elaborated based on the work and inputs of other technical bodies under the Convention, such as the completion of the work of the AWG-LCA, the work that will be done by the technical bodies under the Convention (Adaptation Committee, Standing Committee, Technology Executive Committee), and adaptation-related issues under SBI and SBSTA. Of particular importance for LDCs is the National Adaptation Plans process. Significant progress in the elaboration and delivery of these plans can inform the ADP, e.g. regarding post-2020 finance needs. Full implementation of NAPs should be a key objective for the new Protocol. Furthermore, the work programme on loss and damage should elaborate beyond COP18 options to address loss and damage, including an international mechanism, to feed into the ADP. Rationalising and improving the financial mechanism from an adaptation point of view should also be considered, ensuring full consideration of LDC's particular needs and vulnerabilities.

Finance and Technology

These issues have been subject to extensive institutional and rule development as a result of decisions adopted at Cancun and Durban. Some of these need to be anchored and/or further elaborated in the new Protocol to ensure they can function effectively to support the implementation of new commitments of all Parties. The commitment to longer-term financing and establishing a firm legal basis of this within a legally binding framework should be a major issue for the ADP.

Transparency of Actions and Support

Decisions adopted by Cancun and Durban have made progress on transparency and reporting for both mitigation and for related support under the Convention. The new Protocol will need to further elaborate these provisions with the aim of ensuring there are robust systems for reporting, review and common accounting rules to ensure the COP is able to track the implementation progress made by Parties, individually and collectively, towards achieving the ultimate objective of the Convention. The body of rules and experiences under the Kyoto Protocol should be taken as a model or benchmark and the MRV provisions under the ADP should build upon these. Early warning systems may be needed under the Convention to alert the COP to lack of progress and a framework of rules and mechanisms needs to be in place to incentivize compliance.

Capacity Building

All developing countries require more capacity building support. The new Protocol should include provisions to this end based on experiences and recommendations from existing and new bodies.

Institutions and mechanisms

The new Protocol will need a coherent institutional framework. The COP may need to provide specific instructions, adjustments, elaborations to the mandates and working modalities of existing and new institutions and mechanisms to ensure they can work smoothly to support the implementation of the new Protocol. The institutions of the Kyoto Protocol will also need to be addressed in a coherent manner to capture very important synergies between protocols, instruments and mechanisms. Such synergies include in relation to funding of adaptation activities (e.g. such as the Kyoto Protocol Adaptation Fund) based on market mechanisms, relationship between different kinds of market mechanisms that may be established or agreed, and between MRV systems which may have a common scientific and/or accounting basis.

Linkages with the Kyoto Protocol and other treaties

The ADP was agreed on the basis that amendments in respect of the second commitment period of the Kyoto Protocol would be agreed and adopted at Doha. The new Protocol would need to clarify the relationship and/or linkages between the Doha amendments and the new legal instrument.

Additionally, many mitigation, adaptation and financing issues are covered by treaties and bodies outside the UNFCCC. It would be important to examine the role of the Convention in supporting the work of others bodies as well as potentially requesting or inviting them to contribute to mutually beneficial tasks. An initial mapping report of such bodies and efforts might help scope the work of the ADP.

Ratification and Entry into Force

The “trigger” for entry into force needs to be designed taking into account lessons from the Kyoto Protocol and other international treaties including the fact that some domestic ratification processes may create uncertainty and delays. Early consideration should be given provisional entry into force and prompt start provisions to ensure the new framework can take legal effect as quickly as possible. Procedures to allow countries to declare they will apply the provisions

of the new Protocol pending ratification and/or entry into force could also be included to enhance universal application.

Treatment of non- Parties

Thought may need to be given to mechanisms and rules to enhance universal participation and to discourage free-riding based on other multilateral agreements, consistent with international trade rules and agreements.

Final clauses

These include standard clauses relating to signature, withdrawal, depositary and authentic texts etc. and can be elaborated at an appropriate time, perhaps as part of a legal contact group.