

## **SUBMISSION BY MEXICO TO THE AD-HOC WORKING GROUP ON THE DURBAN PLATFORM FOR ENHANCED ACTION (ADP)**

### **2015 Agreement: Indicative elements for a Legally Binding Instrument (LBI)**

Mexico is pleased to submit its views on the elements and structure of the “protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties” (referred to as the “2015 Agreement”), under workstream 1 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP/WS1).

#### **1. Objective and dynamic nature of the 2015 Agreement.**

The 2015 Agreement should be informed by science and designed to deliver the objective of the Convention: stabilising atmospheric concentrations of greenhouse gases (GHGs) to avoid dangerous climate change.

It also should provide adequate flexibility for national circumstances, be rules-based, include *ex ante* clarity and comparability on the commitments adopted, and incorporate a mechanism that allows for the evolution of its provisions and adapts to changing conditions, both in terms of scientific findings as well as in levels of development of countries, as a way to gradually increase the collective and individual level of ambition oriented to reach the above mentioned objective of the Convention.

Mexico proposes to entrust a group of legal experts to draw a list of instruments that have an evolutionary gene which works without being subject to the rigorous process of amendments that require parliamentary approval, such as in the areas of trade law, certain environmental agreements, and illicit drugs. One alternative could be annexes that can be updated on a regular basis.

#### **2. Overarching elements of the 2015 Agreement.**

The 2015 Agreement should:

- Be under the Convention and guided by its principles.
- Aim for the participation of all Parties in accordance to their specific national circumstances.
- Ensure enhanced implementation of existing commitments: enhanced action on mitigation and adaptation and enhanced delivery of means of implementation.
- Include mechanisms/incentives to ensure meeting the required level of aggregate effort so as to hold the increase in global average temperature below 2 °C above preindustrial levels as per the Cancun Agreements.

- Not be construed as a disruption of the current climate regime, but rather build upon, improve and effectively implement the existing framework and institutions, and guarantee a smooth transition and link between the pre-2020 and post-2020 action and ambition.
- Establish commitments for all Parties in mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support that are commensurate in scale and timing to the challenge that climate change poses to the international community.
- Aim at granting a balanced treatment of all elements.
- Enhance transparency.
- The 2015 Agreement should incorporate a compliance mechanism to allow for the periodic review of progress in the fulfilment of commitments, which should be of a facilitative nature and with the objective of assessing the incremental performance and effectiveness of measures with respect to scientific information and facilitate the up-scaling of efforts.

### **3. Mitigation.**

Mitigation is a central component of the 2015 Agreement, and as such all Parties must take appropriate commitments of same international legal form and under same rules (e.g., same time periods, under same MRV provisions) at different depths according to the principles of common but differentiated responsibilities and respective capabilities (CBDR/RC) and equity, and commensurate to the scientific recommendations for reducing global GHG emissions.

- These commitments should be communicated by Parties upon signature of the 2015 Agreement and will be part of the 2015 package in the form of an Annex per Party.
- Developed Parties must take the lead with quantified economy-wide emission reduction targets.
- Other Parties in the position to do so must follow the lead with quantified economy wide emission reduction targets.
- Other Parties must adopt commitments that, according to their specific national circumstances, could take the form of:
  - Absolute limits on emissions.
  - Intensity-targets.
  - Deviation from business as usual (BAU).
  - Ensuring urban, rural and infrastructure planning processes and decisions that

are consistent with low carbon emissions development plans and strategies.

- Sectorial mitigation plans and strategies.
- Least Developed Countries (LDCs) should take appropriate actions to engage in low-emissions development planning processes.
- A dynamic framework must be developed in order to allow for the review and enhancement of commitments based on evolution of development level, capability level, scientific findings, and/or a Party's decision to do so including as a result of processes that incentivises ambitious participation.

#### **4. Adaptation.**

Adaptation must be a central component of the 2015 Agreement and it should be addressed with the same level of priority as and, whenever possible, in synergy with mitigation. Adaptation will require significant changes to practices, processes and structures all over the world, thus we should seize the unique opportunity to translate the Convention's provisions on adaptation into specific actions in the 2015 Agreement. Moreover, Mexico strongly believes that adaptation actions should be part of the intended nationally determined contributions for the 2015 Agreement, in addition to mitigation, but not in lieu of emissions reductions.

Particularly, the 2015 Agreement should incorporate the following aspects related to adaptation:

- All Parties must develop and implement adaptation plans and strategies and ensure that adaptation is mainstreamed as part of the development planning processes occurring at national level and in coordination with local governments, as appropriate, in order to build resilience and minimize and cope with the adverse effects of climate change.
- All Parties should cooperate in adaptation efforts to develop capacities, share knowledge and best practices and experience.
- Support, financial and technical, as well as knowledge exchange is provided to developing country Parties vulnerable to the adverse effects of climate change, especially the most vulnerable ones, in order to, *inter alia*:
  - Develop and strengthen local and social capabilities to address adaptation concerns.
  - Ensure availability of methods and tools to evaluate impacts of, and vulnerability and adaptation to climate change.

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- Pursue the establishment and well-functioning of adaptation knowledge platforms and networks at all levels.
- Strive for a results-oriented approach facilitated by the monitoring and evaluation of adaptation outcomes.
- Aim at incorporating an approach of sustainable management of ecosystems in adaptation planning.
- Socialise risk through insurance-type mechanisms.
- Establish focused response mechanisms to extreme events.
- The Adaptation Mechanism of the 2015 Agreement needs to build upon and effectively articulate existing arrangements for adaptation under the UNFCCC, including for the effective implementation of the Cancun Adaptation framework, the continuation and downscaling the Nairobi Work Programme on Impacts, Vulnerability and Adaptation to Climate Change at national, regional and local levels, as well as the continuance of the Adaptation Fund and its effective integration to the financing sphere of the Agreement.

Moreover, adaptation can only be successfully accomplished by involving those mostly impacted by climate change, therefore it is essential to engage stakeholders in adaptation planning and implementation, including communities and ensure a gender perspective. While this is a cross-cutting issue applicable to the rest of the elements of the 2015 Agreement, Mexico strongly advocates the involvement of local and non-State actors and a gender perspective in adaptation.

### **5. Finance.**

- There is an indelible link between the ability of developing Parties to embark on mitigation and adaptation action and the need for mobilizing and scaling up climate finance, including from new and additional sources. This is to say that all Parties should commit to take action on mitigation and adaptation according to their own resources first, and identify potential areas of improvement with incremental financial resources.
- Therefore, financial commitments should be part of the intended nationally determined contributions of developed countries and countries in a position to do so.
- Financial resources need to be mobilized from both private and public sources. To achieve this, the agreement should include commitments to mobilize public funds and means to facilitate and encourage private investment. In particular, the 2015 Agreement must provide definitions, respective roles, and give guidance on

the mechanisms to achieve a useful balance of public and private sources. Provided that public funding has shown to be limited to address the global climate challenge, it is fundamental to ensure that public funds effectively catalyze private sector co-financing and co-investment through mechanisms that ensure reasonable returns and full transparency.

- Institutional framework: the financial mechanism of the 2015 Agreement should be built based on improved existing institutions and funds, such as the Green Climate Fund, the Standing Committee on Finance, the Adaptation Fund, the LDC Fund, the Special Climate Change Fund, and the Long Term Finance Program, including the effective mechanism already in place reported as part of the Long Term Finance Program. The operation of such funds must be transparent, competitive, and rules-based, with operating criteria underpinning these rules that are compatible with the requirements of private investors in order to efficiently stimulate co-investment.
- In addition, this mechanism should leverage the potential non-climate specific financing mechanisms and institutions, given the need to mobilize grants, loans and other support mechanisms such as guarantees, insurance and others.
- Furthermore, development finance traditionally allocates a percentage of funds invested in specific projects to technical assistance. It must be recognized and acted upon that climate change adaptation and mitigation projects may require significantly more technical assistance as a proportion of the invested amount, since they often seek to open new markets and promote new patterns of investment, development, and consumption, which presents a greater challenge with regards to information and learning.

## **6. Technology development and transfer.**

The 2015 Agreement must:

- Strengthen the Technology Mechanism and enhance its effectiveness by enabling it to:
  - Support in-depth country-level strategic identification and prioritization of technology families required, as a function of natural resource, human capital, industrial capabilities, development plans, export potential, and availability of funds, for both adaptation and mitigation.
  - Provide technical expertise to support Parties' development of policies instruments, and capabilities that enable technology innovation, transfer and uptake across the whole process of technological development, (including technology "push" and market "pull" mechanisms).

- Focus international public and private funds onto a portfolio of projects which represent the most compelling options for the creation of dynamic future markets.
  - Create enabling environments and foster to the exchange of technologies.
  - Explicitly emphasize the economic and social development benefits – such as local skilled jobs – achievable through a successful technology policy.
  - Create communication and feedback channels so that lessons learned in the technology development and transfer sphere can directly inform economic, regulatory, and tax policy, as well as the international climate finance mechanism.
- Foster enabling environments in both developed and developing countries, by, *inter alia*, adopting appropriate policies that incentivize the development and deployment of clean technologies, being these under commercial or cooperative frameworks.
  - This is an area that could be construed into incentives or drivers for Parties to raise their level of ambition in their mitigation action.

### **7. Capacity-building.**

- Departing from the domestic process to prepare the intended nationally determined contributions, Parties could construct country ownership and identify priorities.
- The 2015 Agreement ought to advance the existing provisions under the UNFCCC regarding capacity building by learning from the last 20 years, and proving the climate regime with tools to make capacity building more effective. These include traditional cooperation modalities as well as south-south and triangular cooperation schemes.
- In particular, capacity building should go beyond the support of capabilities within government and implementing agencies, and should extend ever more deeply into the support of pioneer projects, programs and actions which promote new modes of operation in specific markets that are lower in emissions and/or better adapted to the effects of climate change.
- International cooperation is essential to foster capacity building. In this sense triangular cooperation shall include the support of developed Parties to other Parties in a position to provide valuable expertise to other developing Parties requiring such cooperation, considering socio-economic links that would secure an effective capacity building process.

### **8. Transparency of action and support.**

The 2015 Agreement should incorporate this as a thematic area, although it should be applicable to every other element.

- Transparency is an obligation, but there is need to tailor the measurement, reporting and verification procedures to diverse commitments.
- Building upon existing provisions for MRV, an improved set of accounting rules must be used by different sectors and under defined criteria.
- MRV is essential to assess progress towards the overall objective of the Convention. However, there should be common and differentiated aspects for LDCs and SIDS.

### **9. Other cross-cutting aspects.**

The 2015 Agreement should regularize participation of non-State actors and adopt a gender perspective. Both items should have stand-alone clauses in the Agreement, and be applicable to all of its provisions.

### **10. Legal nature of the 2015 Agreement.**

Mexico advocates a Legally Binding Instrument (LBI) as the only legal form that will provide the necessary certainty to all Parties to take ambitious action and ensure the transition towards a low carbon society, as agreed in Durban, and that could have several meanings:

- Legal force in the sense of producing legal effects as opposed to a strictly legally binding instrument as provided for in the Vienna Convention on the Law of Treaties (VCLT).
- We should address the issue more from an interpretative perspective. According to international law, treaties such as UNFCCC are to be interpreted in conformity with the ordinary meaning of their terms and within the context in which they operate. The context is made of both subsequent agreement and subsequent practice.
- In this regard, we can find out that the vast amount of COP decisions are truly part of the interpretation, which has already been modified by several Parties with respect to the original agreement. Therefore, instead of discussing in abstract

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what kind of instrument we want, we should start identifying and compiling what has actually happened through the various COPs. This is a task that a group of legal experts could do under the guidance of the co-chairs of the ADP.

The LBI should be thematic (i.e., clauses for each of the elements: mitigation, adaptation, finance, technology, capacity development, transparency) and complemented by the Parties' commitments in the form of nationally determined contributions. The LBI should be ratified by Parties but not every other Parties' commitments.