

## **SUBMISSION TO CO-CHAIRS OF THE ADP: ON ADVANCING THE WORK - EQUITY AND AMBITION**

### **1. Introduction**

This submission is made in accordance with the invitation in the “Joint message from the Co-chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)” on June 25 and is directed particularly toward its following terms:

“During its first session held in Bonn from 17-25 May 2012, the ADP agreed on its Bureau, adopted its agenda and initiated two workstreams, one addressing matters related to paragraphs 2-6 of decision 1/CP.17 and another addressing matters related to paragraphs 7-8 of that same decision...

We would also like to provide an opportunity for IGOs and NGOs to contribute to our thinking on how the ADP can advance its work, in light of the ADP’s agenda, under both workstreams in Bangkok and for the remainder of 2012.”

The submission provides a brief overview of the broader context of the ADP’s work as well as its specific context within the UNFCCC. In order to guide the work of the ADP in general, Parties are reminded of several existing and important principles and are urged to act in accordance with them as the basis of the ADP’s work in each initial workstream. The submission then addresses proposals relating to each existing initial workstream, without prejudicing the possible establishment of further new workstreams, and includes a recommended calendar or timeline for the work of each workstream.

This submission is made as the work of the ADP is to be launched at an historic moment: the world is suffering unprecedented climate impacts and conservative estimates tell us we are on track for dangerous climate disruption by as early as 2050. Yet Governments, particularly of industrialised countries who are most responsible for climate change, continue to backtrack on existing promises to reduce emissions and provide climate finance. The ADP provides an opportunity to change our emission trajectory and our cooperation-trajectory – to honour agreements and to take action. The following recommendations are made to remind Parties of what already exists, what they need to implement, and what they need to build on.

**In summary, the submission makes the following recommendations:**

#### ***1.A General Recommendations***

- **The ADP must not allow developed countries to ‘jump-ship to a voluntary pledge and review regime under the Durban Platform to escape their legally binding commitments**
- For a meaningful outcome from the ADP workstreams, Parties must adhere to the international law principle of *pacta sunt servanda* and

fully respect and comply with the UNFCCC and its Kyoto Protocol (KP) and all COP/CMP decisions including the Bali Action Plan.

- The ADP workstreams must first address the principles which underpin the negotiations for the outcome of the ADP. This should explicitly be based on the principles of the Convention in order to set clear guidance for its work, especially Article 3.1 in relation to 'equity' and 'common but differentiated responsibility and respective capabilities' (CBDR).
- The outcomes of the work of the ADP workstreams should not lead to a re-writing, weakening or undermining of the UNFCCC but must lead to its full, effective and sustained implementation.
- The ADP's workstreams should not duplicate nor prejudice negotiations and work already being undertaken in the AWG-KP, AWG-LCA, SBI, or SBSTA.
- The ADP workstreams should not detract time, energy or resources from the successful conclusion of the AWG-KP and AWG-LCA according to their respective mandates.
- Substantive work by the ADP on the issue areas that are still being considered by the AWG-LCA and the AWG-KP should not be undertaken until the successful conclusion of work of those bodies.
- All negotiation sessions, including those in informal settings, should be open to all Parties and observers; they should be participatory, inclusive and transparent.

### ***1.B Workstream I***

- **Workstream I should begin by developing shared understanding on the overall post 2020 outcomes and how to agree on an equity process as part of the ADP.**
- Universal application of the ADP/Workstream I outcome should not be interpreted to mean uniform application, and Parties must prepare for the differentiation of commitments taking into account historical responsibility, capability and the fact that countries are at various stages of development.
- The differentiation of obligations under the outcome of the ADP/Workstream I should be determined with respect to equity, on the basis of historical responsibility and the principle of CBDR and be informed by the outcomes of the "Equitable Access to Sustainable Development" workshop held under the AWG-LCA in Bonn in May 2012.
- Building on existing institutions and outcomes of the AWG-LCA, the outcome of the ADP/Workstream I must give balanced treatment to the

negotiation issues identified in decision 1/CP 17 namely: mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building.

- Workstream I should take an integrated approach to mitigation, adaptation, finance, technology and capacity building, in order to ensure adaptation needs are met and mitigation actions in developing countries are supported in the context of ensuring equitable access to sustainable development.
- The determination of the legal form of the outcome should be phased into the negotiations after there is greater clarity on the content of the agreement. Parties should negotiate the substance before negotiating under which of the three legal options in decision 1/CP17 their commitments should be adopted.

### **1. C Workstream II**

- **In particular, the work under Workstream II as regards the pre-2020 mitigation period should not provide justification for developed countries to commit the ‘great escape’ from their current obligations under the Kyoto Protocol and the Bali Action Plan (paragraph 1b(i)), in which Annex I non-KP parties are to do comparable emission reductions as those under the KP.**
- “Mitigation ambition” for the purposes of Workstream II must be measured against the latest scientific information regarding what constitutes a safe level of interference with the climate system; this level is most likely **well below 2C**.
- Workstream II should “enhance mitigation ambition” based on the principles of the Convention, particularly on the basis of equity and in accordance with the principle of common but differentiated responsibilities and respective capabilities.
- Workstream II’s consideration of mitigation ambition should be guided by and not pre-judge the outcomes of CMP 8/ COP 18, especially the outcomes of the AWG-KP and the AWG-LCA. The work under Workstream II must be properly sequenced, so that the current negotiations under the AWG-KP and AWG-LCA as regards the pre-2020 mitigation are not prejudiced or undermined.
- “Enhanced mitigation ambition” agreed under Workstream II should be reflected in the form of binding ghg reduction commitments for developed country parties, as provided for in the Convention, the Kyoto Protocol and the Bali Action Plan, and should recognize that the voluntary actions of developing countries require finance, technology transfer and capacity building.

## 2. Broader Context: On Track to Risk 6C of Warming

### 2.A Scientific Context

The work of the ADP cannot be divorced from the general context in which the world is already experiencing significant warming, caused by the historical patterns of GHG-emission production and consumption. Vulnerable communities are suffering climate change-induced impacts today.

The work of the ADP is to occur as the current “pledges” of emission reductions risk up to 6C of warming by the end of the century,<sup>1</sup> and as committed finance to match the scale of the crisis confronting the planet’s poorest people (and those least responsible for climate change) remains insufficient by at least an order of magnitude.<sup>2</sup> The work of the ADP must ultimately address these intertwined challenges on the basis of equity, common but differentiated responsibilities and respective capabilities and the right to sustainable development.

### 2.B Political Context

Unfortunately, the ADP will meet within a political context of ‘broken promises’, where pre-existing legal commitments and obligations, particularly by developed countries, or those Parties listed in Annex I and Annex II of the Convention and Annex B of the Kyoto Protocol, have been ignored or publicly renounced.<sup>3</sup> This was recognised at the United Nations Conference on Sustainable Development (“Rio+20”) which “urge[d] parties to the United Nations Framework Convention on Climate Change and parties to the Kyoto Protocol to fully implement their commitments, as well as decisions adopted under those agreements.”<sup>4</sup>

**RECOMMENDATION:** *For a meaningful outcome from the ADP workstreams, Parties must adhere to the principle under international law of pacta sunt servanda and fully respect and comply with the UNFCCC and its Kyoto Protocol and all COP/CMP decisions, including the Bali Action Plan.*

Article 26 of the Vienna Convention on the Law of Treaties provides for this principle as follows: “Pacta sunt servanda” - Every treaty in force is binding upon the Parties to it and must be performed by them in good faith.

**RECOMMENDATION:** *The outcomes of the work of the ADP workstreams should not lead to a re-writing, weakening or undermining of the UNFCCC but must lead to its full, effective and sustained implementation.*

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<sup>1</sup> See comment by Faith Birol, Chief Economist of the International Energy Agency, on the release, *Global carbon-dioxide emissions increase by 1.0 Gt in 2011 to record high*, <http://www.iea.org/newsroomandevents/news/2012/may/name,27216,en.html>.

<sup>2</sup> See for example estimates made by the UN Department of Economic and Social Affairs, in *The World Economic and Social Survey 2011: The Great Green Technological Transformation*, <http://www.un.org/en/development/desa/news/policy/wess-2011.html>.

<sup>3</sup> For example: Canada’s withdrawal from the Kyoto Protocol; lack of progress on Art 4 (3).

<sup>4</sup> Decision adopted at the Rio+20 Summit ‘The Future We Want’ - on 22<sup>nd</sup> June 2012 (Document reference A/CONF.216/L.1), para 192.

### 3. Context of the Decision 1/CP.17 – The Whole “Durban Package”

The decision establishing the ADP was part of a broader political package, including agreement on a meaningful second commitment period of the Kyoto Protocol,<sup>5</sup> and the extension of the AWG-LCA in order to “continue its work and reach the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan ‘BAP’)”<sup>6</sup>.

The work of the AWG-LCA is particularly important in ensuring the comparability of efforts among developed country parties prior to 2020, which is an essential element of maintaining science-based rigour and equitable principles in the international system of climate controls. The BAP decision was also made under the Convention; in planning the ADP’s work, Parties must be mindful of existing mandates and work of other Convention bodies and institutions.

**RECOMMENDATION:** *The ADP’s workstreams do not co-opt nor prejudice negotiations and work already being undertaken in the SBI, SBSTA, AWG-LCA, or AWG-KP.*

**RECOMMENDATION:** *The ADP workstreams do not detract time, energy nor resources from the successful conclusion of the AWG-KP and AWG-LCA according to their respective mandates.*

An example of an issue that is already within the clear mandate of existing bodies, but to which the 1/CP.17 refers, is “enhancing mitigation ambition”<sup>7</sup>; yet for Parties which are KP Parties, this is the subject of negotiations currently under the AWG-KP. For these parties the context for enhancing mitigation ambition at least up to 2020 is provided by the Kyoto Protocol’s second commitment period.<sup>8</sup> For those Parties to the Convention who are not party to the Kyoto Protocol, or are ignoring their legal commitment to inscribe their targets for a second-commitment period under the KP, there is an agreement to ensure the “comparability of efforts” under paragraph 1(b)(i) of the Bali Action Plan.

Furthermore, issues such as adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building are covered by the AWG-LCA, and 1/CP.17 gives a clear mandate to conclude that work.<sup>9</sup>

The conclusion of the work under the AWG-LCA and the AWG-KP are therefore essential preconditions for further work on these issues by the ADP. The removal of these issues from their existing setting risks “throwing the baby out with the bathwater” and disaggregating these discussions from their

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<sup>5</sup> Decision 1/CMP.7, para 6.

<sup>6</sup> Decision 1/CP.17, para 1.

<sup>7</sup> 1/CP.17, para 7

<sup>8</sup> Kyoto Protocol, Art 3 (9).

<sup>9</sup> From the Bali Action Plan mandate, 1/CP.13

agreed underlining principles and commitments, that Parties agreed to under the Convention, the Kyoto Protocol and in the Bali Action Plan.

Therefore, the ADP's work in this area must be focused on filling in the gaps that may not be sufficiently settled in the outcomes of these working groups or other subsidiary bodies and for further enhancing agreements made under the work of the AWG-KP and the AWG-LCA post-2012 and beyond.

**RECOMMENDATION:** *Substantive work by the AWG-DP on the issue areas that are still being considered by the AWG-LCA and the AWG-KP should not be undertaken until the successful conclusion of work of those bodies.*

**In particular, the work under Workstream II as regards the pre-2020 mitigation period should not provide justification for developed countries to commit the 'great escape' from their current obligations under the Kyoto Protocol and the Bali Action Plan (paragraph 1b(i)) for non-KP Annex I parties to take comparable emission reductions as those under the KP.**

**The ADP must not allow developed countries to 'jump-ship to a voluntary pledge and review regime under the Durban Platform to escape their legally binding commitments under the Convention and the KP.**

#### **4. Implementing Decision 1/CP.17 – Getting the Principles Right**

As agreed by the AWG-DP in Bonn, there will initially be two (2) workstreams to carry out Agenda Item 3 on "Implementation of all the elements of decision 1/CP.17", i.e.:

1. A workstream to consider matters related to paragraphs 2 to 6 of decision 1/CP.17; and (Workstream I)
2. A workstream to consider matters related to paragraphs 7 and 8 of decision 1/CP.17 (Workstream II)

##### **4.A Workstream I**

The basic objective of this workstream is to "launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties"<sup>10</sup>. "The process shall raise the level of ambition."<sup>11</sup>

This is a significant undertaking and requires substantial and well-considered planning, to ensure a framework that addresses the interests of all parties and reflects the agreed terms and principles of the Convention. In order to achieve this, several recommendations relating to the content of the workstream's negotiations are provided below.

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<sup>10</sup> Decision 1/CP.17, para. 2.

<sup>11</sup> Decision 1/CP.17, para. 6.

The Convention has served as the bedrock of climate negotiations for 20 years and is the agreed context within which Parties approach negotiations. Workstream I must not be used as an opportunity to “re-write” the Convention, but to acknowledge gaps (including in fulfilling its terms) and to reaffirm its principles and obligations.

In addition, the KP was negotiated to strengthen the implementation of Annex 1 Parties as regards mitigation; many decisions, rules and much experience have been gained through this. Hence, the post-2020 regime must build on the rules and lessons learnt to strengthen the mitigation regime, including through the closing of loopholes, including that of all offset mechanisms.

**RECOMMENDATION:** *The outcome of Workstream I/ADP should have as its objective the enhancement of the full, effective and sustained implementation of the Convention.*

As is outlined in the terms of 1/CP.17, the outcome of the ADP is to be “under the Convention,” which provides a clear link to the substantial and important provisions of the Convention, particularly the principle of “equity” and “common but differentiated responsibilities and respective capabilities”<sup>12</sup> and the recognition of the historical responsibility of developed countries in their contribution to climate change as the basis for these countries taking the lead in efforts to tackle climate change.<sup>13</sup> The Rio+20 outcome also recalled these provisions.<sup>14</sup> A recognition of these principles at the outset would help address concerns that the rules of the game are being changed and set a clear direction for the talks.

**RECOMMENDATION:** *The ADP workstreams must first address the principles which underpin the negotiations for the outcome of the ADP. This should explicitly be based on the principles of the Convention in order to set clear guidance for its work, especially that under Article 3.1 in relation to ‘equity’ and ‘common but differentiated responsibility and respective capabilities’ (CBDRC).*

The outcome of Workstream I is to be “applicable to all Parties”, and thus must be structured to ensure such application is equitable. The universality of application does not suggest a uniformity of application, and Parties should determine how to differentiate obligations and commitments based on countries’ historical responsibility for climate change and their capacity to take on efforts. This differentiation is a key component of “equity” considerations, and Parties have already begun to consider the various elements of this through the “Equitable Access to Sustainable Development” workshop which was held in Bonn in May.

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<sup>12</sup> Art 3 (1).

<sup>13</sup> Art 3(1); affirmation in Cancun Agreements, Decision 1/CP.16, Part A.

<sup>14</sup> Decision adopted at the Rio+20 Summit - ‘The Future We Want’ - on 22<sup>nd</sup> June 2012 (Document reference A/CONF.216/L.1), para 191.

**RECOMMENDATION:** *Universal application of the outcome should not be interpreted to mean uniform application. Parties must prepare for the differentiation of commitments.*

**RECOMMENDATION:** *The differentiation of obligations under the outcome of the ADP/Workstream I should be determined with respect to equity, on the basis of historical responsibility and capacity, and draw on the “Equitable Access to Sustainable Development” workshop and further work to operationalize and apply equity in the broader negotiations.*

A comprehensive response to the climate crisis cannot address mitigation alone; climate impacts are happening now and the international community must create an effective framework to support the adaptation and resilience of vulnerable communities. Adaptation has been the “poor cousin” of mitigation in terms of finance committed and international focus, but it is one of the most essential elements of a global agreement that works in the interests of the world’s poorest and most vulnerable people.

**RECOMMENDATION:** *Building on existing institutions and outcomes of the AWG-LCA, the outcome of the ADP/Workstream I must focus on the adaptation needs of developing countries.*

Mitigation, adaptation, finance, technology and capacity building are not discrete elements but are interconnected and must be integrated. The provision of the means of implementation to developing countries is linked to the efforts and actions these countries choose to undertake.<sup>15</sup> Currently (in the pre-2020 period), developing countries are proposing to undertake greater total mitigation abatement than developed countries,<sup>16</sup> but these efforts must be supported, and developed countries must meet their obligations to support them. In the post-2020 period it is important that the commitment to the provision of the means of implementation matches the scale of the need and the actions countries are prepared to take.

**RECOMMENDATION:** *Workstream I should take an integrated approach to mitigation, adaptation, finance, technology and capacity building, in order to ensure adaptation needs are met and mitigation actions in developing countries are supported.*

One of the contributing factors to the failure of the Copenhagen conference in 2009 was the widespread idea that its objective was to create a “new treaty” or a “replacement of the Kyoto Protocol”. Pre-determining the form of outcomes creates unnecessary pressure within negotiations and prejudices the types of legal agreements necessary to achieve the objectives of the Convention.

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<sup>15</sup> As per, Art 4(7).

<sup>16</sup> Stockholm Environment Institute, *Comparison of Annex 1 and non-Annex 1 pledges under the Cancun*, June 2011, [www.sei-international.org/.../sei-workingpaperus-1107.pdf](http://www.sei-international.org/.../sei-workingpaperus-1107.pdf)

**RECOMMENDATION:** *The determination of the legal form of the outcome should be phased into the negotiations after there is greater clarity on the content of the agreement.*

The processes used to reach agreements at UNFCCC conferences, particularly since 2009, have drawn criticism from many observers and Parties. If the ADP adopts modalities that undermine accountability, transparency and participation, it is unlikely it will be able to produce a result that reflects the needs and interests of the world's people. Such processes undermine trust and confidence in the system and thus setback progress. The process should be Party-driven and in accordance with the practice of consensus decision-making that ensures all voices are heard. This may also require significant commitments to resource negotiations and negotiators to provide the time necessary to resolve outstanding issues.

**RECOMMENDATION:** *All negotiation sessions, including in informal settings, should be open to all Parties and observers; they should be participatory, inclusive and transparent.*

#### **4.B Workstream II**

The basic objective of this workstream is “to launch a workplan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties”<sup>17</sup>.

“Enhancing mitigation ambition” is a term of art from the climate negotiations that is understood to refer to increasing emission reduction targets prior to 2020, so as to bring them into line with scientific requirements. The aim is for the global emissions pathway to meet the ultimate objective of the convention, “the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

While some documents suggest that 2C of warming by 2050 above pre-industrial temperatures reflects this level, many experts and Parties suggest that the limit is actually much lower (1 or 1.5C) in order to ensure a safe operating space for humanity and the Earth's natural systems.<sup>18</sup> The difference between pathways to prevent this dangerous level and current pledges is referred to as the “mitigation gap” or “ambition gap.”

**RECOMMENDATION:** *“Mitigation ambition” for the purposes of Workstream II must be measured against the latest scientific information regarding what constitutes a safe level of interference with the climate system; this level is most likely well below 2C.*

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<sup>17</sup> Decision 1/CP.17, para. 7.

<sup>18</sup> See, e.g. discussion in, James Hansen, et al, *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?*, 7 April 2008, [www.columbia.edu/~jeh1/2008/TargetCO2\\_20080407.pdf](http://www.columbia.edu/~jeh1/2008/TargetCO2_20080407.pdf)

As is noted above, this is an issue being dealt with under other subsidiary bodies of the Convention such as the AWG-KP, AWG-LCA, SBI and SBSTA. The mandates of those bodies should be respected and their outcomes, which ought to be determined successfully at CMP 8/COP 18 in Doha, utilized. Many of the recommendations (in section 1.A of this submission) above are particularly relevant to Workstream II.

**RECOMMENDATION:** *Workstream II's consideration of mitigation ambition should be guided by and not pre-judge the outcomes of CMP 8/ COP 18, especially in relation to the outcomes of the AWG-KP and the AWG-LCA. The work under Workstream II must be properly sequenced, so that the current negotiations under the AWG-KP and AWG-LCA, as regards pre-2020 mitigation, are not prejudiced nor undermined.*

Mitigation obligations carry significant equity implications, particularly relating to historical responsibility and capacity. The Workstream must recognize, in designing its work, that “enhancing mitigation ambition” is a legal obligation of the developed countries, which bear the greatest historical responsibility for emissions, to take the lead.

**RECOMMENDATION:** *Workstream II should “enhance mitigation ambition” based on the principles of the Convention, particularly on the basis of equity and in accordance with the principle of common but differentiated responsibilities and capacity.*

Given the legal framework that governs mitigation in the pre-2020 period, namely the Convention, the Kyoto Protocol and the terms of the Bali Action Plan, it is clear that developed countries have an obligation to undertake binding emission reduction commitments. It is also clear that any “enhanced” mitigation action from developing countries requires similarly enhanced provisions of means of implementation (technology, finance and capacity building), as their voluntary actions are contingent on that support.

**RECOMMENDATION:** *“Enhanced mitigation ambition” agreed under Workstream II should reflect the binding emission reduction commitments for developed countries, as provided for in the Convention, the Kyoto Protocol and the Bali Action Plan, and recognize that the voluntary actions of developing countries require finance, technology transfer and capacity building.*

## **5. Timeline for the AWG-DP Workstreams**

The timelines for the workstreams of the ADP should provide for sufficient negotiating time to cover all of the important issues, and should be designed to complement the work of the AWG-LCA and the AWG-KP and the integration of issues that may be carried over from these subsidiary bodies into the work of the AWG-DP, as may be decided by the COP/CMP.

A possible timeline is recommended below:

<b>Timeframe</b>	<b>Workstream I</b>	<b>Workstream II</b>
August – December 2012	<ul style="list-style-type: none"> <li>• Guiding principles</li> <li>• Scope of work</li> <li>• Shared vision</li> </ul>	<ul style="list-style-type: none"> <li>• Guiding principles</li> <li>• Sequencing work plan</li> </ul>
January - June 2013	<ul style="list-style-type: none"> <li>• Guiding principles</li> <li>• Scope of work</li> <li>• Shared vision</li> </ul>	<ul style="list-style-type: none"> <li>• Integration and plan of work based on outcomes of CMP 8 / COP 18</li> </ul>
June – December 2013	<ul style="list-style-type: none"> <li>• Determination of workplan based on agreed principles, the scope of work and shared vision</li> </ul>	<ul style="list-style-type: none"> <li>• Integration and plan of work relating to “the review” and IPCC AR5</li> </ul>

**Submitted by the following organisations:**

1. Third World Network
2. Earth In Brackets
3. International Forum on Globalisation
4. Friends of the Earth, US
5. Instituto del Tercer mundo (ITeM)
6. Nord-Sux XXI
7. International-Lawyers.org