

Submission by the Stockholm Environment Institute and the University of Oxford to the Subsidiary Body for Implementation on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the provisions of Decision 1/CP.21

The Stockholm Environment Institute and the Blavatnik School of Government at the University of Oxford are grateful for the opportunity to submit these views on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the provisions of Decision 1/CP.21, ahead of the in-session workshop to be held at SBI 46. We believe that non-Party stakeholders have a crucial and multifaceted role to play in ensuring the success of the Paris Agreement, and would like to highlight an aspect of that role that is often under-appreciated: their ability to contribute to the enhanced transparency framework, collective stocktaking, and the facilitative compliance mechanism.

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Decision 1/CP.21 offers a timely recognition of the key role played by non-Party stakeholders in the implementation and scaling up of climate action. It confirms the continuation of the technical examination process for mitigation, establishes one for adaptation, welcomes the efforts of non-Party stakeholders to scale up their climate actions, encourages Parties to work closely with non-Party stakeholders, provides for an annual high-level event in the 2016–2020 period, and puts in place two high-level champions.

However, much of the discourse around non-Party stakeholders and the Paris Agreement has focused on encouraging these stakeholders' own actions – businesses committing to greening their operations, cities undertaking ambitious climate initiatives, the financial sector issuing green bonds, philanthropists supporting adaptation, etc. Such actions are indeed important, but they represent only part of the vital role of non-Party stakeholders in advancing the goals of the Paris Agreement.

Non-Party stakeholders, including but not limited to civil society, research organizations, businesses and investors, local authorities, can also play a crucial role in ensuring the effective functioning of some of the main elements of the Paris Agreement: (i) the enhanced transparency framework established by Article 13; (ii) the implementation and compliance mechanism established by Article 15; and (iii) the global stocktake established by Article 14, as well as the 2018 facilitative dialogue foreseen in paragraph 20 of Decision 1/CP.21.

Non-Party stakeholders have a strong history of informing international processes and helping to ensure accountability. In many areas of international relations, including climate change, they have helped monitor compliance with states' obligations and pledges, provided relevant information and expertise, "named and shamed" laggards, and worked to identify and overcome key barriers to implementation, such as gaps in capacity, funding or technical knowledge. Through these efforts as well as a groundswell of climate actions, cities, sub-national governments, companies and non-profits are also helping to drive up ambition. Making full use of the expertise and experience of non-Party stakeholders can strengthen the Paris Agreement's rulebook in important ways.

This submission outlines how engaging non-Party stakeholders in each of the processes noted above could help support implementation and continue to enhance ambition.

Non-Party stakeholders in the enhanced transparency framework (Article 13)

The first part of the enhanced transparency framework will consist of national reporting. Although this reporting is done by national governments, governments could be encouraged explicitly to draw on the knowledge and expertise from non-Party stakeholders, as appropriate. This step would represent a natural extension of current policies, as many countries have included such information in existing reports.

The second part of the framework is that of review. Mirroring existing review processes, the review under the enhanced transparency framework will have two elements: a technical review of national reports by a team of experts, and a multilateral consideration of the report by other Parties. Both elements can benefit from including non-Party stakeholders.

Technical reviews of national reports (including both action and support) will be carried out by teams of technical experts. Such reviews can be centralized and desk-based, or they may involve in-country visits (developing countries may opt out of these). The guidelines for existing technical reviews under the Convention do not specify that non-Party stakeholders can provide inputs (e.g. by submitting reports or relevant data) into the existing reviews. In practice, however, expert reviewers have often engaged with non-Party stakeholders during in-country visits as a way of gathering the necessary information.

The technical review under Article 13 could build on that experience. For example, Parties could specify clearly that expert review teams, when conducting in-country reviews, may invite non-Party stakeholders to participate (e.g. through a separate meeting). For desk-based reviews, expert reviewers could invite comments or other submissions from non-Party stakeholders.

While the Multilateral Assessment (MA) under International Assessment and Review (IAR) and the Facilitative Sharing of Views (FSV) under International Consultation and Analysis (ICA) do not specify clear roles for non-Party stakeholders, the enhanced transparency framework under the Paris Agreement could strengthen their role. This could be achieved, at a minimum, by making the proceedings accessible to the public (e.g. via webcasting the multilateral consideration, as was already done for the MA and FSV), making all relevant documentation available (which is by and large common practice under all existing review processes), and allowing non-Party stakeholders to submit written and/or oral questions. Such a role for non-Party stakeholders is already common practice in other regimes, including in areas such as human rights (e.g. the Universal Periodic Review under the Human Rights Council).

Finally, given that many nationally determined contributions (NDCs) specifically refer to cities, sub-national governments, the private sector, civil society, and other non-Party actors, both the technical expert reviews and multilateral considerations may find it productive to engage with these actors to understand their role in implementation.

Non-Party stakeholders in the 2018 facilitative dialogue and global stocktake

Non-Party stakeholders could also make valuable contributions to the facilitative dialogue and global stocktake in several ways. First, scientific insights could feed into the work of the Intergovernmental Panel on Climate Change (IPCC), not least the report due in 2018 on the impacts of 1.5°C of global warming and relevant emissions pathways. Such insights could also inform findings on how the NDCs measure up to the 2°C goal.

Second, as the decision adopting the Paris Agreement clearly states that the mentioned inputs for the global stocktake are not exhaustive (no inputs are specifically mentioned or excluded for the facilitative dialogue), this means that other inputs from non-Party stakeholders could be welcomed. This could include reports by credible and reliable non-Party stakeholders, including international organizations

such as the United Nations Environment Programme. The Yearbook of Climate Action, called for under the Marrakech Partnership for Global Climate Action, could represent one such input.

Further possibilities for involving non-Party stakeholders in the stocktake depend on the overall modalities, procedures and guidelines. If the stocktake involves a multilateral discussion of the level of overall progress, a crucial step would be to open those discussions to observer organizations, and to allow them to make written and/or oral interventions.

Finally, both the facilitative dialogue and the global stocktake would benefit from assessing the crescendo of climate-related efforts that cities, companies, and other non-Party stakeholders are making individually, with one another, and alongside states and international organizations. In aggregate, these actions and initiatives have a strong effect on global efforts to address climate. While more research is needed, the 2016 UNEP Emissions Gap Report notes that the total mitigation potential of current non-party activities may be in the same order of magnitude as the NDCs. Moreover, many actions and initiatives help define the upper bound of ambition while providing concrete examples of policy options that Parties might embrace and expand in their own NDCs. For these reasons, non-Party climate action provides crucial information for Parties reviewing collective efforts under the Paris Agreement.

Non-Party stakeholders and the implementation and compliance mechanism (Article 15)

Article 15 of the Paris Agreement calls for a new mechanism “to facilitate implementation of and promote compliance with” the provisions of the agreement. It is to consist of a committee that “shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive”, with “particular attention to the respective national capabilities and circumstances of Parties”.

Non-Party stakeholders could potentially play a role in this mechanism as well, although much will depend on the scope and functions of the mechanism. For example, the Kyoto compliance mechanism allowed for the submission of relevant information from competent international and non-governmental organizations. The new committee could follow this practice and guarantee non-Party stakeholders’ access to documentation and proceedings (e.g. by making all documentation related to specific cases available, and webcasting all proceedings). Beyond such measures, the compliance mechanisms could also actively solicit the aid of non-Party stakeholders in helping Parties tackle barriers to implementation including, for example, technical knowledge, capacity building, or financing.

Ways forward

In summary, non-Party stakeholders can help meet key needs as Parties develop the rules for three key review processes of the Paris Agreement: the enhanced transparency framework, the global stocktake, and the implementation and compliance mechanism. Non-Party stakeholders (i) offer independent and complementary insights and expertise into the progress made by Parties in implementing and enhancing the ambition of the Paris Agreement, (ii) help ensure that the outcomes of review processes are taken up within countries, and (iii) if necessary, can help hold Parties to account.

To use the potential of non-Party stakeholders to its fullest, the following steps can be taken:

- Providing public access to discussions and all relevant documentation as a basic rule for all review processes.
- Explicitly allowing for written submissions and oral interventions by non-Party stakeholders in the multilateral consideration under Article 13 and any multilateral discussions under the stocktake of Article 14.
- Providing space for non-Party stakeholders into the stocktake, provided that such inputs can be seen as reliable and credible.

- Further acknowledging and encouraging the role of non-Party stakeholders in supporting the review processes of the Paris Agreement.

Further thinking on the role of non-Party stakeholders in review mechanisms, including inspiration that can be drawn from other international regimes is provided in the following publications:

- Asselt, H. van (2016). The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement. *Climate Law* 6. 91-108.
- Asselt, H. van & Hale, T. (2016). *How Non-state Actors Can Contribute to More Effective Review Processes under the Paris Agreement*. SEI Policy Brief. Stockholm Environment Institute. <https://www.sei-international.org/publications?pid=2946>.
- Asselt, H. van, Sælen, H. & Pauw, P. (2015). *Assessment and Review under a 2015 International Climate Change Agreement*. Nordic Council of Ministers. <https://www.sei-international.org/publications?pid=2718>.
- Duyck, S. (2014). MRV in the 2015 Climate Agreement: Promoting Compliance through Transparency and the Participation of NGOs. *Carbon & Climate Law Review* 8. 175-187.
- Hale, T. & Harris, M. (2014). *Country-to-Country Review under the Next Climate Treaty: Lessons from Other Intergovernmental Review Processes*. BSG Policy Memo. University of Oxford. <http://www.bsg.ox.ac.uk/sites/www.bsg.ox.ac.uk/files/documents/2014-IntergovernmentalReviews-PolicyMemo.pdf>.