

## **Submission by India**

### **On the work of the Ad-hoc Working Group on the Durban Platform for Enhanced Action**

#### **Work-stream I**

1. The Government of India welcomes the opportunity to submit inputs on the work of Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) – Workstream I in response to the Doha decision 2/CP.18 on Advancing the Durban Platform, which invited information, views and proposals from Parties on matters related to the work of the ADP, including, inter alia, mitigation, adaptation, finance, technology, development and transfer, capacity-building, and transparency of action and support, addressing aspects such as those indicated in paragraph 13 (a)-(d) of the ADP conclusions.
2. These inputs are in continuation of India's earlier submissions on the work of Ad-hoc Working Group on the Durban Platform (AWG-DP) for Enhanced Action dated February 28, 2012, April 24, 2012, August 3, 2012 and Nov 5, 2012.
3. Under paragraph 13 of the conclusions in respect of planning its work,

“The ADP invited Parties and accredited observer organizations to submit to the secretariat, information, views and proposals on matters related to the work of the ADP, including, inter alia, mitigation, adaptation, finance, technology development and transfer, capacity-building, and transparency of action and support, addressing aspects such as:

  - (a) Application of the principles of the Convention;
  - (b) Building on the experiences and lessons learned from other processes under the Convention and from other multilateral processes, as appropriate;
  - (c) The scope, structure and design of the 2015 agreement;
  - (d) Ways of defining and reflecting enhanced action.”
4. India believes that the work of ADP has to be comprehensive in order to fully and truly reflect, inter alia, the decision contained in para 5 of Decision 1/CP17. From this perspective, India sees the work of the ADP as integral to the package of decisions reached at Doha in form of the Doha Climate Gateway. India is willing to actively engage in the work of the ADP on the understanding that the entire package of outcomes adopted in Doha is the basis of its work and that the package is treated as a composite one and is not violated in either spirit or letter.
5. Accordingly, India is of the view that:-
  - 5.1 The ADP should plan its work comprehensively so as to include all aspects covered in para 5 of the Decision 1/CP17. Its work should be informed by the respective subsidiary bodies and mechanisms of the Convention on the progress achieved in implementing the relevant decisions of parties. To this end, the ADP must evolve a mechanism for receiving and accounting for regular and comprehensive feedback from the respective subsidiary bodies/mechanisms. The ADP should build on the past outcomes and enhance the implementation of the

Convention on the basis of inputs received from the respective subsidiary bodies/mechanisms on their work.

#### **(a) Application of the principles of the Convention**

5.2 The decision of the Conference of Parties on Durban Platform specifies that its outcome must be ‘under the Convention.’ “Under the Convention” means consistency with, adherence to, and reflection of all the principles and provisions of the Convention, with no reinterpretation of the Convention, neither of its principles nor its Annexes. Accordingly, an arrangement ‘under the Convention’ may not in any way, explicit or implicit, reinterpret or rewrite the Convention, neither can it re-case the Annexes provided in the Convention.

5.3 The Convention is built on the foundation of the principles of equity and common but differentiated responsibilities. The phrase ‘under the Convention’ implicitly reaffirms and recognizes all the principles and provisions of the Convention, including, in particular the principles of ‘equity’ and ‘common but differentiated responsibilities’. The Conference of Parties has since made this explicit in its decision on ADP at COP-18 in Doha, by acknowledging “that the work of the ADP shall be guided by the principles of the Convention”. This explicit guidance of the COP must be fully respected in the work of the ADP going forward.

5.4 The Convention principles of equity and common but differentiated responsibilities have been reaffirmed as the bedrock of parties’ efforts to address climate change by the COP in various decisions. These principles were reiterated once again in the agreed outcome pursuant to Bali Action Plan adopted at Doha, which decides that Parties efforts towards reducing global GHG emissions to hold the increase in global average temperature below 2 degrees Celsius above pre-industrial levels and to attain a global peaking of GHG emissions as soon as possible should be undertaken on the basis of equity and common but differentiated responsibilities and respective capabilities, and the provision of finance, technology transfer and capacity-building to developing countries in order to support their mitigation and adaptation actions under the Convention, and take into account the imperatives of equitable access to sustainable development.

5.5 The principles of Equity and CBDR were also underscored by the Heads of State in Rio plus 20 in paragraph 191 of the outcome document which reads: “We recall that the UNFCCC provides that parties should protect the climate system for the benefit of present and future generations of humankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”

5.6 The Rio plus 20 document in paragraph 15 also states: “We reaffirm all the principles of the Rio Declaration on Environment and Development, including, inter alia, the principle of common but differentiated responsibilities, as set out in principle 7 of the Rio Declaration.”

5.7 A successful outcome on Durban Platform must be built on equity and duly incorporate requirements of common but differentiated responsibilities. This is necessary not only to raise the level of ambition of parties to the common goal of

climate stabilization but also to ensure that the goal of social and economic development and poverty eradication in developing countries is not compromised. The actions and commitments of Parties in the post 2020 period must be differentiated on the basis of equity in terms of historical responsibilities and the fundamental imperatives of social and economic development and poverty eradication.

5.8 The term ‘applicable to all Parties’ does not signal a dilution of differentiation, or a move away from the balance of responsibilities as established in the Convention. Both the Convention and the Kyoto Protocol that are applicable to all Parties authorize and indeed require differentiation between Parties. Universality of application does not translate into uniformity of application.

5.9 In addition, the avoidance of ‘unilateral measures’ in the name of climate change as contained in Article 3.5 of the Convention is another key principle that must be ingrained in the ADP process as well as its outcome as a necessary confidence building measure for Parties to engage constructively in the ADP negotiations. Parties need to collectively ensure that unilateral actions in the name of climate change are not allowed to damage the spirit of multilateralism.

**(b) Building on the experiences and lessons learned from other processes under the Convention and from other multilateral processes, as appropriate;**

5.10 The purpose of ADP is not to re-invent the wheel; rather it must build on the past outcomes and enhance the implementation of the Convention. As a step in this direction, the review of adequacy of commitments under Article 4.2 (d) of the Convention must be immediately taken up and integrated into the ADP work plan.

5.11 The Durban Platform was established with a common understanding that fulfilling the ultimate objective of the Convention will require strengthening the multilateral, rules-based regime under the Convention. At Doha, Parties have collectively recognised the importance of Kyoto Protocol as a multilateral rules-based model and its contribution towards emissions reduction in accordance with Equity and common but differentiated responsibilities and respective capabilities. ADP must therefore build on the model of Kyoto Protocol. One important lesson that can be drawn from the Kyoto Protocol is the importance of a science and rules-based mitigation model for enabling ambitious emission reductions in developed countries.

**(c) The scope, structure and design of the 2015 agreement;**

Scope

5.12 Decision 1/CP.17, paragraph 5 sets out clearly the scope of the work of the ADP as follows: “Also decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building, drawing upon submissions from Parties and relevant technical, social and economic information and expertise;”

5.13 It is therefore clear that the scope of ADP for developing a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties must include the following elements: mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building. Thus, enhanced action under the Durban Platform is related not just to mitigation but to other pillars of climate action decided upon in the Bali Action Plan and subsequent COP decisions.

5.14 As regards mitigation, it is India's view that distinction enshrined in the Convention between Annex I and non-Annex I Parties must be maintained in accordance with the principles of the Convention. Any other approach would involve re-interpretation of the Convention and will necessarily mandate a revisit of all categorization and classification of Parties under the Convention.

5.15 Post 2020 arrangements to be evolved under the Durban Platform must, inter alia, address the issues of equity, unilateral measures and technology related Intellectual Property Rights (IPRs) sufficiently and adequately.

5.16 In Cancun, developed and developing countries had indicated their pledges for mitigation targets and actions. For effective and ambitious mitigation, Annex I Parties must continue to take quantified emission limitation and reduction objectives, while non-Annex I Parties will take nationally appropriate mitigation actions enabled by finance and technology transfer. The work under the mitigation pillar must address adequately and with due priority the issue of response measures, inter alia, discouraging Parties from taking unilateral trade and other measures in the garb of climate protection.

5.17 Work under the adaptation pillar must draw upon work already done in the AWG-LCA. There must be predictable and adequate Annex II funding for adaptation, and the means must be put in place to ensure this. The Cancun Adaptation Framework and the Doha decision for setting up an institutional mechanism for 'loss and damage' must be carried forward and implemented.

5.18 Work under the finance pillar must build on existing promises and institutions. In particular it must ensure that the agreed full incremental costs of meeting enhanced non-Annex I reporting obligations is met through additional funding. Overall, there is a need for an increase in the quantum of financing provided by Annex II Parties. The ADP process must encourage and generate such increased levels of financing by the developed countries.

5.19 Work under the technology development and transfer pillar must extend existing institutions and commitments. In particular it must operationalize technology transfer to developing countries, ensure Annex II financing for technology development, remove obstacles to and provide financing and incentives for transfer of technology, and facilitate R & D cooperation in climate technology. This pillar must also address the issue of intellectual property rights (IPRs). Many of the technologies that can help India and other developing countries to move towards a lower emissions path are out of their reach due to IPRs and their costs. India strongly supports a facilitative IPRs regime that balances rewards for the innovators with the common good of humankind and thereby enables developing countries to take early

and effective mitigation and adaptation actions at the national level. In the absence of such a facilitative IPRs regime, the objective of advancing nationally appropriate mitigation and adaptation actions at the scale and speed warranted by the Convention will not be achievable.

5.20 Work under the transparency of action pillar must extend to the Durban Agreements, in particular by further fleshing out measurement, reporting and verification (MRV) requirements in relation to Annex I mitigation and Annex II provision of finance and technology. For such arrangements to be effective and inspire confidence, it is important to have common accounting rules for MRV of developed country mitigation targets. MRV of the flow of finance as per Convention obligations should also be an important part of the IAR.

5.21 In addition, India supports the creation of a compliance system as part of the ADP outcome. This system must build on the existing Kyoto compliance system, one of the most evolved and sophisticated compliance systems among multilateral environmental agreements. In particular this compliance system must contain a differentiated structure for Annex I and non-Annex I Parties, such that the former are subject to compliance and consequences for the breach of their obligations, and the latter are encouraged to remain in compliance through a set of incentives. A key incentive in this regard will be a prohibition on use of unilateral actions by a country against another in the name of climate change.

#### Structure and Design

5.22 The post-2020 arrangements must build on the achievements under the Bali Action Plan and the Kyoto Protocol in enhancing the implementation of the Convention. In this context, the work of the ADP should build on and be informed by the work of the subsidiary bodies and other relevant bodies of the Convention and its Kyoto Protocol, without duplicating the work or renegotiating the outcomes of these bodies.

5.23 Paragraph 2 of the Durban Platform, 2011 makes it clear that there are at least three distinct options for the legal form of the Durban outcome i.e. a protocol, another legal instrument or an agreed outcome with legal force. Because all the three forms of outcomes are *under the Convention*, they need fully to comply with the principles of the Convention.

5.24 'A protocol' and 'another legal instrument' concern legally binding instruments under the Convention. A protocol or legal instrument refers to an instrument or agreement that has to be ratified by the Parties. On the other hand, 'an agreed outcome with legal force' need not have the legal form of a protocol or a legal instrument; it could be an outcome that derives legal force from national or international law. In view of this, an agreed outcome of ADP may include aspirational CoP decisions, binding CoP decisions, setting up of institutions and bodies covering various aspects of Bali Action Plan and Cancun Agreements with differing degrees of binding-ness under the provisions of domestic and international law under the UNFCCC.

5.25 The legal shape of post 2020 arrangements cannot be pre-judged. India is open to exploring any and all options, including a combination of these options, at the appropriate juncture in the negotiations, when the substantive content of the arrangements have been agreed.

**(d) Ways of defining and reflecting enhanced action**

5.26 Enhanced action under the Convention must be based on the principles of the Convention, particularly Equity and CBDR and must follow the provisions contained in Article 4 of the Convention. It should build on the agreed outcome pursuant to Bali Action Plan, the work under the Kyoto Protocol and should be informed by the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the outcomes of the 2013-2015 Review and the work of subsidiary bodies.

5.27 As decided under the agreed outcome pursuant to Bali Action Plan adopted at Doha, Parties efforts towards reducing global GHG emissions should be undertaken on the basis of equity and common but differentiated responsibilities and respective capabilities, and the provision of finance, technology transfer and capacity-building to developing countries in order to support their mitigation and adaptation actions under the Convention, and take into account the imperatives of equitable access to sustainable development. Accordingly, developed countries must continue to take lead in the enhanced global efforts to fulfil the ultimate objective of the Convention.

5.28 The following actions should form the basis of enhanced action in the post-2020 period -

- the immediate ratification by Annex I Parties to the Kyoto Protocol of the amendment to the Kyoto Protocol relating to the 2<sup>nd</sup> commitment period and the increase of their mitigation targets under the Kyoto Protocol by 2014;
- the increase of mitigation ambition by Annex I Parties who are not under the Kyoto Protocol or who have decided not to take on targets under the Protocol's 2<sup>nd</sup> commitment period, in a manner and at levels that are comparable to those undertaken by Annex I Parties to the Kyoto Protocol with targets under the 2<sup>nd</sup> commitment period, including increasing such mitigation ambition by 2014; and
- the full operationalization of the mechanisms for the provision of support (finance, technology transfer, and capacity building) to developing countries, including particularly the actual delivery of such support to developing countries in measurable, reportable, and verifiable ways.

5.29 For developing countries, the provision of finance, technology transfer and capacity-building are key components for supporting their ability to undertake enhanced action to implement the Convention and thereby contribute towards meeting its objective under Article 2. Therefore, Article 4.7 of the Convention (on the means of implementation) should form the bedrock for the post-2020 arrangements.

5.30 Further, to encourage broader participation, there has to be an assurance on how the principles of the Convention are applied, that the social and economic and developmental imperative will be respected, multilateral rules are fully respected and

that threat or use of unilateral actions, particularly against developing countries, are permanently removed.

5.31 A big incentive for broader participation will be how comprehensively the new arrangement embraces all aspects of climate change including mitigation, adaptation, finance and technology transfer and how effectively developed countries take the lead in accordance with their commitments under the Convention.

**6. Further, India is of the view that the discussion in the ADP need not be limited to the specific issues listed above; the discussion has to be broad and comprehensive enough to reflect the full scope of the ADP work as mentioned above and in accordance with the decisions reached in Durban. India reserves the right to make additional submissions and present further views on the relevant issues connected with the work of the ADP.**

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