

## Working Document

### [Section K - Facilitating implementation and compliance]

Version of 31 August 2015 at 23:55

#### Establishment clause and related elements

##### *Main observations:*

- Many Parties reiterated the importance of including provisions on the establishment of arrangements on implementation and compliance in the draft Agreement.
- Several Parties identified other elements that in their view should accompany the establishment clause to ensure that a compliance mechanism is in place by the first session of the governing body.

#### Nature and purpose of the compliance mechanism

##### *Main observations:*

- Several Parties spoke on the role that arrangements for facilitating implementation and compliance can play in building confidence among Parties to the Agreement by enhancing transparency and accountability.
- There was a general acknowledgment that a compliance mechanism should be facilitative in nature. Some Parties were of the view that the mechanism should also have an enforcement function. These Parties expressed different views on which group of Parties falls within the scope of any enforcement functions.
- The link between facilitating implementation and compliance and enhancing transparency was also noted.

#### Differentiation and compliance

##### *Main observations:*

- Some Parties were of the view that differentiation would arise from differences in the substantive contributions and does not need to be referred to in provisions relating to a compliance mechanism. Other Parties were of the view that differentiation should be reflected in provisions of a compliance mechanism, including through its scope and structure, namely through facilitative and enforcement branches.

#### Work programme

##### *Main observations:*

- A number of Parties noted that operational details of a compliance mechanism can be elaborated after Paris but would need to be developed before the first session of the governing body. Others were of the view that arrangements should be ready as part of the Paris package in order for their national stakeholders to fully understand the legal nature of the Agreement.
- Some Parties indicated that due to the concise nature of some of the options reflected in the Geneva Negotiating Text, these could be used in their entirety as options to clauses in the draft Agreement. Some Parties recalled that the six elements contained in paragraph 5 of the Durban Mandate (decision 1/CP.17) do not include compliance.
- Other Parties suggested considering the multilateral consultative process under Article 13 of the Convention as a potential example of arrangements for facilitating implementation and compliance.

*Further observations and notes by the Co-Facilitators:*

- Noting Parties' views on the establishment clause, the Co-Facilitators indicated that informal consultations could be conducted on the elements of an establishment clause and the nature and purpose of the mechanism. The informal consultations could explore a range of topics, including discussing a list of components for the establishment clause. The outcomes of those informal consultations would be reported to the facilitated group at its next meeting.
  - In light of views expressed on differentiation, enhanced transparency and the facilitative nature of a compliance mechanism, the Co-Facilitators will endeavour to develop questions that could be used as a starting point for discussions at the next facilitated group meeting. A number of Parties made suggestions on the open-ended list of guiding questions that will be communicated to Parties ahead of the meeting.
  - Parties were invited to submit bridging proposals that would be published for consideration by other Parties and discussion.
-