

## **Youth Submission for the Ad-hoc Working Group on the Durban Platform (ADP) Workstream I**

Submission by United Kingdom Youth Climate Coalition (UKYCC) on behalf of Youth constituency (YOUNGO).

### **Executive Summary**

The Ad-hoc Working Group on the Durban Platform (ADP) is now the most crucial aspect of the international climate regime achieving a fair and ambitious treaty. It will provide the backbone for work towards an international agreement in 2015 and one of the final opportunities to establish an effective legal instrument in this 'critical decade'.

Below we present a number of proposals that would contribute to a fair and ambitious agreement in 2015. This is based upon the following key recommendations:

- a. Include the principle of "Intergenerational Equity" within the preamble of the 2015 agreement and make this the main conception of equity within ADP discussions.
- b. Establish an Intergenerational Arbiter in order to operationalize the principle of Intergenerational Equity.
- c. Promote youth participation within the ADP by encouraging parties from both the developing and developed world to adopt official youth representatives within national delegations in the lead up to COP21.
- d. Ensure that the ADP has a suitable compliance and top-down allocation systems that firmly reflect a carbon budget in line with the 1.5 degree global temperature goal.
- e. Create a negotiating schedule, which quickly addresses the issues of equity, legal form, and participation in 2013.

Together these steps will help to create an agreement in 2015 that has the widespread support of member states as well as civil society. An agreement under the ADP can only be effective and legitimate with the support of youth and civil society in both policy and implementation.

We are more than happy to further discuss the ideas expressed in this paper. All comments and questions can be sent to [luke.kemp@anu.edu.au](mailto:luke.kemp@anu.edu.au)

## 1. Principles of Equity: An Intergenerational Focus

One of the primary points of discussion within the ADP has been the issue of equity and we propose a simple but effective way forward on this topic. So far much of the discussion on equity within the ADP has focused upon equity between member party states. However, previously this focus on equity has often caused friction and worsened the divide between developing and developed countries that already has previously plagued negotiations ([Timmons Roberts, 2011](#)). An idea of equity, which produces ambition and unites party to the common goal of the convention, is needed.

We believe that the principle of intergenerational equity would provide the most suitable moral platform to base the ADP upon. The Principle of Intergenerational Equity has been repeatedly enshrined in international law. The Brundtland Report defined sustainable development as “development which meets the needs of the present without compromising the ability of future generations to meet their own needs.” This explicitly embodies the principle of Intergenerational Equity. The Rio agreement of 1992 enshrined this concept through Principle 3 and Agenda 21 through paragraph 8.7. The first principle of the UNFCCC, as stated in Article 3.1, makes clear reference to the concept of Intergenerational Equity (emphasis added):

*“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.”*

This is further emphasised in the Convention by reference to UN General Assembly Resolution 46/169 on protection of the global climate for present and future generations. This is just a snapshot of the legal basis for intergenerational equity. Despite this robust foundation the principle has not been sufficiently discussed or used within the ADP.

We call upon parties to clearly enshrine the principle of Intergenerational Equity within the upcoming 2015 agreement. We request that the preamble of the ADP 2015 outcome text state that the Parties agree to:

*“Recognising that the atmosphere is held in trust for future generations, Parties will take actions in accordance with the principle of Intergenerational Equity and ensure that the functional integrity of Earth’s climate is not compromised for the benefit of future generations. Youth are hereby recognised as the most appropriate representatives of future generations and will be given a consultative role within the ADP process.”*

Centring discussions within the ADP upon Intergenerational Equity will avoid the state-based blame game that has been the trademark of negotiations. It provides a principle that can unite Parties and global civil society, while being easily explained to the general public. Intergenerational Equity also provides a clearer definition that works in synergy with the objective of the Convention. Failure to avoid the dangerous

impacts of anthropogenic climate change will also be a violation of the principle of Intergenerational Equity yet, an institutional mechanism is needed to operationalize the principle of Intergenerational Equity.

## **2. Intergenerational Arbiter**

An *Intergenerational Arbiter* is an innovative and effective institutional mechanism that would help operationalize the principle of Intergenerational Equity. The *Intergenerational Arbiter* is based upon successful international experience with mechanisms for representing future generations such as the Hungarian Ombudsman for Future Generations and the Commission for Future Generations of the Knesset for the Israeli Parliament (Ward, 2009).

### **2.1 Functions**

The *Intergenerational Arbiter* has three primary functions:

#### **a) Advocating for youth and future generations within the UNFCCC and reviewing progress.**

The *Intergenerational Arbiter* is empowered to bring issues relating to Intergenerational Equity to the attention of the COP and Secretariat, as well as the wider public. The Arbiter would oversee a periodic review of the implementation of actions under the ADP and the projection of climate impacts in order to advise whether the convention as a whole, or individual parties, are violating the Convention, the ADP agreement or the principle of Intergenerational Equity.

#### **b) Arbitrating disputes between parties as well as between parties and non-state actors.**

The *Intergenerational Arbiter* would oversee disputes between parties to the Convention and between parties and non-states actors. This would include providing recommendations, particularly in relation to the core principles of the convention and the principle of Intergenerational Equity. Legal recommendations and statements could be passed on to both international as well as domestic judicial and legislative bodies and organisations.

#### **c) Acting as a liaison with the World Trade Organisation (WTO) and other bodies to provide input on other disputes which may occur outside of the UNFCCC.**

The *Intergenerational Arbiter* would give input, recommendations and advice to other bodies, both within and outside of the UN, who are engaged in activities related to climate change and both mitigation and adaptation actions under the 2015 ADP agreement. The Arbiter would provide both moral and legal counsel to such relevant bodies, most importantly the WTO.

### **2.2 Form**

The *Intergenerational Arbiter* would be located within the UNFCCC Secretariat. It would consist of one official who would be selected by the Secretariat and endorsed by the COP. The official, who would function as the Arbiter, would be chosen on the basis of legal and political expertise as well as previous international work and engagements with youth and the environment.

The Arbiter would liaise with the Joint Liaison Programme of the Secretariat in order to effectively contribute to disputes outside of the UNFCCC. Some authors have suggested that an ombudsman for future generations could be used as a mechanism to streamline and coordinate UN environmental governance (Kornélia, 2012). Similarly the Arbiter could be used to streamline the Joint Liaison Programme within it and to coordinate the external relations and review mechanisms of the Secretariat. This would make the Secretariat a more coherent and coordinated body in relation to the ADP agreement and lighten the load upon the COP.

The Arbiter would be placed directly below executive director within the organisational structure of the UNFCCC. It would be a lean, cost efficient body that would require few additional expenses. The Arbiter would actively consult different stakeholders, especially Youth Organisations, Youth Delegates, and Regional Youth Representatives.

The Arbiter will be elected for a period of four years by a panel composing representatives of both the UNFCCC secretariat and members of the youth constituency of the UNFCCC. This would be subject to a performance review by both the Secretariat and members of the youth constituency of the UNFCCC once every two years.

### **2.3 Powers of Arbitration**

Parties would agree to respect the decisions and recommendations offered by the *Intergenerational Arbiter*. The COP would agree to address all issues forwarded to its agenda for discussion by the *Intergenerational Arbiter*.

The legal powers of arbitration possessed by the *Intergenerational Arbiter* would not involve any form of 'hard' compliance. Instead it relies upon official recommendations to the COP and both domestic and international judicial and legislative systems and organisations for means of publicity and advocacy.

The *Intergenerational Arbiter* is a flexible mechanism that could exist in numerous different architectures.

## **3. Youth Participation**

The role of youth is crucial in creating an effective multilateral agreement. Youth participation ensures accountability, transparency, and stakeholder buy-in from youth as well as better outcomes by drawing upon the ideas, enthusiasm, creativity, and expertise of youth.

The consultative role of youth has been extensively established within international law. Principle 21 of the Rio Declaration emphasises utilising the creativity of youth in global partnerships, Article 6.a.iii on UNFCCC public participation highlights the importance of youth and Paragraph 50 of the recent Rio+20 outcome document 'The Future We Want' declares that "the contribution of children and youth is vital to the achievement of sustainable development". Furthermore, as outlined above, the international legal principle of intergenerational equity is well established throughout international law, particularly relating to sustainable development. Youth are the closest representatives of future generations; therefore its involvement in decision-making processes is crucial in operationalizing the principle of Intergenerational Equity. An institutionalised youth delegate program is crucial for an active representation of youth from all over the world.

Despite these commitments there has been limited action on institutionalising youth involvement in international decision-making processes. We strongly urge member parties to agree to adopt an official youth delegate program. Some parties such as Belgium, Norway, the Philippines and the Netherlands have already adopted successful youth delegate programs in which youth, as part of the national delegation, get the opportunity to magnify their voices, provide direct input into the UNFCCC process, and gain valuable experience. At Rio+20 a number of countries ranging from the US and Germany through to Nigeria also had official youth delegates. Youth delegate programs increase youth involvement and can be used to generate more media attention, both on a regional, national and international level. Annex I states should support Non-Annex 1 countries in funding this initiative where required and relevant.

#### **4. Architecture and Compliance**

The ADP must have both a top-down allocation system and effective compliance mechanism. The scientific consensus and the need for ambitious mitigation are clear. A system of self-made pledges is highly unlikely to produce the global emissions reductions needed to fulfil the objective of the Convention. The most sensible and fair way of allocating global mitigation efforts is a top-down allocation system using a carbon budget approach that is in accordance with the principles of the Convention. This would also greatly simplify the negotiating process on targets and ensure that the overall agreement is in accordance with science. As such we would like to endorse the Greenhouse Development Rights framework as a model for the future 2015 agreement. But any form of agreement must be underpinned by a strong compliance system in order to be effective.

The history of the Convention and previous successes and failures in international treaties suggest the need for a strong compliance system. The Montreal Protocol on Ozone depletion is generally recognised as the most successful multilateral environmental agreement. A large part of its success has been a compliance system, which allowed for restriction of trade in ozone depleting substances including against non-member parties. Similarly the WTO has become a fundamental force in shaping global trade due to the enforcement ability of its dispute settlement mechanism to allow parties to impose trade restrictions upon non-compliant parties. Conversely, the wilful breaking of commitments by countries such

as Canada has shown the ramifications of having a weak compliance system as the Kyoto Protocol did. Climate change is least as urgent and important as both trade and ozone depletion and requires a compliance system of a comparable nature. Such a compliance system will provide legitimacy and build trust between states while providing a stable framework for state and non-state actors to work within.

## 5. Negotiating Schedule

The timely progress of the ADP requires an efficient negotiating schedule. A logical progression is to address some of the most controversial and difficult issues first before moving on to other concerns. This will help avoid many late nights in 2015.

Our suggested negotiating schedule can be seen below:

<b>Task</b>	<b>Time-Frame</b>
Clearly define an amicable conception of 'equity' for member parties, which includes recognition and adoption of the principle of "Intergenerational Equity" into the ADP.	COP19 outcome document.
Parties agree to a program for the adoption of official youth delegates.	COP19 outcome document.
Agree on the need for a mechanism for dispute settlement.	COP19 outcome document
Agree on the need for youth representation and involvement including through a voluntary official youth delegate program.	COP19 outcome document

Clearly define the legal nature of the legal instrument under the ADP.	COP20 outcome document
Establish a legal framework that will institutionalize the Intergenerational Arbiter.	COP21 outcome document.
Establish an effective, top-down legal instrument under the ADP track, which will be operational within three years.	COP21 outcome document.

## 6. Conclusion

The outcome of the ad-hoc working group on the Durban Platform is crucial to addressing the issue of climate change through an effective 2015 agreement. An ambitious and equitable agreement requires a coherent and strong architecture with complementary principles and mechanisms and we believe that our proposals will greatly benefit the development and implementation of the 2015 agreement.

## 7. References

- KORNÉLIA, H. L. 2012. A Preliminary Examination of the Possibilities for the Institutional Representation of the Interest of Future Generations and Environmental Protection within the System of the United Nations. *Sustainable Development Governance 2012*. Stakeholder Forum.
- TIMMONS ROBERTS, J. 2011. Multipolarity and the new world (disorder): US hegemonic decline and the fragmentation of the global climate regime. *Global Environmental Change*, 21, 776-784.
- WARD, H. 2009. Learning from the Hungarian Parliamentary Commissioner for Future Generations. *UKELA E-Law*.

