



Ad Hoc Working Group on the Paris Agreement

2 August 2018

Sixth part of the first session
Bangkok, 4–9 September 2018

Additional tool under item 7 of the agenda

Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement

Informal document by the Co-Chairs

A. Mandate

1. The Ad Hoc Working Group on the Paris Agreement (APA), in order to facilitate deliberations at APA 1.6, requested its Co-Chairs, with the assistance of, to the extent possible, the persons who facilitated work on the relevant matters at APA 1.5, to prepare, by 1 August 2018, tools that are additional to and based on the informal notes contained in the annex to the APA 1.5 conclusions,¹ including proposals for streamlining the outcome of the APA at APA 1.6 and examples of how Parties could further progress towards the development of an agreed basis for negotiations, taking account of the level of maturity and delicate balance achieved to date for individual items. The streamlining should not imply the insertion or deletion of substantive concepts or textual narratives.²

2. The APA noted that the tools referred to in paragraph 1 above would be prepared by the Co-Chairs under their own responsibility, and emphasized that at this stage in the negotiations it would be important to ensure that all options identified by Parties remain on the table, recalling the right for any Party to make submissions to be considered under the relevant agenda items.³

B. Scope

3. The annexes contain the additional tool relating to agenda item 7, “Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement”. The tool was prepared by the APA Co-Chairs with the assistance of Ms. Janine Felson (Belize) and Mr. Peter Horne (Australia).

4. The tool includes:

(a) In annex I, examples of text elements for sections E–G and I–L of the informal note on agenda item 7 contained in the annex to the APA 1.5 conclusions (addressing initiation, process, measures, information sources, the relationship with the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, review of the modalities and procedures, and the secretariat of the committee);

(b) In annex II, an illustration of issues relevant to the possible consideration by the committee of systemic issues, and a set of questions that Parties may wish to reflect upon in the course of any discussion on section H of the tool.

¹ See document FCCC/APA/2018/L.2/Add.1.

² FCCC/APA/2018/2, paragraph 21.

³ FCCC/APA/2018/2, paragraph 22.

C. Approach

5. The tool was prepared on the following basis:

(a) The text of the informal note referred to in paragraph 4(a) above was used in its entirety. No changes were made to sections A–D or H of the informal note, with the exception of the introduction of paragraph numbers for ease of reference and, for sections A and B, the numbering of the options contained in the informal note;

(b) Examples of text elements have been put forward for sections E–G and I–L of the informal note on the following basis:

(i) Suggestions for elaborated text elements have been made in an attempt to facilitate discussions on the relevant options put forward by Parties;

(ii) The elaboration of such elements follows the drafting approach and style applied by Parties to section C on institutional arrangements during APA 1.5 (as reflected in the informal note);

(iii) The elaborated text elements aim to reflect all options put forward by Parties as contained in the informal note, noting the following:

a. The order of some of the elements has been adjusted to improve flow and help streamline the structure, while retaining all the options and concepts put forward by Parties;

b. Several of the options contained in the informal note lacked sufficient detail to enable their elaboration into text elements at this stage. In such cases, the original text was retained to indicate that the option itself remains on the table but further discussion might be required before any text elements can be elaborated;

c. Several technical elements of typical treaty implementation or compliance procedures appeared to be missing, notably in section F (process). Text proposals introduced to address such possible technical gaps have been clearly highlighted to ensure transparency and to facilitate their consideration by Parties;

d. *{Italic text in curly brackets}* is intended to assist in identifying cross references within and between sections and to help with navigation;

(c) With respect to systemic issues (section H), in addition to the text contained in the informal note and replicated in annex I, input was prepared to facilitate discussion among Parties, noting that:

(i) Further discussion by Parties will be needed before text elements can be further elaborated;

(ii) To facilitate any discussion by Parties at APA 1.6, the following has been included in annex II:

a. Framing questions that could facilitate such discussion;

b. A graph based on section H of the informal note to illustrate some of the possible elements related to systemic issues.

D. Possible action by the Ad Hoc Working Group on the Paris Agreement

6. APA 1.6 may wish to consider this tool, in addition to the relevant informal note contained in the annex to the APA 1.5 conclusions, in its deliberations.

Annex I

Additional tool under item 7 of the agenda

Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement

Elements of relevant guidance⁴

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A. Purpose, principles and nature

Box 1: Changes implemented in this section

The text of section A below is replicated directly from the informal note by the co-facilitators dated 8 May 2018.⁵ Two modifications of an editorial nature were introduced to assist Parties in navigating the section and the document as a whole:

- (a) Introducing general paragraph numbering; and*
- (b) Introducing options numbering within the text.*

Parties may wish to consider the elements contained in this section vis-à-vis any language related to the principles and nature of the mechanism that may be reflected in the operational sections C to K. In doing so, Parties may wish to reflect on, inter alia, the best placement for individual text elements, keeping in mind the desirability of comprehensive but streamlined modalities and procedures.

A.1 Purpose

1. Facilitate implementation and promote compliance (Art 15.1).⁶
 - *Encourage, assist and enable Parties to implement provisions and comply with their obligations*
 - *Prevent situations of non-implementation or non-compliance*
 - o *Preventive role is inconsistent with the facilitative and non-adversarial nature of the Committee*
 - *Thereby:*

⁴ Headings, subheadings and formatting are without prejudice to the eventual modalities and procedures and are intended as a tool to collect and organize issues for the purposes of this document.

⁵ FCCC/APA/2018/L.2/Add.1. See pages 132-145, Informal Note on APA agenda item 7 (final iteration, 8 May 2018).

⁶ References to articles (Art) are to those of the Paris Agreement (PA).

- *Enhance effectiveness and durability of the Agreement*
- *Enhance credibility, confidence, consistency and effectiveness of actions, and trust among Parties*
- *Complement other processes and mechanisms under the PA and the Convention*
- *Avoid politicization.*

A.2 Principles

2. Established under the Paris Agreement (PA)

- *Nothing in the design or operations of the Art 15 Mechanism can change the content or legal character of the PA's provisions.*

3. Paris Agreement and Convention principles:

- **Option A:** *Art 15 Mechanism must reflect equity and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in line with the Convention*
 - *The modalities need to respect and be informed by the principles, including with regard to nature, scope, functions, commencement, measures/outputs, and procedures*
 - *This includes differentiation between developed and developing countries*
- **Option B:** *The PA already reflects CBDR-RC in the light of different national circumstances: no further reflection in the modalities*
 - *Differentiation is already embedded in the PA provisions, and is embedded in Article 15 in a particular way.*
 - *Art 15 mechanism is applicable to all Parties*
- **Option C:** *Reference to Articles 2 and 15.*

4. Other relevant principles:

(Options, not necessarily mutually exclusive):

- *transparency*
- *non-duplication of effort/complementarity*
- *effectiveness*
- *independence*
- *inclusiveness.*

A.3 Nature

5. Functioning in a facilitative, transparent, non-adversarial, non-punitive manner (Art 15.2),

- *Expert-based and facilitative (Art 15.2),*
- *Paying particular attention to the respective national capabilities and circumstances of Parties (Art 15.2),*
- *Transparent (see below: Procedural matters) (Art 15.2),*
- *Non-punitive (Art 15.2), i.e.:*
 - *No enforcement*
 - *No penalties or sanctions,*
- *Non-adversarial, (Art 15.2), i.e.:*
 - *Not a mechanism to settle disputes*
 - *Respecting national sovereignty,*
- *Consultative,*
- *Advisory.*

B. Functions

Box 2: Changes implemented in this section

The text of section B below is replicated directly from the informal note by the co-facilitators dated 8 May 2018. Two modifications of an editorial nature were introduced to assist Parties in navigating the section and the document as a whole:

(a) Introducing general paragraph numbering; and

(b) Introducing options numbering within the text.

Parties may wish to consider the elements contained in this section vis-à-vis any language related to the functions of the mechanism that may be reflected in the operational sections C to K. In doing so, Parties may wish to reflect on, inter alia, the best placement for individual text elements, keeping in mind the desirability of comprehensive but streamlined modalities and procedures.

6. Facilitate implementation and promote compliance (Art 15.1):

- **Option A:** Two distinct functions:

With differences based on scope, triggers, and/or measures;

o **Option 1:** As a dual function; distinct but complementary; may not be mutually exclusive;

o **Option 2:** Two distinct roles, reflecting differentiated approach throughout PA and national circumstances;

- **Option B:** A continuum within the spectrum of functions:

o *With the difference being determined by the legal nature of the provision in question:*

▪ *Facilitation and compliance for legally binding provisions; only facilitation for non-legally binding*

o *With the difference being determined by what is the appropriate measure/output in each case*

- **Option C:** One function: with no difference in measures/outputs as its outcomes are advisory and non-binding.

National circumstances and capabilities (NCC): to be taken into account in the exercise of its functions / Whether and how to operationalize this element under this section to be explored.

C. Institutional arrangements

Box 3: Changes implemented in this section

The text of section C below is replicated directly from the informal note by the co-facilitators dated 8 May 2018. Paragraph numbering was introduced to assist Parties in navigating the section and the document as a whole.

Composition (1/CP.21, para 102)

7. The Committee to be comprised of twelve members with recognized competence in relevant scientific, technical, socioeconomic or legal fields to be elected by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing States and the least developed countries, while taking into account the goal of gender balance.

Members / alternates and expert based nature

8. **Option A:** Members of the Committee:

Option B: Members and an alternate for each member of the Committee:

- to be elected by the CMA
- taking into account the expert-based nature of the Committee in accordance with Article 15 of the Paris Agreement
- giving consideration to diversity of the relevant fields of expertise.

Term of office, staggered election for continuity

9.

(a) Members / and alternate members / to be elected to serve for a period of three years and be eligible to serve a maximum of two consecutive terms

(b) Six members / and six alternate members / to be elected at CMA [x] initially for a term of two years and six members and alternate members for a term of three years

(c) Thereafter, the CMA to elect at each of its regular sessions six members / and alternate members / for a period of three years

- (d) The members / and alternate members / to remain in office until their successors are elected.

Resignation / replacement

10. If a member / or an alternate member / resigns or is otherwise unable to complete the term of office or to perform the functions of that office, the Committee may decide, bearing in mind the proximity of the next session of the CMA, to appoint a member / or an alternate member / from the same group or constituency to replace said member for the remainder of that member's / alternate member's / mandate. Such term of office to count as one term.

Individual vs expert capacity

11. Members of the Committee / and their alternate members / to serve in their

Option A: individual capacity

Option B: expert capacity

Option C: individual, expert capacity.

Bureau

Election, term of office and geographical representation

12. **Option A:**

- The Committee to elect from amongst its members for a period of two/three years the Chair and Vice-Chair as well as three other members to serve as the Bureau of the Committee
- In electing the Bureau, the Committee to ensure equitable representation of the five regional groups of the United Nations
- The positions of the Chair and Vice-Chair, taking into account the need to ensure equitable geographical representation

Option B: No bureau provisions in the modalities

Option C: The Committee to elect

- from amongst its members
 - Option 1:** the Chair and Vice-Chair
 - Option 2:** two Co-Chairs
- for a period of two/three years,
- taking into account the need to ensure equitable geographical representation.

Role of the Bureau

13. Role of the Bureau with regards to admissibility, question of implementation and systemic issues.

Frequency of meetings

14. Unless otherwise decided, the Committee to meet

Option A: at least once a year

Option B: at least twice a year

Option C: X times a year,

- beginning in
 - Option A:** 2019
 - Option B:** 2020.

Open or closed meetings

15. Meetings of the Committee to be

Option A: *{open as default}*

- held in public
- unless the Committee, of its own accord or at the request of the Party concerned, decides for part or all of the meeting to be held in private
- only members / and alternate members / of the Committee and secretariat officials to be present during the elaboration and adoption of a decision of the Committee

Option B: *{closed as default}*

- held in a closed session, subject to the provisions of the present modalities and procedures on the participation of the Party concerned
- the Committee of its own accord, at the request of the Party or otherwise concerned, may invite the Party concerned to participate in a part of its meeting
- only members / and alternate members / of the Committee and secretariat officials to be present during the elaboration and adoption of a decision of the Committee.

Quorum

16. Adoption of decisions by the Committee requires a quorum of at least

Option A: three fourths of the members to be present

Option B: ten members to be present.

Decision-making

17. The Committee to

Option A: *{consensus}*

- reach agreement on any decision by consensus

Option B: *{consensus, with voting as last resort}*

- make every effort to reach agreement on any decision by consensus
- if all efforts at reaching consensus have been exhausted, as a last resort, the decisions to be adopted by a majority of
 - **Option 1:** the members present and voting
 - **Option 2:** at least two-third of the members present and voting
 - **Option 3:** at least three-fourth of the members present and voting
 - **Option 4:** at least nine of the members present and voting.

Conduct of work and decision-making through electronic means of communication

18. **Option A:**

- Possibility to conduct its work, including with regard to elaboration and adoption of decisions, using electronic means of communication, subject to provisions of these modalities and procedures with respect to participation of the Party concerned
- Such decisions to be deemed taken at the headquarters of the secretariat

Option B:

- The Committee may elaborate and adopt its decisions using electronic means
- Such decisions to be deemed taken at the headquarters of the secretariat.

Reasoning

19. Any decisions of the Committee concerning facilitation of implementation and promotion of compliance by Parties to be made in writing and supported by reasoning.

Conflict of interest

20. Members / and alternate members / to

- disclose any interest in any matter under discussion before the Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member / or alternate member / of the Committee
- refrain from participating in the work of the Committee in relation to such matter.

21. **Option A:** Members / and alternate members / are considered to have a conflict of interest when their country is the Party concerned.

Option B: Members / and alternate members / are not automatically considered to have a conflict of interest when their country is the Party concerned.

Rules of procedure of the Committee

22. **Option A:** {Committee to develop proposal for CMA}

The Committee to develop its rules of procedure for consideration and adoption by the CMA 2/ CMA in 2020

- informed by the principles of transparency, facilitation, the non-adversarial and non-punitive function, and taking into account national capabilities and circumstances.⁷

Option B: {Rules of procedure to be elaborated in this text}

The elements may need to include the following issues (indicative, non-exhaustive list):

- *Dates for start and end of terms of office of members*
- *Details on the role of alternate members, if alternate members are included*
- *Oath of service provisions*
- *Further details on how conflict of interest issues could be addressed*
- *Elaboration on the replacement of Bureau officers*
- *Elaboration on the tasks of the Bureau, including with regard to admissibility, question of implementation, including systemic issues*
- *Details on the timing of document circulation*
- *Process of elaboration of meeting agenda*
- *Timelines for circulation for reports, information on question of implementation and information on systemic issues*
- *Sets of procedures for timelines for circulation of specific documents and other notifications to Parties,*
 - **Option 1:** *including guidelines for differentiated timelines to afford necessary flexibility to Parties and to account for the nature of provisions of the Paris Agreement concerned*
 - **Option 2:** *No text on differentiated timelines*
- *Details on how timeframes are to be calculated, e.g. taking into account working days and holidays and the nature of provisions of the Paris Agreement concerned*
- *Detailed procedures for the use of electronic means of decision-making: what types of decision, what procedures, etc.*
- *Place of meetings*
- *Attendance requirements*
- *Working language.*

⁷ Note: Such rules of procedure may also include some of the elements included above in this section (e.g. replacement of members, electronic modes of work, conflict of interest procedures).

D. Scope

Box 4: Changes implemented in this section

The text of section D below is replicated directly from the informal note by the co-facilitators dated 8 May 2018. Paragraph numbering was introduced to assist Parties in navigating the section and the document as a whole.

Parties may wish to consider the elements contained in this section vis-à-vis any language related to scope that may be reflected in the operational sections E to G. In doing so, Parties may wish to reflect on, inter alia, the best placement for individual text elements, keeping in mind the desirability of comprehensive but streamlined modalities and procedures.

23. Options:

- A. Comprehensive
- B. Scope in light of function
- C. In relation to specific obligations
 - C.1 Specific obligations under Articles 4, 6, 7, 9, 10, 11 and 13
 - C.2 All “shall” provisions
 - C.3 Legally-binding provisions on individual obligations of Parties
- D. In line with the differentiation in the Paris Agreement provisions
- E. One of the above as well as relevant provisions of CMA decisions
- F. Scope in the context of initiation (*see section E*).

E. Initiation of consideration

Box 5: Example of possible text elements under this section

The following section is based on section E of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to how consideration with respect to a Party’s implementation or compliance could be initiated. To facilitate consideration by Parties, the following additional text was introduced in this section:

(a) The numbering of options has been edited to enhance the flow (e.g. under self-referral, Option 2 of the Informal Note is listed below as Option A.3, noting that the chapeau of Option A would be the same for any scope that a self-referral may include; Options 1–6 under Option B were renumbered into Options B.1–B.6);

(b) For consistency purposes across the document, all references to other bodies and processes under the Paris Agreement have been changed to “bodies and arrangements under or serving the Paris Agreement”; and

(c) References to obligations under specific Articles in Options B.2.3–B.2.5 were spelled out in an attempt to provide an example of how the text could look. Parties are encouraged to carefully review the listings to ensure that references to the provisions of the Agreement correspond to the intended scope of their respective proposed options.

*Parties may wish to note that, under Option B.2 (initiation by the Committee), the sub-option of requiring consent of the Party concerned is included twice: once in section E and once in section F below (*see the end of paragraph 24.3 and paragraph 40*). The text was included in both places to maintain consistency with the options contained in the Informal Note, but appears to relate to the same step of the process. Parties may wish to consider whether the sub-option should be retained in both places or in only one of them.*

24.

Option A {Self-referral only}:

24.1. The Committee may consider issues related to, as appropriate, a Party’s implementation of and compliance with the provisions of the Paris Agreement on the basis of written submissions from any Party with respect to its own implementation of or compliance with

Option A.1: any provisions of the Paris Agreement

Option A.2: the provisions of the Paris Agreement

Option A.3: (...) {scope to be further elaborated}.

Option B {Self-referral and other means of initiation};

24.1. (...) *{as paragraph 24.1 above}*.

{Options B.1-B.5 in paragraphs 24.2–24.6 below are not mutually exclusive. Parties may choose to select all, some or none.}

24.2. **Option B.1** *{referrals by a third Party}*:

In addition, the Committee may consider written referrals by a Party or group of Parties with respect to implementation of /compliance with (...) *{scope to be further elaborated}* by another Party.

24.3. **Option B.2** *{Initiation by the Committee}*:

- In addition, the Committee may initiate the consideration of issues related to, as appropriate, a Party's implementation of and compliance with

Option B.2.1: all provisions of the Paris Agreement applicable to a Party or a group of Parties

Option B.2.2: the obligations contained in Articles 4, 6, 7, 9, 10, 11 and 13 of the Paris Agreement and applicable to a Party or a group of Parties

Option B.2.3: obligations related to objectively identifiable binary issues contained in Article 4, paragraph 2, 8, 9, Article 7, paragraph 11, Article 9, paragraphs 5 and 7, and Article 13, paragraphs 7 and 9

Option B.2.4: individual, objectively assessable procedural obligations contained in Article 4, paragraphs 2 and 9, and Article 9, paragraph 5 and Article 13, paragraphs 7 and 9

Option B.2.5: obligations contained in Article 4, paragraphs 2 and 9, Article 9, paragraph 5, Article 13, paragraphs 7 and 9,

Option B.2.6 *{additional to options B.2.1–B.2.5 above}*:

as well as provisions expressed through language of a mandatory nature contained in

Option B.2.6 (a): decisions of the CMA related to these obligations

Option B.2.6 (b): modalities, procedures and guidelines adopted under Article 13 of the Paris Agreement as contained in the relevant decisions of the CMA.

- on the basis of *{options in sub-paragraphs a–e below not necessarily mutually exclusive and one or more can be read together with the relevant options B.2.1–B.2.6 above. Parties may choose to select all, some or none}*:

- (a) information contained in the registry of nationally determined contributions (NDC registry),
- (b) information contained in any relevant registries established under the Paris Agreement,
- (c) any status reports by the secretariat prepared in accordance with Article 13 of the Paris Agreement,
- (d) technical expert review reports under Article 13 of the Paris Agreement, and/or
- (e) information provided by other bodies and arrangements under or serving the Paris Agreement;

- *{For any of the options B.2.1–B.2.6 above}*:

Option (a): provided that the Party concerned consents to such a consideration by the Committee.

Option (b): *No text.*

24.4. **Option B.3** *{Initiation by the CMA}*: In addition, the Committee may consider a referral by the CMA with respect to (...) *{scope to be further elaborated}*.

24.5. **Option B.4** *{Initiation by other bodies/arrangements}*: In addition, the Committee may consider a referral by another body or arrangement under or serving the Paris Agreement with respect to (...) *{scope to be further elaborated}*.

24.6. **Option B.5** *{Differentiated: Self-referral (paragraph 24.1 above) applicable to all Parties; in addition, other ways of initiation may be applicable to developed country Parties}*:

In addition, the Committee may consider, with respect to developed country Parties,

Option B.5.1 *{Third Party referrals}*:

- written referrals by a Party or group of Parties with respect to implementation of /compliance with (...) *{scope to be further elaborated}* by a developed country Party.

Option B.5.2 *{Initiation by the Committee}*:

- (a) information contained in the NDC registry
 - (b) information contained in any relevant registries established under the Paris Agreement
 - (c) any status reports by the secretariat prepared in accordance with Article 13 of the Paris Agreement
 - (d) technical expert review reports under Article 13 of the Paris Agreement
 - (e) information provided by other bodies or arrangements funder or serving the Paris Agreement
- with respect to (...) *{one or more of the options in subparagraphs a–e above to be read together with any of the options B2.1–B2.6 above}*.

F. Process**Box 6: Example of possible text elements under this section**

The following section is based on section F of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to the process of consideration by the Committee of implementation or compliance by a Party. To help facilitate consideration by Parties, the following additional text or formatting has been introduced:

(a) A paragraph is proposed at the beginning of the section (paragraph 25) to set out the parameters of the process and to address the issue of taking into account the national capabilities and circumstances of the Party/Parties concerned at all stages of the process (drawn from the list in section F of the Informal Note⁸). Parties may wish to consider whether such text would be appropriately placed in this section or reflected in section A, taking into account the desirability of comprehensive and streamlined modalities and procedures;

(b) Some additional text elements are proposed in the section below to address process elements that are usual for consideration of implementation or compliance under a treaty. They do not represent new concepts but are rather of a technical procedural nature (e.g. the need to make submissions in writing or via the secretariat, the need to have a timeline for consideration or provision of information). These are suggestions for consideration by Parties in their work on this section. To ensure transparency and facilitate consideration, such additional text elements are highlighted in grey.

The example below does not propose any additional elaboration with respect to Option C (differentiated approach), as the text of this option contained in the Informal Note did not provide sufficient guidance on how the various elements are to be reflected. Option C, of course, remains on the table and is retained as in the Informal Note dated 8 May 2018.

25. *{Guidance generally applicable to the functioning}*:

The Committee is to exercise its functions in line with Article 15 of the Paris Agreement, including with respect to the nature and the manner of functioning of the mechanism to facilitate implementation and promote compliance as established by the Agreement and the need to pay particular attention to the respective national capabilities and circumstances of Parties.

Option A *{Exercise of functions through **bound discretion** (paragraph 26)}*:

26. In the exercise of its functions and subject to these modalities and procedures, the Committee is to determine how to apply such guidance in view of each matter brought before it for consideration.

Option B *{Steps/phases – not necessarily consecutive (comprising paragraphs 27–52 below)}*:

27. The Committee is to consider any matters referred to it under section E above in accordance with the following procedures.

I. Initiation and preliminary examination

Where the procedure is initiated through Party's self-referral: Option A in section E, paragraph 24.1 above:

28. Any submission made by a Party under paragraph *{cross reference to the paragraph on self-referral, currently paragraph 24.1}* above with respect to itself is to be **addressed in writing to the Committee and transmitted through the secretariat**. Such submission is to set out the matter of concern, the relevant provisions of the Paris Agreement, the specific circumstances that the Party concerned considers to be the cause of the challenges with **implementation or compliance**, any need for assistance, as well as any information on the Party's efforts to make use of the existing

⁸ FCCC/APA/2018/L.2/Add.1, page 140.

arrangements and mechanisms under the Paris Agreement in order to facilitate its implementation or promote compliance with the provisions in question.

29. The secretariat is to transmit such submission within [x] weeks to the Committee, which is to commence its consideration of the matter at the latest at its next meeting.
30. The Committee is to undertake a preliminary examination of the submission with a view to verifying whether it contains sufficient information, including information as to whether the matter relates to the implementation of or compliance with the Paris Agreement and information on the efforts by the Party concerned to make use of the existing arrangements and mechanisms under the Paris Agreement to facilitate its implementation and promote compliance with the provisions in question.
31. The Party concerned is to provide responses to any questions the Committee may pose to it in the course of the preliminary examination within [x] months from the date of receipt of such questions unless the circumstances of the particular case or the national capabilities and circumstances of the Party concerned require an extended period of time.
32. The Committee may decide not to proceed with the consideration of the communication where in the course of the preliminary examination it determines that:
 - (a) the matter does not relate to the provisions of the Paris Agreement, or
 - (b) the Party concerned has not made reasonable efforts to make use of the existing arrangements and mechanisms under the Paris Agreement to facilitate its implementation and promote compliance with the provisions in question.
33. Any decision of the Committee on whether to proceed with the consideration of the submission is to be made in writing and notified to the Party concerned through the secretariat, and, in the case of decision not to proceed for reasons related to the use of other arrangements and mechanisms, to take into account the national capabilities and circumstances of the Party concerned and to indicate the efforts that the Party may be expected to make in this regard.

Where the procedure is initiated through means other than self-referral (Option B in section E, paragraphs 24.2–24.6 above):

(a) For referrals by a third Party and referral by other bodies and arrangements (Options B.1, B.4 and B.5.1 in section E, paragraphs 24.2, 24.4 and 24.5 above):

34. Referrals to the Committee other than by the CMA or by a Party with respect to its own implementation or compliance are to be made in writing through the secretariat and are to set out the matter of concern and the relevant provisions of the Paris Agreement, and be supported by corroborating information.
35. Within [x] weeks of it receiving such referral, the secretariat is to send a copy to the Party concerned and to the Committee for consideration, at the latest, at its next meeting.
36. The Committee is to undertake a preliminary examination of such referrals with a view to establishing that the question before it:
 - (a) is supported by sufficient information;
 - (b) is not de-minimis or ill-founded; and
 - (c) is based on the provisions of the Paris Agreement.
37. Any decision of the Committee on whether to proceed with the consideration of such referral is to be made in writing and notified through the secretariat to the Party concerned and to the referee.
38. **Option 1** (on the consent of the Party concerned):
The Committee is to seek the consent of the Party concerned on whether to proceed with the consideration of a referral.
Option 2 (on the consent of the Party concerned):
No text.

(b) *For initiation by the Committee (Options B.2 and B.5.2 in section E, paragraphs 24.3 and 24.6 above):*

39. Where the Committee becomes aware of possible implementation or compliance challenges faced by a Party in relation to its obligations under the Agreement and initiates a procedure under paragraph {cross reference to means of initiation in addition to self-referral, paragraphs 24.3/24.6} above, the Committee is to request the Party concerned to provide necessary information about the matter.

40. **Option 1** (on the consent of the Party concerned):

The Committee is to seek the consent of the Party concerned to proceeding with the consideration of the matter.

Option 2 (on the consent of the Party concerned): No text.

(c) *For referrals by the CMA (Option B.3 in section E, paragraph 24.4 above):*

41. Within [x] weeks of any referral being made by the CMA with respect to implementation or compliance by one or more Parties, the secretariat is to inform the Party or Parties concerned of the referral and to transmit the referral to the Committee for its consideration, at the latest, at its next meeting.

II. Participation of the Party concerned

Possibility to comment

For all initiation options:

42. Further to the provisions of paragraphs {cross reference to the paragraphs on any responses to be provided by the Parties concerned or input during the preliminary examination, currently paragraphs 28, 31 and 39 above} and taking into account the relevant timelines set out therein, the Party concerned may present responses and/or comments at every step of the proceedings described in the present modalities and procedures.

For Option B in section E (initiation other than self-referral), paragraphs 24.2–24.6 above:

43. The Party concerned, with recourse to the Committee for assistance, if required, may make a written submission to the Committee to provide relevant information, including with respect to causes, challenges and constraints. Such written submission is to be made within [x] months from the date of receipt of either the notification of the decision to proceed under paragraph {cross reference to the paragraph on the Committee's decision to proceed with consideration of a referral, currently paragraph 33 above}, the notification of a referral by the CMA under paragraph {cross reference to the notification of the Party concerned of a referral by the CMA, currently paragraph 41}, or the notification of the procedure being initiated by the Committee in accordance with paragraph {cross-reference to the paragraph on Committee initiation, currently paragraph 39} above, as appropriate. Where the circumstances of the particular case or the national capabilities and circumstances of the Party concerned necessitate additional time for the written submission, the Party concerned is to notify the Committee and to indicate the additional time required and the relevant reasons for any delay.

Representation at meetings

For all initiation options:

44. The Party concerned may participate in the discussions of the Committee with respect to its own implementation or compliance but not to take part in the elaboration and adoption of any measures/recommendations/ findings of the Committee in accordance with {cross-reference to the language on open/closed meetings, section C, currently paragraph 15 above}.

For Option B.1 in section E (Third Party' referrals), paragraph 24.2 above:

45. The Party that made the submission under paragraph {cross reference to paragraph on third Party's referrals, currently 24.2 above}, may participate in the consideration of the submission by the Committee, but not take part in the elaboration and adoption of any measures/recommendations/ findings of the Committee in accordance with {cross-reference to the language on open/closed meetings, section C, currently paragraph 15 above}.

Hearings

46. If so requested in writing by the Party concerned, the Committee is to hold a hearing during a meeting at which the matter with respect to that Party is to be considered.

47. The Party concerned is to have the opportunity to make representations and have the opportunity to respond.

Resources for participation

48. Subject to availability of financial resources, assistance may be provided, on request, for Parties that cannot access the financial resources to attend the meetings or hearings.

Information gathering and participation of other bodies

49. In considering how to facilitate implementation or promote compliance by the Party concerned, the Committee may obtain additional information from the sources referred to in section I {*Sources of information*} or, as appropriate and in consultation with the Party concerned, to invite representatives of the relevant bodies and arrangements under or serving the Paris Agreement to participate in the meetings.

Commenting on draft findings

50. The Committee is to send a copy of its draft findings, draft measures and any draft recommendations to the Party concerned, and is

Option 1: to take into account any comments made by it in the finalization of those findings, measures and recommendations.

Option 2: to adopt any findings, measures and recommendations subject to approval by the Party concerned.

Party concerned comments on draft measures/ findings/ recommendations

51. The Committee is to invite the Party concerned to provide in its written submission and during the relevant meetings any information on causes, challenges and constrains that may inform the Committee’s consideration.

III. Identification of measures/ findings/ recommendations

52. In identifying the appropriate measures, findings or recommendations, the Committee, in addition to the comments received from the Party concerned, is to also take into account:

- (a) The legal nature of the provision or provisions concerned;
- (b) Whether the Party concerned is a developed or a developing country;
- (c) The national capabilities and circumstances of the Party concerned;
- (d) The special circumstances of least developed countries and small island developing states;
- (e) Other relevant national circumstances, including force majeure;
- (f) To what extent the lack of capacities contributed to the implementation or compliance challenges;
- (g) With respect to a developing country Party, the specific financial, capacity-building and technology needs and challenges that the Party concerned may have;
- (h) With respect to the developed country Parties, the obligations related to the provision support in accordance with the provisions of the Paris Agreement;
- (i) Type degree and frequency of the failure to implement or comply with the provisions of the Paris Agreement;
- (j) The impact of response measures.

Option C {Differentiated approach}:

{Modalities and procedures to be elaborated, including with respect to developed and developing countries, having regard to differentiated obligations under Articles 4, 7, and 9 and taking into account Article 15, paragraph 2, including with respect to participation and treatment of the Party concerned and the need to take into account national capabilities and circumstances.}

G. Measures and Outputs

Box 7: Example of possible text elements under this section

The following section is based on section G of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to measures and outputs. To facilitate consideration by Parties, some of the items on the list have been re-ordered and paragraph numbering was introduced, while all items and options were retained.

For Options A and B in section E (self-referral and other referrals)*{The measures listed are not mutually exclusive or consecutive}:*

53. With a view to facilitating implementation and promoting compliance the Committee may:

- (a) Facilitate the sharing of information, experience and lessons learned with the Party concerned;
- (b) Assist in the identification of challenges faced by the Party concerned;
- (c) Make recommendations and suggestions to the Party concerned;
- (d) Provide information and advice to the Party concerned; and/or
- (e) Initiate the development of an implementation or compliance action plan

- **Option 1:** upon request by the Party concerned.

- **Option 2:** *{at the Committee's own initiative}*

- **Option 2.1:** with consent of the Party concerned.

- **Option 2.2:** *No additional text.*

{Elements and content of the plan, to be read with any of the options (options 1, 2.1 or 2.2) above}:

- i. The plan is to serve as a roadmap to assist the Party with implementation or compliance, as appropriate, with the Paris Agreement, to be facilitative and advisory in nature and respectful of the nationally determined nature of the NDCs.
- ii. The plan is to contain:
 - A description of the implementation challenges/causes of non-compliance
 - A description of measures that the Party intends to take to improve implementation or achieve compliance
 - Timelines for the measures intended to be taken
 - Follow-up arrangements, including regular information to be provided by the Party concerned to the Committee about the progress made in implementing the measures.
- iii. The plan is to be developed:
 - **Option (a):** By the Party concerned in consultation with the Committee
 - **Option (b):** By the Party concerned with the assistance of the Committee, if so requested by the Party concerned.

54. Furthermore, the Committee may:

- (a) **Option 1:** Provide information on accessing support, for example, on the types of support available.

- Option 2:** Facilitate access to finance, technology and capacity-building support.

{To be read with any of the options (options 1 or 2) above. – Options (a) and (b) below are not necessarily mutually exclusive}:

- **Option (a)** The provision of information/facilitation of access to be in a manner that does not create an incentive for Parties not to implement or comply with the provisions of the Paris Agreement.

And/or:

- **Option (b):** The provision of information/facilitation of access to be subject to efforts made by the Party concerned to make use of the existing arrangements and mechanisms under the Paris Agreement to facilitate its implementation and promote compliance with the provisions in question.

- **Option (c):** *No additional text.*

And/or:

- (b) Refer the Party concerned to appropriate bodies or arrangements for finance, technology and capacity-building support
- (c) Provide access to/refer to/send technical experts to assist Party concerned;
- (d) Make recommendations to relevant bodies or arrangements related to support.

55. The Committee may also issue a statement/declaration/finding on non-compliance.

For **Option B** in section E (Means of initiation other than self-referral), paragraphs 24.2–24.6 above:

56. Where consideration of the matter is initiated by means other than by a submission by the Party concerned, the Committee may choose to apply any of the following measures, taking into account the causes, degree, nature and frequency of non-compliance:

- (a) Notify the Party concerned where it identifies the potential to provide assistance.
- (b) Issue statements of concern / cautionary statements addressed to the Party concerned.
- (c) Report to the CMA on individual cases of non-compliance for situations where the Party concerned fails to implement the action plan referred to in paragraph {cross reference to the implementation or compliance action plan, currently paragraph 53(e)} above.
- (d) Send a confidential letter to the Party concerned.
- (e) Issue

Option 1: A declaration/finding/communication in relation to compliance.

Option 2: No text.

- (f) Issue findings of fact in relation to compliance with provisions of the Paris Agreement.
- (g) Take

Option 1: Measures related with Article 6 of the Paris Agreement.

Option 2: No text.

Follow-up by the Committee

57. **Option 1:** The Committee is to follow up on the progress made by the Party concerned in improving implementation and/or achieving compliance.

- (a) Such follow-up to be facilitative in nature.
- (b) The Committee to develop working methods regarding follow-up (including additional guidelines with further steps and measures for the Committee and in light of the respective measures taken).
- (c) The initiation of a follow-up by the Committee

Option 1.1: To require consent by the Party concerned.

Option 1.2: No text.

Option 2: No text.

H. Identification of systemic issues

Box 8: Changes implemented in this section

The text of section H below is taken directly from the informal note by the co-facilitators dated 8 May 2018. Paragraph numbering was introduced to assist Parties in navigating the section and the document as a whole. See annex II below for Co-Chairs' examples and possible questions to facilitate discussion on section H of the Informal Note (Systemic issues).

58. Systemic issues include:

- **Option A:** General problems / common source of difficulty for implementation and compliance, faced by a number of Parties in relation to any provisions of the Paris Agreement.
- **Option B:** Also recurrent, repetitive and systemic issues of implementation by a Party or group of Parties in relation to any provisions of the Paris Agreement.

59. Consideration of a systemic issue may be initiated:

- **Option A:** By the CMA
- **Option B:** By the CMA
 - Based on the information received from the secretariat
 - In relation to communications under Articles 4, 7 and 9 or reporting under Article 13
- **Option C:** By the Committee
 - **Option 1:** based on systemic challenges identified in the course of its work
 - **Option 2:** for certain areas for which it has mandate from the CMA

- **Option 3:** upon decision of its bureau
- **Option D:** At a request of a group of Parties.

60. Process and outputs:

- Gather information from relevant sources (*see list of sources in section I below*)
- With respect to consideration initiated by the CMA or the Committee, the Committee prepares conclusions and recommendations to be included in a report to the CMA
- With respect to consideration initiated at the request by a group of Parties, the Committee makes recommendation to groups of Parties concerned
- The Committee may be given bounded discretion to decide on the details of the process for consideration of systemic issues subject to guidelines to be included in these modalities
 - *Could serve as background information for Global Stocktake* ↔
 - *Could inform other subsidiary bodies and constituted bodies, support arrangements and other arrangements under the Paris Agreement* ↔
 - *Could take into account the impact of response measures and other relevant factors.* ↔

I. Sources of information

Box 9: Example of possible text elements under this section

The following section is based on section I of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to sources of information.

61. The Committee is to take into account relevant information received from the Parties concerned.
62. The Committee may seek expert advice.
63. The Committee may seek or receive and consider relevant information from sources, such as:
 - (a) Registries established under the Paris Agreement;
 - (b) Nationally determined contributions of Parties;
 - (c) Information under Article 13 of the Paris Agreement;
 - (d) Information on the status of submissions under Articles 4, 7 and 9 of the Paris Agreement;
 - (e) Information from the subsidiary and constituted bodies and other bodies and institutional arrangements under or serving the Paris Agreement
 - (f) Information made available by the secretariat in accordance with the relevant mandates.
64. The Committee, any Party or others involved in its deliberations are to protect the confidentiality of information received in confidence.

{The following element contained under this item in the Informal Note may require further clarification: “In particular, for how to engage with Party concerned, and specific facilitative measures”}

J. Relationship with the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement

Box 10: Example of possible text elements under this section

The following section is based on section J of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to relationship of the Committee and the CMA.

Parties may wish to note that under paragraph 66 on the possible content of the report to the CMA, Options 1, 2.1 and 3 may not require any text as the proposals contained in those options would be addressed through the language in paragraph 65 referring to activities and any decisions taken.

Parties may also wish to note that text elements under paragraph 68 were not elaborated since it is within the prerogative of the CMA to either take note or refrain from taking note of any reports submitted to it by any constituted body and no text may be needed to address either option. However, to ensure that all the options put forward by the Parties are reflected, the original language of both options as contained in the Informal Note is reproduced in paragraph 68 below.

65. Pursuant to Article 15 of the Paris Agreement, the Committee is to operate under the overall guidance of and report annually to the CMA on its activities and any decisions taken in the reported period.

Content of reporting:

66. *{options below are not necessarily mutually exclusive}*:

Option 1: *{No text may be required further to paragraph 65 (Reports on its work)}*.

Option 2: The annual report of the Committee to the CMA is to include information on any decisions adopted by the Committee with respect to implementation or compliance by Parties;

- **Option 2.1:** *{No text may be required further to paragraph 65 (Reports on all to CMA)}*.
- **Option 2.2:** The Committee is to include in its annual report to the CMA information on any decisions with respect to implementation or compliance by a Party provided that the Party concerned so requests.
- **Option 2.3:** The annual report of the Committee to the CMA is to include information on any decisions adopted by the Committee, with the exception of any decisions with respect to review initiated by the Party concerned in accordance with paragraph *{cross reference to the paragraph on self-referral in section E, currently paragraph 24.1}*.
- **Option 2.4:** The Committee is to include in its annual report to the CMA any information related to failure by Parties to implement the implementation or compliance plan referred to in paragraph *{cross reference to the paragraph on implementation or compliance plan in section G, currently paragraph 53(e)}*.

Option 3: *{No text may be required further to paragraph 65(A summary of its activities and actions taken)}*.

Option 4: The Committee is to include in its annual report to the CMA any information related to

- **Option 4.1:** consideration of systemic issues involving a number of Parties under section H above.
- **Option 4.2:** recurring issues with respect to implementation or compliance by a Party.

Recommendations to the CMA:

67. The Committee is to include in its reports to the CMA for its consideration any recommendations with respect to:

{options below are not necessarily mutually exclusive}:

- (a) **Option 1:** Any measures that implicate important issues under the Paris Agreement or may affect the mandated work of other bodies or arrangements under or serving the Paris Agreement;
- (b) **Option 2:** Measures in relation to support required to address implementation or compliance by a Party, including prioritization of technical assistance and capacity-building;
- (c) **Option 3:** Any measures to address cases of repeated non-compliance;
- (d) **Options 4 and 5:** Measures to address any systemic challenges or barriers identified in accordance with section H above;
- (e) **Option 6:** Any measures proposed to address implementation or compliance by a Party, at the request of the Party concerned *{no language is proposed for the CMA not being required to take a decision, since the recommendations are only for its consideration and the CMA is not required to take a decision (...and the CMA is not required to take any decision)}*

68. The CMA *{please see the explanatory note in the box above}*

Option 1: to take note of the Committee's findings in individual cases.

Option 2: Taking note of Committee's findings in individual cases is inconsistent with the nature of the Article 15 Committee

K. Review of the modalities and procedures

Box 11: Example of possible text elements under this section

The following section is based on section J of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to review of the modalities and procedures.

69.

- **Option 1:** The CMA is to undertake, at the latest by CMA [x], a review of these modalities and procedures based on the experience gained with their implementation.
- **Option 2:** The CMA is to regularly review the implementation and effectiveness of these modalities and procedures.

-
- **Option 3:** The Committee is to regularly review the implementation of these modalities and procedures with a view to making recommendations for consideration by the CMA on any revisions to improve their effectiveness.

L. Secretariat

Box 12: Example of possible text elements under this section

The following section is based on section L of the informal note by the co-facilitators dated 8 May 2018. It represents an example of possible text elements in relation to the secretariat of the Committee.

70. The secretariat referred to in Article 17 of the Paris Agreement is to serve as the secretariat of the Committee.
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Annex II

Additional considerations under item 7 of the agenda

Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement

Co-Chairs' examples and possible questions to facilitate discussion on section H of the Informal Note (Systemic issues)

A. Possible questions on systemic issues that Parties may wish to consider ⁹

Initiation

1. What, if anything, should be specified in the Committee's modalities and procedures where consideration of systemic issues is initiated by:
 - 1.1. The CMA
 - 1.2. The Committee itself
 - 1.3. A group of Parties?

Scope

2. Should the modalities and procedures specify the provisions that are open for consideration of systemic issues?

Consideration Process

3. How would the Committee's process differ for the consideration of systemic issues, if at all?
4. What sources of information could the Committee use in its consideration, and how would this differ from those identified in section I of the Informal Note, if at all?

Measures and Outputs

5. What would be the outputs from the consideration of a systemic issue by the Committee?

Further Action

6. Would the Committee's consideration of systemic issues inform other arrangements and processes under the Paris Agreement?

⁹ The guiding questions and the illustration here focus on systemic issues understood as general problems / common source of difficulty for implementation and compliance, faced by a number of Parties in relation to any provisions of the Paris Agreement. In addition, the Informal Note by the Co-Facilitators of 8 May 2018 includes also recurrent, repetitive and systemic issues of implementation by a Party or group of Parties in relation to any provisions of the Paris Agreement (Informal Note, section H, Option B). That option, which remains on the table, may give rise to further and different questions, in addition to the ones offered here or, alternatively, may be considered in the context of the sections with regard to implementation and compliance by a Party as part of any deliberations on the frequency of non-compliance.

B. Example: Illustration of issues relevant to a possible consideration by the Committee of systemic issues

