

Submission by Nepal on behalf of the Least Developed Countries Group on the ADP Work Stream 1: The 2015 Agreement, Building on the Conclusions of the ADP 1-2

The Least Developed Countries Group (LDC Group) welcomes the invitation by the Co-chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) to submit further information, views and proposals on matters related to paragraphs 2 to 6 of decision 1/CP.17 dealing with the 2015 legally binding agreement.

The views expressed in this submission, which further explores and elaborates on specific ideas and proposals, complement those expressed in the previous submission made by the LDC Group on 3 March 2013 in which the Group presented its views on (a) application of the principles of the Convention; (b) lessons learned from other processes under the Convention and from other multilateral processes relevant for the ADP; (c) scope, structure and design of the 2015 agreement; and (d) ways of defining and reflecting enhanced action.

As suggested by the Co-chairs in the informal note 14, the LDC Group also believes the ADP is ready to shift gears and to capture the progress of the ADP in written form. In this regard, the Group proposes Parties to establish two contact groups, one for each of the two work streams, and invites Co-chairs to share with Parties by the end of Warsaw, a building-block text summarizing potential options based on submissions, statements and presentations by Parties, also taking into account contributions by the observer organizations.

I. Application of the principles of the Convention

The LDC Group reaffirms its full support to all the principles of the United Nations Framework Convention on Climate Change (UNFCCC) identified to guide Parties toward achievement of its ultimate objective. The outcome of the ADP established under the Convention, must be in line with this ultimate objective and this can only be achieved through a collective and equitable sharing of efforts and universal participation. In this context, the LDC Group reaffirms its demand that the commitments to be made under the ADP result in an emission pathway that can limit warming below 1.5°C, and in particular result in the closing of the emissions gap by 2020.

The LDC Group believes that taking full account of current socio-economic realities, in addition to responsibilities, respective capacities and vulnerabilities, is appropriate. However, this should not lead to deviation from the principles of UNFCCC; it should rather contribute towards designing a regime which is adequate and effective to address the current climate change problem.

The aim must be to find solutions so that all countries can be encouraged to take on the highest possible levels of mitigation ambition and action, allowing for some degree of differentiation for developed countries, emerging economies, middle-income countries, the most vulnerable and the least developed countries based on agreed criteria.

Equity, fairness and effectiveness should be a central part of the ADP. The LDC Group calls upon all Parties to understand the sense of urgency, to work towards a 2015 agreement, which should incorporate the broad range of commitments by all Parties in a single regime ‘applicable to all’, taking into account the principles of the Convention, in particular different responsibilities and all capabilities. Individual commitments of Parties shall in aggregate fulfil the science-based emission reductions requirements, efficient enough to tackle climate change without compromising the need to reduce poverty and promote sustainable development in developing countries, particularly LDCs, SIDs and Africa.

Any delay in global climate actions will lead to greater adverse effects, increasing needs for adaptation as well as residual and permanent loss and damage in LDC and other vulnerable developing countries. Application of the principles of the Convention also calls for the provision of appropriate means to deal with these serious issues.

II. Lessons learned from the UNFCCC and the KP

LDC Group believes that the 2015 Agreement should be built upon enhanced mitigation, adaptation and adequate means of implementation. As such, lessons learn from the current regime must play a vital role in shaping up the 2015 Agreement. Some key lessons learnt from the UNFCCC and the Kyoto Protocol processes are as follows:

- A voluntary, non-binding pledge and review regime is unable to deliver what is required by science to address the climate change challenge and could lead towards a 4°C warming world. The scientific community have shown that existing and proposed actions fall far short the emission reduction actions needed to hold warming below 2°C above pre-industrial, let alone reduce warming to 1.5°C by 2100;
- A rule-based legally binding regime, designed to implement collectively agreed commitments, based on latest available science, is by far the most favourable to address climate change. However, such a regime can be undermined even when a single Party, in particular if it is a key player, withdraws its contribution from the global effort;
- On the positive side, a legally binding regime could provide guarantees and positive incentives for all state actors and key players as similar levels of enhanced and internationally agreed commitments and actions would bind all. Such a regime would send positive signals and establishes a level of certainty for the private sector to make the required investments;
- It is critical for Parties to build on and improve the MRV and compliance system in the 2015 agreement in order to:
 - Ensure a strong verification process so that all parties are confident that each Party undertakes comparable action;
 - Improve the facilitative mechanism by providing capacity building and support to Parties encountering difficulty in dealing consistently with agreed rules;
 - Address adherence to rules including compliance and the consideration of adjustments measures;

- Address the consequences for non-compliance;
- Build on the MRV and compliance system from the Kyoto Protocol to deliver a robust and stringent system to measure progress. This would have many advantages given the vast amount of time, financial and human resources invested in building up this system. There has been much learning, both scientifically and technically, as well as broad research within the policy community that needs to be taken advantage of and built upon.
- Financial resources and other means of implementation are key for developing countries to deliver appropriate climate action in their countries. Scaling-up of mobilization, provision and effective delivery of committed financial resources beyond the USD 100 billion a year by 2020 commitment made by developed countries back in Copenhagen is paramount.
- Stringent entry into force mechanisms may delay the international process. The entry into force provisions of the 2015 Agreement needs to be designed taking into account lessons from the Kyoto Protocol. It was clear that some domestic ratification processes created uncertainty and delays for the entry into force of the Kyoto Protocol. Therefore, early consideration should be given to provisional entry into force and prompt start provisions to ensure the 2015 Agreement can take legal effect as quickly as possible. Procedures to allow countries to apply the provisions of the new Agreement pending ratification and/or entry into force could also be included to enhance universal application.

III. Scope, structure and design of the 2015 agreement

1. Scope

These three aspects should be considered:

- A global legally binding regime to ensure the widest participation of Parties;
- As any legal instrument adopted by the Convention, the 2015 agreement must be designed to hold warming to below 1.5°C above pre-industrial levels by the end of this century. The level of mitigation commitments should ensure that the sum of actions by all Parties meet the requirements defined by science. It is only by agreeing on emission limits sufficient to achieve these goals, that there will be a chance of ensuring that ecosystems adapt naturally to climate change, that food production is not threatened and economic development can proceed in a sustainable manner;
- The 2015 agreement should address mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity building in an effective and balanced manner.

2. Structure

As emphasized in our previous submissions, the 2015 Agreement should be a Protocol. As such, the following elements should be considered:

- *Commitments*: The various types of commitments, such as absolute targets, relative targets, policies and regulatory instruments, should accommodate various capabilities and vulnerabilities. However, there should be no backsliding for countries regarding the commitments they take. For example, Annex I countries should not be allowed to take relative targets as they have all agreed to take absolute targets in 1997 under the Kyoto Protocol.
- *Differentiation between categories of countries*: The social and economic situation of the world has considerably evolved over the past 20 years, leading to changes of differences between Parties included in the current annexes of the Convention. This occurred as creation of wealth in all countries has been accompanied with correlated growth in GHG emissions. However, due to development needs in all developing countries, the 2015 Agreement should support and incentivize developing countries to transition to a low emission and more sustained development pathway. The 2015 agreement during its first commitment period could consider tapping in a diversity of contributions from developing countries based on their various capabilities. At this point, developing countries' commitments could be reflected as relative targets ensuring deviation from BAU with subsequent consideration of absolute net reduction for all at the most appropriate development levels and time.
- *Elements of the agreement*:
 - *Mitigation*: Mitigation actions under the 2015 agreement should be informed by science and ensure the level of Parties targets for 2020 and beyond meet the ultimate objective of the Convention. The adequacy of those commitments should be assessed based on the latest available science; those commitments must be determined in a way that allows evaluation and verification of whether the aggregate effort is in line with the objective of the Convention. These commitments must then be inscribed into the agreement for no longer than five years to ensure sufficient flexibility to change the target based on new science. Many of the current proposals on the table allowing for communication by Parties of their preferred commitments with a provision for international assessment and adjustment are undermined by the lack of ability to assess if global temperatures are held at the required level.
 - *Adaptation*: The future regime should provide strong guarantees in providing enhanced support to adaptation. Clear commitments should be made to ensure effective implementation of adaptation in vulnerable developing countries and delivery of new multilateral public funding for adaptation through predictable sources. Institutional arrangements to support adaptation, including the Adaptation

Committee, should be anchored in the regime to trigger effectiveness, assess progress and improve delivery. Efforts should be made to support national institutional arrangements in LDCs to support better coordination and management of climate change issues. Moreover, as there are limits to adaptation, an international mechanism to address loss and damage should be integrated in the 2015 Agreement.

- *Finance*: The 2015 Agreement should clearly indicate the contribution of the various sources of revenues—public, private, and other sources—to ensure the effective implementation of the agreement, in particular the achievement of the ultimate objective of the Convention. Clarity should be provided regarding finance for adaptation. Provision of climate finance should be designed in such a way that the financial contributions support the effectiveness of actions. The LDC Group would like to see similar legal symmetry between commitments on mitigation and finance, including Finance for adaptation, in the 2015 Agreement;
- *Technology development and transfer*: The new agreement should trigger support for enhanced action on development and transfer of technology, ensuring the Technology Mechanism established under the Convention, namely, the TEC and the CTCN accelerate technology development and transfer in support of action on mitigation and adaptation. A robust provision and support for MRV on technology development in accordance with developing countries needs as identified in their TNAs are to be adopted. Provision including a periodic aggregate assessment on the extent to which needs are actually being addressed has to be carried for further consideration;
- *Transparency of action, support and implementation*:
 - *Actions*: The 2015 legally binding agreement (LBA) should ensure a transparency and accountability framework that is accurate, consistent, complete and comparable, allowing for regular peer and independent technical reviews. To be effective, transparency and accounting in the 2015 agreement should seek for continual improvement and encourage all Parties to strive to improve the quality of their reporting over time. In principle, there should not be less stringent reporting, review and compliance for any Party than in the current system, including with respect to gases, sectors, adjustments, and frequency. With respect to developed country Parties that are Parties to the Kyoto Protocol, reporting and review should be no less stringent under the 2015 Agreement than it has been in the first and second commitment period under the KP and this more stringent reporting and review should gradually be extended to a broader grouping of Parties as soon as capabilities permit. Parties must begin a discussion on compliance as part of the new agreement. This should be built on the current Kyoto system and improved;
 - *Support and implementation*: The work programme on a common tabular format for the UNFCCC biennial reporting guidelines for developed country parties

(currently under SBSTA) should substantially contribute to the development of a framework for MRV of support in the 2015 agreement. The Standing Committee on Finance per its MRV of support function should be tasked with a work programme to address gaps, shortcomings and limits of the current MRV architecture and make appropriate recommendation to the COP for its adoption.

- *Capacity building*: Integral to the 2015 agreement, guarantee should be provided to ensure that effective support for capacity building will be provided to the LDCs to support and enhance their contribution to the implementation of the 2015 agreement;
- *Institutions and mechanisms*: The new Agreement will need a coherent institutional framework with necessary adjustments and linkages for existing and new institutions and mechanisms. The continuing role of the existing institutions, both under the Convention and the Kyoto Protocol must be recognised;
- *Provisions on linkages with the Kyoto Protocol and other treaties*: It is important to clarify the relationship and the linkages between the 2015 Agreement and the Kyoto Protocol or other relevant international treaties;

Additional issues for imperative considerations are:

- Ratification and entry into force provisions;
- Treatment of non-Parties;
- Final clauses: standard clauses relating to signature, withdrawal, depositary and authentic texts etc must be included.

Ways of defining and reflecting enhanced action

The LDC Group believes that effective and enhanced actions to address global climate change problem can only be delivered if the ADP delivers a single LBA in the form of a protocol universally applied to all Parties, and should be legally bound by their respective obligations under the agreement.

The core Protocol can be accompanied by implementing agreements in the form of decisions, outlining details and modalities to ensure the agreement is immediately operational.

The Protocol should cover all elements, i.e. mitigation, adaptation, finance, technology development and transfer, capacity building, and transparency of action and support. The LDC Group does not support the idea of a ‘mixed bag’ with a mitigation agreement in the form of a legally binding agreement and the remaining issues being addressed in other forms such as decisions and/or declarations.

Historic and recent experience has demonstrated that stringency of legal form of a multilateral agreement is not automatically synonymous of enhanced actions. If strong

international legal bindingness of commitments is crucial, the level and types of incentives for actions and ambition are critical as well. Incentives under the new agreement should not be restrictive to access to flexible mechanisms but encompass and address both global regulatory and policy level modalities, including carbon pricing regulatory policy, investment and technology needs of developing countries to trigger real climate actions. The Protocol should be designed in a way that allows for the expression of the range and specific commitments, corresponding MRV provisions linked to mitigation and financial support.