

# Key technical and political issues for the LDCs under the ADP

Tim Gore and Pa Ousman Jarju

## KEY POINTS

- The negotiations under workstream 1 of the Ad hoc Working Group on the Durban Platform for Enhanced Action (ADP), on a regime which is “applicable to all”, **offer an opportunity for LDCs to ensure that the ambition of all Parties is raised.**
- “Applicable to all” does not, however, mean uniformity of action. Of particular importance to the LDCs is the **differentiation of approaches to commitments, and the provision of ways to deal with the special circumstances of Small Island Developing States and the LDCs.**
- It is important for the LDC Group’s interests that **top-down approaches to the new agreement are strengthened, to avoid free riders and maximise overall ambition.** This can be achieved by building **support for the Equity Reference Framework proposal**, and **maximising the impact of the 2013-2015 Periodic Review.**
- **Clear benchmarks for finance and adaptation in the new agreement are important to the LDC Group’s interest**, with adequate, predictable, new and additional financial resources for adaptation, and a new long-term adaptation goal linked to the mitigation ambition of the 2015 agreement.
- To limit global temperature increase to less than 1.5°C, it is vital that the LDC Group **continues to press developed countries to increase their inadequate pre-2020 mitigation pledges under workstream 2, argue for enhanced means of implementation for developing country mitigation action, and rally Parties around a small number of effective supplementary measures, especially in the energy sector.**

## Table of Contents

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Introduction	2
Key elements of the COP decisions on the ADP (1/CP.17 and 2/CP.18)	2
Issues pertaining to ADP workstream 2 on raising pre-2020 ambition	4
Issues pertaining to workstream 1 on the post-2020 climate regime	12
Conclusions	27

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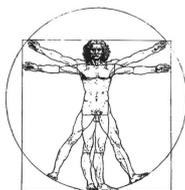
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## Introduction

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At the 17th Conference of Parties (COP 17) to the UN Framework Convention on Climate Change (UNFCCC) in Durban in 2011, an Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established with negotiations under two new workstreams.

Workstream 1 should lead to a protocol, another legal instrument or an agreed outcome with legal force under the UNFCCC, which should apply to all Parties, be adopted by 2015, and come into effect from 2020, and for which a draft negotiating text should be ready by May 2015.

Workstream 2 should lead to a range of actions to raise short-term mitigation ambition to close the “ambition gap” (the gap between the aggregate effect of national mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5°C) before 2020.

This paper assesses some of the key technical and political issues under both workstreams from the perspective of the Group of Least Developed Countries (LDCs).<sup>1</sup>

## Key elements of the COP decisions on the ADP (1/CP.17 and 2/CP.18)

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Key excerpt of 1/CP.17	<i>“Noting with grave concern the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels”</i>
Commentary	The preamble to the decision includes the first formal recognition in the UNFCCC of the “emissions gap” <sup>2</sup> and an important reference to the 1.5°C target that is the position of the LDC Group.
Key excerpt of 1/CP.17	<i>“2. Also decides to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention hereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action”</i>
Commentary	The key paragraph establishing the options for the legal form of the ADP’s agreed outcome, reflecting the compromise reached in the COP 17 closing plenary between those Parties arguing in favour of a legally binding agreement (including the Alliance of Small Island States (AOSIS), LDC Group, and the EU) and those arguing against (including India).  <b>- “another legal instrument”</b> The Foundation for International Environmental Law and Development (FIELD) notes that the likeliest interpretation of this option is that it refers to amendments or annexes under the UNFCCC in accordance with Articles 15 and 16, which would be legally binding in nature. <sup>3</sup> FIELD notes that this option could also refer to an “implementing agreement”, such as that proposed by the US in 2009, <sup>4</sup> similar to a protocol and which may be legally binding. Alternatively, it could refer to COP decisions (or some other type of soft law document) generally seen to be non-binding.

	<p><b>- “an agreed outcome with legal force”</b> The least clear of the options, since the language does not appear in the UNFCCC. An Indian submission suggests that whereas a protocol or another legal instrument would be legally binding, “an agreed outcome with legal force” may derive legal force from a country’s domestic law<sup>5</sup> – an interpretation highlighted by Bodansky.<sup>6</sup> Alternatively, Werksman has suggested this option could be used by Parties to promote COP decisions.<sup>7</sup></p> <p><b>- “under the Convention”</b> Since there is no explicit reference in 1/CP.17 to the core principles of the UNFCCC, notably equity and common but differentiated responsibilities and respective capabilities (CBDRRC) (<i>see below</i>), many developing countries (including the Like-Minded Developing Countries (LMDC) have stressed that the reference to the outcome of the ADP being “under the Convention” means that all of the UNFCCC principles must apply to it. This interpretation was further tested in the context of decision 2/CP.18 (<i>see below</i>).</p> <p><b>- “applicable to all Parties”</b> In the absence of the usual references to equity and CBDRRC, the inclusion of this term is politically significant, and, as Rajamani notes, is likely to indicate a significant shift in the “goal posts on differentiation” between developed and developing countries<sup>8</sup> (the Kyoto Protocol negotiating mandate specifically excluded new commitments for developing countries). “Applicable to all” indicates all Parties should be part of the same legal platform, though this does not preclude differentiation amongst Parties in the contents of their commitments (i.e. an approach which is “universal, but not uniform”).</p> <p><b>- “a protocol”</b> The clearest option, defined by UNFCCC Article 17, referring to a legally binding outcome such as the Kyoto Protocol, as favoured, for example, by the LDC Group, AOSIS and the EU.</p>
Key excerpt of 1/CP.17	“4. Decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall complete its work as early as possible but no later than 2015 in order to adopt this protocol, another legal instrument or an agreed outcome with legal force at the twenty first session of the Conference of the Parties and for it to come into effect and be implemented from 2020”
Commentary	Sets the deadline for completion of the ADP’s work as COP 21 in 2015, with a protocol, another legal instrument or an agreed outcome with legal force to come into effect from 2020.
Key excerpt of 1/CP.17	“5. Also decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building...”
Commentary	The only guidance on the content of the ADP, which gives far less detail than the Bali Action Plan (BAP), for example, and does not even require that all the listed areas are part of the final outcome. This means no guarantee that issues like adaptation, finance and capacity-building will be included in the 2015 agreement, while key principles from the BAP of significance to the LDC Group are absent, such as the requirement that finance be “adequate, predictable, sustainable...new and additional”, or the recognition of the “urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, especially the least developed countries...” <sup>9</sup> By the same token, it may be argued that the list is non-exhaustive so that other issues could be added to it. <sup>10</sup>
Key excerpt of 1/CP.17	“6. Further decides that the process shall raise the level of ambition and shall be informed, inter alia, by the Fifth Assessment Report of the Inter-governmental Panel on Climate Change, the outcomes of the 2013–2015 review and the work of the subsidiary bodies”
Commentary	As FIELD note, the reference to the 2013-2015 review is significant both because decision 1/CP.16 which launches the review is clear that it should include a consideration of strengthening the long-term global goal, including in relation to temperature rises of 1.5°C (the position of the LDC Group, AOSIS and others), and because it is clear that it should be guided by the principles of equity and CBDRRC – which are notably absent from the 1/CP.17 text ( <i>see above</i> ). <sup>11</sup>

Key excerpt of 1/CP.17	<i>"7. Decides to launch a work plan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties; 8. Requests Parties and observer organizations to submit by 28 February 2012 their views on options and ways for further increasing the level of ambition... to consider options and ways for increasing ambition and possible further actions."</i>
Commentary	Basis of the second ADP workstream on "enhancing mitigation ambition", "with a view to ensuring the highest possible mitigation ambition by all Parties", but does not specify that the level of ambition of the means of implementation for developing countries should also be enhanced. Whereas the BAP distinguished between "commitments" for developed countries and "actions" for developing countries, here the reference is to "options for a range of actions" and "options and ways" to increase ambition. Also notable is the absence of specific timelines for the work plan.
Key excerpt from 2/CP.18	<i>"Acknowledging that the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall be guided by the principles of the Convention."</i>
Commentary	Following the debate over the interpretation of "under the Convention" in 1/CP.17, several developing countries pushed for the inclusion of language in 2/CP.18 to clarify that the ADP is to be "guided by the principles of the Convention". The US opposed the inclusion of this language in the preamble, and in the closing plenary rejected any attempt to invoke UNFCCC principles as the basis for negotiations under the ADP, though it did not block the adoption of the decision. <sup>12</sup>
Key excerpt from 2/CP.18	<i>"9. Decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action will consider elements for a draft negotiating text no later than at its session to be held in conjunction with the twentieth session of the Conference of the Parties, due to be held from Wednesday, 3 December to Sunday, 14 December 2014, with a view to making available a negotiating text before May 2015."</i>
Commentary	Sets the deadline of COP 20 for the production of elements of a draft negotiating text for the 2015 agreement, with the aim of producing a full negotiating text by May 2015 – in line with the six-month minimum time period required ahead of adoption of a protocol or another legal instrument under the UNFCCC.

## Issues pertaining to ADP workstream 2 on raising pre-2020 ambition

### The Emissions Gap: a summary

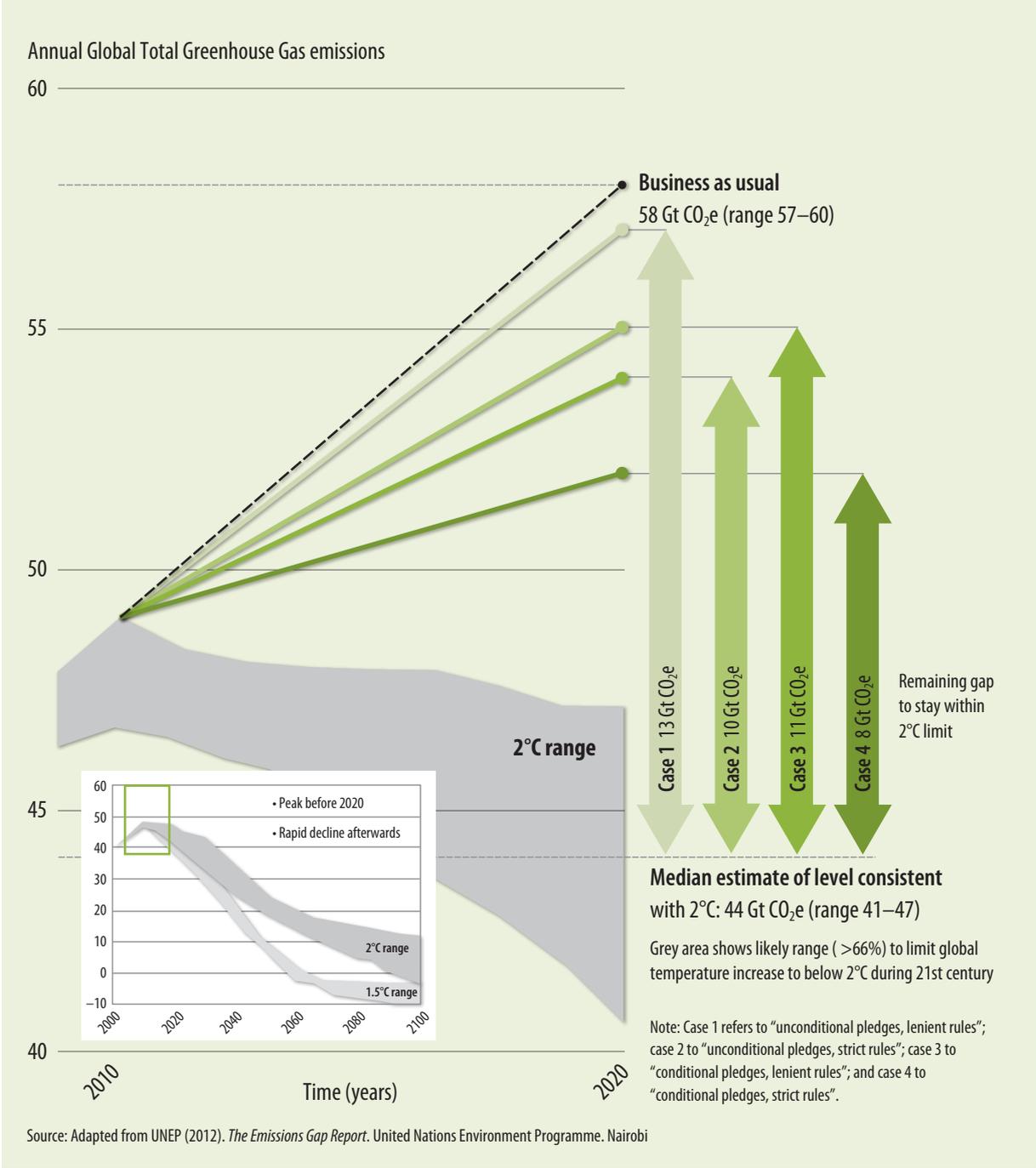
The United Nations Environment Programme (UNEP) Emissions Gap reports of 2010, 2011 and 2012 assess the gap between aggregate global emissions in 2020 based on the emission reduction pledges linked to the Cancún Agreements, and the aggregate global level of emissions in 2020 associated with emissions pathways that have a likely chance of keeping global average temperature increases below 2°C and 1.5°C. The median estimate of emission levels in 2020 consistent with a likely chance of keeping below 2°C of average warming is 44 gigatonnes of carbon dioxide equivalent (Gt CO<sub>2</sub>e).

The UNEP analysis finds that in the most optimistic scenario (assuming the most ambitious pledges made by Parties are implemented with the strictest accounting rules) emissions are set to be 52 Gt CO<sub>2</sub>e in 2020, but could be as high as 57 Gt CO<sub>2</sub>e if only the least

ambitious pledges are implemented. This means that with no additional action taken, the emissions gap in 2020 would be between 8 Gt CO<sub>2</sub>e (highest ambition level) and 13 Gt CO<sub>2</sub>e (lowest ambition level) – see Figure 1 below.

In conclusions that are largely supported by the International Energy Agency and analysis by Ecofys, UNEP suggests that emissions reductions are available globally amounting to 14-20 Gt CO<sub>2</sub>e by 2020, but that current infrastructure investment decisions are having the effect of “locking-in” patterns of high energy use that will constrain future mitigation options.

**Figure 1: The emissions gap**



## Key political issues pertaining to workstream 2

Since COP 17 in Durban, discussions under workstream 2 have taken place in workshop formats, and views have been presented in submissions that are synthesised in a Secretariat technical paper.<sup>13</sup> Key political issues raised by Parties to date have included the following:

- **Differentiation between developed and developing countries in enhancing ambition pre-2020**

Paragraphs 7 and 8 of decision 1/CP.17 do not specify that efforts to enhance ambition should be differentiated between developed and developing countries, but rather strive for “the highest possible mitigation efforts of all Parties”. This has led many developing countries to stress that the workstream must be based on the principles of equity and CBDRRC, and not become a means to shift the responsibility for increasing mitigation efforts from developed to developing countries.

China and the LMDC have been particularly vocal in arguing that the primary means of raising ambition should be through increased commitments of developed country Parties to the second commitment period of the Kyoto Protocol, with parallel efforts by developed countries that are not Parties to the second commitment period under the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA). They note that the total emissions reductions pledged by developing countries linked to the Cancún Agreements are greater in absolute terms than the reductions pledged by developed countries, and that if all developed countries increased their 2020 pledges to 40 per cent below 1990 levels, this would close the emissions gap entirely.

Some developing countries, like Costa Rica and the Dominican Republic, have, however, suggested that developing countries should not wait for developed countries to take the lead in enhancing mitigation action, but should also lead and help to build a cycle of confidence.<sup>14</sup> For the LDC Group, it is critical that all Parties increase their mitigation efforts in order to keep the 1.5°C target within reach. To date the LDC Group has called for:

- Implementation of comparable actions under the Convention from developed countries that are not part of the second commitment period of the Kyoto Protocol; including through reconsideration of inadequate pledges by some Parties.
- Removal of conditionalities around 2020 pledges, moving to the higher range for all countries that have provided ranges and towards deeper reductions than currently pledged for all developed countries.
- Full implementation of developing countries’ Nationally Appropriate Mitigation

Actions (NAMAs), including through provision of finance, technology and capacity building needed to support and facilitate implementation.

- Submission and implementation of additional mitigation actions from those developing countries that have not yet submitted NAMAs.

- **Enhancing ambition of adaptation and means of implementation, as well as mitigation**

In reasserting the principle of equity and CBDRRC, developing countries have also argued that enhanced ambition by developing countries should be contingent on enhanced provision of means of implementation (finance, technology transfer and capacity building) by developed countries. While the LDC Group is clear that workstream 2 should be concerned with mitigation, the Group has stressed in interventions that “Finance, technology, and capacity-building to support implementation of mitigation actions are an essential part of the work of this workstream. Sufficient financing is needed in particular for those countries that need it the most for allowing them to realise their greatest potential to engage in the global effort”<sup>15</sup>, including via the full operationalisation of the Green Climate Fund (GCF). The LDC Group has also led calls for the workstream to consider synergies between mitigation and adaptation, asserting that “ultimately it is mitigation that determines the level of adaptation in the future”.<sup>16</sup>

These efforts have proved successful in establishing the importance of enhanced means of implementation in supporting enhanced mitigation action, and the need to consider mitigation options with adaptation co-benefits, as captured in the informal notes of the co-chairs ahead of COP 18<sup>17</sup> and in August 2013.<sup>18</sup> There will be a key opportunity to press this case further if the Polish Presidency of COP 19 confirms that a ministerial roundtable will take place to discuss the commitment by developed countries to mobilise US\$ 100 billion per year by 2020. One risk that the LDC Group should be conscious of, however, is that developed countries may seek to make the provision of scaled-up finance to meet the US\$ 100 billion commitment contingent upon new mitigation efforts by developing countries. One way to counter this argument may be to focus on the need for enhanced capacity development to create the enabling environment for LDCs to undertake mitigation actions with a higher degree of confidence.

- **The potential for supplementary initiatives to enhance ambition outside the UNFCCC**

In the context in which no developed country has so far been willing to increase its existing mitigation pledge, the EU and some other developed countries, such as

Norway,<sup>19</sup> have placed most emphasis instead on supplementary initiatives outside of the UNFCCC – or what the EU calls “international co-operative initiatives”<sup>20</sup> – to enhance mitigation ambition pre-2020. Such Parties have suggested that the role of the UNFCCC could be to “record, acknowledge, reward and encourage these initiatives and give a political signal of their importance”.<sup>21</sup>

This approach has been criticised by some developing countries including the LDCs, notably members of the LMDC, who have claimed that such initiatives are no substitute for actions under the UNFCCC and the Kyoto Protocol, and must be consistent with UNFCCC principles. A number of countries have expressed concern that such supplementary measures, for example at the sub-national level, will not represent additional mitigation action beyond the existing national mitigation pledges. India and other countries have also raised concerns about sectoral and/or unilateral approaches that may impact the economies of developing countries.

AOSIS has been more open to such supplementary initiatives, suggesting Parties and non-Party actors should provide information to the UNFCCC on such activities and projected outcomes, the quantification of action plans in terms of emission reductions and clarification of the extent to which such reductions are additional to those resulting from the implementation of existing actions. The LDC Group have reiterated that such initiatives should not be a substitute for increasing the mitigation pledges of developed countries but supplemental and subject to the same accounting rules to measure mitigation efforts under the UNFCCC and its Protocol. Some of the proposed initiatives are explored in more detail in the table below.

## Potential policy options for enhancing pre-2020 mitigation ambition

Approach	Commentary	Mitigation potential
(i) Increasing the ambition of existing pledges and commitments		
Higher pledges by Annex I (A1) countries that are Parties to the Kyoto Protocol	<p><b>Most strongly supported by:</b> China, India, Philippines, LMDC, AOSIS, LDCs</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– The Doha decision requires Kyoto Protocol Parties to revisit their commitments for the second commitment period (2013-2020) by 2014 to bring them into the range of 25-40 per cent below 1990 levels.</li> <li>– The Ban Ki-moon summit in September 2014 is a key opportunity to assess the outcome of the review of the ambition of the Kyoto Protocol to press for higher mitigation targets by developed countries.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– There is little prospect of the EU or Norway increasing their 2020 targets, and they would only consider doing so in the context of a wider increase in ambition beyond just Kyoto Protocol Parties.</li> </ul>	<p>Dependant on ambition of increased pledges.</p> <p>For example: All A1 countries going to top-end of current pledges = 2Gt (UNEP).</p> <p>Suggested mitigation asks for each A1 country assessed by Climate Action Network (CAN)-International available here: <a href="http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf">http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf</a></p>
Higher pledges by A1 countries that are not Parties to the Kyoto Protocol	<p><b>Most strongly supported by:</b> China, India, Brazil, South Africa, Philippines, LMDC, Mali, Kenya, Venezuela, AOSIS, LDCs</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– Developed countries should lead the fight against climate change.</li> <li>– The total of current pledges by Non-Annex I (NA1) countries are higher in terms of absolute tonnes of greenhouse gases (GHG) avoided than that of A1 countries.</li> <li>– If A1 countries increase their pledges to 40 per cent below 1990 levels, the emissions gap would be closed.</li> <li>– If A1 countries commit to the high end of their current pledges, the emissions gap would be narrowed by 2 Gt.</li> <li>– The Ban Ki-moon summit in September 2014 is a key opportunity to press for higher mitigation targets by developed countries.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– No developed country Party is currently considering increasing its 2020 mitigation target – an uphill struggle, with strong opposition from the US.</li> </ul>	<p>Dependant on ambition of pledges.</p> <p>Suggested mitigation asks for several NA1 countries from CAN-International available: <a href="http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf">http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf</a></p>
Higher ambition by NA1 Parties, including through enhanced provision of the means of implementation	<p><b>Most strongly supported by:</b> LDC Group, Costa Rica, AOSIS</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– A strong lever to press for increases in finance post-Fast Start Finance.</li> <li>– Finance ministries need to be involved in efforts to close the emissions gap.</li> <li>– Developing countries that have already submitted mitigation pledges, but are in a position to be able to increase their ambition, should do so to create an upward spiral of confidence.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– Reduces pressure on developed countries to take responsibility for enhancing ambition (though this means it could be used as leverage).</li> <li>– Risk that any increase in finance will be made conditional on new commitments by developing countries.</li> </ul>	<p>Dependant on ambition of pledges.</p> <p>Suggested mitigation asks for several NA1 countries from CAN-International available: <a href="http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf">http://www.climatenetwork.org/sites/default/files/doha_final_web.pdf</a></p>
Tougher rules governing pledges (for instance, avoiding double-counting of offsets)	<p><b>Most strongly supported by:</b> UNEP, civil society, AOSIS, LDCs</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– There is no excuse for double-counting emission reductions from offsets towards both developed and developing country mitigation targets.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– May lower demand for offsets, and subsequent financial flows to developing countries (though only a negligible amount flows to LDCs).</li> </ul>	<p>Avoiding the double-counting of international emissions offsets could reduce the gap by up to 1.6 Gt CO<sub>2</sub>e.</p>

Approach	Commentary	Mitigation potential
(ii) Increasing the number of countries making pledges		
Pressing A1 countries that have not yet made a mitigation pledge to do so	<p><b>Most strongly supported by:</b> LDC, AOSIS (but no major supporters)</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– Only one A1 country – Turkey – has yet to register a mitigation pledge under the Cancún Agreements.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– Much more can be gained by focussing on increasing the inadequate pledges of A1 countries that have been made, and/or on NA1 countries that have not yet made a pledge.</li> </ul>	Unclear
Pressing NA1 countries that have not yet made a mitigation pledge to do so	<p><b>Most strongly supported by:</b> EU</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– 87 Parties have made pledges to reduce their emissions, while 105 have not. Those countries that have not yet submitted pledges are estimated to account for 28 per cent of projected global emissions in 2020.</li> <li>– A number of countries responsible for more than 1 per cent of global emissions (and/or with per capita emissions above the global average) including Qatar, Saudi Arabia, Kuwait, the UAE, Malaysia, have not yet made a pledge.<sup>22</sup></li> <li>– As India has noted, any such new pledges should be anchored in the AWG-LCA under the Cancún Agreements, preserving their voluntary nature.</li> <li>– The Ban Ki-moon summit in September 2014 is a key opportunity to press for pledges by all countries in a position to do so, but have not yet done so.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– Reduces pressure on developed countries to take responsibility for enhancing ambition (though this means it could be used as leverage).</li> </ul>	<p>Depending on ambition level of new pledges.</p> <p>For example: If all Parties not yet to make a pledge did so, 0.2-2 Gt CO<sub>2</sub>e could be saved in 2020.</p>
(iii) Recognising cooperative initiatives undertaken at the sub-national, national, regional and international levels. (NB: the below assesses only some options considered most pertinent to the LDC Group; for a full range of potential options, see: Germanwatch <sup>23</sup> and Ecofys <sup>24</sup> )		
Phase-out hydro-fluorocarbons (HFCs) <sup>25</sup>	<p><b>Most strongly supported by:</b> EU, US, Switzerland, Norway, AOSIS</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– Technically feasible and cost-efficient to replace HFCs with other gases.</li> <li>– The Montreal Protocol is an effective existing instrument to implement a phase-out of HFCs.</li> <li>– Mitigating HFCs can have numerous developmental co-benefits, including improved air quality and reduced crop losses.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– India and the LMDC note that it is not clear if the CBDRRRC principle applies to the Montreal Protocol, so developing countries may have to take targets for HFC reduction in that forum.</li> <li>– India and the LMDC also claim that non-HFC alternatives are limited and that these technologies are only in developed countries, which will profit from selling them to developing countries.</li> <li>– The LDC Group has questioned the certainty with regard to HFC projections, and raised concerns that a focus on HFCs will detract attention from reducing carbon dioxide emissions.<sup>26</sup></li> </ul>	Up to 1.3 Gt CO <sub>2</sub> e

Approach	Commentary	Mitigation potential
AOSIS proposal to focus on technical discussions to implement renewable energy and energy efficiency measures at scale <sup>27</sup>	<p><b>Most strongly supported by:</b> AOSIS, LDC Group, Kenya, Japan</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– A proposal for a more technical, targeted and results-oriented discussion, identifying and focusing on areas that have the greatest mitigation potential, are cost-effective and scalable, bearing in mind the need for developed countries to take the lead.</li> <li>– Would bring the right people “into the room” – at expert level initially and later at high political level – to identify the best opportunities and obstacles to take-up (including means of implementation).</li> <li>– The technical approach would assure developing countries of financial support, and developed countries that their support would result in measurable emission reductions.</li> <li>– The LDC Group has noted that the transformation of energy systems (increased efficiency and increased share of renewables) is essential to meet a 1.5°C pathway.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– May lose sight of key political principles of the Convention.</li> <li>– Focussed on mitigation only, no consideration of adaptation.</li> </ul>	<p>Depends on ambition of measures.</p> <p>For example: The World Energy Outlook 2012 estimates that if the full short-term potential in energy efficiency and renewable energy use is tapped, global emissions by 2020 could fall by 5 Gt CO<sub>2</sub>e.</p>
Elimination of fossil fuel subsidies	<p><b>Most strongly supported by:</b> AOSIS, Norway, Switzerland/Environmental Integrity Group, LDC Group<sup>28</sup></p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– The fossil fuel industry is subsidised globally by an estimated US\$ 730 billion per year – more than ten times the subsidies for renewable energies. G20 support phasing-out.</li> <li>– Savings could be re-directed to climate finance (for mitigation or adaptation), or investment in renewable energy.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– The majority of consumption subsidies are in developing countries, where removal may harm the poorest, so only production subsidies should be targeted, and/or removal of consumption subsidies should be accompanied by pro-poor measures.</li> </ul>	2 Gt CO <sub>2</sub> e
Reductions in emissions from international aviation and shipping via new agreements at the International Maritime Organization (IMO) and International Civil Aviation Organization (ICAO)	<p><b>Most strongly supported by:</b> EU</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– Emissions from shipping and aviation are already high, unregulated, and growing fast, yet there is substantial scope to mitigate.</li> <li>– Reducing emissions from these sectors through a form of carbon pricing could also raise substantial new and additional funds (in the order of US\$ 10-20 billion per annum) for climate finance.</li> <li>– A tentative agreement has been reached with regard to the application of CBDRRC at the IMO, and a key opportunity exists for progress on an international mechanism for aviation at the ICAO.</li> <li>– Options exist (including as part of the IMO discussions) that would ensure “no net incidence” from global mechanisms on LDCs and some other developing countries.<sup>29</sup></li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– BASIC countries (Brazil, South Africa, India and China) and the LMDC especially argue that any efforts to raise ambition in the context of IMO and ICAO should be in accordance with UNFCCC principles, and take account of national circumstances. This may be interpreted to mean that measures should ensure no net incidence on developing countries.</li> </ul>	About 0.3–0.5 Gt CO <sub>2</sub> e by 2020 (with further reductions thereafter)

Approach	Commentary	Mitigation potential
Reductions in emissions from land-use (agriculture and forestry)	<p><b>Most strongly supported by:</b> Food and Agriculture Organization, UN-REDD, REDD+ Partnership, Bolivia (integrated adaptation-mitigation proposal<sup>30</sup>), New Zealand</p> <p><b>Key arguments for:</b></p> <ul style="list-style-type: none"> <li>– 30 per cent of global emissions are from land-use (agriculture and forestry), with substantial untapped mitigation potential that could close the emissions gap.</li> <li>– A Bolivian proposal identifies a non-market integrated approach for adaptation and mitigation, based on land tenure of small-scale farmers and generating co-benefits for food security.</li> </ul> <p><b>Key arguments against:</b></p> <ul style="list-style-type: none"> <li>– Mitigation activities must not compromise broader land-use sector priorities related to food security and livelihoods.</li> <li>– It is not clear that it is more cost-efficient than non-land-based mitigation options.</li> <li>– Land-use issues are highly complex (accounting challenges, risk of reversal from wild fires/drought, etc).</li> </ul>	<p>Forestry: between 1.3 and 4.2 Gt CO<sub>2</sub>e</p> <p>Agriculture: between 1.1 and 4.3 Gt CO<sub>2</sub>e</p>

## Issues pertaining to workstream 1 on the post-2020 climate regime

Although workstream 2 may continue beyond 2015, it is strongly linked to workstream 1 as part of the political package needed for an agreement in 2015, with some Parties insisting on “*pari passu*” treatment. The former ADP co-chairs noted the need for balance between the workstreams, and recognised that “[p]rogress on pre-2020 ambition in workstream 2 will contribute to progress in workstream 1 and may help design the 2015 agreement, especially its ambition mechanism. At the same time, concrete progress in workstream 1 may prove helpful for aiming at a more ambitious approach for workstream 2.”<sup>31</sup> The LDC Group should guard against the risk that any perceived lack of clarity about the nature of the outcome under workstream 2 be used to hold up progress on workstream 1.

### Scope, structure and design of the post-2020 climate regime

In their August 2013 Informal Note, the ADP co-chairs suggest that “Parties have made progress in clarifying their understanding of the scope, structure and design of the 2015 agreement, and its contours are beginning to emerge. There is a broad understanding that the 2015 agreement should be: informed by science; based on equity; flexible and sensitive to national circumstances; and environmentally effective; and that it needs to enable broad and deep participation, with contributions from all Parties in accordance with their common but differentiated responsibilities and respective capabilities. These key elements – science, equity, flexibility, effectiveness and participation – are intimately interlinked and could guide Parties in their approach to constructing the 2015 agreement.”

Bodansky’s conceptual framework<sup>32</sup> is helpful in understanding these elements related to the scope, structure and design of the future regime. The influence of his approach can be

seen in some of the key political issues arising in workstream 1, the implications of which for the LDC Group are assessed below.

- **The perceived trade-off between participation and ambition**

Bodansky claims that the objective of a UNFCCC agreement is “climate effectiveness”, which he suggests is the product of three factors: the stringency of commitments, the level of participation and the extent of compliance mechanisms. Varying any one of these factors, he says, may vary one or both of the others. This analysis underpins the arguments made, especially by countries in the Umbrella Group, that there is a trade-off between the level of participation in an international climate agreement, and its level of ambition.

This argument is now reflected in the language of the co-chairs’ Informal Note, which describes “flexibility, effectiveness and participation” as key elements of the 2015 agreement alongside science and equity. Since the 2015 agreement should be “applicable to all”, this framing can be used to imply that ambition (and/or the extent of compliance) may have to be compromised. The LDC Group therefore should be wary of fully endorsing this analysis and framing of the objective of the 2015 agreement, since it could become a self-fulfilling prophecy (in which countries who do not wish to take on high ambition commitments argue that ambition must necessarily be traded-off in order to secure their and others’ participation).<sup>33</sup> The LDC Group position is that the 1.5°C target and adequate action on adaptation and loss and damage can only be achieved through a high ambition agreement with wide participation.

- **Top-down contractual or bottom-up facilitative agreements**

Bodansky suggests that UNFCCC Parties have always struggled to choose between two competing models of international law: a top-down “contractual” approach, based on binding targets and timetables, and a bottom-up “facilitative” approach, based on voluntary actions defined unilaterally. The Kyoto Protocol can be seen as an example of the former, and the Cancún Agreements as an example of the latter. He suggests that the more bottom-up the approach, the easier it is to promote wide participation but the harder it is to promote ambition, while top-down approaches tend to have higher ambition but enjoy narrower participation.

- **Design choices for the post-2020 regime**

Within this spectrum of top-down contractual and bottom-up facilitative agreements, Bodansky highlights a number of key design choices Parties face in designing the 2015 agreement, related to (a) the legal form of the agreement; (b) the structure of

the agreement; (c) the content of the agreement; and (d) the process to reach the agreement. The implications of each for the LDC Group are assessed in the table below.

<p>Design choices for the post-2020 regime<sup>34</sup></p>	<p><b>(a) Legal form of the agreement</b></p> <p>International instruments can take a number of forms:</p> <ul style="list-style-type: none"> <li>– Legally-binding agreements (including treaties, protocols or amendments to treaties or protocols)</li> <li>– Recommendations (unless a treaty gives an international institution authority to make legally-binding decisions, their decisions have the status of recommendations, true of most COP decisions)</li> <li>– Political agreements (agreed outcomes not adopted as treaties/protocols can have political but no international legal force)</li> </ul> <p>§2 1/CP.17 allows for legally-binding outcomes and recommendations (<i>see section 1</i>), but seems to rule out political agreements such as the Copenhagen Accord.</p> <p>Note that an instrument’s legal form is distinct from the question of whether particular provisions of an instrument are “mandatory” or “hortatory” (e.g. whether a provision is phrased as “should” or “shall”). Legally-binding agreements can contain hortatory language, and political agreements can use mandatory language.</p>
<p>Commentary</p>	<p><b>LDC Group position: The outcome of the ADP should be a new protocol.</b></p> <p>Some Parties have expressed clear preferences for the legal form of the 2015 agreement, while others have kept their options open. The LDC Group and AOSIS favour a protocol outcome of the ADP, as does the Africa Group, that builds on the foundations of the UNFCCC and the Kyoto Protocol, and along with the EU fought to prevent non-legal options from being part of the ADP mandate in Durban.</p> <p>However, many Parties are yet to be convinced that a wide-ranging new legally-binding agreement is either feasible or desirable, and many argue that achieving such a legal outcome would only be possible at the expense of the ambition of the agreement. Therefore, rather than an agreement in which all provisions are captured in the same legally-binding protocol (or amendment) form, it is more likely that agreement could be reached with certain key provisions in such a form, and leaving others as either recommendations (COP decisions) or in a form which is legally binding under domestic (not international) law.</p> <p>This more flexible approach is implied in the Co-Chairs’ Informal Note which states that “...it will also be important to start thinking about the legal character of <i>each aspect of the agreement</i>”<sup>35</sup> (emphasis added), and in the Chair’s Summary of the July 2013 meeting of the Major Economies Forum, which states that: “The participants also discussed the options for legal force regarding mitigation provisions of the 2015 agreement in particular and other provisions as well. Regarding mitigation, they noted that there will be several <i>different types of provisions and that their treatment in terms of legal force does not need to be uniform</i>. Options for legal force were evaluated in light of their ability to promote ambition, as well as inclusiveness in terms of countries’ participation”<sup>36</sup> (emphasis added).</p> <p>It is likely that one option being explored is that some types of provisions – such as those regarding the core mitigation commitments – may be legally-binding under domestic law inscribed in annexes or schedules to the agreement, while others – such as those regarding accounting rules and measurement, reporting and verification (MRV)/transparency – may be inscribed in the body of the agreement itself and therefore legally-binding under international law. Both the US and India have indicated some interest in this approach, which could be argued to constitute an “agreed outcome with legal force” under domestic law, even if the international agreement itself was in the form of a COP decision.<sup>37</sup></p>

	<p>The LDC Group must consider which aspects of the 2015 package need to be in a legally-binding form under international law, and which could be captured in other forms. Certainly a starting point should be that core provisions concerning Party commitments on mitigation and finance and their transparency should be legally-binding under international law with an appropriate compliance mechanism,<sup>38</sup> in order to reflect the highest level of commitment by a Party. Some other issues related, for example, to institutions like the Standing Committee on Finance (SCF) or Adaptation Committee may be just as well captured in COP decisions and may not require mandatory language to be effective.<sup>39</sup> The treatment of adaptation in the 2015 agreement is a key consideration in this regard (<i>see below</i>).</p> <p>While this should be the starting point for negotiations on legal form, it is also important to recognise that the lack of ambition in the Cancún pledges is likely more related to the bottom-up process to define them than to their non-legally-binding nature. Ultimately, the overall legal form of the agreement is less important than the commitments and actions contained therein. As such, design choices related to content (including differentiation) and process are likely even more significant for the LDC Group's objectives (<i>see below</i>).</p>
<p>Design choices for the post-2020 regime<sup>34</sup></p>	<p><b>(b) Structure of the agreement</b></p> <p>International agreements can be structured in a number of ways:</p> <ul style="list-style-type: none"> <li>– A single instrument or package of instruments (all Parties agree to the same outcome, such as the “single undertaking” that established the World Trade Organization)</li> <li>– A variable geometry (different configurations of countries for different parts of the regime, such as the “à la carte” approach to trade negotiations in the 1960s/70s, or the “optional protocols” of many international human rights instruments)</li> <li>– Combinations of mandatory and voluntary elements (such as the International Convention on the Prevention of Pollution from Ships, MARPOL, which includes two mandatory annexes and four optional annexes)</li> </ul> <p>§2 1/CP.17 is silent about the structure of the outcome (including whether it will subsume the Kyoto Protocol, or exist in parallel with it).</p>
<p>Commentary</p>	<p><b>LDC Group position: No explicit position to date on the structure of the agreement.</b></p> <p>The co-chairs' Informal Note suggests that several Parties are working on the assumption of a single package of instruments and decisions that all Parties will adopt:<sup>43</sup> “13. The notion of a broader 2015 package was suggested by several Parties, comprising the 2015 agreement itself, the implementing decisions, and other decisions needed to complete and balance the overall package. Parties may wish to further exchange views on the aforementioned package, the components of the 2015 agreement and, as the discussions progress, on what work will be needed during 2016–2019 to enable the agreement to come into effect and be implemented from 2020.”<sup>40</sup></p> <p>However, the discussions on international co-operative initiatives under workstream 2 may be opening space in the negotiations for a more variable geometric approach. Learning from the challenges faced in reaching an all-or-nothing agreement in Copenhagen, the French Presidency of COP 21 may look to secure supplementary voluntary agreements amongst coalitions of the willing to boost the overall ambition of the agreements struck in Paris.<sup>41</sup> Bodansky suggests that a multi-track approach could be pursued in which Parties could pick and choose between different annexes or tracks, with one international agreement prescribing issues like accounting and transparency. Alternatively, certain groups of Parties could be required to negotiate commitments under certain tracks (<i>see below on differentiation</i>).</p> <p>For the LDC Group, one risk of a more variable geometric approach is that the presence and influence of the LDC Group over international climate policy may be weakened. Already the Major Economies Forum's “Action Agenda” (so far focussed only on energy efficiency in buildings) is an example of an international climate initiative proceeding without the scrutiny of the countries most vulnerable to climate change impacts including the LDC Group. According to Bodansky's logic, starting with a smaller group of Parties may be a way to keep ambition high, but equally the exclusion of the most vulnerable countries from such groups may result in lower ambition. For the LDC Group, such initiatives could only be justified where they result in higher ambition outcomes than could realistically be achieved in a form applicable to all, and where accompanied by a strong compliance regime.</p>

### (c) Content of the agreement

The substantive content of an agreement depends on a number of variables, including:

- type of commitments (commitments could be “obligations of result”, requiring achievement of an outcome such as an emissions target, or “obligations of content”, requiring Parties to do particular things such as adopt policies and measures or provide finance)
- scope of commitments (agreements may address an issue comprehensively, such as by focussing on economy-wide emissions reductions, or focus on particular aspects, such as by only focussing on certain sectors or gasses)
- ambition of commitments (commitments may be more or less stringent)
- differentiation of commitments (commitments may be differentiated in various ways, such as according to their type, stringency, timing and/or contingency on assistance in implementation,<sup>42</sup> and based on various objective indicators or on the subjective pledges of individual Parties)

Rajamani offers a complementary conceptual framework of design options for differentiation, showing that differentiation essentially boils down to matching types/categories of commitments to categories of countries.<sup>43</sup> On this basis she identifies four design options for the 2015 agreement:

- predetermined categories of Parties with a predetermined set of commitments (a Kyoto Protocol-like approach);
- predetermined categories of Parties with nationally defined commitments (particular Parties must act, but can set their own commitments);
- no categories of Parties but a predetermined set of commitments (any Party can choose the category of commitment that suits them);
- no categories of Parties or commitments (Parties are free to choose whatever type of commitment they like).

§2 1/CP.17 only suggests that the work plan (not necessarily the final outcome) should address *inter alia* mitigation, adaptation, finance, technology, capacity building and transparency, but otherwise leaves open how they should be addressed in terms of type, scope or differentiation.

### (d) Process to reach the agreement

The substantive content of an agreement may be decided through a spectrum of approaches between the top-down and bottom-up models:

- Top-down (negotiations define a GHG concentration target, emissions pathways, global emissions targets and individual country commitments based on a specific allocation formula)
- Bottom-up (Parties define their commitments through unilateral decisions)
- Options in-between (agreements may be reached through a combination of top-down and bottom-up processes, such as the Kyoto Protocol, in which individual country commitments were the product of international negotiations, but over which countries had considerable influence, and in which the resulting global emissions reduction target was simply the sum of the negotiated national commitments)

Because top-down agreements rest on a “contractual” model in which countries feel their efforts are reciprocated by others, issues of differentiation and comparability of effort are more important to reaching agreement. The importance of differentiation is more indirect in bottom-up models, but will nonetheless influence the commitments that countries feel willing to pledge.

§2 1/CP.17 is silent about the degree to which the substance of the outcome will be defined through top-down international or bottom-up national decision-making.

### Commentary

**LDC Group position: The initial position called for internationally negotiated top-down commitments, but the Group has been open to considering a hybrid approach between top-down and bottom-up that can secure a 1.5°C pathway as a possible compromise. The Group has proposed new categories of commitment, but no back-sliding from economy-wide absolute reductions for A1 countries, and proposed that the 2015 agreement could consider a first differentiation among existing annexes with a provision for graduation across annexes over time, based on agreed criteria.**

As described in section 1, the absence of the usual references to equity and CBDRRC in 1/CP.17 are highly politically significant, and indicate that a shift will take place from the Kyoto Protocol-style approach in which a type of commitment (economy-wide absolute mitigation targets) was prescribed to a category of countries (A1 Parties) in a process with at least some top-down elements (targets were negotiated not merely pledged, with agreed common accounting rules). It is, however, not yet clear what will replace this model.

The question of differentiation is central to the politics of the 2015 agreement.

Many developed countries, including the EU, Australia, Japan and the US, and some developing countries, such as the Association of Independent Latin American and Caribbean states (AILAC), have argued for a “dynamic” interpretation of CBDRRC to reflect evolving responsibilities and capabilities, breaking down the “firewall” between A1 and NA1 Parties.

India and the LDC have firmly opposed any “dynamic” interpretation of CBDRRC that would entail redrawing the A1/NA1 categories, or that is based solely on economic indicators of capability and does not consider historical responsibility. Perhaps in part as a result, to date proposals under the ADP have focussed less on how new categories of countries would be constituted, and more on the need for new categories of commitment (what the EU calls a “spectrum of commitments”), to be determined by processes that range along the spectrum of top-down and bottom-up approaches. Three broad approaches are emerging.

Ethiopia has made a proposal for a largely top-down quantitative approach in which a global target is set and national commitments are determined on the basis of each country’s per capita emissions up to 2020, and their corresponding global emission right.<sup>44</sup> This would give rise to three categories of countries: those who have already used their emission right; those who will shortly use it up; and those who still have available atmospheric space. Another largely top-down quantitative approach has been proposed by Brazil, which has again presented its proposal from the Kyoto Protocol negotiations for a differentiation formula based on historical responsibility for the contribution of a country’s cumulative emissions to temperature rise.

Other Parties have proposed hybrid approaches to determine commitments with both top-down and bottom-up elements. The top-down elements are stronger in proposals for an Equity Reference Framework (ERF), as made by the Gambia on behalf of the LDC Group,<sup>45</sup> South Africa, Kenya and CAN-International. This would see negotiation and agreement on a basket of equity indicators that can be used as an ex ante guide to mitigation pledges to be made by Parties, and to guide ex post reviews of those pledges. It is not as yet clear how precisely an ERF would lead to new categories of either countries or commitments, but the LDC Group have suggested a group of experts could help to develop the methodologies.<sup>46</sup>

The bottom-up elements are stronger in proposals made in varying forms by a number of developed countries, including the EU, US, Switzerland, Australia and Norway, all of which involve nationally-determined pledges followed by an assessment/consultation phase amongst Parties. The proposals from the EU and Australia include a call for establishing new categories of commitments which countries would be free to choose from, with internationally agreed common accounting and MRV rules. As such these proposals would fit into the Rajamani framework as “undefined categories of countries, defined categories of commitments”.

For the EU, Switzerland and Norway, the top-down elements could be moderately strengthened in the assessment/consultation phase by requiring Parties to refer to objective indicators to justify the fairness of their proposed pledge. The US and Japan though have suggested that indicators are unhelpful as they lead to divisions in interpretation amongst Parties which may undermine ambition and/or participation in the regime.

There is a tentative convergence of views emerging around the hybrid process approaches. The Co-Chairs’ Informal Note suggests that: “Regarding mitigation, Parties have explored in more detail bottom-up and top-down elements and how they can be combined. In this regard, Parties broadly acknowledge the need for internationally agreed rules to enable ex ante clarity of nationally determined contributions and to provide for a robust process, framework or mechanism to ensure that Parties’ contributions are ambitious in accordance with science as well as equitable and fair. Greater clarity is needed on how this vision could be realized, including on possible steps and time frames.”

Different opinions are emerging, however, about the timeframe of such a process. The Chair's conclusions from the MEF show that a number of countries want COP 21 in 2015 to start the process of pledges, while others want 2015 to mark the adoption of the pledges.<sup>47</sup>

It is in the interests of the LDC Group to ensure a regime with some clear categories of differentiation, derived through processes with at least some top-down elements and reference to objective indicators. Without either clear categories of countries linked to particular types of commitment, or without at least some reference to objective indicators that require more effort by some countries, it will be very hard to ensure adequate increases in ambition and to prevent free riders. The best route to doing so is likely to be through continuing to develop and build support for an ERF, which would at least give guidance and could set clear bounds on the types and ambition of commitments to be expected of different countries.

Developing this approach does not require a formal re-writing of the A1/NA1 distinction, which should be avoided given likely opposition from many G77 members, though CDRRC could be interpreted to apply within as well as across the Annexes. The current Annexes could remain, but fade in political significance as new norms are developed through an ERF about the expectations of different countries. Alternatively, as suggested by Rajamani and Winkler, Parties could be encouraged to "graduate" from NA1 I to A1, either voluntarily or on the basis of certain criteria.<sup>48</sup>

The LDC Group has proposed that various types of commitment (such as absolute targets, relative targets, policies and regulatory instruments) should be allowed to accommodate various capabilities and vulnerabilities, but that there should be no backsliding from absolute economy-wide targets for A1 countries. In addition, the Group has proposed that the 2015 agreement could consider a first differentiation among existing annexes with a provision for graduation across annexes over time based on agreed criteria.

Given the implications of such an approach for middle-income countries, reaching out to and building bridges of understanding with the LMDC would be an important part of a strategy to build consensus around an ERF-type of approach, and the kind of implications it may have for different countries.

Given the opposition of the US and some other countries to any use of objective indicators formally to inform national pledges, if critical mass cannot be built in favour of an ERF approach, the next best option may be to secure the EU's proposal that countries should also explain how they consider their pledge to be fair when it is presented, and then to work in informal spaces (such as using side-events, press conferences or other media work) to promote the LDC Group's view on which indicators are important and should be considered by countries when justifying the fairness of their pledge.

The LDC Group should also prioritise agreement on differentiation with regard to the means of implementation and adaptation. This should include agreement on a means of determining which countries should be eligible to receive financial and other forms of support to implement mitigation pledges and adaptation actions, and to maintain a recognition of the special circumstances of the most vulnerable countries. This should include a requirement for balance in funding flows between adaptation and mitigation (an existing position), and criteria regarding the allocation of funding, especially for adaptation.<sup>49</sup> Finally, the Group should respond to the EU's focus on common accounting rules for mitigation to insist on common accounting rules for finance (*see below*).

The LDC Group should also be wary of efforts in the MEF to see COP 21 as the start of the pledging process, rather than the moment at which pledges are finalised, and could consider using media channels to raise these concerns. The Group should nonetheless be prepared for this discussion on differentiation to run beyond 2015.

## Summary table regarding scope, structure and design of the post-2020 regime:

Design choice	Priorities for LDC Group
Legal form	Identify and press for elements that should be legally-binding under international law, including core mitigation and finance commitments
Structure	Avoid structures which exclude LDC Group participation
Content and process	Ensure top-down guidance on types and ambition of commitments through an ERF, and secure agreement on differentiation with regards to means of implementation (MOI) and adaptation (i.e. which countries are eligible for support, and recognition of special circumstances of highly vulnerable countries)

## Areas of particular interest to the LDC Group pertaining to the 2015 agreement

### (i) The 2013-15 Periodic Review

As noted above, the references in 1/CP.17 to the 1.5°C target and principle of CDRRC, mean that the Review is a key opportunity to introduce some top-down guidance into the discussion preceding a likely pledging process for national mitigation action.<sup>50</sup> However, some key political issues must be resolved if the Review is to fulfil this potential function.<sup>51</sup> A key sticking point has been the scope of the Review. AOSIS, the EU and Umbrella Group want to focus on the “assessment of the adequacy of the 2°C goal” and to limit the information and inputs only to mitigation. Other countries, including China, the Philippines and Saudi Arabia, want to focus also on the “assessment of the overall progress towards achieving the 2°C goal, including a consideration of the implementation of commitments under the Convention,” and therefore including means of implementation, which is also supported by the Africa Group.

Although a framework for the Review is now in place these tensions over its essential purpose remain, and there are open questions about the form of the outcome of the review and its consequences. The COP has agreed that it will take “appropriate action” based on the review, but what that will involve is not yet clear. FIELD have started to explore options for inclusion of the outcomes of the Review in a 2015 package,<sup>52</sup> which may include: a COP decision which includes whatever “appropriate action” the COP agrees to take; separate COP decisions for the outcomes of the Review and for the “appropriate action” by the COP, which may help to preserve the scientific integrity of the Review; or incorporation in a decision on the outcome of the ADP. Alternatively, as has proved the case with regards to the second review of the adequacy of articles 4.2 (a) and (b), it may not be possible to reach any agreed decision at all. The LDC Group should explore such options with a view to ensuring an outcome which is politically negotiable but which ultimately results in increased ambition.

## (ii) Means of implementation<sup>53</sup>

The table below assesses some of the key issues pertaining to finance in the post-2020 regime, their potential implications for the LDC Group, and corresponding position options for the LDC Group.

(a) Public finance post-2020	
Issues pertaining to finance in the post-2020 regime	<p><b>How should new finance commitments be captured in the 2015 agreement?</b> The Co-Chair's Informal Note suggests that: "All Parties agree that finance, technology and capacity-building are important elements of the 2015 agreement...However, Parties still need to engage more closely with each other to determine how these means of implementation will be elaborated in the design of the agreement." Developing countries argue that MOI should be integral to the new agreement, while developed countries like the US and Japan have suggested it should just be a part of the wider "package".</p> <p><b>What new commitments on public finance should the 2015 agreement contain?</b> Developing countries want clear commitments for scaled-up, new, additional, predictable, and adequate climate financing both before and after 2020, wishing to retain these key principles regarding the provision of financing from the UNFCCC which are absent from 1/CP.17 (<i>see above</i>), and are concerned about shifting this responsibility to the private sector. Developed countries have suggested vaguer commitments, which emphasise <i>inter alia</i> green growth partnerships, the need to leverage private finance, and enabling environments. No indications of scale have as yet been forthcoming.</p> <p><b>What should count as public climate finance? How can support be made more transparent?</b> Parties are discussing these questions at EU level, at the SCF, and in the context of debates on MRV of finance, though little clarity has yet been reached. This includes clarity on the differences between climate-proofing development finance, climate-relevant development finance and climate-specific development finance, and on the baselines against which public climate finance should be considered "new and additional".</p>
Position options for the LDC Group	<ul style="list-style-type: none"> <li>– Principles of predictable, scaled-up, new and additional finance should be reaffirmed and integral to the core 2015 agreement</li> <li>– Public finance commitments from contributing countries should cover five-year periods (2020-2025; 2025-2030)</li> <li>– New assessment of post-2020 finance needs for mitigation, adaptation and loss and damage are needed ahead of the Ban Ki-moon summit in September 2014, building on the forthcoming assessment of the SC</li> <li>– A review mechanism of the adequacy of post-2020 finance commitments is key</li> <li>– New and innovative sources of public finance should be established as part of the 2015 agreement</li> <li>– Parties should agree common criteria for what counts as public climate finance, including a common baseline against which finance should be considered "new and additional", in order to enhance transparency of support</li> </ul>
(b) Private finance post-2020	
Issues pertaining to finance in the post-2020 regime	<p><b>Can private finance play a role in adaptation?</b> Although there is recognition amongst Parties of the important role of public finance for adaptation, some developed countries maintain there is a role for private finance. The private sector will increasingly learn to invest in adaptation measures to protect its investments, but this is not the same as grant-based public finance, which is spent according to the priorities of recipient countries, including those of civil society and affected communities.</p> <p><b>How should the "mobilisation" of private finance be counted?</b> No criteria or standards have yet been agreed for determining how private investments for climate action in developing countries have been "mobilised" by developed countries. This may mean that business-as-usual investments are counted and/or investments with little link to climate action are counted. There is also no clarity as yet on whether the full gross value of an investment should be counted, or a portion of it representing the net value to a recipient country.</p>

	<p><b>How can private finance be reconciled with a country-driven approach?</b>          Developing countries have raised concerns that private finance “mobilised” by developed countries risks circumventing the country-driven approach. A particular concern relates to the channelling of investments through financial intermediaries, which may entail little transparency and weak requirements for due diligence with respect to social and environmental safeguards.</p> <p><b>Will a focus on private finance exclude LDCs?</b>          The LDC Group have noted that a reliance on private finance is likely to mean fewer funds to countries whose markets are less attractive to the private sector.</p>
<p>Position options for the LDC Group</p>	<ul style="list-style-type: none"> <li>– No private finance for adaptation to be counted under the UNFCCC</li> <li>– Only private finance flows which are demonstrably directed to fund climate change mitigation to be counted</li> <li>– Only private finance flows which have been demonstrably mobilised by virtue of the effort of developed countries should be counted (i.e. no counting of business as usual investments)</li> <li>– Only the net value of “mobilised” private finance should be counted</li> <li>– No double counting of carbon market flows as climate finance</li> <li>– Private finance flows must be channelled in line with a country-driven approach</li> <li>– Any use of financial intermediaries must be transparent, and subject to social and environmental safeguards</li> <li>– LDCs should not be excluded from private finance flows for mitigation</li> </ul>
<p><b>(c) Adaptation-mitigation balance</b></p>	
<p>Issues pertaining to finance in the post-2020 regime</p>	<p><b>How should the 2015 agreement address the gap in adaptation funding?</b>          There has been an ongoing imbalance in finance allocated to adaptation and mitigation under the UNFCCC. National Adaptation Programmes of Action remain under-funded, and despite the Copenhagen Accord’s call for “balance”, it is likely less than 20 per cent of Fast Start Finance was allocated to adaptation. This should be addressed in the post-2020 regime to avoid an ongoing under-privileging of resources for adaptation.</p>
<p>Position options for the LDC Group</p>	<ul style="list-style-type: none"> <li>– A quantified floor for adaptation finance in the GCF (a starting point could be at least 50 per cent), a separate pledge for mitigation and adaptation, or new dedicated sources of adaptation finance could be explored</li> </ul>
<p><b>(d) Contributions to, eligibility for, and allocation of finance</b></p>	
<p>Issues pertaining to finance in the post-2020 regime</p>	<p><b>Which countries should be entitled to climate finance post-2020, and which should be prioritised?</b>          In terms of eligibility for accessing support for the implementation of commitments and actions, the US has questioned how, in an agreement which is applicable to all, commitments of some countries would be contingent on the receipt of finance/MOI. Many developed countries have suggested that financial resources should only be provided to developing countries in “need” or with lower capability. The LMDC have stressed that its members, half of whom live below US\$ 2 a day, face severe development challenges, and the Philippines has called the provision of finance to only poor and particularly vulnerable countries paternalistic and noted that all developing countries are particularly vulnerable.</p> <p><b>Which countries should contribute to climate finance post-2020?</b>          Many developed countries, including the EU, have suggested that there is a need for a broader range of Parties to contribute to climate finance beyond 2020, reflecting changing capacities and economic circumstances. Colombia has similarly called for a dynamic approach to the MOI, a position shared by <i>inter alia</i> other members of AILAC and Mexico. Countries including the UAE and Singapore have suggested that countries should be free to determine their own commitments (presumably including any towards climate finance), and opposed a prescriptive approach.</p>
<p>Position options for the LDC Group</p>	<ul style="list-style-type: none"> <li>– Differentiation amongst countries in terms of access to support for implementation of mitigation and adaptation must be secured, though could evolve beyond current arrangements</li> <li>– Recognition of special circumstances of highly vulnerable countries, including the LDC Group, should be retained, with subsequent prioritisation for adaptation finance</li> <li>– Differentiation amongst countries in terms of contributions to climate finance should be secured based on appropriate equity indicators (which should entail contributions from a broader number of countries which result in higher overall resources, not a substitution for lower resources from developed countries)</li> </ul>

## (e) Governance

Issues pertaining to finance in the post-2020 regime

### **How should climate finance be governed in the post-2020 regime?**

There is a broad understanding amongst Parties that the 2015 agreement should build on the existing arrangements established under the AWG-LCA. The SCF should provide various inputs to the ADP process, related to *inter alia* common accounting rules, assessments of the scale of financing needs, and issuance of guidance on behalf of the COP to the GCF. Developing countries continue to press for the major part of climate finance to be channelled through multilateral funds under the UNFCCC, while developed countries want to maintain flexibility to use bilateral and other channels. To ensure maximum coherence in climate finance flows, country ownership and to minimise transaction costs, the LDC Group should aim to secure vital provisions in the design of the GCF (*see below*) and to see it become the primary channel for multilateral finance flows by and from 2020.

### **How should the Least Developed Countries Fund (LDCF) and Adaptation Fund (AF) relate to the GCF?**

The LDC Group should insist on funding shortfalls for the LDCF and AF being addressed ahead of a 2015 agreement (*see below*), and not see them replaced until new arrangements under the GCF of at least equal value to LDCs are in place. Eventual options include folding the AF and LDCF into the adaptation window of the GCF, or agreeing a clear division of labour over the types of adaptation support each should prioritise.

Position options for the LDC Group

- The GCF should be the primary channel for climate finance flows post-2020, subject to agreement on key provisions (*see below*)
- Country ownership of climate finance should be ensured, including via in-country multi-stakeholder mechanisms such as the National Designated Authorities of the GCF
- Participation of civil society and affected communities should be guaranteed at appropriate levels (e.g. GCF Board, in-country mechanisms)
- The SCF should *inter alia* provide guidance on behalf of the COP to the GCF, seek agreements on critical issues like common accounting rules, provide assessments of the overall scale of financial needs, and other assessments as needed under a review of the adequacy of MOI post-2020

## (f) Relationship with finance pre-2020

Issues pertaining to finance in the post-2020 regime

### **Will developed countries meet their US\$ 100bn commitment, and how?**

Developing countries have insisted that a pre-requisite for reaching agreement on a post-2020 regime is that developed countries meet their pre-2020 commitments, particularly with regard to the MOI. Only a few countries have announced plans for climate finance flows in the next two to three years, and it is likely that overall flows have fallen below the Fast Start Finance level. Decision /CP.18 urges developed countries to set out pathways by which they intend to scale up their climate finance, but indications are that few will be ready to do so by COP 19.

### **When will the GCF become operational, and shortfalls in the AF and LDCF be addressed?**

After its establishment at COP 16 nearly four years ago, the GCF is yet to begin disbursing new funds (*see below*). Meanwhile, multilateral funds of key concern to the LDC Group, notably the AF and LDCF, are experiencing major shortfalls in funding, which are also representative of the wider imbalance in funds flowing to adaptation compared to mitigation.

### **Will accounting rules regarding the MRV of finance be strengthened?**

Developed country Parties like the EU have long stressed the importance of common accounting rules for mitigation, but there remains an ongoing lack of clarity and disagreement regarding the establishment of common accounting rules for MOI. These are critical to ensuring transparency and comparability of finance provision, including with regard to the additionality of finance flows, the use of loans, and the mitigation-adaptation balance.

Position options  
for the LDC  
Group

- Developed countries must set out their pathways for scaling-up to meet the US\$ 100bn/year by 2020 commitment by COP 19, including increases in the scale of public finance contributions beyond the Fast Start Finance level, and clear commitments for 2013-2015
- Major shortfalls in the LDCF and the AF should be addressed as part of an effort to scale up significantly the proportion of finance flowing to adaptation
- The GCF should be fully operational and disbursing funds at scale well in advance of the 2015 agreement
- The SCF should present guidelines on what should count as climate finance by COP 19
- Guidelines for MRV of finance should be strengthened in 2014 following the first round of biennial reports

## ● **The Green Climate Fund: Prospects and priorities**

Four years after its establishment at COP 16, the earliest the GCF could begin to disburse funds as grants or concessional loans now looks to be late 2014. While not part of the ADP, the operationalisation of the fund should be a pre-condition of many developing countries for the conclusion of a 2015 agreement. Some of the key outstanding political issues pertinent to the LDC Group at the GCF Board are discussed below.

### *When will the fund be operational?*

At the 5th meeting of the GCF Board in Paris in October, the Board agreed to commence an initial resource mobilisation process as soon as possible and transition thereafter to a formal replenishment process. The next two Board meetings set for February and May 2014 should focus on the completion of the essential requirements for the Fund to receive, manage, programme and disburse financial resources. No more than three months later, the Secretariat should facilitate an initial resource mobilisation process with interested contributors, which will be later followed by a first formal replenishment meeting. The LDC Group could consider targeting the Ban Ki Moon summit in September 2014 as the high profile moment at which developed countries are encouraged to announce their initial pledges to the GCF such that it will be fully operational by the end of the year.

### *What role should National Designated Authorities (NDAs) play, and when should they be established?*

The Board is clear that the fund should follow a country-driven approach, for which the role of NDAs is key, though their exact functions remain unclear. LDCs should insist on dedicated funding to support their establishment as a priority of the readiness and preparatory activities to be supported by the fund. This will ensure no delays in accessing resources as soon as they are available, and that LDCs can contribute to the sharing of best practices with regards to establishing NDAs, including platforms for multi-stakeholder engagement.

*Will direct access work for LDCs, and will the fund support enhanced direct access?*

A key question for the LDC Group is whether direct access will be considered as the primary access modality of the fund, or just one of various modalities, as favoured by developed countries. LDCs should insist on dedicated funding under the readiness and preparatory activities supported by the Fund to build implementation capacity to comply with fiduciary and other standards to enable direct access to the fund, and should continue to press for an enhanced direct access modality to ensure that national trust funds such as those in Bangladesh can play a central role in implementation.

*Which financial instruments will the fund employ?*

Developed countries have been keen to ensure a wide range of financial instruments are placed at the fund's disposal, and to minimise the role of grants and concessional lending largely to capacity-building functions. At the 5th Board meeting, it was decided that "for the initial operationalisation of the Fund" grants and concessional loans would be used, but that "other financial instruments" would be considered by the Board in 2014. As these other financial instruments – likely to include guarantees and equity investments – are considered over the next year, the LDC Group should question whether and how they will benefit the LDCs and whether and how they will contribute to addressing adaptation needs, especially in the poorest communities.

*Will the activities of the Private Sector Facility (PSF) be consistent with a country-driven approach?*

The role and functions of the PSF have been a key dividing line amongst developed and developing countries, with one key concern relating to the extent to which the PSF's activities will be consistent with a country-driven approach. The 5th Board meeting postponed a decision on the "no objection procedure", which is a key mechanism for ensuring that PSF investments are in line with national priorities and strategies and do not cause social or environmental harm. The LDC Group should ensure that the no objection procedure is applied to all projects and programmes of the PSF, and that adequate time and support is provided to enable meaningful consultation with civil society and other stakeholders in signaling consent or objection to a proposed activity.

### (iii) Adaptation (and loss and damage)<sup>54</sup>

There is now a broad understanding amongst Parties that adaptation should feature as an integral part of the 2015 agreement, balanced with mitigation, but many questions remain if the new regime is to raise global adaptive capacities to a level consistent with the scale of the challenge, some of which are assessed below.

*Should there be a long-term global goal for adaptation? What other types of commitment on adaptation could be included in a 2015 agreement?*

A number of Parties are exploring the concept of a long-term global goal for adaptation, linked to the global temperature goal. The simplest way to express an adaptation goal may be in the form of financial commitments, and a forthcoming technical paper from the UNFCCC Secretariat will help to inform the estimate of climate impacts and their costs under different warming scenarios. The LDC Group should seek agreements on the overall scale of adaptation needs linked to the agreement's level of mitigation ambition, on the balance between financing provided for adaptation and mitigation,<sup>55</sup> and on the need to recognise and give priority to the special circumstances of LDCs and other vulnerable countries.

To elaborate further on mitigation-adaptation linkages, the Group should also continue to press for a dedicated stream of adequate and predictable financing for adaptation, which could be linked to the polluter pays principle (for instance, requiring higher contributions from higher emitting countries or sectors, such as international transport). In addition, the LDC Group could press for commitments from all Parties to reduce or avoid activities in their jurisdictions that may have an adverse effect on the adaptive capacity of other Parties (for instance, extraction of up-stream water or other natural resources). New efforts could also be sought with regard to local-level adaptation action, such as those suggested by South Africa,<sup>56</sup> or a Global Action Plan on Community-based Adaptation proposed by CAN. An essential component of the new regime should be a new international mechanism for loss and damage.

*How should adaptation efforts and support be monitored?*

In order to identify whether progress in building adaptive capacity is being made, a number of Parties have suggested new systems for monitoring and evaluation of adaptation action are needed. One approach could be the establishment of a registry or platform through which Parties can present their national adaptation needs and efforts, and which would allow monitoring of progress and gaps from a global perspective. Several Parties have also suggested a periodic review of action on adaptation, which could draw on such a registry. Such mechanisms would increase the visibility of LDC climate action, and pressure for financial support.

*How should the 2015 agreement link to the existing adaptation architecture under the UNFCCC?*

There is a broad understanding amongst Parties that the adaptation provisions of the new agreement should build on the existing institutional architecture under the UNFCCC. This could be achieved in various ways, including by requiring the ADP process to be regularly informed by bodies such as the LDC Expert Group (LEG), LDCF, Adaptation Committee, AF, GCF and a future international mechanism on loss and damage. Bolivia has suggested that the National Adaptation Plan process could be integrated into the new agreement as the principal vehicle through which adaptation needs, assessments and plans are communicated.

#### (iv) Agriculture and REDD+

Unlike the BAP, which made specific reference to reducing emissions from REDD and to sector-specific actions linked to UNFCCC Article 4 §1(c) which lists agriculture, there is no guidance in 1/CP.17 on whether forestry, land-use change and/or agriculture issues should be an integral part of the 2015 agreement. Discussions on both agriculture and REDD+ have continued under the Subsidiary Body for Scientific and Technological Advice (SBSTA), but key questions remain as to whether and how they may be integrated (along with Land Use, Land-Use change and Forestry, or LULUCF) into a 2015 agreement and/or the post-2020 regime.

Tony La Vina<sup>57</sup> suggests that the years between 2013, 2015 and 2020 could be used to scale up phase 1 and 2 activities (related to REDD-readiness and demonstration), so that from 2020 REDD+ could transition into phase 3 (payments for verified emission reductions). However, to follow such a path, clear signals will be needed in ADP decisions. La Vina notes that it remains to be seen whether the ADP would steer discussions towards establishing strict accounting rules (as was the intention with LULUCF), or allow a more “organic” set of efforts to emerge between developed and developing countries. Other critical questions that would require an answer under the ADP include whether REDD+ could be treated as an accepted flexibility mechanism by developed countries (and/or potentially a wider list of countries), or which other systems may be established to provide support, including the possible establishment of a dedicated REDD+ window under the GCF.

Two distinct dynamics may be observed regarding the possible treatment of agriculture in the new regime. On the one hand, the long-running dispute between developed and developing countries under the AWG-LCA as to whether agriculture should be treated solely as an adaptation issue, or also as a mitigation issue, appears to have been resolved in favour of the former in this year’s SBSTA discussions. On the other hand, any efforts towards a comprehensive accounting system for the whole land-use sector could lead to efforts to fold agriculture into wider discussions on LULUCF, and/or to its treatment as a driver of deforestation. Given that many of the voluntary NAMAs put forward by developing countries under the Cancún Agreements are in the land-use sector, it seems that questions about how REDD+ may interact with LULUCF and agriculture as potential commitments in a post-2020 regime will not be easily resolved.

#### (v) Transparency and MRV

The protocol should also include provisions for MRV for the provision of support to developing countries. This should take into account lessons learnt from the Fast-Start Finance period and the results of the SCF’s first biennial assessment and overview of

climate finance flows, as well as the outcome of the review of information on financial flows provided in the first biennial reports. MRV for the post-2020 period should rely on a common system of reporting and review that builds on the GHG inventories and Biennial Reports, and incorporates necessary degrees of flexibility while ensuring adequate information to understand and measure the progress of mitigation contributions.

Transparency is also critical to the effective and successful implementation of the new agreement. Current provisions under the UNFCCC are not satisfactory to enable a sufficient level of transparency. The protocol should contain the following:

- International oversight and internationally agreed rules and standards are absolutely necessary for the new agreement to deliver the required transparency and to allow Parties to assess and evaluate progress towards the common goal.
- Common accounting rules as well as stringent MRV systems. These should be based on the Kyoto Protocol mechanisms, making adjustments for developing countries according to UNFCCC principles that ensure environmental integrity.
- Appropriate accounting for units through the International Transaction Log to identify each emission reduction unit and its location. This is essential for the proper functioning of robust markets.
- Clear international rules to allow for effective, robust mechanisms.
- Eligibility criteria at least as stringent as those under the Kyoto Protocol for countries wanting to participate in any new mechanisms under the UNFCCC. The eligibility criteria would require a country to: be Party to the body under which the mechanism has been established (the UNFCCC), establish binding economy-wide emission reduction commitments, and establish initial assigned amounts, together with other requirements.
- More detailed and robust reporting is required for support provided and received.

## Conclusions

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Whatever its final form and contents, there is no question that the ADP has some major implications for developing countries, but also offers a vital opportunity to secure a more ambitious and effective climate regime. Under workstream 1, the LDC Group can play a critical role in ensuring that an agreement on differentiation in a regime “applicable to all” is found that adequately raises the ambition of all Parties, while securing important new provisions on adaptation and means of implementation that put the interests of LDCs and other highly vulnerable developing countries at its heart.

Workstream 2 is no less significant, its outcome potentially determining the viability of achieving an emissions pathway with a reasonable chance of avoiding 1.5°C of warming. Here the LDC Group's role can be equally pivotal in calling for all Parties to raise their current mitigation ambition, with enhanced means of implementation for those developing countries that need it, and rallying support for a small number of highly effective supplementary measures especially in the energy sector.

Securing such essential elements under both workstreams will require clear prioritisation, careful strategy and alliance-building within the negotiations, and the confidence to use media and other tools outside of the negotiations to set LDC interests at the heart of the broader political debate. The LDC Group was at the forefront of pushing for negotiations on a new climate agreement, and now has the opportunity to help to shape the regime that LDCs need to ensure that their development prospects are not curtailed by a crisis overwhelmingly caused by others.

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- 1 It is beyond the scope of this paper to offer a fully comprehensive assessment of all aspects of the ADP negotiations, rather some choices have been made as to some of the most pertinent issues from the perspective of the LDC Group, without prejudice to the importance of other areas.
  - 2 UNEP (2010). *The Emissions Gap Report*. <http://www.unep.org/publications/ebooks/emissionsgapreport/>; (2011) Bridging the Emissions Gap: A UNEP Synthesis Report. United Nations Environment Programme. [http://www.unep.org/publications/contents/pub\\_details\\_search.asp?ID=6227](http://www.unep.org/publications/contents/pub_details_search.asp?ID=6227); and (2012) The Emissions Gap Report 2012: A UNEP Synthesis Report, <http://www.unep.org/publications/ebooks/emissionsgap2012/>
  - 3 FIELD (2012). In preparation for Doha: defining "legal instrument"; the 2012-2015 review; and the second commitment period under the Kyoto Protocol, [http://www.field.org.uk/sites/field.org.uk/files/papers/field\\_doha\\_negotiations\\_paper\\_august\\_2012.pdf](http://www.field.org.uk/sites/field.org.uk/files/papers/field_doha_negotiations_paper_august_2012.pdf)
  - 4 See [http://unfccc.int/files/parties\\_and\\_observers/notifications/application/pdf/060609\\_nv\\_us\\_proposal.pdf](http://unfccc.int/files/parties_and_observers/notifications/application/pdf/060609_nv_us_proposal.pdf)
  - 5 See <http://unfccc.int/resource/docs/2012/adp1/eng/misc03.pdf>
  - 6 Bodansky, D. (2012). *The Durban Platform Negotiations: Goals and Options*. [http://belfercenter.hks.harvard.edu/publication/22196/durban\\_platform\\_negotiations.html](http://belfercenter.hks.harvard.edu/publication/22196/durban_platform_negotiations.html)
  - 7 Werksman, J. (2011). Q&A: *The Legal Aspects of the Durban Platform Text*. World Resources Institute. <http://insights.wri.org/news/2011/12/qa-legal-aspects-durban-platform-text>
  - 8 Rajamani, L. (2011). *Decoding the Durban Platform*. <http://www.ejiltalk.org/decoding-the-durban-platform/>
  - 9 UNFCCC Decision 1/CP.13. <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf>
  - 10 In practice, the ADP co-chairs have to date worked on the assumption that nothing should be added and nothing should be taken away from this list, and that all issues should be discussed, even if they are not provided with a balanced allocation of time and do not enjoy the same level of development/understanding between Parties.
  - 11 FIELD (2012). *op. cit.*
  - 12 Rahman, M. (2012a). TWN Doha Update No. 21. Third World Network. [http://www.twinside.org.sg/title2/climate/news/doha01/TWN\\_update21.pdf](http://www.twinside.org.sg/title2/climate/news/doha01/TWN_update21.pdf)
  - 13 See <http://unfccc.int/resource/docs/2013/tp/04.pdf>. During this period, the LDC Group has called for a Contact Group to be established so that substantive negotiations can proceed.

- 14 TWN (2012b). *Durban Platform: Way forward on pre-2020 ambition*. <http://www.twinside.org.sg/title2/resurgence/2013/269-270/cover04.htm>
- 15 Submission by Nepal on behalf of the LDC Group on implementation of all the elements of decision 1/CP.17 (b) matters related to paragraphs 7 and 8 of the ADP. Available at: [http://unfccc.int/files/documentation/submissions\\_from\\_parties/adp/application/pdf/adp\\_ldc\\_group\\_workstream\\_2\\_20130303.pdf](http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_ldc_group_workstream_2_20130303.pdf)
- 16 *Ibid.*
- 17 See <http://unfccc.int/resource/docs/2012/adp1/eng/7infsum.pdf>
- 18 “17. There is a broad understanding that pre-2020 ambition should be considered in a comprehensive manner and Parties recognize the need to deliver on existing commitments and decisions, including on support. Furthermore, there is broad agreement that the pre-2020 mitigation and adaptation actions are equally important and should, as such, both receive adequate political attention and support. 18. The role of finance, technology development and transfer and capacity-building has been recognized as a critical factor in the facilitation of enhanced action by developing countries prior to 2020. In particular, accelerating the delivery of effective support is essential to delivering results before 2020.” Informal Note by the Co-Chairs on progress under the ADP (2013), <http://unfccc.int/resource/docs/2013/adp2/eng/14infnot.pdf>
- 19 Norway has stated that it is unlikely that new mitigation pledges or binding commitments would be forthcoming under ADP workstream 2
- 20 See [http://ec.europa.eu/clima/policies/international/negotiations/initiatives/index\\_en.htm](http://ec.europa.eu/clima/policies/international/negotiations/initiatives/index_en.htm)
- 21 See <http://unfccc.int/resource/docs/2012/adp1/eng/7infsum.pdf>
- 22 The ability or capacity to arrive at a confident pledge may be lacking in some developing countries (such as to develop BAU baselines, analyse intervention options from a technological as well as a policy perspective, analyse the socio-economic impact of some of the intervention options, etc) – hence the need for financing for capacity development.
- 23 Germanwatch (2013). *Short-term Mitigation Ambition pre-2020: Opportunities to close the emissions gap*. <https://germanwatch.org/en/download/7124.pdf>
- 24 Ecofys (2012). *Wedging the Gap: 21 initiatives to bridge the greenhouse gas emissions gap*. [http://unfccc.int/files/documentation/submissions\\_from\\_parties/adp/application/pdf/adp\\_ppt\\_hoehne\\_01122012.pdf](http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_ppt_hoehne_01122012.pdf)
- 25 HFCs are the most common group of Fluorinated gases (F-gases) – a family of man-made gases used in a range of industrial applications. Because they do not damage the atmospheric ozone layer, they are often used as substitutes for ozone-depleting substances, which are regulated under the Montreal Protocol. F-gases are powerful GHGs, with a global warming effect up to 23,000 times greater than carbon dioxide, and their emissions are rising strongly.
- 26 The LDC Group has noted that there is a need carefully to evaluate how the Montreal Protocol might be an effective tool, given provisions in the Montreal Protocol, including possible existing exemptions for certain countries, gases and sectors. Furthermore, the Group calls upon Parties to assess whether the mitigation discussions and initiatives should be focused on phasing out all HFCs, or rather immediate phase out of high-GWP HFCs. One option might be to include in a possible Warsaw decision on HFCs a sunset provision to ensure the decision is cancelled if there is little or no progress to phase down HFCs under the Montreal Protocol.
- 27 AOSIS non-paper for ADP workstream 2. [http://unfccc.int/files/documentation/submissions\\_from\\_parties/adp/application/pdf/adp\\_workstream2\\_aosis\\_02052013\\_.pdf](http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_workstream2_aosis_02052013_.pdf)
- 28 The LDC Group supports elimination of fossil fuel subsidies starting with developed countries.
- 29 See <http://www.oxfam.org/en/grow/policy/out-bunker-shipping-emissions>
- 30 Proposal by the Plurinational State of Bolivia – The Joint Adaptation and Mitigation Mechanism for the Integral and Sustainable Management of Forests. Available at: [http://unfccc.int/files/bodies/awg-lca/application/pdf/3\\_bolivia\\_ws\\_redd+\\_bkk\\_august\\_2012.pdf](http://unfccc.int/files/bodies/awg-lca/application/pdf/3_bolivia_ws_redd+_bkk_august_2012.pdf)
- 31 Informal Note by the Co-Chairs on progress under the ADP (2013) *op. cit.*
- 32 See, for example: Bodansky, D. (2012). *The Durban Platform: Issues and options for a 2015 agreement*, <http://www.c2es.org/docUploads/durban-platform-issues-and-options.pdf>
- 33 Indeed, developed countries now argue that equity, or any other issue that they find disagreeable, may also be an impediment to universal participation. “In response to India, the US said that equity could also distract from ambition and was concerned about indicators that would undermine the objective of universal participation in the new agreement. It was worried about being bogged down in a divisive exercise.” (TWN, 15)

- 34 Adapted from Bodanksy (2012) *op. cit.*
- 35 Informal Note by the Co-Chairs on progress under the ADP (2013) *op. cit.*
- 36 MEF Chair's Summary of the 16th Meeting of Leaders' Representatives, 18th July 2013. Available at: <http://www.scribd.com/doc/155484172/MEF-Chair-s-Summary>
- 37 While it is normal for international law to be given effect through domestic legislation, it is not clear how the reverse can work. The LDC Group should question and seek clarification from Parties proposing such an approach.
- 38 It may be useful to examine the compliance regime under the Kyoto Protocol and under the Convention (Article 13 and the decision on the MCP pursuant to the work of the Ad hoc working group on Art 13) to examine whether any combination of them can suffice to address these issues in such a regime under the new agreement while keeping the "hybrid" approach.
- 39 There is some broad understanding that the AC, TEC, etc, have yet to produce substantive results as per their individual mandates, but at the same time there is also a feeling that these institutions or their work needs to be reflected in the Agreement. The issue is "how" should they be reflected without "locking in" and therefore limiting their value and flexibility. Capturing decisions in COP decisions, with hortatory language, may be an appropriate means of maintaining such flexibility.
- 40 Informal Note by the Co-Chairs on progress under the ADP (2013) *op. cit.*
- 41 This is largely speculative, but the author's analysis is based on some early conversations with the French Presidency, which suggest they are at least not closed to the possibility of a range of types and forms of agreement in Paris (such as an agreement to take action on fossil fuel subsidies by those willing to strike one).
- 42 Bodanksy does not include assistance in implementation as a form of differentiation, but in a similar conceptual framework; Rajamani does. Rajamani also lists legal form as a form of differentiation, but since §2 1/CP.17 requires the same legal form to be "applicable to all", this form of differentiation is excluded from negotiations under the ADP and not discussed here.
- 43 Rajamani, L. (2013). *Differential Treatment in International Environmental Law: Presentation to workshop on scope, structure and design of the 2015 agreement*. [http://unfccc.int/files/bodies/awg/application/pdf/adp2\\_workstream1\\_workshop\\_lavanya\\_rajamani.pdf](http://unfccc.int/files/bodies/awg/application/pdf/adp2_workstream1_workshop_lavanya_rajamani.pdf)
- 44 The scientific benefit of this approach could be questioned on the basis that it would/could mean that large countries with large populations and large absolute emissions may not be required to take stringent targets to the detriment of the atmosphere, which only reacts to absolute emissions. In addition, it may lead to outcomes in which the countries that have least responsibility for emissions bear the most impacts of unmitigated climate change – a kind of "reverse inequity".
- 45 TWN (2013). *ADP: Agreement must be based on equity applied to science*. <http://adoptanegotiator.org/2013/06/12/twns-briefing-paper-15-adp-agreement-must-be-based-on-equity-applied-to-science/>
- 46 Singapore has criticised the ERF proposal on the basis that work on a new framework may amount to re-writing the Convention, though Singapore has long been sensitive to efforts to create new categories of countries using objective indicators because of their high per capita emissions and capability. It has been noted that reliance on expert groups in the UNFCCC is usually challenging because they tend to be constituted by negotiators.
- 47 The July 2013 MEF Chair's Summary (not yet available online) states: "Concerning the negotiations under the UNFCCC, participants discussed their respective expectations concerning the Paris Conference of the Parties. In particular, they discussed whether mitigation commitments would be finalized at that point after a process for consulting on/analyzing them or whether Paris would launch such a process. Some considered that it would not be feasible to complete the process by 2015, because countries need to reach agreement on ground rules and on relevant text before putting down their nationally determined mitigation commitments. Others considered that it would be feasible, as well as important, to include such commitments in the 2015 outcome."
- 48 Winkler, H. & Rajamani, L. (2013) CBDR&RC in a regime applicable to all. <http://gdrights.org/wp-content/uploads/2013/06/Winkler-Rajamani-2013-CBDRRC.pdf>
- 49 With regard to the latter, the LDC Group may wish to explore the "disproportionate" argument in an equity context, to assess a country's vulnerability compared to its contribution to emissions.
- 50 An earlier LDC Group position proposed that the output of an ERF should be part of the Structured Expert Dialogue under the Review, which would have strengthened this link further. This proposal has, however, now been revised in light of the scope of the Review, as discussed in the subsequent paragraph.

- 51 The Co-Chairs' Informal Note suggests that one of the areas which need to be explored in greater detail is "the relationship with the 2013-15 review and how the Fifth Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC) will inform the relevant deliberations".
- 52 FIELD (2013). The 2013-15 Review: Challenges and Questions. <http://www.field.org.uk/sites/field.org.uk/files/papers/FIELD%202013-15%20Review%20Challenges%20Aug%202013.pdf>
- 53 For reasons of space, this paper only considers finance, not technology transfer or capacity building.
- 54 Given that loss and damage is the subject of a dedicated paper in the LDC Papers Series, it is not covered here.
- 55 A starting point should be an "equal" balance between adaptation and mitigation, given the historic under-privileging of support for adaptation vis-à-vis mitigation. However, it will be in the interests of the Group to see a link established between mitigation ambition and the scale of support for adaptation, which could in principle lead to more than 50 per cent of public resources being allocated to adaptation.
- 56 See §21 <http://unfccc.int/resource/docs/2013/adp2/eng/11infsum.pdf> "She [South Africa] called on the ADP to maximize ambitious local-level adaptation action. She further suggested that it be done through the following: (a) ensuring that the NAP process include consultation with local governments as a key element of the pre- and post-2020 period; (b) providing local governments with direct access to funding from the adaptation window under the Green Climate Fund; (c) emphasizing the importance of natural ecosystems to create resilience in cities through the inclusion of the valuation, restoration and payment of ecosystem services in urban landscapes as a thematic area of work under the Nairobi work programme; and (d) maximizing the potential of local governments to contribute to the implementation of the Convention by including a decision on a plan of action on sub-national governments, cities and other local authorities in the new agreement."
- 57 La Vina, T. *et al.* (2013). REDD+ and the Future of Climate-Safe Agriculture. [http://www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page\\_id=9550&section=news\\_articles&eod=1](http://www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page_id=9550&section=news_articles&eod=1)