

The key decisions on the Paris Agreement implementation rules

Penang, 19 Dec (Meena Raman) – Following the adoption of the Paris Agreement (PA) in 2015 and its ratification the following year, developed and developing countries had been engaged in a battle of interpretation over the rules for implementation of the agreement.

This battle finally got settled in Katowice, Poland, with the decisions adopted by the Conference of Parties meeting as the Parties to the PA (CMA), late night on Saturday, 15 Dec.

The decisions adopted by the CMA were forwarded as a package from the 24th meeting of the Conference of Parties to the UNFCCC (COP 24), which had been conducting the work on the PA Work Programme (PAWP) under the Ad Hoc Working Group on the PA and the Subsidiary Bodies of the Convention.

The decisions under the PAWP included the following matters relating to: nationally determined contributions (NDCs) (Article 4); adaptation (Article 7); finance (Article 9); technology transfer (Article 10); transparency framework (Article 13); global stocktake (GST) (Article 14); facilitating implementation and compliance (Article 15) and some finance related decisions. The work on Article 6 relating to the cooperative approaches (which includes market mechanisms and non-market approaches) could not be completed owing to divergences among Parties on many technical and substantive issues and work on this will continue next year.

COP 24 also adopted several important decisions on finance, which are relevant to the PA. (A separate article will follow in this regard). Below is a brief analysis on some of the key decisions and the fights that went on prior to the adoption of some key decisions.

Nationally Determined Contributions (Article 4)

The heart of the PA is the obligation in the first sentence of Article 4 that states that “*Each Party shall prepare, communicate and maintain successive NDCs that it intends to achieve.*” The second sentence of the Article states that “*Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.*”

Article 4.8 of the PA provides that “*all Parties shall provide the information necessary for clarity, transparency and understanding (CTU)...*” in communicating their NDCs.

The mandate from Paris was for Parties to agree on the guidance for the information to be provided to facilitate the CTU of the NDCs. Parties were also required to agree on the guidance on ‘features’ as well as the guidance on accounting of their NDCs.

Features of NDCs

One issue that arose was over the guidance on ‘features’ of NDCs, which revolved around what the features ought to be, which are reflected in the PA and whether new features could be agreed to beyond the PA. A related matter was the scope of NDCs, as regards what are the features of the contribution. During the course of negotiations, the only feature that saw consensus among Parties was that an NDC is ‘nationally determined’.

In the decision that was finally adopted, Parties noted “*that features of NDCs are outlined in the relevant provisions of the PA,*” and also decided to *continue consideration of further guidance on features of NDCs ... (in) 2024*”. (See paras 22 and 23 of the decision on NDCs). The can has therefore been kicked down the road for another battle on the features of NDCs in 2024.

Two further issues that saw divergences between developed and developing countries was (i) on **how differentiation would be reflected** between developed and developing countries in relation to the guidance on the information for the CTU, given the different nature of their NDCs; and (ii) **the scope of the NDCs** (whether it is only about mitigation contributions or if it also includes adaptation efforts, as well as the means of implementation related to finance, technology transfer, and capacity-building especially for developing countries to implement their climate actions).

Differentiation

Led by the United States (US), developed countries were not prepared to reflect differentiation among developed and developing countries in the guidance to be developed on NDCs, which was the preferred option of a large bloc of developing countries led especially by the Like-minded Developing Countries (LMDC).

In relation to information to facilitate CTU of Parties' NDCs, the view of developed countries was that all Parties would provide information on a certain set of elements, while the LMDC and some other developing countries were of the view that developed countries would provide a certain set of information, while developing countries could choose the information to be provided as appropriate to them.

The position of the Umbrella Group of which the US is a member, was that such a bifurcated approach between developed and developing countries was inconsistent with the PA and would "hinder rather than build trust among Parties." They stressed that the information to be provided cannot be differentiated between one set of rules for developed countries and another for developing countries.

In the decision adopted, in para 10, it was agreed that "... *in communicating their second and subsequent NDCs, Parties shall provide the information necessary for CTU contained in annex I as applicable to their NDCs, and strongly encourages Parties to provide this information in relation to their first NDC, including when communicating or updating it by 2020.*" (Emphasis added).

The decision (in para 8) also recalls Article 4.4 of the PA which differentiates the type of mitigation efforts between developed and developing countries, and "...*provides that developed country Parties should continue taking the lead by undertaking*

economy-wide absolute emission reduction targets, and that developing country Parties should continue enhancing their mitigation efforts and are encouraged to move over time towards economy wide emission reduction or limitation targets in the light of different national circumstances."

Hence, the information to be provided will be "as applicable" to the different nature of the NDCs between developed and developing countries.

Annex I of the decision deals with information primarily relevant to a mitigation contribution and covers among others matters that relates to quantifiable information on the reference point (including, as appropriate, a base year); how the Party's preparation of its NDC has been informed by the outcomes of the GST, and how a Party considers that its NDC is fair, including reflecting on equity.

The issue of the scope of NDCs is addressed below.

It is also important to note that the information guidance for the CTU is mandatory for the second and subsequent NDCs. Most NDCs of Parties, with the exception of the US and Marshall Islands are of a ten-year time frame from 2021-2030. Hence, the guidance for most countries will apply to NDCs from 2031 onwards.

Scope of NDCs

On the scope of NDCs, developed countries, during the negotiations were of the view that Article 4 of the PA only referred to mitigation actions, while some developing countries including the LMDC, were of the view that NDCs as defined under Article 3 encompass the full scope of contributions, that includes adaptation and the means of implementation, and are not limited to mitigation only. This was a fierce battle in Paris, that led to a final compromise in Article 4 being ambiguous, with provisions for mitigation as well as references to NDCs.

In the NDC decision, developed countries in Katowice continued to resist reference to Article 3 in the operative part of the decision, which was pushed for by LMDC. In the decision adopted, Article 3 is recalled in the preamble.

It is also important to note that in the overarching decision of the COP 24, para 3 reaffirms that "*in the context of NDCs...all Parties are to undertake ambitious efforts defined in...*" the various articles of the PA which includes mitigation, adaptation and the means of implementation, and as reflected in Article 3 of the PA.

The full scope of NDCs is also reflected in the decision in para 11 of the NDC decision, which states as follows in relation to the information to be provided:

“Emphasizes that the guidance on information necessary for CTU is without prejudice to the inclusion of components other than mitigation in a nationally determined contribution, notes that Parties may provide other information when submitting their NDC, and in particular that, as provided in Article 7.11... an adaptation communication referred to in Article 7.10... may be submitted as a component of or in conjunction with a NDC as referred to in Article 4.2., and also notes the further guidance in relation to the adaptation communication...”

Since an NDC is nationally determined, apart from providing information on the mitigation efforts, Parties can also include an adaptation component, and for developing countries, the reference to “other information” can also include their finance, technology transfer and capacity-building needs.

As regards the accounting guidance for NDCs, the decision in para 16 provides that *“in accounting for anthropogenic emissions and removals corresponding to their NDCs, ..., Parties shall account for their NDCs in accordance with the guidance contained in annex II.”*

This accounting guidance is mitigation related and Annex II contains various items, including an explanation of why any categories of emissions or removals are excluded from being accounted for by a Party.

Common time frames

Another issue that saw wrangling related to the matter of the common time frame for NDCs. Developed countries preferred the option of having a common time frame for all NDCs, while some developing countries were of the view that countries should have the flexibility of deciding whether to have a five year or a ten-year time frame.

In the decision adopted, it was decided that Parties *“shall apply common time frames to their NDCs to be implemented from 2031 onward.”* The decision also requests the Subsidiary Body for Implementation (SBI) to continue consideration of the issue of common time frames at its June session in 2019, with a view to making a recommendation to the CMA.

Transparency Framework

Article 13.1 of the PA provides that *“in order to build mutual trust and confidence and to promote effective*

implementation, an enhanced transparency framework (ETF) for action and support, with built-in flexibility which takes into account Parties different capacities and builds upon collective experience is hereby established.”

Article 13.2 provides that *“The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities,”* and that *“The modalities, procedures and guidelines...shall reflect such flexibility.”*

During the negotiations, concerns were expressed by developing countries that the proposed transparency guidelines enhance the obligations of developing countries, with no enhancement of the same by developed countries. Some developing countries were of the view that there cannot be common reporting guidelines for both developed and developing countries in relation to their climate actions as they had different capacities.

Developing countries also wanted stronger rules on reporting and review in relation to the provision of the means of implementation by developed countries, while this was resisted by developed countries.

While developed countries were prepared to accommodate ‘flexibilities’ for developing countries for those who need it, they insisted that the flexibilities have to be ‘bounded’ in that the flexibilities cannot be without restrictions. Developing countries on the other hand opposed such restrictions or limitations and argued that it is up to them to nationally determine the flexibilities needed, without a top-down imposition of who can and who cannot have those flexibilities.

Another issue was when the existing transparency system under the Convention would be superseded by the new MPGs of the ETF.

In the Katowice, the MPGs for the ETF were adopted and are contained in a lengthy annex covering the following chapters: Chapter 1 covers (a) the purpose of the framework; (b) guiding principles; (c) flexibility to those developing country Parties that need it; (d) facilitating improved reporting and transparency over time; (e) reporting format; Chapter II covers among other matters the ‘national inventory report of emissions and removals’; Chapter III on information necessary to track progress made in implementing and achieving NDCs under Article 4; Chapter IV on information related to adaptation, including loss and damage; Chapter V on information on financial, technology

development and transfer and capacity building support provided and mobilised by developed countries; Chapter VI on information on the support needed and received by developing countries; Chapter VII on technical expert review, including about what the technical expert review teams can do and cannot do; and Chapter VIII on the facilitative, multilateral consideration of progress (FMCP).

It was also decided that Parties shall submit their first biennial transparency report (BTR) and national inventory report, in accordance with the MPGs, at the latest by 31 Dec 2024. This replaces the current biennial reports (BRs) for developed countries and biennial update reports (BURs) for developing countries under the Convention.

Parties agreed that the BTRs, the technical expert review and the FMCP prepared and conducted in accordance with the MPGs shall replace the BRs, BURs, the international assessment and review (for developed countries) and international consultation and analysis (for developing countries), following the submissions of the final BRs/BURs, which is 2022/2024 respectively. (See paras 38, 39 and 41).

Flexibilities to developing countries

Although the ETR is common for both developed and developing countries after 2024, flexibilities are accorded to developing countries in relation to the reporting and review. The flexibilities for developing countries can be viewed as operationalising differentiation.

Para 5 provides that *“These MPGs specify the flexibility that is available to those developing country Parties that need it in the light of their capacities..., reflecting flexibility, including in the scope, frequency and level of detail of reporting, and in the scope of the review...”*.

According to para 6, *“The application of flexibility provided for in the provisions of these MPGs for those developing country Parties that need it in the light of their capacities is to be self-determined. The developing country Party shall clearly indicate the provision to which flexibility is applied..., and provide self-determined estimated time frames for improvements in relation to those capacity constraints.”* (Emphasis added). Further, that para states further that *“when a developing country Party applies flexibility provided for in these MPGs, the technical expert review teams shall not review the Party’s determination to apply such flexibility or whether the Party possesses the capacity to implement that specific provision without flexibility.”*

Transparency of support

In relation to transparency of support, developed countries “shall” provide information listed in chapter V of the MPGs and this includes *“an indication of what new and additional financial resources have been provided, and how it has been determined that such resources are new and additional”*. Also required is information on *“how the information provided reflects a progression from previous levels in the provision and mobilisation of finance under the PA.”*

This is a clear win for developing countries, as they have lamented that the financial information provided by developed countries in their reports are not clear on what is new and additional, over and above overseas development assistance.

The wrangling between developed and developing countries in relation to what they should report as reflected in the MPGs took place in the discussions on Article 9.7, which has now been incorporated in chapter V of the MPGs.

Global Stocktake: Attempts to side-line issue of equity

The PA stipulates that the global stocktake (GST), (which is an assessment of the collective progress of Parties towards achieving the purpose of the Agreement and its long-term goals), has to be carried out in light of equity and which will take place in 2023.

There was agreement among developing countries led by the G77 and China, that the guidance to operationalize equity needs to be designed in the modalities of the GST.

Developing countries also called for equity to be captured in the decision not just as an overarching, but also as a crosscutting issue in all the elements of the GST. They also proposed having several indicators to measure equity, such as historical responsibility, equitable access to sustainable development and carbon space etc. However, developed countries from the Umbrella Group of countries were strongly opposed to this approach. The US in fact only wanted a reference to the term “equity” in the preamble of the decision.

Para 2 of the decision on the GST, provides that *“...that equity and the best available science will be considered in a Party-driven and cross-cutting manner, throughout the global stocktake”*. (Emphasis added).

Parties also agreed in para 3 that the GST *“will consist of the following components: (a) Information collection and preparation...; (b) Technical assessment...; (c)*

Consideration of outputs, focusing on discussing the implications of the findings of the technical assessment with a view to achieving the outcome of the GST of informing Parties in updating and enhancing, in a nationally determined manner, their actions and support, in accordance with relevant provisions of the PA, as well as in enhancing international cooperation for climate action”.

In the final decision adopted, on the “sources of input” for the GST, the proposals of the G77 and China on operationalising “equity” through information on “equitable access to sustainable development, historical responsibilities, development gaps between North and South, sustainable development, including Sustainable Development Goals, and leadership by developed countries in achieving low-emission and climate resilient development” were not considered and was replaced with the following: “*Fairness considerations, including equity, as communicated by Parties in their NDCs.*” (See para 36 [h]).

However, there are references to equity in the decision where in the technical assessment, “*equity considerations and the best available science*” are to be taken into account (see para 27), and also that the “*co-facilitators of the technical dialogue will summarise its outputs in summary reports, taking into account equity and the best available science...*”. (See para 31).

Given that the US opposition on ‘equity’. the fact that the term appears in several parts of the GST decision is significant and will mean that developing countries will continue their fight in the future work to ensure that the full understanding of equity is taken on board in the GST process and outcomes.

Overall, in view of the above, the decisions arrived at were, as expressed by the COP 24 President, Michal Kurtyka, “in fragile balance” and “all Parties had to give and gain”.