

### **Note on:**

## **The signing ceremony of the Paris Agreement in New York on 22<sup>nd</sup> April - Why there is no need to 'rush' into signing**

### **A. Background**

1. The UN Secretary-General is convening a “high-level signature ceremony” in New York for the Paris Agreement (PA) on 22<sup>nd</sup> April 2016, as mandated by the decision in Paris of the 21<sup>st</sup> meeting of the Conference of Parties to the UNFCCC (decision 1/CP.21, para 3)
2. Although the UNSG is inviting Parties to the New York event, according to the COP 21 decision, Parties have **one year from 22<sup>nd</sup> April 2016 to 21 April 2017** to sign the Agreement and deposit their respective instruments of ratification, acceptance, approval or accession, where appropriate. (See paras 2 and 4 of decision 1/CP.21). Thereafter, the PA is open for accession from the day following the date on which it is closed for signature. (See Article 20, PA).
3. **There are many reasons why it would be prudent on the part of developing countries not to be rushed into signing the PA on 22<sup>nd</sup> April this year but to wait a little while for the reasons set out below.**
4. The signing of the PA without depositing the necessary instruments of ratification, acceptance, approval or accession indicates (under the Vienna Convention on the Law of Treaties) that a Party is giving political support to the PA and is willing to continue its engagement towards ratifying the treaty in accordance with its domestic processes. The Party, by signing, even if it has not ratified the PA, agrees to act in good faith “not to defeat the object and purpose of the treaty” while the treaty is pending entry into force.
5. The PA will enter into force on the 30<sup>th</sup> day after the date on which at least 55 Parties to the Convention, accounting in total for at least an estimated 55% of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.
6. During the negotiations for the PA, the understanding of Parties was that the Agreement is expected to be effective in 2020.

### **B. Reasons to wait before signing the PA**

There are several reasons to wait before signing the PA. They are set out as follows:

### **1. Holding off to signing of PA to secure the leverage needed in the negotiations**

If developing countries rush into signing the PA, thus indicating their readiness to give effect to the treaty through their domestic ratification process, they lose the political leverage in the current negotiations to get developed countries to meet their existing commitments in the pre-2020 timeframe and in securing the positions and flexibilities needed by developing countries in the negotiations that are outstanding and pending in relation to the PA.

Not signing now keeps the pressure up on developed countries to deliver on their promises and to leverage the outcomes and positions that are vital for developing countries in meeting their obligations under the PA.

Some of the most important issues that are vital for developed countries to deliver on this year are set out below in further detail.

### **2. Ensuring the fulfilment by developed countries of their existing commitments under the decisions of the Convention and the Kyoto Protocol in the pre-2020 time period**

Several preconditions were established by developing countries for developed countries during the negotiations for the PA under the mandate in Durban which have yet to be met. This relates to commitments under the Bali Roadmap that remain unfulfilled in the pre-2020 timeframe and include the following:

- (i) Many developed countries have yet to **ratify the Doha Amendment**, which establishes the second commitment period of the Kyoto Protocol (KP). As of 7 March 2016, only 61 countries have ratified the Doha Amendment, made up of mostly developing countries. Many developed countries, including the European Union, have yet to ratify and implement the Doha Amendment, which commits developed countries who are Parties to the Protocol, to undertake the second commitment period.

In fact, the COP 21 decision on enhancing action prior to 2020 urges all Parties to the KP to ratify and implement the Doha Amendment (see para 106, para (a)).

- (ii) In relation to **financial resources from developed to developing countries**, in Cancun in 2010, Parties had agreed that developed countries will mobilise USD 100 billion per year by 2020 in finance for

developing countries. However, developed countries have yet to deliver on this commitment, with only USD 6.8 billion committed to the Green Climate Fund this year.

Through the COP 21 decision (para 115), it was agreed that developed countries “enhance the provision of urgent and adequate finance, technology and capacity-building support in order to enhance the level of ambition pre-2020 actions by Parties” and developed countries were strongly urged **“to scale up their level of financial support, with a concrete roadmap to achieve the goal of jointly providing USD 100 billion annually by 2020** for mitigation and adaptation while significantly increasing adaptation finance from current levels and to further provide appropriate technology and capacity-building support.”

Whether developed countries will provide a concrete roadmap on the provision of the USD 100 billion annually by 2020 will be an important indicator to gauge if their commitments will be honoured. This is linked to the assessment of progress at COP 22 this year which is set out below.

(iii) **Assessing progress on implementing the Bali Roadmap at COP 22**

In Paris, Parties agreed that at COP 22 (this year), there will be a “facilitative dialogue” “to assess the progress” in implementing the decisions reached under the Convention and the KP (Bali Roadmap) and to “identify relevant opportunities to enhance the provision of financial resources, including for technology development and transfer, and capacity-building support, with a view to identifying ways to enhance the ambition of mitigation efforts by all Parties, including identifying relevant opportunities to enhance the provision and mobilization of support and enabling environments”.(See paragraph 116 of decision 1/CP 21)

**This facilitative dialogue presents an important opportunity to assess progress on whether the existing commitments of developed countries are being fulfilled, as agreed to under the Durban mandate.**

If there is reluctance on the part of developed countries to honour their pre-2020 commitment, there will be considerable doubt as to whether they will meet their obligations under the PA.

Hence, what happens at COP 22 in relation to the pre-2020 commitments of developed countries is an important barometer in assessing the approach developing countries should take as regards the PA and its entry into force.

- (iv) In relation to the **Green Climate Fund (GCF)**, which is a vital entity for developing countries to implement their climate action plans and responses, it is critical for countries to observe the fulfillment of the GCF's approval of projects for funding this year. The approval of funding proposals are now on hold for completing remaining policy discussions within the GCF Board, in order to meet US\$2.5 billion in disbursements this year. There is need to obtain clarity on the type of financing that will be available, the balance between loans versus grants, the balance between funding for adaptation versus mitigation, as well as the process of the replenishment of the GCF's funds which is tentatively targeted to take place by June 2017.

If this entity is not able to respond sufficiently to the needs of developing countries for the implementation of their current plans and actions, it will be even harder for many developing countries to implement their nationally determined contributions under the PA post 2020.

### **3. Tasks pending in preparation for the Paris Agreement**

There are several critical tasks that are pending in preparation for the PA which will be addressed at COP 22 end of this year. Some of the key tasks and issues that are critical for developing countries in advancing their commitments under the PA are as set out below.

- (i) The **Ad Hoc Working Group on the Paris Agreement (APA) is to be established** and will hold its first meeting in May this year in conjunction with the other Subsidiary Bodies and among its tasks is to prepare for the entry into force of the PA. (See paras 7-11 of decision 1/CP 21).

One of the first matters to be addressed is the **election of officers** to the APA. This will involve political negotiations among developed and developing countries as well as among developing countries and their respective groupings. Hence, it would be prudent to take stock of and assess how this body will advance the interests of developing countries, learning from the experience of the Ad Hoc Working Group on the Durban Platform (ADP) (which was tasked to deliver the PA) where there was much unhappiness with some of the Co-chairs in the conduct of their work, which unfairly disadvantaged developing countries.

- (ii) COP 21 also decided that **Warsaw International Mechanism for Loss and Damage (WIMLD)** is to continue, following its review in 2016. (See para 48). Unfortunately, to the detriment of developing countries, through the insistence of developed countries, especially the US and the EU, it was agreed in Paris (through para 52 of the COP decision) that the Loss and Damage provision of the PA “does not involve or provide a

basis for any liability or compensation.” This agreement was reached among the developed countries and some LDCs and Small Island States.

Given this major “loss” to developing countries, it will be vital to review the workings of the WIMLD this year, to assess and take stock of whether the Loss and Damage Mechanism is able to respond to the needs of developing countries or if it is a token Mechanism. Hence, at COP 22, it will be important focus on the usefulness of the Mechanism to developing countries and assess if developed countries will allow meaningful outcomes on Loss and Damage under the PA, including as to how developing countries can secure financial, technological and capacity-building support for this very important element of the PA.

(iii) **Process for identifying information on financial support to be provided by developed country Parties**

On finance, under Article 9(5) of the PA, developed countries are “to biennially communicate indicative quantitative and qualitative information” on the provision of financial support and mobilization of financial resources and “the projected levels of public financial resources” to be provided to developing countries.

**At COP 22 this year, a process to identify the information provided by developed countries in relation to their biennial communication is to be initiated.**

It will be critical to gauge how developed countries engage in relation to this at the end of this year, in order to assess their commitments to developing countries in the provision and mobilization of financial resources.

(iv) **Elaboration of the technology framework and assessment of the effectiveness of the Technology Mechanism**

In Paris, developing countries fought hard to have commitments for developed countries to effectively transfer technology to developing countries. However, the final outcome was not as robust as was advanced by developing countries, given the strong resistance of developed countries in this regard.

However, in the COP 21 decision, the Subsidiary Body for Scientific and Technological Advice (SBSTA) has been tasked to elaborate the technology framework under the PA at its session in May this year and to report its findings to the COP. Whether the technology framework will deliver meaningful outcomes for developing countries remains to be seen and will be a hard struggle for developing countries, given the

resistance of developed countries to be serious about effective and meaningful technology transfer.

Further, at Paris, Parties agreed that the Subsidiary Body for Implementation (SBI) will initiate in May this year, the elaboration of the scope of and modalities for the periodic assessment of the effectiveness of and adequacy of support provided to the Technology Mechanism in supporting the implementation of the PA.

This will be another measure of whether there will be any meaningful assessment of the Technology Mechanism to developing countries.

(v) **The Paris Committee on Capacity-building**

COP 21 also agreed that the Paris Committee on Capacity-building (PCCB) be established. This was a hard fight by developing countries to get an effective institution to address the various problems developing countries face in relation to their capacity needs. The PCCB's work plan for 2016-2020 is to be developed and the SBI is to also assist in organizing its annual in-session meetings. (See paras 74 and 77).

Much remains to be done in to evolve this institution into one that works for developing countries as they prepare to take on the undertakings under the PA.

**4. Securing the conditions for the implementation of their intended nationally determined contributions (INDCs) under the Paris Agreement**

Many developing countries have submitted their INDCs prior to the agreement reached in Paris. All Parties under the PA have agreed to undertake and communicate their INDCs. Most of the INDCs of developing countries are conditional on the provision of finance, technology transfer and capacity-building support.

If these 'enablers' of actions in developing countries are not in place prior to the coming into effect of the PA as set out above, it will be very hard for developing countries to keep to their commitments. Pressure would be brought to bear on developing countries for their non-implementation of their actions as set out in their INDCs.

Hence, it is important for developing countries to have confidence that they can implement their NDCs with the enabling factors put in place, prior to them signing the PA.

**Conclusion:**

Given the reasons above, it will be more advantageous to developing countries to wait this year and not rush into signing of the PA. Otherwise, as indicated above, we lose the political leverage that is critical to secure the necessary conditions that will enable developing countries to meet their obligations under the PA.