

# Briefing

## The Paris Climate Agreement 2015

### An analysis of its conclusions:

#### Introduction

COP 21 was billed as a landmark moment in international environmental politics, with tens of thousands of government officials, UN staff, legal advisers, policy experts, activists, and the worlds media descending on Paris for a fortnight in late November, early December 2015.

The result not just of those 2 weeks but of several years of negotiations, advocacy, protest, and ever more dire scientific warnings, was the Paris Agreement. Gavelled through by Laurent Fabius on the evening of December 12, it generated a media frenzy. Initial “reactions” (prepared months in advance) seemed polarized—either the Agreement saved the planet, or it condemned it. This soon gave way to the slightly more nuanced analysis that, while the Agreement was flawed, to various degrees depending on your criteria, it represented a breakthrough in climate diplomacy from which a lot more progress would develop.

This briefing aims to take a slightly deeper look at what the text of both the Agreement and the attached COP Decision actually says and what that means for a variety of issues. In some cases it briefly looks at what power dynamics were at play in the process of how the text was made. Overall, it is intended to be a fairly comprehensive but accessible guide to the COP21 outcomes.

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For more than 40 years we've seen that the wellbeing of people and planet go hand in hand – and it's been the inspiration for our campaigns. Together with thousands of people like you we've secured safer food and water, defended wildlife and natural habitats, championed the move to clean energy and acted to keep our climate stable. Be a Friend of the Earth – see things differently.

## **1. Emissions Reductions**

The long-term goal is the key clause of the Paris Agreement. The text sets a temperature target for states to reduce their emissions to stay well below 2 degrees celsius above pre-industrial levels. In a major victory for climate justice groups and developing countries, States were also encouraged to pursue efforts to limit the temperature increase to 1.5 degrees celsius above pre-industrial levels.

The devastating impacts of climate change – from extreme weather, floods, droughts, super hurricanes - are already a reality for many. With climate scientists warning that 1.5 degrees is an absolute tipping point for those in many vulnerable nations such as small islands states and the continent of Africa. The Paris Agreement however failed to establish a goal of 1.5 degrees, it merely requires parties to “pursue efforts”, even though the UNFCCC’s structured expert dialogue on the 2013-2015 review found that the “guardrail” concept of assuming that 2 degrees of warming is safe is weak.

***Article 2.1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:***

***(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;***

Although the agreement aims at pursuing 1.5 degrees, the actions proposed by it are not in line with staying at a safe temperature. To stay under 1.5 degrees of warming or to have even a reasonable chance of meeting the 2 degree goal, richer developed countries would have to stop burning all fossil fuels by 2030, yet the Agreement fails to mention ending fossil fuel extraction and use. In addition the Paris Agreement itself does not take effect until 2020, which could lead to us losing any chance of achieving the 1.5 degree goal.

The NDCs or the Nationally Determined Contributions which have been put forward by countries for the years 2025 or 2030, are very far from achieving the objective of the temperature goal. The UN calculated that their cumulative effect would lead to at least 3 degrees celsius of warming, if not higher.

On top of this, the NDCs are mitigation efforts which are also not a fairshare of effort amongst countries. Instead of an approach where richer developed countries with a greater historical responsibility towards climate change are made to reduce their emissions more and poorer developing countries less, NDCs are based on a bottom-up approach where countries simply pledge to reduce their emissions by however much they feel like. This approach will inevitably lead to a warming of the world beyond 3 degrees, and beyond the capacity of many of its citizens and our eco-systems to adapt.

**Article 3 (previously known as Article 2bis during the negotiations) states that, “As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.”**

This symbolizes the fight over the nature of the NDCs, i.e. whether they would be mitigation-centric or not. Developing countries led by the Like Minded Developing Countries (LMDC) pushed for wording in the text that would require parties to regularly prepare, communicate, and implement their NDCs to achieve the goals of the Agreement keeping in mind common but differentiated responsibilities. This was opposed by developed countries.

The US opposed references to each party having to implement the NDC that it had put forward as this would be an obligation rather than a suggestion to meet its already weak mitigation target. To reach a “compromise” on this, the wording in Article 4.2 states that all parties have to do is “pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.” What this means that now the obligation is only to AIM to achieve the target instead of achieving the target itself.

Article 4.9 through 4.12 adds more language on the NDCs. The Agreement requires parties to communicate an NDC every 5 years. Additionally, in the preparation of the next NDC there needs to be a common time frame provided for NDCs, i.e. whether it is a 5 or 10 year (or other) period. During the negotiations, the US had held the position that it would not accept the NDCs being recorded in the Agreement. Hence, the NDCs will now be in a public registry outside of the Agreement.

To achieve the long-term temperature goal, the Agreement also sets out a long-term mitigation goal.

**Article 4.1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.**

This looks at the concept of reducing global emissions to zero in the second half of the century, however the wording leaves it very open to interpretation. The US favoured the concept of decarbonisation (as did the G7 in early 2015), however the EU and Norway supported the term “net-zero” emissions. This was widely opposed and rejected by civil society groups as the term “net” does not mean that we are actually reaching zero emissions, rather that we will rely on technologies to sequester carbon dioxide. Unfortunately, despite this rejection, the wording of “achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century” made it’s way into the deal, and it effectively means the same as net-zero. It is given that all sectors cannot reduce their emissions to zero (such as with agriculture) and such a balance

will need to be struck in a fair and sustainable way, however, temperature rise largely depends on how quickly and deeply we shift away from fossil fuel use.

Though the wording on the long-term is not as strong as we would wish, it still provides us an opportunity to hold governments accountable to their promises, and we must challenge them to take the necessary steps to keep us within the limits set by the Agreement, in particular to realise the goal of preventing a breach of 1.5c.

Under emissions reductions, Article 4.4 was another big fight.

**Article 4.4 “Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. 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.”**

Developing countries wanted the mitigation expectations under the Agreement to reflect the original principles of the Convention relating to historical responsibility and common but differentiated responsibilities. However, developed countries like the US and other rich developed countries in the Umbrella group preferred language that allowed parties to “self-differentiate”. Originally, the text said that developing countries “should continue..” and developed countries “shall continue..”, however the US wanted to word “should” to be used for developed countries as well so that all parties would be treated the same in a legal manner. Hence, we see that this language made it through to the final Agreement.

## **2. Food, Energy and Forests**

- **Energy:**

To meet even the 2 degree target of the Paris Agreement, it is necessary that we reduce our emissions to the point where 80% of the world’s known fossil fuels need to stay in the ground. To make this a reality we will need a massive shift in our energy system away from dirty energy towards renewable energy.

In the preliminary drafts of the Agreement, to reflect fossil fuel reductions, language such as the word “decarbonize” and calls to “reduce international support for high-emissions investments” were present, but were then taken out for various reasons (one of them being the objection from big oil producing nations).

In terms of renewable and sustainable energy, the Agreement contains one mention, in the Preamble. It states: **“Acknowledging the need to promote universal access to sustainable energy in developing countries, in particular in Africa, through the enhanced deployment of renewable energy”**

Additionally, the Africa Renewable Energy Initiative was launched at the High-Level Meeting on “Lima-Paris Action Agenda: Focus on Energy” on 07 December, 2015. This initiative **“aims to achieve at least 10 GW of new and additional renewable energy generation capacity by 2020, and acknowledges the renewable resource potential in Africa”**.

Countries that have signed on to this initiative (such as USA, UK, EU, Canada, to name a few) have agreed to mobilise at least \$10 billion cumulatively from 2015 to 2020. It is essential for civil society to pressure for this to be new and additional public finance and not double counted finance.

- **Food, Land and Geo-engineering:**

Unfortunately, loopholes in the long-term goal under the Paris Agreement have led to the doors being opened for multiple questionable “solutions” to climate change, especially different forms of geoengineering relating to Carbon Dioxide Removal (CDR). CDR can be extremely dangerous if it is carried out through Bio-energy Crops with Carbon Capture and Storage (BECCS). This means that large-scale monocultures of bio-energy crops will be planted to remove carbon dioxide from the atmosphere. Land-use on this scale for such a purpose will greatly threaten food security, land rights and livelihoods as BECCS could require between half and twice the world’s arable land area.

Looking at negative emissions as a solution carries the risk of encouraging us to delay real action on climate change under the assumption that emissions can just be removed from the atmosphere later on. This will lead to an even larger increase in emissions, especially if the unpredictable negative emissions technologies don’t work. Additionally, there is always the possibility of the sequestered carbon being released back into the atmosphere through deforestation or large-scale dieback.

According to Article 4 of the Paris Agreement the long-term goal must be achieved “**on the basis of equity and in the context of sustainable development and efforts to eradicate poverty**”. This needs to be interpreted as the type of emissions reductions that take place being conscious food security, land rights and livelihoods - none of which are respected by BECCS or other methods of CDR.

It is also interesting to note that word “land” is not used anywhere in the Agreement because developing countries were concerned about having to take up mitigation commitments in the agricultural sector where food security is a bigger priority. However, there are multiple indirect references to the land sector in the text due to the mentions of terms like removals, sinks, and reservoirs. This had led to land being the only sector where emissions as well as removals are managed and reported for climate mitigation purposes.

- **Forests:**

Forests are included in the Paris Agreement through Article 5.

***Article 5.1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.***

***Article 5.2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing***

***countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.***

As we can see, in Article 5.1, parties need to take the necessary steps to conserve and enhance natural ecosystems, including forests. In article 5.2, parties are encouraged to implement and support the existing REDD+ framework. Additionally, non-market approaches to forests or the Joint Mitigation and Adaptation Mechanism (JMAM) is put on the same level as results-based payments for REDD+, while reaffirming the importance of the non-carbon benefits of forests. No new finance commitments or pledges have been made for REDD+.

### **3. Adaptation**

Since adaptation was recognised as a central pillar of the global effort on climate change, various institutional arrangements, such as the Adaptation Committee, Cancun Adaptation Framework, and Adaptation Fund have been established and developed. In Paris, the struggle was less to reinvent the wheel and more about making sure the existing wheels would be allowed to turn—by both having the adequate support for adaptation and ensuring parity by making it a central part of the Paris Agreement.

As part of creating a balanced Agreement, developing countries and some CSOs fought for and won in Article 7 a qualitative global goal on adaptation, aimed at “**enhancing adaptation capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development.**” Significantly, the goal is established in the context of the temperature goal referred to in Article 2, with the level of adaptation response necessarily changing depending on the level of mitigation action. Avoiding a mitigation-centric Agreement was an essential objective for developing countries and climate justice campaigners. Also as part of the global goal on adaptation, developing countries had been aiming to secure an assessment on the adequacy of support. Although this was not quite achieved, they did manage to secure a reference that the global stocktake of Article 14 shall review support provided for adaptation as well as the overall progress towards meeting the goal.

A major objective of developing countries was to ensure their adaptation actions—with or without international support—would be recognised as part of their contribution. This was achieved in Article 7, which obliges all Parties to “**submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.**” All adaptation communications will be “**recorded in a public registry maintained by the secretariat.**”

The Convention had already established that in line with the principle of common but differentiated responsibilities certain developed countries (listed in Annex II) would be responsible for supporting developing countries to meet their adaptation costs. However, the state of adaptation finance throughout the lifetime of the negotiations has been poor, with

recurring concerns over the lack of parity with mitigation and extremely fragmented and inaccessible funding.

In terms of ensuring parity between mitigation and adaptation finance, the Agreement only calls for balance, as did the Convention, but does not specify what this means either quantifiably or qualitatively as there is no target for support of action. Regarding the source of funding, the Agreement fails to state who is responsible for **the “continuous and enhanced international support”** of adaptation whereas the Convention had been clear this was a developed country responsibility, and although it does mention public and grant based resources in relation to adaptation, it only asks Parties to “consider” this in their provision of finance.

Paragraphs 42-47 of the Decision relate to adaptation, and request the Adaptation Committee to work with the Least Developed Countries Fund and Standing Committee on Finance to **“consider methodologies for assessing adaptation needs with a view to assisting developing countries, without placing an undue burden on them”** and to **“facilitate the mobilization of support for adaptation in developing countries”** in the context of the temp goal. The Adaptation Committee, in collaboration with LDCF, SCF, and other relevant institutions, is also asked in paragraph 46 (b) to **review “the adequacy and effectiveness of adaptation and support,”** although it is not clear what tangible increase in financial flows this review would yield. Similarly, the request made to the GCF to **“expedite support for the least developed countries and other developing country Parties for the formulation of national adaptation plans [...] and for the subsequent implementation of policies, projects and programmes”** should be welcomed, although the experience of funding NAPAs should make developing countries and CSOs cautious.

Other things to note from the Decision related to adaptation include a request to the Adaptation Committee to review in 2017 all adaptation-related institutional arrangements, and a note that whether or not the Adaptation Fund can serve as part of the Financial Mechanism to the Agreement depends on the decisions of the CMP and CPA.

Several developed countries used the platform offered by COP21 to announce various financial pledges, while resisting efforts to establish a finance target or goal beyond the \$100 billion. This included \$250m for LDCF, \$77m for AF, and over \$180m for Climate Risk Insurance. These pledges are all far short of even the most moderate estimates of adaptation needs, and absent of a binding quantifiable target cannot be considered reliable.

## **4. Loss and Damage**

One of the most high-profile issues in the recent years of the UNFCCC has been how to address the losses and damages arising from the already occurring impacts of climate change (in 2015, global average temperatures are almost 1 degree warmer than pre-industrial levels). Although small island states have been raising the issue since the Convention was established it was only in the past 4 years that G77 coordination and unity began bearing fruits. Warsaw COP19 established an international mechanism on loss and damage, and part of the fight in Paris for developing countries and CSOs was to make sure this achievement was not for naught.

The Paris Agreement includes loss and damage as a stand alone article (Article 8) with the Warsaw Mechanism anchored as the institutional arrangement which in itself is a progression as it means the limits to adaptation are recognised and the opportunity now fully open for international cooperation to enhance action and support to address the issue. Beyond this, the Agreement also marked progress by acknowledging slow onset events and non-economic losses, and by encouraging enhanced understanding, action and support for fostering resilience of communities, livelihoods, and ecosystems.

Article 8 unfortunately does not outline a clear source for finance, instead restricting financial support for dealing with adverse impacts of climate change to insurance schemes and risk management.

Additionally, paragraphs 48-52 of the Decision deal with loss and damage. Paragraph 50 asks the Executive Committee of the International Mechanism to establish a task force “**to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change**” which could later be built on to establish a coordination facility for human displacement under the COP.

Paragraph 52 of the Decision unfortunately included, at the absolute insistence of the US, an “exclusion clause” which states that Parties agree “**that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.**” Although bumping this from the Agreement to the Decision in the final hours gave some hope that this guidance could be interpreted generously over time—as it is not a general exclusion of loss and damage liabilities, should not prejudice other international laws, and does not prevent countries seeking funds through the Financial Mechanism to address loss and damage—it is nevertheless deeply concerning, restricting the work of the international mechanism, and handing a get out of jail free card to countries who are largely responsible for causing climate change.

Also concerning was the manner in which this exclusion clause was secured, with the US exerting extreme diplomatic force by essentially holding the entire agreement hostage unless it was given what it wanted. Developing country unity which could have countered the US was broken by a handful of small islands being forced to trade off loss and damage for the mention of an aspirational long-term goal of limiting warming to 1.5 degrees Celsius.

## **5. Finance**

The fight over climate finance is always a large one at COPs. COP21 in Paris was no exception, and this particular fight for the money was over who would be providing it and in what forms. Developed countries, who have a large historical responsibility for climate change and hence owe new, additional, adequate, predictable, and scaled-up climate finance to developing countries for the adverse effects, were trying to alter the basic principles of the Convention where this responsibility and obligation are recognised.

In the lead up to the final Paris Agreement, developed countries pushed for an increase in the number of countries that would be donors of climate finance so that it included developing countries as well. Language such as asking “all Parties in a position to do so” to provide money and referring to the provision of climate finance as a “shared effort” were proposed in attempts to bring about this change. Additionally, developed countries tried to alter the list of recipients of climate finance from all developing countries to only those who were “particularly vulnerable”, such as Least Developed Countries (LDCs), Small Island States (SIDS) and (after much debate) Africa.

During the talks, developed countries claimed that they were already providing \$62 billion annually and that after the pledges from COP21, that number would go up to \$94 billion a year. However the claim by developed countries was widely challenged by both developing countries and civil society organisations as lacking any factual evidence.

In the end, this is the language that was finalised in the text:

***Article 9.1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.***

***Article 9.2. Other Parties are encouraged to provide or continue to provide such support voluntarily.***

***Article 9.3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds,***

And within the Decision, under Finance in Paragraph 54:

***Also decides that, in accordance with Article 9, paragraph 3, of the Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries;***

Even though the Agreement states that developed countries shall provide finance to developing countries, and the tagline of “particularly vulnerable” has been dropped, in Article 9.2, the usage of “other parties” being “encouraged to provide or continue to provide such support voluntarily” and the reference to a “global effort” in Article 9.3 are just methods by which the liability of the Global North to provide finance was reduced. There is an absence of a burden-sharing mechanism between developed countries as well as an unfair expectation that some developing countries will finance other developing countries.

In Cancun, at COP16, developed countries agreed to mobilise climate finance of \$100 billion per year by 2020 to developing countries. During the Paris climate talks, they claimed that they were already providing \$62 billion annually and that after the pledges from COP21, that number would go up to \$94 billion a year. In reality, the amount of dedicated climate finance that has already been provided is closer to only \$2 billion and if we consider a broader

definition (including development aid, loans, etc.) then around \$20 billion has flowed. Looking at Climate Fairshares, the estimated need of climate finance per year is actually \$400 billion and upward. What we see from the Paris agreement is that developed countries “intend to continue their collective existing mobilization” of \$100 billion per year (which is not enough) and the deadline has been extended from 2020 to 2025 with no real reference to what their obligations on finance would be after. Additionally, the definition of “mobilization” is not clear and is left broad so that it can include loans, development aid, private finance, etc. instead of the new, additional, and scaled-up finance that is required.

## **6. Technology**

On the frequently overlooked issue of technology transfer, the language contained in Article 10 of the Agreement and in paragraphs 67-71 of the Decision are by and large weaker than the language in the Convention. While the Convention had obliged developed countries to **“take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties,”** including by developing and enhancing **“endogenous capacities and technologies of developing country Parties,”** the Agreement actually supplants the obligation for developed countries to transfer technology to developing countries with a more general focus on *“cooperative action.”*

In Paris, developing countries brought various proposals which detailed plans to enhance technology development and transfer, including by establishing a global goal (LMDC), having donor countries provide specific financial support for collaborative research and development of environmentally friendly technologies, and addressing barriers related to IPR (India).

What they ended up with was somewhat different. The Article on technology articulates only a rather vague **“long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.”** A technology framework, although not as ambitious as that which was initially proposed by the African Group to provide direction and guidance in relation to technology assessments (including helping to address barriers), is established to give guidance in pursuit of the long-term vision. In the Decision text, the SBSTA is asked to elaborate the technology framework during its May 2016 meeting and present to the first CPA in Marrakech.

As with other “means of implementation” such as finance, technology transfer and development will be assessed as part of the global stock take of Article 14. The Decision establishes a periodic assessment of the effectiveness and adequacy of support given to the Technology Mechanism and requests the SBSTA to elaborate the “scope of and modalities for the periodic assessment” and present it to COP25 in 2019.

The TEC and CTCN, which together make up the Technology Mechanism of the Agreement, were asked in Article 10 to collaborate with the Financial Mechanism on research, development, and access to technology. A component of the framework being developed by

SBSTA is the “provision of enhanced financial and technical support for the implementation of the results of the technology needs assessments.”

## **7. Market Mechanisms**

The Paris Agreement was negotiated and agreed upon so that it could replace the Kyoto Protocol (KP) of 1997, a protocol with weak targets that did very little to reduce runaway climate change and that allowed developed countries to avoid their responsibilities (though it did have top-down approach). A key component of the KP was that of emissions trading through carbon markets. Within this emissions trading, the way by which developed countries attempted to meet their targets was through heavy reliance on the Clean Development Mechanism (CDM) - an offsetting mechanism that allowed them to purchase carbon credits from developing countries instead of reducing their own emissions as promised. This did not work well due to multiple factors such as an over allocation of credits and a rapid fall in the price of the credits.

Talks on carbon markets under the UNFCCC have been heated, with often no conclusion being reached on them under SBSTA due to the vast differences amongst parties' opinions on them.

Here is what was agreed upon in the Paris Agreement:

Even though there is no mention of “carbon markets” in the text, the concept of emissions trading is still very much in the Paris Agreement. Under Article 6.2 the term “internationally transferred mitigation outcomes” is just a nicer synonym for a carbon market. This allows for parties to trade the outcomes of their mitigation and count it towards their reduction targets. Under Paragraph 38, we can note that guidance for this process to avoid double counting is to be developed by 2020, hence formally establishing UN oversight and approval for the international transfer of credits – something that has been greatly debated under the UNFCCC and opposed by countries such as Bolivia, Venezuela, China, and Brazil (to name a few).

Additionally, despite the CDM being a failure that was also rejected by many parties, the Agreement establishes a replacement for it. This was diplomatically named the Sustainable Development Mechanism (SDM) or the “***mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development***” as it is referred to in Article 6.4, so as to disconnect it from the negative notions associated with carbon markets and offsetting. This was created based on a joint proposal from the EU and Brazil and was opposed by the ALBA group of countries. Through the SDM, parties and private entities will be able to offset by selling emissions reductions to another party. The rules, modalities and procedures for this will be established by 2020.

Under Article 6.8 and Article 6.9, we see the reference to non-market approaches. There is also the establishment of a work programme for a framework that considers linkages between mitigation, adaptation and the provision of support in Paragraph 40. Discussions relating to REDD+ and JMA (Joint Mitigation and Adaptation) will most probably happen under this.

All in all, the process of establishing a new carbon market mechanism is not going to be easy. There is bound to be strong debate over the rules of its creation in the upcoming year and in Marrakesh at COP22.

## **8. Legal Form**

In the run up to the failed Copenhagen negotiations in 2009, the top-line demand from many CSOs was for a “FAB” deal—that is a fair, ambitious, and binding global deal. Although that demand was somewhat abandoned in the aftermath of COP15 and subsequent expectation lowering, it was in essence still the principled demand of social movements going in to Paris.

As with the Fairness and Ambition components of a FAB deal, an assessment of whether or not the Paris Agreement is binding cannot be fully answered with a simple yes or no.

While the Kyoto Protocol set binding targets for rich countries related to their responsibility for causing climate change, the Agreement cements the bottom-up “pledge and review” approach which the US had been pushing on everyone since 2009 (partly why Copenhagen collapsed). As with any Treaty, various degrees of strength are employed when referring to obligations set forth in the Agreement—some actions are tasks countries “shall” do, while others are things they only “should” do. This difference was brought up in the final hours of Paris negotiations, where US negotiators nearly derailed the entire process because they could not accept the sentence “Developed country Parties shall continue taking the lead by undertaking economy-wide absolute emission reduction targets,” instead requiring a serious weakening of differentiation by substituting for “should.”

The divergence from the approach of the Kyoto Protocol was justified by saying that the KP only accounted for a small number of countries who took on targets, whereas the Paris Agreement is applied to all countries (even if, in being applied to all countries, it fails to include any globally determined quantified commitments). This was the only possibility, given the fact that many governments, especially the United States, were not willing or able to undertake legally binding targets for either emissions reductions or financial contributions. Putting a positive spin on that hard fact, many CSOs made a lot of noise about how the Agreement is legally binding—which is true—and rather less noise about the absence of content to be bound to. Such CSOs claimed that the Agreement sent a signal from world governments to corporations, and “investors” that ambitious climate policies would soon be enforced. The national policies enacted since the Paris Agreement tend to debunk that optimism.

When the specific obligations are examined, it becomes clear that the deal is far from “FAB”. On mitigation, all countries “**shall prepare, communication, and maintain successive**” nationally determined contributions, and communicate them every 5 years. The current contributions added up fail by a long way to ensure the 2 or 1.5 degree temperature goal can be met. On adaptation, countries are only obliged to engage in adaptation planning processes. In terms of financial obligations—always contentious—the lack of specific quantifiable obligations coupled with the experience of climate finance to date should lead any analyst to remain cautious.

Where there is real detail in the binding obligation is in reporting, with each country having to regularly provide a national inventory as well as information to track how well (or not) it is implementing its NDC – information which will be subject to an independent “technical expert review” which will consider the progress made.

These meagre obligations, it is argued, are designed to be a minimum which will be built on. But how can that minimum be guaranteed? The experience of the Kyoto Protocol is that several countries failed to meet their Kyoto targets, in spite of the existence of a Compliance Committee.

## **9. Human Rights**

The fight to include language around human rights - particularly rights pertaining to the indigenous, labour, youth, and gender constituencies - in an operative paragraph of the Paris Agreement was one of the most high-profile during COP21. A compromise resulted in language which had been developed by an inter-constituency working group being modified and included in a preambular paragraph of the Agreement.

Specifically, it says in the Agreement preamble that “**Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,**” and that the Agreement will take into account “**the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities**”.

While this recognises the relationship between human rights and climate change in a way that the Convention did not do so explicitly, there was real disappointment from many CSOs who wanted their suggested language included in an operative Article of the Convention. In spite of much clamour in the ultimate days and hours of the talks, no major network or organisation rejected outright the Agreement in spite of this “red line” being crossed—a fact which shows the overwhelming nature of the not wholly one-dimensional, but still ultimately positive spin. It remains to be seen, but one benefit could be that the new “sustainable development mechanism”, established in Article 6, avoids the accusations of human rights violations that were levelled at the Kyoto Protocol’s “Clean Development Mechanism”.

During the COP21 negotiations, several G77 countries (most notably Saudi Arabia) were among those singled out as blockers on the issue of human rights, with the Group as a whole being criticized as a result. However, in dialogue with CSOs, G77 lead Ambassador Diseko explained that though some Parties had issues with the language suggested, the group was in no way taking an anti rights stance. She went on to say that for the G77, fulfilment of human rights was a central tenet of climate justice, and said that as climate change itself is a violation of human rights, the best way to protect those rights would be to

implement the Convention in terms of increasing mitigation ambition and augmenting the provision of support.

## **10. Conclusion**

Clearly, there is no simple “good/bad” analysis of the COP21 outcomes. They are the product of a certain set of power relations between and within nation states, as well as the influence of transnational corporations and global civil society. How the outcomes are understood, and used, depends very much on what position one comes from, what “space” one inhabits, and what discourse one is immersed in.

Some positives from a developing country government perspective include: the prevention of a total dismantling of the Convention and replacement with a “mitigation-centric” Agreement; the preservation of differentiation in principle; the mention of equity in the purpose of the Agreement (Article 2); the mention of sustainable development and poverty eradication; the pursuit of 1.5 in relation to the global goal; the reiteration that developed countries should take the lead in mitigation and finance; and perhaps above all the avoidance of a collapse in negotiations and subsequent diplomatic fallout.

From a civil society perspective the positives lay not so much in the text of the Agreement or Decision as in the general narrative advances. The Paris Summit raised the profile of the challenge of climate change as not only activists and experts were discussing it, but also almost all world leaders, the corporate media, and even celebrities. This attention created an opportunity not just for big green NGOs to fundraise, but also for the climate justice movements to attract a new wave of activists, reach out to other social movements, and carry the momentum back to grassroots struggles, for example around fossil fuel infrastructure battles. Climate justice groups also took heart in the convergence of positions around the concept of “fair shares” and deepening of shared understanding on equity, even if this was not reflected in the official outcomes.

In spite of this, the hard truth about the Paris outcomes are that they represent a significant step down in terms of developed country legal responsibility to act and a growing pressure on developing countries, especially emerging and middle income economies, to undertake much more. The grandeur of the occasion ultimately did not yield an actual plan as to how to limit warming to 2 degrees or less. As they stand, current pledges made in the INDCs will result in up to 3.5 degrees of warming. To bridge this “gap” governments are relying on assumptions about technologies which are unproven, such as BECCS, and ignoring the unknown implications that higher degrees of warming will have on our ability to adapt and mitigate sufficiently. While the door for false solutions like geo-engineering remain open, the door for compensation in the face of adverse climate change impacts seems closed in the UNFCCC after the “liability clause” was inserted.

