

Maximizing the potential of the Paris Agreement:: Effective review in a hybrid regime

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Maximizing the potential of the Paris Agreement: Effective review in a hybrid regime

Summary

The hybrid model of international climate policy embodied in the Paris Agreement requires countries to regularly deliver their nationally determined contributions (NDCs) and to progressively increase collective and individual efforts over time. To be effective, this type of regime requires international review processes that provide robust information about countries' efforts to address climate change and the support they offer other countries to do so, as well as their future plans and trajectories. The regime must also provide substantial opportunities for state and non-state actor engagement with this information, as well as sharing of best practices.

The Paris Agreement creates three different review processes, but leaves critical details regarding each and their relation to each other to future decisions:

- a review of implementation of individual NDCs under an "enhanced transparency framework" for action and support, comprising a technical expert review and multilateral consideration (Article 13).
- a global stocktake every five years to assess collective progress towards achieving the purpose and long-term goals of the Agreement (Article 14), preceded by a mitigation-focused facilitative dialogue in 2018.
- a mechanism to facilitate implementation and promote compliance through a committee that is expert-based, non-adversarial and non-punitive (Article 15).

It is essential for Parties to develop effective modalities, procedures and guidelines for each of these processes, ideally before the Paris Agreement enters into force. To this end, this discussion brief highlights essential considerations and, where possible, potential options for each process. The aim is to show what is at stake as the Parties negotiate the implementation of the Paris Agreement and, to clarify the questions that need to be resolved going forward.



U.S. Secretary of State John Kerry signs the Paris Agreement, with his granddaughter in his arms.

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The key role of review processes under the Paris Agreement

The Paris Agreement shifts the UN climate regime away from a top-down system of negotiated, legally binding emissions targets enshrined in global protocols. In its place, it creates a hybrid system that combines bottom-up and top-down (and binding and non-binding) elements: Parties are required to submit self-determined and non-legally binding NDCs every five years, but these are subject to a number of mandatory reporting obligations and review processes.

National contributions, in aggregate, currently fall short of overall goals (UNEP 2015; Rogelj et al. 2016). Under the previous regime, such inconsistencies between goals and commitments were "front-loaded" into the negotiations, requiring resolution to move forward. The Paris Agreement instead back-loads questions about the adequacy of contributions, and overall equity, into the review of individual countries' implementation of NDCs and the collective stocktaking of aggregate progress, increasing the importance of these procedures.

At present, nearly every country in the world has submitted its intended NDC. The contributions range from economy-wide emissions targets, to mitigation policies and measures. About 80% also include adaptation components, and some pledges are partly conditional on the support provided by other Parties. The heterogeneous contents of Parties' contributions will shape the review system that emerges over time.

This discussion brief builds upon the workshop "Reviewing Implementation and Compliance under the Paris Agreement", held at Arizona State University, 7–8 April 2016. It was written by Harro van Asselt (SEI), Thomas Hale (Blavatnik School of Government, University of Oxford), Kenneth Abbott (Arizona State University), Yamide Dagnet (World Resources Institute), Meinhard Doelle (Schulich School of Law, Dalhousie University), Achala Abeyasinghe (International Institute for Environment and Development), Manjana Milkoreit (School of Sustainability, Walton Sustainability Solutions Initiatives, Arizona State University), Caroline Dohl Prolo (International Institute for Environment and Development) and Bryce Rudyk (Guarini Center on Environmental, Energy and Land Use Law, New York University School of Law). All have contributed in their personal capacities; views expressed here do not necessarily reflect those of the institutions with which they are affiliated. The authors would like to thank Christina Voigt and Jake Werksman for comments on an earlier draft.

In this hybrid system, the importance of effective review cannot be overstated (van Asselt et al. 2015). Because the targets set out in the NDCs are not made legally binding by the Paris Agreement, the review systems are the chief tools to make the agreement effective, by generating information and providing opportunities to apply political pressure to help ensure that countries meet the political commitments made in their NDCs and, collectively, in the Paris Agreement.

The review system to be developed needs to be reliable and support progressively more ambitious contributions over time. The first meeting of the Ad Hoc Working Group on the Paris Agreement in May 2016 provided an initial opportunity for Parties to air their views on these subjects. Most of all, it highlighted the scale of work required in the next months to develop effective review processes (Allan et al. 2016; Briner and Moarif 2016; UNFCCC 2016b).

As a whole, the review process can provide several essential functions and benefits. First, as mentioned above, effective review is essential for tracking how NDCs align collectively with the Paris Agreement’s objective to keep warming “well below 2°C” and to try to stay under 1.5°C, as well as its principles, including equity. Second, the process is expected to enhance transparency, trust and accountability among Parties, by creating a shared understanding of Parties’ contributions and implementation efforts, as well as the underlying information, data and assumptions. Third, it can identify obstacles to the implementation of NDCs, highlight various experiences or solutions that can address those barriers, and help channel resources to countries to overcome such barriers. Finally, and perhaps most important, review can help to increase ambition, by providing opportunities for feedback and exchange of ideas and approaches, and by encouraging additional reciprocal actions from other Parties.

The review processes established in the Paris Agreement, detailed below, include three separate but functionally linked systems. While each was designed to fulfil specific, potentially discrete functions, they should also be seen in relation to one another:

Article 13 provides for a review of implementation of NDCs under an “enhanced transparency framework, comprising a technical expert review and multilateral consideration”.

Article 14 puts in place a five-yearly “global stocktake” to assess collective progress towards achieving the purpose and long-term goals of the Agreement. Parties will also have a first opportunity to assess the adequacy of current mitigation efforts through a facilitative dialogue to take place in 2018.

Article 15 establishes a mechanism to facilitate implementation and promote compliance through an expert-based, non-adversarial and non-punitive committee.

While the Paris Agreement establishes these three distinct forms of review, and offers basic guidance for each of them, it leaves many of the crucial details regarding their content, procedures, modalities, and logistics to be developed before

the first Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.

This discussion brief identifies key questions still to be addressed, and outlines a few options for answering them, regarding review for implementation, ambition, and compliance. The starting point is the agreed design details incorporated in the Agreement and Decision 1/CP.21 (UNFCCC, 2016a), which we highlight in tables at the start of each section below.

Article 13: Transparency framework
Flexibility

While Decision 1/CP.21 highlights a number of ways in which flexibility can be provided to developing countries, especially to Least Developed Countries (LDCs) and Small Island Developing States (SIDS), several questions remain unresolved:

- *Capacities:* Beyond LDCs and SIDS, it is unclear which other developing-country Parties would be granted flexibility “in light of their capacities”, and by what criteria this would be judged. Any criteria will likely be challeng-

Transparency framework (Article 13)	
Scope	(Mitigation and adaptation) action and (financial, technology, and capacity-building) support; individual Parties; implementation and achievement of the NDCs; national emissions inventories
Flexibility	In light of capacities; special circumstances of Least Developed Countries and Small Island Developing States
Principles	Facilitative; non-intrusive; non-punitive; respectful of national sovereignty; avoiding undue burdens
Sources of input	National reports, including inventories and information to track progress towards implementing and achieving NDCs
Institutional arrangements	Review by technical experts, including potentially in-country reviews, as well as multilateral consideration

ing to negotiate, but relying only on Parties’ own determination of their need for flexibility could limit the predictability and thus usefulness of the transparency framework. The Paris outcome provided for a new Capacity-Building Initiative for Transparency to help developing countries meet the requirements of the enhanced transparency framework (see below). The Global Environment Facility (GEF) adopted procedures for the initiative in June 2016, and made it available to all developing countries without exception or prioritization (GEF 2016a; 2016b). It does not necessarily follow, however, that a similar one-size-fits-all approach should be adopted for the operation of Article 13.

- *Frequency of review:* While the frequency of reporting has been decided (at least biennially for all Parties except



Louise Mushikiwabo, Rwanda's minister of foreign affairs and cooperation, deliver's Rwanda's National Statement at the signing of the Paris Agreement at the UN in April 2016.

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for LDCs and SIDS), the frequency of reviews has not. It would seem reasonable that countries with adequate capacities should be reviewed at least once during each five-year NDC cycle, but it can also be decided to review each individual report upon submission. There could also be different levels of review at different times (e.g. an in-country review following one report, followed by a desk-based review for the next).

- *Scope:* Decision 1/CP.21 suggests that the scope of review could make in-country reviews optional for some Parties. This could be the case for LDCs and SIDS, which may initially not have the capacities to organize in-country reviews. To the extent the contents of NDCs allow, the scope of review could be further limited by focusing reviews on particular issue areas or themes (which could rotate in subsequent reviews). To save time and resources for Parties, the Secretariat of the UN Framework Convention on Climate Change (UNFCCC), and expert reviewers, it might be appropriate to do group reviews for specific groups of countries (e.g. Pacific islands, or African LDCs). Group reviews may be most appropriate for the multilateral consideration part of the review process, as expert reviews of individual Parties can more effectively generate valuable information and build capacity. Both scope and frequency could be linked to the outcomes of previous reviews.

Support and facilitation

Decision 1/CP.21 clearly suggests that support should be provided for developing-country Parties to carry out reporting

and participate in reviews, as part of the new Capacity-Building Initiative for Transparency referenced above. Beyond this crucial support, it is important to consider how to make the operation of the Article 13 process itself as supportive and facilitative as possible.

For example, as part of tracking implementation, particularly for developing countries, the review process could be used to identify barriers to implementation (e.g. specific gaps in funding, capacity, regulation, or technology). In this way the review process could feed into other areas of the regime where support can be mobilized, including perhaps the Article 15 compliance process (see below). Parties may wish to encourage expert reviewers to explicitly recommend sources of support to help overcome identified barriers.

Non-state actors

Parties may wish to consider including non-state actors in the review process. This could be done in at least three ways. First, they could act as expert reviewers. Second, Parties may wish to invite non-Party actors to provide written and/or oral input into the expert review. This practice is already common in existing review processes under the UNFCCC, where experts consult with outside groups. Third, Parties could clarify that all proceedings for the expert review and/or the multilateral consideration will be open to observers, and all documentation will be made publicly available.

In addition, because many NDCs explicitly refer to non-state actors (e.g. cities, the private sector, civil society) in the development and implementation of NDCs, Parties may wish to have the option of submitting the actions of these actors within their borders for consideration in the review process (van Asselt and Hale 2016).

Article 14: Global stocktake and facilitative dialogue

Process and format

What will the facilitative dialogue consist of? Minimally, it could just be a designated period for submissions and statements by Parties on collective progress on mitigation toward the long-term goal in 218. Alternatively, Parties may wish to create a more robust process. Similarly, how will the more elaborate global stocktake unfold in 2023, and how can it build on the experience with the 2018 facilitative dialogue?

One potential model would be to follow the design of the 2013–2015 review, which involved a joint working group of the Subsidiary Bodies and several “structured expert dialogues” (UNFCCC 2015). Another suggestion is to draw on the multilateral elements of existing transparency arrangements, such as the Multilateral Assessment of the International Assessment and Review (for developed countries) and the Facilitative Sharing of Views (for developing countries).

It may also be possible for the basis of the stocktake to be a review carried out by the UNFCCC Secretariat, or by a group of Parties. Further questions relate to whether and how the stocktake will be tailored to deal with the different long-term goals listed in Article 2, related to mitigation, adaptation and finance. Moreover, although the stocktake is explicitly aggregate in scope, throughout each of the areas, equity concerns will likely generate significant attention. Will the stocktaking process offer guidance on how equity should be addressed?

	Global stocktake (Article 14), 2023 and beyond	Facilitative dialogue (Decision 1/CP.21, para. 20), 2018
Scope	Collective efforts towards achievement of the Agreement’s purpose and long-term goals (incl. mitigation, adaptation, means of implementation, support)	Collective mitigation efforts towards achievement of the Agreement’s purpose and long-term goals
Flexibility	Global in scope	Global in scope
Principles	Comprehensive and facilitative; in light of equity and best available science	Comprehensive and facilitative
Sources of input	(1) Information on overall effect of NDCs; (2) adaptation communications and reports; (3) information on mobilization and provision of support; (4) latest reports by the Intergovernmental Panel on Climate Change; (5) reports by Subsidiary Bodies	To be determined
Institutional arrangements	To be determined	To be determined
Outcome	Process shall inform Parties in updating and enhancing actions and support; enhance international cooperation	To be determined

Inputs

Beyond statements by Parties, it is unclear what other inputs will inform the 2018 facilitative dialogue. The Intergovernmental Panel on Climate Change (IPCC) has agreed to produce a special report by 2018 on the impacts of global warming of 1.5°C and related emission pathways; this will undoubtedly help to inform the discussion of collective ambition.

For the global stocktake, several key inputs are explicitly called for (see table). A key question is whether and/or how the individual reports under Article 13 or some summary of them will inform the global stocktake. Although adaptation-related reports are explicitly mentioned as an input, this is not the case for national reports under Article 13.7. However, Article 13.5 and 13.6 suggest the stocktake will be informed by the transparency framework. Assuming that these reports and their reviews are taken into account, the question is what information from them will be considered. For instance, if a review suggests that a country’s emissions are higher than reported, will this provide input into the stocktake?



At an April meeting on turning the Paris Agreement into action, World Bank President Jim Yong Kim speaks with Ségolène Royal, French minister of environment, energy and the sea, and Mark Carney, Governor of the Bank of England.

Beyond the transparency framework, reports of existing committees (in addition to the Subsidiary Bodies’ reports) could offer useful inputs on specific areas (e.g. adaptation, finance, technology). For all these possible inputs, the Parties need to determine when they would feed into the stocktake. A final question for both the facilitative dialogue and the global stocktake is whether inputs from organizations other than the UNFCCC and IPCC could be considered. One option in this regard would be to allow input from a limited number of organizations, such as observer organizations accredited with the UNFCCC, or a set of “credible and reliable” organizations, with the UNFCCC Secretariat granted the discretion to decide which organizations meet these criteria.

Non-state actors

Non-state actors could play helpful roles in the facilitative dialogue and the global stocktake, in two main ways. First, a large number of cities, companies, and other non-state actors are demonstrating high levels of ambition, either in individual commitments or in collaborative initiatives with peers and/or nation states and international organizations. The most significant of these have been included in the Lima-Paris Action Agenda. Such efforts provide a useful reference point to help Parties understand what levels of ambition are possible and to learn from a variety of experiences how they might deliver on those ambitions. Second, it may be desirable to include the perspectives of civil society organizations and other stakeholders on collective action toward the long-term goal in 2018, and on all efforts in 2023 and beyond. This could be done either by providing for input into the dialogue or stocktake (see above), or by allowing them to participate directly in the process (e.g. through written or oral interventions).

Relation to NDCs

A crucial outcome of the 2018 facilitative dialogue is to inform the preparation of future NDCs. The collective assessment of progress toward the long-term goal, in light of the current emissions gap, will undoubtedly lead countries to reflect on the appropriate level of ambition to put forward in subsequent NDCs. The facilitative dialogue may go further to help inform future NDCs by emphasizing what policies and measures have proven successful in raising ambition before 2020.

For example, the Technical Expert Meetings under Workstream 2 have captured a broad range of policy options for countries to consider. While the objective of Workstream 2 is to enhance ambition before 2020 and the objective of the 2018 facilitative dialogue is to consider the post-2020 level of ambition, a natural synergy exists between the two, as Decision 1/CP.21 states: “emphasizing that enhanced pre-2020 ambition can lay a solid foundation for enhanced post-2020 ambition” (UNFCCC 2016a, paragraph 18).

Outputs

The Paris Agreement does not specify what, if any, formal outputs the facilitative dialogue or the global stocktake will produce. In many ways, the key outputs of both processes will be informal products of the process itself, consisting of the information generated on progress toward the regime’s goals and the various forms of pressure and positive incentives that will, hopefully, spur countries to augment their contributions in the future.

However, Parties may wish to generate formal outputs that clarify the status of efforts to realize the goals of the convention. This could take the form of a summary report of the discussions written by the chair or the Secretariat, a declaration by the Parties to the Paris Agreement, or guidance for how the stocktake will inform updated NDCs (see also Allan et al. 2016; Dagnet et al. 2016, p. 50).

Article 15: Implementation and compliance mechanism

Scope

It is not clear from the Paris Agreement what precisely lies within the mandate of the new committee, as Article 15 only refers generally to “the provisions of this agreement”. This could be interpreted as limiting the scope and mandate of the mechanism to legally binding obligations under the Agreement. They include obligations to prepare, maintain and communicate an NDC; to ensure that NDCs are clear, transparent and understandable; to make sure that NDCs represent a progression beyond previous NDCs; and to regularly report.

It might be more appropriate, however, to interpret the phrase more broadly, to include the effective implementation and achievement of NDCs, following the requirement in Article 4.2 that countries shall pursue domestic mitigation measures to implement their NDCs with the aim of achieving them (see also Voigt 2016). Furthermore, the scope of the mechanism could be considered to include both action and support, or both individual and collective commitments. In this regard, it



A session during the Bonn Climate Change Conference in May 2016.

Implementation and compliance mechanism (Article 15)	
Scope	The provisions of the Paris Agreement
Flexibility	Committee to consider national capabilities and circumstances
Principles	Committee is to be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive
Sources of input	Expert-based; and possibly others to be determined
Institutional arrangements	Involving a Committee; further details to be determined
Outcome	To be determined

may be important to draw a line between the review of implementation under Article 13 and the facilitation of implementation and promotion of compliance.

Triggers

It is not clear what triggers can bring a matter before the new committee. Traditionally, triggers are procedural, including actions by Parties (self-referral as well as referral by other Parties or groups of Parties), suggestions by expert reviewers, or decisions by the committee on the basis of defined criteria or their discretion – all of which may be appropriate for this mechanism.

Considering the linked nature of the transparency framework and the implementation and compliance mechanism, the reviews under Article 13 could provide an additional trigger. In accordance with paragraph 12 of Decision 1/CP.21, the technical expert review under Article 13 is to identify areas of improvement for the Party being reviewed. This could take the form of a recommendation issued directly to the Party, but could also include a report to the committee. Finally, the Article 15 mechanism could be triggered by submissions from non-Party actors (although it is likely that acceptance of such submissions would be left to the discretion of the committee).

Outcomes

The nature of the outcomes to be produced by the implementation and compliance mechanism is still unclear. The committee could produce a report, or the meeting of the committee could itself constitute the only outcome. Given the “facilitative” nature of the compliance committee, it seems logical to emphasize how the process of committee deliberation can help parties identify the causes of non-compliance and overcome barriers to compliance.

The committee could also point to successful cases of implementation to encourage implementation and compliance by other Parties. The committee may identify and verify cases of non-compliance, and could issue declarations and recommendations to the Party concerned or to the CMA. This may include reference to other convention bodies or sources of support including capacity building, finance, or technology. A process for tracking the progress on the implementation of such facilitative measures could follow.



Celebrating the adoption of the Paris Agreement at COP21 last December.

Delivering on the promise of Paris

With the entry into force of the Paris Agreement likely to be earlier than anticipated, Parties have an imperative to create the processes that will give meaning and substance to the Agreement. To do so, they need to address the questions outlined in this brief. Together with agreement on clarity on the features of NDCs, deciding the operational details of the enhanced transparency framework, the global stocktake (and facilitative dialogue) and the implementation and compliance mechanism will be one of the first major tests for Parties' ability to create a robust and durable framework to address climate change.

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