



Durban Platform for Enhanced Action

An African Perspective



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INTRODUCTION

The 2011 climate change conference in Durban appeared to snatch victory from the jaws of defeat when it adopted the Durban Platform for Enhanced Action (DPEA), the result of gruelling negotiations that continued 36 hours after the official end of the conference. With expectations for an outcome from Durban running very low, any result was better than no result – or worse, a negative outcome, if the Kyoto Protocol was not extended beyond its 2012 first commitment period.

As a result, the DPEA, as it came to be known, was welcomed by all quarters as a step forward during the first few weeks after it was agreed. As the dust settles, however, it is becoming clear that Durban postponed the most controversial decisions, and most of the work in resolving key issues will need to be done within the next three years. This paper presents an overview of the Durban outcomes, followed by an analysis from an African perspective.

The DPEA was not the only outcome from Durban – other key decisions were taken.

Under the **Ad Hoc Working Group on the Kyoto Protocol (AWG KP)**, a *second commitment period of the Kyoto Protocol* was agreed from January 1, 2013. It is expected that the Parties to this second commitment period will turn their economy-wide targets into quantified emission limitation or reduction objectives and submit them for review by May 1, 2012, and agree on a time period for the second commitment period. This will then be adopted at COP 18 along with other amendments related to the Kyoto Protocol, with provisions for immediate implementation. Some key developed countries that are party to the Kyoto Protocol, such as Australia and New Zealand, are yet to decide whether they will subscribe to the second commitment period.

Under the **Ad Hoc Working Group on Long Term cooperative Action (AWG LCA)**, decisions were taken on *climate finance* (the launch of the Green Climate Fund and the establishment up of a Standing Committee on Finance); *adaptation* (operationalization of the Adaptation Committee, a process to initiate National Action Plans for Least Developed Countries (LDCs), and a new Work Program on Loss and Damage); *technology* (mainly on the Climate Technology Centre and Network); *capacity building* (launch of the Durban Forum on Capacity-Building); and on *monitoring, review and verification* (MRV).

It was agreed at Durban that the AWG LCA would be terminated by the next conference of parties in Qatar in 2012. However, certain key issues on the AWG LCA agenda, such as medium and long-term commitments to provide financial assistance to developing countries, sources of finance, MRV of support, and mitigation commitments by developed countries (particularly those who are not party to the Kyoto Protocol) remain unresolved. Unless these issues find a place elsewhere on the continuing agenda or are resolved within the year, before the AWG LCA is wrapped up, there is a danger that they will no longer be on the agenda for discussion.

There were also significant political developments in Durban. During the two weeks of the conference, traditional alliances were called to question and new alliances emerged. As a result of this shifting tectonics, and perhaps somewhat surprisingly, the final confrontation in Durban was between the EU and India, while developed countries that are unwilling to sign on to globally-agreed binding action remained in the sidelines.

Table 1: Positions of key negotiating groups and countries during and after Durban	
Country / Group	Position/ Background
G77 and China	<ul style="list-style-type: none"> Keen to keep the KP architecture
Africa Group	(See section below on the African Position at Durban)
LDCs	<ul style="list-style-type: none"> Joint statement with the EU and AOSIS in Durban, calling for a legally-binding instrument applicable to all countries, respecting the principle of common but differentiated responsibilities and respective capabilities Getting a second commitment period for the Kyoto Protocol was the highest priority Submitted a draft mandate for negotiating a new legally binding instrument for all Parties, and covering all Bali Action Plan pillars in Durban Consider the Durban outcomes as a historical turning point, leading to a future agreement applicable to all Parties Want to preserve the key elements of the KP in the new treaty, in particular assigned amounts for developed countries, compliance regime, and international verification
AOSIS	<ul style="list-style-type: none"> Instrumental in forming the Durban alliance between AOSIS, LDCs and the EU Getting a second commitment period for the Kyoto Protocol was a key priority, as was mitigation. Submitted a draft mandate for negotiating a new protocol applicable to all Parties Called for all Parties to take action to minimize global average temperature rise below 2°C leading, up to 1.5°C, above pre-industrial levels Want to preserve the key elements of the KP in the new treaty, and have already submitted a draft protocol for guiding the negotiations
India	<ul style="list-style-type: none"> Opposed to any new treaty Rejects a legally binding emission reduction obligation for developing countries Any agreement or changes to existing agreements must be in accordance with the principle of equity and CBDR/RC Its recent submission to the UNFCCC on enhanced mitigation action reiterated the need for equity and CBDR to be the basis of a future agreement, and said the increase in ambition in the short-term is applicable to Annex I countries
BASIC	<ul style="list-style-type: none"> Not in the forefront as a group in Durban, and appeared to be split. China had agreed to take on binding obligations subject to certain conditions, as has Brazil and South Africa, leaving India isolated. The statement from a BASIC ministerial meeting in New Delhi in February 2012 stated that the process launched at Durban is not to renegotiate or rewrite the Convention and that this process and its outcome shall be under the Convention and in full accordance with all its principles and provisions, in particular the principles of equity and common but differentiated responsibilities and respective capabilities The statement noted that the scope of work of Durban Platform has to be defined in advance of the conclusion of the work of the two AWGs The Ministers reaffirmed the need to maintain and strengthen the unity of G-77 & China as the unified voice of developing countries in the climate change negotiations.
US	<ul style="list-style-type: none"> Wants all major emitters on board new agreement and treated the same (legal symmetry) , essentially to fulfill the conditions set out under the Byrd-Hagel resolution “Pledge and review” rather than globally agreed mitigation commitments
EU	<ul style="list-style-type: none"> Want a single legally binding treaty for developed and developing countries Agreed to a second commitment period for the KP
China	<ul style="list-style-type: none"> Announced, before Durban, that if developed countries agreed to a second commitment period, it is not averse to legally binding obligations as part of the post-2020 regime, as long as they were based on the principle of common but differentiated responsibilities and respective capabilities.

OVERVIEW OF THE DURBAN PLATFORM

The decision to establish an Ad Hoc Working Group on the Durban Platform for Enhanced Action agrees to:

1. Launch a process to negotiate *a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties* as soon as possible, but not later than 2015. Work will begin immediately under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), and the outcome will be adopted at the twenty-first session of the Conference of the Parties, to come into effect and be implemented from 2020.
2. Extend the AWG-LCA for one year.
3. Launch an immediate workplan on enhancing mitigation ambition, now, up to and beyond 2015.

Each of these elements is briefly described below.

The work of the ADP

The Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) is starting work on *a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties*, to be completed by 2015 and to come into effect and be implemented from 2020. The DPEA decided that the ADP *shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building, drawing upon submissions from parties and relevant technical, social and economic information and expertise.*

The Durban Platform text contains little on how the ADP should carry out its work, including the appointment of officers and the institutional design for the next four years of process. It is expected that these issues will be discussed during the first session of the ADP, from 17-24 May 2012 in Bonn, Germany, based on Party submissions on the ADP work plan.

The DPEA is likened to the Berlin Mandate, adopted in the first session of the conference of parties (COP 1) to the UN Framework Convention for Climate Change (UNFCCC), to provide a roadmap for the negotiation and adoption of the Kyoto Protocol in 1995. The Berlin Mandate agreed to *begin a process to enable it to take appropriate action for the period beyond 2000, including the strengthening of the commitments of ... (Annex I Parties) ... through the adoption of a protocol or another legal instrument.* It also laid out the boundaries for this process, stating that the process *shall not introduce any new commitments for Parties not included in Annex I.*

Like the Berlin Mandate, the DPEA sets out a definite timeline. However, the process is likely to be even rockier than the negotiations that led to the Kyoto Protocol, given the ambiguity surrounding the eventual outcome (*protocol, another legal instrument or an agreed outcome with legal force*). While the first two options are provided for by the UNFCCC (Article 17 provides for a Protocol and Articles 15-16 provide for other legal instruments), the third option has no legal precedence in the climate change regime or in other similar legal regimes. Legal experts have speculated that countries that have resisted calls for a new legally binding agreement may promote this option to lead to an outcome that is not conventionally viewed as legally binding, such as unilateral declarations or COP decisions. It is unclear also whether 'legal force' refers to domestic or international force.

Negotiations are likely to be complicated by the fact that although the DPEA explicitly states that the future regime will include all (developed and developing country) Parties, it omits reference to the principles of equity and of common but differentiated responsibilities, which have been the bedrock of developing country engagement so far. The decision does, however, call for the outcome of the ADP to be *under the Convention*, thus implicitly invoking its principles, including CBDR.

The future of the AWG-LCA

The Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) was established by a decision under the Bali Action Plan in 2007, to *conduct a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome to be presented to the Conference of the Parties (COP) for adoption*. It has since addressed a number of issues related to a shared vision for long-term cooperative action; enhanced action on mitigation; enhanced action on mitigation; finance; technology development and transfer; capacity building; and periodical review to assess the adequacy of the long-term global goal.

In Durban, several developing countries raised concerns on the final document of the Report of the AWG LCA, particularly on the section on mitigation, which they felt was unbalanced and did not reflect their inputs. The Chair of the AWG LCA decided to pass on the Report to the COP for adoption under his own authority – where it was adopted without objections, indicating the spirit of flexibility and compromise developing countries were willing to show, in order to ensure an outcome.

Under the DPEA, the AWG LCA will wrap up by the next conference. While several of the issues being dealt with by the AWG LCA were resolved and institutional arrangements put in place, some were not. For instance, the question of sources of long-term finance remains unresolved, as does the issue of linkages between the institutional arrangements agreed in Durban (for instance, of the Adaptation Committee and the Green Climate Fund), with the arrangements that will be put in place under the DPEA.

Perhaps more importantly, there is no guidance on what is to serve as the basis for the ADP work. For instance, it is not clear what will happen to all the work done in the LCA, and how the KP architecture can be incorporated in the ADP outcome, without having to renegotiate everything.

The ADP will plan its work on the issues that the AWG-LCA has been addressing, as noted above. Submissions on the workplan of the ADP by Parties and observer organisations are due by 16 April 2012.

Work plan on enhancing mitigation ambition

The DPEA launched an immediate work plan to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties.

Parties and observer organizations were invited to submit their views on options and ways for further increasing the level of ambition by 28 February 2012. A number of submissions have been made. The Alliance of Small Island States (AOSIS), for instance, calls for the ambition gap to be narrowed immediately by addressing some of the issues around current pledges – including the implementation of more ambitious targets that are currently conditional, and minimising the use of surplus emissions credits and lenient Land Use, Land Use Change and Forestry (LULUCF) credits. The submission by LDCs, meanwhile, calls on all Parties, in particular Annex I parties, to show the political commitment, leadership and willingness to increase the level of ambition. It calls for the raising of mitigation ambition rapidly, with a firm decision at COP18 instead of a call for further studies and discussing “options”.

An in-session workshop will be held at the first negotiating session in May 2012 to consider options and ways for increasing ambition and possible further actions.

AFRICA'S POSITION AT DURBAN

African negotiators held a series of preparatory meetings in the run-up to Durban. The African Common Platform on Climate Change was finalized by the African Group of Negotiators (AGN), and adopted by the African Ministerial Conference on the Environment (AMCEN) at its meeting in Bamako, Mali, from 13-17 September 2011. The Ministerial segment also adopted a set of key messages constituting Africa's common negotiation position for the Durban conference.

The Common Platform, relatively unchanged from the African position before the Copenhagen conference, was influenced by the projections of the Intergovernmental Panel on Climate Change (IPCC) on the impacts of climate change on the continent, its vulnerability, its limited capacity to adapt and the undermining of the ability of many African countries to deliver on development priorities that are part of the Millennium Development Goals.

The position called for preserving and strengthening the architecture of the UNFCCC and the Kyoto Protocol, regarded as the fundamental global legal framework for climate change. There was a growing sense that developed countries were undermining the core principles of the UNFCCC and Kyoto Protocol by shifting the burden of mitigation to developing countries, while weakening their own commitments and the compliance regime. In response, the African position laid heavy emphasis on protecting the principles of the "common but differentiated responsibilities" (CBDR), and equity.

The African position called for strengthening a science-led, mandatory global regime with strong compliance provisions, legal requirements and enforceable penalties along the lines of the Kyoto Protocol, as opposed to the "pledge and review" system advocated by the Copenhagen Accord. Specifically, it prioritized the reaching of an agreement for a second commitment for Annex I Parties, and opposed the migration of the Annex I Parties and the Kyoto Protocol mechanisms into the LCA track. It also called for the provision of new, additional and adequate means of implementation for developing countries to adapt to climate change, and steer themselves towards a low-carbon development pathway.

KP track

Under the Kyoto Protocol negotiations, the African position called for the negotiations to produce two outcomes as agreed to under the Bali Roadmap: an agreed outcome on the LCA; and an amendment to Annex B of the Kyoto Protocol regarding further commitments for Annex I Parties in a second commitment period, beginning immediately after the end of the first commitment period on the 31st December 2012 to ensure that there is no gap. If there was insufficient time for ratifications for the amendments to enter into force by 1 January 2013, the African position called for the provisional application of the new targets to avoid a gap.

African countries consider the pledges proffered by developed countries in the Cancun Agreements as wholly inadequate to stabilize atmospheric concentrations of greenhouse gases (GHGs) at a safe level. Existing pledges would result a global temperature rise of 2.5°- 5°C. For Africa, this meant a median increase of 1°C above the global average temperature increase. Therefore, the position before Durban was to get the Annex I countries to honour their commitments and increase the level of ambition of the mitigation commitments for the second and subsequent commitment periods. Non-Annex I Parties that are not party to the Kyoto Protocol were also expected to take comparable action to increase their level of ambition to reduce emissions.

Africa expected developed countries to commit to reducing GHG emissions by at least 40 percent compared to 1990 levels by 2017 (second commitment period), and at least 95 percent by 2050, as recommended by the IPCC in its Fourth Assessment Report.

LCA track

Under the LCA track, the African position was to preserve and strengthen the UNFCCC architecture, and call for the implementation of the obligations written into the Convention. This could include a legally-binding agreed outcome; scaling up the mitigation ambitions of developed countries with due regard for environmental integrity; providing financial resources to developing countries to meet their commitments; and prioritization of implementation of adaptation, particularly for Africa. The African position also viewed the operationalization of the Green Climate Fund as a vital component of the outcome from Durban.

Shared vision

The African position on “shared vision” called for a global target of limiting average temperature increase to well below 1.5°C, with developed countries taking on ambitious short, medium and long-term mitigation commitments, reflecting their historical responsibilities and meeting the principles of equity. They would also be required to provide adequate means of implementation for finance, technology and capacity building to enable developing countries to address mitigation and adaptation.

Mitigation

On mitigation action outside the KP track, the African position called for developed country Parties that do not sign on to the Kyoto Protocol’s second commitment period to undertake comparable legally binding commitments under the Convention. It called for these Parties to take on quantified emission reduction commitments under an agreed set of common accounting rules, and a compliance framework. These efforts and the means of implementation provided to non-Annex I Parties were to be measurable, reportable and verifiable (“MRV”).

The African position also called for a firewall to be maintained between the mitigation commitments of Annex I Parties that should be legally binding in nature, and voluntary non-Annex I Party nationally appropriate mitigation actions that were dependent on the provision of the means of implementation.

The African position would only support new market mechanisms on the condition that Annex I Parties agree to a second commitment period, and take on ambitious mitigation commitments.

Adaptation

Adaptation, a priority for Africa, was one of the issues where agreement was reached in Cancun, and implementation sought in Durban. The African position called for a simplified procedure for developing countries to access support for country-driven national action plans for adaptation and for capacity building, based on direct access, full cost funding, adequate, new and additional public grant-based financial resources and clarity on the sources of funding.

Technology transfer

On technology transfer, the African platform called for the identification and removal of all barriers preventing access to climate-related technologies and the appropriate treatment of intellectual property rights, including the removal of patents on climate related technologies for non-Annex I Parties as one of the means to address the transfer of technology.

Finance

On finance, the African position called for the operationalization of the Green Climate Fund with identified sources under the authority of the Conference of Parties to the UNFCCC, and an independent Secretariat that has no links with the World Bank. It called for a more transparent common reporting format on provision of support, direct access for developing countries, equitable allocation through geographical and needs based criteria, a balance between adaptation and mitigation, and grant-based funding for adaptation activities.

The African position also called for agreement in Durban on the scale of public resources to be provided by developed country parties from 2013 onwards, with private and market finance playing a complimentary role. By 2020, it called on developed country Parties to provide scaled up financial support based on an assessed scale of contributions that constitutes at least 1.5 per cent of the gross domestic product of Annex I Parties.

IMPLICATIONS OF THE DURBAN OUTCOMES FOR AFRICA

In the negotiations leading up to the Copenhagen conference and in Cancun, several developed countries called for the merging of the KP and the LCA tracks, while Africa and the other developing countries wanted to continue the two-track approach. It would appear that the view of the developed countries has prevailed, as the DPEA calls for a protocol, another legal instrument or an agreed outcome with legal force under the Convention that will be applicable to all by 2020.

The merging of the two tracks opens up the real possibility that developed countries will find ways to weaken their commitments, and shift the burden of mitigation to developing countries, the emerging economies in particular. Although the outcome will be under the Convention, it will apply to all Parties, giving rise to concern that developed countries will re-interpret the CBDR and equity provisions of the Convention.

Although developing countries may have scored a victory over the agreement for a second commitment period for the Kyoto Protocol, it is unlikely to result in any significant reductions. A number of developed countries have made it clear that they will not sign on to this second commitment period, which will cover 13-30 per cent of global emissions at best, depending on which developed countries join the EU. (The 13-30 per cent figures were used widely during the Durban conference and previous AWG meetings by developed countries during their interventions and in public statements, including statements from Australia on behalf of the Umbrella Group, and Canada.)

The length of this second commitment period is still up in the air – although it starts on 1 January 2013, it has not yet been agreed whether it will end in five years (on 31 December 2017) or eight years (31 December 2020). If it ends in five years, as many developing countries would like, work on negotiating a third commitment period will have to begin almost immediately, possibly through an extension of the Ad Hoc Working Group on the Kyoto Protocol (AWG KP).

If a third commitment period is to be negotiated, it could run for three years or longer. It will then overlap with first year of the ADP outcome. While it is legally possible for two legal instruments to operate in parallel, Parties will have to make arrangements to avoid possible duplication, including of institutional arrangements.

The negotiation of a third commitment period is a situation the main Annex I signatory to the second commitment period, the EU, is likely to resist for a number of reasons. They fear it will further prolong a two-track negotiating situation, and risk perpetuating the “firewall” between developed and developing countries. They also fear that some countries could claim that the DPEA is only for developing countries and Annex I countries that are not part of the Kyoto Protocol. Moreover, the EU is reluctant to start negotiations of a third commitment period under the prospect that they would remain the only major Annex I signatory, which would be unacceptable to them. Another reason the EU would be opposed is that a third commitment period would risk unravelling the internal climate legislation and policies of the EU, currently in place until 2020, as certain member states that are not happy with these arrangements might call for their renegotiation.

With the LCA track having to wind up by December 2012, many issues that were included under the Bali Action Plan risk falling off the agenda. The DPEA makes no mention of how they will be dealt with. The African Group wants unresolved issues from COP 18 to be included in the ADP’s work in order to ensure balance in the treatment of all the pillars of the Bali Action Plan. While it would be unlikely that the uncompleted issues or the texts would be automatically referred to the ADP for further work, the fact that the ADP’s work will also draw from submissions from Parties makes it almost likely that the African Group could re-submit the uncompleted texts in the form of a submission for it to be considered for further negotiations. Submissions for the ADP’s work plan are due in April 2012.

On the level of mitigation ambition, the African position called for developed countries to reduce their emissions by 40 percent below 1990 levels, by 2017, and for an overall reduction of at least 95 percent below 1990 levels by 2050. Although this was not achieved at Durban, the workplan on enhancing mitigation ambition, which is part of the ADP, will be an opportunity to continue to negotiate for a level of ambition that is more consistent with the African position, and with protecting the African continent from severe climatic change.

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