



ecbi policy report

Adaptation under the UNFCCC

Working paper prepared by
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June 2010

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Acknowledgments:

This work has been made possible through funding support to the ecbi from the **UK Department of International Development (DFID)**.

Other Acknowledgments



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The Foundation for International Environmental Law and Development (FIELD), an ecbi partner, is a group of public international lawyers committed to promoting fair and effective outcomes for all by helping vulnerable countries, communities and campaigners negotiate for fairer international environmental laws. Our work is more than that of a conventional law firm: it includes capacity building, research and advocacy. We work with local partners, national and international NGOs and institutions. Website: www.field.org.uk.

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Acronyms

AOSIS	Alliance of Small Island States
AWG-KP	Ad hoc Working Group on further commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad hoc Working Group on Long-term Cooperative Action under the Convention
BAP	Bali Action Plan
COP	Conference of the Parties
GEF	Global Environment Facility
GHGs	Greenhouse gases
IPCC	Intergovernmental Panel on Climate Change
LDCs	Least Developed Countries
LEG	Least Developed Countries Expert Group
LDCF	Least Developed Country Fund
NWP	Nairobi Work Programme
NAPAs	National adaptation programmes of action
SCCF	Special Climate Change Fund
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change

Executive Summary

The latest scientific evidence shows that many key climate indicators are already moving beyond the patterns of natural variability within which contemporary society and economy have developed and thrived. Science also shows that climate change is already having strong effects on human societies and the natural world, and is expected to do so for decades to come. Regardless of how quickly the world's countries reduce their greenhouse gas (GHG) emissions, an effective, well-funded 'adaptation safety net' is required for those people least capable of coping with these effects. This working paper analyses provisions for action on adaptation under the UN Framework Convention on Climate Change (Convention) and progress made on implementation of these provisions.

Africa is one of the most vulnerable continents to climate change and climate variability, a situation aggravated by the interaction of 'multiple stresses', occurring at various levels, and low adaptive capacity. Agricultural production and food security in many African countries and regions are likely to be severely compromised by climate change and climate variability. Among other things, climate change will aggravate the water stress currently faced by some countries, climate variability and change could result in low-lying lands being inundated, with resultant impacts on coastal settlements; and human health, already compromised by a range of factors, could be further negatively impacted by climate change and climate variability.

The Convention provides an international platform for countries to work together to reduce greenhouse gas emissions and adapt to human-induced climate change. Nevertheless, articulating adaptation under the UN framework is a challenge because it is not addressed in the Convention in a comprehensive way. Many of the Convention's articles are relevant to adaptation and the term is used frequently, but it is not defined. Therefore, we are left to understand the term in relation to those terms which are defined, such as 'climate change' and the 'adverse effects of climate change'.

While adaptation has been discussed in the Convention process since it was agreed in 1992, progress on adaptation has been slow. The two Convention articles which are central to addressing adaptation in developing countries are articles 4.8 and 4.9. Article 4.8 requires all Parties to give full consideration to the actions necessary to meet the specific needs and concerns of developing country Parties 'arising from the adverse effects of climate change and / or the impact of the implementation of response measures', including actions relating to funding, insurance and the transfer of technology. The adverse effects of climate change and the impacts of response measures (measures taken to mitigate GHG emissions) have different causes, nature, and timing; and the groups affected have different vulnerabilities and interests. As a result, their linkage in the same article under the Convention has proven challenging in attempts to negotiate separately on ways to address adaptation to the adverse effects of climate change.

The needs of the least developed countries (LDCs) are addressed in article 4.9 of the Convention. Article 4.9 requires Parties to take full account of the specific needs and special situations of LDCs with regard to funding and transfer of technology. One of the central decisions on adaptation activities is 5/CP.7 which focuses primarily on the identification of actions under articles 4.8 and 4.9. More specifically, decision 5/CP.7 is

divided into four areas: (1) the adverse effects of climate change; (2) the implementation of Article 4.9 (which relates to LDCs); (3) the impacts of the implementation of response measures; and (4) further multilateral work. Decision 5/CP.7 is bolstered by decision 1/CP.10, which lays out areas in which further work is needed.

The lack of adequate financing for adaptation is a major concern for developing countries, and one of the major failings of the Convention process thus far. Despite the clear language of Convention articles 4.3 and 4.4, funding for adaptation has eroded almost completely under the Convention's financial mechanism. While the outcome of the Copenhagen climate change summit in December 2009 failed to provide clarity, ongoing negotiations under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) provide scope for injecting new momentum into elaboration of an adaptation framework under the Convention. While there are currently a wide range of ideas that have been articulated and put on the table in the LCA process, any approach to adaptation under the Convention must be able to assist developing country Parties in determining and expressing their adaptation needs while responding to these prioritised needs in an organised and equitable manner.

Introduction

The 4th Assessment Report (AR4) of the Intergovernmental Panel on Climate Change (IPCC) published in 2007 finds that most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in human-induced greenhouse gas (GHG) concentrations.¹ Furthermore, under current GHG mitigation policies, the IPCC has determined that GHG concentrations will continue to grow² and current evidence shows that regional climate change, particularly temperature increases, has already begun to affect many natural systems.³ As the leading body for the assessment of climate change, IPCC's AR4 is deemed to provide the best available scientific information on climate change. Among other things, this information guides Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in their review of national climate change policies and the calculation of emissions volumes.

Adaptation is the adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.

Vulnerability is the degree to which a system is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. **Vulnerability** is a function of the character, magnitude, and rate of climate change and variation to which a system is exposed, the sensitivity and adaptive capacity of that system.

IPCC, 4th Assessment Report, 2007

While the 2007 AR4 has already been instrumental in increasing both public and political awareness of the societal risks associated with unchecked emission of GHGs, since the production of the IPCC report, new knowledge has emerged that furthers understanding of the impacts of human influence on the climate. This knowledge was recently brought together in an international scientific congress held in Copenhagen in March 2009.⁴ One of the key messages coming out of this congress is that the climate is changing near the upper boundary of the IPCC range of projections. Many key climate indicators are already moving beyond the patterns of natural variability within which contemporary society and economy have developed and thrived.⁵

Another key message from the congress is that climate change is already having, and will have, strong effects on human societies and the natural world, regardless of how quickly and effectively the world's countries reduce their GHG emissions, and an effective, well-funded 'adaptation safety net' is required for those people least capable of coping with these effects.⁶ It is now inevitable that human-induced climate change will result in sea level rise, changes in the intensity and frequency of extreme weather events, and alternations in patterns of biodiversity. The fact that we are reaching a dangerous level of climate change far more quickly than predicted just a few years ago, that we are

¹ IPCC AR4 Summary for Policymakers, p. 5, available at www.ipcc.ch.

² *Id.* at p. 7.

³ *Id.* at p. 2.

⁴ For further information see the Synthesis Report: Climate Change – Global Risks, Challenges & Decisions, Copenhagen 2009, 10 – 12 March, available at www.climatecongress.ku.dk.

⁵ *Id.* at p. 6.

⁶ *Id.*

already being required to adapt to these changes and the least capable of coping will suffer the most, provides the fundamental context for developing country Parties negotiating a deal on enhanced action on adaptation under the climate change convention.

Impacts, Adaptation and Vulnerability – Africa

Key messages from the IPCC's 4th Assessment Report, Chapter 9, Africa

- Africa is one of the most vulnerable continents to climate change and climate variability, a situation aggravated by the interaction of 'multiple stresses', occurring at various levels, and low adaptive capacity (high confidence).
- African farmers have developed several adaptation options to cope with current climate variability, but such adaptations may not be sufficient for future changes of climate (high confidence).
- Agricultural production and food security (including access to food) in many African countries and regions are likely to be severely compromised by climate change and climate variability (high confidence).
- Climate change will aggravate the water stress currently faced by some countries, while some countries that currently do not experience water stress will become at risk of water stress (very high confidence).
- Changes in a variety of ecosystems are already being detected, particularly in southern African ecosystems, at a faster rate than anticipated (very high confidence).
- Climate variability and change could result in low-lying lands being inundated, with resultant impacts on coastal settlements (high confidence).
- Human health, already compromised by a range of factors, could be further negatively impacted by climate change and climate variability, e.g., malaria in southern Africa and the East African highlands (high confidence).

Adaptation under the UN Framework Convention on Climate Change⁷

Articulating adaptation under the UN framework is a challenge because it is not addressed in the Convention in a comprehensive way. Many of the Convention's articles are relevant to adaptation and the term is used frequently, but it is not defined. Therefore, we are left to understand the term in relation to those terms which are defined, such as 'climate change' and the 'adverse effects of climate change'.⁸

The two Convention articles which are central to addressing adaptation in developing countries are articles 4.8 and 4.9. Article 4.8 requires all Parties to give full consideration to the actions necessary to meet the specific needs and concerns of developing country Parties 'arising from the adverse effects of climate change and / or the impact of the implementation of response measures', including actions relating to funding, insurance and the transfer of technology. The adverse effects of climate change and the impacts of response measures (measures taken to mitigate GHG emissions) have different causes,

⁷ For a detailed analysis of adaptation under the UNFCCC, please see Mace, MJ, 'Adaptation under the UN Framework Convention on Climate Change: The International Legal Framework' in *Fairness in Adaptation to Climate Change* (Adger, WN et al eds.) 2006.

⁸ UNFCCC, article 1.

nature, and timing; and the groups affected have different vulnerabilities and interests. As a result, their linkage in the same article under the Convention has proven challenging when negotiating separately on ways to address adaptation to the adverse effects of climate change.

The needs of the least developed countries (LDCs) are addressed in article 4.9 of the Convention. Article 4.9 requires Parties to take full account of the specific needs and special situations of LDCs with regard to funding and transfer of technology. Elaborating necessary actions under articles 4.8 and 4.9 is a slow and ongoing process. In 2001, the seventh conference of the Parties (COP 7) marked a breakthrough on adaptation with the Marrakech Accords which contain a series of decisions on adaptation actions and funding. The central Marrakech decision on adaptation activities is 5/CP.7 which focuses primarily on the identification of actions under articles 4.8 and 4.9. More specifically, decision 5/CP.7 is divided into four areas: (1) the adverse effects of climate change; (2) the implementation of Article 4.9 (which relates to LDCs); (3) the impacts of the implementation of response measures; and (4) further multilateral work.

Among other things, decision 5/CP.7 creates a work programme for LDCs and a mechanism for identifying the urgent and immediate needs of LDCs. 5/CP.7 also includes the development, preparation and implementation of National Adaptation Programmes of Action (NAPAs). These will be discussed in more detail below. The final section of decision 5/CP.7 provides for workshops to identify further actions under articles 4.8 and 4.9, including actions on integrated assessments, synergies between conventions, modelling, economic diversification and insurance. In the years since decision 5/CP.7, adaptation negotiations have been largely centred on how to take forward the outcomes of these workshops.

Current adaptation agenda items being addressed by Parties

Ad-hoc Working Group on Long-Term Cooperative Action under the Convention (AWG-LCA)

- Enabling the full, effective and sustained implementation of the Convention through long-term cooperative action now, up to and beyond 2012, by addressing, *inter alia*: Enhanced action on adaptation

Subsidiary Body for Scientific and Technological Advice (SBSTA)

- Nairobi work programme on impacts, vulnerability and adaptation to climate change
- Technology transfer
- Research and systematic observation

Subsidiary Body for Implementation (SBI)

- Article 4.8
- Article 4.9: LDCs and National Adaptation Programmes of Action
- Non-Annex I national communications
- Annex I national communications
- Funding for adaptation: Guidance to the GEF, Review of the financial mechanism, LDCF, SCCF and AF
- Capacity building
- Article 6 of the Convention (education, training and public awareness)
- Technology transfer

Further implementation of adaptation under the Convention

By COP 10 in 2004, the Parties recognized that gaps remained in the implementation of 5/CP.7, and agreed on decision 1/CP.10, which lays out areas in which further work is needed. With respect to the adverse effects of climate change, these areas included: information and methodologies; vulnerability and adaptation; modelling; reporting; and financial support to address the needs of developing countries. Decision 1/CP.10 mandates a series of workshops relating to the adverse effects of climate change and the impact of the implementation of response measures. The following workshops were held:

- 3 regional workshops on the adverse effects of climate change
- 1 expert meeting for small island developing states (SIDS) on issues of concern to the group
- 1 pre-sessional expert workshop on the impacts of response measures
- 1 pre-sessional expert workshop on economic diversification

The three regional workshops and the expert meeting for SIDS fall under the heading of ‘adverse effects of climate change’. A synthesis report of the outcomes from the three regional workshops and the expert meeting for SIDS summarises some of the key outcomes of those meetings.⁹ The two pre-sessional expert workshops were held in the context of the impact of the implementation of response measures. The workshops and meetings were organised to facilitate information exchange and to assist regional groupings of Parties to identify specific adaptation needs and concerns. Many of the recommendations emanating from the workshops and meetings were subsequently incorporated into a position developed by the G77 and China. The SBI has been attempting to negotiate a set of adaptation actions for nearly two years but to date has been unable to reach any conclusions.

At its last session in December 2009 (SBI 31), the SBI was invited to consider a draft decision text prepared by its Chairman with a view to recommending a draft decision for adoption at COP 16 (Mexico, 2010). Given the overriding priorities at the Copenhagen summit, time for negotiation was short, and little if any substantive progress was made toward a progressive outcome. The draft conclusion resulting from the negotiation (FCCC/SBI/2009/L.28) takes note of the documents issued to date on the implementation of Article 4.8 of the Convention, and decisions 5/CP.7 and 1/CP.10, including the document with the agreed G77 position. Adaptation funding issues are addressed in a number of these documents. Paragraph 3 of the draft conclusion welcomes the information and advice arising from the implementation of the Nairobi Work Programme (NWP); and in paragraph 4, the SBI asks its Chair to draft a decision text for adoption at COP 16 (Mexico, 2010). A number of Parties have informally discussed the folding 1/CP.10 negotiations on adaptation into those taking place in the AWG-LCA. Developing country Parties will need to consider whether this is a beneficial strategy.

⁹ FCCC/SBI/2007/14, 3 May 2007.

Nairobi Work Programme

In section IV of decision 1/CP.10 the Parties to the Convention request SBSTA to develop a structured five-year work programme on the ‘scientific, technical and socio-economic aspects of impacts, vulnerability and adaptation to climate change’. While Parties agreed the basic framework of this work programme in 2005 at COP 11, a first phase of activities was not agreed until 2006 at COP 12 in Nairobi. The resulting, Nairobi work programme on impacts, vulnerability and adaptation to climate change (NWP) is designed around the following nine areas of work:

1. Methods and tools;
2. Data and observations;
3. Climate modelling, scenarios and downscaling;
4. Climate related risks and extreme events;
5. Socio-economic information;
6. Adaptation planning and practices;
7. Research;
8. Technologies for adaptation; and
9. Economic diversification

The objective of the NWP is to improve understanding of climate change impacts and vulnerability, so that countries can make informed decisions about adapting to climate change. The NWP has a second phase of activities currently scheduled through 2010, and it not clear at this time whether it will continue beyond that point.

The NWP was developed by the Subsidiary Body on Scientific and Technological Advice (SBSTA), a Convention body established to provide scientific and technological information and advice. Because SBSTA has no implementing authority, the activities currently agreed under the NWP framework are fairly passive in nature and include workshops, expert meetings and the publication and dissemination of information. During the negotiation of the NWP and its activities, the proponents of this working style argued that NWP activities had the ability to catalyse and co-ordinate concrete action on adaptation by Parties, organisations and other stakeholders at a range of different levels.

However, many of the developing countries were hoping for a programme that would result in more concrete actions, including the submission of written progress reports at each session of the SBSTA, which would reflect the views of Parties. Instead, progress during the first phase of the NWP was reported orally, which left many developing country Parties with the sense that the Convention’s implementing bodies were not fully informed about the outcomes of the NWP.

In the context of the review of the activities of the first phase of the NWP at COP 14 in Poznan, the SBSTA recognized the catalytic role of the NWP and expressed its appreciation to the organisations that had undertaken, or had stated their intention to undertake, actions in support of the objective of the NWP. The SBSTA also provided the SBI with relevant information and advice emerging from the implementation of the first

phase of the NWP. Developing country Parties were particularly keen to do this as it provided an opportunity to place potential adaptation actions in front of the Convention's implementing body.

At various intervals in the NWP process, Parties have considered the possible need for a group of experts and the role they might have in the further development of the NWP. While the Group of 77 and China advocated strongly for an expert group from the outset. Their view was that an expert group could play a pivotal role in overall management of adaptation under the Convention as well as in facilitating the implementation of adaptation actions. Unfortunately, the Parties were unable to agree on the inclusion of an expert group in the modalities of the NWP. Instead, the discussions of an expert group have been 'strung out' over a number of sessions. At COP 14 in Poznan, the SBSTA again considered the possible need for a group of experts and the role that this group could play in the implementation and further development of the Nairobi work programme.

The developing countries were hoping to end up with a decision on the formulation of an Expert Group on adaptation; however, the developed countries were not in favour of this stating that it would be extremely difficult to represent the expertise required to address varying regional vulnerabilities in just one group. The developing countries countered that what was really at issue was geographical representation (developing countries are underrepresented), i.e. representation of needs rather than vulnerabilities. The final outcome was a decision to create a roster of experts from non-Convention organisations, i.e. organisational representation.

.While many have acknowledged that the topics covered by the NWP are relevant, its placement under SBSTA has served to re-enforce the fragmented manner in which adaptation is addressed under the Convention. Even though one of the expected outcomes of the NWP is to facilitate the implementation of decision 1/CP.10, in reality the flow of information between the SBSTA and SBI has been very limited.

The LDC Work Programme and Scope for Capacity-building

Acknowledging that LDCs often lack the means to address their adaptation needs, decision 5/CP.7 established an LDC work programme, which includes:

- Preparation and implementation of NAPAs
- Strengthening climate change Secretariat and Focal Points
- Training in negotiation skills and language
- Promotion of public awareness
- Developing and transfer of technology

The specific scope for capacity building in LDCs is set out in an annex to decision 2/CP.7 (paragraph 17).

National adaptation programmes of action (NAPAs)

Created by decision 5/CP.7, NAPAs (National Adaptation Programmes of Action) provide a process for Least Develop Countries (LDCs) to identify priority activities that respond to their urgent and immediate needs with regard to adaptation to climate change.

The rationale for NAPAs rests on the limited ability of LDCs to adapt to the adverse effects of climate change.

The NAPA process is designed to use existing information at the grassroots level. The steps for the preparation of NAPAs include the synthesis of available information by a NAPA country team, a participatory assessment and review process, the identification of key adaptation measures as well as criteria for prioritizing activities, and the selection of a prioritized short list of activities. Upon completion, the NAPA is submitted to the UNFCCC secretariat, where it is posted on the website, and the LDC Party becomes eligible to apply for funding for implementation of the NAPA under the LDC Fund. A copy of the NAPA is also sent to the Global Environment Facility (GEF). To date 44 NAPAs have been submitted to the Secretariat.¹⁰

The process of preparing NAPAs has provided LDCs with extremely valuable experience, in particular in the areas of vulnerability assessments and the identification of adaptation needs. In fact, this level of experience is unique amongst developing countries. Unfortunately, the hopes of many LDCs that their NAPAs would be implemented on a timely basis have not been met. Some LDC Parties have begun to question the relevance of the urgent and immediate needs identified in NAPAs that are now more than a few years old.

Funding has been one of the primary hindrances in the implementation of NAPAs. While the level of funding required to implement the urgent and immediate adaptation needs of the LDCs has been estimated at approximately US\$2 billion, estimated financing for proposals submitted to the GEF will not exceed US\$85 million, and the current level of funds in the LDC Fund is US\$176m. In addition, a number of LDCs believe that accessibility to the LDCF is not fully understood by the implementing agencies, since they are not always part of the regional dialogue that takes place between the GEF and the LDCs. Co-financing requirements are also a real obstacle facing the LDCs.

With no real mechanism for implementing priority projects identified under NAPAs and limited amounts of funding (see further discussion below), it is not surprising that many LDC Parties have expressed their disappointment in the progress of the NAPA process.

Least Developed Countries Expert Group (LEG)

The COP established the Least Developed Countries Expert Group (LEG) in 2001 to advise on the preparation and implementation strategy for NAPAs (decision 29/CP.7). The LEG meets twice each year, and reports on its work to the SBI.

At COP 13 in Bali (December 2007), the Parties reviewed the progress of the LEG, the need for continuation of the group and its terms of reference and decided to extend the mandate of the LEG under the terms of reference adopted by decision 29/CP.7.

COP 13 also requested the LEG to develop a work programme that contains its objectives, activities and expected outcomes and takes into account the results of the stocktaking meeting and the Nairobi work programme on impacts, vulnerability and

¹⁰ See unfccc.int under adaptation.

adaptation to climate change. The LEG prepared its work programme for 2008 – 2010 and presented it to the SBI in June 2008.¹¹

The LEG has been very important for the LDCs. It played a significant role in the preparation of the NAPAs. It is expected that the LEG will continue to play an important role in the implementation of NAPAs. Indeed, the LEG has a mandate to prepare and disseminate a step by step guide on NAPA implementation. However, many LDCs feel that the LEG, and the LDCs programme in general, are facing a severe limitation of resources.

Financing Adaptation

The Convention provides for financial transfers from Annex II Parties to developing country Parties under articles 4.3 and 4.4. Article 4.4 considers developing country Parties that are ‘particularly vulnerable’ to the adverse effects of climate change. At COP 7 in Marrakech, the following funds were created to supplement funds contributed to the Global Environment Facility (GEF), the operator of the Conventions’ financial mechanism¹²:

- An LDC fund, under the Convention, to address the work of the LDC work programme;
- A Special Climate Change Fund (SCCF), under the Convention, to finance adaptation, technology transfer, climate change mitigation, and economic diversification; and
- An Adaptation Fund, under the Kyoto Protocol, to support concrete adaptation projects and programmes.

The GEF has been entrusted to operate both the LDCF and the SCCF. A body under the Convention called the Adaptation Fund Board (AFB) operates the Adaptation Fund. Financing provisions under the Copenhagen Accord, the controversial document emanating from the high-level segment of the December 2009 Copenhagen summit, are discussed in more detail below.

Current funding opportunities for adaptation include:

- the GEF Trust Fund, including support for vulnerability and adaptation assessments as part of national communications;
- the Least Developed Countries Fund (LDCF) under the Convention;
- the Special Climate Change Fund (SCCF) under the Convention;
- The Adaptation Fund (AF) under the Kyoto Protocol and managed by the AFB.

Estimated future funding needs:¹³

UNDP	USD 86 billion by 2015
World Bank	USD 10–40 billion by 2030
Oxfam	Greater than USD 50 billion by 2030
UNFCCC	USD 28–67 billion by 2030

¹¹ See FCCC/SBI/2008/6, 19 May 2008.

¹² See UNFCCC, article 11.

¹³ FCCC/TP/2008/7, 26 November 2008.

The lack of adequate financing for adaptation is a major concern for developing countries, and one of the major failings of the Convention process thus far. Despite the clear language of Convention articles 4.3 and 4.4, funding for adaptation has eroded almost completely under the Convention's financial mechanism. The GEF's climate change focal area lacks a formal operating programme on adaptation. The apparent preference of the implementing agencies for larger projects, the GEF's cumbersome application procedures and co-financing requirements often deter countries from seeking funding.

While the LDC Fund, Special Climate Change Fund and Adaptation Fund were created in part to respond to these shortcomings, these funds are clearly insufficient, and many pledges of support for projects through these processes remain unfulfilled. Even when the Adaptation Fund is fully operational, new sources of funding will clearly be needed in addition to existing funding under the Convention.

Negotiations under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) provide scope for guaranteeing regular, adequate and additional sources of funding for adaptation. A number of developing country proposals link funding for adaptation needs to GHG emissions, consistent with the polluter pays principle. The AWG-LCA and progress on financing provisions in the Copenhagen Accord will be discussed in more detail in the following sections.

Adaptation under the LCA process

The thirteenth session of the Conference of the Parties (COP 13) in Bali, December 2007 adopted the Bali Action Plan (decision 1/CP.13), which identifies adaptation as one of the five key building blocks required (shared vision, mitigation, adaptation, technology and financial resources) for a strengthened future response to climate change. One of the primary aims of the Bali Action Plan (BAP) process is to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012 (BAP, paragraph 1).

The Bali Conference was the start of negotiations to enhance the international climate change regime by the end of 2009 while setting a clear roadmap for negotiations - the Bali Road map process. It is worth noting that the BAP separates the adverse effects of climate change and the impacts of response measures into separate paragraphs. There is the hope on the part of a number of developing country Parties that this will facilitate separate discussions on these two issues.

There is no consensus in the G77 & China as to where in the negotiating process response measures should be considered. In fact some developing countries see the relevance of response measures in the transfer of technology. Developing countries have begun to consider impacts of response measures beyond the more 'traditional' oil-producing country examples, e.g. impacts created by a change in livelihoods resulting from biofuel production in Djibouti. Accordingly they do accept the consideration of this issue under adaptation. In order to push the adaptation discussion forward, a number of developing countries have begun to examine more closely the advantages and disadvantages of including response measures in negotiations on adaptation.

The Bali Action Plan is being negotiated under the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). At the eighth session of the AWG-LCA in December 2009, Copenhagen, the bulk of the discussion on adaptation was conducted in a small drafting group. The G77 and China (G77) worked hard to develop common positions, but differences persist on the definition of vulnerability to the adverse effects of climate change and the inclusion of response measures. Vis a vis Annex I Parties, there is still no agreement, inter alia, on an international mechanism to address loss and damage, the method of assessing delivery of support for adaptation actions, and the infrastructure for implementing adaptation under the Convention. There was also some debate as to whether or not the approach to adaptation under the Convention should be given a name, and if so, what it should be called (e.g. framework, or programme).

The text as it currently stands has a number of brackets around areas where there is no consensus, and various options for a number of paragraphs. Highlights on key issues for developing country Parties are as follows:

- A Copenhagen Adaptation Framework for Implementation (CAFI) is envisioned;
- On the international mechanism to address loss and damage, there are two options on the table: 1) the original language proposed by the Alliance of Small Island States (AOSIS), supported by many G77 members; and 2) the consideration of activities related to insurance, loss and damage at local, national and regional levels, and further investigation into the possible need for a global mechanism;
- On the vulnerability issue, the developing countries are down to two options: 1) prioritisation of all developing countries; and 2) prioritisation of particularly vulnerable countries using the language of the Bali Action Plan (i.e. especially LDCs, SIDS and taking into account countries in Africa subject to droughts, desertification and floods);
- Response measures is still in brackets in many paragraphs especially paragraph one. Response measures is also linked to adaptation to the adverse effects of climate change in the Copenhagen Accord. See further discussion below.
- The issue of institutional arrangements under the Convention to support adaptation action at all levels (international, regional and national), was a controversial issue. While developing countries insisted on creation of new institutions, the developed countries maintained that it would be better to strengthen existing ones.

At COP15 the mandate of the AWG-LCA was extended to COP16 and the basis of ongoing work on adaptation will be the text described in this section (as well as any further work undertaken by the COP, which could include the Copenhagen Accord). The first substantive discussions under the AWG-LCA took place at its tenth meeting in Bonn, Germany, from 31 May through 11 June 2010.

Adaptation under the Copenhagen Accord

The most discussed outcome of the December 2009 Copenhagen climate change conference is a decision by the Parties to the UNFCCC to ‘take note’ of a twelve-paragraph political declaration. The process of negotiating this political declaration, called the Copenhagen Accord (Accord), was conducted primarily by Heads of State and their Ministers, working in parallel with negotiations going on in the AWG-LCA and the AWG-KP. Some countries opposed the Accord not only because it lacked substance, but also because of the non-transparent manner in which it was drafted – by a small, self-selected group. Many Parties felt offended by this process, which lacked a mandate and could be seen to violate the principles of the United Nations.

The final version of the Accord is attributed to the work of five countries late on the last official day of the conference (Friday, 18 December). The five countries were Brazil, South Africa, India and China (a newly visible coalition called the BASIC countries) and the United States.

When this draft was presented to Parties in the final plenary session objections were raised by a number of Parties including Bolivia, Cuba, Nicaragua, Sudan, Tuvalu and Venezuela. After many hours of further discussion, all Parties could agree to do was ‘take note’ of the Accord; and in a notification to Parties, the Executive Secretary of the Convention clarified that

...since the Parties...merely took note of [the Accord], its provisions do not have any legal standing within the UNFCCC process even if some Parties decide to associate themselves with it.

The Executive Secretary went on to say that ‘*the Accord is a political agreement, rather than a treaty instrument...*’. For purposes of the COP 15 report, Parties that stated their wish to be associated with the Accord by a 31 January 2010 cut-off date will be listed in the chapeau of the Accord, but Parties are also free to associate themselves with the Accord at any time they wish. At this writing, 134 Parties have associated themselves with the Accord.

The Accord asks Annex I and non-Annex I Parties to provide planned emissions reduction targets (Annex I) or mitigation actions (non-Annex I) to complete a set of blank appendices. The deadline provided in the Accord for submitting these actions is 31 January 2010. The Accord states that Least Developed Countries (LDCs) and Small Island Developing States (SIDS) may fulfil this requirement voluntarily on the basis of support, but it is not clear what the nature of this support might be or if LDCs and SIDS will be held to two-year reporting requirements set out in paragraph 5 of the Accord. The UNFCCC Secretariat will maintain an updated record of Party communications related to the Accord (submitted before and after 31 January) on the UNFCCC website.

To date, much of the focus of commentary on the Accord has been on its mitigation provisions, which appear to reflect a new willingness on behalf of developing countries with emerging economies to have their mitigation actions measured internationally. From an adaptation standpoint, however, the Copenhagen Accord rolls back the clock. In the first operative paragraph of the Accord, the physical impacts of climate change on

vulnerable developing countries and the potential economic impacts of mitigation on oil-producing countries are linked. Paragraph 3 of the Accord, which deals specifically with adaptation, goes a step further - saying in effect that adaptation actions consist of both addressing the physical adverse effects of climate change and the potential economic impacts of response measures. Article 4.8 of the Convention forged this link by requiring full consideration of the actions necessary to meet the specific needs and concerns of developing country Parties 'arising from the adverse effects of climate change and / or the impact of the implementation of response measures', including actions relating to funding, insurance and the transfer of technology.

Many developing countries have very strong positions regarding the level of ambition of emission reductions as well as the maximum level of increase of temperature (<1.5 degrees Celsius). The Accord indicates that the reduction of global emissions should aim to hold the increase in global temperature below 2 degrees Celsius. Yet, it includes no assurances that this goal will be reached. In fact, even limiting temperature rise to 2 degrees was considered too high and threatened severe impacts, particularly for the most vulnerable countries. Without ambitious cuts of greenhouse gases, it is difficult to see how best adaptation efforts will be sufficient to cope in the long run.

The adverse effects of climate change and the impacts of response measures (measures taken to mitigate GHG emissions) have different causes, nature, and timing; and the groups affected have different vulnerabilities and interests. As a result, their linkage in the same article under the Convention has proven challenging when negotiating separately on ways to address adaptation to the adverse effects of climate change, especially in regard to the levels of funding required. Led by the Alliance of Small Island States (AOSIS), a number of developing countries fought successfully at 2007 the Bali conference to de-link these two concepts in the Bali Action Plan (BAP).

While the BAP continues to address both issues, response measures are addressed in its mitigation section, and adaptation to the adverse effects of climate change is addressed in a separate subparagraph. In the run up to Copenhagen, attempts by certain Parties to re-insert response measures into legal text on adaptation have been resisted by many Annex I and non-Annex I Parties, and language on response measures is currently bracketed in the AWG-LCA draft decision on adaptation. While the provisions of the Copenhagen Accord are not legally binding, as a political 'statement of intent', and possible 'tie breaker' in future negotiating processes, the re-unification of adaptation and response measures is cause for concern.

The 'adaptation paragraph' of the Accord (paragraph 3) begins by stating that 'adaptation to the adverse effects of climate change and the potential impacts of response measures is a challenge faced by all countries'. In addition to perpetuating the response measures link, this statement ignores the principle of common but differentiated responsibilities and respective capabilities underpinning the Convention. The risks and burdens of adapting to climate change will fall on those Parties least responsible for the impacts and with the most limited capacity to cope.

The Convention obliges developed country Parties to assist developing country Parties which are particularly vulnerable to the adverse effects of climate change to meet the cost of adapting to those adverse effects. Nevertheless, the Convention does not explicitly

indicate who these particularly vulnerable countries are. The BAP helps to clarify this issue, specifying that international cooperation to support urgent implementation of adaptation actions must take

...into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, especially the least developed countries and small island developing States, and further taking into account the needs of countries in Africa affected by drought, desertification and floods.

In the negotiations leading up to the Copenhagen conference, the definition of particularly vulnerable developing countries became a contentious issue. There is concern amongst certain developing country Parties that this BAP language not only prioritises the needs of some developing countries over others but will limit their ability to access funding and other support for their own adaptation needs. These countries have advocated the use of the following characterisation of vulnerability found in the Convention's preamble:

Recognising further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change...

The vulnerability issue has become one of the 'stickiest' in the LCA negotiations on adaptation, and the language of the Accord provides little additional clarity. Paragraph 3 of the Accord, which addresses adaptation, preserves the terminology of the BAP, referring to the need for urgent action in particularly vulnerable developing countries, especially LDCs and SIDS. Then, rather awkwardly, the African continent, instead of specific countries in Africa, is included in the list of particularly vulnerable countries, which is a departure from the BAP. This departure may be an outcome of the influence of the African parties who attended the drafting of the Accord as it is repeated again in paragraph 8 of the Accord.

Unfortunately, paragraph 8 of the Accord, which addresses funding, is not consistent in its characterisation of vulnerability. It prioritises adaptation funding for the 'most vulnerable developing countries, such as LDCs, SIDS and Africa'. The term 'most vulnerable developing countries' is a new formulation that does not appear in either the Convention or the BAP. In addition, the words 'such as' convey the notion that LDCs and SIDS (and Africa) are part of a much longer list of 'most vulnerable countries'. The internally inconsistent treatment of vulnerability in the Accord reduces its value as a means of resolving this difficult issue as negotiations on adaptation continue.

While paragraph 8 does prioritise adaptation funding for vulnerable developing countries, this will do little good where the funds do not exist – a chronic problem with adaptation funding under the Convention. The Accord does not provide a dedicated source of funds for adaptation. Short-term funding pledges 'approaching' USD 30 billion for the period 2010 – 2012 call for a 'balanced' allocation between adaptation and mitigation', but balanced does not mean equal, and it is not clear how this balance will be determined. Over the long-term, it is not at all clear that funding for adaptation is included in the USD 100 billion annual pledge to 2020 (between 2013-2019 the Accord

does not explicitly specify any amount of funding). This figure is tied to ‘the context of meaningful mitigation actions and transparency on implementation’.

New multilateral funding for adaptation is discussed subsequently in a separate sentence in the paragraph. In the best case, where funding for adaptation is deemed to be included in the Accord’s long-term funding goal, there is no mechanism for determining the public / private funding mix, nor how and where this money will be spent. Negotiations under the finance building block of the BAP have been some of the most polarised, and the Accord provides no direction to the AWG-LCA on a way forward here. In addition, calls from SIDS and other developing country Parties for burden-sharing and compensation mechanisms to deal with loss and damage arising from the impacts of climate change are not touched upon at all in the Accord.

The Accord envisions that the bulk of funding being pledged by the developed country Parties will flow through a Copenhagen Green Climate Fund, meant to be an operating entity of the Convention’s financial mechanism (currently the Global Environment Facility or GEF). The GEF funding process has been criticised regularly for slowing down the funding process and for discriminating against smaller developing countries, which often have limited capacity to apply for and absorb sizable amounts of funding – not to mention difficulties complying with co-funding requirements. Developing countries have called for a reform of the financial mechanism with an architecture similar to the Kyoto Protocol’s Adaptation Fund. In other words, one that brings the governance of financial resources under more direct control of the Parties, including the ability to access funds directly instead of through an intermediary international implementing agency. Arriving at robust financial arrangements for funding current and future adaptation needs will require a significant amount of additional work by the Parties.

For a number of years, developing country Parties have called for concrete infrastructure under the Convention to guide the implementation of adaptation action. The Accord makes no provision for this infrastructure; however, it does provide for the creation of both REDD+ and technology mechanisms. A REDD+ mechanism would be aimed at efforts to mitigate greenhouse gas emissions; and while the technology mechanism is meant to support action on adaptation and mitigation, past experience with the UNFCCC’s Expert Group on Technology Transfer (EGTT) has shown that the development of mitigation technologies has been emphasised over that of adaptation technologies. For adaptation issues to receive the level of attention required under the Convention, an approach will need to be organised that includes a mechanism capable of assisting vulnerable Parties to identify needs, effectively access support and cope with unavoidable loss and damage. The Accord stresses the need to establish a comprehensive adaptation programme which includes international support, but falls short of identifying an appropriate mechanism for doing this.

Enhanced action on adaptation under the Convention is one of the most important outcomes for LDCs and SIDS, which will be most severely impacted by the adverse effects of climate change, have limited capacity to deal with these effects and did little to create them in the first place. The Accord places greater emphasis on mitigation actions and support, which reflects the priorities of the final group of Parties involved in drafting it. While it is yet unclear how influential the language of the Accord will be in the further work of the AWGs-LCA and -KP, the linkage of adaptation and response

measures threatens to undo the delicate but clear separation of these two issues achieved under the Bali Action Plan.

The decisions extending the mandates of the LCA and KP processes, request the working groups to continue their work on the basis of the draft texts negotiated in parallel to the Copenhagen Accord. The fact that the Accord was not adopted in Copenhagen and a mechanism for implementing its provisions is not in place, may provide some comfort that the more detailed negotiating texts will survive. Nevertheless, the political nature of the Accord and its non-binding status under the UNFCCC process could provide the impetus for moving global climate change decisions outside the UNFCCC forum, e.g. to the G8, G20 or the MEF (Major Economies Forum). The emergence of the BASIC group of developing countries and the openness with which they are conducting their meetings may be an indication of their willingness to move in this direction. This would do most harm to particularly vulnerable developing country Parties, which rarely have a direct voice in these more exclusive international country groupings. To ensure the fairness and transparency of the process for the particularly vulnerable, it is critical that international climate change decision-making remains under the aegis of a UN body like the UNFCCC.

Conclusions

Recent science shows that human-induced climate change is occurring now and at the upper ranges of most projections. The developing country Parties that are the most vulnerable to the adverse effects of climate change have contributed the least to global emissions. This presents a compelling case for assistance. It is the needs of these vulnerable countries that should be driving current negotiations on adaptation actions and funding. While there are currently a wide range of ideas that have been articulated and put on the table in the LCA process, the approach to adaptation under the Convention must be able to assist developing country Parties in determining and expressing their adaptation needs while responding to these prioritised needs in an organised and equitable manner. A successful approach to adaptation under the Convention must be bolstered by political will on the part of those most responsible and most able to address the causes of climate change.¹⁴

¹⁴ Mace (2006), p. 72.

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