



Seminar on Durban Outcomes for the Africa Group



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ecbi

European Capacity Building Initiative
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Partners



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INTRODUCTION

The European Capacity Building Initiative (ecbi) promotes capacity building in the context of international climate negotiations. It strives to foster mutual understanding and trust between negotiators and to prepare delegations for their task. ecbi workshops and seminars offer an opportunity for negotiators to meet and discuss their concerns in an informal setting.

An ecbi Seminar on the outcomes of the 17th Conference of Parties (COP-17) to the UN Framework Convention on Climate Change (UNFCCC) for Africa Group negotiators took place in Paris on 29 and 30 March 2012. It was organized jointly by the International Institute for Environment and Development (IIED) and the Institute for Sustainable Development and International Relations (IDDRI), and attended by 19 negotiators from the Africa Group.

The two-day event opened with an introductory speech by the Chair of the Africa Group, Emmanuel Dlamini from Swaziland. He said the excitement after the Durban climate conference in 2011 has given way to a serious challenge for Africa – namely, to determine what exactly the “Durban package” means for the continent. He emphasised the importance of African negotiators staying well informed about the outcomes and consequences of Durban, and of capacity building efforts.

SESSION I: LEGAL ISSUES RELATED TO COP-17 OUTCOMES

Nick Flynn from the Legal Response Initiative and Achala Chandani Abeysinghe from IIED chaired this session. In his presentation, Flynn said the period from 2012 to 2020 will be crucial from a legal perspective because it will have to see a reduction of the emissions gap. Global emissions will have to drop from 52 Gt to 44 Gt. He listed three elements of importance for the future negotiations: the legal form of the future agreement; the level of ambition; and the role of the principle of “common but differentiated responsibilities” (CBDR).

Flynn said the state of Palau is seeking support at the UN General Assembly, to refer climate change to

the International Court of Justice – a development that could set a precedent for dealing with climate questions in the future. He said a gap between the first and second commitment period of the Kyoto Protocol (KP) seems very likely, even if parties manage to settle all open questions at the next COP in Qatar. In this context, the concept of “provisional application” (applying a treaty as if it were in force, even though it is in reality pending) should be considered as a remedy to this gap. Another challenge to the adoption of a post-Kyoto regime is that the only explicit reference to adoption in Durban was to the Annex B of the KP, and not to the KP itself. However, annexes cannot enter into force unless the text itself also enters into force. Flynn said this is quite a technical, but nevertheless, important issue.

With regard to a third commitment period for the KP, Flynn argued that even though this would be a possibility, the Durban Platform is widely assumed to replace the KP from 2020 onwards.

Overall, he said the Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) still leaves many questions open, and it is not completely clear where the climate process is heading. Unlike the Bali Action Plan, the ADP contains no explicit references to CBDR and to country differentiations. The Ad-hoc Working Group on Long Term Cooperative Action (AWG LCA, or LCA), which was created as part of the Bali Action Plan, is expected to come to an end this year. African states and developing countries will have to ensure that there is a linkage between the Bali Action Plan (and CBDR) and the work of ADP.

With respect to legal form, one of the most contentious issues, he listed the three possibilities mentioned in the Durban document: protocol, agreed outcome with legal force or other legally binding instrument. He said there was no precedent for the second option (agreed outcome with legal force), but it is considered similar to, and stronger than, the Bali Action Plan, but softer than a “legally-binding” document. An agreed outcome with legal force would probably only have to be signed and not ratified, which could make it easier for the US to come on board as the US Congress will not need to ratify the document.

However, he said legal bindingness is not a solution in itself, as the form of a treaty can only complement the substance. Meaningful content, in the form of hard commitments, is therefore necessary.

In the discussion that followed Flynn’s presentation, one participant said the ADP brought forth many operational items and offered a legal outcome, which BAP had not, and that it also included finance and technology in addition to mitigation. This, as one participant suggested, was a good option even though CBDR had been “lost”. The case of Canada, which has withdrawn from the KP, was also brought up during the discussion. Nick Flynn clarified that African countries had no legal leverage to force Canada to stay aboard the KP, but encouraged them to seek new ways to exert pressure in the international arena, like Palau.

Africa Group perspectives on ADP

Mohamed Nasr from Egypt chaired this discussion, and Seth Osafo from Ghana made an introductory presentation. Osafo proposed three questions for discussion:

- What issues should Africa focus on in the ADP negotiations?
- What can Africa do to influence the outcomes of the negotiations?
- What can individual negotiators do to influence the negotiations?

In the discussion that followed, negotiators noted that current discussions on the ADP have centred on mitigation. They stressed the importance of pushing for the inclusion of adaptation, a priority for Africa, finance and technology transfer. It was agreed that the question of financing should be discussed in the Standing Committee.

Negotiators agreed on the importance of clear work plans covering the time until COP 18, and the need for sequencing efforts to secure the KP and LCA before moving on to the ADP was recognised. In this context, the work programme of the Standing Committee was considered crucial. It was stressed that the Durban Platform outcome should be flexible enough to allow all countries, including the US and India, to participate.

Negotiators called for increased visibility of the Africa Group in the negotiations, saying the Africa Group is often equated with or subsumed under the Least Developed Country (LDC) Group, without special attention to specific African needs and demands. Negotiators expressed the hope that the ADP will allow them to move beyond arguments over principles and towards their operationalization.

Generally, there was agreement that African negotiators need to be very well informed on the priority issues for Africa, their own positions and weaknesses, and how to shape the climate negotiation process. One possibility that was mentioned was to ask an institution to simulate and model the major challenges of the KP, as well as potential solutions.

Discussion with the LCA Chair

A meeting with Chair of the LCA, Aysar Tayeb from Saudi Arabia, arranged at short notice, presented the African negotiators with the opportunity to discuss issues related to the LCA.

Tayeb opened the session by stating that his main objective for 2012 was to ensure a smooth closure for the LCA track at the end of the year, ensuring that all outcomes mandated by the Bali Action Plan had been achieved. The LCA agenda for 2012 includes five workshops (on mitigation for developed countries; mitigation for developing countries; market mechanisms; various approaches; and equity in the context of sustainable development). In order to achieve these objectives, an additional LCA session was planned for September 2012.

Negotiators stressed that they hope for a party-driven approach and “a chair who will listen” to the delegations. An important part of the discussion was devoted to the question of agenda-setting for this last year of LCA activities, in order to avoid important issues being left to the very last minute. Seminar participants stressed that issues with special interest to Africa, like financing, need to be on the LCA agenda, and that the limited size of delegations needed to be taken into account when planning workshops and meetings. With regard to the question of “equity”, the chair and the negotiators agreed that highly politicized discussions about the content of the term should be avoided, and that there should be a fruitful discussion among academics and civil society regarding the practical implications of this term.

The LCA Chair remains open to any suggestion from negotiators (lca.chair@gmail.com).

SESSION II: POLITICAL ISSUES RELATED TO COP-17 OUTCOMES

Dan Hamza-Goodacre from the Climate and Development Network (cdkn) briefly presented on the three main areas of activity of cdkn: providing support to key groups of countries (LDC, the Africa Group, Alliance of Small Island States and the Rainforest Group); promoting capacity building in preparation for negotiations; and reflecting on the work of cdkn and others to improve it.

In the ensuing discussion, participants said the fact that Western nations supported them in preparing for

negotiations would not mean that African states would automatically back up the positions of these states, and that they did not want to be overlooked in deciding what form of support they should receive in the preparations for negotiations. Hamza-Goodacre stressed that the UK and the Netherlands, the countries supporting cdkn, do not expect negotiators to adopt their positions, and that cdkn is very open to lending all forms of support to the delegations. Negotiators are free to formulate their own suggestions and approach cdkn. Participants emphasized the importance of language issues (all supporting documents need to be available in both French and English) and the importance of funding – especially if different delegates from one country are funded by different organizations covering diverging levels of expenditure.

Political issues related to COP-17 outcomes

This session was chaired by Tosi Mpanu Mpanu from the Democratic Republic of Congo, and started with a presentation by Benito Müller from Oxford Climate Policy.

In his presentation, Müller discerned two possible destinations for the future of the climate process: one towards a new treaty that resembles the Kyoto Protocol, and the other towards an agreement that resembles the Copenhagen Accord or the Cancun Agreement. He expressly mentioned the possibility that the Durban Platform could exclude the financing, technology and capacity building elements that had been included in the Cancun Agreement, and centre completely on mitigation.

The main argument of Müller's presentation was that in order to build bridges across some of the rifts that had opened up in Durban, it is crucial to understand the underlying motivations of the different negotiating parties. Towards this end, he said the most important point for the US delegation is that all countries have to be included in one legal outcome, with no differentiation in responsibility, and without any mentioning of historic responsibility or per capita emissions. For India, on the other hand, these very principles of common but differentiated responsibilities and equity are crucial.

Müller made the case that even though India is a large country by population size, it should be treated along the same lines as African countries and LDCs in climate negotiations, for India is similar to these two country groups with regard to the share of domestic poor and rich parts of the population, historic emissions, capability, and GDP per capita ("Descriptively equal cases ought to be treated equally"). Hence, according to Müller, India needs to be given some comfort zone in the negotiations because otherwise the only option they have is to block the whole process. One option for achieving this would be to build an alliance between India and other countries that are poor in terms of GDP per capita.

Müller also advised the negotiators to be flexible with regard to coalition building for CBDR operationalization. Countries should set out some rules and principles and let whoever goes along with them to be part of their alliance (instead of fitting rules and principles around existing alliances). Further, he stated that so far, negotiators had stuck too much to the meta-levels of principles, which had hindered their operationalization in concrete terms.

In the discussion following the presentation, participants judged the input given on India very useful, and underlined that equity was equally a crucial topic for African negotiators, which deserved more attention and elaboration, especially regarding "respective capability". On the other hand, negotiators expressed concern that the US might also back out of the Durban Platform at some point.

Panel discussion: Where do we go from here?

A panel discussion on the future of the negotiations was chaired by Saleemul Huq from IIED, with inputs from Dalamini and LDC Chair Pa Ousman Jarju from the Gambia. In his introductory remarks,

Huq stressed that while it was important for continuity that the same negotiator should be allowed to attend subsequent negotiating sessions, the education of new young negotiators, and the rejuvenation of capacities was also crucial. He recommended that LDC Group of negotiators should co-author papers with well-known technical experts in order to build expertise within the LDC itself, and focus on the dialogue with domestic stakeholder groups on the outcomes of negotiations. He likewise drew the attention of participants to the importance of long-term strategies instead of just preparing for up-coming negotiations, and recommended a strategic alliance between the LDC Group, the African Group and AOSIS.

Dlamini said African negotiators needed to be well informed of the positions of other parties, analyze their own strengths and weaknesses and subsequently build a clear and coherent group position. He called on African negotiators to be very open and flexible in the changing climate negotiations, work with the LDC Group on common positions, and undertake independent studies on key issues like CDM or the Adaptation Fund, so that African countries would not lose out on these opportunities. Dlamini said the operational mechanism of the African Group would have to be transformed in order to move away from asking questions towards answering them.

Jarju emphasised the importance of African states actively make submissions to the Durban Platform on issues like timelines, sequencing, financing and adaptation in order to raise the level of ambition, and in order for the African parties not to be confined to a passive role in the subsequent process. He also stressed the importance of agreeing on a common position as to what exact legal form the outcome of the Durban Platform should take, asserting the basic Kyoto Protocol structure should be transferred to the Durban Platform. In order to achieve these aims, cooperation would be of greatest importance.

During the discussion, negotiators stressed the importance of the short- and long-term dimension of ambition for the submissions, and discussed the question of legal obligation within the scope of the ADP. They showed a pragmatic attitude towards coalitions, which they agreed could be very pragmatic and on single topics if needed.

As a conclusion of this session, Huq presented the negotiators with the following advice: think beyond the nitty-gritty of negotiations and focus on strategy; appoint a spokesperson to communicate African views on the state of the negotiations; make use of the expertise that many in the academic and 'think tank' world would be happy to provide (often for free); and continue to communicate the situation for vulnerable countries even beyond the UNFCCC negotiations.

SESSION III: KYOTO PROTOCOL AND THE ADP

This session was chaired by Kamel Djemouai from Algeria, and started with a presentation by Müller, who underscored the stances of three large parties to the negotiations with regards to the KP-ADP link.

The US position is that they will only sign on to any climate treaty if developing countries, during the same period, are also subject to "meaningful participation" in the form of emission reductions or limitations, based the Byrd-Hagel resolution by the US Senate, dating from 1998. India regards the US proposal as the default outcome of the current negotiations. The EU on the other hand aims to end the current "two-track negotiating situation" in favour of an all-encompassing Durban Platform to replace Kyoto.

In the discussion that followed, one participant remarked that the negotiating process needed to be creative enough to carry over some content considered successful from the Kyoto Protocol (like the accounting

rules) to the Durban Platform. Further, the planned LDC focus for the Clean Development Mechanism for the second commitment was hailed, even though complaints about the low carbon prices were voiced.

CLOSING SESSION

The two-day seminar closed with an outlook to the African Group meeting to be held in Namibia two weeks later, where the aim was to be more specific, and to concentrate on certain topics that needed more attention on behalf of the African negotiators.

Abeyasinghe closed the seminar by calling on each participant to look back at the past 20 years of climate negotiations, to consider what has worked well and what has not.

An internal informal session among African delegates only (without IIED and IDDRI staff) was held after the official closing of the meeting at the request of the delegates.

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