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Critical issues facing Durban Climate Conference

Durban, 28 November, (Meena Raman) – Critical issues face the Durban climate talks under the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol (KP) which begins on 28 November and is scheduled to end on 9 December 2011.

Second commitment period of the KP

A key issue for decision is whether there will be any agreement by Annex 1 Parties to reduce their emissions under a second commitment period (SCP) of the KP without any pre-conditions, as mandated under the work of the Ad-hoc Working Group on Further Commitments for Annex 1 Parties under the KP (AWG-KP).

The first commitment period of the KP expires in 2012 and there will definitely be a legal gap before the SCP gets ratified by Parties if further commitments for emissions reductions are made in Durban, and that is a very big IF.

Developing countries have been calling for at least a 40% emissions reduction cut compared to 1990 levels by Annex 1 KP Parties for the period 2013-2020.

Russia, Japan and Canada have already expressed that they will not make any further commitments under the Kyoto Protocol.

The European Union, Norway, Australia and New Zealand have all conditioned their SCP commitments under the KP on a decision for a new single treaty on mitigation, with all Parties, including "major economies" or "major emitters" undertaking legally-binding obligations for emissions reductions, that includes the United States and other "advanced developing countries", mainly targeting China, India, Brazil and South Africa.

They want to secure in Durban, a mandate for negotiating a new mitigation treaty that would replace the Kyoto Protocol, as an outcome of the work that is currently being under taken under the Ad-hoc Working Group on Long–term Cooperative Action (AWG-LCA) under the Convention track.

The EU at the Panama climate talks in October said that SCP under the KP would be the "last time (its) mitigation obligations are set out separate from other major economies" as the "single legally binding agreement will cover all major economies after the second commitment period of the KP."

The US on the other hand has made clear in Panama that it will not agree to any new treaty, which is not on its terms. Among the US demands are that the agreement must bind all major economies in a "symmetrical fashion" (meaning that it must have the same legal character) with respect to their mitigation actions and such actions should not be conditioned on the provision finance (which is contrary to the provisions of the UNFCCC).

In addition, the US wants a revision of the Annex 1, Non-Annex 1 categories "to reflect today's and tomorrow's economic realities, and not that of 1992", a demand which is also echoed by all other developed countries, including the EU.

There is some belief that given the current political conditions in the US, with the stand-off between the Republicans and Democrats in Congress, it is unlikely that the US will be able to agree to any legally binding treaty on climate change.

Many developing countries view the demands of developed countries under a new treaty as a re-writing of the Convention where historical responsibility and the principles of equity and common but differentiated responsibilities and respective capabilities are disregarded.

Further, many developing countries are also concerned that a new legally binding treaty being envisioned, especially by the US and other developed countries would be much weaker than the existing KP regime, with a voluntary and domestic "pledge and review" system that would replace a top-down, science and equity-based approach to determining the aggregate targets for Annex 1 countries, upon which the individual Annex 1 commitments are based.

The outcome of the AWG-KP negotiations will be very keenly watched to see if the Annex 1 Parties will deliver on their legally binding obligations to undertake further commitments for emissions reductions without any delay and pre-conditions.

AWG-LCA issues

Under the AWG-LCA, many issues remain to be resolved under the various elements of the Bali Action Plan (BAP) and the Cancun decision adopted last year.

Shared vision

From the Panama talks, a non-paper has been prepared. One major issue that remains to be resolved is the scope of the shared vision. Developed countries want the focus to be only on the issue of determining the long-term global goal for emissions reductions and the time frame for global peaking in terms of the specific numbers. This view is also shared by some developing countries.

Many developing countries on the other hand want the shared vision to also operationalise the principles of equity and historical responsibility, including through having a fair sharing and equitable allocation framework in relation to emissions reductions, and the establishment of global goals for finance, technology transfer, adaptation, and capacity building. In addition, developing countries also want the issue of unilateral trade measures and intellectual property rights to be addressed as part of the shared vision.

On the long-term global goal for emissions reductions by 2050, the suggestions on the global emissions reductions goal include a range from there being no number to at least 95% by 2050 compared to 1990 levels and more than 100% by 2040.

On the timeframe for global peaking, suggestions include a range from there being no number to peaking only for Annex 1 countries by 2012 and global peaking by 2015 or 2020.

Adaptation

Following the discussions in Panama, a draft decision text was prepared by the facilitator relating to the Adaptation Committee. Among the substantive issues in the adaptation negotiations include (i) the relationship of the Adaptation Committee (AC) to the financial mechanism. Some countries want to see the AC having a more "hands-on" role on how finance is allocated, including criteria and prioritization, while other developing countries fear that giving the AC a role could become another layer to access finance. The developed countries on the other hand do not want the AC to have any role in decisions on finance.

Another sticky issue has been the composition of members of the AC, with a divergence of views among developing countries. While all developing countries support an AC comprised of a majority of developing countries, there are difference of views on how the developing countries are to be represented with options including (i) five regional groupings, (ii) inclusion of special seats for LDCs and (iii) special seats for "particularly vulnerable developing countries".

The US wants the AC to have equal distribution of Annex 1 and Non-annex 1 countries.

Mitigation of developed countries

Following the Panama talks, a non-paper has been prepared by the co-facilitators on "possible elements of draft guidelines for biennial reports"; a non-paper on "possible elements of modalities and procedures for International Assessment and Review (IAR) and a co-facilitators' summary of the discussions also held on the pledges of developed countries, their ambition level and the accounting framework (relating to paragraphs 36-38 of the Cancun decision) has been produced.

Many Parties recognize the existence of an ambition gap in relation to the pledges of developed countries and the need to raise their ambition level. However, in Panama, developed countries insisted on the consideration of this issue in the context of encompassing all Parties, including developing countries with a significant share of emissions. Developing countries on the other hand were opposed to the attempts by developed countries to link their ambition level to that of developed countries.

Mitigation actions of developing countries

In Panama, Parties had discussions on biennial update reports (BURs); international consultations and analysis (ICA); the registry to record the national appropriate mitigation actions (NAMAs) seeking international support; and the pledges of developing countries including the assumptions underlying them (which related to paragraphs 48 to 51 of the Cancun decision).

4 non- papers have been produced on the "possible elements of draft guidelines for biennial update reports", "possible elements of modalities and procedures for international consultations and

analysis,"; the registry and a co-facilitators' summary of the discussion related to paragraphs 48-51.

Developing countries have expressed concerns that as developed countries seek to weaken their mitigation and financial commitments, more and more obligations are placed on developing countries as regards the production of BURs, for measuring, reporting and verification of their mitigation actions (MRV) and the conduct of ICAs.

Reducing emissions from deforestation and forest degradation in developing countries (REDD-plus)

According to the report back by the facilitator of the informal group in Panama, Parties had explored financing options for results-based actions in implementing forest-related activities and considered what results-based actions were. A vast majority of Parties wanted a decision on REDD-plus finance for its full implementation.

The facilitator was able to produce a non-paper which was a "placeholder text" which was an outline rather than a negotiating document. The facilitator asked Parties to submit views and proposals which the secretariat will compile so that Parties can begin work in having a full text for negotiations in Durban.

The key issues under discussion are (i) diversity of sources for REDD-plus finance – with countries supporting a range of options including public and private; (ii) the definition and scope of result-based activities and actions and (iii) the linkage with the Green Climate Fund.

It is instructive to note that the draft instrument for the Green Climate Fund (which will be considered in Durban), did not provide for a separate window for REDD-plus.

Many countries also stressed that results-based activities should not only be confined to looking at forest carbon stocks but also encompass the role forests played including in adaptation, biodiversity conservation and the provision of ecological services.

Cooperative sectoral approaches

The informal group in Panama discussed the general framework of the cooperative sectoral approaches, agriculture and international aviation and shipping. A consolidated text was produced in which the options reflected captured a divergence of views. Some Parties wanted decisions on agriculture and international aviation and shipping while others did not want any decision in this regard.

Various approaches including market and non-market based mechanisms

A draft text was produced from the Panama talks which contained a compilation of submissions from Parties which, according to the facilitator, provided ingredients for negotiations. One major area of disagreement among Parties is whether offsets should be allowed in relation to market-based mechanisms.

Economic and social consequences of response measures

In Panama, the informal group on economic and social consequences of response measures saw deep divisions over issues raised by a large number of developing countries especially on unilateral trade measures. (UTMs). Developed countries were opposed to any texts for negotiations and did not even want the submissions of developing countries to be compiled into a document. Developed countries and Singapore insisted that the UNFCCC was not the proper forum to discuss UTMs but the WTO was the appropriate forum.

Finance

The co-facilitators reported in Panama that Parties discussed "long-term finance" and the "Standing Committee on Finance" As a result of time constraints for further discussions, the co-facilitators said they would incorporate Parties comments in the meetings along with additional submissions into a draft text, which will be presented for negotiations.

There were different views on long-term finance. Some developed countries, including Australia, Japan and Canada were initially opposed to any text on long-term finance, but relented after insistence by developing countries. The US has also tabled a submission on long-term finance, which is bound to draw the flak of developing countries, given the emphasis of the submission on core public funds being used to leverage private investments. The US submission also calls on developing countries to also provide financing.

Another related finance issue under the agenda of the Conference of Parties (COP) is the **Green Climate Fund (GCF)**. The Transitional Committee which was tasked to prepare the operational documents for the GCF concluded its work in Cape Town, South Africa in October. A report, containing the draft instrument of the GCF was not adopted as there was no consensus, given objections raised by the US and Saudi Arabia. The report and the draft instrument has been transmitted to the COP for its consideration and a key issue here is whether the instrument would be adopted as is or if it will be "opened" for further changes.

Technology development and transfer

Based on the submissions of the G77 and China, the European Union and the joint-submission by Japan and the United States, a draft decision text for negotiations was produced in Panama and Parties engaged in a first reading of the text and there was a good exchange of views on the governance structure of the Climate Technology Centre and Network (CTCN) and on the criteria for the host of the CTCN.

There were divergences of views over the role of the Technology Executive Committee (TEC) in governing the host of the CTCN and this was an issue that will need resolution in Durban. Developing countries want the CTCN to be governed by the TEC while this was opposed to by developed countries. Japan, US and EU, supported by Norway and Switzerland what the CTCN to be "independent but accountable to the COP" and for it to be governed by the board of whatever institution that may be selected to host the Centre.

On the process for the selection of the host of the CTCN, the issue is whether it will be done through a 6-man panel (proposed by the US and Japan) or through the UNFCCC Secretariat (proposed by the EU) or by the TEC (proposed by G77 and China).

Other outstanding issues relate to the details of the request for proposal for the host of the CTCN, the time-line for the work of the CTCN, technology assessment for new and emerging technologies and intellectual property rights.

The UNFCCC secretariat has also prepared an analysis of possible gaps in the procedure for the call for proposals and criteria to be used to evaluate and select the host of the CTCN and sample documentation for the call of proposals.

A related matter is that of the **Technology Executive Committee** which is on the agenda of the COP, for the adoption of the modalities and procedures for the working of the TEC.

Capacity building

A draft decision text has been compiled for further discussions.

Review to define its scope and development of its modalities

A non-paper was produced from Panama but Parties were divided on the scope of the review as the Alliance of Small Island States wanted the review to only be confined to a review of the adequacy of the long-term global goal in relation to the temperature goal while a large number of developing countries were in favour of a review of the adequacy of the implementation of commitments under the Convention as a whole.

Legal options

On the legal options for the agreed outcome of the work of the AWG-LCA, the facilitator in Panama reported a divergence of views on the matter. Parties are to continue discussions on the menu of options. This issue was one of the "hottest" issues in Panama, as some Parties wanted Durban to launch a new mandate and process for a new legally binding instrument under the Convention while other Parties wanted the content of the outcome to be agreed to first before determining the legal form of the outcome.

This issue is expected to be a major controversial issue in Durban.

COP Agenda

In June 2011, India made a submission for the inclusion of 3 new agenda items for the consideration of the COP. These agenda items were for the inclusion of the following issues viz. (i) accelerated access to critical mitigation and adaptation technologies and related intellectual property rights (IPRs), (ii) equitable access to sustainable development and (iii) unilateral trade measures (UTMs).

These new items are now on the provisional agenda of the COP as agenda items 11, 12 and 13 and are expected to draw strong resistance from developed countries on the first day of the meeting when the provisional agenda will be considered for adoption. Developed countries have over the years staunchly opposed discussion of these matters, especially that of IPRS and UTMs, despite repeated calls by developing countries to address them.

In a further submission made to the UNFCCC on 7 October, India stated that it was essential for Parties in Durban to identify a forum and process to address these issues, as well as ensure that these remain on the agenda for subsequent meetings of the COP.