

CMA decision adopted amidst controversy on Paris Agreement implementation

Marrakech, 22 Nov. (Meena Raman) – The closing plenary of the first session of the Conference of the Parties to the United Nations Convention on Climate Change serving as the meeting of Parties to the Paris Agreement (CMA 1) adopted a decision on matters related to the implementation of the Paris Agreement (PA) in a rather unprecedented manner that was confusing on the future work of the body.

The decision, which was adopted just past midnight, (early morning of 19 November), a day later than the scheduled closure of the meeting in Marrakech, was mired in controversy on the process forward, as regards items under the PA that were not assigned in Paris last year to any of the subsidiary or constituted bodies for further work (referred to as the ‘homeless items’).

(The 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change was held in Paris in 2015, which adopted the PA.)

The source for the controversy during the final plenary began already during the first week of the climate talks (that started on 7 November), where these ‘homeless items’ were the subject of intense debate in the informal consultations under the Ad Hoc Working Group on the Paris Agreement (APA) and comprise the following matters:

- common time frames for nationally determined contributions (NDCs) for consideration at CMA 1 (Article 4.10 of the PA);
- guidance by the CMA on adjustment of existing NDCs (Article 4.11);
- progress and procedural steps to enable the forum on the impact of the implementation of response measures to serve the PA (Article 4.15;

paragraphs 33,34 of the Paris decision known as 1/CP.21);

- modalities for the recognition of adaptation efforts of developing country Parties, for consideration and adoption at CMA 1 (Article 7.3; paragraph 41 of 1/CP.21);
- initial guidance by the CMA to the operating entities of the Financial Mechanism (Article 9.8; paragraphs 58, 61 of 1/CP.21);
- initial guidance by the CMA to the Least Developed Country Fund and the Special Climate Change Fund (paragraph 58 of 1/CP.21);
- process for setting a new collective quantified goal on finance (paragraph 53 of 1/CP.21);
- modalities for biennially communicating information in accordance with Article 9.5 (which relates to “quantitative and qualitative information on projected levels of public finance by developed countries”); and
- guidance by CMA 1 on education, training and public awareness (Article 12; Paragraph 83 of 1/CP.21).

Parties were divided since the very beginning on how to handle these items, with **Brazil** wanting items such as the common time frames for NDCs and education, training and public awareness to be forwarded to the subsidiary bodies of the Convention on the grounds that these matters were mandated to be dealt with by CMA 1, while other countries in the **Like-minded Developing Countries (LMDC)** group wanted all the ‘homeless items’ to be dealt with comprehensively as a package.

(Common time frames for NDCs relate to the length of the period of a contribution, as currently, Parties have communicated either a 5- or 10-year time frame that expires in 2025 or

2030 from 2020. Brazil has been pushing for a common time frame for all Parties.)

As there was no agreement on the issue, the APA Co-chairs **Sarah Baashan (Saudi Arabia)** and **Jo Tyndall (New Zealand)** emphasized that the APA should only identify and bring these possible additional matters to the attention of the Convention's Conference of the Parties (COP) for its consideration and any further action, without prejudice to any action to be taken by the COP.

Consequently, when the APA concluded its work on Monday, 14 November, the Moroccan COP Presidency continued with informal consultations on the decision to be adopted by the CMA as well as the COP on matters related to the PA, including that of the 'homeless items'.

Again, no agreement was possible given the divergences between Parties. The decision proposed by the Presidency, which was circulated to the CMA plenary for consideration and adoption, was to have the APA continue its consideration of the issues next year.

However, when the Moroccan Foreign Minister Salaheddine Mezouar, who was also the CMA 1 President convened the meeting late Friday, 18 November, he singled out two of the 'homeless items' for the consideration of Parties, i.e. the common time frames for NDCs and guidance on education, training and public awareness.

Bolivia asked the CMA President for clarification about the proposal he was making, given that it was "something very new" (and not contained in the draft decision proposed by the President for adoption by the Parties).

To this, Mezouar responded that after considering this matter, Parties could move forward on the adoption of the proposed decision.

Bolivia then asked the CMA President to invite Parties to first consider the draft decision proposed and circulated to Parties before reviewing the items he raised.

The President then invited Parties to adopt the decision proposed (contained in

FCCC/PA/CMA/2016/L.3), which was then approved by Parties with no objections (see highlights of decision below).

(Paragraph 9 of the decision which addresses the 'homeless items' requests the APA "to continue its consideration of possible additional matters relating to the implementation of the PA and the convening of the first session of the CMA.")

Following the adoption of the decision, the President then invited Parties to consider the issue of the common time frames for NDCs and that of education, training and public awareness, and proposed to send these items to the Convention's Subsidiary Body for Implementation (SBI) for further work and to forward a decision to the CMA.

Bolivia said that it could not support the proposal by the President as it meant that there would be follow-up on a specific issue (of common time frames for NDCs) which appeared to be mitigation-centric (as the other 'homeless items' dealt mainly with finance-related matters, adaptation and response measures). It also said that there was need for a comprehensive and holistic approach on all the 'homeless items' in a single package, and that just singling out a particular issue was "breaking the delicate balance" as regards all the issues. Bolivia said it wanted to see a balanced approach on all the remaining issues and wanted this matter discussed at the next meeting (of the APA).

Brazil did not agree with Bolivia and said that the two issues raised by the President are supposed to be dealt with by CMA 1 as mentioned in the PA and asked Bolivia to reconsider its decision. (The PA does refer to the two issues for the consideration of the first CMA while all of the other issues except the item on adaptation efforts have no time frame specified from the decision in Paris.)

Bolivia asked for clarification, saying that Parties had already taken a decision on the matter and why after doing so, specific issues were being raised by Parties and that this was setting a bad precedent. It said that the particular interest of

Parties can be considered later (next year) in one single decision in a comprehensive manner.

Costa Rica, the United States, Mali, the European Union, the Democratic Republic of Congo and Maldives supported Brazil and the proposal by the President.

India supported Bolivia and said that a common understanding was needed and called for a balanced and inclusive approach. It said paragraph 9 of the CMA decision (that had just been adopted) captured the views of all Parties and was accepted in the spirit of compromise. It said that it was best to stick to the decision without singling out any specific topic for further work.

At this juncture, the CMA President called for a short break for Parties to consult, which took longer than expected.

When the President reconvened the meeting, he said that after consultations, there was no possibility to reach an agreement at this point and proposed that Parties move forward.

Brazil continued to persist in its demand and asked Parties to consider forwarding the two issues to the SBI's next session.

(On the side-lines, as the plenary meeting continued, countries of the BASIC group [Brazil, South Africa, India and China] were seen engaged in a huddle in intense talks.)

South Africa then raised its flag and spoke on behalf of **BASIC** and said that it wanted first to register its concern regarding the way the pre-2020 issues (climate actions in the pre-2020 time frame) were dealt with as pre-2020 actions form a good basis for the implementation of the PA (climate actions in the post-2020 period). It added further that it was concerned that the pre-2020 matters had not received good attention, and went on to say that it could go along with the President's proposal (of forwarding the two issues for the consideration of the SBI). It stressed that it was the understanding of BASIC that at the next session, Parties would give equal attention to both pre-2020 and post 2020 issues.

The CMA1 President then proposed to send the two items to the SBI for its consideration at its 47th session and this was gavelled with the approval of Parties.

(Several Parties and observers alike were confused as to how the proposal by the President was going to be reflected when the decision that was adopted reflected a different approach.)

The CMA meeting was then suspended to allow for the resumption of the 22nd session of the COP (COP 22) for the adoption of a decision related to "preparations for the entry into force of the PA and the first session of the CMA".

The COP President then invited Parties to consider and adopt the decision contained in FCCC/CP/2016/L.12, and this was accordingly adopted.

Highlights of the CMA decision

Below are highlights of the decision adopted by the CMA on matters related to the implementation of the PA.

On the completion of the work programme under the PA, in paragraph 5, the CMA invited the COP "to continue to oversee the implementation of the work programme under the PA in accordance with the arrangements contained in decision 1/CP.21, and to accelerate work and forward the outcomes at the latest to the third part of the first session of the CMA to be convened in conjunction with the 24th session of the COP (December 2018) for its consideration and adoption."

(This decision was taken to allow an inclusive process under the COP for all Parties, including those that have yet to ratify the PA, to take part in crafting the rules of implementation for the PA, as not all Parties have ratified the Agreement. The decision in this regard also makes clear that the further decisions from the outcome of work of the COP will only be considered and adopted in 2018, at the resumed session of CMA 1.)

In paragraph 6, the decision invites the COP “to continue to oversee the work on further guidance in relation to the adaptation communication, including, inter alia, as a component of NDCs, referred to in Article 7, paragraphs 10 and 11, of the PA”.

In paragraph 7, the decision invites the COP “to continue to oversee the work on the development of modalities and procedures for the operation and use of a public registry referred to in Article 7, paragraph 12, of the PA”, which relates to the adaptation communication.

Paragraph 9 of the decision invited the COP “to request the Subsidiary Body for Scientific and Technological Advice (SBSTA), the SBI, the APA and the constituted bodies under the Convention to accelerate their work on the work programme resulting from the relevant requests contained in ...decision 1/CP.21, and to forward the outcomes” to COP 24 (2018) at the latest.

The decision in paragraph 9 invites the COP to request the APA to continue its consideration of possible additional matters relating to the implementation of the PA and the convening of the first session of the CMA. (This is the paragraph in controversy surrounding the ‘homeless items’.)

In paragraph 10 of the decision, the CMA decided that “the second part of its first session”, will be convened with a joint meeting of COP 23 to be held in Nov 2017, “to review progress on the implementation of the work programme under the PA”.

In relation to the Adaptation Fund (AF), in paragraph 11, the CMA decided that “the AF should serve the PA, following and consistent with decisions to be taken at the third part of the first session of the CMA, to be convened in conjunction with the 24th session of the COP (2018), and by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) that address the governance and institutional arrangements, safeguards and operating modalities of the AF.”

(In Marrakech, developed countries were of the view that in Paris, no decision was taken that the AF shall serve the PA, while developing countries on the contrary had the understanding that the AF would serve the PA following some “preparatory work” that needed to be undertaken at COP 22. See TWN Update 10 for details at: <https://twnetwork.org/climate-change/no-decision-taken-adaptation-fund-serves-paris-agreement-say-developed-countries>)

Highlights of the COP decision

Below are highlights of the decision adopted by the COP as regards the “preparations for the entry into force of the PA and the first session of the CMA.”

On the completion of the work programme under the PA, paragraph 10 of the decision requests the “SBSTA (Subsidiary Body on Scientific and Technological Advice), the SBI, the APA and the constituted bodies under the Convention to accelerate their work on the work programme described in decision 1/CMA.1 ... and to forward the outcomes to COP 24 (2018) at the latest.”

Similar to the decision adopted under the CMA above, in paragraph 11, the COP decided to convene, at its 23rd session in November 2017, a joint meeting with the CMA ... to review progress on the implementation of the work programme under the PA.

In paragraph 12, the COP decided to “conclude the work programme under the PA as soon as possible and to forward the outcomes, at the latest, to the third part of the first session of the CMA ... in conjunction with the 24th session of the COP, for its consideration and adoption.”

On the issue of the ‘homeless items’, paragraph 13 of the decision took note of the invitation by the CMA to request the APA “to continue its consideration of possible additional matters relating to the implementation of the PA and the convening of the first session of the CMA.”

In relation to the Adaptation Fund (AF), the decision in paragraph 14 requested “the APA in its consideration of the necessary preparatory work on the Adaptation Fund to address the governance and institutional arrangements, safeguards and operating modalities for the Adaptation Fund to serve the Paris Agreement.”

Paragraph 15 of the decision “invites Parties to submit, by 31 March 2017, their views on the governance and institutional arrangements, safeguards and operating modalities for the AF to serve the PA.”

In relation to the facilitative dialogue on enhancing ambition and support to be conducted in 2018, the decision in paragraph 16 requested the Moroccan COP 22 President “in collaboration with” the incoming President of COP 23 (which will be Fiji) “to undertake inclusive and transparent consultations with Parties on the organization of the ... dialogue referred to in decision 1/CP.21, paragraph 20, including during the sessions of the subsidiary bodies to be convened in May 2017 and COP 23, and to jointly report back to COP 23 on the preparations for this dialogue.”

(The 2018 facilitative dialogue is to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to in Article 4(1) of the PA that relates to the global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take longer in developing countries and to inform the preparation of NDCs.)

On the issue of enhanced action prior to 2020, paragraph 18 of the decision underscores “the urgent need for the entry into force of the Doha Amendment (of the Kyoto Protocol)” and calls “on those Parties to the Kyoto Protocol that have not done so to deposit their instruments of acceptance ... as soon as possible.”

(The Doha amendment provides for the second commitment period of greenhouse gases reduction under the Kyoto Protocol.)

Paragraph 19 welcomed the ‘Marrakesh Partnership for Global Climate Action’ (which is designed to provide a strong foundation for how the Convention process will catalyse and support climate action by Parties and non-Party stakeholders in the period from 2017 to 2020).

Paragraph 20 of the decision takes note of the resolutions adopted at the 39th session of the Assembly of the International Civil Aviation Organization (ICAO) on 6 October 2016 while paragraph 21 welcomed the adoption of the Kigali Amendment by the Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, at 28th meeting.

Following the adoption of the decision, several Parties took the floor.

The **Democratic Republic of Congo** speaking for the **Least Developed Countries (LDCs)** said that its understanding was that when the CMA resumes in 2017 to review the progress of work, it could take decisions (and not just take stock of the progress of work as understood by a large number of Parties.)

China supported the statement by South Africa on behalf of BASIC, and emphasised that the pre-2020 enhanced actions did not attract sufficient attention and this needed to be addressed at the intersessional meeting in Bonn in May next year.

Bolivia speaking for the LMDC that it was puzzled by the decisions adopted and that the ‘Marrakech Proclamation for Climate Action and Sustainable Development’ did not find reflection in the decisions adopted.

(See TWN Marrakech News Update #21 on the proclamation at: <https://twnetwork.org/climate-change/twn-marrakesh-news-update-no-21-marrakech-proclamation-action-climate-and-sustainable>)

Bolivia said that developing countries took the lead in ratifying the PA and expected more action from the developed countries in the pre-2020 period to reflect the urgency needed for the post-2020 mandate.

It referred to section IV of the Paris decision in 1/CP.21 and the 2013 Warsaw COP decisions (under 1/CP/19, paragraphs 3 and 4 that relate to the implementation of commitments under the Bali Action Plan and the Kyoto Protocol) that it said “defined precisely the actions sought by all Parties.” Bolivia further said that, “it was incumbent upon Parties in Marrakesh to give momentum to our collective desire, to take these decisions forward and take them to their logical conclusion.”

Bolivia also stressed that the outcome of the 2016 facilitative dialogue on enhancing ambition and support (that was conducted in Marrakech) should also be followed up and linked to the 2018 facilitative dialogue referred to in the decision adopted at COP 22.

In relation to the decision regarding the ICAO, **Venezuela** expressed its reservations and said that the rules of the Convention needed to be respected, stressing that the ICAO needed to support developing countries in providing the means of implementation for undertaking actions.

India supported Venezuela in this regard and also expressed its reservation, stressing the need for coherence between the ICAO, the Convention and the PA.

Following these interventions, the COP meeting was adjourned for a joint session of the COP, the COP serving as the Parties to the Kyoto Protocol and the CMA, to hear statements by Parties (see separate article on this).