

Maximizing the Potential of the Paris Agreement: Effective Review of Action and Support in a Bottom-up Regime

Discussion brief

17 May 2016

Harro van Asselt,^a Thomas Hale,^b Meinhard Doelle,^c Achala Abeysinghe,^d
Manjana Milkoreit,^e Caroline Dihl Prolo,^f Bryce Rudyk^g

This discussion brief builds upon the workshop “Reviewing Implementation and Compliance under the Paris Agreement”, held at Arizona State University, 7-8 April 2016. Authors have contributed to this brief in their personal capacities; views expressed here do not necessarily reflect those of the institutions with which the authors are affiliated. The authors would like to thank Christina Voigt and Jake Werksman for comments on an earlier draft.

Summary

To succeed, the hybrid model of international climate policy embodied in the Paris Agreement requires countries to deliver their nationally determined contributions (NDCs) and to progressively increase collective and individual efforts over time. The effectiveness of this type of regime will require international review processes that provide robust information about countries’ efforts and trajectories and give substantial opportunities for state and non-state actor engagement with this information. The Paris Agreement creates three different review processes, but leaves critical details regarding each to future decisions:

- It provides for a review of implementation of individual NDCs under an “enhanced transparency framework”, comprising a technical expert review and multilateral consideration (Article 13).
- It puts in place a global stocktake every five years to assess the collective progress towards achieving the purpose and long-term goals of the Agreement (Article 14), preceded by a mitigation-focused facilitative dialogue in 2018.
- It establishes a mechanism to facilitate implementation and promote compliance through a committee that is expert-based, non- adversarial and non-punitive. (Article 15).

It is essential for Parties to develop effective modalities, procedures and guidelines, as mandated by Decision 1/CP.21, for each of these processes. To this end, this discussion brief highlights essential considerations and potential options for each process.

^a Senior Research Fellow, Stockholm Environment Institute (SEI); Professor of Climate Law and Policy, University of Eastern Finland.

^b Associate Professor, Blavatnik School of Government, University of Oxford.

^c Professor, Schulich School of Law, Dalhousie University.

^d Principal Researcher, International Institute for Environment and Development (IIED).

^e Postdoctoral Research Fellow, Walton Sustainability Fellowship Program, Walton Sustainability Solutions Initiatives, Arizona State University.

^f Research Consultant, IIED.

^g Adjunct Professor and Senior Fellow, Guarini Center on Environmental, Energy and Land Use Law, New York University School of Law.

1. Introduction: Effective review in a hybrid regime

The Paris Agreement shifts the United Nations climate regime away from a top-down system of negotiated, legally-binding emissions targets enshrined in global protocols. The new hybrid system is a mix of bottom-up and top-down elements in which Parties are required to submit a non-legally binding NDC every five years, which is then subject to a number of mandatory review processes. National contributions, in aggregate, might (and currently do) fall short of overall goals. Under the previous regime, these problems were “front-loaded” into the negotiation process. The Paris Agreement instead back-loads questions of effectiveness and equity into the review and stock-taking phases.

At present, nearly every country in the world has submitted a national contribution. Parties’ contributions range from economy-wide emissions targets, to mitigation policies and measures, with some also including adaptation components and some made partly conditional on the support provided by other Parties. The heterogeneous contents of Parties’ contributions will shape the review system that emerges over time.

In this hybrid system, the importance of effective review cannot be understated. Because the targets set out in the NDCs are not made legally binding by the Paris Agreement, the review systems are the chief tools to make the agreement effective by generating information and providing an opportunity for political pressure to be applied to help ensure that countries are meeting their political commitments, including those contained in their NDCs. As the review processes do not start until the Paris Agreement comes into force (with the exception of the 2018 facilitative dialogue on collective progress toward the Paris Agreement’s mitigation goals), there is now a window of time to develop a reliable review system that supports a progressive dynamic of increased contributions over time.

The review processes, which are detailed below, are three separate but functionally linked systems. While each was preliminarily designed to fulfil specific, potentially discrete functions, when looked at collectively, they highlight some important functions and potential benefits as a whole. First, as mentioned above, effective review is essential for tracking how NDCs align collectively with internationally agreed objectives and principles, such as staying well below 2 °C and pursuing 1.5 °C, and equity considerations. Second, the process can and is expected to enhance transparency, trust and accountability between Parties by creating a shared understanding of Parties’ contributions and implementation efforts, as well as the underlying information, data and assumptions. Third, it can identify obstacles to implementation of NDCs, and help channel resources to countries to overcome such barriers. Finally, and maybe most importantly, review can help to increase ambition by providing an opportunity for feedback and exchange of ideas and approaches, and by encouraging additional reciprocal actions from other Parties. In essence, the review process is key for the success of the Paris Agreement on multiple dimensions of effectiveness.

Review processes are included in the Paris Agreement in three major ways:

- It provides for a review of implementation of NDCs under an “enhanced transparency framework, comprising a technical expert review and multilateral consideration (Article 13).
- It puts in place a five-yearly global stocktake to assess the collective progress towards achieving the purpose and long-term goals of the Agreement (Article 14). More narrowly, Parties will also have an opportunity to assess the adequacy of current efforts regarding mitigation through the facilitative dialogues to take place in 2018.
- It establishes a mechanism to facilitate implementation and promote compliance through an expert-based, non-adversarial and non-punitive committee (Article 15).

Maximizing the Potential of the Paris Agreement

While the Paris Agreement establishes these three forms of review, and offers basic guidance for each of them, it also leaves many of the crucial details regarding their content, procedures, modalities, and logistics to be developed before the first Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA1). This discussion brief raises a range of key questions – and outlines a few options for answering them – regarding review for implementation, ambition, and compliance. The starting point for these questions and options are the agreed design details as highlighted in the Agreement and Decision 1/CP.21, as highlighted in the tables at the start of each section.

2. Transparency framework: Key questions and options

	Transparency framework (Article 13)
Scope	(Mitigation and adaptation) action and (financial, technology, and capacity-building) support; individual Parties; implementation and achievement of the NDCs; national emissions inventories
Flexibility	In light of capacities; special circumstances of least developed countries and small island developing states
Principles	Facilitative; non-intrusive; non-punitive; respectful of national sovereignty; avoiding undue burdens
Sources of input	National reports, including inventories and information to track progress towards implementing and achieving NDCs
Institutional arrangements	Review by technical experts, including potentially in-country reviews, as well as multilateral consideration

Flexibility: While Decision 1/CP.21 highlights a number of ways flexibility can be provided to developing countries and especially to least developed countries (LDCs) and small island developing states (SIDS), several questions remain unresolved:

- *Capacities:* Beyond LDCs and SIDS, it is unclear which other developing country Parties would be granted flexibility “in light of their capacities”, and by which criteria this would be judged. Although any criteria will likely be challenging to negotiate, relying only on self-determination of this status may limit the predictability and thus usefulness of the transparency framework.
- *Frequency of review:* While the frequency of reporting has been decided (at least biennially for all Parties except for LDCs and SIDS), the frequency of reviews has not. It would seem reasonable that countries with adequate capacities should be reviewed at least once during each five-year NDC cycle, but it can also be decided to carry out reviews of each individual report after submission. Furthermore, there could be different levels of review at different times (e.g. an in-country review, followed by a desk-based review).
- *Scope:* Decision 1/CP.21 suggests that the scope of review could make in-country reviews optional for some Parties. This could be the case for LDCs and SIDS, which may not have the capacities to organize an in-country review. To the extent the contents of NDCs allow, the scope of review could be further limited by focusing reviews on particular issue areas or themes (which could rotate in subsequent reviews). To save time and resources for Parties, the UNFCCC Secretariat and expert reviewers, group reviews may also be appropriate for specific groups of countries (e.g. Pacific islands, African LDCs, etc.). Such group reviews could make more sense in the context of the multilateral consideration part of the review process, as the expert reviews

Maximizing the Potential of the Paris Agreement

may generate valuable information and build capacity in the Party under review. Finally, the scope (and also the frequency) could be linked to the outcomes of previous reviews.

Support and facilitation: The decision clearly suggests support for developing country Parties to carry out reporting and to participate in reviews, as part of a new Capacity-building Initiative for Transparency. However, it does not clarify how this support will be delivered, and to whom. As part of tracking implementation, particularly for developing countries, the review process can be used to identify barriers to implementation (e.g. specific gaps in funding, capacity, regulation, or technology). In this way the review process can feed into other areas of the regime where support can be mobilized. Parties may wish to encourage the expert review report to explicitly recommend sources of support to help overcome these barriers.

Non-Party actors: Parties may wish to consider including non-Party actors in the review process, in at least three ways. First, non-Party actors could act as expert reviewers. Second, Parties may wish to invite non-Party actors to provide written and/or oral input into the expert review. This practice is already common in existing review processes in the UNFCCC, with experts consulting with outside groups. Third, Parties could clarify that all proceedings for the expert review and/or the multilateral consideration will be open to observers, and all documentation will be made publicly available. And finally, because many NDCs explicitly refer to non-Party stakeholders (e.g. cities, the private sector, civil society) in the development and implementation of NDCs, Parties may wish to have the option of submitting the actions of these actors within their borders for consideration in the review process.

3. Global stocktake and facilitative dialogue: Key questions and options

	Global stocktake (Article 14), 2023 and beyond	Facilitative dialogue (Decision 1/CP.21, para. 20), 2018
Scope	Collective efforts towards achievement of the Agreement's purpose and long-term goals (incl. mitigation, adaptation, means of implementation, support)	Collective mitigation efforts towards achievement of the Agreement's purpose and long-term goals
Flexibility	Global in scope	Global in scope
Principles	Comprehensive and facilitative; in light of equity and best available science	Comprehensive and facilitative
Sources of input	Sources include: (1) information on overall effect of NDCs; (2) adaptation communications and reports; (3) Information on mobilization and provision of support; (4) Latest IPCC reports; (5) Reports by subsidiary bodies	To be determined
Institutional arrangements	To be determined	To be determined
Outcome	Process shall inform Parties in updating and enhancing actions and support; enhance international cooperation	To be determined

Process and format: What will the facilitative dialogue consist of? Minimally, it could just be a designated period for submissions and statements by Parties on collective progress on mitigation toward the long-

Maximizing the Potential of the Paris Agreement

term goal in 2018. Alternatively, Parties may wish to create a more robust process. Similarly, how will the more elaborate global stocktake unfold in 2023? One potential model would be to follow the design of the 2013-2015 review, which involved a joint working group of the Subsidiary Bodies and several “structured expert dialogues”. However, in theory it may also be possible for the basis of the stocktake to be a review carried out by the UNFCCC Secretariat, or by a group of Parties.

Inputs: Above and beyond statements by Parties, it is unclear what the specific inputs will be to inform the 2018 facilitative dialogue. The Intergovernmental Panel on Climate Change (IPCC) report on the 1.5 °C that Parties have requested in 2018 will undoubtedly help to inform the discussion of collective ambition. For the global stocktake, in turn, several key inputs are explicitly noted (see table above). A key question is whether and/or how the reports under Article 13 will inform the global stocktake. Although adaptation-related reports are explicitly mentioned as a source of input into the stocktake, this is not the case for the national reports under Article 13.7, even though Article 13.5 and 13.6 suggest the stocktake will be informed by the transparency framework. Assuming that the various types of reports and reviews of these reports will be taken into account, the question then is what information from these reports and their reviews will be taken up. For instance, if a review suggests that a country’s emissions are higher than reported, will this provide input into the stocktake? Beyond the transparency framework, reports of existing committees (in addition to the subsidiary bodies’ reports) could offer useful inputs on specific areas (e.g. adaptation, finance, technology). Finally, a question for both the facilitative dialogue and the global stocktake is whether inputs from organizations other than the IPCC could be considered. One option in this regard would be to allow for the input by a limited number of organizations, for instance, observer organization accredited with the UNFCCC, or a set of “credible and reliable” organizations, with the UNFCCC Secretariat granted the discretion to decide which organizations meet these criteria.

Non-Party actors: Related to this, could non-Party actors play a helpful role in either the facilitative dialogue or the global stocktake? Two roles seem potentially appropriate. First, a large number of cities, companies, and non-Party actors are demonstrating high levels of ambition either in their individual commitments or in initiatives with peers and/or nation states and international organizations. The most significant of these have been included in the Lima-Paris Action Agenda. Such efforts provide a useful reference point to help Parties to understand what levels of ambition are possible, as well as to learn from a variety of experiences regarding how to deliver on those ambitions. Second, it may be desirable to include the perspectives of civil society organizations and other stakeholders on collective action toward the long-term goal in 2018, and on all efforts in 2023 and beyond. This could either be through their input into the dialogue or stocktake (see above), or by allowing them to participate in the process (e.g. through written or oral interventions).

Relation to NDCs: A crucial outcome of the 2018 facilitative dialogue is to inform the preparation of future NDCs. The collective assessment of progress toward the long-term goal, in light of the current emissions gap (Decision 1/CP.21, paragraph 17), will undoubtedly lead countries to reflect on the appropriate level of ambition they can put forward in their subsequent NDCs. However, the facilitative dialogue may also go further to help inform future NDCs by emphasizing what successes countries have had in raising ambition before 2020. For example, the Technical Expert Meetings under Workstream 2 have captured a broad range of policy options for countries to consider. While the objective of Workstream 2 is to enhance ambition before 2020 and the objective of the 2018 facilitative dialogue is to consider the post-2020 level of ambition, a natural synergy exists between the two, as Decision 1/CP.21 paragraph 18 states, “... emphasizing that enhanced pre-2020 ambition can lay a solid foundation for enhanced post-2020 ambition”.

4. Implementation and compliance mechanism: Key questions and options

	Implementation and compliance mechanism (Article 15)
Scope	The provisions of the Paris Agreement
Flexibility	Committee to pay attention to national capabilities and circumstances
Principles	Committee is to be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive
Sources of input	Expert-based; and possibly others to be determined
Institutional arrangements	Involving a Committee; further details to be determined
Outcome	To be determined

Scope: It is not clear from the Paris Agreement what precisely lies within the mandate of the new committee, to the extent Article 15 generally refers to “the provisions of this agreement”. The scope and mandate could be limited to legally binding obligations under the Agreement, including obligations related to the preparation, maintenance and communication of a NDC, to ensure that NDCs are clear, transparent and understandable, to make sure that NDCs represent a progression beyond previous NDCs, and to regularly report. It could also be interpreted more broadly to include the effective implementation and achievement of NDCs, following the requirement in Article 4.2 that countries shall pursue domestic mitigation measures to implement NDCs with the aim of achieving them. Furthermore, the scope could be considered to include both action and support, or both individual and collective commitments. In this regard, it may be important to draw a line between where the review of implementation under Article 13 ends and where the facilitation and promotion of compliance begins.

Triggers: Related to this, it is not clear what triggers can bring a matter before the new committee. Traditionally, triggers are usually actions by Parties (either through self-referral, referral by other individual Parties, or groups of Parties), or decisions by the committee on the basis of defined criteria or their discretion – all of which may be appropriate for this agreement. Considering the linked nature of the transparency framework and implementation and compliance mechanism, the trigger could further be linked to the reviews under Article 13. In accordance with paragraph 12 of Decision 1/CP.21, the technical expert review under Article 13 shall identify areas of improvement for the Party. This could lead to an output in the form of a recommendation issued directly to the Party, but also in a report to be sent over to the committee. Finally, the mechanism could be triggered by non-Party actors (combined with a mandate that leaves it to the discretion of the committee to consider the case).

Outcomes: The outcome of the implementation and compliance mechanism is as of yet unclear. The process could involve the committee producing some kind of report, but the output could also be limited to the meeting itself. Given the “facilitative” nature of the compliance committee, it seems logical to emphasize how the process can help parties identify and overcome barriers to compliance. The committee may identify and verify cases of non-compliance, and could issue declarations and recommendations to the Party concerned. This may include reference to other convention bodies or sources of support including capacity building, finance, or technology. A process for tracking the progress on the implementation of such facilitative measures could follow.