



Climate Action Network

The Paris outcome: Composition and placement of elements

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Climate Action Network International (CAN-I) is the world's largest network of civil society organizations working together to promote government action to address the climate crisis, with more than 950 members in over 100 countries. www.climatenetwork.org

Key recommendations:

The Paris outcome should take into account Parties' national circumstances while simultaneously securing ambition, accountability, and equity. This requires, *inter alia*, that the following criteria are met:

1. The Paris outcome should come as a “hybrid” or “package” deal primarily consisting of three main components: (i) a ratifiable core legal agreement, (ii) COP decisions, and (iii) Annexes and/or supplementary instruments.
2. Appropriate placement of key issue areas across these different instruments should be ensured. This is a crucial pre-requisite to help ensure the final outcome is ambitious and reflects fairness and accountability.
3. The core legal agreement should:
 - Address each key issue area, including the issue of loss and damage;
 - Anchor the temperature threshold (1.5 degree) objective;
 - Establish key principles to guide its implementation, some of which are already contained in the Convention, and some of which, such as respect for human rights of all, should not be left behind;
 - Introduce strong, durable commitments for the post-2020 climate regime, including a commitment to phase out fossil fuel emissions and phase in 100% renewables for all by 2050; and a global adaptation goal;
 - Facilitate anchoring of Nationally Determined Contributions as legal commitments;
 - Introduce 5-year commitment cycles as well as 5-year cycles for the setting of targets for the provision of financial support, and for review and revision;
 - Allow rapid and simple accession;
 - Ensure the required “critical mass” for entry into force is reasonable.
4. Political declarations form a possible fourth and complementary component of the Paris package, but do not form an acceptable substitute for legally binding instruments or COP decisions.

1. Introduction

The Durban Platform recognizes that in order to fulfill the ultimate objective of the Convention, the multilateral, rules-based regime will need to be strengthened. For this reason, it was agreed that by 2015, the ADP would develop and adopt “a protocol, another legal instrument or an agreed outcome with legal force”, to take effect from 2020.

However, beyond identifying these three possible outcomes from the ADP, the Durban mandate does not prescribe the final legal architecture of the agreement to be made at COP21. Notably, it does not specify whether the outcome should consist of a single instrument or multiple instruments, and, in case of the latter, what form these instruments should take or how obligations should be distributed within them.

Yet the question of the final architecture of the Paris outcome is crucial, as it will help determine how various elements and issues within the climate negotiations are treated, thereby impacting the ambition and effectiveness of the overall outcome. This matter needs to be addressed in the UNFCCC negotiations adequately early to provide the necessary clarity to move forward with the textual negotiations.

This position paper presents CAN-International’s stance on, and expectations for, the composition of the final Paris outcome.¹ It proposes a “package deal”—one that takes into account national circumstances whilst safeguarding ambition, accountability, and equity—as the most appropriate outcome for COP21.

2. Composition of the Paris Outcome

International agreements within the UNFCCC and similar international forums can involve various structures and legal instruments, and an outcome can be adopted as a single instrument or a package of instruments. The table below identifies the different instruments that the Paris outcome could include, providing additional information on each type:

Instrument type	Description
Core legal agreement	A universal core agreement that binds all Parties under international law, to take effect from 2020. This should take the form of a Protocol or another ancillary agreement with the same effect. The requirement of ratification is usually strong evidence of countries’ intent to be bound.

¹ An upcoming CAN paper will additionally present CAN’s position on how best to approach the crucial issues of bindingness and accountability, including the role of transparency and public participation in facilitating compliance under the Paris agreement.

COP decisions	COP decisions help to ensure effective implementation of the Convention and its Instruments, such as the Paris Agreement. They may address particular issues in more technical and scientific detail than the instruments above, and can include mandates to other UNFCCC bodies, guidance, modalities and rules, which may be based on recommendations of subsidiary bodies. COP decisions may be adopted at COP21 or later.
Annexes and supplementary instruments	This category comprises Annexes, as well as information and/or miscellaneous documents and registries and schedules that contain details that a country or countries have agreed to share, including in the areas of mitigation, adaptation, and means of implementation. Annexes and/or supplementary instruments enhance transparency and contribute to the efficacy of the core agreement and COP decisions.
Political declarations	Explicit formal announcement(s) of additional non-legally binding actions, made by fewer-than-all Parties to the UNFCCC in the context of the negotiations.

CAN supports a hybrid or “package” deal in Paris that combines these options, with a particular focus on agreeing as much as possible via the first three instruments.²

CAN believes that this package approach is the most likely to facilitate effectiveness of the Paris outcome, since the success of an international agreement is a function not only of the stringency of its commitments, but also the levels of participation and compliance by States. CAN believes that by opting for a package as the form of the outcome, the specific requirements of different elements of the Paris outcome can be addressed in a way that reflects different national circumstances among the Parties while retaining a necessary level of stringency. Each instrument may contain obligations of varying legal character, creating a spectrum of “legal bindingness” that may assist in bridging gaps between the positions of Parties on legal form, while helping to ensure the Paris outcome is applicable to all. With more effective use of the instruments available, wider participation of States in the COP21 outcome is facilitated.

² Note that CAN does not support political declarations as a substitute for legally binding instruments or COP decisions.

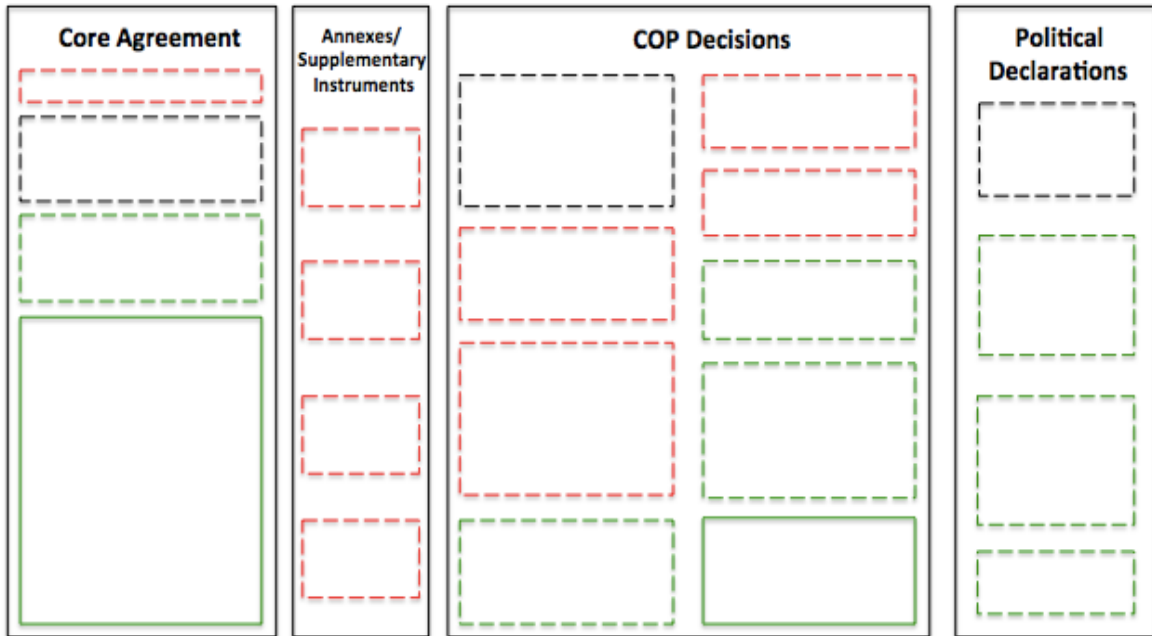


Figure 1 - The instruments available to Parties at COP21. CAN supports an outcome that focuses on the first three of these options, with Political Declarations forming a possible supplementary element.

3. Recommendations on Placement

While employment of different instruments can provide Parties with the flexibility necessary to accommodate their national circumstances, Parties should at the same time ensure that the overall Paris outcome **lays a foundation for the required ambition, accountability, and equity necessary to achieve the objective of the Convention**. In other words, the fact that the core legal agreement will co-exist with other instruments should not be used as an opportunity to weaken climate commitments, but rather, should promote a strong and durable Paris outcome through appropriate placement.

This section provides recommendations for the role that each instrument of the Paris Package can play in advancing ambition, accountability, and equity at COP21. Without purporting to be comprehensive, it proposes a number of essential elements that should be addressed in each instrument.

Core Agreement

While recognizing the need for some flexibility in the instruments employed at COP21, CAN underscores that in order to demonstrate credible political commitment and enhance legal certainty, **legally binding commitments form an essential part of the Paris package**. The package should therefore include a ratifiable, **legally binding agreement as a core component**. The Paris agreement should in any case:

- **Address key issue areas**

The core legal agreement should address all key issue areas mentioned in the Durban Mandate as well as provisions essential to its effective implementation: mitigation, adaptation, finance, technology development and transfer, transparency of action and

support, capacity-building and compliance. It is important that the Paris Agreement also include provisions on loss and damage and human rights, in order to ensure the interests of the most vulnerable are taken into account.

- **Anchor the 1.5 degrees objective**

The core agreement should define limiting global average temperature rise to 1.5 degrees Celsius above pre-industrial levels as a key objective in order to achieve the Convention's ultimate objective.

- **Establish key principles to guide its implementation**

The core agreement should furthermore adopt key principles that must guide the implementation of the climate regime going forward, including equity and its reflection in differentiation, no-backsliding, gender equality, access to information and the effective participation of stakeholders, in particular local communities and affected communities, respect for human rights of all, including the rights of indigenous peoples, ensuring a just transition, ensuring and promoting food security; and restoration, protection and resilience of natural ecosystems and the necessity of climate action to enable and ensure sustainable development.

The core agreement's provisions should also encourage and empower local civil society and other stakeholders to assist in its implementation and enforcement. Many other international agreements have benefitted from such participation by non-governmental organizations.³

- **Introduce strong, durable commitments for the post-2020 climate regime**

The core agreement must contain overarching and durable commitments for the post-2020 climate regime to ensure the ultimate objective of the Convention is achieved. These include a **long-term temperature goal** of limiting global average temperature rise to 1.5 degrees Celsius compared to pre-industrial levels, and a **commitment to phase out fossil fuel emissions and phase in 100% renewables for all by 2050**. In order to achieve these goals, the core agreement should establish that **collective targets for the provision of support shall be set in regular intervals, reviewed, adjusted and re-set every five years (with separate targets for adaptation) and that countries receiving support are enabled to identify the levels and nature of support required**. It should also include a pledge that Parties will "**shift the trillions**"—i.e., phase out international support for high-carbon investments, including international fossil fuel subsidies, while increasing support for renewable energy and energy efficiency. The agreement must furthermore treat adaptation as a priority alongside mitigation, and achieve this, *inter alia*, with the adoption of a **global adaptation goal**.

- **Facilitate anchoring of Nationally Determined Contributions as legal commitments**

Recognizing that nations that wish to bind themselves internationally should not be held back by others that do not, crucially, the core agreement should incentivize and reward

³ See Kal Raustiala, The "Participatory Revolution" in International Environmental Law, 21 HARV. ENVTL. L. REV. 537 (1997). See also Abram Chayes & Antonia H. Chayes, The New Sovereignty, at Chap. 11 (1995).

nations that convert intended nationally determined contributions (INDCs) from political pledges into legal commitments. Internationally legally binding mitigation commitments must not reflect a decrease in ambition as compared to a nation's INDC. While experience demonstrates that internationally binding legal commitments do not by themselves create the certainty that they will be implemented and achieved, making a commitment legally binding can be seen as giving it extra force and may be taken more seriously by those undertaking the commitment as well as by others.

Notably, **it is imperative that all nations regularly report on implementation and domestic enforcement of their commitments and contributions** in order to participate, for example, in the mechanisms and institutions established under the core agreement. LDCs and other developing countries that need support should be provided financial and technical support to meet such reporting requirements so as to avoid imposing additional burdens on them.

To provide additional legal certainty and confidence in the achievement of commitments, countries should be required to provide and update information about the current or planned laws, regulations, standards, or other enforceable provisions that are being relied on to achieve their contribution or commitment. Such a requirement would not only build confidence and trust among nations in the achievement of their contributions, but would also identify areas where international cooperation, financing, or capacity building in support of INDCs might be most helpful. The core agreement should require that this and other additional clarifying information, consistent with the Lima decision (1/CP.20, *Para. 14*) and additional guidance agreed in future COP decisions, be provided in future rounds of NDCs and regularly updated in biennial communications.

- **Introduce 5-year commitment cycles and 5-year review and revision cycles**

The core agreement should contain an obligation for countries to set five-year mitigation commitment periods, instead of defining commitment periods in a COP decision as proposed in the July 2015 Co-Chairs' Tool. Such a strong and clear mandate is needed in order for much-needed new rounds of mitigation commitments to be secured, while cycles any longer than 5 years risk locking in weak ambition.

In order to promote ambition and fairness, the core agreement should, additionally, contain a commitment from Parties to periodically set collective targets for the provision of financial support, and do so consistent with the overall 5-year-cycles of the agreement. Parties should moreover commit to review, also in five-year cycles, and progressively revise their existing mitigation, adaptation, and means of implementation (MOI) commitments, without backsliding, until the objective of the Convention is met.

These aspects—five-year mitigation commitment periods, five-year cycles for setting collective targets for the provision of financial support, and five-year review and revision cycles—are crucial if the Paris outcome is to be considered a credible way forward to effectively tackle climate change.

- **Allow rapid and simple accession**

The core agreement should also contain simple accession provisions. Multilateral Environmental Agreements such as the Montreal Protocol have accession provisions that provide a much more flexible means of expanding participation than the cumbersome provisions of the UNFCCC-Kyoto Protocol framework. A nation wishing to join the Montreal Protocol need only ratify the Protocol and immediately apply all of the obligations to which existing members are subject. The same is true of the Basel Convention on the Transboundary Movement of Hazardous Wastes and CITES.

- **Ensure the required “critical mass” for entry into force is reasonable**

The core agreement should ensure that entry into force provisions do not allow any country to have an effective veto on entry into force of the Paris agreement.

COP Decisions

CAN believes that COP decisions will be necessary to put in place technical modalities, rules, guidelines and other operational foundations to ensure ratification and implementation of the core agreement adopted in Paris. The Paris COP decisions will play a key role in mandating actions for the pre-2020 period, such as providing mandates to the SBSTA to undertake technical work programmes, develop modalities and guidance where required as well as addressing the question on credible pathway towards \$100 billion annually by 2020. In addition, they have an important role to play in developing interim arrangements pending entry into force of the core agreement, in particular the need to increase climate finance, increase ambition and close the emissions and adaptation gaps prior to 2020.

When it comes to the core agreement, COP decisions can also provide details of implementation of its provisions, as they did in the Marrakesh Accords to the Kyoto Protocol. For instance as regards the provisions concerning phasing out fossil fuel emissions, shifting high-carbon investments to renewables and energy efficiency, and accounting related to the land sector, the agreement should contain higher level Principles and the related COP decision(s) provide guidance for further work to be undertaken related to modalities and additional guidance.

As COP decisions do not require ratification, they are easier to revise and adjust over time than the core agreement. Although COP decisions have an important role to play in ensuring implementation of the core agreement, they ultimately have a legal status that is less secure under international law than that of the Paris agreement. **The core agreement, however, could provide an explicit mandate for the COP to make binding decisions addressing specific issues requiring additional provisions.**

Annexes and/or supplementary instruments

Annexes and/ or supplementary instruments play an indispensable role in enhancing transparency and accountability.

The core agreement should for instance establish a legal connection to one or more annexes, schedules, or lists detailing differentiated national mitigation targets and actions. Mitigation

commitments should be additionally recorded in a document and database managed by the Secretariat, in a way that ensures transparency and enables unilateral increases without requiring ratification.

Other lists should contain country-specific information on adaptation actions taken, and MOI made available in a particular year, as well as types, instruments, sources, and channels of support provided.

CAN emphasizes that detailed categories and types of information to be shared in such instruments should be agreed multilaterally in order to enhance understanding, accountability and transparency.

Political Declarations

CAN does not support political declarations as a substitute for legally binding instruments or COP decisions. It does, however, support political declarations from a country or group of countries that complement legally binding instruments. Such declarations could reaffirm important emerging or existing principles of environmental law, outline political action programmes, or create codes of conduct to enhance legally binding rules.

4. Conclusion

The final composition of the Paris outcome is one of the determinative aspects of its overall ambition, effectiveness, and fairness. A strong and durable outcome would come as a “hybrid” or “package” deal consisting primarily of: (i) a ratifiable core legal agreement, (ii) COP decisions, and (iii) Annexes and/or supplementary instruments.

To achieve the desired results, *appropriate placement* of elements is moreover key. For instance, the core legal agreement should address all key issue areas, including loss and damage; introduce strong, durable commitments for the post-2020 climate regime, including goals for mitigation, finance and adaptation; and establish key principles to guide the agreement’s implementation.

Conversely, the Paris COP decisions will play central role in mandating actions for the pre-2020 period. These include providing a credible pathway towards meeting the \$100 billion annually by 2020 commitment, increasing climate finance, and closing the emissions and adaptation gaps prior to 2020.

Understanding, accountability and transparency in the climate regime should be facilitated and enhanced through appropriate use of Annexes and/or supplementary instruments. The scope and nature of the contents of such instruments should be multilaterally agreed.