

CLIMATE LAW AND GOVERNANCE INITIATIVE



# Climate Law and Governance Specialization Course 2022

*With all appreciation for the endorsement of the UNFCCC CoP22, 23, 24, 25 26 and 27  
Presidencies*



*With special thanks to experts leading international organisations for their guidance and support:*



## *Climate Law & Governance Specialization Course*

### COURSE PROGRAMME & LECTURERS

10:00 Registration

10:05 Opening & Introductions

10:20 – 10:30 Foundations: Understanding the Paris Agreement under the UNFCCC

10:30 – 11:30 Session 1: Law, Governance & Climate Mitigation

11:30 – 12:30 Session 2: Climate Law & Governance on Adaptation, Loss and Damage

12:30 Light Break (20 mins)

12:50 – 13:50 Session 3: Climate Law & Governance on Finance, Compliance & Transparency

13:50 Closing Ceremony/Announcement of Awarding of Certificates for Participants

14:00 CLGI Thanks & Acknowledgements



# FOUNDATIONS: UNDERSTANDING THE UNFCCC PARIS AGREEMENT

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**Prof. Marie-Claire Cordonier Segger**  
**Climate Law and Governance Specialization Course**  
Capacity-Building Course during UNFCCC 2021 COP26  
Glasgow, UK



# LEARNING OBJECTIVES

- Gain understanding of the key elements, structures and principles of the Paris Agreement and the Katowice Outcomes.
- Learn key challenges and opportunities in the implementation of the UN climate change regime.
- Gain insights on the key role of law and regulation in the transition toward low greenhouse gas emissions and climate-resilient development.

*With special thanks and recognition for the collaboration of key international organisations:*

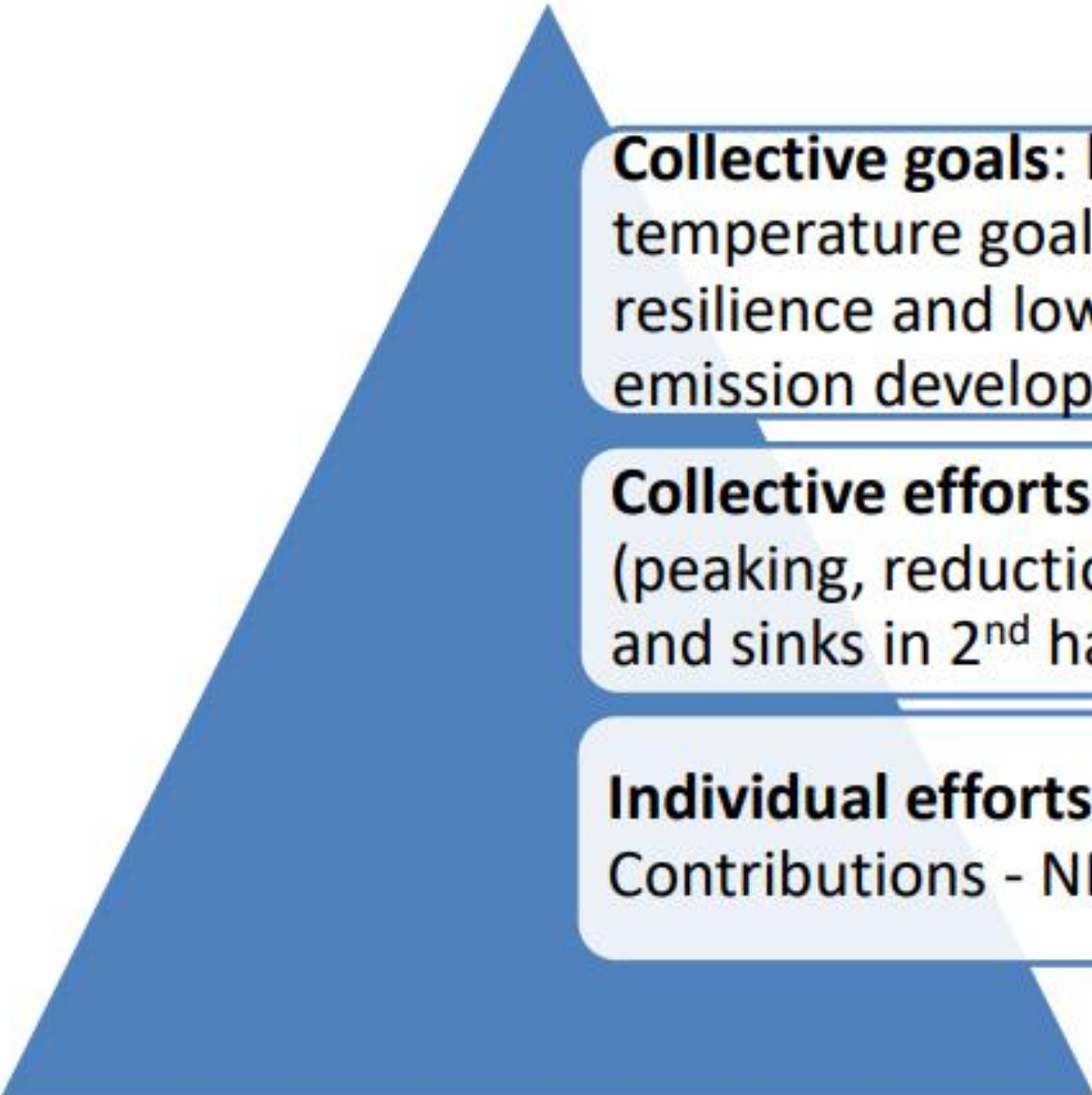


# Climate Change

A common concern  
of humankind



# The Paris Agreement and its objectives

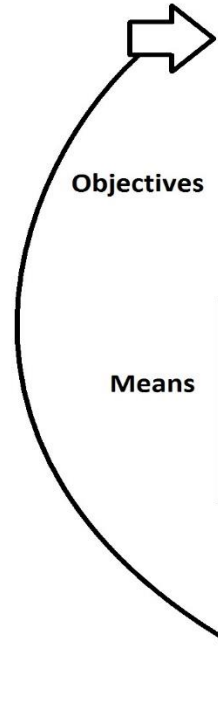


**Collective goals:** long term temperature goal; resilience and low GHG emission development

**Collective efforts:** a global emission trajectory (peaking, reduction, balance between sources and sinks in 2<sup>nd</sup> half of 21<sup>st</sup> century)

**Individual efforts:** successive Nationally Determined Contributions - NDCs

Informs Action and Supports



Art. 2: Purpose: Mitigation, Adaptation & Financial Flows

Art. 3: All Parties to take and communicate efforts towards the purpose, and with progression over time.

	Art. 4: Mitigation	Art. 7: Adaptation	Art. 9: Finance	Art. 10: Technology	Art. 11 Capacity-building	Art. 13 Transparency
<b>Objectives</b>	Peaking +rapid reductions+ Balance	Capacity+ Resilience+ Vulnerabilities	Assisting developing countries	Fully realise technology development and transfer	Enhance capacity and ability of developing countries	Trust+ Confidence + Effective Implementation
<b>Means</b>	Long-term strategies and NDCs every 5 years with progressive ambition	Cooperation + Planning + Adaptation communication	Provision and mobilisation of support and ex ante biennial information	Strengthen cooperation action and support innovation	Cooperation and regular communication of activities	Provision of information, expert review and multilateral consideration

Art. 14: Global stocktake every 5 years towards the purpose and long-term goals of the PA

- Art. 5: Sinks
- Art. 6 Mechanisms
- Art. 8: Loss & Damage
- Art. 12 Education

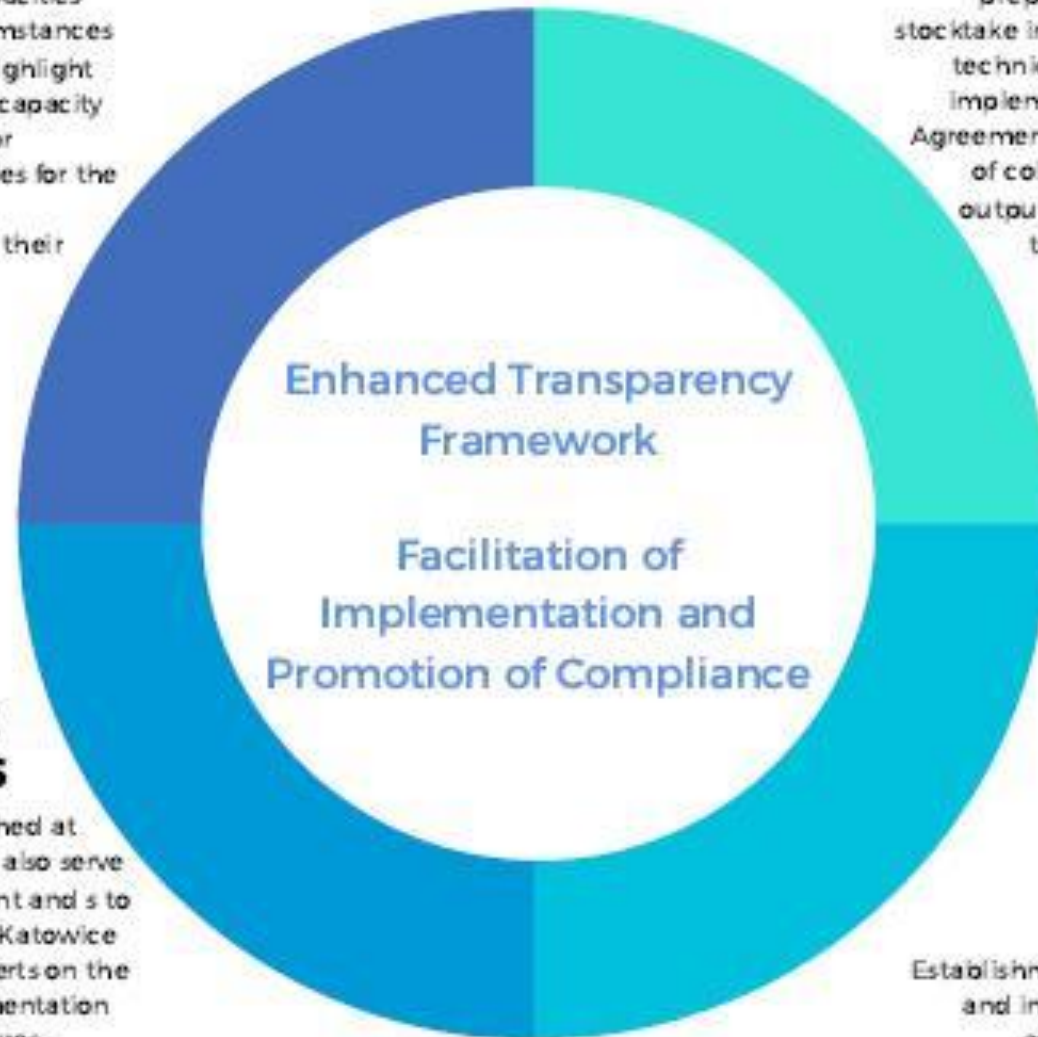
Art. 15: Implementation & Compliance Mechanism

## NDC GUIDANCE AND ACCOUNTING RULES

Recognizing the different starting points, capacities and national circumstances of countries, and highlight the importance of capacity building support for developing countries for the preparation and communication of their NDCs.

## GLOBAL STOCKTAKE

Collection of information and preparation for the global stocktake in 2023; conducting a technical assessment of the implementation of the Paris Agreement and an assessment of collective progress; and, outputs and findings of the technical assessment.



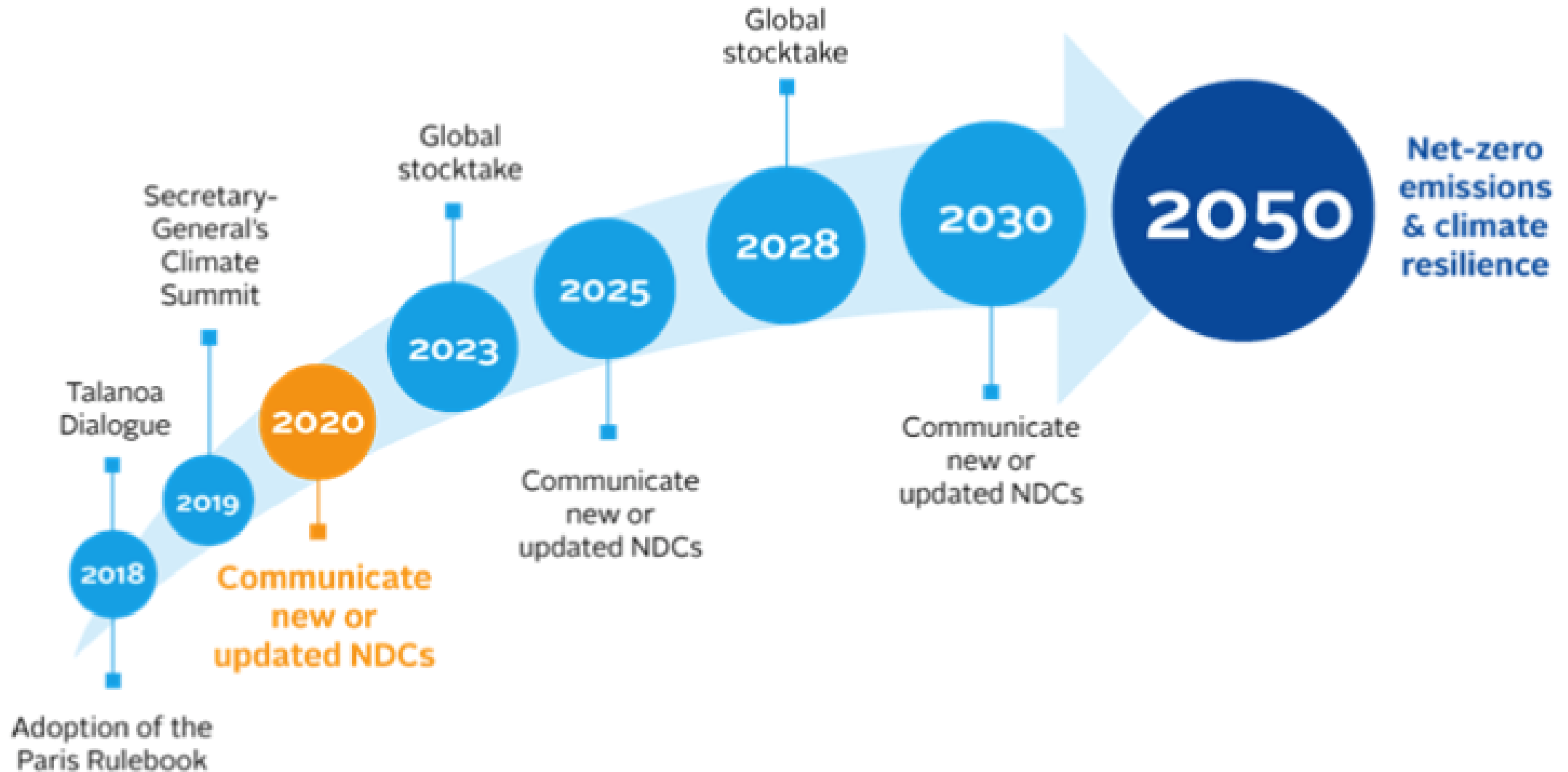
## RESPONSE MEASURES

The forum established at COP16 in 2010, will also serve the Paris Agreement and is to be supported by a Katowice Committee of Experts on the Impacts of Implementation of Response Measures.

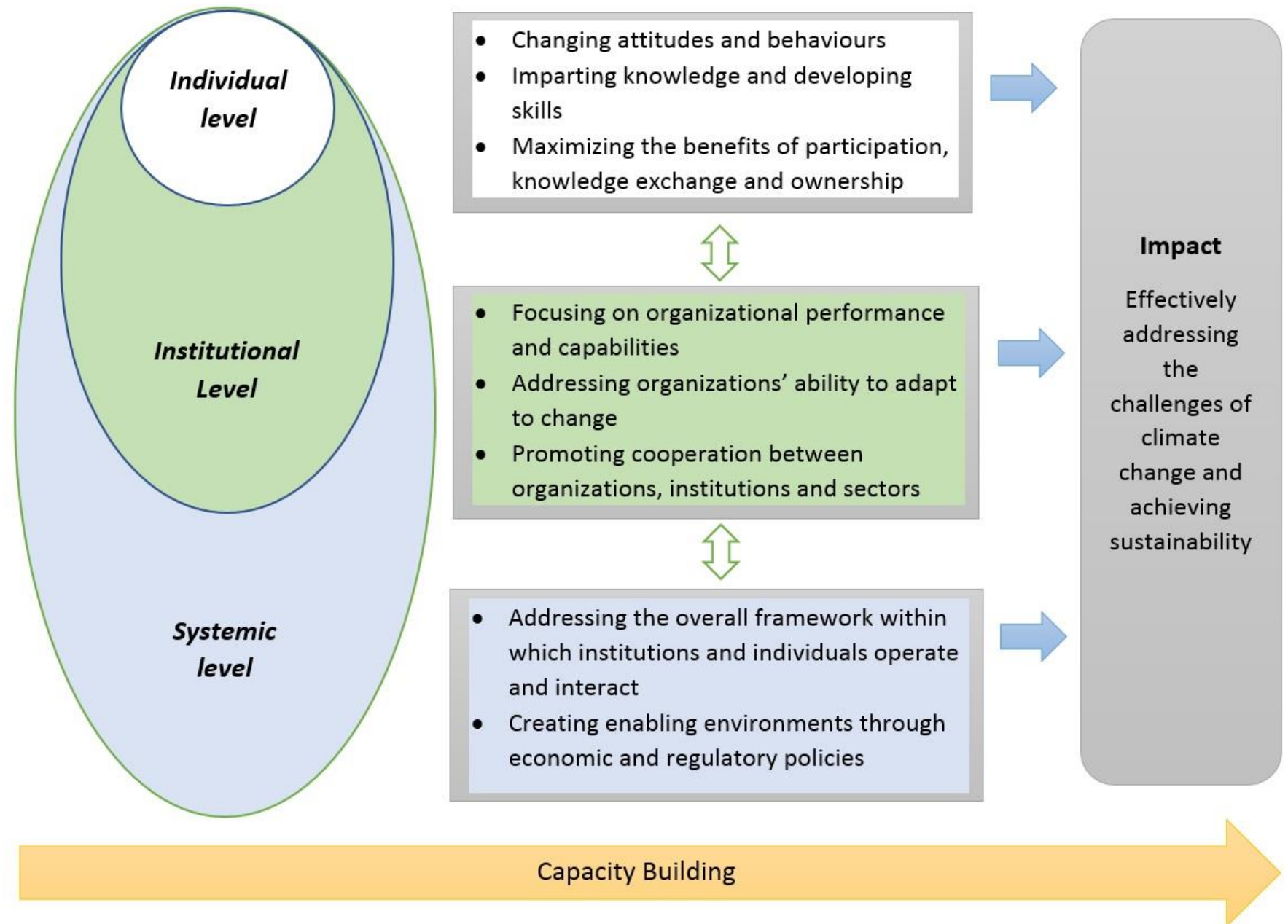
## CLIMATE FINANCE

Establishment of new targets and inclusion of new and additional resources.

# AMBITION MECHANISM IN THE PARIS AGREEMENT



- **Law and regulation can play a key role in the transition toward low greenhouse gas emissions and climate-resilient development.**



Source: UNFCCC Secretariat (2019)



# THANK YOU

Prof. Marie-Claire Cordonier Segger  
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# ANNEX

## *The Objective of the UNFCCC Paris Agreement*

### Article 2

“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

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# LAW, GOVERNANCE, AND CLIMATE MITIGATION

Prof. Markus Gehring, Lauterpacht Centre, University of Cambridge  
Prof. Michael Mehling, Strathclyde/MIT

Climate Law and Governance Specialization Course  
Capacity-Building Course during UNFCCC 2021 COP26  
Glasgow, UK



# LEARNING OBJECTIVES

- Learn the concept of climate mitigation under the UN climate change regime.
- Gain insight into the “mitigation toolbox” envisaged in the Paris Agreement and the Katowice Outcomes.
- Build learners’ understanding of the legal scope, nature and possible outcomes of market and non-market mitigation measures.

*With special thanks and recognition for the collaboration of key international organisations:*

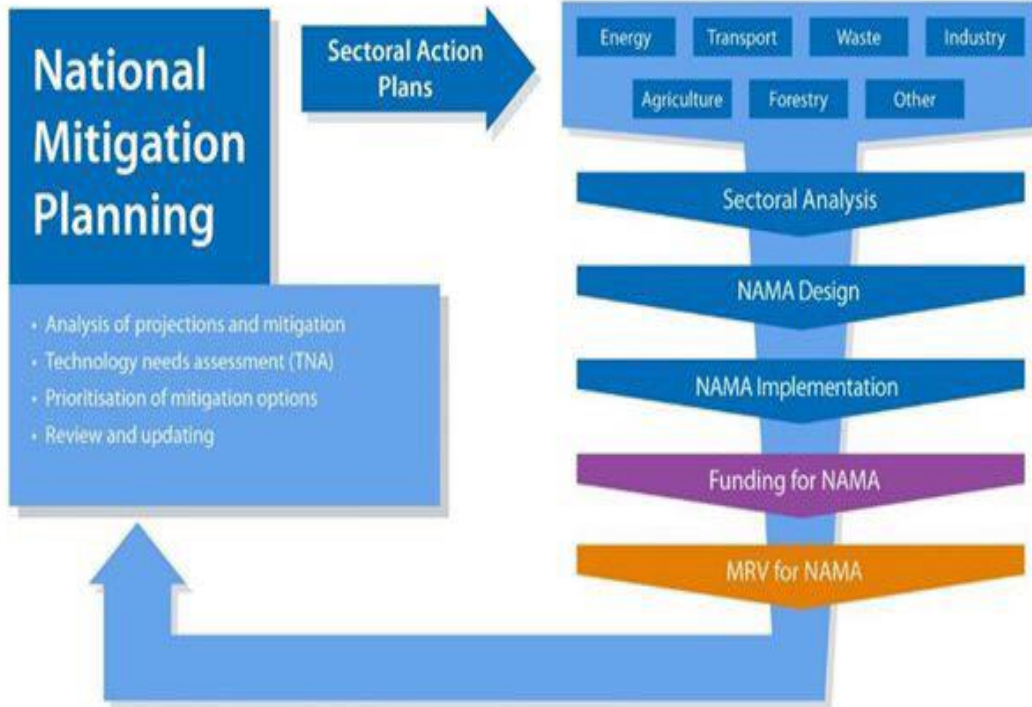


# Climate Change Mitigation

- The key for the solution to the climate change problem, according to the UNFCCC Secretariat, rests in decreasing the amount of emissions released into the atmosphere and in reducing the current concentration of carbon dioxide (CO<sub>2</sub>) by enhancing sinks (e.g. increasing the area of forests). These **efforts to reduce emissions and enhance sinks are referred to as “climate mitigation”**.
- According to UN Environment, mitigation can thus mean: “using new technologies and renewable energies, making older equipment more energy efficient, or changing management practices or consumer behaviour. It can be as complex as a plan for a new city, or as simple as improvements to a cook stove design.”
- Under the Paris Agreement, mitigation is the centre of the instrument’s goal to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. Each Member Party is required to put forward **successive and progressively more ambitious Nationally Determined Contributions (NDCs)**, representing its highest possible mitigation ambition.
- Key mitigation tools from Katowice / Glasgow Outcomes:
  - Guidance for the communication and tracking the progress of NDCs for the second round to be submitted by States on 2020, and every 5 years thereafter (e.g. 2020, 2025,2030), to ensure comparability platform across different NDCs.
  - Also address: i) mitigation co-benefits; ii) capacity-building support to help developing countries produce their NDCs; iii) a common timeframe for communicating NDCs; iv) negative impacts of response measures on certain countries and sectors; v) and modalities for the operation and use of a public NDC registry. (IISD, 2019)

# Enhancing climate mitigation ambition

## Long-term mitigation strategy



*c.f. Paris Agreement: Article 4 (Mitigation), 5 (Forests) and 6 (Mechanisms)*

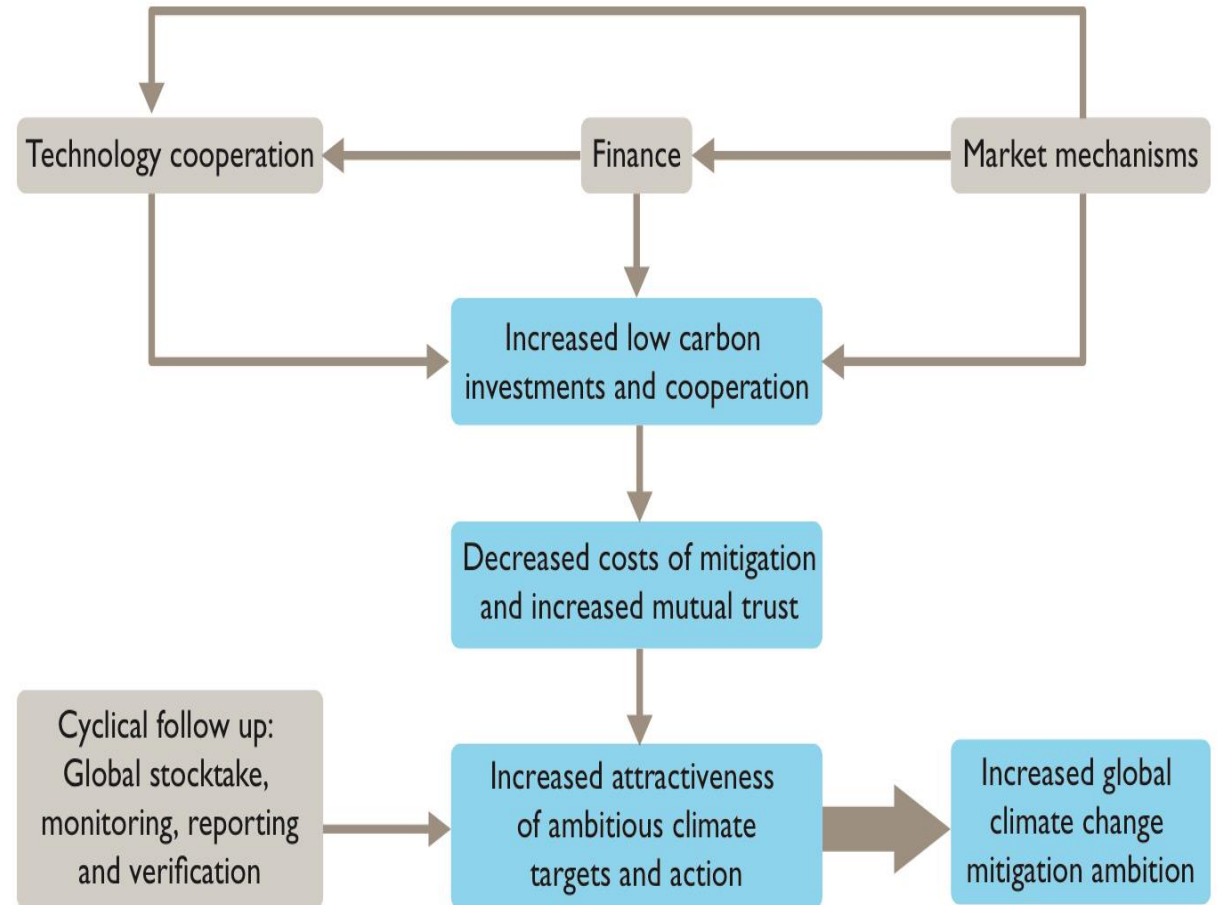
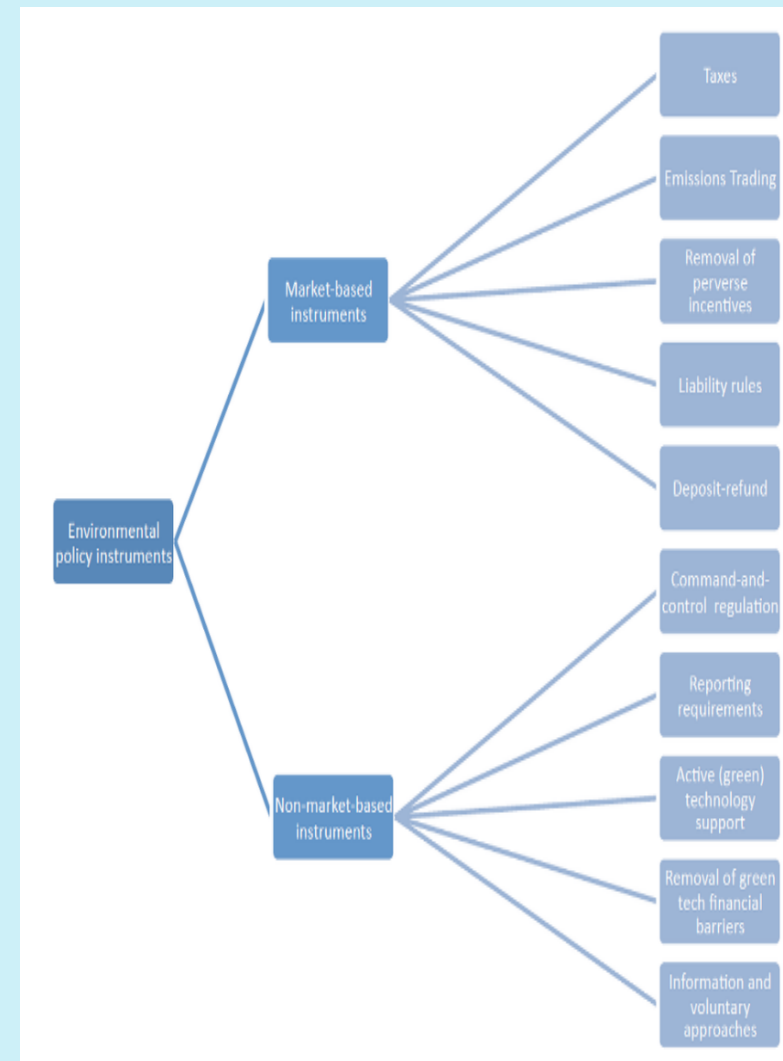


Figure A: Enhancing global climate change mitigation ambition in the Paris Agreement framework.

# MARKET / NON-Market MITIGATION

## Article 6

1. "Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity."
2. "Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement."
3. "The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties."
4. "A **mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development** is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim: (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development; (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party; (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and (d) To deliver an overall mitigation in global emissions."
5. "Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution."
6. "The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation."
7. "The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session."



Source: Ecologic Institute, 2013

**Table I.** Most important parts of the Paris Agreement for market mechanisms (UNFCCC 2015a).

Paris Agreement	Part in text	Issue	What does it state?
COP Decision	Par. 37	Double counting	Guidance to ensure that double counting is avoided for both anthropogenic emissions by sources and removals by sinks.
COP Decision	Par. 38	Sustainable Development Mechanism	Basis of the rules, modalities and procedures for the mechanism.
COP Decision	Par. 39	Sustainable Development Mechanism	Subsidiary Body for Scientific and Technological Advice should develop and recommend rules, modalities and procedures for the mechanism.
Agreement	Article 6, par. 1	Voluntary cooperation	Parties can pursue voluntary cooperation in the implementation of their nationally determined contributions. Parties shall apply robust accounting.
Agreement	Article 6, par. 2-3	Internationally transferred mitigation outcomes	Parties shall apply robust accounting and avoid double counting. The use of ITMOs shall be voluntary and authorized by participating Parties.
Agreement	Article 6, par. 4-7	Sustainable Development Mechanism	A new market mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is established.

Source: UNFCCC Secretariat (2015)

# Online Participant Questions

Select a Rapporteur & Timekeeper, then brainstorm:

1. List the top three (3) priorities for law and governance relating to climate mitigation in 2 countries that your group selects (from two regions).
2. List three (3) key elements of a domestic emission trading system that compatible with the Paris Agreement?

Timekeeper gives warnings to group at -15 mins, -5 mins, 0 mins (then zoom cuts off automatically).

Rapporteur types in the bullet point answers and emails them to [nps32@hughes.cam.ac.uk](mailto:nps32@hughes.cam.ac.uk), copying [Juliette.Mestre@mail.mcgill.ca](mailto:Juliette.Mestre@mail.mcgill.ca)



# THANK YOU

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# ANNEX

## History of Emission Trading



- Traditionally environmental law is modelled on police powers and thus its main regulatory approach was command and control (direct regulation).
- Permits for certain polluting activities and control by public authorities – determining the outcome through a fixed methodology.
- Good experience with certain forms of pollution, for example dangerous substances into the air or water.
- Much more challenging for a problem like Greenhouse Gases (GHGs) – control and appropriate command could become very costly.
- Market mechanisms were adopted to reduce cost of compliance for society – prime example: emission trading.
- SO<sub>2</sub> trading in the US (Clean Air Act) – worked well, few installations (power plants) and available alternatives.
- Other market mechanisms include carbon tax, green subsidies, like feed-in tariffs, liability regimes, labelling.
- The 1992 UNFCCC aims to achieve “stabilisation of greenhouse gas concentration in the atmosphere at the level that would prevent dangerous anthropogenic interference with the climate system” (Art.1).
- Initially against opposition from environmental NGOs state-to-state emission trading was included in the so-called Kyoto flexible mechanisms (Art. 6, 12 and 17 Kyoto Protocol (KP))
- Annex I countries under the KP have a reduction commitment which varies from country to country.
- Should help to reduce compliance costs for those Parties.
- Allows trading of Emission Reduction Units (ERUs) between states, combined with the Clean Development Mechanism (Certified Emission Reduction Units (CERs)) allows countries to comply with Kyoto even if they miss their overall reduction commitment.
- EU negotiated EU-Umbrella with an overall 8% reduction commitment (which allows some EU members to emit more, while others reduce more than 8% GHGs under 1990 levels.)

# Achievements of the Clean Development Mechanism

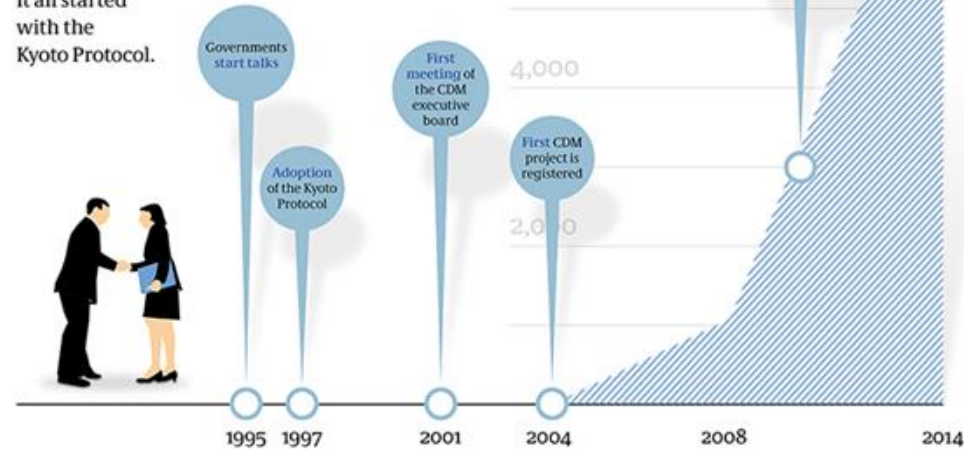
Building the largest carbon offset instrument in the world

Under the Clean Development Mechanism (CDM), developing-country projects that reduce emissions and contribute to sustainable development earn credits that can be sold to countries or companies with a commitment to reduce emissions.

## How did it start?

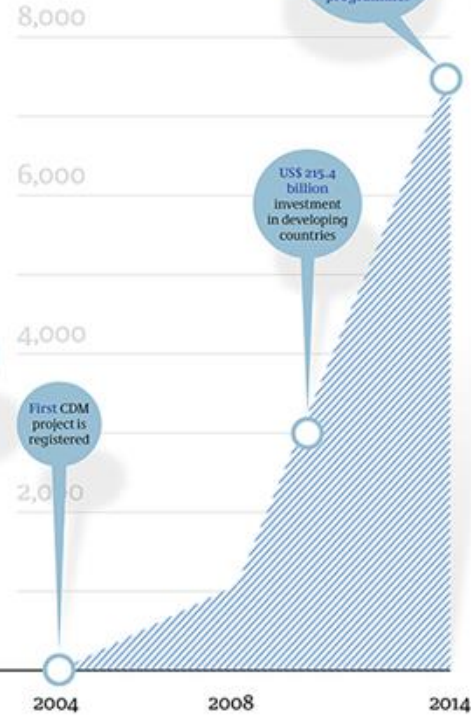
1

It all started with the Kyoto Protocol.



2

Since 2004. The number of projects and programmes has grown to almost 8000.

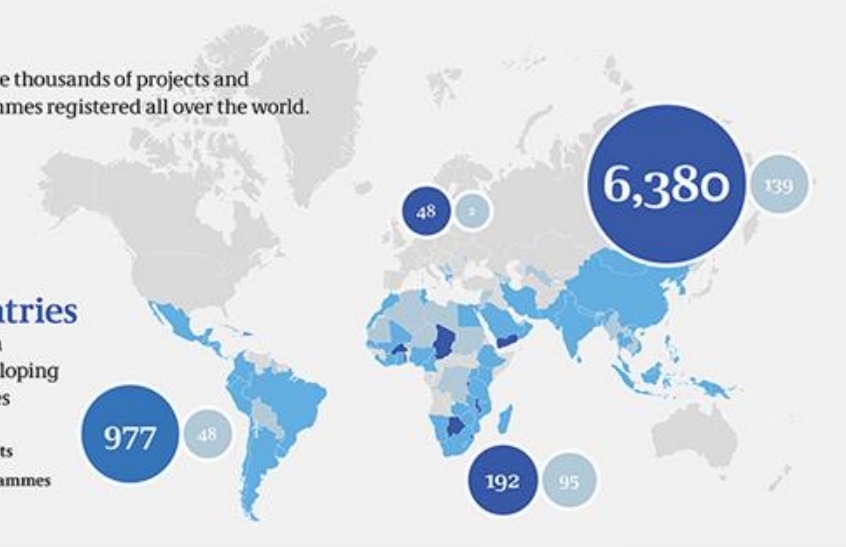


3

There are thousands of projects and programmes registered all over the world.

128 countries of which 105 developing countries

977 Projects  
139 Programmes  
192 Both



4

Ranging from clean cookstoves to large industrial projects.

CDM is facilitating technology transfer, income and employment generation, economic development and improvement of air quality in developing countries.

## Key facts

- US\$ 9.5–13.5 billion direct benefits to host countries from sale of CERs (as of 2012)
- More than 1.5 billion tonnes CO<sub>2</sub> avoided
- US\$ 3.5 billion saved by developed countries in compliance costs (as of 2012)
- The CDM has leveraged, and can continue to leverage, private investment 10 times the public funds allocated

## How does it work?

It starts with a project developer recognizing the potential to earn saleable credits

Project developer prepares a proposal for a project that reduces emissions

Host country Developing country grants its approval

Third-party certifier validates the information in the project proposal

CDM executive board registers the CDM project

Project developer monitors emission reductions

Third-party certifier verifies emission reductions

CDM executive board issues carbon credits

Project developer sells credits to industrialized countries or companies

# Legal Mitigation Practices

Three illustrative examples of successful legal mitigation practices contemplated in NDC's:

- The **1993 Forest Act in Nepal** created **17,000 autonomous community forest user groups**, with rights to manage (including exclusive rights to regulate harvesting) and control access to forests. **National forest cover has since increased by 20%** – one of the fastest rates of forest recovery in the world. (UNFCCC Global Climate Action 2018)
- **Belize passed the Petroleum Operations Act**, also called the Maritime Moratorium Act, in 2017. The act imposes an **indefinite moratorium on the exploration for and exploitation of petroleum and other petroleum operations in the maritime zone of Belize**. The act also makes provisions for protecting the Belize Barrier Reef System. (UNFCCC Global Climate Action 2018)
- The Japanese government set up a voluntary efforts programme for industry called the **Greenhouse Gas Emissions Accounting, Reporting and Disclosure Program**. Under the programme, emitters that exceed a given threshold of greenhouse gas emissions are required to **report their emission quantities to the Government annually**, which is disclosed to the public. Each industry sector in Japan voluntarily sets greenhouse gas emission reduction targets and develops action plans. Between 2013 and 2016, the industry sector reduced energy-oriented CO2 emissions by 10 per cent. (UNFCCC Global Climate Action 2018)

# Art 6 Voluntary Cooperation Through 'ITMOs'

- **Article 6** has the potential to stimulate a new round of legal innovation in cooperative approaches to mitigation that address some of the gaps and deficiencies common to market-based approaches to date.
- **Art. 6.2:** '...where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions ...' Parties shall:
  - promote sustainable development
  - ensure environmental integrity
  - ensure transparency, including in governance
  - apply robust accounting to ensure i.a. avoidance of double counting
- **Art. 6.3:** Authorization by Parties when used towards NDCs
- **COP Decision 1/CP.21:** 'Corresponding Adjustment'
- No consensus was reached in CoP24 in Katowice

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# CLIMATE LAW & GOVERNANCE ON ADAPTATION, LOSS & DAMAGE

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Maitre Ayman Cherkaoui, CISDL / Hassan II International Environmental Training Centre

M. Hafijul Islam Khan, Centre for Climate Justice Bangladesh

Climate Law and Governance Specialization Course  
Capacity-Building Course during UNFCCC 2022 COP 27



# LEARNING OBJECTIVES

- Build learners' understanding of the legal and policy regimes for adaptation and loss and damage.
- Provide opportunities for learners to share country experiences regarding laws on legal and policy approaches.
- Strengthen capacity of learners to analyze and provide briefings on legal and policy regimes on adaptation and loss and damage.

*With special thanks and recognition for the collaboration of key international organisations:*



# DEFINITIONS

## Adaptation

“In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects.”

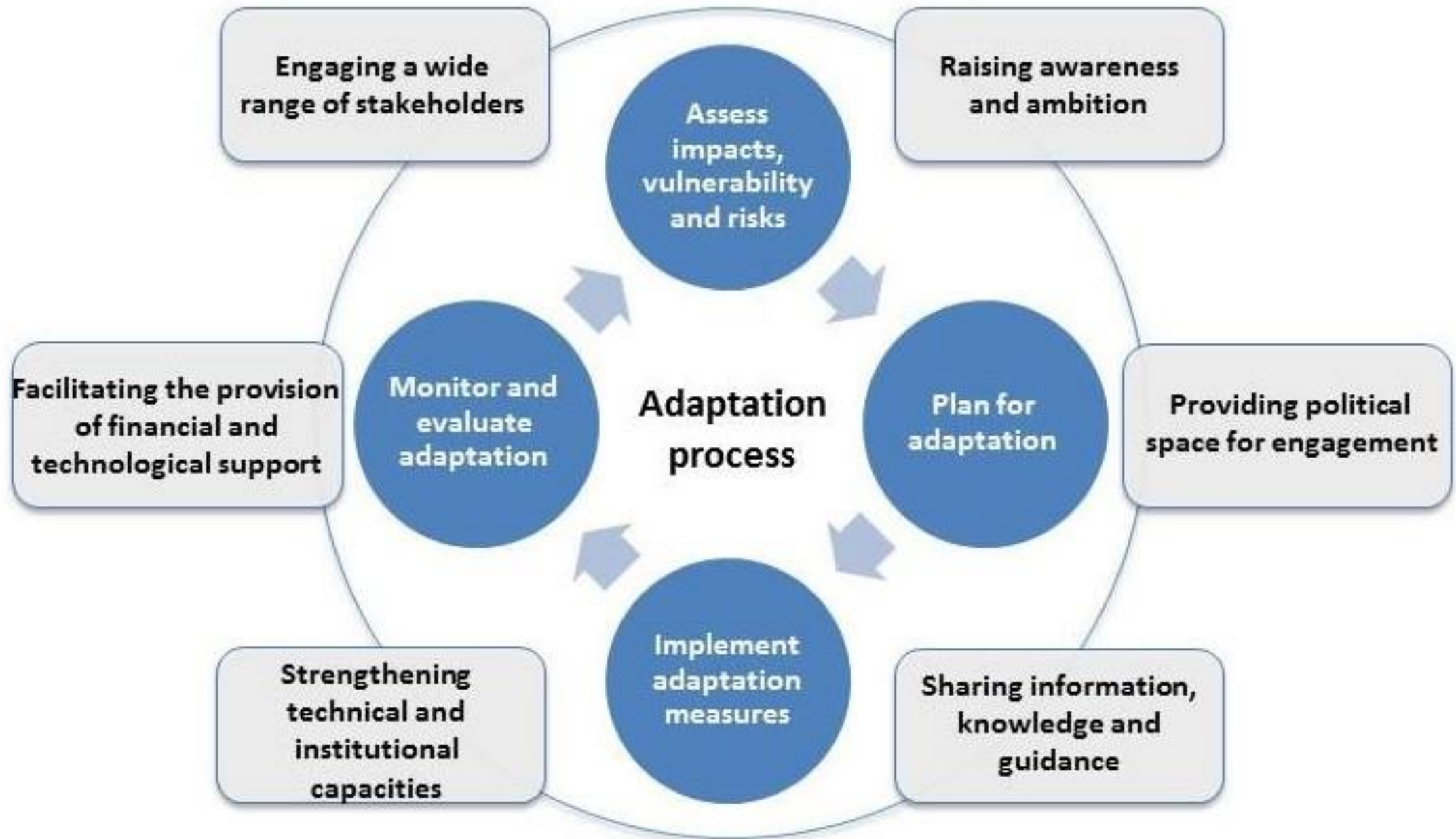
*In the Paris Agreement: Adaptation is referred to through more than 40 occurrences*

## Resilience

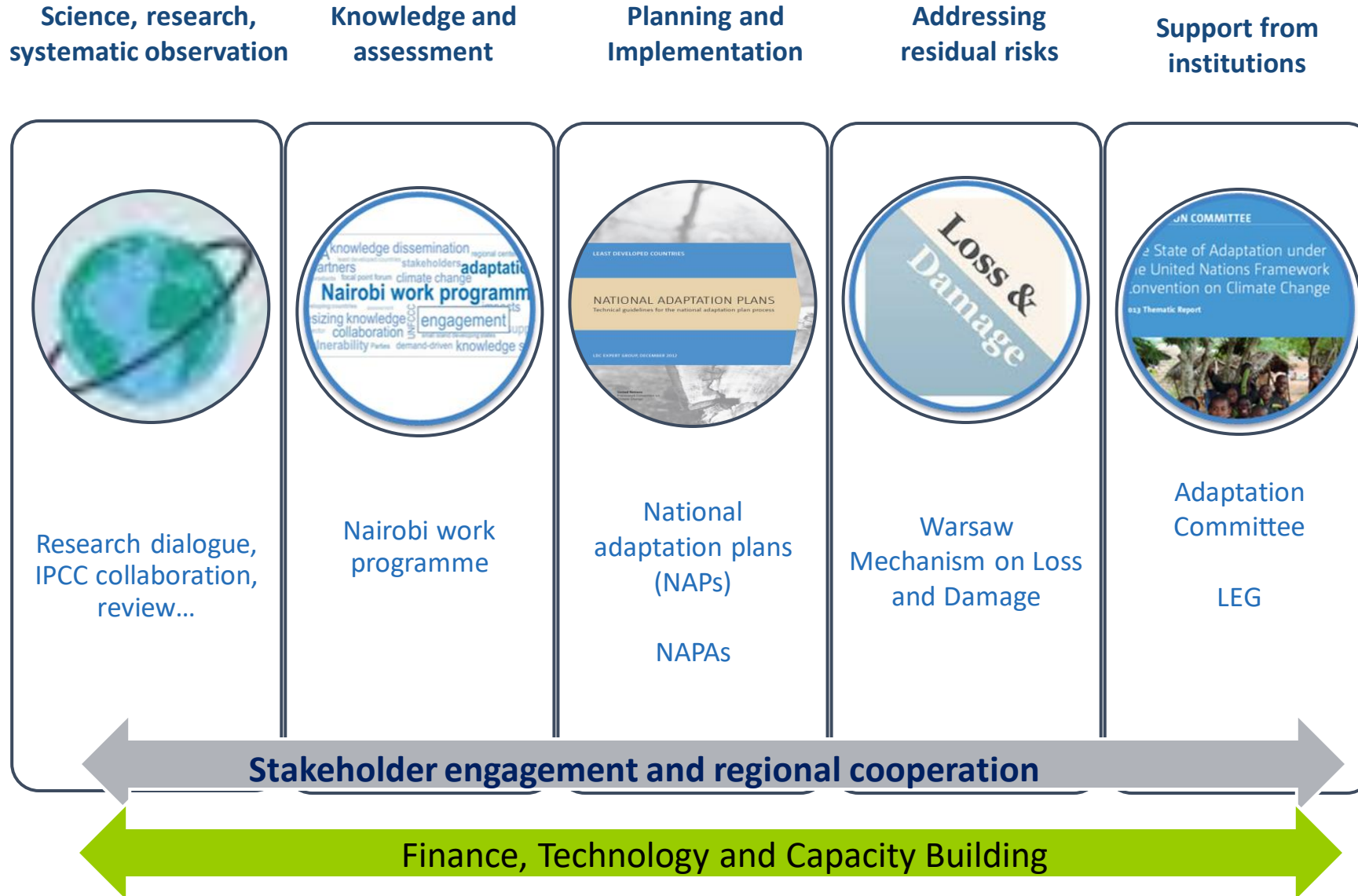
“The capacity of social, economic and environmental systems to cope with a hazardous event or trend or disturbance, responding or reorganizing in ways that maintain their essential function, identity and structure while also maintaining the capacity for adaptation, learning and transformation.”

*In the Paris Agreement: Resilience is mentioned in articles 2, 7.1 and 7.9, 8.4, 10*

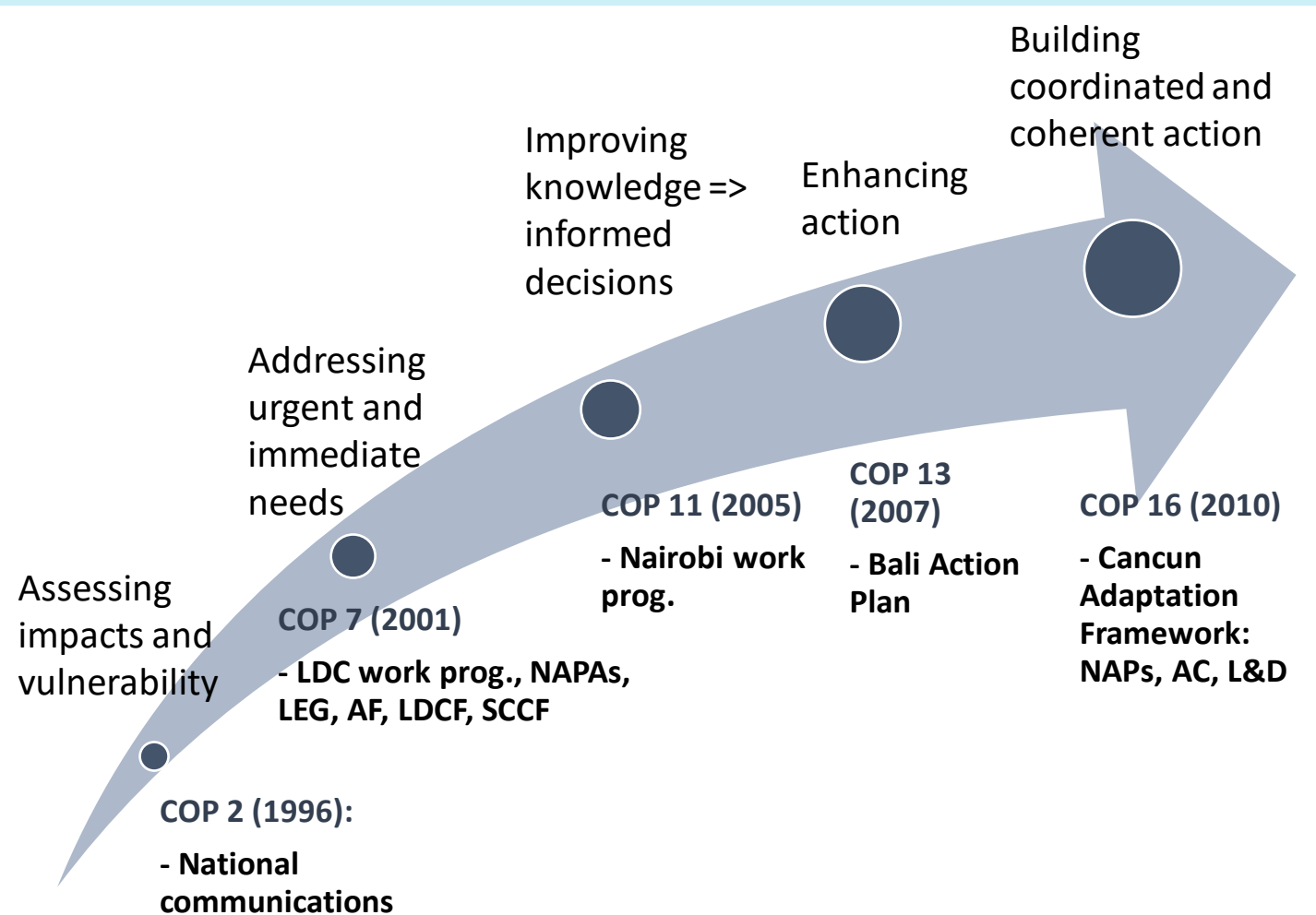
IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)].



# UNFCCC: Adaptation Landscape



# History of adaptation in the UNFCCC



## COP 21 (2015) - Paris Agreement:

- Global goal and link to temperature goal
- NDC adaptation components
- Adaptation communications
- Transparency and global Stocktake
- NAP financing
- Loss and damage

## COP 22 (2016)

- Adaptation Fund and Paris Agreement: may → should
- Workplan NWP for 2017-2019
- GCF Financing of up to USD 3 million for the formulation of National Adaptation Plans (NAPs) and/or other adaptation planning processes

## COP23 (2017)

- Adaptation Fund and Paris Agreement: should → shall subject to

## COP24 (2018) - The Katowice Outcomes:

- Adaptation Fund and Paris Agreement: should → shall
- Public adaptation registry
- Adaptation Committee will work with IPCC drafting guidance on communicating information on adaptation
- Koroniva joint work on agriculture
- Adaptation Communications

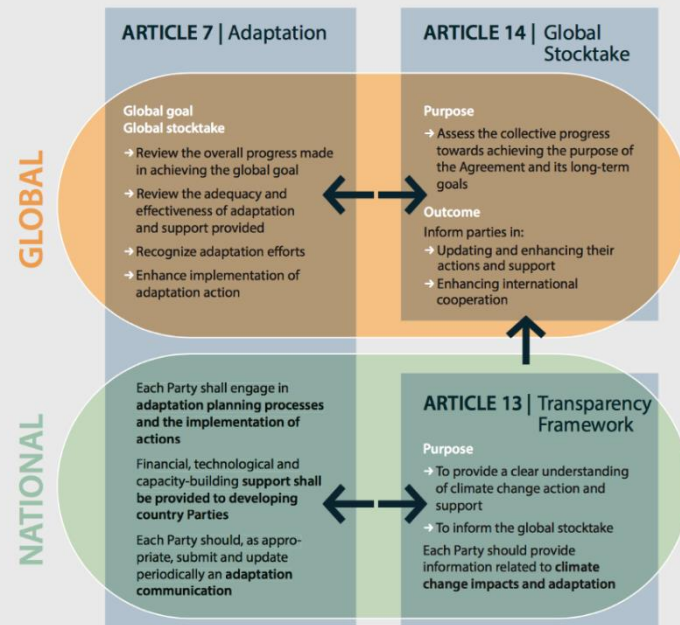
## COP 25 (2019)

- Chile Madrid Time for Action

# Adaptation Under the Paris Agreement

## Article 2:

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.



## Decision 1/CP21:

- Enhanced Action prior to 2020:
  - “significantly increasing adaptation finance from current levels “ (para115).
  - “Launch, in the period 2016-2020, a technical examination process on adaptation” (Article 125). The Technical Examination Process will “endeavour to identify concrete opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions” (Article 126) and will benefit from the lessons learned from the TEP-M (Article 129). This process is a collaboration between the Adaptation Committee (Cancun) and SBI/SBSTA (Article 127). Non-party stakeholders are encouraged to increase their engagement in this process (para 120).
  - Synergies with existing process within UNFCCC (para 131).
- “Recognizes the social, economic and environmental value of voluntary mitigation actions and their co-benefits for adaptation” (Para 109).
- Throughout the text, a conscious effort is made to link both mitigation and adaptation (18 occurrences of mitigation and adaptation together).
- In this context, notes the adaptation needs expressed by many developing country Parties in their intended nationally determined contributions (para 18).

## Article 7

- Establishes “the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2. ” (7.1).
- Enshrines the co-benefits between mitigation and adaptation (7.4).
- Includes gender-responsiveness, traditional knowledge, knowledge of indigenous people, ecosystems (7.5).
- Calls for specific support (7.13).
- International Cooperation (7.6) and local/subnational elements (7.2).
- UN Specialized Organizations and Agencies (7.8).
- Strengthens the Cancun Adaptation Framework, after Durban, (7.7).
- Recognizes adaptation efforts of developing countries (7.3).
- Provides for National Adaptation Planning Processes (7.9) and adaptation communications (7.10 7.11 and 7.12).

# A few elements Pertaining to Adaptation under the Katowice rulebook

## Decision 9/CMA.1 – NDCs and Communication

- The purpose of adaptation communication is to – [1]
  - a) “Increase the visibility and profile of adaptation and its balance with mitigation”;
  - b) “Strengthen adaptation action and support for developing countries”;
  - c) “Provide input to the global stocktake”;
  - d) “Enhance learning and understanding of adaptation needs and actions;”
- Adaptation is “country-driven”, “flexible” and “should not pose an additional burden to developing countries” - [2a]
- “Urges developed country Parties and invites other Parties that provide resources on a voluntary basis, United Nations organizations, specialized agencies and other relevant organizations as well as bilateral and multilateral agencies to continue to mobilize support for adaptation activities in developing country Parties;” – [19]
- Invites the Global Environment Facility, in line with its existing mandate, to consider channelling support to developing country Parties for the preparation and submission of their adaptation communications, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, of the Paris Agreement, and/or a national communication; [20]

## Decision 13/CMA.1 – Adaptation Fund

- “Adaptation Fund will continue to be financed by the activities under Articles 6, 12 and 17 of the Kyoto Protocol” – [2]
- It will also be financed by the mechanism established under Article 6, paragraph 4 of the Paris Agreement – [5]
- Parties from developed and developing countries are eligible for membership on the Adaptation Fund Board – [4]

# A few elements regarding the Glasgow Climate Pact & Adaptation

## Glasgow Climate Pact

- 9. Urges Parties to further integrate adaptation into local, national and regional planning;
- 11. Recognizes the importance of the global goal on adaptation for the effective implementation of the Paris Agreement and welcomes the launch of the comprehensive two-year Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation;
- 12. Notes that the implementation of the Glasgow–Sharm el-Sheikh work programme will start immediately after the third session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;
- 14. Notes with concern that the current provision of climate finance for adaptation remains insufficient to respond to worsening climate change impacts in developing country Parties;
- 15. Urges developed country Parties to urgently and significantly scale up their provision of climate finance, technology transfer and capacity-building for adaptation so as to respond to the needs of developing country Parties as part of a global effort, including for the formulation and implementation of national adaptation plans and adaptation communications;
- 18. Urges developed country Parties to at least double their collective provision of climate finance for adaptation to developing country Parties from 2019 levels by 2025, in the context of achieving a balance between mitigation and adaptation in the provision of scaled-up financial resources, recalling Article 9, paragraph 4, of the Paris Agreement;

### Decision 3/CMA 3 Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement

*Chapter 7 of the Annex, art 67:*

The share of proceeds to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation shall be comprised of:

(a) A levy of 5 per cent of A6.4ERs at issuance;

(b) A monetary contribution related to the scale of the Article 6, paragraph 4, activity or to the number of A6.4ERs issued, to be set by the Supervisory Body;

(c) After the mechanism becomes self-financing, a periodic contribution from the remaining funds received from administrative expenses as per paragraph 68 below, after setting aside the operating costs for the mechanism and an operating reserve, at a level and frequency to be determined by the CMA

*Article 7:*

Further requests the Subsidiary Body for Scientific and Technological Advice to develop, on the basis of the rules, modalities and procedures contained in the annex, recommendations, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fourth session:

(f) The processes necessary for implementation of the share of proceeds to cover administrative expenses and the share of proceeds to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation in accordance with chapter VII of the annex (Levy of share of proceeds for adaptation and administrative expenses)

# History of Loss & Damage in the UNFCCC

## MILESTONES ON LOSS AND DAMAGE

The work on loss and damage under the UNFCCC has undergone several stages of development since its initial scoping in 2007.



## Article 8

*Article 8 1.* “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.”

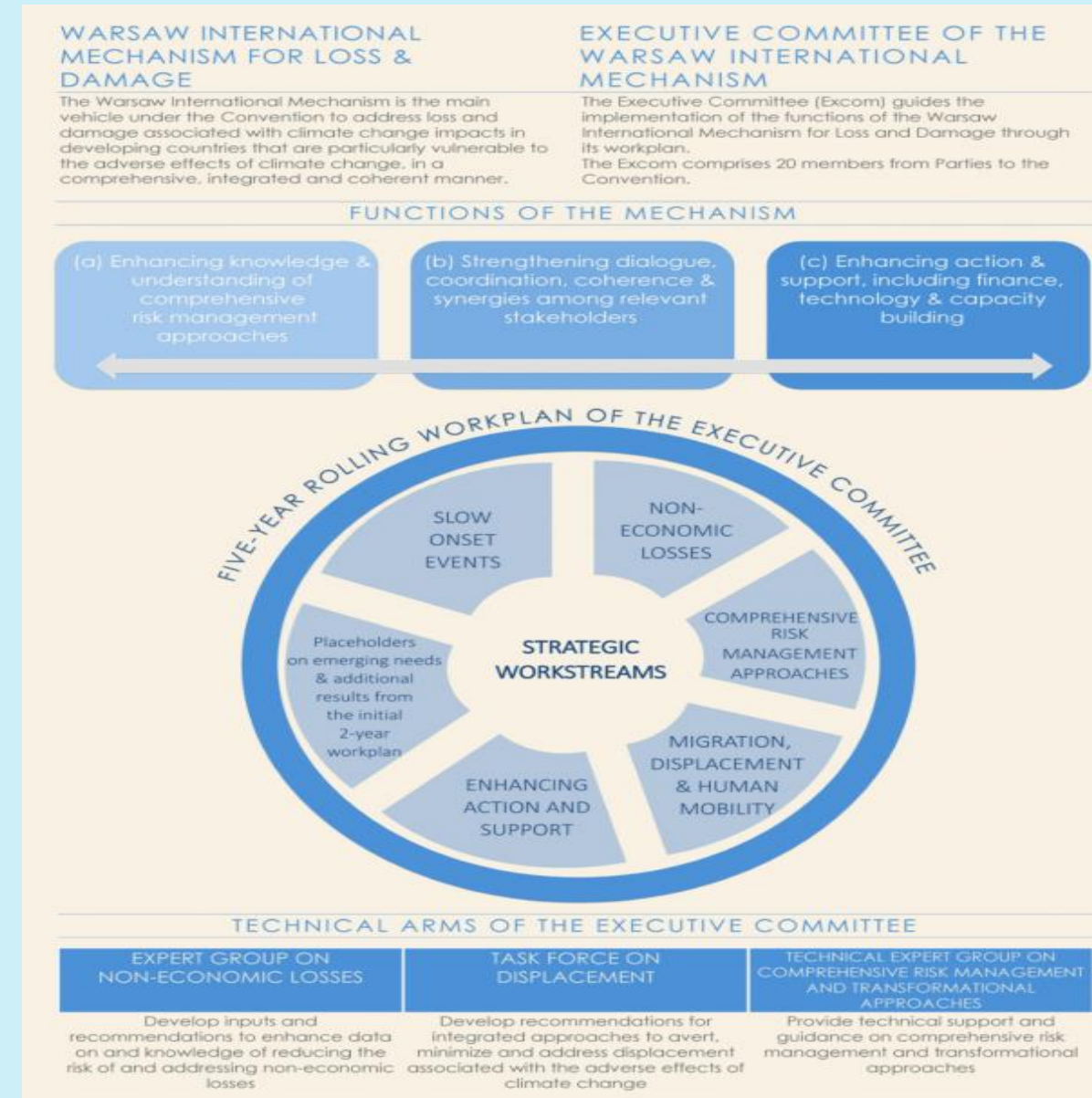
2. “The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.”

3. “Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.”

4. “Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:

- (a) Early warning systems;
- (b) Emergency preparedness;
- (c) Slow onset events;
- (d) Events that may involve irreversible and permanent loss and damage;
- (e) Comprehensive risk assessment and management;
- (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
- (g) Non-economic losses; and
- (h) Resilience of communities, livelihoods and ecosystems.”

5. “The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.”



CLIMATE LAW AND GOVERNANCE INITIATIVE



# Climate Law and Governance Specialization Course 2022

*With all appreciation for the endorsement of the UNFCCC CoP22, 23, 24, 25, 26 and 27  
Presidencies*



*With special thanks to experts leading international organisations for their guidance and  
support:*



# Online Participant Questions

Select a Rapporteur & Timekeeper, then Brainstorm:

1. List three (3) adaptation actions at country level that require law?
2. Recommend a framework for loss and damage in one country selected by the group:
  - a) List the country's three (3) most urgent challenges on adaptation, loss and damage?
  - b) List two (2) sectors or existing institutions that should be involved in governing this?

Timekeeper gives warnings to group at -15 mins, -5 mins, 0 mins (then zoom cuts off automatically).

Rapporteur types in the bullet point answers and emails them to [nps32@hughes.cam.ac.uk](mailto:nps32@hughes.cam.ac.uk), copying [Juliette.Mestre@mail.mcgill.ca](mailto:Juliette.Mestre@mail.mcgill.ca)



# THANK YOU

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# ANNEX

## Nature of Loss and damage

**Loss and damage:** The impacts and vulnerabilities that people cannot cope with or adapt to..(Warner, 2013)

**Loss and damage:** Loss and damage associated with adverse impacts of climate change includes, in some cases involves more than, that which cannot be reduced by adaptation [UNFCCC Decision, 2/CP 19]

**Loss:** : Climate impacts and Vulnerabilities- irrecoverable-loss of human life, species, habitats etc.

**Damage:** Climate impacts and Vulnerabilities- repairable-damage to infrastructures

So, loss and damage in nature can be permanent and temporary, while damage can be recovered with corrective measures and loss needs to be addressed with remedial measures

**Economic Loss and damage:** Losses those can be quantified/measured in terms of monetary value, includes loss of assets, loss of livestock's etc.

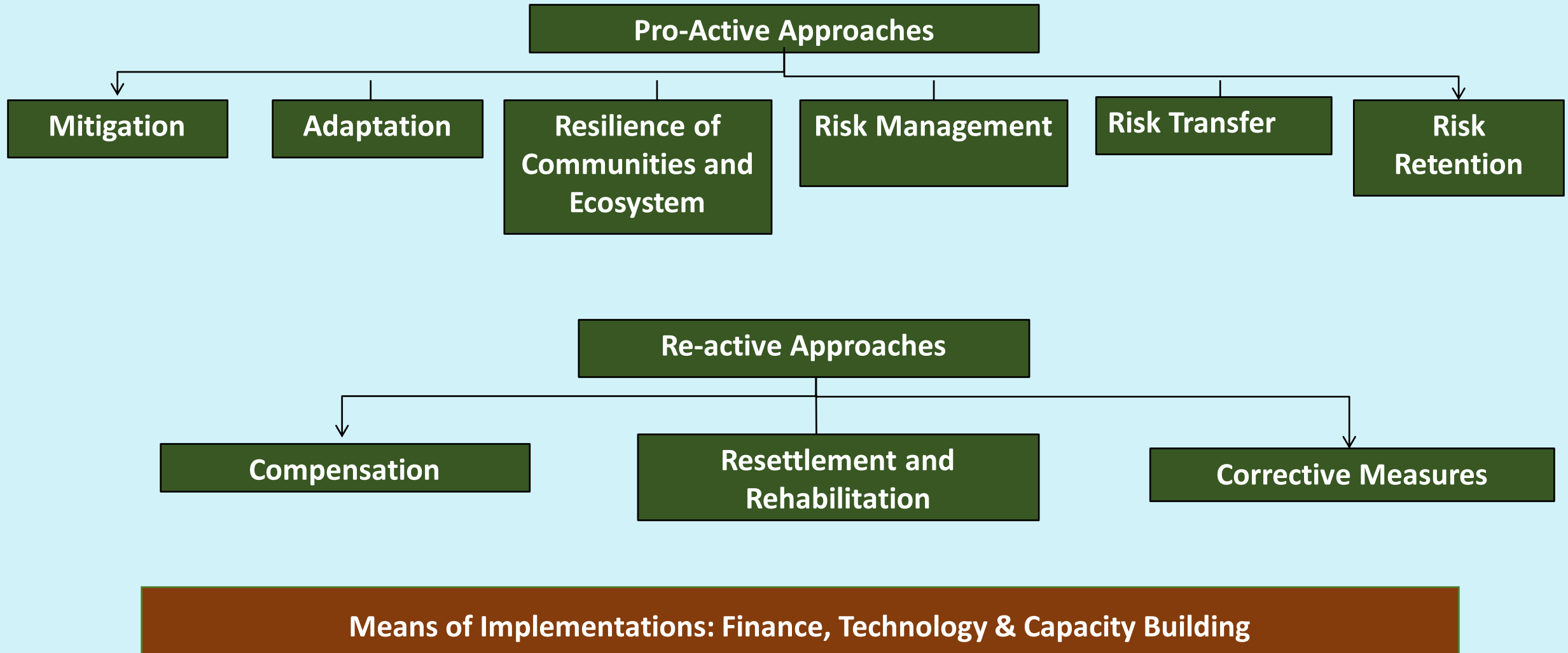
**Non-economic Loss and damage:** Losses those cannot be quantified/measured in terms of monetary value, includes loss of culture, values, territory etc

**Avoided loss and damage:** The impacts of climate change that are avoided by mitigation and adaptation.

**Unavoided loss and damage** could have been avoided, but have not been avoided because of inadequate mitigation and adaptation efforts.

**Unavoidable loss and damage:** loss and damage that is unavoidable no matter how ambitious mitigation and adaptation efforts are taken.

# POLICY APPROACHES TO ADDRESS LOSS AND DAMAGE



# CLIMATE LAW & GOVERNANCE ON FINANCE, COMPLIANCE & TRANSPARENCY

Wendy Miles KC, Essex Court Chambers

Climate Law and Governance Specialization Course  
Capacity-Building Course during UNFCCC 2022 COP 27



# LEARNING OBJECTIVES

- Learn the key aspects of climate finance in the Paris Agreement.
- Gain insights into the Paris Agreement transparency provisions and their implications.
- Gain understanding of the structure, functions and objectives of the Paris Agreement Compliance Committee.

*With special thanks and recognition for the collaboration of key international organisations:*



# Climate Finance Bifurcated Obligation (Art 9)

## Article 9

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
2. Other Parties are encouraged to provide or continue to provide such support voluntarily.
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.

4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.

5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.

6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.

7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.

8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.

9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

# Climate Finance Bifurcated Obligation (Art 9) – key points

- Rulebook for Articles 9.5 and 9.7 finalised at COP24 in 2018.
- Distinction between developed and developing countries' obligations:
  - Developed countries **shall** communicate relevant information.
  - Developing countries **should** communicate relevant information.
- Developing countries are further encouraged to communicate their finance needs.
- Climate finance can be in the form of loans, grants or other financial instruments. Parties only encouraged to report grant-equivalent value “on a voluntary basis”.
  - Note disagreements about which types of instruments should count towards climate finance goals.

# Climate Finance Bifurcated Obligation (Art 9) – key points (continued)

- COP26 decision text “notes with deep regret” the failure to meet the \$100bn global climate finance target by 2020. Urges parties to meet this target by 2025.
- Article 9.4 (balance between mitigation and adaptation finance) – particular struggle to meet adaptation finance goals.
  - Glasgow-Sharm el-Sheikh work programme on adaptation aims to address this.
- Decision 4/CP.26 continued discussions on ‘long-term climate finance’, decided that they are to be concluded by 2027.



# Enhanced Transparency Framework in Paris Agreement (PA)

**Article 13.1** : *"In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established."*

*COP Serving as MoP to the PA at its first session to adopt modalities, procedures and guidelines*

## **Purpose and linkages** (Art 13.5 and 13.6)

- ✓ To provide clear understanding of climate action
- ✓ Tracking of progress on NDCs under Art.4 and adaptation under Art 7
- ✓ Inform global stocktake under Art14
- ✓ Support provided and received in the context of climate actions

## **Modalities and guidelines**

- ✓ Facilitative, non-intrusive, non-punitive, respectful of national sovereignty and avoid placing undue burden on Parties (Art. 13.3)
- ✓ Build on existing experience from NATCOMS, BRs, BURS, IARs, ICAs (Art. 13.4)
- ✓ To be developed through first COP/MOP of PA

## **Flexibility** (Art 13.2)

- ✓ Shall provide flexibility in the implementation of the provisions.... In light of their capacities
- ✓ Modalities to reflect such flexibility
- ✓ Review process to give attention to respective national capabilities and circumstances
- ✓ Review process to provide assistance in identifying capacity building needs

## Article 13 of the Paris Agreement: transparency of action and support

### Reporting

#### All Parties (shall)

- National greenhouse gas (GHG) inventory report [{Article 13.7\(a\)}](#)
- Progress made in implementing and achieving nationally determined contribution (NDC) [{Article 13.7\(b\)}](#)

+

#### Developed country Parties (shall) and other Parties that provided support (should)

Financial, technology transfer and capacity-building support provided to developing country Parties under Article 9, 10 and 11 [{Article 13.9}](#)

#### All Parties (should, as appropriate)

- Climate change impacts and adaptation [{Article 13.8}](#)

#### Developing country Parties (should)

Financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11 [{Article 13.10}](#)

### Technical expert review

#### All Parties (shall)

- Undergo technical expert review of information submitted under Articles 13.7 [{Article 13.11}](#)

+

#### Developed country Parties (shall)

- Undergo technical expert review of information submitted under Articles 13.9 [{Article 13.11}](#)

### Multilateral facilitative consideration

#### All Parties (shall)

- Multilateral facilitative consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its NDCs [{Article 13.11}](#)

\* The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities [{Article 13.2}](#);

\* The transparency framework shall recognize the special circumstances of the least developed countries and small island developing States [{Article 13.3}](#).

# Further decisions on transparency

- At COP24, Parties agreed on transparency ‘modalities, procedures and guidelines’ (MPGs).
  - Parties to submit their first biennial transparency reports and national inventory reports by 2024. This is discretionary for LDCs and SIDS.
- Key issues at COP26 centred on the design of countries’ reporting tables.
  - Final rulebook ended up giving countries a degree of flexibility as to how tables are designed.
  - Countries can make certain tables collapsible or expandable, but ultimately all parties must include the same tables and information.
  - “Interested” parties may provide information about loss and damage.

# Global Stocktake (Art 14)

- Objective: assess collective progress towards peaking global emissions and the 1.5 ° C / 2 ° C targets, as well as increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development.
- Multilateral evaluation:
  - Reduction of GHG emissions
  - Adequacy and effectiveness of adaptation
  - Support provided to developing countries
- Every 5 years starting in 2023.

# 1. Scope and Function of the Art. 15 Committee

- Facilitate implementation of and promote compliance with the provisions of the Paris Agreement (Art. 15.1)
- Facilitative in nature, transparent, non-adversarial, **non-punitive** (Art. 15.2), Avoid duplication of effort, shall not function as enforcement or dispute settlement mechanism, **not impose sanctions or penalties**, shall respect national sovereignty ( Art. 15 Decision, Annex para 4)
- Three modes of initiation:
  1. Self-referral by a party on all provisions of the PA (20/CMA.1, para 20)
  2. “Automatic” initiation of the committee by a violation of obligations and based on the information listed in para 22(a)
  3. Discretionary initiation, with consent of Party, in cases of *significant and persistent inconsistencies* of the information submitted under art. 13.7 and 13.9 with MPGs, based on recommendations in TERR (para 22(b))

## 22. The Committee

- (a) Will initiate the consideration of issues in cases where a Party has not:
  - (i) Communicated or maintained a nationally determined contribution under Article 4 of the Paris Agreement, based on the most up-to-date status of communication in the public registry referred to in Article 4, paragraph 12, of the Paris Agreement;
  - (ii) Submitted a mandatory report or communication of information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the Paris Agreement;
  - (iii) Participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat;
  - (iv) Submitted a mandatory communication of information under Article 9, paragraph 5, of the Paris Agreement;

## ii. What Can the committee do?

Shall take appropriate measures, which may include:

1. Engaging in a dialogue with the Party to share info, identify challenges and recommend solutions (para 30 a)
  2. Assist the Party in engaging with support arrangements and make recommendations to the Party (and communicate those to the support arrangements) (para 30 b and c)
  3. Recommend development of an action plan (30 d)
  4. Issue findings of fact in relation to matters listed in para 22 a (para 30 e)
- Plus: *systemic function*: Identify issues of systemic nature faced by a number of Parties (not individually!) and bring such issues, and as appropriate, recommendations to the attention of the CMA

# A Party participates in cooperative approaches (Art. 6.2)

Structured summary contains “shall” information according to Decision 18/CMA.1, para 77(d)

**No**

- 20/CMA.1, para **22(a)(ii)**: “not submitted a mandatory report or communication of information under art. 13.7”
- Automatic Art. 15 Committee initiation
- Does not address the content! (para 23)
- **Measures: Dec. 20/CMA.1, para 30 a-e**

**Yes**

- Reviewed by Art. 6 and/or Art. 13 TERT
- If “significant and persistent inconsistencies” pointed out in TER Report recommendations
- Art. 15 Committee initiation 20/CMA.1, para **22(b)**
- Here: discretion of committee and consent of party
- **Measures: Dec. 20/CMA.1, para 30 a-d (4-6 years’ lag)**

# Online Participant Questions

Select a Rapporteur & Timekeeper, then Brainstorm:

1. List three (3) important considerations when designing a strategy for the transparent reporting of Nationally Determined Contributions?
2. List two (2) financial mechanisms available to fund the State's transition to a low-carbon and climate-resilient economy?

Timekeeper gives warnings to group at -15 mins, -5 mins, 0 mins (then zoom cuts off automatically).

Rapporteur types in the bullet point answers and emails them to [nps32@hughes.cam.ac.uk](mailto:nps32@hughes.cam.ac.uk), copying [Juliette.Mestre@mail.mcgill.ca](mailto:Juliette.Mestre@mail.mcgill.ca)



**THANK YOU**

Wendy Miles KC, Twenty Essex Chambers

# ANNEX

## Mechanisms of Paris Agreement Implementation

- Paris Agreement Implementation Mechanisms include:
  - Nationally determined contributions (**Article 3 -4**)
  - Transparency Frameworks for Action and Support (**Article 13**)
  - Global Stocktake (**Article 14**)
  - Implementation and Compliance Mechanism (**Article 15**)
  - International cooperation, information sharing, encouragement, and support

# Capacity Building Initiative for Transparency (CBIT)

- Established under Paris Agreement **Article 13**
- Measuring and reporting requires extensive skills and knowledge
- “The goal of the CBIT is to strengthen the institutional and technical capacities of developing countries to meet the enhanced transparency requirements of the Paris Agreement.”
- Provides “tools, training , and assistance” to developing countries
- Coordinated by the Global Environment Facility (GEF)

# Transparency - Climate Finance

## ➤ Ex ante finance (Art 9.5)

- Bifurcated Obligation: Developed country Parties **shall** biennially communicate indicative **quantitative and qualitative** information ... including, **as available**, projected levels of public financial resources to be provided to developing country Parties.

## ➤ Finance provided (Art 9.7)

- Bifurcated obligation: Developed country Parties **shall** provide transparent and consistent information on support for developing country Parties **provided and mobilized** through public interventions biennially
- Modalities, procedures and guidelines as stipulated in Article 13.



# Please join the CLGD Registry

**CLIMATE PLEDGE REGISTRY** 



**REGISTER NOW!**

The Registry stems from the Pledge in Glasgow to increase climate law and governance capacity and community worldwide tenfold from 600 to 6,000 legal specialists by 2024, engaging qualified leaders in every legal system and converting ambition to obligation worldwide.



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Are you a climate law and governance specialist?

Have you signed up to the Climate Pledge Registry?

More information: <https://www.climatelawgovernance.org/registry/>

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