

Accountability in the Paris Agreement: The Interplay between Transparency and Compliance

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Abstract

Following the adoption and entry into force of the Paris Agreement, the “Climate Package”¹, adopted in Katowice in December 2018, is generally regarded as the “Rulebook” for the implementation

of the Paris Agreement.² The negotiations of the Agreement and the “Rulebook” were conducted on a theme-by-theme basis. However, the Paris Agreement can only be implemented as one holistic instrument. This article aims at identifying the inter-linkages of different parts of the package, especially between the procedural arrangements for enhancing transparency and for promoting compliance. Both aspects together establish the basis for Parties’ accountability for their performance under the Paris Agreement. In this article, the authors start with the elaboration of accountability in the context of the Paris Agreement, followed by an in-depth analysis of the two accountability procedures; namely the enhanced transparency framework (ETF) and the modalities for the committee to facilitate implementation and promote compliance (“Article 15 Committee”). The authors find that both procedures together function as an “accountability continuum”. In the end, they highlight some unresolved issues which could lead to uncertainties in implementation. They also provide suggestions for further academic research as well as for policy making.

Keywords: *Paris Agreement, accountability, transparency, reporting, review, compliance, governance*

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¹ Katowice climate package. <https://unfccc.int/process-and-meetings/the-paris-agreement/paris-agreement-work-programme/katowice-climate-package>. The Climate Package is a series of decisions adopted by the conference of the Parties of the UNFCCC, Kyoto Protocol, and the Paris Agreement.

² Liu Zhenmin and Patricia Espinosa, *Tackling climate change to accelerate sustainable development*, *Nature Climate Change*, 9: 494-496 (24 June 2019); Charlotte Streck, Moritz von Unger and Nicole Krämer; *From Paris to Katowice: COP-24 Tackles the Paris Rulebook*, *Journal for European Environmental & Planning Law*, 16(2): 165-190 (2019).

1. Transparency and Accountability: Clarifying Terms

a) What is Accountability?

“Accountability” is a many-faceted term. In the context of governance, it generally means answerability for actions.³ Grant and Keohane define accountability as the power or right to be held to a set of standards.⁴ Keohane further suggests three components of accountability: standards, information, and sanctions.⁵ Some consider accountability as a tool to constrain power by “the linkage of two components: the ability to know what an actor is doing and the ability to make that actor do something else”.⁶ It is also more generally accepted as a means to accept responsibility for actions, disclose them and to increase accessibility to and transparency of information about them.

In the context of the Paris Agreement, the authors adopt the wider understanding of accountability as responsibility for actions and accessibility to and transparency of information about those actions. The Paris Agreement established a system where Parties are left with significant discretion in defining their mitigation and adaptation efforts to climate change. On the one hand, it encourages the wide participation of Parties, while it on the other hand seeks to match global goals listed in Article 2, paragraph 1 (a–c), with the aggregate efforts of Parties. In order to facilitate each Party to prepare and implement its Nationally Determined Contribution (NDC)

at the highest possible ambition, and in order to meet the global goals, it is crucial to hold each Party accountable for its performance of its obligations under the Paris Agreement. In this context, it could be argued that the inclusion of sanctions and other punitive measures and of an enforcement mechanism would have held stronger accountability elements.⁷ However, for political reasons this was not possible. Instead, Parties agreed that the Agreement will be implemented in a facilitative, non-adversarial, non-punitive manner and in an atmosphere of mutual trust.

The authors therefore define “accountability” in the context of the Paris Agreement as holding Parties accountable for their performance in light of the nature and content of relevant provisions of the Agreement and in relation to the mechanisms and procedures established under the Agreement. The Paris Agreement sets up several elements for Parties’ individual “accountability” in such wider sense which, when seen together, can be considered an “accountability continuum”: the continuum of each Party’s interconnected individual obligations, where one follows from the other. In concrete terms, this can be described in the following way: From the obligation to submit an NDC and to provide information necessary for clarity, transparency and understanding of that NDC⁸, flows the obligation to report on the progress in implementing and achieving this NDC through the enhanced framework for transparency of action and support⁹, including a technical expert review and participation at the facilitative, multilateral consideration of progress, and, finally, the engagement with the mechanism to promote compliance and facilitate implementation of the pro-

³ See Richard Mulgan, «Accountability»: An ever-expanding concept?, 78 *Public Administration* 4, 555-573 (2000).

⁴ Ruth Grant and Robert Keohane, Accountability and Abuses of Power in World Politics, *The American Political Science Review*, 99(1): 29-43 (2005).

⁵ Robert Keohane, Abuse of Power: Assessing Accountability in World Politics, *Harvard International Review*, 27(2): 48-53 (2005).

⁶ Thomas Hale, Transparency, accountability, and global governance, *Global Governance* 14: 73-94 (2008).

⁷ Daniel Bodansky, *The Art and Craft of International Environmental Law*, Harvard University Press (2010).

⁸ Article 4, paragraph 8, Paris Agreement; and Decision 4/CMA.1.

⁹ Article 13 Paris Agreement; and Decision 18/CMA.1.

visions of the Paris Agreement in cases where a Party encounters difficulties with implementing and/or complying with its obligations.¹⁰

While the provisions in the Paris Agreement were instrumental for establishing the core obligations, procedures and institutional set-ups; they were insufficient in making those arrangements operational.¹¹ The “Rulebook” adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) at its first session in 2018 solved this core issue by specifying provisions, including on enhancing transparency of action and support¹², and by adopting the modalities and procedures for the committee to facilitate implementation of and promote compliance with the provisions of the Paris Agreement, established by Article 15 to (hereinafter as “Article 15 committee”).¹³

The “Rulebook” includes 18 decisions¹⁴ aiming at enabling the comprehensive implementation of the Paris Agreement by its Parties. In or-

der to understand how Parties are to implement the agreement in a responsible manner and to fully grasp Parties’ accountability throughout the various stages of implementation (“accountability continuum”), it is important to analyze the inter-linkages among the different parts and mechanisms of the Paris Agreement and its “Rulebook”. In this article, the authors explain how these mechanisms are expected to work, how they relate to each other, and which questions (still) arise in ensuring effective and integrated functioning of the various accountability elements.

b) The Role of Transparency

The term “transparency” is borrowed from physics where it describes the property of allowing light to pass through matter without being scattered.¹⁵ Transparency is often cited as a metaphor, implying visibility in contexts related to the behavior of individuals or groups, and beyond that, openness, communication, and accountability. Scholars have defined “transparency” under international politics or international law in different ways, and generally, they regard “transparency” as a right of access to and dissemination of relevant information.¹⁶ Those defi-

¹⁰ Article 15 Paris Agreement; and Decision 20/CMA.1.

¹¹ Daniel Bodansky, *The Legal Character of the Paris Agreement*, *Review of European Community & International Environmental Law* 25(2): 142-150 (2016); Xiangwen Kong, *Achieving accountability in climate negotiations: Past practices and implications for the post-2020 agreement*, *Chinese Journal of International Law*, 14(3): 545-565. (2015); Christina Voigt, *The Compliance and Implementation Mechanism of the Paris Agreement*, 25 *Review of European, Comparative & International Environmental Law* 2, 1-13 (2016); Gu Zihua, Christina Voigt and Jacob Werksman, *Facilitating Implementation and Promoting Compliance with the Paris Agreement: Conceptual Challenges and Pragmatic Choices*, 9 *Climate Law*, 65-100 (2019).

¹² Decisions 4, 5, 6, 9, 10, 12 and 18 of CMA.1, and part of Decision 11/CMA.1 with regard to experiences sharing on adaptation efforts.

¹³ Decision 20/CMA.1 (2018), *Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement*.

¹⁴ For an overview of the decisions, see: <https://unfccc.int/process-and-meetings/the-paris-agreement/paris-agreement-work-programme/katowice-climate-package>.

¹⁵ M. Kerker, *The Scattering of Light* (Academic, New York) (1969).

¹⁶ A. Tzanakopoulos, *Transparency in the security council*. In: A. Bianchi, A. Peters (Eds.), *Transparency in International Law* (Cambridge University Press) 367-391 (2013); C. Creamer and Beth Simmons, *Transparency at home: how well do governments share human rights information with citizens?* In: Bianchi, A., Peters, A. (Eds.), *Transparency in International Law* (Cambridge University Press) 239-268 (2013).; Anne Peters, *Towards transparency as a global norm*. In: Bianchi, A., Peters, A. (Eds.), *Transparency in International Law* (Cambridge University Press) 534-607 (2013); Tian Wang and Xiang Gao, *Reflection and operationalization of the common but differentiated responsibilities and respective capabilities principle in the transparency framework under the international climate change regime*, *Advances in Climate Change Research*. 9: 253-263 (2018).

nitions echo with the practice of existing transparency arrangements in international treaties.

Transparency is closely related to accountability. As mentioned above, transparency is often considered to be the basis of accountability and, thus, a condition for the international legitimacy of state behavior. It has been argued that international agreements are more likely to succeed in the negotiation and implementation process when they are built on increasing transparency of verifiable data and information.¹⁷ Such agreements enhance mutual trust and create stronger confidence in agreed norms, and can better influence the behavior of nations to improve the effectiveness of international institutions.

Transparency is a fundamental issue in global climate governance.¹⁸ As one of the six pillars of the negotiation process¹⁹ towards the Paris Agreement, transparency has always been at the heart of the UN climate negotiations from Durban to Paris and to Katowice, and the adoption of modalities, procedures and guidelines (MPGs) for the transparency framework for action and support has been seen as a “highlight” of the whole “Rulebook”.²⁰

As the Paris Agreement adopted a system that requires its Parties to strengthen the global response to the threat of climate change in a nationally determined way, a robust transparency system was crucial to ensure the implementation and effectiveness of such a regime.²¹

Under the Paris Agreement, the enhanced transparency framework fulfills four functions: (i) to understand the contribution of each Party towards the collective temperature goal of the Paris Agreement; (ii) to provide an opportunity for the sharing of experiences and for mutual learning; (iii) to create peer pressure between Parties in order to facilitate the improvement of their performance; and (iv) to enable the public to engage in decision-making which will contribute to the implementation and achievement of NDC.

i. Understanding the contribution of each Party towards the collective temperature goal of the Paris Agreement

Under the Kyoto Protocol, developed country Parties agreed on negotiated quantifiable emissions limitation and reduction commitments (QELRCs) and relevant common accounting, re-

¹⁷ Jesse Ausubel and David Victor, Verification of International Environmental Agreements, *Annual Review of Energy and the Environment*, 17(1): 2-3 (1992); Owen Greene, International Environmental Regimes: Verification and Implementation Review, *Environmental Politics*, 2(4): 156-173 (1993).

¹⁸ Aarti Gupta, Transparency in Global Environmental Governance: A Coming of Age? *Global Environmental Politics*, 10(3): 1-9 (2010).

¹⁹ Decision 1/CP.17 (2011), Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action.

²⁰ U.S. Department of State, Outcome of the 24th Session of the Conference of the Parties (COP24) to the UN Framework Convention on Climate Change (UNFCCC); available at: <https://www.state.gov/r/pa/prs/ps/2018/12/288121.htm> (2018); European Commission, UN climate talks: EU plays instrumental role in making the Paris Agreement operational, available at: <https://ec.europa.eu/clima/news/un-climate-talks-eu-plays-in>

strumental-role-making-paris-agreement-operational_en (2018).

²¹ Daniel Bodansky, The legal character of the Paris Agreement, *Review of European Comparative & International Environmental Law*, 25(2): 142-150 (2016); Christina Voigt and Felipe Ferreira, “Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement, 5 *Transnational Environmental Law* 2, 285-303 (2016); Lavanya Rajamani, Developing countries and compliance in the climate regime, In: Jutta Brunnee, Meinhard Doelle, and Lavanya Rajamani (Eds.), *Promoting Compliance in an Evolving Climate Regime* (Cambridge University Press) 367-394 (2012); Harald Winkler, Brian Mantlana and Thapelo Letete, Transparency of action and support in the Paris Agreement, *Climate Policy*, 17(7):853-8722 (2017); Peter Lawrence and Daryl Wong, Soft law in the Paris climate agreement: strength or weakness? *Review of European, Comparative and International Environmental Law*, 26(3): 276-286 (2017).

porting and review rules. The QELRCs are listed in Annex B of the Kyoto Protocol. The aggregated emission reduction commitments by these Parties are defined in Article 3 of the Protocol, which shall not exceed the QELRCs. Article 3 gives these commitments legally binding effect. Different from the Kyoto Protocol, the system set by the Paris Agreement allows each Party to determine its contribution individually.

The Agreement gives guidance on the scope of Parties NDC, their level of ambition (“highest possible ambition”) and progression in article 4, paragraphs 3 and 4. Other than that, Parties are required to provide information when they communicate their NDC on certain elements (sometimes referred to as “*ex-ante* transparency”), such as, the reference point, time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches and how it considers its NDC to be fair, ambitious and contributing towards the objective of the Convention. Without such information, it would be difficult to understand the NDC of a Party. Even the Party itself could encounter difficulties in the design and implementation of its NDC. This would also cause problems to the assessment on an aggregate level, as it would be impossible to compare the coverage and content of the NDC of one Party with those of others. During the implementing phase and after the end of the NDC period, transparency (also sometimes referred to as “*ex-post* transparency”) of information in the context of reporting is important in order to understand the progress made by each Party and whether it achieved its NDC or not. This is crucial for building mutual trust and confidence that efforts are taken without free-riding.

ii. Providing an opportunity for the sharing of experiences and for mutual learning

Information provided under the enhanced transparency framework is not only fact-based, but also provides insights into how well a Party is making its effort to address climate change, including which challenges and possibilities it encounters. There are success-stories and good practices, failures and lessons learnt, as well as assessments on gaps and needs. The transparency provisions can also provide a possibility for Parties to get into a dialogue with each other in order to enhance mutual learning.

iii. Creating peer pressure between Parties in order to facilitate the improvement of their performance

When preparing the information required under the transparency framework and when making it public, it requires of governments to seriously consider their commitments and implementation, as the information disclosed could have reputational costs.

iv. Enabling the public to engage in decision-making which will contribute to the implementation and achievement of NDC

National strategies, laws and policies are the instruments for states’ climate actions. Transparency on NDC, its implementation and achievement will draw public awareness towards the “climate attitude” of a country or regional economic integration organization. It can also encourage sub-national governments, businesses, non-governmental organizations, civil society, and individuals to make climate-friendly decisions, either because of political incentives, or business interest, or reputation, or faith. The more stakeholders actively engage in climate policies and measures, the easier and more effective a Party could achieve its NDC, and, thus, be accountable for its commitment.

This article will next analyze how the transparency framework under the Paris Agreement is supposed to function.

2. Transparency in the Paris Agreement

a) Transparency in a wider sense: Article 13 and other relevant provisions

Although Article 13 of the Paris Agreement is widely regarded as *the* “transparency article”,

the authors argue that there are several other articles, which also set up requirements relevant for transparency. These articles and provisions, together with relevant CMA decisions adopted by CMA.1 in Katowice in 2018, are meant to enhance the transparency of planned and implemented actions and support by Parties of the Paris Agreement, as shown in Table 1.

Table 1. Relevant transparency provisions of the Paris Agreement

Article (paragraph)	Corresponding CMA decisions	Component and transparency related activities				
		mitigation	adaptation	finance support	technology development and transfer	capacity building
4 (2, 8, 9)	4/CMA.1	Information to be provided when communicating an NDC (ex-ante)				
4 (13)	4/CMA.1	Accounting for NDC, in accordance with guidance under Article 4				
6 (2, 5)	8/CMA.1 and further decisions to be taken by CMA	Accounting for cooperative approaches				
7 (10)	9/CMA.1		Communication			
9 (5)	12/CMA.1			Communication of indicative quantitative and qualitative information on financial resources to be provided		
9 (7)	18/CMA.1			Information on support provided and mobilized		
11 (4)						Report
13 (7a)	18/CMA.1	Report (Greenhouse Gas Inventory)				
13 (7b)	18/CMA.1	Report on progress in implementing and achieving the NDC (ex-post)				
13 (8)	18/CMA.1		Report			
13 (9)	18/CMA.1			Report (ex-post on providing) report (needed and received)	Report (ex-post on providing) report (needed and received)	Report (ex-post on providing) report (needed and received)
13 (10)	18/CMA.1			TER and FMCP (ex-post on providing)	TER (ex-post on providing)	TER (ex-post on providing)
13 (11)	18/CMA.1	TER and FMCP (ex-post)				

Note: 1) TER refers to “technical expert review”; 2) FMCP refers to “facilitative, multilateral consideration of progress”.

b) Nature of the transparency framework under Article 13 of the Paris Agreement

The transparency framework is facilitative in nature. The purpose of the transparency framework, as stated in Article 13, paragraphs 5 and 6, is to build mutual trust and confidence, to provide a clear understanding of actions, provide

clarity on support provided and received, and to inform the global stocktake under Article 14 of the Paris Agreement. There is no intention for any punitive consequence or sanction within the transparency framework; though voluntary or reputational consequences may result. Paragraph 3 of Article 13 states clearly that the transparency framework shall “be implemented in a

facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties”.

The articles and CMA decisions listed in Table 1 above set out the transparency required of Parties to the Paris Agreement. However, these provisions are not all of the same legal nature. In the context of the UNFCCC, the Kyoto Protocol and the Paris Agreement and based on a shared understanding and practice by Parties, a provision using “shall” is mandatory in nature and leads to different consequences compared to “should” or “may” provisions. For example, under the Paris Agreement, the stronger normative character of “shall provisions” has the effect that non-compliance by a Party with those obligations will be addressed by the Paris Agreement implementation and compliance committee. Paragraph 22(a) of Decision 20/CMA.1, Annex, lists mandatory reporting or communication obligations, all of which are “shall” provisions in the Paris Agreement and all of which, if not adhered to by a Party, lead to initiations of committee proceedings. Moreover, during the technical expert review process, a Party which has not met a “shall” reporting requirement will receive a “recommendation”, while for non-“shall” provisions, it will only receive an “encouragement”. This consequence is set out in paragraph 162 of Decision 18/CMA.1.

With respect to the decisions of the CMA, their legal nature depends on the mandate for the CMA expressed in the Paris Agreement itself. Only if the mandate is formulated in a manner that gives competence to the CMA to adopt a legally-binding decision, that decision is mandatory.²² One example of such mandate is Article 4, paragraph 8, of the Paris Agreement.

²² Robin R. Churchill and Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in Inter-*

For the provisions in Table 1, there are three types of legal nature:

- mandatory for all Parties, for example, Article 4, paragraphs 2, 8, 9, and 13, Article 6, paragraphs 2 and 5, Article 11, paragraph 4, and Article 13, paragraphs 7(a), 7(b) and 11;
- mandatory for developed country Parties, but voluntary for the rest, including Article 9 (provisions of paragraphs 5 and 7), and Article 13, paragraph 9; and
- voluntary for any Party, including provisions of Article 7, paragraph 10, and Article 13, paragraph 8.

c) Components, institutional arrangements, and processes

The mandate for the negotiation of the Paris Agreement, the Durban Platform, established by COP17 in 2011²³ clearly indicated the six pillars of the negotiation process, among which five are substantive issues, namely mitigation, adaptation, finance, technology development and transfer, and capacity-building. The sixth one is of procedural character, which is the transparency of action and support. It was understood that the outcome of the transparency negotiations would cover all the five substantive issues. It is therefore no surprise, that the final outcome, as shown in Table 1, does cover all the five substantive issues.

As mentioned above, for providing and enhancing transparency under the Paris Agreement (i.e. “ex-ante” information on NDCs and adaptation information, as well as “ex-post” reporting and review), there are several channels, vehicles and arrangements: (i) the communication of an NDC including necessary informa-

national Law, *The American Journal of International Law*, Vol. 94, No.4, 623-659 (2000).

²³ Decision 1/CP.17 (2011), Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action.

tion, (ii) adaptation communication, (iii) biennial communication of indicative quantitative and qualitative information related to Article 9, paragraph 5, of the Paris Agreement; (“Article 9.5 communication” for short), (iv) other information on support; (v) biennial transparency reports (BTRs) and the national inventory report; (vi) the technical expert review (TER); and (vii) the facilitative, multilateral consideration of progress (FMCP).

i. The NDC communication

According to Article 4, paragraphs 2, 8 and 9, communicating an NDC every five years is mandatory for all Parties. When communicating an NDC, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the CMA. In other words, it is mandatory for all Parties to provide such information. Decision 4/CMA.1 adopted the guidance on such information, as applicable to each Party’s NDC. At the same time, CMA1 decided that Parties shall provide the information necessary for clarity, transparency and understanding when communicating their second and subsequent NDCs in accordance with the guidance adopted in Annex I of Decision 4/CMA.1.²⁴ However, Parties are strongly encouraged to provide this information already in relation to their first NDC, including when communicating or updating it by 2020.²⁵

Before the adoption of the Paris Agreement, according to Decision 1/CP.19²⁶, Parties were invited to communicate intended nationally determined contributions (INDCs) by 2015,

which started the five-year processes of NDC communication.²⁷ When Parties joined the Paris Agreement, they either submitted an NDC or transformed their INDC into an NDC. NDCs communicated by Parties are recorded in an interim public registry maintained by the secretariat. Each Party is obliged to pursue domestic measures, with the aim of achieving the objectives included in its NDC. There is a general understanding that the achievement of the NDC is not a legally binding obligation²⁸, and there is no mechanism to individually review the content or level of ambition of the NDC itself as communicated by each Party.

Article 4, paragraph 13, further obliges Parties to account for anthropogenic emissions and removals corresponding to their NDCs in accordance with guidance adopted by the CMA.²⁹ The Katowice outcome has also provided the

²⁷ According to Decision 1/CP.21, paragraph 23, the COP “requests those Parties whose intended nationally determined contribution [...] contains a time frame up to 2025 to communicate by 2020 a new [NDC] and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement”, while in paragraph 24 of Decision 1/CP.21, the COP “requests those Parties whose intended nationally determined contribution pursuant to decision 1/CP.20 contains a time frame up to 2030 to communicate or update by 2020 these contributions and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement”. After lengthy negotiations, CMA2 in Madrid in 2019, recalled those provisions and urged Parties to consider the “significant gap between the aggregate effect of Parties’ mitigation efforts in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with 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” with a view to reflecting their highest possible ambition when responding to the request to communicate a new or update their existing NDC in 2020. See: Decision 1/CMA.2, paragraphs 7 and 5.

²⁸ Daniel Bodansky, *The legal character of the Paris Agreement*, *Review of European Comparative & International Environmental Law*, 25(2): 142-150 (2016).

²⁹ Article 4, paragraph 13, Paris Agreement.

²⁴ Decision 4/CMA.1 (2018), Further guidance in relation to the mitigation section of decision 1/CP.21, paragraph 7.

²⁵ *Ibid.*

²⁶ Decision 1/CP.19 (2013), Further advancing the Durban Platform.

guidance for accounting, but it is only mandatory for the second and subsequent NDCs, while Parties may elect to apply the accounting guidance already in relation to their first NDC.³⁰ There is no review or multilateral consideration process for the information provided when communicating an NDC.

Accounting for the NDC, however, shall be done in the biennial transparency reports (BTRs), including through a structured summary, and will be subject to technical expert review as well as facilitative multilateral consideration of progress, according to Article 13 of the Paris Agreement.

When submitting their NDCs, Parties shall, *inter alia*, provide assumptions and methodological approaches for accounting for emissions and removals as well as assumptions and methodological approaches for accounting for the implementation of policies and measures in the NDC.³¹ The accounting approach is important to ensure that the NDC is robust and progress and achievement of the NDC is transparent and reliable. A Party shall make its accounting approach clear when communicating its NDC. In the same spirit as NDCs, the accounting approach is nationally determined. However, there are some basic requirements. According to Article 4, paragraph 13, in accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, including as per Article 6, paragraph 2, Parties shall apply robust accounting to ensure the avoidance of double counting. This applies, in particular, when Parties participate in cooperative approaches under Article 6,

paragraphs 2 and 4. Moreover, when accounting for their NDCs, Parties shall use common metrics and methodologies assessed by the IPCC and adopted by the CMA. If this is not possible due to the type or nature of a Party's NDC, the Party needs to provide information on their own methodology used.³² In accounting for their NDC, Parties need further to ensure methodological consistency, including on baselines, between the communication of their NDC and its implementation.³³

ii. The adaptation communication

Article 7 requests each Party to submit and update periodically an adaptation communication. Decision 9/CMA.1 adopted the guidance for it. However, neither the submission and update, nor the application of guidance in Decision 9/CMA.1 is mandatory. There also is no provision to define "periodically", which means Parties could submit an adaptation communication whenever they wish to do so without a fixed frequency. Furthermore, according to that decision, the adaptation communication is not subject to review.

There is a real danger of a duplication between adaptation communication established by Article 7, paragraph 10 and the reporting on adaptation issues under Article 13, paragraph 8, which are both provisions on how to report on adaptation related issues. However, Decision 9/CMA.1 on adaptation communication under Article 7 makes it clear that "the adaptation communication shall be, as appropriate, submitted and updated periodically, 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

³⁰ Decision 4/CMA.1, paragraph 14.

³¹ Decision 4/CMA.1, Annex I, paragraph 5.

³² Decision 4/CMA.1, Annex II, paragraph 1.

³³ Decision 4/CMA.1, Annex II, paragraph 2.

Agreement and/or a national communication". Furthermore, according to COP decision 1/CP.24³⁴, "Parties may submit their national communication and BTR as a single report". Therefore, it seems rather unlikely that there will be a stand-alone and comprehensive "adaptation communication" by a Party in the near future. Rather, we might see either that Parties name their "national adaptation plan" also "adaptation communication", or they could attach an additional document to their "national adaptation plan" or to their NDC called "adaptation communication", or there could be a part of the NDC or national communication or even BTR marked as "adaptation communication".

The adaptation communication or reporting of adaptation in the BTR is not subject to review, as agreed in Decision 9/CMA.1 and Article 13 of the Paris Agreement, respectively. However, if a Party includes an adaptation component in its NDC, and reports the progress of such component in accordance with the transparency guidance contained in Decision 18/CMA.1, it could be argued that according to Article 13, paragraph 11, of the Paris Agreement, also this information undergoes a TER and FMCP. However, this scenario is somewhat uncertain. Equally, the argument could be made that Article 13, paragraph 7, refers to the NDC under Article 4. Even if it is possible to submit an adaptation communication under Article 7 through the NDC, the guidance on NDC information in CMA decision 4/CMA.1 is without prejudice to the inclusion of such an adaptation communication.³⁵ It can be

expected, however, that this uncertainty will be resolved by the TER practice.

iii. "Article 9.5 communication"

According to Article 9, paragraph 5, it is mandatory for developed country Parties and optional for other Parties to biennially communicate indicative quantitative and qualitative information related to climate finance. Decision 12/CMA.1 adopted guidance on the types of information to be provided by Parties in this regard, and requested developed country Parties to provide such information starting in 2020.³⁶ It is not clear, however, whether Parties will submit such information in conjunction with their NDC or BTR or as a stand-alone document; although the latter appears to be highly likely. In any case, it is understood that such information is outside the scope of TER process established by Article 13.

iv. Other information on support

Regarding the information of support, as shown in Table 2 below, the processes of providing information vary depending on the category of information and of Parties. Except for the "Article 9.5 communication", all other information of support is to be reported through the BTR. As discussed above, the communication of "Article 9.5 information" is mandatory for developed country Parties, while voluntary for the others and not subject to TER or FMCP. There is no requirement on indicative reporting for

³⁴ Decision 1/CP.24 (2018) Preparations for the implementation of the Paris Agreement and the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.

³⁵ Decision 4/CMA.1, paragraph 8 "*Emphasizes that the guidance on information necessary for clarity, transparency and understanding is without prejudice to the inclusion of components other than mitigation in a nationally determined contribution, notes that Parties*

may provide other information when submitting their nationally determined contributions, and in particular that, as provided in Article 7, paragraph 11, of the Paris Agreement, an adaptation communication referred to in Article 7, paragraph 10, of the Paris Agreement may be submitted as a component of or in conjunction with a nationally determined contribution as referred in Article 4, paragraph 2, of the Paris Agreement...".

³⁶ Decision 12/CMA.1 (2018), Identification of the information to be provided by Parties in accordance with Article 9, paragraph 5, of the Paris Agreement.

technology development and transfer nor for capacity building support. Reporting and TER on financial, technology development and transfer and capacity-building support provided and mobilized is mandatory for developed country Parties, but only the information on financial support will undergo FMCP as a mandatory requirement. Reporting on financial, technology development and transfer and capacity-building support provided and mobilized is not mandatory for other Parties, including developing country Parties, that provide support. However, according to Article 13, paragraph 11, of the Paris Agreement, if these Parties voluntarily provide this information, the TER of such information should be mandatory, and the FMCP for the information on financial support will also be mandatory. Nevertheless, in Katowice the CMA agreed that these Parties' information may undergo TER at the Party's discretion.³⁷ Information on support needed and received by developing countries is not mandatory, and such information will not undergo TER nor FMCP.

v. BTR and national inventory report

Article 13 of the Paris Agreement does not set up the requirement for Parties to submit a BTR. It only establishes clarity on which information Parties need to provide, and which information will undergo a technical expert review. Paragraph 90 of Decision 1/CP.21 requests all Parties to provide relevant information as requested by Paris Agreement "no less frequently than on a biennial basis", and therefore the outcome of Katowice negotiation decides that Parties shall submit relevant information on a biennial basis, and named the document BTR. In the BTR, each Party shall provide a national inventory report of

anthropogenic emissions by sources and removals by sinks of GHGs, the information necessary to track progress in implementing and achieving its NDC, and voluntary information on climate change impacts and adaptation. Furthermore, developed country Parties shall provide information pursuant to Article 13, paragraph 9, on provision of financial, technology transfer and capacity-building support provided to developing countries. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11. Not all the information in the BTR will be subject to review, as the authors will elaborate in the following parts.

The relationship between BTR and the national inventory report varies depending on how a Party submits them. Decision 18/CMA.1 gives Parties the options to either submit a national inventory report as a stand-alone report or as a component of the BTR. At the same time, in order to avoid inconsistencies, Decision 1/CP.24 requests those Parties to the Convention that are also Parties to the Paris Agreement, to prepare and submit national inventory reports in accordance with Decision 18/CMA.1 including in years in which a BTR is not due under the Paris Agreement. This is to recognize that Annex I Parties to the Convention have the obligation under the Convention to submit national inventory reports annually. Respectively, Decision 18/CMA.1 creates a new mode of review called simplified review to be used for Party's national inventory report submitted in a year in which BTR is not due.

The first BTR, in accordance with the modalities, procedures and guidelines, is due at the latest by 31 December 2024.³⁸ This is because, in

³⁷ Decision 18/CMA.1(2018) Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement, paragraph 150(c).

³⁸ UNFCCC. 2018. Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement. Decision 18/CMA.1, paragraph 3.

practice, there will be a time lag in collecting information and preparing for reporting according to agreed guidance. For example, in China the national statistics system usually takes almost two years to get energy, industry, agriculture and other activity data³⁹, and it would take more than one year to compile the greenhouse gas inventory. Since the NDC is for contributions from 2020 onward, data for at least 2021 is necessary to reflect any progress.

With regard to the information to be reported for tracking progress of NDC' implementation and achievement, there is a general scope and a narrower scope, which is reflected as Section III.A and Section III.B. and C of Decision 18/CMA.1, respectively.

Under the general scope, each Party needs to provide information on national circumstances and institutional arrangements, including government structure, population profile, geographic profile, economic profile, climate profile and sector details. Institutional arrangements include legal, administrative and procedural arrangements for domestic monitoring, reporting, archiving of information and stakeholder engagement.⁴⁰

For the narrower scope, the information to be reported includes a description of each Party's NDC, including targets and descriptions, such as target types, target years or periods, reference points, levels baselines, base years, starting points and their values, time frames, scope and coverage, the intention to use cooperative approaches and any updates, mitigation policies and measures, actions and plans, summary of greenhouse gas emissions and removals, projections of greenhouse gas emissions and removals and other information, indicators to track pro-

gress and their value or information, accounting approach, explanation on the consistency of methodology used, and the assessment of whether the Party has achieved the target(s) for its previous NDC.⁴¹

As part of the accounting approach, each Party is also requested to report on the contribution from the land-use, land-use change and forest (LULUCF) sector, if it contributes to the achievement of NDC but is not included in the inventory time series of total net GHG emissions and removals. Also, for any Party that participates in cooperative approaches (Article 6, paragraph 2) that involve the use of internationally transferred mitigation outcomes (ITMOs) towards its NDC under Article 4, or authorizes the use of such mitigation outcomes for international mitigation purposes other than the achievement of its NDC, shall also provide the information on annual GHG emissions and removals, emission balance reflecting its use or acquisition of ITMOs, and other relevant information consistent with guidance to be developed for Article 6 of the Paris Agreement.

vi. Technical Expert Review (TER)

All information submitted under paragraphs 7 and 9 of Article 13 of the Paris Agreement, shall undergo a TER. This means that the national inventory report shall undergo a TER, whether it is submitted as a stand-alone report or as a component of the BTR, as well as information necessary to track progress made in implementing and achieving its NDC under Article 4 in the BTR and information on financial, technology development and transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11 of the Paris Agreement in the BTR. The TER is technical in nature, without introducing political judgment. Accord-

³⁹ For example, the "China Energy Statistical Yearbook 2018" which includes energy statistics information of the year 2017 was published on September 2019.

⁴⁰ Decision 18/CMA.1, paragraphs 59-63.

⁴¹ Decision 18/CMA.1, paragraphs 64-79.

ing to Decision 18/CMA.1, the TER will be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty.⁴² The TER will review the consistency of the information submitted by the Party with the modalities, procedures and guidelines of Decision 18/CMA.1, will consider the Party's implementation and achievement of its NDC and the Party's support provided, as relevant, will identify areas of improvement for the Party related to implementation of Article 13 of the Paris Agreement, and will assist in identifying capacity-building needs for those developing country Parties that need it in the light of their capacities.⁴³

The TER for each individual Party is conducted by a single TER team and supported by the UNFCCC secretariat. The secretariat is responsible for the composition of TER teams to ensure the collective skills and competencies of the teams correspond to the information to be reviewed.

Decision 18/CMA.1 introduced at the same time a "negative mandate" for the TER teams, stating that the TER team shall not: 1) make political judgments; 2) review the adequacy or appropriateness of a Party's NDC under Article 4 of the Paris Agreement, of its associated description or of the indicators; 3) review the adequacy of a Party's domestic actions; 4) review the adequacy of a Party's support provided; 5) for those developing country Parties that need flexibility in the light of their capacities, review the Party's determination to apply flexibility that has been provided for in the MPGs, including the self-determined estimated time frames referred to in paragraph 6 above (of the Annex to Decision 18/CMA.1), or whether a developing country Party

possesses the capacity to implement that specific provision without flexibility.

Prior to the Paris Agreement, under the UNFCCC, TERs for greenhouse gas inventory were carried out for developed country Parties only. The GHG inventory of developed country Parties was reviewed for any issue in the submitted report related to transparency, consistency, comparability, including failure to use agreed reporting formats, completeness, accuracy, and adherence to the UNFCCC Annex I inventory reporting guidelines. The technical review for Biennial Reports and National Communications of developed country Parties under the Convention only identified issues related to transparency, completeness, timeliness and adherence to the reporting guidelines.⁴⁴ For developing country Parties, the technical analysis (TA) process for Biennial Update Reports (BUR) under the Convention only identified the extent to which the necessary information was included in the BUR. It undertook a technical analysis of information contained in the BUR, and identified capacity-building needs in order to facilitate BUR reporting, and participating in international consultation and analysis (ICA).⁴⁵ The Katowice outcomes did not copy existing practice under the Convention. Rather, the TER under the Paris Agreement will now review, for all Parties, issues related to transparency, consistency, comparability, completeness, accuracy, and adherence to reporting guidelines, as applicable to different information categories.

The outcome of the TER will be a TER report for each individual Party. In the TER report,

⁴² Decision 18/CMA.1 (2018) Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement.

⁴³ *Ibid*, paragraph 146.

⁴⁴ Decision 13/CP.20 (2014) Guidelines for the technical review of information reported under the Convention related to greenhouse gas inventories, biennial reports and national communications by Parties included in Annex I to the Convention.

⁴⁵ Decision 20/CP.19 (2013) Composition, modalities and procedures of the team of technical experts under international consultation and analysis.

the team will include “recommendations” (for “shall” provisions in reporting) and/or “encouragements” (for non-“shall” provisions in reporting).⁴⁶

vii. Facilitative multilateral consideration of progress (FMCP)

In addition, each Party shall undergo a facilitative multilateral consideration of progress (FMCP). The FMCP will consider the information in the BTR and national inventory report submitted by each Party (except the adaptation related information), the TER report, and any additional information provided by the Party for the purpose of FMCP.

The FMCP will be conducted in two phases: a “question and answer phase” and a “work-

ing group phase”. In the written question and answer phase, Parties may submit question to another Party within the information scope as above, and the Party in question shall make best efforts to respond. In the working group phase, after a Party made its presentation, other Parties could share their views for discussion. The working group sessions are also open to registered observers. The record of the FMCP, containing the questions submitted and answers provided, a copy of the Party’s presentation, a recording of the working group session, a procedural summary of the FMCP and any additional information generated during the FMCP will be published on the UNFCCC website by the secretariat.⁴⁷

Table 2. Information regarding financial, technology development and transfer and capacity-building support

	Indicative information on financial resources to be provided	Financial support provided and mobilized	Technology development and transfer support provided	Capacity-building support provided	Financial support needed and received	Technology development and transfer support needed and received	Capacity-building support needed and received
Developed country Parties	- R/C (mandatory, Article 9.5)	- R/C (mandatory, Articles 9.7 and 13.9) - TER (mandatory, Article 13.11) - FMCP (mandatory, Article 13.11)	- R/C (mandatory, Articles 13.9 and 10) - TER (mandatory, Article 13.11)	- R/C (mandatory, Articles 13.9 and 11) - TER (mandatory, Article 13.11)	N.A.	N.A.	N.A.
Other Parties (including developing country Parties)	- R/C (voluntary, Articles 9.2, 9.5(2), 13.9)	- R/C (voluntary, Articles 9.7 and 13.9) - TER (mandatory Article 13.11) - FMCP (mandatory, Article 13.11)	- R/C (voluntary, Article 3.9) - TER (mandatory, Article 13.11)	- R/C (voluntary, Article 13.9) - TER (mandatory, Article 13.11)	For developing country Parties: R/C (voluntary Articles 13.10 and 9)	For developing country Parties: R/C (voluntary Article 13.10) and 10	For developing country Parties: R/C (voluntary Articles 13.10 and 11)

Note: 1) R/C refers to reporting or communicating; 2) TER refers to “technical expert review”; 3) FMCP refers to “facilitative, multilateral consideration of progress”; 4) N.A. means not applicable

⁴⁶ Decision 18/CMA.1 (2018) Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement.

⁴⁷ Decision 18/CMA.1, Annex, paragraph 199.

d) Further steps

Although after three-years of negotiations on transparency provisions, the Katowice outcome provided the MPGs that should enable Parties to be ready for implementation, there are still two significant issues unresolved.

The first issue is the development of reporting tables and outlines to facilitate the reporting and review process, as well as to help the audience to easier and better understand the information provided. These negotiations are currently being conducted under the Subsidiary Body for Scientific and Technological Advice (SBSTA), and are supposed to conclude by the end of 2021, for adoption by CMA3.

The second issue is related to Article 6. There are three elements established by Article 6 of the Paris Agreement for a Party to use for achieving its NDC, on a voluntary basis. Article 6, paragraph 2, establishes cooperative approaches, under which mitigation outcomes can be internationally transferred towards the achieving of NDCs. To ensure environmental integrity and transparency, guidance to ensure that double counting is avoided on the basis of a corresponding adjustment by Parties is requested by Decision 1/CP.21, paragraph 36. Article 6, paragraph 4, establishes a mechanism, under which a body designated by CMA supervises the activities by Parties with regard to the quality of mitigation actions, verification and certification of emission reductions, and ensuring emission reductions is not used by more than one Party to demonstrate achievement of the NDC. Decision 1/CP.21 also requests the CMA to adopt rules, modalities and procedures in this regard. Article 6 also recognizes the importance of non-market approaches being available to Parties to assist in the implementation of their NDCs, and a framework for non-market approaches is defined by Article 6, paragraph 8. Decision 1/

CP.21 requested the CMA to adopt a work program on the non-market approaches, which was supposed to be part and parcel of the “Katowice Rulebook”. However, the negotiations on rules for the entire Article 6 were not completed in Katowice. Parties struggled not only over how double counting should be avoided but also what constitutes double counting and whether it should be avoided under all circumstances.⁴⁸ Relevant reporting and review provisions could neither be agreed upon by the CMA in 2019, in Madrid, Spain.

Making use of Article 6 possibilities is important for some Parties to formulate, implement and achieve their NDC. Therefore, the accounting, reporting and review rules are equally important. In Katowice, in order to make sure the accounting and reporting about Article 6 related activities is robust, Parties agreed on some general provisions,⁴⁹ but these provisions are without prejudice to the outcomes on matters relating to Article 6.⁵⁰ It is expected that more specific rules and guidelines will be adopted by CMA3.

In Katowice, Parties also agreed to “undertake the first review and update, as appropriate, of the modalities, procedures and guidelines no later than 2028 on the basis of experience in reporting, technical expert review and facilitative, multilateral consideration of progress”.⁵¹

⁴⁸ Lambert Schneider, Maosheng Duan, Robert Stavins, Kelley Kizzier, Derik Broekhoff, Frank Jotzo, Harald Winkler, Michael Lazarus, Andrew Howard, Christina Hood, Double counting and the Paris Agreement rulebook: Poor emissions accounting could undermine carbon markets, *Science*, 366 (6462): 180-183 (2019).

⁴⁹ Decision 18/CMA.1, paragraph 77(d).

⁵⁰ Decision 8/CMA.1 (2018) Matters relating to Article 6 of the Paris Agreement and paragraphs 36–40 of decision 1/CP.21.

⁵¹ Decision 18/CMA.1 (2018) Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement.

3. Facilitating Implementation and Promoting Compliance: The Article 15 Committee

Another important aspect of enhancing Parties' accountability under the Paris Agreement, is the possibility to engage with Parties with respect to their implementation and compliance by an independent, standing, expert body: the committee established under Article 15, paragraph 1, of the Agreement ("Article 15 Committee" or the Paris Agreement Implementation and Compliance Committee – PAICC). Under the modalities and procedures established for the functioning of the Article 15 committee, Parties will be able to engage in a dialogue with the committee with the purpose of identifying challenges, making recommendations and sharing information.

Following the definition of accountability set out in the beginning of this article, by establishing a "compliance committee", Parties accepted responsibility for their actions, to disclose them and increase accessibility to and transparency of information. The Article 15 committee is an accountability mechanism in the understanding that it is designed to hold Parties accountable for their performance in light of the nature of relevant provisions of the Agreement and in relation to the mechanisms and procedures established under the Agreement. As mentioned above, accountability of Parties addressed by the Article 15 committee is a "continuum" of other processes. Parties' individual obligations are interconnected and one flows from the other. There are clear linkages between the NDC preparation guidelines, guidelines for reporting and review, all the way to the processes according to Article 15. Policy makers are well-advised to have this "accountability continuum" in mind, already when preparing their NDCs.

a) Nature of the Article 15 Committee

Article 15, paragraph 1, of the Paris Agreement establishes a mechanism to facilitate implementation of and promote compliance with the provisions of the Agreement. This mechanism consists of a committee.

The Article 15 Committee is expected to enhance the effective functioning of the Paris Agreement both by encouraging Parties to implement the Agreement and by holding them accountable for aspects of their performance. Effectiveness depends on the extent to which it is being implemented by Parties including on Parties' compliance with their legally-binding obligations. The processes under Article 15 are therefore designed to build confidence and trust among Parties.⁵²

The committee is to be facilitative in nature, transparent, non-adversarial, non-punitive (Article 15, paragraph 2). In the same vein as the transparency framework, it shall strive to avoid duplication of effort, shall not function as enforcement or dispute settlement mechanism, not impose sanctions or penalties, and shall respect national sovereignty.⁵³

The Article 15 committee will express its facilitative nature through its operation, both in terms of which issues get before the committee, how it deals with them and what outcomes and measures it can adopt. The CMA in Decision 20/CMA.1 has put in place the modalities and procedures intended to safeguard the effective functioning of the committee in line with the general guidance set out in Article 15 of the Paris Agreement. In doing so, the Article 15 Committee has

⁵² Christina Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement', 25(2) *Review of European Comparative and International Environmental Law* 1 (2016).

⁵³ Decision 20/CMA.1 (2018), Modalities and procedures for the effective operation of the committee referred to in article 15, paragraph 2, of the Paris Agreement, Annex, paragraph 4.

been tailored to fit the unique characteristics of the treaty it serves; including the requirements of holding Parties accountable for their performance in light of the nature of relevant provisions of the Agreement and in relation to the mechanisms and procedures established under the Agreement.

b) Composition, Competence and Decision-making

The Committee is a constituted standing, expert body under the Paris Agreement, with a mandate to address situations related to the performance of individual parties. It consists of twelve members, plus twelve alternate members.

The first members and alternates were elected by CMA 2, in December 2019, and the first two co-chairs were elected by the members of the committee during its first meeting on 2 June 2020.⁵⁴ It is composed on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from SIDS and LDCs, while taking into account gender balance as shown in Table 3.⁵⁵ Members will serve for a term of three years and can be re-elected once.

Table 3. Size and composition of the Article 15 Committee

	Developed country Parties	Developing country Parties
African Group		2
Asia Pacific Group		2
Eastern European Group	2	

Group of Latin American and Caribbean Countries		2
Western European and Other Group	2	
Small Island Developing States		1
Least Developed Countries		1
Subtotal	4	8
Total	12 (+12 alternates)	

The Committee's composition is supposed to include a broad range of relevant scientific, technical, socioeconomic and legal expertise. It is, however, up to the CMA, every time when electing the members and alternates of the committee to see that a representation of these various backgrounds is ensured in order to keep the committee functional.

Members serve in their individual, expert capacity based on recognized competence in those fields. The considerable size of the Committee compared, for example with the ad hoc TER teams under the Enhanced Transparency Framework combined with the requirement for the diversity in scientific backgrounds, should ensure that this wide range of expertise is made available to a party. When comparing with TER teams, the biggest difference is that the competence of TER teams is ensured by the review coordinator and by the secretariat when choosing experts from all areas that are needed. The competence of the Article 15 Committee is ensured by the CMA. The guidance on members' expertise should well-position the Committee to address the wide spectrum of implementation or compliance issues that could come before it,

⁵⁴ UNFCCC, *Key Paris Agreement Implementation and Compliance Work Initiated*, news article, 26 June 2020, available at: <https://unfccc.int/news/key-paris-agreement-implementation-and-compliance-work-initiated>.

⁵⁵ Decision 1/CP.21, paragraph 102.

reflecting all relevant articles and elements of the Paris Agreement.⁵⁶

The committee will meet at least twice a year, desirably in conjunction with the sessions of the subsidiary bodies serving the Paris Agreement. The covid-19 pandemic in 2020, however, led the committee to conduct its first meeting in a virtual manner.⁵⁷

The Committee shall make every effort to make decisions by consensus. However, if all efforts are exhausted, the decision may be adopted by a majority vote (3/4 of the members present and voting).

c) How will issues come before the Committee?

The modes of initiation of committee proceedings reflect the different legal nature of the provisions in the Agreement.⁵⁸

There are three modes of initiation, i.e. of how an “issue” could get before the committee. These are:

- Self-referral by a Party on all provisions of the Paris Agreement (Decision 20/CMA.1, annex, paragraph 20);
- “Automatic” initiation of the committee in cases of a violation of specified legally binding provisions of the Agreement (Decision 20/CMA.1, annex, paragraph 22(a));
- Discretionary initiation, with consent of Party, in cases of *significant and persistent inconsistencies* of the information submitted under

Article 13, paragraph 7 and Article 13, paragraph 9, with MPGs, based on recommendations in TER Report (Decision 20/CMA.1, annex, paragraph 22(b)).

First, in any case, a Party can always bring a matter concerning its own implementation and/or compliance to the attention of the committee, based on a written submission (Decision 20/CMA.1, annex, paragraph 20). In this situation, the committee has discretion as to whether it “takes on the issue”. It will undertake a preliminary examination of the submission within a certain timeline and inform the party of whether and how the issue will be taken further.

Second, for provisions that set out a *legally binding, individual obligation* for Parties, the committee will start proceedings automatically if a Party has failed to comply. In those cases, no consent of the Party concerned is required, and the committee has no discretion on whether to consider the issue or not.

This applies specifically to cases where a Party has not:

- 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;
- Submitted a mandatory report or communication of information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the Paris Agreement;
- Participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat;
- Submitted a mandatory communication of information under Article 9, paragraph 5, of the Paris Agreement.⁵⁹

⁵⁶ For a detailed account of the article 15 committee, see: Gu Zihua, Christina Voigt and Jacob Werksman, Facilitating Implementation and Promoting Compliance with the Paris Agreement: Conceptual Challenges and Pragmatic Choices, *Climate Law* 9, 65-100 (2019).

⁵⁷ https://unfccc.int/sites/default/files/resource/June_momentum_overview_of_meetings.pdf.

⁵⁸ See, e.g., Daniel Bodansky, ‘The Legal Character of the Paris Agreement’, 25(2) *Review of European, Comparative and International Environmental Law*, 28(2) *Journal of Environmental Law* 337 (2016).

⁵⁹ Decision 20/CMA.1, Annex, paragraph 22 (a).

The TER of the Enhanced Transparency Framework will review the completeness of information submitted by each Party, including the “mandatory report or communication of information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the Paris Agreement”. If a Party does submit a BTR, but does not submit all mandatory reports or communications, the TER will give recommendations to the Party in the TER report. In this situation, however, the absence of mandatory reports or information will also trigger the proceedings of the “Article 15 committee”. In this situation, it will be important that the TER team and the Article 15 collaborate on how to best approach this situation in order to avoid duplication of efforts. If, however, a Party does not submit a BTR at all, no TER will be conducted and the “Article 15 committee” will consider this situation.

For the other cases in the first three bullet points above, the Enhanced Transparency Framework has no review or assessment process and therefore cannot address them. In other words, those situations will never be “picked up” by the ETF and there is no overlap between the competences of the “Article 15 committee” and the TER.

The Committee will base its consideration on publicly available information, published through the information channels established under the Paris Agreement: public registries of NDCs, the online portal for BTRs and national inventory reports, information by the secretariat and the online portal for posting and recording biennial communications under Article 9, paragraph 5.

Third, proceedings with respect to *other provisions* can only commence if the Party concerned has requested the committee to act or has given its consent. This applies in particular to situations where the TER report includes “recommendations” with respect to mandatory

“shall” requirements for reporting, but the Party concerned was not able to resolve the issues. This applies, however, only in cases of significant and persistent inconsistencies of information submitted in the BTR with the modalities, procedures and guidelines for the Enhanced Transparency Framework.

In these cases, the committee might be able to ‘backstop’ the oversight exercised by the transparency framework of a Party’s performance in relation to significant and persistent inconsistencies identified but left unresolved by the ETF. Under paragraph 22(b), the Committee may initiate cases in a way that complements the rules, procedures, and institutions of the ETF. The roles of the TER teams and the Committee are designed to be complementary in both helping Parties and holding them accountable for their individual performance. As explained above, the purpose of the transparency framework includes the tracking of progress towards implementing and achieving Parties’ NDCs and providing clarity on support provided and received by Parties.⁶⁰ To this end, each Party is to submit, regularly, national inventory reports and other mandatory information.⁶¹ Moreover, developed country Parties ‘shall’ (and other parties that provide support ‘should’) submit information on support provided to developing countries to implement the Agreement.⁶²

As already mentioned, each BTR and national inventory report will undergo a TER carried out by a TER team.⁶³ The TER team will review the consistency of the information submitted by the party with the transparency Modalities, Procedures and Guidelines (MPGs), while taking into account the flexibility accorded to those developing country parties that need it in

⁶⁰ Article 13, paragraphs 5 and 6, Paris Agreement.

⁶¹ *Ibid.*, paragraph 7.

⁶² *Ibid.*, paragraph 9.

⁶³ Decision 18/CMA.1, Annex, VII.

light of their capacities. With regard to the ‘shall’ provisions in the MPGs, the TER team will identify any ‘areas of improvement’, in the form of ‘recommendations’ and/or ‘encouragements’, which it will include in its final TER report.⁶⁴ The reports will be published on the UNFCCC website.⁶⁵ The TER teams have a role in holding Parties accountable for providing the information necessary to track progress made in implementing and achieving NDCs, in accordance with the transparency MPGs. However, once the final TER report has been published on the UNFCCC website, the role of the TER teams ends. This is the interface where, in situations of “significant and persistent inconsistencies” the role of the Article 15 committee starts.

Prior to the adoption of the modalities and procedures for the Article 15 committee, many Parties expressed doubts about making a link between the ETF and the Article 15 processes.⁶⁶ Some were of the view that a TER team’s engagement with a Party would provide enough assistance and incentive to ensure that the Party implements the MPGs. Some were concerned that strengthening the link between Article 15 and the transparency framework would raise sovereignty issues and lead to a weakening of the mandatory character of the transparency MPGs, as well as to a less rigorous TER. Others yet were concerned that linking the two processes could undermine the TER teams’ role, worrying that technical experts would be hesitant to identify ‘areas of improvement’ if this were taken to trigger the Article 15 Committee proceeding.⁶⁷ Still

other Parties felt it essential that the ad hoc TER teams be backstopped by the standing Committee, particularly where a TER team’s engagement with a Party did not resolve a performance problem. Finding common ground required coming to an understanding among Parties as well as within delegations, as some transparency and Article 15 negotiators belonging to the same Party disagreed with each other on these questions.⁶⁸

In the end, a balance was struck that enables the Committee to take up issues unresolved by the TER teams, but limits the scope of the Committee’s role in several important respects. Under paragraph 20(b), the Committee may, at its discretion, and only with the consent of the party concerned, engage that party in cases of “significant and persistent inconsistencies” between the information that the party has submitted under the transparency framework and the transparency MPGs.

In order for such a case to be taken up by the Committee, a TER team must have included in its final report a “recommendation” or “encouragement” related to an “area of improvement” of the Party’s performance on the ETF’s MPGs of the “shall” provisions only.⁶⁹ The Committee will not address an “area of improvement” expressed as “encouragement” in the TER report, which is for non-mandatory reporting provi-

⁶⁴ Ibid., paragraph 162(d).

⁶⁵ Ibid., paragraph 187.

⁶⁶ Sue Biniarz, *Elaborating Article 15 of the Paris Agreement: Facilitating Implementation and Promoting Compliance*, ID-DRI Policy Brief (October 2017).

⁶⁷ This concern was derived in part from the experience of the Kyoto Protocol’s Compliance Committee, which can be triggered by the identification by an ERT of a ‘question of implementation’. See, for example, Jutta

Brunnée, ‘Multilateral Environmental Agreements and the Compliance Continuum’, in Gerd Winter (ed.), *Transnational Governance of Environmental Change* (Cambridge University Press, 2005), 387; and Meinhard Doelle, ‘Experience with the Facilitative and Enforcement Branch of the Kyoto Compliance System’, in Brunnée et al. (eds.) 201-221 (2012).

⁶⁸ For a discussion of the link between Article 13 and 15, see Sue Biniarz, *Elaborating Article 15 of the Paris Agreement: Facilitating Implementation and Promoting Compliance* (ID-DRI Policy Brief, October 2017); and ID-DRI, *Articles 13 and 15 – Takeaways from the May 2017 Bonn Workshop*, ID-DRI (2017) (on file with authors).

⁶⁹ Decision 20/CMA.1, Annex, paragraph 22(b).

sions. It is important to note that Article 13 limits the scope of TER, and therefore also limits the Committee's review to information provided under Article 13.⁷⁰ Most of the transparency MPGs are "shalls", and generally are expressed in mandatory terms when they implement a mandatory treaty-based reporting obligation in the Agreement. Thus, for example, each Party "shall" provide information necessary to track progress under Article 13, paragraph 7(b), of the Paris Agreement: the corresponding MPGs are also "shall" provisions.⁷¹ At the same time, the MPGs associated with the Agreement's "encouragement" to countries (other than developed-country parties) to provide support are expressed as "should" provisions;⁷² these will result in neither a TER team recommendation nor a case under paragraph 22(b).

To understand whether or how the Committee might take up a case under paragraph 22 (b) requires an analysis of the transparency MPGs and the role of TER Teams in reviewing the MPGs.⁷³ For initiation, the Committee

must decide whether the recommendation in the TER team's report, together with any written comments provided by the party during the review, relate to a "significant and persistent" inconsistency between the information submitted by the Party and the transparency MPGs. It is not expected that the TER report will point out "significant and persistent inconsistencies".

The Rulebook does not define "significant and persistent", but the language implies a judgment by the Committee on whether the inconsistency crosses a *de minimis* threshold and demonstrates the Party's failure to respond to repeated efforts by the TER team to encourage the party to improve its performance. "Significant" could indicate that the Committee is to act only on cases where the inconsistencies limit the effective functioning of the transparency framework with regard to the party concerned. "Persistent" may be taken to refer to circumstances where a Party has failed to improve over time—for example, where an issue is unresolved after repeated TER cycles. The two threshold criteria will need to be further developed by the Committee through its rules of procedure or its own practice or operational guidelines, taking into account qualification criteria, e.g. whether the reported information by a Party is too vague to understand the progress made in NDC implementation and achievement, and quantification criteria, e.g. with how much under-estimation or over-estimation will a certain issue result in the overall assessment of the progress or achievement of the NDC, while at the same time also consider the balance between time needed for a Party to see and address "recommendations" and the limited number of years within an NDC timeframe.

⁷⁰ For example, the MPGs exclude from TER and recommendations (and therefore from the scope of the Committee) provisions related to the description of the NDC (Decision 18/CMA.1, paragraphs 149(b) and 64).

⁷¹ Decision 18/CMA.1, Annex, ch. III.C.

⁷² *Ibid.*, ch. V.

⁷³ For example, under paragraph 6 of Decision 18/CMA.1, those developing countries that exercise 'a flexibility' in the MPGs 'shall clearly indicate the provision to which flexibility is applied, concisely clarify capacity constraints... and provide self-determined estimated time frames for improvements provided for in relation to these constraints'. As this is a 'shall' provision, a TER Team could make a recommendation, and the Committee might act on that recommendation. However, there might be doubt on whether a recommendation on para. 6 would amount to 'significant' inconsistency, which is an issue that needs to be decided by the Committee in its future work. Meanwhile, para. 6 clarifies that the TER Teams are not to review the substantive basis of the party's determination to apply such flexibility, nor its capacity to implement the provision without flexibility. In this context it seems that neither the TER Team nor the Committee will be in a position to second-guess a developing

country on whether it 'needs' flexibility in light of its capacities: Decision 18/CMA.1, Annex, paragraph 149(e).

As mentioned above, a case under paragraph 22(b) will move forward only with the consent of the Party concerned. This was a compromise arising from a concern of some Parties about intrusion on sovereignty. Yet the initiation may provide a degree of accountability even if the Party concerned ultimately withholds its consent. This partly depends on how the Committee's consideration of a case is sequenced and made public. Read together, paragraphs 22(b) and 24 suggest that the process begins with a Committee decision to initiate consideration. It would make sense that this involves a preliminary determination that a "significant and persistent" inconsistency exists. The Committee will then notify the Party and request it to provide information, including whether it consents to the case moving forward. If the preliminary stages of this process were to be made public, the Party would face political pressure to engage with the Committee to provide its perspective on the issue, or even to seek to benefit from whatever assistance the Committee can facilitate. Making the Committee's preliminary determination public might, however, be seen as undermining the right of the Party to withhold its consent and as running counter to the emphasis on "facilitative consideration". If the preliminary determination is not made public, some pressure on the Party would still remain if the Committee were to include the fact that the Party withheld its consent in its annual report to the CMA.

In the course of its engagement, the Committee "shall" take appropriate measures, which may include the measures listed in paragraph 30. Where the significant and persistent inconsistencies are due to gaps in the Party's capacity, measures involving assistance in engaging with bodies that provide financial, technological, or capacity-building support may be of particular

relevance.⁷⁴ In circumstances where the inconsistencies have resulted from a lack of political attention, the Committee's initiation of a case may be enough to solve the problem by raising the profile of the issue before the Party's authorities.

Fourth, the committee may also address *systemic issues* which it identified during the course of its work.⁷⁵ Systemic issues are those that are experienced by several Parties and point to a shortcoming in the system itself, as opposed to individual performance of Parties. It may bring such issues to the attention of the CMA and provide recommendations. At the same time, the CMA could ask the committee to examine systemic challenges.

It is worth noting that, with the exception of paragraph 22 (b), the Committee will not address the content of NDCs or of other communications or reports. Neither will the work of the Committee change the legal character of the provisions of the Paris Agreement.

The Committee is required to pay particular attention to the respective national capabilities and circumstances of Parties, recognizing the special circumstances of LDCs and SIDS, at all stages of the process.

d) What will the Committee do?

In the situations outlined above, the Committee is tasked to take appropriate measures to facilitate implementation and promote compliance.

Decision 20/CMA.1, annex, provides the following, non-exhaustive catalogue of measures:

⁷⁴ Decision 20/CMA.1, Annex, paragraph 30(b) and (c); Paris Agreement, Article 13, paragraphs 14 and 15; and Decision 1/CP.21, paragraph 84, which establishes a Capacity-building Initiative on Transparency to support developing countries in implementing the ETF.

⁷⁵ Decision 20/CMA.1, Annex, paragraphs 32-24.

- Engaging in a dialogue with the Party to share information, identify challenges and recommend solutions (paragraph 30 (a))
- Assist the Party in engaging with the appropriate finance, technology and capacity-building bodies and arrangements under or serving the Paris Agreement in order to identify possible challenges and solution (paragraph 30 (b))
- Make recommendations to the Party with regard to those challenges and solutions and communicate them, with the consent of the Party concerned, to the relevant support bodies or arrangements (paragraph 30 (c))
- Recommend development of an action plan (paragraph 30 (d))
- Issue findings of fact in relation to matters listed in paragraph 22 a (paragraph 30 (e)).

Importantly, these measures are designed in such way as not to impede, but complement and add value to other processes under the Paris Agreement.

It is worth noting that issuing finding of fact *only* applies only to those matters listed in paragraph 22(a), as a consequence of their legally binding character. However, those matters can be brought to the committee by the Party itself (self-referral according to paragraph 20) or through “automatic” initiation (paragraph 22(a)). The Committee would still need to define in its operational guidelines what “issuing finding of fact” implies; but it can be expected that it will most likely involve a public statement about the circumstances of non-compliance of a party with one of the issues listed in Decision 20/CMA1, Annex, paragraph 22(a). Furthermore, the committee shall annually report to the CMA where the “finding of fact” will also be included.

e) Further Steps

The Modalities and Procedures for the effective operation of the “Article 15 Committee” foresee that the Committee develops its rules of procedure for adoption by CMA3; provided that the committee is able to commence and finalize this work despite the constraints put to UNFCCC processes by the covid-19 pandemic.⁷⁶ The rules of procedures will have to cover more specific details on, for example, timelines, conflict of interest, role of the co-chairs and reasoning in the decisions of the committee.

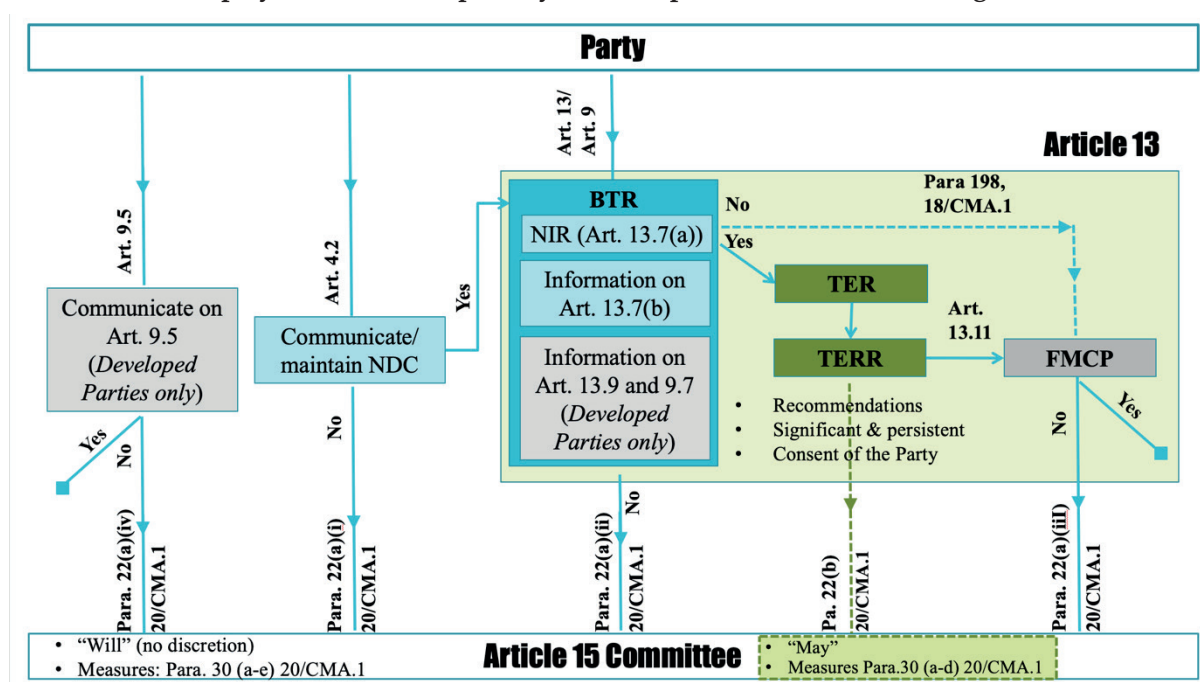
Moreover, negotiations on the rules and guidelines for cooperative approaches under article 6 of the Paris Agreement continue throughout 2020 and 2021 with the view of reaching agreement at CMA3. Also in this context, the role of the committee could be further elaborated and refined.⁷⁷

Table 4 summarizes the inter-linkage between the transparency provisions of Article 13 and other articles and the facilitating and compliance provisions of Article 15 under the Paris Agreement.

⁷⁶ At the time of writing, COP26/CMA3 in Glasgow was postponed to 2021, and the meetings of the SBs were postponed from October 2021. See: <https://unfccc.int/news/cop26-postponed>. See also: <https://unfccc.int/news/cop-bureau-reschedules-unfccc-subsi-dary-body-meetings-to-2021>. The Article15 committee might be able to work remotely in the meantime. However, it needs to be taken into account that the committee has never met in person.

⁷⁷ See Christina Voigt, *Linkages between Cooperative Approaches, Transparency and Compliance (Articles 6, 13 and 15 of the Paris Agreement)*, ERCST Paris Agreement Policy Brief (2019); available at: https://ercst.org/wp-content/uploads/2019/08/20190819-Arts.-6-13-15_Brief-w-Letterhead.pdf. See also: Christina Voigt, *An Appeal Procedure for the Mechanism Established by Art. 6.4 of the Paris Agreement* (19 August 2019) ERCST Policy Brief and Options Assessment, available at: <https://ercst.org/publication-art-6-4-appeal-procedure/>.

Table 4: The Interplay between Transparency and Compliance under the Paris Agreement



Explanation of Table 4:

According to Article 4, paragraph 2, each Party shall prepare, communicate and maintain successive NDC. If any Party fails to do so, according to paragraph 22(a)(i) of Decision 20/CMA.1 (Annex), the Committee will initiate the consideration of this issues, and take appropriate measures as provided in paragraph 30 (a) to (e) of that. There is no discretion for the committee as to whether consider such case.

According to Article 9, paragraph 5, each developed country Party shall biennially communicate indicative quantitative and qualitative information related to provision of financial resources to assist developing country Parties. If a developed country Party fails to do so, according to paragraph 22(a)(iv) of the Annex of Decision 20/CMA.1, the Committee will initiate the consideration of this issues, and take appropriate measures as provided in paragraph 30 (a) to (e) of Decision 20/CMA.1. There is no discretion to initiate such case.

After communicating the NDC, during the implementation phase, according to Article 13,

paragraph 7, Article 13, paragraph 9 and Article 9 paragraph 7, each Party shall provide mandatory reports and information as relevant. According to Decision 18/CMA.1, the BTR with the national inventory report as a component or stand-alone document will be used for this reporting. If a Party fails to provide such mandatory information, according to paragraph 22(a)(ii) of Decision 20/CMA.1, the Committee will initiate the consideration of this issues, and take appropriate measures as provided in paragraph 30 (a) to (e) of Decision 20/CMA.1. There is no discretion for the committee to initiate proceedings.

The BTR and national inventory report will undergo TER according to Article 13, paragraph 11 and Decision 18/CMA.1. The TER team will publish a TER report, including 'areas of improvement' expressed as 'recommendations' and/or 'encouragements'. For those 'recommendations', according to paragraph 22(b) of Decision 20/CMA.1, if the Article 15 Committee recognizes any significant and persistent inconsistencies with the modalities, procedures and guidelines adopted by Decision 18/CMA.1, with

the consent of the Party concerned, the Committee may engage in a facilitative consideration, and take appropriate measures as provided in paragraph 30 (a) to (d) of Decision 20/CMA.1. In this case, the Committee has discretion on whether initiate the consideration or not.

After TER, each Party shall participate in a FMCP according to Article 13 paragraph 11 and Decision 18/CMA.1. If any Party fails to do so, according to paragraph 22(a)(iii) of Decision 20/CMA.1, the Article 15 Committee will initiate the consideration of this issues, and take appropriate measures as provided in paragraph 30 (a) to (e) of Decision 20/CMA.1. There is no discretion for this case. Participation in the FMCP is an obligation for Parties of the Paris Agreement. The Decision 18/CMA.1 also considered the situation that if a Party did not submit a BTR on time, it can also participate in a FMCP. In such a case, the Article 15 Committee will initiate its consideration.

4. Conclusions: The “accountability continuum” in the Paris Agreement

As this article has shown, the procedures for creating and enhancing transparency under Articles 4, 9 and 13 of the Paris Agreement, and for facilitation of implementation and promotion of compliance under Article 15 of the Agreement are inter-linked in many ways. Some of the linkages are clear and explicit; others can only be understood by a careful, in-depth analysis of the provisions in the Rulebook for Articles 4, 9, 13 and 15.

In any case, these linkages are deliberate and increase Parties’ accountability for their actions as well as for their compliance with the rules and obligations established under the Agreement. In fact, by seeing the two processes (i.e. transparency and compliance) together, one can identify a kind of procedural “accountability continuum” for parties’ performance in light of the nature of

relevant provisions of the Agreement and in relation to the mechanisms and procedures established under the Agreement.

Parties accepted responsibility for their actions, the obligation to disclose them and to increase accessibility to and transparency of information. They created an “accountability continuum” for Parties’ individual obligations which “flows” through several processes: There are clear linkages between the NDC preparation guidelines (Article 4), decisions for reporting of finance related issues (Article 9), guidelines for reporting and review (Article 13), all the way to the implementation and compliance processes under Article 15. As mentioned above, policy makers would be well-advised to have this “accountability continuum” in mind, when preparing their NDC’s.

The Enhanced Transparency Framework together with the “Compliance Mechanism” establish an oversight system to ensure the effective implementation of the provisions of the Agreement. This “oversight” is vital to the accountability of Parties and forms a cornerstone of the conceptual apparatus of the agreement.⁷⁸ Since the Paris Agreement does not contain legal obligations of (quantifiable) result which would be enforceable under international law, the provision of mandatory information, both “*ex-ante*” when submitting an NDC under Article 4 and “*ex-post*” when reporting under the transparency framework (Article 13) has been considered “the main mechanism to hold states accountable for doing what they said they would do”.⁷⁹ It was noted that peer pressure and public pressure due to publicly available information can be as effective as legal obligations in influenc-

⁷⁸ Daniel Bodansky, Jutta Brunnee and Lavanja Rajamani, *International Climate Change Law*, Oxford University Press (2017) 242.

⁷⁹ *Ibid.*

ing behavior.⁸⁰ The MPGs for the functioning of the transparency framework are of surprisingly high “normative density”, i.e. they are detailed and prescriptive and witness the willingness of Parties to commit to common criteria for providing necessary information.

This, however, is not the entire “accountability” picture. As this article has shown, the link to the “article 15 committee” provides another accountability aspect with respect to parties’ performance. In situations where Parties are either unable or facing other challenges with implementing the provisions of the Paris Agreement, they can always engage voluntarily with the “Article 15 committee” in order to seek help and support to address their situation. This way, it might be possible to avoid worsening circumstances and prevent non-performance by the respective Party. This is in line with the understanding that with respect to climate change and other environmental harm, preventing non-compliance and non-performance of Parties might be more important and meaningful than any *ex-post* sanctions or punitive measures for non-compliance.⁸¹

Yet, in situations where a Party does not comply with its legally-binding obligations under the Agreement, i.e. under Article 4 paragraph 2, Article 13, paragraph 7, Article 13, paragraph 11, Article 9, paragraph 5 and Article 9, paragraph 7, its accountability will be addressed by the Article 15 Committee. The committee’s nature is fa-

cilitative, non-punitive and non-adversarial; but it is nevertheless an independent body designed to work with Parties in order to get them to do what they agreed they would do. The modalities and procedures set up a direct engagement with the party concerned, a dialogue and a process in order to facilitate the “return to compliance” by the Party. The publicity around these procedures, the public report to the CMA, as well as open meetings further enhance the “accountability” aspect of the committee’s function.

The committee will to a significant extent build upon the work of the ETF, e.g. in accessing information about the provision of mandatory reports under Article 13. In other words, the committee will need to rely on the ETF registry for initiating its work. Moreover, as detailed above, the committee is designed to function as a back-stop to the TER. After the TER teams publish their reports, their engagement with Parties ceases. In cases, however, of significant and persistent inconsistency with the transparency MPGs, the Article 15 committee can continue the dialogue with the Party concerned in order to address its challenges and to provide recommendations, including on assessing finance, technology and capacity-building support, and communicate such recommendations to the relevant bodies or arrangements under or serving the Paris Agreement. Moreover, the committee can work together with the Party concerned in developing an action plan on how best address implementation and compliance issues. It is in these continued engagements with a Party, that the “accountability continuum” lies. The possibility to “pick up” parties’ performance challenges and seeking to address them is a logical continuation from the accountability that lies in providing information and being transparent about such challenges, where they exist.

An accountability-linkage between the transparency framework and Article 15 exists

⁸⁰ Dinah Shelton, *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (OUP, 2000); see also: D. Victor, K. Raustiala, and E. Skolnikoff (eds.) *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice*, MIT Press (1998).

⁸¹ Edith Brown Weiss, *Invoking State Responsibility in the Twenty-First Century*, *The American Journal of International Law*, Vol. 96, No. 4, 798-816 (October 2002); Dinah Shelton (ed.) *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System*, Oxford University Press (2003).

further in cases where a Party does not participate in the FMCP; a central building-block of the ETF. These main mechanisms together hold states accountable for doing what they said they would do.

The Paris Agreement has occasionally been criticized as weak and “toothless” (in terms of not being enforceable)⁸², or prone to unravel.⁸³ Such criticism, however, appears somewhat speculative, premature and unsubstantiated as it is rarely (if at all) based on an in-depth study of the Agreement’s architecture or a profound understanding of its mechanisms, let alone the inter-linkages between them. Based on the analysis above, the authors take the opposite view, i.e. that the carefully designed and crafted pro-

cedural “accountability” elements of the Agreement hold the strength and effectiveness necessary to “induce” Parties to accept responsibility for their actions (or inactions).

The processes under Articles 4, 13 and 15 were created in order to enhance the visibility and “understandability” of parties’ actions; and for holding Parties accountable for their performance. These procedures set up a system which is complex, but flexible; a system which consists of several steps and building blocks, while also being dynamic, evolving, and fine-tuned to the Agreement’s architecture; but most importantly, a system which puts accountability at the core of international climate governance.

⁸² Anne-Marie Slaughter, ‘The Paris Approach to Global Governance’, Project-Syndicate (28 December 2015), found at: <https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12>; see also: Richard Falk, ‘Voluntary International Law and the Paris Agreement’ (16 January 2016), found at: <https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/>.

⁸³ Noah Sachs, The Paris Agreement in the 2020s: Breakdown or Breakup? *Ecology Law Quarterly*, Vol. 46, No. 1 (2019).