

## **Legal issues are not the obstacle at the Durban climate conference**

Legal issues are high on the agenda for the Durban climate conference, but international law is not the obstacle to progress in the negotiations. The Durban outcomes depend on political will and the willingness of credit-crunched voters in northern countries to back strong measures and help for developing countries.

In less than two weeks thousands of government representatives, campaigners and others will gather in Durban for the next big UN climate conference.

At stake is slowing climate change to a level which avoids large-scale damage, especially to the most vulnerable countries and poorest people in the world. African countries are expected to suffer some of the harshest impacts.

Many see legal questions related to the shape of the future climate accords as deal-breakers in Durban. At the end of 2012 the current greenhouse gas reduction targets for developed countries under the Kyoto Protocol terminate and it is not yet clear what will take their place.

### **Legal options**

Negotiations are taking place in two tracks which mirror the Climate Convention and its subsidiary treaty, the Kyoto Protocol.

Developing countries are fighting for a new set of targets for developed countries after 2012, as foreseen in the Kyoto Protocol. Countries such as Japan, Russia and Canada have stated categorically that they will not agree to further commitments under Kyoto.

Many developed countries prefer a single new agreement with legally binding additional actions for large developing countries with fast-growing emissions, such as Brazil, China and India.

Potential “legal options” include a new legally binding agreement under the Convention; amendments to the Convention or the Kyoto Protocol; political decisions, for example decisions by the Conference of the Parties (COP); or various combinations.

Since prior to the disastrous Copenhagen Summit in 2009 countries have been submitting proposals for new agreements and amendments to the existing ones. Not all are detailed, but lack of legal options is not the problem.

Encouragingly the majority of countries – even the US – appear to agree that there should be a legally binding agreement.

Developed countries such as the US insist on legally binding actions by large developing countries, but several studies have shown that the voluntary “pledges” made by developing countries in Copenhagen and Cancun amount to greater emission reductions than the pledges made by developed countries, although the latter have agreed to take the lead in tackling climate change because of their historical responsibility for emissions.

## **The “Kyoto gap”**

The question of the “Kyoto gap” is at the centre of the Durban talks. This is the situation where the current targets under Kyoto run out without new commitments having been agreed in their place. This has caused much debate about the legal status of the Kyoto Protocol in such a situation.

Parts of the Kyoto Protocol would continue even in the absence of new emission reduction targets. Other parts might not operate - or countries could agree temporary arrangements.

Options for bridging the gap exist if there is political will, for example “provisional application”, where states agree to apply amendments or a new agreement as if they had entered into force. There is also talk about a political (i.e. not legally binding) agreement to extend Kyoto for a limited period while negotiations continue after Durban.

## **In Durban**

Continuing climate change is already unavoidable, even if all emissions stopped today. If Durban postpones conclusion of a new agreement to 2015 or 2018, as some now expect, vulnerable people in developing countries risk devastating impacts.

Another big issue in Durban will be the Green Climate Fund, created last year in Cancun to help fund climate action and adaptation in developing countries. Will it be anything but an empty shell with no money? It might not even be a shell – countries have not been able to agree on its design in preparatory negotiations.

Countries have tabled around twenty formal proposals for new agreements or amendments to the Climate Convention and Kyoto Protocol since 2009.

Many preparatory meetings have considered issues and much work has been done behind the scenes. Why not get as much of the job done in Durban as possible – even the whole job - without delaying?

If there is political will there is certainly a legal way in Durban. International law is not the problem.

## ***About FIELD***

FIELD is a team of international environmental lawyers based in London. We believe strongly that creating effective international law is an essential part of solving global environmental problems.

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