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COP22 / CMP 12 / CMA1 | Marrakech - Debrief note

Introduction

With the entry into force of the Paris Agreement just days before the commencement of the Marrakech climate change meetings, the scene was set for an upbeat and busy two weeks of negotiations to progress issues relating to the operationalisation of the Paris Agreement.

At the opening session of the COP, the Moroccan COP Presidency outlined its desire to see concrete action in Marrakech, focussing on enhanced ambition, promoting implementation and providing support and finance to vulnerable countries. As an African COP, a key issue was to ensure that opportunities to address mitigation and adaptation on that continent were kept in the spotlight.

Another priority of the Presidency was to progress the Global Climate Action Agenda being led by the High-Level Champions, Ms. Laurence Tubiana, French Ambassador for climate change and Ms. Hakima El Haite, Minister Delegate to the Minister of Energy, Mines, Water and Environment of Morocco. The Champions had developed a roadmap focused on mobilising stronger and more ambitious climate action by all Parties and non-Party stakeholders and were looking to promote greater engagement with sub-national governments, cities and civil society, including the private sector, through a high-level event in week two.

Parties welcomed the recent decisions by parties to the Montreal Protocol to reach agreement on amendments to accelerate the phasedown of hydrofluorocarbons (HFCs) and International Civil Aviation Organisation (ICAO) to limit growth in greenhouse gas emissions in the aviation sector. There was also much talk about how the market mechanisms under the Paris Agreement might link with the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) agreed to by ICAO.

The early entry into force of the Paris Agreement enabled the first meeting of the parties (CMA1) to the Paris Agreement to be commenced. One of the first issues to be addressed by the COP Presidency was how to manage the CMA-1 agenda, recognising that many of the decisions that need to be taken on modalities and procedures under the Paris Agreement still had to be negotiated and agreed.

Despite the uncertainty (and dismay) that swept over the COP in the first week following the outcome of the US election, by the end of the first week an attitude of resolve had set in that global action under the Paris Agreement would move forward, with the US or without. Click here for an overview of what a change in US policy may mean for the Paris Agreement.

Below we provide an overview of some of the key issues that were discussed in Marrakech and their implications for private sector engagement on climate change.

The Marrakech Action Proclamation for Our Climate and Sustainable Development

One of the more unique outcomes of COP22 was the *Marrakech Action Proclamation for Our Climate and Sustainable Development* (the Proclamation). The Proclamation is a concise statement that reflects the general consensus of the Parties on the important momentum for climate action. Language agreed towards the latter stages of negotiating the text highlights this notion - stating that "[t]his momentum is irreversible – it is being driven not only by governments, but by science, business and global action of all types at all levels." While this statement could be viewed as merely a statement of fact, and as such not particularly remarkable, the clarity of this simple notion embraced by the world community marks a step change in the evolution of the international negotiations on climate. The Proclamation more than anything is a reminder of how far the international negotiations have come and how strong the momentum truly has been. In keeping with this spirit, and recognising the need to move to implementation, the Proclamation calls for:

- the highest political commitment to combat climate change, as a matter of urgent priority;
- solidarity with those countries most vulnerable to the impacts of climate change;
- an increase in the volume, flow and access to climate finance; and
- non-state actors to join in immediate and ambitious action and mobilisation.

A copy of the full Proclamation is available here.

The First Meeting of the Parties to the Paris Agreement (CMA1)

With the Paris Agreement entering into force just days before the opening session of COP22, this created a tricky procedural and logistical dynamic in Marrakech. The Parties to the Paris Agreement had not expected that enough countries would submit their respective instruments of ratification to the U.N. during 2016 such that it would cross the threshold for entry into force within a year. By comparison, the Kyoto Protocol took eight years from signing to entry into force. As a result of this unanticipated momentum, Marrakech marked the first Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA1) and meetings to begin the work of this body had to be convened.

In the Paris Agreement and its accompanying COP Decision, there are a whole host of actions and areas of progress that are to be made by CMA1. Just to name a few, the Parties are supposed to agree on modalities, procedures and guidelines: (1) to operationalise the centralised emissions reduction trading mechanism under Article 6.4; (2) to provide transparent and consistent information on the financial support provided by developed countries to developing countries under Article 9; and (3) to inform the transparency mechanism under Article 13, all of which involve complex considerations and are key elements to the Paris Agreement. In addition, the Parties are to agree on the institutional arrangements for capacity building and consider a set of common time frames for individual Parties' Nationally Determined Contributions. Needless to say, all of the work was envisaged to take years, not months, and it was not completed as the Parties gathered in Marrakech.

The procedural solution agreed by the Parties was to open CMA1 and then suspend it without closing the session to allow more time to complete the required tasks. The bulk of the negotiations in Marrakech then focussed on reaching consensus for an aggressive, yet practicable time period within which the CMA1 session would be suspended in order to allow the Parties time to achieve the work mandated to them by CMA1. The Parties agreed to language that allows CMA1 to be suspended, reconvened in 2017 and then again in 2018 with all work required to be completed no later than the 2018 meeting. Parties also spent considerable time discussing which items where required to be completed by CMA1 and which items could wait, with some countries arguing that all open issues needed to be addressed together as a package and others seeking to prioritise certain items over others.

Finance

There was a large number of separate agenda items on finance at the Marrakech COP. These included reports from bodies that serve the Financial Mechanism, initiating reviews on progress related to long term finance and developing modalities for accounting for financial resources mobilised under the Paris Agreement.

As is always the case with climate change meetings, progressing these issues was critical to achieving a successful outcome for the COP Presidency. For developing countries, the commitment that developed countries have collectively made to 'mobilize' $100 billion per year by 2020 is fundamental to their willingness to participate in the whole process of the UNFCCC and especially to their making mitigation commitments. However, attention is now firmly focussed on how that can be scaled up post 2020.

The issues arising in the negotiations cover a number of broad and interrelated themes. These include the need for all governments and stakeholders to:

- understand and assess the financial needs developing countries have so that such countries can undertake activities to address climate change;
- understand the sources of this financing, in other words, how these financial resources will be mobilised;
- understand the way in which these resources are transferred to and accessed by developing countries.

Developing countries wanted to know that financial resources are predictable, sustainable, and that the channels used allow them to utilise the resources directly and without difficulty. For developed countries, it was important that developing countries be able to transparently demonstrate their ability to effectively receive and utilise the resources. The effective measurement, reporting and verification of climate finance was also key to building trust between Parties to the Convention, and also for external actors.

The **High Level Ministerial Dialogue on Climate Finance** took place on Wednesday 16 November. The event aimed to provide a clear vision on how to make further progress on the mobilisation of climate finance, supported by the broadest range of Parties. Finance Ministers from a range of developed and developing countries provided views on how to enable and deliver concrete initiatives on leveraging and catalysing public and private finance. The Governments of a number of developed countries highlighted the $100 Billion Roadmap and progress that had been achieved to date to meet this goal. Mobilising finance for adaptation was also a key theme with the President of Fiji, the Minister for Energy and Environment from the Maldives, as Chair of AOSIS, and a number of other developing country representatives highlighting the urgent need to significantly increase finance for adaptation. Information on potential financial tools to scale up private sector finance, such as climate bonds, was also presented.

Outcomes from some of the more controversial agenda items on finance are summarised below:

- **Long-term finance** - Negotiations on this agenda item focussed on how to avoid a finance gap and to access and deliver finance, noting the second biennial assessment report, workshops and work that had been done throughout the year on adaptation finance and loss and damage. Developed country parties presented their $100 Billion Road Map, which set out progress on mobilising climate finance to date, and projecting the ability to achieve the $100 Billion goal. Developing country parties were keen to discuss the levels of finance that would be needed for adaptation and mitigation post 2020. However, there was some resistance to discuss that under this agenda item. The final decision urged developed country parties to scale up efforts to mobilise finance and to strive for greater balance between mitigation and adaptation finance. The focus of workshops over the next 2 years will be on translating needs into projects and programmes; the role of policies and enabling environments and facilitating enhanced access to finance.

- **Green Climate Fund** - The Board of the GCF submits an annual report to the COP as provided for in its governing instrument containing information such as the implementation of the guidance provided at COP 21 and any other relevant decisions of the COP. The COP was invited to provide further guidance to the GCF on policies, programme priorities and eligibility criteria. A COP Decision was taken which welcomed the Report of the GCF and highlighted a number of specific actions and results achieved in 2016, including, amongst other things, the approval of US $3 million per country in funding for the preparation of national adaptation plans or other national adaptation planning processes through the readiness and preparatory programme. Guidance to the GCF included requests to facilitate the amount of direct access proposals in the pipeline, enhance coordination and delivery of resources to support country driven strategies through simplified and efficient application and approval procedures and continued readiness support to developing countries, including LDCs and SIDS. The Decision notes with concern the lack of signed bilateral agreements related to privileges and immunities in order for the GCF to undertake its activities. This issue has been seen as an impediment by countries such as Indonesia. The GCF will be required to address this concern as a matter of priority during 2017. Another issue which arose during the COP related to Turkey - which was seeking recognition of its special circumstances in order to access finance from the GCF. This was dealt with through COP Presidency consultations and no reflection of the issue was included in the GCF Decision.

- **Adaptation Fund** - The CMP adopted two decisions relating to the Adaptation Fund (AF) - the first noted the Report of the AF and highlighted some key findings from the report, in particular the status of funding for program and project approvals, funds available for new programs, receipts into the AF Trust Fund and the ongoing discussion about linkages between the AF and the GCF. The Decision highlighted some of the positive findings of the independent evaluation of the AF, including its pioneering of adaptation financing and direct access. Parties also welcomed the financial pledges and contributions made to the

AF by Germany, Italy, Sweden and 2 Flemish regions totalling $81 million. The second CMP decision decided that the third review of the AF would be undertaken in accordance with terms of reference set out in an Annex and invited Parties and observer organisations as well as other interested international organisations to submit views by 30 April 2017. The scope of the review will cover progress made to date and lessons learned in the operationalisation and implementation of the fund, with a focus on provision of sustainable, predictable and adequate financial resources and mobilisation of resources to fund concreted adaptation projects and programs that are country driven and based on needs, views and priorities of eligible countries.

- **Adaptation Fund - Paris Agreement** - Of particular interest in Marrakech was the relationship between the Adaptation Fund and the financial mechanisms serving the Paris Agreement. Decision 1/CP21 paragraph 5 recognises that the Adaptation Fund may serve the Paris Agreement, subject to relevant decisions of the CMP and CMA. Some Parties will be pressing for that decision to be taken at COP 22 whilst others see a need for further preparatory work to be undertaken to address outstanding legal issues. The APA was requested to consider whether the AF should serve the Paris Agreement. Developing Country Parties argued that it was a simple procedural matter and a decision could be taken at COP 22. Developed Country Parties highlighted a number of legal issues that required resolution before a decision could be taken. The APA closed without concluding its work on this issue. The matter was picked up by CMA1 which concluded with a Decision which states that "the Adaptation Fund should serve the Paris Agreement, following and consistent with decisions to be taken at CMA1-3 (COP24/CMP14) that address the governance and institutional arrangements, safeguards and operating modalities of the AF.

- **Sixth Review of the Financial Mechanism** - The COP adopted Guidelines for the 6th Review, to be completed by COP 23. Those Guidelines state that objectives for the review include assessing the effectiveness of activities funded and provision of resources; consistency and complementarity between operating entities of the financial mechanism; the role of the financial mechanism in scaling up the level of resources and assessing enabling environments to catalyse investment. The review will take into account a wide array of information and be assessed having regard to transparency, stakeholder engagement, gender, adequacy, predictability and timeliness and rate of disbursements, responsiveness and efficiency, amounts of finance provided and leveraged, sustainability and country ownership. Parties, observers and other interested international organisations are invited to provide submissions based on the Guidelines by 30 April 2017.

Article 6 and KP markets

Parties were expected to begin work on developing guidelines for Internationally Transferable Mitigation Outcomes (ITMOs) at this session. However, progress on substantive discussions was slow with some Parties calling for further technical information to inform discussions. As a result, Parties have been invited to submit views (by 17 March 2017) on the elements to be addressed, including their operationalisation in the guidance, overarching issues and relationships between Article 6 paragraph 2 and other provisions of the Paris Agreement.

Similarly, in relation to the new sustainable development mechanism under Article 6 paragraph 4, there was a robust exchange of views on the new mechanism, in particular in respect to governance, the scope of the mechanism in the context of all Parties having nationally determined contributions and the relationship with the existing flexible mechanisms under the Kyoto Protocol. However, progress was limited and the draft conclusions invite Parties to submit views (by 17 March 2017) on the elements to be addressed, including their operationalization, in the rules, modalities and procedures for the mechanism, overarching issues, and relationships between the new mechanism and other provisions of the Paris Agreement.

In both cases, a roundtable discussion will take place based on these submissions at the next SBSTA meeting in Bonn. It was disappointing to note that although early versions of the draft conclusions invited submissions from observers, this reference was deleted in the final text.

Markets were also being discussed under the Kyoto Protocol, with a review of the modalities and procedures of the CDM continuing in Marrakech. Parties were unable to conclude work on the review, so it will be taken up again at the next round of SB meetings in Bonn. The development of an appeals mechanism for the CDM, which has been under discussion for a number of years has also been deferred until 2019. Parties were able to conclude consideration of the item on eligibility of transboundary carbon capture and storage as CDM project activities, noting that no CCS project activities had been registered to date and there was no need to continue to consider this issue. On Joint Implementation, it was noted that activity under JI was virtually non-existent and questions were raised about whether the JISC could operate in a "virtual" context.

Technology Transfer

Parties have been tasked to continue to work on elaborating the Technology Framework with initial key themes to include innovation, implementation, enabling environments and capacity building, collaboration and stakeholder engagement. A reflection note prepared by the Co-Chairs expanded on these themes and also identified the possibility of exploring work areas related to leveraging and increasing synergies with international organisations and initiatives outside the Convention and cooperating with the private sector.

At COP 22, the Parties encouraged the Technology Executive Committee, the Climate Technology Centre and Network and the operating entities of the Financial Mechanism to enhance the involvement of relevant stakeholders as they undertake actions to strengthen the linkages between the Technology Mechanism and the Financial Mechanism. The Parties further invited these entities to provide information on their actions in strengthening the linkages between the Technology Mechanism and the Financial Mechanism and provide guidance on further actions if needed.

Loss & Damage

Loss and Damage (i.e., the negative impacts of climate change in vulnerable developing countries after climate mitigation and adaptation efforts have been undertaken) remained a very important topic for developing countries at COP22. The Executive Committee (ExCom) of the Warsaw Implementation Mechanism (WIM) has been working on loss and damage issues for the last several years. At COP20 in 2014, a Two Year Work plan for the ExCom was approved. The Two Year Plan contains nine action areas, and the ExCom has made progress in each of these nine areas over the last two years but as of the time of COP22 work had not been completed.

The ExCom has also been tasked to develop a Five Year Work plan to progress the ExCom's work on loss and damage. An indicative plan has been prepared, but lacked detail. Developing country Parties sought to elaborate on the ExCom's indicative plan and strengthen the mandate of the ExCom in COP 22.

After many hours of negotiations, two decisions on Loss and Damage were agreed upon in COP 22. First, in decision FCCC/SB/2016/L.8, Parties welcomed the Excom report and requests the ExCom to continue to implement activities from its initial Two Year Workplan. The decision further approves the indicative framework for the five-year rolling workplan of the ExCom as the basis for developing corresponding activities, starting at the first meeting of the ExCom in 2017. Relevant inputs provided by parties and relevant organisations were invited by 28 February 2017 with a focus on the placeholders in the workplan. The decision requests the ExCom to include in its five-year rolling workplan relevant work for advancing the operationalisation of the mandates ensuing from Decision 1/CP.21, paragraphs 48 (establishing a clearinghouse for risk transfer) and 49 (establishing a task force to avert, minimize, address displacement). The decision notes that the Excom will evaluate its progress on an interim basis, as appropriate and invites integration among constituted bodies under the Convention.

Second, in Decision FCCC/SB/2016/L.9, the Parties reviewed the WIM, including the mandate, structure and effectiveness. The decision recommended further guidance relevant to enhancing and strengthening the WIM. The decision also recommended a no longer than five-year review period for the WIM with the next one to be held in 2019 with terms of reference finalized six months in advance of each review. A secretariat technical paper will be prepared to elaborate the sources of financial support for addressing loss and damage through the Financial Mechanism and outside of it. The decision further recognised that the ExCom may prioritise thematic areas for further work and consider expert groups, subcommittees and panels to assist in the work.

Global Champions & Non-State Actors

The role of non-state actors in realising the aims of the Paris Agreement was widely acknowledged at COP22, and formed a key focus of the Global Climate Action Agenda. To action this Agenda, Decision 1 at COP21 authorised the appointment of two Global Champions Ms. Laurence Tubiana, French Ambassador for climate change and Ms. Hakima El Haite, Minister Delegate to the Minister of Energy, Mines, Water and Environment of Morocco. At the UN Climate Change Conference in Bonn, Germany in May 2016, the Global Champions announced a Roadmap for achieving the Global Climate Action Agenda, which was a cornerstone of the High-Level Event on Accelerating Climate Action at COP22. The roadmap focuses on mobilising stronger and more ambitious climate action by all Parties and non-Party stakeholders.

At the High Level Event, the Global Champions announced the Marrakech Partnership for Global Climate Action, a permanent working group of national and sub-national governments, civil society, financial institutions, cities, local communities and the private sector. The Marrakech Partnership seeks to complement Party negotiations by providing key non-government stakeholders with a platform to assist governments in advancing the aims of the Paris Agreement as well as achieve greater ambition over time on mitigation, adaptation, and assist on the delivery of finance, technology and capacity building to developing countries. It also sets out a tracking mechanism for delivery on commitments by non-Party stakeholders and voluntary initiatives to increase confidence and ambition as well as to identify gaps and areas for improvement.

The High Level Event hosted speakers from civil society, the private sector, ministers from several countries and provincial governments and representatives of international organisations including the Secretary General of the United Nations, Mr. Ban Ki-moon. It provided stakeholders with the opportunity to announce new or strengthened voluntary efforts, initiatives and coalitions. To that end, several countries including New Zealand, Norway, the Seychelles, France, South Africa, Canada, Germany, Spain and Hungary affirmed their commitments, the United Arab Emirates increased its Investment into sustainable energy and raised its target from 24% to 27% by 2021, Pakistan announced a new Climate Change bill to establish new platforms to address climate change nationally, the EU announced allocation of an additional €4.1 billion to climate action in Europe and Africa, which seeks to leverage up to €44 billion from the private sector, and the Association of Small Island States announced the Initiative for Renewable Island Energy.

Non-State actor Ms. Rachel Kyte, Special Representative of the United Nations Secretary General and CEO of Sustainable Energy for All announced the intention to launch in April 2017 a platform for faiths and non-government foundations to commit to allocating 1% of their assets - in a blend of both grants and investments – into clean energy solutions to improve access to energy, which is estimated to leverage $500 billion in capital investment. This announcement was coupled with a call to non-state actors to allocate 1% of their assets to sustainable energy investments and do their part to further the aims of the Paris Agreement.

NDC Implementation

The Nationally Determined Contributions (NDCs), submitted by nearly every nation under the Paris Agreement, provide a blueprint for integrated economy wide low carbon economic growth. Effective implementation will necessitate the roll-out of low-carbon, climate-resilient infrastructure and economy-wide transformation, financed by significant, mostly private, investment.

Recognising the need to provide support to developing countries to build the capacity to access and mobilise public and private finance quickly, and at scale, the NDC Partnership was launched in Marrakech by a coalition of governments and international institutions. The Partnership will provide a platform to coordinate host country needs with donor support and link with entities able to provide technical support.

In addition, *GNIplus*, a consortium comprising Climate Policy Initiative, AECOM, Baker McKenzie, and Ricardo Energy & Environment hosted a seminar on the work it is doing with respect to NDC implementation to demonstrate how support can be mobilised. *GNIplus* is already collaborating deeply with governments, multilateral agencies and private investors on climate and development issues and working with selected countries to develop and enhance the legal, policy, financial, institutional, and governance frameworks to catalyse broader systemic transformations (see here for more information about *GNIplus*).

Some Final Personal Reflections

The Baker McKenzie team were very active in Marrakech, participating in a number of side events related to renewable energy, carbon markets and aviation, climate change law and governance and NDC implementation. We also engaged in a number of activities related to REDD+ and sustainable landscapes, including briefing the investment community on the launch of the IFC-BHP Billiton REDD+ Bond.

A number of team members had the privilege of acting as advisors to the Moroccan Presidency. From the outset of that assignment, it was clear that the Presidential team were committed to keeping the momentum from Paris going and securing a strong outcome at the COP. The Declaration, which reflects significant behind-the-scenes negotiations, captures that sense of urgency and determination to limit warming and pursue low carbon development.

The US election result clearly had an impact on the mood of the COP, but it didn't take long for leaders to come forward and reiterate their commitments to the Paris goals and make it clear that one country alone could not reverse the momentum for climate action. The high-level segment, convened by His Majesty Mohammed VI, King of Morocco was attended by Heads of State and senior government officials, including President Hollande from France and US Secretary of State, Senator John Kerry - highlighting the continued importance of this global forum. In his address to the COP Senator Kerry summed this up stating "*The global community is more united than ever not just in accepting the challenge, but in confronting it with real action, in making a difference. And no one should doubt the overwhelming majority of the citizens of the United States who know climate change is happening and who are determined to keep our commitments that were made in Paris*."

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