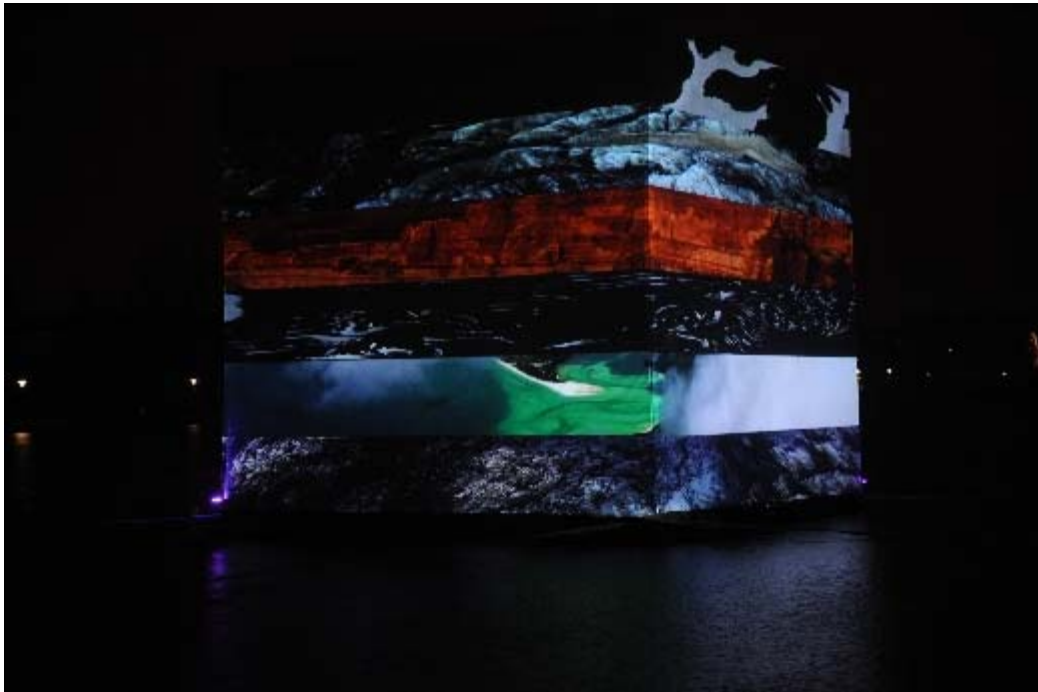


25 Degrees in Africa - Climate Change

COP16 – does Africa need a legally binding agreement?

According to the New York Times, Washington's climate policy analysts and several experts with ties to the Obama administration are starting to quietly abandon the once sacrosanct belief that all nations must agree to legally binding emission targets.

There were many doubts that a legally binding treaty would be achieved at COP15 and when, after months of planning this was not achieved, people started to wonder whether it would be likely or even desirable to achieve this at the next Conference of the Parties in Cancun, Mexico.



What everybody wants

Getting the world's nations to commit to a legally binding agreement has been the first and foremost concern amongst policy negotiators and climate change activists. But after days of talks and debates an Accord, which was merely noted by the United Nations, was all that was presented. Disappointment, finger pointing and blame shifting ensued. But what if legally binding isn't what we should be focusing on?

"I think that it is politically easier for world leaders to shift the goalposts towards a 'political deal' instead of a legally binding one," says Melita Steele, Climate & Energy Campaigner for Greenpeace Africa. "However, you just have to look at the 3 000 events held in over 130 countries worldwide on the global day of action last year calling for a legally binding deal in Copenhagen to see that more and more people around the world believe that all nations do have to commit to a legally binding agreement."

Andrew Gilder, Director at IMBEWU Sustainability Legal Specialists, says that one of the most interesting developments at COP15 was a widespread idea that the EU was trying to kill Kyoto," At COP15, people were shouting and protesting that we must not kill Kyoto, but the belief that a legally binding agreement is the trigger for action is misguided. There is a range of actions that can be implemented, domestically within both developed and developing countries, prior to the achievement of a legally binding international agreement."

The Kyoto Protocol, which requires countries to cut emissions of carbon dioxide and five other greenhouse gases by an average of 5.25% between 2008 and 2012, became legally binding in 2005. "Although the Kyoto Protocol compels industrialised countries to cut emissions, the US is not party to it. It is widely acknowledged that the US needed to be involved in climate change negotiations and according to the New York Times, developing countries do not want to give up Kyoto because it "enshrines the idea that poorer countries need only take voluntary measures unless wealthy ones pony up financial assistance."

Peet du Plooy, Trade and Investment Advisor at WWF SA (World Wildlife Fund South Africa), says that the Kyoto Protocol is not the only multilateral agreement that the US will not commit to. "There is a whole list of multilateral agreements that the US have not legally committed themselves to in the past, seeing these as imposing on the country's sovereignty. This includes not ratifying the Conventions on Discrimination Against Women and the Convention on the Rights of the Child, not signing the Mine Ban Treaty and 'unsigned' the Rome Statute of the International Criminal Court" says du Plooy.

See <http://www.globalpolicy.org/component/content/article/154/26665.html>

"There is suddenly some noise about moving away from a legally binding agreement, but this is really only a US argument. The G77, Europe and virtually everyone else is still standing by the necessity of a legally binding agreement," says du Plooy.

Legally binding = money for Africa

On 29 January, Alf Wills (Deputy Director General from the Department of Environmental Affairs and Tourism) sent a letter to Yvo de Boer (head of the U.N. Framework Convention on Climate Change) stating that South Africa will take nationally appropriate mitigation action to enable a 42% deviation below the 'Business As Usual' emissions growth trajectory by 2025, but that the extent to which this action will be implemented (in accordance with Article 4.7 of the Convention), depends on the provision of financial resources, the transfer of technology and capacity building support by developed countries.

"A fair and ambitious legally binding agreement would enable African countries to implement effective local action plans to leap-frog dirty development and facilitate a green development path. It would also commit Annex 1 countries to providing funding and technology for adaptation and mitigation for a specified period," agrees Steele.

"If the legally binding agreement was both fair and ambitious it would mean large scale predictable funding for adaptation and mitigation for most African states."

Domestic action plans

Although a legally binding agreement is not the ultimate goal, people are starting to look towards their own countries and asking what is being done domestically.

"Internationally, some countries are certainly putting off domestic action until a legally binding agreement is reached," explains Steele. "Some countries have been stalling the negotiating process, but in some cases, for example South Africa, their mitigation targets are an opportunity to drive a more progressive domestic policy in the medium term."

Steele comments that African countries should still be seeking a legally binding agreement and they also need to start focusing on domestic action plans. "Domestically enforceable action plans are critical. However, it's important to note that, apart from South Africa, few African countries would be able to implement these kinds of plans without a substantial amount of financing and technology being provided by Annex 1 countries for developing country mitigation, adaptation and forest protection, and that Africa is a net carbon sink. Which is one of the reasons why a legally binding agreement is so important – to protect the most vulnerable countries around the world. It is also a lot more difficult to try and get 192 different domestic action plans of varying targets."

Notwithstanding his abovementioned comments Gilder agrees that domestic action would best be undertaken in accordance with a legally binding agreement. "Although the taking of domestic action has been part of South Africa's agenda for some time, such action is likely to become more important once the Green Paper, setting out a fiscal, legislative and regulatory regime for dealing with climate change, is released – which is expected by mid- year. But South Africa should be taking domestic action in addition to legally binding emissions reductions commitments from Annex 1 countries. We need to see Annex 1 countries committing to specific targets."

Du Plooy confirms that although countries are not putting off the development of local climate policies until a legally binding agreement is achieved by the COP, some of the local action plans are indeed lagging.

"The Green Paper has been delayed since the National Climate Change Summit in the beginning of March 2009," says du Plooy. According to www.ccs Summit2009.co.za, over 600 participants from government, organised labour, business and industry associations, public interest groups and academia convened at this conference.

Confusion about "legally binding"

Gilder believes that one of the reasons for the focus on a legal binding agreement is that there is confusion regarding what this essentially means.

"There is certainly confusion amongst not only delegates, but also the public, on what 'legally binding' is and what it is not," says Gilder. "There is a naïve view that Annex 1 country Parties' emission reduction targets are the only legally binding obligation. We have found, for example, that some Non-Annex 1 country Parties are of the view that they have no obligations at all, under the climate change regime, because they do not have to make emission reductions. On the contrary, under the Climate Change Convention Non-Annex 1 country Parties are obliged to report on their greenhouse gas emissions and to formulate, implement, publish and regularly update regional programmes for climate change mitigation" says Gilder.

Steele says that Greenpeace accepts the idea of common but differentiated responsibilities for African countries. "In terms of emissions, aside from South Africa, the African continent has little to mitigate. What is important is reliable and sufficient funding to ensure that green development is a possibility for these countries, and that they can adapt to the climatic change that is already affecting these countries and their people," concludes Steele.

Sources: www.nytimes.com, www.ccs Summit2009.co.za.