

## LMDC's submission on

### The Sharm El Sheikh Dialogue on Article 2, paragraph 1(c) and its complementarity with Article 9

#### I. Introduction

1.1 We welcome the decision to continue and strengthen the Sharm El-Sheikh Dialogue to enhance understanding of the scope of Article 2, paragraph 1(c), of the Paris Agreement and its complementarity with Article 9<sup>1</sup> through at least two workshops during 2024 and 2025. We appreciate that the co-chairs of the dialogue have requested parties constituted bodies under the Convention and the Paris Agreement, the operating entities of the Financial Mechanism, climate finance institutions, observers, and observer organizations to submit their views on how could the dialogue be strengthened and identify the key issues to be taken up at the workshops<sup>2</sup>.

1.2 While the dialogue identifies the subject for discussion as the implementation of the commitments under Article 2 para 1 (c) and its complementarity with Article 9, it is important to note that the sub-para mentioned above, is part of Article 2, which includes two broad aspects- the objective (the chapeau of Article 2 and Article 2.1) and how are these to be implemented (Article 2.2). The legal interpretation of an article must be in accordance with customary rules of interpretation of public international law and should consider the “context”, including the preamble and subsequent paragraphs. Interpretation of Article 2.1.c, therefore, has to be in the context of the chapeau of Article 2, Article 2.1, and Article 2.2 and other articles such as Article 4 and Article 9.

1.3 Any legal interpretation of the article must be carried out in the context of poverty eradication and sustainable development. Further, article 2.2 provides keystone principles for implementing article 2 i.e. CBDR-RC, equity, and national circumstances, and the other articles that define the commitment (that is, Article 4, Article 9, 10, and 11). Article 4.5 mandates that developed countries provide support to developing countries in financing climate action- both by providing resources and by mobilizing these through various sources “... noting the significant role of public funds” (Article 9), access to technology (Article 10), and building capacity (Article 11) “...recognizing that enhanced support for developing countries will allow for higher ambition in their action”.

1.4 It is LMDC's view that international cooperation on 2.1c must be facilitative and represent positive collaboration, rather than protectionism and punitive measures. Discussions on 2.1c must be consistent with the Paris Agreement's bottom-up approach and its principles, namely equity and common but differentiated responsibilities and respective capabilities in light of different national circumstances. We must recognize that each country will pursue a unique pathway and

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<sup>1</sup> [https://unfccc.int/sites/default/files/resource/cma2023\\_L12E.pdf?download](https://unfccc.int/sites/default/files/resource/cma2023_L12E.pdf?download)

<sup>2</sup> Paragraph 11 of decision 9/CMA.5

policy-mix that is reflective of its own circumstances. Therefore, whilst a set of policies may work effectively in one country, it may not be applicable in another context. This particularly applies to punitive measures such as taxes, penalties, levies and fees.

1.5 LMDC's earlier submission on Article 2.1.c<sup>3</sup> can be referred to for further details.

The group's views on the guiding questions provided by the co-chairs are as follows.

**a. How could the Sharm el-Sheikh Dialogue be strengthened in your view?**

The annual report prepared by the co-chairs for the year 2023 provides a good summary of discussions during the last year and brings out the views of parties on the scope and implementation of the article. The report brings out divergences in views where certain members and stakeholders are willing only to consider a sub-para of a sub-article as a commitment while others have sought a holistic understanding of this provision in the context and as read with other provisions of the Paris Agreement.

There are multiple conflicting interpretations of Article 2.1c, resulting in difficulties in discussing the Article and its complementarity with Article 9 of the Paris Agreement. For this reason, Parties in COP28 decided to extend the Dialogue for two additional years rather than establishing a work program or any substantive work. These two years must be utilized to arrive at a convergence of views among Parties and an interpretation that is consistent with the principles and provisions of the Convention and its Paris Agreement.

Current interpretations of Article 2.1c by some Parties run contrary to the Paris Agreement, by focusing on sources rather than emissions, advocating for unagreed MRV approaches that extend beyond the Enhanced Transparency Framework which was carefully negotiated, and promoting top-down policies that are detrimental to developing countries.

To further strengthen the process and allow for a better understanding of the sub-para of a sub-article, the discussion must take into account how legal texts have to be implemented as expounded in the customary rules of interpretation of public international law.

The secretariat must ensure equitable participation of the private sector across developed and developing countries. Private sector and civil society groups from developing countries must be provided adequate opportunities to air their views.

**b. Which topics do you see as most relevant and helpful to be discussed in the context of the workshops as part of the dialogue?**

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<sup>3</sup> <https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202207261423---Submission%20of%20LMDC%20on%20Article%202%201%20C.docx>

In line with our view that a common understanding must be arrived at before proceeding into discussions related to implementation and operationalization, we recommend that the dialogue focus on these priority areas for its first year:

- *How do customary rules of interpretation of public international law guide the interpretation of Article 2.1.c?*
- *What does the goal mean? A common view of what the goal aims to achieve is a prerequisite for any substantive discussions*
- *What are common threads between different interpretations and what are some key divergences? How do the divergences differ? Having a clear view of divergence areas and exploring those further will allow convergence to occur openly and transparently.*
- *How can we implement Article 2.1 c given the foundational principles of Equity and Common but Differentiated Responsibility and Respective Capabilities and Article 3, Article 4.5, and Articles 9, 10, and 11?*
- *What are the differentiated roles between developed and developing countries? Embedding differentiation between developed and developing countries is key to ensuring the interpretation of Article 2.1(c) is consistent with the Paris Agreement.*
- *What does it aim to achieve in the context of the Convention and its Paris Agreement? How the goal relates to the Convention and its Paris Agreement is important as it contextualizes the goal within a broader regime to address climate change*
- *How could it be achieved? What are the principles that must guide its achievement? A common view on how the goal can be achieved will allow for further substantive discussions related to implementation*
- *How does it relate to Article 9 of the Paris Agreement? A key expression of the relationship with Article 9 will be key to contextualizing the goal and ensuring a common view among Parties on the different aspects of the Paris Agreement and the manner of their implementation.*
- *How Article 2.1 can be implemented in the context of strengthening integrated, holistic and balanced non-market based approaches in accordance with Article 6, paragraph 8, of the Paris Agreement and paragraph 32 of the First Global Stocktake.*
- *What is the role of country circumstances in the implementation of Article 2.1c?*
- *What are the challenges posed by the unavailability or non-accessibility of technologies required in the pathway towards low greenhouse gas emissions?*
- *Is the renewable energy route viable given the variability in its generation, poor access or unviable battery storage technology, and the need for energy security to enable the achievement of the developmental priorities of developing countries?*
- *How do we address adaptation action in the context of Article 2.1c? How developed countries could support the financing of enhanced adaptation action?*
- *Considering that the Paris Agreement seeks a global response in the context of equity and CBDR-RC, what in the minds of the stakeholders would be the appropriate way forward?*

- *What in your mind would be the impact of unilateral measures on developing countries?*
- *What are the unintended consequences of different interpretations presented? Having honest discussions on the consequences of different interpretations is key to ensuring the concerns of all Parties are addressed and to generating buy-in in the process.*