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The Participation of Non-Party Stakeholders In The Implementation of The Paris Agreement Towards COP26

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Abstract

This article deals with the participation of Non-party Stakeholders (NPS) in implementing the Paris Agreement. Paris Agreement is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC) signed in 2016. The 26th Conference of the Parties (COP26) has been delayed due to pandemics and will be conducted in November 2022 in Glasgow. However, the member states have not showcased any progress in its implementation. The method of this research is normative-analytical. Despite the roles of NPS are enhanced compared to its arrangement in Kyoto Protocol, the target of the Paris Agreement is not on track where there are member states who have not submitted their updated Nationally Determined Contribution (NDC). Hence, the upcoming COP26 is expected to result progressive advancement of member states towards the implementation of Paris Agreement. The enhancement of Non-Party Stakeholders' participation is deemed as a crucial factor in achieving the Paris Agreement's goals. In this article, I argue that even if the agreement does not directly bind NPS, the participation of NPS can be realized and enhanced to advance the achievement of Paris Agreement's goals, especially towards COP26 through national legislations of the member states that obliged NPS to cooperate and participate actively. Thus, the principle of cooperation is also applicable towards NPS.

Keywords: Climate Action, COP26, Implementation, Non-Party Stakeholders, Paris Agreement.

Partisipasi Non-Party Stakeholders dalam Implementasi Perjanjian Paris Menuju COP26

Abstrak

Artikel ini membahas partisipasi *Non-Party Stakeholder* (NPS) dalam implementasi Perjanjian Paris. Perjanjian Paris adalah perjanjian pada *the United Nations Framework Convention on Climate Change* (UNFCCC) yang ditandatangani pada tahun 2016. Saat pandemi terjadi, Konferensi Para Pihak ke-26 (COP26) ditunda dan akan dilakukan November 2021 di Glasgow. Namun, para pihak belum menunjukkan kemajuan dalam implementasi Perjanjian Paris. Metode penelitian ini adalah penelitian analitik normatif. Meskipun adanya peningkatan peran NPS dibandingkan dengan Protokol Kyoto, target Perjanjian Paris belum sesuai khususnya ada beberapa negara anggota yang belum menyampaikan pembaharuan *Nationally Determined Contribution* (NDC). Ada dorongan bagi negara anggota untuk percepatan yang progresif terhadap implementasi Perjanjian Paris khususnya karena akan mendekati COP26 pada November 2021. Peningkatan peran NPS dianggap menjadi faktor krusial dalam mencapai tujuan Perjanjian Paris. Dalam artikel ini, saya akan membahas meskipun NPS tidak terikat secara langsung, partisipasi NPS bisa direalisasikan dan ditingkatkan untuk mempercepat pencapaian Perjanjian Paris khususnya menjelang COP26. Sehingga, Prinsip kerjasama juga dapat diaplikasikan terhadap NPS.

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Kata Kunci: Aksi Iklim, COP26, Implementasi, *Non-Party Stakeholders*, Perjanjian Paris

A. INTRODUCTION

The United Nations Paris Climate Change Conference (COP26) has been delayed for 1 (one) year since 2020, yet member states' commitments are still being questioned. 2021 is a make-or-break year to confront the global climate emergency. It is clear that to limit global temperature rise to 1.5°C; we must cut global emissions by 45% by 2030 from 2010 levels.² The interim report from the United Nations Framework Convention on Climate Change (UNFCCC) is a red alert for our planet.³

Paris Agreement was adopted on 12 December 2015 by states at the United Nations Paris Climate Change Conference (COP21). It strives to limit global warming to well below two °C with the intent to pursue a 1.5°C target. This Agreement was created due to the unsuccessful implementation of the Kyoto Protocol⁴ which attempted to embrace more parties to involve, not only states but including non-state actors and many other Non-Party Stakeholders (NPS). This Agreement is a new notion in terms of conducting climate action. In the previous Kyoto Protocol, states were the main focus and were factually parties to the convention. However, some states decided not to ratify the Kyoto Protocol; it thus led to the lack of achievement of the Kyoto Protocol itself.

Despite the fact that there is enhancement on the roles of NPS in Paris Agreement compared to the Kyoto Protocol, the target of the Paris Agreement is not on track, because there are member states who have not submitted its updated

Nationally Determined Contribution (NDC). There has been an urge on the progressive advancement of member states towards the implementation of the Paris Agreement, especially we will approach COP26 in November 2021. The enhancement of participation of Non-Party Stakeholders in the Paris Agreement can be considered as the solution as it is deemed a crucial factor in achieving the Paris Agreement's goals.

Several journals also elaborated the position of Indonesia towards Paris Agreement from the political perspective, and some research papers specifically colored about the participation of Non-party Stakeholders under the UNFCCC options for a future agreement. The latter paper has inspired me to write on the progress of Non-party stakeholders towards COP26. Yet, the latter paper has not updated on the current progress of Non-party stakeholders and how it is impactful towards COP26.

Paris Agreement has given the mandate for member states to cooperate to achieve the goals of Paris Agreement and, it mentions the role of NPS. Even if Paris Agreement does not bind NPS, NPS must comply with the law enacted in their countries. For instance, Indonesia has ratified the Paris Agreement into Indonesian Law, which applies to all Indonesians who can be considered NPS under the Paris Agreement. Further, I believe that the participation of Non-Party Stakeholders is crucial and urgently required to be enhanced for Paris Agreement to advance its implementation towards COP26 and to achieve its target by 2030 because Paris Agreement has given the mandate. I use normative-analytical research in this paper. My argument is also supported by the duty to cooperate as one of the most significant principles of international environmental law as it is lay down in 1972 Stockholm Declaration and

² Saier, Alexander. "Greater Climate Ambition Urged as Initial NDC Synthesis Report is Published." *UN Climate Press Release*, 26 Feb 2021, <https://unfccc.int/news/greater-climate-ambition-urged-as-initial-ndc-synthesis-report-is-published>. 1 March 2021.

³ *Ibid.*

⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997 (entered into force 16 February 2005), online: UNFCCC [Kyoto Protocol].

1192 Rio Declaration.⁵ This principle has also become customary international law used as the basis of various international conventions related to the environment.

Paragraph 15 of the preamble of the Paris Agreement recognizes the importance of the engagements of all levels of government and various actors; it is evident that Paris Agreement has brought attention to other actors rather than only governments who are parties to the agreement and has recognized the role of various actors for Paris Agreement to achieve its goal. Further, paragraph 15 of the preamble of the COP21 Decision mentions specifically about Non-Party Stakeholders, which includes civil society, the private sector, financial institutions, cities and other sub-national authorities, local communities, and indigenous people that could support the Paris Agreement. *NPS can also uphold and promote regional and international cooperation to strengthen climate action.*

The paragraph mentioned above created a legal problem of whether the participation of NPS could be significant since it does not have a legally binding force mandated by the Paris Agreement. It is only stated in the agreement's preamble without any explicit articles. Meanwhile, states as parties to the Paris Agreement possess the obligation to be fulfilled under the Paris Agreement. Therefore, there is a legal question of whether the participation of NPS in the implementation of the Paris Agreement is deemed obligatory under international law.

Based on the aforementioned legal problem, I would elaborate the reason behind the urgency of discussing the participation of Non-Party Stakeholders in the first section as it is a crucial topic in which the obligations embedded under the

Paris Agreement will not be achieved in time—and followed by the explanation regarding the overview of Non-Party Stakeholder in the implementation of Paris Agreement. Also, the possible actions would be explained by Non-party Stakeholders afterward. Lastly, I would elaborate on the advancement of Non-Party Stakeholders' participation towards COP26 that would be held this year.

B. OVERVIEW OF NON-PARTY STAKEHOLDERS IN THE IMPLEMENTATION OF THE PARIS AGREEMENT

The term “Non-Party stakeholders” (NPS) indicates entities that are not Parties to the Paris Agreement. Non-Party Stakeholders, therefore, include civil society, the private sector, financial institutions, cities and other sub-national authorities, local communities, and indigenous peoples, as indicated in the draft COP decisions prepared by the co-chairs of the United Nations Framework Convention on Climate Change (UNFCCC)’s Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) as part of the Paris Package.⁶

The term “Non-Party Stakeholder” itself is not specifically mentioned in Paris Agreement. It is rather clear in the Decision adopted by the Conference of the Parties (Decision 1/CP.21), which governs in paragraph 15 of the preamble of the COP21 Decision that explicitly mentions Non-Party Stakeholders as well as in a specific section about Non-Party Stakeholders.⁷ However, it does not portray the specific obligations embedded in Non-Party Stakeholders.

Furthermore, referring to Decision 1/CP.21 does not give any coercive clauses towards the term of Non-party stakeholders. As it is indicated in the

⁵ Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Annex I, principle 7, 9, 14 and 27.

⁶ Nobuoka, Yoko; Ellis, Jane and Andersen, Sarah Pyndt. “Encouraging Increased Climate Action By Non-Party Stakeholders”, *the CCXG Global Forum on the Environment*, 2015/05, 1 October 2015, 8-34. <https://doi.org/10.1787/5jm56w74s5wg-en>.

⁷ Paris Agreement, Conference of Parties 21, Decision 1/CP.21 (2015)

specific section of Non-party stakeholders that it uses the term “welcomes,” “invites,” and “recognizes” as written in the clauses to address the important roles of Non-party stakeholders in the efforts of scaling up and supporting the actions of parties to tackle climate change.

Even if the Paris Agreement does not bind NPS, the member states could enforce a law regarding the ratification of the Paris Agreement. Thus NPS is obliged to comply with the law. NPS is not directly bound by the Paris Agreement, yet the necessity of implementing international environmental law is cooperation and is also clearly governed in the Paris Agreement. Hence, member states are urged to cooperate with NPS to achieve the goals of the Paris agreement.

Additionally, referring to Paris Agreement as it does not mention explicitly regarding Non-party stakeholders, it does regulate the obligation of states to cooperate in taking measures to enhance climate change education, training, public awareness, public participation, and public access to information as well as recognizing the importance of these steps concerning enhancing actions under Paris Agreement.⁸ Also, it is initially stated in Article 6 and Article 7 of the Paris Agreement.

Following the Copenhagen summit of 2009, the regime has been shifting from a “regulatory” model of binding, negotiated emissions targets to a “catalytic and facilitative” model that seeks to create conditions under which actors progressively reduce their emissions through coordinated policy shifts.⁹ In other words, the climate regime has now shifted from the state-centric agreement, which is a top-down approach to a more bottom-up

approach agreement, it thus creating a supporting and facilitative agreement for those not bound by the agreement but who are also interested and indirectly affected by its implementation.

The changes are evident before and during making the Paris Agreement itself. First and most importantly, the increasing amounts of sub and non-state climate action have occurred over the past two decades.¹⁰ As a growing area of governance, non-state climate action was increasingly impossible to ignore, with some groups actively lobbying governments for greater inclusion and recognition in the UNFCCC process.

Second, the failure of the Copenhagen summit to negotiate a successor to the Kyoto Protocol proved to be a critical juncture, prompting new thinking from a range of actors on how to address climate change. Following Copenhagen, many observers emphasized policy tools outside the UNFCCC process, including smaller intergovernmental clubs¹¹, cities, the private sector, and transnational coalitions. Academic interest in “transnational climate governance” (TCG) also increased.¹² Meanwhile, Parties and Non-Party Stakeholders have commonly agreed to enhance cooperation and mobilize stronger and more ambitious climate actions through the Paris Agreement.

Agreeing to uphold and promote regional and international cooperation to mobilize stronger and more ambitious climate action by all Parties and Non-Party Stakeholders is indeed an achievement that reached through the Paris Agreement. However, this would not affect anything except the current situation of the climate

⁸ Paris Agreement, Conference of Parties 21, 15 December 2015, Decision 1/CP.21 (entered into force 4 November 2016), art. 12.

⁹ Hale, Thomas. “All Hands On Deck”: The Paris Agreement and Nonstate Climate Action.” *Global Environmental Politics*, 16(3), August 2016, 12-22. doi:10.1162/GLEP_a_00362.

¹⁰ Bulkeley, et al. *Transnational Climate Change Governance*. UK: Cambridge University Press, 2014.

¹¹ Victor, David. *Global Warming Gridlock*. UK: Cambridge University Press, 2011.

¹² Andonova, et al. “Transnational Climate Governance.” *Global Environmental Politics*, 9(2), 2009, 52-73. http://econpapers.repec.org/article/tprglenvp/v_3a9_3ay_3a2009_3ai_3a2_3ap_3a52-73.htm.

change regime. For this commitment to be realized, strong cooperation is required between the parties to the Paris Agreement and Non-party stakeholders.

As it is evident in article 12 of the Paris Agreement, which states that Parties, which are states, shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation, and public access to information, recognizing the importance of these steps concerning enhancing actions under the Paris Agreement. The proper implementation and compliance with a treaty cannot be achieved without involving a whole range of non-state actors, including civil society groups, Non-Governmental Organizations ("NGOs"), scientific groups, and business and industry.¹³

To achieve the goal of Paris Agreement to limit global warming with the participation of non-party stakeholders or the non-state actors, the principles in the 1992 Rio Declaration can be taken into consideration. The principles are transparency, public participation, and access to information and remedies as well as cooperation. Those principles are interconnected with each other. In this regards, the climate action should also emphasize how public can participate in the decision-making process and its implementation. Furthermore, the public will have access to information and remedies after they participate actively. Thus, it leads to transparency as well as enhancing the trust between the states and their citizens. It would also improve the integrated cooperation between states and other interested parties.

Moreover, environmental issues are best handled with the participation of all concerned citizens. It is evident through Paris Pledge for Action initiated by almost

700 major cities, regions, companies, and investors.¹⁴ Nevertheless, the role of ordinary citizens and Non-Governmental Organizations concerned is also needed to supervise the actions at the grass-root level with the implementation of environmental policies. Under the Paris Pledge for Action, these signatories commit to aid in the quick and effective implementation of the Paris Agreement and contribute to accelerating the necessary transformation to combat climate change.¹⁵

As referring to the Paris Pledge for Action, it realized that this climate change would also deliver better growth and sustainable development. Pertaining to sustainable development, it is an essential part of International Environmental Law's principles that states push to achieve in its actions. Moreover, paragraph 4 of the Paris Pledge for Action reaffirms the promise of taking concrete steps. It further indicates how the strong will of Non-Party Stakeholders to actualize their plans without waiting for the entry into force of the agreement. They are willing to work individually and cooperatively to reduce greenhouse gas emissions actively to a safe level.

However, the question would be how the current situation would truly unfold. Then, it is committed to building resilience against those situations which already occur. It emphasizes how immediate and robust cooperation between parties, both individually and cooperatively urgently required in contrast with the changes in the environment that already occurred

Second, regarding principle 7 of the Rio Declaration, which is cooperation. Climate action would not be complete without the

¹³ Kurukulasuriya, Lal & Robinson, Nicholas A. *Training Manual on International Environmental Law*. Nairobi, Kenya: United Nations Environment Programme, 2006.

¹⁴ IISD, "Non-State Actors Sign Paris Pledge for Action". *News*, 21 December 2015, <http://climate-iiisd.org/news/non-state-actors-sign-paris-pledge-for-action/>.

¹⁵ International Institute for Sustainable Development (IISD). "Non-State Actors Sign Paris Pledge for Action." *SDG Knowledge Hub*, 21 Dec 2015, <http://climate-iiisd.org/news/non-state-actors-sign-paris-pledge-for-action/>.

cooperation between states and other non-states actors. The obligation to cooperate is affirmed in all international environmental agreements of bilateral and regional applications and global instruments such as 1982 UNCLOS, Arts. 123 and 197 and 1985 Vienna Convention, Art. 2(2). This obligation is in accordance with the Rio Declaration's goal according to the fourth paragraph of its preamble concerning the establishment of a new and equitable global partnership. The concept of global partnership can be seen as a more recent reformulation of the obligation to cooperate, and it has become increasingly important.¹⁶

Principle 7 of the Rio Declaration refers to states. Still, the concept of global partnership may also be extended to non-state entities, including international organizations, business entities including transnational business entities, Non-Governmental Organizations, and civil society, in general, who should cooperate and contribute to this global partnership.¹⁷ Based on the principles above, it shapes the notion of having a greater participation of Non-party Stakeholders in which it is highly required as an effort to advance the cooperation and contribution towards the implementation of the Paris Agreement.

Although the global partnership that includes the involvement of Non-Party Stakeholders was not a key point in the Kyoto Protocol, it has become a crucial point in the Paris Agreement. NPS in this Agreement is seen as an essential part of climate actions since states would not be able to execute the plan with assistance from any other actors. On top of that, three principle of transparency, public participation and access to information and remedies and principle of cooperation are intertwined with each other that also benefit from each other, in which

cooperation principle would be not achieved fully without accomplishing the principle of transparency, public participation and the access to information and remedies.

Therefore, the notion of having greater participation from Non-Party Stakeholders in the implementation of the Paris Agreement is not only shaped by the mandate that has been embedded on the decision of the parties and Paris Agreement. It further has also been supported by the existing principles of international environmental law. It thus gives a mandate to parties of the Paris Agreement to bestow an improved access and mechanism for Non-Party Stakeholders.

C. THE POSSIBLE ACTIONS OF NON-PARTY STAKEHOLDERS IN THE IMPLEMENTATION OF PARIS AGREEMENT

The Paris outcome is a long-term policy commitment that signals to all relevant actors, including business and investors, that the transformation has begun. The Paris conference saw unprecedented participation of heads of state and governments. The resulting treaty provides political direction that includes the redirection of financial flows and the cycles structure of the global effort. The involvement of a broad range of Non-party Stakeholders indicates that the signal is being heard, thus providing that it should be followed by implementation.

Based on Article 2 of the Vienna Convention on Law of Treaties states that a treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. Paris Agreement is a treaty governed by Vienna Convention 1969 in which the definition referred to the article mentioned above. The party binding towards a treaty only states, excluding non-party stakeholders explicitly mentioned under the regime of

¹⁶ Kurukulasuriya, Lal & Robinson, Nicholas A, *supra* note 14 at 29.

¹⁷ *Ibid.*

the Paris Agreement. Therefore, concluding from the definition, NPS has no embedded obligation to comply with the Paris Agreement.

It creates a legal dilemma whether NPS could be an impactful party in implementing the Paris Agreement. NPS is not bound by any operative articles in the Paris Agreement, and NPS is not also considered a state party based on Vienna Convention 1969. However, there are indeed possible actions that NPS can do. Even though NPS are not direct parties to the Paris Agreement, they can be bound by national and customary international laws that apply to states.

The emergence of Non-Party Stakeholders' role is apparent through articles embodied in the preamble, the decision of the Paris Agreement, and the Paris Agreement itself. Further, the Paris Agreement defines the role of Non-party Stakeholders itself and includes their possible actions that could be realized through the implementation of the Paris Agreement. There are several possible actions that Non-party stakeholders could do to advance the achievement of the Paris Agreement's goals.

The possible actions of Non-Party Stakeholders are as follows:

1. Support the decision 1/CP.19, paragraph 5(a), and decision 1/CP.20, paragraph 19, in which to strengthen the existing technical examination process on mitigation taking into account the latest scientific knowledge in the period 2016–2020, Non-Party Stakeholders could work in cooperation with Parties, Convention bodies, and international organizations to share their experiences and suggestions, including from regional events, and to cooperate in facilitating the implementation of policies, practices, and actions identified during this process following national

sustainable development priorities. It is in line with paragraph 110 of the Adoption of the Paris Agreement.

2. Scale up the climate actions and register the actions in the NAZCA platform;¹⁸
3. Work closely with Parties to catalyze efforts to strengthen mitigation and adaptation action;¹⁹

Increase the engagement in the processes related to the existing technical examination process on mitigation and the launch of a technical examination process on adaptation in 2016–2020.²⁰

Even if the Paris Agreement does not bind NPS, the member states could enforce a law regarding the ratification of the Paris Agree. Thus NPS is obliged to comply with the law. NPS is indeed not directly bound by the Paris Agreement, yet the necessity of implementing international environmental law is cooperation and is also clearly governed in the Paris Agreement. Hence, member states are urged to cooperate with NPS to achieve the goals of the Paris agreement.

Additionally, since the Paris Agreement does not explicitly mention Non-Party stakeholders, it regulates the obligation of states to cooperate in enhancing climate change education, training, public awareness, public participation and public access to information and recognizing the importance of these steps.²¹ Also, it is initially stated in Article 6 and Article 7 of

¹⁸ Paris Agreement, Conference of Parties 21, 15 December 2015, Decision 1/CP.21 (entered into force 4 November 2016), Para. 118 of the Adoption of the Paris Agreement.

¹⁹ Paris Agreement, Conference of Parties 21, 15 December 2015, Decision 1/CP.21 (entered into force 4 November 2016), Para. 119 of the Adoption of the Paris Agreement.

²⁰ Paris Agreement, Conference of Parties 21, 15 December 2015, Decision 1/CP.21 (entered into force 4 November 2016), Para. 125 of the Adoption of the Paris Agreement.

²¹ Paris Agreement, Conference of Parties 21, 15 December 2015, Decision 1/CP.21 (entered into force 4 November 2016), art. 12.

the Paris Agreement. Given Indonesia as an example, Indonesia is also one of the member states that ratified the Paris Agreement. It was ratified by the enactment of Law in the No. 16 year 2016 regarding the Ratification of Paris Agreement to the United Nations Framework Convention on Climate Change. This law has become the legal basis for Indonesia as a member state to bind NPS to comply with the Paris Agreement. Even though NPS is not party to the agreement, as they are bound by Indonesian law, they must comply with the law that ratified the Paris Agreement t.

Law no. 16 year 2016 does not include any reservations on specific articles as it merely ratifies the Paris Agreement. Hence, referring to the Paris Agreement, member states must cooperate to achieve the results of the agreement since it governs under article 6, article 7 and article 12 of the Paris Agreement. This way of emphasizing the participation of NPS is greatly mandatory as climate action cannot be executed by only one person in the country. Yet, it must be done by the whole country as one vision and mission. Thus, the possible actions stipulated under the Paris Agreement can be implemented through national regulations enacted by the member states.

In addition to the possible actions, Chapter V of the Adoption of the Paris Agreement, which governs the role of Non-Party Stakeholders in the implementing the action of the Paris Agreement, proves that Non-Party Stakeholders have become an important part of the effort to address and respond to climate change. Also, Non-Party Stakeholders are invited to scale up their efforts and support actions in reducing emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform.

Moreover, Non-Party Stakeholders are also encouraged to assist in strengthening knowledge, technologies, practices and efforts of local communities and indigenous people related to addressing and responding to climate change as well as establishing a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner. Lastly, Non-Party Stakeholders are encouraged to recognize the important role in providing incentives for emission reduction activities, including domestic policies and carbon pricing tools.

Further, the role of Non-Party Stakeholders is specifically required in the action of implementing Non-state Actor Zone for Climate Action. Based on Paragraph 118 of the Adoption of the Paris Agreement, which encourages Non-Party Stakeholders to scale up and register their actions on NAZCA portal. It is a web-based portal where cities including local governments, regions and its regional governments, companies, and investors can register and update progress on their climate action commitments via external data partners and the types of commitments vary, for example, emissions reduction of CO₂, an increased share of renewable energy in final energy demand, energy efficiency improvements, and investment in renewable energy projects or a low-carbon fund.²² In October 2015, the NAZCA displayed 4024 commitments to action, of which 1215 are from cities, 262 from regions, 617 from investors and 1930 from companies.²³

An enhanced information-sharing platform such as the NAZCA could also foster transparency, public participation and access to information and remedies as well as cooperation principle, in which it could work in line with the goal of the Paris

²² Nobuoka, Yoko; Ellis, Jane and Andersen, Sarah Pyndt, *supra* note 7 at 13

²³ *Ibid.*

Agreement which is not only to limit global warming but also to enhance the global partnership between wide range of actors. As cooperation is considered a principle of International Environmental Law, it has become apparent that it is deemed an obligation for a convention, such as the Paris Agreement, to be effectively applied.

One of the Non-Party Stakeholders that makes greater steps through their actions is city leaders. The real-life examples would be Rockefeller Foundation's 100 Resilient Cities, a network of over 100 cities worldwide, jointly working to increase urban resilience against social, physical, and economic major challenges, including climate change related. Also, City Climate Leadership Group (C40), a network of world megacities, aims to develop actions to mitigate climate change, by reducing emissions, and to adapt to its inevitable effects and impacts.

In addition to that, the European Union that acts through the Covenant of Mayors, an initiative and network of local and regional authorities, aimed to meet the EU 2020 20% emission reduction target by increasing energy efficiency and renewable energy. The UN acts through UNHABITAT's Cities Resilience Profiling Programs (CRPP). It is a global program that provides local and national governments tools to measure and increase resilience by favoring collaboration among stakeholders. All these initiatives play a fundamental role in implementing the COP21 resolutions and the Paris agreement, facilitating, supporting and coordinating the involvement and contribution of cities.

The general obligation to cooperate has also been translated into more specific commitments through techniques designed to ensure information sharing and participation in decision-making.²⁴ The specific commitments itself have been

tried, for instance in the continuation of NAZCA which utilizes a internet-based portal, that realizes the reality of the era of digitalization and creates easy access for parties to put their actions into one system. Additionally, Non-Party Stakeholders would possess the capacity and access to share information, possible solutions to others who have obstacles in executing the climate action and ensuring that everyone is involved during the realization of the climate action itself.

Moreover, considering the participation of Non-Party Stakeholders during the decision-making process, they have been recognized as one of the main players, not only states that are asked to do their parts to implement the Paris Agreement. Further, it could also set out a process to continue and strengthen high-level engagement according to Paragraph 121(d) of the Adoption of the Paris Agreement.

In addition, the existing obligation of member states to cooperate with other actors, its realization has been constantly achieved through the presence of website or portal that could be accessed by those related to or concerned of the Paris Agreement. It also reflects that the participation of other actors not only government could have considerable impact on achieving the goals of the Paris Agreement.

The Article 7 paragraph 6 of the Convention states that Parties to the Convention, United Nations and related organizations and agencies, media and non-profit organizations with observer status may attend the sessions. Hence, all participants who wish to attend the conference must have registered first. Meanwhile, other organizations, companies, and the general public who could be referred to as Non-party stakeholders must also be registered as observers or participate through the

²⁴ Sands, Philippe. *Principles of International Environmental Law*. London, UK: Cambridge, 2005. p. 250

nomination by a party or an already admitted organization.

This clearly shows that Non-party stakeholders' access to the conference is not straightforward. The secretariat also emphasizes that the conferences are not open to the public through its website.²⁵ As it requires more steps to be able to be accepted as a mere observer. The implementation of Paris Agreement is not only executed by member states. Paragraph 15 of the preamble of the Paris Agreement has emphasized that it recognizes the importance of the engagements of all levels of government and various actors to mobilize stronger and more ambitious climate action.

However, I could not see the mandate reflected through paragraph 15 of the preamble of Paris Agreement has been manifested through action. Considering that the engagements of all levels of various actors are not accommodated through a straightforward access that could also impact the process of achieving the goals of the Paris Agreement.

Further, I think that to accommodate the inputs from other parties who are not observers or not registered, it is feasible to submit written input on views and information on various issues under negotiation as some parties may request to do so. Thus, this could be done through submissions accessible on the website.²⁶ The submissions from Non-party Stakeholders are written and accessible on the website, however I am not convinced that this mechanism could assist the process of the implementation of Paris Agreement itself. As it is informed on the

website, it has included submissions from parties since July 2014 and thus it also includes submissions from Non-Party Stakeholders.

Following the mechanism of submitting written input, it clearly states on the website that it is open for submissions from parties aimed to share information, build understanding in an open, transparent, and inclusive manner. It also points out that the website is regularly updated. It also mentions the mechanism of uploading submissions and statements that create a user-friendly website.

The portal is regularly updated to reflect calls for submissions from the Conference of the Parties (COP), the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), the Subsidiary Body for Scientific and Technological Advice (SBSTA), the Subsidiary Body for Implementation (SBI) and the Ad Hoc Working Group on the Paris Agreement (APA).²⁷

Further, the submissions could also vary from non-governmental organizations and other non-party stakeholders. It states specifically that even if the organizations do not have observer status, they could also submit the written input on the website. However, organizations that do not have observer status could only send to e-mail.

Ironically, the submissions from organizations that do not have observer status will go through a clearing process, and then cleared submissions will be published in the Submission and Statement Portal. I believe this could also hinder the participation of Non-party Stakeholder from giving constructive inputs. It is not transparently gone through the clearing

²⁵ UNFCCC. "How to Engage without Observer Status". *Process and Meetings*, 28 Feb 2021, <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/how-to-engage-without-observer-status>. 1 March 2021.

²⁶ UNFCCC. "Submissions and Statements". *Process and meetings*, 28 Feb 2021, <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/submissions-and-statements#eq-2>. 2 March 2021.

²⁷ *Ibid.*

process and there are no announcements regarding this matter on the website.

I believe this process could be enhanced and the participation of Non-party stakeholders could have a more profound impact on achieving the goals of the Paris Agreement. This enhancement is urgently required as it might also hinder the acceleration process of the goals since it must have greater efforts to be able to tackle climate change. Even if the current situation depicts better participation of Non-party stakeholders. It is indeed relevant to look at previous conferences that trigger the change.

Thus, as mentioned previously, possible actions have been stipulated explicitly in the Paris Agreement. It is proven that Non-Party Stakeholders have key roles in the future implementation of the Paris Agreement. These roles can be enhanced especially towards COP26 to achieve the goals of Paris Agreement by 2030. The successful of this goal depends on how Parties and Non-Party Stakeholders can work cooperatively and implement the actions mentioned above in an integrated manner.

D. THE ADVANCEMENT OF NON-PARTY STAKEHOLDERS' PARTICIPATION TOWARDS COP26

The Covid-19 pandemic has changed every aspect of people's lives, including conducting intergovernmental conferences that have to be held virtually. However, this does not change the implementation process of Paris Agreement. While the conference has been delayed since 2020, COP26 would still be held in Glasgow this year. I believe that it requires the advancement of actions from parties and the enhanced participation of Non-party stakeholders to achieve the goals of Paris Agreement towards COP26.

While preparing for COP26, the Climate Dialogues has been conducted in which it was held virtually in 2020 and it was a

series of virtual events to help pave the way towards this year's climate change conference (COP26) to be held in Glasgow. More than 80 virtual events took place between 23 November 2020 and 4 December 2020, providing a platform for countries and other stakeholders to showcase progress made in 2020 and exchange views and ideas on mandated work for COP26.²⁸ The Climate Dialogues brought together some 8000 attendees worldwide, including over 3100 delegates and indicated continued momentum on climate change action despite the postponement of COP26 from December 2020 to the end of 2021 owing to the COVID-19 pandemic.²⁹

Commitment of state parties to comply with the Paris Agreement is required to be seen as an effort to advance the NPS' participation towards COP26. Referring to principle 7 of the Rio Declaration which is cooperation. Climate action would not be complete without the cooperation between states and other non-states actors. The obligation to cooperate is affirmed in virtually all international environmental agreements of bilateral and regional applications and global instruments such as 1982 UNCLOS, Arts. 123 and 197 and 1985 Vienna Convention, Art. 2(2).

Notably, 2020 marks the year in which countries submitted more ambitious national climate action plans and long-term strategies (LTS). These plans and strategies were submitted once every 5 (five) years. There are tools for nations to specifically chart their path forward, concerning reducing emissions and adapting to climate change.

COP26 would provide an opportunity to reach a balanced agreement that could

²⁸ UNFCCC, "Virtual Climate Dialogues: A Successful Milestone on the Road to COP26" UN Climate Press Release, 4 Dec 2020, <https://unfccc.int/news/virtual-climate-dialogues-a-successful-milestone-on-the-road-to-cop26>. 2 March 2021

²⁹ *Ibid.*

demonstrate to the world that countries are determined to achieve the Paris Agreement's goals and contribute towards the intergovernmental process. This also includes the ambitions on all fronts such as emission reductions, adaptation and support for developing countries.

Due to all the events occurred in 2020, the advancement of Non-Party Stakeholder's participation is highly demanded and deemed more urgent than before. It would advance the process especially towards the determined target set in the Paris Agreement. It is well-known that the participation of Non-Party Stakeholders has been widely accepted in some other United Nations (UN) conferences as it takes important roles in the decision-making and during the negotiation process.

Non-party Stakeholders can apply for observer status and participate in the meetings of COP, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the Paris Agreement.³⁰ Participation of non-party stakeholders in the work of the UNFCCC is highly demanded. As of 2016, more than 2,000 non-governmental organizations (NGOs) and 100 intergovernmental organizations (IGOs) were accredited as official observers.³¹

Under the UNFCCC process, non-party stakeholders are loosely organized into general constituencies that act as informal focal points to support knowledge dissemination and exchange official information within their respective groups. However, I believe this mechanism still lacks its impact as under UNFCCC, non-party stakeholders are merely observers who could not impact the decision-making process. This would lead to a lack of

influence towards some aspects in the Paris Agreement implementation because it requires more impactful participation.

Based on the interim report from the UNFCCC, a significant number of countries included adaptation in their National Determined Contributions (NDC). It provided information on their climate vulnerabilities and measures to address these matters. Further, the quality of the information provided has increased significantly, and approaches for addressing vulnerabilities have also become more comprehensive.

More countries reported on mitigation co-benefits of adaptation action and economic diversification plans. Adaptation actions and economic diversification plans with mitigation co-benefits include climate-smart agriculture, reducing food waste, vertical farming, adapting coastal ecosystems, increasing the share of renewable sources in energy generation, improving energy efficiency, carbon dioxide capture and storage, fuel switch and fuel price reforms in the transport sector, and moving to circular economy for better waste management.

In contrast with the progress above of some countries that have been reported, while it advances the adaptation actions and economic plans with mitigation benefits, some countries still need assistance from other countries to achieve the climate plans. There are various demands of needs from other countries that can be varied from financial assistance to technical assistance.

Many developing countries remain in urgent need of support to implement the climate actions. This was also reflected in many of the Nationally Determined Contributions (NDC), which provided quantitative estimates of financial support needs for NDC implementation. Indeed, climate action must be enabled and facilitated by providing adequate support where it is needed. This is critical and must

³⁰ UNFCCC, "Communications to Parties and Observer Organizations" Process and meetings, 26 Feb 2021, <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/the-big-picture/notifications-to-parties-and-observers>. 28 Feb 2021.

³¹ *Ibid.*

also be addressed with high propriety and urgency. Without adequate resources and access to greener technologies, the deep transformation that we need will not happen.³²

The report requested by Parties to the Paris Agreement to measure the progress of national climate action plans or well-known as Nationally Determined Contributions (NDC) ahead of COP26 this November in Glasgow covered submissions up to 31 December 2020. The report showed that 75 Parties have communicated a new or updated NDC, representing approximately 30 per cent of global greenhouse gas emissions.³³

However, it illustrates that governments are nowhere close to the level of ambition needed to limit climate change to 1.5 degrees and meet the goals of the Paris Agreement. From 193 member states of United Nations, only 75 member states have updated NDC. UN Secretary-General António Guterres emphasized that the major emitters must step up with much more ambitious emissions reductions targets for 2030 in their Nationally Determined Contributions well before the November UN Climate Conference in Glasgow. I believe this statement has left a strong impression that UN has put attention on this highly required advancement of member states' efforts towards COP26.

As the efforts towards the implementation by parties to the Paris Agreement are still demanded and questioned, the advancement of Non-party stakeholders' participation is highly requested to be enhanced. Although, some mechanism may have been implemented as I have mentioned in the previous section,

it does not guarantee that the only efforts from parties could undergo the implementation of Paris Agreement.

Indeed, under the UNFCCC, non-party stakeholders can apply for observer status and participate in the meetings of COP, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the Paris Agreement. There was also hindrance towards the mechanism as it was stated in the draft Rules of Procedure (ROP), first put forward at COP2 in 1996, provides that any "body or agency, whether national or international, governmental or nongovernmental" that has expertise in matters relating to the convention may apply for observer status unless one-third of the party's object.³⁴

Currently, a total of nine constituencies are recognized such as business and industry Non-Governmental Organizations (BINGOs), environmental Non-Governmental Organizations (ENGOs), local governments and municipal authorities, Indigenous peoples' organizations, research and independent Non-Governmental Organizations (RINGOs), trade union Non-Governmental Organizations, women and gender, youth Non-Governmental Organizations and farmers.³⁵ The members of recognized constituencies may apply for attendance at meetings under the UNFCCC with spots allocated on a quota system. While COP22 conducted in Marrakesh, it provided a specific opportunity for observers to make short interventions at the end of the high-

³² UNFCCC, "Climate Commitments Not On Track to Meet Paris Agreement Goals" as NDC Synthesis Report is Published". *News*, 26 Feb 2021, <https://unfccc.int/news/climate-commitments-not-on-track-to-meet-paris-agreement-goals-as-ndc-synthesis-report-is-published>. 1 March 2021

³³ *Ibid.*

³⁴ Phillips, Freedom-Kai. "Participation of Non-party Stakeholders under the UNFCCC." *Options for Future Engagement*, CIGI Papers no. 205, December 2018, 1-15. Center for International Governance Innovation, https://issuu.com/cigi/docs/paper_no.205web.

³⁵ UNFCCC, "Admitted NGOs". *Process and meetings*, 27 Feb 2021, <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/information-by-category-of-observer/admitted-ngos>. 2 March 2021.

level segment, yet it could not exceed two minutes.³⁶

Considering the current mechanism of the UNFCCC which involve the Non-Party Stakeholders, it is unfortunate that Non-Party Stakeholder could only have an observer status. Meanwhile, in other UN settings, it is feasible that Non-Party Stakeholder has greater participation, especially during the decision-making process.

Non-party stakeholders should be given the role to be involved during the decision-making process as it has been conducted under World Health Organization (WHO). Thus, it could give the decision makers a portrayal of the real condition in the field as climate change affects states and its citizens' daily lives. The mechanism itself could be benchmarked from the existing mechanism in other UN Conferences, thus it could be able to accommodate less difficulties in applying the mechanism itself.

For instance, under WHO's setting, additional forms of interaction are available, including providing financial or in-kind contributions, submission of evidence or technical materials, advocating for increased awareness of an interest critical to public health, and technical collaboration.³⁷ There is also a unique feature among the frameworks surveyed, under the WHO all non-state actors are required to disclose conflicts of interest, including organizational name, membership, legal status, objectives, governance structure, the composition of main decision making bodies, assets, annual income and relevant affiliation.³⁸

WHO also excludes some industry that might be associated with any non-state actors. WHO also provides for increased caution when conducting due diligence on non-state actors whose activities negatively impact human health.³⁹ The conduct of due diligence on non-state actors could also be implemented in the UNFCCC process, as it could ensure the participants which are Non-Party Stakeholders, whether they deal with the appropriate measures in conducting their business and whether it would hindrance the goals of Paris Agreement.

UNFCCC could also learn from WHO's mechanism in terms of its requirement to screen the organizations. Suppose an organization would be involved for official relations with WHO. In that case, it is required that the organizations provide core details of the organization, a summary of past engagements, a three-year plan for collaboration and a signed letter certifying the accuracy of submissions.⁴⁰ Further, there is a mechanism of reviewing the collaborations as it is reviewed every three years. At the same time, the director-general can propose an earlier review and discontinue official relations in cases where there is a failure to fulfill the reporting, collaboration or contract requirements, or due to changing program priorities or other circumstances.

Another distinct process is that secretariat of WHO conducts a risk assessment and due diligence review to identify risks to engagement. Under the due diligence review, the relevant technical unit verifies information on the entity to clarify the nature, purpose, interests, and objectives of the organization, to determine the legal status and structure, activities, membership, governance, sources of funding and affiliations; and to define the main characteristics of the organization and its work relating to health,

³⁶ *Ibid.*

³⁷ Report of the Subsidiary Body for Implementation on its thirtysixth session, UNFCCC, UN Doc FCCC/SBI/2012/15, held in Bonn from 14 to 25 May 2012, at paras 232–33.

³⁸ COP22, Provisional agenda and annotations, UNFCCC, UN Doc FCCC/CP/2016/1, online: <http://unfccc.int/resource/docs/2016/cop22/eng/01.pdf>

³⁹ *Ibid.*

⁴⁰ *Ibid.*

environment, human rights, labor rights, reputation and financial stability.

As mentioned before, the conduct of due diligence towards non-party stakeholders could be taken from the practice of WHO as it has been established as one of the mechanisms to identify risks to engagement. This could be the basis to enhance the participation of Non-party Stakeholders as there is a proper measure before giving an access to Non-party Stakeholders to the decision-making process. The due diligence is also equipped with risk assessment to ensure the effectivity of the process.

The risk assessment, which considers a specifically proposed engagement, evaluates the likelihood of potential impacts, and applies a risk management approach to engagement. A non-state actor will only be engaged where the direct or indirect contributions to global public health outweigh residual risks associated with engagement. Non-compliance with the rules under the framework of engagement with non-state actors could result in an administrative review and lead to a rejection or termination of engagement.

the use of conflict-of-interest disclosure provides an interesting comparison to the climate process. It is worth considering whether disclosure requirements could be usefully adapted to the climate context, or whether they might serve as a barrier to sector-wide participation.

The participation of non-party stakeholders could not only be limited to being mere observers, but I believe that they can be involved in a more impactful setting to create stronger and more ambitious goals of the Paris Agreement. Additionally, Paris Agreement has given mandate to Non-Party Stakeholders to be able to act towards more ambitious goals, it is arguable that Non-Party Stakeholder's participation is required to be more

impactful, and it is also highly demanded to advance the implementation.

E. CONCLUSION

The enhancement of the roles of NPS in the Paris Agreement has not yet resulted in achieving the target of Paris Agreement which is currently not on track especially there are member states who have not submitted its updated Nationally Determined Contribution (NDC). There has been an urge on the progressive advancement of member states towards the implementation of Paris Agreement especially we will approach COP26 in November 2021.

The enhancement of participation of Non-Party Stakeholders in the Paris Agreement can be considered the solution as it is deemed a crucial factor in achieving the Paris Agreement's goals. Even if NPS is not directly bound by the Paris Agreement, their participation can be enhanced through the acts of member states at the national level such as the ratification of Paris Agreement and further implementation into national regulations. As the necessity of cooperation is regulated under the Paris Agreement and a recognized principle of environmental law.

As the Covid-19 pandemic has changed every single aspect of people's life including the conduct of intergovernmental conferences that have to be held virtually. However, this does not change the implementation process of Paris Agreement. COP26 would still be held in Glasgow this year. Therefore, I believe that it requires the advancement of actions from parties and the enhanced participation of Non-party stakeholders to achieve the goals of Paris Agreement towards COP26.

In short, due to all the events in 2020, the advancement of Non-Party Stakeholder's participation is highly needed and deemed more urgent than before. By benchmarking the mechanism

of non-state actors that has been implemented under World Health Organization (WHO) would advance the participation of Non-party stakeholders towards COP26. I believe this research could be conducted more comprehensively in political science or other environment related science. It also lacks in terms of data since the submissions of NDC from parties to the Paris Agreement still proceed, thus further research regarding Paris Agreement especially related to the impact of participation of Non-Party Stakeholders would be relevant in the future.

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