

Climate Emergency / COP Accountability Motion

Background Paper - July 2022

Contents

I. Summary	1
II. Introduction	2
III. Rationale and Background	3
(i) Accountability requires transparency	3
(ii) Dual accountability	4
(iii) Legal accountability	5
(iv) Legal accountability of people in the UK	6
Annex 1 – Consultations	8
External consultation	8
Internal consultation	8
Annex 2 - References	10

I. Summary

The COP Accountability motion is needed because:

- COP26 did not put Earth on a path to keep the temperature increase to 1.5 degrees
- Huge groups of people from civil society, particularly protected groups and indigenous/first nation peoples, felt that their voices were not heard nor acted on.
- COP26 meetings were conducted behind closed doors, so there were limited opportunities to engage or be informed as negotiations progressed
- Payment for loss and damage debts and climate finance is still lagging behind promises, and do not respond to the needs and demand from low and middle income countries, especially those affected most by current global heating.
- UNFCCC has not set up or even discussed any kind of accountability mechanism to hold country governments and the private sector to account for promises made.

The Green party needs to be able to publicly support mechanisms and processes for improving the COP process as it evolves. A statement in Record of Policy Statements will enable this. In addition, the suggested change in the PSS will allow for a law-based mechanism for holding UK companies and residents to account for their actions in contributing to global heating, harm to people and destruction of eco-systems.

II. Introduction

COP26 was a failure. It did not put the Earth on a path that will keep the temperature increase below 1.5, or even 2, degrees. There are several underlying issues that limit the COP process effectiveness.

Transparency and inclusion: There was limited transparency in the COP26 process and multiple organisations and countries have complained about it. Civil society organisations (CSOs) felt that they were excluded from meetings and some have even said that COP26 was “the most exclusionary COP ever”ⁱ. In particular there were calls for children’s, young people’s and indigenous/first nation people’s voices to be better included and heard – as the guardians of the natural world and “leaders of the future”ⁱⁱ.

Power and influence: It is clear that there is an unequal power balance between countries and within the structure of the UNFCCC – possibly also because of who funds the UNFCCC Secretariat and controls the processes (EU, USA, UK). The recent June COP27 preparatory meeting in Bonn was marred for many parties and CSOs who had submitted proposals and comments before the meeting, only to have absolutely none of them included in the draft text for the meeting. There was also an unequal treatment of many parties, including those of the G77 who were ignored in their request for a Loss and Damage finance facility. The UNFCCC Secretariate left this discussion to the end of the Bonn meeting, and only a continued dialogue was agreedⁱⁱⁱ.

Carne Ross (internal consultee – see annex) is concerned that the relationship and agreement between the global south and global north has completely broken down after the Bonn meeting. A new kind of agreement and mechanism is needed.

UNFCCC and COP structures: According to Maldives President Mohamed Nasheed back in 2019: “Unless you change the structure and the ground rules, this is not going to work.”^{iv} Building on this, Richard Roberts has blamed the COP process^v. The faults are, he says, the need for unanimity, the non-binding nature of the agreements reached and the lack of penalties for defaults. Also, he says, the negotiators are “trapped in a process that empowers the few over the many”.

And here we have the root of the problem. For the defects in the process were included and continue because the most powerful countries want them. And those countries will continue to resist changes that might hold them accountable, or even embarrass them. COP27 will be even more difficult as the meeting will be held in a walled city, with the Green Zone (where CSOs hang out) on the other side of an 8 lane motorway from the Conference Centre (financed by Lamborghini!) where negotiations will be conducted. Some CSOs have already had their hotel rooms cancelled for no apparent reason.

Accountability for NDC delivery: There is no formal accountability mechanism for reviewing the level of implementation of nationally determined contribution (NDC) plans every year. High income countries have to report every two years on their progress, and low/middle income countries report voluntarily. There is a global stocktake every five years, which is clearly too long to wait. Even when countries have fairly ambitious NDCs they often lag behind in making progress (e.g. the UK Climate Change Committee (CCC) report to parliament in June 2022 states that the UK government has important policy gaps still. Even where there is good policy, implementation is slow and lagging behind what is needed). There are no sanctions or legal repercussions for non-delivery of NDCs, nor is there an independent process for checking a country’s performance.

III. Rationale and Background

The Green Party needs an agreed position to take for the coming COP27 in Egypt. This needs to challenge some of the significant weaknesses apparent at COP26, and propose a practical way forward. This motion does not set out a perfect system for forcing powerful nations to do what's needed. Instead, it sets out changes that are substantial enough to make a difference whilst still being feasible. These changes would leave the most obstructive countries more exposed to world public opinion. Pressing for these changes would in itself expose their bad behaviour.

We do not claim that these changes ensure that the next COP will solve the climate emergency – only that they will help to ensure a more robust and accountable process. The motion urges the UK government and stakeholders to take action that would re-balance the power and status of country governments in the COP processes, including through legal efforts and a focus on human rights.

The UK is COP President until the start of COP27. It therefore has a clear role and continuing responsibility. This motion sets out some ways in which the UK, and its successors as president, can improve the COP process.

We do not expect these changes to be made at COP27. What we hope is that they can be discussed by delegates to COP27, perhaps informally, then proposed for substantive discussion at COP28.

And even that feels optimistic!

There are several sections in the policy proposal as follows. The first two are for introducing into the Record of Policy Statements (RoPS), and the third section is for introducing a paragraph into the Policies for a Sustainable Society (PSS).

(i) Accountability requires transparency

Policy wording:

Conference calls on the UK government, as the outgoing president of the COP, to ensure through the preparations for COP27 that:

- The negotiations take place in a transparent, inclusive and accountable way, with parties and observers granted equal access to the negotiations
- Real-time access with simultaneous translation is provided for those unable to attend in person.

Many of the negotiations at and up to a COP occur in private. This proposal would improve on the current position. It wouldn't prevent delegates from lying or from making secret deals. But it would make lies apparent sooner. It would also provide a platform for CSOs and specific groups of people to engage with the process in a more meaningful way.

(ii) Dual accountability

Policy wording:

Conference calls on the UK government, as the outgoing president of the COP, to ensure through the preparations for COP27 that:

- The design of the Global Stocktake includes robust science-based reviews of every country's progress towards delivering their NDCs and analysis of the barriers to the delivery of those NDCs and the Paris targets. The representatives of groups affected by climate change, as well as those providing conditional support, will be invited to participate in this process.

Countries need to be held to account for both their failures to achieve their NDCs and the inadequacy of these NDCs. Both are covered here:

	Review of	Relative to
1	NDCs	Paris targets
2	Delivery	NDCs
3	Delivery	Paris targets

Since this is intended to be part of the UNFCCC process, we treat the Paris Agreement as the gold standard despite its weakness in key respects.

Coverage: NDCs relate mainly, if not always, directly to territorial emissions. Since most emissions are territorial somewhere this gives the policy good coverage of global emissions. Success in avoiding catastrophe is critically dependent on reducing territorial emissions.

Some countries' reports and NDCs also include at least some international shipping and aviation emissions. Since most international shipping and aviation emissions are not reported in this way (?) we have to extend accountability to contributions to the work of the International Maritime Organisation (IMO) and International Air Transport Association (IATA). The IMO is responsible for reducing international maritime emissions. The IATA is responsible for reducing international aviation emissions.

IATA and the IMO are governed by assemblies of states in which some are much more powerful than others. The specific mention of these bodies requires the climate accountability process to consider what delegations to IMO and IATA meetings have or haven't done.

Imported emissions: Imported emissions are not included here due to the lack of agreement on definitions. However, most imported emissions arise in the exporting countries and are, or ought to be, included in their reports of territorial emissions. In practice equitable consumption reduction policies will need to be detailed in NDCs of the highest emissions countries.

"Nothing about us without us: These would include:

- states that are already suffering from climate change
- representatives of small islands states and indigenous people.
- They should also include representatives of future generations.

'Participation' can, of course, be fake. It can be a box-ticking exercise that leaves the world unchanged. However, in our view the root problem in the COPs is the unwillingness of major polluters to prioritise long-term human benefits over short-term economic ones. Having those

affected in these sessions would help to bring their lived experiences to the fore. In order to ensure these groups are fully listened to and that their advice and requests are acted upon the COP process would need to be re-structured substantially and a power balance would have to shift. This is unlikely to happen in the near future, but should be an aspiration going forwards.

(iii) Legal accountability

Policy wording:

Conference calls on the UK government, as the outgoing president of the COP, to ensure through the preparations for COP27 that:

- The COP makes progress on agreeing a process whereby parties can be held accountable for:
 - their shortfalls in delivering their NDCs and in providing climate finance
 - the losses and damages caused by their emissions.
 - COP considers a debt for climate agreement with low- and middle-income countries

The most important aspect of this part of the motion is that this issue of **legal accountability** needs to be put on the table. If the COP makes progress, this will mean that they have discussed and considered the option of holding country governments to account for the promises in their NDCs as well as other commitments. The most important to hold to account are the high emissions countries, who also owe the highest (and increasing) loss and damage debt. We also know that the £100bn in Climate Finance that was promised annually by 2020 has not been reached. Much of that finance has been given in debt and for mitigation rather than loss and damage. The G77 wish this to change and wish for there to be a formal mechanism for addressing the loss and damage in their countries now.

Some organisations^{vi} are now considering a **debt cancellation for climate action** proposal that would be similar to the Highly Indebted Poor Countries initiative (HIPC). HIPC was an IFC and World Bank initiative supported by all of the main bilateral donors in the late 1990s and early 2000s. Essentially low- and middle-income countries would commit to climate action in exchange for cancellation of their international debt. These countries would use the fiscal space created by this debt cancellation to implementation of their NDCs, including financing energy transition as well as action on loss and damage. Much of the low- and middle-income country debt is now held by China, as well as the USA and Europe - so they would all have to be fully involved in the proposal, as well as the IFC, the World Bank and all of the Regional Development Banks. This proposal will be explored by the GPEW for inclusion in messages for COP27 as part of implementing the motion.

This proposal includes examination of **Article 30 of the Rome Statute of the International Criminal Court and the UK's International Criminal Court Act 2001**. These are just examples. There are many other international legal treaties and courts, as well as international human rights treaties that might be relevant to this accountability.

Establishing legal liability faces major legal and political problems.

The legal problems relate to the general difficulty of establishing international laws and enforcement institutions. However, such laws and institutions have been established both by treaty and on a universal basis.

In July 2022 the Supreme Court in Brazil became the first in the world to recognise Paris Agreement as a human rights treaty. The ruling said that: "Treaties on environmental law

are a type of human rights treaty and, for that reason, enjoy supranational status. There is therefore no legally valid option to simply omit to combat climate change”.^{vii}

Trade treaties often include means to require countries to obey the treaties (eg Investor-State Dispute Settlement provisions aka ‘corporate courts’) and this is one reason that trade treaties are so much better obeyed!

Universal jurisdiction, ie the right of courts in one country to hear cases about crimes in other countries, is established for war crimes and in some countries for corruption and people trafficking. These would be useful precedents for climate change.

The political problem is the reluctance of states to agree to accept external criticism. We recognise that this will be hard to overcome which is why we use the words “discusses the possible ways of making countries legally responsible”.

These discussions would need to cover how to assess loss and damage and the institutions to be involved.

(iv) Legal accountability of people in the UK

Policy wording:

Insert into PSS:

CJ362 To establish a legal process to prosecute the people most responsible for the UK having failed to protect people and habitats from climate breakdown. This will include examination of Article 30 of the Rome Statute of the International Criminal Court and the UK’s International Criminal Court Act 2001.

This revision to the Policy for Sustainable Society (PSS) inserts the sense of the final part of the RoPS statement, that is detailed in the motion, into policy for the UK.

We considered incorporating the other points into the Climate Emergency chapter but concluded that:

- They were more the application of Green values than new policy.
- They were time-sensitive and thus unsuitable for the PSS.

There are already efforts to use human rights law, including the concepts of crimes against humanity and genocide, to protect nations and groups of people, especially those arrested while demonstrating against climate crimes. For example, in a letter to the Court of Appeal, Climate Genocide Act Now^{viii} cites allegations of crimes against humanity and genocide, committed by three British Prime Ministers, that are now with the International Criminal Court (ICC) in the Hague ((ICC Ref OTP-CR-22/21). In 2019 this group sought a criminal investigation by The Metropolitan Police (SO15, War Crimes Team) into crimes associated with the policies that cause mass loss of life through climate breakdown, but SO15/Met and appeal bodies (MOPAC) refused to act. Having exhausted all legal avenues open to them, the case was submitted to the ICC. Metropolitan Police (SO15 War Crimes Team) and the International Criminal Court do not dispute that government policies are contributing to mass loss of life. The case has been brought to the attention of the Crown Prosecution Service to consider the implications for the cases it chooses to prosecute and that body does not dispute that government policies are leading to the complete annihilation of several low lying island states and contributing to the death of millions of people around the world.

In May 2022 A global alliance of civil society groups, representing over 1500 civil society organisations in 130 countries, was launched to support a powerful new climate justice initiative by the Government of Vanuatu to take the human rights impacts of climate change to the world's highest court, the International Court of Justice^x. The Government of Vanuatu has announced that it will take a proposal to the United Nations General Assembly in September, which will then vote whether to refer the matter to the court. The Alliance consists of Pacific Island Students Fighting Climate Change, Climate Action Network – International, Greenpeace Australia Pacific, 350 Pacific, Pacific Islands Climate Action Network and Vanuatu Climate Action Network^x.

Quotes from Climate Action Network and Pacific Island Climate Action Network:

Tasneem Essop, Executive Director, Climate Action Network, said: “This initiative by the Government of Vanuatu puts the protection of human rights at the heart of our struggle for climate justice. We are witnessing how escalating climate impacts are undermining people’s rights in every way. Hundreds of millions of people impacted by climate change across the world, and particularly in developing countries, are being denied their fundamental rights- the right to food, water, shelter, property, freedom of movement, livelihoods, health and a clean environment. We urge all countries to support this initiative and recognise that the climate crisis is at its core a human rights crisis.”

Lavetanalagi Seru, Regional Policy Coordinator, Pacific Islands Climate Action Network, said: “Seeking an advisory opinion from the International Court of Justice on human rights and climate change is another tool in our toolbox that we must use in our urgent and collective efforts to bolster action on climate change. In many frontline climate change affected communities today, the most vulnerable, including women and girls, elderly people, people with disabilities, indigenous communities, LGBTQI, youth and other marginalized groups, have, and will continue to experience their basic human rights being undermined.

“We applaud the Government of Vanuatu on its intention to seek a resolution from the UN General Assembly this year, and we call on the global civil society family and most importantly on all countries to support this important initiative, which is predicated on human rights and intergenerational equity”.

Other examples include:

Dutch example – Urgenda taking Dutch govt to court in Hague. And Denmark’s new law in 2020 article by Jocelyn Timperley

<https://www.bbc.com/future/article/20200706-the-law-that-could-make-climate-change-illegal>

Philippines Commission on Human Rights, report on moral and legal responsibility of FF companies and governments whose action has caused the typhoon.

https://www.theguardian.com/world/2022/may/06/filipino-inquiry-finds-big-polluters-morally-and-legally-liable-for-climate-damage?CMP=Share_iOSApp_Other

Annex 1 – Consultations

External consultation

Colin McQuistan – Practical Action. Two interviews with Colin were conducted. In the first interview Colin gave useful advice about the shape of the motion and we have adjusted according to his comments. We spoke to Colin a second time once he had been at the Bonn Conference – a negotiation meeting, precursor to the COP27 meeting. He provided evidence of the flaws in the COP27 pre-negotiation process and the issues with the power structure of the UNFCCC secretariate. This evidence gave even more justification for the motion, and some detail has been included in this paper.

Philippe Sands – International human rights lawyer, academic and author. While Philippe has shown interest in the policy he was not available for an interview and we will be following up with a date in September once his is back from a retreat writing his next book. Hopefully an interview will happen just before Conference, and findings will be presented briefly at Conference.

Loss and Damage Collaboration – heard back from them, but they have not yet set up an interview.

Elizabeth May – Parliamentary Leader of the Green Party of Canada, and the Member of Parliament representing the southern Vancouver Island riding of Saanich-Gulf Islands on the territory of the W̱SÁNEĆ Nation. Positive and supportive response by email.

Diarmid Campbell-Lendrum, Team leader, Climate Change and Health, World Health Organisation (WHO) and a lead author of the IPCC reports and of the first health report to the UN Climate Negotiations. Asked for meeting and waiting reply.

Good Law Project – waiting for reply

Client Earth – waiting for reply

Tim Barnden – Bates Wells law firm. Brief chat which confirmed that we are going in the right direction. Tim will pass on the motion for review by one of his colleagues who works more directly on climate related issues.

Internal consultation

Carne Ross – Spokesperson for Global Solidarity. Carne answers “I would be glad to support the motion. But it would be useful to have a chat about it. I’ve been thinking a lot about the UNFCCC and how to improve it. I think debt-for-climate may be part of the answer ie a new deal between the global North and South whereby the North forgives the Souths’ debt in return for commitments to a clean energy transition. Others rightly call it debt-for-debt – the North forgives the South’s debt in return for being forgiven the debt it has created in terms of climate damage.” Georgia spoke with Carne about these suggestions and we have included information in the Background/Briefing Paper.

Laura Baldwin of Campaigns – is enthusiastic and will discuss with her colleagues

Waiting for replies from:

Molly Scott-Cato – Spokesperson for Finance and Economy.

Carla Denyer – Co-Leader

Benali Hamdache – Spokesperson, Migration and Refugee support

Denis Kefentse – Greens of Colour

Ria Patel – Spokesperson for Equalities and Diversity

Jane Baston and Kelsey Trevett – Young Greens

Green Party Women

Sean Mulcahy – Equality and diversity PWG

Paul Beswick – Rights and Responsibility PWG

Mike Shipley – Wildlife and Habitats PWG

Annex 2 - References

Peter Carter, Director of Climate Emergency Institute – Post Bonn meeting review June 2022
<https://www.youtube.com/watch?v=iTfs4kKpFEQ>

ⁱ <https://climatenetwork.org/2021/11/13/cop26-rich-nations-betray-vulnerable-people-of-the-world/>

ⁱⁱ Yolande Wright, Global Director of Child Poverty and Climate at Save the Children

ⁱⁱⁱ Conversation with Colin McQuistan from Practical Action – he attended the UNFCCC meeting in Bonn June 2022

^{iv} <https://medium.com/volans/the-cop-process-has-failed-time-to-try-something-different-84443e2a51a6>

^v <https://medium.com/volans/the-cop-process-has-failed-time-to-try-something-different-84443e2a51a6>.

^{vi} Conversation with Carne Ross

^{vii} https://www.climatechangenews.com/2022/07/07/brazilian-court-worlds-first-to-recognise-paris-agreement-as-human-rights-treaty/?utm_source=Climate+Weekly&utm_campaign=8d795691b5-CW-15-Jul&utm_medium=email&utm_term=0_bf939f9418-8d795691b5-408093056

^{viii} Letter written by and supplied by Jon Fuller, who was consulted as part of the development of this motion.

^{ix} <https://climatenetwork.org/2022/05/05/thousands-of-civil-society-organisations-call-on-countries-to-support-vanuatu-climate-justice-initiative/>

^x <https://climatenetwork.org/2022/05/05/thousands-of-civil-society-organisations-call-on-countries-to-support-vanuatu-climate-justice-initiative/>