



**Ways Forward after Copenhagen:
Reflections on the Climate Change Negotiating Processes by the REDD-plus
Facilitator**

Antonio G. M. La Viña¹

2 February 2010

It has been more than a month after the Copenhagen Climate Change Conference ended. Up to now, I have refused to reflect systematically on my experience as a negotiator in that conference, and in particular in identifying and articulating the lessons I learned facilitating the negotiations on Reducing Emissions from Deforestation and Degradation (also known as REDD-plus). Among others, I was depressed and disappointed with the outcome of Copenhagen and writing about it would bring back the despair and anger particularly of the last hours. I also did not want to join the destructive blame game that became the staple of most analyses that came out of Copenhagen.

I do not subscribe to the view that it was China's fault or that of the United States, or that the developed countries were more to blame than the developing countries, or vice versa. In my view, the failure of Copenhagen was a collective failure and that all of us who were there, and the governments we represented, should hold ourselves accountable for our failure to produce an agreement. For the record, I can tell stories of the generosity, willingness to innovate and ability to listen of many colleagues from the South and the North. Sadly, I can also say that unconstructive behavior, including inflexibility, was not a monopoly of negotiators from a single group of countries. Because most of them were expelled from the Bella Center in the last three days, I think that the only actors that could not be blamed for the failure of Copenhagen are the environmental and social activists, the young people, the representatives of citizen organizations, the business lobbyists, etc. who wanted to influence the process.

While not enthusiastic about revisiting Copenhagen, I do realize that it would be a responsible thing to do, i.e., to put in words my thoughts, framed as lessons learned. In a way, the distance from Copenhagen is now enough for me to conduct a secondary reflection (to use a concept from the French philosopher Gabriel Marcel) where I understand what happened there in the context of my overall experience, having been involved in these processes for nearly 20 years (including my role in Kyoto when I chaired the LULUCF negotiations). There is another reason for doing these reflections now. I feel compelled to share my insights given the need to identify ways forward after Copenhagen. Thus, I also suggest some recommendations to enhance the potential for success of the Mexico meeting in December 2010.

¹ Dean, Ateneo School of Government; Lead negotiator, Philippines and Facilitator, REDD+ negotiations in the LCA process. This paper reflects the author's personal views and should not in any way be attributed to the Philippine government. This was originally written for the author's classes in the Ateneo de Manila University where he teaches International Environmental Litigation and Environmental Law and Policy.

I have identified five lessons from my experience in the Copenhagen negotiations (which to me began in March 2009 when I first returned to the climate change processes after having been absent for awhile). These are:

The legal form of the outcome of our negotiations must be decided as early as possible.

We have to accept that there is a price in efficiency if we are to keep the negotiating processes transparent and participatory. But there are mechanisms that could be used to limit inefficiency. Upholding best practices in social accountability by engaging stakeholders - informing them, providing them opportunities to influence the outcome – results in support and trust for the process whatever the final outcome;

Getting the sequence right in making decisions of what to prioritize and emphasize is important. Chairs and facilitators must however secure the trust of the Parties so they can make these decisions on sequence.

A comprehensive package approach where "Nothing is agreed until everything is agreed." is doomed to failure and should be abandoned in favor of a more disaggregated approach to negotiating climate change issues.

Deciding Legal Form

The scene that continues to haunt me from those last few chaotic hours in Copenhagen is not the debate on whether the Copenhagen Accord could be adopted in the face of objections by four countries. But what bothered me most was that after the trauma of the whole process of negotiating and dealing with the adoption of the Accord, in deciding that the negotiations will continue towards hopefully a conclusion in Mexico, many Parties went back again to their original positions (first expressed in Bonn in March 2009) on whether or not the Mexico agreement should be legally binding or not. I could not believe why we, the climate change negotiators, could continue to behave the way we did – refusing to move nearer to each others' positions - moments after there was a real danger that multilateral environmental processes could implode. It should be clear to us now that by not deciding legal form early we are setting up ourselves again for failure.

This is the first lesson I can identify from my experience of the Copenhagen negotiations. It is clear to me that we will fail again in Mexico if we do not decide legal form early, at the latest by the end of the June session but preferably by the conclusion of the first week. Because it is not possible to do real negotiations: working, brainstorming and agreeing on texts unless we know what they are for. That is in fact what happened in the AWG-LCA process, including in the REDD-plus negotiations. It was only when things became clear, and in our case, by the end of the first week, we assumed in the REDD-plus group that the outcome would be a COP decision, that progress towards agreement accelerated.

In my view, and this is unsolicited advice to the President of the COP and the Chairs of the AWGs, the priority then in June is a decision on legal form. Ideally, we should come to at least a tentative consensus by the first week so that the second week of negotiations would be more productive. If it cannot really be decided that we are negotiating a treaty, one option would be to explicitly articulate two scenarios and work as if either would be decided – thus both legal text and COP decisions would be prepared. In facilitating the REDD-plus negotiations, until the last week as narrated above, I followed this option of two scenarios and developed, with UNFCCC Secretariat colleagues, both legal and decision text. I was also transparent about this to all the Parties that were active in the REDD-plus negotiations.

Minimizing Inefficiency

One interesting and good development in the climate change negotiations is its universality. Practically, all countries of the world are now Parties to the Convention. Not only environmentalists attend and follow the negotiations but social activists, development advocates, human rights campaigners, and many other diverse groups have also gotten involved. Business lobbyists are no longer limited to the fossil fuel or renewable energy sectors but investment bankers, forest companies, etc. are also now active. Religious and church groups are also concerned with climate change and are making their presence felt. Copenhagen was truly a gathering of the peoples of the worlds and this was good.

Given this universality however, we have to accept that there is a price in efficiency if we are to keep the negotiating processes transparent and participatory. In other words, more Parties at the table mean less time for everyone to speak and more important to deliberate. More stakeholders mean more issues come to the table and can no longer be ignored. There is no way around this and I will certainly not advocate sacrificing transparency and universal participation. The result in such a case would be an agreement such as the Copenhagen Accord that ultimately would cause a lot of discord. One of the things I really liked about what I did in Copenhagen was that I paid attention to the concerns of all Parties: everyone, no matter how small or politically weak a state, no exception, I treated equally.

There are mechanisms however that could be used to limit inefficiency and in fact make universal participation an asset towards agreement. In the REDD-plus agreement, I realized early on that the only way I could manage the enthusiasm of my colleagues in participating in the processes was to meet each of them (in a few cases, by groups) bilaterally. I did this in Bonn in August and again in Bangkok in September, at one point conducting more than 50 bilateral meetings in a 36 hour period. But the bilaterals were a huge success: by giving the Parties a sense that they were listened to and their concerns addressed; by laying down the basis for trust in the Facilitator which in turn enabled him to take risks especially in the end game; and because, in the non-threatening atmosphere of bilateral negotiations, solutions to difficult issues like indigenous peoples rights and scope of REDD-plus could be explored.

Another mechanism to minimize inefficiency that I used successfully in the REDD-plus process was asking the help of Friends of the Facilitator who, in parallel to my bilateral consultations, also worked on other issues. I employed this technique up to the end and it yielded many positive outcomes. In my experience, people do not mind that a Friends of the Chair is created but they do want to have the option to become such a friend. It is OK to have Friends of the Chair as long as everyone can theoretically be a friend. In reality, a manageable group of Parties attended these sessions. We did this in the REDD-plus negotiations so very few complained. And when two or three Parties actually voiced concern about transparency, I immediately took action and address their discomfort.

Best Practices in Social Accountability and Stakeholder Engagement

Actively and creatively engaging stakeholders in the climate change processes is not only the right thing to do because it is fair, but when designed properly, social accountability mechanisms can work to improve the potential agreement as well as generate support and trust in the process. This is certainly the experience I had in facilitating the REDD-plus negotiations. Immediately after I was appointed by the LCA Chair to facilitate the REDD-plus negotiations, I decided to conduct regular informal consultations with all those stakeholder groups that were concerned with REDD-plus. These included indigenous peoples, environmental advocates, transparency and accountability activists, forest defenders, conservation groups, investment bankers, etc.

I did not discriminate among the groups: any one who wanted to meet with me was free to do so as long as I set the time and place and as long as the consultations remained informal in nature and limited to information exchange. I was transparent about these meetings with the Parties who were in the REDD-plus group whom I assured will receive the information first before the stakeholders. I also told everyone who met with me that they should not lobby me or push positions with me. Instead, they would be working with their governments as that was more appropriate. By giving stakeholders correct information at the right time, they were provided with opportunities to influence the outcome.

Imperfect as it is, I am proud of the text we negotiated in Copenhagen. I am particularly happy that we have the right balance in the safeguards that are institutionalized in the current draft. In my view, we would not have arrived at such an agreement if the REDD-plus negotiations did not follow best practices in social accountability.

The Right Sequence of Issues and Decisions

An important lesson I earned from Copenhagen is that getting the sequence right in making decisions of what to prioritize and emphasize is important. Given a set of issues, decisions have to be made about what to tackle first. One approach is to just do one reading after another treating all issues equally. In my view, in negotiations on an issue as complex as climate change, that would not be strategically correct. In the REDD-plus negotiations, I apply a mosaic approach solving different pieces of the puzzle but not necessarily in a linear way. For example, we solved safeguards-related issues first followed by scope before going to MRV and means of implementation.

Of course, chairs and facilitators must have the trust of the Parties so they can make these decisions on sequence without being second-guessed. There were some concerns once in a while in my approach, including those who wanted to have an early debate on scope or prioritizing means of implementation. But I paid attention to those who complained about this and made commitments that satisfied them.

Rethinking a Comprehensive Agreement

My final lesson from Copenhagen is that I think it is now time to abandon or at least modify the comprehensive package approach. Under such an approach, patterned after the "Single Undertaking" approach of the World Trade Organization, nothing is agreed until everything is agreed. In my view, given the number and state of the issues in the climate change negotiations, we are dooming ourselves to failure. It is going to be impossible to get a good comprehensive agreement in the future and for legitimate reasons. For example, how can we expect to get a new agreement on science-related issues if the state of the science in many of these issues is not at the same level? Why should we hold hostage a REDD-plus agreement that is practically agreed to a complete agreement on financial arrangements that has been elusive in many forums (not just in the UNFCCC).

There is nothing in the Bali Action Plan that says everything has to be decided together and at once but that seemed to be the understanding and certainly has been the practice. In my view, the comprehensive approach should be abandoned in favor of a more disaggregated approach. Staring in June and implemented in Mexico, let's agree on a set of issues that can be decided together because of a combination of readiness and willingness. To assure symmetry, Parties can agree on a schedule on how the other issues can be decided.

If this rethinking of the comprehensive approach is not successful, it might make sense then to identify issues within the LCA that have a link to other processes and decisions (such as in SBSTA or SBI). The problem with "parking" or temporarily setting aside a more or less agreed decisions is that, at some point, maybe after a year or two, it could be reopened. The better alternative is to adopt those agreements as decisions under other processes. Thus the REDD-plus text that was near agreement in Copenhagen could be adopted under the SBSTA process. The same could be done for those areas where progress has been made such as technology transfer and adaptation. But the preparatory work on this needs to be done beginning in June

In this context also, perhaps a strategy on how to converge the Copenhagen Accord with the UNFCCC processes could be actively developed. This will be tricky but I think it is doable. In any case, I think we have no choice but to try to do this.

Conclusion

Viewed solely from the lens of its last hours, Copenhagen was a failure. But it did not have to be that way. Before that fateful night, for 12 days, those of us who were sent by our governments to work and agree on a common solution had worked hard trying to address our many disagreements. In fact, in the last five days of the conference leading up to the fateful last night, I had not slept for five straight days. Although I do have a strong work ethic, this was the first time in my life I had to do this. As a Facilitator of REDD-plus, I had worked round the clock to get an agreement within my group and that was within reach for us. As a lead negotiator for the Philippines, I was also coordinating our 20+ negotiators who had come to Copenhagen aware that climate change was a critical issue for our country. Because of this hard work, real progress was being made in some areas (forests, adaptation, technology transfer) while major difficulties continued to be insurmountable in other issues (especially mitigation targets by developed countries, mitigation actions by developing countries, and finance related concerns). As we entered the last three days of the Copenhagen conference, we continued to be in a stalemate in this last set of issues. This in spite of the fact that we have been negotiating for two years and quite intensively in the last nine months where we met in Bonn, Bangkok and Barcelona for a total of six weeks. But time run out as Presidents, Prime Ministers and other heads of states started arriving in Copenhagen.

Copenhagen was disappointing. But, if we learn the lessons from this experience, it could turn out to be a positive experience. In fact, this is what I realized as I walked home to my hotel that final day in Copenhagen. It was cold, it was snowing, I was depressed because of how the conference ended, but strangely enough it was a liberating experience. It became clear to me what needed to be done both in my country, the Philippines, and what we needed to do internationally.

For the Philippines, for example, the priority on climate change would now have to be adaptation. I do not expect a good agreement on climate change anytime soon and so we are, with some help here and there, essentially on our own. And whether we like it or not, climate change is already happening; it will probably worsen before it gets worse. It will have the earliest and most serious impacts on the poor. Because of this, we should invest resources into helping our farmers adapt, reduce risks brought by disasters, build a public health system that helps the poor, conserve our forests, etc. We should still do mitigation but mainly those that are consistent with our adaptation goals and that are no-regrets.

On that last day in Copenhagen, it was tempting to give up on the UNFCCC processes. But as I walked home that day, I realized that was not an option. It would be foolish, it would be wrong to do that as climate change is in fact a global issue. But things would have to be changed: we have to drastically modify the way we negotiate, so there is less brinkmanship and stalemates,

and more innovative thinking and brainstorming. I knew that this was possible because of my own experience with REDD-plus where we succeeded in making a lot of progress and was on track to solve the outstanding issues. And so I look forward to the next meeting in Mexico in December, 2010. At least, it will be warmer there and maybe that can make the difference.