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PRESIDENT OBAMA AND THE NEW POLITICS OF INCLUSION IN THE CLIMATE CHANGE DEBATE

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On Monday, December 14, 2009, the fifteenth session of the Conference of Parties of the United Nations Framework Convention on Climate Change entered its second week. Traditionally the time when heads of state from across the globe arrive at the conference to take up the negotiations where their overworked junior representatives have left off, there was even more excitement in the air than in past years, and as participants began to queue for entry to the Copenhagen's Bella Center in the pre-dawn air, there was a nearly palpable sense of excitement. While waiting to pass through the security pavilion—a low, wide tent packed with x-ray conveyor belts and metal detectors stretching to the horizon—conference participants discussed the highlights of the previous week's negotiations and speculated about the direction the talks would take in the new week. People speculated about the possibility of a G77 walkout and the likely fate of REDD¹. Everyone was excited to be participating in what seemed likely to be an historic conference, and in those early moments that morning, a workable, equitable global climate change agreement seemed within reach as the sky began to lighten with the rising sun. But a few hours later, that sense of promise would begin to unravel on an international stage. News from the conference that day would include not just summaries of the day's negotiations, but also images of hundreds of participants shut out of the main center for hours in the bitter cold. As the week wore on, logistical issues at the conference resulted in a public relations disaster, with over forty thousand authorizations having been

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1. *About REDD+*, UN-REDD.ORG, <http://www.un-redd.org/AboutREDD/tabid/102614/Default.aspx> (last visited Aug. 4, 2014) (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development.”).

issued for a conference venue with a maximum capacity of fifteen thousand people. There was widespread confusion over the ad hoc additional access restrictions that were imposed, and complaints that the new rules were unfairly excluding duly authorized participants. Later in the week, video reports of police violence against shut-out protesters went out around the world, erasing for good the image of what many considered to be the most promising Conference of Parties (COP) to date.

In a way, it was the very success of the global movement to fight climate change that now threatened to undermine the legitimacy of the most important global climate meeting to date. Without the unprecedented worldwide interest in the issue, and the unprecedented hope of finally reaching a binding global climate change agreement, there would have been no overwhelming crowds. Moreover, for many process observers, that unprecedented hope was encapsulated in one fact: President Obama was coming to Copenhagen.

In 1992, most countries, including the United States, joined the United Nations Framework Convention on Climate Change (UNFCCC), an international treaty establishing a structure for considering climate change solutions and mitigation policies. In 1997, a number of nations, not including the United States, approved an addition to the treaty: the Kyoto Protocol,² which has more powerful, legally binding measures, including specific goals for emissions reductions. The Kyoto Protocol is generally seen as an important first step towards a global emission reduction regime that will stabilize GHG emissions, and provides the essential basis for any future international agreement on climate change. The first commitment period of the Kyoto Protocol ended in 2012.³ COP15 was therefore a critical meeting in

2. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10 1997, 37 I.L.M. 22, available at http://unfccc.int/essential_background/kyoto_protocol/items/1678.php [hereinafter Kyoto Protocol]. Adopted in 1997, a permanent, binding implementation agreement to implement the UN Framework Convention on Climate Change, 183 countries have signed; U.S. and a few small countries have not. Kyoto Protocol sets emissions reduction commitments for Annex I developed countries, with 1st commitment period from 2008 to 2012 target of reducing Annex I emissions 5.2% below 1990 levels at the end of 2012. It also provides for collaborative international work on mitigation, adaptation, research, national reporting and other elements. Rich country targets were set not based on what science said was needed, but against arbitrary baseline of 1990, which ignored historic responsibility for using up global carbon sinks. It is very imperfect, but it is the only binding climate commitment.

3. *Kyoto Protocol*, UNFCCC.INT, http://unfccc.int/kyoto_protocol/items/2830.php (last visited Aug. 3, 2014):

In Durban (COP 17), the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention, applicable

the international climate debate, in that the U.N. Secretariat intended for the climate agreement that would be reached in Copenhagen to stand as the new international framework. Additionally, COP15 was a crucial meeting from a U.S. policy perspective for two reasons. First, any agreement reached in Copenhagen had the potential to substantially affect the prospects of comprehensive climate legislation that was being heard in Congress. Second, in a break with the previous presidential administration, the Obama administration has signaled its intention to assert U.S. leadership on global climate issues, and the Copenhagen meeting provided the first opportunity for the United States to demonstrate this new direction.

The Obama administration used its participation in the Copenhagen conference not only to promote its substantive climate change policy goals, but also to signal to the world a new willingness to engage the issue of climate change both within and aside from the established global structure, thus garnering U.S. support. Even before President Obama arrived at the conference, senior administration officials were on the ground at the Bella Center and were participating in the process in a notably new way for the United States. Then-Environmental Protection Agency (EPA) Administrator Lisa P. Jackson was the first senior U.S. official to arrive, establishing U.S. delegation participation from the very beginning of the conference. Administrator Jackson's remarks to the UNFCCC assembled body established the U.S. delegation's argument that the U.S. was going to be engaged in combating climate change both globally and domestically.⁴ Then-Administrator Jackson distanced the current administration from that of the immediately previous President Bush, saying, "We [President Obama and the United States] have been fighting to make up for lost time. In less than 11 months since taking office, we have done more to promote clean energy and prevent climate change than happened in the last 8 years."⁵ Such a pointed criticism of the previous administration was an attempt to reposition the United States in the eyes of global stakeholders as a team player on climate change—a responsible nation that is shouldering its share of the burden of adaptation and

to all Parties. The ADP is to complete its work as early as possible, but no later than 2015, in order to adopt this protocol, legal instrument or agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020.

4. Lisa P. Jackson, Env'tl Prot. Agency Administrator, Remarks to the United Nations Climate Change Conference (Dec. 9, 2009), *available at* <http://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/2e2fc405206fb50d85257687005493c2!OpenDocument>.

5. *Id.*

mitigation. This signaling, designed at least in part to improve the image of the United States globally, has already proven itself somewhat successful. Administrator Jackson also specifically highlighted several domestic climate change and environmental initiatives, including the recently released EPA finding that carbon dioxide emissions pose a danger to human health, and must thus be regulated under the Clean Air Act.

Then-Secretary of State Hillary Rodham Clinton arrived in Copenhagen during the second week of the conference, when heads of state from various nations traditionally appear. Her public remarks on December 17, 2009, put forward in detail several key policy points of the U.S. proposals for the Copenhagen agreement.⁶ Specifically, Secretary Clinton announced proposed U.S. emissions reductions of 17% below 2005 levels in 2020, with additional proposed reductions of 30% by 2025, 42% by 2030, and more than 80% by 2050, to be guided by the language in a final comprehensive domestic climate change bill.⁷ Then-Secretary Clinton was one of President Obama's most prominent advisors, and her participation in the conference made clear the importance with which the United States was treating the talks. Secretary Clinton's participation was also an example of the administration's approach of linking the issue of climate change to broader political issues; in this case, having the Secretary of State focus on climate change implied a link between climate change and national security.

Nancy Pelosi, the then-Speaker of the U.S. House of Representatives, also attended the Copenhagen conference, accompanied by a delegation of fellow Congressional representatives.⁸ The House having

6. Hillary Rodham Clinton, U.S. Sec'y of State, Remarks to the United Nations Climate Change Conference (Dec. 17, 2009), *available at* <http://www.state.gov/secretary/20092013clinton/rm/2009a/12/133734.htm>.

7. *Id.*

8. The Speaker's delegation consisted of the following members: Majority Leader Steny Hoyer; Chairman George Miller, Committee on Education and Labor; Chairman Henry Waxman, Committee on Energy and Commerce; Chairman Ed Markey, Select Committee on Energy Independence and Global Warming; Chairman Charles Rangel, Committee on Ways and Means; Chairman Bart Gordon, Committee on Science and Technology; Congressman James Sensenbrenner, Ranking Member, Select Committee on Energy Independence and Global Warming, Committee on Science and Technology; Congressman Sander Levin, Congressman Joe Barton, Ranking Member, Committee on Energy and Commerce; Congressman Fred Upton, Congressman Earl Blumenauer, Congresswoman Diana DeGette, Congressman Jay Inslee, Congresswoman Shelley Moore Capito, Congressman John Sullivan, Congresswoman Marsha Blackburn, Congressman Tim Ryan, Congressman G.K. Butterfield, Congressman Emanuel Cleaver, and Congresswoman Gabrielle Giffords.

passed a comprehensive climate change bill in June of 2009,⁹ the House delegation was poised to receive credit for their actions on an international stage. The presence of the prominent legislators also served to demonstrate U.S. engagement in the global climate change process from a variety of centers of authority—not only executive, but legislative as well.

The impressive visibility of senior members of Congress and the Obama administration was all preliminary to the arrival of President Obama himself. President Obama's personal engagement in the Copenhagen climate talks was unprecedented for a U.S. president. President Obama actively participated in the drafting and negotiation process, joining other heads of state in a negotiating room and working beyond the official end of the conference to facilitate a tentative agreement that became the starting point for future climate negotiations, including the COP16 in December 2010. Although the final COP15 agreement was not the comprehensive, legally binding agreement that many hoped for, President Obama's participation was seen by some as a key element in breaking the deadlock that would have resulted in no agreement at all.

PRESIDENT OBAMA AND A NEW TEMPLATE FOR U.S. CLIMATE ENGAGEMENT

With President Obama's election in November 2008, the expectations of climate change advocates for action on climate issues was justifiably high. The Bush Administration had aggressively worked against any progress on climate change. In contrast, President-elect Obama demonstrated an intention to engage the issue and work toward climate change solutions. Right after President-elect Obama was elected to the presidency, he sent a taped message to a global warming conference convened by then-Governor Arnold Schwarzenegger of California on November 18, 2008. He promised, "[m]y presidency will mark a new chapter in America's leadership on climate change that will strengthen our security and create millions of new jobs in the process."¹⁰

9. H.R. 2454, the American Clean Energy and Security Act of 2009, passed the House on June 26, 2009. In addition to establishing a cap-and-trade system for carbon emissions, the bill contains consumer protection provisions for low-income populations.

10. John M. Broder, *Obama Affirms Climate Change Goals*, N.Y. TIMES (Nov. 19, 2008), <http://www.nytimes.com/2008/11/19/us/politics/19climate.html?pagewanted=print&r=0>.

Once sworn in, President Obama hit the ground running. He created a sense of urgency and new energy, and by February 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA), a stimulus bill, which included \$80 billion in clean energy investments.¹¹ In April 2009, the White House backed the EPA's greenhouse gas endangerment finding and cleared the proposed finding.¹² In May, President Obama announced carmakers will have to meet fuel efficiency standards of 35.5 miles per gallon by 2016.¹³ Under this plan about 900 million metric tons of greenhouse gas emissions would be eliminated through 2016.¹⁴ During the G-8 and Major Economies Forum Summit in July 2009, President Obama addressed the need to finance climate change, increase research and development, and transfer low-carbon technologies.¹⁵ Then in September, during the G-20 meeting, President Obama and other G-20 leaders committed to phasing out inefficient fossil fuels.¹⁶ The next month, President Obama signed an executive order that requires federal agencies to set a 2020 emission reduction target.¹⁷ The executive order mandated that agencies appoint sustainability managers and meet targets such as 30% reduction in vehicle fleet fuel use and implementation of 2030 net-zero-energy building requirements.¹⁸ The United States federal government operates more than 600,000 vehicles, employs more than 1.8 million civilians, occupies nearly 500,000 buildings, and purchases more than \$500 billion annually in goods and services.¹⁹

11. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat 115 (Feb. 17, 2009).

12. Joe Romm, *Endangerment Finding Clears White House Review*, THINKPROGRESS.ORG (Apr. 14, 2009), <http://thinkprogress.org/climate/2009/04/14/203955/endangerment-finding-white-house-epa-global-warming/>.

13. Brad Berman, *Obama Proposes Rules for Carmakers to Meet 35.5 MPG*, HYBRIDCARS (Sept. 16, 2009), <http://www.hybridcars.com/obama-proposes-rules-carmakers-meet-35-mpg-26112/>.

14. *Id.*

15. DEP'T OF STATE, CHAPTER 7, FINANCIAL RESOURCES AND TECHNOLOGY TRANSFER IN U.S. CLIMATE ACTION REPORT (2010) available at <http://www.state.gov/documents/organization/140005.pdf> (last visited August 4, 2014).

16. Juliet Eilperin, *G20 Leaders Agree to Phase Out Fossil Fuel Subsidies*, WASH. POST (September 25, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/25/AR2009092502453.html>.

17. Exec. Order No. 13514, 74 Fed. Reg. 52,117 (Oct. 5, 2009).

18. *Id.*

19. *Federal Leadership in Environmental, Energy, and Economic Performance – Executive Order 13514*, WHITEHOUSE.GOV, <http://www.whitehouse.gov/administration/eop/ceq/sustainability> (last visited Aug. 4, 2014).

About a week before President Obama traveled to Copenhagen for the COP 15, he received the Nobel Peace Prize in Oslo, Norway.²⁰ The Nobel Prize panel claimed that President Obama deserved the prize “for changing the United States approach toward the world. The panel cited his efforts on nuclear disarmament, climate change and diplomacy.”²¹ Thus, with all those considerable accomplishments, President Obama had to enter the fray (again) in Copenhagen. His last trip to Copenhagen in September of 2009 did not go well when he and the Chicagoans attempted to secure the 2016 Olympics for the United States.²² Instead, the 2016 Olympics went to Rio de Janeiro.²³ The second time had to be the charm.

On the day of the opening of the COP15, in Washington, D.C., EPA issued the formal finding that carbon dioxide and five other compounds endanger public health and the environment.²⁴ The “endangerment finding” mandated by the 2007 Supreme Court decision in *Massachusetts v. EPA*,²⁵ allowed for EPA Administrator Jackson to begin regulating greenhouse gasses.

Prior to Copenhagen, then-UNFCCC Executive Secretary Yvo de Boer identified the key deliverables for Copenhagen, namely agreement on: ambitious mid-term emission reductions by developed countries; clarity on mitigation actions by major developing countries; short- and long-term finance; and governance structures.²⁶ The two key bodies, the *Ad Hoc* Working Group on Long-term Cooperative Action under the UNFCCC (AWG-LCA) and the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) held five negotiating sessions in 2009 before the Copenhagen Conference.²⁷ Related discussions also took place in various other

20. Darren Samuelsohn, *Obama Wins Nobel Prize in Part for Confronting ‘Great Climatic Challenges’*, N.Y. TIMES (Oct. 9, 2009), <http://www.nytimes.com/gwire/2009/10/09/09greenwire-obama-wins-nobel-prize-in-part-for-confronting-55250.html?pagewanted=all>.

21. Ben Feller, *Obama Nobel Peace Prize: President Picks Up His Award*, HUFFINGTON POST (Dec. 10, 2009), http://huffingtonpost.com/2009/12/10/obama-peace-prize-p_n_386824.html.

22. Steve Benen, *President Obama Wins Nobel Peace Prize*, WASH. MONTHLY (Oct. 9, 2009), http://www.washingtonmonthly.com/archives/individual/2009_10/020347.php.

23. Juliet Macur, *Rio Wins 2016 Olympics in a First for South America*, N.Y. TIMES (Oct. 2, 2009), <http://www.nytimes.com/2009/10/03/sports/03olympics.html?pagewanted=all>.

24. *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*, EPA.GOV, <http://www.epa.gov/climatechange/endangerment/> (last updated Nov. 22, 2013).

25. 549 U.S. 497 (2007).

26. INT’L INSTITUTE FOR SUSTAINABLE DEVELOPMENT, A BRIEF ANALYSIS OF THE COPENHAGEN CLIMATE CHANGE CONFERENCE (2009), available at http://www.iisd.org/pdf/2009/enb_copenhagen_commentary.pdf.

27. *Id.*

settings, including the Greenland Dialogue, the Major Economies' Forum on Energy and Climate Change, the Group of Eight (G-8), and the Group of Twenty (G-20).²⁸

In Copenhagen however, as the press noted, the negotiations were not going well. Six meetings all occurred at the same time: the conference of the parties, the Kyoto Protocol parties, the subsidiary body for scientific and technological advice and subsidiary body for implementation under the UNFCCC convention, the next steps under Kyoto Protocol, and the next steps for the long-term cooperative agreements (LCA).²⁹ In addition, the countries grouped themselves into affinity groups such as: the AOSIS (Alliance of Small Island States), African Nations, G-77, BASIC (Brazil, South Africa, India, China), Venezuela, Bolivia, Cuba, Nicaragua (ALBA), the European Union (EU), and the United States.

Different documents and texts flew between negotiators from the 185 countries represented. Many developing nations were upset when it seemed their long-crafted text would be in danger of being left on the floor by substitutes. Other delegations felt the text from the AWG-LCA and the AWG-KP was too heavily bracketed and dense.³⁰ Then-United States Secretary of State Hillary Clinton brought in a breath of new energy midweek when she announced that the United States would contribute its share to raising a \$100 billion fund for financing adaptation.³¹

Added to the mix were about 40,000 accredited NGOs (nongovernmental organizations) and media pressing to enter the conference in the Bella Center.³² The Bella Center only had capacity for 15,000 people. The weather was typical for northern Europe in December—freezing cold. These delegates were forced to stand outside and queue for upwards of eight hours a day; many waited in vain.³³ Every day the U.N. NGO Secretariat decreased the number of NGOs allowed into the

28. *Id.*

29. CHAD CARPENTER, THE BALI ACTION PLAN: KEY ISSUES IN THE CLIMATE NEGOTIATIONS (2008), available at http://www.um.edu.mt/_data/assets/pdf_file/0007/187450/BALI_Action_Plan.pdf. LCA originated under the Bali Action Plan of 2007 laying out the process for concluding in Copenhagen the implementation of the UNFCCC. *Id.* The Bali Action Plan recognized developed country responsibility for climate change and an essential developing country role to address climate change. *Id.* The LCA called for action on four issues: mitigation, adaptation, technical cooperation and financing. *Id.*

30. Clinton, *supra* note 6, at 3.

31. Lisa Friedman & Darren Samuelsohn, *Hillary Clinton Pledges \$100B for Developing Countries*, N.Y. TIMES (Dec. 17, 2009), <http://www.nytimes.com/cwire/2009/12/17/17climatewire-hillary-clinton-pledges-100b-for-developing-96794.html?pagewanted=all>.

32. *Id.*

33. *Id.*

Bella Center until the last days when virtually no one, who was not in a Party, could enter due to the arrival of President Obama and the other major heads of state. By then the talks were about to collapse.³⁴

The NGOs had a difficult time organizing and coalescing since their access to the Bella Center was restricted.³⁵ Thus it was very hard to plan for meetings with their national delegations and other delegations and colleagues from other countries. Many of these participants and their organizations had planned, saved, raised funds, and scrimped to travel to Copenhagen. The frustration level rose every day as the lines outside the Bella Center grew longer and longer. Walkouts by official national delegates and NGOs gained in strength with each passing day.³⁶ A protest conducted outside the Bella Center was brutally repressed by the Danish police.³⁷ The Danish police heavily-handedly arrested the protesters with brute force and dogs.³⁸ An air of gloom settled on the whole situation. Fortunately, another venue for the NGOs had been created—the Klimaforum—near the main city train station.³⁹ This area had buildings that contained conference rooms for side events and meetings. Closed circuit screens provided the participants the televised plenary proceedings from the Bella Center. Although the organizers had provided for the Klimaforum and its schedule of endless activities, side-events and workshops, this venue felt like a big student union. The “grownups” (officials) were back in the Bella Center, and the NGOs were the exiled “kids” with no access to the “grownups.” Despite these logistical problems, some determined NGO groups, including the Pan African Climate Justice Alliance (PACJA—represented 102 organizations from 37 Sub-Saharan African countries headquartered in Nairobi, Kenya), the Indigenous Environmental Network (IEN), Climate Justice Now, Climate Justice Action, Gender Climate Change (Gender GC), Advocates for Environmental Human Rights (AEHR) and several youth groups, managed to distinguish themselves through side-events, press events, and meetings.

Into this breach entered President Obama on December 18, and he spent ten hours negotiating an agreement with the BASIC countries.⁴⁰ Media accounts indicated the President put significant

34. Author's personal observations.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Chandra Bhushan, *Copenhagen According to the USA*, DOWN TO EARTH (Jan. 15, 2010), <http://www.downtoearth.org.in/content/copenhagen-according-usa>.

pressure on his fellow heads of state to come together and to reach an understanding.⁴¹ President Obama's presence and participation made all the difference. President Obama, however, was boxed in by the United States Senate's failure to act on their own legislation before Copenhagen, and did not want to go beyond the U.S. stated short-term emissions reduction target as stated in the United States House of Representatives' Waxman-Markey bill.⁴² So there was serious dissonance between what the United States could or should commit, and what was needed. China was particularly resistant to setting a short-term target or to having international verification of its domestic emission reductions. The Copenhagen Accord (also otherwise known as the "Danish text") was crafted in "friends of the chair"⁴³ consultations, and many of the other countries learned of it on the Internet and through leaks before the official UNFCCC document was published and publicized by President Obama before he departed for Washington.⁴⁴

The Accord stated in part: "climate change is one of the greatest challenges of our time" and requires holding temperature rise to two degrees; developed countries must provide "adequate, predictable and sustainable financial resources for adaptation, as well as technology and capacity building to support . . . "; Annex I countries will set short-term [2020] emission reduction targets that are verifiable; Non-Annex I countries will take "nationally appropriate mitigation actions";⁴⁵ incentives will be implemented to reduce deforestation and forest degradation; short-term support of \$30 billion will be provided from 2010-2012, with a goal of \$100 billion annually by 2020, supported by joint developed and developing country governance; and implementation of the Accord in 2015 must be assessed, including whether strengthening of the long-term target is needed.⁴⁶

41. *Id.*

42. See Darren Samuelson, *Obama Negotiates 'Copenhagen Accord' with Senate Climate Fight in Mind*, N.Y. TIMES (Dec. 21, 2009), <http://www.nytimes.com/cwire/2009/12/21/21climatewire-obama-negotiates-copenhagen-accord-with-senat-6121.html?pagewanted=all>.

43. INT'L INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *supra* note 26.

44. See Samuelson, *supra* note 42.

45. Note the language included regarding developing country mitigation actions addressing concerns about international verification: their actions are to be "subject to domestic measurement" which they will communicate, and "provisions for int'l consultation and analysis under clearly defined guidelines that will ensure that national sovereignty is respected."

46. See United Nations Framework Convention on Climate Change, Copenhagen, Den., Dec. 7-19, 2009, *Conference of the Parties on Its Fifteenth Session*, art. 1, 2, 4, 5, 6, 8, & 12, U.N. Doc. FCCC/CP/2009/11/Add. 1 (Mar. 30, 2010), available at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>.

The Accord was brought forward for plenary approval on the final day. The Accord fell very far short of legally binding commitments of developed countries to science based emission reductions and failed to include a long-term global emissions reduction target. Many delegates and advocates were frustrated that the agreement that was ultimately adopted had been concluded behind closed doors, although there had been some discussion of it among only twenty-five nations out of the more than 180 present. The ALBA countries strongly objected to the Accord and alleged the process of being undemocratic and not transparent. Tuvalu's delegate, Ian Fry, movingly protested against the Accord due to the fact Tuvalu is two meters above sea level. During an ad hoc meeting of 100 African representatives of civil society (and a few parliamentarians, including Lance Greyling of South Africa), the head of the G-77, Lumumba Di-Aping of Sudan, went so far as to say the Accord was a "suicide note for Africa" and compared it to the (European) Holocaust. Speaking in measured tones, Di-Aping first attacked the two degrees Celsius warming maximum that most rich countries currently consider acceptable. Referring continuously to science, in particular to parts of the latest Intergovernmental Panel on Climate Change (IPCC) report, which he referenced by page and section, Di-Aping said that two degrees Celsius globally meant 3.5 degrees Celsius for much of Africa. He went on to say then (and in a later press conference) that it was a bad deal for Africa, and Western civil society, once they learned about it, would agree. He forthrightly accused some of the African delegation members of being bought off by the West. This was nothing less than a colonization of the sky, he said. "Ten billion dollars is not enough to buy us coffins."⁴⁷ The Holocaust analogy caused great consternation and Sudan lost delegates' support, especially from those who decided the enactment of the Accord was better than going home empty-handed.

Bolivian President Evo Morales, in response to the situation, called for *The World People's Conference on Climate Change and the Rights of Mother Earth* and invited activists to Bolivia for a global climate gathering of civil society and governments hosted by the government of Bolivia in Tiquipaya, just outside the city of Cochabamba from April 19–22, 2010. The event was attended by around

47. Kate Sheppard, *Poor Countries Reject "Suicide Pact,"* MOTHER JONES (Dec. 9, 2009), <http://www.motherjones.com/environment/2009/12/poor-countries-g77-suicide-pact-copenhagen>.

30,000 people from over 100 countries. Over 241 organizations signed the *People's Agreement*.⁴⁸

DOMESTIC LEGISLATION, INTERNATIONAL TALKS

Although he participated actively in the Copenhagen climate talks, President Obama was careful not to commit the United States to any actions not already explicitly included in the climate legislation passed by the House of Representatives in June 2009.⁴⁹ The President did not want to repeat the Clinton-Gore ordeal of 1997 when the Clinton Administration signed onto the Kyoto Protocol only to have the Senate thoroughly reject it so that the treaty was never submitted to a vote.⁵⁰ Despite the executive and regulatory accomplishments of this first year of the Obama Administration, legislatively, all President Obama could work off of in Copenhagen was the Waxman-Markey bill.

Waxman-Markey, otherwise known as the American Clean Energy and Security Act, (ACES), H.R. 2454, was passed by the House Energy and Commerce Committee on May 21, 2009.⁵¹ The 946-page bill passed the entire House of Representatives by roll call vote of 219-212 on June 26, 2009. This bill's passage marked the first time that climate change legislation had been passed by either house of Congress.⁵² Organizations as diverse as environmental groups,⁵³ labor unions,⁵⁴ corporations,⁵⁵ and other organizations supported ACES.⁵⁶ Organizations such as the American Petroleum Institute, Greenpeace, American Farm Bureau, Public Citizen, National Mining Association,

48. World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bol., Apr. 22, 2010, *People's Agreement*, available at <http://pwccc.wordpress.com/support>; *People's Conference on Climate Change and the Rights of Mother Earth*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (2014), <http://therightsofnature.org/cochabamba-rights/>.

49. See Samuelson, *supra* note 42.

50. *Id.*; see also Helen Dewar and Kevin Sullivan, *Senate Republicans Call Kyoto Pact Dead*, WASH. POST (Dec. 11, 1997), <http://www.washingtonpost.com/wp-srv/inatl/longterm/climate/stories/clim121197b.htm>.

51. American Clean Energy and Security Act of 2009, H.R. 2454, 111th Cong. (2009).

52. John M. Broder, *House Passes Bill to Address Threat of Climate Change*, N.Y. TIMES (June 26, 2009), http://www.nytimes.com/2009/06/27/us/politics/27climate.html?_r=0.

53. *E.g.*, the Sierra Club, Natural Resources Defense Fund, Union of Concerned Scientists.

54. *E.g.*, SEIU, Steelworkers, Communication Workers of America, LiUNA, Utility Workers Union of America.

55. *E.g.*, Rio Tinto, Shell, Siemens, Pepsico, GM, Ford, Dow Chemical, Dupont, GE, Caterpillar, Alcoa, Duke Energy, PGE, Nike.

56. *E.g.*, American Civil Rights Union, Aspen Snowmass, Oxfam.

Friends of the Earth, Americans for Tax Reform, and the National Pork Producers Council opposed ACES.⁵⁷

Key ACES provisions include: (1) creating a combined energy efficiency and renewable electricity standard and requiring retail electricity suppliers to meet 20% of their demand through renewable electricity and electricity savings by 2020; (2) setting a goal of, and requiring a strategic plan for, improving overall U.S. energy productivity by at least 2.5% per year by 2012 and maintaining that improvement rate through 2030; and (3) establishing a cap-and-trade system for greenhouse gas (GHG) emissions and setting goals for reducing such emissions from covered sources by 83% of 2005 levels by 2050 (this national target can also be stated as 17% below 2005 by 2020, the equivalent of 4% below 1990 target by 2020—when the U.S. Kyoto target was 7% below 1990 by 2012).⁵⁸

Another feature of the ACES Act included complementary policies and investments in avoided deforestation; emissions are reduced 16% of 1990 levels by 2020 and 80% of 1990 levels by 2050. The bill covered approximately 85% of the economy by 2016 and allowed two billion tons of offsets annually, split between domestic and international locations. ACES also included a national renewable electricity standard of 20% by 2020, a portion of which would have been met through efficiency measures, funding for carbon capture and sequestration (CCS), low-income consumer protection, and transition assistance for industry. According to the legislation text, 7% of the allowances would have been used for investments in international climate change infrastructure, including 1% for adaptation funding, 1% for clean energy transfer, and some proportion for avoiding deforestation in developing countries.⁵⁹

The ACES low-cost consumer protection section contained a monthly federal benefit, administered through states' human services agencies, to offset the loss in purchasing power caused by the other provisions of the bill. This benefit would have been delivered electronically onto the same debit cards that states now use to deliver food stamps and other benefits.⁶⁰ The bill also used a portion of the proceeds from auctioning 15% of the allowances to finance an expansion in the component of the Earned Income Tax Credit (EITC) targeting low-

57. See Broder, *supra* note 52.

58. H.R. 2545.

59. *Id.*

60. *Podcast: Climate Change Legislation and Low-Income Households*, CTR. ON BUDGET AND POLICY PRIORITIES (May 18, 2010), <http://www.cbpp.org/cms/index.cfm?fa=view&id=3186>.

income workers who did not live with children, the one low-income group most likely to be missed by the benefit provided through the state human services agencies.⁶¹ This EITC expansion would have helped offset the rising costs, in the form of higher energy and food prices that these workers would have faced as a result of the climate legislation. It also would have reduced taxes for the only group of Americans that must pay federal income taxes despite living below the poverty line.⁶² Despite these targeted consumer protection provisions, ACES did not contain a consumer protection mechanism to shield undocumented workers, who are ineligible for EITC, from the cost burdens associated with the provisions of the legislation. According to the Center for American Progress, there are about 11.1 million unauthorized migrants in the United States.⁶³ These migrants are people who contribute to the American economy, but who will suffer high energy costs if this legislation is ever enacted into law. As this paper will discuss shortly, this population is among those in the U.S. who contribute the least to climate change in this country yet face the most significant burdens.

In sum, this was all the legislation President Obama had to work off of in Copenhagen. Speaker Pelosi (D-CA) and Chairman Waxman (D-CA) deserved a lot of credit for heaving this legislation out of the House, but in the international context, it fell short of the required emissions reduction targets to keep the Earth from warming 1.5 degrees.⁶⁴

The U.S. Senate did not match the House's accomplishment of passing a comprehensive climate change bill. On September 30, 2009, Senators John Kerry (D-MA) and Barbara Boxer (D-CA) introduced the Clean Energy Jobs and American Power Act.⁶⁵ This legislation included a cap and trade system that would reduce U.S. domestic carbon emissions to 3% below 1990 levels by 2030 and 80% below 1990 by 2050.⁶⁶ When complementary policies and investments in avoided de-

61. *Id.*

62. *Id.*

63. Ann Garcia, *The Facts on Immigration Today*, CTR. FOR AMERICAN PROGRESS (Aug. 14, 2013), <http://www.americanprogress.org/issues/immigration/report/2013/04/03/59040/the-facts-on-immigration-today->.

64. Greenpeace, for example, insisted by at least 40% by 2020 (compared to 1990 levels). At least three quarters of these reductions must be achieved domestically. In order to meet this timescale, developed countries as a group must agree reductions of 23% in the next round of cuts (2013-2017). *Climate Security Act Falls Short of Action Needed to Avoid Catastrophic Climate Impacts*, GREENPEACE (Jun. 2, 2008), <http://www.greenpeace.org/usa/en/media-center/news-releases/climate-security-act-falls-sho/>.

65. Clean Energy Jobs and American Power Act, S. 1733, 111th Cong. (2010).

66. *Id.*

forestation are included, the bill would have reduced emissions to 17% below 1990 levels by 2020 and 80% below 1990 by 2050.⁶⁷ The bill would have covered approximately 85% of the U.S. domestic economy by 2016, and would allow two billion tons of carbon offsets annually.⁶⁸ Other provisions included public investment in clean energy research, generation from electricity from natural gas, nuclear power, CCS, and clean transportation investment.⁶⁹ Similarly to ACES, 7.25% of the allowances under the allocation scheme would have been used for investments in international climate change, including funding for adaptation in developing countries (5%).⁷⁰ The funding levels were to be lower, however, than the House legislation in order to keep the bill “deficit neutral.”⁷¹

On October 29, 2009, Senator Boxer, Chairwoman of the Environment and Public Works (“EPW”) Committee, released her manager’s mark of the proposed legislation.⁷² On November 5, 2009, after a boycott from its Republican members, the EPW Committee passed the bill by an 11-1 vote. No Republicans were present for the vote, and one Democrat voted against the legislation.⁷³ The bill was placed on the Senate calendar and was never brought up on a vote and thus died.⁷⁴

In June 2009, the Senate Energy and Natural Resources Committee chaired by Senator Bingaman (D-NM) passed the American Clean Energy Leadership Act (S.1462). This bill contained many of the same energy provisions as the House-passed ACES bill, including a federal renewable electricity standard of 15% by 2020, appliance efficiency, and building code provisions, and investments in nuclear power, CCS, tar sands, and domestic oil development. To achieve strong emissions reduction goals, the Senate energy bill needed even stronger standards for renewables like wind and solar and avoided the increased extractive industries development (the tar sands and additional oil production). Also on the Senate side, the low income provisions were less robust, for example, as less funding for the Low-Income Home Energy Assistance Program (LIHEAP).⁷⁵ This legisla-

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *From the Hill—Climate Change Debate Remains Gridlocked*, ISSUES IN SCI. & TECH., Winter 2010, available at <http://issues.org/26-2/hill-51/>.

73. *Id.* Senator Max Baucus (D-MT) was the only individual to vote against the bill. *Id.*

74. *Id.*

75. See INT’L INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *supra* note 26.

tion was also never acted upon. The other Senate Committees with jurisdiction on climate change (Agriculture, Finance, Foreign Relations and Commerce) introduced legislation. Then-Senators Kerry, Joe Lieberman (I-CT), and Lindsey Graham (R-SC) led a bipartisan effort to negotiate a bill that did not lead to an enacted bill.

AGENTS OF CHANGE

COP15, despite all the drama and disappointment, exposed the growing power of the Global South and new voices in the climate change debate and negotiations. No longer are the issues of climate change solely the purview of European and North American scientists and environmental professionals. The young people of the world, especially those of color and those in the developing world, have claimed a stake on climate change. Their future is compromised, and a critical focus must also be a reduction in the developed world's consumption patterns along with greenhouse gas emissions reductions. A third of the world's population is under 18, with 85% in developing countries.⁷⁶ Children will suffer more health effects from warming temperatures because their developing bodies are more susceptible to diseases related to climate: malaria, diarrhea, and under-nutrition.⁷⁷ Children and young people have a higher mortality rate from climate disasters than adults.⁷⁸ They are susceptible to separation from their families and exploitation. Climate change, in the words of the national security community's lingo, is "a threat multiplier" in the lives of children and young people. Yet, the young people of the world are teaching the old heads new ways of seeing and doing things, using technology and recycling and adapting to climate change through their schools, communities, and creating new livelihoods. During COP15, the face of climate change was outstanding activity of the young people. Two days before the COP15, 2,000 young people convened a Conference of Youth (COY). The connections they made with like-minded young people cemented new friendships and resolve. While President Obama had to chase down Premier Wen, Chinese youth actively sought out their counterparts from other countries. The U.S. youth did not accept U.S. State Department's Number Two climate negotiator Jonathan Pershing claiming the President's hands were tied because of the inaction

76. BARBARA ADAMS & GRETCHEN LUCHSINGER, CLIMATE JUSTICE FOR A CHANGING PLANET: A PRIMER FOR POLICY MAKERS AND NGOs 22, U.N. Doc. UNCTAD/NGLS/2009/2, U.N. Sales No. E.09.I.19 (2009).

77. *Id.* at 23.

78. *Id.*

of Senate. They instead demanded leadership from him to break the stalemate. The U.S. youth contingent was among the most vocal critics of the final Accord.

These young people went home to advocate and agitate for action on climate change. They followed the progress of the Accord as the countries responsible for the bulk of climate change pollution formally submitted their emission reduction plans. Fifty-five countries, including the U.S., submitted the reduction plans to the UNFCCC. China reported it would reduce the amount of carbon dioxide emitted per unit of activity (its carbon intensity) by 40-45% by 2020 compared with 2005 levels.⁷⁹ India stated its carbon intensity would fall by 20-25% over the same period. South Korea set an intensity target of 30% below 2005 levels by 2020.⁸⁰ The U.S. repeated President Obama's promise to cut emissions "in the range" of 17% by 2020 compared to 2005 but only if and when Congress passes legislation that meets that goal.⁸¹

The subsequent COPs (and intervening sessions) in Cancun, Durban, Qatar, and Warsaw, respectively, saw the great level of participation by young people (and great recognition to the role of gender and women regarding climate change). While the aforementioned COPs were well represented by the American delegation, President Obama has yet to attend another COP since Copenhagen.

"EVERYBODY'S MOVEMENT"⁸²

In addition to the youth movement, the environmental justice (EJ) movement has claimed a large space regarding climate change. The field of environmental justice consists of the intersection of human rights, civil rights, environmental protection, and the broader quest for more just and sustainable communities. Because sensitive populations are the bellwether for the harmful effects of environmental abuses, equity must underpin the policy discourse about how to reverse these practices and create more sustainable environments. In 1994, President Clinton issued Executive Order 12898, requiring all federal agencies to ensure their policies and practices do not have a disproportionate or adverse environmental impact on low-income and minority

79. John M. Broder, *Countries Submit Emission Goals*, N.Y. TIMES (Feb. 1, 2010), <http://www.nytimes.com/2010/02/02/science/earth/02copenhagen.html>.

80. *Id.*

81. *Id.*

82. ANGELA PARK, EVERYBODY'S MOVEMENT: ENVIRONMENTAL JUSTICE AND CLIMATE CHANGE (2009), available at http://www.energyactioncoalition.org/sites/wearepowershift.org/files/everybodysmovement_AngelaPark.pdf.

populations. Great advances have been made as well as great setbacks since the signing of this Executive Order. The scope of environmental justice is broad, encompassing health equity, transportation access, climate change, protection of natural resources, green jobs, Brownfields redevelopment, energy policy, and infrastructure development, as well as environmental protection. More than nine million people are estimated to live in circular host neighborhoods within three kilometers of the nation's 413 commercial hazardous waste facilities. More than 5.1 million people of color, including 2.5 million Hispanics or Latinos, 1.8 million African Americans, 616,000 Asians and Pacific Islanders, and 62,000 Native Americans live in neighborhoods with one or more commercial hazardous waste facilities. Poverty rates in the host neighborhoods are 1.5 times greater than non-host areas.⁸³ This is just one dimension of the dire conditions that too many communities endure on a daily basis.

EJ populations in the U.S. (and their aforementioned youngsters) endure climate change as a “threat multiplier” as their counterparts in the Global South. African Americans are 13% of the U.S. population and on average emit nearly 20% less greenhouse gases than non-Hispanic whites per capita.⁸⁴ Though far less responsible for climate change, African Americans are significantly more vulnerable to its effects than non-Hispanic whites.⁸⁵ Health, housing, economic well-being, culture, and social stability are harmed from such manifestations of climate change as storms, floods, and climate variability.⁸⁶ African Americans are also more vulnerable to higher energy bills, unemployment, and recessions caused by global energy price shocks.⁸⁷ Similarities with communities in the Global South abound, and the issues of climate justice rest on the fact that the long-industrialized Global North have caused far more than their proportional share of the pollution, while predominantly of color nations (in the Global South), especially African nations, have low missions relative to a fair distribution.⁸⁸ The U.S. has a per capita pollution responsibility that is a startling 42% more than that of the continent of Africa!⁸⁹

83. ROBERT D. BULLARD ET AL., TOXIC WASTES AND RACE AT TWENTY 1987-2007 *x* (2010), available at http://www.ucc.org/justice/advocacy_resources/pdfs/environmental-justice/toxic-wastes-and-race-at-twenty-1987-2007.pdf.

84. J. ANDREW HOERNER & NIA ROBINSON, A CLIMATE OF CHANGE: AFRICAN AMERICANS, GLOBAL WARMING AND A JUST CLIMATE POLICY FOR THE U.S 1 (2008).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 7.

89. *Id.* at 8.

As with African nations and other countries in the Global South, African Americans stand to gain a corresponding substantial improvement in health when emissions are reduced.⁹⁰ For these and many other reasons, African Americans have been actively combating the effects of climate change. EJ coalitions such as the Environmental Justice and Climate Change Initiative (EJCC) and its HBCU project, as well as the EJ Forum on Climate Justice (EJ Forum), were formed to combat the effects of climate change on African Americans and other people of color by advocating on the local, state, federal, and international levels. Both the EJCC and EJ Forum (and its members) have participated in past COPs and regularly lobby Congress. This space had to be created and also includes youth, faith based organizations, and civil rights groups due to the fact that historically environmental groups did not adequately represent the interests of African Americans and people of color for a very long time.

The Joint Center for Political and Economic Studies formed the Commission to Engage African Americans (the Commission) in 2008 to address growing concerns about climate change and its potential impact on African Americans. Comprised of leading experts from government, industry, labor, academia, and the civil rights and environmental movements, the Commission responds to an urgent need to increase African Americans' understanding of climate change, and to ensure that they have a seat at the table when critical solutions are decided.⁹¹

The Commission conducted a major national opinion poll of African American households on the subject of climate change, which was released in conjunction with the launch of the CEAC. Key findings of the initial poll include: a majority of African Americans (58%) characterize global warming as a major problem.⁹² Majorities of African Americans believe government at all levels can take actions to limit these problems.⁹³

Significantly, according to the poll, African Americans also express a willingness to pay more for electricity to combat global

90. HOERNER & ROBINSON, *supra* note 84, at 13.

91. See *Commission to Engage African Americans on Energy, Climate Change and the Environment*, JOINT CENTER, <http://70.32.93.32/content/commission-engage-african-americans-energy-climate-change-and-environment> (last visited Aug. 4, 2014).

92. DAVID A. BOSITIS, JOINT CENTER NATIONAL SURVEY RESULTS AFRICAN AMERICANS ON CLIMATE CHANGE AND CONSERVATION 2 (2009), available at <http://jointcenter.org/sites/default/files/African%20Americans%20on%20Climate%20Change%20and%20Conservation.pdf>.

93. *Id.*

warming.⁹⁴ A solid majority of African Americans (61%) were willing to pay an additional \$10 per month to fight global warming.⁹⁵ Further, 30% were willing to pay an additional \$25 per month to fight global warming, and 16% were willing to pay an additional \$50 per month.⁹⁶ Responses to this question were, as expected, income-sensitive, with lower income respondents expressing less willingness to commit to higher bills, and individuals with higher levels of education and income more willing to commit to higher bills.⁹⁷ Between 40 and 50% of African Americans with advanced degrees or higher incomes were willing to pay \$25 more per month for electricity (\$300 per year), and between 20 and 30% of them expressed a willingness to pay \$50 more per month (\$600 per year).⁹⁸ To put this finding into context, it is important to remember the U.S. economy was under substantial stress at the time of the survey, in 2009, and the average income of African Americans was significantly less than non-Hispanic whites' incomes (2007 non-Hispanic white per capita income was \$31,051, while African American per capita income was \$18,428, according to the 2008 Annual Current Population Survey (CPS) conducted by the U.S. Bureau of Labor Statistics).⁹⁹ Their unemployment rate is almost double that of whites.¹⁰⁰

Latino-Americans also overwhelming support government action to fight climate change. This level of support is exceeded only by their views on immigration reform.¹⁰¹ In a survey by the Natural Resources Defense Council, nine in ten Latino voters surveyed said it was important for the U.S. government to address global warming and climate change, and 80% favored presidential action.¹⁰²

In addition, the African American community sends members to Congress that consistently vote for pro-environmental issues.¹⁰³ In

94. *Id.* at 4

95. *Id.*

96. *Id.*

97. *Id.*

98. BOSITIS, *supra* note 92, at 4.

99. BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY, 2008 ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT (2008), available at <http://www.census.gov/prod/techdoc/cps/cpsmar08.pdf>.

100. *Id.*

101. Tony Barboza, *Most Latinos Want Government Action on Climate Change, Poll Finds*, VOCES VERDES (Jan. 29, 2014), <http://www.vocesverdes.org/in-the-news/232/most-latinos-want-government-action-on-climate-change-poll-finds>.

102. *Id.*

103. Phaedra Ellis-Lamkins, *Commentary: Black Leaders Are Building a Healthy Green Economy*, BET (Sept. 18, 2013), available at <http://www.bet.com/news/national/2013/09/18/commentary-black-leaders-are-building-a-healthy-green-economy.html>.

1999, the Congressional Black Caucus established the Environmental Justice Braintrust at the Congressional Black Caucus (CBC) Foundation's Annual Legislative Conference.¹⁰⁴ Established under the leadership of Rep. James E. Clyburn (D-SC), the forum brings together a wide range of technical experts, policy makers, medical officials, and community activists to discuss issues related to environmental justice, including public health and economic development.¹⁰⁵ CBC Members have used the Annual Legislative Conference to address a number of issues related to environmental justice. These include natural disaster relief, health care, and environmental policy.¹⁰⁶ To that end, then-U.S. Environmental Protection Agency Administrator Lisa P. Jackson and U.S. Representative Barbara Lee, then-Chair of the CBC, convened a tour in 2010 to visit American communities most ravaged by environmental degradation and pollution.¹⁰⁷ The joint EPA-CBC Environmental Justice Tour visited several areas throughout the country to highlight environmental justice challenges faced by Americans in all communities.¹⁰⁸ The mainstream environmental community still has not acknowledged the full participation of African Americans and other people of color as full partners in the advocacy to alleviate the scourge of climate change. With relatively few resources, the EJ movement and its allies (e.g. faith, civil rights) has built a foundation of local and neighborhood credibility and community empowerment.¹⁰⁹ This movement and its sister movements in the Global South have created sophisticated political education and leadership development programs that speak to and engage the communities who have the most to gain from a truly just and sustainable future and the most to lose from a fossil fuel economy.¹¹⁰ The solutions for the new just green economies and livelihoods will derive from these communities. The future is requiring a new course.¹¹¹ These new courses of action and

104. *Environmental Justice – Timeline*, AVOICE, <http://www.avoiceline.org/environmental/timeline.html> (last visited Aug. 4, 2014).

105. *Environmental Justice – Public Advocacy*, AVOICE, <http://www.avoiceline.org/environmental/advocacy.html> (last visited Aug. 4, 2014).

106. *Id.*

107. *EPA-Congressional Black Caucus (CBC) Environmental Justice Tour*, EPA.GOV, <http://www.epa.gov/region9/mediacenter/EJtour/> (last updated Nov. 2, 2012).

108. *EPA, Congressional Black Caucus Announce Joint Environmental Justice Tour Jackson, Miss. Marks First Stop on Tour Highlighting Impact of Environmental Issues on Underserved Communities*, EPA.GOV, <http://yosemite.epa.gov/opa/advpress.nsf/0/1e85d6d3d29b3220852576b300508bb0> (last updated Aug. 5, 2014).

109. PARK, *supra* note 82, at 5.

110. *Id.*

111. *Id.* at 41.

recognition will define whether or not the challenge of this generation, climate change, will be met and controlled.

INTEGRATION AND INCLUSION: THE FUTURE OF
U.S. CLIMATE CHANGE POLICY

Climate change and energy are key issues for the Obama administration, both substantively and strategically; active engagement in the global climate change space reinforces the image of the United States as a cooperative global leader. President Obama has clearly established climate change as a high-priority issue through statements and actions.¹¹² As noted above, the President made climate change and clean energy a major part of his platform even before taking office.¹¹³ And in a reflection of President Obama's own priorities, the House of Representatives took up the issue of climate change months before engaging in debate on health reform legislation or a jobs bill, passing a comprehensive climate bill despite the overwhelming national focus on healthcare reform and the weakened domestic economy.¹¹⁴ President Obama has also publicly committed to the idea that action on climate change is a key to economic growth and prosperity.¹¹⁵ Given the prominence of the current economic situation in the national consciousness, by tying climate change policy to economic recovery, President Obama has deliberately elevated the prominence of the climate change in the national conversation.

President Obama's substantial engagement in the Copenhagen process proved that he, early on his first term, recognized the importance of the global climate change process to his domestic energy policy agenda. Even though President Obama has not returned to any of the COPs, his Administration has progressed and supported on many international climate initiatives.¹¹⁶ In 2010, the Cancun Agreement confirmed and substantially extended the core elements of the Copenhagen Accord in the areas of finance, technology, and adaptation, as

112. *Climate Change*, WHITEHOUSE.GOV, <http://www.whitehouse.gov/energy/climate-change> (last visited Aug. 4, 2014).

113. Andrew C. Revkin et.al., *On the Issues: Climate Change*, N.Y.TIMES, <http://elections.nytimes.com/2008/president/issues/climate.html> (last visited Aug. 4, 2014).

114. *Rep. Henry Waxman on Healthcare Reform, the Waxman-Markey Climate Change Bill and the Expanding Role of Private Contractors in the Battlefield*, DEMOCRACY NOW (Aug. 4, 2009), http://www.democracynow.org/2009/8/4/rep_waxman_on_healthcare_reform_the.

115. EXECUTIVE OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN 4 (2013), available at <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf> at 4.

116. *Id.* at 17-21.

well as mitigation and transparency in an instrument that the Parties enthusiastically endorsed.¹¹⁷ In December 2011 at Durban, the United States and the international community took important steps to make operational all of the key elements of the Cancun agreement, including a transparency regime to monitor and review mitigation efforts by developed and developing countries, as well as established a Green Climate Fund.¹¹⁸ In addition, a process was launched to negotiate a new legal instrument to take effect from 2020, and U.S. leadership was crucial to ensuring that the instrument will be applicable to all parties and include all of the major economies within a common legal system.¹¹⁹

Although President Obama pushed his climate change agenda forward through integration—both by integrating climate change into a larger fabric of domestic issues and by integrating the United States more fully into the global climate conversation—he did not integrate the issues of the communities most affected by climate change into his climate plan: those of African Americans and other people of color.

The Obama Administration has taken many steps to fight climate change, from pushing lower corporate average fuel economy cars to setting strict rules limiting carbon emissions per unit of electricity produced for all new and existing power plants and other related rules. President Obama mentioned tackling climate change in his State of the Union speeches.¹²⁰ On June 25, 2013, a sweltering hot day, the President announced his climate action plan action at Georgetown University.¹²¹ This plan's main components include: (1) cut carbon pollution in America; (2) prepare the United States for the impacts of climate change; and (3) lead International efforts to combat global climate change and prepare for its impacts.¹²² Despite its specificity, the Climate Action Plan only mentions environmental justice once.¹²³ The EJ Forum has advocated for the president to “close the climate gap” in

117. *Climate Change*, WHITEHOUSE.GOV, <http://www.whitehouse.gov/climate-change> (last visited Aug. 4, 2014).

118. *Id.*

119. *Id.*

120. Andrew Friedman, *Obama's State of the Union Climate Mention Fits Pattern*, CLIMATE CENTRAL (Jan. 29, 2014), <http://www.climatecentral.org/news/obamas-latest-state-of-the-union-climate-mention-fits-pattern-17007>.

121. *Obama Speaks at Georgetown, Takes Major Action on Climate Change*, GEORGETOWN UNIV. (June 25, 2013), <http://www.georgetown.edu/news/obama-old-north-2013.html>.

122. EXECUTIVE OFFICE OF THE PRESIDENT, *supra* note 115.

123. *Id.* at 13.

his climate plan through a petition campaign.¹²⁴ In response to the president's plan, the EJ Forum suggests that the federal government establish a policy that requires all climate change strategies to improve the economic conditions of environmental justice communities. Environmental justice communities suffer a wealth gap as a result of limited economic opportunities, lowered property values, and a degraded quality of life brought on by undesirable land uses that contribute to climate change. This wealth gap sets back the capacity of environmental justice communities to recover from the effects of climate change.¹²⁵

Specifically, the Obama Administration must include African Americans and people of color in the conversation in a way that mirrors the growing inclusion of representatives of the Global South in the global climate debate. Even climate change legislation is no longer a part of President Obama's agenda mainly due to intransigent Republicans.¹²⁶ The African American community is significantly important to any effort to push such other climate change initiatives—domestic and international—forward. African American voters were an important constituency for President Obama during his campaign, and were a crucial component in his 2008 and 2012 election victories.¹²⁷ Further, while President Obama's approval ratings among the general U.S. population have waned as he has undertaken the task of governing, his approval among African Americans remains high; a poll of African American voters conducted by the Joint Center for Political and Economic Studies shows President Obama's personal approval rating topping 90%.¹²⁸ Less overwhelming but still substantial African American support also extends to President Obama's climate change policies.¹²⁹ The majority of African Americans are eager to see government action on climate change, mirroring President Obama's focus on the issue.¹³⁰ Further, the majority of African Americans recently polled in several key states indicated that climate change is for them a

124. Brentin Mock, *Environmental Justice Leaders to Obama: There's a Gap in Your Climate Plan*, GRIST (Dec. 20, 2013), <http://grist.org/climate-energy/environmental-justice-leaders-to-obama-theres-a-gap-in-your-climate-plan/>.

125. *Id.*

126. Jane C. Timm, *On Climate Change, Democrats Appeal to GOP's Fiscal Conservatism*, MSNBC (Aug. 1, 2014), <http://www.msnbc.com/morning-joe/climate-change-democrats-appeal-gops-fiscal-conservatism>.

127. Leonard E. Colvin, *Black Voters Dealt Obama Victories*, THE NEW JOURNAL & GUIDE (May 2, 2013), <http://www.thenewjournalandguide.com/community/health/item/2733-black-voters-dealt-obama-victories>.

128. BOSITIS, *supra* note 92.

129. *Id.*

130. *Id.*

voting issue, meaning that a candidate's views and actions on climate change are likely to affect whether or not the respondent votes for that candidate.¹³¹ These are voices that are not traditionally privileged within climate change discussions, and their inclusion should mark a change—and a new way forward—for U.S. climate change policy.

131. DAVID BOSITIS, OPINION OF AFRICAN AMERICANS ON CLIMATE CHANGE AND 2010 MIDTERM ELECTIONS: THE RESULTS OF A MULTI-STATE POLL: THE VIEW FROM ARKANSAS, INDIANA, MISSOURI, AND SOUTH CAROLINA (2010), *available at* http://jointcenter.org/sites/default/files/CC_4-State_Report_WEB_REV.pdf.
