

NDC features and guidance on information to be provided by the Parties to facilitate clarity, transparency and understanding

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Query:

1. *What are NDC features and guidance that Parties need to comply with when submitting their second round of NDCs?*
2. *What obligations do they contain?*
3. *Specifically, how should Parties comply with requirements related to equity when updating their NDC?*

Advice:

1. Introduction

In accordance with Article 4(9) of the Paris Agreement, Parties are due to communicate new and successive nationally determined contributions (**NDCs**) in 2025. Parties were due to submit new NDCs by 10 February 2025, at least nine months ahead of CMA7.¹ Only 13 of 195 Parties met that deadline, and as of 1 June 2025, 22 Parties have submitted their third NDCs.² It is expected that the majority of remaining Parties will submit prior to COP30/CMA.7 held in November 2025.

Since the adoption of the Paris Agreement in 2015, the Parties have – through the Ad Hoc Working Group on the Paris Agreement (**APA**) and decisions taken by the Conference of the Parties serving as the meeting of the Parties to the Paris agreement (**CMA**) – provided guidance on the content and characteristics of NDCs. As Parties work towards the communication of their third NDCs, this advice provides an overview of the legal obligations of Parties; the existing guidance on the features of NDCs, their content, and their legal status; and the interpretive aspects of NDC communication. In addition,

¹ United Nations Climate Change Secretariat, Message to Parties to the Paris Agreement: Upcoming deadlines for the communication of nationally determined contributions (NDC), the submission of biennial transparency reports (BTR) and biennial communications of information related to Article 9, para 5, of the Paris Agreement (16 September 2024), LA/MTP/NDCs/BTRs/BC.

² UNFCCC, NDC Registry (no date) <https://unfccc.int/NDCREG>.

this advice considers the relationship between equity and NDC communication, and how equity can be (and is) reflected in Parties' NDCs.

The distinction between Parties' legal obligations and non-binding commitments, or guidance (where compliance is not enforceable), is important to ensure that Parties meet their obligations under the Paris Agreement and to inform discussions on the content of NDCs. As will be explained below, legal obligations are often found in the operative parts of a treaty and their legal bindingness depends on a range of factors including the language used – binding obligations are often denoted by a specific verbs i.e. “shall”, “will”, “must” – normative content, position within the treaty and other characteristics, such as review through compliance mechanisms.³ COP or CMA decisions or related documents *may* create legally binding obligations on Parties where those decisions are referred to in the body of a treaty, or the treaty confers power on the COP to take such a decision. These are distinguished from non-binding commitments, or guidance, which may be contained in COP decisions and other documents, which Parties are encouraged to follow or consider, but for which there is no recourse against Parties if they do not comply.⁴ Non-binding commitments and guidance are often found outside of the treaty text and can be indicated by range of language including 'calls' for Parties to do something, indications of what Parties 'should' do, and encouragement for Parties to take a certain action.

2. Parties' procedural and substantive obligations in respect of NDC preparation and communication

The Paris Agreement contains both procedural and substantive obligations concerning Parties' communication of NDCs. The legal bindingness of these obligations is denoted by the use of prescriptive language i.e. “shall”.⁵ Parties are required to comply with the provisions, which create a range of both binding obligations and non-binding commitments.

Article 4 of the Paris Agreement provides the foundation of the NDC guidance, and refers to Articles 4(8), 4(9), 4(13), 4(14) as well as to external sources which must inform the content and form of NDCs. These external sources include Decision 1/CP.21 and any relevant decisions of the COP, as well as the outcomes of the global stocktake. Article 14(3) provides that ‘the global stocktake *shall* inform Parties’ (emphasis added) when updating and enhancing their actions and support under the Paris Agreement, creating a binding legal obligation on Parties to take the global stocktake outcomes into account. This provision does not refer explicitly to NDCs, but the references to “a nationally determined manner” is evocative of the obligations to prepare and communicate NDCs in accordance with Article 4.⁶ This is also consistent with Article 4(9).

³ LRI, 'Possible outcomes from a COP', *Legal Assistance Paper* (30 May 2024): <https://legalresponse.org/wp-content/uploads/2024/06/Advice-to-Q55-23-Possible-outcomes-from-a-COP.pdf>

⁴ For further information on the legal status of treaty provisions, COP decisions and unilateral decisions, see LRI's Legal Assistance Paper <https://legalresponse.org/legaladvice/treaties-cop-decisions-and-unilateral-declarations/>

⁵ L Rajamani, 'Interpreting the Paris Agreement in its Normative Environment; (2024) 66 *Current Legal Problems* 167-200, 191; Leslie-Anne Duvic-Paoli et al, 'Guide to climate negotiations terminology' (Second Edition, 2024): <https://legalresponse.org/wp-content/uploads/2025/04/UNFCCC-terminology-guide.pdf>

⁶ Jorge Vinuales, 'The Paris Climate Agreement: An Initial Examination (Part III of III)' (8 February 2016) <https://www.ejiltalk.org/the-paris-climate-agreement-an-initial-examination-part-iii-of-iii/>

The binding obligations on Parties in the Paris Agreement, both procedural and substantive, are set out in the table below.

	Article no.	Extracted text (emphasis added)
Procedural obligations		
1.	4(2)	'Each Party shall prepare, communicate and maintain successive NDCs'
2.	4(9)	'Each Party shall communicate a NDC every five years'
3.	4(12)	'Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat'
4.	13(7)	'Each Party shall regularly provide information on national inventories [and] information necessary to track progress made in implementing and achieving its NDC'
Substantive obligations		
5.	4(2)	'Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions'
6.	4(3)	'Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances'
7.	4(8)	Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties
8.	4(9)	'Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP21 and any relevant decisions of the Conference of the Parties [...] and be informed by the outcomes of the global stocktake referred to in Article 14'
9.	4(13)	'Parties shall account for their NDCs [...] In accounting, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency'
10.	14(3)	'The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action'

Provisions which are not legally binding include those using 'should', such as the provisions concerning emissions reduction targets (Article 4(4)) and highest possible ambition (Article 4(3)) in NDCs.

Whether a COP decision is legally binding or not will depend on the basis on which that decision is made. For example, COP decisions may be enabled, mandated or authorised by a clause in the UNFCCC, Kyoto Protocol or the Paris Agreement to be legally binding. This means the treaty itself has expressly delegated legislative power to the COP, CMP or CMA to give effect to specific treaty provisions with wording that indicates an intention to legally bind the Parties.⁷ However, COP decisions are not generally assumed to have a legally binding status, and determining whether a decision does or does not create an obligation for Parties requires analysis of the specific text and circumstances of the decision's adoption on a case-by-case basis.⁸ Article 4(8) on Information necessary for Clarity,

⁷ LRI, 'Treaties, COP decisions and unilateral declarations', *Legal Assistance Paper* (5 February 2010) <https://legalresponse.org/legaladvice/treaties-cop-decisions-and-unilateral-declarations/>.

⁸ Ibid.

Transparency, and Understanding (ICTU) and Article 4(13) on accounting in NDCs provide that Parties are to act “in accordance with” relevant CMA decisions. The formulation of each of these provisions is as follows: each Party *shall* fulfil an obligation in accordance with ‘any relevant decisions of the [CMA]’. The use of “shall” in both Article 4(8) and Article 4(13) denotes the creation of a legally binding obligation, which must then be ‘in accordance with’ a future decision of the CMA. As a result, decisions taken by the CMA under the power conferred by Article 4(8) or Article 4(13) can be considered to be legally binding.

Information Necessary to Facilitate Clarity, Transparency and Understanding (ICTU)

Article 4(8) obliges (“shall”) Parties to provide information necessary to facilitate clarity, transparency and understanding of NDCs (ICTU). Prior to the Paris Agreement, the Lima Call for Action (2014) in Decision 1/CP.20 paragraph 14, set out informational requirements for intended NDCs to ensure clarity and transparency.

The guidance for the first round of NDCs was provided by Decision 1/CP.21, which set out in paragraph 27 that Parties may include, as appropriate, the following elements:

1. quantifiable information on the reference point (including, as appropriate, a base year);
2. time frames and/or periods for implementation;
3. scope and coverage;
4. planning processes;
5. assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas emissions and, as appropriate, removals;
6. how the Party considers that its nationally determined contribution is fair and ambitious, in the light of its national circumstances; and
7. how it contributes towards achieving the objective of the Convention as set out in its Article 2.⁹

Decision 1/CP.21 requested the Ad Hoc Working Group on the Paris Agreement to develop further guidance on information to be provided by the Parties to facilitate clarity, transparency and understanding, along with guidelines on the accounting process for NDCs.¹⁰

These guidelines were expanded upon in Decision 4/CMA.1 Annexes I and II, which further clarify the requirements to comply with the ICTU guidance.¹¹ These requirements represent guidance from the COP, mandated by the Paris Agreement, and are therefore legally binding pursuant to Article 4(8). Parties are obligated (“shall”) to follow the ICTU guidance in Annex I, and the accounting guidance in Annex II for second and subsequent NDCs. Decision 4/CMA.1 paragraph 7 expressly requires that Parties shall, in communicating their second and subsequent nationally determined contributions, ‘provide the information necessary for clarity, transparency and understanding contained in annex I as applicable to their nationally determined contributions’. All second and subsequent NDCs, being developed and communicated after CMA.1 in 2016, should therefore comply with the guidance contained in Annexes I and II.

Decision 4/CMA.1 also ‘strongly encourages Parties to provide this information in relation to their first nationally determined contribution, including when communicating or updating it by 2020’. In contrast to “Parties shall”, the weaker wording of “strongly encourage” can be read as an indicator of best practice for first NDCs, rather than a legally binding obligation.

⁹ UNFCCC, Decision 1/CP.21, paragraph 27 <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>.

¹⁰ Ibid, paras 28 and 31.

¹¹ UNFCCC, Decision 4/CMA.1 https://unfccc.int/sites/default/files/resource/4-CMA.1_English.pdf

Taken together, the decisions of the COP and the CMA provide the most relevant guidance to Parties on their obligations and best practice for the second round of NDCs. ICTU guidance is regularly confused as "features" of NDCs itself, however it is best understood as information about "features". As part of COP22 discussions, Parties provided written submissions on ICTU and in October 2016 and April 2017 on features. Many submissions viewed the guidance on features of NDCs and the guidance on information for ICTU as linked, as information provided in the NDC should also provide ICTU on how features are reflected, incorporated or "operationalised" in NDCs (Australia, China, Kuwait, Korea, South Africa, Switzerland, AOSIS, AILAC, African Group, EU, LDC, LMDC).¹²

The seven elements of ICTU provided by Decision 4/CMA.1, Annex I are:

1. quantifiable information on reference points (e.g. years/periods);
2. time frames for implementation;
3. scope and coverage of the target;
4. planning process undertaken to prepare the NDC;
5. assumptions and methodological approaches;
6. consideration of fairness and ambition in light of national circumstances; and
7. explanation of how the NDC contributes to achieving the objective of the Paris Agreement.

The elements of ICTU are further described in the table below.

Element	Further information to facilitate ICTU
1. Quantifiable information on reference points	a. Reference year(s), base year(s), reference period(s) or other starting point(s);
	b. Quantifiable information on the reference indicators, their values in the reference year(s), base year(s), reference period(s) or other starting point(s), and, as applicable, in the target year;
	c. For strategies, plans and actions referred to in Article 4, paragraph 6, of the Paris Agreement, or policies and measures as components of NDCs where paragraph 1(b) above is not applicable, Parties to provide other relevant information;
	d. Target relative to the reference indicator, expressed numerically, for example in percentage or amount of reduction;
	e. Information on sources of data used in quantifying the reference point(s);
	f. Information on the circumstances under which the Party may update the values of the reference indicators.
2. Time frames for implementation	a. Time frame and/or period for implementation, including start and end date, consistent with any further relevant decision adopted by the CMA;
	b. Whether it is a single-year or multi-year target, as applicable.

¹² OECD, 'Information needed to facilitate the clarity, transparency and understanding of mitigation contributions' (May 2017)
https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/06/information-needed-to-facilitate-the-clarity-transparency-and-understanding-of-mitigation-contributions_196fc784/757cb062-en.pdf

3. Scope and coverage of the target	a. General description of the target;
	b. Sectors, gases, categories and pools covered by the nationally determined contribution, including, as applicable, consistent with Intergovernmental Panel on Climate Change (IPCC) guidelines;
	c. How the Party has taken into consideration paragraph 31(c) and (d) of decision 1/CP.21;
	d. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans, including description of specific projects, measures and initiatives of Parties' adaptation actions and/or economic diversification plans.
4. Planning process undertaken to prepare the NDC	a. Information on the planning processes that the Party undertook to prepare its nationally determined contribution and, if available, on the Party's implementation plans, including, as appropriate: i. Domestic institutional arrangements, public participation and engagement with local communities and indigenous peoples, in a gender-responsive manner; ii. Contextual matters, including, inter alia, as appropriate: 1. National circumstances, such as geography, climate, economy, sustainable development and poverty eradication; 2. Best practices and experience related to the preparation of the nationally determined contribution; 3. Other contextual aspirations and priorities acknowledged when joining the Paris Agreement;
	b. Specific information applicable to Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under Article 4, paragraph 2, of the Paris Agreement, including the Parties that agreed to act jointly and the terms of the agreement, in accordance with Article 4, paragraphs 16 18, of the Paris Agreement;
	c. How the Party's preparation of its nationally determined contribution has been informed by the outcomes of the global stocktake, in accordance with Article 4, paragraph 9, of the Paris Agreement;
	d. Each Party with a nationally determined contribution under Article 4 of the Paris Agreement that consists of adaptation action and/or economic diversification plans resulting in mitigation co-benefits consistent with Article 4, paragraph 7, of the Paris Agreement to submit information on: i. How the economic and social consequences of response measures have been considered in developing the nationally determined contribution; ii. Specific projects, measures and activities to be implemented to contribute to mitigation co-benefits, including information on adaptation plans that also yield mitigation co-benefits, which may cover, but are not limited to, key sectors, such as

	energy, resources, water resources, coastal resources, human settlements and urban planning, agriculture and forestry; and economic diversification actions, which may cover, but are not limited to, sectors such as manufacturing and industry, energy and mining, transport and communication, construction, tourism, real estate, agriculture and fisheries.
5. Assumptions and methodological approaches	a. Assumptions and methodological approaches used for accounting for anthropogenic greenhouse gas emissions and removals corresponding to the Party's nationally determined contribution, consistent with decision 1/CP.21, paragraph 31, and accounting guidance adopted by the CMA;
	b. Assumptions and methodological approaches used for accounting for the implementation of policies and measures or strategies in the nationally determined contribution;
	c. If applicable, information on how the Party will take into account existing methods and guidance under the Convention to account for anthropogenic emissions and removals, in accordance with Article 4, paragraph 14, of the Paris Agreement, as appropriate;
	d. IPCC methodologies and metrics used for estimating anthropogenic greenhouse gas emissions and removals;
	e. Sector-, category- or activity-specific assumptions, methodologies and approaches consistent with IPCC guidance, as appropriate, including, as applicable: i. Approach to addressing emissions and subsequent removals from natural disturbances on managed lands; ii. Approach used to account for emissions and removals from harvested wood products; iii. Approach used to address the effects of age-class structure in forests;

	f. Other assumptions and methodological approaches used for understanding the nationally determined contribution and, if applicable, estimating corresponding emissions and removals, including: i. How the reference indicators, baseline(s) and/or reference level(s), including, where applicable, sector-, category- or activity-specific reference levels, are constructed, including, for example, key parameters, assumptions, definitions, methodologies, data sources and models used; ii. For Parties with nationally determined contributions that contain non-greenhouse-gas components, information on assumptions and methodological approaches used in relation to those components, as applicable; iii. For climate forcers included in nationally determined contributions not covered by IPCC guidelines, information on how the climate forcers are estimated; iv. Further technical information, as necessary; g. The intention to use voluntary cooperation under Article 6 of the Paris Agreement, if applicable.
6. Consideration of fairness and ambition in light of national circumstances	a. How the Party considers that its nationally determined contribution is fair and ambitious in the light of its national circumstances; b. Fairness considerations, including reflecting on equity; c. How the Party has addressed Article 4, paragraph 3, of the Paris Agreement; d. How the Party has addressed Article 4, paragraph 4, of the Paris Agreement; e. How the Party has addressed Article 4, paragraph 6, of the Paris Agreement.
7. Explanation of how the NDC contributes to achieving the objective of the Paris Agreement	a. How the nationally determined contribution contributes towards achieving the objective of the Convention as set out in its Article 2; b. How the nationally determined contribution contributes towards Article 2, paragraph 1(a), and Article 4, paragraph 1, of the Paris Agreement.

Parties deal with their obligations to facilitate ICTU in different ways, such as annexing a table with the information to their NDCs¹³ or including an ICTU section within the body of the NDCs.¹⁴

The COP secretariat published a synthesis report on the 168 latest available NDCs as of 9 September 2024, which was requested by the CMA in Decision 1/CMA.3.¹⁵ The secretariat is requested to annually update the NDC synthesis report which is to be made available to the CMA at each session. The report identifies COP and CMA guidance as the relevant framework for provision of information necessary for clarity, transparency and understanding of NDCs.¹⁶ The report found that, in the first NDC cycle, 95% of Parties provided the information necessary for clarity, transparency and understanding of their NDCs in accordance with Article 4(8) of the Paris Agreement and paragraph 27 of decision 1/CP.21.¹⁷ In addition, 94% Parties applied the CMA guidance to their NDCs. The report also reaffirms the distinction between the strong encouragement for complying with ICTU Annex I guidance for the first NDCs, and the obligation for Parties' second and subsequent NDCs¹⁸ to comply with Decision 4/CMA.1 paragraph 7, outlined above.

Paragraph 18 of Decision 4/CMA.1 mandates a review and potential update of ICTU by 2027, with a potential decision targeted for 2028.

NDC features

While there is no agreed definition, the "features" of NDCs are widely understood to refer to the characteristics of NDCs. LRI's response to Query 68/24 covers this substantively.¹⁹ In summary, "features" suggest a focus on characteristics as opposed to prescriptive elements on how to draft and present the NDC. This accommodates different national circumstances and considers CBDR-RC. Article 4 of the Paris Agreement lists several characteristics of NDCs, that provide that an NDC should:

- be communicated every five years;
- represent a progression from previous NDCs;
- represent the highest possible ambition (and, whenever required, be adjusted for that purpose);
- include economy-wide emissions reduction targets (for developed countries);
- move over time towards economy-wide emissions reduction or limitation targets (developing countries);
- be informed by the outcomes of the global stocktake;
- be accounted for in order to promote environmental; and

¹³ See for example EU States: https://unfccc.int/sites/default/files/NDC/2023-10/ES-2023-10-17_EU_submission_NDC_update.pdf and New Zealand: <https://unfccc.int/sites/default/files/2025-01/New%20Zealand%27s%20second%20Nationally%20Determined%20Contribution.pdf>.

¹⁴ See for example Brazil: https://unfccc.int/sites/default/files/2024-11/Brazil_Second%20Nationally%20Determined%20Contribution%20%28NDC%29_November2024.pdf%20 and Nepal: https://unfccc.int/sites/default/files/2025-05/Nepal_NDC3.pdf

¹⁵ UNFCCC, Decision 1/CMA.3, paragraph 30: https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf

¹⁶ COP Secretariat, "Nationally determined contributions under the Paris Agreement" (October 2024) Synthesis Report, FCCC/PA/CMA/2024/10.

¹⁷ Ibid para 54.

¹⁸ Ibid paras 46 and 47.

¹⁹ LRI, "'Features' for Nationally Determined Contributions under the Paris Agreement" (11 November 2024) <https://legalresponse.org/legaladvice/features-for-nationally-determined-contributions-under-the-paris-agreement/>; APA agenda item 3 – Further guidance in relation to the mitigation section of decision 1/CP.21 (13 November 2017) available at: https://unfccc.int/sites/default/files/apa_3_informal_note_final_version.pdf.

- promote environmental integrity, transparency; ensure accuracy, completeness, comparability and consistency; and avoid double counting.

While the currently established features are set out above, the Parties to the Paris Agreement have agreed to continue discussing the content and form of NDCs in the APA.²⁰ The matter of defining "features" has been raised on multiple occasions – most recently under Agenda Item 7 in CMA 6 in 2024. There, no conclusion was reached and it was determined that it would be revisited in 2026. It has been suggested that changing context – including the conclusion of the first global stocktake and scientific developments – has likely resulted in new elements for features.²¹ However, no new guidance has been issued.

For further guidance on NDC features, please refer to LRI's legal assistance paper titled "Features" for Nationally Determined Contributions under the Paris Agreement'.²²

Global stocktake

Article 4(9) of the Paris Agreement requires that NDCs be informed by the outcomes of the global stocktake. Explicitly in relation to NDCs, the outcome of the global stocktake encourages Parties to:

- submit their next NDCs with 'ambitious, economy-wide emission reduction targets, covering all greenhouse gases, sectors and categories and aligned with limiting global warming to 1.5 °C, as informed by the latest science, in the light of different national circumstances'; and
- align their next NDCs with 'long-term low greenhouse gas emission development strategies'.

More broadly, the outcome of the global stocktake 'commits to accelerate action in this critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities'. In accordance with Article 4(9) of the Paris Agreement, Parties must ensure that NDCs are informed by the outcomes (without limitation or caveat) of the global stocktake, which includes acceleration of the transition away from fossil fuels, contributions towards tripling renewable energy capacity and doubling annual energy efficiency improvements, and phase outs of fossil fuel subsidies.²³ There are also provisions emphasising the importance of conservation and restoration of ecosystems and biodiversity, which Parties should also reflect in their NDCs.²⁴ Generally, there is an obligation to reflect increased ambition in NDCs aligned with the outcome of the global stocktake.

NDCs must also be informed by the best available science, in accordance with both the outcome of the global stocktake and the Paris Agreement.

²⁰ UNFCCC, Decision 1/CP.21 <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>, para 26; UNFCCC, 'Ad Hoc Working Group on the Paris Agreement' <https://unfccc.int/process/bodies/subsidiary-bodies/apa>.

²¹ Centre for Climate and Energy Solutions, 'Features and Normative Requirements for Nationally Determined Contributions; (June 2024) <https://www.c2es.org/wp-content/uploads/2024/06/20240619-C2ES-NDC-Features-Normative-Requirements.pdf>.

²² LRI, "Features" for Nationally Determined Contributions under the Paris Agreement' (11 November 2024) <https://legalresponse.org/legaladvice/features-for-nationally-determined-contributions-under-the-paris-agreement/>.

²³ UNFCCC, Outcome of the first global stocktake, Decision 1/CMA.5 para 28 https://unfccc.int/sites/default/files/resource/1_CMA.5.pdf.

²⁴ UNFCCC, Outcome of the first global stocktake, Decision 1/CMA.5 para 33 https://unfccc.int/sites/default/files/resource/1_CMA.5.pdf.

3. Equity and CBDR-RC in the context of NDCs

Requirements to reflect equity are present in the Paris Agreement and COP/CMA decisions, and the outcome of the global stocktake reinforces this principle. Equity in the context of NDCs is undefined, though it is commonly understood to complement the principle of CBDR-RC.

A distinction can be made between domestic (or national) equity and international equity. First, domestic equity refers to equity issues which are *within* countries, such as the risks, costs and benefits associated with climate action.²⁵ It can include procedural equity in the preparation of a Party's NDC through the involvement and consultation of domestic stakeholders.²⁶ Second, international equity refers to equity *between* countries, concerning their contribution to tackling climate change through mitigation, adaptation and enabling finance flows and other means of implementation.²⁷ Neither the UNFCCC nor the Paris Agreement make this distinction, and both versions of the concept can be seen in Parties' NDCs.

A further distinction must be made between equity and the principle of CBDR-RC, which whilst complimentary are materially different. Equity is a broader principle which refers to fair distribution of climate responsibility and action, while CBDR-RC recognises that all States are responsible for climate change, but that some States have contributed more to the crisis and/or have the economic position to take more action, and that in-turn, less developed States have limited resources and capabilities to take the same level of action.²⁸ Equity focuses on ensuring fair outcomes, while CBDR-RC emphasises a flexible approach to climate action based on national circumstances.

Equity in the UNFCCC regime

The table below sets out each of the explicit references to the principle of equity in the UNFCCC and Paris Agreement.²⁹ There are no references to equity in the Kyoto Protocol.

	Treaty	Article	Text (emphasis added)
1	UNFCCC	3(1)	'The Parties should protect the climate system for the benefit of present and future generations of humankind, <i>on the basis of equity</i> and in accordance with their common but differentiated responsibilities and respective capabilities.'

²⁵ C Holz et al, 'Tempering and enabling ambition: how equity is considered in domestic processes preparing NDCs', *Int Environ Agreements* (2023) 23:271-292, p. 274,

²⁶ Ibid.

See also: M Fleurbaey, et al. (2014) Chapter 4: Sustainable development and equity. In *Climate Change 2014: Working Group III contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press) para 4.6.2.

²⁷ M Fleurbaey, et al. (2014) Chapter 4: Sustainable development and equity. In *Climate Change 2014: Working Group III contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press) para 4.6.2.

²⁸ V Fajardo, 'Reassessing Common But Differentiate Responsibilities and Respective Capabilities' (12 November 2024) <https://voelkerrechtsblog.org/reassessing-common-but-differentiated-responsibilities-and-respective-capabilities/>.

²⁹ The Preamble of the Paris Agreement also makes reference to intergenerational equity. This has not been included in this table as the focus is on equity as a standalone principle, as it relates to and is referred to in the context of NDCs.

2	Paris Agreement	Preamble, para 3	'In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, [...]'
3	Paris Agreement	2(2)	'This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capacities, in the light of different national circumstances.'
4	Paris Agreement	4(1)	'In order to achieve the long-term goal [...] Parties aim to reach global peaking of GHG as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHG in the second half of this century, on the basis of equity , and in the context of sustainable development and efforts to eradicate poverty.'
	Paris Agreement	14(1)	'The Conference of the Parties... shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.'

The reference to equity in Article 2(2) of the Paris Agreement marks a continuation and affirmation of the foundational role of the principle as set out in Article 3(1) of the UNFCCC. The centrality of equity to the implementation of the UNFCCC and the Paris Agreement is instructive and breathes the principle into decisions taken by the COP and CMA.³⁰ In addition to its foundational role, equity is specifically invoked in relation to Parties' mitigation goals in Article 4(1).

Despite the incorporation of equity into both preambular and operative parts of the UNFCCC and Paris Agreement, the principle has found less consistent representation in COP and CMA decisions. This could in part be related to the lack of uniform interpretation of equity as noted above, and the concern from developed countries that are concerned that more ambitious climate action will not be met in kind by developing countries. The paragraphs that follow explore the treatment of equity in COP/CMA decisions, with a focus on obligations concerning mitigation and NDCs.

Recalling Article 2(2) Paris Agreement

Decision 4/CMA.1, Annex 1 on Information to facilitate clarity, transparency and understanding of NDCs refers to 'fairness considerations, including reflecting on equity' as information demonstrating 'how the Party considers that its [NDC] is fair and ambitious in light of its national circumstances'. Decision 1/CMA.3, paragraph 4 recalls Article 2(2) of the Paris Agreement (extracted above) and at paragraph 23 in relation to mitigation 'recognises that [limiting global warming to 1.5°C] requires accelerated action in this critical decade, on the basis of best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities in light of different national circumstances [...]'. Both references are repeated in the Sharm el-Sheikh Implementation Plan

³⁰ LRI, 'Equity in the Paris Agreement', *Legal Assistance Paper* (17 January 2018), p. 1.

in the same terms, showing a continuation of the centrality of the principle of equity but no progression on its meaning.

ICTU – ‘fairness considerations, including reflecting on equity’

As noted earlier in this advice, the obligation on Parties to provide ‘information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21’ (Article 4(8), Paris Agreement) was elaborated on through Decision 4/CMA.1, Annex I. In relation to information demonstrating how a Party considers that its nationally determined contribution is fair and ambitious, Annex I sets out a number of inclusions for Parties, most notably ‘fairness considerations, including reflecting on equity’.³¹

Compliance with ICTU is a binding obligation on Parties (“shall”), but Annex I only provides that Parties must provide fairness considerations, including reflecting on equity, with no indication of how Parties should do this and what “reflecting on equity” looks like in practice. This is exhibited in the variety of interpretations taken by Parties in their NDCs, many of which focus on equity in the context of national circumstances:³²

- **GDP per capita vs emissions per capita:** A comparison between growth rate of GDP, GDP per capita and the rate of decreasing emissions has been used to demonstrate equity and fairness, where the rate of decreasing emissions is more ambitious despite a growth in GDP.³³
- **Alignment to best science and global targets:** Parties have made assessments on fairness and equity based on how aligned their NDC commitments are to the best available scientific data and the Paris Agreement temperature goal.³⁴
- **Barriers to NDC implementation:** Parties have sought to demonstrate fairness, ambition and equity through focusing on barriers to NDC implementation in-country, such as cost of energy, regional instability and the effects of COVID-19.³⁵
- **Balancing with socio-economic development:** For many developing country Parties, equity is reflected and ambition demonstrated with reference to the need for socio-economic development. This is often done through a focus on a just transition,³⁶ including reference to sectoral policies and national programmes for growth.³⁷

Whilst many of the examples noted focus on domestic models of equity – and that is perhaps expected given the national nature of the submission – Parties often include examples of both domestic and international equity. For example, Brazil’s Second NDC explicitly refers to ‘equity at both international

³¹ UNFCCC, Decision 4/CMA.1, Annex I, para 6(b) https://unfccc.int/sites/default/files/resource/4-CMA.1_English.pdf.

³² Initiative for Climate Action Transparency, ‘Guidance document on NDC reporting’ (March 2024), p. 41 <https://climateactiontransparency.org/wp-content/uploads/2025/01/NDC-Reporting-ICTU-Guidance-Documents-Dev-J-eng.pdf>.

³³ Ibid.

³⁴ See for example: Government of The Gambia, *Second Nationally Determined Contribution*, pp. 6-7 (2021); and Government of Ukraine, *Updated Nationally Determined Contribution of Ukraine to the Paris Agreement* (2021), p. 19.

³⁵ See for example: Government of Madagascar, *Deuxieme Contribution Déterminé au Niveau National* (2022), p.52; and Government of the Republic of Angola, *Nationally Determined Contribution* (2021) p. 81.

³⁶ Government of Brazil, *Brazil’s NDC: National determination to contribute and transform* (2024) p. 22 and p. 40.

³⁷ Government of Namibia, *Namibia’s Nationally Determined Contribution: Second Update* (April 2023) p. 22.

and domestic levels', noting that it is informed not only by the principle of CBDR-RC but also 'ensuring that climate ambition and action contribute to reducing inequalities between and within countries'.³⁸

Global stocktake

As explained above, Decision 1/CMA.5 on the outcome of the global stocktake 'commits to accelerate action in this critical decade on the basis of the best available science, *reflecting equity* and the principle of common but differentiated responsibilities and respective capabilities' (emphasis added). The use of "commits" indicates that the Parties intend to take robust action to accelerate action, and do so in a way that reflects equity. The language 'reflecting equity' is similar to that used in Decision 4/CMA.1 on ICTU, and also evocative of the language used in Article 2(2) of the Paris Agreement (which refers to implementation of the agreement to "reflect equity").

The reference to equity in Decision 1/CMA.5, especially in the context of a commitment to accelerate action, is significant. However, like previous references to equity discussed above, Decision 1/CMA.5 does not put forward a definition or any clarity on how equity should be interpreted (or is interpreted) by the Parties.

Emerging interpretations of equity

The re-emergence of equity in Decision 1/CMA.5, together with the deadline for submitting new NDCs, has re-invigorated commentary as Parties and non-Parties alike grapple with *how* Parties can reflect equity in their NDCs, and which version of equity should be reflected. Whilst the examples provided above focus broadly on equity in the domestic context, perhaps the most dominant emerging interpretation is that of equity through "fair share" of the global carbon budget. "Fair share" can be understood as meaning 'a share of the effort for mitigating climate change that is in accordance with equitable principles of international law'.³⁹ However, there has been some variation in how Parties go about calculating "fair share", reflecting the diverse interpretations of equity amongst Parties.⁴⁰

The language of "fair share" has not featured in any of the relevant treaties or CMA, CMP or COP decisions, although it has been included by some Parties in their submissions relating to climate finance.⁴¹ The terminology of "carbon budget" has however appeared in previous COP decisions, noted below:

- Decision 1/CMA.3, paragraph 3: 'Expresses alarm and utmost concern... that **carbon budgets consistent with achieving the Paris Agreement temperature goal are now small and being rapidly depleted**';
- Decision 1/CMA.5, paragraph 25: 'Expresses concern that the **carbon budget consistent with achieving the Paris Agreement temperature goal** is now small and being rapidly depleted and acknowledges that historical cumulative net carbon dioxide emissions already **account for about four fifths of the total carbon budget** for a 50 per cent probability of limiting global warming to 1.5 °C'

Whilst neither of the above decisions refer to the global budget as being central to achieving international equity, the recognition from the Parties that the total carbon budget is fast depleting is

³⁸ Government of Brazil, *Brazil's NDC: National determination to contribute and transform* (2024) pp. 40-41.

³⁹ L Rajamani et al. 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law', *Climate Policy* (2021) Vol 21, No. 8, 983-1004, p. 984.

⁴⁰ Ibid.

⁴¹ See for example: G77 and China, 'Submission for the 11th Technical Expert Dialogue and the Third meeting of the ad-hoc work program on the New Collective Quantified Goal' (2024).

notable, and the existence of this wording in existing CMA decisions provides a lever for Parties to include it again in the future.

Broadly, the “fair share” approach to equity seeks to provide both quantitative and qualitative evidence of equity through an alignment of responsibility for historic emissions over time, levels of socio-economic development and capacity to mitigate climate change and/or adapt to the effects of climate change. Some Parties have consistently included references to “fair share” and the global carbon budget. For example, in its Intended Nationally Determined Contribution, Bolivia stated that ‘Protecting the integrity of Mother Earth [...] can be achieved through the distribution of the budget surplus of carbon emissions and greenhouse gases among all countries in the context of climate justice criteria.’⁴²

It is difficult to say whether “fair share” approaches will become a dominant indicator for demonstrating fairness and equity in NDCs. However, at the time of writing, ‘fair share’ conceptualisations can already be seen in recent submissions of NDCs, including Canada’s 2035 NDC. In providing the required ‘fairness considerations, including reflecting on equity’, it states that ‘[f]airness was a key consideration in the [Net-Zero Advisory Body’s] advice, including considerations on Canada’s fair share of emissions reductions and equity’.⁴³

Outside of the UNFCCC process, this approach has also gained momentum. In advisory proceedings before the International Court of Justice (ICJ) concerning States’ obligations in respect of climate change, a number of States, in oral and written submissions, referred to the need to adhere to the global carbon budget and reflect a fair share in mitigation targets and action.⁴⁴ The ICJ’s advisory opinion is expected later this year and whilst it will not be legally binding and has no strict normative influence on the UNFCCC process, any considerations on equity in the context of climate action and Paris Agreement obligations may influence the approach that Parties take to NDCs in the future.

4. Looking ahead

The distinction between what Parties are legally obligated to include in their NDCs, and what Parties are encouraged or advised to include as a matter of best practice, is important not only for Parties who are currently finalising their NDCs but also for future negotiations on this matter. As Parties ratchet up their ambition in accordance with Article 4 of the Paris Agreement, how they can best communicate that ambition and reflect the principle of equity, which is core to both the UNFCCC and Paris Agreement, is a hot topic. This is reflected in the commentary and provides impetus for further discussion at the COP-level.

As indicated earlier in this paper, there are two potential upcoming opportunities for the COP to provide further guidance on NDCs:

- First, Parties may provide an update of ICTU by 2027, with a potential decision on the same by 2028, under the mandate provided by paragraph 18 of [Decision 4/CMA.1](#); and

⁴² Government of Bolivia, *Intended Nationally Determined Contribution* (2016), p. 2.

⁴³ Government of Canada, *Canada’s 2035 Nationally Determined Contribution* (2025), p. 33.

⁴⁴ See for example: Solomon Islands, ‘Verbatim record’ in *Obligations of States in respect of climate change* (December 2024); India, ‘Written Statement, Submission in *Obligations of States in respect of climate change* (March 2024); Bolivia, ‘Written Statement, Submission in *Obligations of States in respect of climate change* (March 2024); and Kiribati, ‘Written Statement, Submission in *Obligations of States in respect of climate change* (March 2024).

- Second, Parties may provide further guidance on NDC features following a failure to reach a decision on this at CMA 6, to take account of the changing context and new scientific developments.

Today, the primary focus is on the preparation and communication of Parties' third NDCs, with some expected around the time of the SB62 meetings in Bonn (June 2025) and the majority expected ahead of COP30 in Belém. During SB62, the second Global Stocktake NDC dialogue will be conducted, which is an opportunity for Parties and non-Party stakeholders to focus on how the Global Stocktake outcomes will inform Parties' NDCs.⁴⁵

In advance of SB62, the Chairs of the subsidiary bodies have published a concept note on the "*The Global Stocktake NDC Dialogue 2025*".⁴⁶ It is based on informal consultations held with Parties and non-Party stakeholders over April 2025. The concept note sets out, in proposed Roundtable 1 on "*Integrating GST outcomes into the preparation of NDCs*" questions for discussion. These questions include the following concerning equity: 'How are equity, gender equality, just transition, sustainable development and other cross-cutting elements being considered in the NDC preparation process?'.⁴⁷ This session, in conjunction with the focus on preparation of Parties third NDCs, may be beneficial to Parties and observers keen to understand how different Parties are addressing equity in upcoming NDCs.

⁴⁵ UNFCCC, Decision 1/CMA.5, para 187.

⁴⁶ Chairs of the subsidiary bodies, 'The Global Stocktake NDC Dialogue 2025', *Concept Note* (May 2025) accessed via: <https://unfccc.int/documents/647182> (NDC Dialogue Concept Note), The NDC Dialogue is currently scheduled to take place on 19 and 20 June 2025.

⁴⁷ NDC Dialogue Concept Note, p. 4.