

## 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. Only 13 of 195 Parties met that deadline, and as of 30 September 2025, 55 Parties had submitted their third (or second in some cases) NDCs (UNFCCC, NDC Registry). It is expected that more Parties will submit prior to COP30/CMA7 held in November 2025.

## Legal status of NDCs

The Paris Agreement contains both procedural and substantive commitments, some of which are legally binding, evident by the use of prescriptive language such as "shall".

Article 4(2) requires "Each Party to prepare, communicate and maintain" NDCs, and further to "pursue domestic mitigation measures, which aim to achieve the objectives" of the NDC. As such, Parties have two binding legal obligations – one procedural, one substantive – borne out of this provision. Parties are not, however, bound to a specific outcome. They are required to "pursue" but not to "meet" or "comply" with their commitments. While there are multiple binding legal obligations in respect of the procedure and substance of NDCs, the focus of this explainer will be on those found in Article 4(8) and Article 14(3).

The International Court of Justice, in its recent Advisory Opinion on the Obligations of States in respect of Climate Change, has clarified the scope of the obligations. It noted that "failure to prepare, communicate and maintain successive NDCs, to account for them and to register them would constitute a breach of [States' international law] obligations". And that "the mere formal preparation, communication and maintenance of successive NDCs is not sufficient to comply with the obligations under Article 4 ... [t]he content of the NDCs is equally relevant to determine compliance" (ICJ, [236]). The Court held that Parties' discretion as to the content of NDCs is limited (ICJ, [245]), and that NDCs must represent the "highest possible ambition" and be more progressive with each iteration. Whilst ICJ findings are advisory only, they provide an authoritative statement of international law and for that reason carry significant moral value and can influence subsequent cases.

## Due diligence standard

In fulfilling their obligation to prepare NDCs, Parties must meet a stringent due diligence standard, due to the gravity of the threat posed by climate change (ICJ, [246]). This means that each Party must do its "utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realise the objectives of the Agreement". Thus, whilst Parties have no obligation to meet their NDC ambitions, they must demonstrate through conduct – in line with the stringent due diligence standard – that they have undertaken their best efforts to meet targets.

## Obligation or not?

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 specific verbs i.e. "shall", "will", "must" – normative content, position within the treaty and other characteristics, such as review through compliance mechanisms.

Non-binding commitments and guidance can be indicated by a range of language including 'calls' for Parties to do something, indications of what Parties 'should' do, and encouragement for Parties to take certain actions. They create an expectation that Parties will follow through on them even if not formally binding.

## NDC features, and their relationship to obligations

There are various guiding principles and considerations that Parties will need to take into account in the preparation, communication and maintenance of their NDCs. "Features" is undefined in the context of NDCs, and any guidance on NDC features is still to be fully developed by the CMA. In summary, "features" are characteristics as opposed to prescriptive elements on how to draft and present the NDC, although some features are also legal requirements (as indicated below). This accommodates different national circumstances and considers common but differentiated responsibilities and respective capabilities (CBDR-RC). Article 4 of the Paris Agreement sets out that NDCs should (or, in some cases, shall):

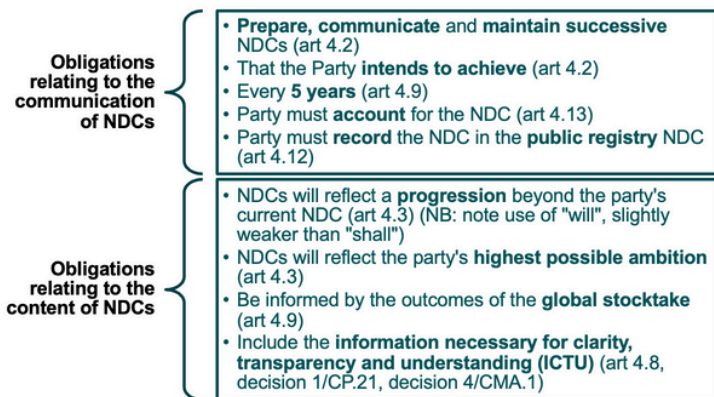
- be communicated every five years;
- represent a progression from previous NDCs;
- represent the highest possible ambition (and may, at any time, be adjusted to enhance its level of ambition);
- include economy-wide emissions reduction targets (for developed countries);
- move over time towards economy-wide emissions reduction or limitation targets (developing countries);
- be informed by the outcomes of the global stocktake;
- be accounted for; and
- promote environmental integrity, transparency; ensure accuracy, completeness, comparability and consistency; and avoid double counting.

As explored in previous LRI advice (see advice to Q68–24 on the LRI website), features may refer to both mandatory requirements for NDCs and voluntary aspects, and include special flexibilities afforded to some parties such as LDCs and SIDSs (see for example Art 4(6)) and optional inclusions or approaches (see for example Art 4(7)). With this in mind, features of NDCs are reflective of a distinct legal space between the binding obligations of Parties to the Paris Agreement and voluntary, nationally determined elements of NDCs. They can be seen as encompassing evolving best practice, collective experience and flexible standardisation (see advice to Q68–24 on the LRI website).

## Parties' obligations in relation to NDCs

Article 4(2) of the Paris Agreement sets out the legal obligations that each Party, individually, has to "prepare, communicate and maintain successive nationally determined contributions that it intends to achieve". A full list of obligations relevant to NDCs is available in LRI's advice in response to Query 68–24 ([see LRI website](#)).

The graphic below sets out the key steps that Parties must take to comply with their obligations, split into procedural obligations and those which relate to the content of NDCs:



For procedural obligations of communicating an NDC, a party's compliance (or non-compliance) is generally clear. However, when it comes to obligations concerning the content of NDCs, there is some room for interpretation, especially concerning what it means for an NDC to reflect a Party's "highest possible ambition", be informed by the global stocktake or how Parties include information which is consistent with information to facilitate clarity, transparency and understanding (ICTU) guidance. The ICJ, however, found that states have less discretion despite what some states may have suggested (ICJ [254]). These elements are explored in more detail below.

## Is ICTU considered "features"?

ICTU guidance is regularly confused as "features" of NDCs itself. The better interpretation, however, is to see the two concepts as distinct but linked, eg. the ICTU guidance on consideration of fairness and ambition in light of national circumstances. As part of COP 22 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 NDCs 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) (OECD, May 2017).

## Information to facilitate clarity, transparency and understanding (ICTU)

Article 4(8) obliges ("shall") all Parties to provide ICTU in their NDCs (as indicated in the graphic above). Building on para 27 of Decision 1/CP.21 which set out what this information might include, Decision 4/CMA.1 expanded on the guidance in its Annex I and clarified that, for their second and subsequent NDCs, Parties are required ("shall") to follow the ICTU guidance in Annex I (and the accounting guidance in Annex II). These requirements represent guidance from the COP, mandated by the Paris Agreement, and are therefore legally binding pursuant to Article 4(8). In relation to their first NDC, Parties were only 'strongly encouraged' to provide this information.

Taken together, the decisions of the COP and the CMA provide the most relevant guidance to Parties on their obligations and best practice for preparing and maintaining subsequent NDCs.

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.

For more detailed information on the elements of ICTU, and necessary inputs, see LRI's recent advice on NDC features and guidance on information to be provided by the Parties to facilitate clarity, transparency and understanding.

How Parties include ICTU in their NDCs differs, and existing guidance on ICTU is not prescriptive as to where or how it should be presented. For example, some include ICTU as a table annexed to their NDC (see for example: [New Zealand's second NDC](#), December 2024), whereas others include ICTU within the body of their NDC (see for example: [Brazil's NDC](#), November 2024).

## But what are States actually doing when it comes to ICTU?

The COP secretariat published a synthesis report on the 168 latest available NDCs as of 9 September 2024 (requested by the CMA in Decision 1/CMA.3). The report identified COP and CMA guidance as the relevant framework for provision of information necessary for clarity, transparency and understanding of NDCs. The report found that, in the first NDC cycle, 95% of Parties provided ICTU in accordance with Article 4(8) of the Paris Agreement and paragraph 27 of decision 1/CP.21. 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 NDCs to comply with Decision 4/CMA.1 paragraph 7, outlined above.

## Equity in NDCs

When it comes to demonstrating that an NDC is fair and ambitious considering national circumstances, Annex I of decision 4/CMA.1 sets out a number of inclusions for Parties, such as "fairness considerations, including reflecting on *equity*" (emphasis added). Equity is also referred to in the outcomes of the global stocktake: "commits to accelerate action... on the basis of the best available science, *reflecting equity*..." (emphasis added). But what does equity mean in this context?

While there is no formal definition of equity, a distinction can be made between (i) domestic equity, which refers to equity issues which are within countries, such as the risks, costs and benefits associated with climate action and (ii) international equity, which refers to equity between countries, concerning their contribution to tackling climate change through mitigation, adaptation and enabling finance flows and other means of implementation. Both forms of equity are reflected in Parties' NDCs as part of their ICTU, with many Parties using evidence of domestic equity such as implementing a just transition which balances socio-economic development and climate action, or providing a comparison between GDP per capita and GHG emissions per capita. However emerging language of "fair share" concerning the global carbon budget has started to feature in NDCs (see, for example, Canada's 2025 Nationally Determined Contribution), evidencing a shift towards internationally measures of equity. For more information on how Parties comply with the requirement to reflect equity, please refer to LRI recent advice NDC features and guidance on information to be provided by the Parties to facilitate clarity, transparency and understanding.

## Progression and ambition

Article 4(3) of the Paris Agreement provides that "[e]ach Party's successive nationally determined contribution *will* represent a *progression* beyond the Party's then [NDC] and reflect its *highest possible ambition*..." (emphasis added). In its recent advisory opinion, the ICJ considered that the use of "will" (rather than "shall") is not merely hortatory but prescriptive and reflects an expectation as to the ambition of NDCs (ICJ, [240]), whilst noting that the highest possible ambition of one State will differ to that of another State, taking into account the principle of CBDR-RC and national circumstances; in both cases, the NDC will be representative of the highest possible ambition for each Party.

Exactly what a Party's highest possible ambition is, and whether it is reflected in its NDC, depends on whether it is capable of "making an adequate contribution to the temperature goal" (ICJ, [242]). This is in keeping with Article 3 of the Paris Agreement which refers to making ambitious efforts with a "view to achieving the purpose of this Agreement as set out in Article 2". The ICJ did not provide further analysis on demonstrating highest possible ambition, but Parties may consider what this means in the context of States withdrawing from the Paris Agreement, making the achievement of the temperature goal potentially more difficult.

## Informed by the outcomes of the global stocktake

Article 4(9) of the Paris Agreement provides that NDCs must be "informed by the outcomes of the global stocktake referred to in Article 14". 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". The first global stocktake called on Parties to accelerate the transition away from fossil fuels, contribute towards tripling renewable energy capacity and doubling annual energy efficiency improvements, and phase out of fossil fuel subsidies (Decision 1/CMA.5, [28]). There are also provisions emphasising the importance of conservation and restoration of ecosystems and biodiversity, which Parties should reflect in their NDCs (Decision 1/CMA.5, [33]). 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.

The ICJ highlighted that the decision adopted on the outcomes of the first global stocktake (Decision 1/CMA.5, [2]) found that "despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals". It is not yet clear how parties will seek to collectively get on track towards achieving the purpose of the Paris Agreement.

At SB62 in June 2025, the second Global Stocktake NDC Dialogue took place. It consisted of two roundtable sessions where certain Parties delivered presentations on integration of the global stocktake outcome into NDCs and advancing NDC implementation (Concept Note, The Global Stocktake NDC Dialogue 2025, May 2025). Concerning the implementation of the global stocktake into NDCs, several Parties presented on their own lessons learned and best practice. For example:

- The United Kingdom shared how it has addressed global stocktake calls on mitigation through a range of commitments, including energy efficiency initiatives, scale up of carbon capture usage and storage, closure of the UK's largest coal-fired plant, phase-out of fossil fuel subsidies and announcing its 2030 clean power mission (SB62: Second Annual GST NDC Dialogue, Roundtable 1, June 2025);
- The Republic of the Marshall Islands shared how it has approached providing ICTU which demonstrates implementation of the global stocktake outcomes, including information on transitioning away from fossil fuels, accelerating efforts towards the phase-down of unabated coal power and phasing out fossil fuel subsidies (Learning from The Pacific: GST Annual Dialogue, June 2025); and
- Nepal shared a range of ways that it is aligning its third NDC to the outcomes of the GST, across a range of thematic areas. On adaptation outcomes, Nepal noted that the adaptation priorities are aligned with its national adaptation plan, with the cost to be met by international climate finance. Concerning outcomes on loss and damage, Nepal's NDC commits to strengthening its national inventories, assessments and actions, as well as enhancing institutional capacity. (Nepal's NDC 3.0 and alignment with the GST outcome, June 2025).

### Looking ahead

This year Parties are due to communicate their third NDCs in advance of COP 30 in November. It is likely that there will be increased scrutiny on Parties' NDCs, from both non-Parties and other Parties, following the ICJ's analysis of Parties' obligations under the Paris Agreement.

In addition to this tightening focus, there are two potential upcoming opportunities for the COP to provide further guidance on NDCs. First, a review and possible update of ICTU guidance will be initiated in 2027, with a potential decision on the same by 2028, under the mandate provided by paragraph 18 of Decision 4/CMA.1. Second, Parties may provide further guidance on NDC features to take account of the changing context and new scientific developments.

Finally, Parties can anticipate some impacts on UNFCCC negotiations, and how NDCs are received, from the ICJ's recent advisory opinion. The advisory opinion is the first time that Parties' obligations under the UNFCCC and Paris Agreement have been interpreted by the ICJ, and there is now considerably less room for creative interpretation or discretion. When it comes to NDCs, Parties' obligations are clear: substantively, they must be successive, of the highest possible ambition, be aligned to the outcomes of the global stocktake, include ICTU and be implemented domestically. Although the content of Parties' NDCs will not be on the agenda at COP 30, Parties and observers alike will certainly be looking to see how these commitments are met.

All reasonable efforts have been made in providing the following information. However, due to the circumstances and the timeframes involved, these materials have been prepared for informational purposes only and are not legal advice. Transmission of the information is not intended to create, and receipt does not constitute, a lawyer-client relationship. Those consulting this Paper may wish to obtain their own legal advice. To the extent permitted by law, any liability (including without limitation for negligence or for any damages of any kind) for the legal analysis is excluded.

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**Legal Response International**  
c/o Simmons & Simmons, CityPoint,  
One Ropemaker St, London EC2Y 9SS, UK  
enquiries@legalresponse.org - www.legalresponse.org  
Registered in England and Wales,  
company no. 07385563, charity no. 1147043