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## Justice is still critical in the post-Paris world of “nationally determined” climate action

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### **Author:**

Anju Sharma

At a [public event in Oxford](#) a few weeks ago, one of the main architects of the [Paris Agreement](#) indicated just how problematic ethical considerations in solving the world’s climate change crisis are for the “mainstream”. Describing the French Presidency’s strategy in the run-up to the Paris Conference last year, she listed “*the need to get out of burden sharing and carbon budgets*” as one of their main priorities.

### ***Can we really solve the climate change problem without some notion of fair burden sharing, not only of carbon budgets, but also of impacts?***

We may be in a “post-Paris” world now, with “nationally determined” bottom-up “contributions” instead of a top-down determination of actions required by each country on the basis of fair criteria, but does this really mean that we no longer need fair burden sharing?

There are two kinds of “burdens” linked to climate change: the burden of “mitigating” or reducing greenhouse gas emissions; and the burden of dealing with the impacts of climate change – either through “adaptation”, where it is still possible, or by bearing the burden of the “loss and damage” caused by climate change that cannot be adapted to.

Developed countries have been very eager to share the former, the burden of mitigation, as long as it does not involve any calculations to determine which countries are most responsible for greenhouse gas emissions, and the most capable, so should take on the greater burden of mitigation. For years, they made action on their own on mitigation conditional to participation by developing countries. Countries that have neither comparable responsibility for the climate change problem, nor adequate capacity to take on this extra effort on top of their existing development challenges, eventually gave in to the decades of pressure and agreed to take on mitigation efforts under the Paris Agreement. Thus fell one of the two historic “[twin taboos](#)” of climate change.

The problem now is that although the Paris Agreement includes mitigation action by all countries, including developing countries, all countries are left to decide their own “nationally determined contributions” (NDCs). It is unlikely that they will shoulder their fair share of the mitigation burden.

Developed countries are not very keen, however, to share the burden of adaptation and loss and damage. They would prefer to leave this topic as muddly as possible, drawing red lines around any consideration of the polluter pays principle, or of liability for climate impacts. The second “Northern

taboo” still stands strong. It is a continuing battle to get developed countries to show as much interest in adaptation in developing countries as they do in mitigation, and to get them to even talk about loss and damage. The Paris Agreement may include Articles on both, but [read the fine print](#) and it is clear that there is much more tangible progress in the Agreement on mitigation than on adaptation or loss and damage.

Far from bringing adaptation and loss and damage into the limelight, moreover, there is the distinct danger that the Paris Agreement will once again turn the limelight onto mitigation. With the inclusion of the 1.5°C aspirational target, however “difficult if not impossible to hit”, the focus of the global scientific community already appears to have shifted to mitigation once again. Global attention seems to have returned to where it was in 2002, before the climate conference in New Delhi, when everyone was only talking about mitigation. But unlike in those days, when equity and the principle of “common but differentiated responsibilities” was central to the debate, justice-talk has been removed from polite climate conversation in the post-Paris world.

### **The post-Paris narrative**

Any substantive discussion on justice in the climate context is seen to be seditious in the post-Paris, nationally-determined world. A month after the Paris Agreement was adopted, I participated in an academic conference on climate change in Cambridge. The reaction to my presentation on why the Paris Agreement was unfair to poor countries and communities was decidedly frosty, antagonistic even, and the topic was clearly not as engaging or interesting as a discussion on whether China’s mitigation intentions were honourable.

This tendency to consider burden sharing and equity concerns as peripheral or even dangerous is the subject of a [recent editorial](#) in *Global Environmental Change*, which notes “*an established line of argument*”, “*heard from very influential players in UN negotiation halls, academic journals, and within think-tanks and government ministries*”, arguing “*that discussions of justice ought to be left out of both academic work and policy discussions because they are conceptually flawed, could “derail the negotiations,” and erode political will*”.

Talking about equity, it is alleged, may derail negotiations. But not talking about it can kill the possibility that the outcome of the negotiations will ever be implemented in good faith, with maximum possible ambition, or that countries will continue to engage.

### **Why is equity still important?**

Social entities such as people and governments may not necessarily worry too much about the overall fairness of a situation. *But they are almost always concerned if they see themselves as being treated unfairly.*

The Paris Agreement deliberately eschews any comparison between countries or even groups of countries. However, such comparisons are a prerequisite for moral and ethical considerations, which are inherently relational. It only allows for aggregate global assessments, therefore rendering any assessment of whether a country is “doing its fair share” or is “free-riding” obsolete.

Moreover, the diverse nature of Nationally Determined Contributions’ (NDCs), including the different time horizons (at least in the first NDCs: five years for some countries, ten for others) makes any such comparisons difficult, if not impossible.

In the absence of information on what others are doing and how this compares to their fair share, countries will tend to assume that the others are only doing the absolute minimum. To avoid taking

on an unfair share of the burden, they will do the same. If I think that everyone else will be free-riding, then the only fair way out is for me also to free-ride. This can only result in a “race to the bottom”.

If there is no way in which countries can compare their intended (but not yet finalised) actions, be reassured that the others are carrying a fair share of the burden, and discuss how they would be mutually willing to equitably increase ambition, then ambition beyond the minimal “no-backsliding” provision of the Paris Agreement will be dead.

Worse, if countries feel that they are being treated unfairly under the Agreement, then there is nothing to prevent them from withdrawing their signature. India [has already indicated](#) that its participation is conditional to what the country’s government considers fair action by other countries.

## **Building space for equity in the post-Paris process**

The word ‘equity’ finds five mentions in the Paris Agreement: twice in the Preamble; once in Article 2 on the overall goal of the Agreement; once in Article 4 on NDCs; and once in the context of the global stocktake. Mostly, they are references to the general principle. How equity will be operationalised in practice will now have to be discussed as part of the decisions taken post-Paris, [starting in Marrakech](#) in a couple of weeks, which will deal with how the provisions of the Agreement are actually implemented.

Negotiators may choose to follow the process adopted for the first lot of [“intended” NDCs](#), tasking countries to themselves explain why their NDCs are fair. This simply means that countries will put forward their own criteria as to why what they are proposing to do should be regarded as fair. But it does not mean that these criteria will only be about the country in question and not involve a comparison with others. The global stocktake [provides a space](#) for further consideration of equity, by assessing the fairness of countries’ NDCs, and also by proposing what might be a more “fair” contribution.

There is likely to be strong resistance to this kind of formal process under the global stocktake. But even if there is resistance to a formal equity review under the stocktake, as long as the information is available, such reviews can also be undertaken informally outside of the negotiations, by academic or civil society organisations, for example. For this to take place, the transparency framework will have to be designed in a way that elicits adequate information from countries.

If such a stocktake (or informal review) takes place only after a country has already formally communicated its NDC, then any revision by countries to enhance their ambition to match others is extremely unlikely (although technically possible).

It therefore stands to reason that countries will have a chance to improve the equity and fairness component of their NDCs only if:

- they are not yet finalised at the national level, and have not undergone whatever final process of endorsement they have to undergo before they are formally communicated. In other words, the NDC is still “indicative”.
- there is a moment of time, between the “indication” of an NDC and its formal communication, when all countries are aware of the level of fairness and ambition in other NDCs, and are expected to review their NDC before its finalisation, to enhance both fairness and ambition.

The only way to avoid a race to the bottom and ensure the continued support of all countries for the

Paris Agreement, in other words, is to [create a process](#) where countries are well informed of what others are doing, can assess fairness, and then bargain with each other to create a fair but “upward spiral” of ambition.

Enhancing overall ambition is not just a matter of comparing mitigation or adaptation actions. It is also a matter of providing means of implementation, in particular financial support. In that context, another equity issue will arise: who should be eligible to receive support, who should provide it, and how much would be fair? This will be a controversial question, and answering it will need a lot more finesse than the usual “changing world order” and “increased reliance on domestic and private sources” arguments that emerge when discussions on development and climate finance take place these days.

## **Delusion, not realism**

At the Oxford public event, when questioned on how the implementation of the Agreement could avoid glaring injustices, a panelist summarised this mainstream ‘political realist’ view very succinctly: *“we live in a not so fair and not so just world, and the Agreement in Paris reflects our world”*. But if we can accept the optimistic view that climate change can lead to better energy systems, and stronger and more resilient development, then why can’t we also accept that it will not at least further exacerbate inequities, to what can only be described as unsustainable levels?

Those who think they can solve the climate change problem without taking equity into consideration are living in a deluded world. They are not political realists, but self-delusionists who, if left to their narrative, will scupper the Paris Agreement, along with any hope of tackling climate change.

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