

Equity and human rights

PARIS CLIMATE JUSTICE BRIEFS

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Solving the moral and ethical dilemmas posed by climate change

A common element of environmental problems, such as climate change, is that people who contributed least to the problem will be the most impacted. For example, at the beginning of the 21st century, the industrialised world, with 20% of the global population, generated more than 80% of the world's pollution and used about 80% of global energy and mineral resources, accounting for 83% of the world's GDP.¹

This historical inequity in resource use, and the potential for climate change to undermine all aspects of human rights, illustrates how equity and human rights are crucial elements of our response to climate change. Equity ensures fair global conditions within which to craft a response to climate change that is compliant with human rights.

In international environmental law, the concept of equity recognises that countries have different contributions to environmental problems and therefore differing responsibilities to act.² This is enshrined in the UNFCCC through obligations rooted in the acknowledgement of Common but Differentiated Responsibilities.³ It is essential that these obligations are carried through into the new

treaty framework.

Human rights are not currently referenced in the climate change treaty framework and are mainly understood as imposing obligations on states that relate to the people within their territory. This “traditional” model can work for civil and political rights, which focus on liberties such as freedom of expression and rights of assembly and voting. It is less useful for economic and social and cultural rights, such as the right to food, shelter and health, which have a collective dimension.

While an individual-state focus is one part of ensuring state action to prevent individuals from harm in the face of climate change, another key aspect of climate change is that emissions from one part of the globe cause harm in another. This raises a clear international dimension: to uphold human rights, states need to recognise a collective responsibility to ensure global conditions that allow them to be fulfilled in practice.⁴ The Office of the High Commissioner for Human Rights has made several pronouncements on the importance of equity in the human rights context and recognised the need for equity in climate action⁵ in her messages during the lead-up to Paris.

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PHILIPPINES MOVEMENT FOR
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LDC WATCH
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INTERNATIONAL

APPLYING HUMAN RIGHTS AND EQUITY

Action to address climate change should be taken in a way that addresses existing imbalances and promotes the rights of local communities. Likewise, action to adapt to climate harm or address loss and damage which cannot be adapted to must be undertaken in a way that respects human rights and helps the most vulnerable.

CLIMATE OBLIGATIONS INCLUDING MITIGATION AND FINANCE

An equity-based approach would see mitigation targets developed using the principles of historical responsibility, respective capacity and a right to development. The urgent threat of climate change means that all countries now need to undertake some level of mitigation. However, primary responsibility lies with developed countries whose historical overconsumption means that their equitable target, based on a global emissions budget approach, would imply emissions reductions of well below zero as they have already used their “fair share” of the carbon budget.⁶

To stay within a global emissions budget consistent with limiting temperature rise to 1.5C, rich industrialised countries need to achieve ambitious emissions reductions domestically. However a fair shares approach demands that they would also provide financial and technical resources, as well as supporting institutions and international cooperation, to allow developing countries to take on more than their fair share of emissions reductions.⁷

In addition, a human rights approach would require that mitigation in both developed and developing countries should be carried out in a way that does not negatively impact on the rights of the poorest and most vulnerable in society and enables their full engagement and participation. An example of such action would be community renewable energy schemes designed through public participation, which tackle climate change while also reducing poverty created through expensive fuel bills.

FINANCE AND TECH TRANSFER

Human rights discourse on the need to take affirmative action to address discrimination is relevant here, reinforcing the need to provide finance and technology to address the unfair position in which developing countries find themselves.

Obligations relating to finance and technology transfer are positive obligations in the context of the human rights framework, providing equitable solutions to the climate crisis that genuinely contribute towards improving the position of the most vulnerable.

ADAPTATION

Climate change requires countries in the developing world to adapt to harm that they have not caused in order to safeguard their populations. Equity requires that funding and technology transfer is provided by the developed world to assist them with this task. Human rights also provide an in-country framework to ensure that climate finance is directed to those who are most vulnerable and in need.

LOSS AND DAMAGE


Loss and damage concerns climate impacts that cannot be adapted to. When viewed through an equity lens, a key aspect of this concerns redress for countries and communities including, for example, financial support and the development of a legal framework to assist climate refugees. Loss and damage also results in breach of human rights and requires a framework to promote the fulfilment of human rights and provide redress when such rights are breached.

NET ZERO AS A LONG TERM GLOBAL GOAL

Under a “net” approach, the total emissions into the atmosphere minus those removed would equal zero. Such an approach is “blind” to the location of the carbon emissions and is designed to make it easy for developed countries to reduce emissions in other parts of the world, rather than tackle systemic patterns of sustainability in their own societies and economies, which also makes it harder for developing countries to meet their fair share of climate mitigation, if developed countries are counting the emission reductions as their own.

A net zero global goal also threatens development and undermines equity through a reliance on land for carbon sequestration in forests, soil and other biomass.

Land use on the kinds of scale required would threaten rights to food, water and development as well as undermining goals for poverty eradication.⁸ A rights-based approach to climate mitigation would focus on phasing out fossil fuels, with finance and technological support for a clean energy transition in developing countries.



Legal obligations in human rights and equity can operate in a mutually reinforcing way to ensure that we make good choices about what kind of action is taken to mitigate climate harm, adapt to its consequences and provide redress for loss and damage where it is no longer possible to adapt. The Paris treaty text should reference and implement the core obligation of CBDR while also including language on human rights – both are crucial aspects of combatting climate change in a way that protects the most vulnerable.

¹ Dinah Shelton, *Equitable Utilisation of the Atmosphere in Human Rights & Climate Change* Stephen Humphries (Ed) (Cambridge University Press, 2011, p 112)

² The Rio Earth Summit recognised the links between the differentiation of obligations and equity and this is reflected in the Rio Declaration (in particular Principle 7 and the three conventions agreed in Rio, including the UNFCCC.

³ See for example, Article 3.1 which states that Parties should act “on the basis of equity in accordance with common but differentiated responsibilities and respective capabilities.” See also Articles 3.2, 4.2(a), and 4.8

⁴ Obligations such as the duty of cooperation among states to progressively realise rights set out Article 2(1) of the International Covenant on Economic, Social and Cultural Rights provide a good model for this.

⁵ The Office of the High Commissioner for Human Rights has said “*Equity in climate action requires that efforts to mitigate and adapt to the impacts of climate change should benefit people in developing countries, indigenous peoples, people in vulnerable situations and future generations.*”

⁶ Tom Athanasiou, Sivan Kartha and Paul Baer, *National Fair Shares* (EcoEquity and Stockholm Environment Institute, 2014) <http://civilsocietyreview.org/>

⁷ Ibid.

⁸ See figures referenced in IPPC, WGIII, Chapter 11, which reference figures representing 1/3 to 4 times current global agricultural land use.