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HUMAN RIGHTS IN CLIMATE ACTION

AN ANALYSIS OF NATIONALLY DETERMINED CONTRIBUTIONS TO THE PARIS AGREEMENT (NDCS) AND EU NATIONAL ENERGY AND CLIMATE PLANS (NECPS)

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SUMMARY

This paper presents the findings from an analysis of 194 State climate action plans from a human rights perspective.

The current climate collapse negatively impacts people's rights to life, an adequate standard of living, housing, food, health, water and sanitation, and many other human rights. Mitigation and adaptation measures can also have negative human rights implications when they are not human rights compliant.

States have binding human rights obligations under international law, and judicial developments across the globe increasingly illuminate the consequences of climate-related human rights violations.

DIHR analysed 167 Nationally Determined Contributions (NDCs) to the UNFCCC and 27 EU National Energy and Climate Plans (NECPs). We looked for signs of alignment with human rights in general and with the principles of equality and non-discrimination and participation. This analysis comes in the lead up to the global stock-take at COP 28 and the entry into force of the Enhanced Transparency Framework in 2024.

FINDINGS ON GENERAL REFERENCES TO HUMAN RIGHTS

- **Fewer than half (46%) of State submissions mention human rights.** Hence, the commitment to align climate action with human rights obligations is not visible in the majority of submissions.
- The Americas region has the highest share of submissions with human rights references (66%), followed by Europe (59%), Africa (38%), Asia (35%), and Oceania (31%).
- The submissions that refer to specific rights cover only a **narrow set of rights** relative to the broad spectrum of rights impacted by climate change.

FINDINGS ON EQUALITY AND NON-DISCRIMINATION

- **Most submissions (85%) mention vulnerable groups**, the need for **social inclusion**, or the commitment to **“leave no one behind”** under the 2030 Agenda.
- 85% of African submissions mention gender and 70% mention children, compared to 43% and 45% respectively in Europe. 54% of submissions in the Americas mention indigenous peoples.
- **Fewer submissions (64%) describe actions** targeted to a vulnerable group. **Only 28% propose to measure differentiated vulnerabilities**, including through disaggregated data.
- This indicates a gap in action even when there is attention to differentiated vulnerabilities.
- **Reporting requirements matter:** All 27 EU NECPs mention vulnerable groups, per the common requirement to address vulnerable energy consumers and energy poverty.

FINDINGS ON STAKEHOLDER PARTICIPATION

- **Most submissions (90%) refer to stakeholder participation** in the development of the NDC or NECP. **Slightly fewer (81%) identify a type of non-state actor involved** (e.g., NGOs, academia, experts). **Fewer (69%) explain how participants were involved.** More analysis is required to evaluate the quality of this engagement from a human rights perspective.
- The EU NECPs perform considerably better, potentially due to more demanding reporting requirements: 96% of NECPs describe the participation process, compared to 65% of NDCs.
- **No submission mentions the involvement of the National Human Rights Institution (NHRI).**

Overall, stronger human rights integration is required in future climate action to consistently live up to State commitments under the Paris Agreement and binding human rights instruments.

RECOMMENDATIONS

FOR STATES

- Ensure that climate action is systematically grounded in human rights obligations including also extraterritorial obligations.
- Improve analysis of the differentiated impacts of climate change and climate action on marginalised and vulnerable groups and ensure targeted actions to reach those furthest left behind first in mitigation and adaptation measures.
- Ensure that targeted actions are reflected in indicator frameworks and in disaggregated data.
- Ensure meaningful participation of National Human Rights Institutions, civil society, and rights holder groups – including the most marginalised and vulnerable populations in society – in the development, implementation, and monitoring of climate action plans.
- Report on how human rights concerns have been integrated in climate action in practice in their submissions under the Enhanced Transparency Framework, starting in 2024.
- Adopt more detailed reporting requirements under the Enhanced Transparency Framework to guide States in how to integrate human rights in NDCs and Transparency Reports.

FOR CIVIL SOCIETY

- Hold States accountable to living up to human rights standards and obligations in climate action
- Contribute to design, implementation, and monitoring of climate action plans where possible
- Bring attention to the differentiated impacts on marginalised groups

FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

- Engage in the design, implementation, and monitoring of climate action plans from a human rights perspective, focusing on their mandate to advise, monitor, and report on State compliance with binding international human rights obligations.
- Collect or improve data on the human rights impacts of climate change and climate action, especially disaggregated data that illuminates differentiated vulnerabilities.

INTRODUCTION

“ Acknowledging that climate change is a common concern of humankind, **Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity [...]**

Preamble, Paris Agreement (2015)

Climate change poses an overall and existential challenge to the social and international order in which rights can be realised. It already negatively affects the enjoyment of human rights, including the right to life, an adequate standard of living, housing, food, health, water and sanitation, development, cultural rights, and the right to a clean, healthy, and sustainable environment. Disproportionate impacts are felt by groups already marginalised.

To comply with their human rights obligations, States must mitigate greenhouse gas emissions in line with the Paris Agreement's target of 1.5 degrees above pre-industrial levels and invest a maximum of available resources in adaptation measures. It is critical that climate policies, including Nationally Determined Contributions (NDCs), are designed and implemented with a human rights-based approach, as recognised in the preamble to the Paris Agreement quoted above. This includes respect for procedural rights such as the right to participation, information, and the free, prior, and informed consent of indigenous peoples.¹

While the actual integration of human rights standards into climate change targets, laws, policies, programs, and processes requires deeper analysis on a country-by-country basis, the State submissions under the United Nations Framework Convention on Climate Change (UNFCCC), namely the NDCs, provide an indication of the status of integration of human rights in climate action.

This paper presents the findings from the Danish Institute for Human Rights' (DIHR) analysis of the most recent NDCs, 167 total, and the 27 National Energy and Climate Plans (NECP) of the European Union countries as per October 2023. The analysis looks at signs of alignment with human rights in general and with the principles of equality and non-discrimination and participation.

Other actors have scrutinised NDCs in earlier years to look for human rights mentioning and references to specific marginalised groups.² This analysis provides an updated overview and goes wider and deeper by investigating the extent to which NDCs and NECPs reflect the human rights principles of equality and non-discrimination and participation.

As the parties to the UNFCCC move from NDCs to the Enhanced Transparency Framework in 2024, it will be critical to keep an eye on how human rights are reflected in the reports detailing what State Parties have done to implement their NDCs. While the current regime requires only that Parties submit an NDC detailing a commitment, from 2024 countries must submit a Biannual Transparency Report on concrete actions taken to implement the NDCs, subject to review by a technical expert team.³

Moreover, judicial developments across the globe increasingly illuminate the consequences of non-compliance with human rights obligations in the climate response. In the landmark “Urgenda case” of 2019, for example, the Netherlands’ Supreme Court held that the State’s insufficient action to address climate change posed a risk to the ecosystems and to several human rights that it has a duty to protect under the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴ Courts at the domestic and regional levels are increasingly confirming the relevance of States’ human rights obligations to protect against the adverse impacts of climate change.

After the methodology section below, we investigate whether and how NDCs and NECPs reflect human rights in general (Part 1), as well as the principles of equality and non-discrimination (Part 2) and participation (Part 3). In each part, we introduce the related international and regional human rights standards to which climate action must adhere, then present the results of the analysis while highlighting good practices. In Part 4, we present conclusions to push for better alignment with human rights standards and principles in international climate action.

METHODOLOGY

SELECTION OF NDCS AND NECPS

167 NDCs and 27 NECPs – 194 State submissions in total – were included in the analysis.

The most recent NDC from each State in the UNFCCC Registry⁵ was analysed. For some States, this was the first NDC from 2016, and for others, an updated or twice-updated NDC, the most recent of which were from 2023.

The NECPs were included for scrutiny of EU Member States' commitments, as there is only a collective EU NDC with too little country-level information. The NECPs fall under the European Commission framework and are structured by a shared template.⁶ The most recent submissions were analysed, consisting of 12 final NECPs from 2019 and 15 draft updated NECPs from 2023.

See Annex 1 for the list of NDCs and NECPs and their submission years.

THE PARAMETERS OF THE ANALYSIS

Each submission was analysed to identify the extent to which it refers to human rights in general and reflects the principles of equality and non-discrimination and participation. The principle of equality and non-discrimination ensures that all members of society are equal contributors and beneficiaries of climate action, and that climate action effectively address existing inequalities and the heightened vulnerabilities of marginalised groups. The principle of participation ensures that climate action results from meaningful participation of all relevant stakeholders and that the interests of marginalised groups are reflected at all levels of decision-making.

Both the presence and quality of references were assessed using detailed indicators. For example, regarding participation, we assessed not only whether the submission mentions stakeholder participation, but also whether it specifies the type of participant involved and whether it describes the participation process, e.g., evidence of a specific initiative to engage a certain group, or a group's formal inclusion in the institutional arrangement behind the NDC or NECP. Notes were taken to further qualify indicators and to identify good practices. Table 1 summarises how the human rights parameters were operationalised.

Table 1. List of dimensions and their indicators.	
Dimension I. Human rights	
	Indicator 1: Is there a reference to human rights or fundamental rights in general?
	Indicator 2: Is there a reference to specific rights, e.g., labour rights, tenure rights, indigenous peoples' rights?
	Note: Which specific rights are mentioned?
Dimension II. Equality and non-discrimination	
	Indicator 3: Is there a reference to Leaving No One Behind (LNOB), social inclusion, "vulnerable groups" per se, or a group generally understood as vulnerable?
	Indicators 4-10: Is there a reference to women, girls, or gender (4); indigenous peoples (5); children, youth, or adolescents (6); the elderly (7); persons living with disabilities (8); LGBTI persons (9); or to ethnic/racial minorities (10)?
	Note: Which other groups are mentioned?
	Indicator 11: Is there an analysis of differentiated vulnerabilities to the impacts of climate change?
	Indicator 12: Does the NDC mention an action (past, present, or aspirational) targeted toward a vulnerable group?
	Indicator 13: Does the NDC mention indicators on vulnerable groups, including simple disaggregated data?
Dimension III. Participation	
	Indicator 14: Is there a reference to stakeholder participation or an inclusive/consultative process behind the NDC/NECP?
	Indicator 15: Are the types of participants identified, e.g., civil society groups, academia, businesses?
	Note: Which types of participants are identified (excluding government actors and intergovernmental organisations)?
	Indicator 16: Does the NDC mention the involvement of the National Human Rights Institution (NHRI)?
	Indicator 17: Does the NDC describe the participation process, e.g., the name or date of a certain initiative, or the explicit place of participants in the institutional arrangement?

TEXTUAL ANALYSIS

Submissions were analysed using a pdf reader application. For the English- and French-language documents, a text search in the respective language was used to identify the presence or absence of keywords pertaining to each human rights parameter. To minimize the risk of false negatives, i.e., missing a reference that was indeed present, many search terms were used and terms were kept as general as possible.

If the keywords were present, the paragraphs containing them were read to interpret qualitatively whether they constituted valid references to the human rights dimension in question: e.g., a nation's geographical "vulnerability" to climate change does not relate to equality and non-discrimination, whereas the heightened "vulnerability" of the elderly to pollution-induced respiratory diseases satisfies this meaning.

For the NECPs, which are structured by a common template, in addition to the procedure described above, the following common sections were read in full to determine the presence and quality of references to equality and non-discrimination: 3.2.3(iv) Policy measures to protect consumers with a focus on vulnerable consumers and, where applicable, consumers at risk of energy poverty; 2.4.4(i) Where applicable, national objectives with regard to energy poverty. For references to participation, the following common section was read in full: 1.3(iii) Consultations with stakeholders, including the social partners, and engagement of civil society and the general public.

For the 17 Spanish-language NDCs that were not accompanied by an English translation,⁷ the text search procedure was applied using Spanish translations of the keywords. If found, the whole paragraphs or sections containing the keywords were machine-translated to English using Google Translate for qualitative interpretation. For the only Arabic-language NDC without a translation,⁸ the entire 16-page document was machine-translated to English to identify the keywords and their qualitative meanings.

QUANTITATIVE ANALYSIS

An addition function was used to calculate the number and proportion of NDCs or NECPs satisfying the presence of each of the human rights indicators. By comparing indicators within a dimension, the quality of references was made visible.

Additional analyses were conducted to illuminate regional differences, changes over time, and differences between the NDCs and NECPs. Visualisations were created using Microsoft Power BI.

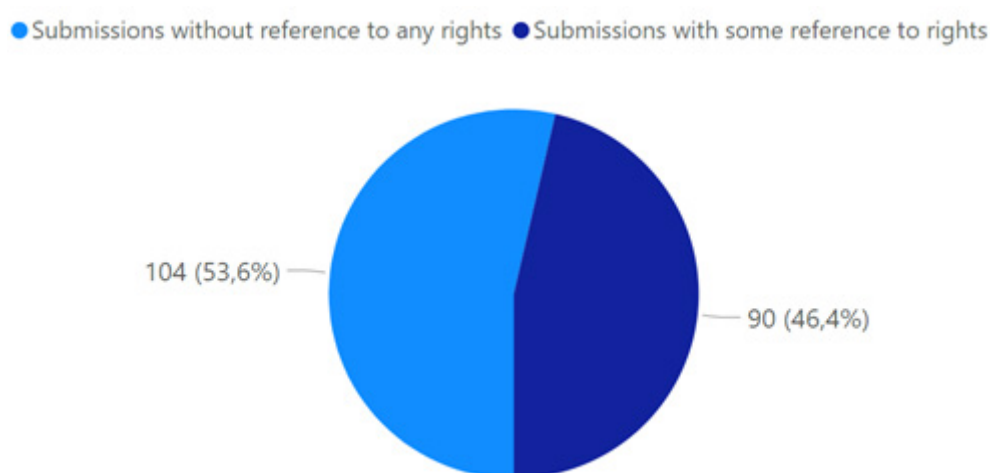
1. FINDINGS: HUMAN RIGHTS IN NDCS AND NECPS

The Paris Agreement recalls the human rights obligations of States when taking action to address climate change. The full spectrum of human rights is impacted directly or indirectly by climate change, and States have binding obligations to respect, protect, and fulfil the human rights enshrined in the instruments that they have ratified. For example, most States have ratified the Covenant on Economic, Social and Cultural Rights and are therefore obligated to ensure the right to an adequate standard of living, food, housing, cultural rights, and many other rights affected by climate change. The International Covenant on Civil and Political rights also enjoys near universal ratification, meaning that rights such as the right to participation, information, and access to remedy are legally binding on States.

While the right to a clean, healthy, and sustainable environment does not yet entail binding obligations at the global level, it is now part of the corpus of international law and recognised by the UNFCCC⁹ and the UN General Assembly.¹⁰ Many countries have enshrined this right in their constitutions – e.g., Portugal (1976), Spain (1978), and Peru (1979) – as well as in legislation, making it legally binding.¹¹ In fact, the right was legally recognised in over 80% of UN Member States prior to recognition by the General Assembly.¹²

Despite the relevance of States' human rights obligations to climate action, **fewer than half of the climate action plans (46%) refer to either human rights in general or to a specific human right** (Figure 1). **This share has dropped slightly between 2020 (50%) and 2023 (45%).** Hence, more than half of the State Parties to the UNFCCC do not clearly signal if and how they consider human rights relevant to climate action.

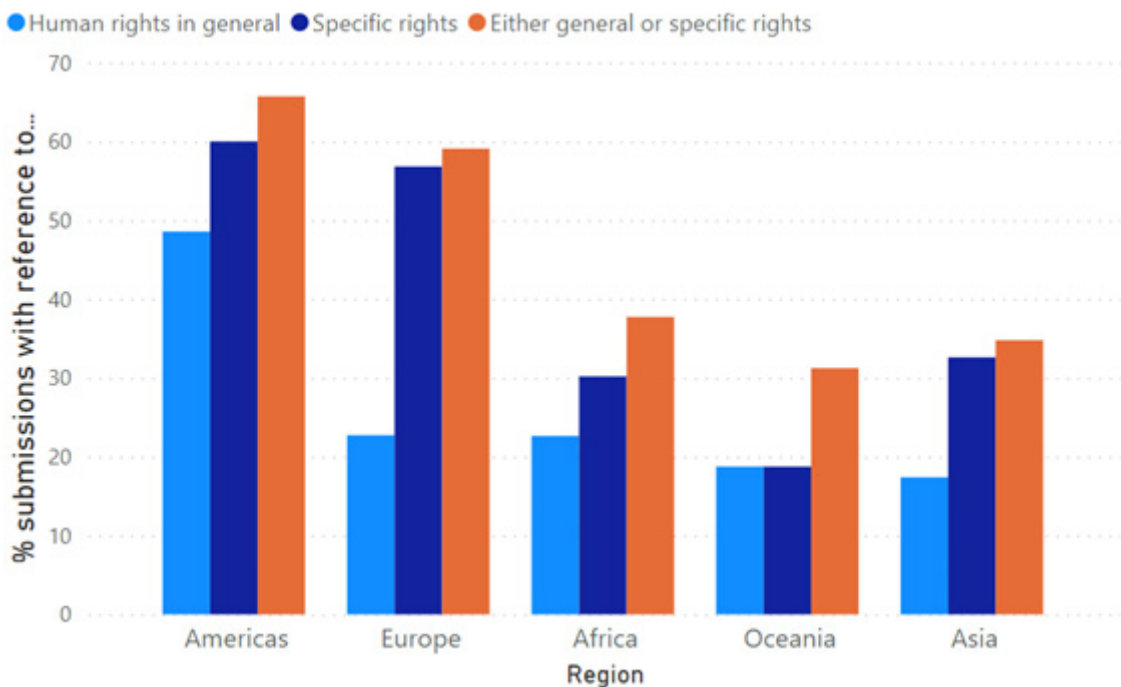
Figure 1. References to human rights



About 1 in 4 (26%) of the submissions include a reference to human rights in general and **41% refer to a specific right** (these are not mutually exclusive). While mentioning human rights more generally can be interpreted as a signal that human rights obligations are considered relevant, the reference to specific rights may indicate a more detailed analysis of how rights are affected.

Figure 2 demonstrates regional variations in the prevalence of general human rights references and references to specific rights. **The Americas region has the highest share of NDCs with either general or specific references (66%), followed by Europe (59%), Africa (38%), Asia (35%), and Oceania (31%).** In Europe and Asia, there is a heavy tendency to refer to specific rights over human rights in general, whereas in other regions there is a relatively even prevalence of both.

Figure 2. Regional variations in human rights references



Commonly mentioned rights in the NDCs are equal rights between women and men (27), rights of indigenous people (19), environmental rights (13), and the right to development (9). Bolivia, Nicaragua, and Venezuela refer to “**nature rights**,” i.e., the rights of Mother Earth. Most common in the European NECPs are references to **property rights** (5) and **social rights** like the right to social security (3), to access energy (3), and to residential tenancy (3), and references to the European Pillar of Social Rights itself (4).

Hence, the specific rights mentioned are limited relative to the broad spectrum of rights impacted by climate change. The paucity of references to economic, social, and cultural rights including the right to food, the right to housing, the right to water, land rights, and cultural rights is notable considering the significant impacts that climate change is already having on these rights as it increasingly destroys livelihoods, habitats, natural resources, and cultural sites.

Very few submissions mention procedural rights such as the right to information and participation or the freedom of expression and assembly despite these being critical to the political environment in which NDCs or NECPs and climate policies are designed, implemented, and monitored.

GOOD PRACTICES: LINKING HUMAN RIGHTS AND CLIMATE CHANGE

Papua New Guinea seeks to ensure in its climate policy “a gender-responsive and human rights-based approach in all related planning, programming, and implementation. This includes the participation of men, women, youths, and vulnerable groups in consultations, planning, decision making and implementation in the identified sectors, as well as ensuring men, women and youths have opportunities to develop sustainable low-carbon livelihoods.”

Papua New Guinea Second NDC (2020), p. i

Comoros points to its international human rights obligations as grounds for upholding women's rights in national climate policy – specifically, to its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and adherence to the Beijing Declaration and Platform for Action adopted at the 4th UN conference on women, as well as ratification of the Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the rights of women in Africa.

Comoros First NDC, updated submission (2021), p. 10

Iceland, in its elaboration of domestic institutional arrangements behind the NDC, refers specifically to its ratification in 2011 of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) “which links human rights and environmental rights.”

Iceland First NDC, updated submission (2021), p. 6

2. LEAVING NO ONE BEHIND: EQUALITY AND NON-DISCRIMINATION

While the nature and scale of the climate crisis is such that all people everywhere face significant risk, disproportionate impacts are felt by indigenous peoples, peasants, migrants, children, women, persons with disabilities, and others in vulnerable situations who are at risk of being left behind.¹³ Hence, the worst impacts will often be experienced by those with the fewest possibilities to adapt.

Vulnerability to climate change impacts can vary based on several factors, including geography, poverty, age, gender, sex, disability, migration status, religion, race, and cultural or ethnic background. Multiple forms of discrimination may combine, overlap, or intersect and create further injustice.¹⁴

Equality and non-discrimination are rights in themselves and cross-cutting principles that underpin the realisation of all human rights. They have been at the heart of the international human rights system since its creation, as enshrined in the Universal Declaration of Human Rights (1948).¹⁵ They are also embodied in conventions on the rights of groups facing discrimination, like women,¹⁶ children,¹⁷ and persons with disabilities,¹⁸ and are routinely spotlighted by the UN Human Rights Committee and treaty bodies in a myriad contexts: for example, the Committee on Economic, Social and Cultural Rights has called for women and men's equal enjoyment of these rights, stressing that "guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality."¹⁹

Moreover, equality and non-discrimination are indispensable to achieving the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) which aim to "leave no-one behind."²⁰

Most State submissions (85%) refer to Leaving No One Behind (LNOB), social inclusion, vulnerable groups or a group generally understood as vulnerable (Figure 3). Hence, there seems to be some attention to differentiated vulnerabilities in the climate action plans. Figure 4 demonstrates that the three most-often mentioned groups are women, girls, or gender (68%), children, youth, or adolescents (58%), and the elderly (28%).

Figure 3. References to LNOB, social inclusion, or a vulnerable group

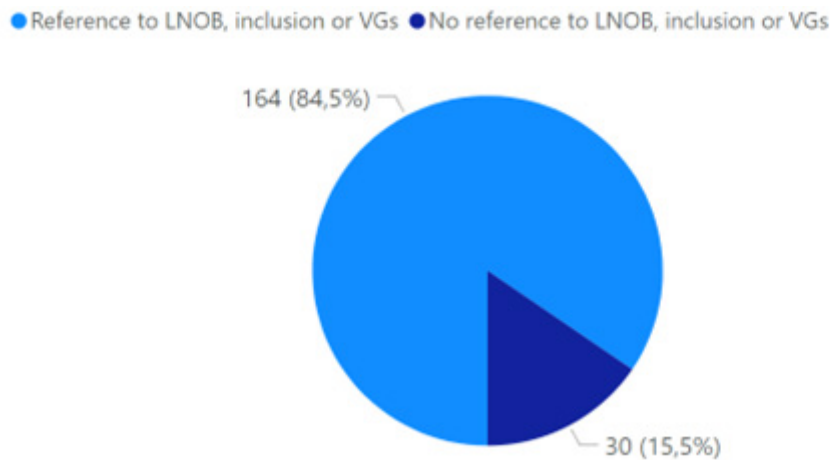
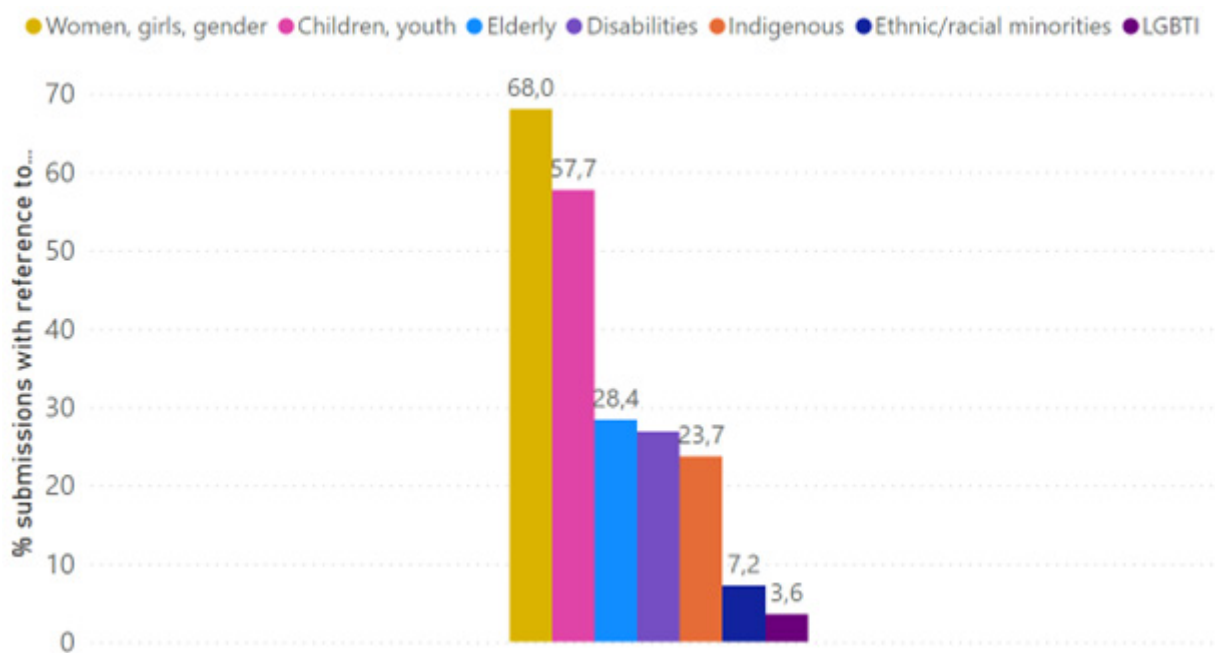
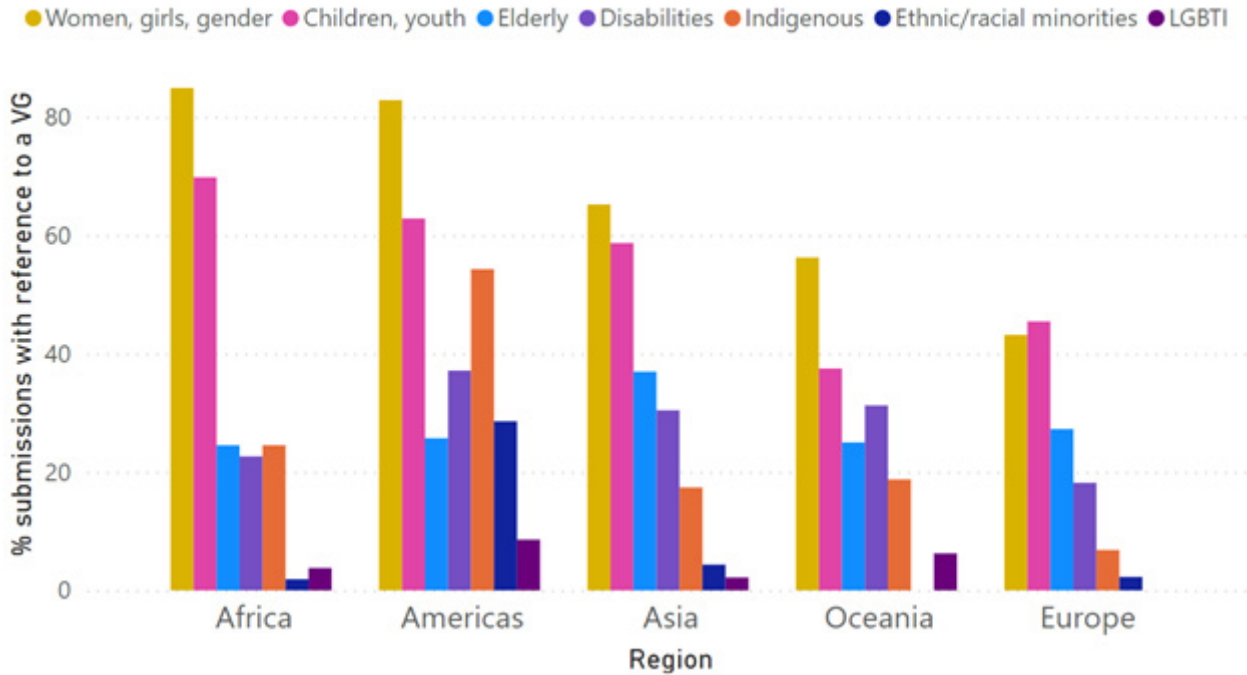


Figure 4. References to different vulnerable group



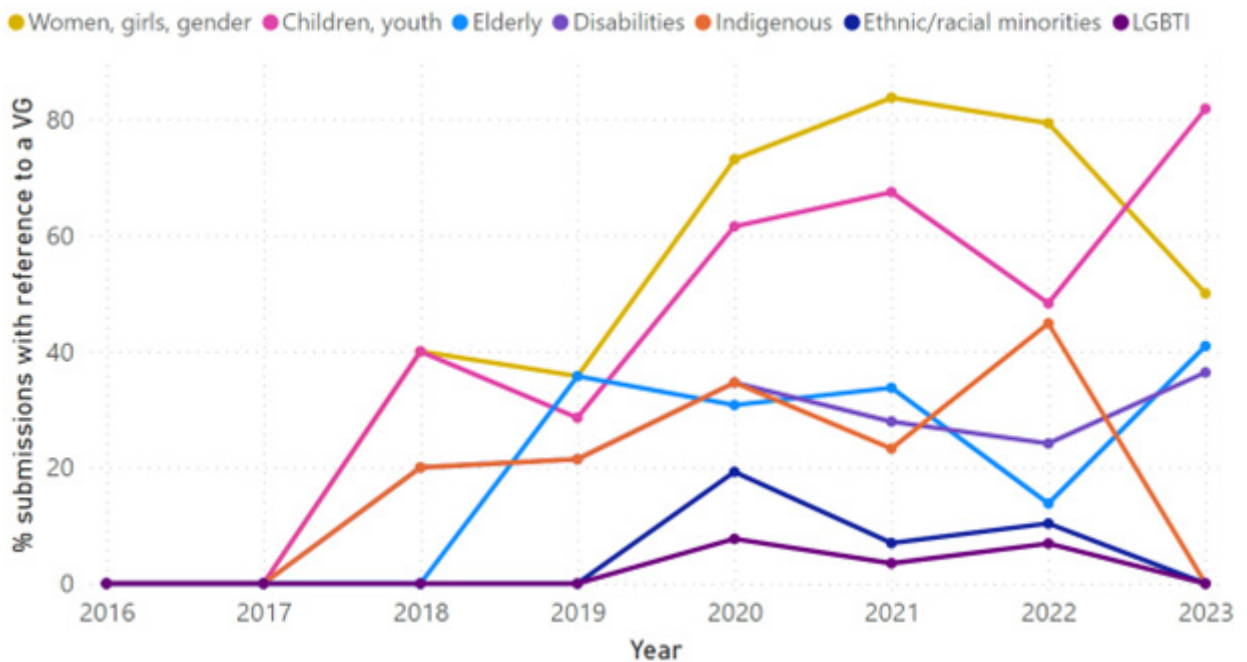
As for regional variations, Figure 5 shows that 85% of African submissions mention women, girls, or gender and 70% mention children, youth, or adolescents, compared to 43% and 45% respectively in Europe. States in the Americas show the greatest attention to indigenous peoples, with 54% of submissions in the region referring to this group. This corresponds with the relatively higher level of recognition of indigenous peoples and their rights in the Americas region compared to others. Europe is the only region without any references to LGBTI persons, and Oceania is the only region to not mention ethnic or racial minorities.

Figure 5. Regional variations in references to vulnerable groups



The **attention to vulnerable groups in State submissions has varied over time**, as seen in Figure 6. Globally, gender-awareness peaked in 2021 when 84% of State submissions referred to women, girls, or gender; whereas mentions of children, youth, or adolescents has seen a steady increase and have even superseded gender references as of 2023. Attention to ethnic or racial minorities and LGBTI persons has been consistently negligible. These changes can reflect dynamisms in political priorities, organised interests, and discourses at all levels of governance.

Figure 6. References to vulnerable groups over time

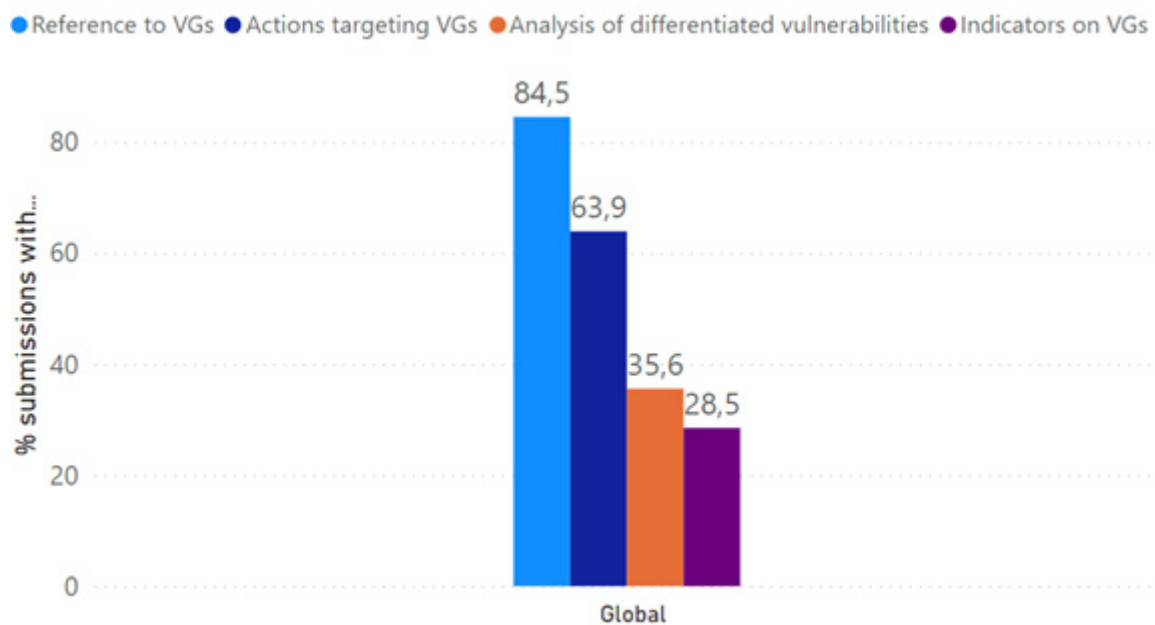


While 85% of submissions refer to LNOB or vulnerable groups, **only 64% mention an action** (past, present, or aspirational) targeted to a vulnerable group (Figure 7). This indicates a gap in designing interventions to ensure equality and non-discrimination even when there is attention to differentiated vulnerabilities.

Only 36% of submissions explain that the groups mentioned face differentiated vulnerabilities to climate change and climate action. Hence, there is a limited analysis of the mechanisms by which certain population groups are made more vulnerable than others.

Measuring vulnerabilities is another critical blind spot, as **only 28% of submissions include targeted indicators** to illuminate the situation of vulnerable groups, including those that simply suggest disaggregated data.

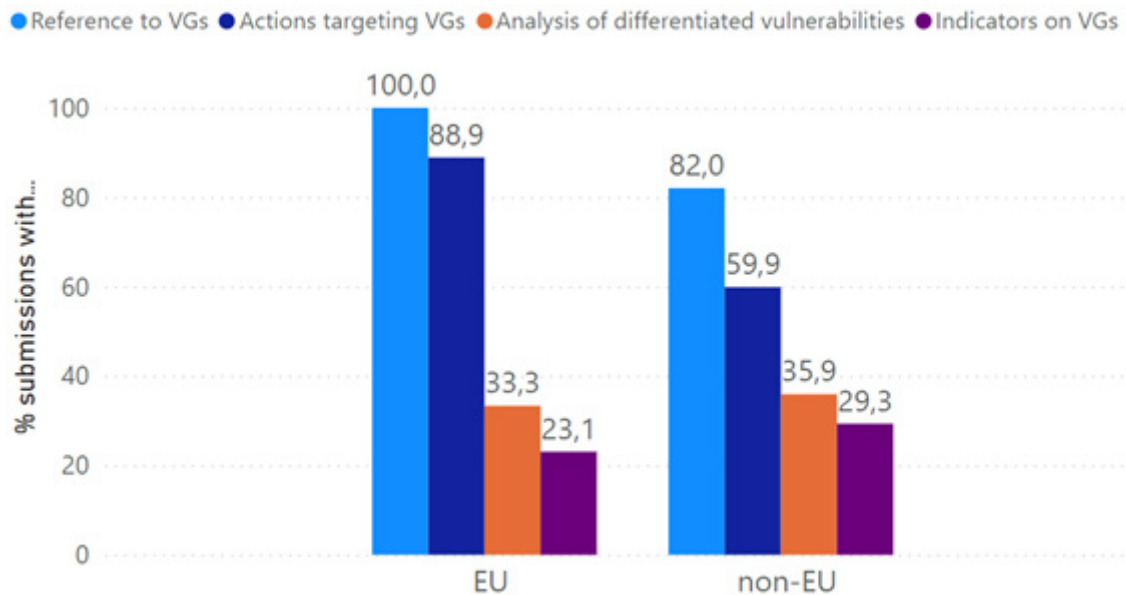
Figure 7. Quality of references to vulnerable groups



A comparison between NDCs and NECPs reveals the importance of reporting requirements under the multilateral framework (Figure 8). All 27 EU NECPs mention vulnerable groups and 24 propose actions to address them. This can be attributed to the requirement under the common format to elaborate on “3.4.3.iv. Policy measures to protect consumers with a focus on vulnerable consumers and, where applicable, consumers at risk of energy poverty” and “2.4.4.i. Where applicable, national objectives with regard to energy poverty.”

However, the NECPs have a narrow understanding of vulnerability in this context, focusing only on energy poverty (e.g., consumers who may struggle to afford heating). Moreover, many NECPs simply mention “vulnerable” groups, households, or consumers per se without specifying who is vulnerable. A more holistic understanding of vulnerability to the effects of climate change can inform better targeted mitigation and adaptation actions addressing the rights and needs of those most at risk.

Figure 8. Quality of references to vulnerable groups: NECPs (EU) vs. NDCs (non-EU)



GOOD PRACTICES: EQUALITY AND NON-DISCRIMINATION

Vanuatu's climate policy is grounded in the knowledge that “[t]he roots of climate change are tied with the roots of multiple oppressions.” It explains how gendered power relations, norms and practices aggravate the impact of climate shocks and climate change on women, girls, and LGBTI individuals.

Vanatu NDC, revised and enhanced (2022), p. 22; *ibid.*, p. 59

Tunisia presents a long list of gender-focused priorities and related measures. For example:

“Priority 3: Ensure gender justice in water resilience policy

- Measure 1: Transform gender inequalities at scale by promoting gender-transformative planning, decision-making and institutional development for water and food security investments
- Measure 2: Significantly increase women's access to information, decision-making power over practices and management
- Measure 3: Establish a study of the experiences of resilience and adaptation in water management by women, women's organizations (GDA or / GH) in order to orient their power of involvement and decision of gender (consideration of women as a vector of communication and behaviour change essential / management and mediation within the household and community [...])”

Tunisia First NDC, updated submission - English version (2021), p. 67

Canada recognises that the “compounding and interconnected impacts of climate change, lower socio-economic outcomes, colonial legacies, and disparities in access to clean technologies have had and continue to have an important impact on Indigenous Peoples’ wellbeing. To support Indigenous Peoples in adapting to the changing climate and contributing to national decarbonization efforts, the Government of Canada has been and will continue to partner with First Nations, Inuit, and the Metis Nation to position Indigenous climate leadership as a cornerstone of Canada’s Strengthened Climate Plan and sure that federal initiative support Indigenous Peoples’ climate priorities and ambitions.”

Canada First NDC, updated submission (2021), p. 7

Venezuela proposes to collaborate with the National Institute of Statistics to disaggregate data and make visible information on the most vulnerable sectors: children and adolescents, Afro-descendants, indigenous peoples, people with disabilities, older adults and women, among others, under the principle of “leaving no one behind.”

Venezuela First NDC, updated submission (2021), pp. 32-33

3. PARTICIPATION

The right to participate in public affairs and to have access on equal terms to public service are set out in article 25 of the International Covenant on Civil and Political Rights (ICCPR).²¹ The Committee on Civil and Political Rights has stressed in its general comments No. 25 that “[a]rticle 25 lies at the core of democratic government based on the consent of the people”²² and that “[n]o distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²³

Some regional human rights instruments bring additional clarity to the State obligations regarding environmental information and decision-making. For example, the Aarhus Convention enshrines important procedural environmental rights – access to environmental information, public participation in decisions relating to the environment, and access to justice – which are necessary for citizens to assert their “right to live in an environment adequate to his or her health and well-being” and to observe their “duty to protect and improve the environment for the benefit of present and future generations.”²⁴ The Escazú Agreement stresses States’ obligation to protect human rights defenders in environmental matters and to ensure a safe and enabling environment for them.²⁵

Respect for the right to information and participation are preconditions for meaningful consultation in the context of the development of an NDC or NECP. The UN Office of the High Commissioner for Human Rights (OHCHR) provides detailed and practical recommendations for States to develop an appropriate institutional framework and measures to ensure meaningful participation before, during, and after decision-making in non-electoral contexts, and on the use of information and communications technology to strengthen equal and meaningful participation.²⁶

QUESTIONS TO GUIDE PARTICIPATION IN NDCS

The Center for International Environmental Law (CIEL) and the OHCHR provide a list of questions to help States guarantee the meaningful participation of rights-holders in the NDC process:

“Has there been a mapping of the specific groups and peoples (including but not limited to Indigenous Peoples, local communities, ethnic and religious minorities, older persons, women, migrants, persons with disabilities, and children and youth) who may be affected by the NDC and whose participation will therefore be essential for the planning, development, and implementation of the NDC?

- Have specific approaches been considered for the effective participation of each of these groups, taking into account their social, linguistic, geographical, and cultural context (e.g., translation and interpretation in relevant languages and measures designed to overcome any barriers related to digital literacy or access)?
- Where members of the public have differentiated capacities, resources, socio-cultural circumstances, or economic or political influence, have special measures been taken to ensure a balanced and equitable process [...]?
- Have processes been designed to promote transparency; minimize social, economic, and political inequality; and avoid the exercise of undue economic or political influence in the design and implementation of the NDC (e.g., through the rigorous application of conflict of interest policies and registers)?
- Has participation occurred early in the decision-making process when all options are open?
- Has there been timely, adequate, and effective notice for specific groups and peoples of the opportunity to participate early in the planning and preparation of the NDC?
- Has all relevant information been made publicly available in an easily accessible and understandable manner, including detailed information related to any assumptions made about baselines and projected impacts?
- Was the public allowed to submit any comments, analyses, or proposals that they consider to be relevant to NDC decision-making?
- Has the participatory process been implemented within reasonable timeframes to ensure meaningful and effective participation? [...]”

Center for International Environmental Law (CIEL) and OHCHR. (2022). Integrating human rights in Nationally Determined Contributions: Toolkit for practitioners, pp. 11-12

Globally, **most State submissions (90%) refer to stakeholder participation** in the development of the NDC or NECP (Figure 9). Figure 10 shows that **81% identify broadly the type of participant** (excluding government or UN agencies) and **69% include a statement about how participants were involved**.

Since 2019, **States are almost universally referencing participation and indicating the type of participation** (Figure 11). However, there is a persistent gap in substantiating these references by describing the participation process.

Figure 9. References to participation

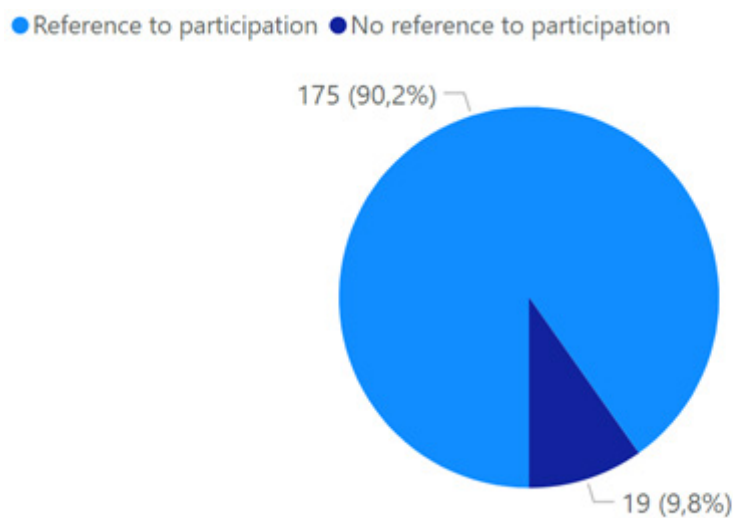


Figure 10. Quality of references to participation

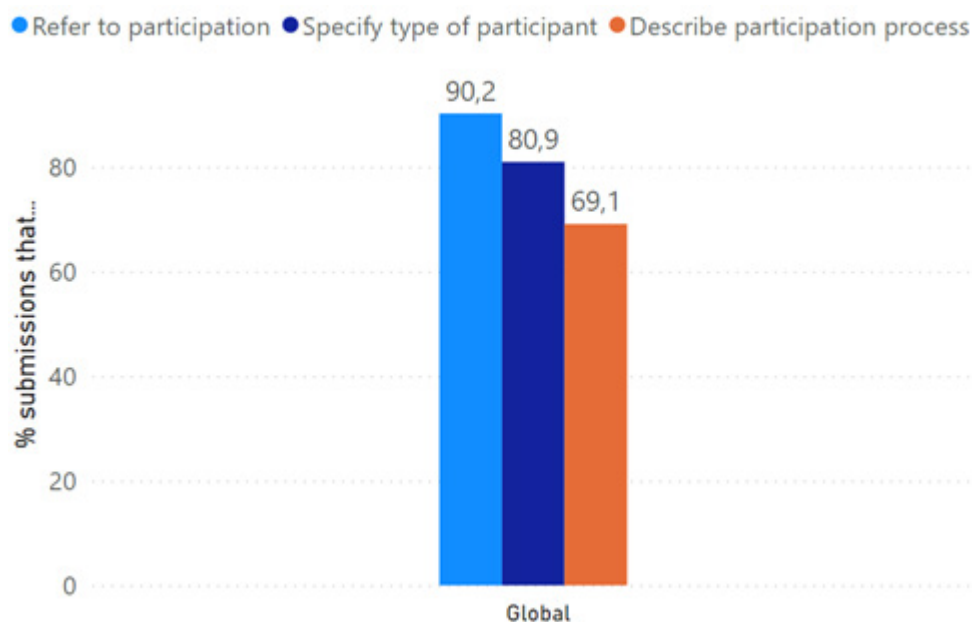
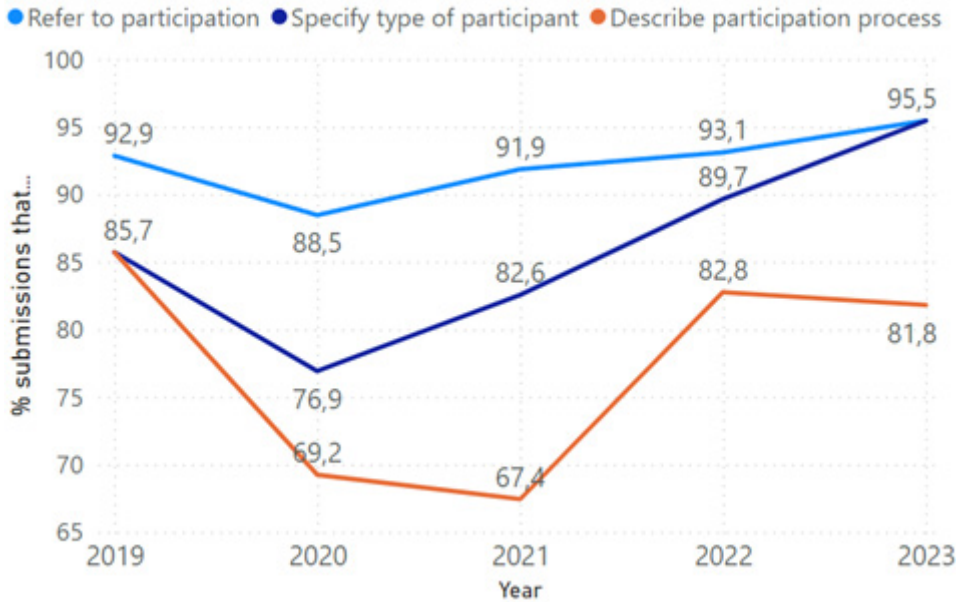
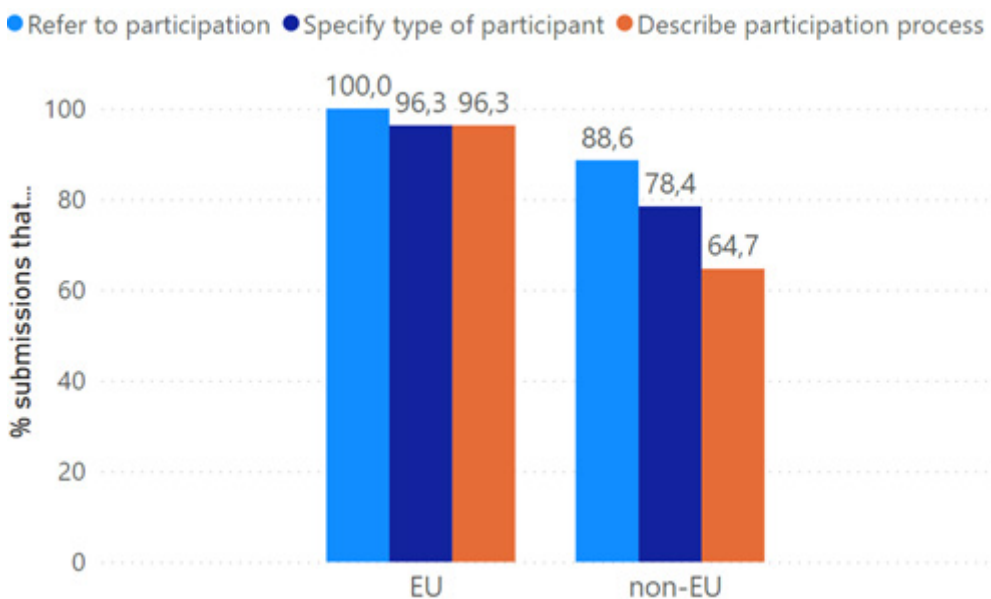


Figure 11. Quality of references to participation over time



As in the equality and non-discrimination dimension, the participation dimension reveals the impact of different reporting requirements. Figure 12 shows that the **EU NECPs perform considerably better than the non-EU NDCs on all three indicators of participation**. All but one NECP (96%) describe the participation process, compared to only 65% of NDCs. This is to be expected as EU Member States are required to report on “1.3(iii) Consultations with stakeholders, including the social partners, and engagement of civil society and the general public.”

Figure 12. Quality of references to participation: NECPs (EU) vs. NDCs (non-EU)



No State submission mentions the involvement of the National Human Rights Institution (NHRI) which is mandated to, inter alia, “promote and ensure the harmonization of national legislations to regulations and practices with the international human rights instruments to which the State is a party” and to “contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations.”²⁷

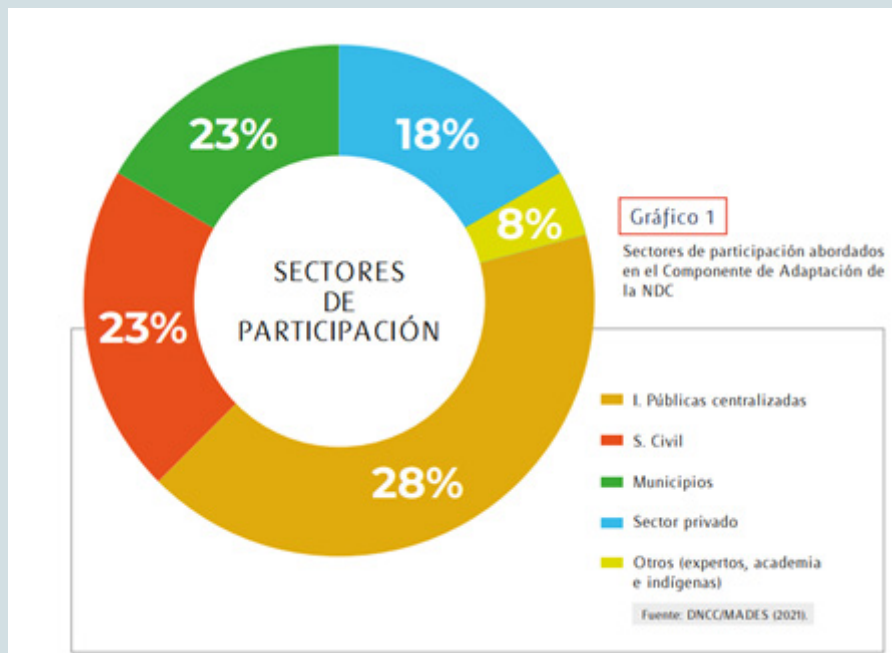
More rigorous investigation including, e.g., interviews with stakeholders is needed to assess whether the participation process was consistent with human rights standards, i.e., held in good faith, transparent, fair, legitimate, informed, accessible, genuine, and free of coercion – considering the power dynamics in each national context (See p. 22 for guiding questions.)

GOOD PRACTICES: PARTICIPATION

Antigua and Barbuda provide an “Annex 4: Key Stakeholder Agencies Consulted” which details for each programme the list of stakeholders consulted as well as collaborators and partners. Under the Social Inclusion and Investment Programme, for example, it names six government ministries, three training and education institutions, seventeen civil society organisations, three faith-based organisations, nine financial institutions, seven solar sector actors, and thirteen agriculture and fisheries sector actors.

Antigua and Barbuda First NDC, updated submission (2021), pp. 57-62

Paraguay indicates the share of various sectors among participants in the preparatory process: central public authorities, civil society, municipalities, private sector, and others (academia, experts, representatives of indigenous peoples). There is therefore some transparency on the relative weight of different viewpoints and interests shaping the NDC.



Paraguay First NDC, updated submission (2021), p. 31 (including graph)

Denmark summarises comments from each of twelve consulted non-State parties regarding nine topics (e.g., electricity grid, waste and heat, biogas, renewable energy) and cross-cutting remarks, as well as responses from the Ministry of Climate, Energy and Utilities addressing the issues raised. This shows that the input from these stakeholders did not go unheard.

Denmark Draft Updated NECP (2023), “1.3(iii) Consultation of stakeholders, including the social partners, and engagement of civil society and the general public”

4. CONCLUSIONS

There are considerable gaps and regional variations in States' consideration of human rights obligations in their NDCs and NECPs.

More than half of States do not refer to human rights. Among the remaining States, many stop at general references without deeper analysis or mentioning of specific rights. The Americas region has the highest share of submissions with human rights references, and the African States pay the most attention to gender and children.

The discrepancies in the quality of references suggest that States tend to “tick the box” on human rights without following through. For instance, even where vulnerable groups are identified, there is sometimes no explanation of the mechanisms by which they are made vulnerable and no proposal to address or measure vulnerabilities. Furthermore, while most States mention participation and identify the types of stakeholders involved in the drafting of the NDC or NECP, they do not always demonstrate that civil society actors participated meaningfully in an enabling environment consistent with human rights standards.

The role of different reporting requirements is seen in the contrast between the EU NECPs and non-EU NDCs. Where formats call for mentioning of vulnerable groups and participation, States tend to comply.

Going forward, it will be crucial for States to close this gap by implementing a human rights-based approach to climate action, i.e., a systematic integration of human rights standards and principles at all stages of decision-making, in close collaboration with human rights actors and civil society.

This will also necessitate a stronger multilateral approach under the UNFCCC, as the human rights impacts of climate change – much like climate change itself – know no borders: the climate (in)action of one State threatens not only the rights of its own people but also the rights of others. Given the real interconnectivity of rights beyond territorial limits, States' response to climate change must be grounded in the universality of human rights as enshrined in binding agreements.

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ENDNOTES

- 1 For further guidance on human rights in NDCs: Center for International Environmental Law (CIEL) & OHCHR. (2022). Integrating human rights in Nationally Determined Contributions: Toolkit for practitioners
 - 2 For example: Women's Environment and Development Organization. (n.d.). Quick analysis on the integration of women and/or gender in NDCs; IWGIA. (October 2022). Recognition of indigenous peoples in Nationally Determined Contributions
 - 3 UNFCCC. (n.d.). FAQ – Moving towards the enhanced transparency framework
 - 4 Urgenda Foundation v. State of the Netherlands. (Netherlands Sup. Ct. 2019)
 - 5 UNFCCC. (n.d.). NDC registry
 - 6 The content of the common template derives from the EU regulation on the governance of the energy union and climate action (December 2018).
- Note: The NECP template requires reporting on “Policy measures to protect consumers with a focus on vulnerable consumers and, where applicable, consumers at risk of energy poverty” and “Where applicable, national objectives with regard to energy poverty.” This in practice meant that attention to differentiated vulnerabilities was present in all submissions. Similarly, the section on “Consultations with stakeholders, including the social partners, and engagement of civil society and the general public” meant that reference to participation was ubiquitous. Nonetheless, the multi-level parameters, as elaborated in the next paragraphs, allowed for meaningful analysis of the quality of references.
- 7 Andorra, Argentina, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela
 - 8 Iraq
 - 9 Preamble, Sharm el-Sheikh Implementation Plan (November 2022)
 - 10 UN General Assembly resolution (July 2022). The human right to a clean, healthy and sustainable environment
 - 11 UNDP, OHCHR, & UNEP. (January 5, 2023). What is the right to a healthy environment? Information note, p. 8
 - 12 *ibid*
 - 13 See: Report of the Secretary-General to the Human Rights Council (May 6, 2022). The impacts of climate change on the human rights of people in vulnerable situations
 - 14 *ibid*.
 - 15 UN General Assembly resolution (December 1948). Universal Declaration of Human Rights, art. 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
 - 16 UN General Assembly resolution (December 1979). Convention on the Elimination of All Forms of Discrimination Against Women
 - 17 UN General Assembly resolution (November 1989). Convention on the Rights of the Child

- 18 UN General Assembly resolution (December 2006). Convention on the Rights of Persons with Disabilities
- 19 Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005). The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic Social and Cultural Rights), para. 7
- 20 UN Sustainable Development Group. (n.d.). Leave no one behind
- 21 UN General Assembly resolution (December 1966). International Covenant on Civil and Political Rights, art. 25
- 22 Committee on Civil and Political Rights, general comment No. 25 (July 12, 1996). The right to participate in public affairs, voting rights and the right of equal access to public service, para. 1
- 23 *ibid.*, para. 3
- 24 UN Economic Commission for Europe (UNECE). (June 25, 1998). Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention), preamble
- 25 UN Economic Commission for Latin America and the Caribbean (ECLAC). (March 4, 2018). Regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (Escazú Agreement), art. 9
- 26 OHCHR. (2021). Guidelines for states on the effective implementation of the right to participate in public affairs, pp. 12-17
- 27 UN General Assembly resolution (December 1993). Principles relating to the status of national institutions (Paris Principles), para. 3

ANNEX 1. LIST OF NDCS AND NECPS

NDCs (non-EU): green

NECPs (EU): blue

Country	Submission year	Country	Submission year
Afghanistan	2016	Colombia	2020
Albania	2021	Comoros	2021
Algeria	2016	Congo	2021
Andorra	2022	Cook Islands	2016
Angola	2021	Costa Rica	2020
Antigua and Barbuda	2021	Côte d'Ivoire	2022
Argentina	2021	Croatia	2023
Armenia	2021	Cuba	2020
Australia	2022	Cyprus	2023
Austria	2019	Czechia	2019
Azerbaijan	2017	Democratic People's Republic of Korea	2019
Bahamas	2022	Democratic Republic of the Congo	2021
Bahrain	2021	Denmark	2023
Bangladesh	2021	Djibouti	2016
Barbados	2021	Dominica	2022
Belarus	2021	Dominican Republic	2020
Belgium	2019	Ecuador	2019
Belize	2021	Egypt	2023
Benin	2021	El Salvador	2022
Bhutan	2021	Equatorial Guinea	2022
Bolivia	2022	Eritrea	2018
Bosnia and Herzegovina	2021	Estonia	2023
Botswana	2016	Eswatini	2021
Brazil	2022	Ethiopia	2021
Brunei Darussalam	2020	European Union (Excluded)	2020
Bulgaria	2019	Fiji	2020
Burkina Faso	2021	Finland	2023
Burundi	2021	France	2023
Cabo Verde	2021	Gabon	2022
Cambodia	2020	Gambia	2021
Cameroon	2021	Georgia	2021
Canada	2021	Germany	2019
Central African Republic	2022	Ghana	2021
Chad	2021	Greece	2019
Chile	2020	Grenada	2020
China	2021	Guatemala	2022

Guinea	2021	Morocco	2021
Guinea-Bissau	2021	Mozambique	2021
Guyana	2016	Myanmar	2021
Haiti	2022	Namibia	2021
Holy See	2023	Nauru	2021
Honduras	2021	Nepal	2020
Hungary	2023	Netherlands	2020
Iceland	2021	New Zealand	2021
India	2022	Nicaragua	2020
Indonesia	2022	Niger	2021
Iraq	2021	Nigeria	2021
Ireland	2019	Niue	2016
Israel	2021	North Macedonia	2021
Italy	2023	Norway	2022
Jamaica	2020	Oman	2021
Japan	2021	Pakistan	2021
Jordan	2021	Palau	2016
Kazakhstan	2023	Panama	2020
Kenya	2020	Papua New Guinea	2020
Kiribati	2023	Paraguay	2021
Kuwait	2021	Peru	2020
Kyrgyzstan	2021	Philippines	2021
Lao People's Democratic Republic	2021	Poland	2019
Latvia	2019	Portugal	2023
Lebanon	2021	Qatar	2021
Lesotho	2018	Republic of Korea	2021
Liberia	2021	Republic of Moldova	2020
Liechtenstein	2017	Romania	2019
Lithuania	2023	Russian Federation	2020
Luxembourg	2023	Rwanda	2020
Madagascar	2016	Saint Kitts and Nevis	2021
Malawi	2021	Saint Lucia	2021
Malaysia	2021	Saint Vincent and the Grenadines	2016
Maldives	2020	Samoa	2021
Mali	2021	San Marino	2018
Malta	2019	Sao Tome and Principe	2021
Marshall Islands	2020	Saudi Arabia	2021
Mauritania	2021	Senegal	2020
Mauritius	2021	Serbia	2022
Mexico	2022	Seychelles	2021
Micronesia	2022	Sierra Leone	2021
Monaco	2020	Singapore	2022
Mongolia	2020	Slovakia	2023
Montenegro	2021	Slovenia	2023

Solomon Islands	2021
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South Africa	2021
South Sudan	2021
Spain	2023
Sri Lanka	2021
State of Palestine	2021
Sudan	2022
Suriname	2019
Sweden	2023
Switzerland	2021
Syrian Arab Republic	2018
Tajikistan	2021
Thailand	2022
Timor-Leste	2022
Togo	2021
Tonga	2020
Trinidad and Tobago	2018
Tunisia	2021
Türkiye	2023
Turkmenistan	2023
Tuvalu	2022
Uganda	2022
Ukraine	2021
United Arab Emirates	2023
United Kingdom	2022
United Republic of Tanzania	2021
United States of America	2021
Uruguay	2022
Uzbekistan	2021
Vanatu	2022
Venezuela	2021
Viet Nam	2022
Zambia	2021
Zimbabwe	2021