

The Rights of Indigenous Peoples in Nationally Determined Contributions

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Submission date: 24-Aug-2023 04:18AM (UTC+0700)

Submission ID: 2150150303

File name: hrlr-article-p90_004.pdf (344.69K)

Word count: 10526

Character count: 51489

The Rights of Indigenous Peoples in Nationally Determined Contributions

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Abstract

The inclusion of explanations related to indigenous peoples (IPs) in Nationally Determined Contributions (NDCs) contributes to amplifying the harmony between climate change (CC) and the rights of IPs. The existence of IPs in NDCs explains and improves the position of IPs in their own states, and serves as a model for other parties to the Paris Agreement (PA). Nonetheless, not all parties to the PA mention and have the same standards in explaining the rights of IPs in their NDCs. There are different standards on whether or not the rights of IPs are included in NDCs, and there is also a disparity in the quality and quantity of explanations of the rights of IPs in NDCs. These differences occur in the 'engagement form' of Annex I of Decision 4/CMA.1 or elsewhere in NDCs.

Keywords

indigenous peoples – human rights – climate change – Nationally Determined Contributions (NDCs) – Paris Agreement

1 Introduction

The Paris Agreement (PA) increases the harmony between climate change (CC) and human rights (HRS)¹ by providing that: '[...] 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 [...].'² The Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment mentions the HRS element in the PA (Report of the Special Rapporteur) as '[t]he most important sign of the increasing attention to the relationship between climate change and human rights'.³ Furthermore, the report states that '[t]he Paris Agreement is the first climate agreement, and one of the first environmental agreements of any kind, to explicitly recognize the relevance of human rights'.⁴ Commentators have also agreed on the pioneering nature of Paragraph 11 of the Preamble of the PA concerning HRS compared to other multilateral environmental agreements.⁵

We can see that interactions between IPs and CC are also located in the HRS' preamble above as well as in climate adaptation, where '[p]arties acknowledge that adaptation action [...] should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples [...].'⁶ In relation to the interactions above, the Report of the Special Rapporteur states that '[t]he Paris Agreement recognizes the importance of respecting the rights of the most vulnerable'.⁷

1 Human Rights Council 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' J Knox, A/HRC/31/52 (1 February 2016) para 20. See also: J Knox, 'Bringing Human Rights to Bear on Climate Change' (2019) 9 *Climate L* 165, 167.

2 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) (PA) preamble para 11. See: *ibid.*

3 Human Rights Council, Knox, A/HRC/31/52 (n 1) para 20.

4 *Ibid.*

5 See eg A Savaresi, 'The Paris Agreement: A New Beginning' (2016) 34 *J Energy & Nat Resources L* 16, 25 (citing Knox); S Duyck et al, 'Human Rights and the Paris Agreement's Implementation Guidelines: Opportunities to Develop a Rights-Based Approach' (2018) 2018 *CCLR* 191, 191–192; S Duyck, 'Delivering on the Paris Promises? Review of the Paris Agreement's Implementing Guidelines from a Human Rights Perspective' (2019) 9 *Climate L* 202, 203 and 207; and L Rajamani, 'Integrating Human Rights in the Paris Climate Architecture: Contest, Context, and Consequence' (2019) 9 *Climate L* 180, 181 (citing Knox).

6 PA (n 2) art 7 para 5. See also: Rajamani, *ibid.*, 184.

7 Human Rights Council, Knox, A/HRC/31/52 (n 1) para 84.

The PA and NDCs are topics that have been widely discussed.⁸ In short, NDCs are ‘ambitious efforts’ of Parties to the PA in relation to ‘achieving the purpose’ of the PA.⁹ These ‘ambitious efforts’ are related to the implementation of NDCs in various aspects of CC.¹⁰ The main purpose of the PA is inter alia to execute the 1992 United Nations Framework Convention on Climate Change (1992 UNFCCC/ UNFCCC),¹¹ although the PA is more specifically focused, for example on ‘holding the increase in the global average temperature’.¹²

As of the end of June 2022, there were 193 parties to the PA.¹³ All state parties to the PA had submitted at minimum their first NDCs.¹⁴ In addition, one state is a party to the 1992 UNFCCC but not yet a party to the PA, nonetheless that state

- 8 There are many commentators, to name but a few, see in general: S Maljean-Dubois, T Spencer, and M Wemaere, ‘The Legal Form of the Paris Climate Agreement: A Comprehensive Assessment of Options’ (2015) 2015 *CCLR* 68; D Bodansky, ‘The Legal Character of the Paris Agreement’ (2016) 25 *Rev Eur Comp & Int’l Envtl L* 142; D Bodansky, ‘The Paris Climate Change Agreement: A New Hope’ (2016) 110 *Am J Int’l L* 288; M Doelle, ‘The Paris Agreement: Historic Breakthrough or High Stakes Experiment’ (2016) 6 *Climate L* 1; C Streck, P Keenlyside, and MV Unger, ‘The Paris Agreement: A New Beginning’ (2016) 13 *J Eur Envtl & Planning L* 3; L Rajamani and J Brunnée, ‘The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the U.S. Disagreement’ (2017) 29 *J Envtl L* 537; and B Mayer, ‘International Law Obligations Arising in Relation to Nationally Determined Contributions’ (2018) 7 *TEL* 251.
- 9 PA (n 2) art 3. See also, eg Bodansky, ‘The Legal Character of the Paris Agreement’, *ibid*, 147; T Bach, ‘Human Rights in a Climate Changed World: The Impact of COP21, Nationally Determined Contributions, and National Courts’ (2016) 40 *Vt L Rev* 561, 575; Rajamani and Brunnée, *ibid*, 541; and Mayer, *ibid*, 251–252.
- 10 PA, *ibid*, arts 2–4, 7, 9–11, and 13; Bodansky, *ibid*; Bach, *ibid*; Rajamani and Brunnée, *ibid*; and Mayer, *ibid*.
- 11 PA, *ibid*, in particular: art 2; and United Nations Framework Convention on Climate Change (adopted 5 May 1992, entered into force 21 March 1994) (UNFCCC) art 2. See also, eg: Bach, *ibid*, 574–575.
- 12 PA (n 2) art 2 para 1. See also, eg: Bodansky, ‘The Paris Climate Change Agreement: A New Hope’ (n 8) 302–304; Streck, Keenlyside, and Unger (n 8) 4–5 and 9–11; Bach, *ibid*; Doelle, ‘The Paris Agreement: Historic Breakthrough or High Stakes Experiment’ (n 8) 8; and Rajamani and Brunnée (n 8) 540–541 and 545.
- 13 UNFCCC, ‘Paris Agreement – Status of Ratification’ <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed 13 June 2023.
- 14 UNFCCC, ‘NDC Registry’ <<https://unfccc.int/NDCREG>> accessed 13 June 2023. An Intended NDC (INDC) of a country could become an NDC of a Party to the PA if a Party decides to do that, see: COP (UNFCCC), ‘Decision 1/CP.21, Adoption of the Paris Agreement’ FCCC/CP/2015/10/Add.1 (29 January 2016) para 22; M Ge and K Levin, ‘Insider: What’s Changing as Countries Turn INDCs into NDCs? 5 Early Insights’ <<https://www.wri.org/insights/insider-whats-changing-countries-turn-indcs-ndcs-5-early-insights#:~:text=According%20to%20the%20global%20climate,unless%20a%20country%20decides%20otherwise.>> accessed 13 June 2023; Bodansky, ‘The Paris Climate Change Agreement: A New Hope’ (n 8) 314; and Mayer (n 8) 256.

had also sent its NDC.¹⁵ It should be noted that as of 30 June 2022, three States had not yet become parties to the Paris Agreement and had not submitted their NDCs to the UNFCCC Secretariat.¹⁶ NDCs have a strategic role in checking the CC commitments of Parties to the PA and periodically monitoring them.¹⁷

Previous research has discussed the HRS aspects of the PA¹⁸ and the HRS aspects in NDCs have also been a topic of discussion.¹⁹ For example, Duyck, Lennon, Obergassel, and Savaresi identify the acknowledgement of HRS in NDCs,²⁰ categorising the acceptance of HRS in NDCs according to a variety of levels of commitment.²¹ The most substantial level of commitment occurs in NDCs that integrate HRS in implementing NDC actions in law (seven NDCs).²² Other NDCs connect the implementation of NDC actions with a HRS approach (seventeen NDCs) and in general numerous NDCs incorporate a HRS aspect.²³

Other work related to HRS in NDCs also has been developed by the Human Rights and Climate Change Working Group (HR&CC WG), which identifies countries' HRS obligations, commitments, and positions related to CC on its platform, although the content needs to be updated frequently.²⁴ The HR&CC WG is also developing a platform for integrating HRS in NDCs.²⁵

In addition, previous research has examined IPs in the UNFCCC's National Communications.²⁶ In the PA, not many articles specifically focus on IPs and

15 See: Eritrea, 'Nationally Determined Contributions (NDCs) Report to UNFCCC (Final)' (First NDC, 2018).

16 They are: Iran, Libya, and Yemen, see: United Nations Treaty Collection, 'Chapter XXVII Environment, 7. d Paris Agreement' <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XXVII-7-d&chapter=27&clang=_en> accessed 13 June 2023; and UNFCCC, 'NDC Registry' (n 14).

17 Bach (n 9) 566–567 and 573–574.

18 See in general, eg: articles in n 5; Knox (n 2); A Savaresi and J Hartmann, 'Human Rights in the 2015 Agreement' (Briefing Paper 2/2015, Legal Response Initiative 2015); A Boyle, 'Climate Change, the Paris Agreement and Human Rights' (2018) 67 *Int'l & Comp LQ* 759; and A Savaresi and J Scott, 'Implementing the Paris Agreement: Lessons from the Global Human Rights Regime' (2019) 9 *Climate L* 159.

19 Eg: Duyck et al (n 5) 195–196; and Bach (n 9) 570.

20 Duyck et al, *ibid*, 195.

21 *Ibid*.

22 *Ibid*.

23 *Ibid*.

24 Human Rights and Climate Change Working Group, 'Search our Country Profiles' <<https://climaterights.org/>> accessed 13 June 2023.

25 The pertinent HRS and NDCs platform is not up-to-date, no data was available as of 18 June 2023, see: Human Rights and Climate Change Working Group, 'Integrating Human Rights in the Nationally Determined Contributions (NDCs)' <<https://climaterights.org/our-work-unfccc-human-rights-in-indcs/>> accessed 18 June 2023.

26 H Abidin, *The Protection of Indigenous Peoples and Reduction of Forest Carbon Emissions: The REDD-Plus Regime and International Law* (Brill Nijhoff 2015) 80–85.

NDCs.²⁷ Recent research in 2022 identifies a number of NDCs in Southeast Asia concerning the rights of IPs;²⁸ however, although the pertinent research is a detailed study of the rights of IPs beyond NDCs, the sample of NDCs in the research is too limited to bring out broader conclusions about their rights in NDCs in general.²⁹ The author develops the 2022 research by increasing and broadening the scope to examine NDCs submitted to the UNFCCC Secretariat, although it should be noted that this examination is limited to NDC submissions in English.³⁰

A report by the UNFCCC Secretariat in 2021 identified and summarised the responses to IPs in the NDCs of Parties to the PA.³¹ Although the report explains the IPs' rights, it does not explicitly concern HRS.³² The report locates the explanation of IPs in three parts: the first is located in the 'I. Executive Summary' part, where in general it is concluded that 'some Parties' in varying degrees have explained IPs in their NDCs.³³ The second part is located in the section 'F. Planning and Implementation Processes', specifically under the sub-sections: '1. Domestic Institutional Arrangements', '3. Indigenous Peoples and Local Communities', and '5. Best Practices and Other Contextual Matters'.³⁴ The third part is located in the section 'G. Mitigation Co-benefits Resulting from Adaptation Action and/or Economic Diversification Plans'.³⁵

The second part, in particular Paragraph 114 on 'Indigenous Peoples and Local Communities', is a further explanation of Paragraph 22 in the first part.³⁶

27 For a specific discussion of IPs and NDCs, see eg: Asia Indigenous Peoples Pact (AIPP) and Forest Peoples Programme (FPP) (Authors: JA Guillao et al), 'Nationally Determined Contributions in Asia: Are Governments Recognizing the Rights, Roles and Contributions of Indigenous Peoples?: Country Reports from Malaysia, Philippines and Indonesia' (AIPP Printing Press Co Ltd 2022); and BL Gunn, 'Protecting Indigenous Peoples' Rights Through Indigenous Peoples' Participation in Decision-Making: A Climate Change Example' (2021) 17 *McGill J Sust Dev L* 1, 10–12, 15–17, 22–23, and 25.

28 AIPP and FPP (JA Guillao et al), *ibid*; and Asia Indigenous Peoples Pact (AIPP) and Forest Peoples Programme (FPP) (Authors: B Hien et al), 'Nationally Determined Contributions in Asia: Are Governments Recognizing the Rights, Roles and Contributions of Indigenous Peoples? Country Reports from Cambodia, Myanmar, Vietnam, and Thailand' (AIPP Printing Press Co Ltd 2022).

29 *Ibid*.

30 UNFCCC, 'NDC Registry' (n 14).

31 UNFCCC Secretariat, 'Nationally Determined Contributions under the Paris Agreement Revised Synthesis Report by the Secretariat' FCCC/PA/CMA/2021/8/Rev.1 (25 October 2021) paras 22, 102, 114–115, 121, and 124.

32 See in general: *ibid*, all paras.

33 *Ibid*, para 22 (see pp 4 and 7).

34 *Ibid*, paras 102, 114–115, and 121 (see pp 20 and 22–23).

35 *Ibid*, para 124 (see p 24).

36 *Ibid*, compare paras 22 and 114 (see pp 7 and 22).

Essentially, the Secretariat has recognised four major points which are IPs' rights, threats, knowledge, and involvement with NDCs.³⁷ Other paragraphs in the second part are related to the participation of IPs³⁸ and activities that bring advantages to them.³⁹ The third part concerns the effects of climate actions on IPs as a workforce.⁴⁰

It is essential to highlight that although the Secretariat has provided an excellent report on what the Parties to the PA reported in their NDCs, the report only summarised aspects of IPs in their NDCs, without more detailed explanations. However, we can see how a party to the PA treats IPs in the context of its domestic climate actions, for example by looking at how that party accommodates IPs' rights in their NDCs. This article develops earlier discussions and focuses on how parties to the PA respond to the rights of IPs in their NDCs based on the HRS' preamble. Furthermore, the author develops this article based on the Secretariat's report, offering more detailed explanations of the NDCs of parties to the PA. This article examines how far Parties to the PA increase the legitimacy of the rights of IPs' preamble in their NDCs. Based on this data, the article suggests how the protection of IPs might be improved in the context of NDCs. The author focuses and concentrates on the recent versions of the NDCs of Parties to the PA, and NDCs that were submitted and published after Decision 4/CMA.1.⁴¹ All the NDCs in this research were taken from the NDC Registry, which according to the PA is managed by the UNFCCC Secretariat.⁴²

2 The Rights of Indigenous Peoples (IPs) in the Human Rights' Preamble of the Paris Agreement

Endeavours to connect the problem of CC to HRS violations⁴³ and to insert the content of HRS into the UNFCCC regime have been on-going for years.⁴⁴ Various parties from different stakeholders have encouraged the content of

37 Ibid, para 22, see also: para 114.

38 Ibid, paras 102 and 121.

39 Ibid, para 115.

40 Ibid, para 124.

41 CMA (Paris Agreement) 'Decision 4/CMA.1, Further Guidance in Relation to the Mitigation Section of Decision 1/CP.21' FCCC/PA/CMA/2018/3/Add.1 (19 March 2019) Annex I (note: the decision was agreed on 15 December 2018 at the 26th plenary meeting).

42 UNFCCC, 'NDC Registry' (n 14).

43 Knox (n 1) 165–168.

44 Rajamani (n 5) 182–183; and Duyck (n 5) 204–206.

HRs in the PA.⁴⁵ There were many parties who wanted HRs to be inserted in the body of the PA, but ultimately the HRs aspect was only in the preamble section.⁴⁶

Bodle, Donat, and Duwe noted that the content in the PA's preamble contains an essential aspect when dealing with CC issues in terms of its inclusion of the topic of HRs, but it was still challenging to include this issue in the body of the PA.⁴⁷ According to Doelle, an issue that is still open to debate about whether or not it should be inserted in the body of the PA can be resolved by including the issue in a paragraph in the preamble.⁴⁸ Rajamani summarises various opinions regarding the HRs' preamble by dividing the discussion into two camps.⁴⁹ The first responds optimistically to the preamble, while the second responds with a pessimistic tone.⁵⁰ Rajamani believes that the HRs' preamble, which includes the protection of categories that are seen as more vulnerable to CC, is an advancement 'in the integration of HRs concerns in the climate regime'.⁵¹ However, Boyle states that the HRs element in the PA has reduced the HRs' position because the HRs' paragraph is not in the body of the PA, and its content is weak.⁵²

The HRs' paragraph in the preamble of the PA does not construct different commitments for the Parties to the PA, but nevertheless the HRs content in the preamble strengthens the legal commitments of Parties that have bound themselves to international HRs instruments.⁵³ Bodansky says that the HRs paragraph's success in the PA's preamble still needs to be proven,⁵⁴ while

45 Rajamani, *ibid*, 183–184; and Duckyk, *ibid*, 207–208.

46 Rajamani, *ibid*; Duckyk, *ibid*, 208; Bach (n 9) 563 and 570; and Savaresi and Hartmann (n 18) 2.

47 R Bodle, L Donat, and M Duwe, 'The Paris Agreement: Analysis, Assessment and Outlook' (2016) 2016 *CCLR* 5, 14.

48 Doelle, 'The Paris Agreement: Historic Breakthrough or High Stakes Experiment' (n 8) 6.

49 Rajamani (n 5) 185.

50 *Ibid*.

51 *Ibid* 200.

52 Boyle (n 18) 769–770.

53 Bodansky, 'The Paris Climate Change Agreement: A New Hope' (n 8) 313; Duyck et al (n 5) 194; Rajamani (n 5) 189; Savaresi and Scott (n 18) 161; Asia Pacific Forum of National Human Rights, 'Amicus Brief – Human Rights and Climate Change' (Asia Pacific Forum of National Human Rights Institutions 2017) 11; and Client Earth, Center for International Environmental Law, Environmental Law Alliance Worldwide, Our Children's Trust, Asia Pacific Forum of National Human Rights Institutions & the Global Alliance of National Human Rights Institutions, Maastricht Principles Drafting Group, and Plan B, 'Summary of Amici Expert Contributions Regarding Obligations of States' in 'Joint Summary of the Amicus Curiae: In Re: National Inquiry on the Impact of Climate Change on the Human Rights of the Filipino People' (19 March 2018) 53.

54 Bodansky, *ibid*, 313.

Duyck, Lennon, Obergassel, and Savaresi, note that the success of the HRS' paragraph relies on how the content is implemented at various levels.⁵⁵

The strength of the connection between HRS and CC has increased since the PA, particularly in the context of Conference of the Parties (COP) decisions and in a number of the UNFCCC's regime subsidiary bodies.⁵⁶ The HRS' paragraph, including content on the rights of IPs, is followed verbatim by several COP Serving as the Meeting of the parties to the PA (CMA) decisions⁵⁷ as well as the COP decisions.⁵⁸ However, commentators also identify that decisions regarding the implementation of the PA (the Paris Rulebook) have failed to put specific reference to HRS, although efforts to push this have been made by a number of parties.⁵⁹ Nonetheless, albeit there is no direct reference to HRS, there is a direct reference to IPs in the Paris Rulebook,⁶⁰ and the spirit of HRS

55 Duyck, Lennon, Obergassel, and Savaresi (n 5) 191–192.

56 Ibid 194; Duyck (n 5) 209; and Rajamani (n 5) 186.

57 CMA (PA) 'Decision 1/CMA.2, Chile Madrid Time for Action' FCCC/PA/CMA/2019/6/Add.1 (16 March 2020) preamble para 1; CMA (PA) 'Decision 2/CMA.2, Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and Its 2019 Review' FCCC/PA/CMA/2019/6/Add.1 (16 March 2020) preamble para 5; CMA (PA) 'Decision 1/CMA.3, Glasgow Climate Pact' FCCC/PA/CMA/2021/10/Add.1 (8 March 2022) preamble para 6; CMA (PA) 'Decision 2/CMA.3, Guidance on Cooperative Approaches Referred to in Article 6, para 2, of the Paris Agreement' FCCC/PA/CMA/2021/10/Add.1 (8 March 2022) preamble para 3, and Annex (Guidance on Cooperative Approaches Referred to in Article 6, para 2, of the Paris Agreement) para 18 (i) (ii) and para 22 (g); CMA (PA) 'Decision 3/CMA.3, Rules, Modalities and Procedures for the Mechanism Established by Article 6, para 4, of the Paris Agreement' FCCC/PA/CMA/2021/10/Add.1 (8 March 2022) preamble para 3, and Annex (Rules, Modalities and Procedures for the Mechanism Established by Article 6, para 4, of the Paris Agreement) para 24 (a) (ix); CMA (PA) 'Decision 4/CMA.3, Work Programme under the Framework for Non-market Approaches Referred to in Article 6, para 8, of the Paris Agreement' FCCC/PA/CMA/2021/10/Add.1 (8 March 2022) preamble para 3, and Annex (Work Programme under the Framework for Non-market Approaches Referred to in Article 6, para 8, of the Paris Agreement) para 3 (e); and CMA (PA) 'Decision 7/CMA.3, Glasgow–Sharm el-Sheikh Work Programme on the Global Goal on Adaptation' FCCC/PA/CMA/2021/10/Add.3 (8 March 2022) preamble para 8.

58 COP (UNFCCC), 'Decision 3/CP.25, Enhanced Lima Work Programme on Gender and Its Gender Action Plan' FCCC/CP/2019/13/Add.1 (16 March 2020) preamble para 6; COP (UNFCCC), 'Decision 1/CP.26, Glasgow Climate Pact' FCCC/CP/2021/12/Add.1 (8 March 2022) preamble para 6; and COP (UNFCCC), 'Decision 16/CP.26, Local Communities and Indigenous Peoples Platform' FCCC/CP/2021/12/Add.2 (8 March 2022) preamble para 3. See also: Duyck (n 5) 209.

59 Duyck, *ibid*, 202–203 and 211–213; Rajamani (n 5) 180, 187–189, and 192; and Savaresi and Scott (n 18) 162–163. See also in general: CMA (PA), Decision 4/CMA.1 (n 41).

60 Duyck, *ibid*, 213; and Rajamani, *ibid*, 187. See also in general: CMA (PA), Decision 4/CMA.1, *ibid*.

can be identified.⁶¹ The next section will discuss how Parties to the PA have responded to the rights of IPs in their NDCs.

3 The Rights of Indigenous Peoples (IPs) in Nationally Determined Contributions (NDCs)

Gunn explains that the Paris Agreement (PA) does not satisfactorily cover IPs.⁶² Gunn also specifically comments that the 2015 Canadian INDC is not satisfactory in protecting IPs.⁶³ However, this section will examine a substantially larger sample of NDCs than just Canada.

In 2018, the CMA prepared a model to be followed and used by parties for their NDCs 'to facilitate clarity, transparency and understanding' as requested in Annex I Decision 4/CMA.1.⁶⁴ There are seven main points in the 'information',⁶⁵ and one of the items related to IPs is under point 4, entitled 'Planning Processes'.⁶⁶ Parties to the PA need to explain the '[p]lanning processes that the Party undertook to prepare its nationally determined contribution and, if available, on the Party's implementation plans [...]' which contain inter alia: '[d]omestic institutional arrangements, public participation and engagement with local communities and indigenous peoples, in a gender-responsive manner' (the form/engagement form).⁶⁷

This form asks parties to explain how far the 'engagement' of IPs is included in the process of creating their NDCs, as well as their plans for implementing NDCs taking into account the aspect of engagement in a 'gender-responsive manner'.⁶⁸ This form is a formal structural insertion of IPs' 'engagement' in NDCs. Nonetheless, as commentators have pointed out, the process of filling out the form has a drawback in that it only works if the information asked is 'available' and 'appropriate'.⁶⁹ This implies that Parties to the PA only need to insert the form in their NDCs and offer explanations of their actions or

61 Duckyk, *ibid.*, 213–216.

62 Gunn (n 27) 9, 11, and 25.

63 *Ibid.*, 11–12 and 22.

64 CMA (PA), Decision 4/CMA.1 (n 41), Annex I; and COP (UNFCCC), 'Decision 1/CP.21, Adoption of the Paris Agreement' FCCC/CP/2015/10/Add.1 (29 January 2016) para 28.

65 Decision 4/CMA.1, *ibid.*, Annex I.

66 *Ibid.*, Annex I, para 4.

67 *Ibid.*, Annex I, para 4 a (i).

68 *Ibid.*

69 Rajamani (n 5) 195–196; and M Doelle, 'The Heart of the Paris Rulebook: Communicating NDCs and Accounting for Their Implementation' (2019) 9 *Climate L* 3–20, 11.

action plans 'if available' and 'as appropriate'.⁷⁰ In a more general setting, the 'information' entered by Parties to the PA in Annex I Decision 4/CMA.1 is only filled out if it is 'applicable'.⁷¹

In the context of the UNFCCC Secretariat's report on NDCs, the engagement form is relevant and can be connected with sub-sections concerning '1. Domestic Institutional Arrangements', '2. Gender', and '3. Indigenous Peoples and Local Communities' under the section 'F. Planning and Implementation Processes'.⁷² Nonetheless, in the UNFCCC Secretariat's report there is no explanation of IPs in the 'Gender' sub-section, although there is evidence of explanations by Parties to the PA in relation to the topic of gender and IPs, as explored in this section.⁷³

There are many rights in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷⁴ that can be connected to IPs' engagement and gender context.⁷⁵ In terms of the 'engagement' aspect, Article 18 of the UNDRIP is a good starting point: '[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights [...]'.⁷⁶ Other articles, inter alia, are related to receiving the Free, Prior, and Informed Consent (FPIC) of land,⁷⁷ property,⁷⁸ legislative and administrative.⁷⁹ In the context of gender, there are also articles in the UNDRIP that specifically underline the protection of indigenous women with disabilities,⁸⁰ against discrimination and violence to indigenous women,⁸¹ and how the rights under the UNDRIP 'are equally guaranteed to male and female indigenous individuals'.⁸²

70 Ibid.

71 Rajamani, *ibid.*, 194–195; Duyck (n 5) 213; L Rajamani and D Bodansky, 'The Paris Rulebook: Balancing International Prescriptiveness with National Discretion' (2019) 68 *Int'l & Comp LQ* 1023, 1030; Doelle (n 69) 11; and C Verkuyl and HV Asselt, 'Paris Rules?' (2019) *Env'tl Policy & L* 49/1, 12. See also: Decision 4/CMA.1, (n 41) paras 7 and 10.

72 UNFCCC Secretariat, 'Nationally Determined Contributions under the Paris Agreement Revised Synthesis Report by the Secretariat' (n 31) 20–22.

73 See: *ibid.* 21–22.

74 For further discussion of the rights of IPs in the UNDRIP and REDD-Plus, see: Abidin (n 26) 59–72.

75 See in general: UNGA, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), A/RES/61/295 (2 October 2007).

76 *Ibid.*, Annex, art 18.

77 *Ibid.*, Annex, art 10, art 28 para 1, art 29 para 2, and art 32 para 2.

78 *Ibid.*, Annex, art 11 para 2.

79 *Ibid.*, Annex, art 19. See also: Abidin (n 26) 62–72.

80 UNDRIP, *ibid.*, Annex, art 21 para 2 and art 22 para 1.

81 *Ibid.*, Annex, art 22 para 2.

82 *Ibid.*, Annex, art 44.

There are five ways in which a party to the PA might react to the IPs' engagement form. It should be recalled that this categorisation focuses on the latest versions of the NDCs produced by the parties to the PA, published after Decision 4/CMA.1 agreed in mid-December 2018.⁸³ This article focuses on explaining how parties to the PA respond to IPs in their engagement forms, but their responses to IPs outside the form will also be discussed. The UNDRIP will be the benchmark for assessing how far IPs are protected by a party to the PA in its NDC. Due to the interconnected nature of the UNDRIP articles,⁸⁴ their connection with NDC contents as described in this research is not exhaustive and the author's intention is merely to give some examples.

The selection of words is an important component in demonstrating the stage of seriousness with which a party to the PA approaches the treatment of IPs.⁸⁵ According to Bodansky, the word 'shall' is stronger than 'should', 'encourage', 'may', 'will', 'acknowledge', or 'recognize'.⁸⁶ Mayer also emphasised the force of the word 'shall', which carries an 'obligation' over 'should'.⁸⁷ In Rajamani's perspective, 'require' is equivalent to 'shall', and 'recommend' is similar to 'should'.⁸⁸ In other words, the word 'require' is also stronger than 'recommend'.⁸⁹ Rajamani and Boyle note that the words 'respect, promote and consider' in the HRS' preamble in the PA are considered weak, and are not as strong as words like 'protect' or 'fulfil'.⁹⁰ Lawrence and Wong explain the binding force of 'must' and 'shall' – although we need to look at the context to determine how strong the binding power is – and regard 'will' and 'should' as non-binding.⁹¹ The author purposefully quotes several parts in full in the explanation of the NDCs below to show the exact words chosen by the relevant parties to the PA.

The rights in the UNDRIP take the form of 'minimum standards',⁹² which means that each party to the PA is able to improve them to increase the rights

83 CMA (PA), Decision 4/CMA.1 (n 41).

84 Abidin (n 26) 61.

85 Bodansky, 'The Legal Character of the Paris Agreement' (n 8) 145 and; Bodansky, 'The Paris Climate Change Agreement: A New Hope' (n 8) 297. See also, in the context of COP, IPs, and REDD-Plus: Abidin (n 26) 50.

86 Bodansky, 'The Paris Climate Change Agreement: A New Hope', *ibid*, 294 and 297; and Bodansky, 'The Legal Character of the Paris Agreement', *ibid*, 145.

87 Mayer (n 8) 258.

88 Rajamani (n 5) 198.

89 *Ibid*.

90 *Ibid* 192; and Boyle (n 18) 769–770.

91 P Lawrence and D Wong, 'Soft law in the Paris Climate Agreement: Strength or weakness' (2017) 26 *Rev Eur Comp & Int'l Env'tl L* 276, 280.

92 UNDRIP (n 75) Annex, art 43.

of IPs in their own states. The length of the NDCs varies because there is no exact rule about how long or short an NDC should be.⁹³ Likewise, the length of the explanation related to IPs is also not specifically regulated, either in or outside the engagement form.

The first category of response is where a party puts the IPs' engagement form and provides an explanation concerning IPs in the pertinent place in its NDC. Several examples of NDCs by parties to the PA belong to this category; the first to be examined is the NDC of Canada.⁹⁴ Along with the European Union and Norway, Canada supports the engagement form.⁹⁵ Compared to other countries, the NDC of Canada has a longer explanation of IPs.⁹⁶ It can be said that Canada is more accommodating to IPs in its NDC than other parties.⁹⁷ There are a number of explanations and even a dedicated annex related to IPs in the Canadian NDC.⁹⁸ Nonetheless, as stated above, there have also been criticisms of Canada's INDC.⁹⁹ The NDC that will be discussed below is the latest version of the NDC of Canada (issued in 2021).¹⁰⁰

There are two main points in Canada's explanation of IPs on its engagement form. First, any proposal to revise Canada's emission targets requires the protection of IPs right to express their opinions as mandated by the Net-Zero Emissions Accountability Act.¹⁰¹ Second, Canada provides IPs with a strategic position by establishing 'senior bilateral tables'.¹⁰² The goal of these tables is to strengthen the involvement of 'indigenous climate leadership' in working together with Canada in the spirit of 'recognition of rights, respect, co-operation, and partnership'.¹⁰³

Explanations on IPs outside the engagement form may also be identified in the Canadian NDC.¹⁰⁴ This article does not examine all the statements made by Canada in its NDC. Rather the author only examines the statements that

93 Mayer (n 8) 255–256; C Streck, MV Unger, and S Greiner, 'COP 25: Losing Sight of (Raising) Ambition' (2020) *J Eur Envtl & Planning L* 17, 150; Maljean-Dubois (n 8) 74–75; Duyck et al (n 5) 195–196; and MA Mehling, GE Metcalf, and RN Stavins, 'Linking Heterogeneous Climate Policies (Consistent with the Paris Agreement)' (2018) 48 *Envtl L* 647, 672.

94 See in general: Canada, 'Canada's 2021 Nationally Determined Contribution Under the Paris Agreement' (First NDC, Updated Version 2021).

95 Duyck (n 5) 213–214.

96 Canada (n 94) 1–2, 4–7, 10–11, 14–18, 21–23, 27, 30, and 39–42.

97 Ibid.

98 Ibid.

99 Gunn (n 27) 11–12, and 22.

100 Canada (n 94).

101 Ibid 14–15. See: UNDRIP (n 75) Annex, eg: preamble para 10 and art 18.

102 Ibid 16. See, eg: *ibid*, UNDRIP.

103 Canada, *ibid*.

104 See in general: *ibid*, 1–2, 4–7, 10–11, 14–18, 21–23, 27, 30, and 39–42.

most strongly support the UNDRIP. Other examples of statements regarding IPs are considered briefly to provide a wider overview of the rights of IPs in the Canadian NDC. This also applies to the NDCs of other parties to the PA, and in particular to the NDCs of states that devote more portion of their NDCs to issues related to IPs.

The IPs of Canada are explained in the Canadian NDC from the national viewpoint, the provinces' position, and the IPs' standpoint.¹⁰⁵ Canada makes three references to the UNDRIP in its NDC. The use of the phrase 'without qualification and committed to its full and effective implementation' to back the UNDRIP can be qualified as a strong statement.¹⁰⁶ The other two references to the UNDRIP also contain strong elements namely 'support[...] without qualification'¹⁰⁷ and 'support for the full and effective implementation'¹⁰⁸ of the UNDRIP. The position of the UNDRIP in Canada is also described in its NDC, for which parliament has authorised a law to execute the UNDRIP's implementation.¹⁰⁹ Canada uses an interesting phrase, 'supporting self-determined climate action', to improve the participation of IPs.¹¹⁰ Another important aspect of the Canadian NDC is when Canada explicitly acknowledges the rights of IPs in the HRS' preamble of the PA.¹¹¹ Statements like this strengthen the influence of the content on the rights of IPs in the PA.

The Canadian government provides many instances of support for its IPs, including employment opportunities in the climate transition,¹¹² clean energy,¹¹³ conservation funding,¹¹⁴ and carbon prices that consider the condition of IPs.¹¹⁵ Canada has also pointed out its focus on underlining the significance of indigenous women and gender perspectives when dealing with IPs.¹¹⁶ At the provincial level, Alberta has been in communication with IPs to

105 See in general: *ibid.*

106 *Ibid.*, 18.

107 *Ibid.*, 7.

108 *Ibid.*, 17.

109 *Ibid.*, 18.

110 *Ibid.*, 7. See: UNDRIP (n 75) Annex, eg: arts 3–4, 23, and 35. For discussion of self-determination and CC, see in general: A Maguire and J McGee, 'A Universal Human Right to Shape Responses to a Global Problem: The Role of Self-Determination in Guiding the International Legal Response to Climate Change' (2017) 26 *Rev Eur Comp & Int'l Envtl L* 54.

111 Canada, *ibid.*, 7.

112 *Ibid.*, 9–10.

113 *Ibid.*, 4.

114 *Ibid.*, 6.

115 *Ibid.* 5. See: UNDRIP (n 75) Annex, eg: arts 18, 23, and 39.

116 Canada, *ibid.*, 7, 10 and 22–23. See: *ibid.*, Annex, eg: art 21 para 2, art 22, and art 44.

provide support for actions related to CC.¹¹⁷ As can be seen in the dedicated annexes on IPs in the NDC, IPs in Canada have actively engaged in Canada's climate action.¹¹⁸ In these annexes, the Canadian First Nations, Inuit, and Métis have expressed their pledges and activities toward CC.¹¹⁹ For example, the First Nations have published statements on climate action called 'Yeendoo Diinehdoo Ji' heezrit Nits'oo Ts' o' Nan He' aa',¹²⁰ the Inuit have produced the 'National Inuit Climate Change Strategy',¹²¹ while the Métis have expressed their preferences in the climate agenda.¹²²

New Zealand notes in its engagement form that it has a treaty with the Māori called the Treaty of Waitangi.¹²³ The structure of the New Zealand government provides the Māori with ministers whose primary responsibility is the interests of the Māori.¹²⁴ The Climate Change Response Act (CCRA) of New Zealand 'requires' to take into consideration the consequences that emissions programmes will have on the Māori, and stipulates that the Māori must be 'adequately consulted' about the plan.¹²⁵ New Zealand also mentions several policies that have been implemented that can be linked to CC, including the 'Māori-Crown Engagement Framework and Partnership Guidelines' which is designed to provide 'full involvement' for the Māori in every step of CC activity, and the country is continuing to explore the formulation of a variety of initiatives relating to the reduction of emissions.¹²⁶ Outside the form, New Zealand also states its commitment to 'recognis[ing] and protect[ing] the rights and interests of indigenous peoples' by linking them to the implementation of the PA.¹²⁷ The Climate Change Commission of New Zealand has also provided a recommendation in relation to the NDC that if there is any revision, the Iwi/Māori needs to be involved.¹²⁸

Nepal explains in its engagement form that the IPs' participation in the NDC took place when they 'verified' the data in the NDC prepared by experts.¹²⁹

117 Canada, *ibid*, 27. See: UNDRIP, *ibid*, Annex, eg: art 18.

118 Canada, *ibid*, 39–42 (Annex 3: Indigenous Climate Action), see also: 1 and 7. See: UNDRIP, *ibid*.

119 Canada, *ibid*, 39–42.

120 *Ibid*, 39.

121 *Ibid*, 41.

122 *Ibid*, 42.

123 New Zealand, 'Submission under the Paris Agreement New Zealand's first Nationally Determined Contribution' (First NDC, Updated Version 2021) 8–9.

124 *Ibid*, 8.

125 *Ibid*, 9. See: UNDRIP (n 75) Annex, eg: art 18.

126 *Ibid*.

127 New Zealand, *ibid*, 11.

128 *Ibid*, 5–6. See: UNDRIP (n 75) Annex, eg: art 18.

129 Nepal, 'Second Nationally Determined Contribution (NDC)' (Second NDC, 2020) 10. See: UNDRIP (n 75).

Outside the form, explanation relating to IPs extends to the context of mitigation¹³⁰ (forestry,¹³¹ agriculture,¹³² social inclusion¹³³), adaptation,¹³⁴ and implementation.¹³⁵ In the context of forestry, Nepal is committed to implementing FPIC and will also provide financial support for its implementation.¹³⁶ In a broader sense, but still within the context of forestry, Nepal is also dedicated to providing financial assistance to IPs.¹³⁷ In terms of its gender-based strategy, Nepal announces that it will give more attention to Nepalese IPs.¹³⁸

Belize states in its engagement form that IPs have ‘validated’ the updated NDC.¹³⁹ Outside the form, IPs are supported in the country’s action plans related to lands and coastal lands that are managed by Belizean IPs,¹⁴⁰ tourism and adaptation,¹⁴¹ infrastructure related to flooding and sea-level rise,¹⁴² and enhancing fisheries-related capacity.¹⁴³ Belize also includes IPs in its climate finance strategy.¹⁴⁴

A short but important statement is included in Iceland’s form, where that country states that it ‘support[s]’ the UNDRIP.¹⁴⁵ In relation to initiatives that may have an effect on the Sami, Norway states that it has ‘procedures for consultation’.¹⁴⁶ Brazil explains how it ‘guarantees’ the rights of IPs based on the Brazilian constitution,¹⁴⁷ and invokes the Convention concerning Indigenous

¹³⁰ Nepal, *ibid*, 1–3, 5–6, and 8.

¹³¹ *Ibid*, 5.

¹³² *Ibid*, 6.

¹³³ *Ibid*, 8.

¹³⁴ *Ibid*, 16 and 18.

¹³⁵ *Ibid*, 19–21. See: UNDRIP (n 75) Annex, eg: arts 18, 23, and 39.

¹³⁶ Nepal, *ibid*, 5. See: *ibid*, Annex, eg: art 10, art 11 para 2, art 19, art 28 para 1, art 29 para 2, art 32 para 2, and art 39.

¹³⁷ Nepal, *ibid*. See: UNDRIP, *ibid*, Annex, eg: art 39.

¹³⁸ Nepal, *ibid*, 18. See: UNDRIP, *ibid*, Annex, eg: arts 22 and 44.

¹³⁹ Belize, ‘Belize’s Updated Nationally Determined Contribution’ (First NDC, Updated Version 2021) 37–38 (the form regarding ‘engagement’ is merged with ‘contextual matters’) 12, see also: 1. See UNDRIP, *ibid*, Annex, eg: art 18.

¹⁴⁰ Belize, *ibid*, 14–15 and 17.

¹⁴¹ *Ibid*, 28.

¹⁴² *Ibid*, 30.

¹⁴³ *Ibid*, 27. See UNDRIP (n 75) Annex, art 39.

¹⁴⁴ Belize (n 139) 33–34. See: UNDRIP, *ibid*.

¹⁴⁵ Iceland (Ministry of the Environment and Natural Resources, Government of Iceland), ‘Update of the Nationally Determined Contribution of Iceland’ (First NDC, Updated Version 2021) 5–6.

¹⁴⁶ Norway, ‘Update of Norway’s Nationally Determined Contribution’ (First NDC, Updated Version 2020) 7–8. See: UNDRIP (n 75) Annex, eg: art 18.

¹⁴⁷ Brazil, ‘Nationally Determined Contribution (NDC)’ (First NDC, Updated Version 2022) 4.

and Tribal Peoples in Independent Countries (ILO 169) as an international IPs' rights instrument which Brazil is a Party to.¹⁴⁸

The second category of response is similar to the first category in that a party to the PA includes an IPs' engagement form in its NDC, but the difference is that the party does not provide any direct or explicit explanation related to IPs in the form. Nonetheless, the parties in this category state their support for IPs outside of the IPs' engagement form. The European Union states its 'support' for the UNDRIP,¹⁴⁹ while Australia notes that it uses indigenous knowledge to tackle CC.¹⁵⁰ In the CC adaptation, Liberia also refers to the concept of indigenous knowledge.¹⁵¹ The Gambia states that it conducts 'consultations' with IPs in its Strategic Program for Climate Resilience.¹⁵² South Africa underlines the importance of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform (FWG LCIPP) to support its NDC.¹⁵³ South Africa also mentions the need for IPs to have a connection to climate finance, and notes that it 'will seek to raise further awareness'.¹⁵⁴ Regarding the issue of drought, Jordan recognises the usefulness of indigenous knowledge.¹⁵⁵ The United States provides an explanation of the percentage of land (3 percent) in the United States that is managed by the Bureau of Indian Affairs for Native Americans in the form of a trust.¹⁵⁶

The third category of response includes parties to the PA that do not provide an IPs' engagement form, but support IPs in other places in their NDC.

148 Ibid.

149 European Union (Submission by Germany and the European Commission on Behalf of the European Union and Its Member States), 'Update of the NDC of the European Union and its Member States' (First NDC, Updated Version 2020) 12, see also: 10.

150 Australia (Australian Government, Department of Industry, Science, Energy and Resources) 'Australia's Nationally Determined Contribution Communication 2022' (NDC, Updated Version 2022) 5, see also: 12. See: UNDRIP (n 75) Annex, eg: preamble para 11.

151 Liberia (Environment Protection Agency), 'Liberia's Revised Nationally Determined Contribution (NDC)' (First NDC, Updated Version 2021) 31 and 38, see also: 20. See: UNDRIP, *ibid*.

152 Gambia (Climate Change Secretariat Ministry of Environment), 'Second Nationally Determined Contribution of The Gambia' (Second NDC, 2021) 23, see also: 6. See: UNDRIP, *ibid*, Annex, eg: art 18.

153 South Africa, 'South Africa First Nationally Determined Contribution under the Paris Agreement' (First NDC, Updated Version 2021) 28, see also: 19–20.

154 *Ibid* 29. See: UNDRIP (n 75) Annex, eg: art 39.

155 Jordan (Ministry of Environment), 'Updated Submission of Jordan's 1st Nationally Determined Contribution (NDC)' (First NDC, Updated Version 2021) 39, see also: 64–65.

156 United States, 'The United States of America Nationally Determined Contribution, Reducing Greenhouse Gases in the United States: A 2030 Emissions Target' (First NDC, 2021) 12, see also: 9–11.

Cambodia, through its constitution, 'recognises' IPs.¹⁵⁷ A number of laws in Cambodia accommodate IPs.¹⁵⁸ Cambodia states its intention 'to promote the rights of indigenous people' in terms of executing its NDC in relation to IPs' lands.¹⁵⁹ Cambodia expresses its 'respect' for IPs' traditional knowledge in connection with their rights.¹⁶⁰ Furthermore, IPs in Cambodia are 'engaged' throughout the development of the Cambodian NDC, and the gender of the IPs is also taken into account.¹⁶¹

Indonesia refers to the HRS' paragraph in the preamble of the PA, and states that it 'respects, promotes and considers its obligation on [...] the rights of adat communities'.¹⁶² The Indonesian NDC also highlights its support for adat communities in the context of conservation¹⁶³, social forestry¹⁶⁴, and reducing deforestation and forest degradation.¹⁶⁵ Myanmar includes IPs in its CC strategy in the context of the institutional strategy for its NDC.¹⁶⁶ Myanmar explains the implementation of 'inclusive engagement' with IPs in the context of forestry.¹⁶⁷ Myanmar states its 'support' for IPs 'as stewards of biodiversity, critical ecosystems and species'.¹⁶⁸ Myanmar shows its willingness 'to engage with [...] indigenous/ethnic groups' in climate adaptation activities with support from international parties.¹⁶⁹ In the context of indigenous knowledge,

- 6
- 157 Cambodia (General Secretariat of the National Council for Sustainable Development/Ministry of Environment), 'Cambodia's Updated Nationally Determined Contribution (NDC)' (First NDC, Updated Version 2020) 6 and 40. For a more detailed discussion of IPs in Cambodia, see in general: H Bunhieng, 'Cambodia' in AIPP and FPP (Authors: B Hien et al) (n 28) 7–24.
- 158 Ibid, 40.
- 159 Ibid, 6 and 40. See also: UNDRIP (n 75) Annex, eg: preamble paras 7 and 10; and art 8 para 2 (b), art 10, arts 25–28, art 29 paras 1–2, art 30, and art 32 paras 1–2.
- 160 Ibid, 40. See also: UNDRIP, (n 75) Annex, eg: preamble para 11 and art 31.
- 161 Ibid, 7, 47, and 113–114. See also: UNDRIP, (n 75) Annex, eg: arts 39, 22, and 44.
- 162 Indonesia, 'Updated Nationally Determined Contribution Republic of Indonesia' (First NDC, Updated Version 2021) 2. Compare with: PA (n 2) preamble para 11. For a more detailed discussion of IPs or adat communities in Indonesia, see in general: GB Indrarto and U Zunga, 'Indonesia' in AIPP and FPP (JA Guillao et al) (n 27) 59–80.
- 163 Indonesia, *ibid*, 31–32.
- 164 Ibid, 2 and 31.
- 165 Ibid, 28. For a more detailed discussion, see in general: Indrarto and Zunga, 'Indonesia' in AIPP and FPP (JA Guillao et al) (n 27) 59–80; See also UNDRIP (n 75) Annex, eg: arts 18, 23, and 39.
- 166 Myanmar, 'Nationally Determined Contributions' (First NDC, Updated Version 2021) 51. See: UNDRIP (n 75). For a more detailed discussion of IPs in Cambodia, see in general: NEE Min, 'Myanmar' in AIPP and FPP (Authors: B Hien et al) (n 28) 25–50.
- 167 Myanmar, *ibid*, 51; UNDRIP (n 75).
- 168 Myanmar, *ibid*, 55, see also: iii. See: UNDRIP, (n 75) art 39.
- 169 Ibid, Myanmar, 36, 38, and 41. See: UNDRIP (n 75) Annex, eg: arts 18, 23, and 39.

Myanmar intends to disseminate the knowledge of IPs in Myanmar to the LCIPP.¹⁷⁰ The Philippines ‘promot[es]’ the rights of IPs in connection with its NDC¹⁷¹ and acknowledges ‘the importance of meaningful participation of [...] indigenous peoples’ in its NDC.¹⁷² Papua New Guinea acknowledges that its IPs ‘customarily owned’ the majority of the country’s land area.¹⁷³

Guyana acknowledges the position and significance of IPs in protecting forests¹⁷⁴ and states its ‘respect’ for the rights of Guyanese IPs both internationally and domestically.¹⁷⁵ In the context of REDD-Plus, Guyana has also implemented a ‘full application of the FPIC process’ for IPs.¹⁷⁶ During the creation of Guyana’s NDC, IPs were involved through a ‘broadly consultative process’.¹⁷⁷ Suriname recognises its IPs,¹⁷⁸ acknowledges their role in protecting forests,¹⁷⁹ and allows the sustainable use activities of IPs.¹⁸⁰ In its strategy related to REDD-Plus, Suriname underlines the need for IPs to be paid due to their protection of forests.¹⁸¹

The fourth category is where a party has included the engagement form but there is no explicit explanation related to IPs in the form or in other places within the NDC. There are many states in this fourth category – for example (in alphabetical order): Albania,¹⁸² Antigua and Barbuda,¹⁸³ Bangladesh,¹⁸⁴

170 Ibid, Myanmar, 57.

171 The Philippines, ‘Nationally Determined Contribution Communicated to the UNFCCC on 15 April 2021’ (First NDC, 2021) 2. For a more detailed analysis, see in general: JA Guillao, ‘The Philippines’ in AIPP and FPP (JA Guillao et al) (n 27) 31–57.

172 The Philippines, *ibid*, 1; and Guillao et al, *ibid*. See also: UNDRIP (n 75) Annex, eg: art 18.

173 Papua New Guinea (Climate Change and Development Authority), ‘Papua New Guinea’s Enhanced Nationally Determined Contribution 2020’ (Second NDC 2020) 1. See also: UNDRIP, *ibid*, Annex, eg: preamble paras 7 and 10; art 8 para 2 (b), art 10, arts 25–28, art 29 paras 1–2, art 30, and art 32 paras 1–2.

174 Guyana, ‘Guyana’s Revised Intended Nationally Determined Contribution’ (Guyana First NDC, 2016) 2 and 7.

175 *Ibid*, 4.

176 *Ibid*, 7. See also: UNDRIP (n 75) Annex, eg: art 10, art 11 para 2, art 19, art 28 para 1, art 29 para 2, and art 32 para 2.

177 Guyana, *ibid*, 4. See also: UNDRIP, (n 75) Annex, eg: art 18.

178 Suriname (Cabinet of the President of the Republic of Suriname, Coordination Environment), ‘Nationally Determined Contribution 2020’ (Second NDC, 2019) 5.

179 Suriname, *ibid*, 11.

180 Suriname, *ibid*, 16. See: UNDRIP (n 75) Annex, eg: art 23.

181 Suriname, *ibid*, 13. See also: UNDRIP, *ibid*.

182 Albania, ‘Albania Revised NDC’ (First NDC, Updated Version 2021) 82.

183 Antigua and Barbuda, ‘Updated Nationally Determined Contribution’ (First NDC, Updated Version 2021) 38–39.

184 Bangladesh (Ministry Environment, Forest and Climate Change), ‘Nationally Determined Contribution (NDCs) 2021 Bangladesh (Updated)’ (First NDC, Updated Version 2021) 27–28.

Barbados,¹⁸⁵ Bhutan,¹⁸⁶ Brunei Darussalam,¹⁸⁷ Ghana,¹⁸⁸ Guinea-Bissau,¹⁸⁹ Israel,¹⁹⁰ Jamaica,¹⁹¹ Japan,¹⁹² Lebanon,¹⁹³ Malaysia,¹⁹⁴ Maldives,¹⁹⁵ Mauritius,¹⁹⁶ Montenegro,¹⁹⁷ Mozambique,¹⁹⁸ North Macedonia,¹⁹⁹ Samoa,²⁰⁰ Sao Tome and Principe,²⁰¹ Saint Kitts and Nevis,²⁰² Switzerland,²⁰³ the

- 185 Barbados, 'Barbados 2021 Update of the First Nationally Determined Contribution' (First NDC, Updated Version 2021) 21.
- 186 Bhutan, 'Second Nationally Determined Contribution' (Second NDC, 2021) 19.
- 187 Brunei Darussalam, 'Nationally Determined Contribution (NDC) 2020' (First NDC, 2020) 3.
- 188 Ghana, 'Updated Nationally Determined Contribution under the Paris Agreement (2020–2030)' (First NDC, Updated Version 2021) 16.
- 189 Guinea-Bissau, 'Updated Nationally Determined Contribution in the Framework of the Paris Climate Agreement' (First NDC, Updated Version 2021) 23.
- 190 Israel, 'Update of Israel's Nationally Determined Contribution under the Paris Agreement' (First NDC, Updated Version 2021) 10–11.
- 191 Jamaica, 'Update of Nationally Determined Contribution (NDC) of Jamaica to the United Nations Framework Convention Climate Change (UNFCCC)' (First NDC, Updated Version 2020) 5.
- 192 Japan, 'Japan's Nationally Determined Contribution (NDC)' (First NDC, Updated Version 2021) 4–5.
- 193 Lebanon, 'Lebanon's Nationally Determined Contribution Updated 2020 Version' (First NDC, Updated Version 2021) 17.
- 194 Malaysia, 'Malaysia's Update of Its First Nationally Determined Contribution' (First NDC, Updated Version 2021) 3.
- 195 Maldives (Ministry of Environment), 'Update of Nationally Determined Contribution of Maldives' (First NDC, Updated Version 2020) 5.
- 196 Mauritius, 'Update of the Nationally Determined Contribution of the Republic of Mauritius' (First NDC, Updated Version 2021) 9–10, see also: 30–31.
- 197 Montenegro, 'Updated NDC for Montenegro' (First NDC, Updated Version 2021) 7–8.
- 198 Mozambique (Ministry of Land and Environment), 'Update of the First Nationally Determined Contribution to the United Nations Framework Convention on Climate Change Mozambique Period: 2020–2025' (First NDC, Updated Version 2021) 54–57.
- 199 North Macedonia (Ministry of Environment and Physical Planning), 'Enhanced Nationally Determined Contribution' (First NDC, Updated Version 2021) 10–11, see also: 9.
- 200 Samoa, 'Samoa's Second Nationally Determined Contribution' (Second NDC, 2021) 18.
- 201 São Tomé and Príncipe, 'São Tomé e Príncipe, Nationally Determined Contributions (NDC-STP) Updated' (First NDC, Updated Version 2021) 7.
- 202 St. Kitts and Nevis, 'St. Kitts and Nevis, Updated Nationally Determined Contribution: Communicated to the UNFCCC October 2021' (First NDC, Updated Version 2021) 22–23.
- 203 Switzerland, 'Switzerland's Information Necessary for Clarity, Transparency and Understanding in Accordance with Decision 1/CP.21 of its Updated and Enhanced Nationally Determined Contribution (NDC) under the Paris Agreement (2021–2030)' (First NDC, Updated Version 2021) 5–6.

Republic of Korea,²⁰⁴ the United Kingdom,²⁰⁵ Tonga,²⁰⁶ Uganda,²⁰⁷ Ukraine,²⁰⁸ Vanuatu,²⁰⁹ and Zambia.²¹⁰

The fifth category is where a party has not included the IPs' engagement form at all, and does not explain IPs in its NDC.²¹¹ It should be noted that if a party is in the fourth or fifth category, this does not mean that it is not protecting IPs.²¹² However, it can be argued that any party that fails to insert an explicit explanation of IPs in its NDC is not considering IPs as a main priority in the context of CC.

Ideally, each party to the PA must include an engagement form in its NDC not only based on whether the information is 'available'.²¹³ In this form, parties to the PA need to describe their connection with IPs. Parties must not leave the form regarding IPs blank, or provide insufficient information. Explanations outside the form are also needed for concerns that are not engagement-related, since the engagement form is only a specific tool that a party to the PA can use.

Reiterating support for HRS in accordance with the preamble of the PA as well as expressing endorsement for the UNDRIP in NDCs are positive steps. However, this is still insufficient, since explicit discussions are needed to detail the plans and actions for IPs taken by a party to the PA in accordance with the UNDRIP. It is also possible to provide a longer and more in-depth explanation in a separate document that is not included directly in the NDC itself but is acknowledged as a part of the NDC.

- 4
- 204 Republic of Korea, 'Submission under the Paris Agreement the Republic of Korea's Enhanced Update of its First Nationally Determined Contribution' (First NDC, Updated Version 2021) 11–16.
- 205 United Kingdom of Great Britain and Northern Ireland, 'United Kingdom of Great Britain and Northern Ireland's Nationally Determined Contribution' (First NDC, Updated Version 2020) 6–12.
- 206 Tonga, 'Tonga's Second Nationally Determined Contribution' (Second NDC) Annex, 18–19.
- 207 Uganda (Ministry of Water and Environment), 'Submission of Uganda's Interim Nationally Determined Contribution (NDC)' (First NDC, Updated and Interim Version 2021) 7–8.
- 208 Ukraine, 'Updated Nationally Determined Contribution of Ukraine to the Paris Agreement' (First NDC, Updated Version 2021) 5–6.
- 209 Vanuatu, 'Vanuatu's First Nationally Determined Contribution (NDC) (Updated Submission 2020)' (First NDC, Updated Version 2021) 10–12.
- 210 Zambia, 'Republic of Zambia' (First NDC, Updated Version 2021) 8; and UNFCCC, 'NDC Registry' (n 14).
- 211 See UNFCCC, *ibid.*
- 212 For example, Malaysia (the fourth category), see in general: D Venugopal and T Lim, 'Malaysia' in AIPP and FPP (JA Guillao et al) (n 27) 7–29; and Malaysia (n 194) 3.
- 213 See also n 69–71 above.

In the future, the LCIPP and the FWG LCIPP could also improve the standards in NDCs that must be adhered to by parties to the PA.²¹⁴ These standards shall be relevant to the context of the engagement form or go beyond the form. The UNFCCC Secretariat could also improve its NDC report by giving more detail about how each party to the PA treats IPs. Thus, the parties to the PA can use the data to make progress. Parties to the PA can learn from and monitor each other regarding the treatment of IPs in their NDCs.²¹⁵ International bodies and entities related to HRS and IPs can also use NDCs to monitor the commitments of parties to the PA in relation to UNDRIP.²¹⁶ The relevant parties, including the IPs themselves in their respective states, can monitor what their states assert in their NDCs and ensure that it is accurate.²¹⁷ Many commentators have noted that an NDC is legally binding from a procedural standpoint, but not in terms of executing its contents.²¹⁸ Nonetheless, according to Mayer the content of an NDC may have legal consequences for a state from a 'unilateral declaration' perspective.²¹⁹ Furthermore, in practice, the substance of INDCs and NDCs has been the issue of climate-related litigation in national courts.²²⁰

4 Conclusion

Explanations of the rights of IPs have been developing in NDCs, with various parties to the PA including explanations regarding the position of IPs in their NDCs. There are certain states that explain the condition of IPs on the engagement form as well as outside of it, although these descriptions have a variety of levels of importance. However, other States have not addressed IPs

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214 COP (UNFCCC), 'Decision 2/CP.23, Local Communities and Indigenous Peoples Platform' FCCC/CP/2017/1.1/Add.1 (8 February 2018) para 6.

215 For a more general context related to fulfilling the goals of NDCs, see n 17.

216 Ibid. For HRS context, see: Human Rights Council, Knox, A/HRC/31/52 (n 1) para 89; Savaresi (n 5) 25; Savaresi and Hartmann (n 18), and Boyle (n 18) 774–777.

217 See also n 18 for a more general context.

218 Eg: Bodansky, 'The Paris Climate Change Agreement: A New Hope' (n 8) 304; Bodle, Donat, and Duwe (n 47) 7 and 13; C Streck, 'Ambition Trap or Accelerator: Cooperative Approaches under the Paris Agreement' (2017) 13 *SCJ Int'l L & Bus* 277, 280; Lawrence and Wong, (n 91) 279–281; Rajamani and Brunnée (n 8) 537, 539, 541–542, and 549; Duyck et al (n 5) 195; Mayer (n 8) 259; Mehling, Metcalf, and Stavins (n 93) 672; Rajamani (n 5) 197 and; PA (n 2) art 4 paras 2, 8–9, and 12–13.

219 Mayer, *ibid*, 262–275.

220 Bach (n 9) 584–585, see also: 593–595; and D Hunter, W Ji, and J Ruddock, 'The Paris Agreement and Global Climate Litigation after the Trump Withdrawal' (2019) 34 *Md J Int'l L* 224, 229–332. *ibid*.

in their NDCs, or have merely provided engagement forms without explaining the position of IPs. The same minimal standards will be necessary in the future to improve the protection of the IPs' rights across the UNFCCC regime by using an NDC.

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