4

Local rights claims in international negotiations

Transnational human rights networks at the climate conferences

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Introduction

Every year, member states of the United Nations Framework Convention on Climate Change (UNFCCC) negotiate at the Conference of the Parties (COP) to review the convention’s implementation, to adopt legal instruments or to make additional institutional arrangements. During the negotiation process, governments organize themselves in blocs and coalitions in order to combine strengths, increase their influence and push forward their common agendas.1 Civil society organizations (CSOs) can participate in UNFCCC negotiations as accredited observers representing the interests of particular societal groups. To be able to make oral interventions at the negotiations, CSOs need to be recognized as an official constituency by the UNFCCC’s Secretariat. Whereas the UNFCCC has initially been characterized by strong engagement of business stakeholders and environmental organizations, other actors have now entered the scene, among them Indigenous Peoples, faith-based groups, gender advocates and human rights activists often organized in transnational advocacy networks (TANs).2

TANs can be understood as communicative structures in which a range of activists guided by principled ideas and values interact. These ideas, values and norms are central to the networks’ activities and they determine criteria for evaluating whether particular actions and their outcomes are just or unjust. TANs create new linkages, multiply access channels to the international system, make resources available to new actors and help to transform practices of national sovereignty. Within these networks, international and local CSOs, foundations, the media, churches, trade unions, academics and even members of regional or international state organizations as well as single representatives of a state government can collaborate. TANs’ overall objective is to change the policies of states and international organizations (IOs).3

Strong civil society and TAN participation can make state negotiations more complex and difficult – tabling new themes and issues, such as the adverse human rights impacts of climate change and climate politics. Human rights concerns, in particular, give negotiations a more intricate character; they cannot be easily ignored and usually require immediate political action.4 Concerns voiced in relation to human rights at the climate conferences usually take
two directions. On the one hand, climate change impacts hamper the full realization of economic, social and cultural rights, such as the right to health, water, food and adequate housing. In certain cases, like extreme weather events, the right to life can also be affected. On the other hand, climate policy implementation can also infringe on human rights; large-scale mitigation projects like hydroelectric dams, for instance, have previously led to limited access to land, water or cultural sites for local populations. Therefore, civil society actors lobby for governmental commitment to human rights in climate agreements. States, however, have for a considerable period of time refrained from applying a human rights language in climate negotiation processes. Developed states – that are usually financing climate policies – feared even more costly obligations if an observance of certain standards is required. Developing countries emphasized their sovereignty and were afraid that deficiencies in the rights situation on their own territory could become unveiled.

Nevertheless, human rights entered the perambulatory and operative clauses of the climate agreements made at COP 16 in Cancun, Mexico, in 2010 and have again been institutionalized in the preamble of the 2015 Paris Agreement at COP 21 in France. Moreover, in 2010, procedural human rights have been installed as a requirement for forest protection and management programs called Reducing Emissions from Deforestation and Forest Degradation (REDD+). Their introduction for projects under the Clean Development Mechanism (CDM) has been debated at COP 19 in Warsaw in 2013 and at the following negotiations with a view to revising the modalities and procedures of the CDM. Procedural human rights are of particular importance in environmental law. They establish a link between the state and civil society by fostering transparency and participation in environmental decision-making. The most important procedural rights are the right to information, the right to participation in decision-making and the right to justice, the latter usually meaning access to judicial and administrative recourse procedures. All of these rights are anchored in the International Covenant on Civil and Political Rights. Of far more influence in environmental matters, however, is the United Nations Economic Commission for Europe’s (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention from 1998. Although it is only binding for the states that ratified it, the Aarhus Convention has turned out to become the main reference document when it comes to procedural rights in climate change–related matters.

In this chapter, I argue that the activities of TANs explain why and how human rights have entered climate agreements. TANs use local experiences and case studies at the international climate conferences to demonstrate that both climate change and climate policies have adverse implications for the human rights of populations. Simultaneously, they emphasize the need for observing existing rights obligations in all climate-related actions and for strengthening procedural rights in climate policies to protect local societal groups, especially Indigenous Peoples. By interacting very closely with state representatives, international non-state partners within TANs transmit local claims to the states’ negotiation table. They persuade state actors that are receptive to human rights arguments to introduce rights language into the draft texts being negotiated. States, in which rights infringements in climate policy implementation occur and that have an active domestic civil society, can experience pressure from below (through civil society) and from above (through TANs). In this way, pressure exerted by state governments on their local population in the course of policy implementation can come back to them at the international climate conferences – like a boomerang.

To elaborate my argument, I have structured my chapter in the following way. First, I briefly review the literature on civil society participation and the activities of TANs at the international climate conferences. Second, I will present a case study on the activities and influence of the
Human Rights and Climate Change Working Group (HRCCWG). I selected the HRCCWG because it constitutes the only TAN active at the COPs that is exclusively focusing on institutionalizing human rights in the climate regime and that was established for exactly that reason. The HRCCWG was the initiator and coordinator of a broader inter-constituency alliance at COP 21 promoting human rights in the Paris Agreement. My empirical assessment builds on a content analysis of primary documents, including observer submissions, press releases, social media, as well as reports from IOs and CSOs. Additionally, I draw on semi-structured interviews conducted with activists of the HRCCWG at the international climate negotiations in Warsaw (Poland) in 2013 and in Paris (France) in 2015. Third, I will reflect on the relevance of information delivery and the boomerang pattern as the main mechanisms explaining institutional interaction between the human rights and the climate regime, before I conclude.

Transnational human rights advocacy at the international climate conferences

In 1992, the Rio Conference on Environment and Development has marked, among other substantive themes, the strengthening of civil society participation in decision-making processes within the UN system. Civil society participants are understood to bring expertise and credibility to IOs and negotiations within their fora. In open and transparent negotiation processes, states increasingly take up non-state demands. CSO participation is considered to improve the democratic development of IOs and their decisions. Environmental and climate politics can be regarded as unique policy fields facilitating advanced institutional mechanisms for access and participation of civil society actors.

In climate politics, the focus of CSOs in negotiations is on addressing justice concerns or employing a climate justice frame. Climate justice is a fluid framework that is diversely utilized, but it broadly embraces the observation that those people who have contributed the least to climate change are those who are affected the most – and often have the fewest resources to adapt. The climate justice movement is characterized by antagonism between a moderate wing accepting capitalism and lobbying for change within established institutions and a radical wing viewing capitalism as a root cause for climate challenges that needs to be questioned. This results in cooperation and conflict between TANs and states within and outside of the UNFCCC process.

Moderate-wing CSOs seek to shape the development of climate policies by actively engaging in international climate conferences. They can participate in the official UNFCCC process by acting as accredited organizations, which grants them the opportunity to raise awareness for certain issues, lobby with governmental representatives and create networks of influence. Those organizations with strong ties to state delegations have the most advanced access, and in some cases, civil society actors can even become members of national delegations and are “formally granted a ‘seat at the table’”. This increases their opportunities to influence governmental decisions since it provides them with access to closed sessions, official state documents and the possibility to present their own proposals. Governmental delegations are interested in including CSOs because they provide expertise and can enhance the legitimacy of their decisions. CSOs, in contrast, use their close interaction with governments to exert pressure for negotiating, ratifying and complying with international environmental agreements. Hence, relations between IOs and CSOs are changing; state and society are not entirely separate entities anymore, but they are in flux and their specific interaction has to be analytically captured.

There are some particulars about TANs active at the international climate conferences: their networks are hybrid – actors may join for a short period of time and then leave again – and
participating organizations can be quite diverse. Although groups of the global South are usually underrepresented in these networks, local CSOs from developing countries are increasingly funded by foundations and international CSOs as part of TANs to voice the concerns of local people adversely affected by climate change and climate policies at this international venue. TANs often have the expertise and experience needed to strategically use the information provided by local actors for lobbying purposes within the UNFCCC. Thus, TANs help explain how justice and human rights claims are transported from civil society to state negotiators.

This means actors work at various scales; they differ in their degree of institutionalization and in their positioning toward the UNFCCC process (inside/outside). Newer (and still evolving) network structures engage very closely with international institutions and sometimes even invite governmental delegates to participate, in particular if they bring in information from closed (intergovernmental) sessions or if they are open to introduce text passages prepared by CSOs in these sessions.

**Case study: the human rights and climate change working group**

**Network building and initial successes**

One important example of a TAN working closely with governmental delegations is the Human Rights and Climate Change Working Group (HRCCWG). The HRCCWG has been particularly active and successful in their attempt to promote human rights within the climate regime. The idea to launch this group was born in 2008 at COP 14 in Poznan, Poland, and the network became operative during the following COP in 2009 in Copenhagen, Denmark. The HRCCWG can be described as a hybrid network of predominantly civil society and single government representatives (mostly from IOs) operating at various scales – from the local to the global – with the common objective of promoting and institutionalizing human rights in the climate regime. Among the networks’ members are prominent international CSOs, such as the Center for International Environmental Law, Earthjustice, Friends of the Earth, Carbon Market Watch, Human Rights Watch, Amnesty International, but also local CSOs from developing countries, gender advocates, Indigenous Peoples’ representatives, academics, representatives from IOs, like the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF, as well as single actors from state delegations. Membership in the network is rather informal; participants can be present at one negotiation meeting joining the group’s activities there, and then miss the next one. Simultaneously, they can be part of another TAN active at the international climate conferences, including Climate Action Now, the REDD+ Safeguards Working Group or the Indigenous Caucus.

The Human Rights and Climate Change Working Group, among other TANs, was strongly involved in efforts to promote and institutionalize human rights in the climate regime at COP 16 in Cancun (Mexico) and at COP 21 in Paris (France). Members of the HRCCWG consider these negotiation sessions as reflecting incremental progress in the institutionalization of rights in climate governance. The most important successes have been the following. First, in the preambulatory clauses of the Cancun Agreements, the UNFCCC member states recognized a Human Rights Council Resolution (HRC 10/4) on human rights and climate change, stating:

> the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability.
This means that there is a consensus that rights are adversely affected by climate change impacts. Second, in the operative part of the Cancun Agreements, member states announced, “parties should, in all climate-change related actions, fully respect human rights”. These actions, of course, refer to all climate policy initiatives introduced under the legal framework of the UNFCCC and the Kyoto Protocol. Third, the first procedural rights, also known as safeguards, were institutionalized as a requirement for the implementation of REDD+ programs in Annex 1 of the Cancun Agreements. This means that the rights to participation, information, transparency and free prior and informed consent need to be respected for local communities affected by the realization of REDD+ programs. The rights, knowledge and (land) ownership of Indigenous Peoples are particularly emphasized here. Fourth, a review of the modalities and procedures of the CDM is underway. During COP 19 in 2013 in Warsaw and during the Intersections in 2014 and 2015 in Bonn, states (and CSOs) discussed stronger stakeholder consultation requirements and several references stating that activities under the CDM have to be carried out in accordance with human rights. It can be expected that procedural rights will enter CDM policies in the future. Finally, human rights have again been anchored in the preambulatory clauses of the Paris climate treaty in 2015. It stipulates that state 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.

Local rights claims in negotiations

Network strategies

The most successful strategy the HRCCWG employed for achieving its objectives has been to build friendly relations with state representatives at the climate negotiations. Making use of these receptive relations, the network receives access to negotiating texts and attempts to include human rights language in respective drafts asking state parties to introduce these drafts in closed negotiation sessions:

Most of the actual negotiating meetings have been closed to me because I’m civil society but a lot of times I’ll go and network with parties . . . and we’re staying outside the door and if we have position papers on different things, we’ll ask parties to introduce an item or . . . we write an email. . . [and ask to] consider it or anything. One of our . . . points is actually looking at the text, examining it, seeing places that we could think could be improved to better support the issues that we want them to support and then actually suggesting language. And parties actually take it up and are really excited about it. . . . I know several parties that I can just ask for: “What happens in that meeting?” or “could you possibly pass on to me the text?” You know or, “could you send it around?” You know, so that part is really through the relationship that you have with the parties and if the parties [change] you build new relationships with the parties. It’s really great.

Relations with state parties are particularly well established if the negotiators are open to human rights arguments due to their own liberal democratic state identity or increased pressure by domestic CSOs, or if they rely on the network’s expertise and capacities like a number of developing countries do. If the latter is the case, network members provide their expert knowledge
and attend sessions on behalf of small delegations that cannot afford to travel to the negotiations with a large number of staff. This means, civil society actors become officially registered on respective state delegations and draft text suggestions can be introduced in meetings officially closed for non-state observers on their behalf:

Many parties have so little capacities to follow half of the issues that it’s actually very helpful to them if there is something drafted and they can either redraft it, interpret it or be able to kind of introduce it as it is. Their country position goes well with the language, they just didn’t know, they didn’t have time to actually formulate the language and so, you know, we are advocates but at the same time . . . technical experts on gender issues, you know, this has helped to influencing the agenda.\(^{50}\)

To justify the use of human rights language in climate agreements, the HRCCWG frequently works with case studies emphasizing the adverse effects of climate change and climate policies on local people from Asia, Latin America and also Africa.\(^{51}\) At the climate negotiations, case studies are usually presented during so-called side events\(^{52}\) that run parallel to the meetings of state parties and are accessible to all, to governmental delegations but also to non-state observer groups, including civil society, the business community, representatives from religious organizations and academics. Cases on problematic rights situations are sometimes presented by locally affected people themselves, e.g. indigenous or agro-pastoralist groups. Some international partners of the HRCCWG have in the past sponsored representatives of these local groups to join international meetings, share their experiences and bring forward corresponding demands. TANs help to process these cases demonstrating that there are severe drawbacks in the body of rules and regulations of climate policies, such as REDD+ and the CDM, and to voice their demands for change in the modalities and procedures of such instruments.\(^{53}\) In this way, local claims are fed into the international negotiation process. A representative from an international CSO summarizes their objective of transporting local claims to the international negotiation table with the following words:

The way we do our research is really go into the field and speak with the people on the ground, do many many interviews, speak with everyone, not only the communities that are affected but of course also, you know, government and, . . . especially in a context where not everyone is able or, financially able or just generally can participate in these kind of high-level discussions and so, of course, in a COP like here there are many groups from different countries but still if you think about representation, these won’t be the most disadvantaged people that will make it to these international negotiations. So I think this is also what we are trying to do with our work generally but also in this context is kind of bringing the voices of those that are not usually being heard to the international negotiations.\(^{54}\)

Whereas the initial focus of the HRCCWG was on framing emission reductions as a human rights obligation, there is now a clear emphasis on response measures and their impact on local populations in developing countries.\(^{55}\) Thus, procedural human rights, and especially the right to participation, lie at the heart of the network’s activities.\(^{56}\) Altogether, we can find a two-way process here: local advocates inform the policy-making process of states within the forum of an international organization and their decisions may, in return, possibly affect climate policy implementation at the local level.\(^{57}\)
Enhanced outreach on the road to Paris

On the road to Paris, two key representatives of the HRCCWG initiated an inter-constituency alliance in order to combine the strengths of several civil society networks at the negotiations of a new climate treaty. The constituencies at the UNFCCC negotiations are clustered groups of officially registered CSOs sharing certain interests and acting as observers in the process, among them environmental CSOs (ENGO), Indigenous Peoples organizations (IPOs), youth CSOs (YOUNGO), or women and gender (WOMEN AND GENDER). Participation in a constituency comes with several advantages: it allows observers to make interventions at certain points in the state negotiation process, it facilitates the use of focal points for better coordination with the UNFCCC Secretariat and it enhances flexible information sharing. Prior to the Paris negotiations, an inter-constituency alliance was established because most observer organizations shared some common concerns. Among them were the protection and fulfillment of human rights, in particular the right to health and food security, Indigenous Peoples’ rights, a just transition of the workforce and the creation of decent jobs, gender equality and equal participation of women, as well as inter-generational equity.

Besides initiating and coordinating the inter-constituency alliance, there were also other changes to the HRCCWG leading to a strengthening of its advocacy efforts. After they had commenced working mainly with environmental law organizations, representatives from Indigenous Peoples’ and women’s rights CSOs, the major non-governmental human rights players, Human Rights Watch (HRW) and Amnesty International (AI), came on board at the COP in Lima in 2014. A common Greenpeace-Amnesty statement, as well as a widely spread common press release by HRW and AI during the Paris negotiations, marked the arrival of the large human rights CSOs in the network.

In addition to these new non-governmental partners from the human rights regime, state actors joined the working group as well. Among them were mainly IOs, like the OHCHR and UNICEF. Both took an active part in the network, further developed its strategy at the coordination meetings and engaged in awareness-raising activities targeting state delegates.

Besides IOs, there were also some states taking an active part in the promotion of human rights in the climate agreement. Already prior to the negotiations, eighteen governments took action and initiated the Geneva Pledge for Climate Action calling for enhanced institutional interaction between the UNFCCC and the OHCHR and emphasizing that human rights obligations need to be observed in all climate-relevant actions. Among the committed states were mostly Latin American countries (e.g. Mexico, Peru and Costa Rica), many small island states (e.g. Maldives, Kiribati and Samoa) as well as a few European nations (e.g. France, Sweden and Ireland).

Another great push for human rights in the climate regime came from increased media attention and a successful Twitter campaign. Under #Stand4Rights, the HRCCWG and several of their partners disseminated information regarding new versions of the negotiating text including human rights, spread the word on further awareness-raising actions and put pressure on governments who argued against rights in the climate agreement during the negotiations. An interesting example for the latter is the use of the #Stand4Rights to tweet a joint press release by Amnesty International and Human Rights Watch that blamed and shamed those countries that were severely blocking human rights language in the climate treaty at that point, namely the USA, Saudi Arabia and Norway. Everyone on the mailing list of the HRCCWG was asked to re-tweet this press release, and the wide public attention around this led to immediate reactions of the opponents. Norway, for instance, released an official statement emphasizing that it
supports human rights in the operative part of the treaty but not in Article 2 (which sets out the purpose of the agreement).  

Moreover, several high-quality media outlets, among them The Guardian, took up the issue because human rights as bracketed text were still part of the operative clauses of the agreement in the pre-final draft and thus remained one of the outstanding questions to be decided upon until the very end of COP 21. Several representatives from the HRCCWG evaluated this as a significant success in public awareness raising on human rights in the context of climate change.

Thus, prior to and in Paris, the network was benefitting from an enhanced outreach including combined strengths in the inter-constituency alliance, active participation of international governmental organizations and state actors as well as increased press and social media coverage. All of these aspects led to at least one success – the institutionalization of human rights in the preamble of the new climate agreement.

**A boomerang pattern in climate negotiations?**

What representatives of the HRCCWG have described as initial successes in institutionalizing human rights in the climate regime can best be explained with insights from scholarship on institutional interaction or regime interplay. Institutional interaction means that the institutional development or effectiveness of one institution becomes affected by another institution. Interaction can also occur across policy fields leading to either conflict or synergy. So far, the literature has predominantly focused on investigating cases of inter-institutional conflict. Instances of interaction with synergetic effects have received less attention yet. One focus in the literature on institutional interaction is to identify causal mechanisms of influence exerted from one source institution to a specific target institution. These comprise, first of all, cognitive interaction, or learning. Here, the source institution disposes of insights that it feeds into the decision-making process of the target institution. Second, interaction through commitment means that the member states of a source institution have agreed upon commitments that might be relevant for the members of the target institution as well. If there is an overlap of membership, the commitments made in the source institution can lead to differing decision-making in the target institution. Third, behavioral interaction comes into play if the source institution has obtained an output initiating behavioral changes that is meaningful for the target institution. In cases like this, the initiated changes in behavior can foster further behavioral changes. And fourth, impact-level interaction is based on a situation of interdependence, in which a “functional linkage” between the governance objectives of the institutions can be observed. If the source institution obtains an output that has an effect on the objectives of the source institution, this impact can also influence the objectives (and effectiveness) of the target institution.

For developing a better understanding of institutional interaction between the human rights and the climate regime, the micro-macro link, i.e. the mechanisms at play between the micro level of actors and the macro level of institutions, need to be further established. Here, constructivist international relations models highlighting the mutually constitutive character of actors and structures might be able to enrich rational choice-oriented institutionalist theories, i.e. scholarship on institutional interplay. Research on TANs provides useful insights that help us understand how CSOs use information and established frames in one policy field to motivate (more powerful) IOs and their member states in a different policy field to change their policies.

The boomerang pattern describes a situation in a repressive state, in which channels between domestic CSOs and the norm-violating state are blocked and these CSOs decide to bypass the state government and provide information on rights violations to a TAN. Thereupon, the
network mobilizes the human rights regime, including democratic states and IOs, using persuasion mechanisms. The regime, eventually, exerts pressure on the respective state to initiate a human rights change. Hence, what has departed from within a state, i.e. by oppositional groups, comes back like a boomerang from outside, i.e. the TAN and the human rights regime, and motivates the state government to institutionalize rights.\footnote{Keck and Sikkink have developed a typology of tactics TANs use when employing persuasion, socialization and pressure mechanisms. In this context, they highlight (1) \textit{information politics} understood as strategically using information, (2) \textit{symbolic politics} as drawing on symbols and stories to highlight a situation to a target audience that might be geographically distant, (3) \textit{leverage politics} as network actors being able to gain moral or material leverage over state actors and IOs, as well as (4) \textit{accountability politics} referring to formerly adopted norms and policies of governmental actors and obligations to comply with them.\footnote{At the climate conferences, a similar pattern can be observed: local CSOs provide information on rights infringements in climate policy implementation in certain states to advocacy networks. TANs, like the Human Rights and Climate Change Working Group, use this information to mobilize other actors of the human rights regime \textit{(information politics)}. At side events, for example, TANs encourage local actors to share their cases and stories from home countries to raise awareness about adverse human rights effects of both climate impacts and climate policies \textit{(symbolic politics)}. These cases are presented as instances of climate injustice in which local population groups who have contributed little to greenhouse gas emissions and have few resources to adapt cannot fully enjoy their human rights due to climate impacts or experience severe rights infringements due to climate policies. This creates moral leverage over states that have historically contributed to emissions and that are implementing climate policies in developing countries \textit{(leverage politics)}. Moreover, TANs persuade states to vote for an incorporation of human rights into climate agreements, and more particularly procedural rights into climate policies. Mechanisms of persuasion (and discourse) function according to a logic of appropriateness (or a logic of arguing) and are particularly successful with (often liberal democratic) state governments\footnote{At least three aspects in this scenario are completely new to international relations research relating to the boomerang pattern. First, the COP is a transnational arena, in which states closely interact with CSOs. This might accelerate the boomerang pattern since information can be quickly and informally exchanged and strategically used. Second, due to very close interaction between TANs and states, civil society actors possibly deliver important text passages of final} that have already legally committed to human rights, understanding them as part of their state identity, e.g. European states like France, Sweden and Ireland \textit{(accountability politics)}. Actively engaged and in favor of rights institutionalization are also those states that are pressured from above through TANs and from below through domestic civil society organizations. These often are Latin American countries with strong CSO movements representing local communities’ and Indigenous Peoples’ concerns. Among them are Mexico, Peru, Costa Rica, Guatemala and Uruguay. Especially in those countries, a boomerang pattern can be observed as domestic CSOs pressure the government to change the modalities and procedures of climate policy implementation from inside, while TANs and the human rights regime exert pressure on the government from outside the country. Also in favor of rights institutionalization are small island states, such as the Maldives, Kiribati, Samoa and the Philippines, that fear severe climate change consequences for the citizens living in their territory. Some states (together with CSOs, IOs and other actors of the human rights regime) also try to pressure less democratic states to vote in favor of rights institutionalization, claiming that they will not fund climate policies with adverse right affects anymore, such as REDD+ and CDM programs. Thus, they use negative incentives or sanction mechanisms that function according to a logic of consequences.\footnote{At least three aspects in this scenario are completely new to international relations research relating to the boomerang pattern. First, the COP is a transnational arena, in which states closely interact with CSOs. This might accelerate the boomerang pattern since information can be quickly and informally exchanged and strategically used. Second, due to very close interaction between TANs and states, civil society actors possibly deliver important text passages of final}}
agreements that are being negotiated. This means boundaries between states and civil society at the international negotiations become increasingly blurred, contributing to further transformation of state sovereignty in this context. And third, in contrast to what empirical analyses on the boomerang pattern suggest so far, an institution will adopt these rights (and not the state itself). This might slow down the process because a consensus between different state actors has to be found. However, it might also lead to a transfer of, for instance, procedural rights to states that would not adopt them otherwise. Thus, integrating procedural rights into climate policies might also become a booster for improving the human rights situation of a particular state or it can lead to “democratic empowerment” and foster further democratization processes.

Cost-benefit calculations of state actors are an important mechanism explaining why states refrain from supporting human rights in the climate regime. Governments like the United States, for instance, have remained opposed to rights institutionalization in the operative part of the Paris Agreement (and in previous negotiations) because they fear costly obligations and demands for compensation:

And the US, for example, it’s like they refuse to talk about human rights. Refuse. It’s a non-starter. It’s like a totally toxic kind of issue to bring to them. . . . If you follow the Human Rights Council discussions and dialogues, the US refuses to talk about climate change in the human rights regime as well. For exactly the same reason. It’s like the loss and damage negotiations are playing out here for a reason, they won’t talk about climate change in a human rights context because they don’t want to be held liable for historic contributions to climate change.

The strong emphasis on economic, social and cultural rights in the context of climate change impacts also leads to the US remaining highly skeptical regarding rights institutionalization in the climate regime. African countries, in contrast, rather fear that conditionalities are being imposed on them when implementing climate policies funded by Annex I parties (i.e.

![Figure 4.1: The boomerang pattern fostering institutional interaction](source: Own compilation)
Local rights claims in negotiations

developed states). They emphasize their state sovereignty and are concerned that deficiencies in their domestic rights situation could be exposed – and that the international community would interfere in their domestic affairs with the help of procedural rights in climate policies.87

In sum, actors like TANS and domestic CSOs, as well as mechanisms, such as information delivery, the boomerang pattern and persuasion, help us to understand institutional interaction between the human rights and the climate regime. They explain how cognitive interaction and interaction through commitment can be initiated. Behavioral interaction and impact-level interaction can probably rather be observed at later stages – when the Paris Agreement with its commitment to human rights is being implemented. And here, compliant state action will be most necessary.

Figure 4.1 displays the boomerang pattern fostering institutional interaction between the human rights and the climate regimes.

Conclusion

The objective of this chapter was to demonstrate how close state-society interaction can foster the institutionalization of human rights in the international climate regime. Those civil society actors and transnational advocacy networks collaborating intensively with state actors are much more likely to achieve moderate gains for the inclusion of human rights in climate politics. With the help of information dissemination, persuasion as well as inside and outside pressure mechanisms, they have convinced state representatives to recognize human rights in the climate regime. The empirical evidence gathered mainly from expert interviews at the international climate negotiations in Warsaw 2013 and in Paris 2015, primary documents and participatory observations of the HRCCWG strategic meetings suggests that in particular constellations, a boomerang pattern explains how local claims enter international negotiations. This is the case when information about local rights infringements in climate policy implementation is released by domestic civil society groups and comes back like a boomerang to the norm-violating government at international conferences. This has so far led to an acknowledgement of the human rights implications of climate change in the preambulatory clauses of the Cancun Agreements in 2010, a binding statement that all climate-related actions have to be carried out in accordance with human rights norms and an inclusion of procedural rights in REDD+ policies.88 In Paris 2015, states agreed to include a reference to respecting, promoting and considering human rights in climate-relevant action in the preamble (UNFCCC 2015).89 The focus on procedural rights upheld by many CSOs and TANs – compared to earlier attempts that have framed emission reductions as a human rights obligation – demonstrates that civil society operating within the UNFCCC process has become pragmatic, aiming at moderate changes and reforms in climate policies (as opposed to the more radical part of the climate justice movement operating exclusively outside the UNFCCC process protesting for an encompassing system change). The fact that civil society representatives even become registered on state delegations shows that demarcations between state and non-state activities at the climate conferences become blurry and state-society relations are in flux. The cooperative and often pragmatic approach of TANs has allowed for the strategic use of information and concerns from the local level to transform part of the international debate and to include human rights in climate agreements. Following upon that, the next problem to be addressed is whether rights institutionalization in climate agreements actually leads to rights implementation in climate action. This is a significant question that needs to be further investigated in future research on human rights in climate governance.
Notes

2. On human rights advocacy, see also L. Wallbott, Rights, Representation, and Recognition: Practicing Advocacy for Women and Indigenous Peoples in UN Climate Negotiations (this volume).

In this chapter, I understand institutionalization as the adoption of human rights norms. States can formally adopt norms due to strategic reasons without necessarily being convinced that this is an appropriate norm. The literature I refer to makes a conceptual differentiation between prescriptive status (institutionalization) and norm-consistent behavior (internalization). Thus, institutionalization has to be differentiated from behaving according to the norm. T. Risse, S. C. Ropp and K. Sikkink (eds.), The Power of Human Rights: International Norms and Domestic Change (1999).

8. See also D. D. Pugley, Rights, Justice, and REDD+: Lessons From Climate Advocacy and Early Implementation in the Amazon Basin (this volume).


12. Schapper and Lederer, supra note 5.

13. See also A. Jegede, Protecting Indigenous Peoples’ Land Rights in Global Climate Governance (this volume) and B. Powless, The Indigenous Rights Framework and Climate Change (this volume).


Local rights claims in negotiations

22 Görg and Bedall, supra note 20, at 88–89.


24 della Porta and Parks, supra note 20, at 47.


27 Görg and Bedall, supra note 20, at 94–95.

28 Bernauer and Betzold, supra note 26, at 63.


31 Bernauer and Betzold, supra note 26, at 63.


34 Brunnengräber, supra note 25.

35 Görg and Bedall, supra note 20, 94–95.


38 Expert Interview, Representative from International CSO, COP 21 in Paris, 8 December 2016.


40 Ibid.

41 Expert Interview, Academic and Activist, COP 19 in Warsaw, 17 November 2013; Expert Interview, Representative of the Human Rights and Climate Change Working Group, COP 19 in Warsaw, 16 November 2013; Expert Interview, Representative of an Environmental Think Tank, COP 19 in Warsaw, 16 November 2013; Expert Interview, Representative from AIDA (Interamerican Association for Environmental Defense), via Skype after COP 21 in Paris, 4 February 2016; Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016; Expert Interview, Representative of the OHCHR, at COP 21 in Paris, 10 December 2015.


43 Ibid.


48 Expert Interview, Representative of a Women’s Rights Organization, COP 19 in Warsaw, 15 November 2013.
49 Ibid., Expert Interview, Academic and Activist, COP 19 in Warsaw, 17 November 2013; Wallbott and Schapper, supra note 6.
50 Expert Interview, Representative of a Women’s Rights Organization, COP 19 in Warsaw, 15 November 2013.
51 Expert Interview, Representative of an Environmental Think Tank, COP 19 in Warsaw, 15 November 2013.
53 Expert Interview, Representative of an Environmental Think Tank, COP 19 in Warsaw, 16 November 2013.
54 Expert Interview, Representative from an International CSO, COP 21 in Paris, 8 December 2015.
56 Expert Interview, Representative of the Human Rights and Climate Change Working Group, COP 19 in Warsaw, 16 November 2013; Expert Interview, Representative of an Environmental Think Tank, COP 19 in Warsaw, 16 November 2013.
59 Inter-constituency Proposal for Paragraph 15, circulated among the HRCCWG mailing group on 11 June 2015.
60 Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016.
61 Expert Interview, Representative from OHCHR, at COP 21 in Paris, 10 December 2015.
66 Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016.
70 Gehring and Oberthür, supra note 68, at 6–7.
72 Gehring and Oberthür, supra note 71, at 136.
73 Ibid., at 141–142.
74 Young, supra note 67.
75 Gehring and Oberthür, supra note 71, at 143–144.
Local rights claims in negotiations

76 B. Buzan, C. Jones and R. Little, *The Logic of Anarchy: From Neorealism to Structural Realism* (1993); Gehring and Oberthür, *supra* note 68.
77 Keck and Sikkink, *supra* note 3.
84 At the Paris negotiations, the US actually spoke in favor of human rights but did not agree to them being included in article two outlining the purpose of the agreement; Human Rights Watch, *supra* note 63.
87 See also Wallbott and Schapper, *supra* note 6.
88 UNFCCC/CP., *supra* note 42.
89 UNFCCC, *supra* note 47.