

**The human rights turn:**

**NGOs' changing tactics in the quest for a more  
transparent, participatory and accountable CDM**

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## **Abstract**

Non-state actors are increasingly participating in international climate diplomacy. The tactics employed by diverse civil society agents to influence climate policy-making are radicalizing through the adoption of more confrontational language. Activist groups have been seeking opportunities to influence policymakers regarding the rules related to transparency, public participation and accountability in the Kyoto Protocol's Clean Development Mechanism (CDM). By scrutinizing efforts of three environmental NGOs (ENGOS) – Climate Action Network, Center for International Environmental Law and Carbon Market Watch – the analysis concentrates on what tactical shifts have occurred in the framing positions and approaches of these activists during the 1997-2015 period. After several years of legal advocacy, expertise and/or critique in an effort to reform input legitimacy of CDM governance, the selected ENGOS have recently drifted away from narratives of green governmentality and ecological modernization and, instead, radicalized their rhetorical tactics by turning to a human rights perspective under the umbrella of climate justice.

## **Keywords**

CDM, climate governance, climate justice, ENGOS, activism, advocacy, legitimacy

## **Introduction**

At the 19th Conference of Parties (COP19) to the United Nations Framework Convention on Climate Change (UNFCCC) in 2013 in Warsaw, Carbon Market Watch, an activist group dedicated to monitoring the Mechanism and other carbon trading bodies, hosted a side event during which the CDM came under scrutiny for “failing to protect human rights” due to serious weaknesses in stakeholder consultations and lack of global standards that would condition effective participation of local communities (Author's observations, Carbon Market

Watch 2013a). In addition to this side event, a member of the Climate Action Network (CAN), a transnational umbrella group of environmental NGOs, made an intervention at COP19 plenary session, urgently calling on Parties to “establish a grievance mechanism for local stakeholders and ensure that all CDM projects uphold human rights” (Author’s observations; CAN 2013a).

Certainly, this is not the first time when the CDM has been subject to scrutiny and resistance from civil society actors increasingly participating in international climate diplomacy. Since its establishment at the 3rd Conference of Parties (COP3) in Kyoto in 1997, the Mechanism has been one of the most contested elements of climate policy under the UNFCCC, embroiled in a broader anti-systemic and anti-globalization criticism underpinning debates over carbon markets (Bachram 2004; Böhm and Dabhi 2009; Boyd et al 2008; Lohmann 2006; Lövbrand et al 2009, Paterson 2009) and legitimacy in environmental governance (Bernstein 2005; Paterson 2010). According to global environmental governance (GEG) scholars, various NGOs have for years concentrated their critique and defiance of the Mechanism’s legitimacy, particularly in terms of methodological aspects related to carbon accounting, additionality, and the inclusion of forests as carbon sinks (Bachram 2004; Boyd et al 2008; Paterson 2010). Serious doubts and concerns were also raised regarding a growing number of controversial CDM projects that, rather than contributing to sustainable development goals, caused social and ecological problems, harming local communities and aggravating environmental justice in the process (Böhm and Dabhi 2009). Consequently, some local and transnational activist groups have raised awareness about human rights violations and opaqueness surrounding specific CDM projects (Checker 2009).

However, while the CDM’s format and application of rules conditioning input legitimacy – concerned with transparency, public participation and accountability – have been subject to ongoing criticism by scholars (Fogel 2004; Gilbertson 2009; Kuchler 2015; Kuchler and

Lövbrand 2016; Lövbrand *et al.* 2009; Newell and Bumpus 2012; Newell 2014b) and policy experts (CDM Policy Dialogue 2012; Newell 2014a), the GEG literature offers less insight into what persuasive tactics have been mobilized by NGOs in their efforts to shape participatory conditions for civil society in the Mechanism's decision-making process.

Hence, my aim here is to shed light on efforts of environmental NGOs (ENGOs) that have been, since the CDM's inception, actively seeking opportunities to devise and refine the CDM's rules related to input legitimacy understood as certain participatory conditions for civil society to participate in the decision-making process (Nanz and Steffek 2004). The analysis concentrates on the framing tactics and strategies employed by three ENGOs: Climate Action Network (CAN), Center for International Environmental Law (CIEL) and Carbon Market Watch (previously known as CDM Watch), selected because these NGOs have been most actively involved in the Mechanism's critique, and (re)form of opportunities for civil society to participate in CDM governance, especially in terms of input legitimacy of the project design and validation phases in the Mechanism's project cycle (e.g. local and global stakeholder consultations). Therefore, the analysis excludes other activist groups, e.g. Carbon Trade Watch, that did not engage in similar insider strategies in an effort to directly affect the CDM policy process. Though the narrow selection of ENGOs is far from comprehensive, it provides an important snapshot of a less discussed area of civic activism in the landscape of international climate diplomacy.

Furthermore, the prominence of human rights claims underpinning critique of participatory conditions, employed by ENGOs at COP19 events, resonate with findings provided by GEG scholars who demonstrate the shift from conventional, science-based and reform-oriented tactics toward a confrontational, radicalized and justice-based multi-issue framings of climate change (Fisher 2010; Hadden 2014, 2015; Nicholson and Chong 2011) – what Bäckstrand and Lövbrand (2016, 10) refer to as “the return of radical civic environmentalism.” By

appropriating insights from studies on meta-discourses underpinning international climate negotiations within the UNFCCC framework (Bäckstrand and Lövbrand 2006, 2007, 2016) and by drawing on most recent findings concerned with climate framings mobilized by transnational activist networks (Fisher 2010; Hadden 2014, 2015), the objective is to shed light on the continued evolution of the activists' set of framing tactics since COP3. Thus I ask what strategic choices regarding rhetorical forms of persuasion – i.e., a repertoire of arguments and normative examples – have been mobilized by the three ENGOs in their efforts to influence the structure and legitimacy of the Mechanism's governance in terms of transparency, public participation and accountability.

The analytical point of entry is via documents issued by these three activist groups, including: submissions, interventions, recommendations, and position papers; bulletins and newsletters; direct letters to the CDM Executive Board (CDM EB); and yearly reports. Most texts were obtained from the official websites of these organizations, but some materials issued before 2000 had to be located via the Internet Archive,<sup>1</sup> which provides access to older versions of these websites, and via Google Groups,<sup>2</sup> which offers access to the archive of Usenet newsgroup postings. Having access to contemporary data and empirical material dating back to the COP3 negotiations in 1997, I examine positions of selected ENGOs in the context of two interrelated decision-making arenas—international climate negotiations under the UNFCCC, and internal CDM governance—during the 1997–2015 period.

The following analysis benefits from and relates to two interrelated scholarly streams seeking to understand the dynamics of global environmental politics: one concerning the role of NGOs in shaping and modifying international environmental law and policy instruments (Arts 1998; Betsill and Corell 2008; Keck and Sikkink 1998; Newell 2000); the other demonstrating discursive accounts of global climate governance – specifically, the shift from

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<sup>1</sup> See Internet Archive at <https://archive.org/>

<sup>2</sup> See Google Groups at <https://groups.google.com/forum/#!overview>

conventional, science-based, and reform-oriented strategies of transnational advocacy groups to radicalized, confrontational tactics of civic environmentalism under the powerful “climate justice” narrative (Bäckstrand and Lövbrand 2016; Fisher 2010; Hadden 2015).

The discussion is structured as follows. First, I elaborate on the analytical framework employed. Second, I turn to the empirical material and examine three phases of the NGO struggle for a more transparent, participatory, and accountable CDM. Third, I present the results of my study and discuss their implications.

### **Analytical Framework**

The extraordinary increase in the level of NGO engagement and activity in international environmental politics over the last 20 years has been the subject of continuously growing academic scholarship. According to Keck and Sikkink (1998, p. 16), transnational activist networks—such as environmental NGOs—seek influence by using their ideas, arguments, framings and tactics as powerful means to alter and/or modify policy instruments and practices by promoting norm implementation, pressuring target actors, and monitoring compliance with institutional standards. Global environmental governance scholars have embarked on the ambitious venture of assessing the form and level of this influence in international arenas related to environmental policy-making, such as climate change negotiations (Betsill and Corell 2008; Gulbrandsen and Andresen 2004; Humphreys 2008; Nasiritousi *et al.* 2016; Newell 2000).

Yet, we are reminded by Michel Foucault (1982, 1997) that influence—when understood as power—is not merely something to be attained but must be constantly performed. It is a productive force contingent on multiple forms of resistance; it does not function in a linear influencer-to-infleece configuration but rather is a circulating and permeating process that creates “a field of possibilities in which several ways of behaving, several reactions and

diverse compartments may be realized” (Foucault 1982, p. 790). From this perspective, activists’ efforts to influence actors – such as state delegates during climate negotiations – constitute a continuous struggle embedded in power relations that (re)produce specific discourses in the field of climate policy-making. These powerful narratives create fields of possibilities that, in return, affect how NGOs may respond to any form of resistance to their efforts to persuade, as they must be creative in finding opportunities or enacting established norms in attempting to change the agenda or policy (Foucault 1997; Hajer 1997; Litfin 1994). As Keck and Sikkink (1998, p. 5) observe, by functioning in socio-political contexts that contain not only contested but, particularly, stable and shared understandings, activists “operate strategically within the more stable universe of shared understandings” and, simultaneously, “they try to reshape certain contested meanings.” In other words, to effectively contest policymakers and persuade them to implement changes, NGOs strategically embody their arguments with elements of dominant discourses that provide both shared understandings and powerful narratives.

Bäckstrand and Lövbrand (2006, 2007, 2016) identify three prevailing policy discourses of green governmentality, ecological modernization, and civic environmentalism that inform how climate decisionmaking under the UNFCCC is framed and enacted. According to these scholars, green governmentality is characterized by techno-administrative rationalism of a top-down “global gaze” approach favouring science-driven, expert-oriented problem-solving of environmental issues (Bäckstrand and Lövbrand 2006, 2007). In this view, the central role in global climate governance is reserved for networks of state administrators and professional experts (Bäckstrand and Lövbrand 2016, p. 6-7). As a result, green governmentality establishes climate change as an intergovernmental issue that is managed through multilateral agreements and institutions, a mode particularly advocated by the European Union (Bäckstrand and Lövbrand 2007, p. 126).

Ecological modernization, on the other hand, is a narrative informed by market rationality and neo-liberal economic principles (Dryzek 2013). It is, therefore, committed to the ideal of green growth achieved through effective implementation of market mechanisms (Bäckstrand and Lövbrand 2016). This discourse is characterized by a bottom-up, decentralized and multi-actor approach to the climate change challenge by promoting a broad involvement of various stakeholders to increase accountability and legitimacy of decision-making, under the aegis of “good governance” (Bernstein 2001; Bäckstrand and Lövbrand 2007; Kaspersen 2006). In terms of managing and mitigating environmental problems, ecological modernisation favours flexible, hybrid (public-private) and cost-effective solutions, making CDM a prime example of this political narrative.

According to Bäckstrand and Lövbrand (2006, 2007), traces of both green governmentality and ecological modernization are present in the *reformist* branch of civic environmentalism – the third discourse identified by the scholars – that emphasizes the importance of deliberative policy-making and the role of transnational civil society activists whose advocacy is seen as helpful in enhancing input legitimacy of climate governance (Streck 2004; Streck and Lin 2008). Since the establishment of flexible mechanisms through the adoption of Kyoto Protocol in 1997, the reform-oriented transnational activism has gradually embraced “reflexive” green governmentality and “strong” ecological modernization by mobilizing scientific and legal advocacy in an effort to improve accountability and legitimacy of global carbon markets (Bäckstrand and Lövbrand 2007, p. 135; Hadden 2015, p. 25-29). In contrast to the reformist version, the radical strain epitomizes deep scepticism about and harsh critique of both expert-driven green governmentality and market-based ecological modernization (Bäckstrand and Lövbrand 2006, 2007).

In their most recent study of meta-discourses in the post-Copenhagen climate governance, Bäckstrand and Lövbrand (2016) observe the return of *radical* civic environmentalism that



dissociates itself from global managerialism of green governmentality and market-driven ecological modernization, by mobilizing critique of dominant power structures underpinning climate policy-making within the UNFCCC arena. This observation conflates with the latest findings provided by Fisher (2010) and Hadden (2014, 2015) who argue that the 2009 climate conference in Copenhagen (COP15) marks the shift from conventional, science-based, and reform-oriented advocacy tactics towards a confrontational, radicalized and justice-based multi-issue framing of climate change. According to Fisher (2010, p. 15), the climate justice movement mobilized civil society groups to participate at COP15 “against the climate regime and global capitalism more broadly.” Similarly, in her meticulous study of transitional activist networks in global climate governance, Hadden (2015) illustrates how the conventional branch of “scientifically sophisticated” ENGOs appealing “to an insider contingency of experts” (p. 95) has been gradually outshone by an unconventional strain of radical civic environmentalism that, by employing the multi-issue framework of climate justice, voices its critique through contentious language and mobilizes arguments linking climate change to, among others, human rights. Following the post-Copenhagen spillover, civil society groups increasingly departed from scientific/legal language associated with environmental advocacy and intentionally adopted the justice-based framings in order to attract “less technical” constituencies and mobilize “a broader systemic critique” of climate governance (Hadden 2015, p. 31). More specifically, Nicholson and Chong (2011) illustrate that activists have increasingly mobilized human rights institutions and framings under the umbrella of climate justice. Jumping on the “human rights bandwagon”, as these scholars contend (Nicholson and Chong 2011), might provide support for civil society groups in formulating and deploying more persuasive tactics that could “break existing impasses in climate change negotiations” and “formulate more effective climate policies” (p. 121). Linking the human rights perspective with climate change under the umbrella of climate justice is particularly

significant in terms of input legitimacy, because it helps refocus attention to individuals and communities that are excluded from decision-making processes (Nicholson and Chong, 2011).

I argue that the insights on prevailing climate discourses (Bäckstrand and Lövbrand 2006, 2007, 2016) and the findings on climate framings mobilised by activists (Fisher 2010; Hadden 2014, 2015; Nicholson and Chong 2011) complement each other. When merged, they create an analytical device through which I trace and map framing strategies implemented by selected ENGOs in their efforts to shape and modify the rules related to transparency, public participation, and accountability in the CDM governance. Hence, since the conventional strain of climate change activism is characterized by science/legal-based framings and reform-oriented arguments concerned with legitimizing climate governance through improvements of its structure and institutions, such advocacy strategies borrow elements from and position themselves within the discourses of green governmentality and ecological modernisation. The second strain— unconventional activism — represents a (re)turn to justice-based framings, contentious arguments, radicalisation of language and anti-systemic critique. In this sense, the unconventional repertoire of climate change activism resonates strongly in the discourse of radical civic environmentalism.

### **Three Phases of NGO Struggle**

#### *The Pre-Marrakech phase: Constructing the CDM*

Following its inception as one of three flexible mechanisms of the Kyoto Protocol (UN 1998, Article 12) at COP3 in 1997, the CDM's legal structure was subject to negotiations between Parties from COP4 (1998) until agreement was reached at COP7 (2001). The outcome of this process was the Marrakech Accords that specified “Modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol” (UNFCCC 2002,

Decision 17/CP.7). In the pre-Marrakech phase, CAN and CIEL were increasingly active in seeking opportunities to persuade government representatives to treat transparency and public participation in the CDM's legal framework.

At the early agenda-setting stage of COP4 and subsequent COP5, CAN's recommendations were modest in scope and generic in nature, for example, that a successful CDM should have a governance structure transparent to society and meaningfully involving a full range of stakeholders (CAN 1998, 1999a,b; Eddy 1999). CIEL, on the other hand, elaborated on the matter and, based on its legal expertise contained in the study "Carbon Conservation" (Goldberg 1998), suggested that to ensure transparent and participatory CDM governance, four universally acknowledged legal-based principles had to be implemented, namely: informed and effective public participation; access to information; public participation and consultations; access to justice. In line with the discourse of green governmentality, these principles would thus provide administrators of CDM governance a top-down, legal-based rationale to manage input legitimacy. Furthermore, normative examples to these recommendations were made by referring to internationally recognized principles of multilateral institutions and agreements, such as the United Nations Conference on Environment and Development (UNCED), the Rio Declaration and Agenda 21 (Goldberg 1998, p. 16). Following CIEL's recommendations, at the 12th session of the Subsidiary Body for Implementation (SBI-12) in 2000 in Bonn, CAN activists argued that disclosure of and access to information as well as public participation in environmental decision-making must be included as fundamental principles of CDM structure, not only because they are "essential elements of good governance" (CAN 2000d), as the policy discourse of ecological modernization would imply, but also because of the "obvious moral imperative and the clear operational benefits involved" (CAN 2000e).

At SBI-12, stakeholder participation was briefly noted by the Parties in relation to CDM project design and validation and to the accreditation of operational entities. However, this did not satisfy green activists, who lobbied for a more systematic approach to the issue. Therefore, CAN tried to bolster its argument for the right of the public to relevant information and to participate in environmental decision-making by enacting discursive tactics characteristic for both green governmentality and ecological modernization. On one hand, the activists maintained that “local stakeholder involvement should be explicitly required in project selection and design” (CAN 2000e), thus alluding to the bottom-up, decentralized and multi-stakeholder nature of carbon markets. On the other hand, by referring to top-down, universally recognized multilateral agreements CAN insisted that engaging local people and communities in environmental policy-making is “an established international norm, enshrined in Principle 10 of the 1992 Rio Declaration and more recently, in the Aarhus Convention” (CAN 2000f). At the subsequent SBI-13 and especially at COP6 (2000), Principle 10 of the Rio Declaration and, most significantly, the Aarhus Convention<sup>3</sup> became key normative institutional instances that CAN repeatedly cited to strengthen its case regarding civil society participation in and transparency of CDM governance (CAN 2000a,b,c,g; 2001a,c). At COP6 in The Hague and subsequent COP7 in Marrakesh, CAN continued to argue along these lines, urging the Parties to strengthen the CDM rules in line with three pillars of the Convention, namely: “public access to information; meaningful public participation in decision-making; access to justice” (CAN 2000a; CAN 2001a,c).

However, Principle 10 of the Rio Declaration and the Aarhus Convention were not the only normative institutional examples enacted by both CAN and CIEL to bolster their arguments in striving to influence target actors at COP6 and COP7. As the legal language of

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<sup>3</sup> Developed based on Principle 10 of the Rio Declaration, The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, commonly known as Aarhus Convention, was signed in 1998 by state members of the UNECE and states having consultative status with the UNECE. It entered into force in October 2001.

climate negotiations was increasingly being influenced by a powerful business/industry lobby and global financial institutions (Bachram 2004), green activists increasingly struggled to fit their claims into the prevailing neoliberal, good governance discourse of ecological modernisation as well. For example, in its *ECO* newsletter at The Hague, CAN stated that “the CDM should at the very least meet the precedents set by international agreements such as the Aarhus Convention, and the mandatory procedures of the World Bank and the European Bank for Reconstruction and Development [EBRD]” (CAN 2000b). The ENGO argued that public participation in CDM projects could not only help “foster environmental and social objectives” but would also “provide economic benefits” recognized by the International Finance Corporation (IFC), including reducing financial risks and contributing to direct cost savings (CAN 2000b). In another newsletter from COP6, green activists contended that “the precedence is there. Major international financial institutions, such as the World Bank and EBRD, have public participation policies and guidelines, ranging from local stakeholder consultations in project design, to comment periods on environmental and social impact documents, to an appeal process” (CAN 2000c). At the COP6 side event “CDM: Closing the loophole, raising the standard,” co-organized by CAN and CIEL, both activist groups continued to frame their persuasive tactics within the market-based narrative of ecological modernization by evoking instances “for good public participation provisions set by some of the major international financial leading institutions” (CAN 2000f; CIEL 2001).

Nevertheless, the struggle to implement the CDM legal framework with robust principles for transparency and civil society participation, particularly in relation to project design and validation, was eventually lost by activists at COP7 in Marrakech. Public access to information as well as opportunities for civil society participation and comment, while included in the final version of the CDM modalities and procedures, were greatly limited in scope and frequency.

### *The Post-Marrakech Phase: Reforming the CDM*

The CDM modalities and procedures approved by the Marrakech Accords in 2001 constituted a legal basis for operationalizing the CDM and implementing its projects. However, despite NGOs' efforts to shape the outcome of negotiations, the provisions related to transparency and public participation during the design and validation of CDM projects "barely existed" in the final text (CAN 2002). Hence, at the subsequent SBI-16 in Bonn in 2002, both CAN and CIEL expressed their dissatisfaction with the outcomes of COP7 in Marrakech by arguing that CDM modalities and procedures contained in Decision 17/CP.7 "represent a step backward from project standards set world-wide by international financial institutions and development banks" (CAN 2002) and fail "to provide adequate public notice, comment and input into decision-making" (CIEL 2002, 3).

With weak and vaguely defined rules related to transparency, public participation and accountability, the ENGOs were left with very little manoeuvring room to exert influence on Parties or the CDM Executive Board. However, rather than rejecting the newly created CDM governance structure in its entirety, the activist groups continued their efforts to expose the shortcomings of input legitimacy in the Mechanism's governance by engaging, when possible, in debates about improvements and by providing their reform-oriented advocacy in terms of participatory conditions for civil society in the decision-making process. Additionally, CAN initiated a network called CDM Watch "dedicated to monitoring project-based mechanisms and building the capacity of stakeholders and NGOs affected by project activities" (CAN 2001d). This new activist group sought to couple its framing tactics with CAN's by taking advantage of open policy windows enabled by the process of reviewing and reforming the Mechanism during the climate negotiations under UNFCCC and within the CDM governance (CDM Watch 2002, 2009).

One such promising policy opportunity came in December 2009, with Decision 2/CMP.5 in which Parties requested the CDM EB to adopt “revised procedures for registration, issuance and review” (UNFCCC 2010, para 37) and establish “procedures for considering appeals that are brought by stakeholders directly involved, defined in a conservative manner” in the design, approval, and implementation of CDM project activities or proposed CDM project activities (UNFCCC 2010, para 42). Unable to influence the Parties or the CDM EB regarding provisions for access to information and stakeholder consultations, CAN and CDM Watch used this policy window by concentrating their efforts on the appeal procedure as a new opportunity for civil society participation.

In April 2010, CDM Watch made two submissions in response to the EB’s call for public comments regarding the appeals procedure, one on behalf of CAN and one backed by two other NGOs, including Earthjustice and Transparency International (CAN 2010; CDM Watch 2010). Speaking with the same voice in both submissions and employing discursive tactics alluding to ecological modernization, these activists strongly urged the CDM EB to “implement the right of stakeholders to appeal as broadly as possible,” by involving both local communities directly affected by project activities and global citizens directly affected by climate change (CAN 2010, 2; CDM Watch 2010, 3). Moreover, these NGOs advocated that, in light of the limited opportunities for civil society to contest specific projects during the design and validation phases “the right to request a review of a registration request should be extended to the public” (CAN 2010, 3; CDM Watch 2010, 6; see also CIEL 2011).

Furthermore, the paper prepared by CDM Watch in cooperation with Earthjustice and Transparency International included references to various international normative examples. In this submission, the activists supported their recommendations by arguing that “the broad right of members of the public to access justice in environmental matters is enshrined in international law and numerous conventions to which many UNFCCC/KP parties are party”

(CDM Watch 2010, 4). Apart from deploying framing tactics alluding to green governmentality via enactment of normative institutional precedents exemplified by Principle 10 of the Rio Declaration and by the Aarhus Convention, these NGOs referred particularly to two other European Community laws, namely, the Aarhus Regulation<sup>4</sup> that deals with the application of procedural rights assured by the Convention, and Commission Decision 2008/50/EC<sup>5</sup> that specifies rules for applying the Regulation. In addition, this Eurocentric enactment of international law was supported by the normative institutional example of the Office of the Compliance Advisor/Ombudsman (CAO)—a recourse mechanism for private sector institutions under the auspices of the World Bank Group.

The other opportunity came with the CDM Policy Dialogue initiated by the CDM EB at its 64th meeting in 2011. The purpose of this year-long initiative was to “make recommendations on how best to position the CDM to respond to future challenges and opportunities and also on how to ensure the effectiveness of the CDM in contributing to future global climate action” (CDM Policy Dialogue 2012, 9). However, as Newell (2014a) observes, both the inclusion of and deliberation with activist groups were restricted by, among others, excluding civil society representation from the high-level panel of selected experts, limiting opportunities to participate in consultations, as well as disregarding more critical views and neglecting social aspects during the Dialogue process. Despite a short timeframe for submissions (Newell 2014a), opened in October 2011, CDM Watch was able to send its response at the last minute (CDM Watch 2012). In terms of participatory conditions, yet again the activists used framings related to the discourse of ecological modernization, by emphasizing the importance of “good governance” as an essential aspect of the CDM governance and calling for establishment of “means for stakeholder involvement during the implementation of a CDM project activity”

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<sup>4</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006; see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1367>

<sup>5</sup> 2008/50/EC: Commission Decision of 13 December 2007; see: [http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX\\_SESSIONID=vz4zJhWPgVwg8P2hJvC11tjqzLDLGy27s2GFwhJvYIKvGQ3xMfqy!-663730610?uri=CELEX:32008D0050](http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=vz4zJhWPgVwg8P2hJvC11tjqzLDLGy27s2GFwhJvYIKvGQ3xMfqy!-663730610?uri=CELEX:32008D0050)



and for improvement of stakeholder consultations at local and global levels (CDM Watch 2012, 5). The ENGO also called for creation of a grievance mechanism, arguing that “project-affected peoples and communities and civil society groups have the right to appeal decisions by the CDM Executive Board” (CDM Watch 2012, 5). Interestingly, while the document submitted by CDM Watch referred to evidence of human rights abuses in controversial CDM projects registered by the CDM EB, the “human rights” claim was not linked with the right to appeal decisions by the Board nor the right to participate in the Mechanism’s decision-making process.

### *The Human Rights Turn*

The radical turn to human rights perspective in the framing tactics of CAN, CIEL, and CDM Watch promised to advance their efforts and took place at the conjunction of two circumstances. The first was related to transformations in the population of activist groups that, following the fiasco of negotiations at COP15 in 2009, triggered the return of radical civic environmentalism in international climate politics under the UNFCCC (Bäckstrand and Lövbrand 2016). As Hadden (2015) observes, while between 2007-2009 reform-oriented ENGOs providing legal- and science-based advocacy still constituted the biggest majority, the post-COP15 spillover was characterized by the emergence of a highly divided network of activists and the inflow of new groups – organized particularly in two coalitions: Climate Justice Now! and Climate Justice Action – that engaged in more contentious approaches under the climate justice framings. This radical strain of civic activism brought with it a wider and more diverse range of issues in order to appeal to a broader constituency. Consequently, some ENGOs – such as CAN – have drifted away from conventional ways of persuasion and, instead, have “increasingly embraced an issue framing that focuses on equity and justice issues” (Hadden 2015, 154). Thus, under the umbrella of climate justice, various activist

groups have now begun to also “strategically utilize human rights institutions, practices and discourses” (Nicholson and Chong 2011, 122).

The second factor was related to associating climate change with human rights in Decision 1/CP.16 of the Cancun Agreements (UNFCCC 2011) approved at COP16 in 2010. Paragraph 8 of the Decision recognized that Parties “should, in all climate change-related actions, fully respect human rights” (UNFCCC 2011, para 8). This shift in understanding that climate-related decision-making can have human rights implications provided an important opportunity for activists to jump on the human rights bandwagon (Nicholson and Chong 2011) and recast their position on transparency, public participation, and accountability in CDM governance. In particular, it allowed ENGOs to render these principles by framing them not just as rights but as *human rights*. For CIEL, the full respect of human rights in climate-related actions should also “include the rights of affected individuals and peoples to participate in decision-making processes” (CIEL 2011). In line with this rationale, Carbon Market Watch (previously CDM Watch) was now able to expose poor access to information and lack of consultation with local communities as human rights abuses (Carbon Market Watch 2013a,b). In its opening statement at SBI-36 in 2012, where work on the appeal procedure continued, CAN contended that “Parties must uphold the principle that the right to information, the right to public participation, and the right to seek justice are intrinsic to every individual and are inherent human rights” (CAN 2012).

Most significantly, contrary to discursive framings of green governmentality’s top-down gaze and ecological modernization’s good governance, ENGOs could now enact the justice-based framework emphasizing human rights principles concerned with safeguarding the rights of most vulnerable people and communities, potentially affected by CDM projects. In its Watch This! bulletin from March 2013, Carbon Market Watch explicitly argued: “all States as well as UN institutions are bound by human rights obligations. As such, climate change

actions—in this case, CDM projects—must be designed, implemented, and monitored in a way that respects the full and effective enjoyment of human rights, including the rights of access to information, public participation, and access to justice” (Carbon Market Watch 2013b, 2). Subsequently, at SBI-38 in 2013, CAN called on the Parties to revise the CDM rules not only to strengthen provisions regarding local stakeholder consultations and set up a grievance process allowing local communities to express their concerns regarding specific projects but, above all, to “establish international safeguards to protect human rights” (CAN 2013b).

However, at COP19 in Warsaw in 2013, where the side event on human rights lessons from the CDM was hosted by Carbon Market Watch, negotiations on the appeal procedure and on reviewing CDM modalities and procedures were postponed to the next SBI session in 2014 with possible adoption at COP20 in Lima. At SBI-41 in Lima, however, work on these two issues was again deferred, to the next SBI session in 2015, with no decision in sight. At COP20 in Lima, yet another side-event on the CDM was organized by Carbon Market Watch. Co-hosted by CIEL and Interamerican Association for Environmental Defense, the discussion brought forward the issue of human rights abuses in CDM governance (Carbon Market Watch, 2014), similarly to the side-event organized a year earlier at COP19.

Nevertheless, the human rights turn coupled with previously applied strategies did not allow green activists to successfully persuade state delegates and the CDM EB for more transparent, participatory, and accountable CDM governance. Two crucial issues most recently postulated by ENGOs – the inclusion of a grievance mechanism for affected local communities and improvements of local stakeholder consultations – were absent from the negotiating table during the round of negotiations at SBI-42 in June 2015 (Carbon Market Watch 2015). However, despite lack of improvements and reforms related to participatory conditions for civil society in CDM governance, the human rights turn in ENGOs’ framing

tactics might have implications for their struggles in the post-Paris phase of negotiations under the UNFCCC. On one hand, the Paris Agreement adopted at COP21 in December 2015 (UNFCCC 2016, Decision 1/CP.21) is the first climate change treaty that includes mention of human rights (Mayer 2016). The Agreement acknowledges in its preamble that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights” (Decision 1/CP.21, paragraph 12). Contrary to Cancun Agreements being only a COP decision, as Mayer (2016) argues, the inclusion of human rights in the globally recognized treaty provides “a stronger statement and a more authoritative reference” (p. 111), thus giving ENGOs’ struggle more compelling normative leverage in the post-Paris negotiations. On the other hand, however, the Agreement establishes a new market-based mechanism (Decision 1/CP.21, article 6.4) that will most likely borrow elements from the CDM governance structure. Yet, the Agreement stipulates only a vague objective of “fostering sustainable development” (Decision 1/CP.21, article 6.4.a) and procedural details concerned with input legitimacy of this climate policy instrument will be a matter of further negotiations between Parties.

## **Conclusions**

The case analysed provides two sets of insights. On a general level, the findings indicate that the ENGOs studied have pursued their campaigns as a dynamic process during which activists seek ways to provide critique, arguments and recommendations by taking advantage of specific policy opportunities and circumstances in the climate negotiations under the UNFCCC, including: the pre-Marrakech agenda-setting phase with construction of CDM governance on the agenda; the post-Marrakech revision of the Mechanism’s rules related to sinks and the appeal procedure; the registration of controversial CDM projects; and, most recently, the comprehensive review of the Mechanism’s modalities and procedures.

More significantly, however, the results illustrate that, in order to support their critique, arguments and recommendations, the ENGOs borrow elements from and position their framing tactics within prevailing climate discourses. Both the pre-Marrakech agenda-setting phase and post-Marrakech negotiation period are characterized by a conventional, reform-oriented type of advocacy that deploys legal expertise and normative ideals alluding to two powerful narratives. On one hand, activists regard public access to information, meaningful participation in policymaking and access to justice as *rights* understood as international, universally recognized principles enshrined in *multilateral* agreements and conventions. Normative ideals used by ENGOs to strengthen their positions include globally recognized UNCED, Principle 10 of Rio Declaration and Agenda 21, as well as a more Eurocentric enactment of international law, such as Aarhus Convention and Aarhus Regulation. In this perspective, civil society groups refer in their framing tactics to top-down, universal, legal-based and administrative rationales of green governmentality.

On the other hand, activists also mobilize another set of strategic arguments that is characteristic of decentralized, bottom-up and market-based narratives of ecological modernization. Transparency, public participation and accountability are not just internationally recognized principles but, most significantly, essential elements of *good governance* that can provide *economic benefits*, especially when a full range of *stakeholders* is empowered by their inclusion to increase accountability in the decision-making process. Major global financial institutions – World Bank, European Bank for Reconstruction and Development, the Office of Compliance Advisor/Ombudsman for the International Finance Corporation, and Asian Development Bank – serve here as significant international standards and precedents in support for ENGOs' arguments and recommendations.

It can be argued that the radical turn to human rights in the framing tactics of studied ENGOs, while enabled by specific open policy windows, such as Decision 1/CP.16 of the

Cancun Agreement, was, to a large extent, reinforced by the return of radical civic environmentalism. According to Hadden (2014, 2015), this tactical radicalisation of activists' positions was spurred by ample changes in the population of civil society groups mobilized around the issue of climate change under the UNFCCC. The inclusion of a more diverse range of activist networks induced new climate justice framings vis-à-vis the conventional approaches based on scientific/legal arguments, and thus made "human rights bandwagoning" possible (Nicholson and Chong 2011).

Contrary to Humphreys' assumption that activists "are likely to be successful in campaigning for a concept or idea that has already been accepted in another forum" (Humphreys 2004, p. 69), the present analysis demonstrates that, despite supporting their arguments and recommendations by referring to internationally accepted or recognized norms and institutional standards (the Rio Declaration, Aarhus Convention, and World Bank), the NGOs were unable to persuade state delegates. However, the inclusion of human rights in the Paris Agreement has equipped activists with greater leverage in their post-Paris struggle to improve participatory conditions for civil society in the CDM and in the new mechanism. It remains to be seen what framing tactics ENGOs, engaged in climate activism under the UNFCCC, will employ in the process of shaping the new market mechanism established by the Paris Agreement. Global environmental governance scholars indicate that a continuous radicalisation of activists' strategies might be costly because it can trigger further changes in policing around subsequent rounds of climate negotiations (Fisher 2010, Hadden 2014). Thus, in order to avoid the risk of "disenfranchisement" in the form of institutional sanctions depriving civil society groups of "the capability to participate and influence agenda-setting and decision-making" (Fisher and Green 2004, p. 69) green activists, such as CAN, CIEL and Carbon Market Watch, might be forced to modify the contentious justice-based framing by

co-opting it into the reform-oriented discourses of green governmentality and ecological modernisation.

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