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Delivering on the Paris Promises? Review of the Paris Agreement’s Implementing Guidelines from a Human Rights Perspective

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Abstract

The adoption of the Paris Agreement in 2015 constituted an unprecedented step in state recognition of the importance of ensuring that state action on the climate is informed by human rights: for the first time a global environmental legal instrument referred explicitly to human rights. However, whether this provision will contribute to the shaping of climate policies depends significantly on the extent to which it is integrated into further guidance regarding the implementation of the Agreement. The adoption by states of guidance on most aspects of the Paris Agreement, at COP 24/CMA1.3, in December 2018, is a litmus test on whether the implementation of the Agreement is likely to reflect a higher level of integration of human rights concerns into climate governance. Having noted the absence of explicit reference to human rights in the guidelines, this article reviews key aspects of the guidelines from the perspective of principles related to human rights, such as public participation, gender equality, and respect for the rights and knowledge of indigenous peoples. This review includes an analysis of the final provisions in key chapters of the guidelines. It is informed by the positions put forward by countries throughout the drafting process as well as by the evolution of negotiating texts prior to the finalization of the guidelines. The review finds that COP 24/CMA1.3 failed, for the most part, to uphold the principles laid out in the preamble to the Paris Agreement, particularly in relation to human rights; the guidelines make only a few references to human-rights-related principles.

Keywords

Paris Agreement, COP 24/CMA1.3, implementation guidelines, human rights, climate governance, public participation.

1. Introduction

The adoption of the Paris Agreement in 2015 marked an unprecedented step towards states' recognition of the importance of ensuring that human rights inform climate action. It was the first time a global environmental legal instrument explicitly referred to human rights.¹ The Agreement also promised greater consideration for the human rights impacts of climate change by defining long-term mitigation objectives and by recognizing and reaffirming key principles necessary to the promotion and fulfillment of human rights—including equity, loss and damage, and the plea of the most vulnerable.² However, the extent to which the rights of those most exposed to adverse climate impacts will be protected depends primarily on the ability of states to uphold these obligations and principles.³

By including the reference to human rights in the preamble of the Paris Agreement, its Parties committed to align climate action with existing human rights obligations, strengthening the synergies between the Agreement's implementation and the fulfillment of these obligations. However, whether this reference will inform the legal regime established by the Paris Agreement depends in part on whether it will effectively serve as the basis for additional normative developments. The adoption of most aspects of the Paris Agreement's implementation guidelines by states at COP 24/CMA1.3, in December 2018, serves as a litmus test on whether the preamble's reference has informed further development of the climate change regime.

This article reviews how human rights were taken into account in the outcomes of COP 24, shedding light on the negotiations leading up to those outcomes. Having noted the absence of an explicit reference to human rights in the implementation guidelines, this article reviews key aspects of the guidelines from the perspective of human-rights-related principles, such as public participation, gender equality, and respect for the rights and knowledge of indigenous peoples. It concludes by suggesting two key take-away points from this analysis.

2. Human Rights and the Paris Agreement

It is necessary to place the proceedings and outcomes of COP 24 in an historical context in order to assess the progress and missed opportunities in December 2018. This section provides an historical perspective on the emergence of human rights considerations under the UNFCCC by looking not only at the provisions of the Paris Agreement but also briefly reviewing relevant developments occurring throughout the UNFCCC's three-decade-long history.

¹ UNFCCC, Decision 1/CP.21, 'Adoption of the Paris Agreement', FCCC/CP/2015/L.9/Rev.1 (2015). The author is grateful to Adam Stepien, Alexander Zahar, Annalisa Savaresi and Jolein Holtz for their comments on draft versions of this article.

² Sébastien Duyck, 'The Paris Climate Agreement and the Protection of Human Rights in a Changing Climate', 26 *Yearbook of International Environmental Law* 3 (2017); Lavanya Rajamani, 'Human Rights in the Climate Change Regime', in *The Human Right to a Healthy Environment*, edited by John H. Knox and Ramin Pejan (Cambridge, UK: Cambridge University Press, 2018), at 236-251.

³ For a clear articulation of this argument, see Alan Boyle, 'Climate Change, The Paris Agreement and Human Rights', 67 *ICLQ* 759 (2018).

2.1. Progressive Recognition of the Linkages between Human Rights and Climate Change under the UNFCCC

Since the very beginning of the UNFCCC process, parties and stakeholders have sought greater recognition of the linkages between human rights and climate change.⁴ During the final stages of drafting the UNFCCC in 1992, developing countries proposed that the future convention recognize in its article 2 that ‘the right to development is an inalienable human right. All peoples have an equal right in matters relating to reasonable living standards’.⁵ Through this proposal, many developing countries sought to secure recognition of the necessity of addressing global socio-economic injustices through a collective right to development.⁶ However, this language was rejected by the United States, which systematically opposed the recognition of the human right to development by UN processes.⁷ As a result, the proposal was abandoned, and instead, the UNFCCC affirms that ‘the parties have a right to, and should, promote sustainable development’.⁸ Still, many provisions of the Convention echo concerns closely aligned with human rights obligations – from a recognition of the central role of the principle of equity, to need to acknowledge the vulnerability of specific groups, or to references to human health, the eradication of poverty, and public participation.⁹

Human-rights-related issues re-emerged in UNFCCC processes in the late 1990s in the context of the operationalization of the Kyoto Protocol. At that time, indigenous peoples and scholars highlighted concerns that the establishment of the Clean Development Mechanism—the first climate-related, market-based mechanism established at the UN level—might provide incentives for activities that could ultimately result in violations of the rights of indigenous peoples and local communities.¹⁰ However, these concerns were ignored in the modalities and procedures regulating the CDM’s operation, which lack the social safeguards and remedies required to avert such risks.¹¹

The adoption of the Bali Action Plan in 2007 and its mandate for negotiations on a new, comprehensive climate agreement offered another opportunity for governments

⁴ For a chronological account of the successive campaigns seeking consideration of human rights under the UNFCCC, see Duyck, *supra* note 2.

⁵ UNFCCC, ‘Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the work of its fourth session, held at Geneva from 9 to 20 December 1991’, UN Doc. A/AC.237/15 (1992).

⁶ Richard N Kiwanuka, ‘Developing rights: The UN declaration on the right to development’, 35.3 *Netherlands International Law Review* 257 (1988), at 264.

⁷ Daniel Bodansky, ‘The United Nations Framework Convention on Climate Change: A Commentary’ 18 *Yale Journal of International Law* 451 (1993), at 504.

⁸ UNFCCC, article 3.

⁹ For a comprehensive analysis of the provisions of the UNFCCC from a human rights perspective, see Rajamani, *supra* note 2.

¹⁰ *Position Paper Presented to the 13th Session of the Subsidiary Bodies to the UNFCCC*, Forum of Indigenous Peoples and Local Communities on Climate Change (September 2000), <https://www1.folha.uol.com.br/folha/pensata/popup_leite_06.htm>. See also Joyotee Smith, ‘Afforestation and Reforestation in the Clean Development Mechanism of the Kyoto Protocol: Implications for Forests and Forest People’, 2 *International Journal of Global Environmental Issues* 322 (2002), at 335.

¹¹ UNFCCC, Decision 3/CMP.1, ‘Modalities and Procedures for a Clean Development Mechanism as Defined in Article 12 of the Kyoto Protocol’, FCCC/KP/CMP/2005/8/Add.1 (2005), Annex.

and stakeholders to consider human rights as a guiding principle for climate action. At the time, other UN institutions, such as the Human Rights Council, had begun to acknowledge these linkages and explore potential policy responses.¹² In addition, earlier human-rights-related concerns were confirmed as organizations began to document human rights infringements in the context of emission reduction schemes such as the CDM and REDD mechanism.¹³ The mobilization of key actors in favor of human-rights-based climate action—as well as the proactive role played by the Mexican presidency of COP 16—resulted in the Cancun Agreements explicitly recognizing the complex linkages between climate change and human rights.¹⁴ The Agreements emphasized that ‘parties should, in all climate change related action, fully respect human rights.’¹⁵ The Agreements also recognized that climate change has adverse impacts on a range of human rights;¹⁶ it provided a mandate for REDD safeguards; and it noted the relevance of the UN Declaration on the Rights of Indigenous Peoples to the implementation of response measures.¹⁷

Despite these developments, there is no convincing evidence that UNFCCC parties embraced the importance of human rights any differently in their implementation of their climate commitments. At the same time, the human rights impacts of projects supported by the CDM continued to be documented, with evidence that projects had led to the eviction of local communities and to the failure to uphold the right of indigenous peoples to free, prior, and informed consent.¹⁸ National implementation reports submitted to the UNFCCC Secretariat by governments contained little information suggesting any specific attempt to strengthen the role of human rights norms in climate responses.¹⁹

Against this background, the Paris Agreement negotiations offered yet another opportunity for the climate change regime to contribute to the growing international

¹² Yves Lador and Felix Kirchmeier, ‘Climate Change in the UN Human Rights System’, in *Routledge Handbook of Human Rights and Climate Governance*, edited by Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (London and New York: Taylor and Francis Group, 2018). For an insightful account of the linkages between developments at the UN human rights institutions and the inclusion of human rights language in the Cancun Agreements, see also Marc Limon, ‘Politics of Human Rights, Environment and Climate Change’, in *The Human Right to a Healthy Environment*, edited by John H. Knox and Ramin Pejan (Cambridge, UK: Cambridge University Press, 2018), at 205.

¹³ See, e.g., Victoria Tauli-Corpuz, Aqaluk Lyngé, *Impact of Climate Change Mitigation Measures on Indigenous Peoples and on Their Territories and Lands*, UN Economic and Social Council, 7th Sess., Agenda Item 3 and 4, UN Doc E/C.19/2008/10 (2008); *Indigenous Peoples’ Statement on Shared Vision under AWG-LCA*, (delivered 9 December 2009), <<https://www.uncclearn.org/sites/default/files/inventory/unifem07.pdf>>, at 7.

¹⁴ UNFCCC, Decision 1/CP.16, ‘Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention’, FCCC/CP/2010/7/Add.1 (2010).

¹⁵ *Ibid.*, at para. 8.

¹⁶ *Ibid.*, preamble.

¹⁷ *Ibid.*, preambular recital preceding para. 88 and Appendix I.

¹⁸ Jeanette Schade and Wolfgang Obergassel, ‘Human Rights and the Clean Development Mechanism’, *27 Cambridge Review of International Affairs* 717 (2014), at 725.

¹⁹ Mary Robinson Foundation for Climate Justice, *Incorporating Human Rights into Climate Action* (2014), <<https://www.mrfcj.org/pdf/2014-10-20-Incorporating-Human-Rights-into-Climate-Action.pdf>>. Sébastien Jodoin, Rosine Faucher, and Katherine Lofts, ‘Look before you Jump’, in *Routledge Handbook of Human Rights and Climate Governance*, edited by Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (London and New York: Taylor and Francis Group, 2018).

recognition of the relevance of human rights to climate change.²⁰ Several Special Rapporteurs of the Human Rights Council summarized these expectations in a joint statement released in 2014:

‘To prevent such adverse impacts, States must incorporate their existing obligations under the human rights framework into the climate change negotiations. Applying human rights in the context of climate change brings many benefits. It moves the rights of affected individuals and communities centre stage in all response strategies. The human rights framework focuses our attention on the rights of the most vulnerable and marginalized individuals and groups requiring adaptation policies and measures, inclusive disaster risk reduction planning and resilience strategies on the basis of non-discrimination and equality.’²¹

2.2. A Human Rights Revolution? Relevant Provisions in the Paris Agreement

The mobilization of states, stakeholders, and institutional actors who supported the inclusion of human rights references in the Paris Agreement ultimately resulted in two complementary outcomes. First, human rights language was included in the provisions of the Paris Agreement. Second, the intense formal and informal discussions resulting from this advocacy generated increased awareness of the human rights dimensions of climate policies and the relevance of human rights norms to climate governance.²²

In what has been described as a significant achievement or even a revolution,²³ the Paris Agreement became the first global environmental agreement to include an explicit reference to the importance of human rights.²⁴ Its preamble reads:

‘Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’²⁵

²⁰ See for instance *Geneva Pledge for Human Rights in Climate Action* (2015), <<https://carbonmarketwatch.org/wp-content/uploads/2015/02/The-Geneva-Pledge-13FEB2015.pdf>>.

²¹ OHCHR, ‘Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the Human Rights Day’ (2014), <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393>>.

²² Evan Gach, ‘Normative Shifts in the Global Conception of Climate Change: The Growth of Climate Justice’, 8 *Social Sciences* 24 (2019); Andrea Schapper, ‘Local rights claims in international negotiations - Transnational human rights networks at the climate conferences’, in *Routledge Handbook of Human Rights and Climate Governance*, edited by Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (London and New York: Taylor and Francis Group, 2018), at 49.

²³ Maria Pia Carazo, ‘Contextual Provisions (Preamble and Article 1)’, in *The Paris Agreement on Climate Change: Analysis and Commentary*, edited by Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham (Oxford: Oxford University Press, 2017), at 116.

²⁴ Prior to the Paris Conference, only the Aarhus Convention – an instrument of regional scope – contained such an explicit reference. UNECE, ‘The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters’, 2161 UNTS 447; 38 ILM 51(1998), preamble, recital 6, 7, 8 and article 1.

²⁵ Paris Agreement, preamble, recital 11.

Prior to the adoption of the Paris Agreement, several parties and stakeholders had advocated for the inclusion of references to human rights in the operative sections of the Agreement.²⁶ The fact that human rights are only mentioned in the preamble limits the political gravity of this reference.²⁷ However, the binding character of states' human rights obligations is not minimized by this placement, as human rights obligations have their legal basis outside the UNFCCC regime.²⁸ Through this provision, the parties indicated their commitment to ensuring the Agreement's compatibility with relevant international human rights obligations.²⁹ The recital consequently offers a parallel to the wording of the Human Rights Council's resolutions on climate change that have consistently affirmed that 'human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes'.³⁰

In addition, several other provisions of the Paris Agreement echo human-rights-related principles and concepts:

First, other elements of the preamble stress principles related to the fulfilment of human rights, including the imperatives of safeguarding food security and ending hunger, and of ensuring a just transition of the workforce, and the creation of decent work and quality jobs.³¹

Second, an operative provision dedicated to adaptation stresses the importance of participatory and gender-responsive action—two principles also mentioned in relation to capacity-building—and the need to ensure that adaptation action is guided and informed by traditional and indigenous knowledge.³²

Third, the Paris Agreement underlines the importance of public participation and public access to information in relation to all matters addressed by the Agreement.³³ In addition, it affirms the commitment of parties to take measures to enhance public participation and public access to information.³⁴

²⁶ Such proposals were discussed in particular in relation to draft articles addressing the Paris Agreement's objectives (Article 2), adaptation action (Article 7), and capacity building (Article 11). For a brief description of advocacy seeking the inclusion of human rights language in the Paris Agreement, see also Tracy Bach, 'Human Rights In A Climate Changed World: The Impact Of COP21, Nationally Determined Contributions, And National Courts', 40 *Vermont Law Review* 56 (2016).

²⁷ Rajamani's piece in this special issue.

²⁸ Carazo, *supra* note 23. For a full discussion of the wording of the recital and its implications see Rajamani, *supra* note 2, at 243.

²⁹ Marie-Claire Cordonier Segger, 'Advancing the Paris Agreement on Climate Change for Sustainable Development', 5(2) *Cambridge Journal of International and Comparative Law* 202 (2016), at 231. See also Annalisa Savaresi, 'Climate change and human rights: Fragmentation, interplay, and institutional linkages', in *Routledge Handbook of Human Rights and Climate Governance*, edited by Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (London and New York: Taylor and Francis Group, 2018).

³⁰ HRC, Resolution 38/4, 'Human Rights and Climate Change', UN Doc. A/HRC/38/L.5 (2018), recital 15; HRC, Resolution 35/20, 'Human Rights and Climate Change', UN Doc. A/HRC/35/L.32 (2017), recital 11.

³¹ Paris Agreement, recital 9 and 10.

³² *Ibid.*, Article 7.5 and 10.2.

³³ *Ibid.*, paragraph 14 of the preamble, for a commentary on the parallel between these provisions and procedural rights, see Carazo, *supra* note 23, at 118.

³⁴ Paris Agreement, Article 12.

2.3. The ‘Paris Effect’: Increasing Recognition of the Linkages between Climate Governance and Human Rights

Since 2015, parties have stressed the importance of human rights in several COP decisions addressing thematic work areas or assigning mandates to specific constituted bodies. For instance, in 2016, the COP mandated that the Paris Committee on Capacity Building consider cross-cutting issues such as ‘gender responsiveness, human rights and indigenous peoples’ knowledge.’³⁵ In 2017, the COP recalled the Agreement’s preambular provision when launching the Gender Action Plan,³⁶ and working to operationalize the Local Communities and Indigenous Peoples Platform.³⁷

Several subsidiary bodies also considered the relevance of human rights to their subject area, including, for example, the Warsaw International Mechanism on Loss and Damage and its Task Force on Displacement,³⁸ the Paris Committee on Capacity Building,³⁹ and the Standing Committee on Finance.⁴⁰ Additionally, both the Green Climate Fund and the Adaptation Fund have established safeguards and avenues to ensure that the projects supported by the funds comply with human rights standards.⁴¹

Moreover, since the adoption of the Paris Agreement, UN human rights institutions have played an increasingly prominent role in further clarifying the extent of states’ human rights obligations in the context of climate change. Only three months after the adoption of the Agreement, the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment presented a report exploring the linkages between climate policies and human rights.⁴² In addition, the UN human rights treaty bodies have elaborated detailed substantive guidance on how states should fulfill their existing obligations

³⁵ UNFCCC, Decision 16/CP.22, ‘Third comprehensive review of the implementation of the framework for capacity-building in developing countries under the Convention’, FCCC/CP/2016/10/Add.2 (2017).

³⁶ UNFCCC, Decision 3/CP.23, ‘Establishment of a Gender Action Plan’, FCCC/CP/2017/11/Add.1 (2018).

³⁷ UNFCCC, Decision 2/CP.23, ‘Local Communities and Indigenous Peoples Platform’, FCCC/CP/2017/11/Add.1 (2017), preamble and para. 6(c).

³⁸ *Report of the Task Force on Human Displacement*, UNFCCC (2018), <https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf> and *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, UNFCCC, 49th Sess., Agenda Item 4 and 10, FCCC/SB/2018/1 (2018).

³⁹ *Annual technical progress report of the Paris Committee on Capacity-building*, UNFCCC, 49th Sess., Agenda Item X, FCCC/SBI/2018/15 (2018).

⁴⁰ *Report of the Standing Committee on Finance*, UNFCCC, 23rd Sess., Agenda Item 10(b), FCCC/CP/2017/9 (2017).

⁴¹ In relation to the Green Climate Fund, see GCF, Decision B.19/11, ‘Indigenous Peoples Policy’ (2018) and GCF, Decision B.19/10, ‘Environmental and Social Policy’ (2018). Concerning the Adaptation Fund, see for instance Adaptation Fund, ‘Proposed Ad Hoc Complaint Handling Mechanism’ (ACHM), AFB/EFC.19/9/Rev.1 (2016), Adaptation Fund, ‘Environmental And Social Policy’ (2016), <https://www.adaptation-fund.org/wp-content/uploads/2013/11/Amended-March-2016_-OPG-ANNEX-3-Environmental-social-policy-March-2016.pdf>; and Adaptation Fund, ‘The Gender Policy And Action Plan Of The Adaptation Fund’ (2016), <https://www.adaptation-fund.org/wp-content/uploads/2016/04/OPG-ANNEX4_Gender-Policies-and-Action-Plan_approved-in-March-2016-1.pdf>.

⁴² *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Prof. John Knox, Human Rights Council, 31st Sess. (2016), Agenda Item 3, UN Doc. A/HRC/31/52.

under key human rights treaties.⁴³ Both the Special Rapporteur and the human rights treaty bodies referred repeatedly to the Paris Agreement's goals and commitments, elaborating how these provisions should be interpreted from a human rights perspective.⁴⁴

3. Human Rights and the Paris Agreement Implementation Guidelines

COP 24/CMA3.1 was called upon to play a greater and more long-lasting role than the previous COPs, as its mandate was to deliver a comprehensive set of implementation guidelines that would shape the long-term implementation of the Paris Agreement. The COP offered an opportunity for parties to make more precise their intentions to integrate human rights considerations into climate policies. This was of particular importance because the preambular language of the Paris Agreement itself offered little policy guidance despite its potential in informing various processes established under the Agreement.⁴⁵

3.1. COP 24's Failure to Recognize the Role of Human Rights in the Paris Agreement's Implementation Guidelines

During the early stages of the negotiations on the implementation guidelines, parties and observer organizations advocating for human rights identified the guidance for Nationally Determined Contributions as the section where a reference to human rights could have the most impact. This determination was based on several complementary factors.

First, the NDCs are the key to translating the parties' international commitments into domestic action, so securing greater integration of human rights principles as countries design their future climate commitments could help drive greater policy coherence at the national level.

Second, to a significant extent, the NDCs will define the scope of other mechanisms established under the Paris Agreement, such as the Transparency Framework and the Global Stocktake, as these processes are explicitly mandated to consider information related to the NDCs. Therefore, securing a reference to human rights in the guidance for NDCs could have a trickle-down effect and inform other processes designed to support the implementation of the Paris Agreement.

Following the Paris COP, both Norway and observer organizations put forward similar proposals suggesting that, when communicating their NDCs, parties explain how human rights and related principles had been taken into consideration.⁴⁶ The

⁴³ Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, 'States' Human Rights Obligations in the Context of Climate Change: 2019 Update' (2019), <<https://www.ciel.org/reports/states-human-rights-obligations-context-climate-change-2019-update/>>. See also Boyle, *supra* note 3, at 774.

⁴⁴ Center for International Environmental Law, *supra* note 43, at 13.

⁴⁵ For a description of the preambular provisions as offering an 'obvious source' to inform processes established the Agreement, see Meinhard Doelle, 'The Heart of the Paris Rulebook: Communicating NDCs and Accounting for Their Implementation' 9 *Climate Law* 4 (2019), at 17.

⁴⁶ *Norway's submission on features, information to facilitate clarity, transparency and understanding and accounting of Parties' Nationally Determined Contributions*, UNFCCC, COP-21, APA Agenda Item 3 (2017), at 31.

Norwegian proposal, later supported by Canada and the African Group of Negotiators, was included in a compilation of proposals in November 2017 and remained in the negotiating text up to the start of COP 24.⁴⁷ There it became the center of attention for human rights advocacy groups, given that no other sections of the draft guidelines contained any reference to human rights—despite several proposals having been made by civil society and UN human rights bodies.⁴⁸ As the conference unfolded, the wording included in the Norwegian proposal was repeatedly weakened and evolved into a formulation that is hardly understandable to anyone beyond those directly involved in the negotiations—let alone those who will be called upon to implement the guidelines.

Halfway through COP 24, the explicit reference to human rights in the negotiating text was replaced by a more generic reference inviting parties to communicate information concerning ‘how the Party has considered, as appropriate, the context of sustainable development and poverty eradication, as well as any other contextual issues, such as those contained in the preamble of the Paris Agreement.’⁴⁹ However, even this was too explicit for some parties and was replaced by a more implicit reference to the issues addressed in the Agreement’s preamble.

The final decision adopted at COP 24 contains an invitation to parties to communicate information related their NDC planning process, including, as appropriate, ‘other contextual aspirations and priorities that Parties acknowledged when joining the Paris Agreement.’⁵⁰ Furthermore, the decision makes clear that the parties are to only communicate only that information which they deem ‘applicable to their nationally determined contributions.’⁵¹

As a consequence, the Paris Agreement’s implementation guidelines not once refer to human rights. Other related principles reaffirmed in the preamble to the Paris Agreement – such as food security, intergenerational equity, and ecosystem integrity – are absent from the guidelines, while just transition is mentioned only once in the context of a technical work programme.⁵²

Several factors may help understanding this outcome. To begin, the number and diversity of states actively advocating for a reference to human rights in the implementation guidelines did not reach levels comparable to the mobilization for human rights leading up to the Paris COP. Additionally, during the negotiations preceding the adoption of the Paris Agreement, human rights were mainly debated in

⁴⁷ First iteration of the *Further Guidance in Relation to the Mitigation Section of Decision 1/CP.21*, UNFCCC, CMA, APA 1.7 agenda item 3 (2018), at 2.

⁴⁸ CIEL, IWGIA, RNF, CARE, WEDO, AIPP, ITUC, ‘Delivering on the Paris Promises: Combating Climate Change while Protecting Rights - Recommendations for the Negotiations of the Paris Rule Book’ (2017), <<https://unfccc.int/sites/default/files/903.pdf>>; and OHCHR, ‘Response to the request of Ad Hoc Working Group on the Paris Agreement (APA)’ (2016), <<https://unfccc.int/sites/default/files/722.pdf>>.

⁴⁹ *Further Guidance in Relation to the Mitigation Section of Decision 1/CP.21*, UNFCCC, CMA, APA 1.7 agenda item 3 (2018), at 3.

⁵⁰ UNFCCC, Decision 4/CMA.1, ‘Further guidance in relation to the mitigation section of decision 1/CP.21’, FCCC/PA/CMA/2018/3/Add.1 (2018), Annex I at para. 4(a)ii(c).

⁵¹ *Ibid.*

⁵² UNFCCC, Decision 7/CMA.1, ‘Modalities, work programme and functions of the forum under the Paris Agreement on the impact of the implementation of response measures’, FCCC/PA/CMA/2018/3/Add.1 (2018), Annex at para. 2(b).

the context of preambular provisions, with several sessions of these negotiations largely dedicated to reviewing arguments in favour, of or against, the inclusion of human rights language. Yet, in the lead up to COP 24, human rights were primarily discussed in the context of the NDC guidance, which was the most politically charged aspect of the guidelines. Consequently, the consideration of human rights was drowned out by other issues carrying much greater political weight in the climate regime, such as the balance between mitigation and adaptation and the role of differentiation between developed and developing countries under the Paris Agreement.

3.2. Beyond Explicit Recognition: Progress and Missed Opportunities in the Implementation Guidelines

Several decisions adopted at COP 24 refer to key human-rights-related principles emphasized in the Paris Agreement, including the importance of public participation, gender-responsive climate policies, and consideration of traditional knowledge and indigenous peoples' knowledge.

3.2.1. Promoting Public Participation in Relation to Future Climate Commitments

The NDC guidance provides that parties are to communicate information related to 'domestic institutional arrangements, public participation and engagement with local communities and indigenous peoples, in a gender-responsive manner,' with the caveat that this is only 'as applicable.'⁵³ A handful of parties, including Canada, Norway, and the European Union, championed this proposal in the early stages of the negotiations.⁵⁴

The NDC guidance provision is supported by the decision on education, training, public awareness, public participation, and public access to information, which encourages parties to:

'promote the systematic integration of ... public participation, public access to information, and regional and international cooperation into all mitigation and adaptation activities implemented under the Convention, as well as under the Paris Agreement, as appropriate, including into the processes of designing and implementing their nationally determined contributions.'⁵⁵

This guidance goes beyond the guidelines given in 2014 in relation to the submission of Intended Nationally Determined Contributions.⁵⁶ At that time, the relevant COP decision invited parties to only consider providing information related to 'planning

⁵³ Decision 4/CMA.1, *supra* note 50, Annex I at para. 4(a)i.

⁵⁴ *Submission by the Republic of Malta and the European Commission on behalf of the European Union and its Member States on APA Agenda item 3 – Further guidance in relation to the mitigation section of decision 1/CP.21*, UNFCCC, SB-46, APA Agenda Item 3 (2017), at 14; *Submission by Canada on APA Item 3: Features, up-front information and accounting for Nationally Determined Contributions (NDCs)*, UNFCCC COP-23, APA Agenda Item 3 (2017), at 3; Norway's submission on APA Agenda Item 3, *supra* note 48.

⁵⁵ UNFCCC, Decision 17/CMA.1, 'Ways of enhancing the implementation of education, training, public awareness, public participation and public access to information so as to enhance actions under the Paris Agreement', FCCC/PA/CMA/2018/3/Add.2 (2018), at para. 5.

⁵⁶ UNFCCC, Decision 1/CP.20, 'Lima Call for Climate Action', FCCC/CP/2014/10/Add.1 (2014).

processes,’ without any reference to stakeholder consultations or public participation.⁵⁷

3.2.2. Ensuring Participatory, Gender-Responsive Adaptation Action Informed by Traditional and Indigenous Knowledge

In addition to promoting public participation in the planning of NDCs, the implementation guidelines recall the importance of participatory, gender-responsive adaptation action that is guided by indigenous and local knowledge.

First, the COP 24 guidelines list gender-responsive adaptation action and indigenous and traditional knowledge as elements that may be included in future adaptation communications—the new tool established under the Paris Agreement for parties to communicate their priorities, needs, plans, and actions.⁵⁸

Second, the modalities, procedures, and guidelines related to the Transparency Framework also invite parties to report on their adaptation action, including aspects related to gender perspectives, indigenous and traditional knowledge, and stakeholder involvement.⁵⁹ However, the guidance related to adaptation reporting is not mandatory.⁶⁰ While references to gender, indigenous and traditional knowledge, and stakeholder involvement were included in the negotiating texts throughout most of the meeting, a draft decision text circulated halfway through COP 24 stripped these out.⁶¹ It took the mobilization of supportive states and civil society actors for these references to be reinserted.

Neither of the other two decisions adopted at the COP on adaptation reiterates this reference to participatory, gender-responsive adaptation action guided by indigenous and local knowledge.⁶² During earlier stages of the negotiations, parties considered mandating that the Adaptation Fund include, or amend the existing ‘social safeguards, in particular relating to indigenous peoples and traditional knowledge and gender.’⁶³ Given that the fund’s existing social safeguards are recognized as an example of good practice,⁶⁴ this mandate would have appeared unnecessary. The request was consequently removed from in COP 24 decision.

⁵⁷ *Ibid.*, at para. 14.

⁵⁸ Paris Agreement, Article 7.5; UNFCCC, Decision 9/CMA.1, ‘Further guidance in relation to the adaptation communication, including, inter alia, as a component of nationally determined contributions, referred to in Article 7, paragraphs 10 and 11, of the Paris Agreement’, FCCC/PA/CMA/2018/3/Add.1 (2018), Annex; Carazo, *supra* note 23.

⁵⁹ UNFCCC, Decision 18/CMA.1, ‘Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement’, FCCC/PA/CMA/2018/3/Add.2 (2018), at para. 106(b) and 109(c)(h).

⁶⁰ *Ibid.*, para. 104.

⁶¹ *Draft Text on Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement*, APA, 1.7, Agenda Item 5 (2018).

⁶² UNFCCC, Decision 11/CMA.1, ‘Matters referred to in paragraphs 41, 42 and 45 of decision 1/CP.21’, FCCC/PA/CMA/2018/3/Add.1 (2018) and UNFCCC, Decision 13/CMA.1, ‘Matters relating to the Adaptation Fund’, FCCC/PA/CMA/2018/3/Add.2 (2018).

⁶³ *Matters relating to the Adaptation Fund, Section III*, UNFCCC, Agenda Item 8(a), Doc. APA.1.6.Informal.1.Add.6 (2018).

⁶⁴ See for instance the reference to these safeguards in John H. Knox, ‘Letter from the Special Rapporteur on Human Rights and the Environment to Climate Negotiators’ (2016), <https://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf>.

3.2.3. Narrowing the Scope of the Transparency Framework...

Beyond the invitation to report on various aspects of adaptation action, the guidelines concerning the Transparency Framework represent a missed opportunity to ask parties to work towards, and report on, the integration of human rights in their climate responses. The only reference to social dimensions is a request for information concerning the economic and social impacts of response measures.⁶⁵ Parties are invited to report on matters related to public participation and public access to information only in the very narrow scope of capacity-building support needed and received by developing countries.⁶⁶

As reflected in Article 13 of the Paris Agreement, the modalities, procedures and guidelines for the transparency framework do not provide any new request or invitation for parties to report on measures to enhance climate change education, training, public awareness, public participation and public access to information.⁶⁷ This constitutes a step backward compared to reporting obligations under the Convention.⁶⁸ While decision 1/CP.24 explicitly provides that the modalities adopted at COP 24 do not prejudice the obligation for parties to report on these measures under the UNFCCC,⁶⁹ the absence of reference to article 12 in the new framework indicates that the transparency framework will not be 'enhanced' in relation to public participation and public access to information.

Additionally, the Transparency Framework's modalities exclude an active role for observer organizations.⁷⁰ Building on the experience of other multilateral forums, the involvement of civil society in the Transparency Framework could have provided an opportunity to enhancing governmental ambition by holding governments to account.⁷¹ While such an option was included in the advanced draft versions of the guidelines, it was rejected.

3.2.4. ...while Enabling an Inclusive Process for the Global Stocktake

The modalities related to the Global Stocktake follow a much more inclusive approach. Established under Article 14 of the Paris Agreement, the Global Stocktake is a periodic review of collective progress toward meeting the goals of the Agreement.

at 3. See also *Social and Environmental Accountability of Climate Finance Instruments*, Carbon Market Watch (2015), <<https://carbonmarketwatch.org/wp/wp-content/uploads/2015/09/SOCIAL-AND-ENVIRONMENTAL-08-web-.pdf>>, at 15. The author is grateful to Erika Lennon for her insights on this argument.

⁶⁵ Decision 18/CMA.1, *supra* note 59, at para. 78.

⁶⁶ *Ibid.*, para 128.

⁶⁷ Paris Agreement, Article 13.6.

⁶⁸ 'Guidelines for the Preparation of National Communications by Parties included in Annex I to the Convention, Part II: UNFCCC Reporting Guidelines on National Communications' FCCC/CP/1999/7 (1999), para. 65 and 66; and 'Guidelines for the preparation of national communications from Parties not included in Annex I to the Convention' FCCC/CP/2002/7/Add.2 (2002), para. 45.

⁶⁹ Decision 1/CP.24, 'Preparations for the implementation of the Paris Agreement and the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement', FCCC/CP/2018/10/Add.1 (2018), para. 43(b)(i).

⁷⁰ Decision 18/CMA.1, *supra* note 59, para. 192 and 193.

⁷¹ Harro van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement', 6(1) *Climate Law* 91 (2016).

It is therefore a crucial mechanism to increase ambition over time and to bridge the gap between climate commitments and the Agreement's goals—not only on mitigation, but also on adaptation and finance.⁷² By including both a review of implementation and a forward-looking exercise, the Stocktake aims to play a significant role in reframing climate action periodically in the broader context of sustainable development.⁷³

The COP 24 guidelines stress that, while remaining a party-driven process, the Global Stocktake will be open to participation by non-party stakeholders.⁷⁴ The technical dialogue is to be open, inclusive, transparent, and facilitative,⁷⁵ and that the list of inputs to be considered will include submissions by non-party stakeholders and UNFCCC observer organizations.⁷⁶

There thus exists a stark contrast between the absence of active roles for observers in the Transparency process and the more inclusive approach underpinning the Global Stocktake. This may be explained by the fact that states parties to resist any role for third parties in reviewing the individual states implementation, but have fewer objections for processes addressing action in the aggregate.⁷⁷

Additionally, path dependency – whereby negotiators tend to rely on precedents within intergovernmental processes and resist change to those prior models – may have played a role in this divergence.⁷⁸ The MRV arrangements preceding the adoption of the Paris Agreement did not offer an active role to observer organizations.⁷⁹ This constituted a negative precedent for a new framework explicitly mandated to build upon existing reporting processes.⁸⁰

A third point is that, because the negotiations of the Global Stocktake's modalities took place in parallel with the Talanoa Dialogue, they benefited from a more inclusive precedent.⁸¹ The Fijian presidency of COP 23, which was in charge of the dialogue, opted for a participatory process, in which civil society's participation was considered

⁷² Meinhard Doelle, 'The Paris Agreement: Historic Breakthrough or High Stakes Experiment?', 6(1-2) *Climate Law* 1 (2016), at 14. Jürgen Friedrich, 'Global Stocktake (Article 14)', in *The Paris Agreement on Climate Change: Analysis and Commentary*, edited by Daniel Klein et al. (Oxford: Oxford University Press, 2017), at 319.

⁷³ Jennifer Huang, 'What Can the Paris Agreement's Global Stocktake Learn from the Sustainable Development Goals?', 12(3) *Carbon Climate Law Review* 218 (2018), at 228.

⁷⁴ UNFCCC, Decision 19/CMA.1, 'Matters relating to Article 14 of the Paris Agreement and paragraphs 99–101 of decision 1/CP.21', FCCC/PA/CMA/2018/3/Add.2 (2018), at para. 10.

⁷⁵ *Ibid.*, para. 30.

⁷⁶ *Ibid.*, para. 37(i).

⁷⁷ Note however that arguments have been put forward to suggest that the Global Stocktake might also offer an opportunity to consider individual efforts. See Alexander Zahar, 'Collective Progress in the Light of Equity Under the Global Stocktake', 9 *Climate Law* 101 (2019).

⁷⁸ Kenneth W. Abbott and David Gartner, 'Reimagining participation in international institutions', 8 *Journal of International Law and International Relations* 1 (2012).

⁷⁹ Sébastien Duyck, 'MRV in the 2015 Climate Agreement: Promoting Compliance Through Transparency and the Participation of NGOs', 3 *Climate and Carbon Law Review* 175 (2014).

⁸⁰ Paris Agreement, para. 94.

⁸¹ *Ibid.*, para. 20.

a key to success.⁸² The delegates drafting the Global Stocktake's modalities were expected to draw from the good practices used in this dialogue—including the active role of observer organizations.⁸³

The inclusive nature of the Global Stocktake offers a ray of hope for greater recognition of the human rights dimensions of climate action under the international climate change regime. Not only does it strengthen the role of public participation in global climate governance, it is expected to empower civil-society organizations and intergovernmental bodies to put the social dimensions of climate action on the agenda.

Civil society and intergovernmental organizations' input will be all the more crucial in elevating the consideration of climate action's social dimensions because the Global Stocktake's modalities suggest a more limited focus on these issues than initially proposed by several parties. For example, from the earliest stages of the negotiations, China had stressed the importance of considering issues related to poverty eradication through the Global Stocktake.⁸⁴ Such proposals were reflected in the negotiating texts considered prior to COP 24, which suggested that the Stocktake might consider information related to issues such as 'efforts to eradicate poverty, food security, job creation, and social justice in developing countries, climate refugees and displaced people.'⁸⁵ In lieu of these references, the final modalities refer to equity as well as to the 'social and economic consequences and impacts of response measures' as thematic focuses for the Stocktake, without mentioning other social dimensions.⁸⁶

3.3. Critical Issues Left Unresolved: Human Rights and Article 6 Mechanisms

One section of the guidelines that could not be finalized at COP24 is particularly relevant to the protection of and respect for human rights in climate responses: negotiations relating to Article 6 of the Paris Agreement will continue in 2019.⁸⁷

Article 6 establishes three parallel approaches through which parties can work jointly to implement their NDCs: so-called cooperative approaches; a sustainable development mechanism; and a framework for non-market approaches.⁸⁸ The sustainable-development mechanism is most similar to the CDM. The parties

⁸² COP23 Presidency, 'Suggested approach to organizing the Talanoa Dialogue in the first half of 2018' (2018), <https://cop23.com.fj/wp-content/uploads/2018/02/Approach-to-the-Talanoa-Dialogue-on-the-First-Half-of-2018_20Feb.pdf>.

⁸³ See for instance Eliza Northrop, Yamide Dagnet, Niklas Höhne, Joe Thwaites, and Kathleen Mogelgaard, 'Achieving the Ambition Of Paris: Designing The Global Stocktake' (2018), <<https://newclimate.org/wp-content/uploads/2018/04/achieving-ambition-paris-designing-global-stocktake.pdf>>.

⁸⁴ *China's Submission on the Global Stocktake*, Ad Hoc Working Group on the Paris Agreement, 1st Sess., Agenda Item 6(a) and (b), FCCC/APA/2016/INF.4 (2016), at 3.

⁸⁵ Presiding officers of the Ad Hoc Working Group on the Paris Agreement, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation, 'Matters relating to the global stocktake referred to in Article 14 of the Paris Agreement' APA-SBSTA-SBI.2018.Informal.2.Add.7 (2018), at para. 56.

⁸⁶ Decision 19/CMA.1, *supra* note 74, at para. 6(b)(i) and 36(h).

⁸⁷ UNFCCC, Decision 8/CMA.1, 'Matters relating to Article 6 of the Paris Agreement and paragraphs 36–40 of decision 1/CP.21', FCCC/PA/CMA/2018/3/Add.1 (2018).

⁸⁸ Andrew Howard, 'Voluntary Cooperation (Article 6)', in *The Paris Agreement on Climate Change: Analysis and Commentary*, edited by Daniel Klein et al. (Oxford: Oxford University Press, 2017), at 178.

mandated that its rules, modalities, and procedures be informed by the ‘experience gained with and lessons learned from existing mechanisms’ under the UNFCCC and the Kyoto Protocol.⁸⁹

As noted above, however, the CDM has been the subject of much criticism for its poor record on the protection of human rights. Its modalities and procedures suffered from three main flaws. First, they failed to provide guidance on how projects are expected to contribute to sustainable development in the host country and thus deliver social benefits for local communities. Second, even though the modalities required local stakeholder consultations in the planning of projects, they fell short of defining minimum standards for those consultations. Third, they offered no remedies for local communities and indigenous peoples whose rights are adversely affected by the implementation of CDM projects.⁹⁰

Despite reports of human rights violations associated with forced evictions, negative impacts on local communities’ right to livelihood, and failure to respect the free, prior, and informed consent of indigenous peoples, the CDM has made little progress in addressing these flaws.⁹¹ In particular, the CDM has made no significant progress in providing an effective remedy for affected communities.⁹²

Under these circumstances, many parties and stakeholders sought to ensure that the Article 6 mechanisms, and in particular the sustainable-development mechanism – would learn from negative experiences with the CDM and include sufficient safeguards and remedies.⁹³ Early in the negotiation, the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment issued a letter to negotiators, stressing the need for adequate social safeguards and a grievance mechanism⁹⁴—a position echoed by the Office of the High Commissioner for Human Rights.⁹⁵

The text on the sustainable development mechanism that was circulated prior to COP 24 included reference to the conduct of local stakeholder consultations and the need for consistency with human rights as general requirements for any activity implemented.⁹⁶ This text also suggested that the host government may be required to

⁸⁹ Paris Agreement, at para. 37.

⁹⁰ Sébastien Duyck, Erika Lennon, Wolfgang Obergassel, and Annalisa Savaresi, ‘Human rights and the Paris Agreement’s implementation guidelines: opportunities to develop a rights-based approach’, 3 *Carbon and Climate Law Review* 199 (2018).

⁹¹ Knox, *supra* note 64, at 4. See also *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, Human Rights Council, 27th Sess., Agenda Item 3, UN Doc. A/HRC/27/52/Add.1, at para. 42.

⁹² *Provisional Agenda*, Subsidiary Body for Implementation, 50th Sess. (2019), <https://unfccc.int/sites/default/files/resource/SBI50_provisional_agenda-.pdf>.

⁹³ For another account of human rights negotiations in the relation to the development of modalities for article 6.4 mechanism, see Tim Cadman, Klaus Radunsky, Andrea Simonelli, and Tek Maraseni, ‘From Paris to Poland: a postmortem of the climate change negotiations’, 8:2 *International Journal of Social Quality* (2019) (in print).

⁹⁴ Knox, *supra* note 64.

⁹⁵ OHCHR, ‘Comments and Recommendations of OHCHR regarding the future UNFCCC Sustainable Development Mechanism’ (2016), <https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR_SBSTA.pdf>.

⁹⁶ Presiding officers of the Ad Hoc Working Group on the Paris Agreement, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation, ‘Matters relating to

provide information on how the proposed activity ‘conforms to the host Party’s obligations on human rights’—a requirement that was also extended to parties acquiring emission-allowance certificate. In addition, the draft text indicated that states would need to provide confirmation that a local stakeholder consultation had been conducted.⁹⁷ Lastly, the text envisioned the creation of a ‘rights-based’ grievance process,⁹⁸ as well as a process enabling stakeholders to communicate alleged human rights violations to the Supervisory Body.⁹⁹

After a week of negotiations at COP 24, the SBSTA forwarded a draft decision to the CMA that retained several of these proposals—albeit some of them bracketed—while scrapping any requirement for the host or others to communicate information on human rights compliance.¹⁰⁰ No further progress was made on these proposals during the second week of the COP.¹⁰¹

Similar proposals were considered in relation to safeguards for ‘cooperative approaches’ implemented under article 6.2 of the Paris Agreement, with a focus on defining information requirements. The absence of centralized governance for this mechanism limited options for establishing a redress mechanism. The SBSTA suggested that host parties regularly submit information regarding national governance frameworks (but without any explicit reference to stakeholder consultations) and consistency with human rights and the Sustainable Development Goals (SDGs).¹⁰² The Polish presidency’s proposal tabled during the late stage of the negotiations was cleared of references to governance frameworks and the SDGs, but retained the reference to consistency with human rights.

The Article 6 negotiations were one of the most challenging items on the agenda of COP 24. The parties’ views diverged on several issues, most significantly on the environmental integrity of the sustainable-development mechanism and on whether its modalities adequately prevented the double counting of emission reductions.¹⁰³

In the end, the parties acknowledged their disagreements in a short procedural decision, which recommended that negotiations continue on the basis of both the final

Article 6 of the Paris Agreement and paragraphs 36–40 of decision 1/CP.21’, APA-SBSTA-SBI.2018.Informal.2.Add.2 (2018); *Draft CMA decision containing the draft rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement*, SBSTA, 48-2 Sess., Agenda Item 12(b) (2018), Annex I at para. 78(f)(k).

⁹⁷ *Ibid.*, para. 48(j)(m) and regarding the acquiring Party para. 56(f).

⁹⁸ *Ibid.*, para 38 and 89.

⁹⁹ *Ibid.*, para. 90

¹⁰⁰ *Draft CMA decision containing the rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement*, SBSTA, 49th Sess., Agenda Item 11(b) (2018), at paras. 31(d)(e), 54 and 55.

¹⁰¹ ‘The Katowice Texts, Proposal by the President’ (2018),

<https://unfccc.int/sites/default/files/resource/Katowice%20text%2C%2014%20Dec2018_1015AM.pdf>.

¹⁰² *Matters relating to Article 6 of the Paris Agreement: Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement*, SBSTA, 49th Sess., Agenda Item 11(a) (2018), at para. 28(g) and (i)iv and v.

¹⁰³ Wolfgang Obergassel, Christof Arens, Lukas Hermwille, Nicolas Kreibich, Hermann E. Ott, and Hanna Wang-Helmreich, ‘Paris Agreement: Ship Moves out of the Drydock. An Assessment of COP24 in Katowice’, 13(1) *Carbon and Climate Law Review* 3 (2019), at 15.

document considered by the SBSTA and the text issued by the presidency.¹⁰⁴ The absence of an outcome on Article 6 leaves open the question of whether the Paris Agreement's implementation will benefit from past lessons and will avoid some of the mistakes made under the Kyoto Protocol.

4. Conclusion

Three years after Paris, the adoption of the implementation guidelines at COP 24 offered an opportunity for parties to demonstrate whether the Paris Agreement would constitute a paradigm shift for the integrating human rights into climate policies. The parties failed to include explicit references to the importance of human rights into climate action, which might have steered the implementation of the Paris Agreement towards greater coherence with human rights obligations. In this context, it is hard to see the outcome as anything but a backward step—not only from the provisions of the Paris Agreement, but also from the wording included in the UN Human Rights Council's resolutions on climate change.

It remains to be seen whether, over time, states will interpret the guidelines in a way that allows human rights norms to play a greater role in climate action. One can hope that the lack of substantive references will be partly compensated for by procedural opportunities created by the guidelines that allow civil society voices to help shape climate policies.¹⁰⁵ The guidelines' emphasis on gender-responsive and participatory climate policy-making may prove instrumental to promoting coherence between the implementation of the Agreement and human rights norms.

The parties' limited support for deeper consideration of human rights in climate policies raises questions about the role that the evolving climate change regime will play in promoting greater policy coherence in the implementation of the Paris Agreement. One argument used to justify the refusal to recognize human rights elements is the need to shield the climate change regime from 'imports' from human rights processes in order to conserve perceived specificities in the climate negotiations.¹⁰⁶ Paradoxically, this position—when leading to outcomes cut off from human rights considerations (such as the COP 24 guidelines)—might lead to a strengthening of the role of human rights institutions, including the Human Rights Council, its Special Procedures mandate-holders, and the human rights treaty bodies. If the climate change regime continues to plod several years behind normative developments in human rights institutions on the interplay between human rights and climate change, it risks undermining its own role as the powerhouse for shaping and governing climate change responses.¹⁰⁷

¹⁰⁴ Decision 8/CMA.1, *supra* note 87, at paras. 1 and 2.

¹⁰⁵ Such opportunities would also offer opportunities for lobby groups holding more regressive positions to contribute to the process. For an expression of concerns about such influence, see for instance the submission of the Like Minded Developing Countries Group urging the UNFCCC process establish a conflict of interest policy similar to that established under other international frameworks. 'LMDC Submission for the In-Session Workshop on Opportunities to Further Enhance the Effective Engagement of Non-Party Stakeholders at UNFCCC SBI 46' (2017), <<https://www4.unfccc.int/sites/submissionsstaging/Pages/Home.aspx>>.

¹⁰⁶ Savaresi, *supra* note 29, at 37.

¹⁰⁷ See for instance the increasing number of recommendations adopted by UN human rights treaty bodies addressing the national implementation of specific elements of the climate change regime. *Supra* note 43.