

Public Participation and Climate Governance: An Introduction

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This introduction situates the contributions to this special issue within the broader legal and scholarly developments that concern the relationship between public participation and climate governance. It begins by discussing the origins and scope of the principle of public participation in international environmental and climate law. It then provides an overview of three broad strands of research that have examined the role and prospects of public participation, collaboration and deliberation in the governance of complex environmental issues such as climate change. It concludes by identifying a number of lines of inquiry that could inform future research on the relationship between public participation and climate governance.

INTRODUCTION

Due to its wide-ranging social, economic and environmental implications, and its significant intergenerational dimensions, the principle of public participation has long been recognized as paramount for the governance of climate change. Article 6 of the United Nations Framework Convention on Climate Change (UNFCCC) most notably outlines States' responsibilities to promote and facilitate education and public awareness, public access to information, public participation, training and international cooperation with respect to addressing climate change and its effects.¹ Most recently, during the 2014 Conference of the Parties to the UNFCCC, governments reiterated the importance of public participation and public access to information in mitigating greenhouse gas emissions and in promoting climate-resilient sustainable development.²

As the world develops long-term solutions to climate change, public participation is likely to remain a key organizing principle for climate governance at the local, national, regional and international levels. This special

issue aims to contribute to scholarly and policy efforts in this domain by presenting new research from multiple perspectives on the concept, potential, challenges and limitations of public participation in the governance of climate change. The remainder of this introduction is structured as follows. We begin by briefly presenting the origins and scope of the principle of public participation in international environmental and climate law and introduce a related article included in the special issue. Next, we situate the other contributions to this special issue within the existing array of academic debates focusing on the nature, promise and shortcomings of participatory governance in the field of climate change. We conclude by identifying a number of lines of inquiry that could inform future research on the relationship between public participation and climate governance.

THE PRINCIPLE OF PUBLIC PARTICIPATION IN INTERNATIONAL ENVIRONMENTAL AND CLIMATE LAW

The principle of public participation was first affirmed in international environmental law in the context of the Earth Summit held in Rio de Janeiro in 1992. In particular, Principle 10 of the Rio Declaration on Environment and Development provides that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.³

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¹ United Nations Framework Convention on Climate Change (New York, 9 May 1992; in force 21 March 1994), Article 6.

² UNFCCC, Decision 19/CP.20, The Lima Ministerial Declaration on Education and Awareness-raising (UN Doc. FCCC/CP/2014/10/Add.3, 2 February 2015).

³ Rio Declaration on Environment and Development, found in Report of the UN Conference on Environment and Development (UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992), Annex ('Rio Declaration'), Principle 10. See also Agenda 21, found in Report of the UN Conference on Environment and Development (UN Doc. A/CONF.151/26, 14 June 1992), at paragraph 23.2.

This influential definition delineates the concept of public participation into three main components: access to information, opportunity to participate in decision making, and access to judicial and administrative proceedings and remedies.⁴ Over the last few decades, the principle of public participation has been reaffirmed in all of the major United Nations (UN) outcomes adopted in relation to sustainable development⁵ as well as included in dozens of multilateral environmental treaties.⁶ Even so, in its 2010 *Pulp Mills* decision, the International Court of Justice refused to recognize public participation as a general principle of international law or as an obligation under customary international law.⁷ In order to accelerate the effective implementation of Principle 10, the Governing Council of the UN Environmental Programme adopted in 2010 a voluntary set of guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters.⁸ These guidelines aim to provide guidance to governments, in particular in developing countries, in relation to minimum standards with regards to the three components of public participation included in the Rio Declaration.

A number of developments at the regional level have also served to further elaborate and operationalize the principle of public participation over the last 20 years. To begin with, regional human rights courts have established linkages between the principle and political and civil rights, most notably the right to participate, that are protected under international human rights law.⁹ In addition, the principle has been included in several regional environmental agreements adopted around the world.¹⁰ In this regard, the regional treaty that goes furthest in defining and giving effect to the principle of public participation is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), which was adopted in 1998 under the auspices of the UN Economic Commission for

Europe.¹¹ At the moment, a process largely inspired by the example of the Aarhus Convention is currently ongoing under the aegis of the UN Economic Commission for Latin America and the Caribbean in order to develop a regional instrument to promote the implementation of Principle 10 in that region.¹²

The principle of public participation also constitutes a cornerstone of the multilateral climate regime. As was mentioned above, the principle is enshrined in Article 6 of the UNFCCC, which obliges State parties to promote and facilitate public access to information and public participation at the national, sub-national and regional levels. Additionally, Article 4.1(i) of the UNFCCC also commits State parties to encourage the widest participation in the climate negotiations themselves, including that of nongovernmental organizations. In order to support the implementation of the former provision, the parties have established successive work programmes specifically dedicated to Article 6.¹³ These work programmes have aimed at providing a flexible framework to facilitate cooperation among UNFCCC parties, relevant intergovernmental organizations and nongovernmental organizations. On the basis of this provision, a formal dialogue covering access to information, public participation and public awareness took place in 2014.¹⁴ This dialogue emphasized the crucial nature of public participation for informed policy making and strong policy acceptance and support for its implementation. It also highlighted, however, that effective public participation in climate governance is complex in nature and requires strengthening the capacities of both governments and civil society.¹⁵

This special issue aims to contribute to this important dialogue and includes an article¹⁶ by Sébastien Duyck that specifically explores the efforts held under the Aarhus Convention to promote public participation in international forums, particularly within the UNFCCC. Duyck highlights that nongovernmental organizations,

⁴ J. Ebbesson, 'Principle 10: Public Participation', in: J.E. Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press, 2015), 287, at 291–294.

⁵ Johannesburg Declaration on Sustainable Development, in: Report of the World Summit on Sustainable Development (UN Doc. A/CONF.199/20, 4 September 2002), at paragraphs 26 and 34; The Future We Want (UNGA Resolution A/RES/66/288, 11 September 2012), at paragraph 43.

⁶ See J. Ebbesson, n. 4 above, at 294–297.

⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, [2010] ICJ Rep. 14, at paragraph 216.

⁸ Decision SS.XI/5 – A, Annex: Environmental Law (UN Doc. UNEP/GCSS.XI/11, 3 March 2010).

⁹ L.-A. Duvic-Paoli, 'The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence', 23 *Yearbook of International Environmental Law* (2012), 80.

¹⁰ See J. Ebbesson, n. 4 above, at 298–303.

¹¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998; in force 30 October 2001).

¹² See Note Verbale Dated 27 June 2012 from the Permanent Mission of Chile to the United Nations addressed to the Secretary-General of the United Nations Conference on Sustainable Development (UN Doc. A/CONF.216/13, 25 July 2012).

¹³ UNFCCC, Decision 11/CP.8, New Delhi Work Programme on Article 6 of the Convention (UN Doc. FCCC/CP/2002/7/Add.1, 28 March 2003); Decision 9/CP.13, Amended New Delhi Work Programme on Article 6 of the Convention (UN Doc. FCCC/CP/2007/6/Add.1, 14 March 2008); Decision 15/CP.18, Doha Work Programme on Article 6 of the Convention (UN Doc. FCCC/CP/2012/8/Add.2, 28 February 2013).

¹⁴ See Decision 15/CP.18, n. 13 above.

¹⁵ Summary Report on the 2nd Dialogue on Article 6 of the Convention (UN Doc. FCCC/SBI/2014/15, 15 September 2014).

¹⁶ S. Duyck, 'Promoting the Principles of the Aarhus Convention in International Forums: The Case of the UN Climate Change Regime', 24:2 *Review of European, Comparative and International Environmental Law* (2015), 123.

the secretariats established under both agreements and the parties to the Aarhus Convention have all contributed to the interactions between these two regimes. Stakeholders have ensured that the relevance of the Aarhus principles remains continuously highlighted in the context of the international climate negotiations and have informed Aarhus parties of specific emerging issues and concrete opportunities related to public participation in international climate governance. The Aarhus secretariat has mainly worked to support its parties by providing opportunities to exchange information and good practices. However, its direct input to the climate change regime has remained limited up to now. Beyond the role that these actors have played in terms of information-sharing, the effective promotion of the Aarhus principles in the climate change regime has relied primarily on the activities and positions supported by the countries that are parties to both instruments. Duyck argues that the majority of these initiatives have focused on strengthening the engagement of domestic stakeholders in relation to the climate negotiations. He concludes that the limited geographic scope of the Aarhus Convention hampers the ability for its parties to shape the participatory modalities and outcomes of international forums. The current process towards the adoption of a Latin American and Caribbean regional instrument on Principle 10, Duyck argues, provides renewed momentum for the implementation of public participation in international climate governance.

UNDERSTANDING THE RELATIONSHIP BETWEEN PUBLIC PARTICIPATION AND CLIMATE GOVERNANCE

Alongside its recognition in international environmental and climate law, the concept of public participation has also given rise to a rich body of scholarly literature that has discussed the role and prospects of public participation, collaboration and deliberation in the governance of complex environmental issues such as climate change.¹⁷ This literature features three broad

strands of research, each of which is represented in this special issue.

The first strand focuses on the normative aspects of public participation and emphasizes the inherent value of giving effect to democratic principles and respecting the rights, autonomy and dignity of individuals and communities in a domain that has significant implications for social, environmental and intergenerational equity and justice.¹⁸ The scholars writing in this vein have tended to adopt a more discursive approach that assesses the potential for participatory processes to challenge, expand or reinforce dominant discourses in the realm of climate governance. While increased public participation ostensibly empowers marginalized voices through more inclusive processes, these scholars seek to deconstruct the power relations implicit in the framing of participatory mechanisms, interrogating the notion that broader access to decision-making forums necessarily leads to more effective, inclusive and equitable outcomes.¹⁹

In his article,²⁰ Umberto M. Sconfienza examines how the dominant neo-liberal approach to environmental governance, and its attendant focus on marketization and efficiency at the expense of equity and distributional concerns, has tended to crowd out other normative arguments in the environmental arena, promoting a thin idea of participation through the market. Sconfienza argues that more robust mechanisms of public participation provide a potential challenge to the neo-liberal approach. They do so by helping to ensure that market-based instruments provide more equitable forms of environmental protection (through the provision of greater *information* to decision makers) and by counteracting the dominance of efficiency-based arguments and allowing disparate actors to frame issues in their own terms (through the increased *presence* of the public at the decision-making table). In this way, the mechanisms of public participation have led to an increased realization that climate change is a distributional problem, in addition to a technical one. However, the narrative of public participation is also susceptible to neo-liberal reinterpretation and co-option. For example, the notion that greater participation will lead to more equitable outcomes due to increased information can also reinforce the focus on efficiency favoured by neo-liberal discourse. As such, in analysing the normative presuppo-

¹⁷ See, e.g., J. Ebbesson, 'The Notion of Public Participation in International Environmental Law', 8 *Yearbook of International Environmental Law* (1997), 51; J. Steele, 'Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach', 21:3 *Oxford Journal of Legal Studies* (2001), 415; B.J. Richardson and J. Razzaque, 'Public Participation in Environmental Decision Making', in: B.J. Richardson and S. Wood (eds.), *Environmental Law for Sustainable Development* (Hart, 2004), 165; E. Lövbrand and J. Khan, 'The Deliberative Turn in Green Political Theory', in: K. Bäckstrand et al. (eds.), *Environmental Politics and Deliberative Democracy: Examining the Promise of New Modes of Governance* (Edward Elgar, 2010), 47; R. Bouwen and T. Taillieu, 'Multi-party Collaboration as Social Learning for Interdependence: Developing Relational Knowing for Sustainable Natural Resource Management', 14:3 *Journal of Community & Applied Social Psychology* (2004), 137.

¹⁸ See, e.g., R. Few et al., 'Public Participation and Climate Change Adaptation: Avoiding the Illusion of Inclusion', 7:1 *Climate Policy* (2007), 46; R. Lidskog and I. Elander, 'Addressing Climate Change Democratically. Multi-level Governance, Transnational Networks and Governmental Structures', 18:1 *Sustainable Development* (2010), 32.

¹⁹ See, e.g., R. Few et al., n. 18 above.

²⁰ U. Sconfienza, 'The Narrative of Public Participation in Environmental Governance and its Normative Presuppositions', 24:2 *Review of European, Comparative and International Environmental Law* (2015), 139.

sitions behind participatory discourses, Sconfienza concludes that they contain some of the narratives and justifications arising from the very neo-liberal approach that such discourses intend to challenge.

The contribution²¹ by Gwendolyn Blue also notes that the idea of public participation is grounded in the normative assumption that good governance requires the active consent of those governed, and that public participation can provide an alternative to more exclusive or technocratic forms of decision making. Nevertheless, she argues that the principles of public participation have not been adequately brought to bear on climate change practices. Blue interrogates the normative underpinnings of formal participatory initiatives on climate change through an examination of framing effects – how issue framing affects the articulation of problems, the legitimization of viewpoints and potential prescriptions for addressing the problem. The article examines as a case study the World Wide Views on Global Warming (WWViews) process – an experimental methodology for convening cross-national deliberations to inform UN decision-making processes – to examine these framing effects. She concludes that the top-down nature of the WWViews process restricted discussion and contributed to the exclusion of voices that did not align with the dominant framing of climate change espoused by the initiative. Ultimately, Blue suggests that the way in which participatory processes are framed can influence whether or not deliberative initiatives serve to ‘open up’ or ‘close down’ policy discussions, and thus whether such initiatives can indeed fulfil their promise of better climate governance.

The second strand of scholarly research on public participation that is present in this special issue is oriented around functionalist and practical considerations. While it acknowledges the normative importance of public participation, this literature tends to stress the practical benefits of participatory governance, including its ability to generate knowledge, improve decision making and foster local capacity for responding to climate change,²² as well as its beneficial effects for the empowerment of local communities and alleviate poverty among marginalized actors.²³ This literature

accordingly seeks to understand whether and how the potential of public participation may be fulfilled in practical terms.

In their article on the participation of the Inuit in climate governance in the Canadian Arctic, Konstantia Koutouki, Paul Watts and Shawn Booth emphasize the importance of respecting the collective rights of Inuit communities enshrined in Canadian and international law as well as ensuring that their traditional knowledge is effectively integrated into the design and management of climate adaptation programmes in the Canadian Arctic.²⁴ Notwithstanding increasing scholarly recognition of the value of traditional Inuit rights and knowledge in responding to climate change, the authors note that Inuit perspectives remain largely absent from Canadian tertiary education, which continues to emphasize Western scientific knowledge over other forms of spiritual, cultural and aesthetic knowledge regarding marine environments and inhabitants. The authors present an innovative transdisciplinary analysis of historic fish and marine mammal catch in the Canadian Arctic that illustrates the potential and the need for cross-cultural and collaborative approaches for reconciling scientific and traditional knowledge in the context of resource governance. More broadly, Koutouki, Watts and Booth propose the adoption of an inclusive approach to university and college education that could meaningfully incorporate Inuit traditional knowledge and indigenous rights, most notably the indigenous right of free, prior and informed consent, into existing curricula. They argue that the graduates of such programmes would be well positioned to understand indigenous and non-indigenous interests and perspectives, improve the capacity of Inuit communities to participate in decision making, and help foster cooperation among these communities and other stakeholders in the governance of climate adaptation in the Canadian Arctic.

For their part, Joanne Narksompong and Sangchan Limjirakan emphasize in their article²⁵ the critical importance of youth participation in decision making and in climate change action, as well as the role of educational responses to climate change. Genuine youth engagement on climate change is still largely lacking in countries’ policies and plans, in spite of the serious implications of climate change for young people’s lives. Climate change education is key to preparing young people for unpredictable futures, while youth

²¹ G. Blue, ‘Public Deliberation with Climate Change: Opening Up or Closing Down Policy Options?’, 24:2 *Review of European, Comparative and International Environmental Law* (2015), 152.

²² See, e.g., A. Nyong *et al.*, ‘The Value of Indigenous Knowledge in Climate Change Mitigation and Adaptation Strategies in the African Sahel’, 12:5 *Mitigation and Adaptation Strategies for Global Change* (2007), 787; K. Hobson and S. Niemeyer, ‘Public Responses to Climate Change: The Role of Deliberation in Building Capacity for Adaptive Action’, 21:3 *Global Environmental Change* (2011), 957; H. Leck and D. Simon, ‘Fostering Multiscalar Collaboration and Co-operation for Effective Governance of Climate Change Adaptation’, 50:6 *Urban Studies* (2013), 1221.

²³ See, e.g., K. Lawlor *et al.*, ‘Community Participation and Benefits in REDD+: A Review of Initial Outcomes and Lessons’, 4:2 *Forests* (2013), 296.

²⁴ K. Koutouki *et al.*, ‘The Canadian Arctic Marine Ecological Footprint and Free Prior Informed Consent: Making the Case for Indigenous Public Participation through Inclusive Education’, 24:2 *Review of European, Comparative and International Environmental Law* (2015), 160.

²⁵ J. Narksompong and S. Limjirakan, ‘Youth Participation in Climate Change for Sustainable Engagement’, 24:2 *Review of European, Comparative and International Environmental Law* (2015), 171.

participation in responding to climate change can help reorient development pathways toward sustainability by broadening the perspective to include the social and economic forces behind the problem. Taking Thailand as a case study to examine the inadequacy of national policies in addressing youth engagement and education in climate change issues, the authors argue that the integration of climate change education into educational policy in the country has been limited, and opportunities for Thai youth to participate in climate change policy and decision-making processes largely remain restricted to informal and community settings. The article concludes that approaches to youth engagement must recognize the complex social and political aspects of climate policy making, remaining reflexive and participatory. Involving youth has the potential to enhance their capacity to engage in climate-related discussions and actions affecting their future, while also strengthening and improving the sustainability of Thailand's climate change response.

Finally, this special issue also contributes to a third strand of scholarly research that focuses on the political nature of public participation in the climate policy domain. Whereas the other strands of research discussed above can be seen as focusing on the 'supply' of participatory mechanisms and approaches (or lack thereof) across various institutional contexts, this literature centres on the 'demand' side, examining whether and how non-State actors may create and seize opportunities for participating in the adoption and elaboration of climate policies.²⁶ In this vein, Ana Nassar de Oliveira's article²⁷ in this special issue underscores the importance of political strategy and context in shaping the nature and outcomes of public participation in the policy process. Drawing on social movement theory, Nassar de Oliveira identifies and examines the most common strategies that Brazilian civil society organizations (CSOs) adopted in order to influence domestic and international policy discussions concerning the intersections between forestry and climate change. Her analysis most notably reveals that greater openness to civil society participation and alignment with their views led Brazilian CSOs to favour cooperative, rather than contentious, strategies in their engagement with the Brazilian government. As such, Nassar de Oliveira's case study suggests that creating meaningful opportunities for public participation may indeed contribute to the emergence of the sort of productive,

collaborative and inclusive policy process that the governance of climate change requires.

CONCLUDING THOUGHTS

Taken together, the articles in this special issue uncover both the opportunities and the challenges involved in developing institutions and approaches that can foster the full and effective participation of citizens and communities in the design and implementation of solutions to climate change. We suggest that five important lines of inquiry on the relationship between public participation and climate governance merit further attention from scholars.

First, further research is needed on the best practices, appropriate methodologies and enabling conditions for ensuring that participatory approaches to climate governance deliver on their full potential.²⁸ Second, in light of the serious implications of climate change for marginalized populations around the world, further research on how narratives about participation relate to the dominant discourses in the climate arena may help determine how such participatory processes and mechanisms can be deployed most effectively, locating potential entry points for more transformative change.²⁹ Third, additional research is needed to examine the relationship between different forms of democracy and levels of democratization in the governance of climate change in the North and South as well as within global institutions.³⁰ Fourth, given the increasingly transnational character of climate governance, it will be increasingly necessary to conceive and study different manifestations of public participation across the broader transnational regime complex for climate change, including in the context of private and hybrid forms of authority.³¹ Fifth and finally, further research could explore linkages and disconnects between the three components of the principle of public participation in the context of climate governance. While the contributions to this special issue primarily focus on public participation and access to

²⁶ See, e.g., P. Newell, *Climate for Change: Non-state Actors and the Global Politics of the Greenhouse* (Cambridge University Press, 2006); M.M. Betsill and E. Corell, 'NGO Influence in International Environmental Negotiations: A Framework for Analysis', 1:4 *Global Environmental Politics* (2001), 65.

²⁷ A.L. Nassar de Oliveira, 'Forests and Climate Change: Strategies and Challenges for Brazilian Civil Society Organizations between 2005 and 2010', 24:2 *Review of European, Comparative and International Environmental Law* (2015), 182.

²⁸ See, e.g., L. Bizikova *et al.*, 'Participatory Scenario Development and Future Visioning in Adaptation Planning: Lessons from Experience, Part I' (International Institute for Sustainable Development, 2014).

²⁹ See, e.g., E. Lövbrand *et al.*, 'Closing the Legitimacy Gap in Global Environmental Governance? Lessons from the Emerging CDM Market', 9:2 *Global Environmental Politics* (2009), 74.

³⁰ See, e.g., P.J. Burnell, 'Democracy, Democratization and Climate Change: Complex Relationships', 19:5 *Democratization* (2012), 813.

³¹ See, e.g., R. Moncel and H. van Asselt, 'All Hands on Deck! Mobilizing Climate Change Action beyond the UNFCCC', 21:3 *Review of European Community and International Environmental Law* (2012), 163; L.B. Andonova *et al.*, 'Transnational Climate Governance', 9:2 *Global Environmental Politics* (2009), 52; K.W. Abbott, 'The Transnational Regime Complex for Climate Change', 30:4 *Environment & Planning C* (2012), 571.

information, it will be increasingly important to study the ways in which civil society actors are seeking and gaining access to administrative and legal remedies in relation to decisions taken to mitigate, and adapt to, climate change.³²

In turn, this research may help activists, citizens and policy makers develop and implement participatory practices that could enhance democratic legitimacy as well as foster local knowledge and capacity in the pursuit of equitable and effective solutions to climate change.

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³² See, e.g., J. Peel and H.M. Osofsky, *Climate Change Litigation* (Cambridge University Press, 2015).