

International law and policy on public participation in the transition to a low-carbon economy - ensuring inclusivity and fairness?

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Introduction

- Climate change – the convergence of hard and soft science
- IPPC (2014):

People who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses...
- Public participation as a corrective? Moral and practical elements.

Securing a Just Transition - International Human Rights Law and Public Participation

- A plethora of (hard and soft) legal coverage, notably:
 - article 21 of the Universal Declaration of Human Rights;
 - article 25 of the International Covenant on Civil and Political Rights; and
 - article 8 of the International Covenant on Economic, Social and Cultural Rights
- Further specific entitlements for minorities, etc.

International Human Rights Law and Public Participation (ii)

- Fine, as far as it goes ... but the focus on participation rights in 'public affairs' historically confined to states' organisation of their internal affairs
- Is this approach still adequate in the context of emerging global environmental governance?

Public Participation – a working definition drawn from a HRs approach

- Public participation provides a range of opportunities to individuals, groups, and organizations to take part in the conduct of public affairs that affect them, or in which they have an interest, across policy and legal contexts

Public participation in international (environmental) law?

- System evolving but remains essentially state-centric
- State obligations extend to public participation in the international sphere (General Comment no. 25 on ICCPR)
- Public participation depends on states delivering on their human rights commitments
- Limited examples states sanctioning external reach e.g. Espoo Convention



Public participation in international (environmental) law? (ii)

- Customary law - *Pulp Mills on the River Uruguay (Argentina v Uruguay)* [2010] ICJ Rep. 14
- General principles of law – *Pulp Mills*
- Indigenous Peoples
- Treaties/MEAs – *Pulp Mills*
 - Central in the international climate change regime
 - Sustainability as a lever for change?



Public participation in the international climate change regime – at the macro level

- UNFCCC
 - Art 4.1(i) commitment to ‘... encourage **the widest participation in this process, including that of non-governmental organizations**’ and Art 6. at national/sub-regional/regional levels ‘shall promote and facilitate’ (a) (ii) access to information; and (iii) **public participation**
- Civil society participation ‘rights’ in UNFCCC negotiation processes?



Public participation in the international climate change regime – at the micro level

- Kyoto Protocol (KP) Art 10
- The **Clean Development Mechanism**: KP Art 12 7. ‘... modalities and procedures with the objective of ensuring **transparency, efficiency and accountability** through independent auditing and verification of project activities.
- 2015 Modalities and Procedures 2.0
- 2009 work began on developing an appeals mechanism re EB decisions (but not DOE activities) ...



Public participation in the international climate change regime – at micro level

- Main features and flaws of public participation in the CDM
- Decision-maker CDM Executive Board
 - Procedure, new 2017 process documents:
 - Access to Information - improved
 - Public Participation - improved
 - Access to Justice???
- CDM 'simplifications' 2017 - direction of travel ...



Public participation in the international climate change regime – at the micro level – next steps

- The Paris agreement and the **Sustainable Development Mechanism** ... Art 6.4 ... supervised by a body designated by the Conference of the Parties ... and shall aim:
 - a. To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
 - b. To **incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities** authorized by a Party; ...



What would it take for the global climate change regime to contribute to a just transition?

As a sustainability problem, climate change requires the development of a **true multi-stakeholder approach** ...

Most urgently at the micro level
Desirable too at the macro level
Public participation is an essential ingredient of this ...



Images Used

Lymedisease.org; Greenpeace; globalbullionsuppliers.com;
NASA, Climate Change News; theweek.com;
genesisnetwork; uclan.



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