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RESEARCH ARTICLE

Recognising differentiated affectedness within a global demos: promoting the democratic legitimacy of the UNFCCC

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Abstract

This article seeks to understand the evolving democratic legitimacy demands of the United Nations Framework Convention on Climate Change (UNFCCC) by reflecting on the challenges of catering to a globally affected public and enhanced participation opportunities given to some highly affected groups. It argues that the principle of democratic equality at a global scale fails to take account of inequities in affectedness and power within the demos and, instead, an approach that strives towards a principle of proportionality based on degrees of affectedness could enhance the UNFCCC's democratic legitimacy. This builds on existing scholarship identifying a turn to an affectedness paradigm in international institutions more generally and the emerging influence of affected peoples organisations, characterised by the more direct forms of representation they facilitate and emphasis placed on the affectedness of their constituents to claim recognition and influence. The normative appeal of giving enhanced participatory opportunities to those most affected by climate governance is weighed against its challenges and risks. It is concluded that, despite conceptual and practical difficulties connected to the subjective nature of affectedness, a pragmatic approach that treats such a proportionality principle as a democratic ideal to be strived towards could have a legitimising effect on the UNFCCC.

Keywords: all-affected principle; democratic legitimacy; international institutions; public participation; UNFCCC

Introduction

The parties to the UNFCCC have recognised that climate change is a 'common concern of humankind', thereby acknowledging that the entire present and future world population is, or will be, affected by the decisions taken to mitigate against and adapt to its effects (UNFCCC, preamble). However, while everyone will be affected by both climate change and climate policy to some degree, affectedness is not evenly distributed. Certain populations, communities and groups are likely to be more negatively and disproportionately affected than others due to their particular characteristics and circumstances.

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The risks posed by climate change itself may apply more severely to people living in highly affected geographical zones with a close relationship to the land, such as small islands or coastal areas, but also to societal groups with particular physical vulnerabilities or subject to socio-economic marginalisation such as those living in poverty, women, indigenous peoples, peasants, youth, migrants, displaced people and disabled persons (HRC, 2022; IPCC, 2023: 51). Climate policy itself can also have disproportionate adverse impacts on certain societal groups, particularly if high ambitions have been set (Johansson, 2023). Giving specific consideration to these most highly affected groups is an essential component of promoting distributive climate justice, supporting the legitimacy of decision-making, and ensuring the overall effectiveness of climate action at all levels of governance (IPCC, 2023: 101).

Despite this, these high-stakes groups also tend to face some of the highest hurdles when it comes to political participation in climate governance. The increasing prevalence of civil society protest actions and litigation, aimed at challenging both the ambition of climate policy and its distributive effects, are an indication that many feel that they have inadequate representation and recognition in formal governance processes. At international level, the UNFCCC has in theory committed to an open and inclusive approach to civil society participation, facilitating the engagement of a broad range of observer organisations (UNFCCC, 2022). However, the huge volume of non-state actor participants permitted in recent years, as was the case at the 2023 conference in Dubai, has in reality increased competition for influence that disadvantages many marginalised groups. Many of the dominant international environmental non-governmental organisations (ENGOs), who have traditionally claimed to represent the general public interest, have been accused of favouring mainstream environmentalist narratives without incorporating the interests and viewpoints of significantly affected minorities (Kuyper et al., 2017: 98–100). The underrepresentation of those most affected was raised as a key concern by the Special Rapporteur on the promotion and protection of human rights in the context of climate change in his first report delivered to the United Nations General Assembly (UNGA, 2022: paras 73–80).

This sense of disenfranchisement and mistrust of the large international ENGOs has, over time, prompted more civil society groups to exclusively organise around their specific sets of interests. This pattern corresponds with the turn to an affectedness paradigm within international institutions, which was discussed in a special issue of the *Third World Quarterly journal* in 2018 (Sändig et al., 2018). So-called 'affected persons organisations' (APOs) are characterised, first, by the more direct forms of representation that they facilitate and, second, by the reliance they place on the high degree of the affectedness of the group they speak for (Sändig et al., 2018; Von Bernstorff, 2021). In doing so, APOs are able to claim high levels of legitimacy as participants, wield influence within institutional deliberations and draw greater attention to their interests and concerns. This article will discuss how, over time, in response and in an effort to safeguard perceptions of its own legitimacy, the UNFCCC has given certain highly affected groups improved participatory opportunities through, for example, the creation of new observer constituencies and establishing dedicated agenda items.

This article adds to the existing collection of literature examining the phenomenon of the turn to the affectedness paradigm by other international institutions (Sändig et al., 2018; Von Bernstorff, 2021). It also aims to further contextualise narrower case studies of how specific groups, such as indigenous peoples, have framed their participation on the basis of affectedness within specific dimensions of the international climate regime (Toussaint, 2018; Wallbott and Recio, 2018), thereby considering how these examples

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fit within the broader landscape of the many others seeking to exert influence within the UNFCCC. Lastly, the article aims to elaborate upon how these issues can be interpreted through a lens of democratic theory on democratic boundaries and distribution of power amongst the demos.

The application of the lens of democratic theory is triggered by the reliance placed on the concept of affectedness, now prevalent across various justice-focused dimensions of climate discourse, to establish normative claims to participation. This language invokes the all-affected principle, which requires that all those who are affected by the decisions of a political authority ought to be able to participate in its decision-making processes (Dahl, 1970; Arrhenius, 2005; Goodin, 2007). However, the application of the principle to a global issue gives rise to a global demos which, assuming the principle of democratic equality applies to all those within the demos, generates scepticism of its conceptual and practical feasibility (Miller, 2010). This article proposes that the claims of participation by highly affected groups instead suggest that the legitimacy of decision-making processes would be improved through efforts to adhere, as far as is possible, to a proportionality criterion or principle that recognises differentiated affectedness as a democratic ideal.

The next section begins by describing how institutions like the UNFCCC are increasingly turning to democratic values as a source of legitimacy, why this triggers the all-affected principle and the ensuing challenges where the principle generates a global demos (Democratic values and communities at global scale). The article then examines how a global demos is recognised within the context of UNFCCC, the struggle of highly affected groups to gain visibility and recognition within the institution's pursuit of openness and inclusivity, and the role that informal powers play in their lack of representation (Representation of the Global Demos within in the UNFCCC). The next section then discusses the strategic advantages of using affectedness as a framing tool to claim participatory rights and political recognition, as well as how its use has emerged in practice within the UNFCCC (Affectedness as a normative basis for participation). The article then applies a theoretical lens to explain the normative arguments for replacing a democratic principle of equality with a principle of proportionality, as well as various conceptual challenges in dealing with such a subjective concept. It concludes that a pragmatic approach, which treats proportionality as an ideal to be strived for on an ongoing basis, through deliberative processes, could help steer the UNFCCC towards more legitimate decision-making (Theoretical implications: from political equality to a proportionality criterion?). The article concludes with some reflections for future research (Conclusion).

Democratic values and communities at global scale

The democratic value of civil society participation

Several international agreements on sustainable development have endorsed the notion that international institutions must be democratic, or fulfil democratic principles, to achieve sustainable development goals (e.g. Johannesburg Declaration 2002: para 31; UNGA, 2012: para 10; UNGA, 2015: SDG 16.7). It has also become increasingly commonplace for international institutions dealing with various subject matters to 'speak the language of democracy' by referring or making commitments to democratic values and norms such as participation, inclusivity, representation, deliberation, transparency and accountability (Dingwerth et al., 2020).

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In accordance with these upwards trends, such democratic language has also become more prevalent within the institutional statements and outputs of the UNFCCC. Arguably, the Paris Agreement (2015) itself alludes to democratic principles in its preamble by affirming the importance of public participation and access to information 'at all levels'. This is fleshed out by several decisions of the Subsidiary Body for Implementation, which has referred to a need for 'open dialogues' with observer organisations and to foster 'openness, transparency and inclusivity' (See e.g. UNFCCC, 2011, para. 178(a); UNFCCC, 2012b, para. 242; UNFCCC, 2019b, para. 138). In 2022, as part of a consultation aiming to strengthen observer engagement, the secretariat referred to the need to ensure that engagement is 'inclusive', 'fair' and 'transparent' (UNFCCC, 2022). In 2023, a joint statement issued in advance of COP28 by the UNFCCC and the United Arab Emirates, as the incoming COP Presidency, committed to an 'inclusive' COP, urging 'increased participation and meaningful engagement of youth, women, local communities, and Indigenous Peoples' (UNFCCC, 2023b).

The regard given to these kinds of values seems to have emerged as institutional mandates have expanded into realms of more direct consequence to individuals and as the role of state consent in their decision-making processes has been diluted, triggering growing scepticism of their democratic legitimacy (Brunnée, 2002; Dingwerth et al., 2020). In the case of the UNFCCC, while climate governance has become characterised by a multi-level and polycentric approach, it remains a critical locus of decision-making that guides global climate action. The UNFCCC is where agendas and ambitions are set, rules are developed, responsibilities and resources are allocated, collaboration is facilitated, action is orchestrated, and progress is monitored. Each of these activities involves exercises of authority that generate demands for democratic legitimacy. Formalistic arguments that this legitimacy can be derived from state participation alone, amongst members with diverse domestic political cultures, populations and dilute chains of power, are now considered to be weak (Scholte, 2002: 289–92; Buchanan and Keohane, 2006; Bodansky, 2008).

However, exactly how international institutions can or should be democratised has been the subject of significant discussion and debate in political scientific literature, with various degrees of optimism, scepticism and theoretical approaches that may take either normative or sociological perspectives (Dahl, 1999; Buchanan and Keohane, 2006; Koenig-Archibugi, 2011). According to normative perspectives, democratic legitimacy is understood to emerge from the extent to which a set of democratic values or standards are met within an institution, derived from primarily input and throughput elements (Schmidt, 2013; Dingwerth, 2014; Bäckstrand and Kuyper, 2017). Grainne de Búrca (2008) argues that a pragmatic approach that 'strives' towards these democratic 'building blocks' in practice, while remaining flexible and self-correcting, can improve and safeguard democratic legitimacy. Striving for 'the fullest possible participation and representation of those affected' is one core value that De Búrca emphasises should form part of this values-based approach to democratic legitimisation (De Búrca, 2008: 129–36).

Related theories concentrate on the value of deliberation, thus elaborating on how the inputs of various actors are processed into institutional outputs (Habermas, 1996; Stevenson and Dryzek, 2014). Theories of deliberative democracy resonate in the context of international institutions dealing with complex problems because they focus on the quality of discussion that feeds into decision-making rather than solely voting powers (Steffek and Nanz, 2008; Stevenson and Dryzek, 2012). Ideal deliberative practices entail the facilitation of authentic, reasoned dialogue and collective problem-solving amongst

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participants, free from the undue influence of power and supported by expert advice, to support and inform the ultimate decision-makers (Bächtiger, 2018: 2–8). International institutions such as the UNFCCC have been understood as being able to facilitate deliberative 'moments' that take place within a broader deliberative system encompassing various actors, including civil society organisations (Parkinson, 2003; Bäckstrand, 2006; Dryzek and Stevenson, 2011).

The participation of civil society organisations is viewed as critical to the democratic legitimacy of international institutions because they fill representative gaps left by states. Institutions have long engaged NGOs to some extent, although historically this was justified on the basis of the functional or instrumental value of their knowledge and expertise, or roles they could play in implementation. These are important objectives but imply only certain actors should participate in certain ways at certain stages, according to their substantive added value (Von Bernstorff, 2021: 140–3; Sharman, 2023). However, increasing recognition and emphasis placed on the democratic value of NGO engagement entails a more inclusive and rights-based approach, widening the parameters of who would be considered a legitimate participant (Sharman, 2023). It includes NGOs that can speak on behalf of marginalised or minority groups who tend to be disregarded by states, that can unite and advocate for transnational movements, and contribute otherwise unheard information, experiences, perspectives, concerns and dissenting views (Dryzek, 1999: 34–5; Scholte, 2002: –4; Beijerman, 2018a: 151–4).

Still, it can be difficult to distinguish between different forms of participation or the spectrum of influence over outcomes it can entail, which may range among co-creative processes, consultation or mere tokenism (Arnstein, 1969). There are also multi-layered challenges to claims of its democratic value from various theoretical standpoints. Some focus on the internal qualities of organisations, pointing out that many NGOs do not adhere to democratic values themselves in terms of participation in their own decision-making, representation, transparency and accountability (Parkinson, 2003: 187–8; Anderson and Rieff, 2005: 29–31; Beijerman, 2018a: 158–161). Others claim that they cannot meet the necessary qualities and spirit of a deliberative participant that is flexible and open to persuasion by better arguments. This is because of their narrow and fixed mandates (Young, 2001), or collaborative relationships with other organisations, states and donors (Beijerman, 2018a: 159–60). As will be explored in more detail below, structural inequities may also give some organisations advantages that result in uneven representation, which only replicates existing hierarchies of power (Scholte, 2002; Beijerman, 2018a). A value-building approach to institutional democratic legitimacy is able to acknowledge these challenges and shortcomings, while also striving towards mitigating against them.

Who is included? The all-affected principle and global demos

Assessing the UNFCCC through this lens of democratic theory triggers the fundamental question of who exactly should be considered part of the democratic community and therefore entitled to be represented. Variously referred to as the domain problem, the boundary problem or the problem of constituting the demos, determining the parameters of this boundary is the critical first step in establishing and maintaining a democratic system (Dahl, 1970: 45–9; Goodin, 2007: 40–2). But constituting the demos within any political context contains the inherent paradox, at least in the first instance, of how to do

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so before any demos exists in the first place. The demos cannot be determined democratically. It must therefore be defined according to objective criteria derived from normative principles (Goodin, 2007: 43–51).

The all-affected principle is accepted by many theorists to be a compelling normative measure, focused on possible outcomes, by which to define the outer edges of the democratic boundary. As described by Robert Dahl, the all-affected principle asserts that ‘everyone who is affected by the decisions of a government should have the right to participate in that government’ (Dahl, 1970: 49; Arrhenius, 2005: 19–23). This principle resonates with various philosophical traditions of thought that support values such as autonomy, consent, and relational conceptions of justice (Schaffer, 2012: 323–4). Habermas (2006: 78) therefore recognises that ‘deficits in democratic legitimation arise whenever the set of those involved in making democratic decisions fails to coincide with the set of those affected by them’.[1]

The well-understood practice of identifying democratic populations on the basis of a geographically grounded methodology, such as nationality or residence, is argued by Robert Goodin to stem from the all-affected principle. This is because of an underlying assumption that generally, due to spatial or historical proximity, the interests of these population units are more closely intertwined (Goodin, 2007). But, particularly in an increasingly globalised world, the all-affected principle does not necessarily have to be tied to geographical boundaries (Goodin, 2007: 48–50; Miller, 2009: 213–4). Many theorists of transnational and global democracy thus describe those ‘affected’ in their identification of democratic participants, in reference to the all-affected principle (e.g., Bäckstrand, 2006: 475; De Búrca, 2008: 133; Dryzek and Stevenson, 2011: 1870).

Endorsement of the all-affected principle can be found in international legal instruments pertaining to procedural environmental rights. Principle 10 of the Rio Declaration (1992) states that ‘environmental issues are best handled with the participation of *all concerned* citizens, at the relevant level’ (emphasis added). The Aarhus Convention (1998), adopted as a means of giving legal effect to Principle 10 and widely understood to support the concept of environmental democracy, confers certain participatory rights to the ‘public concerned’, defined as ‘the public affected or likely to be affected by, or having an interest in, the environmental decision-making’ (arts 2.5, 3.9, 6.2, 6.5 and 6.6). The Escazú Agreement (2018), which provides for similar procedural environmental rights, obliges state authorities to promote specific actions to facilitate the participation of the public ‘directly affected’ by projects or activities (arts 7.11 and 7.16). Both of these treaties incorporate a principle of non-discrimination, meaning that the public is entitled to have their procedural environmental rights upheld by the member states regardless of their citizenship, nationality or domicile (Aarhus Convention: art 3.9; Escazú Agreement: art 3(a)),[2] and oblige their members to promote the principle of public participation in international forums (Aarhus Convention: art 3.7; Escazú Agreement: art 7.12). This implies that affectedness should also be used as the normative measure of democratic boundaries in international environmental institutions.

[1] Future generations, animals and nature might also be included by theories that assign rights of representation to such groups. See e.g., O’Neill, 2001: 494–7.

[2] Although, the Escazú Agreement’s restriction of its definition of ‘the public’ to persons or groups that that are nationals of, or subject to, the national jurisdiction of the parties has created some interpretative confusion. For discussion, see Stec and Jendrośka, 2019: 543–4.

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However, although the all-affected principle is intended to create democratic boundaries, global environmental issues can induce a universal affectedness that removes the existence of any boundary at all. Arguably, a global demos could apply to any issue on account of the butterfly effect suggesting that everyone is affected by everything across space and time (Goodin, 2007: 55; Fraser, 2010: 292). However, the applicability of global a demos becomes particularly difficult to refute with respect to a multidimensional and global concern such as climate change. Related international decision-making, which contains innumerable variables, possible response measures and outcomes, foreseeably has universal consequences for all natural, social and economic systems with which the climate interacts. This universal affectedness is arguably reflected within the concept of climate change being a 'common concern of humankind' acknowledged by the parties in the preamble to the UNFCCC and subsequent climate treaties. Although its legal status and implications are ambiguous, the concept speaks to the impacts not only on states but all people at an individual level (Brunnée, 2008).

On the one hand, some theorists are extremely sceptical that a global demos is feasible or desirable (Valentini, 2014). They express concern with the effects of a global demos on the practicalities and quality of deliberation, arguing that deliberative exchanges will become so diluted at global scale that they become meaningless and ineffective (Dahl, 1994: 27–32; Goodin, 2000: 82; Keohane, 2003: 141; Miller, 2010: 153–6). Others focus on the composition and qualities of the demos that enable it to function competently, arguing that common values, mutual understandings of the world, trust, a sense of solidarity and shared responsibility towards one another diminish at a global scale (Miller, 2009: 207–10; Song, 2012). On the other hand, some theorists are favourable to the idea of recognising a global demos because it removes the circular boundary problem, allows for a stable and consistent democratic community, and reflects the reality that finding and implementing solutions to global problems requires systemic universal effort (Goodin, 2007: 63–8; List and Koenig-Archibugi, 2010). Generally, these optimistic voices recognise the 'impossibility of full inclusion' that would engage all global citizens directly and understand that the practical implementation of deliberative democracy at scale relies on systems of representation of people and discourses (Parkinson, 2003: 186–91; Stevenson and Dryzek, 2012).

Regardless, weaknesses in the theory of the all-affected principle become pronounced at a global scale. These can be understood in large part to stem from the fact that the principle generally adheres to, or is associated with, egalitarian ideals and the principle of political equality. While broadly appealing in theory, in practice this can ignore the reality of differentiations and inequalities within the demos. One dimension of these differentiations is the degree of affectedness of each individual (Miller, 2009: 216–7). Affectedness may be trivial or highly significant. Therefore, an only marginally affected majority could control decision-making in ways that routinely ignore or oppress very highly affected minorities (Brighouse and Fleurbaey, 2010: 140; Schaffer 212: 326). Democracy may be more likely to operate in this oppressive way on a global scale, where the sense of democratic solidarity is so weakened (Miller, 2020: 6–7). The other dimension of inequality is that, behind formal access and participation opportunities, we find uneven distributions of informal and invisible political power, influence and capacity (Beijerman, 2018a). This can perform a powerful role in deliberative systems and will be exacerbated within a demos that incorporates the extreme ends of global inequality.

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The next section illustrates how the challenges of catering to a global demos with inequal stakes and power manifest in practice within the institutional processes of the UNFCCC.

Representation of the global demos within the UNFCCC

The promotion of openness and inclusion

According to the climate treaties, any non-governmental organisation qualified in matters relating to the treaty may be admitted as an observer to conference sessions by the secretariat unless at least one-third of the member states object, and subject to the rules of procedure of each constituted body (UNFCCC, art 7.6; Paris Agreement, art 16.8). The term's usage in this context refers not only to classic non-profit civil society organisations but also encompasses research and academic institutions, networks of municipal governments and associations from the private sector. The delegates of admitted organisations may contribute to the overall deliberative character and quality of the UNFCCC process by, beyond mere observation of open proceedings or delivery of statements, engaging in institutional activities, processes, forums, dialogues and workshops, hosting and engaging in informal side events and exhibitions or otherwise interacting with the other state and non-state delegates present at the conferences.

The UNFCCC and its COP Presidencies have generally displayed a commitment to openness and inclusivity in admission and engagement of observers (UNFCCC, 2011, para. 178(a); UNFCCC, 2012b, para. 242; UNFCCC, 2019b, para. 138; UNFCCC, 2023b). Over time, particularly since 2009, the annual meetings of the UNFCCC have become high-profile political events, observer accreditations have steadily grown, and there has been a general upwards trend in the capacity for delegate attendance facilitated by host countries (For up-to-date statistics, see UNFCCC, 2025).[3]

Amongst the admitted organisations, a broad variety of mandates, goals and rationales for participation can be identified (Betsill, 2015; Van Asselt, 2016; Nasiritousi, Hjerpe and Linnér, 2016a). Jennifer Allan distinguishes the mission statements of observers based on whether they are aimed at environmental, climate, economic, social, research or other goals (Allan, 2020). The UNFCCC secretariat officially recognises nine constituency groups for the purposes of coordination and administration, mirroring the major groups established at the 1992 Rio Conference on Environment and Development (Agenda 21, 1992: Section III). The constituencies are environmental NGOs (ENGO), business and industry NGOs (BINGO), local government and municipal authorities (LGMA), indigenous peoples' organizations (IPO), research and independent NGOs (RINGO), trade union NGOs (TUNGO), women and gender NGOs (WGC), children and youth NGOs (YOUNGO) and NGOs representing agriculture and farmers (Farmers). Although, observers do not necessarily need to be affiliated with any of these constituencies.

While the roles of participating organisations are often multifaceted, many have primarily functional or instrumental objectives, rather than the objective of facilitating democratic representation (Nasiritousi, Hjerpe and Bäckstrand, 2016b; Von Bernstorff, 2021; Sharman, 2023: 8–11). The RINGO constituency, for example, which makes up just

[3] As of 2023, cumulatively over 3,800 NGO observer organisations had been admitted by the secretariat. COP28 in Dubai in 2023 was a milestone in terms of scale, where in total around 85,000 party and non-party delegates reportedly attended.

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over 25% of accreditations, is self-characterised as an unpolitical constituency with the sole purpose of offering technical and expert contributions. Business organisations tend to justify their participation according to their instrumental value in advancing climate action and economic development.[4] Many environmental NGOs also focus on their role in monitoring, enforcing or implementing climate action through local projects and programmes (Allan, 2020). While these functions contribute to building certain democratic values and checks on authority such as transparency, accountability and deliberative inputs, they place less emphasis on the value of representing affected civil society interests and concerns in the decision-making process itself.

Other organisations, however, do purport to fulfil this representative role (Betsill, 2015: 253–56). As elaborated upon below, some speak and advocate for the interests of specific societal groups affected by climate change and climate policies, such as those affiliated with IPO, TUNGO, WGC, YOUNGO or farmers. Other organisations within the ENGO constituency adopt more generalist narratives concerning environmental protection. These NGOs and networks may allude to the representation of the general global civil society interest in effective climate action, or advancing notions of global justice that claim to take into account and collate various affected interests at once (Anderson and Rieff, 2005: 29–31). Individual NGOs with such generalist narratives include Greenpeace, Friends of the Earth and WWF. Many also collectively organise around the Climate Action Network (CAN) of over 1800 members, which has gained a special status of recognition within the ENGO constituency that allocates the network specific speaking and engagement opportunities in institutional sessions (Roose, 2012: 354–56; Nasiritousi, Hjerpe and Linnér, 2016a: 121; Kuchler, 2017).

Collectively, the facilitated participation of this broad coverage of organisations by the UNFCCC, representing both specific and generalised notions of the public interest, affirms the notion of universal affectedness induced by climate change and, therefore, the applicability of a global demos that democratic values should cater to.

Underrepresentation of highly affected groups

Despite this theoretical acceptance of a global demos applicable to the UNFCCC, there are well-documented concerns regarding representational imbalances in practice. Various dimensions of this were highlighted in a consultation held by the secretariat in 2022 on how observer engagement could be strengthened. The context to the consultation was that the number and diversity of observers are making it increasingly difficult to ensure 'meaningful, inclusive, fair and transparent' engagement (UNFCCC, 2022: 7). Notwithstanding growing accreditation numbers and enhanced capacity at conference venues, demand for observer access to conferences is still growing, and higher volumes of attendees further complicates logistics and limits the availability of speaking slots, meeting rooms, side events and other engagement opportunities amidst resource limitations. The secretariat also noted that there is a perception that the UNFCCC is 'not inclusive of civil society participation, particularly those representing marginalized communities' (UNFCCC, 2022: 33).

This perception of under-representation is empirically supported by some available statistical information. From a geographical perspective, over two-thirds of accredited

[4] Although some conceptualise this in terms of 'corporate citizenship' and argue it serves the general public interest. See Tempels, Blok and Verweij, 2017.

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NGOs originate from the Global North and bring more delegates to COPs, despite the fact that the Global South has a higher population and is generally more heavily impacted by climate change (Gereke and Brühl, 2019: 878–82; UNFCCC, 2025). But under-representation goes beyond North–South divides. Other representational imbalances are shown in the proportion of constituency affiliations, such as the fact that the BINGO constituency has four times more affiliated organisations than the IPO constituency (UNFCCC, 2025). However, there is also a lack of data and therefore transparency on COP attendance, given that many delegates attend as part of national delegations or with party-issued overflow badges, which has concealed the presence of certain actors. For example, there is a reportedly expanding presence of corporate representatives with interests in carbon-intensive industries. But because many attend as part of national delegations, the extent of their attendance is difficult to ascertain (Michaelson, 2022; Durkee, 2017: 229–43).

The balance of representation indicates what interests, positions and discourses are likely to be promoted within deliberations. For example, many fear that overrepresentation of observers with interests in the fossil fuel industry will undermine and derail strong climate action. Moreover, given the agendas of NGOs are often shaped by their geographical origins, the disproportionate representation of NGOs from the Global North indicates an underrepresentation of certain ideologies on the appropriate solutions to climate change. According to a typology developed by Brian Doherty and Timothy Doyle, post-material and post-industrial perspectives are predominantly found in the Global North and tend to focus on technical solutions, market-based mechanisms and stronger regulatory frameworks. Meanwhile, post-colonial critiques more closely associated with the Global South understand the issue of climate change as being embedded within historical practices of domination, promote the idea of climate justice and are much more likely to take into account the concerns of highly affected and marginalised groups (Doherty and Doyle, 2006: 697–712; Gereke and Brühl, 2019: 876–7). Hayley Stevenson and John Dryzek have previously claimed that overall discursive representation in the UNFCCC has been highly weighted towards mainstream perspectives that 'are blind to the concerns, interests, and values of many potentially affected people' (Stevenson and Dryzek, 2012: 3–7).

The visibility of various interests is also influenced by the constituency system administered by the secretariat. The system can to some extent empower the select groups that have their own recognised constituency, by ensuring access formal sessions, invitations to workshops and events, and guaranteed time to make interventions, regardless of the size of their membership. But the recognised constituency groups do not effectively capture the spectrum of possible highly affected interests (Cabré, 2011). Interests not captured by any recognised observer category may be left without the same opportunities and visibility. Examples of highly affected groups who do not have, but are arguably deserving, of their own constituencies might include the urban and rural poor, peasants, the elderly, those with health concerns, migrants, displaced persons or local communities living in certain vulnerable geographical zones.[5] Moreover, the homogenous categorisation of constituencies might conceal the unique and heightened experiences of affected persons whose identity falls across intersectional lines (Flavell, 2023: 399).

[5]The secretariat has recognised a selection of 'informal groups', including a disability caucus, however they do not enjoy all privileges of an official constituency.

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Informal and invisible power

The under-representation of some highly affected civil society groups within the UNFCCC can be linked to existing structures of informal and invisible power. Those most deeply affected by climate governance outcomes are likely to come from groups that are already vulnerable, marginalised or disadvantaged (IPCC, 2023: 51). Historic injustices and ongoing oppression perpetrated against certain groups create and deeply embed vulnerabilities that can transcend generations and underlie the likelihood of these groups' affectedness, their capacity to mitigate against or adapt to changes, and their ongoing lack of social and political capacity to access and influence political decision-making (Afsahi, 2022: 45). Meanwhile, those with abundant political capital not only are more likely to have the resources to mitigate against political decisions that would negatively affect them, but enjoy institutional biases that incentivise greater regard to be given to their interests in the first place. These issues are well-recognised in critical legal theory, including for example post-colonial (e.g. Chimni, 2006), Marxist (e.g. Newell, 2011; Grear, 2015: 92–8) and feminist (e.g. MacGregor, 2009) perspectives.

These informal power asymmetries create obstacles at different layers of the participatory process. First, it can determine which organisations are present within institutional deliberative forums in the first place. Organisations from the Global South and smaller NGOs advocating for marginalised viewpoints frequently report that lack of funding, logistical challenges, and higher visa restrictions affect their capacity to travel to, attend, and engage in UNFCCC meetings (Gereke and Brühl, 2019:883).

Second, informal power can play a role in influencing the agendas, strategies and positions of dominant ENGOs and networks with more generalist missions in terms of whose interests are spotlighted or given consideration. Critics of the democratic potential of large international NGOs accuse them of operating in opaque, bureaucratic, unaccountable and paternalistic manners. They are said to be more likely to place privileged persons in top positions, to favour western neoliberal perspectives, and to use tokenistic engagement that does not genuinely consider minority and marginalised interests (Scholte, 2002: 295–9; Anderson and Rieff, 2005: 29–31; Roose, 2012: 354–6; Sandig et al., 2018: 590; Beijerman, 2018a: 158–61; Von Bernstorff, 2021: 150–1). Tensions that have emerged within the ENGO constituency throughout the last two decades reflect perceptions of this in practice. This was a central driver for Climate Justice Now! Alliance forming and braking away from CAN in 2007, opting instead to pursue their more radical perspectives through 'outsider' tactics (Kuyper et al., 2017: 98–100).

Third, this turn to outsider tactics is also triggered by frustrations with which organisations are given recognition by other institutional participants and decision-makers. Richard Stewart claims that 'mission-oriented authorities tend systematically, due to deep-seated structural factors, to give greater regard to the interests and concerns of some dominant actors, especially powerful states and well-organised economic actors, and lesser regard to the often peripheral interests and concerns of more weakly organised and less powerful groups and of vulnerable individuals' (Stewart, 2019: 211). The effectiveness of a regime with a specialised mandate, like the UNFCCC, depends on the buy in of civil society actors with political clout, economic capacity and instrumental value in implementing solutions on the ground. This is clearly reflected through the evolution of the UNFCCC's transformation under the Paris Agreement to institutionalise the role of non-state actors as implementers of climate action through orchestration activities such as the Marrakesh Partnership for Global Climate Action (Bäckstrand et al., 2017: 564). Instrumental rationales for participation have been shown to be valued highly

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amongst participants in the UNFCCC (Nasiritousi, Hjerpe and Bäckstrand, 2016b). While these instrumental objectives are undeniably important, orchestration activities may risk being conflated with political participation (Thew et al., 2021: 889), and highly affected groups without this added value may be overshadowed and struggle to exert meaningful political influence in how climate action is designed under the regime (Marquardt, Fast and Grimm, 2022: 12–15).

Affectedness as a normative basis for participation

The affectedness paradigm

Amidst the sense of under-representation in the UNFCCC experienced by some segments of civil society, certain groups have increasingly sought not to rely on large international ENGOs to represent their interests but instead to seek more direct forms of representation through their own organisations and by placing emphasis on their particular affectedness. A special issue of the *Third World Quarterly journal* in 2018 collated a collection of articles that explored this as a rising phenomenon within international governance in general within the last two decades (Sandig et al., 2018). Jochen von Bernstorff, (2021), building on the collection, suggests that a 'principle of participation of the most affected' could be emerging as a new guiding principle of international institutions, designed to respond to the effects this may have on democratic legitimacy. This, he sees, as 'a pragmatic attempt to correct the overly optimistic deliberative approaches' that have sought to include as many stakeholders as possible. This section elaborates on what this phenomenon tends to look like in practice, why it may prove an effective strategy for civil society organisations seeking greater representation and recognition, and how the turn to the so-called affectedness paradigm may have begun to emerge within the UNFCCC.

Jan Sändig et al. (2018: 590–1) describe what they conceptualise as a shift from a public interest paradigm, characterised by the indirect representation of broad public interests by NGOs, to an affectedness paradigm characterised by vesting greater legitimacy in affected persons themselves and their own organisations. Affected peoples' organisations (APOs) focus only on the specific interests and concerns of a particularly affected societal group, typically those overlooked and under-represented by large international NGOs. They are also comprised of direct representatives of the group in question with 'local knowledge, lived experience and cultural understanding' relative to the issues under discussion. APOs often emerge from grassroots local and transnational social movements, although could form into relatively large organisations or networks (Sändig et al., 2018: 590-1; Hasl, 2018: 628–9; Von Bernstorff, 2021: 147–9). La Via Campesina, which routinely emphasises the grassroots nature and specific affectedness of its member organisations, is a particularly prominent example of such a network (Schramm and Sändig, 2018; Heri, 2020).

The first set of advantages of APO participation stems from the more direct form of representation of their constituents that they facilitate. This denotes a higher degree of internal democratic legitimacy of APOs in comparison to their counterparts. The visibility of highly affected groups is enhanced through APOs because their interests and concerns are not being diluted within the messaging of more generalist narratives. Members of highly affected groups themselves are able to deliver direct, authentic, and unfiltered testimonies within deliberations, bringing to life how remote global decision-making impacts realities for people on the ground. APOs can use the performative power

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of such opportunities to exert influence and persuade other actors of their perspectives and positions (Sändig et al., 2018: 594–7; Von Bernstorff, 2021: 149–52).

Other benefits flow from the focus that APOs place on the affectedness of their constituents, which is a framing device that applies a certain lens to the climate crisis and their role in its causes, impacts and solutions. Jennifer Allan (2018: 561) has written about the power of frames that may be adopted by NGOs to make their case for belonging to the community of actors within an international regime, thereby generating greater political recognition and capacity for influence. Not only can this help to legitimise certain organisations' place in the decision-making process, but link the legitimacy of its outcomes to their participation (Heri, 2020). Due to the concept's well-established connections with democratic theory, any issue framing that focuses on the high degree or unique affectedness of a particular group signifies a collective claim to a democratic right of participation of that group (Heri, 2020). It is also likely to entail framings of the problem itself that rely on concepts of justice, equity and emphasise human rights considerations, in both their procedural and substantive dimensions.

Affectedness may be perceived as being closely associated with the concept of vulnerability, which is very frequently applied to certain societal groups within human rights and climate discourses. The IPCC uses the concept in its impact reports (IPCC, 2023: 51) and the UNFCCC parties have also formally recognised differing vulnerability at a societal level (UNFCCC, 2010). However, while they may be overlapping and mutually supportive concepts in many respects, Corina Heri (2020) points out the important distinctions that should be made between their origins, meaning and implications. Affectedness has its roots as a concept in political science. Meanwhile, vulnerability is a legal-ethical concept that has been theorised to refer to capacities for resilience (Fineman, 2013). Recognising differentiated vulnerability is therefore a conceptual device more orientated towards generating specific protections for certain groups to correct uneven distributions in such resilience and, thus, build substantive equalities (Heri, 2020; Sormunen, 2023). This may also entail the need for ancillary procedural human rights protections. However, the concept of vulnerability alone potentially runs the risk of having a disempowering effect through its connotations with victimhood and dependence. Thus, many organisations distance themselves from being characterised in this way, preferring to emphasise the value of the knowledge they possess and agency in implementing solutions, precisely because they are on the front lines of a given issue (Wallbott and Recio, 2018; Noll and Tsagkari, 2020).

Framing issues in terms of group affectedness on the societal level should also not be confused with framing issues in terms of vulnerability or affectedness at the state level. The concept of state vulnerability has long been embedded into the climate regime, with UNFCCC and subsequent treaties referring to the need to consider the specific needs and special circumstances of countries particularly vulnerable to the adverse effects of climate change (UNFCCC, 1992: arts 3.2 and 4.4; Paris Agreement, 2015, arts 7.2, 7.6 and 9.4). It is often adopted as a negotiation tool by certain blocs, such as the Alliance of Small Island States. However, although states advocating on behalf of their own constituents may capture many important highly affected groups, Patrick Toussaint (2018: 775) points out the shortcomings of such a state-centric approach in his discussion of negotiations on loss and damage, which were largely pursued according to a narrative that prioritises only the impacts on vulnerable developing countries rather than people. He highlights that this can obscure the reality that poor and marginalised communities in both developing and developed countries stand to lose more from the impacts of climate change than other

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groups, risks downplaying the importance of civil society engagement at all, and can fuel North–South polarisation.

Stemming from the gains in legitimacy, recognition and influence that APOs can achieve on their own, eventually, this could compel cooperation from the larger and more generalist NGOs in what Schramm and Sändig (2018) call 'affectedness alliances'. They may do so by better incorporating the interests of affected groups into their agendas and political positions, supporting the activities of APOs or providing support in the form of finance, contacts, know-how and experience. For these international NGOs, visibly supporting such civil society organisations and movements helps mitigate against criticism and mistrust levied against them, and therefore safeguards their own legitimacy (Schramm and Sändig, 2018: 667-9; Sändig et al., 2018: 591). Such cooperative activities must be treated with healthy scepticism, as there is a risk of co-option. But genuine collaborations that do not alter the original character and position of the APO may help to build their profile and foster greater respect, trust and mutual learning (Schramm and Sändig, 2018: 668–9; Sändig et al., 2018: 597–8).

The legitimacy claims of APOs also can prompt the institutionalisation of participation structures that specifically facilitate and ensure their visibility and engagement. Jochen von Bernstorff (2018: 109–13; 2021: footnote 2) has observed that many international institutions in the fields of human rights, the environment and health, as a strategy to preserve their own legitimacy, already have devised procedural rules and practices for non-state actors that give special recognition to the most affected. In the environmental field, the parties to the Aarhus Convention have also endorsed giving special regard to the most affected within international institutions. The Almaty Guidelines (2010) were adopted to elaborate on the Article 3(7) duty to promote the Convention's principles in international forums, and state that while 'participation of the public should be as broad as possible', relevant stakeholders may include 'the members of the public who are, or are likely to be, *most directly affected*' (para 30(a), emphasis added). They also state that 'processes and mechanisms for international access should be designed to… facilitate the participation of those constituencies that are *most directly affected* and might not have the means for participation without encouragement and support' (para 15, emphasis added).

Markus Hasl (2018) has further examined these trends and developed a three-tiered typology to explain how institutional implementation of the affectedness paradigm may be understood. According to subordination models, affected persons are not treated separately and are instead expected to participate through the general NGO constituency.[6] According to parity models, affected persons are specifically recognised and granted their own delegations in addition to other NGO categories.[7] The strongest manifestation of the affectedness paradigm would be through a priority model, according to which affected persons are not only granted their own delegations but are also prioritised over other NGO categories through allocations of additional formal powers.[8]

[6]Examples given by Hasl are the Joint UN Programme on HIV/AIDS and the process establishing the UN Convention on the Rights of Persons with Disabilities (UNRPD).

[7]Examples given by Hasl are the monitoring body of the UNRPD, the Committee on the Rights of Persons with Disabilities, and the Global Fund to Fight Aids, Tuberculosis and Malaria.

[8]Examples given by Hasl are the Arctic Council which prioritises indigenous peoples' organisations, the International Labour Organisation which prioritises trade unions and workers, and the Committee on World Food Security at the UN's Food and Agriculture Organization which prioritises peasant and indigenous food producers.

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As explained below, the UNFCCC's gradual recognition of formal observer constituencies and other special opportunities given to certain civil society groups might be understood to institutionalise versions of the affectedness paradigm that sit at various points along Hasl's typological spectrum, depending on the civil society group in question.

The affectedness paradigm within the UNFCCC

Within the context of the UNFCCC, there are a number of civil society groups that have visibly come to be typically represented through APO models. The IPO, YOUNGO, WGC, TUNGO and Farmers constituencies each have memberships of APOs comprised of representatives from the group in question, and frame the value of their participation according to the high or unique degree of their affectedness relative to other groups. These APOs now have added visibility precisely because they have been granted their own observer constituencies. Therefore, this institutional recognition can in itself be understood as an instrumentalization of the affectedness paradigm, in a way that might correlate to Hasl's parity model. The fact that they were not established at the UNFCCC's inception, which at the time only recognised ENGO and BINGO, and were only incrementally created, suggests that the creation of these constituencies was fuelled by legitimacy considerations stemming from their normative claims. Some additional participatory opportunities have also been granted to some of these constituencies, as discussed below.

Indigenous peoples organisations (IPOs) provide perhaps the clearest example of an APO movement and have made significant gains in raising the profile of indigenous persons as participants in UNFCCC deliberations. Linda Wallbott and Eugenia Recio (2018: 791) have assessed the strategies adopted by IPOs for seeking recognition within the UNFCCC, and note that they have typically framed themselves not simply as stakeholders in the negotiations, but as a collective constituency of rights-holders against the background of historic injustices perpetrated against them. They have drawn attention to the disproportionate threat that the impacts of both climate change and many mitigation measures and projects pose to indigenous ways of life and existence, but have also reframed the value of their participation to focus on the assets that emerge from their affectedness, emphasising their role as knowledge-holders and environmental stewards. Wallbott and Recio attribute the recognition given to indigenous peoples and the rights-based approach adopted in REDD+ negotiations to this strategic framing. Since their official recognition as a constituency in 2001, IPOs have also been granted an enhanced role through the establishment under the Paris Agreement of the Local Communities and Indigenous Peoples Platform (LCIPP) for 'integrating traditional, indigenous, and local knowledge systems into the UNFCCC process' (UNFCCC, 2015: para 135). The Facilitative Working Group of the LCIPP was later established as a constituted body of the UNFCCC in 2018 to further operationalise the LCIPP, with a membership equally split between representatives of states and IPOs (UNFCCC, 2018: paras 1–3). This has arguably given IPOs an unprecedented opportunity to provide input into various dimensions of the UNFCCC process through a dedicated mechanism, and reflects a priority approach that gives added formal opportunities and powers over other civil society groups.

Another constituency that has been granted extra opportunity to have their interests heard within UNFCCC negotiations is the WGC constituency. Officially recognised in 2011, WGC frame the affectedness of women and other minority genders by

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highlighting that they are typically more vulnerable to and disproportionately affected by the impacts of climate change due to gender inequality, discrimination and the particular roles that women often play in society, while also stressing that climate measures will be more effective and efficient with the input of gender-inclusive perspectives (Allan, 2020: 90; Flavell, 2023: 389-97). While a number of UNFCCC decisions have referred to the need for the involvement of women in decision-making, one notable decision in 2012 established a standing agenda item on 'Gender and Climate Change' (UNFCCC, 2012a: para 9). Among various activities under this item, a Gender Action Plan has been implemented that is not only concerned with substantive mainstreaming of gender into climate policy as a cross-cutting issue, but also the goal of equal participation (UNFCCC, 2019a). Although the WGC constituency does not have any formal added rights to participate in this element of the negotiations, it promotes participation of women and gender minorities across the regime more broadly and clearly creates a regular designated forum within which its members have an enhanced claim of legitimate participation to advance their interests as the affected group.

The YOUNGO constituency membership also accords well with the APO model and, despite the risk of being viewed as lacking knowledge or capacity, has made progress in enhancing youth visibility. Youth organisations have generally framed their affectedness by spotlighting inter-generational inequities that mean younger generations will bear the brunt of the cost of climate change and energy transitions in the future but also highlighting their value as agents of change (Thew et al., 2020). Recognition of the YOUNGO constituency was formalised in 2011. However, while several COP decisions have recognised the importance of youth participation, little has been done to institutionalise an enhanced role for youth in any way. The most notable innovation so far has been the recent creation of the Presidency Youth Climate Champion in 2023, the role of whom will be 'to facilitate the enhancement of the meaningful, inclusive engagement of youth in climate action, including within the UNFCCC process' (UNFCCC, 2023a: para 6).

Both the TUNGO and Farmer constituencies can also be understood to encompass APO models, each highlighting the unique affectedness of their memberships by climate change and climate policy, as well as their critical role in climate solutions on account of this affectedness. This resonates strongly, for example, with the elements of the regime developing and implementing the concept of the just transition (Johansson, 2023) or, for farmers, the UNFCCC's dedicated work program for agriculture and food security. However, neither constituency has been granted any significant enhanced institutional participation opportunities beyond the recognition of their constituencies.

These observations point to the emergence of the affectedness paradigm within the UNFCCC and its increasingly visible role for highly affected communities. But there are clear limits to how far this has been taken. First, there are still many collectives of distinct or overlapping highly affected interests that constituencies could organise around which arguably have extremely high stakes in the outcomes of the UNFCCC process, but who do not fall within or only constitute a sub-group of the formally recognised constituencies. As Karin Bäckstrand (2006: 477) summarises, assessing the adequacy of representation in the global context is particularly difficult because constituencies will inevitably be 'less formal, less homogeneous, more changeable and more contested than in national-electoral contexts'. But the successes of only some means that others have been placed at a competitive disadvantage in terms of having their interests heard and accounted for. Normative claims alone are unlikely to be enough to gain recognition and will also have depended on access to knowledge, networks, and other resources (Allan, 2020).

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Second, questions and challenges remain as to whether the enhanced participation opportunities gained by APOs and highly affected groups are truly meaningful or merely tokenistic. Although IPO and YOUNGO have on the face of it greatly boosted their profile within the UNFCCC, there is also a perception that these same groups may simply be being used as window-dressing to legitimise the UNFCCC process while paradoxically maintaining the status quo of structural powers (Toussaint, 2018; Hasenclever and Narr, 2018; Thew et al., 2020; Marquardt et al., 2022: 14). Concerns about co-option question whether APOs are able to maintain their positioning and aims while operating within the UNFCCC context, or whether they may have their character watered down or compromised due to lack of expertise and the desire to win at least some level of recognition (Sändig et al., 2018; Marquardt et al., 2022: 15).

Notwithstanding these limits and challenges, the normative influence of highly affected groups, both within and outside of the formal UNFCCC negotiation space, is illustrated by the role they have had in tilting the scales of prevailing climate discourse overall. The 2009 conference in Copenhagen is widely understood to have constituted a key moment, where tensions between mainstream environmentalists and more radical movements spilled over to induce a shift in the tactics and campaigning of several of the large international ENGOs and networks. The emphasis placed on climate justice and the most marginalised groups by these radical movements, which included a strong contingent of grassroots activists and representatives of highly affected civil society, compelled CAN and other dominant ENGOs to dilute elements of their narratives that strongly favoured techno-administrative approaches and market-based measures. There has since been a drift towards framings of the causes and solutions to climate change that focus on the pursuit of justice, equity and human rights, not only compelling these NGOs to push for the adoption of these concepts in UNFCCC decision texts but also to incorporate the procedural elements of these principles into their own governance processes (Chatterton et al., 2013; Kuchler, 2017; Allan and Hadden, 2017: 606; Toussaint, 2018: 773). The re-framing of various climate issues in justice-based terms which might otherwise have been approached in a purely technical frame, such as market mechanisms and loss and damage, may also have opened the door to APOs that might otherwise not have been deemed as relevant and legitimate participants in these elements of the negotiations (Allan and Hadden, 2017: 614–5).

Thus, the democratic legitimacy of decision-making outcomes has increasingly been assessed within these justice frameworks, including procedural justice for those historically excluded from decision-making. This has likely played a role in reinforcing the participation claims of some of the most affected within the UNFCCC context and bolstered support for the notion that highly affected groups should be granted enhanced recognition and opportunities to share their views, concerns and perspectives. Highly affected groups still may be able to ride the wave of momentum generated by these discourse shifts to further advance these special recognitions.

Theoretical implications: from political equality to a proportionality criterion?

Requiring the participation of highly affected groups as a legitimacy criterion for decision-making processes of the UNFCCC can clearly be linked back to theory that uses affectedness as a measure of how to define democratic boundaries. However, it does not reflect the application of a principle of equality of all those within the boundary's ambit. What is suggested is that a principle of proportionality based on affectedness

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should apply, which would recognise different degrees of affectedness and stakes that groups have in political outcomes (Brighouse and Fleurbaey, 2010: 138–41). In other words, people should be given a say 'not simply if their interests are affected but also in proportion to the degree to which their interests are affected' (Goodin, 2007: 51). Von Bernstorff, (2021: 147–9) has described a principle of participation of the most affected as a conceptual offshoot to, or derivative of, the concept of democratisation itself. This section will return to democratic theory to explore the basis of support for applying a proportionality criterion to civil society participation, as well as the difficulties of its operationalisation in practice, particularly in the context of climate change.

Giving enhanced rights of participation to groups with higher stakes in the outcome is a possibility that has often received only passing consideration by democracy theorists (see e.g. Goodin, 2007: 51; Miller, 2009: 216-7; Agné, 2006: 435–6). Harry Brighouse and Marc Fleurbaey (2010) have given the idea more detailed thought, and argue that replacing the principle of political equality with a principle of proportionality based on affectedness is capable of addressing both the question of the composition of the demos and, incidentally, the allocation of formal power within it. They contend that this is how democracy is already intuitively understood on the basis of the fundamental values it can be understood to uphold. First, a principle of proportionality can better implement the democratic and deliberative value of equal respect, because it acknowledges different circumstances from the outset. Second, it can better promote the ideal of self-autonomy, because people will have more power in relation to the issues that affect them most. This includes making efforts to ensure that participation is as direct as possible. Third, they argue that a proportionality approach is more likely to result in broadly acceptable and fair social outcomes (Brighouse and Fleurbaey, 2010: 141–2).

Brighouse and Fleurbaey (2010: 146) would likely argue that the phenomenon of the affectedness paradigm in international institutions identified by Sändig, Von Bernstorff and others, including the discussed measures taken by the UNFCCC, can be understood to reflect an implicit endorsement of this principle of democratic proportionality in practice. They cite other already common and well-accepted examples of domestic governance practices that do the same. For example, geographical decentralisation gives greater power to the constituents of a particular area over decisions relating to that area because, although others may be affected, they are the most likely to be significantly affected. Any legal protections aimed at giving closer consideration to minority views, such as public consultations or judicial review processes, also support the principle (Brighouse and Fleurbaey, 2010: 139-40; Agné, 2006: 435).

However, there are several theoretical challenges that institutionalisation of a principle of proportionality faces, which in many ways magnify those already directed towards the all-affected principle itself. One challenge is what Schaffer (2012) calls the problem of fickle boundaries. The broader international climate change regime can be broken down into narrower agenda items and instances of decision-making on particular issues that may interrelate but will have a greater impact on certain groups compared to others. For example, loss and damage negotiations under the Paris Agreement primarily affect those who stand to suffer the greatest losses from the impacts of climate change itself, rather than mitigation policies (Toussaint, 2018: 768). Meanwhile, negotiations on just transition policymaking may be more likely to affect workers in certain sectors. The effect is to create a myriad of different possible and overlapping democratic communities, to which the application of a principle of proportionality would create even more complexity. These tiers of differently affected communities will be in a constant state of flux as the climate problem progresses and various circumstances and capacities change. This raises

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practical questions about how to constantly re-evaluate democratic distributions of power, as well as what impact this would have on the quality of deliberations (Miller, 2009: 209; Schaffer, 2012: 329).

Moreover, there is the question of what it means to be more or less affected. The diversity of affected interests means that affected persons are not only competing with broader public interest advocacy groups for recognition but are also competing amongst each other. Yet simply adding more constituency groups will add more complexity to decision-making and dilute the impact of other claims. Any institutional attempts to reflect a principle of proportionality in UNFCCC participation mechanisms inevitably involve making a comparative assessment of the stakes that various groups could possibly have in decision outcomes. Also, Brighouse and Fleurbaey (2010: 146) point out that a proportionality criterion is only applicable to participants' stakes in the outcome and not any measure of technical competence, which is a legitimate source of power. This therefore raises the complex question of how to disentangle measures of affectedness from, but still give due regard to, the value of these other attributes and roles played by civil society organisations. Every strategy and methodology of inclusion of certain interests will function at the same time as a means for the dilution or exclusion of others (Jokubauskaite, 2020: 2)

It may be that a theoretical or methodological scale would need to be devised to measure and compare group effects (Schaffer, 2012: 324–5). This could be an intuitive exercise in some issue-specific transnational regimes because their mandate will identify and be directed towards a particular group. Institutions dealing specifically with the protection and promotion of the rights of disabled persons or indigenous persons, for example, clearly most directly affect those societal groups and so specifically provide for their participation (Sändig et al., 2018: 592).[9] However, the multidimensional and global nature of climate change and its impacts creates a much more complicated picture for the world population. Its negative effects are hugely diverse and can include, for example, water and food insecurity, displacement, detriments to health, economic damage, loss of livelihoods and loss of cultural identity. These various effects may be physical, economic, social or cultural, may interrelate, compound and cascade in extremely complex ways that are difficult to trace or predict, and may occur across different timelines (IPCC, 2023: 42–51). Significant impacts may also stem not only from climate change itself but from the impacts of regulation and policy measures taken in response to it, raising questions about how different positive and negative effects might inter-relate or off-set each other. Effects will also be heavily informed by historical roots that may have created and continue to exacerbate existing social inequities, vulnerabilities and political disempowerment (Afsahi, 2022: 45–53; Chimni, 2018: 809; Toussaint, 2018). Those who have been subjected to injustices, oppression, colonialism and discrimination are likely to be more exposed to climate change impacts, to be negatively affected by mitigation policies and lack the capacity to adapt (IPCC, 2023: 51).

Against this background, several attempts can be identified across the literature to capture what it means to be more or less affected than another person, group, community or population. Von Bernstorff (2021: 147) rather vaguely defines the most affected as 'groups which, based on prior, and often negative, experience, can make a plausible claim to be existentially affected by the concrete repercussions of a certain structure of

[9]E.g. *UN Declaration on the Rights of Indigenous Peoples* 2007, Article 41; *UN Convention on the Rights of Persons with Disabilities* 2007, art 32.1(a).

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governance'. Other writers have suggested approaches that measure the extent of human rights violations (Gould, 2006: 53–5; cf. Von Bernstorff, 2021: 153). David Held (2006: 170–2) proposes a typology whereby strong affectedness would constitute a threat to life and life expectancy, moderate affectedness would constitute lost economic, cultural and political opportunities to participate in public life, and weak affectedness would involve impediments to self-development and self-expression.

Some of these suggestions imply that we should simply choose a set of technical, scientific and empirical criteria to rely on. We have seen the concept of vulnerability being approached in this way within some realms of climate science, with the IPCC making frequent use of the term in its assessment reports on the impacts of climate change (IPCC, 2023: 51). But while quantifying likelihood of affectedness may be straightforward in some dimensions, such as physical impacts, others such as loss of cultural knowledge and heritage, which are connected to senses of identity, belonging and home, are impossible to objectively value. Thus while experts may have a role to play, overly technical approaches might also struggle to capture the value attached to various effects, how they should be weighed against each other, as well as the relevance of historical and socio-economic factors.

Moreover, the choice of criteria for affectedness can lead to different outcomes and may be guided by different underlying values that should themselves be matters for political debate (Schaffer, 2012: 325). Top-down determinations that are justified on the basis of objectivity may actually be imbued with institutional bias, dictated by a particular worldview that likely reflects that of incumbent powers, and subject co-option of the concept itself for instrumental ends (Sändig et al., 2018: 592; Jokubauskaite, 2018). Affectedness therefore is best understood as a subjective, socially constructed and malleable concept, that may be contested and approached from different experiences and points of view (Schaffer, 2012: 324–7; Sändig et al., 2018: 592). It involves self-identification and self-recognition, both of which are understood to be important facets of recognition and participation justice (Thew et al., 2020: 3; Von Bernstorff, 2021: 151–2). As Nancy Fraser puts it, judgements about who counts 'necessarily involve a complex combination of normative reflection, historical interpretation and social theorizing. They are inherently dialogical and political'. (2010: 292).[10]

The understanding of the subjective, self-constructed and political nature of affectedness therefore demands that the application of a principle of proportionality must incorporate processes of democratic deliberation that give the opportunity for affected persons to make the case for their claims according to their own experience, worldviews and values (Afsahi, 2022: 52). This might return us to the circular boundary problem, that democratic boundaries cannot be determined democratically themselves. However, in the context of global climate change governance and the existence of a global demos, it may be argued that this theoretical hurdle is bypassed because there is no outer boundary to determine. The appropriate distribution of power within the global democratic population is a different question that may be more convincingly argued can be determined by taking into account democratic inputs. However, such processes will still in the first place remain vulnerable to the undue influence of incumbent informal powers that overshadow those with legitimate claims (Sändig et al., 2018: 592).

These inherent tensions and circular challenges ultimately provide compelling grounds for rejecting the idea of a principle of proportionality based on affectedness.

[10] Fraser's critique leads to her proposition of the alternative 'all-subjected principle', which refers to all those jointly subject to a given governance structure.

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But they are also largely the basis upon which the all-affected principle itself has been opposed and challenged (Fraser, 2010; Schaffer, 2012). The all-affected principle nevertheless still has considerable support in theory and practice, despite its shortcomings, and is defended on the basis that it should be treated as a normative ideal rather than something that can be perfected (Arrhenius, 2005: 19–23). This understanding also resonates with De Búrca's (2008) theory of the democratic legitimacy of international institutions, in which she argues that the fullest possible participation and representation of those affected is a normative ideal that should be continuously strived towards while recognising that the goalposts will always be disputed, shifting and remain out of reach. Although a principle of proportionality adds another layer of complexity to this, it arguably can be conceptualised in the same way and used as a guide to distinguish between better and worse decision-making processes.

This values-based approach would allow for a more pragmatic understanding of how a principle of proportionality may be pursued in practice, that takes into account both technical inputs and civil society debate. De Búrca calls for an iterative and self-correcting method, that is neither exclusively top-down or bottom-up in nature, and is an 'ongoing and continuously revised endeavour' (2008: 117, 157; see also Ashafi 2022: 51–3). To facilitate the fullest possible participation and representation of those affected, she suggests structuring participation in a way that keeps the circle of participants continuously open to new actors that self-identify themselves as affected, whereby the process itself may be revised in cycles to take account of new interests, participants and the ways in which they may define the problem being addressed (2008: 134). Taking this approach as a starting point, a proportionality principle could similarly act as a guiding principle for deliberations, informed by expert advice, to make decisions on the design of participatory mechanisms on an ongoing basis that approximate proportionality as a democratic ideal to the best possible extent.

This understanding helps explain why, despite the theoretical objections, there is plenty of empirical evidence to illustrate the institutionalisation of the proportionality criterion in practice across various international institutions (Hasl, 2018). We have arguably seen a version of this striving approach emerge in practice within the UNFCCC. By keeping the conditions of observer accreditation relatively open, the UNFCCC has allowed new participants to enter the institutional deliberative space. Over time, some of these participants have been successful in this deliberative space to advance their claims for enhanced recognition and participation opportunities based on their characteristics, circumstances and conceptualisations of justice. In some cases, this has induced formal institutional responses to revise its processes, including recognising new constituencies, dedicating specific agenda items to group issues and establishing the LCIPP. Although many may remain unsatisfied at how the UNFCCC has so far granted special opportunities only to specific segments of civil society, these adaptations may have nevertheless improved perceptions of its democratic legitimacy overall. In order to maintain and further improve these legitimacy perceptions, the UNFCCC should therefore continue to remain open, responsive to new claims of high affectedness and willing to adapt its processes accordingly.

Conclusion

Within the complex landscape of multi-level and polycentric climate governance, the UNFCCC still arguably remains the global epicentre of related decision-making. As the

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effects of climate change and climate policy are increasingly universally felt by civil society in various dimensions of their lives, the democratic legitimacy of its processes and outcomes is going to continue to come under scrutiny. Promoting this dimension of legitimacy, and attending to groups that feel underrepresented or excluded, is therefore an essential task of the institution to justify its continuing authority and maintain the momentum of the climate regime.

But, due to the obscure nature of the concept of democracy itself, how to design and model institutional processes in a way that meets democratic ideals is, and will likely continue to be, a challenging and contentious field of discussion. There are innumerable options in terms of how civil society participation should be structured, how boundaries should be drawn and how power should be distributed. As scholars, it is important to engage with underlying theory, connect this with what can be observed as happening in practice, and accordingly evolve understandings of what might constitute a better or worse decision-making process. This article has sought to do this by highlighting the connection between the growth in the use of the affectedness paradigm in the climate context when discussing and addressing matters of civil society participation, and the all-affected principle as a widely accepted normative concept used to draw democratic boundaries.

Specifically, the article has considered the competition for recognition and influence generated by the UNFCCC's global demos, and the special recognitions given to some highly affected civil society groups who represent themselves through their own organisations in contrast to the environmentalist narratives of larger international ENGOs. The strong legitimacy claims of some of these APOs have prompted the UNFCCC secretariat over time to establish new observer constituencies, and in some instances for the parties to establish new institutional processes, bodies or agenda items that account for particular interests and concerns. In theoretical terms, it is argued that these developments may challenge the very ideal of democratic equality. Instead, in order to account for differentiated affectedness and, incidentally, differentiations in informal and invisible powers, a proportionality criterion justifies the allocation of enhanced participatory opportunities to representatives of highly affected groups.

The article has also explored the normative appeal of a proportional approach to the participation of affected groups against its considerable conceptual challenges. As von Bernstorff (2021: 147) argues, prioritisation of the most affected in international institutions has the potential to counter 'the exclusion of those so-far unheard groups, which find themselves on the receiving end of the fragmented 21st-century international legal order'. But the inherently subjective nature of the concept necessitates an approach that is not purely technical or formulaic in nature but accounts for self-constructed notions of affectedness through dialogical processes of deliberation that facilitate and guide institutional responses on an ongoing and evolutionary basis.

While this article builds on existing scholarship that is optimistic about the legitimacy implications of the emergence of a so-called affectedness paradigm, further research is needed to develop understandings of its normative basis. For example, this article has not explored in depth how normative arguments for the proportionality criterion might possibly play out differently depending on the kind of decision-making taking place, ranging from the development of legal rules that allocate state responsibility or orchestration of non-state actor climate action. It also does not consider whether arguments for the proportionality criterion might apply differently depending on the level of formal power being exercised, which might range from simple speaking opportunities to actual voting powers. Furthermore, in line with broader debates concerning possible trade-offs

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between democracy versus effectiveness (Armeni and Lee, 2021), there may be important questions to answer regarding whether an emphasis on differentiated impacts could have the counterproductive effect of downplaying the universal urgency of ambitious climate action. Additional empirical research that assesses various actors' perceptions of the value and legitimacy of institutional mechanisms that operationalise a proportionality criterion based on affectedness, including the innovations of the UNFCCC already discussed, would thus need to form part of this continued research agenda to connect both the normative and sociological dimensions of democratic legitimacy.

Also, while a small number of existing examples within the UNFCCC have been pointed out, further research would be needed to explore the various ways in which a principle of proportionality might be operationalised in practice, taking into account the realities of institutional resource constraints. This might include considering further innovations to the observer constituency system, how NGOs could be distinguished according to their purpose and those they claim to represent, exploring ideas for new institutional mechanisms that spotlight particular groups, and options for enabling more direct forms of participation. This research would also entail consideration of the processes by which such innovations might be established and how to counter the already well-established structures of power and risks of co-option and tokenism.

For now, the main intention of this article has been to begin to illustrate what democratic theory may underlie examples in practice of the UNFCCC integrating a proportionality criterion based on affectedness into the design of its participatory mechanisms. These examples demonstrate the potential feasibility of further institutional innovations according to such a principle, and its possible positive impact on the democratic legitimacy of the UNFCCC and global climate action.

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