

## **Non-Party stakeholders' input for the Talanoa Dialogue**

### **Public Participation Enhancing Climate Action**

#### **Where are we?**

“Article 6 of the Convention plays a critical role in building broad public support for taking the negotiation process forward, as well as for enhancing climate change action on the ground.”

Summary report on the 1st Dialogue on Article 6 of the Convention

Climate change governance is better handled when public participation is at its core and it is facilitated for concerned citizens at all relevant levels. The Rio Declaration on Environment and Development states that at a national level, individuals “shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”<sup>1</sup>

Countries that supported the Agenda 21 should encourage the participation and awareness of the public by making information available. The mandate to engage the public in the decision-making process was taken to the international climate change governance sphere by Article 4 and 6 of the United Nations Framework Convention on Climate Change (UNFCCC). Article 4 mandates to: “Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations.”<sup>2</sup> The Paris Agreement under the UNFCCC also recognizes the importance of public participation, awareness, and access to information as a key step to enhance climate actions.<sup>3</sup>

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<sup>1</sup>“A/CONF.151/26 (Vol. I) REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT.” United Nations, United Nations, 12 Aug. 1992, [www.un.org/documents/ga/conf151/aconf15126-1annex1.htm](http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm).

<sup>2</sup> United Nation Framework Convention on Climate Change. Article 4.i 1992, [http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)

<sup>3</sup> Paris Agreement. Article 12, 2015.

[http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf)



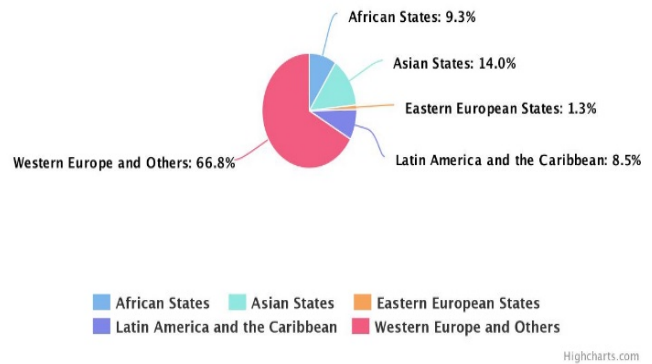
Figure 1 Cumulative admission of observer organizations<sup>4</sup>

Stakeholders from different governance levels have been increasing their request to participate at the international level (Figure 1). As of COP23 the non-governmental organizations admitted were about 2259. Although general participation has increased, participation segregated by regions does not seem proportionate to world population.

Figure 2 Admitted Observer organizations by Regional Group<sup>5</sup>

Non-governmental observer organizations of western Europe and others represent more than 66% of admitted organizations at the UNFCCC (Figure 2), which does not correspond to world population percentages (Figure 3)<sup>6</sup>. This maybe correlated with the means that different Parties have facilitated for national NGO engagement; and the financial barriers to engage at the international level as well as at the implementation of actions for climate empowerment<sup>7</sup> in the national context.

Admitted observer organizations by Regional Group (as at December 2017)



<sup>4</sup> United Nations. “Cumulative Admission of Observer Organizations.” UNFCCC Observer Organizations Statistics, 18 Dec. 2017, unfccc.int/parties\_and\_observers/observer\_organizations/items/9545.php.

<sup>5</sup> United Nations. “Admitted observer organizations by regional groups” UNFCCC Observer Organizations Statistics, 18 Dec. 2017, unfccc.int/parties\_and\_observers/observer\_organizations/items/9545.php.

<sup>6</sup> “World Population Growth.” Our World in Data, 29 Mar. 2018, ourworldindata.org/world-population-growth#population-size-vs-population-growth-rate.

<sup>7</sup> United Nations. “Education, Training and Public Awareness under Article 6 of the Convention.” Cooperation & Support - Education & Outreach, 2 June 2017, unfccc.int/cooperation\_support/education\_outreach/overview/items/8946.php.

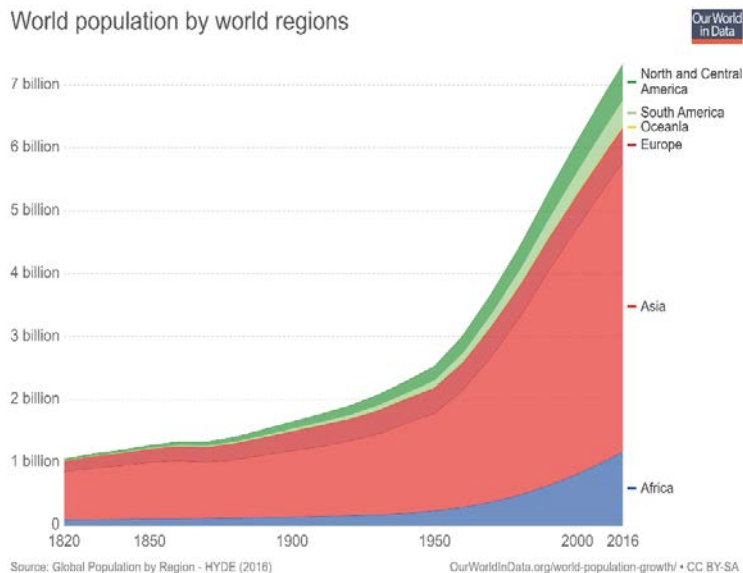


Figure 3 World population by world regions<sup>8</sup>

Regarding actions for climate empowerment during COP23, the SBI considered this agenda item at its 1st meeting and took note of the summary report on the 5th ACE dialogue.<sup>9</sup> The Dialogue was focused on the implementation of actions for climate empowerment regarding education and training. The issue of participation in decision-making processes is a key element of Principle 10 of the Rio

Declaration and an integral goal of Article 4 of the UNFCCC which promotes “the widest participation in this process, including that of non-governmental organizations”. However, this principle is yet to be developed further under the UNFCCC, especially considering that observer organization’s participation has grown to be an intrinsic and basic part of international climate governance. Participation is even more vital for the effective and efficient implementation of climate actions at a regional and national level, and to strengthen the Paris Agreement goals. Thus, there is an opportunity to fill the participation gap in the upcoming 6th Dialogue on Action for Climate Empowerment<sup>10</sup> and within the special processes under the Talanoa Dialogue.<sup>11</sup>

The absence of proportional participation of stakeholders from specific world regions is not correlated to the interest or motivation to engage at the international arena by Observers Organizations. It can be argued that observer organizations have participated more intensively during the last Conferences of Parties (Figure 4) and that there is a clear drive of being present at this stage of climate governance, which reinforces the need to have a more proportional representation of world regions. There is a need to explore and address this imbalance, and that

<sup>8</sup> “World Population by World Regions.” Our World in Data, 31 Mar. 2018, ourworldindata.org/grapher/world-population-by-world-regions-post-1820?overlay=data.

<sup>9</sup> United Nations. “Report of the Subsidiary Body for Implementation on its forty-seventh session, held in Bonn from 6 to 15 November 2017”. Subsidiary Body for Implementation, 31 January 2018. <http://unfccc.int/resource/docs/2017/sbi/eng/19.pdf>

<sup>10</sup> United Nations. “6th Dialogue on Action for Climate Empowerment.” 6th Dialogue on Action for Climate Empowerment, Bonn, May 2018, 8 Mar. 2018, [unfccc.int/cooperation\\_and\\_support/education\\_and\\_outreach/dialogues/items/10563.php](http://unfccc.int/cooperation_and_support/education_and_outreach/dialogues/items/10563.php).

<sup>11</sup> United Nations. “2018 Talanoa Dialogue Platform.” Talanoa Dialogue 2018, 21 Mar. 2018, [unfccc.int/focus/talanoa\\_dialogue/items/10265.php](http://unfccc.int/focus/talanoa_dialogue/items/10265.php).

Parties facilitate adequate means of engagement and implement actions for climate empowerment.

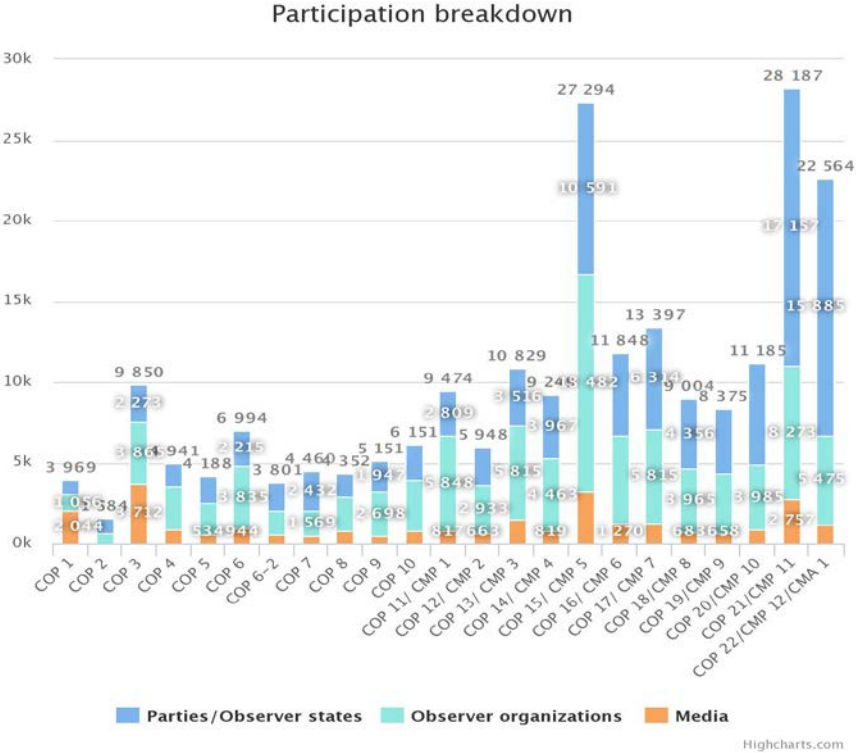


Figure 4 Participation Breakdown<sup>12</sup>

### Latin America

At a regional level, the implementation of means to engage the public in the decision-making process and provide access to information in matters related to climate change governance, has been weak since the Declaration of Rio in 1992. This became a regional issue on the regional political agenda as of 2012, when the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development was issued<sup>13</sup>. This declaration is currently supported by 24 Latin American countries. This year concluded the negotiation of a regional binding agreement for the protection of access rights in environmental matters, which soon will be open for countries ratification.<sup>14</sup> This regional agreement regional, provides a framework for

<sup>12</sup> United Nations. “Admitted observer organizations by regional groups” UNFCCC Observer Organizations Statistics, 18 Dec. 2017, [http://unfccc.int/parties\\_and\\_observers/observer\\_organizations/items/10271.php](http://unfccc.int/parties_and_observers/observer_organizations/items/10271.php)

<sup>13</sup> Economic Commission. “Background.” Economic Commission for Latin America and the Caribbean, CEPAL, 16 Feb. 2017, [www.cepal.org/en/topics/principle-10/background-principle-10](http://www.cepal.org/en/topics/principle-10/background-principle-10).

<sup>14</sup> “América Latina y El Caribe Adopta Su Primer Acuerdo Regional Vinculante Para La Protección De Los Derechos De Acceso En Asuntos Ambientales.” Ninth Meeting of the Negotiating Committee - Principle 10, 28 Mar. 2018, [negociacionp10.cepal.org/9/en/news/america-latina-caribe-adopta-su-primer-acuerdo-regional-vinculante-la-proteccion-derechos](http://negociacionp10.cepal.org/9/en/news/america-latina-caribe-adopta-su-primer-acuerdo-regional-vinculante-la-proteccion-derechos).

the application Article 4 and 6 of the UNFCCC and Article 12 of the Paris Agreement. This is a collective first step to standardize public participation and strengthen the means for climate empowerment actions. However, its national application in the region is yet to be translated into national policies, legislations and institutions for its full implementation.

## Costa Rica

In the Central American region, public participation in climate governance has been developing its structure with emerging policy, law and institutional frameworks. This is a necessary step to guarantee the effectiveness of the Paris Agreement and to fulfill Parties' obligations under the UNFCCC.

Costa Rica submitted its INDC (now NDC under the Paris Agreement) in October 2015. Regarding transparency and accountability its NDC "is looking into strengthening accountability mechanisms, information access, and availability, and citizen participation"<sup>15</sup>. The NDC commits the country to create a Climate Change Citizen Consultation Council (known as 5Cs)<sup>16</sup> as a forum of permanent citizen participation on climate governance. However, it is important to point out that in Costa Rica public participation in environmental governance is limited to what the law and regulations states and to the established procedures, according to the latest Constitutional Court ruling (Resolution 2017001163 of January 2017)<sup>17</sup>.

In Costa Rica, public participation in climate governance is not yet a right on its own, and the country lacks a general climate change law to regulate this issue. The legal nature of public participation in environmental matters in Costa Rica is not clear and there is a rift in its legal interpretation, as to determine whether this is a Legal, Constitutional, Human Right or just a Principle. It is a contentious opinion within Constitutional Court if its enforcement is to be addressed only by the lower courts and is no longer a matter of constitutional jurisdiction. Moreover, it is important to consider that the main environmental law that broadly addresses the issues related to environmental matters (Costa Rican Organic Environmental Law), does not mention climate change within its mandate, which represents a challenge when public

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<sup>15</sup> Costa Rica. "COSTA RICA's INTENDED NATIONALLY DETERMINED CONTRIBUTION." NDC Registry, 01 Apr. 2018.

<http://www4.unfccc.int/ndcregistry/PublishedDocuments/Costa%20Rica%20First/INDC%20Costa%20Rica%20Version%20%200%20final%20ENG.pdf>

<sup>16</sup> Martinez, Adrian. "El Consejo Climático Ciudadano y El Consejo Climático Científico En Costa Rica." La Ruta Del Clima, 7 Nov. 2017, <http://larutadelclima.org/2017/11/07/consejos-climaticos-ciudadanos-y-cientificos-en-costa-rica/>.

<sup>17</sup> Constitutional Court of Costa Rica. Ruling 2017001163, 27th January 2017. [http://jurisprudencia.poder-judicial.go.cr/SCIJ\\_PJ/busqueda/jurisprudencia/jur\\_Documento.aspx?param1=Ficha\\_Sentencia&param2=1&nValor1=1&nValor2=692979&tem1=&param7=&strTipM=T&IResultado=2](http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Ficha_Sentencia&param2=1&nValor1=1&nValor2=692979&tem1=&param7=&strTipM=T&IResultado=2)

participation is viewed as only as a principle and its enforcement is relegated to discussions of legality in lower courts. Regarding public participation, Article 6 of this Costa Rican law, mentions that “The State and the municipalities, will encourage the active and organized participation of the inhabitants of the Republic, decision-making and actions tending to protect and improve the environment.” However, under the newly narrow interpretation of the law, if there is not a defined process and explicit legal right established by law, the participation of the public will be limited. In this context public participation in what is considered State administrative matters, is only a principle and the government is restricted by the Principle of Legality. This can become complex when international climate governance at the UNFCCC process continuously advances creating new platforms, initiatives, and discussions, where the public is meant to enhance climate action and secure transparency at the national level.

Considering this, the Costa Rican government issued the Executive Decree N° 40616- MINAE<sup>18</sup> (August 2017) to establish as a means of implementing and providing a legal basis for structured public participation through the formal creation of the Climate Change Citizen Consultation Council – 5C. This new platform could be a reaction to the new limited interpretation of public participation as a principle and its conditioning to correspond to the existence of procedures established by a corresponding legal framework.

## **Where do we want to go?**

Public participation in climate governance cannot be analyzed only from the perspective of the international negotiations or the UNFCCC since its implementation is dependent on the legal structures that facilitate its enforcement and exercise at a regional and national level. The Paris Agreement transparency and governance process depends on considering the contextual implementation of public participation at a national level. This represents a challenge for the enhancement and efficacy of climate action at a ground level and a defining factor for the results of the Global Stocktake.

Latin America, recently negotiated a Regional Agreement on Access to Information, Participation and Justice in Environmental Matters for Latin American and the Caribbean (March, 2018)<sup>19</sup>. This is a final step of the negotiation of the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development. This new stage for public participation in climate

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<sup>18</sup> Costa Rica. “Creation of the Climate Change Citizen Consultation Council” MINAE, 01 Apr. 2018 [https://www.imprentanacional.go.cr/pub/2017/09/26/ALCA230\\_26\\_09\\_2017.pdf](https://www.imprentanacional.go.cr/pub/2017/09/26/ALCA230_26_09_2017.pdf)

<sup>19</sup> CEPAL. Regional Agreement on Access to Information, Participation and Justice in Environmental Matters for Latin American and the Caribbean <https://www.cepal.org/es/organos-subsidiarios/acuerdo-regional-acceso-la-informacion-la-participacion-publica-acceso-la>

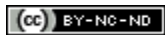
governance creates a need to review the discussions and established processes at a national level to fulfil the Parties obligation of securing the widest participation possible in climate governance. This new agreement, which will be signed in September 2018, creates a new framework for public participation and addresses the question of the nature of public participation, as it labels it within Access Rights as “the right of public participation in the environmental decision-making process”. However, how will this develop and impact climate governance nationally and within the UNFCCC process, may depend on how non-governmental observers are able to communicate its value and how Parties recognize, in process such as the Talanoa Dialogue, the enhancing value of public participation regarding climate action and the merit of effectively implement it.

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