

# Unstunting stunted public participation in the regulation of environmental protection.

MADEBWE, T.

2017

*This is the accepted manuscript version of the above article, which has been published in *Environmental Liability: Law, Policy and Practice*. The published version of record is available in Lexis+: <https://plus.lexis.com/>*

# Unstunting stunted public participation in the regulation of environmental protection

(2017) 25(1) Env. Liability: 13

1 February 2017

**Environmental Liability: Law, Policy and Practice > 2017 - Volume 25 > Issue 1, 1 February > Articles**

Environmental Liability, Law Practice and Policy

Tinashe Madebwe<sup>1</sup>

Practising Environmental Lawyer, Zimbabwe

© Lawtext Publishing Limited 2017

*Abstract: Public participation in the regulation of environmental protection is key to the attainment of environmental protection objectives. Despite this, history shows that state officials have consistently stunted opportunities for public participation and, thus, compromised the attainment of environmental protection objectives. I argue that the reason behind this is the regulatory capture of these officials. I also consider that captured officials' central tool in stunting participation has been the misinformation of the public in order to dissuade them from participation through manipulation of reporting on environmental protection by the widely trusted, and relied on, news arm of the mass media. As such, I argue that the key to greater participation in environmental protection, which would fuel the attainment of objectives, is through the turn to delivering information through other means, most notably social media platforms, and in a manner that would facilitate participation.*

Environmental Law

## Introduction

The history of the pursuit of effective and efficient environmental protection is, to a significant extent, a history of the recognition of the significant role that public participation, a three-pillar concept consisting of access to information, actual participation and access to justice, plays in efforts to secure environmental protection objectives.<sup>2</sup> Indeed, the provision of public participation in the international regulation of environmental protection is as old as efforts to regulate such protection.<sup>3</sup>

Despite the recognition of the significance of public participation to the attainment of environmental protection objectives and the provision of opportunities for the public to participate in the regulation of environmental protection, however, actual participation opportunities have been stunted.<sup>4</sup> In a world confronted by a deteriorating environment, this makes no sense. As such, in this article I argue for an approach to restoring public participation to a central role in the regulation of environmental protection in order to ensure the attainment of effective environmental protection.

To this end, I consider first why it is that the provision of public participation – which would undoubtedly lead to more ecologically rational environmental outcomes – has

---

Page 14

been stunted.<sup>5</sup> I argue that this is due to the regulatory capture of state officials charged with securing the provision of public participation, with capture serving as a reference to the fact that state officials are 'susceptible to private

pressures and to manipulation for private purposes. In addition, they have often lacked an affirmative concept of public interest; they have failed to meet the test of political responsibility in a democratic society'.<sup>6</sup> In the second section, I follow from this and consider how captured officials have stunted public participation despite the fact that the natural inclination of people, especially where the environment is concerned, is to participate in regulatory efforts. In the third, and concluding, section I build on the discussion prior and identify how public participation in the regulation of environmental protection might be enhanced so that effective environmental protection might be attained.

## Why the stunt?

There are two significant realities in the context in which the public must participate in the regulation of environmental protection that have played a central role in the stunting of such participation. First, it would be impractical for every individual to participate in decision-making with respect to every environmental protection situation. State officials have relied on this to argue that the more practical alternative is for the requirements of public participation to be satisfied through representative means, with representatives being predominantly state officials.<sup>7</sup> A consequence of this is that state officials have lured the public into the habit of relying on representative participation when it comes to environmental protection matters meaning officials are at the centre of public participation. Secondly, and in the context of broader rights discourse, the constituent pillars of public participation, that is, actual participation, access to information and access to justice have been accorded the status of rights open to qualification based, predominantly, on the availability of resources. Importantly, the determination of the availability of such resources is left to state officials. As a consequence, when actual participation, access to information and access to justice are relied on as pillars of public participation, the public considers opportunities for participation in regulation as provided, and prone to qualification, by state officials.

Importantly, the fact that state officials occupy such a central role in the provision of participation opportunities to the public is central to understanding why public participation in environmental protection has been stunted. This is because state officials have a history of being more concerned with pursuing socio-economic development than environmental protection.<sup>8</sup> This being the case, state officials are particularly prone to regulatory capture, a reference to the fact that they are 'susceptible to private pressures and to manipulation for private purposes. In addition, they have often lacked an affirmative concept of public interest and failed to meet the test of political responsibility in a democratic society'.<sup>9</sup> Following on from this, it is not unreasonable to conclude, *prima facie*, that stunting of public participation has been driven by state regulatory officials. Stunting has occurred because state officials have been captured and are motivated to safeguard special interests by precluding public participation, which might adversely affect these interests.

Certainly, if unsubstantiated, this would be an unreasonable, unfair, and reckless, allegation. However, there appear to be three reasons to infer the capture of state regulatory officials.

First, that there has been the capture of state officials can be inferred from the fact that these officials have generally ensured that they assume a central role in the provision of what is considered relevant information that would facilitate such public's participation in the regulation of environmental protection. In addition, officials have been

at pains to ensure that the public are either, not given adequate access to environmental protection information, or that they frame information in a way that advances certain objectives that often are not the basic environmental protection objectives.<sup>10</sup> The result of all this has been the stunting of the public's opportunities to participate in regulation. In efforts to combat climate change for instance, captured state officials have ensured that the most authoritative source of the public's information on climate change is published by the Intergovernmental Panel on Climate Change, a body that is controversially influenced by state officials.<sup>11</sup> This body has also shot down, as expensive, techniques such as spraying specific aerosols into the stratosphere, whitening marine clouds, using

satellites in space and whitening the earth's surfaces as 'solar radiation management' avenues for combating climate change that may appeal to some sectors of the public.<sup>12</sup> All this has worked to stunt public participation in climate change efforts as the public, faced with unreliable, complicated and conflicting information, has largely left the regulation of climate change to state officials who purport to know more and act to advance the public's interest.

Secondly, that there has been the regulatory capture of state officials can also be inferred from state officials' emphasis on participation through representative means, while simultaneously discouraging the public from individual participation. This approach has left the public unmotivated to challenge state officials' rhetoric. It has even culminated in the wholly untenable and impractical situation where people falling into certain blocs are alleged to speak with one voice and share the same opinions. In climate change, for example, it cannot be true, as state officials aver, that the bulk of people in developing states are of the opinion that climate change is the result of the actions of the developed world that has resulted in the current levels of development based on high and unsustainable levels of energy consumption and natural resource depletion.<sup>13</sup> It is also not true, as is alleged by the same state officials, that inhabitants of the developing world en masse consider that the developed world should bear the bulk of the responsibility in combating the detrimental effects of, and the future of, climate change that is the result of activities undertaken by the developed world in the past.<sup>14</sup> It is unlikely to be true that people in developing states also expect developed states to give them as much economic and technological assistance as possible if they are to be expected to rely on 'clean' development.<sup>15</sup> If anything, there is evidence to suggest that developed states have shown little propensity to live up to their promises and there is little real interest in the plight of poor states.<sup>16</sup> Even more, at the grassroots level and particularly in the community of Pacific small island developing states, there is evidence to suggest that people in the developing world are more concerned with mitigation and adaptation in order to secure their futures than in assigning blame.<sup>17</sup> It is reasonable to infer, therefore, that, rather than facilitate

public participation, state officials in both the developing and developed worlds purport to be representative of the public. However, they actually act autonomously and frame environmental protection issues in a manner that advances the mandates of the special interests that would have captured these officials.<sup>18</sup>

Thirdly, the regulatory capture of state officials is also apparent from the way in which officials have played a role in stunting the public's effective access to justice within states. To this end, there is a well-chronicled history of state officials in several states at different levels of development across the world consistently working to limit the public's access to justice with respect to environmental protection.<sup>19</sup> Frequently cited issues in this regard include limitation of standing, the expense of going to court and expertise in courts, and there is even systematic limitation of access to information including information on the mere ability to approach courts, or which courts to approach, with environmental issues.

The same restriction of access to court occurs at the inter national level, where access to justice in environmental protection has a long history of being limited.<sup>20</sup> For instance, and despite acquiescence to a few specialised environmental protection tribunals, most notably the International Tribunal on the Law of the Sea, the effort to limit access to justice at the international level is most apparent from the manner in which calls for the turn to an international environmental court have been shut down by state officials.<sup>21</sup> To this end, it has been argued that environmental issues do not carry a caseload that justifies such a court.<sup>22</sup> This has been supported by the fact that the special chamber for environmental matters established by the International Court in 1993 under Article 26 (1) of its statute had to be abolished after 13 years because no cases had been brought before it.

Alternatively, the merits of such a court have been questioned on the grounds that it is not easy to identify what is an environmental case. For instance, it has been argued that cases may raise environmental issues, whether legal or factual, but they rarely do so in isolation. To illustrate this, the *Gabèikovo-Nagymaros Case* has been cited as an example of a case which is as much about the law of treaties, international watercourses, state responsibility and

state succession as it is about environmental law. This has formed the backbone of the argument that parties in environmental disputes will often need a generalist court rather than a specialist one.<sup>23</sup>

It has also been contended that an international court is unnecessary to the extent that international dispute resolution forums are often most effective when they have a special body of law to apply, usually a treaty such as the European Convention on Human Rights, the United Nations Convention on the Law of the Sea or the General Agreement on Tariffs and Trade. In such instances, these forums carry much-needed specialist expertise and procedures and, importantly, they relieve the International Court of Justice of a burden of litigation it could not sustain. Unlike these bodies of law, however, it is argued that international environmental law is not a self-contained, codified system. Settling environmental disputes, as with most forms of international dispute resolution, would therefore require a wide-ranging grasp of international law, meaning that the jurisdiction of such a court would necessarily be shared by specialized tribunals such as the European Court of Human Rights, the International Tribunal on the Law of the Sea, or the World Trade Organization's Appellate Body. Ultimately, state officials have argued that all this leaves little room to justify a dedicated environmental court.<sup>24</sup> What they seem to prefer as a way of securing access to justice for the public, despite the fact that international law makes extensive provision for access to court in a manner most beneficial to the plaintiff or victim,<sup>25</sup> and consistent with them having been captured, has been the turn to political solutions which they oversee in order to protect the special interests that would have captured them. Following the Bhopal disaster in India and the Chernobyl disaster, for instance, officials

intervened to secure that the public gained access to justice that was sufficiently qualified.<sup>26</sup>

However, it would certainly be unfair to allege the capture of all state officials. It is not unreasonable to deduce from the manner in which officials have acted, when opportunities to act differently and in a manner that would facilitate greater public participation, that the regulatory capture of these state officials lies at the heart of why public participation has been stunted. And, having established why public participation has been stunted, an interesting question, in the greater scheme of the article, is determining how officials have managed to stunt public participation, despite the natural inclination of people being to participate in the regulation of environmental protection.

### **How has stunting occurred?**

In the context of the three-pillar approach to public participation, and having noted the central role played by state officials in stunting regulation and actual public participation as well as access to justice, or the quality of such participation and access to justice at the very least, are contingent on the quality and reliability of information availed by state officials to the public. It has to be something in state officials' approach to information delivery that has convinced the public to relinquish their natural inclination to participate in the regulation of environmental protection and accept having their access to justice being limited.

Therefore, in exploring how the stunting of public participation in environmental protection has occurred despite the public's natural inclination to participate in regulation, it is useful to consider that, historically, state officials have opted to deliver information to the public through the news arm of the mass media.<sup>27</sup> In the early phases of the environmental protection effort, the reasons for this appeared sound.<sup>28</sup> For instance, the news arm of the mass media was made up of established organizations and corporations with established reputations for reliable and objective news delivery.<sup>29</sup> In several respects, this arm was knowledge-enabling in a manner that cultivated critical thinking around environmental protection issues among the public.<sup>30</sup> Officials also seemingly relied on this arm because it was in tune with the context in which the public lived.<sup>31</sup> As such, this arm could sensitize the public on issues of shared concern, thereby setting the agenda for public debate through the news.<sup>32</sup>

As time has moved on, however, adverse factors that obviously compromise the news arm of the mass media's

capacity to deliver effective information have emerged. The most notable factor in this regard has probably been the commercialization of the sector.<sup>33</sup> In addition, where the news arm of the mass media was previously the most viable medium through which to inform and educate the public on environmental protection issues, other viable and potentially reliable platforms have emerged.<sup>34</sup> All of this has culminated in apparent efforts by media houses to remain relevant, while reporting news which sells and news framed in a manner that does not compromise the interests of actual and potential financial investors.<sup>35</sup> Importantly, reports carrying news which sells, as well as media reports which are not in conflict with the agendas of financial investors, do not always convey good, understandable and objective environmental protection information which adequately educates the public on relevant issues allowing

them to participate effectively in decision-making.<sup>36</sup> Such news and reports may not encourage the public to act on the information presented, compromising the quality of environmental protection decisions arrived at. Alternatively, the public may be moved to act on the basis of biased reporting, which leads to compromised participation.<sup>37</sup>

Despite this, state officials have persisted in relying on this news arm of the mass media to disseminate information even as alternative information delivery avenues, capable of educating and encouraging wider participation, have emerged. It would appear that this is because this arm allows them, together with special interests they serve, to frame issues in ways that would stunt public participation through manipulating the public's conceptions of environmental protection issues and discouraging them to participate in regulation, despite their inclination to do so.<sup>38</sup> As such, the news arm of the mass media empowers state officials to influence the manner of the public's participation in regulation, or to demotivate the public from participation altogether.<sup>39</sup> Relying on the news arm of the mass media to disseminate information in a context where such arm has increasingly become commercialized and is itself open to capture means that the influences on the news arm of the mass media are the same influences on states.<sup>40</sup> Thus, states have preferred to remain committed to these media houses because they often report on environmental protection issues in a manner which is not in conflict with the agendas of the special interests that capture states.<sup>41</sup>

Put simply, state officials have managed to stunt public participation in the regulation of environmental protection, despite the public's inclination to participate, through disseminating compromised information to the public. Essentially, state officials have manipulated the environmental protection information pillar of public participation. In turn, this has had a ripple-down effect to other pillars of public participation, compromising the public's drive to participate in regulation, as well as the quality of the participation when they do. It has also had the effect of compromising the public's exercise of their access to justice rights.<sup>42</sup>

## Conclusion

Based on the preceding discussion, overcoming the inexplicable and sustained stunting of public participation by state officials is possible through, first, departing from reliance on state regulatory officials to disseminate environmental protection information. To some extent, this has been attempted by turning to avenues such as the publication of the *Global Environment Outlook* series, and the *REDD* reports. The problem with this, however, is that these reports are not published regularly enough and there is – not negligible – state official involvement in these efforts. Secondly, facilitating greater public participation is contingent on educating and empowering people so that they may understand environmental protection information. Not only that, based on the history of interference by state officials, information should ideally be framed in ways that matter to people so as to motivate the public to participate in the regulation of environmental protection, and chase justice where the public's individual or collective rights are threatened. Thirdly, overcoming the inexplicable and sustained stunting of public participation by state officials is dependent on departing from entrusting information dissemination to the news arm of the mass media to any significant extent other than to account for the fact that a not negligible number of people find comfort in relying on news from this source.


In the modern world, achieving all three of these and by-passing adverse effects of the capture of state officials is entirely possible through disseminating environmental protection information in accessible ways using various social media platforms. Such an approach would offer an opportunity to take back the framing of environmental protection issues and, instead, frame such issues in an objective way, which allows the public to formulate valid opinions on environmental protection and act upon such

information if they should choose to do so. Certainly, there is the risk that information supplied in this way could be unreliable. However, sources of information are so varied now that, even if one source offers unreliable information, this is easily discovered and verified. The verification process itself is often educational for various members of the public. Such education is useful to facilitating better participation in regulation. Education is also critical to ensuring the public better understand their rights. In a world that has seen extensive provision of environmental rights, knowing is a central step to encouraging the pursuit of access to justice where necessary. And, even if state officials should preclude participation and access to justice, in the modern world – which has seen the potency of the court of public opinion rise – the sort of discourse around environmental protection that would be generated through information dissemination using social media would create the situation in which an unhappy public could directly participate in, and affect, regulation quickly and effectively. This would be done through recourse to the court of public opinion.<sup>43</sup> This court of public opinion, often convened on and through social media, has increasingly acquired heightened status as a potent avenue for the public to rely on in order to participate in regulation and secure access to justice, regardless of limitations imposed by state officials.

In conclusion, participation has been stunted because of the capture of state regulatory officials. Having been captured, these officials' primary tool in stunting participation has been through manipulating information delivery so that the public would not feel motivated to participate in regulation. despite their natural inclination to do so. The key to overcoming all this, and thus restoring public participation to a central role in the regulation of environmental protection in order to ensure the attainment of effective environmental protection is through the provision of information to people in a way that encourages participation and empowers them to pursue access to justice. Better information delivery in this way is best secured through turning to social media as an information dissemination tool. This would secure the public's access to justice and empower them fully and effectively to participate in the regulation of environmental protection, surely leading to environmental protection objectives being attained.

---

<sup>1</sup> LLB, LLM (Rhodes University); PhD International Environmental Law (University of Strathclyde); tinashe.madebwe@gmail.com.

<sup>2</sup> U Beyerlin and T Marauhn *International Environmental Law* (Hart/Beck 2011) 234; J Ebbesson 'The notion of public participation in international environmental law' (1997) 8 *Yearbook of International Law* 51, 58; E Mostert 'The challenge of public participation' (2003) 5 *Water Policy* 179, 180–81; Common Ground Calabash 'A one stop participation guide: a handbook for public participation in environmental assessment in Southern Africa' (2005) 7 <http://www.saiea.com/calabash/handbook/handbook.pdf> .

<sup>3</sup> To this end, Recommendation 7(a) of the 1972 Action Plan on the Environment 'recommended the provision of equal opportunities for everybody, both by training and ensuing access to information to influence the environment by themselves'. Similarly, Principle 23 of the 1982 World Charter for Nature noted that 'all persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation'. The significant role of public participation to effective regulation was also acknowledged under Principle 10 of the Rio Declaration, which declared that, on the domestic level, 'environmental issues are best handled with the participation of all concerned citizens, at the relevant level'. In Agenda 21, the Action Plan that emerged from the Rio Declaration, Chapters 8, 28 and 36 make reference to an obligation on states to

## Unstunting stunted public participation in the regulation of environmental protection

facilitate public participation. Finally, there is perhaps no better example of the positive impact that such provision for public participation at law and in regulation can have on the attainment of environmental protection objectives than the ozone protection effort. See Beyerlin and Marauhn (n 1) 234; Ebbesson (n 1) 58; Mostert (n 1) 180–81.

<sup>4</sup> Evidence of sustained deterioration of the environment is recorded in several sources. See for instance see the International Union for the Conservation of Nature Red List of Threatened Species <https://web.archive.org/web/20140627094911/http://www.iucnredlist.org/##>. See also the United Nations Environment Programme 'Global Environment Outlook: GEO4, Environment for Development' <http://www.unep.org/geo/>; OECD Environmental Outlook to 2050: The Consequences of Inaction <http://www.oecd.org/env/indicators-modelling-outlooks/oecd-environmental-outlook-1999155x.htm>.

<sup>5</sup> W J Novak 'A revisionist history of regulatory capture' (2013) [http://www.tobinproject.org/sites/tobinproject.org/files/assets/Novak%20Revisionist%20History%20of%20Regulatory%20Capture%20\(1.13\).pdf](http://www.tobinproject.org/sites/tobinproject.org/files/assets/Novak%20Revisionist%20History%20of%20Regulatory%20Capture%20(1.13).pdf); F Boehm 'Regulatory capture revisited: lessons from economics of corruption' (2007) <http://www.icgg.org/downloads/Boehm%20%20Regulatory%20Capture%20Revisited.pdf>; L WrenLewis 'Regulatory capture: risks and solutions' (2010) <https://ecopub2.files.wordpress.com/2010/01/liam-on-capture.pdf>

<sup>6</sup> *ibid.*

<sup>7</sup> Ebbesson (n 1) 58, 60.

<sup>8</sup> G Therborn 'The world's trader, the world's lawyer: Europe and global processes' (2002) 5 *European Journal of Social Theory* 403, 405; A Tokar 'Something happened: sovereignty and European integration' (2001) 11 *IWM Junior Visiting Fellows Conferences* 1, 2; E Louka *International Environmental Law: Fairness, Effectiveness and World Order* (Cambridge University Press 2006) 8–9; P Birnie 'International law and solving conflicts' in J E Carroll (ed) *International Environmental Diplomacy* (Cambridge University Press 1988) 95; R Falk 'Environmental protection in an era of globalization' in G Handl (ed) (1995) 6 *Yearbook of International Law* 3, 10–11; A Kiss *Survey of Current Developments in International Environmental Law* (IUCN 1976) 10; D Bodansky, J Brunnée and E Hey 'International environmental law: mapping the field' in D Bodansky, J Brunnée and E Hey *The Oxford Handbook of International Environmental Law* (2007) 1, 2–4; G Handl 'Transboundary impacts' in D Bodansky, J Brunnée and E Hey *The Oxford Handbook of International Environmental Law* (2007) 531, 533; J Drexhage and D Murphy 'Sustainable development From Brundtland to Rio 2012' (2010) Background Paper Prepared for Consideration by the High Level Panel on Global Sustainability at its First Meeting, 6–8 [http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP16\\_Background%20on%20Sustainable%20Dev.pdf](http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP16_Background%20on%20Sustainable%20Dev.pdf).

<sup>9</sup> Novak (n 4); Boehm (n 4); WrenLewis (n 4).

<sup>10</sup> M J Kelly 'Overcoming obstacles to the effective implementation of international environmental agreements' (1997) 9 *Georgetown International Environmental Law Review* 448, 454–55.

<sup>11</sup> J W Dacyl 'Sovereignty versus human rights: from past discourses to contemporary dilemmas' (1996) 9 *Journal of Refugee Studies* 136, 140; M E Keck and K Sikkink *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 124; Kelly (n 9) 455; Louka (n 7) 31–32.



<sup>12</sup> J Lin 'Geoengineering: An ASEAN Position' in K Kheng-Lian, I Kelman, R Kibugi and R Eisma Osario *Adaptation to Climate Change: ASEAN and Comparative Experiences* (World Scientific Publishing 2016) 191, 191–97.

<sup>13</sup> C Boyden Gray and D B Rivkin 'No regrets: environmental policy' (1991) 83 *Foreign Policy* 47, 64; D Zaelke and J Cameron 'Global warming and climate change: an overview of the international legal process' (1990) 5 *American University Journal of International Law and Policy* 249, 280; P Sands 'Enforcing environmental security' in P Sands *Greening International Law* (Earthscan Publications 1993) 50, 60; P S Thatcher 'The role of the United Nations' in A Hurrell and B Kingsbury (eds) *The International Law of the Environment* (Clarendon Press 1992) 183, 193; A Hurrell and B Kingsbury (eds) *The International Law of the Environment* (Clarendon Press 1992) 3.

<sup>14</sup> Hurrell and Kingsbury (n 12) 40; Louka (n 7) 9; R O Keohane and J S Nye 'The club model of multilateral cooperation and the world trade organization: problems of democratic legitimacy' in *Efficiency, Equity and Legitimacy*



## Unstunting stunted public participation in the regulation of environmental protection



(2001) 6 [http://www.hks.harvard.edu/visions/publication/keohane\\_nye.pdf](http://www.hks.harvard.edu/visions/publication/keohane_nye.pdf)  A D'Amato 'The Evolution of International Environmental Law' <http://anthonydamato.law.northwestern.edu/IELA/Intech01-2001-edited.pdf> .

<sup>15</sup> A Dan Tarlock 'The role of non-governmental organizations in the development of international environmental law' (1992) 68 *Chicago-Kent Law Review* 61, 73–75; Louka (n 7) 29; B Stigson 'Sustainable development' in J Krieger and others *Oxford Companion to World Politics* (2nd edn Oxford University Press 2001) 816, 816.

<sup>16</sup> M H I Khan 'The Warsaw International Mechanism: exploring the structures and functions to address loss and damage associated with climate change impacts' in K Kheng-Lian, I Kelman, R Kibugi and R Eisma Osario *Adaptation to Climate Change: ASEAN and Comparative Experiences* (World Scientific Publishing 2016) 165, 170; A Gunawansa 'Dealing with climate migrants: a new challenge for developing nations' in K Kheng-Lian, I Kelman, R Kibugi and R Eisma Osario *Adaptation to Climate Change: ASEAN and Comparative Experiences* (World Scientific Publishing 2016) 311.

<sup>17</sup> I Kelman 'Asia-Pacific islander responses to climate change' in K Kheng-Lian, I Kelman, R Kibugi and R Eisma Osario *Adaptation to Climate Change: ASEAN and Comparative Experiences* (World Scientific Publishing 2016) 27; M List and V Rittberger 'Regime theory and international environmental management' in A Hurrell and B Kingsbury *The International Politics of the Environment* (Clarendon Press 1992) 85, 92; L Rajamani *Differential Treatment in International Environmental Law* (Oxford University Press 2006) 56; M Poustie 'Environment' in E Moran and others (eds) *Stair Memorial Encyclopaedia Reissue* (2007) paras 22, 78; Louka (n 7) 29; I F I Shihata 'Implementation, enforcement and compliance with international environmental agreements-practical suggestions in the light of the World Bank's experience' (1996) 9 *Georgetown International Environmental Law Review* 37, 40–41.

<sup>18</sup> To this end, such interests benefit from the pursuit of socioeconomic development in the developing world. And, because these interests are typically domiciled in the developed world, state regulatory officials in the developed world have an interest in seeing to it that developing states continue to chase development creating profit-making opportunities for these interests.

<sup>19</sup> M D Zinn 'Policing environmental regulatory enforcement: cooperation, capture, and citizen suits' (2002) 21 *Stanford Environmental Law Journal* 81, 84; D Shelton 'Human rights, health and environmental protection: linkages in law and practice' (2002) [www.who.int/hhr/Series\\_1%20%20Sheltonpaper\\_rev1.pdf](http://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf) . See also E C McCall and R W Trail 'Citizen suits to enforce federal environmental laws' (2001) [www.mccallenv.com/websites/mccallenv/images/Citizen%20Suits%20to%20Enforce%20Federal%20Environmental%20Laws.pdf](http://www.mccallenv.com/websites/mccallenv/images/Citizen%20Suits%20to%20Enforce%20Federal%20Environmental%20Laws.pdf) .

<sup>20</sup> J Brunnée 'Promoting compliance with multilateral environmental agreements' in J Brunnée, M Doelle and L Rajamani *Promoting Compliance in an Evolving Climate Regime* (Cambridge University Press 2012) 38, 40–41.

<sup>21</sup> P Birnie, A Boyle and C Redgwell *International law and the Environment* (3rd edn Cambridge University Press 2009) 70.

<sup>22</sup> P Okowa in M Evans (ed) *Remedies in International Law* (1998) 157, 157.

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid* 168–72.

<sup>25</sup> D S Sternberg 'Res judicata and forum non conveniens in international litigation' (2013) 46 *Cornell International Law Journal* 192.

<sup>26</sup> R R Churchill and G Ulfstein 'Autonomous institutional arrangements in multilateral environmental agreements: a little-noticed phenomenon in international law' (2000) 94 *American Journal of International Law* 623; Poustie (n 16) paras 23, 109, 110; M Mason 'Citizenship entitlements beyond borders? Identifying mechanisms of access and redress for affected publics in international environmental law' (2006) 12 *Global Governance* 283, 295; G Handl 'Environmental security and global change: the challenge to international law' in G Handl (ed) (1990) 1 *Yearbook of International Environmental Law* 3, 18; P Sands *Principles of International Environmental Law* (2nd edn Cambridge University Press 2003) 177; Birnie, Boyle and Redgwell (n 20) 224, 298.

<sup>27</sup> Notable examples include television network news, websites, editorial cartoons, and syndicated columns. On what constitutes 'news' see M Wall 'Blogs of war: weblogs as news' (2005) 6 (2) *Journalism*, 153, 154–55; P Chioma 'News

## Unstunting stunted public participation in the regulation of environmental protection

commercialization in Nigeria: undermining issues in public interest for financial gains' (2013) 2(13) *International Journal of Innovative Research and Development* 172, 173.

<sup>28</sup> W Gamson and A Modigliani 'Media discourse and public opinion on nuclear power: a constructionist approach' (1989) 95 *American Journal of Sociology* 1, 2–3. For a general historical analysis of why the mass media has been entrusted with a similar role in politics see D Kinder and D Sear 'Public opinion and political action' in G Lindzey and E Aronson (eds) *The Handbook of Social Psychology* (3rd edn McGraw-Hill 1954) 705–706.

<sup>29</sup> B Williams and M D Carpini 'Unchained reaction: the collapse of media gatekeeping and the Clinton-Lewinsky scandal' (2000) 1 *Journalism* 61, 63; S Papathanassopoulos 'Media commercialization and journalism in Greece' (2001) 16 *European Journal of Communication* 505, 507.

<sup>30</sup> D Machin and F Papatheoderou 'Commercialization and Tabloid Television in Southern Europe: Disintegration or Democratization of the Public Sphere?' (2010) 10 *Journal of European Area Studies* 31, 35.

<sup>31</sup> K Halvorsen 'Assessing the Effects of Public Participation' (2003) 6 *Public Administration Review* 535, 536–37.

<sup>32</sup> Chioma (n 26) 173.

<sup>33</sup> Wall (n 26) 154–55, 156; Chioma (n 26) 173. See however, Machin and Papatheoderou (n 29) 38; T Patterson 'The Search for a Standard: Markets and Media' (2003) 20 *Political Communication* 139; Gamson and Modigliani (n 26) 7; Chioma (n 26) 172.

<sup>34</sup> Wall (n 26) 154–55.

<sup>35</sup> *ibid* 154–55, 156; Chioma (n 26) 173. See however, Machin and Papatheoderou (n 29) 38; Patterson (n 32) 139; Gamson and Modigliani (n 26) 7; Chioma (n 26) 172.

<sup>36</sup> L B Ruddick and R Lawrence 'Editors' introduction: a semi-independent press: government control and journalistic autonomy in the political construction of news' (2003) 20 *Political Communication* 359; Chioma (n 26) 173–74.

<sup>37</sup> S Eden 'Public participation in environmental policy: considering scientific, counter-scientific and non-scientific contributions' (1996) 5 *Public Understanding of Science* 183; Patterson (n 32) 139.

<sup>38</sup> B Page and R Shapiro 'Effects of public opinion on policy' (1983) 77 *American Political Science Review* 175; D Watts and P Sheridan Dodds 'Influentials, networks, and public opinion' (2007) 34 *Journal of Consumer Research* 441.

<sup>39</sup> T Beierle 'Using social goals to evaluate public participation in environmental decisions' (1999) 16 *Policy Studies Review* 76, 82; Gray and Rivkin (n 12) 48–49; Bodansky and others (n 7) 7; Gamson and Modigliani (n 26) 3–5; C Chess and K Purcell 'public participation and the environment: do we know what works?' (1999) 33 *Environmental Science and Technology* 2685; Wall (n 26) 154–55. See also Machin and Papatheoderou (n 29) 33–34.

<sup>40</sup> Ruddick and Lawrence (n 35) 359; Wall (n 26) 154–55; H Keum and others 'The citizen-consumer: media effects at the intersection of consumer and civic culture' (2004) 21 *Political Communication* 369, 369–70.

<sup>41</sup> Gamson and Modigliani (n 26) 5–7; Chioma (n 26) 173–75.

<sup>42</sup> P Moy and B J Bosch 'Theories of public opinion' Sociology Department, Faculty Publications Paper 244 <http://digitalcommons.unl.edu/sociologyfacpub/244> .

<sup>43</sup> J P Garnier, chief executive of one of the companies, GlaxoSmithKline, acknowledged the power of negative public opinion: 'We don't exist in a vacuum, [w]e're a very major corporation. We're not insensitive to public opinion. That is a factor in our decision-making' in T Olesen 'In the court of public opinion' transnational problem construction in the HIV/AIDS Medicine Access Campaign, 1998–2001' (2006) 21 *International Sociology* 5. See also W Scott O'Connell 'Brand protection in high exposure litigation' in *Winning in the Court of Public Opinion* 46 [https://www.lexisnexis.com/university/sslacourses/112033012/story\\_content/external\\_files/112033012VE1\\_art.pdf](https://www.lexisnexis.com/university/sslacourses/112033012/story_content/external_files/112033012VE1_art.pdf) .