

Public participation in environmental plans and programs

مشاركة الجمهور في الخطط والبرامج البيئية

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Abstract:

Public participation makes it possible to strengthen democratic life by improving their participation in environmental management. Public participation, from a legal point of view, constitutes an exceptional system in administrative law and imposes more consideration by the authorities to the individual interests of individuals, since it implies a reduction in the traditional character of unilateral administrative procedures. The right to public participation in environmental matters suffers from a significant ineffectiveness because the legal formation of the right of participation expresses and confirms various reservations with regard to participatory democracy. The development of participatory democracy in environmental plans and programs will inevitably strengthen the environmental effectiveness and legitimacy of these tools, which will eventually become the main tools of environmental law.

Keywords: participatory democracy, representative democracy, environmental programs, dialogue, consultation.

المخلص

إن مشاركة الجمهور تجعل من الممكن تعزيز الحياة الديمقراطية من خلال تحسين مشاركتهم في إدارة البيئة، إذ تشكل مشاركة الجمهور من وجهة النظر القانونية نظاما استثنائيا في القانون الإداري، وتفرض مزيد من الاعتبار من قبل السلطات للمصالح الفردية للأفراد، كما يعني ضمنا تقليص الطابع التقليدي لإجراءات الإدارية الانفرادية.

يعاني الحق في المشاركة العامة في المسائل البيئية من العجز الكبير في الفعالية، إذ أن التكوين القانوني للحق في المشاركة يعبر ويؤكد تحفظات مختلفة فيما يتعلق بالديمقراطية التشاركية. إن تطور الديمقراطية التشاركية في الخطط والبرامج البيئية سيعزز حتما الفعالية البيئية وشرعية مثل هذه الأدوات التي ستصبح في النهاية الأدوات الأساسية للقانون البيئي.

الكلمات المفتاحية: الديمقراطية التشاركية، الديمقراطية التمثيلية، البرامج البيئية، التشاور، الاستشارة،

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1- Introduction

The topic of citizen participation in public and administrative life represents an effective democratic approach to environmental preservation. This participation allows citizens to share both power and responsibility simultaneously, through the use of possible intellectual and legal means that foster positive interaction with the environment and contribute to the development of behaviors and general public skills concerning their surroundings. This can only be achieved with a philosophical intellectual awareness and a general culture among citizens, along with a set of laws that ensure effective participation on one hand, and discipline toward the environment on the other. Laws have been enacted in all countries to protect the environment. However, democratic systems, in their various forms, whether political or social, have not given much attention to participatory democracy in the environmental field, despite the presence of directly elected representatives for the governed and managed. Their duties have been limited to addressing general issues in the political, social, and economic domains within the framework of representative democracy. Yet, the need for another form of participatory democracy in environmental issues is necessary. Over the past thirty years, there have been demands and new experiences for citizen participation in governance outside the classic electoral system. (Prieur, 1988,397)

The issue concerning the relationship between "participatory democracy" and representative democracy directly or indirectly pertains to one of the most important issues of institutional organization in our democracy and the selection of the best possible "democratic model." The integration of the environment into public policies, as a result of the strong social demand from public opinion, has led to a redefinition of the relationship between citizens and political-administrative power. Since the environment concerns everyone when it comes to shared nature, it must be managed for everyone and by everyone. Indeed, democratizing the management of common goods is inherent in the shared nature of these goods. (Prieur.M,1999,p.09)The growing focus on environmental issues, due to escalating problems such as pollution, gas emissions, and the intensive use of resources, led to the emergence of environmental planning. Environmental planning focuses on incorporating the environmental dimension into the planning of development projects. It also concerns environmental preservation and sets measures to ensure biological balance and assesses the environmental impact of proposed projects. Therefore, it is essential to involve the public in the development of environmental plans and programs to ensure their legitimacy and acceptance.

The central problem of this article therefore lies in the effectiveness of the mechanisms and procedures for participation in environmental plans and programmes?

Thus, the central issue of this article is the effectiveness of the mechanisms and procedures for public participation in environmental plans and programs. The study aims to demonstrate that if democracy is characterized by transparency and accountability of those who make decisions on behalf of the people, then the relationship between democracy and the environment requires a stance on interests, democracy, and the inclusion of citizens in the decision-making process, particularly in environmental planning. Environmental protection can no longer be achieved solely through existing laws and regulations but must also involve plans and programs in which public participation is imperative, as these matters are closely tied to citizens' lives, health, and well-being.

This study uses a descriptive and analytical approach by combining theoretical and practical aspects of public participation in environmental planning. The study is based on existing realities, with the principle of participation characterized by diverse sources, as reflected in many international and national texts, making it difficult to define its concept and scope.

Furthermore, the principle of participation and planning faces challenges related to uncertainties and ambiguities, particularly regarding concepts and potential obstacles to deepening democracy and environmental planning. The study will address what public participation in the development of environmental plans and programs should look like.

1- The nature of participation in environmental planning

The term "participation" is an imprecise concept that is difficult to define, given its many methods and many areas of overlap. Participation may take place in various ways, either through public investigation, consultation, or through advisory referendum and other methods..., and the techniques for implementing it are increasing, even in the case of a specific field such as environmental protection, for example (1.1), as you know. Participatory democracy and planning have both been developing in the environmental field for about thirty years (1.2).

1.1- The concept of participation and environmental planning

The individual's participation in public decisions is considered one of the pillars of democracy, as it represents the mechanism for transferring power, and therefore, through...

Improving the participation of individuals in public administration and affairs, as it is a concept of multiple dimensions and forms (1.1.1). Environmental planning is also considered a modern concept that has evolved with the development of the provisions of environmental law (1.1.2).

1.1.1- Definition of Participation and Its Mechanisms

A- Definition of Participation

Participation can be defined as contributing to a decision-making authority that is less harmful to the environment. (Prieur,P.398) According to the legal dictionary, "participation is the principle of organizing the work of administrative and political bodies, as well as the management of private institutions, by involving the concerned parties or their representatives in decision-making." (Guillien & Jean, 2010,P.521) It is also defined as: "The possibility of granting individuals the opportunity to participate in exercising authority themselves, where this participation ranges from information and dialogue to decision-making". (Delpérée, Direct participation of citizens in political and administrative life.(Delpérée,1986,p.13)

However, in all cases, participation means: "Participation in administrative, governmental, or legislative procedures organized by law, in an attempt to influence administrative or politically related decisions concerning the environment." (Debaets, 2010,p.156)

B- Mechanisms of Participation in Environmental Plans and Programs

To determine the forms of participation, it is necessary to identify the concerned parties and sectors. Many actors can contribute to the decision-making process. An individual can participate as a right-holder or a party with a private interest, as a "concerned actor," and can also participate "as a guarantor and protector of the public interest, namely, environmental protection," as a "responsible actor." (Debaets, p.156) Thus, participation becomes an effective tool for serving the public interest, making the individual an active citizen. Participation also includes individuals and associations, which are among the most important actors, as they can, in the name of environmental protection, defend both private and public interests.

Regarding areas of participation, they are similar across all countries due to the similarity of environmental issues. Participation may be in laws, regulations, and planning schemes related

to the environment, or it could be in making specific decisions, such as expropriation for public interest, licensing the establishment of an industrial facility, or planning a natural space. As for the forms of participation, Professor Michel Prieur distinguishes five methods of participation, ranked from the least institutional to the most committed in terms of public involvement in environmental management. (Prieur, p.404)

Protest

Protest is the objection to a current situation and the demand for its change. One cannot ignore the spontaneous and often rough participation that expresses citizens' immediate need to oppose a decision they consider harmful to the environment. Protest can take various forms, such as demonstrations, marches, petitions, occupying sites, etc. This form of participation reflects institutional blockages, excessive secrecy by public authorities, or a refusal to consult and negotiate. This form of participation has played an important role in some cases related to environmental protection, such as protests against nuclear weapons. On the global level, some non-governmental organizations specialize in this type of participation through protest. One example is Greenpeace, which works to protect whales and opposes nuclear testing in seas and the disposal of nuclear waste in them. Objection to decisions can also be expressed through petitions and written complaints, reflecting citizens' spontaneous desire to participate in environmental protection.

Consultation

Consultation forms an essential aspect of participatory democracy through regular communication and institutional dialogue between public authorities, citizens, civil society organizations, and various social actors about different decisions, policies, programs, projects, and plans related to environmental protection or resolving existing conflicts.

This participation is organized in flexible forms and may be institutionalized, often in an experimental manner. It is noteworthy that consultation forms may be decided by public authorities or proposed by the public or associations depending on the circumstances. Consultation is carried out through the creation of national and local consultation bodies, or regular meetings related to environmental protection with representatives of concerned organizations and associations, opinion polls, and investigations related to citizens' preferences.

Advisory Consultation

Advisory consultation represents a formal model of participation, which is the most widespread and widely accepted by authorities. It is a passive form of participation because the initiative for consultation is decided by the administration and framed by legal texts. It is subject to more complex procedures, as public opinion often regards legal consultation tools as mere tricks. (Prieur, 1988) This has led authorities to continually seek ways to improve formal consultation systems. We distinguish between three types of institutional consultation: the participation of associations in permanent committees, public inquiry and advisory referendum.

Participation in Decision-Making

Participation in decision-making or sharing power assumes that citizens directly engage in decisions that essentially allow them to exercise a veto. This implies a modification in decision-making mechanisms and in services and activities related to the environment. Participation in decision-making takes several forms, starting from the simplest forms, which include suggestions in the form of popular initiatives, meetings, or through committees or councils, whether elected or appointed. (Shihab, 1995,p.213) It can also take the form of a referendum on a specific decision or participation in environmental management.

Participation in Environmental Management

This participation occurs through inviting organizations, associations, and citizens to take responsibility for managing the environment themselves, playing the role of a true concessionaire for the public environmental service. In this context, associations and organizations manage protected natural areas, either on their own initiative or officially entrusted to them by the competent authorities. (Prieur, p.407)

1.1.2: Definition of Environmental Planning

Most countries have adopted environmental planning to address environmental and developmental issues and protect the environment. Although environmental planning is an essential part of comprehensive planning, it differs from it in concept and approach. Environmental planning focuses on the impacts and environmental aspects of proposed projects, with its primary goal being the optimal use of natural resources without harming the environment.(bassam.samir, Talhi, 2018,p.260)

Environmental planning is defined as : "The creation of programs that include specific rules and regulations for protecting the environment by anticipating and predicting environmental risks and issues that may arise in the future, and taking precautions through the necessary plans to protect it, as well as minimizing the losses resulting from them." It is clear that environmental planning is a complementary and integrated process with comprehensive development processes, as development plans are formulated from an environmental perspective to provide protection for environmental components and maintain their quality. Some define it according to the Algerian legislator's definition of the environment, which enumerates the elements of the environment. In this context, an environmental plan is defined as "any plan that addresses one or all of the environmental elements." (Absi,2019,p.12-13)

2.2: Parallel Development of Participatory Democracy and Environmental Planning

Both participatory democracy and planning have evolved in the field of the environment over the past thirty years. The environment is seen as a fertile area for the development and application of the principle of participation, considering that environmental law governs the relationship between humans and the environment (2.2.1). Environmental law has entered a new phase, represented by environmental planning, clearly reflected in the strong shift towards planning and programming as new tools for environmental protection. (2.2.2)

2.2.1- Evolution of Participatory Democracy in the Field of Environment

Although the principle of participation is not specific to the environment, the unique nature of environmental law led to its early development in this field, as it found a suitable foundation for that. Many legal texts were adopted to recognize the right of citizens to participate in decisions affecting their environment, in response to increasing social demands due to growing public awareness of environmental issues. Therefore, the call for greater participatory democracy in the field of the environment is a direct result of the expansion of

the scope of participation and the reinforcement of the principle. The principle of participation was enshrined in Article 21, paragraph 1, of the Universal Declaration of Human Rights, which states: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." Similarly, Article 25, paragraph "a," of the International Covenant on Civil and Political Rights states: "Everyone has the right to participate in the conduct of public affairs, directly or through freely chosen representatives." Furthermore, Article 13, paragraph 1, of the International Covenant on Economic, Social, and Cultural Rights states: "The States Parties to this Covenant recognize the right of everyone to education, and agree that education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms."

Based on the idea that protecting the biosphere is a common interest of humanity, the demand for environmental protection is considered a right and a legal source for individuals, meaning positive intervention by states. The right to a healthy environment is also a source of obligations for them, imposing the duty to participate in environmental protection.

The principle of participation has been enshrined in many international legal instruments as a component of the right to a healthy environment. The Stockholm Declaration on the Human Environment, held on June 16, 1972, emphasized the need for public education. Therefore, the principle of participation is mentioned in Principle 19, which states that information and education for the public will enable them to contribute to environmental protection. The Recommendation 97 from the action plan adopted at the end of the conference was clearer, encouraging states to facilitate "public participation in environmental management and monitoring, and providing the means to encourage effective participation of citizens."

The World Charter for Nature, adopted on October 28, 1982, emphasized the principle of participation in a more clear and serious manner. Point 23 of the Charter states: "All people, in accordance with their national legislation, should be given the opportunity to contribute, individually or in association with others, to the formulation of decisions directly affecting their environment." Point 16 of the Charter also states that all elements of planning should be presented to the public by appropriate means and within a time frame that allows for consultation and effective participation.

In the Rio Declaration on Environment and Development, adopted on June 14, 1992, the principle of participation was strongly affirmed. Principle 10 states: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Everyone shall have 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." This precise formulation of Principle 10 represents the culmination of the idea covering various aspects of establishing participatory democracy in environmental protection, through participation, access to information, and recourse to justice. ((Prieur, p.17)

The principle has also been reinforced through Article 40 of the Agenda 21, emphasizing the need to involve all social groups, including the participation of women, recognizing the role of indigenous peoples and their communities, and enhancing their role. It also highlights the importance of strengthening the role of non-governmental organizations for the achievement of sustainable development and comprehensive environmental protection. This participation

targets all levels of decision-making and action, from the local level (neighborhoods and municipalities) to international levels, including regional, national, and intergovernmental levels. Several international agreements that followed the Rio Conference have also enshrined the principle of participation, including the United Nations Convention on Biological Diversity (1992), the United Nations Framework Convention on Climate Change (1992), and the United Nations Convention to Combat Desertification in Countries Experiencing Severe Drought and/or Desertification, particularly in Africa (1994).

The Aarhus Convention on access to information, public participation in decision-making, and access to justice in environmental matters, adopted within the framework of the Council of Europe on June 25, 1998, is the first international legally binding treaty to enshrine the right to information and public participation in decision-making. It is not a new environmental treaty, but rather a treaty that introduced democracy into the process of public decision-making. Traditional democracy, which only knows the passive citizen-voter, can now open up to participatory democracy, where citizens become active participants in administrative life, a rare occurrence. (Prieur,p.9)

The Convention aims, as stated in Articles 6, 7, and 8, to enable the public to take a greater interest in environmental issues and contribute more effectively to their preservation. Under the Convention, decisions related to private activities, plans, programs, and policies concerning the environment, as well as the establishment of regulatory provisions and legally binding standard tools with general application, are subject to the principle of participation.

At the national level, Algerian legislation has aligned with international agreements by enshrining the principle of participation in national laws. It made the principle of participation one of the fundamental principles of environmental protection in Algeria. Article 3, paragraph 8, of Law 03/10 on environmental protection in the context of sustainable development states: "..... participation in the preliminary procedures when making decisions that may harm the environment." It has also made it one of the objectives of environmental protection through public involvement in protective measures.

At the national level, the Algerian legislator has embodied the principle of participation by granting environmental organizations and those working to improve living standards the right to participate in the work of public bodies concerning the environment, through assisting, providing opinions, and participating in accordance with the applicable legislation, as outlined in Article 25 of Law 03/10. The principle has also been enshrined in laws related to environmental protection, including Law 01/20 on regional planning and sustainable development, which states in Article 2: "The contribution of citizens in preparing and implementing the national regional planning policy in accordance with the applicable legislation and regulations." The principle of participation is also included in Law 03/03, concerning tourism expansion areas and tourist sites, where Article 10 emphasizes the necessity of involving citizens in the protection of heritage and tourist areas.

Additionally, Law 11-10, concerning municipalities, in Article 12, states that the municipal council is responsible for creating an appropriate framework for local initiatives aimed at encouraging citizens to participate in resolving their issues and improving their living conditions. Article 13 further emphasizes that: "The President of the municipal council may, whenever the municipality's affairs require, seek the assistance of any local figure, expert, or representative of a legally recognized local association, whose contribution is beneficial to the council's work or its committees, based on their qualifications or the nature of their activities." Article 20 of the law highlights that the local community works on implementing participatory democracy and takes all measures to allow citizens to regularly monitor council activities and decisions that affect them. This is further supported by the provisions of Article

21, which require necessary measures to improve citizen engagement, facilitate their attendance at council sessions, and guarantee their right to access relevant administrative documents. Environmental organizations have been involved in some steering committees, such as three members in the legal and economic committee of the Higher Council for Sustainable Development, one representative in the National Office for Sanitation, suggested by an organization working in water and sanitation, one representative from organizations involved in promoting and protecting protected areas, and one representative from organizations working in the field of marine fishing and aquaculture in the national and regional committees for protected areas. Additionally, one representative from a national environmental organization is included in the National Waste Agency. However, the representation of these organizations is weak compared to the number of government departments represented on each committee, which makes their participation more symbolic, as decisions are made by majority vote. In addition to giving the environment law a democratic character, there has been a development of plans and programs as distinctive tools in the field of environmental management.

2.2.2: The Emergence of Goal-Oriented Legal

Tools with Binding Normative Scope (The Era of Planning) Environmental law has entered a new phase known as environmental planning, which can be observed both internationally and nationally. This shift is evident in the strong trend towards planning and programming as new tools for environmental protection. At the international level, the Stockholm Declaration was the first international document to address planning and programming. Principle 2 states: "The natural resources of the earth, including air, water, soil, animals, plants, and particularly representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate." The emphasis on planning and programming was reiterated at the 1992 Rio Conference through the Rio Declaration and the Agenda 21.

Most international agreements adopted a strategy of planning and programming for environmental protection, including the United Nations Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. At the national level, many countries have adopted planning and programming approaches in various environmental sectors under the influence of international law.

In Algeria, the legislator adopted the planning and programming approach in environmental laws. Law 03/10, for instance, dedicates Chapter 3, Articles 13 and 14, to defining the state's planned activities in the environmental sector. It specifies the content and methods for initiating such plans through decrees. Environmental protection laws have enshrined the strategy of planning and programming. Notable examples include Law 11/02 on protected areas under sustainable development, Law 02/02 on the protection and valorization of the coast, and Law 01/20 on regional planning and sustainable development, which dedicates the first section of Chapter 2 to planning. Additionally, Law 98/04 on cultural heritage protection stipulates the necessity of preparing a protection plan for archaeological sites.

The future management of the environment is increasingly being imposed through these "new-type" legal tools, accompanied by binding goal-oriented laws. These involve setting objectives and providing the means necessary to achieve them. In reality, both terms "plan" and "program" refer to actions to be taken in the future. Thus, planning marks a departure

from old legal traditions, moving from the era of monarchy (the authority of legal rules) to the era of remote governance (teleocracy), via guiding laws, final programs, project procedures, and public policy objectives. (Aoustin, 2003/2004,p.13)

Plans and programs are considered new regulatory tools with varying legal value. Some classify them as "soft law," lacking binding force, but the diversity of these tools does not allow for broad generalizations. For example, plans and programs set by directives are considered merely advisory documents, without a true legal dimension. However, regulatory tools set by laws have binding power, making their compliance mandatory. While the principles of participation and planning have seen real development, significant obstacles must also be identified in order to deepen these processes.

3- Obstacles to Deepening Participatory Democracy and Planning in the Environmental Field:

The principle of participation and planning faces uncertainty and ambiguity, primarily concerning the concepts involved. These include conceptual doubts about the idea of participation itself and its place within representative democracy, as well as doubts about administrative decisions made by public authorities that consider themselves the guardians of the public interest (3.1). There are also potential obstacles to deepening democracy and environmental planning, mainly related to difficulties in defining the concept of the public or those related to the restrictive nature of the institutional framework for participation, such as authorized associations (3.2).

3.1- Doubts and Ambiguity Surrounding the Principle of Participation

The principle of public participation in environmental planning and programming is clouded by doubts and ambiguities concerning the proper understanding of public participation in formulating environmental plans and programs, both from the administration's side and from elected officials, who see it as an interference with their powers (3.1.1). Additionally, doubts exist about the general theory of administrative decisions, which regards administrative decisions as unilateral actions and the administration's monopoly on the public interest, leading to a lack of direct impact from participation in decision-making (3.1.2).

3.1.1- Conceptual Doubts and Ambiguity in the Principle of Participation

The principle of participation is characterized by diverse sources, as it is referred to in many international and national texts, making it difficult to define its concept and scope. In reality, participation is fundamentally a vague idea in our representative democracies, where it is praised in political discourse. However, local elected officials view it as a constraint due to the fear of relinquishing their powers, seeing it as incompatible with representation. It places each concerned individual at the forefront of projects and decisions that are imposed and weakens the role of the political representative as a decision-maker, who views the development of participation procedures with caution.

This hesitant attitude is the root of many misunderstandings and tensions, partially explaining the uncertainty around the concept of participation and the difficulty in enforcing this principle. Nevertheless, the principle of participation does not harm elected representatives. On the contrary, it facilitates the conditions for exercising their mandate by allowing projects to be more socially acceptable. It also helps to make decision-makers accountable and makes the environmental decision-making process more transparent.

Resistance factors linked to administrative traditions and the relative passivity of a disengaged public are also obstacles. These obstacles are further compounded by the significant

procedural differences currently present in environmental decision-making. The participation of individuals and civil society organizations in various pathways and mechanisms for formulating decisions and measures related to environmental protection is one of the fundamental pillars of contemporary policies and trends aimed at environmental protection, both nationally and internationally. Participation, as a practical procedure, requires decision-making bodies to follow it when preparing and formulating decisions, plans, and measures related to the environment. It serves as an important guarantee to ensure that individuals can effectively enjoy their right to a healthy and sound environment, as participation provides them with the ability to influence plans and decisions affecting their environmental surroundings, ensuring they align with the requirements for protecting this environment.

The desire to participate is first expressed in terms of current concerns that affect citizens' daily lives in their work or living areas. Sectors such as urban planning and development have seen multiple experiences and active citizen participation. In the environmental field, the rise of public environmental policies has increased the public's and associations' desire not to leave decision-making solely to the administration and elected officials. Moreover, the worsening of environmental issues for future generations has led to a widespread demand for new ways of participation. Some consider citizen participation a direct political and legal outcome of the recognition of the right to a healthy environment. (Prieur, p.397-398)

2.1.3- Doubts About the General Theory of Administrative Decisions

In Algeria, the administration monopolizes the public interest. It is clear that this fact is the reason for the lack of direct influence from participation on environmental decisions and plans. Furthermore, the public's right to participate in environmental planning challenges this tradition, which is based on the general

A- The Administration's Monopoly on the Public Interest as a Reason for the Lack of Direct Impact from Participation in Decision-Making

Currently, participation in decision-making is practiced in very different ways between countries. In fact, the administrative traditions of countries are diverse and have their own histories before environmental issues emerged. In some countries with a Napoleonic tradition, unilateral administrative actions reflect the logic of public authority, and the procedural law that creates decisions is almost nonexistent. Therefore, in France and Algeria, there is no law for non-judicial administrative procedures. In other traditions, however, public decisions are made based on a consensus logic, and initial procedures, as well as opportunities for public expression and participation before decision-making, are highly developed, as is the case in Nordic countries and North America. For example, in the Netherlands, public decision-making requires internal dialogue between the state, economic actors, and citizens. The state is just one actor among others, and once consensus is reached, the decision is no longer questioned. The same applies to the American negotiation procedures when setting rules that regulate forms of public dialogue before decision-making. Therefore, this administrative culture is based on transparency and consensus. In contrast, in countries like France and Algeria, the process of making public decisions remains secretive (decisions are only communicated after they are finalized). If there is any negotiation, it tends more toward consultation than consensus, as the administration claims a monopoly on the public interest, which constitutes a real obstacle to the principle of participation. (Prieur, p.21)

The Algerian legislator has enshrined the principle of participation but has not defined specific participation procedures, particularly consultation with all stakeholders, alongside public discussion. Consultation is considered one of the main guarantees for involving the public in the planning decision-making process, as it plays a key role in

"democratizing the planning decision-making process and fostering social cohesion."
(Huglo.Christian & Cassin, p.09)

Consultation is a fundamental aspect of participatory democracy, involving regular communication and institutional dialogue between public authorities, citizens, civil society organizations, and various social actors concerning decisions, policies, projects, and plans that affect public life and relate to citizens' rights and sustainable development goals.

The Algerian legislator enshrined the principle of consultation in Law 06/06, which includes the framework law for urban planning, but did not specify the concept of consultation or the procedures and mechanisms for its implementation in practice. Similarly, Executive Decree 15/207, dated July 27, 2015, which outlines how to initiate and prepare the National Environmental Activity and Sustainable Development Plan, limited consultation in Articles 6 and 7 to public sectors, without involving economic and social actors.

It is important to distinguish between consultation and deliberation. In consultation, the administration is assumed to be seeking merely an opinion from the concerned parties regarding a project that has already been designed. In contrast, deliberation requires the administration to negotiate with the concerned parties about the content of the decision. Therefore, deliberation necessitates a joint and genuine adoption of the decision. However, in practice, participation often remains limited to consultation or informing the public, as stated in Executive Decree 91/177, dated May 28, 1991, which defines the procedures for preparing the master plan for urban planning, and Executive Decree 91/178, dated May 28, 1991, which defines the procedures for preparing land use plans. Additionally, there is an institutional variable that also has a significant impact on the principle of participation: the relatively decentralized nature of decision-making centers in environmental matters. It appears that the more local the decision, the more effective public participation becomes. In countries like Denmark or the Netherlands, where environmental interests are decentralized, the public is closely involved in decision-making in either informal or institutional ways. Local authorities establish advisory committees or consultative bodies, and organize public hearings and consultative referenda.

In contrast, in France and Algeria, environmental decision-making remains centralized or loosely decentralized, and public consultation is rigid, typically carried out by the governor, a state representative, who holds significant authority over the chairing of consultative committees and approval of associations, as well as partly in establishing lists of inquiry commissioners. (Prieur, p.22)

In addition to the complexity of political structures and their foundations in relation to democracy and participation, one author asserts that "in addition to the crisis of representation, the limitations of policy and democracy are due to the administrative usurpation of all powers." New supranational demands are questioning states on one of the fundamentals of democratic systems: the separation of powers, and the status of popular structures in relation to society and the public interest. These demands clearly indicate that the condition for participation can enhance public intervention in the name of the public interest. (Aoustin, p.116)

B - Public Participation in Plans and Programs as a Requirement for Justifying Regulatory Administrative

Decisions Public participation traditionally plays a key role in both the preparation of administrative decisions, on one hand, and their justification, on the other. These are two distinguishing elements of the general theory of individual administrative decisions. However, when considered on a larger scale, the commitment to providing justifications can help make

public participation more genuine. Therefore, the administration's commitment to responding to public comments can serve as a key link between representative democracy and participatory democracy.

In reality, genuinely considering the public's opinions gives participation the dimension it currently lacks. However, highlighting this commitment to responding is not an easy task, and it has not yet been fully realized, although some initial steps indicate its emergence. The development of the requirement to justify administrative actions and subject them to public participation has evolved simultaneously in the environmental field. While public inquiry procedures in France date back to the First Empire, the law on participation saw significant development in the 1980s, shortly after the passage of the law of July 11, 1979, which required justification for certain administrative decisions. The "democratization" of public inquiries occurred in 1983. (Bétaille, 2019,p.31)

In Algeria, public inquiry began in the early 1990s with the passage of the Urban Planning and Development Law (90/29) and Executive Decree 91/177, which defined the procedures for preparing the master plan for urban planning, as well as Executive Decree 91/178, which defined procedures for preparing land use plans. These regulations made public inquiry mandatory in the preparation of urban planning tools. In the field of environmental protection, Executive Decree 90-78, concerning environmental impact assessments, requires that stakeholders, whether natural or legal persons, be invited to express opinions on development and construction projects. Similarly, Executive Decree 2007/145, which defines the scope, content, and procedures for approval of environmental impact assessments and summaries, requires public inquiry for environmental impact assessment procedures. In the absence of other participation methods such as consultation and public discussion, public inquiry remains the only mechanism allowing citizens to participate in Algeria. However, legal scholars consider public inquiry as merely a public opinion, without sufficient binding power for its implementation by public authorities. The real discussion and dialogue occur between the appointed investigator and the administration. Furthermore, public participation in the public inquiry process has limited impact on administrative decision-making. As a result, public inquiries can become ineffective because public participation takes place once the administration has already made its choices. Thus, individual contributions to the final decision are symbolic and have no real effect. (Mohamed, 2018, p.96). Additionally, Algeria lacks a general provision requiring the administration to justify its administrative decisions, except for Article 11 of the Anti-Corruption Law, which states that "public administrations and bodies must justify their decisions when they are not in favor of the citizen..." Although the Algerian legislator took steps to establish the regulatory relationship between the administration and the citizen through Decree 88-131, it did not acknowledge the principle of mandatory justification. While this requirement is a positive step for rights and freedoms, it is insufficient, as it only recognizes the right without providing the necessary procedural, objective, and institutional mechanisms to ensure it. This requires a separate law in this regard. (Dahel,2017,p.434)

2.3 - Obstacles to Public Participation in Environmental Plans and Programs

The principle of participation in the development of environmental plans and programs faces obstacles that prevent the democratic character of planning and programming. These challenges primarily stem from the difficulty in defining the concept of the public involved in participation without violating the principle of equality among citizens (3.2.1). Additionally, associations and organizations active in the environmental field play an important role, as citizens participate in environmental decisions mainly through their membership in recognized associations. These associations represent the institutional framework organized

by public authorities for participation, but their role remains limited due to the restrictive nature of the institutional framework for participation, especially in Algeria, where financial resources are weak and they rely entirely on state subsidies, weakening their role (3.2.2).

3.2.1 - Obstacles Related to Defining the Concept of the Public

Another significant obstacle to democratizing the decision-making process relates to those who will be the actors in participation. In reality, the quality of participation is not simply the result of the procedural rules applied; it also requires a certain type of participant. Has the public been trained to receive information and is it ready to participate? Public mobilization cannot be imposed by decree; rather, it depends on national sensitivity and culture, and how the public organizes itself.

Furthermore, the public's perception of the environment differs across countries and even within the same country depending on the region. The very concept of the environment is not uniform, given its broad scope and what it may encompass. For example, does it include cultural and heritage assets, energy, or territorial planning, or does it exclude them? Additionally, the public's acceptance of environmental issues is largely conditioned by the level of education and the quality of information provided. Here, national differences are also important, and everything depends on the dynamics of the bodies responsible for disseminating information, as well as the relatively active role of the media in conveying data and producing reports about the environment (Prieur, p.21-22). This also applies to environmental plans and programs, where a deep analysis of their foundations reveals the difficulties faced by public authorities when it comes to defining the relevant public.

The liberal definition of the public adopted by the Aarhus Convention presents significant challenges. It can be noted that it is easy to identify and recognize the interest or relevance of a specific project through the decision to implement a plan or program within that project. However, public authorities already face considerable difficulties in determining the population concerned with these precisely defined projects. It is also easier to identify what plans and programs, which define the framework for these projects, can offer, considering their relative degree of abstraction and the increasing difficulties involved.

The administration determines participants according to the categories it wants. Thus, the user is defined as someone who may potentially benefit from the project, while the resident is defined by their proximity to the area affected by a specific project. In reality, the project itself plays a structural role in determining the population likely to express an interest, which can be very difficult to predict accurately at the planning stage. Therefore, limiting the discussion or public inquiry to a specific group of individuals constantly fails.

A liberal acceptance, meaning the expected acceptance of the concerned public, should prevail, especially at the planning stage, but this seems particularly difficult. Moreover, the structural role of large projects is more concerned with the populations contemporary to the works, rather than with future populations affected by their exploitation and sustainability, given their potential lifespan and impact on land use planning. Regardless of progress in participation, the interests of these silent groups and the future populations in the affected area must be considered.

It is also worth noting that the Aarhus Convention distinguishes between "the public" and "the public concerned." It provides a broad legal definition for the public (groups without legal personality are part of the public as intended in the Aarhus Convention and can exercise the rights provided for by the convention). The "public concerned" is a subset of the public, consisting of those affected or likely to be affected by public decisions and plans impacting the environment. Environmental associations and non-governmental organizations advocating

for the environment are always considered part of the public concerned because they do not have a legal or factual interest to prove before their intervention, provided that their social purpose is environmental in nature. This is the same approach taken by Algerian legislators in Law 03/10 through Articles 35, 36, and 37, where they considered environmental associations to be part of the public concerned.

The Algerian legislator also adopted the liberal concept of the public through Article 9 of Executive Decree 90-78 concerning environmental impact studies, which requires governors to "invite others, whether individuals or legal entities, to express their opinions on the works, planning, or facilities to be carried out, and to inform the public of the decision that orders the publication of the environmental impact study." Similarly, Article 9 of Executive Decree 2007/145, which defines the scope and content of the approval process for environmental impact studies, mandates that the governor "invite others, or any person, natural or legal, to express their opinions on the project to be implemented and on the expected environmental impacts."

2.2.3-The Restrictive Nature of the Institutional Framework for Participation:

Accredited Associations Environmental associations play a crucial role alongside public authorities as active participants in decision-making. They represent a channel (used by public authorities) to inform and educate citizens, in addition to their primary role as expert bodies or counter-expertise in environmental issues and litigation. They are members of many national or local advisory bodies and intervene particularly in environmental plans and programs (Aoustin, p.116).

The strength of these associations depends on their number of members and financial resources. National traditions play a significant role in supporting associations, depending on the level of supportive or encouraging assistance available. In Algeria, the Ministry of Interior estimates that there are about 2,505 active environmental protection associations, representing about 2.3% of the total. However, no statistics are available regarding the number of members or their annual budgets (Local, 2016). In France, about 3% of the population is engaged in environmental defence associations, representing approximately 1.74 million members. The French Federation for Nature and Environment is the largest gathering of associations, comprising 3,500 associations with 880,000 members, followed by the World Wildlife Fund in France with 100,000 members, and Greenpeace France with 30,000 members. This number is low compared to the United Kingdom, where approximately 4 million people are members, representing 7.2% of the population. In the Netherlands, about 1.9 million people are members, representing 12.6% of the population.

As for budgets, these also vary. For the French Federation for Nature and Environment, the budget is about 4 million euros, while the World Wildlife Fund France has a budget of 20.8 million euros. These budgets are modest compared to major environmental associations in the United States, such as the National Wildlife Federation, which has 4 million members and a budget of 615 million dollars, and the World Wildlife Fund USA, with 1.2 million members and a budget of 580 million dollars (Prieur, p.22).

The effectiveness of these associations is also linked to their structures, working methods, and the way they cooperate with public authorities in decision-making. Additionally, the development of a certain legitimacy for some associations sometimes leads to excesses at the expense of ordinary citizens or other associations. For example, when specific associations are granted representation rights by public authorities, they are given special accreditation. Consequently, administrative information or reports are sent to these associations, which do not regularly disseminate them. In Algeria, the representation of associations in national,

regional, and local advisory committees is weak compared to the number of environmental protection associations active in Algeria, as reported by the Ministry of the Interior. Clearly, the difficulties faced by public authorities when it comes to identifying the relevant public for a specific project are among the reasons for preferring such associations and organizations, and directing public participation.

4. Conclusion

Despite some significant achievements and encouraging prospects, there will still be a need for many national legal and executive provisions regarding environmental plans and programs in their entirety. It seems that the public's right to participate in these plans and programs is primarily characterized by its lack of consistency. In general, the right to public participation in environmental matters, as a procedural tool, like substantive environmental law, suffers from a significant lack of effectiveness. Due to the absence of full legal effectiveness, it is extremely difficult to evaluate its efficacy.

The legal formation of the right to participate expresses and affirms, in its own way, various reservations regarding participatory democracy. In Algeria, participation in environmental plans and programs remains limited to public investigations, which are riddled with many flaws, and the absence of other participation mechanisms such as consultations and public debates. Additionally, the legal scope of the participation legal instruments in Algeria remains weak to the point of ridicule. However, it does not seem that engagement in this path, such as joint decision-making, is promising; rather, it serves as a source of confusion and obstruction rather than deepening democracy.

The difficulties facing the principle of participation always encompass a three-dimensional approach: the citizens' approach, where they act effectively as active environmental citizens; the administrative authority's approach, where it adopts a participatory and sincere stance; and the political authority's approach, where it imposes its will to modernize the relationships between the authority and the citizen or between the administration and the citizen. Such an evolution of participatory democracy in environmental plans and programs would undoubtedly enhance environmental effectiveness and the legitimacy of such tools, which would eventually become the core instruments of environmental law. Political will, as in any field, will be a key factor in achieving satisfactory effectiveness of the public's right to participate in environmental plans and programs.

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