Note to readers:

This is an early and very much incomplete first draft of an article that explores structural inequality and barriers to participation in the UNFCCC. It is part of a broader research agenda that seeks to explore to what extent civil society participation and ideas of networked multilateralism can respond to legitimacy deficits in global governance and international law.

As you will see, the current draft is work in progress in the best sense of the word. I would have wished to present you with a more complete draft. I do hope, however, that in its current stage, the article's main argument and gist are clear. I am currently considering complementing the research with semi-structured interviews with select members of the Women and Gender Constituency. This would go primarily into part II.

At this point, I am particularly interested in the following questions:

- Do you find the argument as a whole and the steps of the article convincing?
- What additional information would you require/are you missing (also considering parts that are not yet elaborated)?
- Should I tailor the article more towards a *legal* audience (and thus debates on the legitimacy of international law), or keep the focus on global governance more broadly speaking?

Many thanks for reading me. I look forward to the discussion. All comments and critical feedback are welcome at hannah.birkenkotter@itam.mx.

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Civil society participation and the question of legitimacy at the UNFCCC: the case of the Women and Gender Constituency

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Addressing the adverse effects of climate change is arguably one of the greatest challenges of our time. This includes tackling its unequal effects: climate change will exacerbate already existing inequalities, especially for those disadvantaged by gender, age, race, class, caste, indigeneity, and (dis)ability (IPCC 2018).[1] In this paper, I explore two interrelated questions: On the one hand, I interrogate to what extent the unequal impact of climate change necessitates a regulatory response at the input level; on the other hand, I show that there exist structural and practical barriers to ensure equal access to climate negotiations within the UNFCCC framework, using the example of the Women and Gender Constituency. I proceed in three steps.

In a first step, I explore justifications for input legitimacy in global governance debates. There is general agreement that those most affected by a given policy should have a voice in regulatory choices (a form of input legitimacy). In global regulatory processes, this is often ensured through civil society participation frameworks. The first part of the paper shows how civil society participation is organized within the UNFCC framework, specifically at the UNFCCC Conferences of Parties, and to what extent such participation is related to a call for input legitimacy given the unequal impact of climate change.

In a second step, I then argue that current civil society participation mechanisms at the UNFCCC and its CoPs do not adequately ensure input legitimacy in global climate governance. I focus on the Women and Gender Constituency (WGC) as one of the civil society constituencies that are generally regarded as successfully advocating women's interests at the UNFCCC (e.g.

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[1] Olsson, L. et al., 2014: Livelihoods and Poverty. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 793–832. https://www.ipcc.ch/sr15/chapter/chapter-5/

Morrow 2017). The WGC is an interesting example because it is explicitly committed to intersectionality and to making subaltern voices heard. Yet, it faces several structural barriers, both in practical matters (such as funding and visas) as well as in terms of knowledge (epistemic capital). Path-dependency of participation structures in international negotiations and multiple conditionalities of international development cooperation are but two factors that explain these barriers.

In a third step, I ask whether, based on the case of the WGC, advocacy groups' participation enhances the legitimacy of international norm-making processes or rather undermines it. While transnational advocacy networks can enable actors neglected at the domestic level to make their voices heard internationally without the intermediate of the state, resource allocation typically favors the participation of actors from the so-called Global North and thus amplifies those voices and values that are already heard most in international contexts. I end with some practical policy suggestions that would ensure more equal participation in climate negotiations.

I. Input legitimacy in global governance: the case of UNFCCC

This part looks at input legitimacy in global governance and specifically examines the case of the UNFCCC. I first discuss why input legitimacy is generally considered important in global governance. In a second step, I argue that civil society participation is often understood as a common form of generating input legitimacy, even if it has been acknowledged in different policy fields that such legitimacy is far from ideal. The last section explores how civil society participation is organized within the UNFCCC.

A. Why is input legitimacy relevant (for international law)?

Legitimacy in (international) law and international relations is generally understood as the conditions under which rules are acceptable to (normative conception of legitimacy) or accepted by (descriptive conception of legitimacy) those over which they purport to exercise authority.[2]

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[2] See https://plato.stanford.edu/entries/legitimacy/, for a summary of different conceptions of legitimacy specifically in international law dos Reis and Kessler in D'Aspremont/Singh.

[*Distinguish descriptive and normative conceptions in more detail; clarify that while I tend to look rather at descriptive conceptions due to a general constructivist posture, this is not necessarily decisive for this paper and/or identifying specifically input legitimacy as relevant for rules at the international level.*]

Whether one subscribes to a normative or descriptive conception of legitimacy, the term is typically associated with a set of procedural and substantive criteria that must be fulfilled in order for a rule to be considered a legitimate exercise of constraining power. In the Western legal tradition, legitimacy was long considered to be connected to the constitutional state, and international rules as state-consented rules derived their legitimacy from the fact that they were based on the consent of sovereign states as the original *locus* of legitimate authority.

With the rise of international organizations that typically exercise some form of autonomy and are not determined (at least not entirely) by their member states,[3] there is a plethora of rules and institutions beyond the state that do not respond to traditional conceptions of legitimacy. As a consequence, scholarship and practitioners alike have been concerned about how to close „legitimacy gaps" in global governance institutions. One influential conception of legitimacy for entities beyond the state has been the distinction of input, output, and throughput legitimacy.[4] Input legitimacy relates to the *who* of rule-making and can largely be equated with concern for self-determination at the core of a democratic conception of rule.[5] Output legitimacy in turn refers to the substantive content of a rule, and to what extent it serves the interests of those over whom it purports to exercise authority. Lastly, throughput legitimacy, while rooted in old debates on how to best organize political processes, is a relatively new term and relates to the quality of the process through which a political decision is reached, including criteria such as transparency, inclusivity and accountability.[6]

[*Further elaboration on blurry lines between different forms of legitimacy, specifically between input and throughput dimensions.*]

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[3] Barnett/Finnemore 2004.
[4] For input and output legitimacy see Scharpf 1999; for throughput legitimacy Schmidt 2020 Chapter 2; for a recent overview Steffek 2023; specifically in international environmental law Bodansky 2012.
[5] For a defense of such a conception of legitimacy from the constitutional law literature see Möllers 2013.
[6] Schmidt 2020.

International organizations are traditionally focused on output legitimacy. A prominent theory of international organizations, based on liberal institutionalism, justifies international organizations' existence because they are adequate responses to coordination and collaboration problems amongst states.[7] However, more recently, input and throughput legitimacy have been given greater prominence. For example, the High-Level Advisory Board on Multilateralism, put in place by UN Secretary-General António Guterres in the lead-up to the 2024 Summit of the Future, emphasizes inclusion and accountability as crucial elements to improve legitimacy and effectiveness of global governance.[8] Specifically, this report highlights the need for greater inclusivity of traditionally marginalized or neglected groups in global governance. This includes a commitment to gender equality and equity, which is of particular concern for the present article.

[*Further recent global governance documents that concern the input/throughput levels; Zero Draft Summit for the Future*]

B. Civil Society Participation as Input Legitimacy

As mentioned in the previous section, inclusivity and participation are of particular concern in current global governance debates. This is particularly true for the participation of actors other than states. The role of non-state actors in global politics has been a topic of both international relations and international law scholarship at least since the publication of Margaret E. Keck and Kathryn Sikkink's seminal study on transnational advocacy networks in 1998.[9] Keck and Sikkink argue that the emergence of these networks has a considerable impact on global governance as they influence state actors' discursive positions and behavior, shape norms, and influence institutions. The two authors identify two factors for the success of such networks: issue characteristics and actor characteristics. Transnational advocacy networks typically are successful in issue areas that are value-laden and deal with „right" or „wrong" - examples examined in their book are human rights, the environment, and violence against women. These

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[7] Krasner 1983; Keohane 1984.
[8] HLAB Report 2023.
[9] Keck/Sikkink, Activists Beyond Borders, 1998.

are issue areas where states typically have little (rationalist) incentive to cooperate, but where some form of transcultural value - e.g. human dignity - exists. The second factor, actor characteristics, relates to the actors that populate a transnational advocacy network. Here, the authors point out that non-governmental organizations are key: typically, transnational actor networks are animated by shared values and common discourse, and this is often to be found amongst a set of non-governmental organizations that are primarily considered to be animated by common good considerations.[10]

It is no coincidence that Keck and Sikkink's study was published in the late 1990s. The 1990s were characterized by a series of world summits in different issue areas - starting with the World Summit for Children in 1990, which resulted in the adoption of the Convention on the Rights of the Child, to the 1993 Earth Summit, which adopted the Rio Declaration and several multilateral treaties, including the UN Framework Convention on Climate Change, to the 1995 Fourth World Conference on Women in Beijing and the World Summit for Social Development in Copenhagen in the same year. All of these conferences saw unprecedented levels of civil society participation; between 1990 and 2000, NGO accreditation with the UN Economic and Social Council more than doubled from just below 1000 organizations to over 2000 accreditations. Today, there are over 5000 non-governmental organizations that have consultative status with ECOSOC.[11]

Keck and Sikkink's work ushered in a large number of studies on civil society organizations' impact on global politics and negotiations.[12] This coincided with parallel developments in international institutions and an increase in NGO participation in various international organizations which tend to view NGO participation as an unequivocally positive development. [*World Bank Example to that effect.*] One such example is the 2004 Cardoso report on United Nations - Civil Society Relations,[13] commissioned by former UN Secretary-General Kofi Annan in response to the increase of NGO accreditations. Annan established a high-level panel, chaired by former Brazilian President Fernando Henrique Cardoso, after whom the report is named. The report is a good example of how NGO participation is considered something positive: one of the

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[10] p. 9.
[11] http://www.staff.city.ac.uk/p.willetts/NGOS/NGO-GRPH.HTM#graph; https://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search.
[12] For an overview on NGO research in the development sector see Brass et al. 2018.
[13] UN Doc. A/58/817.

biggest advantages of enhanced UN-civil society engagement identified by the report is that it would make the UN more effective. This is related to output: „The panel views greater civil society engagement as a means to addressing the democratic governance deficit „it is prone to",[14] i.e. that is inherent in many supra- or international organizations, and it emphasizes explicitly that „expanding roles for civil society in deliberative processes" would be a meaningful way of countering that deficit.[15]

[...] [*Include: moral authority of NGOs - Stroup and Wong 2017*]

What this section shows, then, is that greater civil society participation is often considered not to only have a positive impact on global governance processes at the output level, but to enhance specifically the input legitimacy of global decision-making by adding an element of participatory democracy to the largely representative democracy prevalent in global governance today. This is true of multiple governance institutions and organizations at the global level. The following section considers how civil society participation is organized within the UNFCCC.

C. Civil society participation at the UNFCC

Today, there are over 3500 non-governmental organizations accredited with the UNFCCC Secretariat.[16] UNFCCC accreditation is a good example of the ambiguity of the term „non-governmental organization" (NGO): the Cardoso report, mentioned in the previous section, highlighted that „there is considerable confusion surrounding this term in United Nations circles", and that while „NGO has become shorthand for public-benefit NGOs — a type of civil society organization that is formally constituted to provide a benefit to the general public or the world at large through the provision of advocacy or services", the report adopted a broader definition that included „[a]ll organizations of relevance to the United Nations that are not central Governments and were not created by intergovernmental decision, including associations

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[14] para. 37.
[15] paras 10, 37.
[16] See for a list of all admitted NGOs https://unfccc.int/process/parties-non-party-stakeholders/non-party-stakeholders/admitted-ngos/list-of-admitted-ngos; for statistics https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/statistics#Statistics-on-admission.

of businesses, parliamentarians and local authorities".[17] This means that NGOs can also include for-profit organizations, something that is not congruent with the intuitive meaning of the term. In turn, the Cardoso report limited the term „civil society" to „associations of citizens…entered into voluntarily to *advance their interests, ideas and ideologies*" and explicitly excluded profit-making activity from this definition.[18]

At UNFCCC, the definition of accredited NGOs is broad and, beyond not-for-profit advocacy organizations, encompasses for-profit institutions as well as research entities, amongst others. Most accredited observer organizations are part of a constituency (UNFCCC states that 99% of observer organizations form part of a constituency, with the exception of faith groups, national parliamentarians, and inter-governmental organizations with accrediation at UNFCCC). A constituency is a loose network of broadly clustered perspectives and interests, with a common focal point to facilitate conversation with the UNFCCC Secretariat.[19] In the early days of the UNFCCC, only two constituencies existed: the business and industry NGOs (BINGOs) and the environmental NGOs (ENGOs). Today, there are nine constituency groups: in addition to the BINGOs and ENGOs, there are constituencies of local government and municipal authorities (LGMA)[20], the indigenous peoples organizations (IPO),[21] the research and independent NGOs (RINGO),[22] the trade union NGOs (TUNGO),[23] the Women and Gender constituency (WGC) and youth NGOs (YOUNGO).[24] Each constituency has a designated „focal point", i.e. one organization that acts as an intermediary with

Several benefits derive from being part of a constituency. Only constituencies have access to the Plenary floor at UNFCCC Conferences of Parties (COPs) with formal speaking rights, and only organizations affiliated with a constituency are allowed secondary badges when site access is limited.[25] These two points in particular are crucial because they are directly linked to access, and therefore voice, of civil society at UNFCCC.

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[17] Cardoso, p. 13.
[18] Id., emphasis added.
[19] UNFCCC, constituencies and you, https://unfccc.int/documents/36933.
[20] Established at COP 1 in 1995.
[21] established at COP 7 in 2001
[22] Established at COP 9 in 2003.
[23] Established in 2008.
[24] Both established in 2011.
[25] UNFCCC, constituencies and you, https://unfccc.int/documents/36933.

[*… Add: accountability structures within different constituencies; development from expertise and lobby - BINGOs and ENGOs - to broader, cross-cutting constituencies, esp indigenous peoples, youth, women - differences between the type of consistituency - emphasize parallelism to the Major Group structure and rooting in Rio process for different constituencies. Point to inequality in representation already here.*]

II.   Unequal representation at the UNFCC: the case of the WGC

sIn this section, I argue that current civil society participation mechanisms at the UNFCCC and its CoPs do not adequately ensure input legitimacy in global climate governance. Of course, unequal representation is not limited to civil society participation mechanisms. Danielle Falzon has shown convincingly that not all states contribute equally to climate negotiations, and that „developing" nations are typically at a disadvantage because their delegations do not tend to exhibit the attributes that an effective, or, in Falzon's words, „ideal" delegation should have in order to successfully impact climate negotiations.[26]

If the problem of unequal representation arises already amongst state delegations, with states being the original actors of international negotiations, we might expect an even greater disparity within the civil society constituencies. A first indicator that confirms this hypothesis is the country of origin of civil society organizations that interact with the UNFCCC: according to the UNFCCC Secretariat, 67 % of organizations that are accredited with the organization come from countries that are in the Western European and Others Group, and less than 10 % are, for example, from countries from the African Group.[27] [Insert statistics about population - WEOG only 12 % of world population; Asian and Pacific group largest percentage of world population, but very underrepresented at COP.]

In this section, I examine the extent to which the Women and Gender Constituency (WGC) is facing structural and practical barriers to equal representation in UNFCCC negotiations. I choose the WGC for two main reasons. First, it is one of the constituencies that has generally been

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[26] Falzon, 2021.
[27] https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/statistics#Statistics-on-admission

regarded as successfully advocating for women's interests at the UNFCCC.[28] Second, it is explicitly committed to intersectionality and to making subaltern voices heard. It is explicitly based on democratic and participatory governance, wide and inclusive membership that encourages regional balance, and broad and participatory access.[29]

Yet, it faces several structural barriers, both in practical matters (such as funding and visas) as well as in terms of knowledge (epistemic capital). Path-dependency of participation structures in international negotiations and multiple conditionalities of international development cooperation are two factors that explain these barriers.

[*Note to readers: the following sections are very incomplete and only in bullet points; I do hope that they are intelligible nonetheless.*]

A. The Women and Gender Constituency at the UNFCCC

The Women and Gender Constituency (WGC) is one of the youngest civil society constituencies at the UNFCCC, even though women were present and wanted to shape the environmental protection and climate change agenda since the 1993 Earth Summit in Rio de Janeiro. Flavell distinguishes three different phases of women's engagement with climate negotiations: a first phase from 1992 to 2007, where individual strong feminist voices were present at the COP but did not receive any institutional feedback or position; a second phase from 2007 through 2014 that witnessed relative success and resulted in the adoption of the Lima work programme on Gender at COP20; and a third phase from 2014 till today marked by the consolidation of the Gender Action Plan and its renewal within the UNFCCC framework.

[*Outline:*
- WGC history along the three phases
- Content of 2014 Lima Work Programme and GAP - highlight intersectional commitment of WGC
- Justification of WGC in COP along input and output dimensions

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[28] E.g. Morrow 2017; Flavell 2023.
[29] https://womengenderclimate.org/about-us/#principles

[*- Organization of WGC - follows largely the Women's Major Group at UN/Rio process*

- Major actors - WEDO, WECF, WILPF - identical —> transition to section II]

B. Obstacles to equal representation in the WGC

At face value, the composition of the WGC displays relative diversity in terms of geographical distribution: its member organizations hail from all regions and focus on all regions of the world.[30] Yet, a closer look reveals that the WGC's main actors tend to be women* working for or based in what is often referred to as the „Global North". I have already pointed out that there are far-reaching congruencies between the Women's Major Group at the United Nations and the UNFCCC WGC in terms of main organizations, and these organizations, even if committed to diversity and inclusion, are headquartered in „developed" countries. WEDO is based in Brooklyn, NYC, the United States.[31] WECF's headquarters are in the Netherlands.[32] GenderCC's International Secretariat is located in Berlin, Germany.[33] This is not to diminish the work of any of these organizations. But it begs the question of why equal representation is so difficult to achieve within a group that is explicitly committed to inclusivity and intersectionality.

With regard to states, Danielle Falzon has found that there are four attributes that an ideal state delegation should display: they should be large, English-speaking, equipped with Western scientific and legal expertise, and have the ability to send the same people every year.[34] We might assume that similar attributes are warranted for successful lobbying by non-state actors.

[*Explanation of attributes for all these organizations: resources, knowledge, education, stability throughout the years. Matching coordinators of WGC - WMG throughout the years. Even „Global South representatives" typically work for, and are financed through, Northern-based organizations.*]

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[30] https://womengenderclimate.org/member/
[31] https://wedo.org/contact-us/
[32] https://www.wecf.org/offices/
[33] https://www.gendercc.net/who-are-we/international-secretariat.html
[34] Falzon 2021.

III.   Legitimacy of international norm-making

In the previous parts, I have argued that legitimacy at the UNFCCC, as in many global governance processes, is thought to be enhanced through greater inclusivity.

This last part examines whether, based on the case of the WGC, advocacy groups' participation enhances the legitimacy of international norm-making processes or rather undermines it. As we have seen, resource allocation and epistemic access typically favors participation of actors from the „Global North", or „developed" countries and thus amplifies those voices and values that are already heard most in international contexts. Similarly, Northern academics are the ones that produce the most knowledge on NGOs and their behavior in global governance (this author recognizes the irony of being herself an academic with education from a „developed" country, even though her work would count as being „South"-based).[35]

To what extent is input legitimacy specifically at stake here? Part of the WCG legitimacy stems precisely from the idea that the most affected - women - should have a voice; but the voices that are often quoted are NOT the women that are most affected.

[*Traditional „boomerang model" by Keck and Sikkink is therefore not necessarily reflected in the realities of civil society participation at UNFCCC - country-level inclusion important - how to translate these voices into global policy processes. Danger of tokenism.*]

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[35] Brass et al 2018, p. 140.