

Public participation on its own barricades: citizens' jury on water management from experiment to instrument.

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Abstract

Due to the broadening scope of water management, due to recent flooding events and due to the increasing degree of uncertainty in the effects of climate change on the water system an intensive need has arisen for the consideration of different interests and stakeholders in the traditional technocratic water management. In this paper we evaluate how current Dutch law on citizens participation in water management meets criteria for good citizens' participation and how a more innovative approach to public participation, a citizens' jury, meets those criteria. Four citizens' juries were organized on water management of the Markermeer and on spatial planning. We use four criteria for evaluation: 1) authority of the process, 2) conditions of access, 3) the flow of information and 4) costs involved.

From this evaluation it can be concluded that none of the instruments does and can meet the criteria for good citizens' participation completely. Water managers should pay more attention to the variety in available instruments for citizens' participation beside the instruments in current law. A more complex and innovative instrument as a citizens' jury has good perspectives for involving citizens early in the decision-making for complex water policy problems. The simpler procedures for citizens' participation in current law are more appropriate as a final check of draft policy plans. The combination of instruments utilized in a decision-making process should jointly meet the criteria for good citizens participation and should be aimed at the specific features of the water policy problem at stake.

Introduction

This paper discusses whether innovative public participation in the form of a citizens' jury can contribute to better decision making in water management in The Netherlands compared to the current law on public participation. The paper is based on experiences of the authors with the citizens' jury method and on literature research of relevant current Dutch law on public participation.

First we will discuss how water management changed from being solely a technical matter to an environmental issue strongly linked to society and how this gradual change increased the necessity of public participation in water management. Following this we will define criteria for good participation in decision-making in water management. These criteria were used to qualitatively evaluate current law on public participation in water management and the citizens' jury on how well they meet preset goals for participation in water management.

We will show in this paper that the instruments for public participation in water management in the current Dutch law are not as good for participation in decision-making as might be required for the management of a natural system that affects many people in their living circumstances. And we will argue that a citizens' jury does meet the criteria for a suitable participatory method only to a certain extend. We will finalize with recommendations to complement existing procedures on citizens' participation in current law with more innovative and more complex instruments on citizens' participation, as the

citizens' jury, to design a participatory process that does meet the criteria for good participation in water management.

Reframing the water system

Until recently active involvement of the general public was not considered as being highly important for adequate management of the Dutch water system. Water management has been a matter of technical expertise for many years. Around fifty percent of the nowadays-habitable surface of the Netherlands actually lies below sea level. The Netherlands comprises a delta system of three large rivers. Technical measures as dikes, pumps, mills, weirs and a high density of drainage systems have been required to prevent this part of the Netherlands from extensive flooding for many years. Flood defense has been the major objective of Dutch water management for a long time (Kerkhof & Huitema, 2003). Because of this technical approach participation was limited to voting for members of the regional water boards. Water managers have not considered active participation of the public in the actual decision-making process as being useful. Generally, citizens had no desire to participate in actual decision-making on such a technical matter either.

During the recent years water managers got confronted with additional targets of water management. Nature conservation, agricultural production and drinking water supply are just a few these goals that water management has to make possible. And only recently the awareness arose that water is not always as controllable as desired. Climate change specifically results in a rising degree of uncertainty in the behavior of the water system. It appears that the traditional technical measures might not be sufficient to manage the water system in a satisfactory way. The probable effects of climate change will ask a higher degree of flexibility of the inhabitants and of water managers towards the water system. Due to the broadening scope of water management and due to the mentioned changes in the water system by climate change, possibly demonstrated by recent unexpected and serious events as extreme flooding and severe drought, an intensive need has arisen for the consideration of different interests and stakeholders in water management. Water management is about more issues and affects more people than in the past (Kerkhof & Huitema, 2003). A water system that has been viewed upon as being solely a physical system, following its own natural laws, appears now to be strongly interacted with society (Van Ast & Boot, 2000).

Taking a closer look at the current problems in water management it shows that almost without an exception the problems related to water management are unstructured policy problems (Kallis et al., 2003). Unstructured policy problems are characterized by a lack of certainty (as explained above) and a lack of consensus related to the values at stake (Hendriks et al, 1998). In problems related to water management many different interests exist. For example, in The Netherlands the interest of farmers in water management (sufficient discharge of water, agriculture results also in a lower water quality) usually conflicts with the interest of nature conservation (sufficient recharge of water of sufficient quality). In general it is stated that these kind of problems benefit from a participatory approach. To involve stakeholders in the decision-making process means that knowledge, insights and values can be brought together. Participants will be confronted with new insights and other interests. A participatory approach can result in new definitions of the problem and new possible solutions (Lenselink et al., 2003). To conclude, a participatory approach in decision-making is assumed to contribute significantly to the required legitimacy of water policy.

What is good citizens' participation?

As described above the character of current problems related to the water system asks for an intensive consideration of interests and stakeholders involved in water management with the objective to increase the legitimacy of water policy. To a certain degree the Dutch legal system supplies possibilities for the involvement of stakeholders in the decision-making process. However, to answer the question whether these possibilities (or obligations depending on ones perspective) are sufficient to meet the

requirements for the involvement of stakeholders in water management, this current law need to be evaluated on its possible contribution to legitimacy of water policy and to be compared with the required degree of good participation to meet this objective. And to advice on the possible suitability of the citizens' jury, this method also needs to be evaluated on its possible contribution to legitimacy of water policy.

Evaluation of participatory processes can be performed on the process, how the activities take place, or on the actual outcomes (Chess, 2000). Since we defined the objective of participation to increase legitimacy of water policy, we focus on the process itself. When a participatory process is well designed with a strong focus on a high degree of actual participation it is likely to contribute, amongst other results, to increased legitimacy. A participatory process can achieve more than just stakeholders' opinions on certain topics. The process can contribute to better decisions, to raising awareness among its participants, to accountability and to collective learning (Kerkhof & Huitema, 2004). Therefore we do not focus on the actual content of the participatory results. No standard framework exists for evaluating participatory processes (Rowe & Frewer, 2000), but several suggestions have been made in literature. Many attempts to measure or evaluate the degree of participation refer to Arnstein (1969). The so-called 'ladder of citizens' participation' establishes the degree of participation by evaluating the actual power of the participants in the decision-making process (Arnstein, 1969). As stated above in our opinion a participatory process comprises more than decision-making power. Therefore we complement this criterion of decision-making power, or authority of the process, with three more categories, as suggested by Coenen et al. (1998): the conditions of access to the process, the flow of information and the costs of the process.

- *Authority of the process*: is what the participants are advising binding or not? Can they determine themselves which issues they will address or not? To which extent do they have to take into account and are they bound by existing policy choices – in other words: what competence is assigned to the participants and is the timing of the process such that the outcomes will be in time? This is the classic focus of participation studies and how Arnstein (1969) measured the degree of participation: what is the decision making power of participants? This category also includes transparency on arguments for and against jury recommendations and independence of the process and of the participants, in other words the relation between participants and the public authority.
- *Conditions of access*: who is in and who is out? It matters a great deal whether participation rights are allotted only to landowners, to tax payers, to organized interests, or to anyone having or showing an interest. This category links also to representativeness (Rowe & Frewer, 2000). Is the participant representative just for himself or for a population of the affected public?
- *Flow of information*: this is a matter of the participants getting access to all information they may need. This includes access to good quality information, access to human resources (also a source of information), material resources and time resources (Rowe & Frewer, 2000). This category of the flow of information also relates to the interaction between participants and between participants and other actors or experts. The more interaction the more intensive the flows of information or knowledge exchange are.
- *The costs of the process*: do participants have to pay their own way or not? Costs associated with participation relate to the giving up of free time, the gathering of support and organizing a collective, travel and sometimes the hiring of experts to help formulate and defend one's position. This also relates to cost effectiveness. Are the costs of the process in balance with the benefits (Rowe & Frewer, 2000)?

In establishing criteria for good citizens participation in water management from this evaluation framework we considered citizens' participation as an essential part of decision-making and especially required in decision-making for water management by the unstructured nature of water problems. From the objective to contribute to increasing

legitimacy of water policy providing good opportunities for participation is here considered to be the responsibility of the government. This essence of public participation can be translated in the statement that a participatory process should not be organized for the sake of participation itself. A good participatory process is the one with a truly high degree of participation. This may sound obvious, but it is a clear message. Still, too often participatory processes are organized on a weak base and have the risk of being perceived as fake or as a show process, without actual participation.

In the scope of water management our four-pillar framework gives us a fundament to establish criteria to define a good participatory process with the objective to increase legitimacy of water policy:

Table 1 – Criteria for good citizens' participation in water management

Category	Aspect (if more than one)	Good citizens' participation in water management requires
Authority rules	Timing of the process	... to take place early in decision-making
	Agenda setting	... competence for participants in defining or adjusting the agenda
	Competence in decision-making	... balanced and founded consideration of recommendations by decision-makers
Conditions of access	Inclusiveness	... citizens from the region (inhabitants, landowners, recreationist, etc) as participants
	Representativeness	... participants as representatives of the public interest
Flow of information	Information supply	... supply of relevant information on technical issues and information on stakeholders' interests
	Quality of information	...good quality information for citizens (not too technical, too general or too rational)
	Information exchange	... a high degree of interaction on information
Costs	For the participants	... a balance in costs and benefits
	For the initiators	... a balance in costs and benefits

How good is current law on citizens' participation in water management?

The general obligations on participation in decision-making are formulated in the General Law on Administration (Stb. 1992, 315). It gives organized stakeholders and citizens the legal right to express their viewpoints on draft policy products in the last phase of the policymaking process. And policymakers are obliged to collect information on relevant facts and on different interests involved. When this passive participation does not lead to consideration of different interests and stakeholders or citizens are not satisfied with the result, they can proceed to court. The court will judge whether these interests should be reconsidered after all.

In water management policymakers execute the obligation for collecting information on different interests by the consultation of a network, which units the most relevant interest groups and stakeholders (on the national level: 'Overlegorgaan Water en Noordzee). And citizens have an additional right to participate in water management by voting for the government of the local water board every four years. This type of participation is not considered in this paper, since we want to focus on the actual decision-making process. Additional obligations on information supply are formulated in the different water laws.

A characterization of participation

These obligations on public involvement in Dutch water management can be characterized on their actual degree of participation by the categories mentioned above: *authority of the process, conditions of access, flow of information* and *costs*. Since we will compare the current law in this paper with the usefulness of a citizens' jury, a method specifically aimed at the participation of the general public, we will focus this analysis on current law to involve individual citizens rather than to involve organized stakeholders.

Much can be said about the *authority of the process* assigned to the participants in the different obligations on public participation. The decision makers are obliged by the General Law on Administration and the Law on Water Management (Stb. 1989, 285) to publish the final drafts of the policy making products, in some cases these drafts need to be directed to a specific stakeholder ('information supply'). Arnstein (1969) recognizes that the emphasis with these 'information' obligations too frequently is placed on one-sided communication. This is a passive invitation for persons and parties concerned to submit their viewpoints in the latest phase of the decision-making. There is no opportunity for agenda setting and the decision makers weigh all the viewpoints and determine the relevance for the policy product. The power and the initiative are with the decision makers. There is no assurance that these viewpoints will be taken into account. There are no legal standards for weighing these viewpoints and for the argumentation to ignore viewpoints. Arnstein (1969) states, that when this type of consultation is not combined with other modes for participation, it is merely a fake instrument.

In terms of *conditions of access* although individuals are not actively invited to participate in the decision making process as organized stakeholder groups are, they do have the legal right to submit their viewpoints on draft policy products and they do have open access to relevant information. These individuals cannot be considered as representatives of the public interest since their viewpoints on the draft policy products generally only concerns their own interest.

In terms of *the flow of information* the availability is not so much a problem. As said additional obligations on information supply are formulated in different water laws. The quality of information, however, might be limiting to public participation. Where professional interest groups sometimes can be viewed upon as true experts on the topic, the information might be too technical, too general or too rational (without a normative judgment: is it good or is it bad) for individuals to handle. This may limit the possibility for individuals to actively participate in the decision making process by submitting viewpoints. And it cannot be said that the current law give participants many opportunities to exchange information. The degree of interaction is quite low, there are no opportunities to exchange information on facts or interests.

Costs for public participation are in general taken care of by the responsible authority and are not so much a stimulating or limiting factor for the degree of participation of the specific obligations. It also takes relatively little time for the public to submit viewpoints.

Table 2 – Scores of current law on criteria for good participation

Category	Aspect (if more than one)	In current law on public participation in water management
Authority of the process	Timing of the process	- -
	Agenda setting	- -
	Competence in decision-making	+/-
Conditions of access	Inclusiveness	+ +
	Representativeness	- -
Flow of information	Information supply	+
	Quality of information	-
	Information exchange	- -
Costs	For the participants	+ +
	For the initiators	+ +

EU policy on participation in water management

Despite the changing characteristics of the Dutch water system, under influence of climate change, and the shift from water management being solely a matter of technical expertise to more than ever the need to consider different interests, it was not until the emergence of the European Water Framework Directive (WFD, PB L 327, 2000), that the Dutch government intensified the obligations on participation in water management. The first attempts were careful. The Dutch Implementation Law for the WFD (Stb. 2005, 303) prescribes a less intensive obligation for information and consultation as the WFD does in article 14. And this Implementation Law does not oblige for the stimulation of active involvement. It will not be until the application of a new Water Law in 2006 that the obligations on participation of the WFD are fully incorporated in the Dutch legal system. The WFD 'information' obligation to publish even the first products of the River Basin Management Plans give citizens and organized stakeholders the opportunity to submit their viewpoints in an earlier stage of the policymaking process than originally was the case. This increases the theoretical influence of these viewpoints in the end products. And the obliged encouragement of active participation of organized stakeholders shifts the power of stakeholders somewhat from 'consultation' to 'partnership' (Arnstein, 1969). No encouragement of active participation by citizens is obliged by the WFD (Huitema et al., 2004).

How good is a citizens' jury as a method for citizens' participation in water management?

In this section we describe a more innovative approach to public participation: the citizens' jury. A citizens' jury is a method for public participation developed in the United States in the Seventies and can be understood as a group of randomly selected citizens who attend a series of meetings in order to learn about and discuss a specific issue and make their recommendations public (Crosby, 1995; Crosby et al., 1986; Diemel, 1989; Stewart et al, 1994; Coote en Lenaghan, 1997; Huitema, 2003). At the start, the jury gets a 'charge', which is a question that they have to answer or a topic they must address. Basically, the participants (the jurors) hear evidence, question witnesses, discuss the issues that are raised, and then make an informed judgment with regard to the charge (Kuper, 1996). The jury hears 'witnesses' that are selected by themselves to represent different (conflicting) viewpoints on the topic under consideration.

In the Netherlands four citizens' juries have been organized on water management and spatial planning in the province of Flevoland. One citizens' jury focused on water quality issues of the Markermeer, a part of the central lake in the Netherlands, and was specifically linked to the implementation of the WFD. It was an experiment funded by the European Commission. The other three juries focused on spatial planning issues in the province of Flevoland. Water management was an integrated aspect in these spatial planning issues and related for example to the realization of extra water storage capacity. These juries were initiated as an instrument in the decision-making process by the regional government. The regional government had followed the earlier experimental citizens' jury on water quality issues and got enthusiastic about the method: the citizens' jury from experiment to instrument.

Each jury started the process with two preparatory sessions: one to focus on the role of the participants as jury members and one to focus on the 'charge' they were addressing. This preparatory phase was followed by the actual jury sessions during which each jury questioned different stakeholders and experts (water managers, technicians, farmers, nature managers, fishers, recreation sector, etc). All juries finished the process with formulating policy recommendations for the regional politicians. The politicians to complement their arguments for their points of view regarding new spatial planning policy used these recommendations.

A characterization of participation

This approach to public participation can be characterized on its actual degree of participation by the categories mentioned above: *authority of the process, conditions of access, flow of information and costs.*

In terms of *authority of the process* the jurors have no direct saying in the decision making process. The jurors were asked to advise the regional politicians on different aspects related to water management and spatial planning. The politicians weighed the recommendations against their own viewpoints and against factual information and information from other stakeholders. However, the participation of the jurors did take place early in the decision making process, this enhanced the chance of actually influencing the final policy products. It appeared that the regional politicians did take the jury recommendations extremely serious. Whenever the jury recommendations amplified their own viewpoints the regional politicians frequently referred to the jury recommendations in their statements.

Another important aspect of competence is that the jurors were allowed to alter the agenda somewhat, but the broad agenda tended to be determined by the organizers or a 'commissioning body'.

In terms of *conditions of access*, the number of participants varied from 12 to 16. The citizens were gathered through a quota system in such a way as to represent a microcosm of the community from the province of Flevoland. The criteria included demographics such as age, gender, and education. The composition of the jury also relied on balancing the attitudes of the jurors on the question under consideration so that they resemble their community. However, it could not be avoided that certain groups were overrepresented in the group of volunteers and in the juries. Figures 1 to 3 show that the juries contained relatively few younger people and relatively few lower educated people.

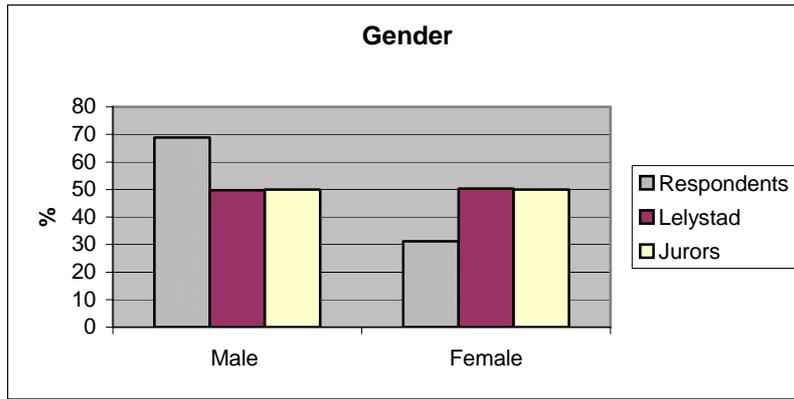


Figure 1 - Gender of inhabitants of Lelystad (capital of the province of Flevoland), respondents and jurors

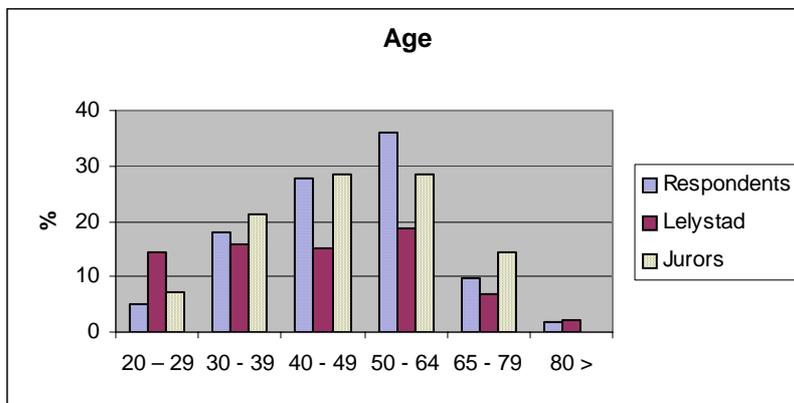


Figure 2 - Age of inhabitants of Lelystad (capital of the province of Flevoland), respondents and jurors

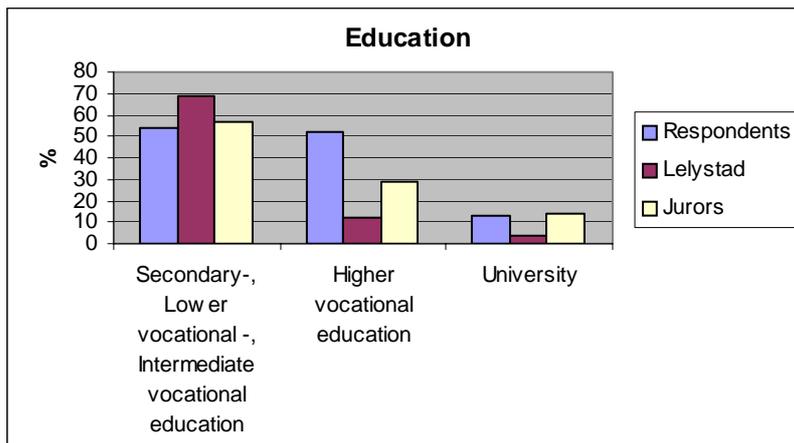


Figure 3 - Education of inhabitants of Lelystad (capital of the province of Flevoland), respondents and jurors

The criterion of the *flow of information* can be considered as the most important feature of the citizens' jury approach. In general citizens do have an opinion about certain policy related topics. However these opinions are mostly normative and difficult for politicians to incorporate in rational policy products. Although the policy making process is not that

rational at all, a policy making product in general is. Policy choices in the final products are accompanied by rational and factual arguments (Davies, 2001).

To fulfill this need of rationality in viewpoints a citizens' jury is very much focused on argumentation of opinions. The process includes witnesses (e.g. scientists, other stakeholders) who give presentations, who are questioned by the jurors and who are selected with the help of the jurors. These witnesses and relevant literature are the most important source of information for the jurors on the topic. The witnesses provide the jurors with factual information about the specific problem and about the different interests involved in the problem. The jurors weigh this information in a structured manner and formulate their viewpoints based on this weighing process and base their viewpoints on rational arguments for their viewpoints. A shift is made from opinions based on normative values to opinions based on factual information and strong arguments.

However, the regional politicians asked many critical questions about the financial implications of the recommendations and whether these had sufficiently been considered. Also criticism was directed at the quality and usefulness of the recommendations and at the practical feasibility of the recommendations and consideration of relevant interests. Even more interesting was that the regional politicians searched for diversity of opinions in the jury recommendations, while the jury members aimed at consensus. Consensus is difficult to achieve among a diverse group of citizens and might not be as important as was considered by the organizers. The regional politicians searched for diversity to be able to emphasize those aspects in the jury recommendations that would fit their political points of view.

In terms of *costs*, a citizens' jury is quite an expensive process, as well as for the paying organization as for the participants who spend much time and energy in the process. Therefore the costs need to be weighed carefully against benefits of early and intensive participation. In general the expenses made by participants on travel costs and on childcare are being taken care of by the paying organization. So this needs not to be a hampering factor in the willingness of citizens to participate. The benefits of jury process are hard to measure and differ between the actors. For citizens a benefit might be actual influencing decision-making or more modest to learn about decision-making. For decision-makers a benefit might be an increase in legitimacy, as stated earlier.

Table 2 – Scores of the citizens' jury on criteria for good participation

Category	Aspect (if more than one)	In the citizens' jury
Authority of the process	Timing of the process	++
	Agenda setting	+/-
	Competence in decision-making	+/-
Conditions of access	Inclusiveness	-
	Representativeness	+/-
Flow of information	Information supply	++
	Quality of information	+
	Information exchange	++
Costs	For the participants	+/-
	For the initiators	+/-

Which method has the best perspectives when?

In general it can be concluded that none of the instruments, instruments in current law and the citizens' jury as an example for more innovative instruments on citizens' participation, does or can meet the criteria for good citizens' participation completely. Traditionally Dutch legislation on public participation in policymaking in general and in water policy specific can be characterized as being limited in the influence it gives to participants on the decision-making process. And the possibilities are more limiting to individuals than to organized stakeholders. Individuals are not actively invited to submit their viewpoints and in general individuals are no experts on the topic. This can hamper the access to relevant information. However, generally it is possible for anyone with an interest to submit his or her viewpoint.

The citizens' jury meets more criteria for good citizens participation in the sense that is situated earlier in the decision-making process and that the fence around relevant information is lifted and that the information is made accessible for ordinary citizens. This gives the participants a fundament to base their opinions. In general, everyone can participate in a citizens' jury, but the number of available places in a jury is limited. In terms of representativeness a jury, ideally, is a microcosm of the population it represents. This turns out difficult to establish. There is also a tension between the criterion of inclusiveness and the opportunity for information exchange. The larger the group of participants, the more difficult it is for individuals to exchange information with experts and stakeholders. Therefore it seems impossible for a single instrument on participation to completely meet the criteria for good citizens' participation. Another important aspect is commitment of the regional politicians to take the jury recommendations serious. To increase the degree of participation in the decision-making process regional politicians should agree to inform the jury members on the final implications of the jury recommendations for the decision making process and about the arguments behind this. However, it can also be concluded that these jury recommendations are the most vulnerable aspect of the process. In general a citizens' jury does not deliver new factual information about the policy problem, but it does give increased insight in citizens' values related to the problem at stake and, in contrary to the current law on citizens' participation, it gives insight in rational arguments accompanying these values. Most criticism is directed at the financial implications of the recommendations and regional politicians questioned whether these had sufficiently been considered. Also criticism was directed at the quality and usefulness of the recommendations and at the practical feasibility of the recommendations and consideration of relevant interests. The quality of this final product determines the influence of the recommendations in de decision-making process. This is specifically the case in water management, a field relatively unknown with public participation.

From this analysis it appears that a combination of both instruments for citizens' participation scores maximally at the criteria for good participation with the objective to increase legitimacy of water policy. A more complex and innovative instrument as a citizens' jury has good perspectives for involving citizens early in the decision-making for complex water policy problems. The simpler procedures for citizens' participation in current law are more appropriate as a final check of draft policy plans

Recommendations

From this the following recommendations can be made:

- Water managers should pay more attention to the variety in available instruments for citizens' participation beside the instruments in current law. A citizens' jury is an example of a more innovative and more complex procedure to involve citizens, but other alternatives exist as well (for example consensus conference). The combination of instruments utilized in a decision-making process should jointly meet the criteria for good citizens participation and should be aimed at the specific features of the water policy problem at stake.
- Focusing at the citizens' jury more attention should be paid to the selection procedure to overcome an overrepresentation of certain groups.

- More attention should be paid to the role of the usability of the final results of any participatory process. The citizens' jury illustrated that its recommendations are more worth to politicians when aspects as financial and practical feasibility and overlap with existing policy area are considered.
- Following this, severe attention needs to be paid to the expectations of participants and politicians involved. Their expectations of the possible contribution of participants in the decision-making process generally do not match. This mismatch should be made explicit in the very beginning of the process and should be point of attention during the process.

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