



United Nations Environment Programme

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## STRENGTHENING UNEP'S LEGITIMACY: TOWARDS GREATER STAKEHOLDER ENGAGEMENT

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### Executive Summary

UNEP's mandate in the international arena has been enlarged by the United Nations General Assembly (UNGA) and its legitimacy increased through the establishment of a new Universal Membership body, the United Nations Environment Assembly (UNEA). It is now time to examine how UNEP can further increase its legitimacy and effectiveness by improving its engagement with civil society. UNEP initially engaged in dialogue with formal, registered environmental NGOs. In 2002 civil society engagement shifted to the nine major groups, and since 2004 has expanded to include major groups and stakeholders. However, while the elaboration of major groups and stakeholders was an improvement on the initial design of NGO engagement, UNEP faced a number of new challenges as this paper illustrates.

An independent expert group appointed by UNEP has suggested that the advisory function of stakeholders should be separated from the representative function, and that civil society engagement would be enhanced by shifting some responsibilities for organization to civil society itself. No system is fool proof, but if the system is subject to periodic review and allows for institutional learning, it may result in a practical and more effective way of scaling up participative processes at global level.

### 1. Introduction

The Rio+20 Conference, apart from its many other achievements, marked two important milestones in respect of UNEP's development on the world stage. One of these milestones was to "upgrade" UNEP. We are now moving into the second phase of UNEP's existence. While UNEP remains a 'programme' (established following the UN Stockholm Conference on the Human Environment of 1972), it has become a universal membership organization with the replacement of the 58-member Governing Council with the new United Nations Environment Assembly (UNEA) of UNEP, in recognition of its status as 'the leading global environmental authority that sets the global

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environmental agenda'. This shift has recognized, on the one hand, the increasing mainstream nature of environmental issues, and, on the other, the need to enhance the authority and legitimacy of the UN agency that champions this cause! This is one good reason for considering other options for enhancing UNEP's legitimacy.

The Rio+20 Conference also reaffirmed the 1992 Rio Declaration on Environment and Development, including Rio Principle 10 which focuses on participation, and principles 20-24 which focus on marginalized groups – women, youth, indigenous peoples and people living in occupied territories, as the framework of principles that should govern the transition towards sustainability. As the 'global environmental authority' UNEP more than most other organizations ought to realize how essential the free flow of environmental information and the participation of stakeholders is in decision-making, policymaking and supporting policy implementation. UNEP as part of its 'upgrade' has the opportunity to emerge as a leader within the UN system for stakeholder engagement, on a par with a handful of other organizations working on issues of similar importance to people, such as food security and human rights. At the same time, UNEP's upgraded stakeholder engagement policy has to ensure that the environment has a voice.

During times of recession it is often difficult to focus on environmental issues. Meanwhile degradation continues unabated! Precisely at such times, it is also necessary to engage stakeholders in debating and developing strategies for the future.

It is against this background that we examine in this essay the issue of how UNEP can maximize its ability to engage with stakeholders and the public in general. This essay builds on but goes beyond our recent participation in an assignment for Independent Experts to examine new mechanisms for stakeholder engagement.

## 2. UNEP's evolving practice of stakeholder engagement

UNEP's current practice is based upon Rule 69 of the Rules of Procedure of the Governing Council, which provides that international non-governmental organizations may make statements at the invitation of the President or Chair of the meeting, subject to approval of the relevant body. UNEP has established an accreditation procedure with reference to ECOSOC rules that requires NGOs for accreditation to have an interest in the environment, to be international in scope, to have been in existence for at least two years, and to be legally constituted and registered in a country.

Accredited NGOs participate in meetings as observers. Apart from the right to make oral statements during the discussions of relevant meetings upon invitation of the Chairperson, they have the right to circulate written statements to Governments through the UNEP Secretariat, and to receive and comment upon unedited working documents of the Governing Council/ UNEA. With the Committee of Permanent Representatives (CPR), observer organizations can obtain working documents through the Major Groups and Stakeholders Branch (MGSB). While in principle allowed under Rule 69, accredited NGOs have not yet participated in CPR meetings.

In early years, the Major Groups and Stakeholders were allotted three seats in GC meetings and had to rotate their participation based upon the issues discussed. In recent years however, Major Groups and Stakeholders have had nine seats in the GC. It has also been the practice that NGOs are recognized and allowed to make statements at the end of the sessions.

While in the initial years, consultation was organized with the category of non-state actor in general, following the adoption of Agenda 21 in 1992, the focus was on organizing a relationship with the nine Major Groups as identified in Agenda 21, per decision SSII.5 of 15 February 2002, which states that "civil society encompasses major groups, that is farmers, women, scientific and technological community, children and youth, indigenous peoples and their communities, workers and trade unions, business and industry, non-governmental organisations." Although local authorities were omitted, they are one of the nine major groups. As certain groups were not fully represented in the Major Groups approach, since 2004 UNEP has included the term "stakeholders" to broaden the scope to "Major Groups and Stakeholders." In practice, NGOs



belonging to the nine Major Groups have self-organized within their groups, while interaction among the MGs and other stakeholders, and their participation in meetings, has often been facilitated through UNEP's MGSB.

Moreover, accredited NGOs can participate in the Global Major Groups and Stakeholders Forum (GMGSF) and its preparatory Consultation Meetings in the regions; the Ministerial Roundtables of the GMEF; as well as all UNEP meetings and conferences at different levels.

**Table 1. Evolution of UNEP's rules regarding stakeholder practice**

| Year      | Practice of engaging with society   |
|-----------|---|
| 1972      | NGOs with (a) interest in environment, (b) international in scope, (c) at least two years in existence, and (d) legally registered  |
| Post 2002 | 9 major groups: (1) farmers, (2) women, (3) scientific and technological community, (4) children and youth, (5) indigenous peoples and their communities, (6) workers and trade unions, (7) business and industry, (8) non-governmental organizations, (9) local government |
| 2004      | Major groups and stakeholders (not further defined)   |
| 2014      | UNEP is revisiting this classification  |

### 3. Pros and cons of stakeholder engagement

Historically, ECOSOC lumped all stakeholders together in the category of non-state actor. They were subsequently unpackaged into the nine major groups. Today one might think that the nine major group approach consists of somewhat random categories of society in general, and also includes large overlaps. Besides, they are not homogeneous: some of these groups are well-organized, structured groups with clear memberships and structured policy processes; others are not so well-structured. They reflect varying power structures – for example the business and industry group tend to be well funded and influential and may overpower the influence of the other groups. At the same time by naming some groups, these groups become more empowered at the cost of others. For example, indigenous groups have deservedly been given importance, but other groups in the same field are relatively less represented. Furthermore, individually, these groups are diverse; there are farmers and farmers – and their interests in the environment may also be extremely diverse. Furthermore, most of these groups do not necessarily have the interests of the environment at heart. The expansion in 2004 to include stakeholders alongside the nine major groups tries to do justice to these perceived problems.

Before delving into the details of UNEP's options, it may be useful to briefly reflect on the driving factor behind the rise of stakeholder participation as a discourse and the pros and cons of stakeholder engagement.

Participatory approaches in the development and environment discourse have evolved since the 1950's where initially the focus was on simply transferring knowledge to social actors, through recognition of local knowledge as a valuable input in the 1970s, through a focus on community and stakeholder participation in the 1980s, to a wider and more interactive set of rules of engagement in the 1990s, and greater stakeholder say in policymaking in the last decade which accompanied the coming of age of the shift from government to governance approaches and the shift from centralization to decentralization. A part of this shift was the realization on the part of governments that the complex issues facing the world today require the actualization and mobilization of the maximum amount of human resources.



Consequently, enlightened governments have voluntarily accepted the involvement of non-state actors in decision-making and policymaking, and rules of engagement have been developed to a high degree of sophistication. At the same time, this shift received a push from the neo-liberal trend that promoted leaner governments and called for the transfer of more power to non-state actors. The genesis behind the shift towards greater stakeholder engagement thus lies in two contradictory ideological positions – one calling for deeper democracy and the other for small government!

These two diverging ideological positions reinforced the call for stakeholder participation at national and also increasingly at international level. As far back as the mid-20th century, the Human Rights Declarations recognized the right to political participation. In the environmental field, soft law developed on participation with the Stockholm Declaration of 1972, which was further elaborated on in the Rio Declaration, and is now repeated time and again in the area of water (Dublin Statement on Water and Sustainable Development, 1992, the Hague Declaration, 2000, the Berlin Rules on Water Resources 2004 and in a large number of river basin agreements) but has also been included in treaty regimes such as the Ramsar Wetlands Convention of 1971 and its strategic plans, the Convention on Biological Diversity of 1992, and the Desertification Convention of 1994. The UNECE Aarhus Convention of 1998 in particular focused primarily on participatory rights. Several UN agencies and development banks have also incorporated stakeholder participation into their policy making processes.

The literature defines stakeholders to include those whose interests are affected by decisions, and/or who have the power and ability to influence decisions. However, stakeholders are only a subset of the public and stakeholder engagement may not adequately reflect public or citizen views; furthermore, stakeholders normally engaged in discussions are, more often than not, those with power and representative capacity, as opposed to the actual rights holders – i.e. the affected communities! This poses some challenges regarding the legitimacy of engaging organized stakeholders as opposed to the public at large, civil society and social movements. At the same time, it is practically impossible if not undesirable to invite non-organized segments of society as one may then land in a chaotic and unmanageable situation. This poses a dilemma.

Stakeholder engagement is seen as a way of enhancing the relevance, responsiveness, accountability, transparency, inclusiveness, legitimacy, effectiveness, efficiency and equitability of decision-making. In that sense, if stakeholder participation is done well, it can in and of itself make an immediate and significant contribution to good governance. Because good governance implies that policymaking builds on stakeholder knowledge and experience, such policymaking is more contextual, reliable and implementable. But such engagement comes at a price – it is expensive, bureaucratic, labour-intensive, and can never be perfect and all inclusive. In fact ironically those included in stakeholder processes may even become 'exclusive' and privileged groups and the large number of social segments and rights holders who are not organized within a formalized body may be excluded.

Stakeholder engagement can be organized in a number of ways, including through consultations, hearings, written commenting, workshops, focus group discussions, and citizen juries, while new methods are constantly arising as technology develops. Such new methods would include the possibility of engaging the public more through social media, facebook, twitter and skype. These are relatively cheap options for informing and engaging the public in decision-making. New technologies have to be carefully considered, as they do not automatically improve participation. The excitement over the advent of the internet had to be tempered when it was realized that large swathes of the population of many developing countries did not have ready access to it. At the same time, the public tends to respond erratically to such calls, participation is self-serving and protestors on any issue more readily



use these media than those who support a particular idea, creating new bias in results. The real value of participation is not always understood. Too often it is organized in a purely symbolic or manipulative way through imparting information. The ladder of participation sees a hierarchy in the way society can be engaged and the top rungs of this ladder focus on more inclusive participation processes that aim at also empowering the stakeholder. Each of these degrees of participation also comes with a short and long-term price tag.

It should also be noted that while formal negotiations on treaties have clear rules of procedure to guarantee a modicum of legality and legitimacy, stakeholder participation brings no such rules with it. Stakeholder participation may shape decisions, but the accountability for such decisions becomes unclear.

Furthermore, participation is not a replacement for legitimate authority taking hard decisions. Participation has to be properly considered and properly weighed, but there are persons in positions of responsibility who will ultimately be judged on the final decision, and should be held accountable. The stakeholders cannot, nor would wish to, take the credit or the blame. But a well-managed, fair, equitable, efficient stakeholder engagement process has manifold benefits while intensifying democracy and good governance.

**Table 2. Pros and cons of stakeholder participation**

| Pros                                 | Except when   |
|--------------------------------------|---|
| Relevant, responsive, and legitimate | Existing power politics is reflected in and reproduced by the stakeholders participating  |
| Accountable                          | The lack of rules of procedure leads to a dispersion and abdication of responsibility by the policymaking entity  |
| Transparent                          | The overflow of information 'papers out' participants   |
| Inclusive and equitable              | Those included become exclusive, as not all can be included and including those without formal registration can raise security risks apart from making the process very chaotic |
| Effective                            | A standard design of participation is used for all problem types  |
| Efficient                            | The costs of truly inclusive participatory processes become too large and cumbersome  |

The more one delves into participation and its role in policymaking, the more it becomes clear that participation should be used carefully and selectively if it is to be viable and improve decision-making. There may be occasions when stakeholder participation is not needed (e.g. if mercury is a clear pollutant, it may not be necessary to discuss whether it is a pollutant and should be regulated). Where the problem being discussed is highly structured, the science uncontroversial, the cause-effect chain undisputed, the prevention principle could easily be used to justify action by the state without necessarily engaging the public beyond providing information. However, where the problem are clearly only partially structured in the sense that the science and/ or the values underlying a specific issue are controversial, stakeholder participation becomes absolutely essential – as myriad interests will be reflected in such a situation. Where a problem is unstructured – there is little agreement on the science (cause-effect questioned) and the values (principles/norms about allocation of responsibility) the role of stakeholder participation becomes different. Here it is less about finding direct solutions to a problem, but promoting social learning in the hope that gradually a consensus develops on the science and/or the values. This implies that effective stakeholder engagement requires



an understanding of the nature of the issues for which such engagement is needed and its goal. In other words, the expectations from stakeholder participation change depending on the nature of the problem; the design of the mechanism of stakeholder participation should also accordingly change.

Finally, stakeholder engagement if not done correctly can actually reinforce entrenched power configurations, weaken the legitimacy of the process and end up being counter-productive.

#### 4. Potential directions for such engagement for UNEP

UNEP as a programme has not been the host of all the issues it has signalled and the treaty negotiations it has launched. As a consequence, all hot issues on which treaties have been adopted have their own organizations and non-state actors participate in those different treaty regimes. This has left UNEP with administrative issues and discussions on the relationship with and between all the different environmental issues. As such UNEP's agenda has not always been attractive and engaging. The difficulties in reaching consensus via the Governing Council (replaced by UNEA) and the natural limitations of a "small program" located in Nairobi have meant that stakeholder representation up to now rarely has reached the critical mass needed. It will be a challenge for UNEP in its new guise to increase the relevancy of its international agenda in order to attract the participation of a broader and deeper range of stakeholders. It is a Catch-22 or chicken-and-egg problem – the agenda has to be relevant to be attractive, while the relevance of the agenda can only be guaranteed through effective stakeholder engagement.

Furthermore, UNEP might be particularly prone to pitfalls in stakeholder engagement. Stepping into the shoes of UNEP, it is clear that UNEP would want to maximise the pros of stakeholder engagement while minimizing the cons.

While Agenda 21 tried to give a voice to the voiceless at the time – the farmers, the women's groups, indigenous peoples, youth -- it also relegated environmental NGOs and the scientific community to two of the nine groups. This raises questions: Is the scientific community providing the best state-of-the-art evidence for action, or is the scientific community just a stakeholder? This is not an easy question to answer. In the hypothetical case that scientists say that there is conclusive evidence of a climate change problem, and seven of the remaining eight stakeholder categories find this less important, does that mean that UNEP should not take this issue seriously? On the other hand, scientists often do not take contextual issues into account. So whether scientists should be elevated into a separate category or not is a choice that cannot be easily answered. Similarly, for UNEP – which aims to be the advocate of environmental voices within the UN system – shouldn't environmental groups, NGOs and social movements have a more prominent voice? These kinds of issues were tackled in the discussion of the Expert Group on Stakeholder Engagement.

How could one design the "right" type of stakeholder engagement?

It is just as important, if not more so, for stakeholders to participate in the agenda-setting of the organization as it is for them to have a voice in decision-making. A stakeholder engagement strategy, therefore, must have both procedural and substantive aspects. It must take into account the procedural aspects of the meetings and their preparatory processes in order to ensure that the "rules of the game" are fair, efficient and effective. But it must also ensure that due account is taken of the substantive input presented by stakeholders who have dedicated time and money to organize their constituencies and to express forcefully their interests and concerns.





A stakeholder engagement policy must also deal with various entry points in the process, from accreditation, to organization and collaboration, to participation in agenda-setting and decision-making. Stakeholders also have a role in implementation of projects and programs that are developed in response to the policy-level decisions made by the UNEA. However, that has to be carefully managed so as to understand the drivers and motivations of stakeholder participation.

In 2013, the Executive Director of UNEP convened a special panel of experts acting in their personal capacity, the Independent Group of Experts on New Mechanisms for Stakeholder Engagement at UNEP, to advise the Task Force on Stakeholder Engagement on the main elements of new mechanisms for stakeholder engagement and transparency that build on best practices of multilateral organizations. The current authors served as member and rapporteur of the group, respectively, and the recommendations below flow from its report.

At the outset, it is important to distinguish between two major functions of stakeholder engagement. One function involves the value of stakeholder engagement in and of itself as representative of viewpoints and interests that ought to be taken into account in decision-making and policymaking. This function is often couched in terms of a “rights-based approach,” as the stakeholders may be directly affected by the decisions and policies adopted and thus may have their legal rights and interests impaired.

The second function of stakeholder engagement relates to the quality of information that is available to the responsible authority, which in turn is a major determining factor as to the quality of the resulting decisions and policies. Stakeholders in these processes stand in an advisory role towards UNEP bodies. For some of the existing MGs, moreover, advice and expertise is the main role. This is certainly true of the science and technology major group, which perhaps should be considered apart from “civil society.” On the other hand, it is not only technical expertise that should be included in an advisory role. The stakeholder per se has a natural value in an advisory capacity, as representative of local knowledge, symbol of social cohesion, and contributor to strategies for implementation.

In examining good practices in international organizations, it emerged that these two functions are best treated separately through the organization of separate bodies and processes. The advisory function can be carried out through an Advisory Body with a permanent status whose membership may fluctuate and which may be called upon from time to time to provide expert input and advice.

Most of the controversy over stakeholder engagement, however, has been focused on the other function of stakeholder engagement, that is, the representative and rights-based approach to stakeholder engagement. UNEP can learn from the experience of other international bodies in this area to establish a new stakeholder engagement mechanism that improves on current practice and confirms UNEP as a leader in enabling people power as a means of addressing critical environmental challenges.

The Major Groups approach has stood as a barrier to effective participation. One major impediment has been the lumping of business and industry together with civil society groups. As business and industry is widely acknowledged to be in a different position than the other special interests, it is typically able to occupy a seat at any meeting where the number of seats is limited. This has the effect of guaranteeing that business and industry has a voice whenever it chooses, while other MGs may have to compete for space. Taking this as a given, it makes sense to allow business and industry to organize itself in its own caucus and to be granted space on its own merits, without this having an impact on civil society’s participation. The Major Groups approach thus should be abandoned or at least revised in order to take out



business and industry, science and technology, and local government. Rather than limiting their participation, however, separating them from the other groups would in fact allow each to stand on its own in an appropriate relationship towards UNEP bodies and processes. This might in fact mean an enhanced level of engagement, for example in an advisory capacity in the case of science and technology, and in strategic planning and implementation of programs and projects in the case of local government.

The remaining civil society groups would then fall under a new Environmental Civil Society Mechanism (ECSM), which would be based upon the self-organization principle. In the best possible world, this ECSM would allow for civil society to organize itself on a case-by-case basis to ensure that the most affected groups are present and represented in each individual decision-making or policymaking process. In order to ensure that most affected groups are present, formal obstacles to participation through, e.g., accreditation criteria, should be relaxed. The principle of self-organization would shift some of the responsibility for decisions about accreditation to civil society itself, although at the same time the organized leadership of the ECSM would be held accountable to UNEP for its internal processes of selection.

But UNEP is unique. It represents the environmental agenda as a component of sustainability. It is therefore potentially everywhere. Whereas civil society can be expected to self-organize on narrow sets of issues, it would be a challenge to pass the burdens of organization wholly onto civil society in the case of such a broad-based organization. Therefore, in contrast with some other existing state-of-the-art mechanisms, the Expert Group recommended that UNEP continue to have intensive involvement with the ECSM's coordination body in order to facilitate its organization and to build its capacities gradually towards greater self-organization. This support role is especially important in the upcoming period after the UNEP upgrade while the new scope of the UNEP agenda is evolving.

Meanwhile, the principles of self-organization might include:

- a. Fair distribution of opportunities to have a seat at the table for key voices, especially the less represented, vulnerable groups and most affected;
- b. Adequate representation of the environment (the silent voice) through those who speak best for it – e.g. environmental NGOs, indigenous peoples, peasants, artisanal fisherfolk, pastoralists etc. who also have a nurturing relationship with the environment (except when extreme poverty and distress oblige them to adopt practices that are not environmentally friendly);
- c. Adequate regional representation;
- d. Developing a common position based on the subject matter under discussion or policy being developed or implemented;
- e. Enhancing the (former) major groups and stakeholders by proactively recruiting and including other groups from social movements and under-represented constituencies.

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