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Discussion Paper: Improving Public Participation in International Environmental Governance

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I. Introduction

The 2012 UN Conference on Sustainable Development in Rio de Janeiro (Rio +20) has as one of its two main themes, “strengthening the institutional framework for sustainable development.” This theme raises the opportunity for the international community to move forward significant reforms in international environmental governance (IEG) – the institutions and procedures through which governments set and implement international environmental law and policy.² IEG decisions affect all three pillars of sustainable development: economic, social, and environmental. In order to build public support for IEG reforms, these reforms should lead to new opportunities for civil society to perform four key roles in environmental decision-making: to observe, inform, shape policy, and engage. [See Box 1 for definitions.] Such opportunities improve the legitimacy, quality, and sustainability of IEG decisions through greater collaboration and cooperation.

Forty years ago, the 1972 Stockholm UN Conference on the Human Environment marked the beginning of modern international environmental institution-building. Since then, the number and diversity of the institutions involved in IEG has grown dramatically, with over 40 international institutions now seen as playing a significant role.³ These institutions range from those with a primarily environmental focus to trade organizations and development banks. The number, size, and diversity of civil society actors participating in these institutions have also expanded.⁴ Information and communication technologies, including websites and webcasts, have vastly increased the opportunities to observe IEG in practice. However, the challenge of managing this growing *quantity* of interest has led governments to adopt an approach to civil society participation that risks limiting their role to mere observers.

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This discussion paper 1) briefly explores the rationale and principles for “public participation” in IEG; 2) reviews exemplary practice and options of intergovernmental organizations (IGOs) with regard to implementing these principles and suggests a number of changes to IEG that could enable more transparent, participatory, and accountable governance; and 3) suggests that Rio +20 provides an opportunity to improve the *quality* of civil society participation by enabling civil society organizations not merely to observe, but also to inform, shape, and engage decision-making processes by securing an equal footing with states in some aspects of the IEG policy-making process; performing key governance functions that governments cannot or will not perform themselves; and amplifying the voices of people and of interests that governments may not represent adequately. In order to frame these observations in the context of Rio +20’s mandate to review progress toward sustainable development, this paper concludes by summarizing proposals across the three pillars of Principle 10 of the 1992 Rio Declaration (access to information, public participation, and access to justice).

II. Rationale and Principles for Public Participation in International Environmental Governance and the Institutional Framework for Sustainable Development

While states are the primary actors in IEG, it is widely recognized that the systematic involvement of civil society improves environmental governance by providing the means for organized interests and perspectives that might not otherwise be represented by governments to participate more directly in decision-making. Through their participation, civil society organizations can: drive greater transparency by having access to documents and meeting rooms; improve the basis for decision-making by providing key scientific information, policy analysis and advice, and stakeholder perspectives; and accelerate implementation and compliance by acting as watchdogs and whistle blowers at the national level for commitments governments made internationally.⁵

Civil society participation can thus enhance the quality of IEG outputs (new policies), of IEG outcomes (new practices), and of IEG impacts (improvements to environmental, economic, and social quality). Providing formal mechanisms for increasing the level and quality of civil society participation can magnify the capacity of IEG to produce fair and effective outcomes, and, therefore, can also enhance the legitimacy of IEG.

The importance of civil society participation has been recognized in international environmental law and policy, most prominently in the “access principles” in Principle 10 of the Rio Declaration on Environment and Development. The United Nations Environment Programme’s (UNEP) “Draft Guidelines for Participation of Major Groups and Stakeholders in Policy Design” state that “Major Groups and Stakeholders can be substantive contributors to improving our understanding of the environment, and to developing innovative solutions to environmental challenges.”⁶

With regard to IEG in particular, the Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters have developed guidelines for best practices on the application of Principle 10 to civil society participation in international fora, which have become a touchstone for global discussions. These guidelines are discussed in more detail in section III, below.



The secretariats and bureaus of IEG processes actively court the participation of CSOs in major IEG events – such as Conferences of Parties (COPs) to environmental treaties, the meetings of the Commission on Sustainable Development, and UNEP Governing Council – as the level of CSO participation provides an indicator to the media and other stakeholders of the importance of these events. CSOs play a significant role in setting public expectations of IEG events and in measuring progress toward those expectations, and can praise or condemn a process as a success or failure.

The secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), the international environmental treaty that has attracted more civil society participation than any other IEG process, recognizes that participation, “helps to bring **transparency** to the workings of a complex intergovernmental process, facilitates **inputs** from geographically diverse sources and from a wide spectrum of expertise and perspectives, improves **popular understanding** of the issues, and promotes **accountability** to the societies served... supporting the global trend towards more informed, participatory, and responsible societies” (emphasis original).⁷

The application of access principles thus far has led to an increase in the volume of civil society presence at IEG fora, and, therefore, in the public’s ability to observe IEG processes. But there remains a significant and increasingly observable gap between the expectations of CSOs that are able to attend these processes, and the opportunities for them to inform, shape, and engage directly in decision-making. (See Box 1.) For example, as attendance at UNFCCC COPs has grown, so has the need for the treaty administration, faced with constraints on time and resources, to limit the number of registrations available for each observer organization, to require organizations of sometimes divergent views to operate through interest group constituencies, and to ration out the number of speaking slots, exhibition booths, and side events. As a result, progress made in enhancing civil society participation runs the risk of providing a focus for frustration rather than an opportunity for improvement.

The need for greater public participation in IEG has been heightened by the proliferation of multilateral environmental agreements (MEAs) over the last twenty years and the consequent challenges of implementation. Giving civil society a prominent role in the design of MEAs is likely to lead to greater public awareness and more effective administration of these agreements at the national level.

III. Gaps in Practice and Proposals for Improving Public Participation in IEG

Analyses of the strengths and weaknesses of IEG have recognized that despite the widely recognized rationales and principles that support improved public participation, the full potential for CSO contributions remains untapped.⁸ Whether

BOX 1. FORMS OF CSO PARTICIPATION IN IEG PROCESSES

Observe. CSOs that are accredited as observers to IEG processes typically may gain entry to the forum venue, and occupy assigned seating in sessions that are designated as “open” to observers. Observers typically have access to official meeting documentation either electronically or in hard copy, when available, at the same time or soon after these documents are available to governments. Increasingly, IEG processes can be monitored live by the public at large on webcasts.

Inform. Accredited CSOs typically have the opportunity to share information with government delegations in written form or through organized side events at or near the forum venue. IEG administrators often make exhibition space available for document distribution and for informal meetings with government delegations.

Shape policy. Accredited CSOs typically have the opportunity to approach and try to persuade government delegations, although access during negotiating sessions may be limited. Some IEG processes have developed the practice of allowing CSOs to speak (“intervene”) in negotiations – typically after those governments wishing to speak and within strict and rationed time limits.

Engage. There is no IEG process in which CSOs can engage in decision-making by, for example, regularly intervening in debates or casting a “vote” when decisions are being taken. Non-state actors have, however, through IEG policies, been given limited roles in national level implementation processes and in raising questions about states’ and other actors’ compliance with environmental standards and safeguards.



the larger IEG reforms being proposed as part of the Rio+20 process will create new institutions or modify existing institutions, emerging practice provides the basis for across-the-board improvements in public participation in IEG through increased access to information, participation, and accountability. The examples, many of which are drawn from current practice, or from the 2005 “Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums,”⁹ are meant to stimulate discussion and generate excitement for potentially better participation in the run up to Rio+20. (Box 2 provides additional sources for other specific proposals.)

A. Clarify institutional mandates and opportunities to participate

The IEG landscape is a complex one, with multiple institutions and overlapping mandates that can be forbidding to any but the most sophisticated participants. Guides explaining institutional mandates and opportunities to participate will be key to improving public participation. Current good examples include “How the European Union Works: A Citizen’s Guide to the European Union”¹⁰ and “Your Right to a Healthy Environment: A Simplified Guide to the Aarhus Convention,”¹¹ both of which are available in multiple formats and explain to the non-specialist how to access a complicated set of institutions. UNEP’s “Natural Allies” handbook¹² is another good example, but is insufficient to guide newcomers through the closely-related mandates of the 40 or so IEG institutions.

Proposal: Each IEG institution should publicize a simple, accurate *how-to guide* for participation. These should include accreditation, participation in major groups or other representative configurations, integration of an opinion into collective documents such as major groups or plenary statements, and expectations for representatives of various civil society representation configurations.

B. Criteria for accreditation

Setting high bars for the accreditation of observer organizations can result in unfair processes, where only the most well-connected or well-resourced organizations are heard.¹³ Many of the existing major treaties and UN processes require participants to meet certain threshold criteria to participate.¹⁴ Accreditation of CSOs is necessary for intergovernmental negotiations, allowing meetings to operate efficiently, improving the legitimacy of decisions by IGOs, and helping gather empirical data on who is attending. The Almaty guidelines provide that accreditation processes should aim for equitable representation and fair, timely processes (Para 31). The current system of ECOSOC accreditation has certainly improved following the passage of ECOSOC Resolution 1996/31 standardizing registration, although it is not without its flaws, requiring significant energy and time. Precedents for “fast track” accreditation have been successfully implemented before, including the 2002 World Summit on Sustainable Development and Rio+20 which have provided CSO accreditation for all three PrepComs and the final Summit, irrespective of ECOSOC accreditation.¹⁵ The Aarhus Convention has no formal accreditation process¹⁶ and the Convention on Biological Diversity waives requirements of expertise for indigenous and local communities.¹⁷

Proposal: Processing speed should be accelerated through *publicly available metrics on accreditation processing time* for each UN organization. ECOSOC and other IEG processes could also offer *waivers for participants* from countries where CSOs have considerable difficulty associating and obtaining legal status under their national laws or where the costs of doing so are prohibitive. In these cases, evidence of good-



faith attempts to register for non-governmental status can be accepted in the place of official documentation. Where standardization of accreditation processes has not occurred, efforts should be made to harmonize and centralize processes across the UN and all sustainable development IGOs.

C. Ensuring representative constituency systems

IEG institutions frequently turn to constituency systems to rationalize limits on CSO participation and to ration opportunities to intervene. Many IEG processes use the nine constituencies identified by UN Major Groups and Stakeholders¹⁸ in Agenda 21: business and industry NGOs (BINGOs); environmental NGOs (ENGOS); farmers and agricultural NGOs; indigenous peoples' organizations; local government and municipal authorities; research and independent NGOs; trade union NGOs; women and gender NGOs; and youth NGOs. Members of these groupings often have very different interests and are frustrated when group statements are watered down into a lowest common denominator. The Almaty guidelines recognize that marginalized groups can be further marginalized in a constituency system where there is differentiated capacity, power, and processes, and call for efforts to limit undue influence by the powerful (Para 15). The major groups approach can be used to ensure a minimum of participation, but may not be the most effective in encouraging collaboration and coordination.

Additionally, criticisms leveled at the current major groups system include: a lack of transparency and accountability in participation *within* many of the groups, lack of timely information and guidance on process and substance of decisions, and unclear or inadequate processes for collective decision-making, consultation, and representation of views.¹⁹

Proposal: To solicit more representative and focused contributions from civil society, IEG institutions should strongly consider *a more flexible system for intervention* that allows CSOs to self-represent and to contribute through ad hoc affinity groups. Relatively simple rules could help protect from frivolous or anarchic submissions by such groups, such as a minimum number of endorsements by accredited CSOs, a written statement, or endorsement by a small number of member states to the organization. Regional- and sector-based representation should also be considered. Alternatively, or additionally, the existing major groups process can be enhanced to ensure that underrepresented groups are able to articulate their positions. IEG institutions should develop and maintain *a database of participants' self-descriptions and reasons for attendance at a meeting*. Classification data should be used to identify trends in attendance, allowing for *periodic review and revision of the major groups*. If relevant for the given topic, major groups found to have low levels of participation could be targeted and recruited for participation. Additionally, participation by other groupings of civil society actors – e.g. parliamentarians, un-organized civil society movements, the elderly, the disabled, faith-based organizations, educators, ethnic and racial groups, consumers, and others – can be monitored and actively encouraged if relevant.²⁰

Other recommendations for improved representation include: (1) development

BOX 2. CIVIL SOCIETY RECOMMENDATIONS FOR PUBLIC PARTICIPATION IN IEG

This paper provides an overview of across-the-board reforms that can be taken by IGOs in engaging CSOs in the policy making process. A number of works offer very specific reforms and best practices at high level of detail. These have been useful inputs into the preparation of this document.

Stakeholder Forum for a Sustainable Future. In 2009, Stakeholder Forum published the results of the Stakeholder Empowerment Project. This project reviewed participation in a number of international processes. Among the products in the report are Stakeholder Empowerment Handbook for IGOs and a 10-Point Stakeholder Standard. This publication serves as an excellent guide for the design and conduct of stakeholder participation in international processes.

Rio+20 Submissions. Civil society submissions for the upcoming Rio Summit offer very specific reforms on civil society participation in IEG. Of particular note are the comments on freedom of expression and information by Article XIX, inputs on participation from Stakeholder Forum for a Sustainable Future, the European Environmental Bureau, Civicus – World Alliance for Citizen Participation, and the Access Initiative.



of clear and simple procedures to ensure all interested CSOs can participate in developing common position statements – well in advance of meetings; (2) an obligation by group representatives to ensure that statements submitted in plenary sessions are responsibly made (i.e. are based on evidence and represent shared views); (3) an obligation to group representatives that such statements should also openly reflect dissent and minority views of CSOs; and, (4) development of clear, public, consistent procedures for appointing and removing group representatives.²¹

D. Provide advance notice of meetings and decision-making

Providing advance notice to the public of meetings and decision-making allows civil society to better prepare its interventions. Current good examples include the European Commission's "Your Voice in Europe" website, which maintains a public docket on all decisions at the EU level, including supporting documentation.²² The World Trade Organization,²³ Association of Southeast Asian Nations,²⁴ and the European Union²⁵ all have policies requiring the publication of future meetings and deliberations, an increasingly common practice. The recently established Human Rights Council, might serve as a model for IEG, with a text message to inform participants registered for the service of forthcoming agenda items.²⁶

Proposal: All IEG institutions should coordinate to establish a *centralized meeting clearinghouse* similar to "Your Voice in Europe" in the spirit of the UN's Delivering as One policy. Such a clearinghouse should act as a public docket for each decision process and would include the opportunity for public comment, notes of deliberation, and records of attendance. Information should be sortable, taggable, and searchable and exploit new forms of information and communication technologies – particularly those accessible in developing countries. All IEG institutions should also establish *hard timelines for advance notice of meetings, agendas, and supporting documentation*. UNEP's recently launched website InforMEA, which includes many of the elements of this proposal, is a promising start in this direction.

E. Provide greater opportunity for public participation "upstream" in agenda setting and document preparation

The agenda setting process by which IEG institutions decide which issues will be given space and priority at any particular meeting tend to be managed through the least transparent processes, even though they play a key role in determining the meeting's outcome. Meetings of COP and conference bureau at which governments and bureaucrats set agendas, are typically closed.

Under the Aarhus Convention and the International Conference on Chemicals Management (ICCM) CSOs may be represented in bureau meetings. In the run-up to sessions of the UNEP Governing Council (GC) and Global Ministerial Environment Forum, UNEP also allows accredited civil society organizations to submit written comments on unedited working documents at the same time as the Committee of Permanent Representatives.²⁷ Although public participation in plenary meetings of the GC is at the discretion of the Chair, at times, it does not occur until the end of the session. In contrast, the Ministerial Roundtables as part of the GC have provided a key space for frank interactions with ministers. The High Level Meeting on AIDS,²⁸ the Civil Society Mechanism of Committee on Food Security of the FAO, and UNEP-led mercury negotiations all have demonstrated a high level of participation and collaboration with civil society in agenda-setting, working groups, and negotiations.²⁹ The UNFCCC process has seen innovative pushes to ensure that civil society has regular, informal opportunities spaces to interact with Member States' national



delegations and chairs of subsidiary bodies such as lunch meetings, workshops, and technical meetings.³⁰

Proposal: IEG institutions should *include civil society at the agenda-setting stages* of a process. While forms of participation might differ depending on the forum and the nature and phase of the decision-making process, they could include: observer status, membership in advisory committees, drafting committees, formal document review, open forums and dialogues, and opportunities to provide comments on agendas and documents while in draft. In particular cases full membership of civil society representatives may be possible, as in the International Labour Organization or the Committee on Food Security. All new or potentially consolidated organizations should strive for integration and cooperation in these key decision points. Additionally, all existing organizations should submit plans for enhancing influence of civil society in key upstream decision-making points.

F. Make open meetings the rule

While many IEG processes are, by default, open to observers, many rules of procedure allow for the meetings to be closed by the meeting chair at the request of a government delegation. Furthermore, as the volume of CSO participation has grown so has the creativity of the intergovernmental process in establishing informal working groups, “friends of Chair” groups, and other “off the rules” meetings in which delegations can meet unobserved. It is not unusual for formal meetings to break into informal sessions or for public webcasts to go dark, just as important decisions are about to be taken.³¹

Proposal: Open meetings should be the rule at all IEG processes. They should be open to accredited observers or, for smaller meetings, observer constituencies, and limit the discretion of chairs to close those meetings to *clearly defined exceptions*. Where exceptions are made (e.g. highly sensitive political issues), requests to close meetings should be supported by a consensus, majority, or super-majority of state membership with a recorded vote. When the number of observer seats is limited, transparency in selection criteria and selection of civil society representatives, coordinators, or official observers is essential.³²

G. Use information and communication technology and multiple languages to maximize access and reduce the costs of public participation

To ensure wide outreach and to ensure that groups or individuals with different capacity can participate, some IEG institutions use multiple channels of communication. The Commission for Environmental Cooperation, the body responsible for implementation of environmental cooperation under NAFTA (NAFTA-CEC), ensures public participation through a variety of media including in-person participation, online participation, and live video. The UNFCCC has also been an innovator in live and archived video. Most, if not all, of the major IEG institutions require communication in multiple UN languages.³³

Proposal: All IEG institutions should provide *web streaming and transcripts* of major meetings in UN languages. Virtual and online meeting space can go a long way in facilitating these discussions. UN country offices can provide access to viewing facilities for the most poorly resourced CSOs, or in locations where internet access is unreliable.



H. Provide support to CSOs, particularly from developing countries and marginalized groups

Participation in intergovernmental meetings can be expensive and time-consuming. The NAFTA CEC promotes remote participation by interested individuals and organizations, which can greatly reduce travel costs for civil society, and also has a permanent public advisory committee that is supported to represent and facilitate participation of the public. The Aarhus Convention, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification (UNCCD), the United Nations Forum on Forests (UNFF), the United Nations Commission on Sustainable Development (CSD), and UNEP all provide financial support to CSOs to attend their respective meetings including Rio+20.³⁴ Criteria such as expertise, gender balance, and equitable distribution are regularly considered.

Proposal: IEG processes agencies should consider *support for participation* to help developing country and marginalized groups cover lost work, child care, time, and travel.

I. Acknowledge and respond to input from the public

The significant efforts of CSOs to contribute to IEG decision-making cannot be allowed to go to waste. If these groups sense that their perspectives are being ignored their interest in contributing to these processes will wane. Responses to public comments increase legitimacy and the rational basis for decisions. The NAFTA-CEC and the European Commission maintain a public docket of comments and decisions.³⁵ Response to major categories of input in either organization, however, is inconsistent.

Proposal: In cases where committees have been delegated decision-making powers by ECOSOC, the Governing Council, or their equivalents, final *records of decision should reflect consideration of the major categories of public comment*. In processes such as the lead up to Rio+20, IGOs have carried out a considerable effort to solicit stakeholder input. Regional forums, in particular, have heightened stakeholder involvement and have helped to effectively cut costs of conducting participation. Where possible, such processes should be generalized to other multi-lateral processes. Following on this promising start, it is now critical to maintain a transparent process for treatment of civil society submissions before, during, and after the Summit. Where possible, such regional processes should be carried out and reflected in documentation of decision-making processes.

J. Provide a process for CSOs to request the review of denial of

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