



# Towards a Global Treaty to End Plastic Pollution

## *Ensuring Meaningful and Effective Stakeholder Involvement in the Intergovernmental Environmental Negotiations*

### Summary

This policy brief reviews the legal aspects of public participation and the role it has played and continues to play in the negotiation and adoption of past Multilateral Environmental Agreements. It is developed in the context of and to inform the future negotiations for a new global instrument to end plastic pollution. The brief proposes concrete steps for UN Member States and institutions to take during the upcoming negotiations for the global treaty on plastic pollution. Given the United Nations Environmental Assembly's call for "the widest and most effective participation possible,"<sup>1</sup> it will be necessary to ensure negotiations are inclusive of all stakeholders.<sup>2</sup>

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## Introduction

In March 2022, the resumed fifth session of the United Nations Environment Assembly (UNEA-5.2) adopted a mandate to negotiate an international, legally binding instrument to end plastic pollution entitled “End plastic pollution: towards an international legally binding instrument” (UNEA resolution 5/14).<sup>3</sup> Before negotiations can begin, an Ad-hoc Open-Ended Working Group (OEWG) will meet in Dakar, Senegal, from May 29 to June 1, 2022, to prepare the work for the intergovernmental negotiating committee (INC). This committee will discuss and finalize the objective, scope, obligations, and mechanisms supporting the new international treaty. Subsequent INCs will meet between four and five times beginning in late 2022 at locations still to be determined.

Recognizing the crucial role that country delegations and stakeholders, including civil society organizations (CSOs), can play in the upcoming process, the resolution mandate calls for the “widest and most effective participation possible”<sup>4</sup> in both the OEWG and the INC. It explicitly calls for the participation of potential future parties, representatives from international organizations and bodies, and “relevant stakeholders.”

The emphasis on the widest and most effective participation possible is particularly salient. These will be the first global intergovernmental environmental negotiations following several major developments affecting stakeholders and participation. Those developments include:

- the rise of a global movement led by children and youth, which continues to change the narrative on the environment and climate justice;
- the adoption of a second instrument — the Escazú Agreement — aiming to enhance public participation and environmental democracy;
- the COVID-19 pandemic, which has already brought significant challenges and opportunities to intergovernmental processes and participation;<sup>5</sup> and
- the recognition of the universal right to a clean, healthy, and sustainable environment by the UN Human Rights Council.<sup>6</sup>

Meeting the ambitious objective to end plastic pollution requires that negotiations provide meaningful pathways for engagement — success depends on stakeholders’ full and active participation.

This policy brief focuses on the legal aspects of public participation by examining the rules governing previous intergovernmental negotiation processes and lessons that can be extrapolated from the negotiations and operation of Multilateral Environmental Agreements (MEAs). It examines provisions in the negotiating mandate and ways to strengthen procedures for public participation during negotiations, concluding with recommendations for States and international institutions.

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## The Right to Participate

Public participation in decision-making is a key principle of international environmental and human rights law<sup>7</sup> and domestic law. Effective engagement in multilateral negotiating processes requires the meaningful, unrestricted, and active participation of stakeholders. Multiple documents note its particular importance for environmental decision-making, that range from the Framework Principles on Human Rights and the Environment<sup>8</sup> to the Rio Declaration<sup>9</sup> and the Future We Want outcome.<sup>10</sup> And it is reflected across international institutions and instruments, including but not limited to the United Nations Environment Programme (UNEP) and the United Nations Framework Convention on Climate Change (UNFCCC). The Special Rapporteur on Human Rights and Toxics notes that public participation — especially for vulnerable populations — has been

minimal or non-existent in the decision-making process of plastics policies, and that it will be necessary for future work on the subject.<sup>11</sup>

States cannot craft policy in a vacuum. Stakeholder participation enriches both INC negotiating processes and any instruments they develop. Through active public engagement, experts can provide technical knowledge and advice, communities can offer localized perspectives on tailoring global policies to their unique situations, and stakeholders can elevate insights that may not be represented elsewhere in negotiations. Providing avenues for meaningful and equitable participation ensures more representative decisions<sup>12</sup> and reinforces the legitimacy of the negotiations and their outcome, facilitating the instrument's eventual ratification and enforcement.<sup>13</sup>

## Participation of Key Stakeholder Groups

Any analysis of public participation in multilateral processes must begin by acknowledging that States are the main subjects and actors in international law. But to involve stakeholders beyond State actors, it is essential to understand the kinds of participants that could engage, existing mechanisms that support their activities, and additional opportunities that can be employed.

Participation in UN-level negotiations of MEAs is typically open to UN Member States, relevant international organizations, and accredited stakeholders. At present, non-State actors can participate in intergovernmental negotiating processes in six distinct ways:

1. engaging in civil society delegations;
2. providing knowledge and ideas to assist the Secretariat in the preparation of conference documents;
3. working with or becoming part of national governments' delegations;
4. organizing parallel side-events during negotiations;
5. producing and distributing materials, research, or publications;<sup>14</sup> and
6. proposing text and amendments after their co-sponsorship by a Member State.

One of the primary mechanisms for involving non-State actors is through Major Groups and Other Stakeholders

(MGS). However, there are limitations to the system and alternatives that may need to be explored.

### Major Groups and Other Stakeholders System

The MGS system is replicated across many UN institutions, including the UNEP, and frameworks, including the UNFCCC. While each institution has its variations, their core function is similar: the division of “non-governmental stakeholders” into distinct categories that are self-coordinated and independent from the institutional bodies they fall under. For this discussion, we will analyze the UNEP system, as the plastics treaty falls under its purview.

UNEP's MGS system recognizes nine distinct categories that play a significant role in sustainable development and the formation of environmental governance: non-governmental organizations (NGOs), Indigenous Peoples, women, children and youth, workers and trade unions, farmers, local authorities, the scientific and technological community, and business and industry. While the MGS system has allowed groups that have been traditionally excluded from international negotiations to provide critical contributions to global climate and environmental law, and intergovernmental processes related to sustainable development, reality has shown that this is not always sufficient. Recognizing specific categories of stakeholders does not always equate to participation during negotiations or outcomes that consider those stakeholders' unique perspectives. Therefore, it is essential to examine the rules of procedure that determine how negotiating bodies operate.

#### BOX 1:

#### Recognizing the Role of NGOs

The UN Member States have, on multiple occasions, acknowledged and reiterated the importance of the participation of NGOs specifically. Such instances include the Economic and Social Council (ECOSOC) resolution 1996/31: “Acknowledging the breadth of non-governmental organizations' expertise and the capacity of non-governmental organizations to support the work of the United Nations.”<sup>15</sup>

## Rules of Procedure for Major Groups and Other Stakeholders (MGS) at UNEA

The UNEA rules of procedure determine the modes of participation of MGS in the decision-making body's processes. Some of the relevant elements related to public participation are as follows:

- Meetings of “the United Nations Environment Assembly, its sessional committees and working parties and subsidiary organs, if any” shall be public and broadcast electronically, if possible, unless the body holding the meeting decides to keep them private (*Rule 67*).
- UNEA shall accredit international NGOs interested in the environment, who may send observers to those public meetings, make oral statements at the President or Chairperson's invitation and with Member States' approval, and provide written statements to be disseminated to Member States. (*Rule 70.1 & 2*).
- International NGOs are invited to suggest agenda items for regular UNEA sessions (*Rule 9*) and shall receive the provisional agenda once it is distributed by the Executive Director (*Rule 10*).<sup>16</sup>

The UNEP handbook on MGS engagement and participation details expounds on some of the rules.

Before sessions of UNEA, accredited stakeholders can:

- receive unedited working documents of UNEA first-hand and at the same time as the Committee of Permanent Representatives (CPR);
- submit to UNEP written contributions to these unedited working documents;
- participate in all public meetings of the UNEA subsidiary organs such as the CPR; and
- make oral and written contributions to these meetings.

During sessions, accredited stakeholders can:

- participate in the Plenary, the Committee of the Whole, and the Ministerial Consultations discussions as observers;
- circulate written statements to governments through the UNEP Secretariat; and
- make oral statements during the discussions and sessions of UNEA if invited by the Chair.<sup>17</sup>



## Alternatives to the Major Group System

While this system of MGS categorization and modes of participation has provided a useful pathway for public engagement, it is not without limitations. The draft UNEP We Want report outlines recommendations for a more inclusive and equitable system.<sup>18</sup> These can include open participation, facilitated accreditation processes, an increase in stakeholders' capacity to actively engage in discussions by facilitating their input into formal processes, as well as strengthening all elements of participation.

## Elements of Participation

Each multilateral process requires drafting and adopting “rules of procedure” prior to the start of negotiations. These rules govern various elements, including who can participate in the meetings, the nature of their participation, meeting organization, and how decision-making will be conducted. In developing them, Member States must allow stakeholders to engage and then determine their level of participation.

As there are no standard UN rules of procedure for negotiating committees, individual bodies must make their own decisions. Although it is not a legal requirement, it is common for a negotiating committee or conference to adopt, more or less, the rules of its host body, i.e., the organ of the UN under whose auspices it is operating or to whom it is reporting back. Given the potential for variance, it cannot be assumed that there is a reciprocal relationship between the rules of procedure for host institutions and each of the forums or MEAs under it.

There are six key elements that Member States must take into consideration and decide on when developing rules of participation: how to determine accreditation for observers to negotiating bodies, how participants can engage in agenda discussions, information sharing practices (including translation), the relative accessibility of each meeting to non-State actors, funding for meeting attendance, and how participants can access negotiations.

## Accreditation and Defining Levels of Access

Before stakeholders can participate or access negotiations, they must receive accreditation, which generally

involves meeting a minimum set of criteria as determined by the organizing body. Each MEA negotiating body has adopted its own definitions and procedures to accomplish this, with a wide range of approaches.

Previous treaty negotiation processes show this range. The negotiations to develop the Convention on Biological Diversity (CBD) and the Minamata Convention limited accreditation to “relevant” NGOs, while access to UNFCCC negotiations was confined to “Nongovernmental Organizations invited by the Committee... as appropriate.”<sup>19</sup> Conversely, the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) adopted a different approach for accreditation, allowing participation from observers with standing invitation; as well as NGOs with ECOSOC consultative status; and those accredited to a list of other “relevant conferences and summits.”<sup>20</sup>

While there were no specific provisions for the accreditation of other stakeholders or unorganized rights holders in any of these processes, negotiations for the Escazú Agreement show what this could look like in practice. Its mandate explicitly states that “the interested public”<sup>21</sup> beyond members of formal organizations or MGS representatives, should be allowed to participate, with only limited filtering to ensure the proper functioning of the conference or meeting. Negotiating bodies aiming for open and participatory participation should look to the Escazú Agreement as a potential model.

Moreover, accreditation conveys different levels of access to negotiations. The benefits conferred upon receiving UNEP accreditation provide an illustrative example.<sup>22</sup> Organizations wishing to become accredited at UNEP must be members of a recognized MGS. Only then can they participate in each of its subsidiary bodies, including UNEA.

Overtly complex accreditation processes have, in the past, been used or have had the effect of restricting participation for stakeholders. The accreditation process must be open and as simple as possible so that technical or strictly procedural requirements do not limit stakeholder participation.

## Speaking Rights, Permission to Intervene, and Reply

Being granted admission to a meeting is only the first step to effective and meaningful participation. The right to intervene or to be considered during deliberations is key to distinguishing between mere physical (or digital) presence during negotiations and meaningful participation. Previous MEA negotiating processes show rules limiting stakeholders' ability to engage, defining who can speak, or specifying where, when, and how long they can intervene.

As the examples show, narrow speaking parameters hinder participation. Under most MEA negotiating processes, stakeholders could only contribute "as appropriate," a term that does not provide certainty or foster constructive participation (e.g., the UNFCCC, Basel Convention, and the Minamata Convention). Other processes provide examples where stakeholders were only permit-

ted to offer interventions during pre-determined slots, including following decisions at the end of a meeting.

Negotiating bodies must take several steps to ensure that speaking rights are respected:

- Participating stakeholders have the right to intervene and engage in discussions in an unrestricted and timely way.
- Stakeholders' inclusion in the list of speakers should not be limited to discriminatory time slots (i.e., following decisions).
- Stakeholders should have the ability to take the floor during plenary and breakout sessions.
- Stakeholders should be granted speaking slots between or after statements made by Member States for any agenda item under consideration.

### BOX 3:

#### Lessons from the Minamata Convention

The draft rules of procedure to negotiate the plastics treaty are largely modeled on the process used to draft the Minamata Convention. Therefore, it is appropriate to examine how the rules of procedure affected participation in practice.

Like UNEA 5/14, the Minamata Convention negotiating mandate contained a similar reference to "applicable United Nations rules."<sup>23</sup> The OEWG of that treaty negotiation process subsequently decided to apply *mutatis mutandi*, the rules of procedure of the Preparatory Committee for the UN Conference on Environment and Development (UNCED).<sup>24</sup> It allowed relevant NGOs:

- to be admitted;
- to make written presentations through the Secretariat; and
- to make oral interventions before the plenary and working group sessions, at the discretion of the chairperson and with the consent of the Committee or working groups.

However, those rules further stated that participating stakeholders should not have any negotiation role, contrary to the spirit of the right to participation.



## Language of Proceedings and Availability of Interpretation

International environmental negotiating processes bring forward stakeholders from every region of the world. Language access can play an essential role in furthering or limiting both Member State and non-State actors' ability to participate in a meeting's full agenda.

Most previous international environmental negotiating processes have recognized the official UN languages, namely Arabic, Chinese, English, French, Russian, and Spanish, as the working languages of the respective meetings. Rather than provide translation of materials and interpretation in all sessions, it has often meant that only pre-meeting documents were translated into official languages, with interpretation only available during plenary sessions, and informal meetings primarily held in English. Such is the case at UNEA, where plenary sessions provide broad interpretation into official UN languages, while negotiations and technical meetings are limited to English.

To counteract this, language provisions included in the rules of procedure must include affirmation of:

1. the ability to use any official UN language in any meeting space;
2. allowance for interpretation into other languages, in line with practices at the UN General Assembly (UNGA);
3. interpretation into official UN languages during all intergovernmental negotiating meetings — public and private, plenary or committee, formal or informal, online and in-person — to the greatest extent possible; and
4. that participants can be accompanied by their own, personal interpreters, as needed, without any undue restriction.

## Public Versus Private Meetings

Generally, the plenary sessions of previous MEA negotiations have been held in public, while sub-committee or similar meetings can be held in private, upon a Member States' request. To ensure transparency, effective public

participation, and the full benefit from stakeholders' expertise and knowledge, all plenary, committee, and other meetings should be held in public to the greatest extent possible. If private meetings are requested, some form of stakeholder participation (through the presence of a limited number of observers, for example) should be provided.

## Funding for Stakeholder Participation

Attending international negotiations requires significant resources, including financing. Costs can include passports, visas, transportation, hotels, and food, but they may also include interpretation and interpreters, chaperones, and more, in order to accommodate participants' needs. Making funding available and accessible helps ensure a wide variety of stakeholders can attend and actively participate in negotiations.

To date, no INC rules of procedure for MEA negotiations have included specific funding mechanisms or funds to facilitate stakeholder participation. If anything, the negotiating mandates and rules of procedure only include provisions for voluntary financing mechanisms for developing states. Other regimes offer potential models for having effective financial mechanisms. Under the World Intellectual Property Organization's (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, UN agencies and intergovernmental organizations mobilize "financial cooperation and technical assistance" in order to ensure that Indigenous Peoples can participate on issues that affect them.<sup>25</sup> Similarly, the UN Voluntary Fund for Indigenous Peoples enables Indigenous Peoples' participation in some of the UN processes most relevant to them, including climate change negotiations.<sup>26</sup> In both situations, funding ensures that stakeholders who offer key insights and knowledge can attend and meaningfully engage in meetings.

Some non-UN institutions recognize the impact of limited funding on participation. The Women's Environment and Development Organization (WEDO) offers travel support and training to women delegates, primarily from Least Developed Countries. In promotional materials for the program, it recognizes that "equal participation in climate change decision-making is fundamental to just policies that reflect and respond to the needs of the global community."<sup>27</sup> While funding



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should come from UN institutions themselves, WEDO's model shows that multiple financing models may help fill critical gaps in representative decision-making.

Funding for attendance is just one challenge that stakeholders face when participating in international negotiations. Research, presentations, and materials can all help enable sharing of information, key perspectives, and forms of knowledge. Although these are critical vectors for stakeholder engagement, there are no formal funding mechanisms to help produce or disseminate research or organize stakeholder meetings and discussions. This is a gap that can — and should — be filled.

### **Additional Pathways to Further Facilitate Access**

Beyond developing specific rules of procedure, structural limits can still arise due to international travel or hybrid settings. Meeting planners can anticipate and look for

solutions to these issues, further facilitating the widest possible levels of participation.

The visa application process can present an unnecessary hurdle for stakeholders attending in person. To accommodate for this, the respective host countries of meetings should ensure that, where required, visas are issued to all accredited participants in a simple, streamlined, and efficient manner with no additional fees. For example, during UNEA-5.2, the Kenyan government allowed all accredited participants to apply for visas online at no additional cost.

The COVID-19 pandemic has allowed international institutions to revisit meeting accessibility and develop new ways to conduct proceedings in virtual settings. While the pandemic initially halted or delayed negotiations on key issues, many institutions are now utilizing a hybrid model combining in-person attendance with a virtual option. Hybrid negotiations have, at times,



ensured broad observation access and stakeholder participation, but they also present many challenges. A virtual option should never be used to limit the active, in-person involvement of stakeholders, nor should it be a mechanism to silence or circumvent engaging with remote attendees.

As has been covered in other guides and tools,<sup>28</sup> a partial list of considerations that should be addressed when planning hybrid or fully virtual meetings includes participants’:

- time differences,
- connection barriers,
- economic limitations,
- equality of participation, and
- digital security requirements.

Member States should never use the pandemic as a justification to exclude or limit participation more than is minimally necessary to ensure health and safety. Selected meeting locations should have a large enough venue to ensure that all stakeholders can participate while also leaving room for distancing requirements related to COVID-19.

## Lessons from Previous MEAs and Institutions

To ensure meaningful participation, INCs cannot simply mirror the rules of procedure from previous MEA negotiations. Each new process requires attention to the strengths and weaknesses of previous efforts while assessing new tactics and specific stakeholder needs. Rather than start anew, it is useful to examine practices relating to public participation in other MEA negotiating mandates to see what lessons can be learned.

### BOX 4:

#### A Cautionary Tale of COVID-19 Restrictions on Participation

The UNGA resolution that mandated the start of the Fourth Session of the Intergovernmental Conference (IGC-4) on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) negotiation process explicitly states that NGOs with a standing invitation from the UNGA, ECOSOC consultative status, or those accredited to relevant conferences and summits listed in the resolution, are eligible to participate as observers.<sup>29</sup> Despite that, the pandemic-related restrictions imposed during the IGC-4 set a worrying precedent: while intergovernmental organizations could participate with some restrictions, CSOs were denied physical access to the UN compound in New York during the first week of meetings and could only participate remotely via webcast, without the possibility to make oral interventions. After immense pressure, CSOs holding ECOSOC status were finally permitted to enter the UN compound in New York altogether during the second week of negotiations.<sup>30</sup> However, their participation in the conference room was limited to three observers from all NGOs. Interventions were only possible from the Conference Room. By the middle of the second week, restrictions were further relaxed and also observers from eligible NGOs without ECOSOC status were allowed on the premises. Denying and restricting access is severely detrimental to the negotiation process. The pandemic can never be an excuse to limit civil society or public participation in essential and urgent global governance negotiations.



## Abbreviated Comparative Table: Public Participation in the Negotiations of Specific MEAs

This comparative table is designed to provide an overview of rules of procedure applied during the negotiations of specific MEAs. A table comparing the draft rules of procedure to negotiate UNEA 5/14 and the adopted rules of procedure used to negotiate the Minamata Convention is available through the Center for International Environmental Law.<sup>31</sup>

	UNFCCC <sup>32</sup> 1991	CBD <sup>33</sup> 1993	Aarhus <sup>34</sup> 1996	Minamata <sup>35</sup> 2010	Escazú <sup>36</sup> 2016	BBNJ <sup>37</sup> 2017
Admission	Only NGOs invited by the Committee, taking into account decision 1/1 adopted by the Preparatory Committee for the UNCED.	All conservation and biodiversity NGOs, unless 1/3 of participants object.	NGOs, particularly those involved in the “Environment for Europe” process. Other Major Groups follow the practice established in the preparations for the Sofia Ministerial Conference.	“Relevant” NGOs, taking into account decisions 1/1 and 2/1, adopted by the Preparatory Committee for the UNCED.	Access to the negotiation for “the interested public.” Members of the public from other regions may also participate unless any signatory objects. Two public representatives designated to maintain continuous dialogue with presiding officers.	UNGA observer organizations are allowed. NGOs with ECOSOC consultative status and those accredited to other relevant conferences and summits.
Interventions	Can “contribute as appropriate.”	Can “participate without the right to vote in the deliberations.”  Open to interpretation.	NGOs, “particularly those involved in the “Environment for Europe” process.” Other Major Groups follow the practice established in the preparations for the Sofia Ministerial Conference.	May, “as appropriate,” make contributions to the negotiating process, on the understanding that only States have negotiating roles.	Can make statements.  Regional members of the public may submit language proposals in writing during negotiations, which will be compiled in a separate document. These proposals will be incorporated into the negotiation document if sponsored by at least one country.	Can address the meetings, through a limited number of their representatives, as appropriate.
Publicity	The plenary is public, and subsidiary organ meetings are private, unless otherwise decided.  All decisions taken in private must be announced in a public plenary.	Both the plenary and subsidiary organ meetings are public, unless otherwise decided, except for drafting groups.  All decisions taken in private must be announced in a public plenary.	Not specified.	Both the plenary and subsidiary organ meetings are public, unless otherwise decided, except for drafting groups.  All decisions taken in private must be announced in a public plenary.	The countries participating in the negotiating committee may hold closed sessions during meetings.  However, decisions may be taken only in plenary sessions.	UNGA rules apply: Plenary to be held in public except in “exceptional circumstances.” (Sub) committee meetings shall be held in public, unless otherwise decided.  All decisions taken in private must be announced in a public plenary.

## International Legally Binding Instruments on Environmental Democracy

Currently, there are two main conventions on sound environmental governance and the promotion of public participation at the domestic and international levels: the Aarhus Convention negotiated under the auspices of the UN Economic Commission for Europe (UNECE) and the Escazú Agreement in Latin America and the Caribbean. Both instruments recognize three crucial elements of sound environmental governance:

1. access to environmental information,<sup>38</sup>
2. public participation in environmental decision-making processes,<sup>39</sup> and
3. access to justice in environmental matters.<sup>40</sup>

Their negotiation processes offer a compelling model for good practices of how participation can unfold. These lessons have the potential to influence public participation during future MEA negotiations, including the plastics treaty.

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## Aarhus Convention

UNECE's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention, is designed to establish particular rights of the public concerning environmental decision-making. It was adopted in 1998 and entered into force in 2001. At present, there are 47 Parties in Europe, Central Asia, and Africa, including 46 States and the European Union. Public participation during the negotiations of the Convention was significant. According to Jerzy Jendrośka, the former Chair of the Bureau of the Meeting of the Parties of the Aarhus Convention, "The representatives of civil society organizations in the Aarhus negotiations thus sat at the table as another negotiator, with the same rules as countries and not as observers, although the final decisions were obviously made by the governments. Civil society could present its views and make proposals on equal grounds."<sup>41</sup>

Among the Aarhus Convention's legal commitments intended to guarantee the concretization of Principle 10 of the Rio Declaration is a specific duty for all Parties to promote public participation in the international decision-making process.<sup>42</sup> Adopted in 2005, the Almaty Guidelines were designed to complement the Convention. They promote access to information, meaningful public participation, and access to justice in international environmental governance and decision-making.<sup>43</sup> As a result, all Parties to the Aarhus Convention have an international legal obligation to take proactive action towards guaranteeing public participation in all global forums related to the environment in which they participate, including the upcoming plastic treaty OEWG and INCs. The rules of participation employed during the negotiation of the Aarhus Convention provide a benchmark for good practices that future negotiations can follow.

## Escazú Agreement

Twenty years after the Aarhus Convention, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean was adopted in Escazú, Costa Rica. Also known as the Escazú Agreement, it is one of the most recently negotiated international environmental agreements, entering into force in 2021. Both the negotiation process and the Agreement itself should



serve as good precedents for the rules of procedure in negotiating any new environmental governance.

During the negotiations of the Escazú Agreement, various measures were put in place to ensure public participation and promote sound environmental governance. Among them were:

- Defining public — as “any natural or legal person or community organization.”<sup>44</sup>
- Public meetings — all sessions were public by default, except during exceptional circumstances when countries decided to hold them in private, in which cases reasons for holding a closed session would need to be given by signatory countries.<sup>45</sup>
- Public representatives appointed to engage with the Presiding Officers — six public representatives were elected (two members and four alternates) to hold a continuous dialogue with the Presiding Officers.<sup>46</sup>
- National-level activities organized by the public — information activities included an official website and support actions.<sup>47</sup>
- Multiple participation modalities — three levels of participation were set, including attendance, reporting, and making statements.<sup>48</sup>

The ratified Escazú Agreement itself shapes how its Parties will engage with future MEAs. According to article 7 of the Agreement, public authorities are even directed to identify and support persons or groups in vulnerable situations to engage them in an active, timely and effective manner in participation mechanisms. Moreover, State Parties are expected to:

*“promote, where appropriate and in accordance with domestic legislation, public participation in international forums and negotiations on environmental matters or with an environmental impact, in accordance with the procedural rules on participation of each forum. The participation of the public at the national level on matters of international environmental forums shall also be promoted, where appropriate.”<sup>49</sup>*

Considering that a number of Parties to the Escazú Agreement will be active and even play a leading role in negotiations for a new global instrument to end plastic pollution, these principles should play a fundamental role in shaping public participation rules for the meetings of the plastic OEWG and INCs.

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## Public Participation in the Plastics Treaty Negotiations

The mandate to negotiate a plastics treaty — UNEA 5/14 — recognizes the importance of public participation, with language throughout the document reflecting the need for input from stakeholders at all stages of the process. But unless there is an intentional approach to public participation in developing rules of procedure, that attention will not materialize into concrete practices.

In the operative part of the mandate resolution, countries stress the need to ensure the “widest and most effective participation possible” in the OEWG and subsequent INCs.<sup>50</sup> Both meetings will be open to “relevant stakeholders” according to “applicable United Nations rules,”<sup>51</sup> and it requests that the Executive Director of UNEP facilitate this participation.<sup>52</sup>

But the mandate does not clearly define what “participation” entails. In its preambular paragraphs, the mandate resolution reaffirms and recognizes the Rio Principles, which include the rights to access, participation, information, and justice in environmental matters<sup>53</sup> and the 2030 Sustainable Development Agenda.<sup>54</sup>

To fulfill the provisions of the negotiation mandate, it will be critical to discuss and develop a definition of and specific rules for the participation of “relevant stakeholders,” in the rules of procedure to be discussed at the OEWG and adopted during the first INC meeting.

### Engaging Key Stakeholders

While public participation is essential in any decision-making, elements of the plastics crisis underscore the need for a new approach. A 2021 UNEP report states that systemic issues of inclusions or exclusions can be a major source of environmental injustices.<sup>57</sup> Similarly, Marcos Orellana, the UN Special Rapporteur on Toxics and Human Rights, notes that opportunities for persons, groups, and peoples in vulnerable situations to participate “in the decision-making process on plastics policies have been minimal or non-existent.”<sup>58</sup>

Stakeholders on the frontlines of plastic pollution’s worst environmental and human rights impacts must be active participants during the OEWG and upcoming INCs.

#### BOX 5:

#### Improving the Functionality of the Major Groups and Stakeholders System in Plastics Treaty Negotiations

In early 2022, UNEP’s 19th Global Major Groups and Stakeholders Forum (GMGSF) issued a joint global statement calling for “meaningful and effective participation of stakeholders” to be guaranteed in the process for negotiating and implementing the new plastics treaty. It further emphasized a need for “a just and robust system” for stakeholder participation “under a human rights-based approach,” specifically including those communities most harmed by plastic and the impacts of pollution from plastic along its full life cycle.<sup>55</sup>

To ensure full and inclusive participation during the INC process, seats for all stakeholders should be guaranteed in the negotiation rooms. Doing so would help ensure fair and balanced representation, with observers not exceeding the number of Members.<sup>56</sup> Furthermore, MGS facilitators should not hold or have exclusivity or priority to make oral and written contributions during the plastics treaty negotiations. Instead, those interventions should be open to the broader list of all registered participants.

Their unique perspectives, expertise, local knowledge, innovations, and insights can — and should — be elevated during the negotiating processes. To fulfill the negotiating mandate, the Secretariat and States must take active steps to rectify previous omissions and ensure stakeholders’ perspectives are reflected in the text of the future treaty. Included among the steps that will help enable the widest possible participation are providing in-person and digital access, stakeholders’ ability to make statements and propose text on issues that affect them, and the development of mechanisms for stakeholders to channel their concerns.

The process of developing the negotiating mandate itself shows how involving select stakeholders transparently and inclusively throughout negotiations and informal discussions can influence policy outcomes. Indigenous Peoples’ and waste pickers’ participation in UNEA-5.2 resulted in both key stakeholder groups being mentioned in the final text. Accordingly, the mandate speaks to their importance and outlines specific guidance on how INCs are to engage with the knowledge that each provides.

However, ensuring the broadest possible engagement will require going beyond these two named groups. Negotiations must include other groups of stakeholders, including, but not limited to those discussed below.

## Indigenous Peoples

Indigenous Peoples’ experiences on the frontlines of the plastic crisis and their unique knowledge have the potential to play a critical role in developing a future plastics treaty. They are particularly exposed to the environmental degradation and destruction caused by plastic pollution at all stages of plastic’s full life cycle, resulting in the infringement of their rights to self-determination, water, food, and a healthy environment.<sup>59</sup> Indigenous Peoples also experience the harmful effects of exploration, extraction, and transport of the fossil fuels used to produce plastics. Further, there is historical suppression, and often, groups are not as institutionally well-organized as the corporations and governments causing this harm.<sup>60</sup>

Indigenous Peoples have a unique understanding of the environment, invaluable and highly relevant knowledge systems, and experiences with safe and effective circular models that could inspire solutions and shape the

ongoing plastic pollution discourse and negotiations.<sup>61</sup> UNEA resolution 5/14 acknowledges this, and it calls on the INC to consider, among other things, “[t]he best available science, traditional knowledge, knowledge of indigenous peoples and local knowledge systems.”<sup>62</sup>

In June 2021, the ECOSOC approved a recommendation issued by the UN Permanent Forum on Indigenous Issues (UNPFII), urging States and all bodies of the UN system, including UNEP and UNEA, to “include indigenous peoples in a fully meaningful and effective manner in decision-making processes in all areas aimed at tackling marine litter and plastic pollution, including (...) in the future negotiations of international instruments.”<sup>63</sup> In May 2022, the UNPFII welcomed the resolution, recognizing that “the negotiation of a legally binding agreement will provide an opportunity to ensure that a human rights-based approach is applied to global plastics management, taking into account the most vulnerable ecosystems and the peoples who depend thereon, such as in the Arctic.”<sup>64</sup>

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## Protected Participation of Indigenous Peoples

Since 1920, Indigenous Peoples have attempted to engage with international institutions, including the UN's predecessor, the League of Nations, and then the UN itself. Their involvement in multi-lateral affairs is two-fold, representing a) a concretization of their rights to self-determination<sup>65</sup> and participation in decision-making,<sup>66</sup> and b) a fulfillment of the UN's obligation to contribute to the full realization of provisions outlined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which calls on all organs and specialized agencies of the UN to establish ways and means of ensuring Indigenous Peoples' participation on issues affecting them.<sup>67</sup>

Still, the UN system only started a process to enable the participation of Indigenous Peoples' representatives and institutions in its global fora in 2014.<sup>68</sup> Three years later, a UNGA resolution further encouraged facilitating the participation of Indigenous Peoples' representatives and institutions during conferences, summits, and other meetings of UN bodies.<sup>69</sup> The Secretariat and Member States should decide, together with Indigenous Peoples and in line with the UNDRIP, the modalities of participation in the negotiations and implementation of the plastics treaty.

## Workers

Workers from many different sectors have the potential to be impacted by the future plastic treaty, especially as policies span the full life cycle of plastics. The UN Special Rapporteur on Toxics and Human Rights elaborates: "Workers are one of the groups most exposed to the impacts of the plastics cycle."<sup>70</sup> The negotiating mandate has the potential to serve as a turning point. For the first time in a UN environmental decision, the resolution recognizes the major role played by "workers in informal and cooperative settings to the collecting, sorting, and recycling of plastics in many countries."<sup>71</sup> It states that the INC is to consider "[l]essons learned and best practices," including those from "informal and cooperative settings."<sup>72</sup> Should adequate measures be implemented, the meaningful participation of formal and informal workers representing the full plastic life cycle during negotiations could open the door to a just transition.

Yet, despite their essential contribution to current waste management practices, "waste pickers usually lack formal organization and governmental support, social se-

curity or protection equipment."<sup>73</sup> Furthermore, certain groups can suffer from multiple obstacles. For example, a large portion of waste pickers are from vulnerable groups with a substantial number being women.<sup>74</sup> Thus, the INC needs to take measures that ensure waste pickers and other workers along the plastic supply chain are meaningfully included throughout the negotiation process. Specific actions that could benefit workers include, but should not be limited to, support for the multi-state Group of Friends of Waste Pickers.

## Children and Youth

Although UNEA resolution 5/14 does not explicitly mention children and youth, their involvement in the negotiating process is essential. Evidence is mounting of the intergenerational issues caused by the longevity of plastic pollution and its resultant environmental degradation and biodiversity loss. Research shows that children and youth are exposed throughout their lives to the hazardous substances emitted during plastic's full life cycle and that children born today have toxic chemicals associated with plastics already in their blood.<sup>75</sup>



Heads of UN entities have acknowledged the importance of children and youth participation in policymaking processes. Their commitment is reflected in a pledge to partner “systematically, genuinely and meaningfully” with diverse groups of children and youth at local, national, regional, and global levels.<sup>76</sup> And multiple UN institutions have reiterated that the right of children and youth to be heard in decision-making under article 12 of the UN Convention on the Rights of the Child is upheld through their meaningful participation in environmental discussions.<sup>77</sup> As a result, several countries, including Norway, have established a system to ensure youth delegates are present at international negotiations and serve as part of national delegations to bodies addressing environmental matters, including the CBD, UNFCCC, and the High-Level Political Forum on the Sustainable Development Goals (SDG).<sup>78</sup>

Despite these measures, children face structural constraints that limit their ability to exercise their right to participate in decision-making. Such issues are related to age, funding, the lack of accessible information or modalities for empowering and safe participation, the inability to travel alone or take extended time out of formal education, and other considerations.<sup>79</sup> Therefore, it is essential for the INC and its participating Member States to actively take steps that ensure that children and youth are not only represented but that their participation is meaningful, empowering, and safe throughout all stages of the negotiation process.

## Women

Women comprise half of the world’s population, and they are negatively affected by plastic pollution in unique and specific ways.<sup>80</sup> The chemical structure and additives used in plastics lead to higher health risks for women (and children) as noted in the 2021 Ministerial Statement on Plastic Pollution and Marine Litter.<sup>81</sup> For many women, their proximity to household and feminine care products ensures that they will experience greater exposure to both plastic and toxic pollution.<sup>82</sup> Further, poor waste management, an important source of plastic pollution, has a gendered effect that impacts women’s political, social, and economic empowerment,

which is notable, given their outsized role as informal waste pickers.<sup>83</sup> While a lack of representation of women among meeting participants, staffs, and Secretariats has been recognized and responded to with a number of decisions and action plans from the Parties to the Basel, Rotterdam, and Stockholm (BRS) Conventions,<sup>84</sup> the BRS Secretariat has only begun to explore a partial range of these issues.<sup>85</sup>

Good practice models to support and increase women’s ability to fully participate already exist. The BRS Conventions have established a Gender Task Team and a Gender Action Plan to ensure the mainstreaming of gender in their activities.<sup>86</sup> Similarly, the UNFCCC has a Gender Action Plan that prioritizes gender balance, participation, and women’s leadership to achieve and sustain full, equal, and meaningful participation in the UNFCCC process.<sup>87</sup> The action plan includes capacity building for female negotiators and promotes travel funds to support women’s equal participation in all national delegations.

Importantly, the UNFCCC and its subsidiary bodies, including the UN Climate Technology Center and Network (UN CTCN),<sup>88</sup> coordinate closely with — and are informed by — civil society women and gender organizations, through the Women and Gender Constituency (WGC), one of the Convention’s nine stakeholder groups.<sup>89</sup> Similarly, UNEP coordinates closely with its WGC analogue, the Women’s Major Group, on gender-relevant dimensions of its work.<sup>90</sup>

It is not enough to provide opportunities for a limited number of women to join negotiations. There must be equitable and inclusive representation, with perspectives from all genders present during discussions. The rules of procedure facilitate an opportunity to ensure gender equality in INC negotiations and future treaty bodies.

# Recommendations

## For States

1. Stakeholders must be involved throughout the treaty negotiation process. States and regional organizations should involve stakeholders in national and regional dialogues in a meaningful, transparent, timely, and equal way before the OEWG and every INC meeting.
2. States should include civil society and public representatives in government delegations. UN funding for the participation of developing countries and countries with economies in transition should encourage the participation of stakeholders, including NGOs, children and youth, Indigenous representatives, and workers (including waste pickers) as part of the delegations.

## For International Organizations and Bodies, Including UNEP and UNEA

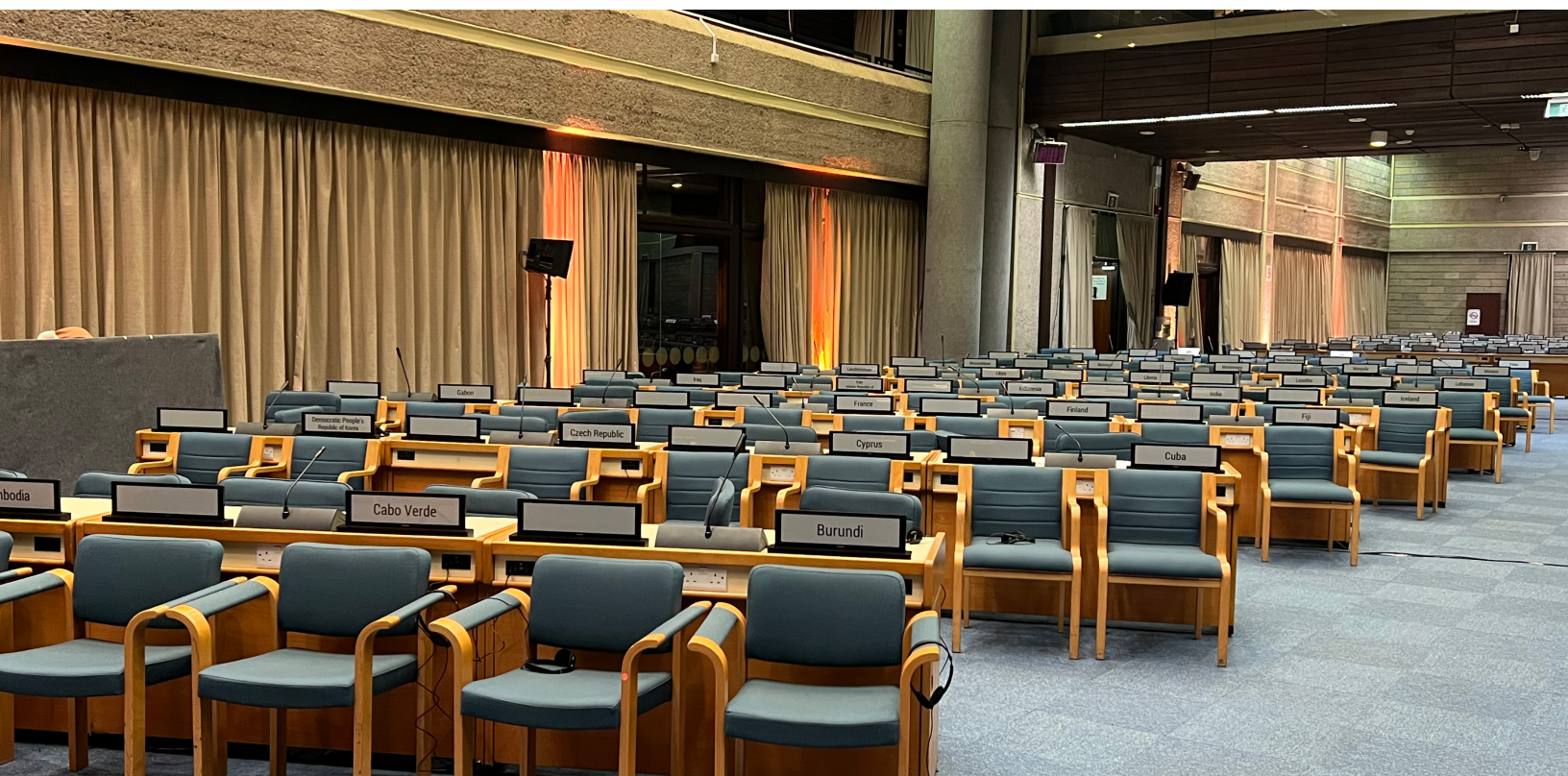
The founding principle of rules of procedure for public participation should be to ensure meaningful, effective, and equitable participation in all meetings and proceedings of the new plastics treaty negotiation process. Steps to achieve that should include:

1. Open accreditation rules should apply to all relevant stakeholders. The negotiations should follow the call for “widest...participation possible” in the mandate resolution, as modeled by the negotiation process for the Escazú Agreement. This would allow any interested member of the public to participate, not only formal NGOs or Major Group members, with filtering only to ensure the proper functioning of the conference or meeting. Accreditation should be open to stakeholders that do not already have UNEP accreditation. The INC secretariat should grant interim observer status and carry out the admission process on an ongoing basis and at least at the beginning of each INC session and OEWG.
2. All stakeholders should be allowed to make submissions, take the floor during proceedings, and make text proposals and statements. The “widest possible and effective participation” includes the right to intervene and make proposals. The permission to intervene during formal and informal meetings, both public and private, must be ensured. If sponsored by at least one State participating in the INC, stakeholders must be allowed to make statements and propose text and amendments. However, the final decision would always remain with the States.
3. Stakeholders should have access to funding to participate in all related meetings, and host States should facilitate entry for all participants, especially members of the public. Sufficient funding should be made available for accredited stakeholder groups to:
  - a. Facilitate their physical or digital participation in the INC and related meetings, such as intersessional workshops.
  - b. Produce relevant publications and research to be disseminated (in different languages) and used in the context of the INC.
  - c. Host regional and inter-stakeholder meetings and conferences before, during, and after the meetings of the INC.
  - d. The respective host States of the various meetings of the INC and its subsidiary bodies should further actively engage with stakeholders to facilitate the smooth and simple approval of visa applications (where required) for all accredited participants without fee or charge.

4. All plenary, committee, and other meetings should be held in public, to the greatest extent possible. Where a public meeting is impossible, any private meetings should still aim to allow some form of stakeholder participation, under the condition that there cannot be more observers than Members.
5. Interpretation and translation into all official languages of the UN should be made available during the entire negotiating process. According to UNGA practice, the right to use any official UN language must be ensured, while interpretation into other languages should also be permitted. Interpretation must be possible during all INC meetings — public and private, plenary or committee, formal or informal session. Relevant documents in all official UN languages must be made available to all participants in a timely manner. Participants can be accompanied by their own personal interpreters, as needed, without any undue restriction.
6. All meetings should be held as hybrid meetings for as long as necessary. Stakeholders must be able to choose whether or not to participate in person freely. The COVID-19 pandemic and measures imposed to control the spread of the virus must not be used as a pretext to exclude or limit public participation, which is best ensured by guaranteeing as much physical participation as possible. As long as the COVID-19 situation makes it necessary, meetings of the INC and other related committees and bodies must be held as hybrid meetings where stakeholders are still allowed to attend in person without further limitations on movement and presence than is necessary to ensure equal, effective, and meaningful participation.

The choice of meeting venue should take into account the need to provide enough room for full physical participation of all registered observers, stakeholders, and rightsholders when applying specific COVID-19 distancing rules. Mechanisms to support the online participation of certain groups in vulnerable situations should include access to data packages, facilitate access to reliable electricity and necessary hardware, and in-country travel to access a stable internet connection.<sup>91</sup>

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7. The INC Bureau itself should include public representatives. Having at least one stakeholder representative to serve as a focal point can help drive necessary dialogue and interactions between INC members and non-State participants. The mechanism for this could build on the negotiation for the Escazú Agreement, as noted above. At a minimum, members of the elected Bureau (particularly its Chair) should engage in regular dialogue with members of the public. This should include dedicated meetings between the public and INC chairs before, during, and after each INC meeting.
8. The involvement of Indigenous Peoples, including participation, consultations, and free, prior, and informed consent, should reflect and recognize their respective governance systems. Accreditation of Indigenous Peoples and their institutions should be based on the principles of self-identification and self-determination. Specific procedures should be mainstreamed with the support of Indigenous Peoples' representatives to guarantee effective and adequate participation throughout the development of the instrument and beyond.
9. Measures that are responsive to gender and age must be mainstreamed throughout the negotiation process and in the instrument's final text. Women, children, and youth are particularly and disproportionately affected by the harmful effects along every stage of the plastic life cycle. It is essential that people of all genders and ages are duly represented and that their perspectives are taken into account throughout the negotiation process and final text. This should be complemented by:
  - a. Setting up briefings to ensure organizers, security, interpreters, panelists, moderators, media, etc. understand the importance of children's and youth participation and their role in creating a supportive and respectful environment.
  - b. Ensuring the accessibility of information on how negotiations and the conferences work, an explanation of the agenda, negotiated text, etc. Information should be accessible, and responsive to age and gender.
  - c. Reviewing security protocols to ensure children's and youth access and participation will be supported, not hindered by removing age barriers for participation. Measures should extend to registration and access for accompanying adults and interpreters.<sup>92</sup>
10. Workers, particularly those from the informal sector, should be prioritized for participation. Rules of procedure and negotiations should prioritize general and timely involvement, respecting representative worker constituencies and trade union structures. The OEWG should consider a subsidiary group on just transition focusing on and including workers. Specific measures for waste pickers' participation include ensuring:
  - a. funding to support in-person attendance at INCs and intersessional meetings and to further capacity building activities; and
  - b. a representation mechanism, such as an observer's seat on the Bureaus and any subsidiary body dealing with issues related to design, the circular economy, recycling, and a just transition.

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This issue brief was authored by Andrés Del Castillo, with assistance from David Azoulay, Jørgen Nyberget, Jane Patton, and Cate Bonacini. The research and analysis for the overview benefitted from the rich input of stakeholders with significant experience in international public participation in negotiating fora and in international plastics policy. Special thanks to Melissa Blue Sky and Sébastien Duyck (CIEL), Kabir Arora (Global Alliance of Waste Pickers), Jess Edwards (Save the Children International), Agnès Gràcia (Child Rights Connect), Neil Tangri (Global Alliance for Incinerator Alternatives), Rich Gower (Tearfund), Fabienne Mclellan (Ocean Care), Sascha Gabizon (Women Engaged for a Common Future), Amanda Kron (Office of the High Commissioner for Human Rights), and Camila Silva for their reviews and/or insights.

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Design & Layout: Taylor Black, CIEL

Cover Photo: UNEP/Cyril Villemain