

To: INC Secretary Jyoti Mathur-Filipp
CC: H.E. Luis Vayas Valdivieso
INC Bureau Members

Subject: 4 Questions:
Fair & Balanced Participation Pending for the Ad Hoc Intersessional Open-ended Expert Groups

Dear Ms. Jyoti Mathur-Filipp,

We appreciate your time in engaging with us in the correspondence ([available here](#)) between you, IPEN, and the INC Bureau and on our call on July 10, 2024, in which we discussed the issue of participation of Observers in the ad-hoc open ended intersessional expert group. We remain concerned about this issue and would like to review and follow-up from our previous communications. Below are four specific questions we would appreciate your replies to.

In your July 5 letter and in our July 10 conversation, you stated the following:

- The Secretariat cannot make decisions on Observer participation, as it is charged with only implementing the INC’s decisions.
- A decision on the establishment of ad hoc intersessional open-ended expert groups was made by the INC at its fourth session and provides instruction on participation modalities. The decision states that the Expert Group meetings “...will be open to participation of all Members of the Committee.”
- That the Secretariat, in consultation with the INC Chair, will invite up to twelve selected technical resource persons per expert group and is “considering the range of Observers, including civil society.”
- The criteria to identify experts include:
 - Technical expertise, experience, and knowledge;
 - Balance of expertise, experience, and knowledge among the technical resource persons, considering the range of Observers, including civil society;
 - Regional and geographic representation;
 - Gender balance; and
 - Language proficiency
- That the Secretariat does not have the mandate to scrutinize potential conflicts of interests of experts nominated by governments, nor of experts that the Secretariat will be nominating.
- That the only transparency measure regarding the selection of experts that the Secretariat is arranging is the publication of the names of the experts on the UNEP website after the Secretariat has selected them.

We remain concerned, as some of the issues raised in our previous communications have not been fully addressed. We are also dismayed that there appear to be misunderstandings about some of our concerns, as there have been some misrepresentations in your responses.

We continue to have questions about the transparency, fairness, and inclusivity of the process. Therefore, we are seeking clarity on the specific questions below regarding the Secretariat’s interpretation of the INC4 outcomes and of Member States’ positions during the INC4 plenary.

1. Did any Member State object to Observer participation in the intersessional work?

In our conversation, you mentioned that consensus was not reached at INC4 on the issue of Observer participation, implying that there were Member States or a State that objected. We are not aware of any such objection. Instead, as we have previously noted, interventions by Member States at INC-4, including by Senegal, New Zealand, and Ecuador, supported participation by Observers. In the INC4 Meeting Report, paragraph 87 recalls the intervention of one Member State calling for Observer participation **that was supported by “many others, including one [Member] speaking on behalf of a group of countries.”**

Para 87: One representative requested that observers be invited to participate in the intersessional work, noting that experts were often representatives of civil society rather than of government. His request was echoed by many others, including one speaking on behalf of a group of countries, who expressed a preference for including experts with specific technical expertise.

The Secretariat’s claim that consensus was not reached on Observer participation appears to contradict the stated preference of many Member States. We request clarification on which Member State or States objected to Observer participation, leading to the decision to ignore the request from several Member States for a process that includes Observers.

2. On what basis has the Secretariat chosen to diverge from precedents set for open participation under other UN policy forums expert groups?

As we noted in our previous communications, other UN policy processes for ad hoc expert groups and technical groups, such as the Stockholm Convention POPs Review Committee and BAT/BEP Expert Group, and the Basel Convention Open Ended Working Groups, are open to Observer participation (with some more fully open and others with more limited participation), providing precedents that should not be broken without providing considerable and reasonable justification.

By excluding Observer participation, the Secretariat is deviating from these norms, without explanation. In previous communications, the Secretariat has only vaguely stated that there may be technical or logistical considerations for excluding Observers and that other UN expert groups are closed to Observers, although no examples of such groups were provided nor were any specific examples of technical or logistical obstacles disclosed. If there are such issues, the Secretariat should provide them and describe why they are insurmountable, given the precedents for and value to the process of openness. Thus, we are requesting the specific justification for a decision that has the potential to erode openness, transparency, and public confidence in the process.

3. How is the Secretariat identifying technical experts to invite as the twelve technical resource persons for each expert group?

The Secretariat has outlined very broad criteria for the technical resource persons but has otherwise left the process for choosing these experts undefined. Without transparency about

the process and deeper openness around the criteria for identifying experts, there is a significant risk of undermining public trust in the intersessional process.

4. Will participants in Member State delegations be identified to ensure there is openness about non-governmental participants through the intersessional process?

We appreciate that Member States have no restrictions on the makeup of their delegations, and we understand that delegations may include an unlimited number of participants, including individuals from industry and others from the private sector. Particularly since the Secretariat has acknowledged that there are no procedures in place to identify or prevent conflicts of interest, it is important and urgent that the Secretariat ensures that Members provide transparency on the backgrounds and affiliations of the participants in their delegations, and that the Secretariat make this information publicly available as soon as possible and well in advance of the in-person sessions.

We look forward to your replies and appreciate that our previous communications are now publicly available.

Kind Regards,



Dr. Tadesse Amera
IPEN Co-Chair



Pamela Miller
IPEN Co-Chair

CC: INC Chair

H.E. Luis Vayas Valdivieso

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