

To: H.E. Luis Vayas Valdivieso
CC: INC Bureau Members & INC Secretary Jyoti Mathur-Filipp
FROM: Yuyun Ismawati and Pamela Miller, Co-chairs, International Pollutants Elimination Network
Subject: INC Chair Decisions Excluding Fair & Balanced Participation in the INC Process

January 17, 2025

Dear Ambassador Vayas Valdivieso,

We would like to follow up on our July 2024 letter and conversations regarding the participation of Observers in the Plastics Treaty process, as we continue to have concerns regarding open access and in particular decisions that you have taken as the INC Chair to exclude participation and diverge from established rules of procedure.

Excluding and limiting participation in the Plastics Treaty process is a bias that favors wealthy and fossil fuel producing Members States who bring large delegations, while low- to middle-income Member States have limited funds to send representatives.

During INC-5, delegates lost opportunities to hear from hundreds of observers with highly specialized knowledge about plastics, chemicals, health science, and other topics critical to the Treaty talks. The ongoing barriers to access are not merely a parochial concern. By excluding civil society, the risk increases of creating a less meaningful Treaty that fails to meet the mandate of protecting human health and the environment.

The unprecedented restriction on the participation of Observers during INC-5 raises our concerns about the ongoing creation and maintenance of barriers to civil society participation in the INC proceedings despite the clear decision from UNEA Resolution 5/14 stressing the importance of ensuring the broadest and most effective participation possible and facilitating such participation in the context of the mandate of the INC.¹ We are eager to work with you on ways to provide for greater participation and ensure compliance with previously adopted UN agreements and UNEA resolution 5/14.

As noted in our July 2024 letter, though no Member State objected to civil society participation in the intersessional meeting between INC-4 and INC-5, and several countries made statements at INC-4 in support of Observer participation, you decided to effectively shut Indigenous Peoples, civil society groups, and independent scientists out of the intersessional process. As a result, delegates were not informed nor supported by key scientists, Indigenous and community leaders, other independent experts, and representatives of groups who are most at risk from plastic pollution.

Since our previous correspondence and discussions, we have been disappointed to find that access for Indigenous Peoples and civil society has worsened. After the Bangkok Intersessional Work meeting, the Heads of Delegation meeting was arranged, with no observer participation. Furthermore, we are especially concerned that, as the INC Chair, you have made unilateral decisions that have excluded civil society, even in the face of Member States supporting open access. At INC-5 in Busan, for example, you made the “informal meetings,” closed-door sessions and used them as a way to exclude Observers from discussions that should have occurred in the open. Opportunities for interventions from Observers were extremely limited in contact groups and in plenary sessions. This conduct is blatantly against existing principles and practices of international law and fails to achieve better decisions.

We are concerned that excluding Indigenous Peoples and civil society groups:

- Creates processes that exclude critical science and issues of human rights. Member States rely on independent expert Observers to provide the latest scientific research, proposals for science-based

¹ UNEP/EA.5/Res.14, par. 7, 9 and 11.

regulations, and the vital real-world experience of those whose health and human rights are most threatened by plastic pollution.

- Benefits the minority of countries who aim to block progress, by allowing closed-door maneuvers that occur without the checks provided by independent observers. Countries aiming to stall the negotiations often bring large delegations and have close industry allies who benefit when civil society is excluded. More transparent work and decision-making processes provide all Member States with access to independent expert advice on a wide range of issues, which is crucial for a meaningful Treaty.
- Contradicts UNEA resolution 5/14 and previous agreements such as the Escazú Agreement and the Aarhus Convention, which requires meaningful public participation in decision-making regarding the environment, noting that restrictions to participation can be considered a restriction of enjoying the right to a clean, healthy, and sustainable environment.

The decisions ahead of and during the INC-5 in Busan to exclude participation were unprecedented and when we raised objections, no rationale for these exclusions was provided. In order to ensure that this does not set a dangerous precedent and that future meetings are inclusive of observers and civil society, we urge you to:

- Ensure open, inclusive and transparent participation in the work of the intergovernmental negotiating committee and related meetings such as ad hoc open-ended working groups as well as Heads of Delegation meetings. This includes ensuring rooms are adequately size for participants and observers and providing spaces and/or segments for observers to effectively participate.
- When restrictions to participation are deemed necessary, they should be explicitly adopted and discussed in the appropriate forum (INC plenary, Bureau meetings, etc.) and interpreted narrowly.
- Considerations of observers' participation are also taken into account when planning meetings, including by providing rooms with adequate seating and adequate space for the large number of observers involved in the process.

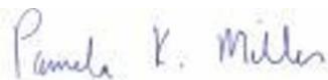
We politely request that these issues be taken up at the January 21, 2025 Bureau meeting, and we would appreciate your written reply following such discussion. Thereafter, we are also interested in an online meeting with you to review these concerns and discuss pathways forward toward open access and participation.

We look forward to your reply and appreciate that our previous communications have been made public.

Kind Regards,



Yuyun Ismawati
IPEN Co-Chair



Pamela Miller
IPEN Co-Chair

CC:

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