



UNEP

United Nations Environment Programme

PERSPECTIVES

ISSUE No 1

Discussion Paper: Improving Public Participation in International Environmental Governance

Jacob Werksman and Joseph Foti¹

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.

A UNEP publication series that presents views from Major Groups and Stakeholders of Civil Society or about issues that are relevant for them. PERSPECTIVES is coordinated by UNEP’s Major Groups and Stakeholders Branch/ Division of Regional Cooperation. The presented views are entirely those of the authors and do not necessarily reflect the views of UNEP.

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 participation and information

Most MEAs have policies in place for dispute resolution between parties, but not between non-state actors. The sole exception, the Aarhus Convention, defines national obligations to citizens. The World Bank has an Access to Information Appeals Board that hears denials of cases of access to information.³⁶ In the case of the Espoo Convention, individuals who feel that they have been denied the right to participate in a transboundary impact assessment must appeal to their governments to seek justice on their behalf.³⁷

Proposal: All IEG institutions should adopt an access to information strategy, building on that of the World Bank, including an *access to information appeals board or commission*. Such an information policy includes major components: (a)



progressive efforts to make decision-relevant data available, public, and useable and documentation; (b) a system for requests of existing but not-yet public information; and (c) a system of appeals for denial of information.³⁸

IV. Promoting Innovation in Forms of Public Participation in IEG

As has been described, significant advances have been made in increasing opportunities for CSOs to participate as observers in IEG processes and that, as a result the volume of information available and the opportunities to “witness” IEG decision making has increased exponentially.

However, extending the opportunity merely to observe these processes, without enhancing also the opportunity to inform, shape, and engage in decision-making itself misses significant opportunities for more legitimate, innovative, and sustainable policy impacts. Disillusionment is a potential risk with processes that, left to governments alone, generate disappointing results.

Rio+20 provides an opportunity to introduce major innovation in public participation in IEG. Any significant efforts at IEG reform should take into account proposals that would significantly enhance the opportunities for CSO to contribute, not merely as observers, but in a manner equivalent to government delegations where their expertise and voice could contribute to the quality of IEG decision-making. Furthermore, in circumstances where governments are unable or unwilling to act, consideration should be given to creating roles for CSOs that are theirs alone. For example, governments are often reluctant to report on compliance related data in a clear, timely, and comparable format, even when such data are publically available. Governments are also often reluctant to comment critically on each other’s performance. CSOs can play this “watch dog” role in both an official and unofficial capacity.

A. More direct CSO participation in decision-making

A number of IEG processes have made modest advances in extending the opportunities for CSO observers to engage more directly in the negotiations themselves by granting participation and speaking rights similar to those of government delegations.

As practice has developed in some IEG processes, CSOs are invited into, rather than routinely excluded from, key strategic bodies. Under the Convention on Biological Diversity (CBD), CSOs have been invited to take part in “friends of the chair” meetings. The CBD special arrangements have also enabled the participation of indigenous and local communities in formal and informal meetings, and their representation on an Advisory Committee.³⁹ Under the rules of procedure of the ICCM and the Aarhus Convention, NGO observers “may speak, request the inclusion of specific agenda items, make proposals and raise and appeal points of order, in the same manner as governmental participants.”⁴⁰

A far bolder move would be to follow the approach taken by the International Labour Organization (ILO) nearly 100 years ago when it established the “tripartite” system of governance that gives an equal voice to workers, employers, and governments on each country’s delegation, to ensure that the views of these three “social partners” are reflected in the ILO’s business of adopting international labor standards and in shaping policies and programmes.



Academics studying the ILO system have found that the “tripartite” system provides opportunities for CSO input that are unparalleled in any other intergovernmental organization. However, it has also been noted that by privileging only two stakeholders in the CSO community (industry and workers) the ILO’s decision-making process, the tripartite system in effect operates to limit and marginalize all other CSO voices of concern.⁴¹

Creating a slot on country delegations dedicated to a single or open to multiple CSO representatives will not obviate the need to be inclusive of the diversity of stakeholder voices in a context in which time and space will need to be rationed. The inadequacy of this approach would likely to be compounded in the context of IEG where the diversity of stakeholders, and of stakeholder expectations created by the Major Groups approach or other more flexible approaches is likely to be much higher than in the ILO context.

The fact that the ILO approach of providing CSOs a seat at the table alongside government counterparts has not yet been replicated, suggests that concerns about maintaining the sovereign preserve of governments are likely to persist even in a major overhaul of IEG. A better approach, in addition to the general enhancements in the quality of CSO participation outlined above, may be, rather than seeking to mimic governments’ role in IEG, to expand CSOs’ roles in areas where governments are less able or less willing to act, detailed in the next section.

B. A more recognized role for CSOs in promoting compliance with international environmental law and policy – or “Citizen’s MRV”

Many aspects of IEG depend upon the regular measurement, reporting and verification (MRV) of data that can demonstrate government compliance with their commitments to implement environmental law and policy. Too often, institutions and procedures designed and operated by governments demonstrate a shared reluctance to provide information in an objective, comparable, and timely manner. The typical system of self-reporting under an environmental treaty will allow governments to disguise inaction.

When they have relevant expertise and independence, CSOs can play a vital role in gathering and reporting the objective data necessary to reveal non-compliance. An early example of IEG recognizing and encouraging this role for CSOs is TRAFFIC, the wildlife monitoring network for the 1975 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). A partnership led by WWF and IUCN, TRAFFIC has become a key component in the implementation of CITES, by creating the world’s largest wildlife trade monitoring organization, carrying out in-depth research and on-the-ground investigations of non-compliance with CITES prohibitions on trade in endangered species.⁴²

Similar kinds of CSO-led networks are emerging around the challenge of measuring, reporting and verifying government performance in the context of climate change. The Climate Action Tracker and the Open Climate Network are two examples of

BOX 3. CIVIL-SOCIETY COMPLIANCE MECHANISMS

In order to ensure compliance with internal policies on access to information and public participation, IGOs often establish compliance mechanisms.

These may take a number of forms, including a review board (such as the World Bank Inspection Panel), a public ombudsman, special tribunal, or one of a number of alternative dispute resolution formats.

In designing compliance mechanisms attention should be paid to jurisdiction, membership, standing, enforcement powers of the office, and costs of using the tribunal and obtaining representation. Such decisions will greatly impact the effectiveness and accessibility of the compliance mechanism.



leading initiatives that are independently gathering data that aspire to enable “Citizen MRV” of government performance in reducing greenhouse gas emissions.⁴³

While a growing number of environmental treaties have put in place compliance mechanisms through which governments can hold each other accountable for the other’s performance, Parties to these treaties have shown a great reluctance to raise questions of non-compliance. Only one such procedure, under the Aarhus Convention, allows CSOs to trigger the process. IEG reformers should look to free trade acts, including NAFTA⁴⁴ and CAFTA-DR,⁴⁵ which allow citizens to raise questions as to whether trade and investment liberalization is leading to lowering of environmental and social standards. The World Bank Inspection panel also allows the public to bring IBRD- and IDA-financed projects where claimants have suffered harm or there has been environmental damage, where the bank has failed to take adequate action, and where the bank failed to follow its own policies and procedures.⁴⁶ See Box 3 for potential models and considerations.

It is encouraging to note, in this context, that the Parties to the UNFCCC are considering a procedure that would allow affected individuals to appeal decisions of the Executive Board of the Clean Development Mechanism and that the draft instrument of the Green Climate Fund, designed to fund the implementation of the UNFCCC has included a “redress mechanism” to receive complaints related to the Fund’s operations.⁴⁷ In both of these cases CSOs, acting in the public and the private interest, are more likely to act to reverse or improve the quality of IEG decision-making of sovereign states.

C. Enhanced substantive and procedural rights of marginalized people

While based on the principle of sovereignty and on recognized role of governments in representing citizens within their jurisdiction, international law and institutions have also played a role in strengthening the voices of minority interests that are marginalized even in the most democratic societies.

Within IEG some progress can be seen in the recognition of traditional rights of indigenous peoples and local communities in the context of whaling rights and in control of access to and benefit sharing from the exploitation of traditional knowledge related to biological diversity. Recent decisions on Reducing Emissions from Deforestation and Degradation (REDD+) also call for international standards and safeguards designed to protect the interest of indigenous peoples.

IEG reformers should build upon this progress and recognize the unique role that CSOs can play in advancing these emerging interests by developing institutions and procedures that assess the legitimacy of organizations that come forward to represent marginalized people, and to ensure that arguments advanced on behalf of these groups are respected.

V. Conclusions

Rio+20 and the discussions and processes that follow are great opportunities for IEG reform. Whether existing institutions are reformed or new institutions are developed, such reforms should seek to fully integrate Principle 10, aspiring to meeting and exceeding the standards laid out in the Almaty Guidelines.

Based on the forgoing analysis and the work of others that have been pressing for reforms since Rio, the following proposals make up an actionable catalogue of reforms for IGOs responsible for IEG.



The list is not an exhaustive list of reforms for access to information or access to justice; instead it aims to identify those options most relevant for improving participation, the focus of this paper.

Access to Information

- Publicize a simple, accurate *how-to guide* for participation, covering accreditation, participation in representative configurations, integrating an opinion into collective documents such as major groups or plenary statements, and expectations for representatives civil society configurations.
- Provide advance notice of meetings and decision-making through centralized meeting clearinghouses and “push” notifications through ICTs.
- Maintain publicly available records of comment, minutes, votes, and records of attendance. This is best done together with the meeting clearinghouse above.
- Establish hard timelines (60 days) for advance release of meeting-relevant documents. Where this is not possible, ensure that civil society receives documentation at the same time as governments.
- Ensure citizen access to all compliance and state of the environment reporting by member states held by IGOs.
- Create a universal open meetings rule. Such a rule would have clearly defined exceptions, a transparent process for closing meetings (with an adequately high bar), and would provide the public with documentation of votes for closure of a meeting.
- Use information and communication technology and multiple languages to maximize access, and to reduce the costs of public participation. All IEG institutions should provide *web streaming* and *searchable transcripts* of major meetings in UN languages. In locations where ICT is not feasible, UN offices should provide alternative means of engagement.

Public Participation

- Criteria for Accreditation
 - » Allow “fast track” accreditation for all major processes, waiving requirements for ECOSOC accreditation.
 - » Publish metrics on accreditation processing time.
 - » Provide waivers for participants from countries with restrictive domestic environments.
 - » Harmonize accreditation processes across IGOs responsible for IEG.
- Ensure representative groupings.
 - » Establish a more flexible system for civil society participation and intervention, strongly considering issue-based, sector-based, and regional options.
 - » Use and enhance the Major Groups and Stakeholders approach as a means to ensure minimum participation, rather than a rationing system. Consider inclusion of other groups which may have historically low levels of participation relative to their interest.
 - » Maintain a public database of attendance, including self descriptions of participating organizations.
 - » Establish a periodic review of processes for groupings in sustainable development decisions.
- Clarify the role of group representatives.
 - » Develop clear and simple procedures to ensure all interested CSOs can participate in developing common positions statement well in advance of meetings.



- » Establish an obligation by group representatives to ensure that statements submitted by civil society are based on evidence and represent shared views.
- » Oblige group representatives to represent areas of consensus and dissent.
- » Develop clear, public, consistent procedures for appointing and removing group representatives.
- Provide greater opportunity for public participation “upstream” in agenda setting and document preparation by introducing members of the public into early and influential stages of the decision-making process.
 - » At a minimum, all major decisions should include observer status. At the other end of the spectrum, IGOs can consider full voting membership of civil society as in some organizations. Between these poles, IGOs should seek to enhance and regularize citizen involvement in advisory committees, drafting committees and formal document review, open forums and dialogues, and opportunities to provide comments on agendas and documents while in draft.
- Encourage the participation of organizations from developing countries and poor and marginalized groups.
 - » Provide financial support for participation and involvement of CSOs as well as alternative means for participation.
 - » Provide multiple channels of participation for civil society organizations.
 - » Build upon progress in participation of marginalized groups by developing institutions and procedures that assess the legitimacy of organizations that come forward to represent marginalized people, and to ensure that arguments advanced on behalf of these groups are respected.
- Acknowledge and respond to input from the public.
 - » Final records of decision should reflect consideration of the major categories of public comment.
- Strengthen public participation in monitoring and compliance, especially where Parties to the convention are unlikely to use compliance mechanisms.
 - » Support the “Citizen MRV” in independent monitoring, verification, and enforcing sustainable development policies.

Access to Justice

- Provide a system of access to information for CSOs to request the review of denial of participation and information. Such a policy should include (a) progressive efforts to make decision-relevant data available, public, and useable; (b) a system for requests of existing but not-yet public information; and (c) a system of appeals for denial of information.
- Establish compliance mechanisms to ensure maintenance of internal policies and agreements.



- ¹ Joseph Foti is a Senior Associate and Jacob Werksman, Program Director, in the Institutions and Governance Program, World Resources Institute (WRI). The authors would like to thank Jeffrey Barber, Carole Excell, Lalanath de Silva, Felix Dodds, Alexander Juras, Fatou Ndoeye, Clara Nobbe, and Natalya Lozovaya for their comments and suggestions. The views expressed are the authors.
Notes
- ² For purposes of this paper, IEG refers to the variety of institutions and activities at the international level affecting the environment. It includes those environmental decisions and actions affecting the social and economic pillars of sustainable development, as well as social and economic decisions affecting environmental outcomes. IEG covers the subset of institutions and activities within the Institutional Framework for Sustainable Development that are not exclusively at the national and subnational levels.
- ³ Based on membership of the UN Environmental Management Group (EMG). Environmental Management Group, <http://www.unemg.org/About/Membership/tabid/1149/Default.aspx> (accessed October, 2011).
- ⁴ This paper uses the term “civil society” to describe all concerned non-state, non-market actors. This is consistent with the “Cardoso Report” (Panel of Eminent Persons on United Nations–Civil Society Relations, *We the Peoples: Civil Society, the United Nations and global governance*, UN Document A/58/817, 11 June 2004.). The authors intentionally use this term to describe the wide range of individuals who may be interested or affected by international environmental governance. This is broader than the “Major Groups” approach set out by Agenda 21 because it includes all legal persons and informal groupings. Where the term “Major Groups” is used, it specifically refers to this approach to participation in UN processes. Where the term “Nongovernmental Organizations” (NGOs) is used, it specifically refers to the major groups category of “NGOs”.
- ⁵ Hoare, A. and R. Tarasofsky, *International Environmental Governance: Report of a Chatham House Workshop* (London: Chatham House, 2007).
- ⁶ UNEP, *Guidelines for Participation of Major Groups and Stakeholders in Policy Design* (Nairobi, 2010).
- ⁷ UNFCCC Subsidiary Body for Implementation, Twentieth Session, *Promoting effective participation in the Convention process*, FCCC/SBI/2004/5.
- ⁸ Najam, A., M. Papa, and N. Taiyab. *Global Environmental Governance: A Reform Agenda*. (Winnipeg: International Institution for Sustainable Development, 2006). Additionally, Stakeholder Forum’s “Stakeholder Empowerment Project” report (2009) employs Minu Hemmati’s framework for multi-stakeholder processes to analyze and chart the strengths and shortcomings of 6 major UN processes to provide a detail-rich description of potential improvements in the process.
- ⁹ UNECE, Report of the Second Meeting of the Parties, *Promoting the Application of the Principles of the Aarhus Convention in International Forums*, ECE/MP.PP/2005/2.
- ¹⁰ European Commission, *How the European Union Works: a citizen’s guide to the EU institutions* (Luxembourg: 2003).
- ¹¹ UNECE and UNEP, *Your Right to a Healthy Environment: a simplified guide to the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters* (Geneva: 2006).
- ¹² UNEP, *Natural Allies: Engaging Civil Society in UNEP’s Work* (Nairobi: 2009).
- ¹³ This concern was registered a number of times at the United Nations Conference for Non-Governmental Organizations associated with the Department of Public Information, *Sights and Sounds of the Conference*, <http://www.un.org/wcm/content/site/ngoconference/> (accessed October, 2011).
- ¹⁴ UN, *Intergovernmental Negotiations and Decision Making at the United Nations: how it works*, <http://www.un-ngls.org/orf/DMUN%20bprev1.pdf> (accessed October, 2011).
- ¹⁵ UNCSD. “Registration & Accreditation,” <http://www.uncsd2012.org/rio20/index.php?menu=90> (accessed October, 2011)
- ¹⁶ UNECE, “Meetings and Events,” <http://unece.org/env/pp/mop4.html> (accessed October, 2011).



- ¹⁷ Convention on Biological Diversity. *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity*.
- ¹⁸ The major groups defined by Agenda 21 are NGOs, indigenous peoples, local authorities, business and industry, science and technology, trade unions, farmers, youth and women.
- ¹⁹ Working Group on Civil Society Participation in Sustainable Development Governance submission to Rio+20.
- ²⁰ This is a composite of proposal forwarded by the Working Group on Civil Society Participation in Sustainable Development Governance to the Rio+20 document and Stakeholder Forum for a Sustainable Future's "Stakeholder Empowerment Project" from 2009.
- ²¹ See Stakeholder Forum (2009) Chapter III for more specific elements of Memorandums of Understanding or Terms of Reference for representatives (Section 3), and clear processes for engagement (Sections 4 and 5).
- ²² UNECE, "Consultations," http://ec.europa.eu/yourvoice/consultations/index_en.htm (accessed October, 2011).
- ²³ World Trade Organization, <http://www.wto.org>.
- ²⁴ ASEAN, "ASEAN Calendar of Meetings & Events 2011," <http://www.aseansec.org/22981.htm> (accessed October, 2011)
- ²⁵ UNECE, "Consultations," http://ec.europa.eu/yourvoice/consultations/index_en.htm (accessed October, 2011).
- ²⁶ C.f. note 6.
- ²⁷ C.f. note 6.
- ²⁸ Stakeholder Forum for a Sustainable Future, *Stakeholder Empowerment Project* (2009).
- ²⁹ F. Ndoye, Personal communication, October 30, 2011.
- ³⁰ UNFCCC Subsidiary Body for Implementation, *Report on the in-session workshop to further develop ways to enhance the engagement of observer organizations* (Geneva: 2011).
- ³¹ See, for example, Climate Action Network, *International Submission To The Subsidiary Body For Implementation Concerning Views On Ways To Enhance The Engagement Of Observer Organizations* (August 13, 2010).
- ³² Stakeholder Forum, *Stakeholder Empowerment Project* (2009).
- ³³ C.f. note 20.
- ³⁴ C.f. note 6.
- ³⁵ See Stakeholder Forum, *Stakeholder Empowerment Project* (2009) Chapter III, Section 3 for specific potential criteria for civil society representatives.
- ³⁶ The World Bank, "Access to Information Appeals Board," <http://go.worldbank.org/RT81EAUOZ0> (accessed October, 2011).
- ³⁷ "Espoo Convention on Impact Assessment in a Transboundary Context," September 10, 1997, Article 15.
- ³⁸ For more specific elements of such a system, see the "Submission of ARTICLE 19, Global Campaign for Free Expression, on Incorporating Principle 10 and the Right to Information in the Rio 2012 Outcomes."



³⁹ C.f. note 6.

⁴⁰ C.f. note 6.

⁴¹ L. Thomann, "The International Labour Organization," in *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?*, ed. J. Steffek, C. Kissling, and P. Nanz (Macmillan: 2008).

⁴² B. Gemmill and A. Bamidele-Izu, "The Role of NGOs and Civil Society in Global Environmental Governance," in *Global Environmental Governance, Options and Opportunities*, ed. D. Esty and M. Ivanova, (Yale: 2002).

⁴³ See Climate Action Tracker, <http://www.climateactiontracker.org/>, and WRI Insights, "Open Climate Network," <http://insights.wri.org/open-climate-network/> (accessed October, 2011).

⁴⁴ Commission for Environmental Cooperation, "Citizen Submissions on Enforcement Matters," http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=210&BL_ExpandID=156 (accessed October, 2011).

⁴⁵ CAFTA-DR Environmental Cooperation Program, "Secretariat for Environmental Matters," http://www.caftadr-environment.org/left_menu/secretariat.html (accessed October, 2011).

⁴⁶ L. Udall, "World Bank Inspection Panel," contributing paper to the World Commission on Dams, <http://www2.wii.gov.in/eianew/eia/dams%20and%20development/kbase/contrib/ins208.pdf>.

⁴⁷ UNFCCC. *Report of the Transitional Committee for the Design of the Green Climate Fund*, TC-4/3 18 October 2011.

