An international perspective:

Public participation according to international human rights & environmental law

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Stakeholders or rightholders?

Participation rather than engagement?
Relevant human rights-holders? → human rights dependent on the protection of the marine environment

• Everyone’s human right to health, food, water, culture
• Ocean-dependent indigenous peoples, communities and women
• Children’s human rights to life, health, development
  • The ocean provides half of the oxygen we breathe
  • The ocean absorbs 26% of greenhouse gas emissions from the atmosphere
  • Marine biodiversity provides multiple benefits to those that live on land

→relevant procedural rights (inter-linked dimensions of participation)

• Ensure affordable, effective and timely access to information
• Facilitate participation in decision-making, taking public views into account
• Integrate human rights in environmental impact assessments
• Provide access to effective remedies for violations of human rights and environmental laws by private and public actors (A/HRC/37/59)
• Safe and enabling environment for environmental human rights defenders (A/HRC/37/59)
Summary of relevant legal bases → UN Framework Principles on HRs and the Environment (A/HRC/37/59, 2018)

• Legal content of existing human rights obligations to protect against environmental harm

• “at a bare minimum” States should consider the Framework Principles “as best practices that they should move to adopt as expeditiously as possible”

• No unjustified, foreseeable infringements of human rights arising from biodiversity loss (A/HRC/34/49)
  • Potential public interventions that may infringe human rights dependent on marine ecosystems
  • States’ obligation to prevent business entities from violating these rights in the context of extractives

• They apply also to international cooperation

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States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

BBNJ negotiations should consider HRs – A/75/161
ISA Member States that are parties to the following global human rights treaties...

- 2030 Agenda is grounded in the Universal Declaration of Human Rights and international human rights treaties
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social and Cultural Rights
  - Convention on the Elimination of all Forms of Racial Discrimination
  - Convention on the Elimination of all Forms of Discrimination Against Women
  - Convention on the Rights of the Child
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
  - Convention on the Rights of Persons with Disabilities

- The implementation of Agenda 2030 must be consistent with States’ obligations under international human rights law (A/HRC/RES/37/24; A/HRC/RES/37/25)

**ISA’s Mandates**

Ensuring that activities in the Area are carried out for the benefit of mankind as a whole

Ensuring effective protection for the marine environment; and of human life

Promoting and encouraging the conduct of marine scientific research in the Area, and the effective participation of developing States in activities in the Area
Other relevant legal sources

• **UNDRIP Art 18**: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

• **ILO Convention No. 169, Art 6**: In applying the provisions of this Convention, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them. 2. The consultations...shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

• **Convention for the Safeguarding of the Intangible Cultural Heritage, Art 15**: Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.

• **Aarhus Convention, Art. 3(7)**: Parties should promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

• **Escazú Convention, Art 7(12)**: Each Party shall 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.
What does international human rights law say about participation?
9 States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process.

- **Open to all** members of the public who may be **affected**
- **Occur early** in decision-making process

- All relevant **information** made available in **objective, understandable, affordable, and timely** manner
  - Enabling people to understand how environmental harm may undermine their rights to life and health & support the exercise of participation rights
  - Opportunity to seek information **without the need to show a legal or other interest**
  - **Grounds for refusal should be set out clearly and construed narrowly**

- Give **adequate** opportunity for the public to **express views**
- Ensure that **relevant authorities take into account views**
- Explain the **justification** for decisions to the public
- Take **additional steps** to facilitate participation of **marginalized communities, women and children**
“Humankind”, future generations and children’s human rights (A/HRC/37/58)

Children-friendly information & participation

Consider children’s views on long-term environmental challenges that will shape the world they’ll spend their lives

“in all actions concerning children, the best interests of the child must be a primary consideration” → EIAs and precaution

Information on the environment should be made available to children in ways that they can understand.

Governments should speak to children and take their experiences and ideas into account when making decisions on the environment.

Governments must seek the views of children on matters affecting them and take them seriously – Article 12, UNCRC.
Needed adjustments to international processes
- eg, Aarhus Convention Almaty Guidelines

13. There may be a need to adapt and structure international processes and mechanisms in order to ensure meaningful and equitable international access.

14. In any structuring of international access, care should be taken to make or keep the processes open, in principle, to the public at large.

15. Where members of the public have differentiated capacity, resources, socio-cultural circumstances or economic or political influence, special measures should be taken to ensure a balanced and equitable process. Processes and mechanisms for international access should be designed to promote transparency, minimize inequality, avoid the exercise of undue economic or political influence, and facilitate the participation of those constituencies that are most directly affected and might not have the means for participation without encouragement and support.

17. Capacity-building may be important to facilitate international access for the public concerned, in particular NGOs promoting environmental protection, and especially in developing countries and in countries with economies in transition.

18. Enhancing international access may imply investment of resources. If necessary, resources should, in relevant cases, be made available in the appropriate form and according to modalities to be agreed upon in each international forum concerned, in order to facilitate meaningful and equitable international access.
The Ocean covers over 70% of our planet. It connects communities, countries and cultures in space and time.