

20 June 2019

Dear Mr. Chair,

I have the honour of writing to you on behalf of the Coordination Committee of Special Procedures (CC) in my capacity as its Chair. Civil society is a long-established partner for special procedures mandate holders at the national, regional or international level. My colleagues and I are convinced that their participation is crucial for the work of the United Nations (UN). The CC met with your predecessor last October and expressed its willingness to share its views on how to improve the participation of civil society in the work of the UN, including, in particular, within the context of the accreditation process of non-governmental organizations (NGOs) to ensure their full participation in the work of the UN. This letter therefore contains ideas and proposals that we hope will usefully feed the reflections of the Committee on Non-Governmental Organizations (Committee) and the UN Economic and Social Council (ECOSOC) on this important issue.

In its Resolution 1996/31, ECOSOC confirmed “the need to take into account the full diversity of non-governmental organizations” at all levels and acknowledged “the breath of [NGOs’] expertise and [their] capacity to support the work of the United Nations” before laying down the rules, aims and principles in establishing consultative relationships between the UN and NGOs. Since then, numerous Human Rights Council (HRC) and UN General Assembly resolutions<sup>1</sup> have further emphasized that the genuine, effective, meaningful, and active participation of NGOs is paramount to the proper functioning and integrity of UN bodies and mechanisms, in particular human rights mechanisms.

The Committee, which is mandated under ECOSOC Resolution 1996/31, among others, to recommend NGOs for ECOSOC status, regularly monitor the evolving relationship between the UN and NGOs, and propose the suspension of NGOs and the withdrawal of their status, plays a pivotal role for the entire UN system and for civic space. Indeed, NGOs must first obtain consultative status with ECOSOC to genuinely, effectively, meaningfully, and actively participate in several UN fora, including the Human Rights Council.

In this regard, ECOSOC Resolution 1996/31 sets forth clearly enumerated and exhaustive principles and criteria upon which the Committee must base its decision to

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<sup>1</sup> See, e.g., HRC Res 36/21 (2017), para. 1; HRC Res 32/31 (2016), paras. 10-11; HRC Res 27/31 (2014), paras. 12-13; HRC Res 24/24 (2013), para. 1; HRC Res 24/21 (2013), para. 5; UNGA Res 70/161 (2016), pmb., para. 7; UNGA Res 66/164 (2012), pmb., para. 8. See also HRC, “Procedures and practices in respect of civil society engagement with international and regional organizations – Report of the United Nations High Commissioner for Human Rights” (2018) UN Doc. A/HRC/38/18, para. 56 [hereinafter “A/HRC/38/18”].

Mr. Mohamed Sallam,  
Chair of the Committee on Non-Governmental Organizations

Cc: H.E. Mrs. Inga Rhonda King  
President of the ECOSOC

recommend granting consultative status to organizations. According to these criteria, among others, the organization's aims and purposes must be "in conformity with the spirit, purposes and principles of the Charter of the United Nations," and it must "undertake to support the work of the United Nations and to promote knowledge of its principles and activities ...".

We welcome the recent decision of ECOSOC to webcast the Committee's public sessions as an important step in improving civil society's access to the Committee's work and enhancing its transparency.<sup>2</sup> We also welcome the Committee's first-ever consultations, which are mandated by Resolution 1996/31, between the Committee and NGOs with consultative status held on 22 June 2018 to, among other things, obtain input from NGOs on how the accreditation process could be improved. We further commend the proposal of the Chair of the Committee during the Committee's May 2019 resumed session to convene informal consultations of the Committee to propose ways in which the Committee could respond to the invitation of the General Assembly to "accommodate effectively the growing number of applications of NGOs for consultative status".<sup>3</sup>

However, concerns raised by special procedures mandate holders, the Human Rights Council Advisory Committee, the Secretary-General, and the High Commissioner for Human Rights in various reports and communications<sup>4</sup> remain. A large and growing number of NGO applications for consultative status continue to be perceived as arbitrarily deferred based on politically motivated and repetitive questioning by Committee members, leading to an increasing backlog for the Committee and longer waiting times for NGOs. NGOs working to promote human rights, democracy and the rule of law are particularly affected by arbitrary deferrals, which, in some cases, amount to de facto rejections.<sup>5</sup> Some of them face insurmountable obstacles that appear to be arbitrary in the accreditation process, including unjustified delays, lack of transparency in the process, or obstruction. Other concerns include the absence of factually-based explanations either for continued questioning and deferral of some applications or for accusations of links to terrorism, the fact that NGOs seem to be deprived of the opportunity to respond to allegations against it in some cases, and the absence of grievance mechanisms with regard to the recommendations issued by the Committee.

Some experts have expressed that the continued arbitrary deferral of certain applications for consultative status undermines and unduly interferes with human rights guaranteed under both conventional and customary international law, namely, the rights to freedom of assembly and of association<sup>6</sup> and the rights to freedom of information and

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<sup>2</sup> ECOSOC Decision 2017/216 (2017).

<sup>3</sup> UNGA Res 72/305 (2018), para. 22

<sup>4</sup> UNGA, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association" (2014) UN Doc. A/69/365, paras. 74, 78, 80 [hereinafter "A/69/365"]; see also OTH 16/2016 (20 May 2016); OL OTH 5/2017 (5 April 2017); OL OTH 6/2017 (18 April 2017); OL OTH 29/2017 (4 January 2018); see also the annual reports of the Secretary-General entitled "Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights" presented to the HRC in UN Doc. A/HRC/39/41 (2018), paras. 20-24, 34, 84; UN Doc. A/HRC/36/31 (2018), para. 12; UN Doc. A/HRC/33/19 (2016), paras. 12-15; UN Doc. A/HRC/30/29 (2015), para. 9; UN Doc. A/HRC/27/38 (2014), paras. 4, 8; UN Doc. A/HRC/24/29 (2013), para. 11; UN Doc. A/HRC/21/18 (2012), para. 7; see also HRC Advisory Committee, "Study of the Human Rights Council Advisory Committee on the Enhancement of International Cooperation in the Field of Human Rights" (2012) UN Doc. A/HRC/19/74, para. 49; see also HRC Advisory Committee, "Preliminary Study on Enhancement of International Cooperation" (2014) UN Doc. A/HRC/AC/12/CRP.2, paras. 6-8.

<sup>5</sup> A/HRC/38/18, *supra* note 1, paras. 2, 20-21.

<sup>6</sup> ICCPR, Arts. 21-22; UDHR, Art. 20; CERD, Art. 5(d)(ix); CRC, Art. 15; ECHR, Art. 11; ACPHR, Arts. 10 and 11; ACHR, Arts. 15 and 16; Arab Charter on Human Rights, Art. 28.

expression.<sup>7</sup> In addition, some deferrals also appear to constitute reprisals against NGOs in response to their cooperation with the UN in the field of human rights. The use of NGO activities and criticism against Member States at the Human Rights Council as a ground for not granting consultative status, which is not a ground permitted under ECOSOC Resolution 1996/31, is disconcerting.

In line with the reviewing of the working methods and practices of the Committee, we would like to recall that in order to help alleviate some of the concerns highlighted above, it is important to bear in mind that any review “should be guided by the principle that the United Nations functions best when it is accessible to the greatest diversity of voices possible.”<sup>8</sup> We therefore respectfully submit the following proposals and recommendations to ECOSOC and the Committee for their consideration, a number of which have been drawn from proposals by diverse stakeholders, including other UN bodies, who have engaged with the Committee on this issue over the last years:

- **To ECOSOC:**
  - Strengthen its oversight and coordination role with the Committee by:
    - Ensuring the Committee’s practices and procedures fully comply with international human rights standards as well as the principles, spirit, and purpose of Resolution 1996/31 and the Charter of the United Nations,
    - Reviewing and rejecting its recommendations to defer applications in cases where there are no objectively good reasons for the continued deferral, and
    - Directly intervening in support of NGOs whose applications have been deferred for several years;
  - Ensure that the Committee fairly, transparently, and expeditiously assesses applications for consultative status in an apolitical and non-discriminatory manner by, for example, clearly reasserting and explaining the objective criteria it must use to assess applications and by requiring it to justify its decisions, preferably in writing, with regard to deferrals extending beyond three years and all denials of consultative status;
  - Create independent grant schemes that fund the participation of civil society organizations to promote and increase the diversity of such organizations in UN fora;
  - Consider expanding the membership of the Committee and promoting membership rotation in order to increase participation, inclusiveness, and diversity;
  - Study the possibility of establishing a new accreditation system and process, such as a tripartite model similar to the model adopted at the International Labour Organization or an independent expert body;
  - Consider instituting a mechanism to expedite applications for consultative status to civil society organizations that have been cooperating with UN bodies and mechanisms for the past five years;

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<sup>7</sup> ICCPR, Art. 19; UDHR, Art. 19; CERD, Art. 5(d)(viii); CRC, Arts. 13 and 15; ECHR, Art. 10; ACPHR, Art. 9; ACHR, Art. 13; see also OL OTH 29/2017, p. 3.

<sup>8</sup> A/69/365, *supra* note 4, para. 88(a)

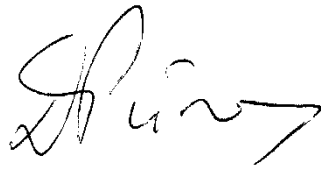
- Establish accountability and grievance mechanisms, including an expeditious process to reconsider any erroneous or arbitrary decisions deferring or denying applications for consultative status by the Committee;
  - Impose a limit on the number of times an application can be deferred, after which ECOSOC can then decide whether an application for consultative status should be approved or denied.
- To the **Committee on NGOs**:
    - Institute safeguards against arbitrary delays, deferrals or denials of consultative status by, among other things:
      - developing clear, transparent, and publicly available objective eligibility criteria for obtaining consultative status on which applications are to be assessed based on the principles and criteria contained in Resolution 1996/31,
      - ensuring that all applications for consultative status are considered in a fair, transparent, non-discriminatory, and timely manner in accordance with Resolution 1996/31 and that its criteria are uniformly applied with a view towards upholding the rights to freedoms of expression and association, and
      - preventing perpetual deferral of applications for status with repetitive and/or irrelevant questioning and requests for documentation by, for example, allowing the Chair to engage the Committee in an in depth review of long differed applications and to require States to justify the relevance of their questions or requests for additional documents;
    - Review the Committee's working methods and practices with a view to making them more efficient, effective, and transparent in line with GA resolution 72/305, including, in particular, to reduce the cost and time associated with applying for consultative status;
    - Continue enhancing the use of information technology, including by allowing NGOs to participate in the Committee's Q&A sessions via videoconferencing, to foster and increase the participation of, among others, NGOs from developing countries;
    - Regularly hold and report on consultations with organizations with consultative status, as mandated in paragraph 61(a) of Resolution 1996/31;
    - Develop additional training materials, webinars, guidelines, and/or an application webpage with frequently asked questions (FAQs) that are clear and user-friendly to assist NGOs with their applications for consultative status;
    - Ensure that all NGOs are provided with the right to respond to objections to their applications and allegations lodged against them during the application process before it takes a decision on suspensions and withdrawals as expressly required by paragraph 15 of Resolution 1996/31;

We support the process to improve the Committee's working methods and practices as we consider it is essential to promote a safe, transparent, and enabling environment in order to ensure that civil society organizations can effectively access and contribute to various UN fora, which is crucial to enable the UN to fulfil its mandate. We would also like to recall that accreditation "should be seen as a cooperative agreement entailing rights and

responsibilities”.<sup>9</sup> We therefore express the hope that the abovementioned suggestions will help the Committee to continue to fulfil its ever-important role as the key gateway to enhanced civil society participation in the UN system.

We thank the Committee on NGOs, ECOSOC, and Member States in advance for their timely consideration of the concerns and suggestions outlined above. We would also highly appreciate it if this letter could be circulated to the Members of the Committee on NGOs and be shared with the Bureau of ECOSOC with a view to engage a discussion on the matter. This letter will also be made available on the website of the CC.

With my highest consideration,

A handwritten signature in black ink, appearing to read 'D Puras', with a long horizontal stroke extending to the right.

Dainius Puras  
Chair of the Coordination Committee of the Special Procedures

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<sup>9</sup> UNGA, “We the Peoples: Civil Society, the United Nations and Global Governance – Report of the Panel of Eminent Persons on United Nations-Civil Society Relations” (2004) UN Doc. A/58/817, p. 11.