Input of the International Justice Resource Center to the Report of High Commissioner: "Civil society space in multilateral institutions"

The International Justice Resource Center (IJRC) submits the summary input below in response to the invitation from the Office of the United Nations High Commissioner for Human Rights, in which it requested civil society and other stakeholder contributions for the forthcoming report of the High Commissioner for Human Rights, pursuant to Human Rights Council resolution 32/31, on civil society space. IJRC's contribution aims to provide some of our most pertinent observations with regard to supranational human rights bodies' practices that facilitate or hinder civil society participation in their activities and procedures. We submit this input with the caveat that IJRC is currently undertaking a study regarding civil society interaction with human rights bodies and intergovernmental institutions, which may yield additional examples, reflections, and conclusions that go beyond our *ad hoc* observations to date.

While we have not necessarily observed a shrinking of civil society space in the supranational human rights realm, as more and more organizations and victims seek to engage with regional and universal human rights oversight bodies, the existing constraints and limitations become more aggravated and consequential. Additionally, while advances have been made in many aspects, it is clear that human rights bodies can do much more to facilitate civil society engagement and that some systems are significantly less hospitable than others.

Our observations are organized around six themes that, in our view, are critical to understanding civil society engagement with regional and universal human rights bodies.

Timing

The timing of human rights bodies' work affects civil society engagement in at least two important ways. First, the length or duration of proceedings is a key factor for advocates (and their clients or constituents) in deciding whether to engage with a particular human rights body or process. If an individual complaint will likely not be decided for eight or more years, this reduces the likelihood of civil society engagement and, when advocates do decide to pursue a complaint, introduces significant risk that the civil society organization or individual victim will lose interest, lose contact, or run out of the time or resources necessary to see the process through to completion. For example, IJRC's review of the most recent merits decisions published by the Inter-American Commission on Human Rights and African Commission on Human and Peoples' Rights indicates that the average victim waits more than 11 years and 6 years, respectively, for a merits decision. It should be noted that the United Nations human rights treaty bodies, which have simpler complaints processes, generally decide complaints more quickly.

International Justice Resource Center
5 3rd Street, Suite 707, San Francisco, CA 94103
(415) 735-4180
ijrc@ijrcenter.org

Second, the timing of human rights bodies' activities and, specifically, how much advance notice civil society is given about those activities, can be one of the primary obstacles to civil society participation. For example, the Inter-American Commission on Human Rights' Rules of Procedure dictate that it must usually provide one month's notice to civil society organizations and others called to participate in its public hearings. In practice, the Inter-American Commission does not provide more advance notice than the minimum period its rules require. One month is not a long time for organizations to prepare their presentations, coordinate related advocacy or media coverage, secure visas, or arrange their travel and accommodation.

Transparency

In a similar vein, the transparency or opacity of human rights bodies' activities affects civil society participation.

We see several obstacles to civil society participation, generally – and exclusion of newcomer organizations and those that lack personal relationships with human rights bodies' staff, in particular – in the following practices:

- Failure to publish information online
- Inaccurate or incomplete information on institutional websites
- Lack of clarity around who to contact for information
- Missing or unclear information about how to participate

Too often, access to accurate and timely information about human rights bodies' proceedings depends on personal relationships with the staff members who support these bodies' work. Requests for information sent through formal channels (such as the institutional email address) may go unanswered or leave the sender without a sense of when to expect a response or from whom. Details such as the current priorities, workload, planned activities, and staffing changes or reorganization are not shared publicly. However, advocates with personal connections can obtain this information through informal channels.

An example of a positive development in this regard is the Inter-American Commission on Human Rights' new online user portal, which allows victims and petitioners to access information about the status of their complaints and update their contact details.

A discouraging example is the African Commission on Human and Peoples' Rights' failure over the last several years to publish all the merits decisions it has adopted. Similarly, it has not agreed to civil society's recommendation that the Commission indicate which individual complaints will be under consideration during each of its sessions. The United Nations human rights treaty bodies do not consistently provide this information in advance of their sessions either.

Another example within the United Nations system of inaccurate or incomplete information is the multiple, conflicting sources of information on upcoming country visits by special procedure mandate holders. Depending whether one looks on the main OHCHR calendar, the individual mandate's official website, social media, or the mandate holder's unofficial website, different information is provided. Old and outdated webpages are still live within the OHCHR web presence (e.g., compare http://www.ohchr.org/EN/HRBodies/SP/Pages/Forthcomingcountryvisits.aspx with http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/Forthcomingcountryvisits.aspx and http://www.ohchr.org/EN/HRBodies/SP/Pages/Pressreleasesvisits.aspx).

Resources & Accessibility

The cost and other practical demands of participation are a major barrier to civil society engagement with human rights bodies. In-person participation is often the only option (as in the hearings of the regional human rights bodies). Moreover, while some bodies have opened up opportunities for civil society members to watch or even participate in their proceedings online, these tools do not yet provide for a full experience. Advocates participating remotely or digitally miss out on opportunities that only arise when one is physically present and able to attend side events and take advantage of informal opportunities to engage in advocacy, networking, relationship building, and learning opportunities.

However, the barriers to in-person participation can be prohibitive. Travel and other costs of attendance are high, particularly when sessions are held in expensive cities like New York and Geneva. The geographical distance and lack of convenient travel options – such as in the journey to Banjul, The Gambia for the African Commission's sessions – impede participation because they require additional time and expense to reach. A positive example of an attempt to help advocates overcome these costs is the African Center for Democracy and Human Rights Studies (ACDHRS) scholarship program for participants in trainings that precede the African Commission sessions. The African and Inter-American human rights bodies also manage legal aid funds to help offset the costs of litigating cases before them (although funds are not available for other types of advocacy or participation).

On a related note, it is the practice of some human rights bodies to exclude discussion of the host country's human rights situation when holding extraordinary sessions in that country. The Inter-American Commission on Human Rights, for example, generally does not hold any public hearings concerning the host country when it convenes away from its Washington, D.C. headquarters. This has the effect of significantly reducing the opportunities local advocates might otherwise have to directly (and at low cost) engage with the Commission and its work.

Translation is another critical concern, although progress has been made recently. Across the UN and regional human rights bodies, translation for most public activities remains limited to a short list of languages; this may be necessary, given logistical and cost concerns. However, in some instances, translation is not provided at all. For example, the Inter-American Commission on Human Rights conducts routinely conducts a portion of its hearings in Spanish only, without any translation to other languages. Its website, and the documents it contains, are only fully

available in English and Spanish (and not Portuguese and French, the other official languages of the Organization of American States.)

Finally, persons with disabilities face particular barriers to participation as civil society representatives. As just one example, sign language interpretation is not ordinarily provided. Similarly, human rights bodies' materials are typically not made available in formats or versions that make them more accessible to persons with intellectual disabilities.

Especially when taken together, and in light of the importance of personal relationships between advocates and human rights bodies' staff for securing access and information, these obstacles privilege longstanding civil society actors (including larger and well-funded organizations) and perpetuate the exclusion of small, new, grassroots, marginalized, or non-mainstream organizations, including those headquartered in the Global South.

Safety, Privacy, and Reprisals

Many organizations and other actors have documented, and raised concerns regarding, the personal safety and security of human rights defenders generally, including those who engage with supranational human rights bodies. This situation is well known to the Office of the High Commissioner.

Hostility from Human Rights Bodies

The members who comprise human rights bodies may themselves hinder civil society participation by virtue of their own prejudices, preferences, and viewpoints. For example, former Vice-chairperson of the African Commissioner Bechir Khalfallah referred to homosexuality as a "virus" and the new Chairperson Soyata Maiga took the unusual step of instructing a representative of the Coalition of African Lesbians (CAL) to "be respectful" following the representative's (objectively calm and reasonable) presentation at the November 2017 session of the Commission. The hostility of some members of the African Commission towards LGBTI rights groups has had a real impact on those groups' willingness and ability to engage with the African Commission, including with regard to the controversy of CAL's observer status.

Hostility from Other Civil Society Members

Finally, in some fora, civil society space has been shrinking due to the encroachment of what may be referred to as "anti-rights groups" or of government-organized non-governmental organizations, and institutions' failure to address the situation. For example, at the General Assembly of the Organization of American States, there have been physical altercations between members of civil society, with some groups (generally, with regressive agendas) attempting to intimidate or obstruct others.

The International Justice Resource Center thanks the Office of the High Commissioner for this opportunity to provide input, and looks forward to the forthcoming report.