

**Submission to report of High Commissioner
on Civil society space in multilateral
institutions:**

**Existing Interaction, Challenges,
Good Practice & Recommendations**

October 2017

Tess McEvoy and Juli King

International Service for Human Rights

e: t.mcevoy@ishr.ch

w: www.ishr.ch

ABOUT THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS

The International Service for Human Rights is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

Follow us

Facebook www.facebook.com/ISHRGlobal

Twitter www.twitter.com/ISHRGlobal

YouTube www.youtube.com/ISHRGlobal

COPYRIGHT © 2017 INTERNATIONAL SERVICE FOR HUMAN RIGHTS

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. Please notify us of any errors or corrections: information@ishr.ch.

Table of Contents

- A. CONTRIBUTION OF CIVIL SOCIETY TO HUMAN RIGHTS MECHANISMS..... 4**
- B. ENGAGEMENT OF CIVIL SOCIETY WITH UN MECHANISMS 4**
 - 1. COMMITTEE ON NON-GOVERNMENTAL ORGANISATIONS 4
 - 2. THIRD COMMITTEE OF THE GENERAL ASSEMBLY..... 5
 - 3. HUMAN RIGHTS COUNCIL 6
 - 4. UNIVERSAL PERIODIC REVIEW 7
 - 5. SPECIAL PROCEDURES 8
 - 6. TREATY BODIES 8
 - 7. AFRICAN COMMISSION 9
- C. CHALLENGES ACROSS MECHANISMS..... 10**
- D. RECOMMENDATIONS..... 11**

A. CONTRIBUTION OF CIVIL SOCIETY TO HUMAN RIGHTS MECHANISMS

Civil society's role is central and vital to the work of the United Nations (UN). This has been acknowledged in various General Assembly and Human Rights Council resolutions on civil society and human rights defenders,¹ as well as by States during discussions of UN human rights mechanisms.²

Former Secretary-General Ban Ki-moon highlighted that 'civil society is an indispensable partner of the United Nations'. The current Secretary-General, Antonio Guterres, has reiterated this commitment, noting civil society's critical role in the success of the Sustainable Development Goals.³ The 2015 Human Rights Council President, Joachim Rucker, described civil society's role at the UN as 'a mirror of realities on the ground', as fundamental to the Council's work and as 'at the core of human rights'. Eric Tistoune, Chief of the Human Rights Council Branch of the Office of the High Commissioner (OHCHR) for Human Rights and former Secretary of the Human Rights Council, also emphasised the critical role civil society plays, observing that non-governmental organisations 'expose in an honest and direct manner human rights violations as they may unfold anywhere in the world'.⁴

In addition to being indispensable, civil society participation in the work of the UN is a right enshrined in international human rights instruments and a fundamental aspect of the rights to freedom of expression and freedom of association.⁵

Despite this, the global crackdown on and challenges faced by civil society and human rights defenders remains a critical and worsening issue, both globally and within the UN system. Several calls have been made to States and UN bodies to put an end to attacks and harassment against defenders and refrain from imposing restrictions that severely affect their work.⁶

The High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, urged regional and UN human rights mechanisms to improve 'the ways civil society can participate in our policy development and decision-making processes, including timely and extensive access to information'.⁷ In an earlier statement, the High Commissioner noted with concern that member States appeared to attempt to prevent civil society from working with UN human rights mechanisms, taking steps to bar them from receiving accreditation.⁸

This submission responds to the call for information on civil society engagement with international and regional human rights mechanisms by laying out existing interaction, best practices and challenges for civil society in engaging. It also makes recommendations to improve genuine and effective participation of civil society which will ultimately improve the functioning of the UN system and the protection of human rights on the ground.

B. ENGAGEMENT OF CIVIL SOCIETY WITH UN MECHANISMS

1. COMMITTEE ON NON-GOVERNMENTAL ORGANISATIONS

The Economic and Social Council's (ECOSOC) Committee on Non-Governmental Organisations (NGO Committee)

¹ GA Res 53/144; GA Res 65/281; GA Res 66/164; GA Res 68/181; GA Res 70/161; HRC Res 7/8; HRC Res 12/2; HRC Res 13/13; HRC Res 16/5; HRC Res 18/18; HRC Res 22/6; HRC Res 24/24; HRC Res 25/18; HRC Res 27/31; HRC Res 31/32; HRC Res 32/L.29

² <http://www.ishr.ch/news/states-call-protection-civil-society-space-and-media-freedom-live-tweet-coverage-high-level>

³ <https://www.un.org/development/desa/en/news/ecosoc/civil-society-engagement-for-sdgs.html>

⁴ <http://www.ishr.ch/news/ten-years-short-play-intermissions-opera-without-pause>

⁵ See, e.g., The Universal Declaration on Human Rights (Articles 13, 19, 20), the International Covenant on Civil and Political Rights (Articles 12, 19, 22), the International Covenant on Economic, Social and Cultural Rights (Article 8, Optional Protocol Article 13), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(i), (viii)), the Convention on the Elimination of All Forms of Discrimination against Women (Article 7, Optional Protocol Article 11), the Convention on the Rights of the Child (Article 13), the European Convention on Human Rights (Articles 10, 11, Article 2 to Protocol No 4), the African Charter on Human and Peoples' Rights (Articles 9, 10, 12), the American Convention on Human Rights (Articles 13, 16, 22), the Arab Charter on Human Rights (Article 28), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 13, Optional Protocol Article 15), the Convention No 87 on Freedom of Association and Protection of the Right to Organise of the International Labour Organisation (Article 2); and UNGA Resolution 53/144 on the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 8 March 1999, UN Doc A/RES/53/144, Annex, Articles 5, 6.

⁶ <http://www.ishr.ch/news/high-commissioner-2017-pivotal-year-international-human-rights-and-rule-law>

⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20634&LangID=E>

⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414>

is the first port of call for non-governmental organisations (NGOs) within the UN. NGOs can engage with the NGO Committee at two stages: 1) the accreditation process; and 2) consultations in NGO Committee sessions.

The NGO Committee accredits NGOs with status as an ‘observer’, which facilitates civil society cooperation with ECOSOC and its subsidiary bodies. Without accreditation, NGOs have only restricted access to UN human rights mechanisms, which limits NGO’s abilities to advocate for human rights situations on the ground.

Each accredited organisation can themselves designate a certain number of people as representatives to attend sessions of UN mechanisms, including the Third Committee of the General Assembly, the Human Rights Council and treaty body sessions. Regrettably, some States have argued for the restriction of certain rights of civil society, specifically regarding such accreditation.

The NGO accreditation process has been criticised for being unfair, subject to undue delay, informed by political interests, and lacking transparency. NGOs working in the field of human rights, particularly in relation to women’s rights, minority rights, sexual and reproductive health rights, LGBTI rights, and in relation to certain countries, are particularly likely to face delays and barriers to accreditation. Recent NGO Committee recommendations include, for example, the deferral, for the 10th year, of the application of the International Dalit Solidarity Network despite its willingness to respond to requests for information. Receiving a deferral means an NGO must wait until the next Committee session for a decision on whether it will be recommended for accreditation. In preparatory stages of NGO Committee meetings, States may object to NGO applications. Unfortunately, NGOs are frequently not informed of a State’s objection or provided an opportunity to respond to such an objection.

The NGO Committee is also supposed to regularly monitor the relationship between NGOs and the UN through consultations.⁹ Unfortunately, to our knowledge, the NGO Committee has never held such consultations. This means there is no opportunity to discuss relevant issues and concerns relating to the relationship between NGOs and the UN. As a result, NGOs have sought alternative routes to voice their concerns on the processes of the NGO Committee, such as seeking to address the Committee at the start of its session. This was permitted once in 2016 but the NGO Committee has refused all such requests since.¹⁰ In response, NGOs have voiced their concerns in a letter to the ECOSOC Bureau and its membership calling on it to ensure the NGO Committee, as its subsidiary body, fulfils its responsibility to meet with accredited NGOs. The failure to hold consultations was referenced by Uruguay on behalf of a cross regional group of States and Estonia on behalf of the EU at the July 2017 ECOSOC Coordination and Management Meeting.¹¹

2. THIRD COMMITTEE OF THE GENERAL ASSEMBLY

Currently, accredited NGOs have little formal interaction with the Third Committee.¹² NGOs cannot make written submissions, oral interventions, or organise side events without States. This lack of formal interaction of NGOs at the Third Committee is inconsistent with the encouragement of civil society participation at the Human Rights Council and, to some extent, in other General Assembly main committees, such as the First Committee (Disarmament and International Security) or the Second Committee (Economic and Financial). As a result of the lack of formal engagement, less NGOs attend Third Committee sessions than Human Rights Council sessions.

Notwithstanding these limitations, NGOs can engage informally with the Third Committee by: 1) lobbying States on resolutions seeking the inclusion of particular language; 2) lobbying States to engage in debates and interactive dialogues on particular issues; 3) hosting side events, with State support; and 4) engaging with human rights experts, such as Special Procedures and Treaty Body representatives when they report to the Third Committee.

⁹ ECOSOC Resolution 1996/31

¹⁰ <http://www.ishr.ch/news/ecosoc-ngos-call-ecosoc-ensure-ngo-committee-protects-civil-society-engagement>

¹¹ <http://www.ishr.ch/news/ngo-committee-ecosoc-member-states-call-committee-consult-and-meet-ngos>

¹² https://www.ishr.ch/sites/default/files/documents/ishr_3rd_com_handbook_eng_web.pdf

States often look to NGOs for expertise on issues and support of initiatives where priorities align. For example, States may accept suggestions on specific language or content in respect of resolutions they are leading at the Third Committee. This applies equally to statements made by States during debates and interactive dialogues.

Side events are a useful tool for trying to influence the agenda of the Third Committee and inspire representatives to engage more actively in negotiations. However, as mentioned above, NGOs cannot directly organise a side event without a State sponsor who must liaise directly with the Secretariat in organising the event.

3. HUMAN RIGHTS COUNCIL

The Human Rights Council is regarded as one of the most accessible UN bodies for civil society, despite increasing political and practical restrictions. The current interaction of civil society with the Council is based on Resolution 60/151, which notes that participation of and consultation with observers should ensure ‘the most effective contribution of these entities’.¹³ As ‘observers’, NGOs play a vital role, including putting issues on the Council’s agenda, providing vital information about situations on the ground, giving voices to rights holders and victims, and assisting with implementation and monitoring of decisions and resolutions.

NGOs have, for example, played a key role in pushing the Human Rights Council and its members to conduct an inquiry into alleged war crimes and crimes against humanity in Sri Lanka. Following the mandate of the independent international inquiry mechanism, NGOs provided support to victims, their families and witnesses.¹⁴ They played a similar role in pushing for a commission of inquiry into the Democratic People’s Republic of Korea, enabling victims to give the Council a first-hand account of the atrocities witnessed and experienced. Ultimately, this led to a referral of the human rights situation to the UN Security Council.

Civil society can engage at the Human Rights Council by: 1) attending sessions; 2) submitting written statements; 3) making oral statements; 4) holding side events; 5) participating in informal negotiations of resolutions; and 6) lobbying States to engage in debates and interactive dialogues on particular issues (discussed above in relation to the Third Committee, see 22 above).

NGOs may attend Council sessions, provided they are an accredited NGO or a designated representative of such an NGO (see discussion in 1 above). In this regard, the recent change made to the system of requesting and obtaining civil society access badges for the Human Rights Council should be monitored and evaluated closely as there are risks that may present new challenges in terms of accessibility.

NGO observer representatives face practical restrictions. They are required to pass through security screening before entering room XX where Council sessions run. When room XX is at capacity, civil society observers are turned away. State observers do not face these restrictions. Further, there is a lack of seating for NGOs in room XX, in fact available seating for NGO observers has gradually declined, with only 2 seats now reserved for NGOs.

Accredited NGOs can make statements under all of the Council’s agenda items. However, these statements are routinely interrupted by a handful of States through ‘points of order’, either questioning the relevance of the statement or the accreditation of the speaker. With some exceptions, these points of order have been dealt with efficiently, meaning that civil society speakers were able to continue making their statement.

Civil society organisations also face challenges in the prioritisation of interaction. During interactive dialogues with Special Procedures, NGOs speak at the end of the debate, which means mandate holders sometimes cannot respond due to time restraints. In fact, it is not uncommon for NGO statements to be made to a room in which State delegates and mandate holders have left. An increasingly crowded and busy Council agenda has led to pressure on time allocation for oral statements, which has meant time limitations for NGOs has decreased, along with attention to competing human rights issues and priorities.

¹³ General Assembly Resolution 60/151, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/151.

¹⁴ A/HRC/25/23

During Council sessions, NGOs can hold side events, which are crucial elements of sessions. Some States have argued for further regulation of these side events, requesting ‘guidelines for the approval of side events’.

4. UNIVERSAL PERIODIC REVIEW

Civil society plays an essential role in the Universal Periodic Review (UPR) by providing information to be considered during the review and working towards implementation of recommendations. The peer review nature of the UPR means civil society input is even more important as it ensures that recommendations made by States are informed by the actual situation on the ground. Specifically, NGOs can engage with the UPR by: 1) participating in the national consultations held by the State under review; 2) providing information on the human rights situation in the country; 3) lobbying States to make recommendations to the State under review 4) attending the Working Group sessions; 5) making statements at the Human Rights Council during the adoption of the report (accredited NGOs only); and 6) monitoring and contributing to the implementation of recommendations by the State.

Prior to the UPR of a State, it is encouraged to hold a national consultation with all relevant stakeholders in which NGOs can participate, playing a critical role. However, numerous States do not hold these consultations.¹⁵

All civil society actors can submit information to the UPR review of a country, regardless of their accreditation status. These submissions feed into the final stakeholder summary report produced by OHCHR and inform recommending States. While all NGO submissions are available online, due to practical restrictions, not all issues from submissions are included in the final stakeholder summary report. Additionally, submissions must be made in one of the UN official languages, preferably in English, French, or Spanish, limiting the ability of NGOs to submit a report in their national or native language.¹⁶

Ideally, civil society submissions contain specific recommendations that can be made by recommending States as part of the official UPR process. This represents a vital opportunity to contribute to the formation and elaboration of recommendations made to States under review. Lobbying is crucial for this to happen. In a move to increase civil society access and engagement at the UN, the international NGO UPR Info organises ‘pre-sessions’ in Geneva. During these one-hour panel discussions NGOs make brief presentations to recommending States, increasing dialogue between these States and NGOs. However, States often send interns or junior representatives to these meetings, limiting opportunities for effective engagement.

Accredited civil society organisations may attend the formal UPR Working Group review sessions; however, they can only observe and cannot make statements or participate in the session.

The report of the review by the Working Group is adopted at Human Rights Council sessions, during which accredited NGOs can attend and make statements. In a positive development, NGOs can make statements by video if the NGO has been involved in the national process or sent a contribution for the summary stakeholder report. However, to do so, the organisation cannot have an office or representative in Geneva and cannot have individuals accredited for the session of the Council.

While not regulated by UN procedures, NGOs have an important role to play during the implementation phase. NGOs can make recommendations and State pledges public, monitor implementation, engage in dialogue with the State to participate in implementation and report to the Council on the progress by publishing a mid-term report or making a statement at any general debate. However, as with all public advocacy this carries with it risks (discussed in C below). The extent to which this involves engagement with the State depends on how open and willing the State is. The recent move in the third cycle of the UPRs to focus on implementation further enhances the critical role of civil society.

¹⁵ http://nhri.ohchr.org/EN/IHRS/UPR/Documents/RoadMap_en_16.09.09.pdf

¹⁶ http://nhri.ohchr.org/EN/IHRS/UPR/Documents/RoadMap_en_16.09.09.pdf

5. SPECIAL PROCEDURES

Civil society frequently cites Special Procedures as the most responsive, rapidly reacting and effective of the UN human rights mechanisms. Civil society engages with Special Procedures in four main areas: 1) thematic reports; 2) country visits; 3) communications; and 4) follow-ups.

Civil society submits information for Special Procedures' thematic reports, which represent a crucial opportunity to contribute to the formation and elaboration of international human rights standards. However, not all mandate holders consistently offer the opportunity to submit information to thematic reports and calls are often published with short notice and are not widely disseminated. This means civil society organisations have limited opportunity to engage. Furthermore, only some Special Procedures publish information submitted by civil society, reducing civil society's visibility within the UN system.

After country visits are agreed, civil society submits information before, during and after the visits to assist Special Procedures to gain an understanding of areas of concern and identify key actors and locations to visit. While some Special Procedures have developed a practice of announcing country visit invitation requests and providing information on the status of State responses, not all do so. Although the information provided on country visits in the Annual Report and 'Facts & Figures' document, country visits [website](#), is welcome, the information is not easily accessible nor is it fully updated with information on the specific country visit. Additionally, the lack of resources provided to Special Procedures limits the number of official country visits they can undertake in a year.

Similar to calls for contributions to thematic reports, country visits are often announced with short notice and are not widely disseminated, severely limiting civil society's ability to engage. The lack of resources discussed earlier also limits the locations in a country Special Procedures can visit, placing a great burden on civil society to shed light on situations in more rural areas and among marginalised communities, as well as limiting the range of civil society representatives with whom mandate holders can directly interact.

Civil society engages with the communications procedure by sharing information on actual and potential human rights violations and requesting action by mandate holders. Security is an issue in submitting such information, which deters civil society from sharing it. Additionally, those who submit information are not kept informed of whether the Special Procedure has decided to act on a situation and must wait until the relevant Joint Communications Report has been published, meaning some wait for at least six months, which in some cases can simply confirm that no action has been taken. This is too late for civil society to leverage action and encourage a constructive State response. Where a State has responded in a language other than English, French or Spanish, its reply only becomes available once there has been an official translation, which means waits of up to nine months for some languages before the reply is included in the Joint Communications Report.

Civil society plays an integral role in follow-up to and implementation of recommendations and has worked with mandate holders to find innovative solutions for this stage of Special Procedures' mandates.

6. TREATY BODIES

Engaging with treaty bodies has proved to be 'an effective way for civil society to contribute to the implementation of human rights and the development of human rights measures'.¹⁷ Civil society can engage in the following treaty body processes: 1) consideration of State reports; 2) individual communications; and 3) submission of information to other procedures (inquiry, early warning/urgent action, elaboration of General Comments, participation in Days of General Discussion, and so on).¹⁸

Generally, Treaty Bodies have adopted good practices and working methods that enable civil society participation and do not require ECOSOC accreditation. However, treaty body reviews are unpredictable compared to other

¹⁷ http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

¹⁸ http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

mechanisms as the timing relies on State submission of reports on time; therefore, it is difficult for civil society to know exactly when a country will be reviewed.¹⁹

Within the consideration of reports, civil society can participate in the national consultations on the drafting of the State report. Unfortunately, not all States make an effort to include NGOs in national consultations and often NGO views are excluded from State reports. NGOs can also submit reports to treaty bodies at three stages of the State review: 1) prior to the adoption of a List of Issues (LoI), to inform the LoI; 2) after the adoption of the LoI, before the actual State review; 3) after the review, to inform the treaty bodies' assessment of the State compliance with concluding observations.

In a welcome development, reports now only need to be submitted electronically and no longer in a hard copy.²⁰

Registered NGOs can also attend the treaty body review sessions. General Assembly Resolution 68/268 required that treaty body sessions be webcast so those NGOs not able to travel to Geneva can observe the reviews. While civil society cannot participate in the formal dialogue between States and treaty bodies, all treaty bodies enable NGOs to address them, often through a combination of both formal and informal briefings held prior to the reviews in Geneva. However, the challenge with this are the differing formats of civil society engagement. For instance, the Human Rights Committee dedicates only minimal time to formal meetings with NGOs (approximately 5 minutes for a maximum of 3 NGOs), while others, such as the Committee on the Rights of the Child, provide entire pre-sessions to meeting with NGOs (at least 15 minutes for all participating NGOs). However, one challenge is the differing formats of civil society engagement. For instance, the Committee on the Rights of the Child provides entire meetings, called 'pre-sessions' dedicated to dialogue with NGOs. While the Human Rights Committee dedicates less time to formal meetings with NGOs, meeting NGOs as part of Committee sessions during which 3-5 NGOs can take the floor, generally for a maximum of 5 minutes each.

The individual complaint process allows NGOs to assist a victim submitting a complaint or to submit a complaint on the victim's behalf. Some treaty bodies, such as the Human Rights Committee, Committee on the Rights of Persons with Disabilities, and the Committee on Economic, Social and Cultural Rights publish lists of cases pending review, facilitating third party intervention. The Committee on Economic, Social and Cultural Rights has even adopted a policy for third party interventions, which is a great step forward for civil society to provide inputs to treaty body case law. Unfortunately, many treaty bodies do not have clear policies on third party interventions and lists of pending cases are not publicly available or regularly updated, limiting civil society engagement.

7. AFRICAN COMMISSION

Civil society can engage with the African Commission by: 1) attending public sessions; 2) making statements and suggesting agenda items during the session; 3) holding side events; 4) meeting with Commissioners on the side lines of the session; 5) participating in the NGO Forum; and 6) attending 'extra sessions' where invited.

The African Commission holds public sessions twice a year. Attendance at these sessions is quite open. Any civil society representative can apply for a badge and attend these sessions. Generally, all applications are successful.

However, participation beyond attendance is more limited. An NGO must have observer status with the Commission to make a statement or suggest agenda items during a public session. To obtain observer status an NGO must apply to the Commission, including providing a report on the NGO's activities, funding statements, the organisations' bylaws, as well as proof of registration within the home country. The Commission does acknowledge that registration in certain restrictive environments may not be possible, in which case an NGO can provide evidence of restrictive national policies regarding registration that would be taken into consideration. The process of obtaining observer status is public. This means States can voice objections. However, the decision to grant observer status lies with the Commission. While positive in certain instances, this has drawbacks as the

¹⁹ <http://www.ishr.ch/news/un-seize-crucial-opportunity-further-strengthen-treaty-bodies>

²⁰ http://www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf

Secretariat often fails to communicate a decision with NGOs in a timely manner. As a result, many NGOs are unaware of the status of their application for a substantial period of time.

Civil society may also organise and hold side events during the public sessions whether accredited or not.

As in the Third Committee of the General Assembly and the UN Human Rights Council, civil society can directly lobby State representatives (as discussed above at 2).

Prior to each public session of the Commission, an NGO Forum is held. Any NGO, whether it has observer status or not, can participate in the NGO Forum, so long as it registers with the ACHPR Secretariat. This is an opportunity for NGOs to present and discuss their issues and objectives and get support from the rest of civil society. Because of the special status of the Forum with the Commission, the outputs and resolutions from the Forum is taken into account at the Commission's public session.

The Commission holds extra sessions twice a year where it discusses the cases that come before it. However, civil society may attend only where they are specifically invited.

C. CHALLENGES ACROSS MECHANISMS

Many civil society organisations are prevented from attending sessions of each mechanism due to resource constraints. Travel restrictions and complicated visa processes also pose problems.

A further challenge arises out of the engagement of non-independent NGOs or so-called government-organised NGOs (GONGOs), which crowd out other civil society actors and may even monitor and report on their activities, exposing and endangering legitimate defenders to government retaliation.

Increasing reports of attacks and threats against individuals or groups seeking to cooperate or having cooperated with the UN on human rights is of rising concern. Such reprisals have a chilling effect on civil society participation in UN human rights mechanisms. Not only do reprisals attack individual defenders' personal lives but they also challenge the legitimacy of the UN and the international rule of law itself.

Various UN mechanisms have developed procedures and taken action seeking to address cases of intimidation or reprisal. The Human Rights Council is obligated to take action if it has information about a credible risk or allegation of reprisals.²¹ In fact, 64 states delivered a statement during the 30th session to reaffirm the Council's moral and legal duty to address reprisals.²² While some Presidents and their Bureaus have taken action toward meeting this obligation, more needs to be done and efforts strengthened to prevent, address and follow-up attacks in a transparent, consistent and effective way.

While the Treaty Body Chairpersons unanimously endorsed a set of guidelines against intimidation or reprisals - the San José Guidelines - and maintain a standing agenda item on the issue in their annual meeting; two of the ten treaty bodies have not adopted the San José Guidelines or a policy on reprisals.²³

In their 2015 annual report to the Human Rights Council, Special Procedures expressed concern for the safety and well-being of those with whom they engage due to the number of reports of intimidation and reprisals. Special Procedures adopted a standard operating procedure for steps to be taken to enhance the response when faced with these cases. The Coordination Committee appointed a focal point and will keep a comprehensive record of all cases of intimidation and reprisals against those cooperating with Special

²¹ <http://www.ishr.ch/news/human-rights-council-time-act-legal-obligation-end-reprisals>

²² https://www.ishr.ch/sites/default/files/documents/05-29-2016-ishr_submission_to_2016_sg_report.pdf

²³ <https://www.amnesty.org/en/documents/ior40/6647/2017/en/>

Procedures. Individual mandate holders will take appropriate action when faced with alleged cases, however, the limited resources of mandate holders restrict their ability to adequately respond to such cases.

D. RECOMMENDATIONS

To the UN system as a whole:

- Uphold the moral authority and values of the UN by speaking out strongly and consistently against attacks on defenders and restrictions on civil society space and in support of vibrant, independent civil society at the UN and at the national level. Such statements are important to show solidarity with defenders, and increase public awareness and support for their work.
- Ensure that all UN staff, particularly senior staff, such as resident coordinators, understand and champion the legitimate and important work of human rights defenders and provide all necessary protection and support to defenders at risk.
- Recognise that systematic attacks and restrictions on human rights defenders may be an early warning sign of more widespread gross and systematic violations and take steps to promote prevention when such signs arise, including, in the case of the Secretary-General, by bringing such situations to the attention of the Security Council through Article 99 of the UN Charter.²⁴
- Designate a civil society liaison at the most senior level of the UN.
- Develop and implement strategies to ensure that human rights defenders and other civil society actors are engaged, consulted and able to meaningfully participate in and contribute to the design, implementation and evaluation of all relevant UN programmes and activities.
- Ensure that the Secretariat, including the Secretariat of the ECOSOC Committee on NGOs, takes all possible steps to support and enable civil society participation in UN bodies and processes and consistently upholds the rights to freedom of expression and association.
- Ensure the right of duly accredited NGOs to designate their representatives to engage with UN mechanisms is not limited.

To Switzerland and the United States of America:

- Provide a facilitated visa process for civil society representatives to participate in the UN.

NGO Committee

To ECOSOC:

- Take further steps to ensure practice of NGO Committee is fair, transparent, non-discriminatory, expeditious and apolitical, such as calling on the NGO Committee to clearly explain the grounds on which applications for accreditation are to be assessed.
- Continue to be prepared to reject recommendations of the NGO Committee to defer NGO applications for consultative status when it is clear there is no good reason for deferral.
- States supportive of civil society should consider putting themselves forward as candidates of the NGO Committee.

Third Committee

- It would be coherent that the practice of the Third Committee engagement with civil society be enhanced
- to provide for at least the same level of participation as is currently the case with the Human Rights Council, including the right to speak during open sessions.
- Engage formally with civil society, for example, by holding consultations with civil society during the Committee session in regard to the work and agenda of the Committee.
- Open informal resolution negotiations up to civil society observers.

Human Rights Council

To States:

- Refrain from challenging the right of civil society representatives to participate at the Human Rights Council.

To the OHCHR:

²⁴ <http://www.un.org/en/sections/un-charter/chapter-xv/index.html>

- Ensure briefings of successive Council Presidents and Vice Presidents on the modalities of participation of civil society.
- Ensure States do not interfere with the holding or content of NGO side events, including by providing security where required.
- Ensure safe, user-friendly and accessible system for requesting and granting access for civil society to the Palais des Nation and room XX without discrimination.
- Communicate information related to the Council to all observers simultaneously.
- Actively encourage remote participation for NGOs not based in Geneva.
- Shrinking physical space for NGOs should be reversed by either restoring or increasing the number of dedicated civil society desks.
- NGO speakers need to be interspersed with those from States within all debates and dialogues, just as they are for panels. At a minimum, this should be extended to interactive dialogues.
- Side events and slots for oral statements should be confirmed with sufficient advance notice to allow for proper travel arrangements.

Special Procedures

To mandate holders:

- Consistently call for submissions for thematic reports and widely disseminate calls with adequate notice to ensure meaningful civil society contributions.
- Consistently announce requests for country visits and State responses on their website and this information should be kept fully up-to-date and widely disseminated.
- Seek resources to undertake more country visits, which should be long enough to ensure that mandate holders are able to visit various parts of the country.
- Issue preliminary recommendations at the conclusion of country visits and ensure these recommendations are easily accessible to a wide range of civil society actors.
- Ensure civil society is able to use secure methods to share information regarding communications; for example, use encryption for emails or Signal for messaging and phone calls.
- Publish communications in the OHCHR database once the period for a State reply has expired, and State replies as soon as they are received.
- Proactively appraise sources as to the status of their communication or request for action.
- Develop systematic approaches to follow-up to and implementation of recommendations; for example, the approaches taken by the Special Rapporteur on the situation of human rights in Myanmar, the Working Group on Arbitrary Detention and the Working Group on Involuntary and Enforced Disappearances.
- Seek sufficient resources to engage consistently in follow-up and implementation.

To the OHCHR:

- Make contributions for thematic reports publicly accessible on the OHCHR website.

Treaty Bodies

To the treaty bodies:

For state reviews

- Create a uniform and system wide policy on interaction between treaty bodies and civil society, including components on format and participation in formal and informal briefings, remote participation, and dealing with GONGOs.
- Continuously update and improve treaty body databases.

For individual complaints:

- Establish policies on third party interventions and publish and regularly update a list of pending cases.
- Continuously update and improve jurisprudence databases.

Universal Periodic Review

To the Working Group:

- Ensure civil society space at the Working Group stage, specifically by permitting up to ten two-minute long interventions after the interactive dialogue with States, with the same modalities as interventions at the Human Rights Council.

- Permit side events to take place in Room XX, rather than only to be held after the session.
- Record NGO interventions in the Working Group report as comments.

To States:

- Respond to recommendations at least two weeks before the beginning of the Council session at which their Working Group report will be adopted to make it easier for NGOs and States to prepare their responses to the Working Group report.
- Use the Item 6 General Debate at the Human Rights Council to monitor and report on implementation of recommendations.²⁵

To the OHCHR:

- Ensure a transparent sign up process and list of speakers during Item 6 of Council sessions.
- Ensure that NGO mid-term reports are visible on the UN website.
- Publish, two months prior to Working Group sessions, an evaluation of UPR recommendation implementation since the previous cycle, in order to inform recommending States and properly consult with civil society and other UN mechanisms in the development of this report.

African Commission

To the Commission:

- Provide information on NGO observer status applications prior to granting or denying status.
- Open extra sessions of the Commission to all civil society, not just those invited.
- Continue to be prepared to reject State objections to NGO observer status applications.
- Actively encourage remote participation for NGOs not based where the Commission is held.
- Provide a webcast of public sessions of the Commission.

To States:

- Refrain from challenging the right of civil society to participate at the Commission.

Reprisals

To States:

- Refrain from, prevent and address acts of intimidation or reprisals associated with cooperation or attempted cooperation with an international or regional human rights mechanism, body.
- Enshrine the right to safe and unhindered access to international and regional human rights mechanisms, bodies and processes in national law.

To the President and Bureau of the Human Rights Council:

- Consistent with their moral and legal duty to prevent and respond to acts of intimidation or reprisals against those cooperating with the Council or its mechanisms, develop and consistently implement a comprehensive policy on intimidation and reprisals. This policy should ensure any alleged acts of intimidation or reprisal are thoroughly investigated, remedies provided to victims, and perpetrators held to account, through effective processes that are accessible and transparent to complainants, States and civil society. Such a policy should be elaborated in a consultative process involving civil society and experts. The President and Bureau should maintain a clear and accessible record of correspondence relating to allegations of intimidation or reprisals brought to the President's attention, and provide the Council with regular updates on the status of such allegations

To Treaty Bodies:

- Urge the Committee on Economic Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women to either adopt the San José Guidelines or a dedicated policy on reprisals.
- All treaty bodies should institute preventative or precautionary measures for engaging with non-independent NGOs in order to reduce or eliminate the risk of exposing and endangering legitimate defenders, as such non-independent NGOs may monitor and report on legitimate defenders' activities, exposing and endangering legitimate defenders to government retaliation.

²⁵ https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_cso_compendium_en.pdf

For more information about our work, or any of the issues covered in this publication, please visit our website:

www.ishr.ch

or contact us:

information@ishr.ch



www.facebook.com/ISHRGlobal



www.twitter.com/ISHRGlobal



www.youtube.com/ISHRGlobal

GENEVA OFFICE

Rue de Varembe 1, 5th floor
P.O. Box 16
CH-1211 Geneva 20 CIC
Switzerland

NEW YORK OFFICE

777 UN Plaza, 8th floor
New York, NY 10017
USA