

# **Upholding freedom of association in multilateral institutions:**

**Submission to the Special Rapporteur on the rights to  
freedom of peaceful assembly and of association**

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# I. INTRODUCTION

**“ More participation. More democracy. More engagement and openness.**

**That means maximum space for civil society.”**

Ban Ki-moon, the UN Secretary-General

The International Service for Human Rights (ISHR) makes this submission in response to a request from the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur) for information concerning exercise of the rights to freedom of peaceful assembly and association in relation to multilateral organisations. This submission is intended to assist the Special Rapporteur with assessing the impact of State action at the multilateral level on civic space, and the extent to which this facilitates or hinders the exercise of the rights to freedom of peaceful assembly and of association. It is envisaged that this information will be used to inform the Special Rapporteur’s next report to the United Nations General Assembly in October 2014.

ISHR considers that the Special Rapporteur’s report will provide valuable guidance and assistance to States, multilateral organisations and other actors in discharging their obligations to enable and facilitate effective, safe and non-discriminatory access to international human rights mechanisms and other multilateral organisations, and to combat cases of intimidation or reprisals related to the exercise of that right.

ISHR’s submission focuses on challenges in the engagement by non-governmental organisations (NGOs) and human rights defenders (HRDs) in key multilateral forums, but is not intended to be exhaustive. Taking into account the wide scope and complexity of the definition of multilateral organisations, this submission is focused primarily on matters related to the United Nations Human Rights Council (the Council) and its mechanisms, the United Nations Treaty Bodies, the United Nations General Assembly and the Committee on NGOs of the Economic and Social Council (the NGO Committee). In particular, the submission considers:

- The right of everyone individually and in association with others to access UN mechanisms and the corresponding obligations of UN mechanisms to enable access and protect people from intimidations and reprisals;
- The issue of intimidation or reprisals, including examples and recommendations to prevent and provide accountability for such cases;
- Fundamental principles applying to the governance of multilateral institutions, designed to ensure they operate in a transparent, participatory, and non-discriminatory manner, and that they provide access and voice to individuals and victims;
- Issues around the system of granting consultative status to NGOs wanting to engage with the Council and some of its mechanisms, i.e. the NGO Committee. This section includes both positive and negative case studies; and
- Issues around the substantive participation of NGOs; that is, the capacity of NGOs to access information and civil society’s influence on decisions by the multilateral mechanisms in question.

The submission concludes with recommendations on to the steps and measures that States, the United Nations and other relevant actors should take to create and maintain an enabling environment for the valuable work of human rights defenders and civil society organisations, and to ensure that multilateral institutions protect and promote rather than restrict the rights to freedom of association and assembly.

This submission does not focus on regional multilateral institutions, which are important to the work of civil society and human rights defenders as we understand that such institutions are beyond the proposed scope of the Special Rapporteur's report. However, there are similar issues and concerns related to the systems of accreditation of some of those mechanisms – such as the discriminatory denial of observers status at the African Commission on Human and Peoples' Rights – and barriers to real influence on decision making – such as the very limited role civil society can formally play with the ASEAN Intergovernmental Commission on Human Rights (AICHR). We encourage the Special Rapporteur to further consider the roles and responsibilities of regional institutions in future reports.

## II. FREEDOM OF ASSOCIATION WITH INTERNATIONAL BODIES AS AN ASPECT OF GOOD GOVERNANCE

As a principle of good governance, multilateral organisations, and in particular those with an explicit human rights mandate, should operate according to the human rights standards they seek to promote and protect, including the right to freedom of association.

At a minimum, this should be understood to require that the rules, procedures and working methods of international organisations be transparent, participatory, non-discriminatory and accountable.<sup>1</sup> They should also be responsive to the needs of the people and provide a voice to human rights defenders and victims.

Civil society is a significant source of expertise and knowledge for the UN human rights system, and plays a critical role in promoting human rights, accountability, the rule of law and development.<sup>2</sup> However it is often confronted by obstacles imposed by States seeking to restrict NGO access and participation in the UN human rights system, or by bureaucratic obstacles inherent in the functioning of the system. These challenges include difficulties of physical access to the UN mechanisms, limitations on the accreditation of NGOs and individuals, and can even include threats, attacks and reprisals for attempted or actual engagement with these mechanisms.

As a principle of good governance, multilateral organisations should facilitate NGO access to and association with those organisations and should take positive steps and measures to prevent and ensure accountability for any reprisals associated with such access or attempted access.

### Recommendations

- Multilateral institutions and decision-making spaces should provide for the full and effective participation of civil society, as a principle of good governance and an essential component of the right to freedom of assembly and of association; and
- To fully guarantee these rights, multilateral institutions should enable and facilitate the full participation of civil society in their work based on the following principles:
  - Non-discrimination and equality: none of the modalities providing for the participation of civil society should discriminate on any grounds ;
  - Transparency: the work of such institutions should be accessible to the public, and modalities for participation should be clearly and publicly explained;
  - Participation: civil society should have effective access to decision-making processes and influence to the work of multilateral institutions;
  - Accountability: institutions should inform not only their State members, but also civil society about any decisions taken, and use procedures providing transparency and appropriate circulation of information; and
  - Fairness – processes concerning civil society representation or participation in decision-making should be predictable, and allow for due administrative process.<sup>3</sup>

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<sup>1</sup> N. Woods, *Good Governance in International Organisations Global Governance*, Vol. 5, No. 1 (1999), pp 39-61.

<sup>2</sup> See *Resolution 2000/64* of the former Commission on Human Rights or the *Millennium Declaration* (8 September 2000) of the UN, which includes a call to 'give greater opportunities to...non-governmental organisations and civil society, in general, to contribute to the realization of the Organization's goals and programmes'.

<sup>3</sup> N. Woods, *Good Governance in International Organisations Global Governance*, Vol. 5, No. 1 (1999), pp 39-61.

### III. FREEDOM OF ASSOCIATION WITH MULTILATERAL ORGANISATIONS AS A LEGAL RIGHT

In addition to being a principle of good governance, the ability of NGOs and individuals to exercise their right to associate with multilateral organisations is a legal right which imposes certain legal obligations on those bodies themselves.

The right of individuals and groups to communicate or cooperate with international human rights bodies, including the Council, is recognised both as a right in and of itself,<sup>4</sup> and as an essential component of the rights to freedom of expression and association.<sup>5</sup>

In the case of Treaty Bodies, the requirement to uphold the right to unhindered access to and communication with international bodies is also enshrined in the human rights treaties or optional protocols which establish or mandate those bodies themselves. For example:

- Article 15 of the Optional Protocol to the Convention against Torture (OP-CAT), stipulates that '[n]o authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention of Torture or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way';<sup>6</sup> and
- Article 11 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW), '[r]equires a State Party to ensure the protection of those submitting communications'.<sup>7</sup>

The Special Rapporteur on human rights defenders comprehensively discusses this right in her Commentary to the Declaration on Human Rights Defenders of July 2011. Since the publication of the Commentary, the right of all persons to unhindered access to and communication with international bodies has been affirmed and its content has been further elaborated on, including in

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<sup>4</sup> *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(c) and 9(4).

<sup>5</sup> *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. See also, United Nations, *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, July 2011, p 48.

<sup>6</sup> *Optional Protocol to the Convention on the Prevention of Torture*, Article 15, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.

<sup>7</sup> *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women*, Article 11, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>. See also *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Article 13; and *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, Article 4.

Council resolution A/HRC/RES/22/6 on the Protection of human rights defenders, as well as in resolutions A/HRC/RES/24/21 on Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment and A/HRC/RES/24/24 on Cooperation with the United Nations, its mechanisms and representatives in the field of human rights. These resolutions affirm that:

- The international bodies that human rights defenders have a right to access also include regional human rights mechanisms (see A/HRC/RES/22/6, OP 13);
- The scope of the institutions covered include ‘international institutions’ (A/HRC/RES/22/6, OP 14a);
- The scope of protection covers not only to ‘those who cooperate, have cooperated or seek to cooperate’ but also to their ‘family members and associates’ (A/HRC/RES/22/6, OP 14a); and
- The obligation includes avoiding legislation that has the effect of undermining the right to unhindered access (A/HRC/RES/22/6, OP 14c).

**“ By good governance is meant creating well-functioning and accountable institutions – political, judicial and administrative – that citizens regard as legitimate, through which they participate in decisions that affect their lives, and by which they are empowered.”**

Kofi Annan, former UN Secretary-General

Effective enjoyment of this right depends on a number of elements characterising the type and modalities of ‘access to and communication with’ international bodies. They include:

- Recognition and implementation of the international law obligations binding multilateral institutions themselves;
- Protection from intimidation or reprisals;
- Ability to access and communicate with international bodies as an association, including through transparent, fair and non-discriminatory accreditation processes; and
- Effective participation and real influence on decision-making.

These are expanded upon further in the sections below.

## INTERNATIONAL LAW OBLIGATIONS BINDING MULTILATERAL INSTITUTIONS

This section considers the obligations of multilateral organisations themselves under international law to enable access and protect people from intimidation and reprisals. It has a particular emphasis on the Human Rights Council and UN Treaty Bodies and, to a lesser extent, the NGO Committee.

States have the primary responsibility to uphold fundamental rights and freedoms, including individuals’ and groups’ right to freedom of association and their right to access and communicate with international bodies. It is therefore first and foremost incumbent on States to address the above challenges through their actions and decisions within the UN human rights system. At the same time,

these rights may also bind international organisations as subjects of international law, including the Human Rights Council, Treaty Bodies and the NGO Committee.<sup>8</sup>

As subjects of international law, multilateral organisations must act in good faith, which informs the assessment of the type of action that they are required to take to discharge their obligations. As a general proposition, the principle of good faith requires that the Council, the Treaty Bodies and the NGO Committee exercise their powers reasonably,<sup>9</sup> and that they must not unreasonably decline to exercise their powers in circumstances where the honest and loyal fulfillment of their mandate in compliance with international law would require them to do so.

The observance in good faith of their legal obligations requires the Council, the Treaty Bodies and the NGO Committee to act in genuine pursuit of the implementation of human rights standards relating to freedom of association, including at the multilateral level, and requires that their internal practice is consistent with the public positions that they endorse.

In pursuing their core aims of promoting respect for and the protection of human rights, the Council and the Treaty Bodies are obliged to exercise their functions in a manner that in itself furthers the rights to freedom of association and assembly in general, and that in particular contributes to the prevention of reprisals and enhance the protection of individuals from reprisals who seek to or have communicated or cooperated with them.

## Recommendations

- Multilateral institutions should recognise that the right of individuals to freedom of association and to access and communicate with international bodies extends to their work, and should make appropriate arrangements to facilitate the effective exercise of these rights (see below sections for more detailed recommendations); and
- In their relations with States, multilateral institutions should promote the full exercise of these rights, including by making relevant recommendations (such as the Human Rights Committee recommending that States enable and not limit individuals and groups in the exercise of their right to freedom of association at the international level).

## PROTECTION FROM INTIMIDATION OR REPRISALS

Members of NGOs and human rights defenders who engage with the UN face serious risks and challenges. One of the cruelest examples is the detention for several months of Cao Shunli, a Chinese human rights lawyer who died on 14 March 2013 after not receiving the appropriate treatment while in detention. She was arrested when travelling to participate in a training session on the UN human rights system organised by ISHR. Her alleged 'crime' was having campaigned for greater civil society participation in the Council's review of China's human rights record.<sup>10</sup>

Other cases of reprisals can be found in the successive reports by the Secretary-General on 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights'. The most recent (2013) report includes, inter alia cases of acts of intimidations and reprisals with regards to Bahrain, Colombia, Democratic Republic of the Congo, Iran (Islamic Republic of),

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<sup>8</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73, pp 89–90. See also *Reparations for injuries suffered in the service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, p 179.

<sup>9</sup> B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953), p 131.

<sup>10</sup> M. Evans, *Michelle Evans calls on the UN to enhance protections for human rights defenders*, UNA-UK New World, 17 June 2014, available at <http://www.una.org.uk/magazine/summer-2014/michelle-evans-calls-un-enhance-protections-human-rights-defenders>.

Maldives, Morocco, Philippines, Russian Federation, Saudi Arabia, Syrian Arab Republic, Tajikistan, United Arab Emirates, Sri Lanka, Sudan, Uzbekistan and Venezuela (Bolivarian Republic of).<sup>11</sup>

Enjoyment of the right to access international bodies, and the right to freedom of association within multilateral institutions implies that those accessing or attempting to access or communicate with these bodies should not face any form of intimidation or reprisal for doing so, as recognised by the Declaration on Human Rights Defenders.<sup>12</sup>

**“ Reprisals and intimidation against individuals cooperating with the United Nations is unacceptable – not only because they help us do the work mandated by the Charter and the Universal Declaration of Human Rights – but because reprisals also aim to discourage others from working with us.”**

Ban Ki-moon, the UN Secretary-General

The right to be free from reprisals that threaten an individual’s life or physical liberty is also an aspect of the protection afforded by other international human rights, such as freedom from arbitrary arrest, detention or deprivation of liberty; torture; cruel, inhuman and degrading treatment; and arbitrary deprivation of life.

Given that the Treaty Bodies are established or mandated by treaties or optional protocols which explicitly or by necessary implication recognise this right, and given the requirement that Treaty Bodies must act consistently with their constituent instruments,<sup>13</sup> it follows that Treaty Bodies have a legal obligation to take appropriate action where they possess information about intimidation or reprisals having occurred or a credible risk of their occurring. It follows further that the Treaty Bodies are legally obliged to take action if they possess information about a credible risk of reprisals.

In the case of the Human Rights Council, its constituent instruments provide that one of the Council’s main functions is to ‘*promot[e] universal respect for the protection of all human rights and fundamental freedoms for all*’, which includes freedom of peaceful assembly and association.<sup>14</sup> To fulfill this obligations the Council has to: contribute, through dialogue and cooperation, towards the

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<sup>11</sup> Report of the Secretary-General, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 31 July 2013, A/HRC/24/29.

<sup>12</sup> *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*, Annex to A/RES/53/144, 8 March 1999, Articles 2(1), 9(1) and 12(2). See also Articles 5(c) and 9(4).

<sup>13</sup> It is a corollary of the requirement that the international organisation not exercise powers beyond its constituent instrument that it comply with limitations imposed by its constituent instrument: CF Ameraginshe, *Principles of the Institutional Law of International Organisations* (2<sup>nd</sup> edn, 2005), pp 140–141; HG Shermers, NM Blokker, *International Institutional Law* (4<sup>th</sup> edn, 2003), pp 155–157, 493. See also the comments of the ICJ that with responsibility of international organisations, comes attendant duties and responsibilities: *Reparation for injuries suffered in the service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, p 179.

<sup>14</sup> 20 UNGA Resolution 60/251 on the Human Rights Council, 3 April 2006, UN Doc A/RES/60/251, preambular para 2.

prevention of human rights violations (which includes the prevention of reprisals)<sup>15</sup>, to ensure it exercises its functions ‘with a view to enhancing ... the protection of all human rights’ (including protection of individuals who seek to or have communicated or cooperated with it and its subsidiary mechanisms),<sup>16</sup> and to promote the full implementation of human rights obligations undertaken by States<sup>17</sup> (including encouraging effective investigation into and accountability for reprisals against individuals who cooperate with the Council and its subsidiary mechanisms).

This submission will now look in particular at the steps taken by the Treaty Bodies and Human Rights Council respectively in responding to the issue of reprisals.

## Treaty Bodies

A number of Treaty Bodies have recognised the need to ensure a more systematic approach to reprisals, and have created dedicated rapporteurs or focal points on reprisals. As far as we understand, this is the case for the Human Rights Committee, the Committee on Enforced Disappearances, the Committee on the Rights of Persons with Disabilities, and the Committee against Torture.

The Committee against Torture has two such rapporteurs, one to handle reprisals in connection with State reporting, and one to handle reprisals in connection with individual communications. The Committee on Enforced Disappearances has only one, but it explicitly sets out in its rules of procedure that this focal point can receive information in relation to all aspects of the Committee’s work, including the State parties’ reporting procedure, urgent actions, individual communications, or country visits.

The Treaty Bodies vary in how comprehensively and explicitly they set out the functions given to these focal points or rapporteurs. In some cases the creation of the focal point or rapporteur is contained within the rules of procedure of the Committee, as is the case for the Committee on Enforced Disappearances and the Committee on the Rights of Persons with Disabilities. In the case of the Committee Against Torture, a separate statement sets out the Committee’s policy on reprisals, contact details for those wishing to report alleged reprisals, and the process that will be followed by the rapporteurs.<sup>18</sup> This makes it easier to locate all relevant information on reprisals.

The policy of the Committee on Enforced Disappearances on reprisals is contained within its rules of procedure and its document on working with civil society actors. The Committee’s rules of procedure set out how allegations will be handled. Specifically, rule 63(2) states that the Committee will send cases of reprisals to the State, with the request that [it] take steps to protect those affected. Rule 99 adds that the State will be requested to urgently adopt measures to ensure protection of those concerned, and submit written explanations or clarifications of the situation and steps taken.<sup>19</sup> Finally, in its document on working with civil society actors (paras 25 and 26) the Committee encourages human rights defenders and civil society organisations to submit information about reprisals to the Committee, and notes that the information received may be kept confidential in order to protect those

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<sup>15</sup> *UNGA Resolution 60/251 on the Human Rights Council*, 3 April 2006, UN Doc A/RES/60/251, para 5(f). See also *Council Resolution 24/16 on the role of prevention in the promotion and protection of human rights*, 8 October 2013, UN Doc A/HRC/RES/24/16, preambular para 3, para 6.

<sup>16</sup> *UNGA Resolution 60/251 on the Human Rights Council*, 3 April 2006, UN Doc A/RES/60/251, paras 2, 4. The Council is also empowered to ‘address situations of violations of human rights’ in accordance with purposes and principles of the United Nations: *UNGA Resolution 60/251 on the Human Rights Council*, 3 April

<sup>17</sup> *UNGA Resolution 60/251 on the Human Rights Council*, 3 April 2006, UN Doc A/RES/60/251, para 5(d).

<sup>18</sup> *Statement of the Committee against Torture*, adopted at its fifty-first session (28 October – 22 November 2013), on reprisals, available at <http://bit.ly/1nDG8AM>.

<sup>19</sup> Committee on Enforced Disappearances, *Rules of procedure*, available at <http://bit.ly/1pdY6oS>.

submitting it.<sup>20</sup> While these documents do set out clearly what steps the Committee will take in response to reprisals, it is not easy for defenders to locate the relevant text.

In other cases the functions are left vague. For example the Committee on the Rights of Persons with Disabilities, in its guidelines on the participation of disabled persons' organisations and civil society organisations in the work of the Committee, 'condemns all acts of intimidation and reprisals towards individuals and organisations for their contribution to the work of the Committee', and appoints a focal point, simply stating however that the focal point 'will follow-up and provide advice' on situations relating to reprisals.<sup>21</sup>

The Treaty Bodies also vary in how much visibility they give to their work on this issue. The Committee against Torture has created a webpage on reprisals where all communications sent to and received from States concerning alleged reprisals are housed, along with public statements made by the Committee on the subject.<sup>22</sup> In other cases, however, it is difficult to find information on the steps taken by the Treaty Body, and defenders may remain unaware that the Treaty Body has a particular policy on reprisals, or a dedicated contact point, which means that many cases may be going unreported.

Other Committees have no formal procedure in place but generally make efforts to address reprisals by raising allegations with the State concerned during its review. Without a dedicated focal point following up on the case, however, any qualitative assessment of how the State responded will fall under the general follow-up that the Treaty Body undertakes following a State review. This falls short of responding to the particular obligation that the Treaty Bodies have in the case of reprisals. It means that cases of reprisal are less likely to receive the timely or dedicated attention that they merit, and there will not be sustained attention on the response of the State to any recommended measures, which increases the chances that they will commit or allow reprisals to take place again in the future.

In ISHR's view, the obligation that the Treaty Bodies have to address reprisals requires a more systematic process for responding to and following up on alleged cases, combined with measures to ensure that defenders are aware of and able to engage safely with this process.

## Recommendations

- Each Treaty Body should adopt a comprehensive policy on reprisals, in which the body recognises its legal obligation to respect and protect the right of all persons to communicate with the body in all aspects of body's work and to take all necessary steps to prevent, protect against and promote accountability for any alleged acts of intimidation or reprisals;
- Each Treaty Body should establish a procedural mechanism – such as a rapporteur, focal point or working group – mandated to promote the right to communicate with the body and to take such steps as are necessary to prevent, protect against, investigate and pursue accountability for any alleged acts of intimidation or reprisals, whether perpetrated by State or non-State actors;
- To achieve these ends the mechanism should be empowered to respond urgently to allegations of reprisals, including during the inter-sessional periods by:
  - Investigating allegations or reports of cases of intimidation or reprisals against those cooperating or seeking to cooperate with the Treaty Body;

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<sup>20</sup> Committee on Enforced Disappearances, *The relationship of the Committee on Enforced Disappearances with civil society actors*, available at <http://bit.ly/1pdY6oS>.

<sup>21</sup> Committee on the Rights of Persons with Disabilities, *Guidelines on the Participation of Disabled Persons Organisations (DPOs) and Civil Society Organisations in the Work of the Committee*, available at <http://bit.ly/1pdYdAM>.

<sup>22</sup> Committee Against Torture, *Reprisals letters*, available at <http://bit.ly/1pdYhAG>.

- To the extent that the allegation is verified and the safety of the defender will not be put at risk, sending a communication to the State concerned which:
      - Strongly condemns the allegations;
      - Sets out what steps are required to prevent recurrence and provide an effective remedy;
      - Requests the State to report back urgently on the steps and measures taken in this regard; and
    - Following up on all communications with States in this context.
  - Each Treaty Body should create a webpage on reprisals that includes the contact detail of the member responsible for this mechanism (the focal point or rapporteur), as well as cases received, communications sent to States concerned, responses received, and follow-up communications;
  - In cases where there is a concern regarding the safety of victims, witnesses and human rights defenders, the relevant Treaty Body should assess, as an integral part of the review, the effectiveness of States measures for their protection; and
  - The confidentiality of NGO information in any dialogue with States must be respected, and the practice by which NGO information is not utilised when confidentiality is requested is discouraged.

## Human Rights Council

The following considerations are relevant to the actions that the Council should take to ensure the fulfillment of its legal obligations in good faith. Given the Council's status as the UN's top political human rights mechanisms and therefore its central role in guiding the UN's overall response to reprisals, the recommendations also include steps that should be taken at a broader UN level.

First, the Council should ensure that it acts in accordance with the public positions that it has endorsed unless it provides a valid explanation for its failure to do so.<sup>23</sup> In this regard, the Council has called on States to investigate allegations of reprisals, hold perpetrators to account and provide appropriate remedies to victims of such reprisals. The Council has repeatedly encouraged, requested and required that information about credible risks and allegations of reprisals be provided to it. Where the Council has such information, it is legally obliged to act upon it in good faith. The United Nations Secretary-General has declared that it is 'incumbent' on the Council to follow up on information it receives about reprisals.<sup>24</sup>

Second, the President of the Council should act consistently with the precedent set by former Presidents on issues of central importance, such as reprisals, unless the President publicly explains the change in approach. The vital importance of responding to credible risks of reprisals has been expressly recognised by former Presidents of the Council as a core function of that office.

Third, whether or not the United Nations adopts a coherent organisation-wide approach to reprisals, the special responsibility of the Council in the area of human rights obliges it to take steps in good faith to ensure that its own response is unified, internally consistent and reflects best practice of the UN human rights mechanisms.

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<sup>23</sup> In this regard, see *Council Resolution 24/24 on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 9 October 2013, UN Doc No A/HRC/RES/24/24, preambular para 2; Council Decision 18/118 on *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 17 October 2011, UN Doc No A/HRC/DEC/18/118, preambular para 3; *Council Resolution 12/2 on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 12 October 2009, UN Doc No A/HRC/RES/12/2, para 2. See also *UNGA Resolution 65/281 on the Review of the Human Rights Council*, 20 July 2011, UN Doc A/RES/65/281, Annex, para 30C.

<sup>24</sup> *Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 21 July 2011, UN Doc No A/HRC/18/19, para 96(d).

Finally, the Council should also take notice of best practice in the field of human rights. The legal obligation of human rights institutions to combat reprisals, and the connection between a strong and consistent response to reprisals and the effectiveness of human rights regimes is well-established in the jurisprudence of both the European Court of Human Rights and the Inter-American Court of Human Rights.<sup>25</sup>

## Recommendations

*Given that the Council is the primary deliberative forum within the UN system where an overall response to reprisals is discussed, the following section contains recommendations that should be considered by various actors, and not only the Council itself as an institution.*

- States should take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisals;
- States should ensure that everyone whose rights are violated benefits from an effective remedy. This includes ensuring full and proper investigation and accountability in relation to intimidation and reprisals against human rights defenders;
- The UN should swiftly operationalise the universal condemnation of intimidation or reprisals against those who cooperate, seek to cooperate or have cooperated with its mechanisms and representatives by appointing a focal point at an appropriately high level within the UN structures;
- The UN should gather and disseminate best practices on the creation of a safe and enabling environment for human rights defenders at the *national* level;
- The UN should take steps, including through the proposed high-level focal point, to foster a safe and enabling environment for human rights defenders at the *international* level;
- The UN should provide guidelines and training to UN staff interacting with human rights defenders and civil society actors on ensuring their protection and minimising the risk of reprisals and intimidation;
- The Council's President and Bureau should provide guidance on the steps they and the Council will take when receiving information about credible risk of or allegations of intimidation or reprisal, building on the proactive standards set by previous Presidents and Bureaus. These steps should, at a minimum, include:
  - Public identification and denouncing of specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned and publicly releasing such correspondence with and from States;
  - Meeting with delegations of Member States to discuss information the Council possesses about credible risks of reprisals occurring or allegations of reprisals having occurred, seeking clarification of the facts and demanding from the State concerned to investigate, hold the perpetrators accountable and report back to the Council concerning measures taken;
  - Perform these steps in a transparent manner, by keeping and publishing minutes for such meetings;

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<sup>25</sup> *Yefimenko v Russia* (App No 152/04), ECtHR First Section, 12 February 2013, para 158; *Markin v Russia* (App No 30078/06), ECHR 2012, para 158. The Inter-American Court of Human Rights has also explained that States have positive obligations to protect individuals from reprisals, including 'the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity', and reaffirmed the 'undeniable' relationship between the protection of individuals who promote human rights and the effective enjoyment of human rights generally: see *Kawas-Fernández v Honduras* (Series C No 196), IACtHR, 3 April 2009, paras 143–149, esp para 145.

- The Council should adopt resolutions that publicly the unambiguously identify and condemn reprisals every time they occur, calling on the State concerned to uphold their human rights obligations by investigating, ensuring accountability of the perpetrator, providing appropriate remedies and reporting back to the Council on the measures it has taken, including in the context of the UPR and correspondence with or visits by special procedures mandate holders; and
- The Council should follow-up to previously reported allegations of reprisals to evaluate and respond to any follow-up information received.

## ACCREDITATION AND REGISTRATION

The regulation of participation such as through registration at the national level, or the bestowal of different forms of ‘status’ at regional and international level, is naturally of concern to the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The effective exercise of the right to freedom of association at the international level requires the association to have the ability to express its views, and participate in, international forums as outlined above.

**“ We wonder how a group that has a ten-year track record of producing credible human rights reporting that is heavily relied on by the international community, academics and the media is somehow continually deferred with little to no explanation.”**

Gissou Nia, the Iran Human Rights Documentation Center

Many NGOs are subject to unconstructive and restrictive practices and procedures relating to their relationship with the UN, but our main focus is on human rights NGOs - as these are the civil society groups most often targeted and excluded by States. The barriers to entry are such, that some of these NGOs question whether they should continue to engage with the UN, which may be exactly what certain States seek to achieve.

ISHR firmly believes that the arbitrary and discriminatory denial or delay of an application for consultative status, impairing the right to communicate freely with international human rights mechanisms and seeking to minimise the extent to which the organisation can cooperate with the UN, violates the right of freedom of association. Such actions also amount to reprisals against the organisations concerned, undermine the good governance of the human rights bodies, and may deprive the UN of essential information that NGOs wish to bring to the attention of member States and the UN.

### NGO Committee

To get access to some forums at the UN requires **obtaining ‘consultative status’** with the Economic and Social Council. This includes the Human Rights Council and many of its subsidiary

bodies, ECOSOC, some UN conferences, and special events organised by the President of the General Assembly.<sup>26</sup>

The process for obtaining consultative status with ECOSOC commences with an application for endorsement by the NGO Committee. It makes recommendations to the ECOSOC, which can either approve or overturn a decision. The NGO Committee is also tasked with considering the quadrennial reports submitted by NGOs already in consultative status.

For many NGOs, the process is complex, costly and lengthy, with problems including that:

- Information about the process can be found primarily online which poses a problem for NGOs with limited access to the Internet;
- NGOs must submit a large volume of supporting documentation such as financial statements, annual reports, registration certificates and other documentation validating the existence of the NGO. Some of this information can be difficult to attain in certain countries, particularly if the government suppresses the NGO; and
- The whole process, which takes place in New York, is long as well as expensive.

In addition to these practical barriers, ISHR is also concerned about the significant and discriminatory political barriers to many NGOs obtaining consultative status. State members of the NGO Committee can and will block those NGOs whose views they do not agree with. States that are not supportive of civil society engagement at the UN use strategies to control the review process and defer applications (some for 5 plus years), such as by asking irrelevant or repetitive questions that go far beyond the scope of what NGOs are required to submit with their applications.

**“ If international NGOs that already work closely with the UN cannot get access, what chance do the grassroots and national NGOs have? We now believe we are unlikely ever to get accreditation, or at least not as long as the States that make up the Committee continue to block human rights organizations overall.”**

Veronica Yates, Child Rights International Network

Unsurprisingly, human rights defenders are disproportionately targeted; and in particular, human rights organisations working on women’s rights, sexual and reproductive rights, lesbian, gay, bisexual, trans and intersex rights (LGBTI), minorities, and human rights situations in specific countries. Of 48 organisations denied accreditation since 2012, 46 work on human rights issues (as tracked on April 2014).<sup>27</sup>

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<sup>26</sup> In this regard, ISHR notes that wherever it is possible and feasible from the perspective of efficiency and effectiveness, participation should be open for civil society on a registration-basis, mirroring the national level best practice identified by the Special Rapporteur on freedom of association and assembly.

<sup>27</sup> Some of the organisations whose applications have been continuously blocked by the Committee were: Collectif des Families de Disparu(e) en Algerie (CFDA), the Global Network for Rights and Development (GNRD), the Geneva Institute for Human Rights (GIHR), International Dalit Solidarity Network (IDSN), Iran Human Rights Documentation Center (IHRDC), Institute for Human Rights and Business Limited, Asia Center for Human Rights (ACHR), Freedom Now, the Child Rights Information Network (CRIN), and the Bureau International Pour le Respect des Droits de l’homme au Sahara Occidental.

Comparing the NGO Committee system of accreditation to the Universal Periodic Review (UPR) or Treaty Body processes, we see that it is vastly more restrictive. In order to submit written information to the UPR and Treaty Bodies, no accreditation is required. NGOs are allowed to attend Treaty Body sessions freely. Despite this, both States engaging in the UPR and experts in the Treaty Bodies evidently deem the information provided by NGOs credible. Giving NGOs more freedom to contribute and attend at other UN sessions would only benefit the UN system and the quality of its output.

The NGO Committee has also used **suspension and withdrawal of status** as punitive measures against NGOs that hold different views or speak critically of States, including at the Human Rights Council. The process used by the NGO Committee to decide on suspension or withdrawal of the status of NGOs is hurried, and fails to respect the procedural safeguards required by ECOSOC Resolution 1996/31.<sup>28</sup>

Harassment of human rights NGOs with ECOSOC status occurs through **continued deferral of quadrennial reports**. For example, in the regular session in January 2014, the Committee took note of 279 new quadrennial reports, while deferring 11 reports, including that of Human Rights Watch due to questions from Cuba and Russia. All 23 previously deferred quadrennial reports were again deferred, including those of Amnesty International, Freedom House, Human Rights First and International PEN.

In May 2014, the Department of Public Information decided to stop **daily information** notes about the meetings of the Committee, citing financial restraints. They were subsequently reinstated by the end of the session, but ISHR remains very concerned that the information notes may be withdrawn again, as information about the work of the NGO Committee is essential to ensure transparency and accountability.

## The ‘no-objection’ procedure

A further critical issue is the use of the so-called ‘**no-objection**’ procedure for NGO participation in some high level events of the General Assembly. Under this severely flawed, non-transparent and arbitrary procedure, NGOs without consultative status can apply to participate in some high-level events in the General Assembly and some standard setting processes.<sup>29</sup> Member States are then allowed to anonymously and without justification object to the participation of certain NGOs, which will automatically bar those NGOs from participating, with no recourse possible.

The arbitrary nature of the procedure poses a severe obstacle to the effective participation of NGOs, and undermines the planning of meaningful NGO contributions. The use of the ‘no-objection’ procedure without procedural safeguards in high-level UN events has in the past enabled the politically motivated exclusion of NGOs and censored legitimate stakeholders.

Unfortunately the ‘no-objection’ procedure to arbitrarily and unfairly restrict NGO access has become prevalent in a range of meetings at UN headquarters in recent years. For example, the ‘no-objection’ procedure was used to manage NGO participation in a 2013 high-level meeting of the General Assembly on the realisation of the MDGs for persons with disabilities, in the General Assembly’s treaty body strengthening process in 2012,<sup>30</sup> in the High level meeting on rule of law, the 2013 High Level Dialogue on Migration and Development and many others. ISHR has expressed our concerns to States and other actors about the use of this procedure on multiple occasions.

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<sup>28</sup> See for example a joint letter by 31 NGOs in relation to the suspension of status for Interfaith and Cetim Europe-Tiers Monde, July 2010, available at <http://www.files.ishr.ch/public/other-docs/100713-Letter-ECOSOC-Committee-NGOs.pdf>

<sup>29</sup> For example, the General Assembly’s treaty body strengthening process was governed by the ‘non-objection procedure’. Note that NGOs already in consultative status can participate by default.

<sup>30</sup> See for instance joint NGO statement on the exclusion of Alkarama from the treaty body strengthening process, available at <http://bit.ly/1rryFVm>.

## Recommendations

- Where a more formal system of accreditation is required, it should be used in accordance with the principles outlined in the previous section of this submission.
- Wherever possible participation should be open for civil society on a registration-basis, mirroring the national level best practice identified by the Special Rapporteur on freedom of association and assembly;<sup>31</sup>
- Member States on the Committee must act in conformity with the principles of the UN Charter and ECOSOC 1996/31;
- States must protect and promote the right for human rights defenders to enjoy unhindered access to and communication with UN organisations, including by recommending consultative status for those human rights organisations that fit the criteria set out in ECOSOC Resolution 1996/31. Retaliations and harassment by States of human rights organisations, including through State tactics such as repetitive questioning and asking questions that go beyond the scope of the resolution, are violations of this right;
- The Committee on NGOs should reflect a balance of States that are supportive of civil society engagement at the UN, particularly the engagement of human rights NGOs. Therefore States from all regions — with positive records vis-à-vis civil society at home that are accountable to local civil society actors — should run for election to the Committee. The presence of such States taking principled positions in the Committee could counteract the outsized negative role played by other States;
- Member States must ensure that civil society organisations can meaningfully participate in and contribute to UN General Assembly processes and relevant world conferences. States should reject the no-objection procedure as it stands in future resolutions dealing with modalities for General Assembly processes and world conferences. Instead States must facilitate a fair, open and transparent accreditation process for non-ECOSOC NGOs;
- The General Assembly should develop alternative modalities for civil society participation including rules for participation that are transparent and inclusive, including giving further reflection to use of ECOSOC Resolution 1996/31 Section V11 as a procedure;<sup>32</sup> and
- The President of the General Assembly (PGA) should ensure that the selection of civil society is carried out consistent with UN values and the principle of procedural fairness. In this regard, the PGA should show leadership by facilitating a more open and transparent accreditation process for civil society in the General Assembly and its high-level conferences and meetings.

## SUBSTANTIVE PARTICIPATION OF CIVIL SOCIETY

This final section will look at challenges in the substantive participation of civil society in the **Third Committee of the General Assembly** and the **Human Rights Council**

**Access to information** is of paramount importance in relation to the substantive participation and engagement of NGOs and civil society with international human rights mechanisms. Whether it is access to documents, the ability to sit in on all sessions or general transparency in the way the UN carries out its work.

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<sup>31</sup> *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 12 May 2012, A/HRC/20/27, recommendation no. 95, available at [http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf)

<sup>32</sup> This part of the resolution was drawn up to address the situation of non-ECOSOC accredited NGOs in the era of world conferences, but it could potentially also be applied to high-level GA events. The procedure appears to offer more protection for NGOs in terms of due process and also doesn't seem to permit one state's objection to effectively veto an NGO from participating.

Over the past years the UN has grown increasingly dependent on NGOs to carry out field services, and implement UN resolutions and goals. This reliance has helped NGOs to gain influence and importance in the international community. NGOs engage in disseminating information, raising awareness, policy advocacy, joint operational projects, and providing technical expertise. NGOs can submit written statements and present oral statements to the Human Rights Council, ECOSOC and its subsidiary bodies, and can designate representatives who have access to UN grounds, where it is possible to lobby delegates and member states. NGOs can insert their ideas into policy debates by lobbying governments and helping to broker agreements among divergent positions. However, in order for NGOs to do this work, they need access to the venues where debates take place, and to decision makers such as State delegates. If access to these people is limited, influencing policy becomes increasingly difficult.

States should be committed to the partnership between civil society and the UN based on the UN legal framework that sets out the relationship between member States and civil society,<sup>33</sup> and because NGOs contribute valuable ideas and information, enrich discussions to assist States to make better decisions, advocate effectively for positive change, generally enhance the accountability and legitimacy of the global governance process, and increase ownership of outcomes.

One of the barriers is the uneven access of NGOs from the North (developed countries) versus the South (developing countries). The majority of NGOs with consultative status are from the North. Northern NGOs are often larger and better resourced, giving them greater access to conferences and meeting. They thus are in a better position to influence policymaking at the global level. It is therefore critical that NGOs present in 'UN hubs' as Geneva and New York facilitate and support human rights defenders from the Global South who have less ready access, and that relevant UN procedures allow for that facilitation.

## Human Rights Council

*Resolution 60/251* adopted by the General Assembly and establishing the Human Rights Council, states that the participation of NGOs and national human rights institutions in the Council shall be based on the *ECOSOC Resolution 1996/31* of 25 July 1996 and the practices observed by the Commission on Human Rights, in order to ensure the most effective contributions of those organisations. NGOs recognise and respect the intergovernmental nature of the UN. However, some States **currently aim to exert political pressure** to limit interaction between NGOs, the Council and States. In many ways, the political and physical space is shrinking, despite positive messages from the Secretary-General and many Member States on the value of the UN's partnership with NGOs.<sup>34</sup> This gap between the values and stated commitment of the UN and the actual experience of NGOs who want to contribute to its work is unacceptable.

To illustrate this pressure on the participation of NGOs, the exchange of letters with the President of the Human Rights Council initiated by Pakistan on behalf of 'a like minded group of States' is instructive.<sup>35</sup> In July 2013, the Permanent Mission of Pakistan to the UN in Geneva proposed to restrict the work of NGOs in the Council, inter alia by enabling the arbitrary or discriminatory exclusion of NGOs representatives, exposing such representatives to increased risk of intimidation or reprisal, and facilitating the censorship of NGO side-events. In his response, the Human Rights Council President correctly underlined that participation of NGOs within the Council is based on *ECOSOC Resolution 1996/31* and practices observed by the Commission on Human Rights.

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<sup>33</sup> UN Charter, *ECOSOC 1996/31* and the practices of Commission and Council as provided by General Assembly Resolution A/RES/60/251

<sup>34</sup> See for example the *Council Resolution 24/21 on civil society space: creating and maintaining, in law and in practice, a safe and enabling environment*, 9 October 2013, (A/HRC/24/21), and a quote from the SG.

<sup>35</sup> Letter to the President of the Human Rights Council from the Permanent Mission of Pakistan on behalf of like-minded countries (China, Russia, Cuba, Sri Lanka, Bangladesh, Uganda, DPR Korea, Belarus, India, Nicaragua, Venezuela, Islamic Republic of Iran) 31 July 2013.

However, the letter by the Permanent Mission of Pakistan on behalf of like-minded countries to the Council in July 2013 shows that some States are consistently trying to undermine the role of NGOs. The letter accuses NGOs of having tried to ‘politicise’ human rights issues in the Council. It questioned side events hosted by NGOs and alleged a lack of transparency in the accreditation process.

Similarly, in February 2013, the Permanent Mission of Sri Lanka to the UN in Geneva exchanged letters with the Human Rights Council President in objection to the planned screening of the film ‘No Fire Zone: The Killing Fields of Sri Lanka’ organised by Human Rights Watch, Amnesty International and FIFDH.<sup>36</sup> The letter claimed organisers were engaging in politically motivated acts against a member State and were in violation of the Charter of the UN, and inferred that this could be grounds for suspension and withdrawal of consultative status (see section on NGO Committee above). As the Secretary-General later mentioned in his report on reprisals, the letter ‘(...) could have the effect of undermining the work of human rights defenders monitoring the situation of human rights in Sri Lanka’.<sup>37</sup>

NGOs are subject to some **practical restrictions and limitations** in the Council as well. For instance, Member States get significantly more speaking opportunities than NGOs, which means that NGOs get less of a say over important decisions.

However, despite the various restrictions in the Council and the ability of member states to influence proceedings in their own favor, the Council does provide **an opportunity for individuals who have suffered human rights abuses, to be heard**. This is a positive and important aspect of the Council, one that should be taken into account and followed by other UN bodies. An example of this is the testimony given by Shin Dong-Hyuk in March 2014. Shin Dong-Hyuk is a North Korean human rights defender and the only known escapee from a North Korean political prisoner camp. Shin in his statement asked the Council to look into human rights abuses in North Korea and to protect his countrymen back home. He stated that the thing he desired most for them was freedom. This speech by a figure like Shin in the Council is very heartening to see. In a small way the Council seems to be fulfilling its role of facilitating the voice of the people.

**“ Freedom is something we may not tangibly feel, but once taken away from us, we eventually reach our death. I believe that freedom is as important to us as the heart and oxygen are important for life.”**

Shin Dong-Hyuk, North Korean human rights defender

Similarly, the above-mentioned letter by Sri Lanka also accused the organisers of having ‘staged’ the screening of the film to coincide with a discussion of a resolution on Sri Lanka at the Council, thereby inadvertently confirming the significant impact that such NGO advocacy has on the substance of the Council’s work.

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<sup>36</sup> Letter to the President of the Human Rights Council from the Permanent Mission of Sri Lanka to the UN, Geneva, 24 February 2013.

<sup>37</sup> *Report of the Secretary-General, Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 31 July 2013, A/HRC/24/29, p 13.

While such proof of impact is welcome, the fact that Sri Lanka and Pakistan were emboldened to move from previous oral statements in the Council to a more formal exchange of letter puts pressure on civil society and thus is worrying in itself. Countering such moves requires continued vigilance by the Council's Presidency and Bureau. First and foremost, attempts to put the issue of NGO participation in the Council on the formal agenda must be resisted. The practices observed by the Commission and the Council are clear, and currently allow for sufficient flexibility to follow the evolution and growth of global civil society and technological advances. Furthermore, the participation of civil society in the UN, including the Council, is a universal concern, and any enhancements to that participation should be resolved at expert level by the UN secretariat based on the principles already agreed by member States.

## Recommendations

- States supportive of full and restrictively effective civil society participation in the Human Rights Council should resist attempts to restrictively regulate such participation;
- The Council President and Bureau must continue to uphold the existing rules and practices applying to the participation of all observers in the Council, in accordance with GA *Resolution 60/251*, which 'includes States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as NGOs'; and
- Donors must support human rights defenders and civil society from all parts of the world in their engagement with the Council, both to raise human rights issues and push for accountability, and to defend civil society space at the Council.

## General Assembly

With regards to the General Assembly it is worth to mention a general lack of space for NGOs in the Third Committee of the General Assembly (Social, Humanitarian and Cultural Affairs Committee). For instance, NGOs do not have formal speaking rights or to provide written submissions (contrary to the Council). NGOs are also not allowed to attend informal meetings and sessions.

## Recommendations

- The Third Committee of the General Assembly and its plenary should develop modalities that allow for the full and effective participation of civil society, as a principle of good governance and an essential component of the right to freedom of assembly and of association, in accordance with recommendations in section 2.1 above; and
- As an immediate remedial measure, modalities could be mirrored on those applicable in the Human Rights Council and ECOSOC.