



THE BACKLASH AGAINST CIVIL SOCIETY ACCESS AND PARTICIPATION AT THE UN

INTIMIDATION, RESTRICTIONS AND REPRISALS: 10 CASE STUDIES

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Introduction

The realisation of the rights of civil society to operate without fear or hindrance is all too often hampered. This includes in regard to rights to access and participate in UN bodies and processes. In this 20th year of the UN Declaration on Human Rights Defenders, which articulates the right 'to unhindered access to and communication with international bodies', ISHR has sought to map out some of the incidents and practices that appear designed to delay or prevent individual human rights defenders from cooperating or seeking to cooperate with the UN.¹

This report provides a snapshot of experiences of intimidation, restrictions and reprisals rather than any exhaustive review.² We thank all civil society partners who provided ISHR with input on the nature of obstacles to their participation and whether they were able to mount an effective challenge to them. By documenting and analysing examples of intimidation, restrictions and reprisals, we aim to persuade decision-makers of the negative impact of such practices, and to assist and inform efforts to contest them. A series of recommendations are provided at the end of the report.

ISHR will continue tracking restrictions over time to assess whether the overall trend is pointing toward the facilitation of access and participation or the reverse, the closure of space for civil society to operate, including at the UN.³



- 1 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
- 2 For example, all cases of intimidation or reprisals documented by the UN are not included here. Nor are the efforts of national human rights institutions and of indigenous peoples to secure appropriate UN accreditation.
- 3 It should be noted that there are a number of other civil society initiatives looking at ways in which civil society is able to operate, including at national level. These take different if complementary approaches. They include the CIVICUS Monitor and research by the International Centre for Not-for-Profit Law.



Civil society access to and participation in UN bodies and processes

States' obligations to uphold fundamental freedoms exercised by civil society relate not solely to desisting from violating those rights but also to actively promoting and protecting them. States have obligations to dismantle unreasonable restrictions as well as positive responsibilities to encourage access and participation. This includes taking practical steps to ensure rights are guaranteed and that those who wish to engage (and meet any reasonable requirements) can do so effectively.

However, States frequently extend the intent of their repressive policies at national level to international spaces, using international platforms to signal their intentions to silence and neutralise criticism. This is attempted through managing civil society access to UN spaces – by becoming the gatekeepers to bodies and processes – and denying or limiting NGO participation where possible. The increasing numbers of cases of reprisals against those that cooperate and seek to cooperate with the UN, show the degree of the challenge.⁴

Of course, who gets access to the UN is informed by more than how Member States behave or the modalities they define. Engaging with UN bodies relies on access to information on relevant opportunities; having the capacity to prioritise engagement and the resources necessary to travel to key human rights hubs.

Creating and supporting enabling environments for the defence of human rights at national level is an important contributor to an individual's ability to engage fully in UN spaces. An individual's engagement in UN processes is, of course, designed to complete that circle, and transform environments and communities back home.

The Legal Framework

The right of NGOs to communicate and cooperate with UN bodies is an aspect and an incident of the rights to freedom of expression, association and public participation and is also subject to the principle of non-discrimination. The right to unhindered access to and communication with international bodies is

codified in specific human rights treaties as well as more broadly in the Declaration on Human Rights Defenders.⁵ Any restrictions on the exercise of this right to communicate and cooperate with UN bodies must accord with international law, requiring that they be for a legitimate purpose, reasonable, necessary and proportionate.⁶ Further, there should be accessible, fair, transparent, expeditious and non-discriminatory processes to appeal and review any such restrictions.

NGOs' right to access to and participation in UN mechanisms and processes was first acknowledged in Article 71 of the UN Charter, which names the Economic and Social Council (ECOSOC) as the body to develop 'suitable arrangements for consultation' with NGOs.

ECOSOC resolution 1996/31, the most recent resolution to define such arrangements, speaks to an 'evolving relationship' between NGOs and the UN. It acknowledges "the breadth of non-governmental organisations' expertise and the capacity of non-governmental organisations to support the work of the United Nations". That support is enabled through accreditation as an observer, most commonly established through consultative status. Such status allows NGOs to designate authorised representatives to attend open meetings, submit written statements or make oral statements.

Civil society participation at the UN is a right. Its value is regularly reiterated in UN resolutions – for example on human rights defenders, and on civil society space – and by States, UN officials and experts.

States have recognised, 'the important role of civil society at the local, national, regional and international levels, and that civil society facilitates the achievement of the purposes and principles of the United Nations'.⁷ UN experts have confirmed that by stating that the 'UN functions best when it is accessible to the greatest diversity of voices possible'.⁸ Civil society 'aggregates and amplifies' voices of those who would otherwise not be heard. It is a critical and constructive voice bringing

⁴ 'Report highlights rising reprisals against human rights defenders cooperating with the UN', 20 September, 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22114&LangID=E>

⁵ *Ibid*, Article 5 (c) and Article 9.4.

⁶ Declaration on Human Rights Defenders, Article 17.

⁷ Civil society space, A/HRC/RES/27/31, 3 October 2014.

⁸ Former Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Maina Kiai. A/69/365.

to the UN information about realities on the ground. To Ban Ki-Moon, former UN Secretary General, civil society is 'an indispensable partner of the United Nations.'

Civil society access and participation over time

Over the years civil society's participation in UN spaces has been formalised, with a high watermark of activity in the mid-1990s. At the time there was a growing recognition of the value of NGO expertise and involvement in several key UN conferences over previous decades.⁹ UN Secretary General Boutros Boutros-Ghali told NGOs:

*'I want you to consider this your home. Until recently these words might have caused astonishment. The United Nations was considered to be a forum of sovereign States alone. Within the space of a few short years, this attitude has changed. Non-governmental organisations are now considered full participants in international life.'*¹⁰

The ECOSOC review of arrangements for consultation with NGOs concluded with the adoption of ECOSOC resolution 1996/31.

Later, in 2002, the Panel of Eminent Persons on UN Civil Society Relations was convened to review relations between the UN and civil society. Whilst the Panel's report did contain some positive recommendations – including in regard to accreditation processes – NGOs joined the Secretary General in distancing themselves from several of its proposals.¹¹ A few years later, a res-

olution prepared by Brazil was drafted, aiming at getting several of the suggestions operational. These included NGOs taking part in General Assembly Main Committee meetings and in informal, interactive hearings before major events; and establishing a working group to analyse a single NGO accreditation procedure at the UN. However, the draft resolution didn't progress.

More recently there have been positive developments that confirm the value of civil society participation and the need to counter attempts to silence civil society actors. These have included the involvement of civil society speakers in the 'interviews' of candidates to the position of UN Secretary General in 2016; and the designation of the Assistant-Secretary General to lead the efforts within the UN system to address intimidation and reprisals against those cooperating with the UN on human rights. Webcasting sessions of the Committee on NGOs, and the invitation to ECOSOC-accredited NGOs to discussions with the Committee on the relationship between NGOs and UN, are positive steps forward. These did not come about, however, without a strong demand from civil society and the leadership of key States.

NGOs continue to call for the protection and promotion of their rights to access and participate in UN spaces. Women defenders are demanding the right to be #intheroom.¹² NGOs speak out against reprisals and feed the UN with information on threats and attacks. They continue to engage in UN processes and request of UN bodies access to platforms to report on State compliance and demand accountability.



⁹ Including the UN Conference on Environment and Development (UNCED); UN Conference on Human Rights; UN World Conferences on Women. This contribution was recognised by Ambassador Ahmad Kamal (Pakistan), Chair of the Working Group carrying out the ECOSOC Review. See: www.globalpolicy.org/ngos/analysis/nglsnv96.htm

¹⁰ Op. cit.

¹¹ For example, a recommendation that parliamentarians and the private sector should be considered elements of civil society organisations and be able to enjoy consultative arrangements with the UN as NGOs do.

¹² Women Thrive, <https://womenthrive.org/intheroom-campaign-recap/>

Zeroing in on the issues: 10 areas of concern



I/ The practice of the ECOSOC Committee on NGOs

Many have voiced concern about the practice of the Committee on NGOs – the body mandated, amongst other things, to consider applications from NGOs for consultative status. It's 'Kafka-esque' and politicised processes have led to it gaining the name of 'the anti-NGO Committee'.

Whilst there have been recent, positive advances – including in regard to the webcasting of open sessions of the Committee – these have only come about as a result of civil society pressure and the leadership shown by key States within ECOSOC – the parent body of the Committee – demanding the Committee change its ways.¹³

The Committee's practice continues to cause alarm, particularly in regard to human rights organisations.¹⁴ The deferral of applications of some human rights NGOs can go on for years. The International Dalit Solidarity Network has been deferred for over 10 years despite having responded to the Committee's questioning efficiently and in good faith.¹⁵ States permit political and economic interests to take precedence over a commitment to support civil society.

Committee members have increasingly employed accusations of terrorist sympathies or affiliations against accredited or applicant NGOs to exclude or silence them. The Committee mandate requires it to ensure only NGOs working 'with the spirit, purposes and the principles of the UN Charter' get accredited. However, accusations of associations of sympathies with terrorist groups or individuals connected with them can be used as a fast track to close applications or force withdrawal of accreditation.

¹³ For example, webcasting of open sessions of the Committee, from 2017 onward. See: <http://www.ishr.ch/news/webcasting-ngo-committee-will-increase-accessibility-un>.

¹⁴ At the most recent session of the NGO Committee in February 2018, of deferred applications, less than 7% of human rights NGOs were recommended for accreditation versus 23% of non-human rights NGOs.

¹⁵ See: <http://www.ishr.ch/news/ngo-committee-politics-front-and-centre-human-rights-ngos-get-deferred-again>.

1/ In 2017, several NGOs who were working in Turkey or had until recently been doing so, had their applications closed or accreditation withdrawn at the behest of Turkey. ECOSOC rubberstamped the Committee's recommendation even though the organisations in question had been denied the right to be informed or to protest the decision of the Committee, as required.¹⁶

2/ In the same year, the Alkarama Foundation, an NGO working on combating extrajudicial executions, enforced disappearance, torture, and arbitrary detention in the Arab world, had its application for accreditation closed by ECOSOC following allegations made by the UAE that the NGO and one of its founders had 'alleged ties to terrorism'.¹⁷ The Alkarama Foundation and individual in question have denied these allegations publicly. Alkarama noted that they were not provided with an opportunity to respond to or challenge the allegations formally. Two UN Special Rapporteurs wrote to the President of ECOSOC expressing concern that the decision to deny Alkarama accreditation 'does not seem to be based on an objective assessment of facts, and may constitute an act of reprisal for their work and engagement with UN mechanisms in the field of human rights'.¹⁸ At time of writing, the Foundation remains without accreditation.

3/ At the most recent session of the Committee in January 2018, the US indicated that an applicant organisation was on a list the US holds on NGOs suspected of links with terrorism. The delegate then added that the basis of the concern was classified information. Alluding to an NGO's supposed terrorist connections without clear evidence or without providing the NGO with an opportunity to defend itself is, at a minimum, dangerous. The legitimate objective of countering terrorism cannot be used as a means to target organisations that dissent or criticise governments. All too often threats and accusations against NGOs go unchallenged by other Committee members.

2/ The no-objection procedure

For NGOs without consultative status, the process for getting in the door for high-level UN events can be deeply problematic. While NGOs with ECOSOC accreditation are, by default, invited to these events, others are subject to the whims of member States.

General Assembly resolutions which outline modalities for specific high-level events are likely to contain a variation of the 'no-objection' procedure.¹⁹ The procedure dictates that if a member State objects to the invitation of a non-accredited NGO, the organisation is excluded from the event. In these cases, the objecting member State has no obligation to provide a reason for its objection and can remain anonymous, if so desired. There are no clear criteria as to what would justify a rejection of observer status. There is no clear process for appealing a decision. Decisions are frequently made so close to the start of the event that, even if there were a clear process for appealing, an NGO may not be able to attend. At times, no information is made public as to who has been refused accreditation. NGOs may not realise that political interests lie behind their non-registration.

The practice of the 'no-objection' procedure appears to date back to modalities resolutions from the year 2000 at the least.²⁰ Due to the lack of formal rules for unaccredited NGOs seeking access to high-level events, organisers came up with procedures on an ad-hoc basis, rewriting the rules from conference to conference. In early modalities resolutions, the practice came with a disclaimer - that they were not to be used as precedent. As time went on, however, the process was institutionalised, and has become almost ubiquitous.

¹⁶ International Service for Human Rights, 'States should reject procedure that results in exclusion of non-government organisations from UN,' 1 February 2013 <http://www.ishr.ch/news/states-should-reject-procedure-results-exclusion-non-government-organisations-un>.

¹⁷ Letter from David Kaye and Michel Forst, 4 January 2018, OL OTH 29/2017. See: <http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-OTH-29-2017.pdf>

¹⁸ 'United Nations Mandates on NGO Accreditation and Participation in United Nations Conferences and Meetings,' Civil Society and Outreach Unit, Division for Social Policy and Development (DSPD), United Nations Department of Economic and Social Affairs (DESA).

¹⁹ International Service for Human Rights, 'States should reject procedure that results in exclusion of non-government organisations from UN,' 1 February 2013 <http://www.ishr.ch/news/states-should-reject-procedure-results-exclusion-non-government-organisations-un>.

²⁰ 'United Nations Mandates on NGO Accreditation and Participation in United Nations Conferences and Meetings,' Civil Society and Outreach Unit, Division for Social Policy and Development (DSPD), United Nations Department of Economic and Social Affairs (DESA).

Examples of the use of the no-objection procedure

K-Monitor, an anti-corruption NGO in Hungary, applied to participate in the 7th Session of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC/COSP7) in 2017. A State vetoed their participation.²¹ The NGO was not informed about who had objected to their participation, nor provided with a justification or with any means to challenge the decision made. They were not alone in having their application blocked.²²

The use of the no-objection procedure gained notoriety in 2016 following the exclusion of 22 LGBT (Lesbian, Gay, Bisexual, Trans) and addiction – related NGOs from the UN General Assembly High-Level Meeting on Ending AIDS.²³ Egypt, on behalf of 51 members of the Organisation of Islamic Cooperation (OIC), issued a statement objecting to the inclusion of these NGOs, despite the fact that they represented populations that are especially vulnerable to the AIDS epidemic. NGOs were key players in creating awareness around the AIDS epidemic, as well as being amongst those closest to the very people most affected by HIV. Their exclusion was counterproductive to any serious effort to address the challenge of HIV/ AIDS. 'Non-objection' clauses allowing this practice have been included in the modalities for every high-level event on HIV/AIDS since the 2006 Political Declaration on HIV/AIDS.²⁴

Despite the outcry in this particular case, the procedure has continued to appear in the modalities for almost

every high-level event held at the UN General Assembly – on topics ranging from Human Trafficking to Disabilities – including the negotiations for the Global Compact for Migration.²⁵

Several NGOs expressed concern at limits placed on the participation of NGOs in the 2013 High Level Dialogue on International Migration and Development²⁶ noting how it was restricted to those that are 'relevant', 'in consultative status with the Economic and Social Council' and to whose participation no State objects. A vote was taken on the resolution – which was a positive development – but it was lost.

The use of the 'no-objection' procedure can be evidence of a divergence between the principles articulated in foundational texts (and their negotiation) and what actually occurs in practice. For example, the UN Convention Against Corruption provides for the participation of NGOs in anti-corruption efforts.²⁷ However, the terms of reference of the Mechanism for the Review of the Implementation of the Convention make it optional for State parties under review to include NGOs in different stages of the review process. They have found themselves relegated to civil society 'briefing days' where any mention of 'specific country situations' is prohibited. Such processes and practices hinder the ability of NGOs to participate in relevant processes and fora, thus interfering with the implementation of the Convention.

The 'no-objection' procedure as currently practiced is severely flawed. It is arbitrary, ad hoc and flies in the face of basic principles of transparency, due process and accountability.²⁸ Its use is by no means required. The resolution organising the 2011 High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, for example, did not contain the phrase.²⁹

The need to take the politics out of processes to accredit and register NGOs for UN events and conferences, is evident. One option would be to place preliminary evaluation of applications in the hands of the relevant Secretariat. A clear

set of criteria for vetting and classifying applications would need to be defined to ensure the process was fair and predictable.³⁰ This would also relieve Missions of having to carry out the initial vetting of hundreds of applications for accreditation. ECOSOC Resolution 1996/31 provides standard arrangements for registering non-accredited NGOs in UN conferences (and could equally as relevant to high-level GA events.)³¹ Whilst the process is ultimately still in the hands of Member States, applicants are able to respond to objections. It makes it much harder for one State's objection to veto an NGO from participating in an event.

21 'So who blocked out participation at the UN Anti-Corruption Conference in Vienna?', K-Monitor; 6/11/17. Available at: <http://k.blog.hu/2017/11/06/uncac-vienna>

22 The European Centre for Not-for-Profit Law was also informed an objection had been made to their application. See: Transparency International and UNCAC Coalition letter to UNCAC COSP President and Secretary, 10 November 2017. http://uncaccoalition.org/en_US/transparency-international-and-uncac-coalition-letter-to-uncac-cosp-president-and-secretary/

23 'LGBT groups barred from attending UN aids conference,' BBC, 18 May 2016 <http://www.bbc.com/news/world-us-canada-36325578>.

24 UN General Assembly Resolutions A/62/178, A/65/180, A/70/228.

25 UN General Assembly Resolution A/71/280.

26 http://www.ishr.ch/sites/default/files/article/files/joint_ngo_letter_on_participation_in_high_level_dialogue_on_migration_and_development-1.pdf

27 UN Convention Against Corruption, Article 13

28 OHCHR, A/69/365 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' 1 September 2014.

29 UN General Assembly Resolution A/65/238.

30 The Cardoso report suggested creating an 'Accreditation Unit' that could include expertise of main stakeholders, including NGOs.

31 ECOSOC Resolution 1996/31 Part VII. It does include the requirement to provide some financial information in applying for registration, but this may not be overly burdensome.

3/ Restrictions on travel to UN and other meetings

Restrictions on the ability to travel for civil society organisations seeking to access UN spaces range from non-recognition or confiscation of passports, to travel bans and denial of access to particular countries. For some, the location of principal UN headquarters in Europe and North America makes access difficult, as visas can be denied.

1/ Civil society organisations from Taiwan face being denied accreditation for events by UN officials on the basis that their passport is not recognised by the UN. In March 2007, civil society representatives were not allowed to use Taiwanese passports to collect UN grounds passes. This is despite being properly registered by an accredited NGO and having entered the US on Taiwanese passports. They were denied entry to the meeting of the Commission on the Status of Women (CSW).

2/ The requirements to get a short-term visa to the US – including financial requirements – put up barriers to many women human rights defenders seeking to participate in UN sessions, including of the Commission on the Status of Women in New York.

In 2018, Nyaradzayi Gumbonzvanda, the Chief Executive of Rozaria Memorial Trust, alerted fellow activists to the fact that 'many African young women and girls are facing challenges in getting US visas'. The Trust knew of 'four young girls from three different countries recently denied visas'. This was despite the fact they could show they were accredited for CSW and were in receipt of a letter from a sponsor.

'When you are poor, young and female, you are then discriminated against on the basis of class and categorised as an "at risk" group', said Gumbonzvanda.

The Trust works to ensure women defenders can 'meaningfully self-represent and not just be a poster or statistic at CSW. 'Young women and girls in our rural communities are front line human rights defenders and advocates, struggling against all odds to claim, defend and protect their rights', said Gumbonzvanda. The Agenda 2030 cry of 'leave no-one behind' feels hollow to her in light of what she describes as 'all these attitudes and rules denying those left behind the opportunity to express themselves, self-represent and participate.'

3/ In April 2017, in the context of the Universal Periodic Review (UPR) of Bahrain, defenders faced restrictions on their freedom of movement. On 5 April, a Bahrainian human rights defender, Sayed Hadi Hasan Mohamed Al Musawi, was prevented from travelling to Geneva to speak at a session organised by UPR Info. When attempting to board a plane at Manama airport he was informed that he would not

be permitted to travel. In addition, ahead of the UPR of Bahrain, 27 Bahraini individuals, including Nedal Al-Salman, Head of Women and Children Rights at the Bahrain Centre for Human Rights, were summoned for questioning by the Bahraini Office for Public Prosecution and, while investigations were ongoing, were placed under a travel ban.³²

4/ Two human rights defenders from Khyber Pakhtunkhwa and the Federally Administered Tribal Areas (FATA) in Pakistan were prevented from traveling to Geneva in November 2017. As the defenders waited for their Swiss visa applications to be approved, the funding agency withdrew financial support. The defenders indicated that the withdrawal of funds may have come about after interventions by the Pakistan Ministry of Foreign Affairs. The defenders had been actively involved in the preparation of the shadow report for the UPR of Pakistan, submitted to the Human Rights Council in March 2017. Other human rights defenders from other provinces in Pakistan were able to attend that particular session of the Council, suggesting that this restriction was specific to representatives from the Khyber Pakhtunkhwa and FATA.

5/ In November 2017, a number of NGOs accredited by the World Trade Organisation (WTO) were advised that the Argentinian Government would not allow them to enter the country to a WTO conference in Buenos Aires. The NGO CELS reports that the Argentinian government then sent a list of the 65 people whose accreditations had been rejected to immigration officials as a 'security alert'.³³ In some cases, organisations were accredited to participate in the event but the security officials rejected their accreditation for 'unspecified reasons.' Later authorities indicated that the refusals were based on individuals' supposed 'intent to generate intimidation and chaos'. On the back of diplomatic and media pressure and the threat of legal action, the Argentinian government recredited some of those on the list. CELS noted in their public statement that 'these actions by the Argentinian government send a chilling message regarding the country's commitment to civil society participation.'



32 See: <http://www.ishr.ch/news/upr-states-should-make-recommendations-defender-protection-during-27th-universal-periodic>.

33 CELS, *Criminal Justice and Security*. See: <https://www.cels.org.ar/web/en/2017/12/wto-meeting-in-argentina-rejected-accreditations-and-deportations/>



4/ Denial of access to a UN building or meeting

Balancing people's security with ease of access and participation is a challenge for UN bodies. However, concerns remain that security can be used as an excuse for restricting access of civil society representatives.

I/ During the 2017 meeting of the Commission on the Status of Women, civil society actors were asked to leave the building at 6pm – before the negotiations had ended for the day – for ‘security reasons’.³⁴ Women's rights groups protested, considering this an attempt ‘to marginalise their voice and influence’ by removing them from the UN.³⁵ Subsequent discussions suggested that the ‘sponsoring office’ of the event – namely UN Women – had not provided security officers with relevant and updated information about who should be allowed access to the premises. Clearer instructions from the organisers may have allowed for an alternative response from the security team.³⁶

Engaging with officers from the security teams can be a good way of understanding and – hopefully – dealing with restrictions and delays. As a result of an exchange between NGOs and a security officer from the UN Department of Safety and Security of the UN Headquarters in New York, facilitated by the NGO Branch of the UN Department of Economic and Social Affairs (DESA), in January 2018 it was confirmed that accredited NGOs were allowed to go ahead of visitors at the main security points. This arrangement facilitates the work of civil society.

³⁴ ‘Civil Society's Space at the UN is Shrinking’, Outright Action International, 20 October 2017. <https://www.outrightinternational.org/content/shrinking-space-civil-society-united-nations>

³⁵ ‘Women Dutch Gender Platform’, <https://wo-men.nl/womens-rights-caucus-media-statement-conclusion-csw61/>

³⁶ Discussion of NGOs with UN Department of Safety and Security of the UN Headquarters in NY.

5/ Restrictions on materials entering the UN

1/ At UN Convention Against Corruption (UNCAC) Conferences, a practice has developed of pre-screening all materials an NGO wishes to place on allocated tables on-site. This practice is worrying on legal grounds and due to the lack of any clear, publicly available criteria as to what might justify a rejection of documentation. In the case of the UNCAC Conferences, material must be provided 2 weeks ahead of time. In 2017, the UNCAC Coalition and Transparency International had numerous documents rejected, and were provided with no written communication as to the reasoning.^{37,38}

6/ Oral statements denied or interrupted

1/ For several years the Conference of NGOs (CONGO), a grouping working for NGOs in consultative status, made regular statements at the NGO Committee. These only ended when representatives were no longer able to travel so regularly to New York. Since then, only one NGO, ISHR, has been permitted to make a short general statement (on behalf of a large group of organisations). An attempt by Amnesty International in June 2017 prompted a no-action motion to be called to halt a vote on allowing the NGO to speak to the NGO Committee.³⁹ At the following session of the Committee, when ISHR was refused the opportunity to deliver a statement, Uruguay invoked the NGO's "right to be heard".⁴⁰

The denial to NGOs of the right to speak to the Committee has been particularly unjustified given the Committee's failure to hold meetings with accredited NGOs, despite a requirement to do so.⁴¹

2/ During the 35th Session of the Human Rights Council (June 2017) the chairing officer and Council Vice President (the Ambassador of Egypt) interrupted several civil society speakers. On interrupting ISHR, the Vice President instructed the representative to 'stick to the topic', without elaborating further. ISHR had been delivering a statement on the lack of cooperation with human rights bodies and mechanisms, which clearly fell within the parameters of the agenda item 'human rights bodies and mechanisms'. Indeed, when several States, including Belgium, Luxembourg and the Netherlands spoke on the topic, they were not interrupted. ISHR expressed concern about a conflict of interest in the case of the Vice President, who interrupted ISHR as they were speaking – by way of example – about Egypt.

3/ The Security Council has agreed by consensus 'to invite civil society, including women's organisations, to brief the Council in country-specific considerations and relevant thematic areas' including 'on matters of urgency for women and girls in conflict and crisis'.⁴² However, when human rights defender Carine Kaneza, spokesperson for the Women and Girls Movement for Peace and Security in Burundi, was due to brief the Council on the human rights crisis in her country, Russia objected to her participation as – it was reported – did other States.⁴³ Kaneza was denied the right to speak.

Kaneza came to inform and warn the Security Council. The Women and Girls Movement for Peace and Security in Burundi, 'has made its priority to collect first hand testimonies in an effort to build a body of memory that can aid us in the search for justice and accountability when the time comes'.⁴⁴ The statement she was due to deliver ends by saying, 'in 1994, in Rwanda, we said that "we did not act because we did not have sufficient information and early warning signs". Today, in Burundi, we have MORE than enough information and an abundant amount of early warning signs.' The Security Council wouldn't hear her.

37 Transparency International and UNCAC Coalition Letter to UNCAC COSP President and Secretary. Op cit.

38 We did not receive any information indicating that pre-screening was carried out prior to other UN meetings.

39 See: ishr.ch/news/ngo-committee-no-action-motion-halts-debate-civil-society-statement.

40 See: <http://www.ishr.ch/news/ngo-committee-ngos-blocked-delivering-statement>.

41 ECOSOC Resolution 1996/31, 61 (a). The Committee will meet with accredited NGOs, for the first time, in April 2018.

42 Security Council Resolution 2242 (2015).

43 'Burundian Peace Activist Barred from UN Meeting', France 24, 10/3/17. <http://www.france24.com/en/20170310-burundian-peace-activist-barred-un-meeting>.

44 http://www.womenpeacesecurity.org/files/UNSC_Briefing_Burundi_Kaneza_03-2017.pdf The UK Mission to the UN, the President of the Security Council at the time, later filmed her reading Kaneza statement.

7/Threatening behaviour in UN spaces

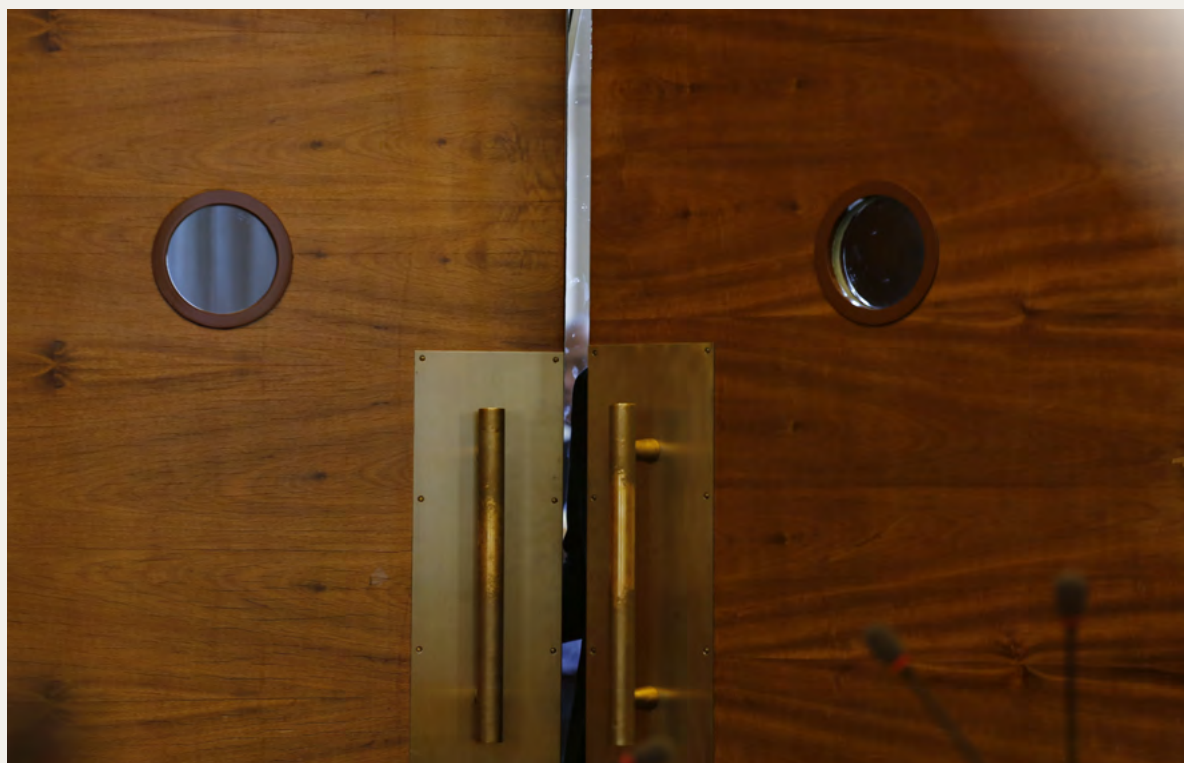
1/ Prior to delivering a statement at the Human Rights Council, Buddhist monk Golog Jigme was photographed by a senior Chinese diplomat, Zhang Yaojun, in a Palais Wilson café. Zhang denied that he was photographing the monk, who was living in Switzerland after escaping from a Chinese detention centre in 2012.⁴⁵ This was not the first time something similar had happened. When a Canadian citizen, daughter of jailed Chinese dissident Wang Bingzhang, was photographed by a representative of a Chinese NGO – suspected of being a GONGO (government-organised non-governmental organisation) – her complaint to the Human Rights Council bureau led to the representative's accreditation being revoked 'until further notice'.⁴⁶

2/ At the Human Rights Council session in June 2013, as a resolution on the situation in Sri Lanka was being negotiated, defenders reported being stopped in the corridors by members of the Sri Lankan delegation and they and their families threatened. At the same time, a Government minister back in Colombo was reported by the BBC as saying that he would 'break the legs' of those he labelled 'traitors' who were criticising Sri Lanka in Geneva.⁴⁷

3/ At the same session, threats were made against human rights defenders who came from Bahrain to draw the Council's attention to events unfolding there. At least one of these defenders received death threats on his mobile phone after making a statement in the Council, and since returning to Bahrain has faced a campaign of judicial harassment. He was taken back to court on charges of 'participation in illegal protest'.⁴⁸

8/ Accredited individuals expelled from meetings

In April 2017, Dolkun Isa, a Uyghur human rights activist, was attending the UN Permanent Forum on Indigenous Issues meeting at the UN headquarters in New York. Despite being fully accredited to participate at the event, upon leaving one of the sessions, he was approached by UN security officers who instructed him to leave the premises. No reason was given and he was not permitted to re-enter despite his accreditation remaining valid.⁴⁹



45 At UN, China uses intimidation tactics to silence its critics, Reuters, Oct. 6, 2015. <https://www.reuters.com/investigates/special-report/china-softpower-rights/>

46 Ibid.

47 See: <http://www.ishr.ch/news/human-rights-council-recent-achievements-challenges-and-look-ahead>.

48 Op cit.

49 Human Rights Watch, 'China's rights abuses infect UN', May 23 2017.

9/Threats to participation in events and dialogues

NGOs ability to participate in discussions has been hindered through exclusions from dialogues, attempts to invalidate their association in events, and a lack of timely provision of information.

1/ During the 2017 session of the Third Committee of the General Assembly, ISHR sought to hold a side event on the strengthening of treaty bodies. The event was co-sponsored by Finland, Belgium and Costa Rica. As required under Third Committee procedures, any room booking request needs to be made by the co-sponsoring State. The State must provide the UN's Meeting Management Services Department with information regarding any NGO associated with the event.

In response to the information provided by Finland, the Department advised that ISHR was in violation of the UN policies regarding the use of UN photos. They stated that ISHR would need to remove photos from its website before it could be listed as an associate. ISHR has been associated with numerous events at the UN over decades. Finally, confirmation came through that ISHR was not, in fact, in violation of any policies, with no such prior problem. However, the matter had taken some days to resolve and required the intervention of co-sponsoring States. The co-sponsoring States indicated that they would be willing to make a statement about this treatment.

2/ In March 2018, NGOs wrote to the President of the Human Rights Council expressing concern about delays between States receiving information and civil society being notified about agenda changes, describing it as a barrier to effective civil society engagement.

3/ The exclusion or lack of sufficient participation of NGOs in informal meetings and processes regarding the operation and strengthening of the Human Rights Council has been highlighted as a concern. In recent years there has been extremely limited civil society participation in various dialogues and meetings – including Glion Human Rights Dialogues and Human Rights Council Presidential retreats. Such participation as there has been has generally resulted from strong civil society advocacy and expressions of support.

10/ Children's access and participation

The UN Convention on the Rights of the Child provides a mandate for the participation of children in UN spaces. It provides a clear legal framework that speaks to the right of children to express their views freely in all matters affecting them (article 12); to seek, receive and impart information and ideas of all kinds, regardless of frontiers (article 13) and to freely associate (article 15).

There are positive examples of children expressing their views in international fora. The UN Committee on the Rights of the Child allows children to take part in its deliberations and considers reports submitted by children in its decision making.⁵⁰ Children and young people have also attended side events, including the 2002 UN General Assembly Special Session for Children (UNGASS). When children do participate, the concern is – in the words of the UN Committee – 'to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight.'⁵¹

In some UN spaces, however, the participation of children has been denied. Recently, working children and adolescents challenged the denial of their request to participate in the 2017 IV Global Conference on the Eradication of Child Labour of the International Labour Organisation (ILO). According to the complaint they made to the UN Committee on the Rights of the Child, 'not only was this right to participate denied us, but it was denied to anyone under 18 years of age, 'for security reasons'.⁵²

In an open letter, the Secretariat of the Movement of Latin American and Caribbean Working Children and Adolescents, noted: '*Without fully understanding the reasons for this violation of our rights, we ask ourselves: Do they want to protect us or do they want to protect themselves against us?*'⁵³

⁵⁰ UN Committee on the Rights of the Child General Comment 12, 2009 (para 131).

⁵¹ UNCRC General Comment 12, 2009, (para 132).

⁵² Open Letter: Complaint to the UN Committee on the Rights of the Child, 14 November 2017. See: <https://www.opendemocracy.net/beyondslavery/secretariat-of-movement-of-latin-american-and-caribbean-working-children-and-adolescent>.

⁵³ Ibid.

Pushing for greater access and participation



The United Nations must be a guarantor and promoter of rights enabling civil society access and participation. What follows are a few suggestions of ways to signal and implement such a commitment:

i/ Establishing an NGO Portfolio in the Executive Office of the UN Secretary General

Not since the days of Kofi Annan has there been a designated NGO portfolio in the Secretary General's Executive Office.⁵⁴ The brief related to facilitating relations with civil society. It went beyond being a kind of complaint mechanism to proactively promoting participation. It was a sign of the Secretary General's commitment to enabling the participation of civil society. In March 2017, during an exchange between the Secretary General António Guterres and civil society, Guterres seemed to agree to appoint someone to a similar position. No further information on the appointment has been forthcoming.

ii/ Defining clear criteria to select individuals to key positions related to civil society participation

The DESA NGO Branch Chief plays an important role in providing an apolitical steer to the Committee on NGOs, amongst other things. It is important that this position is not placed in the hands of an individual who might bring with them a perspective or attitude antagonistic to NGO access or participation. Concerns about the nomination to the position in 2016 of a Russian diplomat with a questionable record on promoting civil society space, managed to stop the recruitment process in its tracks, at least for now.⁵⁵

⁵⁴ Assistant Secretary General Gillian Martin Sorensen was the last in the Executive Office to have this included in her brief.

⁵⁵ 'Russian Accused of Silencing Activists is considered for Top UN Post Dealing with NGOs', Foreign Policy, 15 February 2016. Available at: <http://foreignpolicy.com/2016/02/15/u-s-claims-russian-official-that-helped-silence-american-ngos-is-up-for-top-u-n-ngo-job/>

Clarity as to who has what responsibility regarding civil society participation in UN bodies is also important. The lack of a specific role in OHCHR to ensure maximum civil society participation can lead to issues being passed between individuals in the Human Rights Council branch and the civil society section in Geneva. Ultimately, the risk is that issues are not addressed appropriately.

iii/ Monitoring the relationship between UN and NGOs

It is hoped that the regular meetings to be held between the NGO Committee and accredited NGOs, as per ECOSOC Resolution 1996/31 (61(a)), will provide a space for discussing questions of access and participation openly and in depth. Reports of these meetings will go to ECOSOC. Discussions on the relationship between the UN and NGOs may also be useful between departments, bringing together DESA, the Department of Public Information (DPI), the Department of Safety and Security, and the Department for General Assembly and Conference Management.

iv/ Standardising procedures and practices related to access and participation across UN bodies

i/ NGOs participate in UN mechanisms most fully at the Human Rights Council. It would be coherent that similar arrangements were in place at the General Assembly's Third Committee.

Civil society representatives could provide the Third Committee with input on its work and agenda, and ideas on how to strengthen the implementation of General Assembly resolutions originating at the Third Committee. As a first step, the Third Committee could start by holding informal consultations with civil society as were heard, for example, by the Second Committee in 2015.

In the case of the First Committee, the agenda notes that 'wide civil society participation is encouraged' during the segment of the general debate.⁵⁶ A half day is dedicated to civil society interventions. If the First Committee – a body focusing on disarmament and global challenges and threats to peace – encourages civil society interventions, it is reasonable to expect that the Third Committee would also be open to engagement with civil society.

ii/ Why not standardise procedures such as those related to the organisation of side events? At the Human Rights Council, accredited NGOs can organise a side event in their own right with no expense for the use of the room. In New York, NGOs need to work with a State, and costs for room hire can be high.

Opportunities to cooperate at the Human Rights Council are much greater than in other General Assembly subsidiary bodies. However some of the practical arrangements to enable that cooperation are changing in ways that restrict the time and space available and affect effective participation. For example, over time the number of seats available for NGO observers within the main chamber of the Council has reduced considerably, with only 2 seats now reserved for NGOs.⁵⁷ Fewer NGO observers can access the room to monitor and engage in the session. As another example, the Council is facing a reduction in the number of meetings to be held during its 37th Session.⁵⁸ NGOs are urging that this have no adverse or differential impact on civil society participation.⁵⁹

56 See footnote (b): www.un.org/en/ga/first/71/PDF/CRP1_Draft_ProgOfWork71.pdf

57 The number of seats assigned to NGOs has dramatically reduced since August 2013, from 22 to 2.

58 Announced by the President of the Human Rights Council, the Ambassador of Slovenia, at the 37th Session of the Council, in February 2018.

59 See: <http://www.ishr.ch/news/hrc-consultation-civil-society-key-if-council-be-reformed-fit-purpose>



Conclusions

As in many countries around the world civil society actors face attacks and restrictions on their ability to operate, access to UN platforms and processes to demand accountability becomes all the more important.

However, there is a clear gulf between what is set out in principle in regard to civil society cooperation with the UN, and related procedure and practice. In too many cases, practices at national level to restrict civil society and attack human rights defenders find their echo in the ways the UN operates.

The context in which civil society seeks to participate is one of shrinking funding for UN human rights mechanisms and processes, with possible adverse consequences for those seeking to cooperate. Furthermore, the UN's increasing embrace of models of participation and engagement, that place all stakeholders – including businesses – on a similar level (as if their interests were the same),⁶⁰ risks sidelining and silencing civil society voices.

Civil society access to and participation in UN bodies and processes must be defended and promoted. Each attempted restriction, intimidation or reprisal must be challenged robustly. Transparency and accountability should become watchwords for all UN processes, including those related to engagement with civil society.

Member States must be prepared to prioritise defending the rights of civil society over other interests and to challenge other States more boldly when they violate fundamental rights. The cost of attacking and placing restrictions on civil society, including at the UN, must rise.

The relationship between the UN and NGOs can evolve in the direction of maximising access and participation of civil society thereby enabling the UN to benefit fully from civil society experience and expertise. A clear commitment by States to this objective would be a fitting way to mark the 20th Anniversary of the Declaration on Human Rights Defenders.

What changes do we want to see?

► General recommendations

Member States must show leadership at the highest levels by defending the rights of civil society, including in regard to their access to and participation in UN and other multilateral spaces.

Member States should encourage a positive understanding of the role of civil society including during periods of political transition and of post-conflict.

Rules and regulations relating to NGO access to and participation in UN spaces should be grounded in the principles of accountability, due process, equality, non-discrimination, proportionality and transparency. These should be developed in consultation with NGOs, amongst others.

Member States must refrain from, prevent and address acts of intimidation or reprisals associated with cooperation or attempted cooperation with UN human rights mechanisms. This is a critical element of defending the values and moral authority of the United Nations.

The Presidents and/or bureaus of UN bodies must prevent and respond to acts of intimidation or reprisals against those cooperating or seeking to cooperate with them.

Member States should consider ways to formalise consultative arrangements with NGOs at the General Assembly Plenary and main committees. Civil society engagement should be enhanced

60 'Privatising Global Governance: Corporate Influence at the United Nations', Global Policy Forum, July 2014 https://www.globalpolicy.org/images/pdfs/GPFEurope/GPF___Briefing_1.pdf

to provide for at least the same level of participation as is currently enjoyed at the Human Rights Council, including the right to speak during open sessions.

Member States with positive records in regard to defending civil society space, should actively consider standing for membership of the ECOSOC Committee on NGOs.

Member States should ensure that civil society is consulted meaningfully on all questions related to institutional reform of UN bodies.

Member States in New York should consider opening informal resolution negotiations ('informals') to NGO observers, thereby enabling NGOs' effective cooperation with the UN.⁶¹

The UN Secretary General should establish an NGO Portfolio in his Executive Office.

Member States should maintain political and financial support for the OHCHR, ensuring no funding cuts impact upon the ability of human rights defenders and civil society to access or participate in UN processes.

The Office of the High Commissioner for Human Rights should ensure a safe, user-friendly and accessible system is in place for requesting and granting access for civil society to the Palais des Nation and room XX, without discrimination.

Member States should ensure that the relationship between the UN and NGOs is monitored and fostered, including through regular meetings between the Presidents and high-level officials of relevant UN bodies, to discuss specific cases, trends of restrictions and means to prevent reoccurrence.

Members of UN bodies, officials and experts must ensure that they meet with civil society – as diversely represented as possible - on a regular basis, including on field visits.

► Reform of the Committee on NGOs

Members States of ECOSOC should take steps to ensure the practice of the Committee on NGOs is fair, transparent, non-discriminatory, expeditious and apolitical. They should only elect candidates as members of the Committee on NGOs, that have positive record in regard to ensuring a safe, enabling environment for civil society.⁶² This includes calling on the Committee on NGOs to clearly explain the grounds on which NGO applications for accreditation are to be assessed.

The DESA Secretariat should be given more of a role in preliminary review of applications for accreditation, taking the burden off Member States. The Chair of the Committee and the DESA Secretariat should provide as strong a steer as possible to the Committee in regard to whether its practice is or is not in line with its mandate, as per ECOSOC Resolution 1996/31.

Member States of ECOSOC must be prepared to take action when needed, to ensure that the Committee on NGOs operates in line with its mandate.

Candidates for the Committee on NGOs should commit publicly to ensuring a safe, enabling environment for civil society to operate in, free from hindrance and insecurity.

Membership of the Committee on NGOs should be subject to term limits. States should be required to leave the Committee for a specific period after serving the maximum agreed terms.

The Committee on NGOs must ensure that the intersession meetings with accredited NGOs provide for remote participation thereby allowing for engagement by NGOs who are not based in New York.

61 Our understanding is that a 'closed' meeting in New York means it is restricted access for the public and press, but that the presence and participation of observers is in the hands of the meeting organiser. It should be noted that at the Human Rights Council, NGOs are permitted to observe informals, as a matter of course, and are frequently given the floor by the relevant Chair.

62 As made evident by factors, including, whether the legal framework within which civil society operates at national level is consistent with the Charter of the United Nations and international human rights law; whether domestic legal and administrative provisions and their application facilitates, promotes and protects an independent, diverse and pluralistic civil society, and whether relevant cases of intimidation and reprisals are addressed swiftly and effectively and public statements made denouncing such incidents.

► Civil society accreditation for UN high-level events

Processes for NGOs to apply for observer status should be transparent, fair and apolitical.

Any accreditation process must ensure a uniform practice of publishing information regarding applications and any objections to applications. This information should be posted on the website of the President of the General Assembly.

Criteria for objecting to applications should be defined and made public and any objections by Member States made public along with reasoning.

Appeal procedures for applicants that are refused observer status must be provided. These procedures should be followed in a manner that is fair and timely.

► Civil society entry to host countries to participate in UN events

When processing visas for applicants seeking to participate in a UN event hosted in their territory, State officials should be considerate of the purpose of the visit of the civil society applicant. The relevant embassy or consulate should provide full reasoning for any denial of a visa, to allow the applicant the opportunity to appeal or provide further information in a timely fashion.

UN Women and other 'sponsoring offices' should monitor difficulties faced by civil society representatives seeking to travel to relevant UN meetings, and engage with host States in regard to enabling participation. In country, UN offices should engage with relevant State officials to encourage the facilitation of visa applications related to participation in UN meetings.

The UN should consider shifting meetings, such as those of the Commission on the Status of Women (CSW), to countries where there are likely to be fewer restrictions on access for civil society representatives, thereby ensuring as diverse a participation as possible.

► Denial of access to UN buildings or meetings

The UN Department of Safety and Security should ensure that any security measures are reasonable and proportionate and, if applied, are done so with no differential impact on observers.

The UN Department of Safety and Security should act with sensitivity and respect toward civil society operating in UN buildings. Regular meetings between the Department and NGO representatives could be a means to understand the challenges each other faces and discuss means to improve interactions, where needed.

► Restrictions on materials entering the UN

The review of NGO publications entering UN premises should only be carried out where reasonable objections are raised on site.

Any criteria for assessing the appropriateness of materials must be made public. Any objection process should be transparent and allow for affected NGOs to respond in a timely manner.

► Oral statements denied or interrupted

Member States should desist from interrupting or calling points of order against NGOs, instead exercising a right of reply where necessary and appropriate.

The President and/or bureau members of all UN bodies must commit not to interrupt NGOs abusively, and to recuse themselves where there is a conflict of interest.

Member States should consider favourably, requests made by ECOSOC accredited NGOs to make short statements at the ECOSOC Plenary or subsidiary bodies.

► Threatening behaviour in UN spaces

Where any individual, including civil society representatives, is threatened on UN premises, security officials should respond positively and in a timely manner to ensure the individual is protected.

The President and /or bureau members of UN bodies and mechanisms should publicly condemn such actions when they take place.

► Participation in events and dialogues

The expulsion of any individual, including civil society representatives, from a UN building should only occur when based on well-founded and clearly communicated reasoning.

Under no circumstance should attempts be made to deny NGOs the right to associate themselves with or participate in side events for no well-founded and clearly communicated reason.

Informal processes, conferences, dialogues and roundtables on Human Rights Council strengthening and reform should involve the meaningful participation of diverse, pluralistic and independent civil society organisations, including those working at the national and regional, as well as international, levels.

► Children's access and participation

UN bodies should develop guidelines to enable the participation of children human rights defenders at UN meetings and processes. These should provide for access to child-friendly information and accreditation for children that allows them to be accompanied by their adult chaperone at all times.

► Meeting basic requirements for participation

At the UN Headquarters in New York, accredited NGOs should have access to the Second Floor of the building, as they did until recently, thereby facilitating their work.

The number of dedicated desks for civil society representatives at Human Rights Council sessions at Palais des Nations, Room XX, should be restored to the numbers available prior to electronic voting systems, or, preferably, increased.

In public galleries of UN buildings where NGOs observe public meetings, earphones should be made available and be functioning.

The most recent versions of UN telephone directories should be available to accredited NGOs. The contact details of civil society focal points in relevant departments and agencies should be easily accessible, as should the details of who to contact in case of intimidation, restriction or reprisal.





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