Civil society engagement with the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee

Paper for NGO meeting with members of the Committee on Economic, Social and Cultural Rights and the Human Rights Committee

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NGO Signatories:

• Centre for Civil and Political Rights
• Centre for Reproductive Rights
• Child Rights Connect
• Franciscans International
• Friedrich-Ebert-Stiftung, Geneva Office
• Global Initiative for Economic, Social and Cultural Rights
• Human Dignity
• International Commission of Jurists
• International Disability Alliance
• International Lesbian, Gay, Bisexual, Trans and Intersex Association
• International Movement Against All Forms of Discrimination and Racism
• International Rehabilitation Council for Torture Victims
• International Service for Human Rights
• Programme on Women’s Economic, Social and Cultural Rights
• The Advocates for Human Rights
Introduction

As we celebrate the 50th anniversary of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, we can observe that civil society participation in the work and sessions of both Committees is an important and integrated part of the procedures of the Committees. However, for both Committees, the role of civil society was not foreseen when the Covenants were drafted. Neither treaty includes any reference to the role of civil society in the work of the Committees and yet today, civil society are seen as essential to their functioning. In 1995 Mr Philip Alston, former member and Chair of the Committee on Economic, Social and Cultural Rights, described this evolution as follows:

‘One of the most important features of the way in which the international human rights regime has evolved over the last 2 decades is the extent to which NGOs have come to be accepted not merely as partners in the overall enterprise but as indispensable ones.’¹

This paper discusses the critical role of civil society in the work of the Committees and suggestions for furthering this engagement. It is the result of consultations with civil society organisations that engage with either the Committee on Economic, Social and Cultural Rights (CESCR) or the Human Rights Committee (HR Committee). It reflects the priorities of these organisations and also many of the themes being addressed by the wider civil society group working on treaty body strengthening initiatives across the UN treaty body system.

The paper is divided into 2 parts: the first looking back and reflecting on the evolution of civil society engagement with the Committees and the important role played by civil society in the work of the Committees; and the second looking forward and describing civil society perspectives regarding civil society engagement with the treaty bodies and suggestions for enhancing this strong engagement.

Part 1 - Looking Back

Reflecting on civil society engagement with the two Committees, it is clear that civil society have played a key role since their inception. However, in the beginning, the interaction was informal and ad hoc. Civil society’s role gradually developed over the years until it was formally acknowledged in the working methods of both Committees. Now both Committees have adopted specific documents clarifying the modalities of NGO participation in their

work. These documents establish the engagement of NGOs with the Committees in relation to their three main functions: the reporting procedure; the individual communications procedure; and the elaboration of General Comments.

The CESC R was the first treaty body to formally allow civil society organisations to input into its work. In its first session in 1987 the Committee members debated whether civil society organisations should be permitted to submit written statements to the Committee and whether outside sources of information could be cited. In 1988 the CESC R became the first to permit the formal submission of written statements by NGOs and in 1993 it allowed the first NGO oral submissions to the Committee in relation to its review of Canada.

The HR Committee was also considering NGO engagement at this time after informal engagement from NGOs had occurred since the first reviews of State reports. During its early days, the HR Committee also had lengthy debates on whether the Committee was authorised to receive (and to solicit) NGO information. In 1997, the HR Committee formally decided that it ‘should also seek information from NGOs’ and since 2011 the HR Committee has formally permitted NGO Oral briefings.

Official guidelines setting out the modalities of NGO interaction with the Committees, were adopted by CESC R in 1993 and then updated in November 2000 (guidelines for NGOs of the ESCR Committee) and by the HR Committee in March 2012. Both documents provide

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2 See footnotes 6 & 7 below.
5 The formal briefings have been taking place since the 103rd session (October 2011). “The relationship of the Human Rights Committee with non-governmental organizations”, UN Doc. CCPR/C/104/R.2, paragraph 10.
7 “The relationship of the Human Rights Committee with non-governmental organizations”, UN Doc. CCPR/C/104/3, adopted at the 104th session (March 2012).
detailed descriptions of the role of NGOs in the different areas of work of the Committees and emphasise that this role is an essential part of the good functioning of the Committees. In these guidelines, the HR Committee underlined the cooperation with the NGOs is ‘essential for the promotion and implementation of the International Covenant on Civil and Political Rights and its Optional Protocols’. The HR Committee further stated that:

‘NGOs provide important information relevant to the conduct of the Committee’s activities and have a catalytic role in enhancing the implementation of the Covenant at the domestic level’.

The CESC commenced its guidelines on NGO participation in the work of the Committee as follows:

‘The Committee on Economic, Social and Cultural Rights attaches great importance to cooperation with all non-governmental organisations (NGOs) active in the field of economic, social and cultural rights – local, national and international, those in consultative status with the Economic and Social Council and those without such status. The Committee constantly encourages their participation in its activities. In an effort to secure the most effective and widest possible participation of NGOs in its activities, the Committee adopted, at its eighth session, in 1993, a procedure relating to NGO participation in activities of the Committee…’ which was adopted ‘with a view to facilitating their cooperation with the Committee to enhance the effectiveness of the international monitoring’.

Nowadays, both Committees receive a high volume of NGOs reports in relation to the State reporting procedure. Figures show that during 2015 the HR Committee received 290 NGO reports and the CESC received 212 NGO reports. The average number of reports per country for the HR Committee is - 15.2 NGO reports per country. However, significant discrepancies amongst States are observed. Some States generated a high volume of NGO reports with a maximum of 37 reports for the review of Venezuela, followed by the United

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8 Human Rights Committee, ‘The relationship of the Human Rights Committee with non-governmental organizations’, UN Doc. CCPR/C/104/3, §1 and §3, adopted at the 104th session (March 2012)
Kingdom (31 reports) and the Russian Federation (26 reports). Whereas States such as Monaco, Cyprus, Benin and Suriname, received very few NGO reports.

In relation to the CESCRIPT, the average number of NGO reports is 12.6 per country. Coverage of countries is also very diverse, with 30 reports received on Ireland and 24 reports on Uganda, to very limited NGO contributions on countries such as Mongolia (five reports), Guyana (four reports) and Gambia (three reports).

Both Committees also have dedicated times for NGO formal and informal oral briefings of the Committees which are well utilised by civil society organisations for many State reviews. However, again, the participation rates for these NGO oral briefings vary considerably between different countries.

Of course, the quantity of reports or number of civil society representatives attending Committee briefings is not necessarily indicative of the quality and benefits of NGO engagement. Often civil society works in coalitions and produce 1 very comprehensive report on all relevant issues. A focus on the number of NGO reports submitted also sometimes belies the huge benefits for civil society in participating in the process itself. Participation in the State reporting process can be a significant capacity building exercise for civil society groups and provide an extremely empowering opportunity for marginalised persons or groups to have a voice and call for government accountability.

**Importance of civil society engagement**

What is clear from the NGO Guidelines for both Committees, is that the Committee members highly valued the input of civil society and recognised that without their contribution to the State reporting process, the Committee’s task of assessing the implementation of the Covenant by a State, would be very difficult and would be lacking vital information.

At the annual meeting of Chairs of human rights treaty bodies in 2015, in San Jose, Costa Rica, the Chairs

‘welcomed the indispensable contribution of civil society organizations to the work of the treaty bodies, whether through submissions, inputs, hearings or briefings. They called upon civil society organizations to continue to participate in State party
reviews as well as in the follow-up to recommendations emanating from the treaty bodies. ¹⁰

Input from civil society is not only important for gaining a clearer picture of implementation of the Covenant for the purposes of the State reporting process, but also for the elaboration of General Comments, the holding of Days of General Discussion and in relation to the Communications and Inquiry procedures. In relation to the latter, NGOs often play a significant role assisting individuals to prepare their cases or, in the case of the Inquiry Procedure under the ICESCR, collecting and collating information and submitting it to the Committee for consideration of grave or systematic violations of Covenant rights.

Perhaps most importantly for the work of the Committees, the participation of civil society, connects the Committee to the ultimate beneficiaries of their work: rights holders. Sitting in Geneva and with very little capacity to visit countries (due to budgetary and time constraints), the Committee’s interactions with civil society participants is one of the very limited number of opportunities for the Committee to hear from rights holders about their lived experiences. The statistics and commentary provided by States about their implementation of the Covenants, whilst important and useful for the Committee, does not give the full picture of the lived experiences of violations of human rights. In some circumstances, the situation of rights holders is not even reflected in official statistics or commentary. For instance, in the case of homeless persons who are frequently not counted in official housing or census statistics, for a range of practical and political reasons. Civil society organisations have connected these rights holders with the Committee, sometimes directly through assisting them to attend Committee meetings in Geneva and brief the Committee, and sometimes indirectly. This role is critical to ensuring that the Committee is briefed about the impact on the ground of the Covenant, thus supporting the Committee to provide relevant and textured recommendations to States.

Civil society contributions include a range of alternative information, including: statistical data, survey information, legal analysis of laws and jurisprudence and testimonials. The value of this information is that it is from an alternative source, independent of the State. Civil society information might corroborate, reinforce, supplement or contradict State information, and in this way, give the Committee a fuller picture of the situation in the country.

¹⁰ Report of the Chairs of the human rights treaty bodies on their twenty-seventh meeting, UN Doc. A/70/302 §77.
Another aspect of the importance of civil society engagement for treaty bodies is that civil society organisations can amplify the legitimacy of the work and processes of the Committees. Often civil society organisations play a significant role in promoting the work of the Committees, for instance through disseminating the Committee’s Concluding Observations or Views and working at the national level for their implementation. For many treaty bodies, civil society organisations are the main actors conducting outreach to national and local level civil society organisations and communities to advise them of an up-coming State Party review and to mobilise groups to engage with the review process and to publicise it within the country. The treaty bodies have limited resources to undertake extensive follow-up activities and thus, in many instances, civil society organisations are the main actors working with, and advocating for, the State to implement the Committee’s recommendations. Often, civil society organisations will be the first to bring the Committee’s Concluding Observations to the attention of key State officials and Parliaments who will be responsible for implementation, particularly at the sub-national level. Without civil society organisations playing this role, it is likely that many more recommendations of treaty bodies would remain unimplemented leaving the treaty body system open to challenges with respect to its efficacy.

Part 2 - Looking Forward
We are all aware of the many initiatives past and present to ‘strengthen’ the treaty body system. As key users of the treaty body system, civil society organisations have been involved in those discussions and provided their perspectives on the strengths and weaknesses of the system. NGOs have a unique and important perspective to offer as they often work across different treaty bodies and across different States and often also at both the international and domestic level. Therefore, they are well placed to provide feedback and offer views on how to enhance the system to increase its impact on the ground. In the so-called ‘treaty body strengthening process’, civil society organisations have contributed many ideas to ensure that the system works efficiently and effectively to achieve its mandate to rights holders.

One key element of the joint civil society work on treaty body strengthening has been to highlight the value of the treaty bodies as independent expert bodies that are less affected by politics and State national interest, than other more political elements of the UN human rights system. As many NGOs have pointed out in the consultations for this paper, the treaty bodies have been leaders in shedding light on certain issues and marginalised groups that other human rights bodies have been reluctant to address, such as issues affecting
LGBTI persons. The independence and expert nature of the treaty body system are fundamental to its strength and value, and civil society have invested great efforts in protecting these elements throughout the treaty body strengthening process.

Civil society organisations are continuing to collaborate on their response and inputs into the continuing political process on ‘treaty body strengthening’. Some of the key issues being jointly pursued by NGOs are set out below.

**Harmonisation of processes and practices**

The harmonisation of treaty body processes and practices has been the subject of much discussion throughout the ‘treaty body strengthening process’. We are of the view that, subject to the need to take into consideration the specificity of the different Committees and of their mandates, greater efficiency and usability could be achieved if all of the treaty bodies had more similar processes and practices. We underline that the objective is to align with best practices rather than harmonising down to the lowest common denominator.

An example with respect to civil society participation is the difference in levels and modes of participation of civil society in the State Reporting procedure and the General Comment elaboration process, which can be a cause of confusion and lead to disengagement by civil society.

Much greater alignment could be achieved across treaty bodies in relation to NGO participation in the State Reporting procedure and the General Comment elaboration process.

General Assembly resolution 68/268 called for the:

> ‘Development of an aligned consultation process for the elaboration of general comments’ (para. 14)

In line with this resolution, at the 27th meeting of Chairpersons, a common methodology for consultation regarding draft General Comments was endorsed by the Chairs who acknowledged that ‘consultation was indispensable for the transparency, legitimacy and publicity of general comments’. We encourage the Committees to develop an aligned consultation process for the elaboration of General Comments, which emphasises transparency and open engagement.

Similarly, greater alignment in the opportunities for civil society to make submissions and oral interventions in the State reporting procedure, while ensuring their safe and meaningful engagement, would significantly improve access for many national level NGOs.
who currently find the different processes difficult to decipher and better suited to international or Geneva-based organisations.

**Broadening access to the Committees for civil society**

Another major area of concern for civil society is ensuring broad access to meetings and information about the Committees for all civil society actors and in particular, those coming from the national and sub-national level. We see technology as holding great potential for expanding access to the Committees for civil society around the world and encourage the Committees to continue to look for ways to use technology to expand access to its processes. We are looking forward to the full implementation of the official web-casting system for all Committees and all public meetings which we see as a significant advance in promoting the work of the Committees. Video conferencing is another tool that could be better utilised to ensure a greater level of participation from civil society in the State reporting process, particularly where distance and cost are inhibiting engagement. Skype calls have been successfully organised informally with some Committees, but more stable video conference technologies targeting those with difficult internet access, through OHCHR Country or regional offices or other UN agencies agencies, should be investigated and offered to civil society, as they are offered to States Parties.

Civil society organisations also identified the need for increased accessibility to ensure the participation of persons with disabilities on an equal basis with others (for example, deaf persons), and access to information in at least the UN languages is still incomplete and impedes engagement for some. Language also remains a barrier for many civil society groups. This is the case both for those not working in one of the official UN languages and even for those who do work in 1 of the official UN languages (other than English), where access to contemporaneous information is often very difficult.

Many civil society representatives also highlighted the importance of active outreach to domestic civil society to ensure that they are aware of up-coming reviews and able to engage in a timely and substantive fashion. Recommendations include the Committees taking steps to increase their visibility towards rights holders at the national level through social media.

**Ensuring a safe space for civil society engagement**

A crucial factor in maintaining and strengthening civil society engagement with the Committees, is ensuring that the space for engagement is safe for all stakeholders. Civil society actors need to be able to engage with the Committees free from intimidation and
reprisals. Therefore, it is important that the Committees are aware of the potential for intimidation and reprisals and take action to prevent it and condemn it, in the case that it occurs. There are a number of different actions the Committees could implement in this respect.

First, continuing to publically emphasise the importance of civil society participation during the State reporting process and other processes constitutes great support for civil society representatives.

Second, having spaces for private meetings available for civil society actors would go a long way in placating concerns about their safety. In this respect we emphasise the importance of private NGO briefings, rather than public briefings. In some instances, the fact that NGO briefings of a Committee are public meetings, and very soon may also be webcast, is a disincentive to some NGOs who may fear for their safety if the State is able to identify them as briefing the Committee. Further, we underline the importance of private NGO briefings being formal meetings, in order that interpretation is available thus enabling the meaningful participation of national civil society groups. If private NGO briefings are only available on an informal basis, and therefore without interpretation, many civil society representatives and in some cases, Committee members, will not be able to participate.

Finally, we recommend the Committees put in place a policy on reprisals. This was also one of the recommendations coming out of the treaty body strengthening process and there have been a number of encouraging developments in the processes of individual treaty bodies in this respect, over the last year. Seven treaty bodies out of ten have either adopted the San José Guidelines or have a policy on reprisals. The CESCRO and the HR Committee have not done so, although the HR Committee has appointed a reprisals focal point. We encourage the Committees to adopt and implement a policy on reprisals and ensure that the policy and up to date information about cases of reprisal, is readily accessible.

The engagement of non-independent NGOs, or so-called GONGOs (Government Organised NGOs) in the work of the treaty bodies continues and, in some cases, poses potential threats to legitimate civil society actors wishing to engage with the Committees. In some instances, efforts have been made by treaty bodies to avoid or mitigate the potential threats posed by the presence and participation of GONGOs, however in other instances no preventative or precautionary measures have been taken. When treaty bodies fail to differentiate between GONGOs (in some cases de facto government agents) and independent NGOs, their well-meaning efforts to engage in informal dialogue with civil society run the risk of exposing and endangering legitimate defenders who may suffer government retaliation for their engagement with the treaty bodies.
Communications and Views

In relation to Communications and Views, innovations like CESCR’s table of pending cases, is a simple and practical way of ensuring access to information that will assist civil society to be aware of developments and to respond to cases being considered by the Committees. Opening up avenues for Amicus interventions by civil society organisations is another area which could ensure greater engagement from civil society.

Membership and elections

As mentioned above, civil society highly values the expertise and independence of the CESCR and HR Committee and we recognise the importance of the elections process in maintaining these elements. There remain concerns that the process for nomination of candidates lacks transparency and rigor such that it is difficult for civil society to engage and for electing States to make solid assessments as to the expertise and independence of candidates. A number of civil society initiatives aim to increase the transparency of the process and the amount of information available about candidates to assist informed decisions about candidates. For example, for the June 2016 elections that will take place for four treaty bodies (HR Committee, CEDAW, CRPD and CRC) a group of NGOs (Amnesty International, the Association for Prevention of Torture, the Centre for Civil and Political Rights, Child Rights Connect, the International Disability Alliance the International Rehabilitation Council for Torture Victims, the International Women’s Rights Watch Asia Pacific) launched a website www.untbelections.org, which is dedicated to the strengthening of treaty body membership by promoting a merit-based and transparent elections process. To enable all States and other stakeholders to better understand the skills and experiences of candidates in advance of the elections, all nominated candidates have been invited to complete a questionnaire based on the criteria set forth in the relevant treaty. The responses to the questionnaire are made available on this website and shared with all UN Member States.

Another element of the membership that civil society is particularly concerned about is the gender and regional balance of members. Unfortunately for both the CESCR and the HR Committee, women remain under-represented and this sends the wrong message to States, particularly in respect of the implementation of Article 3 of both Covenants, relating to equality between men and women. Therefore, civil society will continue to pursue initiatives for gender and regional balance in relation to membership of both Committees.
Another concerning practice is for some States to nominate the same person for two different Committees at the same time, which indicates a lack of consideration of the specific skills and expertise required for different Committees.

**Implementation and follow-up**

Another key area of interest and innovation for civil society is implementation and follow-up. This is a notoriously difficult part of all international accountability systems and processes and thus a topic much discussed amongst all stakeholders, including treaty bodies. The initiation of the OHCHR’s capacity building programme for States on reporting to treaty bodies and following up on recommendations constitutes a welcome development.

Likewise, the upcoming publication of an OHCHR manual for States on National Mechanisms for Reporting and Follow-up (NMRF) is expected to boost the establishment and functioning of these important bodies.

Civil society also emphasises the possibilities of standing national mechanisms for reporting and follow-up, as a co-ordinated and integrated approach to implementation and follow-up of treaty body recommendations and Views. We encourage the treaty bodies to also embrace the initiatives in this area and to recommend State Parties establish such mechanisms.

We also recommend that the Committees ensure that follow-up is a standing agenda item at all sessions, that the Committees adopt a follow-up procedure (the HR Committee has done this but not the CESC) and that Committee members maintain active involvement in follow-up processes.

In addition, there have been some informal innovative initiatives on follow-up that civil society have carried out, such as in-country visits with members of the HR Committee assisted by the Centre for Civil and Political Rights. These visits, though unofficial, are nonetheless organised in full cooperation with national authorities. They have shown that the authorities take these visits seriously and appreciate the possibility to continue the dialogue initiated during the review of the State report. Experience has shown that these visits are crucial as most of the national level stakeholders are not aware of the Committee’s Concluding Observations. This is particularly true for members of Parliament who are often not aware of the recommendations, which raises concerns about their ability to be involved in their implementation, such as through new legislation or amendments to existing laws.
Conclusion

This paper aims to reflect on the evolution of civil society engagement with the Committee on Economic, Social and Cultural Rights and the Human Rights Committee respectively while also outlining civil society perspectives on future engagement with the treaty bodies. The overall theme has been to highlight the crucial role civil society plays in the successful workings of the Committees and the subsequent importance of ensuring that a safe space for civil society engagement with the treaty body system is maintained. This call ranges from enabling civil society representatives not based in Geneva to participate in treaty body sessions via means of new communication technologies, to facilitating the protection of civil society representatives actively participating in treaty body sessions and to liaising with civil society in the implementation and follow-up of recommendations made to States Parties.

The paper thus serves as a reminder that civil society is at the core of human rights and that the work of the UN human rights machinery is underpinned by the participation of civil society. Civil society bridges the gap between the international, regional and national levels, and helps translate the work of the treaty bodies into action. Ensuring that the work of civil society and the treaty body system are complementary and mutually supportive is therefore crucial in the joint effort advance human rights.

21 June 2016