

ENCOURAGING CIVIL SOCIETY ENGAGEMENT WITH THE UNITED NATIONS: The Need to Improve the Functionality of the Committee on NGOs

The ECOSOC Committee on Non-Governmental Organisations (“NGO Committee”) is a key gateway for NGOs seeking access to the UN. The Committee is mandated, through ECOSOC resolution 1996/31, to consider NGO applications for consultative status. ECOSOC consultative status is the means by which NGOs gain a range of access and participation rights throughout the UN, including at the Human Rights Council, which is a subsidiary body of the General Assembly. However, the process of accrediting NGOs is underlined by the use of unclear criteria often linked to political interests that adversely impact upon the ability of the Committee to work fairly and promptly. Through a practice of repeated questioning of NGO applicants and frequent deferrals of applications, members of the Committee deny many NGOs consultative status – and hence access – to the UN, sometimes for years. Human rights organisations fare worst.

There are concerns that the practice of the Committee is reflective of growing restrictions on civil society globally at the very time restrictions at the national level make access to the UN all the more crucial.

In a context of increasing pressures on democratic governance, the role of civil society in providing diverse, critical and constructive input to UN human rights processes is essential to promoting the purposes and principles of the UN Charter. To do this, NGOs need to be present. Transforming the practice of the NGO Committee is key to enabling that access and participation.

Whilst many have spoken of the need for reform of the NGO Committee – including States, UN officials, independent experts, and NGOs - positive change has been slow. In a very welcome step, ECOSOC made the decision in its last session to webcast all open sessions of the NGO Committee to increase transparency of the body. All NGO applicants will now be able to follow consideration of their applications, irrespective of whether they can travel to New York to do so. This is an important development, but more will need to be done to ensure that the Committee works to fulfil its mandate in an apolitical, professional, and transparent fashion.

What is needed to ensure the Committee operates to fulfil its mandate?

This is a moment when applications for accreditation of an unprecedented number of NGOs are being delayed by the NGO Committee.

The former Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has spoken of the need for a reform process “guided by the principle that the United Nations functions best when it is accessible to the greatest diversity of voices possible”.

Prospective measures of reform have been proposed by States and NGOs in recent months. Below for consideration is a list of some of these suggestions. This list is not exhaustive, but rather it is offered to provide a basis for discussion.

Prospective measures to improve the functionality of the NGO Committee:

1/ Making NGO Committee membership more diverse and accountable:

Currently, the size of the NGO Committee is fixed at 19 members, which is only 10 percent of the total membership of the UN, and there are no term limits for members. There are States that have been on the Committee for decades. Some current Committee members have demonstrated poor records on defending civil society space nationally.

OPTIONS:

Should the NGO Committee have term limits for membership as is common in other UN bodies?

Would an increase in the number of member states on the Committee be helpful in providing opportunities for other States to engage?

States with positive records on defending civil society space should consider stepping up as candidates for the NGO Committee and more robustly challenge the dominance of regional partners with poor such records.

2/ Ensuring that the NGO Committee is regularly engaging with civil society:

Provisions contained in 1996/31 call for regular engagement with civil society. Specifically, Article 61(a) lays out: "the Committee shall hold, before each of its sessions, and at other times as necessary, consultations with organizations in consultative status to discuss questions of interest to the Committee or to the organizations relating to the relationship between the non-governmental organizations and the United Nations. A report on such consultations shall be transmitted to the Council for appropriate action."

OPTIONS:

The NGO Committee Chair could ensure that such consultations are taking place (and a report prepared) at which concerns about NGO Committee practice can be raised by accredited NGOs.

An NGO speaker should be permitted to make a general statement to the NGO Committee at the start of every open session, as per the precedent set in June 2016.

3/ Safeguards against arbitrary delay or denial of consultative status:

The process the NGO Committee follows for accrediting NGOs should be based on the principles outlined in ECOSOC resolution 1996/31, which establishes the mandate of the Committee, ECOSOC rules of procedure and NGO Committee practice. Neither the Committee

nor ECOSOC has produced more detailed explanations of the grounds the Committee should use to consider and decide on consultative status applications. This lack of clarity creates latitude for arbitrary delay or denial of status through asking the same questions repeatedly, asking questions not directly relevant to the accreditation process, or raising concerns that indirectly discriminate on prohibited grounds or are otherwise inconsistent with human rights. The NGO Committee should have safeguards to prevent against inconsistent or otherwise arbitrary delay or denial of accreditation.

OPTIONS:

ECOSOC could more clearly explain the grounds on which applications for accreditation are to be assessed, which would also better assist applicants in understanding the system and Member States – members of the Committee and Observer States – to keep questioning on track. The process of developing such guidance or guidelines should be open to all interested stakeholders including representatives of civil society, the High Commissioner for Human Rights and relevant Special Procedures.

The NGO Committee Chair could take a more active role in ensuring only timely, non-repetitive and relevant questions are posed. There could be a requirement that States explicitly explain the relevance each question poses to an applicant to grounds for granting or rejecting status. Committee members could object to questions by other members more frequently. NGOs receiving questions could be permitted to request the basis for or relevance of the question.

Member States of the NGO Committee should ensure that NGOs always have the opportunity to respond to any objection to their obtaining status, as explicitly required by resolution 1996/31, paragraph 15.

The Office of the High Commissioner for Human Rights could have ex officio non-voting observer status at the Committee with full speaking rights.

Especially as sessions are now webcasted, applicants could have the right to remotely participate in the Q&A moment through videoconferencing. Giving an opportunity for clarifications to be made at the session will contribute to the speed the process of accreditation.

4/ Providing more ECOSOC oversight of the NGO Committee:

Applicant NGOs have pressed ECOSOC members to reject specific recommendations of the NGO Committee in cases where the applicant has faced several deferrals of their case. ECOSOC resolutions in favour of individual NGO applications for accreditation have been successful but are few and far between.

OPTIONS:

Would ECOSOC members be prepared to act directly to grant consultative status for a number of NGO applicants, whose requests for accreditation have been duly deferred, by calling a resolution on their behalf in ECOSOC sessions?

The 'trigger clause' option: Would establishing a time period after which ECOSOC must act or a Member State will commit to introducing a resolution on a deferred case at ECOSOC help reduce the political costs involved?

5/ Dissolving the NGO Committee and creating a new system in its place:

There are a number of actions that can be taken to help improve the practice of the NGO Committee. However, observers note that the NGO Committee suffers from a number of obstacles, including an overwhelming number of new applications and a growing number of deferred applications, which impede its efficiency.

OPTIONS:

Would a system whereby a secretariat – as a purely bureaucratic administrative process – processes applications for consultative status be preferable?

Would a system in which an independent expert body – selected under a process similar to those for human rights treaty bodies or for special procedures of the Human Rights Council – is entrusted to process applications with the assistance of a secretariat be preferable?

Would the creation of an accreditation body with a different composition – for example, involving both States and NGOs – be preferable and feasible?