

14 July 2014

ARTICLE 19 Response to the Expert Consultation on the Rights to Freedom of Peaceful Assembly and of Association at the Multilateral Level

This submission is made of behalf of ARTICLE 19, the global campaign for freedom of expression and information. ARTICLE 19 is a human rights charity established in 1987. Its mission is "to promote, protect, develop and fulfill freedom of expression and the free flow of information and ideas in order to strengthen global social justice and empower people to make autonomous choices." Its global headquarters is in London, UK and has regional offices in Bangladesh, Brazil, Kenya, Mexico, Myanmar, Senegal and Tunisia.

1. Responses to Section 1 on civil society engagement with multilateral institutions

i. Accreditation

ARTICLE 19 has been registered with ECOSOC since 1991. We find that based on that, accreditation for most UN-related events is relatively simple. We note that based on the experience of our partners, that access to UN events without such accreditation can be problematic. Often, larger NGOs must sponsor them under their name, which can have the effect of marginalizing the small organisations.

We wish to highlight persistent reporting for several years that LGBT groups are having problems gaining accreditation.¹ We also note that the process of gaining ECOSOC accreditation is beyond the capability of many smaller CSOs and not possible for more informal organisations and networks that while they represent substantial numbers of stakeholders, may not be eligible under existing rules.

We also note that in many of the UN bodies and treaty-based processes, CSO participation is completely discretionary to the chair or still allow for a small number of member states to arbitrarily object and block the inclusion of specific CSOs in meetings.

Furthermore, within the Human Rights Council, for example, additional accreditation for Side Event attendance must be done at least 48 hours in advance which can be a barrier for CSO participation. The opening hours of accreditation desk in Geneva can be problematic: there are very long queues, particularly at the beginning of the session with CSOs waiting for up to two hours to gain entry, delaying their participation and engagement with the sessions already underway. The accreditation desk also closes at 5pm, before the session ends, therefore those attending evening events often find it problematic to gain entry.

Examples from ARTICLE 19's work in South East Asia

In the 18th Session of the UPR, it was not difficult to bring in Tep Vanny, a leading grassroots Cambodian human rights defender, into the UN and to participate in our side events and view the UPR session itself. When we arrived to the accreditation desk, Tep Vanny did not have the

¹ See e.g. ISHR, <http://www.ishr.ch/news/un-takes-forward-step-lgbt-rights-and-backward-step-sexual-and-reproductive-rights>

necessary forms filled out yet, but the officers were very good in providing us with the necessary documents, letting us fill them out, and Tep Vanny was shortly thereafter accredited and allowed into the building.

For Vietnam's UPR, there was a significant turn out of Vietnamese civil society, all of whom traveled to Geneva from throughout Europe. They wanted to attend the side event that ARTICLE 19 hosted alongside 5 other organisations, and to also view the UPR itself, however they were not aware that they needed accreditation, who to get it from, and how long it would take. It was also too late for any of the hosting organisations of the side event to sponsor them. In the end, these civil society members had to stay outside of the UN and were not able to participate in the side event and UPR.

In terms of regional bodies, the Association of Southeast Asian Nations (ASEAN) is without a clear accreditation process for civil society (<http://humanrightsinasean.info/engagement-asean-human-rights/cso-engagement-asean.html>). In the 2012 accreditation guidelines, CSOs have to submit their applications directly to the Secretary General of ASEAN, and the nationalities of their members have to be within the 10 member states. As of Nov 2013 (<http://www.asean.org/images/archive/6070.pdf>) there are only 52 CSOs accredited with ASEAN, with none of them (bar a women's confederation) that focuses directly on human rights issues. The Terms of Reference of the AICHR also leads to obstacles for civil society engagement and protection of human rights (<http://www.forum-asia.org/?p=17387>, and <http://www.forum-asia.org/?p=16425>)

ii. Experiences

ARTICLE 19 engages with a variety of UN bodies and processes including the Human Rights Council, the Open Working Group on Sustainable Development, UNEP, and the UN Office of Drugs and Crime, UN regional bodies and processes under UNECE and ECLAC, and regional bodies including the African Union and Organisation of American States. We find that the level of engagement varies widely between the bodies with little consistency.

At the positive end of the spectrum, UN processes relating to sustainable development and the environment generally have a high level of engagement and participation with civil society. Through a process called "Major Groups" first developed under Agenda 21, a wide range of civil society groups (although not comprehensively) are able to formally engage in processes. The Future We Want document agreed at the Rio+20 conference contains extensive commitments for civil society engagement.² However, we are concerned that the High Level Political Forum (HLPF) created to replace the Commission on Sustainable Development (CSD) is not intending on continuing the existing practices of strong engagement of civil society. UNEP has similar practices.³

This process is also not perfect. Many Member State statements are not made available on the DESA site. There has been "informal informals" meetings held where civil society is excluded and a recently scheduled OWG 12 was converted into a semi-open meeting where no video feed was available and no Member State statements were placed on the DESA website.

Another positive example is the UNECE Convention on Access to Environmental Information, Public Participation, and Access to Justice.(Aarhus Convention). The Convention includes the

² See Jan-Gustav Strandenaes, Participatory democracy - HLPF laying the basis for sustainable development governance in the 21st Century: Modalities for major groups, Non-Governmental Organisations and other stakeholders engagement with the high level political forum on sustainable development (UN DESA/DSD) March 2014. <http://sustainabledevelopment.un.org/content/documents/3682The%20High%20Level%20Political%20Forum,%20Major%20groups%20and%20modalities.pdf>

³ See Guidelines for Participation of Major Groups and Stakeholders in Policy Design at UNEP, August 2009. <http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/Guidelines-for-CSO-participation-Aug2609.pdf>

creation of a compliance committee which is made up of experts including those from civil society. It also allows for complaints to be filed against a state party by any affected person or civil organisation. The UNECE Water Convention has adopted similar processes.

A much more restrictive process is in place under the rules of the UN Convention Against Corruption (UNCAC) which the secretariat is held by the UN Office on Drugs and Crime (UNODC). Under the rules adopted by the COSP (Resolution 4/6)⁴, civil society cannot participate in the Implementation Review Group (IRG) and working groups. An inadequate compromise resulted in the creation of a CSO “Briefing Day” which provides only a partial forum for engagement at the “margins of the sessions” compared with the actual meetings.⁵ Even in this limited forum, CSOs are prohibited from mentioning any “specific country situation”.

In terms of general experiences for CSO engagement, visas and travel arrangements are often burdensome and therefore a barrier for participation in many UN processes, particularly those based out of Geneva and New York. There are frequent examples of CSO representatives and speakers being denied visas which in turn restricts the diversity of CSO participation in these mechanisms and tips the balance in favour of Global North perspectives. Furthermore, the expense of travel required to participate limits diversity and prevents many Global South organisations from even considering attending meetings, session or undertaking advocacy within the limited multilateral mechanisms that exist.

Examples from ARTICLE 19's work in West Africa

In West Africa, our experience with regional bodies has been positive in certain number of instances: the response of the Special Rapporteur in cases of urgent appeals has been encouraging.

The African Commission on Human and Peoples' Rights has clear criteria for accreditation and for public participation of CSOs. We have assisted many organisations to get observer status.

There are challenges in a number of its procedures: NGOs' contributions to the state reporting process is not formalised and is still ad hoc. The complaints mechanism in cases of litigation is not easy to follow as limited information about when hearings will take place is available.

iii. Access to Information

Access to information is a significant problem across inter-governmental bodies and processes. The UN has no general comprehensive policy on public access to information held by its agencies and other sub-bodies. Only a few, notably UNDP and UNICEF, have policies which place a duty on the bodies to respond adequately to individuals and civil society asking for detailed information about their activities. Even these processes are not nearly in meeting with standards as set by the Human Rights Council in General Comment 34.

Under UNCAC, national reports, and self-assessments are not published by UNODC, and only a small number have been made publicly available by the State Parties.

⁴ Resolution 4/6, Non-governmental organizations and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session4-resolutions.html>

⁵ Gillian Dell, Follow the Rules on NGO Observer Status in COSP Subsidiary Bodies, UNCAC CSO Coalition, 15 November 2013. <http://www.uncaccoalition.org/en/learn-more/blog/297-follow-the-rules-on-ngo-observer-status-in-cosp-subsidiary-bodies>

In some processes including the on-going Intergovernmental Committee of Experts on Sustainable Development Financing, no official drafts of the documents being discussed have been released.

Access to information is more (but not perfectly) comprehensively addressed in policies by the World Bank and other international financial institutions and global funds. Best practices adopted by the bodies include a limited list of specific exemptions, a public interest test and an independent appeals board.

The Global Transparency Initiative, a coalition of civil society organisations which engage with IFIs has released a “Transparency Charter for International Financial Institutions” which sets out 9 principles for IFIs relating to access to information⁶:

Principle 1: The Right of Access

The right to access information is a fundamental human right which applies to, among other things, information held by international financial institutions, regardless of who produced the document and whether the information relates to a public or private actor.

Principle 2: Automatic Disclosure

International financial institutions should automatically disclose and broadly disseminate, for free, a wide range of information about their structures, finances, policies and procedures, decision-making processes, and country and project work.

Principle 3: Access to Decision-Making

International financial institutions should disseminate information which facilitates informed participation in decision-making in a timely fashion, including draft documents, and in a manner that ensures that those affected and interested stakeholders can effectively access and understand it; they should also establish a presumption of public access to key meetings.

Principle 4: The Right to Request Information

Everyone has the right to request and to receive information from international financial institutions, subject only to a limited regime of exceptions, and the procedures for processing such requests should be simple, quick and free or low-cost.

Principle 5: Limited Exceptions

The regime of exceptions should be based on the principle that access to information may be refused only where the international financial institution can demonstrate (i) that disclosure would cause serious harm to one of a set of clearly and narrowly defined, and broadly accepted, interests, which are specifically listed; and (ii) that the harm to this interest outweighs the public interest in disclosure.

Principle 6: Appeals

Anyone who believes that an international financial institution has failed to respect its access to information policy, including through a refusal to provide information in response to a request, has the right to have the matter reviewed by an independent and authoritative body.

Principle 7: Whistleblower Protection

Whistleblowers – individuals who in good faith disclose information revealing a concern about wrongdoing, corruption or other malpractices – should expressly be protected from any sanction, reprisal, or professional or personal detriment, as a result of having made that disclosure.

Principle 8: Promotion of Freedom of Information

International financial institutions should devote adequate resources and energy to ensuring effective implementation of their access to information policies, and to building a culture of openness.

⁶ Transparency Charter for International Financial Institutions: Claiming our Right to Know, 17 September 2006. Available at <http://www.ifitransparency.org/activities.shtml?x=44474>

Principle 9: Regular Review

Access to information policies should be subject to regular review to take into account changes in the nature of information held, and to implement best practice disclosure rules and approaches.

ARTICLE 19 believes that these principles are a useful model for a broad application to all multi-lateral organisations.

Furthermore, in terms of general engagement and experience, information on the processes for CSO engagement in multilateral institutions' are often times unclear, not available in a range of languages (materials are often only available in English). In addition, some CSOs have limited access to online portals, through heavy internet blocking, censorship or monitoring that could put them at risk and limit their ability to engage safely with multilateral mechanism. This should be recognised as a barrier to diversity of engagement.

iv. Measures to improve freedom of association

Overall, there needs to be a consistent policy across the UN and other IGOs of full and substantive engagement with civil society organisations. It needs to be based on the following elements (adopted from the Principles on Stakeholder Participation in UNEP" presented at the 14th Global Major Groups and Stakeholders Forum (GMGSF-14))⁷:

Principle 1. Major Groups and stakeholders (hereinafter stakeholders) shall have the right to full and effective participation in all activities including planning, agenda setting, decision and policy-making, implementation, and evaluation activities and processes.

Principle 2. All bodies shall provide timely and easy access to all information and documents, including negotiating documents, needed by stakeholders to participate fully, and shall proactively disseminate information relevant to its activities in a comprehensible and easily accessible form and timely manner.

Principle 3. Full participation shall include:

- a. Access to all meetings, processes and bodies (including through the final stages of decision-making) at all levels, such as, inter alia, the governing body, intersessional committees, bureaus, ministerial-level meetings, and drafting and contact groups, Friends of the Chair, etc.;
- b. Speaking rights in all meetings, as a rule with the same opportunities as governments to express views and opinions; and
- c. The right to submit documents equivalent to Member States.

Principle 4. Governments shall facilitate full participation by stakeholders, such as by including stakeholders in preparing for and follow-up to meetings and on national delegations to meetings.

Principle 5. Full participation shall mean participation by all stakeholders representing interests that might be affected by the body's activities and processes, including elements of civil society outside the major groups and on a regional or local basis. Particular attention shall be paid to facilitating participation of those stakeholders that have least opportunities and access to participate.

Principle 6. Stakeholders shall have the right of self-organization, including selection of their respective representatives.

⁷ 14th Global Major Groups and Stakeholders Forum (GMGSF-14) 2013 17 February 2013, <http://sustainabledevelopment.un.org/getWSDoc.php?id=690>

Principle 7. New rules and practices regarding participation and transparency shall encourage continuous improvement and innovation, prevent regression with respect to either current formal and informal practices, and respect internationally agreed principles and rights, such as the human rights to participate in decision-making and to access to information.

Principle 8. All bodies and the governance structures they create including those involving stakeholder participation, shall be accountable with respect to ensuring that the bodies' participation and transparency policies and standards are sufficient to achieve full and effective participation and transparency and are fully implemented, and shall develop effective mechanisms in this regard.

Principle 9. All bodies shall create and maintain an organizational structure and resources to support full participation by all stakeholders and provide sufficient resources to facilitate such participation, including external capacity building, funding of participation, and internal personnel.

Principle 10. In accordance with these Principles on Stakeholders Participation, any decision impacting opportunities for stakeholders to participate in processes shall be developed and adopted in full participation with stakeholders.

Suggestions from ARTICLE 19's work in West Africa

States must be encouraged to implement the recommendations and decisions of human rights bodies either regional or international, particularly UPR recommendations and UN resolutions.

v. Level of Participation

Civil society engagement in international processes has been enshrined in practice since the adoption of the UN Charter, in Article 71. In the intervening period, there has been widespread recognition of the importance of civil society including by the Panel of Eminent Persons on United Nations-Civil Society Relations (Cardoso Panel) and Agenda 21 as well as in the practices of many of the bodies. As noted above, there is little consistency, even among UN bodies.

It is clear that a more participatory model is needed. It is well understood by many that states and UN bodies do not necessarily have all of the answers. As stated by the UNFCCC secretariat:

Since the early days of the climate change Convention, non-governmental organizations (NGOs) have been actively involved, attending sessions and exchanging views with other participants, including delegates. It is recognized that this involvement allows vital experience, expertise, information and perspectives from civil society to be brought into the process to generate new insights and approaches. Furthermore, the access and participation of observers to the process promotes transparency in this increasingly complex universal problem. Such participation flourishes in an atmosphere of mutual trust which acknowledges respect for others and their opinions, and takes into account the nature of intergovernmental sessions.

Many bodies including the UNECE under the Aarhus Convention have recognised the need to move beyond the narrow constraints of just nations debating among themselves.⁸

A new model that has been widely adopted for sustainable development, forests, UNECE and most recently in internet policy area is one of multi-stakeholder processes⁹, where governments,

⁸ See Report of Expert Group Meeting on "Models and Mechanisms of Civil Society Participation in UNEP: Building on the Experiences of Multilateral Organisations" January 22 - 23, 2013, Geneva, Switzerland, http://www.unep.org/civil-society/Portals/24105/documents/GMGsf/GMGsf%2014/Report_of_Expert_Group_Meeting_13Feb2013.pdf

⁹ See NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance. <http://netmundial.org>

civil society and businesses have a more equal status and negotiate together to come up with common solutions to problems. As summarized by the UNFCCC¹⁰:

The aim of multistakeholder processes are to promote better decision making by ensuring that the views of the main actors concerned about a particular decision are heard and integrated at all stages through dialogue and consensus building. The process takes the view that everyone involved in the process has a valid view and relevant knowledge and experience to bring to the decision making. The approach aims to create trust between the actors and solutions that provide mutual benefits (win-win). The approach is people-centered and everyone involved takes responsibility for the outcome. Because of the inclusive and participatory approaches used, stakeholders have a greater sense of ownership for decisions made. They are thus more likely to comply with them.

It has also been adopted by the Open Government Partnership, a multi-stakeholder initiative of over 60 countries, which has both commitments at the national level for civil society participation in development and implementation of the plans and a global steering committee which is made up equally of governments and civil society organizations.¹¹

vi. Multilateral organisations that would benefit from closer engagement with CSOs

Suggestions from ARTICLE 19's work in South East Asia

ASEAN – the ASEAN Intergovernmental Commission on Human Rights (AICHR) is approx 4.5 years old and has done little to support the advancement of freedom of assembly and of association in Southeast Asia. It is an incredibly opaque organisation, for example, in developing the ASEAN Human Rights Declaration in 2012, the drafting was done in secret, and only a few member states held meagre national consultations with civil society.

Suggestions from ARTICLE 19's work in West Africa

The African Union could be more inclusive and allow more organisations who work on freedom of assembly and expression to be part of their network to enable them to share their findings and speak out more, especially where host countries of such bodies do not allow the full enjoyment of such rights.

The UN Rapporteur could work towards expanding the network of organisations working in the field to feed in information on regular basis and a rapid response mechanism to protect human rights defenders working on freedom of assembly and peaceful protest.

2. Responses to Section 2 on Freedom of Peaceful Assembly

ii. Measures/actions to enhance freedom of peaceful assembly in their policies, projects, goals and other engagements with civil society

Suggestions from ARTICLE 19's work in South East Asia

Alternative platforms for assembly, whether online or through other innovative means, would enable civil society in the most restrictive areas to engage despite physical barriers or strong internet controls. Platforms that have been developed and proven useful should also be translated into different languages, and made as localised as possible.

States and multilateral institutions could also provide security trainings for human rights defenders to reduce their risk when they chose to peacefully assemble.

¹⁰http://unfccc.int/files/adaptation/methodologies_for/vulnerability_and_adaptation/application/pdf/multistakeholder_processes.pdf

¹¹ See <http://www.opengovpartnership.org/about/steering-committee>

Suggestions from ARTICLE 19's work in West Africa

Regional and international human rights bodies should further work to set priorities to provide guidance in certain cases where local actors are vulnerable.

Financial and technical support to CSOs working in the field could be considered to ensure a more diverse and inclusive participation.

Promotion of the mandate of the Special Rapporteur on Freedom of Peaceful Assembly should be prioritised in fragile and conflict/post conflict areas. Customised material should be provided to inform and educate actors including government officials and security officers across West Africa.

Conclusion

The currently lack of a consistent policy for UN and other multi-lateral institutions on access to information, CSO engagement, freedom of association and assembly leads to many arbitrary limitations on engagement in important processes. ARTICLE 19 would recommend the development of new standards relating to access to information, CSO engagement, freedom of association and assembly based on well established international human rights standards.

Further Information:

Please contact ARTICLE 19:

Paula Martins – paula@article19.org

David Banisar – banisar@article19.org

Charlotte Gill – charlotte@article19.org

+44 207 324 2500