

HUMAN RIGHTS, THE UNITED NATIONS, AND NONGOVERNMENTAL ORGANIZATIONS

*“Civil society constitutes a major
and increasingly important force in international life.”*

—U.N. Secretary-General Kofi Annan



THE CARTER CENTER



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AND NONGOVERNMENTAL ORGANIZATIONS**

*A REPORT OF THE
INTERNATIONAL HUMAN RIGHTS COUNCIL*



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“Civil society constitutes a major and increasingly important force in international life. In recent years, the United Nations has found that much of its work, particularly at the country level, involves intimately the diverse and dedicated contributions of nongovernmental organizations and groups—be it in economic and social development, humanitarian affairs, public health, or the promotion of human rights ... Yet despite these growing manifestations of an ever-more robust global civil society, the United Nations is at present inadequately equipped to engage civil society and make it a true partner in its work.

Accordingly, the secretary-general is making arrangements for all U.N. entities to be open to and work closely with civil society organizations that are active in their respective sectors, and to facilitate increased consultation and cooperation between the United Nations and such organizations.”

—Secretary-General Kofi Annan,
New York, July 16, 1997

Excerpt from: “Renewing the United Nations:
A Programme for Reform,” paragraphs 59-60.

TABLE OF CONTENTS

FOREWORD by President Jimmy Carter.....	5
INTRODUCTION	7
List of the International Human Rights Council	8
ECOSOC RESOLUTION 1996/31: THE END RESULT OF THE ECOSOC REVIEW PROCESS	9
OF RULES GOVERNING NGO RELATIONS WITH THE UNITED NATIONS by Karin Ryan and Laurie Wiseberg	
NGOs' ROLE WITHIN THE UNITED NATIONS IN MAKING AND MONITORING POLICY:	25
THE AFRICA REGIONAL STUDY by Florence Butegwa	
HUMAN RIGHTS NGOs IN LATIN AMERICA	34
by Jacqueline Pitanguy	
CENTRAL AND EASTERN EUROPEAN NGOs' INTERACTION WITH THE U.N. HUMAN RIGHTS SYSTEM	42
by Ewa Letowska	
USE OF U.N. HUMAN RIGHTS TREATIES AND FORA BY AMERICA'S NATIVE PEOPLES	45
AND RECOMMENDATIONS FOR BETTER ACCESS by Walter Echo-Hawk, Sean Cogley, Tim Coulter, Paul Moorehead, and Brian Stockes	
WOMEN'S HUMAN RIGHTS NGOs AND THE U.N. SYSTEM	61
by Karin Ryan and Makiko Kambayashi	
NGOs AND THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS	81
by Felice Gaer	
NGOs AND TREATY BODIES: A RELATION IN PROGRESS	97
by Michael Posner and Mireille Hector	
NGOs AND U.N. HUMAN RIGHTS TREATY BODIES: A CASE STUDY OF THE COMMITTEE	102
ON THE RIGHTS OF THE CHILD by Anna Edman, PREFACE by Thomas Hammarberg	
NGOs AND SPECIAL PROCEDURES OF THE U.N. COMMISSION ON HUMAN RIGHTS	117
by Helena Nygren Krug	
NGOs IN THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES	128
by Ashley Kushner	
NGOs IN RECENT U.N. WORLD CONFERENCES, WITH EMPHASIS ON THE INTERNATIONAL	143
CONFERENCE ON POPULATION AND DEVELOPMENT (ICPD), CAIRO (1994) by Mona Zulficar	
HUMAN RIGHTS NGOs AND HUMAN RIGHTS COMPONENTS OF PEACEKEEPING OPERATIONS	151
by Ozong Agborsangaya	

FOREWORD

BY PRESIDENT JIMMY CARTER

In recent years, nongovernmental organizations (NGOs) have become increasingly active in informing and influencing global policies developed by governments through the United Nations. Such organizations work independently on behalf of the public interest and bring tremendous experience and resources to solving the world's most perplexing problems. Democratic participation in policy-making at the global level is vital as governments are confronted with a growing need to look outward for assistance in addressing society's problems. At the 1993 World Conference on Human Rights in Vienna, governments agreed:

"Democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing" and that "democracy is based on the freely expressed will of the people to determine their own political, economic, social, and cultural systems and their full participation in all aspects of their lives."

A recent series of world conferences highlighted the potential for effective cooperation between NGOs and the United Nations. This is evident from the far-reaching commitments, many proposed by NGOs, that governments made at the conferences. Governments and NGOs have hailed these commitments and plans of action as blueprints for addressing vital issues such as the environment, human rights, population, and the advancement of women. Many U.N. officials emphasized that the critical relationships between these two groups must be strengthened. However, at this time, NGOs' ability to monitor and influence the deliberative process largely is based on the momentary good will of governments, which can change without warning. I am encouraged by U.N. Secretary-General Kofi Annan's commitment, as stated in his reform proposal, to set the stage for transforming these relationships into true partnerships.

Human rights organizations have played a key role in the United Nations since the body's inception, arguing that respect for human rights is a cornerstone of

peace, security, and prosperity. They also confront particular challenges because their work often results in challenging the policies of governments that violate human rights standards. The Carter Center's International Human Rights Council, a coalition of human rights leaders from throughout the world, examines in this publication the strengths and weaknesses of the relationship between the United Nations and human rights NGOs. The articles on the following pages offer a wide range of ideas on how to make this collaboration more effective.

There are several important reasons to give serious consideration to the recommendations in this report. First, although we think of democracy as relevant to governance in our own communities and nations, we must practice its principles at the global level so that together we can pursue policies whose beneficiaries are the whole of humankind. Second, the invaluable experience that NGOs bring to U.N. human rights work far outweighs the potential political difficulties that their presence may create. Currently, the arrangements for NGOs within the organization are tenuous, making it difficult for them to fully support U.N. activities. Finally,



Former U.S. President Jimmy Carter serves as chair of the International Human Rights Council, based at The Carter Center. Harry Barnes (left) directs the Center's Conflict Resolution Program and chair of the Center's Human Rights Committee.

Billy Howard

for a majority of the world's peoples, the United Nations represents hope. Sometimes, people even see it as the only buffer between themselves and irresponsible or repressive governments or as the only place where their voices can be heard and can make a difference. The earlier human rights problems are brought to light, the better the opportunities for NGOs and governments to prevent them from continuing unchecked and resulting in violent conflict. ■

INTRODUCTION

Established in 1994 by former U.S. President Jimmy Carter, the International Human Rights Council, based at The Carter Center in Atlanta, Ga., serves as a forum for human rights leaders from throughout the world to develop concerted initiatives of key importance to the human rights movement including strengthening U.N. human rights mechanisms, promoting human rights principles in the business community, and addressing human rights aspects of democratization, development, and peacemaking. Originally based in the Center's Human Rights Program, the Council now operates out of the Center's Human Rights Committee under the direction of Ambassador Harry Barnes.

This publication grew out of the Council's first meeting held at The Carter Center in November 1994, when members reflected on ways to support the human rights nongovernmental organization (NGO) movement. In particular, the Council identified the importance of expanding—and in some cases protecting—access for human rights NGOs within the deliberative processes of the United Nations.

The following collection of articles examines specific areas where NGOs have made significant contributions to U.N. human rights work. The reader will notice that the articles vary widely in scope. Some authors analyze their topics in significant detail, while others give cursory treatments to key issues that will require further examination in the future. In addition, some important subjects are not addressed in this volume such as NGO concerns from certain regions of the world, namely Asia and the Middle East. The objective here is to paint a diverse picture—not a comprehensive one—of the vital partnership that is emerging between human rights NGOs and the United Nations and of areas in which some change is needed. The articles were written as the project evolved during 1996-97, and each article presents issues that likely will remain relevant in the foreseeable future.

While this publication enumerates a significant number of proposals, three consistent themes deserve emphasis:

■ **Give NGOs timely access to information.** Key documents should be available before and during inter-governmental deliberations in electronic form as a supplement to hard copies already available to NGOs.

To be effective, NGOs must be able to see what issues are on the table before and during—not after—deliberations.

■ **Allow NGOs consistent access to U.N. deliberations.** Negotiations should be open to NGOs, except when governments have very compelling reasons for excluding them. Transparency should be the watchword of U.N. policy development and implementation.

■ **Expand NGO access to new areas of the United Nations and affiliated agencies.** Human rights organizations traditionally have worked within the framework of the Economic and Social Council (ECOSOC) and its subsidiary bodies such as the Commission on Human Rights. If all human rights are to be effectively promoted, NGOs must have greater access to the U.N. areas that address security, arms, trade, and finance. Specifically, NGOs should be allowed to observe the U.N. General Assembly and its committees as well as the World Trade Organization, the Bretton Woods Institutions, and the various disarmament and security fora.

The publication was designed and edited by Karin Ryan and Helena Nygren Krug, who worked with the articles' authors and the Council as a whole in determining an appropriate range of issues to be covered. Carrie Harmon, Pam Auchmuty, and Laina Wilk from The Carter Center's Office of Public Information provided invaluable editorial assistance.

We also would like to express our appreciation to the John D. and Catherine T. MacArthur Foundation for its generous support, which makes possible the Council's activities and this report's publication. ■

INTERNATIONAL HUMAN RIGHTS COUNCIL

The International Human Rights Council, based at The Carter Center in Atlanta, Ga., works to increase collaboration among nongovernmental, international, and national organizations and world leaders to advance and protect human rights worldwide. Chaired by former U.S. President Jimmy Carter, it comprises diverse members of the human rights field including:

Jimmy Carter, Council Chair and Former President; United States

Rosalynn Carter, Former First Lady; United States

Philip Alston, Chair, U.N. Committee on Economic and Social and Cultural Rights; Australia

Hanan Ashrawi, Minister of Higher Education, Palestinian National Authority; Palestine

Florence Butegwa, Former Coordinator, Women in Law and Development; Lawyer and Consultant, Uganda

Patricia Derian, Former Assistant Secretary of State for Human Rights and Humanitarian Affairs; United States

Clarence Dias, President, International Center for Law and Development; United States and India

Walter Echo-Hawk, Senior Attorney, Native American Rights Fund; United States

Felice Gaer, Executive Director, Jacob Blaustein Institute for the Advancement of Human Rights; United States

Hina Jilani, Human Rights Lawyer, AGHS Legal Aid; Pakistan

Wei Jingsheng, Human Rights and Democracy Activist, Detained; People's Republic of China

Elaine Jones, Director/Council, NAACP Legal Defense and Educational Fund; United States

Sia Kaxinawa, Co-founder, Alliance of the Peoples of the Forest; Brazil

Teddy Kollek, Former Mayor of Jerusalem; Israel

Ewa Letowska, First Ombudsperson in Eastern Europe; Poland

Gay McDougall, Executive Director, International Human Rights Law Group; United States

Bacre Waly N'Diaye, U.N. Special Rapporteur for Extrajudicial, Summary, or Arbitrary Executions; Senegal

Pedro Nikken, Former U.N. Special Rapporteur on El Salvador; Venezuela

Jacqueline Pitanguy, Head of Cidadania, Estudo, Pesquisa, Informaçao e Açã; Brazil

Michael Posner, Director, Lawyers Committee for Human Rights; United States

Nigel Rodley, U.N. Special Rapporteur on Torture; United Kingdom

Mohamed Sahnoun, Secretary-General Special Representative; Algeria

Dorothy Thomas, Director, Women's Rights Project, Human Rights Watch; United States

Andrew Whitley, Chief of Staff, U.N. Conference on Trade and Development; Switzerland

Laurie Wiseberg, Executive Director, Human Rights Internet; Canada

Mona Zulficar, Lawyer and Member of the New Civic Forum; Egypt



Members of the International Human Rights Council pose with Carter Center staff. Starting with the bottom row, they include (from left): Karin Ryan, Michael Posner, Jimmy Carter, Laurie Wiseberg, Clarence Dias, and Mohamed Sahnoun. Pictured in the second row are Felice Gaer, Harry Barnes, Gay McDougall, Patricia Derian, Andrew Whitley, Sia Kaxinawa, and Bacre Waly N'Diaye. Walter Echo-Hawk, Florence Butegwa, and Dorothy Thomas are pictured in the top row.

Billy Howard

ECOSOC RESOLUTION 1996/31: THE END RESULT OF THE ECOSOC REVIEW PROCESS OF RULES GOVERNING NGO RELATIONS WITH THE UNITED NATIONS

by Karin Ryan and Laurie Wiseberg

"Nongovernmental organizations (NGOs) are a basic form of popular representation in the present-day world. Their participation in international organizations is, in a way, a guarantee of the political legitimacy of those international organizations ... NGOs are an essential part of the legitimacy, without which no international activity can be meaningful.

"I should like NGOs to occupy an increasingly significant place within the United Nations itself. From the standpoint of global democratization, we need the participation of international public opinion and of the mobilizing powers of NGOs."

—Former U.N. Secretary-General
Boutros Boutros-Ghali, September 1994.¹

On Feb. 12, 1993, the U.N. Economic and Social Council (ECOSOC) decided to undertake a review of the rules governing its relations with nongovernmental organizations (NGOs) as set out in ECOSOC Resolution 1296 (XLIV) (1968).² On July 30 of the same year, it created the Open-Ended Working Group (WG) on the Review of Arrangements with NGOs, mandated to undertake a general review to:

- Update, if necessary, Resolution 1296.
- Introduce coherence in the rules governing NGOs' participation in international conferences convened by the United Nations.
- Examine ways and means of improving practical arrangements for the Committee on NGOs and the U.N. Secretariat's NGO Unit.³

Several factors precipitated the review process. First, there was dramatic growth in the number of NGOs wanting access to the United Nations. In 1948, 41 NGOs had ECOSOC consultative status. In 1968, when Resolution 1296 was crafted, some 500 received consultative status accreditation. By 1992, the number reached over 1,000.⁴ These NGOs mostly were international.⁵ If one also takes into account the universe of NGOs potentially interested in some aspect of U.N. work, including those at the regional, subregional, national, and local levels, the number would be in the tens of

thousands.⁶ This growth, which led to a phenomenal increase in the amount of NGOs seeking U.N. access, has posed management and resource problems for the overburdened U.N. Secretariat.

Paradoxically, the second factor was a realization by the United Nations and Member States that the type of problems confronting humankind in the 1990s—environmental challenges, poverty, war, massive refugee flows, population growth, unsustainable human settlements, human rights violations, and international crime syndicates among them—could not effectively be addressed by States alone. Civil society, at both the national and global levels, had become critical to finding and implementing solutions to human survival and development. It has been said so often that it appears trite (yet remains true): U.N. human rights machinery would grind to a halt were they not fed by information, ideas, and expertise provided by human rights NGOs. The same can be said for other areas falling under the ECOSOC's mandate.

The catalysts for the review process probably were the opportunities and dilemmas posed by NGO participation in U.N. international conferences. According to Cyril Ritchie:

As far back as the 1972 U.N. Conference on the Human Environment in Stockholm, the United Nations itself—particularly the conference's omnipresent Secretary-General Maurice Strong—created an NGO Com-

mittee which in effect was a coalition to provide advice. For the conferences on population (Bucharest, 1974), food (Rome, 1974), and habitat (Vancouver, 1976), NGOs created their own coalitions, pushed the idea of producing an NGO conference newspaper, and took on the arduous role of organizing a parallel NGO Forum. In the later 1970s and throughout the 1980s, U.N. conferences became inseparable from increasingly complex and expansive NGO participation on topics such as desertification (Nairobi, 1977), science and technology for development (Vienna, 1979), population (Mexico City, 1984), and the first three world conferences on women".⁷

In the 1990s, however, NGOs had a massive presence at world conferences and summits. More than 29,000 participants attended the June 1992 U.N. Conference on the Environment and Development (UNCED), held in Rio. Not only was it "the biggest ever gathering of heads of state in history,"⁸ but at the Earth Summit in Rio and its four PrepComs, the United Nations granted NGOs unprecedented access to the process and thus to delegates themselves. Instead of only allowing access to NGOs with consultative status, NGOs that could prove "particular competence" on environment and development issues also were given accreditation.⁹

This set a precedent for NGO involvement—including by national, subregional, and regional NGOs—which was followed by the World Conference on Human Rights (WCHR) (Vienna, 1993; 2,000 NGOs attended), the International Conference on Population and Development (ICPD) (Cairo, 1994), the World Summit for Social Development (WSSD) (Copenhagen, 1995), the Fourth World Conference on Women (FWCW) (Beijing, 1995, some 30,000 people participated) and Second World Conference on Human Settlements (Habitat II) (Istanbul, 1996). For each conference, the accreditation procedure was ad hoc and sui generis, but for several, it raised serious political problems, which will be examined in the following pages. Moreover, many of the NGOs accredited to the above international U.N. meetings expressed strong interest in participating in the follow-up. For example, some 500 NGOs that were not granted consultative status wanted to participate in the U.N. Commission on Sustainable Development, created to implement commitments made at the Earth Summit.

Thus, the motivating factors to revise Resolution 1296 included the desire to facilitate NGO access to U.N. processes and arenas, permit national NGOs (largely excluded from consultative status under Resolution 1296) U.N. access, and bring U.N. regulations and

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International Human Rights Council member Laurie Wiseberg is executive director of Human Rights Internet.

procedures in line with the current reality that recognizes the important contribution NGOs make or can make to U.N. work. The end of the Cold War meant that this review process finally could be undertaken, 25 years after the regulations were adopted.

Before examining in depth the recent review process, a historical perspective might be useful to understand its context.

A Historical Perspective

When the U.N. Charter was adopted in San Francisco (1945), Article 71 acknowledged the potential contribution NGOs could make to U.N. work in the ECOSOC's areas of concern—i.e., international economic, social, cultural, educational, health, and related matters including human rights. The Article did so by providing that the ECOSOC “may make suitable arrangements for consultation” with international NGOs and could make such arrangements “where appropriate, with national organizations after consultation with the member of the United Nations concerned.” There were two purposes of the consultation, as articulated in ECOSOC Resolution 2/3 (1946):

■ “[To] enable the Council ... to secure expert information and advice.”

■ “[To] enable organizations which represent important elements of public opinion to express their views.”

Article 71 did not so much break new ground as it formalized a relationship that already had emerged during the League of Nations era. While the League's Covenant did not contain provisions for a formal link with international NGOs, it had become normal to consult with such organizations.¹⁰ Chiang Pei-heng, quoting Bertram Pickard, wrote:¹¹

“Participation without vote [was] normal practice [for NGOs with] little if any distinction ... made between IGOs and NGOs, both of which, when consulted, were placed upon an equal footing with government representatives in all but voting.”¹²

Mr. Chiang further noted:

“NGO representatives to the various committees of the League ... although not able to vote, were allowed to speak, present reports, initiate discussions, propose resolutions and amendments, and be assigned to subcommittees.”¹³

The ECOSOC's relationship established with NGOs did not go nearly so far. The United Nations clearly distinguishes between “consultation” with NGOs in Article 71 and “participation without vote” granted to specialized agencies in Article 70. Resolution 1296

specifically notes in paragraph 12, “[this] distinction ... is fundamental, and arrangements for consultation should not be such as to accord to nongovernmental organizations the same rights of participation as accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations.” Paragraph 13 underlines this point: “The arrangements should not be such as to overburden the Council or transform it from a body for coordination of policy and action, as contemplated in the Charter, into a general forum for discussion.”

From the outset, a hierarchy was established between three different categories of NGOs:

- 1) Category A (renamed Category I) NGOs were interested in all aspects of the ECOSOC's work.
- 2) Category B (II) NGOs were interested only in particular aspects of the ECOSOC's work.
- 3) NGOs on the Register (renamed the Roster) made occasional, useful contributions to the ECOSOC's work.

Different privileges—written and oral interventions or being able to propose agenda items—were accorded to the different categories and received different status.

As the ECOSOC elaborated its rules for working with NGOs [in Resolutions 2/3 (1946), 288B (X) (1950), and 1296 (XLIV) (1968)], it progressively tightened control over NGOs. For instance, Resolution 1296 provided for the suspension or withdrawal of status “if the organization clearly abuses its consultative status by systematically engaging in unsubstantiated or politically motivated acts against States Members of the United Nations contrary to and incompatible with the principles of the Charter.”¹⁴

The impetus for the 1968 review came from two sources:

- 1) Extraordinary growth in U.N. membership, such as the addition of African and Asian countries with little understanding of the NGO concept, which led to the ECOSOC's enlargement.
- 2) Two February 1967 exposés by *Ramparts* magazine and *The New York Times*, revealing how the U.S. CIA clandestinely was funding many NGOs including the National Student Association, the International Confederation of Free Trade Unions, the International Commission of Jurists, and Pax Romana.¹⁵

Sidney Liskofsky of the American Jewish Committee published the following analysis in 1970:

“During the 1960s, Afro-Asian membership in the United Nations increased greatly, depriving the West of

The ECOSOC then decided "that any nongovernmental organization failing to show proper discretion in an oral or written statement may render itself subject to suspension of its consultative status." Like Damocles' sword, this threat hung over NGOs' heads for many years even though, over time and through persistent efforts, NGOs were able to force the United Nations to publicly confront governments engaged in gross human rights violations.

its majority and its dominant position in the organization. With this change came increasing expressions of hostility, and even challenges, to the NGO system by Communist and Afro-Asian states. This culminated in a decision to investigate the entire system and re-examine the status assigned to NGOs. The two-year review which followed became deeply enmeshed in the rivalries and conflicts that beset the United Nations, especially those concerning the Middle East. Finally, the Arab-Soviet bloc mounted a virtual assault against organizations specializing in the U.N. human rights program, particularly Jewish ones."

Originally proposed by Tanzania, the review chiefly sought to determine the truth of the widely bruited charges regarding CIA infiltration of NGOs through subsidies and otherwise which, if proven, might negate NGOs' claims of nongovernmental status.

However, a more fundamental motivation among Communist and certain Afro-Asian governments, mostly Arab ones that endorsed the review, was the general hostility to the NGO concept and system.¹⁶ This hostility precluded what became several years later a campaign to silence human rights NGOs.

In the mid-1970s, as the U.N. Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities seriously began to address human rights violations in the context of protection, human rights NGOs started addressing their information and concerns to these bodies. As I (Ms. Wiseberg) wrote in 1977:

"The ECOSOC did not clearly enunciate its rules of parliamentary order, but convention and habit ensured that NGOs would 'address' the issues of violations of human rights and their violators with circumlocutions, euphemisms, and evasions. In February 1974, however, the unwritten rule against 'naming names' was broken when Mrs. Salvadore Allende, widow of the slain Chilean President, was invited to address the U.N. Commission. ... No one interrupted Mrs. Allende to object or invoke a Roberts-type ruling calling her to order. Observing this, Dr. Homer A. Jack, representing the World Conference on Religion and Peace, seized upon the opportunity to present a 'state of the world'/human rights status report, with empirical detail about victims and violators. The following day, Professor Frank C. Newman from Amnesty International made very detailed charges about torture in Chile."

A few months later in May 1974, the executive director of another human rights organization, Niall MacDermot of the International Commission of Jurists, wrote an article for a special human rights section in *The London Times* in which he similarly violated the nation-protecting diplomatic protocol. Mr. MacDermot dealt with real-world, real-time events, regimes, and people by discussing the eight cases of consistent patterns of gross violations, then under investigation by the Commission's Communications WG. This series of NGO 'indiscretions' culminated at the Commission's 31st session in Geneva (February 1975). At that meeting, Dr. Jack spoke out forcefully again, this time addressing religious persecution.¹⁷

States were furious. Egypt, Pakistan, the Soviet Union, Turkey, Zaire, the Philippines, and Syria all took the floor to protest Dr. Jack's statements as untrue, slanderous, or biased. "We are extremely concerned about the abuse of freedom of speech practiced by some representatives of nongovernmental organizations," said the Egyptian delegate. In a private session, the Commission requested that the ECOSOC take measures to impose severe restrictions on the nature of NGO communications about human rights violations, whether those communications were submitted to the United Nations or were in the form of public statements. The ECOSOC then decided "that any nongovernmental organization failing to show proper discretion in an oral or written statement may render itself subject to suspension of its consultative status."¹⁸

Like Damocles' sword, this threat hung over NGOs' heads for many years even though, over time and through persistent efforts, NGOs were able to force the United Nations to publicly confront governments engaged in gross human rights violations.



Courtesy of the United Nations

Council member Laurie Wiseberg delivers a statement during a plenary session on behalf of former U.S. President Jimmy Carter during the Second World Conference on Human Settlements (Habitat II), held in Istanbul in June 1996. President Carter urged those gathered to affirm the right to housing and to take practical measures to realize that right for more of the world's peoples. NGO addresses in plenary sessions are rare but are increasing as NGOs' role becomes more pronounced during U.N. deliberations.

Review of ECOSOC Resolution 1296/New Resolution 1996/31

The Open-Ended WG began deliberations in June 1994. After two arduous years of negotiations in both formal and informal meetings,¹⁹ it completed work on July 25, 1996, thereby adopting Resolution 1996/31. Some 50 States participated in the deliberations, and a core group of about 30 NGOs (numbers fluctuated from meeting to meeting). According to the rules established, any NGO with consultative status, any NGO that had participated in a world conference or PrepComs, and any NGO that showed a legitimate interest in the proceedings could be accredited to the WG. Two hundred fifty NGOs sought and received accreditation to the WG, but lack of resources and other factors such as shifting dates kept them from participating in it.²⁰ Throughout the meetings, Pakistan occupied the chair—Ambassador Jamsheed K.A. Marker at first, followed by Ambassador Ahmad Kamal and his deputy Masood Khan in the final year of negotiations.

In 1994, optimism prevailed, and both NGOs and States tabled some innovative and imaginative proposals. Many of the proposals aimed at facilitating NGO access to the United Nations and broadening NGOs' participation base by:

- Extending accreditation to national and regional NGOs.
- Eliminating disparities in privilege between different categories of NGOs while protecting the privileges and best practices NGOs had achieved over the last decades.
- Finding modalities to speed up or "fast track" accreditation of NGOs that had participated in world conferences and wanted to monitor and contribute to follow-up work.
- Introducing transparency and accountability into NGO accreditation procedures.

There was hope that the WG would agree on amendments to Resolution 1296 that reflected the 1990s, when NGOs are not merely regarded as "silent observers or transmit-

ters of information” but can become “relevant political actors.”²¹ By May 1995, however, clear fault lines had emerged not only between Northern and Southern governments but also within the NGO community itself.

It became clear that more than a few “old boy” NGOs—those which for years enjoyed consultative status²² and had representatives in Geneva or New York—had developed a proprietary interest in their relations with the United Nations.

They came out strongly against opening up the United Nations to national NGOs, fighting particularly hard to deny accreditation to national NGOs affiliated with international NGOs (often their own affiliates)²³ and resisting efforts to eliminate the rankings between Categories I, II, and Roster NGOs. The old-boy NGOs lost on the former two issues but won on the latter. While they may have been motivated by a legitimate interest to ensure no erosion of NGO privileges, the cacophony of NGO voices made it particularly difficult for States wanting to support NGOs, as no single NGO position existed. It was demoralizing to learn that there were NGOs that had been lobbying some of the most hardline States, urging them to not let in national NGOs, lest they open the “flood gates.”

Another intensely controversial issue concerned paragraph 17 in old Resolution 1296, which singled out human rights NGOs for special treatment. On principle, human rights NGOs wanted to eliminate the entire paragraph because they saw no valid reason for human rights NGOs to be treated any differently than other NGOs. Old 1296 stated that human rights NGOs were required to have “a general concern” with human rights but were “not restricted to the interests of a particular group of persons, a single nationality, or the situation in a single State or restricted group of States.” Had it remained, this paragraph would have undercut the granting of consultative status to many national human rights NGOs. Old paragraph 17 also contained a list of NGOs that should be accorded special consideration, i.e., those “combating colonialism, apartheid, racial intolerance, and other gross violations of human rights and fundamental freedoms.”

Although paragraph 17’s content remained, in the new text (as paragraph 25), it is infinitely more acceptable, stating simply: “Organizations to be accorded special consultative status should pursue the goal of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights, and the Vienna Declaration and Program of Action.” The list of NGOs to be accorded special consideration (badly outdated for the 1990s) was deleted.

Human rights NGOs remain concerned about the Vienna documents’ reference to them. While the documents contain many positive points, there is one highly problematic reference to NGOs in Program paragraph 38. It says: “Nongovernmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights and the protection of national law. These rights and freedoms may not be exercised contrary to U.N. purposes and principles. NGOs should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.” However, one must ask:

- Who determines what constitutes a “genuine” NGO?
- Must NGOs abide by national law if it violates international human rights standards?

Human rights NGOs also were concerned with paragraphs 36 (a) and (b) in old 1296. The new paragraphs 57 (a) and (b) are better though still problematic. Old 1296 stated that NGOs’ consultative status would be suspended for up to three years or withdrawn: “1) If there exists substantiated evidence of secret governmental financial influence to induce an NGO to undertake acts contrary to the U.N. Charter’s purposes and principles; or 2) If an NGO clearly abuses its consultative status by systematically engag-

Another intensely controversial issue concerned paragraph 17 in old Resolution 1296, which singled out human rights NGOs for special treatment. . . . Had it remained, this paragraph would have undercut the granting of consultative status to many national human rights NGOs.

ing in unsubstantiated or politically motivated acts against U.N. States Members contrary to and incompatible with the Charter's principles."

The revised Resolution permits suspending NGOs or withdrawing their consultative status: "1) If an NGO, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the Charter's purposes and principles including unsubstantiated or politically motivated acts against U.N. Member States incompatible with those purposes and principles; or 2) If there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as the illicit drugs trade, money laundering, or the illegal arms trade."

The phrase "politically motivated" is troubling, because States frequently charge that NGOs are politically motivated when they expose human rights abuses.

The revised Resolution spells out a specific appeals process, which was not the case before. According to paragraph 55, an NGO whose consultative status is withdrawn or suspended "shall be given written reasons for that decision and shall have an opportunity to present its response for appropriate consideration by the Committee as expeditiously as possible." This provision goes a considerable distance toward the transparency for which NGOs and some governments have been calling.

Paragraph 34.9 in old 1296 was another area of disagreement on international conferences. It states: "In recognition of the intergovernmental nature of the conference, nongovernmental organizations shall have no negotiating role in the work of the conference and its preparatory process." Best practices from recent world conferences have gone far beyond these 1968 strictures. In Habitat II's lead-up (Istanbul, June 1996), NGOs played a major role in drafting the documents. At the actual conference, NGOs were permitted to attend drafting group meetings and make statements, as long as the statements put forward concrete suggestions and did not polemically challenge States' positions.

In addition, a consolidated list of NGO recommendations circulated as an official conference document. In the revised text, new paragraph 50 only partly recognizes these developments: "In recognition of the intergovernmental nature of the conference and its preparatory process, active participation of nongovernmental organizations, while welcome, does not entail a negotiating role." It seems that governments, even if they recognize NGOs' important role in helping them confront a broad spectrum of world challenges, are loathe to relinquish any element of their sovereignty.

A final area important to mention concerns the proposal that most NGOs and many of G77 governments support, but several Western governments, especially the United States, oppose. Indeed, disagreement on this issue threatened to scuttle the entire three years of drafting, and only a carefully crafted and face-saving compromise by the chair made it possible for the ECOSOC to adopt the proposed revision, now ECOSOC Resolution 1996/31. The compromise was for the entire U.N. system, not merely ECOSOC, to be opened up to NGO participation. The United States argued that the technical problem of 1296 applying only to NGO relations with the ECOSOC was at issue and that an ECOSOC WG could not make recommendations beyond its area of competence (e.g., concerning NGO participation in the U.N. General Assembly (G.A.) or the Security Council). In reality, the U.S. government strongly opposed any NGO role, even that of observer in the Security Council.

In compromise, the chair suggested a separate draft resolution to the ECOSOC, recommending that the G.A. "examine, in the light of the experience gained" through ECOSOC arrangements for consultation with NGOs, "ways and means for allowing the participation of NGOs in all areas of the work of the United Nations." To appease the United States, a reference to U.N. Charter Article 10 was added, stating that the G.A. could not make recommendations on a dispute or situation being considered by the Security Council. This seemed irrelevant, but it enabled the United States to save face.

The phrase "politically motivated" is troubling, because States frequently charge that NGOs are politically motivated when they expose human rights abuses.

Official conference documents were not available at the NGO Forum '96 in Istanbul during the Second World Conference on Human Settlements (Habitat II).



Experience has shown, however, that NGOs have developed highly professional attitudes and approaches toward advocacy work within the United Nations, resulting for the most part in respectful, cooperative relations between NGOs and governments.

Though far from ideal and nowhere as innovative as some of the suggestions proposed early on in the negotiations, Resolution 1996/31 nonetheless signifies considerable progress. There now is greater transparency in the accreditation process as well as a provision for a review of the regulations "as and when necessary" to facilitate NGO contribution to U.N. work.

Neither Resolution 1996/31 nor 1296 addresses the two most important requirements for effective contribution to U.N. work after receiving consultative status—access to negotiations and timely access to documents. So far, every conference or meeting has developed its own arrangements concerning NGO access based on the degree to which governments are comfortable having NGOs present during sometimes sensitive negotiations. Often, NGOs are allowed to attend the larger WGs' sessions during general discussions between governments but will be excluded when the final negotiations take place on issues that are hardest to resolve. These negotiations are referred to as "informals" when they are on the calendar but closed to all except the negotiating States. They are called "informal informals" when they are not listed on the calendar. This nomenclature underscores governmental attitudes about such talks' low profile. Some governments responded to criticism about this exclusion by claiming NGOs cannot be trusted with direct knowledge of specific government positions. Experience has shown, however, that NGOs have developed highly professional attitudes and approaches toward advocacy work within the United Nations, resulting for the most part in respectful, cooperative relations between NGOs and governments.

For example, NGOs were present at some point during informal negotiations at the following world conferences and their preparatory meetings as well as at the ECOSOC Open-Ended WG on NGO Arrangements, New York (1994-96):

- 1) WSSD, Copenhagen (1995).
- 2) FWCW, Beijing (1995) (very minimal and unpredictable).
- 3) Habitat II, Istanbul (1996) (only after the insistence of supportive government delegates and chairs of negotiating groups).

In each of these, some governments objected to NGO presence. However, these

objections were overcome because of leadership from certain governments that were convinced NGOs had a role to play even during informal talks. When NGOs were allowed to observe these discussions, they could better understand the governments' positions, enabling constructive relations between the two groups. Conversely, when NGOs could not observe, their efforts were frustrated and relations with governments became polarized.

NGOs also have been concerned with the availability of working documents. Often, NGOs are not able to acquire most recent versions of documents under a WG's consideration. The most successful attempt to give NGOs access to documents was during Habitat II in Istanbul. Officially accredited NGOs had access to a room in which ample copies of the working documents and emerging proposals were made available for NGOs in the small WGs. However, even in Istanbul, NGOs that were accredited only for the NGO Forum but did not have access to conference grounds had no access to the documents, despite their interest in the deliberations.

Without access to such documents, NGOs cannot assess how best to approach governments on issues. While the high cost of printing may preclude the United Nations from making available a large number of copies for NGOs, adequate numbers of hard copies during rapidly evolving negotiations are necessary for NGOs most closely involved. Also, computer and electronic mail technology should enable the United Nations to place emerging texts online immediately for broader NGO access. In this context, the High Commissioner for Human Rights' website, which was launched on Dec. 10, 1996, has facilitated extremely rapid NGO access to key documentation. More could be done, however, to upload proposals as they emerge during negotiations.

Whether the U.N. system will really open up to NGOs will largely depend on what occurs in the NGO Committee charged with accrediting NGOs. This Committee, therefore, merits examination.

The NGO Committee

Under the ECOSOC's auspices, the NGO Committee comprises 19 members who are appointed by governments on the basis of equitable geographical representation.²⁴ It regulates NGOs and can grant, suspend, and revoke their U.N. consultative status. The Committee reviews NGO activities every four years to ensure that these organizations continue to make valuable contributions to the work of the United Nations.²⁵ It is important because it guarantees that only competent groups—not those that are undeserving or illegitimate—are accredited. Only NGOs that support U.N. purposes and principles can be granted consultative status. If an NGO that supports racist policies applied to the Committee, for example, it would be refused without discussion, as racial division contradicts the U.N. aims. Despite the Committee's important role in facilitating the partnership between NGOs and the United Nations, two principle problems exist that can interfere with its effective functioning; one is political, the other administrative.

The Political Problem

Politicization of the Committee's work—particularly the use of "political" rather than "objective" criteria to assess an NGO's worthiness—has a long history, with roots in the Cold War, when East-West divisions dominated the Committee's work. During that time, the United States and the Soviet Union battled each other in the Committee to block NGOs that supported the opposing power's political aims. Stalemates frequently resulted with very few NGOs getting approval unless backroom deals could be negotiated— "we will support NGO 'X' if you support NGO 'Y'." Human Rights Internet benefited from such a trade when it received consultative status in 1983. Since 1990, East-West political pressures have subsided, opening the door for a more effective assessment of NGOs by the Committee. While some improvements have been made, similar dynamics remain along other political fault lines.

Whether the U.N. system will really open up to NGOs will largely depend on what occurs in the NGO Committee charged with accrediting NGOs.

Ambassador Ahmad Kamal of Pakistan, chair of the ECOSOC WG, discusses negotiations on Resolution 1296 with NGO representatives. Also pictured are Jocelyn Dow (left) and Ambassador Jean-Marie Gervais of Côte d'Ivoire.



For human rights NGOs, being reviewed for consultative status by the Committee can be dicey, with the outcome in part dependent on which governments are sitting on the Committee.

For human rights NGOs, being reviewed for consultative status by the Committee can be dicey, with the outcome in part dependent on which governments are sitting on the Committee. This is so because NGOs' principle objective is to hold governments accountable to internationally accepted human rights standards. Governments do not always welcome such work, and their control over NGO access to the United Nations gives them the ability to restrict NGO work. It is not uncommon for governments that sit on the Committee to accuse NGOs applying for consultative status or submitting a quadrennial report of "politically motivated acts"²⁶ simply because the NGO criticized certain policies of that government that violate human rights principles. As previously noted, human rights organizations fought including language in Resolution 1996/31 that permits Committee members such broad grounds for challenging NGO activities.²⁷

Prior to 1993, the Committee worked by consensus, meaning that without unanimous agreement, NGOs could not be accredited. This caused problems for NGOs that were well-known for their hard-hitting work in exposing human rights violations in many countries, as even one government could block the Committee from granting consultative status. It was not until the Committee abandoned this consensus rule in 1993 and switched to voting that opposition to certain NGOs could be overcome through a majority of sympathetic countries' support. Human Rights Watch received Category II consultative status that same year, after having been turned down on several previous occasions. This change helped some high-profile NGOs, for which progressive governments were willing to fight, by lining up votes in their favor. This perhaps was as much a matter of principle as of substance. For lesser known organizations, however, the voting system may not help, as governments remain reluctant to confront each other on behalf of NGOs unless absolutely necessary.

Human Rights Advocates (HRA) provides one such example. HRA, a California-based human rights NGO with Category II status was founded by the late Frank Newman, former justice of the California Supreme Court and renowned supporter of U.N. human rights work. In January 1996, the Committee reviewed HRA's quadrennial report, which is required of all Category I and II NGOs (now called "General" and "Special," respectively). During the review, China raised objections which caused a decision on the report to be deferred until the May meeting. China's objections derived from HRA's statements to the Commission on Human Rights during the 1990-94 sessions concerning the human rights situation in Tibet. Two other delegations raised different concerns about HRA's work, but China's objections proved the most critical.

In an attempt to resolve the issue, HRA President Cindy Cohn traveled to New York for the Committee's May 13-17 meeting. However, she could not convince governments usually supportive of human rights NGOs to take the matter to a vote or to work to

generate votes in HRA's favor. In the end, Ms. Cohn placated the Chinese delegate by orally stating that HRA's human rights work in Tibet did not mean that the organization had the competence to address political questions such as Tibetan "independence" or Chinese "sovereignty." With this, the Chinese delegate could approve HRA's report. Although the matter was settled in a way that allowed HRA to retain its status, it exposed the extent to which a government can determine which terms and activities are "acceptable" and which are not. This could have a chilling effect on NGOs wishing to affiliate with the United Nations.²⁸

Another incident involving Amnesty International (AI) in early 1996 illustrates a similarly troubling form of scrutiny. AI probably is the best known human rights NGO in the world. It received consultative status in 1973 and has made substantial contributions to U.N. human rights work for over 30 years. Therefore, it was with surprise and concern that AI learned the Committee questioned its quadrennial report of the 1989-93 period that it submitted to the Committee in 1994. AI staff were only informed about this review on the day that its report was to be considered, more than one year after it had been submitted to the Committee. Upon arriving at the Committee meeting, the AI representative was informed that two or three delegates had raised questions about AI's activities, specifically whether AI was sufficiently concerned with promoting and protecting the full range of human rights issues covered by international human rights standards, including economic, social, and cultural rights as well as the right to development, and whether the organization works on issues such as the harmful effects of embargoes.

AI expected the review to be a procedural matter of noting its quadrennial report, as had been the case in the past. However, it instead turned into a substantive review of all the organization's activities. It is legitimate for the NGO Committee to use the quadrennial review to assess whether an organization continues to comply with the principles governing consultative status and contribute to the Council's work.²⁹ However, the questions raised about AI's work did not constitute grounds upon which to question its contributions to the United Nations. Nowhere is it stated that human rights NGOs only can have consultative status if they work on every human rights issue. Some who were present characterized these States' interventions as a venting of grudges based on some of AI's past work concerning those governments.

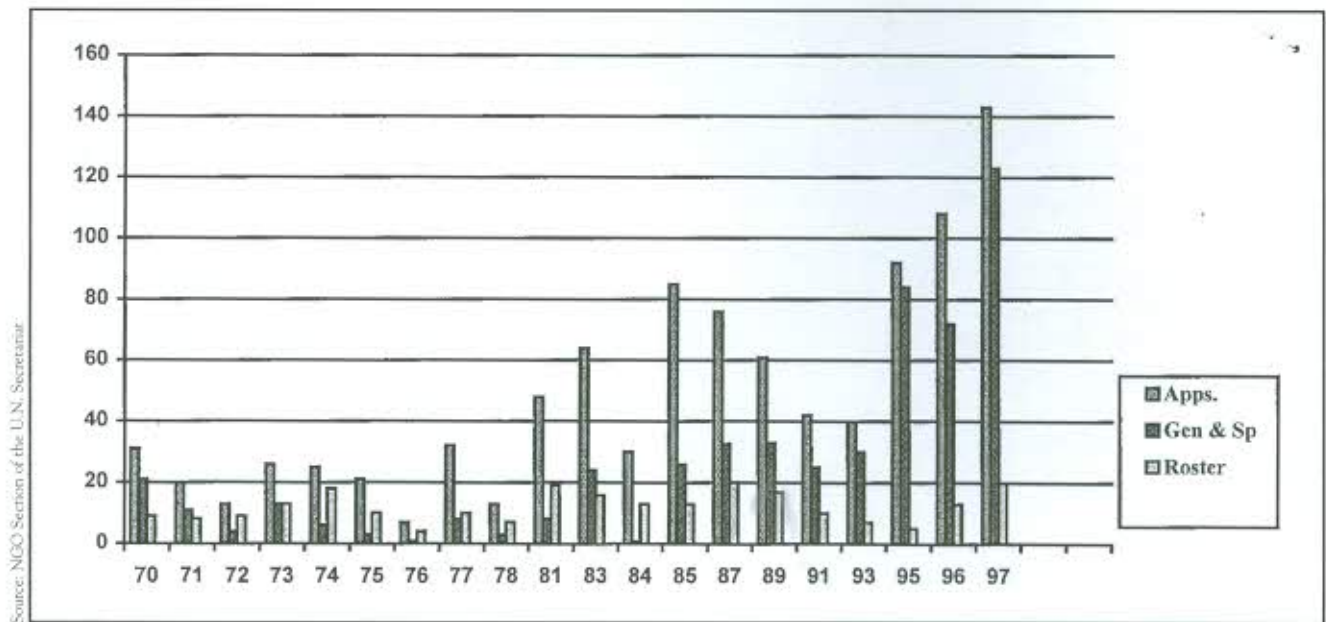
During this interaction, most Committee members expressed support for AI's many contributions to the United Nations, and some criticized the members who raised the questions. In the end, the Committee accepted the report, and the matter was concluded.

The two incidents above highlight the specific challenge facing human rights



Government delegates negotiate new rules for consultative arrangements between NGOs and the ECOSOC during a July 1996 meeting at the United Nations in New York.

Kathryn Ryan



This chart shows the number of NGO applications submitted to the NGO Committee from 1970-97.

NGOs in maintaining a consultative relationship with the United Nations. For such organizations to be effective, their work toward advancing universal human rights principles must not be circumscribed by the fear that governments will block their access if they do not tow a certain line.

The Administrative Problem

The NGO Committee's second problem is administrative in nature. Between 1978-95, the Committee met either once a year or every other year, thereby creating an excessively long waiting period for NGOs applying for consultative status. In 1996, the Committee met twice for a total of four weeks but was scheduled only to meet for one full two-week session, with a resumed "1997" session in early 1998. Given the mounting number of applications, the amount of time devoted to processing them is woefully inadequate. The increasing number of applications and the new regulations established by Resolution 1996/31, which call for greater transparency and efficiency, will add pressure on the Committee, Secretariat staff that service the Committee, and the 1,830 NGOs in consultative status.

The NGO Section of the U.N. Secretariat, which is responsible for screening applications to the Committee, issuing passes to NGO representatives to enter U.N. facilities and observe meetings and providing numerous other services, is poorly equipped and operates with a skeletal staff. For example, in preparing for one recent Committee meeting, NGO Section staff spent an enormous amount of time simply photocopying NGO applications—amounting to over 150,000 pages—for Committee members. The office's size has not increased since its creation in 1947. With only five permanent staff members, two of which are administrative, it is not surprising that many of the basic services NGOs require are hard to deliver.

As a result, many NGOs have had difficulty applying for consultative status since the explosion of interest in the United Nations after UNCED (1992). According to the U.N. Division for Social Development, over half of the more than 900 NGOs that attended the WSSD in Copenhagen (March 1995) have been unsuccessful in their attempts to apply for consultative status. As of mid-1997, two-and-a-half years after the WSSD, only eight have received consultative status. In addition, the 2,100 NGOs accredited to the FWCW in Beijing (September 1995) have been frustrated with their

attempts to apply, according to the U.N. Division for the Advancement of Women. Staff from both divisions report that NGOs have told them repeatedly that the application itself is difficult to understand and that they cannot get the answers they need from the NGO Section.

In addition to being understaffed, the NGO Section lacks basic equipment. At this writing, the Section does not have a fax machine or adequate e-mail facilities, making it virtually impossible to communicate quickly with NGOs throughout the world that are inundating the office with requests. The director of the Section predicts that the office soon will have to process at least 700 applications per year. As shown by the graph,³⁰ on the previous page, such an increase will necessitate a tremendous increase in the Section's capacity.

Conclusion

Given the political and practical challenges to effectively managing arrangements for human rights NGOs within the ECOSOC, some changes must be forthcoming. We propose specific responses to each of the following problems:

- To minimize the degree to which the NGO Committee politicizes human rights NGOs, we support the recommendation made by the Jacob Blaustein Institute for the Advancement of Human Rights³¹ to transform the Committee into a "Committee of Experts." At present, the Committee comprises government representatives who frequently represent their own countries' views and interests.

- The U.N. high commissioner for human rights should demonstrate an active concern for the situation of human rights groups that are scrutinized by the Committee during the application process and the quadrennial review. To this end, the high commissioner's office could assign staff to follow closely the work of the Committee to determine when an intervention may be useful.³²

- The ECOSOC affirmed in 1996 the need to streamline and increase the level of Secretariat support for servicing NGO needs.³³ Measures should be taken immediately to fulfill the ECOSOC's commitment. The secretary-general should conduct a review, in consultation with NGOs, to produce recommendations for improvements, which likely would include expanding staff and procuring adequate technological capacity so the Section can carry out its functions with greater efficiency.

- The secretary-general should encourage Member States to err on the side of inclusion when making judgments about which negotiations to open to NGOs.

The U.N. high commissioner for human rights should demonstrate an active concern for the situation of human rights groups that are scrutinized by the Committee during the application process and the quadrennial review.



Karin Ryan, assistant director of The Carter Center's Human Rights Program, testifies before the U.N. General Assembly Sub-Group on NGO Arrangements in February 1997. Her statement on behalf of the International Human Rights Council called for expanding access for NGOs to the entire U.N. system.

Ashley Koshare

Such an initiative could be enhanced if individual States would support NGO presence whenever possible.

■ Adequate arrangements for timely distribution of documents to NGOs must be developed, including making such documents rapidly available on the U.N. Web site. The Secretariat could consult with NGO organizers to determine the specific needs for adequate documents during each meeting or conference.

■ The G.A. now is considering how to expand NGO access throughout the U.N. system beyond the ECOSOC.³⁴ We encourage all Member States to undertake this important initiative in light of the vital contributions already being made to all U.N. areas. The knowledge and resources NGOs can bring to deliberations on these issues should be seen as a necessary element to developing appropriate policies in these fields.

Adequate arrangements for timely distribution of documents to NGOs must be developed, including making such documents rapidly available on the U.N. Web site.

World leaders repeatedly refer to NGOs' emergence on the international scene as a necessary dimension of U.N. efforts to address the many challenges of today's world. Yet the question remains whether the United Nations and individual governments are willing to take the steps necessary to ensure this vital partnership between NGOs and this world body is strengthened. Their actions alone will provide the answers. ■

We would like to thank the many individuals who took the time to be interviewed for this paper. Although we cannot list them all, we would like to thank the following individuals in particular: Florence Martin of Amnesty International; Bill Pace of World Federalist Movement; Cindy Cohn of Human Rights Advocates; Felice Gaer of the Jacob Blaustein Institute for the Advancement of Human Rights; Farida Ayoub of the NGO Section of the U.N. Secretariat; Masood Khan, former acting chair of the ECOSOC Open-Ended WG on the Review of Arrangements with NGOs; and many other extremely helpful government delegates.

Karin Ryan has worked with The Carter Center's Human Rights Program since its inception in 1988 and now is its assistant director. She also is the principal coordinator of The Carter Center's International Human Rights Council, a coalition of human rights activists and scholars chaired by former U.S. President Jimmy Carter.

Laurie Wiseberg is executive director and co-founder of Human Rights Internet. She has taught political science at Ahmadu Bello University in Nigeria, the University of Wales in Swansea, and the University of Illinois in Chicago. Currently, she is an adjunct professor in the University of Ottawa's Faculty of Law.

ENDNOTES

¹ Both quotes from Ritchie, Cyril. "Coordinate? Cooperate? Harmonize? NGO Policy and Operational Guidelines." Article on the Internet, <tgeearthtime@igc.agc.org>, May 22, 1996.

² ECOSOC Decision 1993/214, Feb. 12, 1993.

³ ECOSOC Resolution 1993/80, July 30, 1993.

⁴ Dunér, Bertil. "Human Rights Spearheads: NGOs in the United Nations." An April 9, 1992 statement of the chair of the ECOSOC Committee on NGOs for the 1948 and 1992 figures; See Guillet, Sara on page 137, for the 1968 figures. According to the *Directory of Nongovernmental Organizations Associated with the Department of Public Information* 1995, approximately 1,200 NGOs were associated with the department including both NGOs with and without consultative status.

⁵ Precisely how one defines an international NGO—whether in terms of its membership, its decision-making structure, the focus of its work, or the geographic reach of its activities—is problematic. Paragraph 4 of Resolution 1296 defined it as follows: "The organization shall be of representative character and of recognized international standing; it shall represent a substantial portion, and express the views of major sections, of the population or of the organized persons within the particular field of its competence, covering, where possible, a substantial number of countries in different regions of the world."

⁶ Human Rights Internet (HRI) has a data base of NGOs concerned with human rights and social justice. At present, the data base contains over 7,000 entries. HRI acknowledges, however, that this is only a small percentage of the total universe of human rights-relevant NGOs.

⁷ Ritchie.

⁸ McCoy, Michael and Patrick McCully. *THE ROAD FROM RIO: AN NGO GUIDE TO ENVIRONMENT AND DEVELOPMENT*. Urrecht, the Netherlands: International Books for World Information Service on Energy (WISE), 1993, 9.

⁹ *Ibid.*, 11.

¹⁰ Chiang, Pei-heng. *NGOs AT THE UNITED NATIONS: IDENTITY, ROLE, AND FUNCTION*. New York: Praeger Publishers, 1981, 34-39. This is the best and possibly the only serious treatment of NGO consultative relations with the United Nations.

¹¹ Pickard, Bertram. *THE GREATER UNITED NATIONS*. New York: Carnegie Endowment for International Peace, 1956, 26.

¹² Chiang, 35.

¹³ *Ibid.*

¹⁴ There was no such provision in the earlier Resolutions, although in 1950, two Category B NGOs were expelled (the International Association of Democratic Lawyers and the International Organization of Journalists) and one was demoted from Category B to Roster (the World Federation of Democratic Youth). In 1954, Category B status also was withdrawn from the Women's International Democratic Federation. All four were NGOs with strong ties to the Soviet Union and the Eastern bloc, and all had been vocal in criticizing the U.S.-led U.N. intervention in Korea.

The sanctioning of the NGOs clearly was orchestrated by the United States, which at that time controlled the votes in both the ECOSOC and its NGO Committee. Chiang, 104-106.

¹⁵ *Ibid.*, 107-108, especially footnote 85, 120-121.

¹⁶ Liskofsky, Sidney. "The U.N. Reviews its NGO System." *Reports on the Foreign Scene*, No. 10. New York: American Jewish Committee, January 1970, 1-2.

¹⁷ Wiseberg, Laurie and Harry M. Scoble. "The International League for Human Rights: The Strategy of a Human Rights NGO." *Georgia Journal of International & Comparative Law*, Vol. 7, 1977, 303-304.

¹⁸ *Ibid.*, 304-305.

¹⁹ Formal meetings occurred in June 1994, May 1995, and January 1996. Informal meetings took place in November 1994 and May-July 1996.

²⁰ The 250 figure is cited by Guillet, 129. For the second and third meetings, a grant from the Canadian International Development Agency made possible the participation of approximately 10 NGOs from the South.

²¹ Statement of Chief (Mrs.) Bisi Ogunleye of the Country Women of Association of Nigeria, May 8, 1995.

²² Many of these NGOs held leadership positions or were very active in the Conference of NGOs in Consultative Status with the United Nations.

²³ For example, we had the spectacle of the United Nations Association (UNA) of the United States arguing that national UNAs should be able to be separately accredited, while the World Federation of UNA took the floor to oppose this position.

²⁴ ECOSOC Document E/5715/Rev.2, Rule 80.

²⁵ ECOSOC Resolution 1996/31, paragraphs 55-59.

²⁶ *Ibid.*, paragraph 57a.

²⁷ See Appendix.

²⁸ Human Rights Advocates Newsletter, Vol. 27, Summer 1996, 2.

²⁹ ECOSOC Resolution 1996/31, paragraph 55.

³⁰ "Apps." represents applications processed by the NGO Section and submitted to the NGO Committee and does not take into account the many applications that come in each year that are not forwarded to the Committee. "Gen & Sp" represents General and Special consultative status (ECOSOC Resolution 1996/31), previously called Categories I and II, differentiating between NGOs that have an interest in a broad range of U.N. activities and those that specialize in select areas. "Roster" status is given to NGOs that can make occasional and useful contributions to the ECOSOC's work.

³¹ "Recommendation of the Jacob Blaustein Institute for the Advancement of Human Rights to the Open-Ended WG to Review NGO Status," New York, Nov. 7-8, 1994.

³² See Gaer's article in this publication.

³³ ECOSOC Resolution 1996/31, paragraphs 68-69.

³⁴ ECOSOC Decision 1996/297.

APPENDIX

Position of NGOs, July 5, 1996

Joint statement concerning ongoing negotiations of the ECOSOC Open-Ended WG on the Review of Arrangements for Consultation with NGOs by the following NGOs:

The Baha'i International Community
Canadian Council for International Cooperation
Center for Citizen Advocacy
Federation Internationale des Ligues des Droits de
l'Homme
Human Rights Internet
Human Rights Watch
Humane Society U.S.
Institute for Agriculture & Trade Policy
International Center for Human Rights
and Democratic Development
International Center for Law in Development
The International Commission of Jurists
The International Human Rights Council
of The Carter Center

International Human Rights Law Group
The International League for Human Rights
International Service for Human Rights
International Union for the Conservation of Nature,
the Netherlands
Jacob Blaustein Institute for the Advancement
of Human Rights
Lawyers Committee for Human Rights
The Robert F. Kennedy Memorial Center
for Human Rights
U.N. Association—United Kingdom
U.N. Association—United States
U.N. Environment & Development U.K. Committee
World Federalist Movement

The organizations listed above are following closely the ongoing negotiations of the ECOSOC Open-Ended WG on Arrangements for Consultation with NGOs. We call upon all governments to address the following key concerns and to conclude this process quickly, if possible, during the ECOSOC's current session.

■ **Draft decision (1.1).** We strongly support a separate recommendation to the G.A. to set up a process for broader access for NGOs throughout the U.N. system.

■ **Paragraph 17 should be deleted.** We object to any provision that includes language establishing that human rights NGOs have to meet higher and different standards of behavior than other NGOs. Such stipulations are obsolete and inappropriate. Advocacy of human rights is inextricably linked with democracy and development and promotes peace, health, the protection of the environment, and other social and economic matters.

■ **Paragraph 34.9 should be deleted.** Paragraph 12 of the original Resolution 1296 adequately distinguishes Member States' role in voting from that of NGOs. We note that NGOs have no voting privileges, but existing practices show their role in negotiations is significant. Recent experiences in Habitat II in Istanbul provide an example of the partnership that has developed between NGOs and the United Nations.

■ **Paragraph 36b should be deleted.** It is necessary to eliminate the vague language and broad categories that can and have been applied inappropriately and with deleterious effect to human rights NGOs. Paragraph 36b's language has been used to intimidate human rights activists and chill freedoms of speech, information, and association by maliciously charging international human rights NGOs and their affiliates with "unsubstantiated or politically motivated acts against States Members."

NGOs' ROLE WITHIN THE UNITED NATIONS IN MAKING AND MONITORING POLICY: THE AFRICA REGIONAL STUDY

by Florence Butegwa

The International Human Rights Council is a coalition of leading human rights scholars and practitioners from throughout the world. Founded and chaired by former U.S. President Jimmy Carter, the Council seeks to develop concerted, coordinated efforts in areas of key importance to the human rights community. At its second annual meeting in November 1995, it agreed to work to promote effective participation of human rights nongovernmental organizations (NGOs) in U.N. deliberations relevant to promoting and protecting human rights.

In pursuance of this decision, the Council conducted a study of current practices, experiences, problems, and potential for NGO access to U.N. processes and its human rights system. The study's two main objectives were to:

- 1) Generate information.
- 2) Develop specific recommendations for improving NGO access and participation in governance, policy formulation, and monitoring at the United Nations.

Membership to the United Nations is reserved exclusively for States. However, the United Nations increasingly is being asked to deliberate and decide on key issues such as the environment, development, human rights, peace, and conflict resolution. Many of these decisions impact or have repercussions on the national level. NGOs, many of them which work directly with communities at the local and national level, increasingly are showing interest in participating in policy deliberations. They carry with them the voice of the people and specific ways in which local and national communities are experiencing the above issues.

Many NGOs have a wide range of expertise acquired over time as a result of hard work and specialization in their various fields. Such expertise can only enrich deliberations and the quality of policy decisions resulting from such deliberations. NGOs gave input into the U.N. Conference on the Environment and Development (Rio, 1992), the World Conference on Human

Rights (WCHR) (Vienna, 1993), the International Conference on Population and Development (ICPD) (Cairo, 1994), the World Summit on Social Development (WSSD) (Copenhagen, 1995), and the Fourth World Conference on Women (FWCW) (Beijing, 1995).

The Africa Regional Study

The Africa study sought information on African NGOs' experiences (national, regional, and networks) in gaining access to the U.N. human rights system's information and processes. The study's purveyors hoped these experiences would help in recommending the most appropriate steps to take to enhance African NGOs' access to the United Nations. The study also aimed to assess the United Nations' presence in different countries and the potential for using that presence for greater access to human rights information.

Methodology

The study used three complementary methods. A structured questionnaire was mailed to human rights NGOs in 16 African countries—Kenya, Tanzania, Uganda, Zimbabwe, Zambia, Swaziland, Ghana, Nigeria, Cameroon, Mozambique, Botswana, Eritrea, Ethiopia, Lesotho, South Africa, and Senegal. It sought information and experiences with respect to access to human rights information. NGOs from nine of these countries responded. NGOs that participated in at least two U.N. conferences and/or PrepComs were used as key informants and were interviewed using topic guides to gain insight on their experiences in gaining access and effective participation in any of the regional or international conferences and PrepComs. The two consultants for this study played key roles in Vienna and Beijing and their related PrepComs. The consultants' personal experiences as leaders and coordinators of broad NGO participation supplemented data obtained from the questionnaire.

Organization of Report

This report consists of three main parts. **Part I** examines access to U.N. human rights information and its significance to African NGOs. **Part II** analyzes access to U.N. conferences, related PrepComs, and ordinary and extraordinary sessions of U.N. human rights bodies. **Part III** lists recommendations for greater access by African NGOs.

Part I: Access to Human Rights Information

The Significance of Information to African NGOs

The old adage that information is power holds true particularly for access to U.N. processes including its bodies' regular sessions. For example, without accurate information on scheduled meeting dates, proposed agenda items, and draft resolutions, it is almost impossible for an NGO to prepare itself for substantive access and participation. Information on procedures and deadlines for NGO accreditation is a crucial antecedent for participation. Where human rights reporting procedures have been involved, NGOs have played a key role in influencing governments to compile and submit a report and/or to provide relevant information to the monitoring body. Such information often facilitates a more informed examination of the State Reports. For NGOs to play this role, they need to know when particular State Reports are due for submission and examination.

Effective NGO roles are not limited to the international level. NGOs should attempt, through advocacy and involvement, to influence their respective governments to implement policy and action commitments made at the United Nations. To do this, NGOs must have information on resolutions, declarations adopted with their respective government's consensus, and human rights conventions ratified by the States.

African NGOs often cannot rely on their governments to provide such data. Sometimes, government officials themselves do not know or do not have the information. Those who may have the information are reluctant to share it with NGOs in their countries because of a misconception that NGOs (particularly those working for human rights) have subversive tendencies or lack nationalist values. Only formal democracies (those that hold regular and frequent elections) appreciate the concepts of popular democracy and participation in governance. Under these circumstances, data must come to the NGOs directly from the United Nations.

Early reception of information also is crucial for NGOs to raise funds for their participation at the United Nations or in regional PrepComs. A salable funding proposal will require detailed information on the session, its agenda, and its relevance to the issues and national context in which the NGO seeking funding works.

Access to Information: African NGOs' Experiences

I will begin this section by indicating the kind of information responding NGOs want to receive regularly (see Q.12 in Appendix II). Almost all responding NGOs want some kind of notification of planned U.N. sessions and activities in the human rights field, draft agendas of such sessions, and any draft resolutions to be sponsored and debated at the session. For their work at the national and international level, NGOs would appreciate copies of adopted resolutions, reports, and studies by experts and special Commission mechanisms, as well as any new human rights materials such as publications.

Eighty-five percent of responding NGOs said they had received human rights information at times, but not regularly. However, only 23 percent received the information from U.N. human rights bodies (the Centre for Human Rights in Geneva and the Commission on the Status of Women). The remaining respondents got the information from specialized U.N. agencies such as UNICEF, U.N. High Commissioner for Refugees (UNHCR), the U.N. Development Fund for Women (UNIFEM), and U.N. Population Fund (UNFPA), which implies that the information received only fit the agency's thematic focus. These agencies tend to use development programs as their national-level

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Florence Butegwa speaks during a November 1996 meeting of the International Human Rights Council at The Carter Center in Atlanta, Ga.

operations, mainly offering assistance to governments. As a result, African NGOs do not have access to information on broader human rights issues handled by the Commission on Human Rights, its working groups, its special rapporteur, the General Assembly, or any other U.N. body. As mentioned, NGOs have not received data on a regular basis. UNFPA, for instance, disseminated a lot of information prior to the ICPD.

Type of Information

Only half of the respondents confirmed having requested human rights information from the United Nations (see Q. 9 in Appendix II). Almost all asked for "materials on human rights" and resolutions adopted by U.N. human rights bodies. Thirty percent requested data on planned events, and another 30 percent wanted information on African countries that had ratified human rights treaties. On a continent where academic journals and text books are not common or easily accessible, human rights materials (standards, procedures, and analyses) and U.N. resolutions in this area are hard to come by, which may in turn explain the requests.

It is interesting to note that the other 50 percent of NGOs that never requested human rights information said they too would like to receive it regularly. The project's consultants further questioned a few of them on this issue, and they confirmed that most African NGOs did not know what information was available, where to send requests, and whether or not they would have to pay for the materials. Also, the NGOs had not heard of the U.N. Secretariat's Department of Public Information (UNDPI). Hence, NGOs need data, but they do not know what is available or how to get it.

On a positive note, every NGO (except one) that requested information received a reply, and most received the requested materials. A few added that since their requests, they were put on the mailing list and now receive regular information.

Part II: Access to U.N. Conferences, PrepComs, and Regular Sessions

African NGOs' Experiences

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[The] lack of data makes it difficult for some NGOs to assess a U.N. session's or conference's relevance to their work and to justify participation to their donors ... It also precludes adequate preparations at the national and regional level and building alliances with other NGOs working on similar issues. Even when an NGO does manage to attend a session or conference, effective participation already is compromised.

Tunis did not know U.N. conference procedures or Vienna's draft agenda and key issues. Also, NGOs' role at the regional conference was unclear. Although the International Commission of Jurists organized an NGO workshop two days prior to the regional conference, only a few NGOs had an agenda or understood the process sufficiently to impact the regional document.

This situation repeated itself on a larger scale at the WCHR in Vienna in 1993. Many African NGOs failed to get accreditation to the NGO Forum or the official conference. Although donor agencies supported many African NGOs in Vienna, NGO participation both at the Forum and the official conference was minor. Many were participating for the first time, were overwhelmed and confused by NGO activities, and were not accredited to the conference. Also, they did not strategically use the few "tickets" to the conference secured for the region. This situation has changed only slightly in subsequent U.N. conferences, although participation in NGO Forum activities has improved tremendously. This has not, however, been used to impact official conferences.

Reasons for the Lack of Access and Participation

Key interviewees cited the following reasons for NGOs' lack of access to U.N. human rights bodies, conferences, PrepComs, and sessions:

■ **Inadequate or late information on the accreditation process, e.g. qualifications of NGOs to be accredited, deadlines, and procedures (by letter or special application form).** Where accreditation had a fee (e.g. for participation in the FWCW), some NGOs failed to get accredited, as they could not raise the money in time to make the deadline.

■ **Inadequate information on the draft agenda (issues) and proposed resolutions to be adopted (The FWCW's Draft Platform for Action was widely disseminated.)** This lack of data makes it difficult for some NGOs to assess a U.N. session's or conference's relevance to their work and to justify participation to their donors, who expect recipients of their funds to expend resources in efficient, productive ways. It also precludes adequate preparations at the national and regional level and building alliances with other NGOs working on similar issues. Even when an NGO does manage to attend a session or conference, effective participation already is compromised.

■ **Inadequate appreciation of NGOs' role.** African NGOs work under circumstances in which relationships with governments are unpredictable and at times fraught with suspicion. Some fear a backlash from their governments upon their return from an international forum at which they dared speak out on matters not cleared by their governments. Others have witnessed little impact from these conferences and human rights sessions on local situations, and they have not seen their effective participation as likely to lead to greater impact or make conferences more relevant to local situations.

■ **Inadequate funding.** Many African NGOs, like NGOs elsewhere, are not self-financing. However, unlike many of the others' mandates, African NGOs' mandates do not focus on advocacy at the international level. Their attempts to evolve an international role at times are frustrated by some funding agencies who insist NGOs concentrate their efforts at the local level. Such agencies believe the significant expenditure involved in an international advocacy role would reduce funding for community and national work.

■ **National, regional, or international NGOs.** U.N. accreditation processes have favored NGOs working at the regional or international level. There are very few such NGOs in Africa, a continent on which most NGOs operate with a national outlook. Although women's human rights NGOs, which work at the national level, have managed to form networks, most mainstream human rights NGOs work individually. As a result, the majority of African NGOs do not qualify for accreditation.

NGOs with Positive Experiences

Although responding NGOs repeated mostly negative U.N. experiences, certain African NGOs have had more positive interactions. Some enjoyed visible participation, which impacted both their own work and the final document produced by the inter-governmental conferences. These NGOs can be put into two broad categories:

- 1) Human rights NGOs with affiliation to international NGOs, experienced in working at U.N. fora.
- 2) Women's rights NGOs associated by the coalition Women in Law and Development in Africa (WILDAF).

The former includes various national chapters of the International Commission of Jurists (ICJ); the YWCA associated with the worldwide YWCA, based in Geneva; and those groups working with UNFPA, UNICEF, or UNHCR at the national level, all of which participated under their international agency's name. As part of this global network, they have received more information on U.N. processes and issues, particularly in the "parent" body's area of interest. This body arranged or significantly facilitated their accreditation. Also, a forum organized by the parent body generated on-site strategies. However, one shortcoming has been the loss of attention to some issues important to African and/or national organizations because of parent bodies' broader agendas.

Women's human rights groups have organized and prepared for participation in U.N. fora through a network in the same way as African NGOs. As a result, they have had chances to build consensus on issues and strategies, and they have allied themselves and worked with women's human rights NGOs from other regions in what has come to be known as the Women's Human Rights Caucus. The Caucus was active from the PrepComs prior to the WCHR through to the actual conference and has reconvened in every subsequent conference, PrepCom, and NGO Forum. Individual NGOs and regional networks come to the Caucus with their positions on issues, information on positions taken by their governments or regional country blocs (if there are any) and information on possible governmental or nongovernmental support for or opposition to particular positions. Then, from all the available information, they work out and agree upon strategies and responsibilities.

Factors Contributing to Effective Participation

These two categories of experiences give insight into some of the factors for NGOs' effective access and participation:

1) **Access to Information.** Access to adequate information of all types is critical to effective access and participation including:

- Accreditation requirements and deadlines.
- Draft agendas and documents relating to the issues to be discussed.
- Positions taken by country blocs or individual countries (particularly from the Africa region) and why such positions are taken.
- Interim processes for continuing negotiations on key draft resolutions or declarations among States and how an NGO might input and/or get information on progress.
- NGO positions on issues of interest and how others might work with them in advancing those positions.

2) **Collaboration With Other NGOs.** Collaboration with other NGOs is particularly important for African NGOs. Because most African NGOs have little to no U.N. experience, having the United Nations work with those NGOs that have had the necessary experience can be a valuable learning process. Some of the experienced NGOs

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In Africa, [access to information] is key. U.N. human rights bodies need to see it as their role to disseminate human rights information and data that would facilitate greater transparency and participation by civil society. The UNDPI, together with the various human rights bodies' Secretariats, can help in this strategy.

devote significant parts of their human, time, and financial resources to U.N.-related work and thus can be invaluable sources of up-to-date information. Collaboration creates prior consensus-building among NGOs and avoids conflicting messages and fragmentation of effort. Government delegates may have difficulty totally ignoring a relatively united front's demands. Collaboration also can facilitate mutual respect among NGOs, allowing different regional perspectives on issues to be represented in NGO positions.

3) **Consistency in Participation.** Rarely can NGOs be effective at the United Nations by "hit-and-run" events. Effective participation requires dedication and consistency to build individual and organizational capacity and develop sufficient rapport and respect with delegates and relevant U.N. staff. African NGOs are particularly weak in this area. Limited resources, distance from most U.N. human rights meetings, and few staff who have heavy work schedules make it difficult for African NGOs to maintain a consistent presence in human rights sessions.

Part III: Recommendations

As outlined above, several areas need improvement for greater NGO access to the United Nations including:

■ **Access to Information.** In Africa, this is key. U.N. human rights bodies need to see it as their role to disseminate human rights information and data that would facilitate greater transparency and participation by civil society. The UNDPI, together with the various human rights bodies' Secretariats, can help in this strategy.

Some of the responding NGOs confirmed that the U.N. Information Service maintains an office in each of their countries or regions. Such offices can be crucial tools in disseminating human rights information and scheduled meetings. Those in charge of the offices are in positions to access active human rights NGOs in their country or region and thus can make the required information available or at least can provide addresses from where the information could be obtained. Unfortunately, these offices do not seem to disseminate or make available information on human rights, partly because some offices' staff do not know what is available on human rights and hence refer questioners to New York. Respondents added that in a few countries, the information office could not be accessed, as it is located in a politically sensitive area (e.g., the ruling party's headquarters where security is tight).

Juanita Jarrett of the Association of Female Lawyers in Liberia discusses gender-specific violations at a June 1997 human rights training workshop in Monrovia, which was co-sponsored by The Carter Center and the U.N. Observer Mission in Liberia (UNOMIL).



■ **Relaxation of Accreditation Criteria.** NGO accreditation criteria urgently needs reviewing. The current preference for regional and international NGOs prejudices the majority of African NGOs. If the rationale for this preference is based on the fact that U.N. meetings do not deal with national issues, the preference's validity is questionable. Increasingly, the line between what falls within domestic and international jurisdiction, particularly in the human rights field, is becoming blurred. However, if the rationale is premised on a fear of an influx of "inexperienced" NGOs to U.N. meetings, then restricting the United Nations to international NGOs merely condemns African NGOs to remain inexperienced. Such restriction also creates a class of "international" NGOs with no constituency or contact with communities affected by the issues being discussed.

■ **Support for Participation of NGOs from Least Developed Countries (LDCs).** Government delegates from LDCs at times enjoy financial support from the United Nations during its sessions. A fund should be created or other avenues sought to support some LDC NGOs, which mainly are in sub-Saharan Africa. Foundations and other funding agencies also should be encouraged to support greater NGO access and participation in U.N. processes.

■ **Training.** Many African NGOs play important roles at the United Nations. Several human rights issues dealt with by various human rights bodies concern African civil society and communities. African governments often are complacent in their contributions to U.N. debates, reporting obligations, and implementation of human rights policy agreed to at the international level. Such complacency may be due in part to a relatively uninformed civil society. Human rights NGOs have not been able to use international fora to monitor the extent of government commitments and implementation at the national level.

For NGOs to play this role, their capacities need to be built through training and assisted, guided exposure. Perhaps the International Human Rights Council, in collaboration with international NGOs with relevant experience, could get involved. Publishing guides on accessing and participating in U.N. human rights processes also may be useful. Together with the U.N. Nongovernmental Liaison Service (NGLS), UNIFEM published the helpful resource *Putting Gender on the Agenda: A Guide to Participating in U.N. World Conferences*. A similar guide for human rights advocacy groups participating in various sessions and for options in making valuable input would be appreciated.

■ **African Initiatives.** African NGOs themselves need to be aggressive in building their own capacities. First, they must define clearly their objectives, issues, desired action, and strategies in seeking access. Second, they should create and sustain links with more experienced and like-minded NGOs on the continent. African NGOs should be present at various sessions to learn how to work the process. They also need to adequately prepare at the local, national, and regional level, so their arguments' validity and authenticity are not compromised. For these initiatives to be possible, NGOs must include advocacy at the United Nations in their programs, so they may seek U.N. funding on a sustained basis.

Conclusion

Although this study focused on NGO access to and participation in the United Nations, its relevance is broader. Africa has structures such as the Organization of African Unity (OAU) and the African Commission on Human and Peoples' Rights. Access to these can be useful for effective participation at the United Nations. African States, such as the "Africa Group" often take positions on issues. Working with them at the OAU level may help NGOs establish rapport and/or learn the Group's politics, leadership, and alignment.

This study's insight is invaluable at the international level. Human rights issues should not be addressed only at the U.N. level. The African Commission on Human and Peoples' Rights serves to promote and protect human rights at the regional level. NGOs

African NGOs should be present at various sessions to learn how to work the process. They also need to adequately prepare at the local, national, and regional level, so their arguments' validity and authenticity are not compromised.

must make this Commission more proactive, accountable, and respected. Fortunately, it is not too difficult to access the Commission. Currently, many NGOs have observer status. Effective use of this status may be part of the training and experience needed for working with U.N. human rights bodies and vice versa. Finally, experience at the United Nations may provide a purpose and some expertise in working with African human rights institutions. ■

Florence Butegwa served as regional coordinator of Women in Law and Development in Africa (WILDAF) from 1991-96. She also has worked with both intergovernmental and nongovernmental organizations on various women's human rights issues. Currently, Mrs. Butegwa lives in Kampala, Uganda, where she works as an attorney and consultant on various human rights initiatives.

APPENDIX I

NGOs That Responded to the Questionnaire

National Association of Women Organizations in Uganda
(Uganda)

Emang Basadi (Botswana)

The International Federation of Women Lawyers,
Kenya Chapter

Women's Legal Aid Centre (Tanzania)

Inter Press Services Third World News Agency,
Africa Regional Office

Zimbabwe Women's Resource Centre and Network
(Zimbabwe)

Women Lawyers Association (Ethiopia)

Catholic Relief Services (Eritrea)

Tanzania Nongovernmental Organizations (TANGO)
(Tanzania)

AAWORD (Pan-African Network)

Women in Law and Development in Africa (WILDAF)
(Pan-African Network)

FEMNET (Network)

International Reproductive Rights Research Action Group
(Nigeria)

Uganda Association of Women Lawyers (FIDA) (Uganda)

Community Law Centre, University of Western Cape
(South Africa)

APPENDIX II

Questionnaire: NGO Access to the U.N. Human Rights System

The International Human Rights Council is conducting a study of NGO access to the U.N. Human Rights system and processes. This study aims to generate information and specific recommendations for improving access and NGO participation in governance at the international level. African NGOs need to contribute to the study so factors peculiar to Africa that hinder access to U.N. human rights information and processes will be addressed. Only through such contributions can solutions appropriate to African circumstances be sought.

Nature of the NGO's Work:

1. Name of organization:
2. Address:
3. Contact person:
4. Nature of work:

Access to Information on Human Rights

5. Below, list U.N. human rights bodies with which you previously have dealt:
6. Have you or your organization ever received any human rights information from U.N. agencies working on human rights?
7. If yes, from which agencies?
8. Have you ever requested human rights information from the United Nations?
9. What kind of information did you request? (Circle all that apply.)
 - a) Information on planned events
 - b) Resolutions adopted by U.N. human rights bodies
 - c) Materials on human rights
 - d) Advice on how to handle a human rights issue in your country
 - e) Others (please specify)
10. What was the response of the agencies?
 - a) Sent the requested materials/information
 - b) Sent a reply
 - c) Did not respond
 - d) Others (specify)
11. Would your organization have, at one time or another, have wanted to find it useful to receive regular human rights information from the United Nations?

12. If yes, what kind of information would you have appreciated?
 - a) Notice of planned activities
 - b) Agendas of regular sessions of human rights bodies.
 - c) Draft resolutions to be discussed at planned sessions of human rights bodies.
 - d) Adopted resolutions on human rights issues
 - e) Resource materials on human rights
 - f) Reports by experts and special rapporteurs
 - g) Other (specify)
13. Is there a representative or office of the U.N. Information Service?
14. If yes, does it disseminate or make available information on human rights?
15. If yes, what kind of information?
16. If no, would you like it to make such information available to NGOs?
17. If there is no office or representative of the U.N. Information Service in your country, does any other U.N. agency make available to NGOs any human rights information/materials?
18. If yes, which agency/agencies?
19. What kinds of information or materials are available?

Recommendations

20. Would your organization appreciate regular human rights information/materials?
21. How would you like to receive it/them?
 - a) Directly from the human rights body concerned
 - b) From any human rights body
 - c) From any U.N. agency
 - d) From a U.N. agency in your country
 - e) Through an NGO network in my country
 - f) Other (please specify)
22. Would your organization like to participate in U.N. human rights bodies' regular sessions?
23. How could your participation be facilitated or made easier?
24. Please indicate other recommendations for strengthening NGO participation in U.N. human rights activities.

HUMAN RIGHTS NGOs IN LATIN AMERICA

by Jacqueline Pitanguy

Despite Latin America's complexity and the major racial and ethnic differences that characterize North America, some general observations can be made particularly with regard to the Southern Cone countries such as Argentina, Uruguay, Chile, and Brazil, which have undergone similar political changes in recent decades. (Paraguay's political context differs from these other countries' situations.) Until the 1960s or early 1970s, democratic civilian governments ruled these countries even though the labor class, nonwhites, and women were largely excluded from the power structures.

For several economic and geopolitical reasons, the above countries suffered coup d'etats in the 1960s and 1970s that installed military authoritarian governments. For the last few decades, those governments used varying degrees of coercion and state violence to impose their rulings. Democratic institutions such as parliaments; unions; the press; civic, professional, and religious organizations; and universities were partially or totally closed, censored, or persecuted. Those in key government positions predominantly maintained attitudes of suspicion toward individual citizens and civil society as a whole. Several factors provided fertile ground for various human rights violations and consequently for a resurgence of human rights organizations including abolishment of the right to habeas corpus, changes introduced in norms that protected prisoners from abuse, censorship of the media, and a general atmosphere of fear and suspicion.

As the military reinforced its power, justice and human rights in Latin America became increasingly detached from the State and were placed solely in the political discourse of civil society.

Given their governments' totalitarian natures, these human rights organizations' agendas centered on denouncing systematic violation of the so-called "first generation" of human, civil, and political rights. Issues of gender and race were not part of their platform. Years of resistance to dictatorship together with the presence of traditional international human rights organizations catalyzed this creation of national human rights organizations, some of which remain active today.

One long-lasting consequence of such regimes is the opacity (lack of transparency) brought to the State,

which increases the distance between governmental institutions and social movements and organizations. This barrier continues to prevail in many Latin American countries. Also, many people still fear arbitrary use of power by the State, but most don't know how to access the State or how to deal with organs which would act as their counterparts inside government. This in turn makes the cooperation between nongovernmental organizations (NGOs) and governments difficult.

Although they had many similarities, human rights NGOs carried different weight in each Latin American country in that region's struggle for democracy. Visibility of organizations largely depended on their roles' centrality. In other words, in countries where other civil society organizations enjoyed visibility and influence in resisting authoritarianism, human rights groups did not play as central or unique a role as in other countries where they were the only or key voices of resistance throughout the military regimes.

In relation to the centrality of human rights organizations' roles, I propose this schematic and simplified differentiation among the Southern Cone countries:

■ **Argentina** would lead in terms of the extension of state violations of human rights, affecting even the second generation of families of those who were persecuted for political reasons ("confiscation" of sons and daughters of political prisoners and their "adoption" by families involved in repression).

Civic and professional organizations such as labor unions, physicians' councils, lawyers' bars, press clubs, and women's groups were not very visible in the denunciation of state abuses. On the other hand, national human rights organizations actively resisted dictatorship abuses, not only inside Argentina but also in the Southern Cone as a whole.

■ **Uruguay** followed a similar path as Argentina. Some characteristics of this country, such as a small population largely employed by the government in the tertiary sector, might partially explain the impact of armed resistance in relation to civic opposition.

■ **Paraguay's** political context differs from other Southern Cone countries. In Brazil, professional organizations such as lawyers' bars, associations of physicians



Courtesy of Becky Castle

Former U.S. President Jimmy Carter speaks with Luis Moreno Ocampo (second from right), founder of Poder Ciudadano (Citizen Power) and president of Transparency International for Latin America and the Caribbean, and Dr. Carlos Manfroni, president of Fundación Etica Pública (Foundation for Public Ethics), during a January 1997 trip to South America. Jacqueline Pitanguy, the author of this article, participated in an NGO briefing on human rights issues in Brazil during President Carter's trip to Latin America.

and engineers, teacher and student unions, ecclesiastic organizations led by liberation theologians, press clubs, and political parties (Brazil's Parliament was never totally closed, as it was in other Southern Cone countries) also played key roles, along with human rights organizations that were not as active.

In the 1980s, labor unions, women's movements, black movements, organizations for the demarcation of indigenous land, and environmentalists became quite visible in the political arena, bringing issues of gender, race, ethnicity, and ecology to the democratization debate. Most traditional human rights organizations did not encompass this new agenda.

■ **Chile** maintains an "in-between" position, in that certain religious organizations and neighborhood associations, together with human rights organizations that emerged in the country, were important in resisting dictatorship. Professional organizations did not play a leading role. In the mid-1980s, women's organizations increased their political activity. At the time, Chile's Parliament was closed, and the press was not as influential in confronting the government as it had been in Brazil.

Two important similarities in the Southern Cone's political context include:

- 1) Throughout the mid-1980s and early 1990s, democratic institutions were reinstalled.
- 2) Today, democratic regimes rule these countries.

Exclusion of the poor, nonwhites, and women continues, although efforts are being made to make societies more inclusive.

Human Rights Organizations, Governments, and the U.N. System

I have outlined the broader context above, even if very briefly, because I believe it has and continues to influence how human rights NGOs operate in Latin America in their relationships with governments and the U.N. system.

Among the many variables derived from this context, I will highlight the four that seem most relevant to our current work:

- Most human rights NGOs were born and grew in dramatic opposition to governments, not in collaboration with them.
- Human rights NGOs have centered their action mainly on the “classical” conceptualization of human rights.
- For decades, governmental institutions and public officers looked upon civil society suspiciously and did not accept criticism or opposition as part of public life.
- As a result of years of authoritarian use of the governmental machinery, NGOs still face the lack of transparency that surrounds the various State organs.

Latin American governments are talking more and more about human rights. However, NGO and government language often differ. . . . A gap exists between international human rights language, government rhetoric, and concrete protection of human rights.

During military dictatorship, civil society and human rights organizations may have monopolized human rights issues, but today they do not. Democratization of these countries led them to create spaces inside various governmental bodies dealing solely with human rights. Besides various human rights parliamentary commissions, several organs have emerged dealing explicitly with this issue at the executive level. Argentina has an Under Secretariat for Human Rights who operates in the Ministry of Internal Affairs, Brazil’s Ministry of Justice has a Secretariat of Citizenship Rights, and Chile has installed the Corporación de Verdad y Conciliación (Trust and Conciliation Commission).

Latin American governments are talking more and more about human rights. However, NGO and government language often differ. The fact that governments are talking about human rights issues does not mean they are committed to implementing human rights. A gap exists between international human rights language, government rhetoric, and concrete protection of human rights. This gap’s size relates to power and politics and results from the tensions, struggles, and alliances of numerous national and international actors.

Democratization of the said countries also increased the number of NGOs, which, not calling or regarding themselves as human rights organizations, have developed human rights projects on gender violence, sexual and reproductive rights, health and human rights, race and ethnicity, the environment, labor rights, protecting rights of children, and other relevant issues. Although a few “traditional” human rights organizations enlarged their goals to include in their political platforms other human rights issues, their agendas remain guided largely by the kinds of violations committed during military regimes.

Most NGOs now deal with the crucial but delicate issues of demanding that governments take responsibility for the deaths and disappearances of oppositionists and for physical and psychological damages caused to those still alive. Currently, all Southern

Former Costa Rican President Oscar Arias Sánchez (right) discusses the global activities of his San Jose-based NGO, the Arias Foundation for Peace and Human Progress, with U.N. Secretary-General Kofi Annan.



Cone governments agree to pay indemnizations in cases where it is proven that the State was responsible for the person when abuses occurred.

This agenda is very complex and time-consuming. Human rights organizations would clarify the circumstances surrounding these deaths and tortures whereas governments are usually more reluctant because, they argue, Amnesty International (AI) laws passed during the democratization process should apply to both sides. Human rights organizations' work also is made difficult by the conflict between individual attitudes and collective goals. Debates among families of political prisoners and activists are divisive and highly emotional. Although they recognize the political relevance of such NGOs' efforts to make the State accountable for abuses and violations, many fear that the compensation would bring silence to these events.

Most human rights organizations have common agendas in denouncing police violence against the populus (especially poorer sectors), in rural and urban conflicts, and against common prisoners. They are particularly active in demanding state control over paramilitary groups. Civic organizations call upon the judiciary and civil and military police to take responsibility for allowing nonofficial squads to proliferate and systematically violate basic human rights.

In terms of networking, not all human rights organizations meet regularly, but they do exchange information and draw common strategies in crises. Argentina, for instance, maintains a permanent Human Rights Assembly, but Las Madres de La Plaza de Mayo (Mothers of the Plaza de Mayo), one of the first groups to confront state violence during dictatorship, does not participate in it. In Brazil, human rights organizations work quite independently, but a Movimento Nacional de Direitos Humanos (National Human Rights Movement) does function as an information network among them. Chile has a Coordinación de Organismos de Derechos Humanos (Coordination of Human Rights Organizations), whose regional representatives include offices of Peace and Justice Services (SERPAJ), founded by Nobel Peace Prize-winner Perez Esquivel, and the Inter-American Commission of Human Rights, with headquarters in Costa Rica.

Human rights organizations do not enjoy strong, systematic relationships with the United Nations. Although they recognize the importance of the United Nations, interviews revealed that many NGOs do not know how to access it for support of their current work. This refers to political support, as U.N. agencies do fund some organizations. In conversations with them, interviewees characterized U.N. relations as irregular, loose, and frequently dependent upon personal contacts.

Interviewees regard the international support received from other human rights organizations, especially AI and Human Rights Watch, as more regular and important in reinforcing and legitimizing their national claims. Most said these groups helped expose their struggles on the international level, thereby significantly increasing their power to push forward their demands at the national level. Many said, "the only thing that the government is really afraid of is international exposure."

Despite misgivings about the U.N. system as a whole, interviewees usually saw U.N. international conferences as important sources of momentum to advance human rights issues. For some of the "traditional" human rights organizations, the WCHR in Vienna provided opportunities for networking, with the more recent NGOs being exposed to gender and race issues as human rights concerns, and opportunities to work side by side with governments. After Vienna, Brazilian NGOs met two or three times with their Ministry of Justice to draw common strategies for implementing the Vienna Plan of Action, and in 1996, Brazil's federal government launched a National Human Rights Plan, written in collaboration with most of the NGOs active in Vienna.

At the U.N. conferences of Rio (1992), Vienna (1993), Cairo (1994), Copenhagen (1995), and Beijing (1995), the human rights platform was enlarged and reconceptualized largely because of the struggle of the "new" NGO community that encompassed issues of health; domestic, urban, and rural violence; reproduction; race; and ethnicity; and the

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Today, most Latin American human rights NGOs ... receive fewer grants from international donors, and there is less voluntary work. Also, governments primarily direct their resources to their own human rights organs. ... Suspicion, fear, and misunderstanding linger on both sides, although as democracy advances, the gap between civil society and the State diminishes.

environment, among others. These NGOs enjoy well-structured national, regional, and international networks, and despite their diversity, they have articulated international strategies based on consensual points.

These NGOs and "traditional" human rights NGOs do not, however, maintain regular contact, which in many cases creates difficulties in encompassing this new agenda, particularly with regard to sexual and reproductive rights and gender issues, due to their strong links with the Catholic Church.

Today, most Latin American human rights NGOs face dramatic financial crises. They receive fewer grants from international donors, and there is less voluntary work. Also, governments primarily direct their resources to their own human rights organs. Politically, they alternate confronting and collaborating with governments. Suspicion, fear, and misunderstanding linger on both sides, although as democracy advances, the gap between civil society and the State diminishes.

NGOs and the U.N. Conference on the Environment and Development —UNCED (Rio, 1992)

Environmentalism in Brazil and in most Latin American countries was born into civil society and developed mainly by NGOs, but it opposed governmental policies. In the 1970s, environmental issues became part of the new political culture which broadened the concept of democracy, bringing to it issues of gender, sexuality, race, and ecology.

In the 1970s and 1980s, Brazil experienced a combination of economic growth, poverty increase, and environmental degradation. Through the 1980s, people focused on the environment as a political issue, involving complex and multirelated variables, marking a noteworthy difference from early ecologists who did not place their work in a political perspective.

In 1986, the Brazilian Green Party and some other NGOs, such as the National Council of Rubber Tappers, were formed to defend the extrativist projects of the Amazon region's rainforests and the Alliance of the People of the Forests. The Green Party linked rubber tappers, nut collectors, and indigenous peoples. In addition, several Brazilian NGOs struggle against urban degradation. Throughout the last two decades, environmental organizations have spread throughout the country.

In 1986, the National Encounter of Environmental NGOs took place. Since then, these NGOs have met regularly, and in 1990, they created a national network called the Forum of Environmental NGOs, congregating more than 900 organizations.

This small introduction highlights the fertile international and national contexts in which UNCED took place. The Brazilian Forum worked in connection with environmental networks from Latin America such as RENACE, Pacto de Acción Ecologica de America Latina, the Chilean Forum, and the Mexican Forum. In 1989, NGOs agreed on the South American Ecologic Action Pact which stated their consent in principles and strategies concerning the environment.

Never before had NGOs played such an important role in the U.N. PrepComs as in the UNCED process. For the first time, a new generation of NGOs demanded and won the right to attend as observers in the governmental conference in very large numbers. The NGO Forum clearly demonstrated the strength of these groups, their divisions, and their common agendas.

Women became a visible political actor in UNCED, and they had their own tent at an NGO Forum called Planeta Femea. In spite of internal divisions among those who adopted a more historical perspective to analyze women's conditions and those who privileged the idea of a "female essence," UNCED was a sort of a preparation for their extraordinary impact in the ICPD (1994).

Conclusion

Because of the UNCED experience, NGOs have in a sense "forced" open some doors at the United Nations, making it more transparent and easier to access. Initially, many Latin American governments (certainly Brazil's) were suspicious and afraid of being exposed and criticized by NGOs. As preparations for UNCED advanced and the U.N. system became more open, thereby legitimizing NGOs as partners, governments had to change their attitudes and try to collaborate or at least accept this strong and visible community's presence.

Although it had an innovative participatory process, UNCED clearly demonstrated that the doors of the United Nations and of governments are not always open to civil society. They can be open or closed depending on NGOs' strength, visibility, and ability to network and negotiate. Conferences offer exemplary momentum to change rules and open doors, but they do not last long. After a conference, people depart, communications become more difficult, and pressure diminishes. At that point in the post-conference euphoria, plans are supposed to be implemented. Providing mechanisms to incorporate conferences' gains into U.N. and government routines still poses a major challenge. ■

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APPENDIX

Human Rights Organizations of Select Southern Cone Countries

In a brief and incomplete way, I present below some of the main "traditional" human rights organizations active in the Southern Cone countries. I will not list the "second generation" human rights organizations, as there is such a large number of them.

Argentina

Argentina was the first country to initiate judicial processes against the State and to judge military involved in torturing and murdering political prisoners. Most of the human rights NGOs in Argentina elucidate and push for accountability for abuses committed during the former regime. Some of the main organizations include:

■ **Las Madres de la Plaza de Mayo (Mothers of the Plaza de Mayo).** This internationally known group consists of mothers who speak out against the authoritarian State, whom they hold responsible for the disappearance of their children. It offers therapeutic support to victims of state violence and their families, and it criticizes with vigor Argentina's neoliberal economic model. The group works in isolation and does not seek connections with the government, the United Nations, or other human rights groups.

■ **Las Abuelas de la Plaza de Mayo (Grandmothers of the Plaza de Mayo).** Mainly, this group of grandmothers searches for members' grandchildren, many of whom were adopted by military couples. In cases where it is proven that children were adopted by the perpetrators of violence against their parents, the group demands retrieval of the children. If the children live with families who were not directly involved, the women do not attempt to remove them. These are very complex issues involving many levels of emotion. The group regards its agenda as "very specific," as it does not favor networking.

■ **Movimiento Ecumenico de Derechos Humanos [(MEDEH) Ecumenic Human Rights Movement].** Headed by the Methodist Church, this organization links with other national and international organizations through the World Council of Churches.

■ **Servicio Paz y Justicia [(SERPAJ) Peace and Justice Services].** Led by Perez Esquivel, past Nobel Peace Prize-winner, this group enjoys international visibility and an easy transit in the U.N. system. Because Mr. Esquivel directs it, the group also is listened to inside the government.

■ **Asamblea Permanente de Derechos Humanos (Permanent Assembly of Human Rights).** A national organization, this assembly draws delegates from many cities, thereby making it not as Buenos Aires-centered. One of the few human rights organizations to incorporate gender issues in its platform, it sponsors a women's and a children's commission.

■ **Movimiento Judío de Derechos Humanos [(AMIA) Jewish Human Rights Movement].** This small organization denounced and resisted the anti-Semitism that spread among the army during dictatorship. It gained strength and notoriety after the recent terrorist attack in Buenos Aires' Jewish community.

Chile

■ **Vicaria de la Solidaridad (The Vicariate of Solidarity).** Established by the Catholic Church, this group was one of the prominent human rights organizations during dictatorship and relates directly to Cardinal Raul Silva Enriquez. Although still active, the Vicaria's presence has diminished, as other religious human rights organizations have emerged and as a more conservative cardinal now heads it.

■ **Fundación Apoyo Social de las Iglesias Cristianas (Foundation of Christian Churches).** Created by the Evangelical Church, this foundation works independently from Vicaria, but they network and cooperate with it.

■ **Comisión de Defensa de los Derechos Humanos del Pueblo [(CODEPO) Commission for the Defense of the People's Human Rights].** This commission defends those who took arms against the military regime. It works specifically for such people, as not all human rights NGOs include their defense in their agendas.

■ **Comisión Chilena de Derechos Humanos (Chilean Human Rights Commission).** When presided over by the former dean of the Catholic University, Jaime Castillo, this group historically denounced human rights abuses during the military regime. The organization remains small but active.

■ **SERPAJ**. Based in Argentina but also active in Chile (see above for full description).

■ **Familiares de Detenidos y Desaparecidos (Families of Detainees and the Disappeared)**. Active for the past 20 years, this NGO consists of women mainly seeking to clarify circumstances of their relatives' imprisonments or deaths.

■ **Human Rights Plenary**. This group coordinates human rights organizations to draw common strategies and unite in moments of crisis.

■ **Two professional groups have been established to support human rights organizations:** 1) A group of lawyers who track the disappeared, and 2) a group of psychotherapists who offer psychological support to victims of state violence.

■ **Verdad y Justicia (The Rettig Commission)**. Drawing representatives from various governmental and nongovernmental sectors, former Chilean President Patricio Aylwin established this commission, which has identified more than 2,000 cases of victims of state violence, marking a joint effort between civil society and the government. Today, the Truth and Conciliation Commission follows investigations of cases not yet concluded.

Brazil

■ **Comissão Justiça e Paz (Commission of Justice and Peace)**. Related to the Catholic Church, this group played a key role under Cardinal Paulo Evaristo Arns' leadership. Cardinal Arns was directly involved in the elaboration of the dossier Brazil Nunca Mais, a "survey" of those who were tortured, exiled, or killed during dictatorship. Similar to the Vicaria in Chile, this commission lost some strength with Don Paulo's retirement. Today, it has branches in several States and offers juridical support to other human rights groups seeking evidence to sue the State in cases of death and torture of political prisoners. It also supports refugees and common prisoners through legal guidance and assistance. (Brazil is the Latin American country with the largest number of political refugees, coming mainly from Africa.)

■ **Tortura Nunca Mais (Torture Never More)**. This organization investigates circumstances of human rights violations committed during dictatorship and files lawsuits against those involved in torture. Through a clinical project, it offers psychological support to families and victims of state violence. Although not one of its main activities, the group also denounces torture against common prisoners. Its offices, located in all regions of the country, work independently of each other.

■ **Comissão de Familiares de Mortos e Desaparecidos (Commission of Families of Those Who Died or Disappeared)**. This commission works to hold the State accountable for past human rights violations.

■ **SERPAJ**. Based in Argentina, but also active in Brazil (see above for full description).

■ **Movimento Nacional de Direitos Humanos (National Human Rights Movement)**. By disseminating information, this group provides a network between human rights organizations and plots strategies for emergency situations.

■ **Centro Brasileiro de Defesa dos Direitos da Criança e do Adolescente (Brazilian Center for the Defense of the Rights of Children and Youth)**. This NGO deals with human rights violations concerning children and adolescents. Among other things, it helps protect "street children" from police abuses.

■ **Núcleo de Estudos da Violência (Center of Studies on Violence)**. A younger organization, this center is located at the University of São Paulo and researches violence. Not devoted solely to abuses during dictatorship, it developed projects on urban and rural violence, helped during the Vienna Human Rights Conference, and recently coordinated the Brazilian federal government's National Human Rights Plan.

■ **Grupo de Mães de Acari (Group of Mothers of Acari)**. This group of black and low-income mothers seeks justice for paramilitary squads' killings of their children. Although centered on these specific events, the women's strength and commitment to the pursuit of justice has reinforced the struggle against police squads in general.

CENTRAL AND EASTERN EUROPEAN NGOs' INTERACTION WITH THE U.N. HUMAN RIGHTS SYSTEM

by Ewa Letowska

Fulfilling human rights in Central and Eastern European states varies with the systemic transformations these societies are undergoing. Countries such as Poland and Hungary already have relatively well-developed systems of formal guarantees and institutions that serve to protect human rights (constitutional courts, the ombudsperson), and they gradually are consolidating and applying the rule of law in domestic issues. Other states such as Bulgaria, Romania, and Russia remain inferior in this respect. Elsewhere in the region (the former Yugoslavia and Russia-Chechnya), war and its effects make the realization of human rights particularly difficult.

In all States, the absence of a genuinely developed mission-oriented NGO system as part of civil society can be felt to varying extents. With extensive Western assistance, this situation greatly could be changed for the better as regards the number and variety of NGOs. However, the following problems exist:

■ **Lack of media publicity.** The press and TV stations will not devote greater attention to NGOs or treat them as serious actors of social life. (The same is true of the establishment i.e., the administration and politicians.)

■ **Weak staff and organization.** Having few activists makes satisfying all the necessary areas' needs difficult. The drop in political tension in most of the region's States together with society's focus on overcoming the economic difficulties of moving toward market economy results in a slow-growing staff.

■ **Organizational and financial problems.** Because of the absence of private capital willing to finance human rights activities, NGOs have difficulty finding sources of local financing. They lack an adequate infrastructure of communication and access to information, which in turn makes activities in Eastern Europe require more energy and time as compared to those in Western Europe and the United States. Cooperation with foreign sponsors, such as international foundations, becomes hindered on one hand by the domestic fiscal system and on the other hand by the strict requirement of co-funding individual projects from lacking domestic sources. Funds cannot be allocated to the organization's

general costs independent of specific projects. Centers, foundations, and institutions based outside the region that assist Central and Eastern European NGOs in finances and organization are doing so by transferring models that are verified in other situations but that do not necessarily fit with local peculiarities.

Because of their shrinking social base, human rights NGOs in this region are facing hardship. These organizations descend from former opposition circles that propagated slogans of struggle for personal and political rights. Political transformations in those countries led to civil and political improvements in "first generation" human rights. Today, due to changes in the economies of the former countries of people's democracies, we observe the apparent loss of social security. Many groups within these societies feel neglected and insecure. This deterioration of living standards and lack of social security leave many feeling that current human rights violations are more prevalent than in the past. Economic reforms launched in Central and Eastern Europe will only result in great social stratification. The emerging market economy will offer little in terms of social safety. It is certainly far removed from Western Europe's social market economy.

Other important phenomena affecting Central and Eastern European NGOs that must be realized are the pauperization of society and an intensified migration to other countries. Because this combination causes a growth of populist attitudes and xenophobia, NGO activities aiming to propagate a human rights culture deviate from popular opinion and thus lose support from broader circles of society.

Human Rights Education

Given the existing NGO situation in this region, NGOs should focus mainly on human rights education campaigns to overcome an "agnosticism" in the sphere of human rights. Even if people are aware of them, human rights fail to exert any impact on everyday reality, especially regarding the administration's work. Until recently, human rights were unknown to society's main actors who never consciously factored such rights in their decision-making or their attitude toward their citizens. These actors also were not aware of the existence of

human rights as a protection accorded to individuals against authorities' arbitrariness. As a result of this "agnosticism," rights existed only on paper without impacting the contents of domestic law or internal relations. The constitutions of people's republic countries neither provided for fundamental rights (which after all set limits on what a legislator "is allowed" to do in lawmaking), nor allowed procedural mechanisms and institutions for citizens to file complaints or seek redress by applying constitutional guarantees afforded them. In other words, the constitutions are reduced to political manifestoes, deprived of the features of a binding law in operation. The lack of a constitutional review of statutes enabled the administration to dominate over the legislature.

Before 1980, there were no administrative courts for citizens to control the administration in individual cases. Slavish obedience to black-letter law unduly influenced the judiciary. Judges did not resort to constitutional or international law (including human rights documents) as the axiological and juridical grounds for their decisions. "Deficit economy," involving administrative interference with economic processes and the distribution of commodities and vital goods, such as lodgings, in a variety of legal forms, provided the executive branch with an effective means of influencing and manipulating citizens. The executive's prevalence over other powers (and consequently, of its policies over law), together with a lack of effective legal instruments to check and balance powers, led to a characteristic loss of awareness by potential reviewers such as the legislature and courts. This branch was not cognizant of its own duties of review and susceptibility to domestic law's inconsistency with international standards, particularly human rights.

Hence, those in Poland who urgently need human rights education are those actors in society who by definition review human rights' implementation in practice (i.e., judges, counselors, and the media), and whose awareness in this area was "misshapen" (i.e., agnosticism in the sphere of human rights). This situation had a very negative effect on the actors' consciousness and distorted human rights awareness among both the actors and the people to whom the rights were due.

Post-totalitarian society does not bear the same traits as civil society. Now, people are passive, expecting authorities to act paternalistically. They are not interested in getting help to fulfill their rights but rather are more concerned with protecting their aims and aspirations, lawful or not, in relation to disputes with authorities, neighbors, or family. They expect matters to be settled by legislative or administrative authorities. In well-rooted democratic traditions, citizens themselves jointly or individually settled such disputes. The authorities-citizens relationship has become greatly paternalistic in Poland, as totalitarian authorities have found this type of rule easier. As a result, society has become incapacitated. People believe they have the same extent of rights granted to them by those in power. Also, they expect authorities to satisfy their aspirations. Still they remain unaware of legal claims they may have on authorities. To change this paternalistic consciousness of broad groups of society, basic human rights education must be a priority next step.

The consciousness of teachers/educators who, at various instruction levels, inform about human rights and provide genuine training about everyday human rights issues, also becomes tainted by the agnosticism discussed above. Central and Eastern European NGOs should focus on the first generation's human rights. Promotion of economic, social, and cultural human rights—no doubt indispensable to make reformers and politicians susceptible to this area of rights—seems to go beyond the possibilities of effective NGO action because the struggle for economic rights tends to be associated in that region with anti-reform trends and promotion of the "former system." Present-day NGO education should be more pragmatic and less political, stressing profits derived from the practice of human rights in the sphere of quality of social life. Also, principles of the rule of law and strategies and techniques of public interest law should be taught as instruments to enhance society's quality of life.

The authorities-citizens relationship has become greatly paternalistic in Poland, as totalitarian authorities have found this type of rule easier. ... To change this paternalistic consciousness of broad groups of society, basic human rights education must be a priority next step.

NGO Relations with the U.N. Human Rights System

NGOs and U.N. human rights agencies interact in many organizational and financial assistance spheres on a variety of projects. However, this interaction lacks regularity and a broad strategic conception.

Central and Eastern European NGOs may interact with the U.N. human rights system in many areas of interest to both parties. NGOs primarily desire U.N. support for educational activities described above, as undertaken by Central and Eastern European NGOs. Interaction in the U.N. human rights system's purely political activities is less common. The absence of a U.N. information center for NGOs from countries in transition and for interested institutions poses a serious problem for mutual interaction. Such a center would need to provide both parties prompt and relevant information. Also, it should maintain a data base on areas of activity and NGO contact addresses in individual countries, and it should link those interested in possible cooperation. Some directories, bulletins, and guidance centers for NGOs do exist, but they are dispersed. A directory of information sources might suffice. ■

The absence of a U.N. information center for NGOs from countries in transition and for interested institutions poses a serious problem for mutual interaction.

Ewa Letowska has taught at the Faculty of Law of the Warsaw University. In 1987, the Polish Parliament chose her as Poland's first ombudsperson. As a result, she has held a top position in public opinion polls addressing the credibility and reliability of Polish politicians.

USE OF U.N. HUMAN RIGHTS TREATIES AND FORA BY AMERICA'S NATIVE PEOPLES AND RECOMMENDATIONS FOR BETTER ACCESS

by

*Walter Echo-Hawk, Sean Cogley, Tim Coulter,
Paul Moorehead, and Brian Stockes*

Spread out across the world, indigenous peoples number roughly 350 million, comprising about 4 percent of the world's population. Though a minority, indigenous peoples retain unique traditions that provide the human family its rich cultural diversity. Sadly, throughout history, whenever dominant peoples have acquired indigenous peoples' lands, the lives, cultures, political autonomy, and livelihoods of such peoples are threatened. In most parts of today's world, indigenous peoples still struggle to protect their human, political, and property rights and their ways of life.

This paper addresses the use of U.N. human rights bodies and procedures by American Indians, Alaska Natives, and Native Hawaiians, who are indigenous to the United States, by:

- Surveying the extent of such usage or lack thereof.
- Identifying barriers or impediments.
- Offering recommendations for better U.N. access.

On the U.S. mainland, indigenous peoples are politically represented by 557 American Indian tribal governments and Alaska Native villages that maintain unique relationships with the U.S. government. In addition, nongovernmental legal, political, and human rights organizations often represent indigenous individuals, tribes, and peoples on human rights issues. In Hawaii, where the U.S. government does not recognize any indigenous governments, nongovernmental organizations (NGOs) provide representation for Native Hawaiian human rights and sovereignty concerns.

As is the case with indigenous peoples located throughout the world, American Indians, Alaska Natives, and Native Hawaiians remain deeply concerned about pressing human rights issues such as religious freedom, cultural protection, discrimination, environ-

mental protection, land rights, economic development, treaty rights, self-government, and sovereignty. For the most part, these individual and group rights are asserted or defended through litigation, administrative advocacy, legislative activity, and political activism in domestic tribal, federal, and state fora. In comparison, America's indigenous peoples make relatively little use of U.N. human rights treaties and mechanisms in domestic or international fora.

This paper also discusses apparent reasons for this discrepancy based on a survey of Indian tribes, NGOs, and Native American NGOs with working experience in U.N. human rights processes, such as the National Congress of American Indians (NCAI) and the Indian Law Resource Center (ILRC). Historically, international law has not helped American Natives. Even though Indian tribes signed over 500 treaties with the United States and European nations, indigenous issues more often were settled on battlefields during the 16th through 19th centuries and in domestic fora during the 20th century rather than in an international arena traditionally reserved exclusively for nation-states. Indeed, early relations between Indian tribes and the United States were couched in terms of foreign policy and the federal government's war-making functions rather than in domestic relations issues.

To date, international law and fora do not provide for full U.N. participation for American Natives. For instance, Indian tribal governments and Alaska Native villages are responsible for protecting the human rights of their members on the U.S. mainland. Since these governments are not NGOs, they have less access to the United Nations than NGOs. Two questions address causes for low Native U.N. participation:

- 1) What voice does the international arena provide for indigenous peoples who exercise self-government over their lands, membership, and activities on those lands?
- 2) Will such self-governing peoples be afforded direct access to international fora as governments with a "direct voice" or must their concerns be filtered through intermediaries?

These are significant issues because much of today's world consists of countries with indigenous peoples as a result of the last half millennium's colonialism. Though our generation inherited this legacy, international law still does not allow for full participation for indigenous peoples located within former colonies' exterior boundaries. Because public international law is grounded in and centered upon the nation-state system, full participation is reserved only for nation-states whose interests often conflict with those of domestic indigenous peoples. Thus, over 350 million indigenous people are deprived of direct voices in international arenas.

Recently, there have been some relevant international law and policy changes. As a result, the United Nations has the potential to offer mechanisms to protect indigenous Americans' human rights.

Recently, there have been some relevant international law and policy changes. As a result, the United Nations has the potential to offer mechanisms to protect indigenous Americans' human rights. It is important that better access be afforded to indigenous Americans during times when domestic fora do not respond to indigenous peoples because of fickle swings in domestic policy and politics. For example, U.S. federal courts and Congress have demonstrated an insensitivity and at times a hostility to American indigenous peoples' needs while at the same time, the executive branch has shown a lack of power and commitment to vigorously defending Natives' rights. Unless U.N. mechanisms realistically acknowledge indigenous peoples' rightful place in the world and respond by providing appropriate, structured access and a direct voice for indigenous governments, American Natives' use of U.N. mechanisms likely will remain negligible.

Background: Treatment of Indigenous Peoples in International Law and Native Americans' Unique Legal Status Under U.S. Law

International Law

International law as an institution evolved in Europe, a continent based on nation-states. As international law developed during Europe's 500-year colonial era, it largely ignored indigenous peoples' legitimate place in the world. Authorities developed legal principles which denied Natives a direct voice in international affairs and justified taking their lands and rights. By the time Europeans began colonizing the Americas, principles of "discovery" and "just war" legalized acquisition of indigenous lands. Although European nations dealt with aboriginal nations through treaties, they typically discarded early natural law concepts that recognized inherent universal human and American Natives' political rights in favor of "positivist" theories that limited international law's scope to European-style nation-states and relegated indigenous issues exclusively to the domestic arena.

Recently, legal and policy principles have started evolving, which might provide opportunity for better indigenous access to international fora. Since the 1970s, the trend retreated from colonialism. Modern international law—although still strongly influenced by the principle of state sovereignty—is returning to early natural law theories, which assert that all peoples have inherent rights to certain basic protections from abuse by dominant governments. As a result, the international community now recognizes human rights as a legitimate concern. Witness, for example, recent "humanitarian interventions" in Somalia, Bosnia, and Haiti.



Walter Echo-Hawk of the Native American Rights Fund discusses the use of U.N. human rights bodies and procedures by American Indians, Alaska Natives, and Native Hawaiians at the 1996 meeting of the International Human Rights Council at The Carter Center.

U.S. Law

In the United States, five sources of law make up the bundle of legal rights and responsibilities in federal Indian law including:

- Certain international law concepts.
- The U.S. Constitution.
- Treaties.
- Federal statutes.
- Federal court decisions.

The U.S. Constitution refers to four governments that are relevant to the U.S. political system: the federal government, states, Indian tribes, and foreign nations. Several constitutional provisions, such as the Interstate Commerce and Indian Commerce Clauses, establish U.S. government power to legislate Indian affairs, regulate commerce within tribes, and enter into treaties with them.

Originally treating Indian tribes as foreign nations pursuant to international law principles, the United States entered into over 500 treaties with American tribes of which about 300 were ratified by the U.S. Senate and signed by the U.S. president. Recognized by Constitution Article VI as the supreme law of the land, these treaties have the same force and effect as any other international convention. Indian treaties act as binding agreements between governments and typically:

- Affirm Indian nations' collective rights.
- Secure Indian lands for white settlement.
- Reserve certain pre-existing Indian land and usufructuary rights such as hunting, fishing, and gathering.
- Set forth other rights and responsibilities between Indian tribes and the U.S. government.

Beginning with his famous Cherokee trilogy of cases in the 1820s and 1830s, U.S. Supreme Court Chief Justice John Marshall defined the contours of Indian sovereignty.

Without a doubt, America's first peoples are the "poorest of the poor," consistently ranking at the bottom of all socioeconomic indicators such as income, poverty, housing, unemployment, education, health, and life expectancy.

His decisions described Indian tribes as "domestic dependent nations" with sovereignty over their lands and peoples but without power to engage in international relations because of their "dependent status" on the U.S. government. After trimming these external attributes of tribal sovereignty, the Marshall Court established the principle of "federal guardianship" over Indian tribes, under which the United States assumed a trust responsibility for Indian tribes, peoples, and resources. These limited sovereignty and trust principles as first articulated by the Marshall Court remain cornerstones of federal Indian law and have been upheld by Supreme Court decisions, U.S. presidents, and Congress exercising its plenary constitutional power to legislate as a trustee in Indian affairs.

Today, 557 federally recognized Indian tribes and Alaska Native nations, villages, and tribes exist in the United States, composing a population of almost 2 million, speaking approximately 200 languages. About half of these citizens live on Indian reservations established in rural areas by the United States through treaties, executive orders, and statutes. Without a doubt, America's first peoples are the "poorest of the poor," consistently ranking at the bottom of all socioeconomic indicators such as income, poverty, housing, unemployment, education, health, and life expectancy.

The executive, legislative, and judicial branches of tribal governments and traditional forms of Native government lawfully exercise civil and criminal jurisdiction over their territory and members, including civil jurisdiction over nonmembers within their jurisdictions.

The U.S. government holds title to most Indian reservation land allotted to individual Indians—including all appurtenant natural resources such as water, minerals, and timber—in trust for tribal or individual Indian owners with restrictions against alienation. Substantial natural resources such as oil, gas, uranium, coal, timber, and grazing lands are located on U.S. Indian and tribal lands. Non-Indian exploitation of these resources requires Indian consent, and tribal governments must approve leasing the lands for mining, agriculture, or other purposes. The federal government collects lease-income royalties and places them in trust accounts for the Indian owners. Because power to tax is a basic attribute of any government, the U.S. Supreme Court has long recognized tribal governments' power to tax non-Indian lessees including the mining industry and others doing business on Indian land.

Because many Indian tribes remain unrecognized by the U.S. government, they exercise forms of self-government. Native Hawaiians represent one such tribe. In 1898, the U.S. military invaded and overthrew the Kingdom of Hawaii. Although Hawaiian islands have since been incorporated into the United States as a state, the U.S. government steadfastly denies any recognition of group or self-government rights to dispossessed aboriginal Hawaiians. Under strong economic pressure to develop Hawaii into a tourist destination and resort complex, Native Hawaiians' human rights and sovereignty continue to be disregarded and denied. As a result, NGOs represent Native Hawaiians more widely than federally recognized tribes.

Such U.S. policy not only adversely affects sizable indigenous American populations but also seriously limits U.S. human rights policies and positions on indigenous affairs abroad for fear of establishing unwanted domestic precedents. For example, the United States has chosen not to participate in important international human rights conventions on indigenous issues, asserting that the conventions violated state sovereignty. However, one underlying reason for the failure of U.S. support is that such conventions would require the United States to treat its own indigenous people in accordance with international human rights standards. The United States still has not ratified many important human rights conventions for protecting indigenous peoples, which seems ironic in a nation that prides itself on its human rights record.

Within the above mentioned legal framework, the United States has promulgated widely varying Indian policies over the years. Throughout its history, the United States has failed to honor treaty obligations and statutes implementing those obligations. As

U.S. Sen. Daniel K. Inouye (D-Hawaii) observed, the United States made over 800 treaties and broke all of them. Certain major U.S. policies have been particularly injurious to Indian tribes including:

- Warfare against Indian tribes to place them on to small “reservations,” an effort largely completed by the 1880s.
- The 1892-1934 period during which the United States banned all tribal religions.
- The Allotment Era (1880-1934) in which the U.S. government broke up and sold vast tribal lands to “civilize” and “assimilate” Indians into the dominant society.
- The “termination era” of the 1950s when the government sought to cease political recognition of many Indian tribes.

On the other hand, some U.S. policy swings have potential for setting indigenous rights precedents for other nations. In 1970, U.S. President Richard Nixon announced the end of forced termination and assimilation which ushered in a new federal policy of tribal self-determination. In 1978, then U.S. President Jimmy Carter signed the American Indian Religious Freedom Act, 42 U.S.C. 1996, establishing a federal policy protecting the practice of Native religions. In 1994, U.S. President Bill Clinton reaffirmed the self-determination policies and the relationship between the U.S. government and Indian tribal governments to protect Native religions and cultures.

Human, political, property, and cultural rights remain of vital concern to American Natives. In the 1980s, the U.S. Indian law and policy pendulum began to swing against Indians. The Reagan, Bush, and Clinton administrations' increased focus on federal budget deficits has resulted in drastic funding cuts to many Indian programs or program mergers into state-administered social service programs. Also, a more conservative U.S. Supreme Court has begun a disturbing trend to trim once long-standing Indian rights. Two recent Supreme Court decisions denying First Amendment protection of tribal religious practices illustrate that indigenous religious liberty remains a serious human rights problem in the United States.¹ Treatment of Native prisoners raises additional concerns, as too many American correctional institutions discriminate against indigenous prisoners and prohibit their freedom of worship.² These troubling developments underline the unpredictability of U.S. domestic policy that requires constant vigilance to protect fundamental Native human rights.

Finally, this paper explores possible remedies in the U.N. human rights system that might be helpful in advancing human rights protection for indigenous Americans. Although most Indian and Alaskan Native nations have not utilized U.N. fora, increased access and use may be helpful in developing enforceable standards to protect the human rights of Native American indigenous peoples.

Favorable Changes in the International Legal Climate for Indigenous Peoples

Overview³

Within the last several years, more people have become aware of and have recognized indigenous people's rights, which largely can be credited to the Natives themselves. Natives' efforts seeking international support for continued cultural existence and political and land rights has increased concern for these previously neglected issues.

In 1982, the United Nations formed a Working Group (WG) on Indigenous Populations as a body of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Within the United Nations, this WG serves as the main forum for indigenous peoples' participation. In 1988, it began drafting a Declaration on the Rights of Indigenous Peoples for the U.N. General Assembly's (G.A.) consideration, and in 1993, after years of consulting with indigenous groups, it completed the historic draft.

Throughout its history, the United States has failed to honor treaty obligations and statutes implementing those obligations. As U.S. Sen. Daniel K. Inouye (D-Hawaii) observed, the United States made over 800 treaties and broke all of them.

This was one of the WG's most important accomplishments, and it presented the final version to the Sub-Commission.

The Draft Declaration contains strong provisions regarding indigenous peoples' collective or group rights to self-determination, land, resources, and political autonomy including:

- The right to self-determination in accordance with international law to freely pursue economic, social, and cultural development.
- The right to exist as "distinct peoples."
- The right to tribal or indigenous government institutions and their internal workings and procedures.
- The right to own, control, and use lands.
- The right to protection of the total environment and protection from pollution and ecological degradation.
- The right to intellectual and cultural property and their ownership and use.
- Cultural and religious rights and practices.
- The right to adequate financial and technical assistance.
- The recognition and enforcement of treaty rights.
- International development and prior consultation with indigenous groups.

These principles bear remarkable similarity to the concerns identified by indigenous groups who responded to the survey discussed below. Perhaps the most significant aspect of the Draft Declaration is that it marked the first step in ensuring that all nations respect the rights of the 350 million indigenous peoples across the world including America's 2 million Natives and that they heighten their sensibilities of indigenous communities' concerns including both individual and group rights.

One key reason for the Declaration was the need for international legal protection of indigenous communities' rights to continued existence as nations, tribes, groups, and peoples. This acknowledgment of collective rights is compatible with well-settled U.S. law on Indian tribes. Recognized as the world leader, the United States occupies a unique position among nations to lay a strong foundation upon which the Draft Declaration can be built. Winning U.S. approval of the Draft Declaration is critical for Native Americans,

Perhaps the most significant aspect of the Draft Declaration is that it marked the first step in ensuring that all nations respect the rights of the 350 million indigenous peoples across the world including America's 2 million Natives.

In 1982, the United Nations formed the WG on Indigenous Populations, shown here at a session in Geneva. The group is a body of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.



as it will affect both international standards and access to international fora. Some U.N. members regard the document as "too controversial," but the Commission on Human Rights continues to work on it. The United States has not given full support because of apparent State Department concerns over:

- Perceived expansion of U.S. self-determination policies regarding its treatment of American indigenous peoples.
- Group or collective rights.

The International Labor Organization's (ILO) revision of its 1957 Convention on Indigenous Peoples represents another favorable development for Natives. The ILO began revising this document in the mid-1980s.⁴ Its earlier 1957 Convention (Convention No. 107) focused on assimilating indigenous peoples into their respective countries.⁵ In 1989, the ILO reversed this policy by adopting the Convention on Indigenous and Tribal Peoples (Convention No. 169) by an overwhelming majority.

Rejecting established assimilation policies that brought so much harm to U.S. and other nations' indigenous peoples, the ILO, by virtue of Convention No. 169, now advocates Natives' right to have their own cultures and live as distinct communities.⁶

Thus, indigenous people successfully have made progress toward protecting their rights on the international level. Notwithstanding these gains, the movement has sparked a continuing commitment by international organizations to develop a body of international law upon which indigenous people can rely for protection of their rights.

Still, the United States lags behind the rest of the world in ratifying indigenous human rights treaties. To date, it has not ratified the ILO conventions discussed above, nor has it fully supported the Draft Declaration. Also, it has signed but not ratified a long list of important human rights conventions affecting Natives' such as:

- The International Covenant on Economic, Social, and Cultural Rights.
- The International Convention on Elimination of All Forms of Racial Discrimination.
- The American Convention on Human Rights.

Failure to ratify these conventions and incorporate them into domestic law significantly impedes America's indigenous peoples and their access to international fora.

Description and Analysis of Access to U.N. Bodies and Complaint Procedures Applicable to American Indigenous Peoples

1) Present Indigenous Access to the United Nations

Apart from the human rights complaint processes identified below, indigenous Americans have participated in U.N. activities in a limited number of ways including:

- **WG on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities:** Indigenous representatives can participate in this WG's public or general sessions which take place for about five days in Geneva each summer before the Sub-Commission's session. No NGO credentials are required. Indigenous representatives cannot be members of the WG, cannot participate in the WG's private sessions, and have little to no role in planning or carrying out the WG's tasks.

- **WG of the Commission on Human Rights:** Indigenous representatives may participate in this WG, created by the Commission on Human Rights, to review the Draft Declaration on the Rights of Indigenous Peoples, if they are approved to do so under a special expedited procedure established particularly for this WG. Although

[The] United States lags behind the rest of the world in ratifying indigenous human rights treaties. To date, it has not ratified [some] ILO conventions, ... nor has it fully supported the Draft Declaration.

Too few indigenous NGOs have participation status in the Commission, Sub-Commission, and other U.N. bodies. Some of these NGOs have become practically inactive, thereby further decreasing indigenous activity.

expedited, the procedure nevertheless applies the same rules to all NGOs pursuant to ECOSOC Resolution 1296. In 1995, 72 indigenous organizations not previously granted consultative status were approved to participate in the WG. The group did not act on several other applications, thereby excluding some indigenous representatives. Participating in this WG is similar to participating in Sub-Commission and Commission meetings, except the WG gives greater time and latitude to indigenous speakers. One useful, positive development is that of the WG's chairperson consulting informally on a daily basis with indigenous leaders.

■ **Sub-Commission and Commission on Human Rights:** The Sub-Commission's and the Commission's annual sessions limit participation to NGOs that have been approved pursuant to the NGO Committee's regular procedure, as outlined in Resolution 1296. Indian or other indigenous representatives wishing to address or submit written statements to the Commission or Sub-Commission must be part of a delegation of one of the NGOs in consultative status. There are at least 11 indigenous NGOs, nine of which include North American indigenous peoples.⁷

It can be difficult, often impossible, for indigenous leaders to gain credentials. Most NGOs do not "lend" their credentials, nor should they. Existing NGOs cannot accommodate more than a few additional speakers or representatives. Under present circumstances, NGOs already take up a large part of Commission and Sub-Commission sessions' time. With restrictions on NGO statements becoming more frequent, prospects do not bode well for indigenous representatives to participate more extensively as NGOs in such sessions. Making more NGO oral statements or submitting more NGO written statements do not promise increased participation by indigenous leaders. Natives' representatives should still be accorded the fullest possible opportunity to participate as NGOs, but this is limited to brief oral statements and short written statements.

■ **Other U.N. Activities:** Separate NGO accreditation procedures regulate participation in other U.N. activities such as the Conference on the Environment and Development, the World Conference on Human Rights, and meetings held under the Climate Change Convention. In some cases, Native American groups have won approval to participate in these activities, even though they do not have NGO status under Resolution 1296. Such approval has helped, but indigenous participation, we believe, has been kept marginal, mostly indirect, and often entirely separate from the main conference activity.

■ **Special Events:** Participation in certain special events, such as the inauguration of the Decade of the World's Indigenous People, has included a broad array of indigenous individuals selected by U.N. staff or bodies. Essentially symbolic or honorific, this participation also can serve to educate. Indigenous experts' participation in meetings organized by the Centre for Human Rights has more substance and value for the United Nations. Unfortunately, the Centre holds such meetings infrequently, and the experts are not, nor are they expected to be, political representatives of indigenous communities.

Certain problems relating to indigenous participation in the above-mentioned U.N. activities include:

■ Too few indigenous NGOs have participation status in the Commission, Sub-Commission, and other U.N. bodies. Some of these NGOs have become practically inactive, thereby further decreasing indigenous activity.

■ Limited NGO participation does not permit the full and effective participation needed and deserved by Native American governments. An NGO statement often becomes a futile three to five minute plea, sometimes one of 20 or 30 such pleas made late at night to a half-empty chamber. Because of the large number of NGO statements, many of which have doubtful value, all NGO statements' efficacy has diminished. Written statements may be useful, but they are part of a deluge of written material circulated at



Kathryn Kolb

Su Kaxinawa, president of the Association of Kaxinawa Rubber Tappers of the Jordao River in Brazil, explains the greater need for U.N. attention to indigenous human rights issues during the November 1996 meeting of the International Human Rights Council in Atlanta, Ga. Patricia Derian, former U.S. assistant secretary of state for human rights and humanitarian affairs, looks on.

every session. Ways and means need to be identified for raising the level or nature of indigenous participation such as according the right to propose resolutions; participate in decision-making; consult with officers of the Bureau, the Commission, the Sub-Commission, and so forth.

■ Most indigenous representatives have no practical access for participating in any U.N. sessions except for those of two WGs. Acquiring NGO consultative status is practically impossible for many Native American groups wishing to use it. The requirements are difficult, and the time needed is truly forbidding.

■ For Native American and other indigenous nations and tribes represented by their respective governments, NGO status is inappropriate, misleading to others, and lacking in dignity. Resolution 1296 and its many criteria and procedures were meant to apply specifically to organizations that are not governments. Its requirements cannot suitably determine whether an indigenous nation with a duly constituted, representative government should be recognized to participate in U.N. work.

■ Because the United Nations does not make available regular information to indigenous governments, even recognized NGOs have difficulty staying well-informed.

■ Although the idea of a permanent forum for indigenous peoples may be useful, no clear concept of it has emerged. Such a forum would be harmful if it served to isolate, marginalize, or stifle indigenous representatives' communication. It should not be considered an alternative to direct and full participation by indigenous peoples in U.N. bodies' activities, especially those concerned with human rights, environmental protection, and economic development.

2) Complaint Procedures Available to American Indigenous Groups

U.N. complaint procedures to enforce human rights conventions can be one source of U.N. access for Native Americans and NGOs representing Natives. However, are U.N. human rights complaint mechanisms available to self-governing American Natives, both theoretically and realistically? And if they are, do they adequately address the real

concerns of American Natives? In answering these questions, one must consider that the United States has not ratified many of the treaties which protect indigenous peoples' rights. An abbreviated analysis follows:

■ **Complaints in the U.N. WG on Indigenous Populations:** This WG's informal complaint procedure brings human rights problems to its attention. Unfortunately, the WG does not have authority to investigate or enforce remedies. Therefore, this forum lacks teeth, and the value of addressing the WG is limited to bringing international attention to a domestic indigenous human rights problem to embarrass a government into response. To our knowledge, no Native American complaints have been filed in this forum.

■ **Complaints in the U.N. Commission on Human Rights and Its Sub-Commission on Prevention of Discrimination and Protection of Minorities:** While these fora have somewhat more ability to hear and act on human rights complaints, practical use of them is hindered, because any response from them is entirely discretionary and often not forthcoming. Consideration of individual complaints or any communication with the State concerned are completely confidential so as to avoid public scrutiny. Requiring an exhaustion of domestic remedies, a corollary to the sovereignty principle, also limits timely and effective access to international fora.

■ **The U.N. Human Rights Committee and the Committee on the Elimination of All Forms of Racial Discrimination—U.N.-Based Treaty Fora:** The International Convention on Civil and Political Rights, ratified by the United States in 1992, governs the Human Rights Committee. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994, controls the Committee on the Elimination of All Forms of Racial Discrimination. These committees only may receive and act on complaints by one government against another. This method has not proven reliable for addressing indigenous human rights concerns, as governments often conflict with indigenous interests. We know of no nation that has filed a human rights complaint in this forum against the United States on behalf of Native Americans, and we have little realistic expectation of this happening. While the Committee on the Elimination of All Forms of Racial Discrimination also has authority to hear complaints directly from individual victims of human rights violations under Article 14, it bars Native American access, because it only may consider Article 14 complaints if the government involved has issued a formal declaration recognizing its authority to do so. The United States has not done this. The Human Rights Committee may hear individual complaints pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights. Because the United States has not ratified the Covenant, Native Americans cannot use this avenue of access.

Until the United States recognizes the authority of these U.N. fora to accept individual communications, the efficacy of these avenues of access will remain limited to rare and improbable instances in which Native Americans can convince another nation to complain on their behalf.

■ **Complaint Procedures Connected to ILO Conventions:** The United States has neither signed nor ratified any of the ILO human rights conventions, thereby rendering these fora unavailable to Native Americans.

■ **Petitions to the Inter-American Commission on Human Rights:** The Organization of American States (OAS) maintains statutes and regulations by which this Commission may hear and act on complaints—called "petitions"—that involve OAS members. Currently, the United States is a member of the OAS, but it has not ratified the American Convention on Human Rights, the primary OAS human rights treaty, nor has it subjected itself to the Inter-American Court's jurisdiction. The United States signed the treaty, but its Congress never ratified it. Therefore, these fora also are unavailable to Native Americans.

Until the United States recognizes the authority of these U.N. fora to accept individual communications, the efficacy of these avenues of access will remain limited to rare and improbable instances in which Native Americans can convince another nation to complain on their behalf.

Survey Results of Indigenous Tribes, Peoples, and NGOs in the United States on How They Use U.N. Fora or Why They Do Not

In preparation of this paper, the Native American Rights Fund, with assistance from the NCAI, the ILRC, and The Carter Center's International Human Rights Council, mailed a survey to over 500 Native American, Alaskan Native, and Native Hawaiian tribes, villages, and NGOs. The survey asked 14 questions on the respondents' identities, extent of use of U.N. human rights fora, knowledge of ongoing U.N. efforts to address protect indigenous human rights, and recommendations for improved U.N. access.

The Fund received 77 responses, a return rate (over 15 percent) exceeding the average return rate of national Indian country surveys previously conducted by that organization.

The survey consisted of the following questions (responses have been summarized):

1) What is the name of your group or tribe?

2) Has your group or tribe ever contacted any U.N. body or organization?

Yes: 14 No: 63 Total responses: 77

3) If your answer to No. 2 is "yes," describe the nature of your contact:

Responses included:

Consulting with the United Nations on a range of issues as a Category II NGO.

Participating in the U.N. Draft Declaration on Indigenous Rights.

Meeting with the U.N. secretary-general to discuss the year and decade of indigenous peoples.

Applying to the United Nations for consultative status.

Requesting comments on proposed rules.

Addressing local development issues.

Working on free trade and cultural genocide issues.

Total responses: 14

4) If the answer to No. 2 is "yes," how could the effectiveness of your contact or relationship with the United Nations be improved?

Responses included:

Lack of funds impairs ability to work with the United Nations.

Need better U.N. contact and communication.

Need more flexible time frames.

Need ongoing relationship development.

Streamline the process of obtaining U.N. consultative status.

Set short-term U.N. objectives to implement general policies.

Appoint a U.N. liaison to attend major Native American functions, such as

Impact Week in February, each year.

Total responses: 11

5) If the answer to No. 2 is "yes," describe any problems you encountered in your work with the United Nations:

Responses included:

Unresponsiveness.

Networking for contacts.

Short length of meetings.

Lack of follow-up by U.N. bodies.

"Numerous problems, primarily centered around the reluctance of nation-states in recognizing indigenous human rights for indigenous peoples within their boundaries."

Total responses: 7

6) Has your group or tribe ever been contacted by any U.N. body or structure regarding Native American rights?

Yes: 13

No: 64

Total responses: 77

7) Is your group or tribe aware that a U.N. WG on Indigenous Peoples is in the process of drafting a Declaration on the Rights of Indigenous Populations worldwide? If so, would you like to be able to comment on the proposed draft?

Aware of Draft Declaration:

Yes: 37

No: 32

Would like to participate: 41

Total responses: 69

8) If your group or tribe has not contacted or used the United Nations regarding Native American rights, please explain why (i.e., lack of information about the United Nations or how to use it, belief that it does not address your needs, etc.).

Lack of information: 43

Do not believe United Nations addresses needs: 11

Never saw the need to contact the United Nations: 5

Believe United Nations incapable of changing U.S. Indian policy: 2

Lack of funds: 2

Never invited: 2

Not accessible via the Internet: 1

Total responses: 65

9) Do you think that creating a permanent U.N. forum for indigenous peoples would improve the addressing of Native American peoples' concerns? If so, what should such a forum try to accomplish, and on which issues should it concentrate?

Permanent forum would be an improvement:

Yes: 48

No: 2

Not Sure: 6

Total responses: 56

What the forum should accomplish, and on what it should concentrate?:

Native American sovereignty issues: 16

Treaty rights: 4

Compensation for lost land and natural resources: 4

- Hunting and fishing rights: 4
- Educate world about indigenous rights violations: 3
- Protection of cultural rights: 5
- Health care: 3
- Protection of global natural resources: 2
- Economic development: 2
- Other miscellaneous goals: 11

10) Did you know that the U.S. government has ratified the International Covenant of Civil and Political Rights (ICCPR) which includes guarantees protecting a minority group's practice of religion, enjoyment of its culture, and use of its own language?

Yes: 17 No: 57 Total responses: 74

11) Are you aware that the U.S. government must report every four years to the United Nations on its compliance with the ICCPR and can be questioned about such compliance by U.N. Human Rights Committee's expert members and about NGO concerns?

Yes: 5 No: 68 Total responses: 73

12) Do you believe it would be useful to work with interested NGOs to compile an alternative report regarding U.S. compliance with the ICCPR for presentation to the U.S. government and the U.N. Human Rights Committee?

Yes: 57 No: 8 Not sure: 3 Total responses: 68

13) If your answer to No. 12 is "yes," what would make it possible for your group or tribe to participate in this work?

- Information: 14
- Financial assistance: 13
- Invitation: 4
- U.S. reluctance to honor U.N. commitments: 3
- Access: 1
- Access and information via the Internet: 1
- Appoint a tribe member to working body: 2
- Authority over important issues: 1
- A meeting to introduce participants to United Nations: 1
- Send U.N. representative to tribes: 1
- Better notice of meetings: 1
- Limit speeches: 1
- Simple format: 1
- More time: 1
- Larger staff: 1
- Organized fora inviting tribes: 1

Total responses: 41
(discrepancy reflects multiple suggestions within single responses)

14) Name and address of person filling out this questionnaire:

Survey responses reflect a widespread lack of knowledge of issues appropriate for consideration in U.N. fora and regarding procedures to address such fora when appropriate. Perhaps one cause for this unawareness, when viewed in comparison with knowledge

Survey responses reflect a widespread lack of knowledge of issues appropriate for consideration in U.N. fora and regarding procedures to address such fora when appropriate.

■ All U.N. bodies should adopt and maintain an openness toward indigenous peoples and organizations' participation. This should include the greatest possible direct participation in all U.N. activities, conferences, events, and other agency work.

about available domestic human rights fora, is the failure of the United States to ratify and incorporate international human rights conventions. Survey comments indicate that Indian tribes desire direct voices in U.N. fora, an experience Indians view as essential for protecting human rights in domestic fora, which generally recognize tribes as self-governing, sovereign entities with status to protect their own interests. Diverse tribal interests make it difficult for a single or even a few NGOs to fairly represent all American Native tribes in American domestic fora. Lack of resources to effectively participate in U.N. fora also creates a barrier to direct U.N. access. "Justice is expensive," as is the case in domestic fora, and often forms a prohibitive barrier for the impoverished communities of America's Natives.

The survey shows little use of U.N. fora by indigenous Americans. Although respondents identified numerous problems, the survey indicates the chief barrier to U.N. access is the lack of information about U.N. fora's substantive scope and procedures.

Recommendations for Increased Participation by American Natives and NGOs in U.N. Human Rights Fora

Based on the survey's results, our analysis of U.N. complaint procedures and Native American NGOs'—such as the NCAI and the ILRC—prior U.N. experience, the five primary barriers to increased Native American access and participation in U.N. fora can be summarized as follows:

- 1) The United States' failure to sign and ratify U.N. human rights conventions including the Draft Declaration on the Rights of Indigenous Peoples, which is related to U.S. domestic policies discussed above regarding U.S. indigenous peoples.
- 2) A widespread lack of Native American knowledge about U.N. fora, procedures, and appropriate issues to bring to such fora. This relates to barrier No. 1.
- 3) Lack of substantial, enforceable U.N. human rights remedies in comparison to domestic fora.
- 4) Inadequate procedures for addressing U.N. fora including the lack of tribal governments' direct representation as opposed to limiting access to NGOs and Member States.
- 5) Financing Native American participation in U.N. fora.

Our recommendations for U.S. Natives' increased access to U.N. fora, including NGOs that advocate for such peoples, are:

■ Because Native American nations and tribes are not actually or adequately represented by U.N. Member States and have a great deal to contribute to the United Nations and the world community, possible procedures, mechanisms, and modalities for direct participation of indigenous peoples, nations, and tribes—especially those represented by their own indigenous governments—should be examined. A special rapporteur or similar mechanism should review a range of possible options; consider creating a new status for participation; and seek information, recommendation, and comments from indigenous representatives, organizations, and experts.

■ The idea of a permanent U.N. indigenous forum should be studied further, paying particular attention to its usefulness for participation by individuals and organizations not represented by an indigenous government.

■ All U.N. bodies should adopt and maintain an openness toward indigenous peoples and organizations' participation. This should include the greatest possible direct participation in all U.N. activities, conferences, events, and other agency work. Because this is a critical, historic period for the development of indigenous peoples' rights, such participation is crucial.

■ The United Nations should fund and host a conference for Alaska Natives, Native Hawaiians, American tribes, and NGOs so indigenous representatives can meet with U.N. representatives to discuss appropriate issues for the United Nations to address and procedures for accessing U.N. fora. Regarding the information gap, the United Nations could write and send to tribes guidelines to supplement the information of tribes who attended the meeting and debrief tribes who could not attend. These guidelines would be updated whenever there was a change in policy or procedure or every two years if no change occurs.

■ A liaison office should be set up within the United Nations for American Natives. It would maintain up-to-date contact information for tribes so guidelines and other information relevant to tribes could be sent to the appropriate representatives on a regular basis. Also, it could help tribes identify appropriate U.N. fora, address the United Nations, frame appropriate complaints and other documents, and file documents in appropriate places within applicable deadlines.

■ An important issue to tribes is that the United Nations and other international organizations recognize that U.S. Indian tribes are self-governing sovereign entities, not NGOs, because their U.N. participation as NGOs does not account for their sovereignty and denies adequate direct representation. American Native tribes need a new category for organizations allowed to access the United Nations, or a renaming of the nongovernmental category to account for their self-governing, sovereign status, with a view to increasing their participation.

■ The United Nations should establish and increase funds for indigenous groups' travel and legal expenses necessary for participation. These funds' existence should be made widely known among tribes and American Native groups.

■ Indian tribes and U.S. NGO advocacy organizations need to lobby the U.S. government for ratification of all pertinent international human rights treaties. Perhaps a coordinated effort of all U.S. groups concerned with human rights would be most effective. Once the government ratifies these treaties, not only will American Natives enjoy greater access to U.N. fora, they also will have more reliable domestic remedies, as U.S. courts must apply laws of treaties ratified by Congress.

Conclusion

If implemented, the above recommendations will increase Native American and NGO access and participation in U.N. human rights fora. Increased participation is necessary for three main reasons:

1) Most important for American Natives, international accountability will help stabilize unpredictable swings in U.S. domestic policy toward Indians and will bring attention and perhaps change to ongoing violations of Natives' human rights. Indian tribes and Native American NGOs must advocate vigorously for U.S. endorsement of the existing Draft Declaration on the Rights of Indigenous Peoples.

2) On the domestic level, increased Native American participation in U.N. fora will help focus attention and perhaps initiate changes in policy toward other racial minorities and disadvantaged groups in the United States.

3) Increased access and participation further will break down barriers in international law that were built during the colonial era. These barriers precluded a seat at the table for indigenous peoples, which is necessary for them to seek international human rights protections. ■

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ENDNOTES

¹Employment Division, Department of Human Resources of Oregon v. Smith," (108 L.Ed.d 876, 1990) denied constitutional protection for Indian peyote, one of the oldest, largest, most continuously practiced religions in the Western Hemisphere. "Lyng v. Northwest Indian Cemetery Association," (485 U.S. 439, 1988) denied constitutional protection for an ancient Indian holy place located on public lands.

²See for example, "Hamilton v. Schriro" (74 F3rd 1545, 8th Cir. 1996) Cert. Den. U.S. Oct. 16, 1996, in which the court upheld a Missouri prison's complete denial of Native American religious practices. In "Dias v. Collins" (872 F. Sup. 353, E.D. Tex., 1994), the court upheld a Texas prison's denial of Native religious practices, even though that state allows other inmates to practice non-Indian religions.

³For more detail, see Anaya, INDIGENOUS PEOPLES IN INTERNATIONAL LAW.

⁴ Anaya, "International Law and Indigenous Peoples: Historical Stands and Contemporary Developments," 43.

⁵ Ibid.

⁶ Ibid, 44.

⁷ These are: Indian Law Resource Center, International Indian Treaty Council, Four Directions Council, Grand Council of the Crees—Quebec, Indigenous World Association, World Council of Indigenous Peoples, Consejo Indio de Sud America, International Organization for Indigenous Resources Development, National Indian Youth Council, Inuit Circumpolar Conference, and National Aboriginal and Islander Legal Services Secretariat.

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WOMEN'S HUMAN RIGHTS NGOs AND THE U.N. SYSTEM

by Karin Ryan and Makiko Kambayashi

The highest U.N. officials repeatedly emphasize the importance of contributions nongovernmental organizations (NGOs) make to U.N. ongoing work and special activities such as world conferences. Former U.N. Secretary-General Boutros Boutros-Ghali said in his address to the Fourth World Conference on Women (FWCW) in Beijing: "Let me emphasize the institutes of civil society which have played such an important role in preparing for this conference ... I have often spoke of the evolution of civil society and its importance for economic, cultural, and democratic advancement."

The U.N. leader also made the following commitment in a speech delivered by the Secretary-General's Special Representative Ismat Kittani on Sept. 15, 1995: "More effective mechanisms to ensure partnerships between governments and civil society will contribute significantly to the implementation of the policies and measures that are called for in the Platform [for Action] ... The United Nations will intensify the close ties and working relationships that already exist with the NGO community at the global and national levels. The United Nations will be prepared to support governments in their endeavors to foster and strengthen the institutions of civil society."

NGOs have played a significant role in educating the public, monitoring human rights conditions, and pressing governments to respect human rights and denounce violations. However, for NGOs to make effective contributions, efforts should be made to improve the inconsistent and inefficient arrangements for U.N. consultation with NGOs. In his FWCW statement, Secretary-General Boutros-Ghali concluded that much progress is needed to transform this goal into reality. Despite such difficulties, women's human rights NGOs have successfully presented unified, cohesive positions on a fairly consistent basis, thereby increasing their effectiveness in advocating women's rights in the U.N. system.

This paper reviews women's rights NGOs' groundbreaking experiences and coordination with U.N. human rights bodies, focusing principally on their achievements at the World Conference on Human Rights in Vienna (WCHR) and the FWCW.

Vienna proved that well-coordinated advocacy is a powerful tool for holding governments accountable for women's rights. Because of women's NGOs' collective voice and efforts, an entire section on "women's rights as human rights" was included in the Vienna Declaration and Program of Action (VDPA), the intergovernmentally negotiated document and principal product of Vienna. This call—first made by NGOs—to recognize women's rights as human rights became Beijing's ringing theme, which U.S. First Lady Hillary Rodham Clinton articulated with great eloquence.¹

NGOs' involvement at the FWCW also should be highlighted, as its preparatory process demonstrated women's rights organizations' enormous strength, diversity, and determination worldwide. Despite previous gains, there were obstacles inhibiting greater participation at Vienna's PrepComs and in Beijing. These issues are worth reviewing here, with a view to preventing similar problems in the future.

This paper also discusses women's NGOs' participation at U.N. treaty bodies and functional commissions and examines best and worst practices of NGO access to U.N. human rights bodies.

Organization of the Study

This paper is a product of a series of interviews with experts and benefits from previous research cited throughout. It consists of four main parts:

Part I examines women's rights NGOs' progression and growth from the U.N. Decade for Women (1975-85) to the WCHR (1993).

Part II addresses the FWCW and its PrepComs.

Parts III and IV analyze practices of U.N. human rights bodies that deal with women's human rights, namely the Committee on the Elimination of Discrimination Against All Women (CEDAW), the Commission on Human Rights (CHR), and the Commission on the Status of Women (CSW).

In each part, recommendations for improved arrangements for NGOs in the identified U.N. agencies follow as appropriate. It is important to note, however, that because women's human rights must be monitored by human rights groups in general and in all human rights treaty bodies and specific mechanisms, women's

human rights NGOs equally are concerned with improving their relationship with all bodies as well as with those dealing specifically with women's human rights.

Part I: Progression and Growth of Women's Human Rights NGOs in the U.N. System

A Growing International Women's Movement

Attention to the international women's movement increased from 1975-85 during the U.N. Decade for Women and during the following decade, as women's NGOs firmly established their relationship to the U.N. system and international community. The number and variety of NGOs and their networks have risen significantly, and leadership has come from women, especially those in the developing world. This movement has made women recognize the necessity of voicing their perspectives at the international level, and now, it influences global policy agendas. Progress can be seen in the following ways:²

Increasingly, representatives of women's human rights NGOs are participating at policy-making tables at both the national and international level. More and more, they are being recognized as important players with special competence on substantive issues.

■ Within the movement, a flow of younger NGOs has supplemented the more established ones that have developed close links with the United Nations over many decades, thereby increasing the diversity of perspectives. The most remarkable change though is the dramatic increase in the number and types of women's groups and NGOs in the world³—most visibly and considerably, those in developing countries.

■ The movement has matured and diversified. Women's NGOs have developed skills in advocacy, political research, analysis, documentation, and communication. They also have learned how to operate on the global stage and how to deliver their messages more effectively.

■ NGOs have gained new strength through alliances, networks, and coalitions, many of which consist of international NGOs working with grassroots groups in several nations. Most critically, NGO networks and coalitions that cut across regional and North-South divides have developed to build broad-based consensus on key issues.

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Necessary Strategies

Women's rights NGOs' experiences in the movement offer important lessons about optimal strategies to participate effectively in policy deliberations, such as world conferences, at which global priorities on women's issues are set. Accurate documentation and analysis of facts together with broad-based coalitions has allowed them to influence policy agendas. Such NGOs also discovered they had to become involved in the preparatory processes preceding world conferences, as most negotiations are completed before the conferences convene, with only a few key issues left unresolved.⁵

To participate effectively in both the preparatory processes and formal policy-making sessions, women's NGOs developed the following strategies:⁶

■ **Global Campaigns:** To increase pressure on official policy-makers and build coalitions and consensus, women's NGOs organized global campaigns calling for dialogue and action at the local level; lobbying at the national, regional, and international level; petition drives directed at specific policies and issues; gathering evidence on and documenting women's rights violations; and attending a wide variety of local, national, regional, and international meetings to increase their visibility.

■ **Building coalitions and consensus:** To do this, women's NGOs held multiple strategic planning meetings with a representative cross section of women and NGOs from

around the world at all levels—local, national, regional, and international—which resulted in specific measures and goals.

■ **Preparing policy documents:** To influence policy-makers and official policy documents, women's NGOs drafted their own language and platform documents to create moral pressure on governments to listen specifically to women when considering possible language formulations. This is important because it illustrates the real gap between government and NGO positions which could be narrowed through advocacy.

■ **Influencing official delegations:** To influence national governments' positions and official delegations' composition, women's NGOs published reports, held briefings, lobbied, and nominated women and NGO representatives as official delegation members.

■ **Bridging NGO and official deliberations:** To bring NGOs into official international meeting deliberations, women's groups developed "the Women's Caucus"—a daily time and space at all policy-making meetings for the groups to develop strategies and hold discussions with official delegates and policy-makers.⁷

In pursuing these strategies, women's NGOs learned to focus on key issues and official documents, work with all players, and become serious advocates. To provide coherence to their global campaigns, they focused on one or two such issues—for example, violence against women in the campaign leading up to Vienna, and women's reproductive health and rights at the International Conference on Population and Development in Cairo. To influence world conference outcomes, they concentrated on conferences' official platform documents and worked deliberately and strategically with government delegates, U.N. agencies, media, influential people, and other NGOs. They drafted alternative or additional texts reflecting women's interests, concerns, and perspectives and to sustain their necessary presence in various fora, they found they needed not only passion, solidarity, discipline, and energy but also funding sources.⁸

"Women's Rights are Human Rights": Experiences and Achievements in Vienna

At the Women's Conference on Human Rights (WCHR), women's human rights NGOs were widely viewed as the best organized and most influential in the official proceedings. Women's rights advocates brought their issues to the NGO Forum and the official conference meeting. Throughout the event, their coordinated effort had a crucial impact not only on their own countries' policies but also on the VDPA. "All the major new proposals debated in Vienna—including the integration of women's rights into the

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Felice Gaer, executive director of the Jacob Blaustein Institute for the Advancement of Human Rights and member of the International Human Rights Council, addresses representatives of women's human rights NGOs meeting in Vienna during one of five regional PrepComs for the Fourth World Conference on Women (FWCW).



Courtesy of the Jacob Blaustein Institute for the Advancement of Human Rights

U.N. human rights program, the High Commissioner for Human Rights, the International Penal Court, and the use of U.N. on-site monitors to document and help prevent abuses—were placed on the agenda by NGOs” (International Human Rights Law Group, 1993). This unprecedented worldwide mobilization forced the United Nations to respond, and it assured the process’ success even before the conference’s opening. This section examines women’s NGOs’ experiences and achievements at the WCHR.

First, broad mobilization of human rights activists resulted in participation by a diverse range of NGOs beyond the traditional international human rights NGOs that held consultative status at the time. At the NGO Forum, over 60 of the workshops, seminars, and lectures specifically addressed women’s rights. Regional, national, and grassroots groups took active roles, proving their significant influence.⁹

Second, throughout the preparatory process, NGOs asserted they must be present at meetings in which the final declaration was being drafted. They realized it was not enough to make presentations to the Drafting Committee and then withdraw, as they had done at past conferences. Instead, to increase transparency and governmental accountability, NGOs should observe governments’ positions on key demands, even during sensitive negotiations. NGOs’ presence also seems to be a prerequisite for effective and timely lobbying.¹⁰

Third, women’s NGOs allied themselves and worked with NGOs from other regions in the women’s caucus, which was active from the PrepComs to the conference and has been reconstituted in subsequent conferences, PrepComs, and NGO fora. Individual NGOs and regional networks came to the caucus with stances on issues, information on positions taken by their governments or regional country blocs, and information on possible governmental or nongovernmental support for or opposition to particular positions. From all this information, NGOs work out and agree upon strategies and divisions of labor.¹¹

Together with the recommendations made by women’s NGOs, these were included in the VDPA. However, there were significant omissions, pointing to the need for continued women’s activism. Gender-sensitive language was inconsistent throughout the document, and there was no mention of transcending the public and private dichotomy to make States accountable for all women’s rights’ violations. Although the VPDA contained many positive statements, it did not sufficiently address the problem of ensuring compliance with its recommendations.

Summary

The WCHR provided women’s rights NGOs with these essential opportunities:

- To assess women’s rights in particular countries.
- To explore the human rights framework and critique its inadequacy in addressing women’s human rights’ violations.
- To mobilize at the national, regional, and international level to demand that the international community and governments recognize and respond to such violations.
- To work with other women’s rights and human rights NGOs to promote common action.

At the WCHR, women’s NGOs successfully brought women’s rights into equal status with human rights. Their challenge prior to Beijing was to move beyond visibility of women’s rights to actual accountability for their protection. For this, women’s NGOs undertook several tasks including:

- Keeping pressure on by providing appropriate authorities with documented human rights abuse cases.

■ Advocating women's issues to be considered at every U.N. committee, convention, and assembly.

■ Continuing to organize cross-culturally, while remaining sensitive to the needs and desires of women from every region of the world.¹²

Part II: The Fourth World Conference on Women (FWCW) in Beijing

At the Earth Summit in Rio (1992), women were recognized as environmental managers key to sustainable development. At the WCHR in Vienna (1993), governments acknowledged women's rights as human rights, and in Cairo (1994), they viewed women's health rights as central to effective population and development policy. At the Social Summit in Copenhagen (1995), empowering women was regarded as essential to combatting poverty.

The FWCW reaffirmed past commitments and asserted new ones. It also called for new plans for action. Because of these plans, this conference's momentum was considered much greater than the three previous U.N. conferences on women¹³ because of the critical role played by NGOs that had gained valuable experience at the Vienna and Beijing PrepComs. Thousands of NGOs, representing the voices and concerns of hundreds of thousands more, contributed to the U.N. Platform for Action through regional and PrepCom meetings. At the actual conference, the 4,035 NGO delegates almost equaled the 4,995 government participants. The Nairobi Conference (1985), to which only 400 NGOs were accredited, barely compares.¹⁴ Because of NGO involvement, the Platform became an agenda reflective of women's voices around the world rather than a government-imposed plan. As a result, NGOs felt a sense of ownership of the document and were determined to see it take shape.¹⁵

Despite these accomplishments, logistical difficulties and mismanagement of the NGO Forum created unnecessary obstacles to effective NGO participation.¹⁶ The following section explores NGOs' experiences in Beijing, from the preparatory process to the NGO Forum.

Regional PrepComs and Fora

First, women's rights NGOs aimed their FWCW PrepCom participation at influencing regional plans of action and the draft Platform for Action. This mobilized NGOs, especially those that never had been involved in U.N. meetings or with their governments' participation in such events. NGOs knew that to be effective advocates for women, they had to participate in discussions at both regional- and international-level discussions. Still, for NGOs that never had experienced working at U.N. or regional conferences or PrepComs, this hardly demystified the U.N. negotiation process. The NGO Forum for African Women lacked transparency and broad representation in the drafting and pre-Beijing organizing committees. Although organizers invited volunteers for the drafting committee at the conference's opening, the absence of daily updates on conference proceedings contributed to a lack of clarity about procedures and limited possibilities for consensus-building for final documents.¹⁷

Second, women's NGOs used the NGO Forum to strengthen the international women's movement. For the first time, NGOs organized fora in five regions before the regional intergovernmental conferences, allowing NGOs to work together across geographical lines. Women's rights activists used regional and international PrepComs to highlight issues not well-represented in the initial draft of the Platform for Action.

Third, all regional documents emphasized the NGO sector as a key actor in implementing the Platform through institutional and financial mechanisms and

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encouraged other sectors to collaborate with NGOs. A call was made to governments and donors for increased financial and technical support for NGOs and to NGOs themselves to advocate for national plans and to monitor implementation. The document that emerged from the European PrepComs presented NGOs as a means for "mobilizing resources." Expectations of diverse NGO roles, beyond policy deliberation, implied ways to increase organizational capabilities and expand a funding base for these organizations to carry a significant share of the workload in implementing the Platform.¹⁸

U.N. Accreditation Process for NGOs

At regional meetings, NGOs increasingly thought they should have a role in monitoring intergovernmental deliberations and advocating with governments for certain language or positions in the Platform. At the PrepComs, however, many NGOs were disappointed to discover they were not necessarily an integral part of the process. At the March 1994 PrepCom in New York, the CSW accredited 108 NGOs and an additional 325 in 1995.¹⁹ It denied accreditation to 500 NGOs because of lack of:

- Competence (must be a legally constituted organization).
- Relevance (connection of NGO work to conference topics).
- Complete and timely submission of application.
- National or international focus.²⁰

During the final PrepCom (March 1995), NGOs pressed intensively for access to an unpublished list of NGOs that the Secretariat had recommended for denial of accreditation. When the list surfaced, NGOs noted that many important human rights NGOs, particularly from South Asia, were slated for rejection. Among these groups was AGHS Legal Aid, headed by International Human Rights Council member Hina Jilani, one of Pakistan's preeminent human rights lawyers and activists. NGOs organized a press conference to highlight this problem and put pressure on governments to correct it. As a result, a process was set up, enabling unaccredited NGOs to resubmit their applications and reopening the accreditation process to other NGOs.²¹ The CSW then recommended 760 out of about 1,000 NGOs for accreditation, and with approval by the Economic and Social Council (ECOSOC), 741 were accredited. The NGOs that were denied approval included three dealing with Tibetan issues and six concerning Iranian women.²²

At the time, ECOSOC Resolution 1296 (May 23, 1968) defined overall parameters for NGO participation, but conferences adopted their own Rules of Procedure.²³ At the Beijing PrepCom, these Rules were adopted on the meeting's final day. The draft text only addressed procedures for NGOs making oral statements during the conference. After lobbying by NGOs and supportive governments, the Rules were amended to include procedures adopted for the Social Summit allowing NGOs to participate as observers in plenaries and main committees. However, no provisions were made for observer status in closed informal negotiations, even though the Social Summit's Rules allowed delegates to escort NGOs into the closed sessions. This is key, as the most sensitive negotiations take place in the closed sessions, outside the scrutiny of civil society.²⁴ The chairperson and conference "bureau" (executive committee) have discretion over any changes in the Rules of Access.²⁵

Logistical Problems

NGOs faced various obstacles to participating at Beijing's conference and NGO Forum including highly inefficient procedures for processing entry visas; access difficulties, particularly for the disabled; and a lack of adequate meeting, communication, and transportation facilities. Logistical difficulties in Huairou and Beijing, together with the Forum's placement at a great distance from the conference site, restricted NGOs' ability to contribute fully to the government conference's work and communicate with accred-

ited NGO delegates. Certain NGOs were subjected to surveillance, harassment, intimidation, confiscation of materials, and restriction of freedom of expression and association.²⁶ These intrusions reportedly were carried out by government delegation members, other NGO participants and officials, and employees of the China Organizing Committee.

Some of the delays in obtaining visas can be attributed to the overwhelming interest in the conference. China received about 35,000 visa applications, although it expected only 10,000-15,000. China required NGOs to give proof of their accreditation when registering at the conference or NGO Forum and to confirm their hotel reservations before it would process their visa application. Some confirmations arrived late, thereby delaying participants' applications. Some travelers received their visas only a few days before they were to depart for Beijing, and some never received them.²⁷ Many speculated that the Chinese government complicated these procedures to keep down the numbers of NGO representatives. This suspicion was the result of an article which leaked an internal communique in which key Chinese officials state that visas for unwelcome groups would be dealt with through "technical means," as *Ming Pao*, a Hong Kong newspaper, reported (Hong Kong, April 13, 1995).

NGO Forum

The NGO Forum was held in Huairou, a small town about an hour's drive from Beijing. The Chinese government announced during the March 1995 PrepCom that the Forum would be moved from Beijing to Huairou. Over 6,000 workshops, plenaries, demonstrations, and cultural events were scheduled over the two-week period. The government clearly was concerned about the presence of so many activists so close to the government conference. The site included buildings, some not completed, and tents laid out over a multiacre area. Indoor meeting space clearly was inadequate, as the largest room accommodated only 1,500 people. Most Forum participants could not access the plenary sessions, which the NGO Facilitating Committee characterized as one of the Forum's central activities, at which participants would articulate their aspirations for communication with the official conference. Translation services were restricted to only a few of the larger rooms.²⁸

During the Forum's early days, Chinese security was overwhelming. Even plainclothes surveillance staff were easy to identify with their walkie-talkies, beepers, and cameras. NGO representatives reported that their rooms were searched while they were out and that papers and computer disks were stolen. Some participants told of being awakened in the middle of the night for security inspections verifying people were in their assigned beds.²⁹

Although these incidents were serious, NGOs were even more concerned for the 5,000 Chinese women who participated in the Forum and workshops on human rights and other issues that their governments considered sensitive. On several occasions, workshop organizers saw security personnel photographing and in some

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Hina Jilani, International Human Rights Council member and human rights lawyer in Pakistan, speaks to the press during the March 1995 PrepCom meeting at the United Nations in New York about the exclusion of South Asian human rights NGOs from the accreditation list for the FWCW.



Barbara Crossette of The New York Times (front row, right) was among those who wrote about the difficulties faced by NGOs seeking accreditation at the FWCW. As a result of public pressure, the United Nations reopened the accreditation process to hundreds more NGOs.

cases, pulling these women from meetings. The Human Rights Caucus formed a Working Group on Openness (WGO) to investigate these cases. As a result of the WGO's work, the United Nations intervened early. However, although surveillance became less apparent, it did continue.³⁰

Despite these problems, most participants found ways to make the experience meaningful. Still, for NGO participants to make constructive contributions to U.N. activities, more consistent procedures to include them in conferences should be adopted.

The Official Conference

Although many NGOs left China after the Forum, the event's energy and positive spirit flowed directly into the Conference. Prior to Beijing, representatives of international women's networks met several times to develop a way to make NGO lobbying at the Conference representative, inclusive, and effective. They recommended creating a group of NGO representatives just before the conference opened, comprising one member from each of the 30 regional and issue-based caucuses. The group, called the "Equipo" or team, met daily throughout the conference to coordinate lobbying and present a briefing for all NGOs.³¹

Despite some high points in Beijing, NGOs again were frustrated to learn that access to the working group (WG) sessions, in which formal negotiations took place, was limited for NGOs. The Equipo received only 30 tickets per session, which it had to distribute among the more than 4,000 NGO representatives present. Finally, as a result of NGO pressure, this restriction was lifted, and NGOs were allowed unlimited access. In the end, this was positive for NGOs, and their presence did not overwhelm the proceedings.

Accredited NGOs had a common mission during the intergovernmental negotiations:

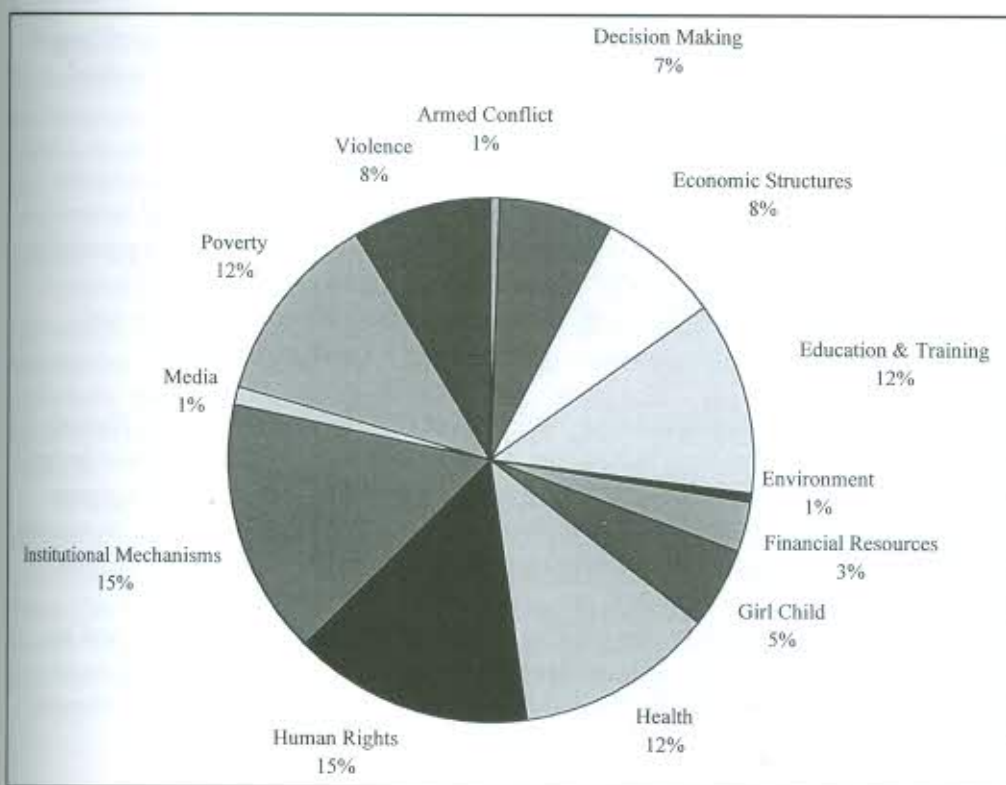
- To hold firm on gains from the Human Rights and Population and Development Conferences.
- To advance the agenda on economic and political empowerment.

- To secure government commitments for follow-up action and implementation.

To ensure these goals, many governments made a set of commitments—called the “Conference of Commitments”—to prioritize actions for implementing the Platform in their respective countries. NGOs viewed this set as a means to promote follow-up and government accountability. Although its language went from the PrepCom to Beijing as unagreed text, most governments and NGOs expected general consensus on making commitments in their plenary speeches and on a mandate to the U.N. Conference Secretariat to document them. Beijing’s deliberators, however, watered down the Platform’s language on commitments, so that the United Nations was not responsible for documenting them. Thus, NGOs took on the tasks of analyzing, documenting, and publicizing the commitments made in plenary speeches. Some examples include:³²

- **India:** Increase education investment to 6 percent of the GDP, focusing on women and girls.
- **The Netherlands:** Encourage employer and worker organizations to include part-time work, shortened work hours, and parental leave in their negotiations, so both women and men can combine professional work and caring tasks, particularly encouraging men to take greater responsibility for the latter.
- **Tanzania:** Revise all discriminatory laws and enact positive nondiscriminatory laws. Also, educate a minimum of 30 percent of women to their rights by the year 2000.
- **The United States:** Establish a White House Council on Women to plan for the effective implementation of the Platform for Action in the United States, with NGOs’ full participation.

The following pie chart shows the percentage of each countries’ commitments in each of the key areas.³³ NGOs carefully documented governments’ commitments and publicized them. Consequently, for NGO representatives involved in Beijing’s process and outcome, advances for the women’s movement and for NGOs as “policy-influencers” were clear and dramatic.³⁴



This pie chart shows government commitment presented in plenary speeches at the FWCW in 1995.

Compiled by The Carter Center Human Rights Program

Members of The Carter Center's International Human Rights Council met in Beijing to discuss NGO access issues. Some Council members met with senior U.N. and U.S. government officials to support broad NGO appeals for greater access to working sessions. Pictured are (seated, left) Felice Gaer, Nigel Rodley, and Radhika Coomaraswamy. Standing are (left) Dorothy Thomas, Karin Ryan, Laurie Wiseberg, Jacqueline Pitanguy, Mona Zulficar, and Gay McDougall.



NGOs participating in any parallel NGO activity or U.N. conference and its PrepComs should enjoy basic rights to freedom of opinion, speech, association, movement, and security of person. The United Nations should ensure that host governments provide security protecting participants from interference with these rights.

Summary

At both the NGO Forum and the government conference, logistical difficulties restricted NGOs' ability to contribute fully to that conference's work and to communicate with accredited NGO delegates and government representatives.³⁵ To act in "partnership" with the United Nations, NGOs must be guaranteed conditions in which they can make constructive, consistent contributions to U.N. activities, particularly those resulting in intergovernmental agreements. Most importantly, governments and the United Nations should take immediate action to ensure the safety of those NGO participants who may be subjected to harassment during U.N. meetings or retaliation upon return to their respective countries.³⁶ The FWCW provided NGOs from an unprecedented number of countries an opportunity to come together in a common call for women's rights and overall development. Governments were placed on notice that women around the world would be watching to see whether their commitments toward these aims would be realized.

Recommendations in Coordinating Future U.N. Conferences

NGOs must be guaranteed conditions under which they can make constructive contributions to U.N. activities, particularly those resulting in governmental agreements. They should receive minimum procedural and substantive guarantees for their participation in U.N. conferences and parallel NGO activities. To do so, the United Nations should commit to respecting the following recommendations in collaboration with governments (including host governments) and other international actors:³⁷

- Without exercising control over parallel NGO activities, the United Nations must accept responsibility for ensuring that NGO participants can exercise basic human rights and fundamental freedoms at NGO fora and other activities. It should support NGO facilitating committees or other bodies organizing parallel NGO events in negotiating with host countries to ensure human rights guarantees are embodied in any agreements.

- NGOs participating in any parallel NGO activity or U.N. conference and its PrepComs should enjoy basic rights to freedom of opinion, speech, association, movement, and security of person. The United Nations should ensure that host governments



Following the meeting between Council members and senior U.N. and U.S. officials, NGOs were given unrestricted access to WG sessions. Previously, NGOs were allowed a total of 30 seats. This photo shows the back of the conference room, which was filled with NGO representatives.

Karen Ryan

provide security protecting participants from interference with these rights. Security measures must not violate participants' internationally guaranteed human rights. The United Nations also should ensure that its own agencies and bodies as well as host governments respect NGOs' rights. NGO facilitators or the host committee should have authority over police presence and interventions within an NGO Forum.

■ Governments, including host governments, should observe human rights standards in all aspects of conference processes including granting exit and entrance visas, customs regulations, disseminating conference information, hosting PrepComs, and permitting NGO assembly in preparation for conferences. The United Nations cannot remain silent when human rights violations are perpetrated during preparations for or during a U.N. conference convocation or related activity.

■ A more consistent commitment from foundations would consistently support NGO work on the global stage.³⁸ More equitable resource allocation by donors would help international dialogue and debate at U.N. conferences. Ways must be found to make available funding for national and local NGOs, especially those from developing countries.

Part III: NGO Participation in Treaty Bodies

U.N. human rights treaties were created to provide a legal framework for the implementation of the Universal Declaration of Human Rights. Governments that signed these treaties agreed to pursue their provisions and report to treaty committees on a regular basis. Because treaty bodies measure treaty compliance, they constitute a quasi-judicial system, with the purpose of realizing rights to which signatory States have committed.

Now, active NGO cooperation is seen as essential to treaty bodies' ability to function in an informed, effective manner. However, access for women's NGOs to those bodies in which women's rights are addressed has been unpredictable, which has strained relations between NGOs and governments and has hindered the important role NGOs can play. The following section analyzes the Convention on the Elimination of All Forms of Discrimination Against Women, the principal treaty body dealing with women's rights.

Committee on the Elimination of Discrimination Against Women (CEDAW)

The Convention, referred to as CEDAW, came into force in 1979 and is monitored by the Committee on the Elimination of Discrimination Against Women, also referred to as CEDAW. (To avoid confusion, we refer to the two as the Convention and the Committee, respectively). As of February 1996, 151 countries had ratified the Convention,⁴⁰ which incorporated the norm against gender-based discrimination and standards relating to women, as established in previous instruments. The norm prohibits distinction, exclusion, or restriction on the basis of sex. The Committee proposed introducing the right of individual petition through an Optional Protocol to the Convention during the FWCW.⁴⁰ This complaints procedure allows individuals and groups to seek remedies at the international level through the Committee for violations of their rights under the Convention after effective domestic remedies have been exhausted.⁴¹

The Convention does not provide for NGO input into the reporting and review process, but it does allow the Committee to call on U.N. specialized agencies' expertise. Despite this, Committee members have welcomed informal submissions of supplemental information indicating the issues of greatest concern to women in countries under review. This information has been submitted directly by NGO groups in reporting countries and by global organizations, such as the International Women's Rights Action Watch (IWRAP) in its annual IWRAP-to-CEDAW Report. Committee members use this information to prepare pointed questions to country representatives during the review session.⁴²

Like other U.N. human rights treaties, signatory States to the Convention often go in place reservations, understandings, or declarations (RUDs) that exempt signing governments from specific treaty provisions in conflict with their own laws. Because RUDs undermine treaties' intentions to promote universally applicable human rights standards, signatories are urged to remove such qualifiers from the books. Many countries have added to the Convention reservations on key provisions that they view as conflicting with their religious or cultural practices, especially marriage and family laws. The Committee contains no internal mechanism to reject reservations considered inconsistent with its obligations' objective and purpose. As a result, some women's rights NGOs have not been able to use the complaint procedure for social- or family-related issues.

Developing international human rights law through treaties such as the Convention and recognizing international customary human rights law are two necessary practices, but they are not sufficient to protect women's rights. The legal foundation of rights serves only as a basis on which to build structures that will protect women's security and

Most of the facilities at the NGO Forum site in Huairou were not accessible for disabled persons. Disabled participants and their supporters protested in front of the largest meeting hall, pictured here.



integrity and will provide them equal opportunities for individual and collective development. Effective methods to monitor states' observance of obligations to which they committed must accompany treaties, and national and international mechanisms must be established to maintain them and enforce state responsibility for treaty rights violations.⁴³ The

Convention can most fully and powerfully be brought to life by NGOs that use it as the benchmark for women's equality and as a campaign tool for women's rights at the national, regional, and local level.

As authors Marsha Freeman and Arvonne Fraser assert, "Their [national level NGOs'] approaches may include legal literacy and legal service programs, test case challenges, organization of constituencies, lobbying, or any combination of these methods. They use information from legal language of international women's human rights activities, demonstrating to national governments and constituencies the immediate relevance of treaty language. Their programs in turn provide examples and precedents to use in developing women's human rights jurisprudence at the international level."⁴⁴

Recommendations for the CEDAW Committee

The Convention sets up the framework for achieving women's rights. As an international legal obligation, an instrument for development planning, and an outline of issues that must be addressed, it provides an essential avenue for women's rights NGOs in delivering justice for women. The following recommendations aim to increase its effectiveness and that of its monitoring committee.

■ First, national NGOs should publicize their governments' periodic compliance reports and the Committee's observations to provoke public debate and put pressure on governments for appropriate changes in national policy. Second, they should provide the Committee with information about those women's rights violations being considered to enhance the Committee's effectiveness in monitoring and encouraging state compliance. Submitting "shadow" reports also can serve to counter-balance official government compliance reports. With these documents, NGOs often reveal violations that otherwise were not recognized and show how those violations might have been prevented or remedied by States.⁴⁵ Third, in coordination with scholars, NGOs should review RUDs, with a view to pressing governments to remove any such qualifiers.

■ While competition for U.N. resources is significant, a more appropriate funding level for the Convention and its Committee is desirable. A voluntary fund could be established for monies earmarked to support enhancing NGO interaction with the Committee.

■ The Secretariat should increase efforts to make documents available to NGOs, especially in countries that are not on regular distribution lists and therefore are unlikely to be aware of recent events with treaty bodies. At the least, such documents could be posted on the U.N. Internet site, allowing NGOs to access them at no significant cost to the United Nations.

■ Treaty bodies should provide national NGOs with guidelines on procedures governing their input and should ensure NGOs are aware of their governments' compliance of reports' submission and the time at which the reports are to be examined.

Recommendations for NGOs in Coordination With Treaty Bodies

■ National NGOs need to build their capacities to achieve a better regional spread of skills in research, information sharing, campaigning, and advocacy. Many NGOs facilitate series of workshops and seminars examining the relationships between human rights, culture, and state responsibility, especially emphasizing women's concerns. Such series are important and should be continued and expanded. But support from funders is key. NGOs should engage in programs that spell out in practical and specific terms States' positive duties regarding women's rights and should launch campaigns to implement these obligations.

■ Training programs for national NGOs are necessary to follow treaty bodies' activities and build connections between NGOs and organizations active at the international level. These could include primers for both women's and general human rights

The Secretariat should increase efforts to make documents available to NGOs, especially in countries that are not on regular distribution lists and therefore are unlikely to be aware of recent events with treaty bodies.

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NGOs which in turn would serve as guides to national NGOs, especially those new to U.N. work, and would acclamate them to U.N. procedures and effective NGO strategies. Already, some training programs like these have been undertaken. These should be expanded, and more should be launched.

■ NGOs that regularly support other treaty-monitoring committees are encouraged to make efforts to ensure a gender perspective is brought to various committees through specific training on women's rights and to expand their networks to include women's rights groups.

■ Women's rights NGOs' effective use of the Internet would expand their networking capacity.⁴⁶ Major themes and issues to be addressed include gender differences and inequities in the electronic communications field, the need for training for women's rights activists in computer technology and its strategic uses, accessibility for women's human rights NGOs from developing countries, using the Internet for dialogue and communication rather than just for one-way information distribution, and ways to connect with non-World-Wide-Web users.

Part IV: Best and Worst Practices in ECOSOC Functional Commissions

The Commission on Human Rights (CHR)

The CHR's original mandate included "the prevention of discrimination" on the basis of sex. In 1946, the ECOSOC decided to establish a CHR Sub-Commission to deal with women's status. At its first session, however, the Sub-Commission recommended that its status be elevated to that of a commission. At the time, the ECOSOC's approval of this appeared to be an important achievement. Over the years, the agendas, mechanisms, and political weight of the CHR and the Commission on the Status of Women (CSW) have developed quite differently. Until Vienna, there seemed to be a tacit agreement that the CSW would deal with all women's issues—including human rights—even though "prevention of discrimination" on the basis of sex never was removed from CHR's written mandate.⁴⁷

Since the early 1970s, the CHR has developed an impressive number of mechanisms for monitoring gross human rights violations.⁴⁸ More than 150 NGOs in consultative status with the ECOSOC attend CHR sessions, and many others without such status follow the sessions and advocate on specific issues.

However, the CHR has not addressed women's rights in a manner commensurate with the problem. Although it has dealt with female victims of disappearance, torture, religious intolerance, etc., it has not drawn attention to issues of particular concern to women such as rape, forced marriage, transboundary trafficking of women, "honor" crimes against women, genital mutilation, and other such practices. The rape of women in former Yugoslavia, for example, hardly was mentioned in early reports of the special rapporteur (SR) assigned to monitor that country's human rights conditions, until women's NGOs demanded the issue be carefully examined. Largely because of NGO pressure, hesitation to recognize rape as a war crime finally has begun to dissipate.⁴⁹

In 1992, the CHR's Sub-Commission on Prevention of Discrimination and Protection of Minorities, in light of growing momentum toward integrating women's rights, adopted a resolution reaffirming women's rights as inalienable human rights that must be treated as such by U.N. bodies, including the CHR.⁵⁰ In response, the CHR adopted the resolution "Integrating the Rights of Women Into the Human Rights Mechanisms of the United Nations" one year later. The appointment of an SR on violence against women marked a critical step toward integrating women's rights into the mainstream of the major U.N. rights body.⁵¹ To improve interactions with women's NGOs, the SR's mandate should be expanded to include systematic gender discrimination and should address all aspects of women's rights.



Karin Ryan

Members of the NGO WG on Openness lead a discussion during a meeting of the Human Rights Caucus in Beijing after the conclusion of the NGO Forum in Huairou. They include Sophia Woodman (left), Laurel Fletcher, Sunila Gunesequera, and Abigail Abrash. This WG documented cases of harassment of NGOs in Huairou by Chinese security and members of the Sudanese and Iraqi delegations.

This paper devotes no attention to NGO practices at the CHR or the CHR's Sub-Commissions despite the essential role NGOs play in their work, as these are discussed elsewhere including to some degree by other authors in this publication.

The Commission on the Status of Women (CSW)

The CSW has not developed a political profile similar to the CHR and has not established any meaningful procedure for dealing with allegations of women's rights violations. It is highly significant that since the 1960s, the CSW has shifted its concern from women's legal status to their role in national development. In 1973, the main unit in the U.N. Secretariat responsible for women's issues was transferred from the Department of Economic and Social Affairs' Division of Human Rights to the Centre for Social Development and Humanitarian Affairs. Since then, U.N. bodies have examined women's issues under the economic and social development agenda, and the human rights perspective has been marginalized.⁵²

The CSW has authority to review communications sent by individuals and organizations identifying "a consistent pattern of reliably attested injustice and discriminatory practices against women." Under this procedure, the CSW examines communications for general trends and patterns of violations against women. A WG then considers the communications and reports to the CSW on any patterns brought to light. At present, many of the communications submitted to the CSW are fairly brief and lack full documentation, permitting governments to dismiss them easily.⁵³ The procedure's confidential nature allows governments to escape accountability. As a result, the communications review process has not significantly contributed to CSW policy-making, nor has it provided adequate remedies for specific complaints.⁵⁴

Although the CSW encourages NGO collaboration to some extent, it has failed to establish for itself a coherent procedure to accredit NGOs that do not have regular consultative status but that did participate in the FWCW. Because obtaining formal consultative status through the ECOSOC's Committee on NGOs can be onerous, many NGOs that participated in Beijing have been hindered from participating in Beijing's follow-up work, which is assigned to the CSW. At the March 1996 session's conclusion, NGOs expressed concern about the lack of a strong U.N. role in promoting government implementation of the Platform for Action and about their own uncertain role in future

All negotiating sessions should be open to NGO observers so they can make timely, professional contributions to CSW work. Only in rare situations where confidentiality is required during negotiations should meetings be closed. Keeping NGOs out of sessions fuels suspicion and distrust of governments and deleteriously affects NGOs' ability to ... work.

CSW meetings. Many lobbied for the CSW to approve a resolution requiring governments to submit annual progress reports on implementation. Instead, the CSW voted in favor of a "hands-off" approach, encouraging governments to "voluntarily" submit information about national action plans or implementation in the CSW's priority theme areas approved for next year's session.

NGOs' most difficult problem in contributing to the CSW's work is the lack of timely access to the Commission's working documents. NGOs often can obtain copies after deliberations have begun or concluded on a given document. Sometimes, copies are not made available for NGOs, so they must ask government delegations for help. Inevitably, this causes difficulties for organizations that can make expert contributions to critical issues being discussed and leads to frustrations and missed opportunities.

Recommendations for the CSW

The following recommendations should be considered to improve NGO interaction with the CSW:

■ NGOs that submit communications to governments should send copies of their documents to all CSW members. They are encouraged to publicize in their own countries the communications, including their governments' responses, to the CSW. This should be done in close liaison with CSW members to ensure greater leverage on governments.

■ The CSW should have greater transparency. Communications procedures should be enhanced to identify specific situations in which individuals require redress and to study problematic country situations thoroughly. NGOs should enjoy timely access to information submitted by governments so they are aware of the most current issues to be discussed during the CSW's session. Preferably, all CSW documents should be made available several weeks prior to the CSW's opening, both on the U.N. Web site and on paper.

■ All negotiating sessions should be open to NGO observers so they can make timely, professional contributions to CSW work. Only in rare situations where confidentiality is required during negotiations should meetings be closed. Keeping NGOs out of sessions fuels suspicion and distrust of governments and deleteriously affects NGOs' ability to carry out work to which they have dedicated tremendous time and energy. If a Member State has a compelling reason for excluding NGOs from a session, its representatives should make their request to the CSW chairperson or bureau, both of which should be predisposed to err on the side of inclusion.

Recommendation for Other Human Rights Bodies

To address female concerns, more women and men with background in women's rights should be members of the various human rights bodies such as human rights committees, courts, and commissions. This would involve close liaison between national and international NGOs to seek qualified candidates and would require sympathetic governments' support.

Recommendation for Other Treaty Bodies

Expert members of all human rights treaty bodies should facilitate contributions from women's rights NGOs to ensure women's rights are examined adequately when States submit compliance reports on torture; civil, political, economic, social, and cultural rights; and other topics.

Conclusion

This paper has analyzed women's human rights NGOs' experience and coordination with U.N. human rights bodies and has outlined some recommendations for the different bodies. Because of the international women's movement, women's rights NGOs have

become increasingly effective in influencing regional and global policy-making. The range of human rights guarantees and bodies responsible for developing, monitoring compliance with, or enforcing these standards indicates the significant opportunities for human rights NGOs to bring women's rights violations to international fora as part of the campaign to respond to them.⁵⁵ Women's NGOs have an important role in emphasizing women's voices, as their associations and networks provide effective means of focusing local and national initiatives and addressing women's concerns. NGOs with broad human rights perspectives should actively address integrating women's rights into the human rights discourse.

Common threads running through many of the recommendations include the need to spread knowledge about the existence and potential of the various international procedures available and to build better links between NGOs at the national level and those at the international level. For NGO work to have a meaningful impact and for these approaches to be effective, timely access to information and deliberations is key. Such access will allow human rights bodies to use information from investigations carried out by NGOs in their reports on human rights violations in each region. NGOs' presence in such bodies allows them to exert some pressure and monitor their progress.

Promoting and protecting women's human rights is too important to be deliberated on outside the view of women and organizations dedicated to their advancement. ■

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ENDNOTES

¹ See her remarks to the NGO Forum on Women, 1995.

² This part draws extensively on Chen's findings of critical changes in the women's movement, 1995.

³ They engaged in delivering welfare or development services to women, organizing women for change, researching women's lives and work, advocating change for women, and more. See Tinker and Jaquette.

⁴ Ibid, 488.

⁵ Ibid, 488.

⁶ These draw extensively on Chen's findings of necessary strategies.

⁷ Ibid, 489.

⁸ Ibid, 489.

⁹ See Friedman's findings on the global campaign for women's human rights.

¹⁰ See the International Human Rights Law Group's findings on NGO mobilization, 1993.

¹¹ See Butegwa, "NGOs with a Positive Experience."

¹² See Dorothy Thomas' comments on challenges for the future cited in Friedman.

¹³ Previous U.N. conferences on women were held in Mexico (1975), Copenhagen (1980), and Nairobi (1985).

¹⁴ Commission on the Advancement of Women (CAW), *Mobilizing for Beijing '95*, Summer 1996, 1.

¹⁵ Ibid.

¹⁶ For detailed analysis of barriers to NGO access, see CAW, Fall 1994, and Amnesty International, et al.

¹⁷ CAW, *Mobilizing for Beijing '95*, Fall 1994, 5-8.

¹⁸ Ibid, 3.

¹⁹ CAW, *Mobilizing for Beijing '95*, Summer 1996.

²⁰ Ibid.

²¹ The CSW Resolution directed the Secretariat to send letters to all groups denied accreditation with reasons for the decision. The groups were allowed four weeks to provide additional supporting documentation for their application. The Secretariat then submitted a revised list of NGOs for accreditation to the ECOSOC's next session for approval.

²² See the special report on the FWCW in *Mobilizing for Beijing '95*, Spring 1995 for details.

²³ This has been replaced by ECOSOC Resolution 1996/31 as of July 1996.

²⁴ The informal talks' results were not technically binding, but countries were supposed to live up to an unwritten agreement not to reverse agreements on language reached during Beijing's PrepComs. See Shepard.

²⁵ CAW, *Mobilizing for Beijing '95*, Fall 1994.

²⁶ For example, Iranian NGO Forum participants living in other countries reported they had been harassed repeatedly by some forum participants from Iran. This harassment—including insults, threats, filming, and pushing—occurred at workshops and

other events. Other NGOs that reported similar cases included lesbians, the disabled, Tibetan exiles, human rights organizations, and people speaking out about problems in host and other countries. See "Statement from the Women's Human Rights Caucus," 1995, and Amnesty International, et al.

²⁷ See "GAO Report on Problems With the Visa Process," 1996.

²⁸ Amnesty International, et al., 9-11.

²⁹ *Human Rights Tribune*, 1995, 19-20.

³⁰ See Amnesty International, et al. and the *Human Rights Tribune* on the NGO Forum and the FWCW, 1995.

³¹ *NGO Forum on Women '95 Bulletin*, December 1995.

³² "Government Commitments Presented in Plenary Speeches at the U.N. FWCW in Beijing." InterAction's Commission on the Advancement of Women, 1995.

³³ Ibid.

³⁴ CAW, *Mobilizing Beyond Beijing*, Winter 1996.

³⁵ "Statement from the Women's Human Rights Caucus," 1.

³⁶ Ibid.

³⁷ This part draws extensively on Amnesty International, et al.'s recommended principles on future world conferences.

³⁸ If, however, Member States take seriously the other recommendations set forth herein to make information available at the local level, the need to travel will diminish significantly.

³⁹ "Status of Instruments," Feb. 1, 1996.

⁴⁰ The protocol is the result of work by a special group of 23 women experts from around the world who form a permanent team that monitors progress on the Convention. It reflects the women's movement's activism and was a key demand at Vienna.

⁴¹ For explanation regarding the complaints procedures, see Byrnes.

⁴² Freeman and Fraser, 114.

⁴³ Cook, 251.

⁴⁴ Freeman and Fraser, 116.

⁴⁵ Ibid., 253.

⁴⁶ In developing Women Watch, a core U.N.-sponsored Internet site, the U.N. Division on the Advancement of Women held an expert workshop in 1996. It also proposed guidelines for forming an NGO advisory committee for Women Watch. This would be an evolution of the Internet with a feminist perspective and the challenges of using this technology as an "activist tool."

⁴⁷ Stamatopoulou, 40-43.

⁴⁸ It dispatches more than 30 fact-finding missions annually and deals with thousands of individual cases through its various monitoring procedures. See "1993 Report of the Commission on Human Rights." U.N. Document E/1993/23.

⁴⁹ Stamatopoulou, 40-43.

⁵⁰ Resolution 1992/4 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd Session, U.N. Document E/CN.4/1993/2.

⁵¹ The SR is responsible for investigating the extent and nature of particular problems ranging from summary or arbitrary executions to trafficking in children and for raising individual cases with governments. Such flexibility can be particularly valuable, as the SRs' procedure is one of the few ways an individual case may be raised with a government on an urgent action basis. This can be considerably important in averting a threatened violation or in stopping an existing one. See Byrnes, 196, and Nygren Krug's paper on U.N. SRs in this publication.

⁵² Stamatopoulou, 40-43.

⁵³ Until recently, petitioners were not even informed of any recommendations the CSW might have made in response to communications received.

⁵⁴ Byrnes, 206.

⁵⁵ *Ibid.*, 221.

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NGOs AND THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS

by Felice Gaer

"In striving to meet the human rights aspirations of all regions, the United Nations relies upon the commitment of nongovernmental organizations and the courage and self-sacrifice of individuals throughout the world. They at times put their lives at risk to promote and secure human rights and they deserve our admiration and support. Our organization should give its close attention to ways and means of assisting and protecting them in their tasks and of stimulating popular association with our ceaseless effort to make a human rights regime encompass the whole world."

—Javier Pérez de Cuellar
"Report of the Secretary-General
on the Work of the Organization," 1990, 10.

Encouraged by thousands of human rights NGOs from all world regions, the U.N. World Conference on Human Rights (WCHR) (Vienna, June 1993), recommended that the U.N. General Assembly (G.A.) consider establishing a U.N. high commissioner for human rights. The G.A. approved the long-awaited position in December 1993. Since the first high commissioner, Jose Ayala Lasso of Ecuador, was appointed in early 1994, the post has raised hopes that the United Nation's capacity to respond to and stop serious human rights violations will improve dramatically. To succeed in this effort, the high commissioner¹ must find official and unofficial ways to turn to nongovernmental organizations (NGOs) in the field of human rights. He/she must do so because traditionally NGOs have been the key sources of early information on human rights conditions, alerting international officials and the world community to human rights violations. NGOs also have been the foremost advocates of action, serving as engines for new ideas and procedures that advance the protection of human rights and for U.N. officials' activities to promote respect for these rights.

Background: NGOs as the Decisive Advocates For the New Post

The concept of high commissioner has been on U.N. drawing boards since shortly after the world body's formation. Jacob Blaustein gave shape to vague, early ideas about an "attorney general" or "high commissioner" in his Dag Hammarskjöld Memorial Lecture at Columbia University (1963), placing them onto the core agenda of those seeking to make the United Nations active in defending of human rights, rather than

passive by merely setting standards and defining norms.² NGOs lobbied avidly for a high commissioner, convincing Costa Rica to formally introduce the proposal in 1965. The United States and other Western governments backed the idea. The Soviet Union and its allies did not, because it proposed to enable the United Nations to emerge from its self-imposed torpor in human rights by taking action on human rights violations against individuals. Thereafter, the idea went back and forth between the Commission on Human Rights (CHR) and the G.A. or the Sub-Commission on Prevention of Discrimination and Protection of Minorities until the early 1980s, when the Sub-Commission stripped it of its substance, and the Reagan administration and others abandoned it.²

The approach of the 1993 WCHR revived the idea, which NGOs ardently re-embraced and supported. Numerous world conference satellite meetings convened by NGOs worldwide also endorsed it. Amnesty International (AI) called for establishing a "special commissioner for human rights."⁴ Each of Vienna's three official governmental Third-World regional PrepComs was paralleled by a regional human rights NGO Forum, and each NGO session endorsed the idea of a high commissioner. At the official Latin American regional meeting, the host country, Costa Rica successfully obtained the governmental conference's endorsement for a study of the post's feasibility.⁵

By the time the fourth official global PrepCom convened in Geneva (April 1993), U.S.-based NGOs working in coalition had convinced the new Clinton administration to break with the Reagan-Bush policy of rejecting the high commissioner post on the grounds that

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enough high-level positions already existed. Clinton administration officials introduced this proposal at the fourth PrepCom, where it emerged in brackets, signifying a lack of consensus. As the actual conference approached, few governments thought the concept had any chance of survival, given the destructive mood of many rejectionist States in Vienna. Predictably, the NGO Forum strongly endorsed the high commissioner as a "new high-level independent authority within the U.N. system, with the capacity to act rapidly in emergency situations of human rights violations" and to ensure systemwide coordination and integration of human rights in all U.N. programs.⁶

The Vienna NGO Forum's organizers reported that 2,721 representatives of 1,529 NGOs attended the sessions preceding the official governmental meeting. Four-hundred and twenty-six organizations came from neighboring Western Europe, 270 from Asia, 236 from Latin America, 202 from Africa, 179 from Eastern and Central Europe, 178 from North America, and 38 from Australia and Oceania. These large numbers were exceeded at the official governmental conference, which 3,691 representatives of 841 NGOs attended as NGO observers.⁷ Though kept from negotiating rooms, NGOs' visibility, together with the moral force of their presence and the information so many brought about atrocious abuses at home, changed the conference's atmosphere and added to the pressure for endorsing the high commissioner post.

About 60 top government officials, speaking at Vienna's plenary session, referred to a high commissioner position. About two-thirds favored it, while most others—particularly those from Asia—called for "further study" and cautioned against possible "duplication" of human rights machinery and wasted resources.⁸ Hard and often creative negotiating was needed and indeed was engaged in.

Lacking legislative power, the conference did not create a high commissioner for human rights. Instead, it invigorated the idea by recommending that the U.N. G.A., which has such authority, consider establishing this post as a priority.⁹ After a 10-year hiatus, the proposal for the position was back on the agenda. In his formal G.A. speech on Sept. 17, 1993, U.S. President Bill Clinton placed the full authority of his office and country behind the idea, urging the United Nations to create the post "soon and with vigor and energy and conviction." Also speaking in its favor were the foreign ministers of Belgium (for the European Union), Germany, Canada, Hungary, Russia, the Gambia, Costa Rica, and Sweden. Cuba, the tone-setter for the opposition, cautioned it should be "considered without undue haste, which we could in the future regret."

NGOs pressed for early action and a strong mandate and formed an ad hoc N.Y.-based working coalition to bolster support. At its center were AI, Human Rights Watch, the Jacob Blaustein Institute for Human Rights, the International League for Human Rights, the International Federation for Human Rights, the International Human Rights Law Group, and the Lawyers Committee for Human Rights. Strategic elements of their advocacy included timely ideas, media commentaries, proposals, and government interaction. Compared to Vienna, few NGOs pursued this issue in New York, and the frenzied pressure of Vienna, with its strong Third-World NGO presence, was absent. Human rights NGOs exerted pressure on delegates through strategic interventions—particularly with the committee chair, who was set up to consider the question—as well as through reports in the press and comments on government-proposed draft papers. Local and national affiliates of these groups were encouraged to intervene with governments.

Andrew Clapham, AI's U.N. representative at the time, described the "outside story," emphasizing key NGO contributions during the drafting process and after the first high commissioner's election.¹⁰ In a timely and widely distributed joint statement in October 1993, the seven NGOs listed above stressed the urgency of creating the post and the complex challenges facing the United Nations in addressing human rights including the need:



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Kathryn Koth

- For strategic direction and proper coordination of existing bodies and programs concerned with human rights.
- For a senior official to ensure promotion and protection of human rights is integrated into the work of all relevant aspects of the U.N. system.
- To ensure human rights become a central, systemwide priority in all U.N. activities rather than continue as a marginalized subject assigned only to Geneva.
- To ensure U.N. response to human rights problems is "early, efficient, effective, and comprehensive."¹¹

These NGOs argued that a high commissioner would bring "both moral and political stature as well as the expertise to ensure prompt responses by the existing [human rights] bodies and mechanisms, ... conduct fact-finding, and help ensure accountability and redress for victims of human rights violations."¹²

The Mandate: NGOs Left Out In the Cold?¹³

In supporting the high commissioner position, Clinton administration officials—sounding even more effusive than the NGOs—said the United States' goal was for the high commissioner to be a "champion and spokesperson" for human rights worldwide; a focal point for implementing and integrating human rights into peacekeeping, peacemaking, and U.N. humanitarian assistance programs; and coordinator of all human rights U.N. programs who regularly would interact with U.N. Development Program, UNICEF, World Health Organization, International Labor Organization, and others. The officials also called for a high commissioner who would have independent authority to dispatch envoys on fact-finding missions, undertake other initiatives, and request that the secretary-general bring to the U.N. Security Council's attention serious human rights violations that threaten international peace and security.¹⁴ Other governments had very different ideas.¹⁵

Ultimately, the mandate that was approved for the post was less far-reaching than the one called for by both NGOs and governmental supporters. Little of the mandate affirms an independent role for the high commissioner. In fact, under it, he/she very much is a manager, coordinator, dialoguer, and cooperator. The approved mandate also is less

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specific and less activist than earlier hoped. However, it does provide adequate flexibility for a committed human rights leader to shape the post in the direction hoped for by its most avid NGO proponents. The key to doing so is in the provision authorizing the high commissioner to play "an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world."¹⁶

The G.A. reaffirmed the need for a "continued adaptation" of U.N. human rights machinery to meet future needs and improve its coordination, efficiency, and effectiveness. The high commissioner's responsibilities include:

- Making recommendations to U.N. bodies for all rights' promotion and protection, including the right to development.
- Providing overall coordination of human rights activities throughout the U.N. system.
- Enhancing international cooperation in human rights including the provision of technical assistance.
- Coordinating education and public information human rights programs and rationalizing, adapting, and strengthening U.N. human rights machinery with a view to improving its efficiency and effectiveness.
- Carrying out tasks assigned to him/her by competent U.N. human rights bodies.
- Being in overall charge of the Centre for Human Rights, the Secretariat division that carries out human rights responsibilities.
- As previously noted, playing "an active role" in eliminating and preventing human rights violations around the world.¹⁷

The mandate includes traditional human rights operational authority, managerial authority, and diplomatic responsibilities for cooperation, dialogue, and coordination. That the different approaches sometimes will clash perhaps is obvious. The key will be how the person appointed to the post mixes these responsibilities with the concrete actions and results that emerge to energize the United Nations and the human rights field.

Jimmy and Rosalynn Carter, along with staff members of The Carter Center and the Jacob Blaustein Institute for the Advancement of Human Rights, meet at The Carter Center with then-U.N. High Commissioner for Human Rights Jose Ayala Lasso during a 1995 consultation with NGOs. Pictured are (from left) Harry Barnes, Gianni Magazzeni, Mrs. Carter, President Carter, High Commissioner Lasso, Felice Gaer, Karin Ryan, and Rachel Fowler.



In general, human rights NGOs have argued that for the high commissioner to be effective, protection—not mere “coordination”—of human rights must be central in his/her strategic planning and actions. Thus the high commissioner should be able to respond effectively to human rights violations wherever they occur. At a minimum, this includes monitoring and ensuring respect for human rights obligations; responding to violations through *inter alia*, effective fact-finding, and public reporting; and securing relief and redress for victims of violations including efforts to establish accountability for those responsible for gross abuses. In short, the high commissioner must make a palpable difference in actually preventing and stopping human rights violations.

It is noteworthy that the high commissioner's lengthy mandate makes no reference to NGOs, the information they provide, or even the technical assistance services they can offer.

Cooperation With Human Rights NGOs

When the G.A. elected Ecuadorian Jose Ayala Lasso as high commissioner in 1994, several NGO representatives raised questions in the press about his diplomatic rather than human rights background and about his relationship to his country's military government.¹⁸ These questions may have led High Commissioner Lasso to initially keep his distance from human rights NGOs. But since his first report as high commissioner in November 1994, he continued to pay at least lip service to the need for NGO cooperation in implementing the Vienna Declaration and other human rights strategies.¹⁹ However, by the time he completed his last report (February 1997) and just before his resignation from office, High Commissioner Lasso had embraced NGOs as sources of information actively engaged with him in the problems of human rights “violations” (a word of which he previously seemed afraid) and as one of “the pillars” of the U.N. human rights program.

At first, his references to human rights NGOs were limited to certain areas and by and large were directed toward outreach (NGOs could help implement human rights). Initially, he emphasized his interaction with NGOs regarding rights to development and human rights education. He also mentioned NGOs' “input,” citing consultations with NGOs in countries he visited, and he said he maintained “close contact” with NGOs in Geneva. A few months later, in his first report to the CHR (February 1995), High Commissioner Lasso's position began to change, as he cited a CHR resolution expressing concern about intimidation and measures taken against individuals and groups that cooperate with U.N. human rights mechanisms—a clear reference to human rights NGOs.²⁰ He pointed out that he wrote to NGOs (as well as to others), asking them to inform him about situations requiring preventive action against human rights abuses.²¹

Following his first year in office and a visit to the United States in June 1995, during which he met, talked, and held a two-day consultation with human rights NGO practitioners,²² High Commissioner Lasso seemed to warm up again to NGOs. In his July 1995 report, he said: “[The] active presence of the human rights constituency, embodied by nongovernmental organizations, grassroots initiatives, and individuals, has become a prerequisite of efficient action in the field of human rights ... [NGOs] are natural partners of the high commissioner. The U.N. human rights program is strongly interested in a close cooperation with them. Regular meetings and consultation with NGOs have become an important component of the activities of the high commissioner.”²³

He added that cooperation of NGOs, together with that of governments and U.N. agencies and programs, is necessary “to ensure a rapid and effective response to situations in which preventive action is necessary.”²⁴ He also ebulliently said, “A vision of a new and enhanced partnership with relevant human rights institutions and NGOs in the implementation of technical assistance programs has been developed.” It is reported as being open to all human rights NGOs, both in-country and abroad, and to academic and

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“Let a partnership for human rights emerge worldwide, uniting people, institutions, and States ... Working together, the human rights community will make the United Nations human rights program a program of all people everywhere.”

—U.N. Secretary-General Kofi Annan

grassroots activists. Also, NGOs seem to be expected to contribute to such programs to become established.²⁵

High Commissioner Lasso repeats such formulae in his November 1995 report to the G.A., with details added about the large number of documented human rights communications from NGOs and a statement claiming that the success of U.N. human rights efforts depends on all relevant actors including NGOs.²⁶ Somewhat toned down in his March 1996 report to the CHR, High Commissioner Lasso, who included a separate section on cooperation with academic institutions as distinct from NGOs, said he has given “high priority to enhancing cooperation with the NGO community ... and to establishing a partnership with them,” especially for technical cooperation activities.

He added “[I have held] extensive consultations with the human rights NGO community” in connection with meetings of U.N. human rights organs, although he did not indicate whether these actually were the pro forma question-and-answer sessions he holds publicly during the Commission and Sub-Commission sessions, or whether there was more interactive contact. He noted his significant action and interaction with NGOs during the Fourth World Conference on Women (FWCW) in Beijing, which will be discussed later.²⁷ High Commissioner Lasso said he has “relied greatly on the input of NGOs” in preparing for his country visits and “has made it a standard practice to meet with the local NGO community in all the countries he visits so as to share information and strengthen cooperation.”²⁸

His enthusiasm and warmth for NGOs again are manifest in his November 1996 report, in which he spoke of a “partnership” with NGOs as being fundamental to the U.N. human rights programs. It is surprising the degree to which this report legitimized and praised NGOs as information sources, advice providers, and groups to be trained and supported by the high commissioner’s projects. For example, he said the much talked about Centre for Human Rights’ restructuring will “give even more impetus to this partnership.”²⁹ He specifically pointed to human rights NGOs’ unique importance as information providers: “Various organs and bodies recognize that they would not have been in the position to appropriately cope with their tasks without data provided by nongovernmental organizations.”³⁰

He also noted their input to treaty bodies’ work, pointing to the Sub-Commission’s WGs on Indigenous Populations and Minorities as having “proved the importance” of creating U.N. fora in which NGOs could debate key human rights issues. High Commissioner Lasso reiterated that he meets with NGOs during country visits and at U.N. organs’ sessions. He added an unexpected reference to conducting “close consultations” in “reaction to human rights violations,” which marked the first time he had used the word “violations” in connection with NGOs, as his mandate never refers to human rights “violations.”³¹

He noted the field offices he created regularly work closely with NGOs, and quite unexpectedly, he pointed to assistance to national NGOs “in the form of training courses on human rights, fellowships, and support of appropriate projects developed by them.” In particular, he cited the U.N.-NGO “partnership” on developing training materials for “capacity building” and called for this partnership to be “further promoted and made more effective” including by implementing technical assistance projects that the Centre for Human Rights presumably could not carry out on its own.³²

High Commissioner Lasso’s rhetorical embrace of the human rights community grew even warmer in his final report (Feb. 24, 1997), in which he characterized human rights NGOs as “one of the pillars of the U.N. human rights program.”³³ It is notable that this report also cites U.N. Secretary-General Kofi Annan’s first speech to the U.N. G.A., which said, “Let a partnership for human rights emerge worldwide, uniting people, institutions, and States ... Working together, the human rights community will make the United Nations human rights program a program of all people everywhere.”³⁴

NGOs and the High Commissioner: Preserving Norms

In June 1995, several participants in a conference with the high commissioner expressed concern that the final PrepCom for the FWCW in Beijing had given rise to an intense campaign to roll back human rights language on universality and equality. They encouraged the high commissioner to speak out to reverse this trend. Although he initially responded that the U.N. Division for the Advancement of Women was responsible for the Beijing conference, participants persuasively argued it was both appropriate and extremely important for the high commissioner himself to defend human rights norms, as he had a mandate to promote respect for human rights' universality, was responsible for coordinating human rights throughout the U.N. system, and was supposed to "play an active role" both in preventing violations and implementing the Vienna Declaration and Program of Action. This Declaration reaffirms universality and elaborates on women's rights as an inalienable part of human rights.

To assist him in evaluating the new preparatory documents for Beijing and addressing the substantive elements on gender-related matters in the short time remaining before Beijing, several NGO participants supplied High Commissioner Lasso with detailed draft commentaries and suggestions. He publicly issued his own comments on the proposed language at mid-summer negotiations in New York, and his representative later distributed them to delegates in Beijing. Numerous delegates referred to and cited the high commissioner's analysis in what ultimately proved to be successful efforts to reaffirm universality and establish women's rights as a framework for the final Beijing document. Here, High Commissioner Lasso acted in cooperation with NGOs, advancing his office's credibility and establishing himself as a defender of human rights norms, particularly those affirmed in Vienna.

This shows how NGOs are commonly the first to recognize threats to human rights norms that stem from the ongoing standard-setting and tinkering by U.N. governmental bodies. NGOs' attentiveness and ability to gain the high commissioner's and other responsible officials' attention can be crucial to maintaining norms, and their technical analyses often are the bases for a more informed, more complete official analysis with corrective action.

The high commissioner played a similar role for the Habitat II World Conference in Istanbul, issuing comments on the "right to housing" dispute that tied up the final PrepCom before the conference. Again, High Commissioner Lasso aimed his remarks at maintaining existing international norms' integrity as propounded by the human rights body concerned, which in this instance was the Economic and Social Rights Committee, a treaty body.

Publicity and Human Rights Violations: Country Visits

There has long been considerable tactical agreement that the most effective activity to stop violations is to bring maximum publicity to governments so they will stop the abuses themselves. As the nongovernmental human rights sector has demonstrated much better than the intergovernmental, this often ends abuses and may in turn trigger other things such as unilateral or regional economic links or sanctions.

Thus, the fact that High Commissioner Lasso began his tenure so quietly caused much concern. In his first year, he visited 20 countries (beginning with Austria and Switzerland and including hot spots such as Rwanda, Burundi, and Cuba), mostly to engage in diplomatic discussions and explore cooperation with other U.N. machinery—not to assess violations. In subsequent years, he traveled to many countries that were not hot spots to seek support (e.g., Canada, the United States, Australia, Spain, and Costa Rica) and to others that have been more complicated (e.g., India, Panama, Colombia, and East Timor), raising the question

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of what he hoped to accomplish in terms of human rights fact-finding and improvements. He stated informally that he visits countries to which he has been invited and in which he believes he can achieve results and support for other human rights mechanisms' initiatives. During his visit to the United States, he told NGOs in Washington, D.C., that through a diplomatic approach he could open the door to visits by CHR special rapporteurs (SRs) in cases where local authorities have prevented them from coming. But human rights NGOs both abroad and in visited countries have highly criticized the high commissioner's country visits. They were concerned that the visits were conducted without pre-conditions, without demands for some of the most critical kinds of access (such as prison visits), without consultation with the SRs, and often, it seemed, without results other than giving the country being visited a diplomatic pat on the back. NGOs criticized the high commissioner's end-of-visit statements as nonjudgmental and unproductive. NGOs also were concerned that with these precedents, other governments responsible for human rights violations might play off the high commissioner's efforts or initiatives against those of U.N. WGs or SRs. NGOs brought these concerns to the high commissioner's attention through both press commentary and direct communication. Many of the visits also seemed to occur without planned follow-up measures.

Some NGO representatives have expressed dissatisfaction with High Commissioner Lasso's quiet, diplomatic, consensus-building approach and with his failure to report publicly on human rights conditions in the countries he visited.³⁵ Though diplomatic visits can open dialogues, their greatest value lies not in contact alone but in action to advance human rights protections as part of a broad country-specific strategy. The high commissioner's trips to Cuba and Colombia seemed to be without preconditions, accomplishment, or public reports and seemed to undercut the difficult work of human rights SRs or CHR expert mechanisms. He also seemed to reward countries for noncooperation with such investigators.³⁶ Locally based NGOs said the high commissioner should set preconditions for visits to countries with gross human rights violations, but these views were ignored. Without such preconditions, they said, the visits offered legitimacy at no cost and even legitimized a country's refusal to accept a visit by a CHR SR. Initially, High Commissioner Lasso argued that he was opening diplomatic doors and that, with the technical assistance he could offer countries, his visits would do more to advance human rights than reporting and criticizing special procedures.

Some NGOs responded that a calibrated policy could do more than diplomatic visits to produce results, legitimize national human rights activities, and maintain the United Nations' and its high commissioner's moral stature and credibility. High Commissioner Lasso's first visit to Colombia received much criticism because it followed almost immediately after two SRs had visited that country but appeared totally unconnected to their recommendations.³⁷ The two SRs—on torture and extrajudicial, summary, and arbitrary executions—visited there on a joint mission concluding that an SR should be appointed to address Colombia's situation. The high commissioner's visits seemed unconnected and gave no indication that he knew of, no less supported, the position of the SRs or of local NGOs with whom the SRs had consulted. Later, after considerable international and local NGO concern and involvement by the CHR and the NGO community, High Commissioner Lasso arranged for a CHR office to open in Colombia, permitting access by NGOs and reports from the high commissioner's representative.

The high commissioner can and should do much during country visits to bolster the existing international human rights mechanisms, assist victims within each country, and raise his/her own credibility. He/she could establish conditions such as freeing political prisoners before the visit or changing major repressive laws. NGOs should be informed of plans to conduct such visits so they can provide the high commissioner information in advance. In situations where an SR or other CHR mechanism has been banned from entering a particular country, the high commissioner should set the condition that he/she will not visit unless the SR will accompany him/her or be given a separate visa and visit

prior to his/her own. This separate visit would enhance or complement the SR's work, not undermine it.

Similar to the high commissioner, country visits' main power comes from the publicity they receive. The high commissioner must ensure his/her visits are transparent and end-of-visit public reports clearly highlight human rights concerns. He/she needs to make post-visit statements and conduct timely follow-up, setting limits and deadlines where needed to ensure results.

AI said, "[in] his role as traveling diplomat ... there developed a chasm between the expectations and the delivery." Instead of clear statements on the human rights records of the governments he was visiting, AI complained that High Commissioner Lasso "delivered speeches which seemed simply to praise the government's efforts and bury the human rights violations."³⁸ AI continued, "This silence on the ... ongoing human rights violations was interpreted by both governments and nongovernmental organizations as weakness. ... If governments know that the high commissioner is unlikely to embarrass them publicly, they will be tempted to appear to cooperate without sensing any need to put an end to human rights violations ... Jose Ayala Lasso consistently failed to confront human rights violators. And he was even eager to provide advisory services and technical assistance to governments which showed little willingness to implement changes."³⁹

The United Nations has developed human rights protection mechanisms—the SRs and thematic mechanisms described earlier—that often combine publicity, fact-finding, and mediation. However, these only are in a primitive stage of effectiveness. The high commissioner will need to work closely with them to coordinate and facilitate their activities, strengthen their working conditions, and enhance their financial and political support. He/she can legitimize SRs' issues of concern: systemwide concerns about situations of gross violations including those for which he/she initiated urgent fact-finding reports. Still, it is essential that whatever he/she does must not undercut the SRs or their recommendations.

Finally, many NGOs have complained that the high commissioner's visits too often are shrouded in secrecy. Although High Commissioner Lasso has made public statements following his trips, they seem overly broad and highly positive. In some instances, he has sent expert representatives, but commonly, those visits' results have been kept confidential and unpublished, as was the case for visits by envoys sent by High Commissioner Lasso to Chechnya and Colombia.⁴⁰ Only donor States, not NGOs or the general public, have had access to reports of all the field missions' activities in Rwanda.

Responding to Urgent Human Rights Crises

The high commissioner must be encouraged to enhance U.N. capacity to protect human rights. He/she should submit regular, monthly reports to the Security Council, advising it of urgent situations that warrant attention because of their threat to international peace and security. He/she should energize and convene the CHR in emergency sessions, as was done for the former Yugoslavia and during High Commissioner Lasso's tenure for Rwanda. He/she should submit reports to other U.N. bodies—such as the U.N. Development Program (UNDP), international financial institutions, world conferences, and others—and to relevant regional bodies and should appear before them. (By the time of his resignation, High Commissioner Lasso had begun to meet with several of these organs but had not submitted formal reports to them.)

In 1994, shortly after his tenure began, High Commissioner Lasso undertook efforts to examine and establish ameliorative high-rights instrumentalities in Rwanda (as an emergency) and Burundi (as a preventive measure under advisory services). He experienced severe difficulties in establishing an on-the-ground presence and called for assistance to provide him a rapid response capacity for such atrocious violations. In his first report to the CHR,⁴¹ High Commissioner Lasso identified the following long-term needs

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for securing support to carry out activities rapidly and effectively in situations of serious human rights violations and where preventive action is necessary:

- Logistical assistance capacity on a standby basis to provide material, communications, and other support for emergency or preventive field missions.
- Establishment and maintenance of an international roster of specialized staff such as investigation teams, field officers, and legal experts to be available on short notice for human rights field missions.
- Increased contributions to the Voluntary Fund for Technical Cooperation.⁴³

Extending U.N. human rights officials' field presence is extremely important as long as the offices are not limited to technical assistance projects but also include collecting local information and public reporting.

That the Centre for Human Rights has none of these capacities at present is indicative of the point made earlier—the Centre lacks a field orientation and has been starved of both human and financial resources. If U.N. human rights programs and the high commissioner in particular are to play a major role in combating gross human rights violations, they need resources and political support. There is no more important means of support than enhancing the high commissioner's capacity to combat violations, which also means assisting the thematic mechanisms and SRs. This will require more funding not only for the standby logistical capacity outlined above but also for the specialized personnel needed for dispatch to the field such as legal officers, investigative personnel, and monitors, etc. Nongovernmental experts and people trained by and with such organizations are the most obvious and appropriate candidates for emergency dispatch to these posts. Just as NGOs are the indispensable sources of information needed for other U.N. human rights mechanisms' success, so must U.N. human rights field missions dispatched by the high commissioner or under his/her auspices maintain close relationships with human rights NGOs. Several of the most senior officials who U.N. human rights field operations have been drawn from human rights NGOs including Ian Martin, former head of AI, who headed the field operations in Haiti and Rwanda; Diego García Sayan of the Andean Commission on Human Rights; and Reed Brody of the International Commission of Jurists and the International Human Rights Law Group. Mr. García and Mr. Brody both have headed at separate times the U.N. Observer Mission to El Salvador's human rights field operation.

The high commissioner has started opening offices in different parts of the world such as Malawi, Bosnia, Rwanda, Cambodia, the Democratic Republic of the Congo (formerly Zaire), and (expected shortly) Colombia. Extending U.N. human rights officials' field presence is extremely important as long as the offices are not limited to technical assistance projects but also include collecting local information and public reporting. As previously noted, such reporting normally has not been the case.

U.N. High Commissioner for Human Rights Jose Ayala Lasso meets with NGOs during a two-day consultation in June 1995 at The Carter Center in Atlanta, Ga. The Center and the Jacob Blaustein Institute for the Advancement of Human Rights, which is based in New York, hosted the consultation.



Stationing human rights officers in the field surely is the most important achievement of High Commissioner Lasso. By his resignation (March 1997), reportedly 289 human rights field workers and consultants were stationed in 18 countries. Most were in Rwanda (174), Cambodia (50), Burundi (31), and the former Yugoslavia (19 stationed in four states). In many cases, one human rights officer was dispatched to a field office, peacekeeping unit, or UNDP setup such as in the Republic of Georgia, Haiti, Latvia, Abkhazia, Albania, Malawi, the Gaza Strip, Papua New Guinea, and Togo.⁴³ Challenges of their field presence are numerous, raising questions about recruiting, professionalizing actions of field personnel facing dangerous situations, and enhancing lone individuals' effectiveness (or even relevance) during complex U.N. operations. There also is the question of how to move beyond just monitoring and reporting and into protecting civilians under threat.

The high commissioner presided over developing a "change plan" to restructure the Secretariat to meet the Vienna Declaration and Program of Action (VDPA)'s priorities. After examining strategic priorities, the plan began, along with a strengthening of administrative services and training of personnel. The Centre for Human Rights' lack of a country-specific or geographical orientation is a major shortcoming for its programs. In the past, such an orientation would have been politically unacceptable, but today, it is under active consideration, as it dramatically would assist the high commissioner and Secretariat staff develop strategic, country-specific plans to combat human rights violations.

This is a time of considerable institutional reformulation and fluidity in U.N. human rights programs. Supporting the high commissioner to undertake a more activist role in setting other agencies' human rights agendas and in making the Centre more responsive to and effective in stopping violations must be the highest priority objectives.

The high commissioner's broad mandate includes responsibilities for proper coordination of human rights throughout the United Nations. He/she can bring the Center's talents and human resources into this picture, but he/she would have a far greater impact by energizing other agencies with resources and field experience to do this work promptly and well.

To do this, the high commissioner needs greater systemwide authority to ensure strategic direction to hands-on U.N. human rights technical assistance activities. He/she must have authority to integrate human rights concerns into all aspects of U.N. work—from development to conflict resolution to peacekeeping—not merely hold cosmetic "coordination" meetings on integrating human rights concerns that do not receive follow-up over which he/she has authority over implementation. As the VDPA suggests, such systemwide authority should extend inter alia to programs affecting human rights of women, children, and indigenous populations as well as to programs of humanitarian aid, criminal justice, election monitoring, and key operational activities such as peacekeeping and post-conflict peacebuilding.

Such responsibilities mean the high commissioner cannot be tied exclusively to the Centre in Geneva. He/she must be free from the Centre's daily line management responsibilities. Access to the secretary-general and principal U.N. development and conflict resolution bodies—including the Security Council—is essential to the high commissioner's effective functioning in these areas. Thus it is important that he/she regularly interact with top New York officials and be included in the secretary-general's regular "cabinet" meetings with the heads of political affairs, peacekeeping, and other departments. The high commissioner must take the initiative to report and make recommendations to both the Centre and the G.A. (in plenary), the G.A.'s committees, and specialized agencies' governing councils. These activities should not, however, distract the high commissioner from his/her principal role of protecting people from human rights violations and responding effectively when violations occur.

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Recommendations

■ The high commissioner must create effective institutionalized channels for greater NGO input in making decisions, preventing and protecting in the field, providing data on human rights conditions for SRs and treaty bodies, and offering advice on implementation including technical assistance. These channels should permeate the Centre's programs rather than be concentrated in a single special office for external or NGO relations. Special NGO "offices" in intergovernmental bodies commonly are used for "output" or external contacts but do not provide the information, interaction, or responsiveness needed for NGOs to best advance more effective U.N. reaction to human rights violations.

■ Greater, more routine contact by NGOs with the high commissioner should focus on enhancing the high commissioner's capacity to influence human rights programs' direction in the following areas:

- 1) Norm preservation.
- 2) Country visits.
- 3) Effective response to emergencies or crises.
- 4) Building more effective national human rights systems.

Steady NGO contact can enhance the high commissioner's intellectual leadership on issues such as the preservation of norms. It also can increase his/her capacity to galvanize the United Nations to act promptly and effectively during human rights crises and to mobilize other parts of the U.N. system to address the human rights causes of conflict and deprivation. NGO information is essential to developing calibrated, result-oriented strategies by U.N. human rights programs.

■ To ensure the high commissioner has greater access to a wider range of NGOs, his/her office and principal residence should be in New York—at the center of U.N. decision-making about emergency action, preventive measures, and long-term development needs. This way, he/she can interact more effectively with a wider array of U.N. officials, diplomats, and programs and with NGOs in all U.N. activities connected with prevention of human rights abuses and protection in the field.

■ The high commissioner's principal deputies in New York and Geneva, as well as the heads of the major field operations organized by him/her, should include people with extensive experience in private volunteer organizations active in protecting human rights. This would facilitate contacts by the high commissioner's office with relevant NGOs in a timely, proactive fashion and should foster greater commitment to protection and action. It also would enhance his/her capacity to respond to emergency situations and violations early and urgently and to bring wisdom, working-level contacts, credibility, and efficacy to his/her performance.

■ The high commissioner should establish a series of geographical "desks" and bureaus in his/her office and at the Centre so country-specific human rights plans could be drawn up, information and actions could be coordinated, and NGOs' maximum input into its planning and follow-up could be ensured.

■ The high commissioner should explicitly and actively support the speedy adoption of the Draft Declaration on Human Rights Defenders, which contains rights of individuals, groups, and organs of society to promote and protect internationally recognized human rights and fundamental freedoms. The high commissioner should put his/her full authority and creative diplomatic skills behind efforts to ensure that the declaration is completed and adopted at the 52nd G.A. and that the text contains strong provisions for strengthening, not weakening, NGO defender groups in the effort.

■ The high commissioner should institute new managerial and substantive measures to legitimate access and should facilitate information submission from NGOs to all

The high commissioner should explicitly and actively support the speedy adoption of the Draft Declaration on Human Rights Defenders, which contains rights of individuals, groups, and organs of society to promote and protect internationally recognized human rights and fundamental freedoms.

U.N. officials including SRs and WGs engaged in investigative field missions and case interventions related to human rights. More than just a hotline is needed. For information inflow, expanded staffing of the special procedures is essential; for outflow, advance information about planned visits and missions of the high commissioner as well as special mechanisms and envoys of the CHR and related bodies must be improved. Thus, it is imperative that priority be given to disseminating data about investigation and field mission-oriented travel in the information provided by the high commissioner to interested NGOs. Notifying NGOs is crucial for both information inflow and outflow and must receive urgent priority from the high commissioner's staff. The high commissioner should make regular public reports on his/her country visits, on those of his/her envoys, and on field operations to which he/she has dispatched human rights officers. Such reports inform NGOs, make governments and the high commissioner accountable for their promises, and facilitate NGOs' ability to offer key information, advice, and assessments of follow-ups aimed at preventing and protecting human rights in visited countries.

■ To ensure human rights NGOs are not excluded from U.N. human rights bodies due to political motivations, the high commissioner should advocate a new procedure to professionalize human rights organizations' access to U.N. conferences and considerations of consultative status by the Economic and Social Council (ECOSOC) and other bodies. Hence, when a human rights organization is being considered for consultative status, the high commissioner's office would review, with assistance from the Centre, the NGO's application and make a professional determination as to the NGO's competence as a human rights organization. After this process, political bodies should not be able to question the NGO's competence in the office's decision to grant access. ■

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ENDNOTES

¹ Following the completion of this article, U.N. Secretary-General Kofi Annan announced the appointment of Mary Robinson, president of Ireland, as the new high commissioner for human rights. She took office Sept. 12, 1997.

² Though an industrialist by profession, Jacob Blaustein actively has sought to include human rights in the U.N. Charter, both prior to and especially during the U.N. founding conference in San Francisco (1945), where he participated as one of 42 NGO consultants to the U.S. delegation. In his post as the American Jewish Committee president and in other posts with that organization, he advocated measures to strengthen U.N. activities protecting human rights for all people, being particularly active on behalf of the creation of the office of high commissioner. In 1971, his family established in his memory the Jacob Blaustein Institute for the Advancement of Human Rights. For details of early thinking and action on this topic, see Clark, Roger S. *A HIGH COMMISSIONER FOR HUMAN RIGHTS*, 1972.

³ See "Summary of information regarding consideration by United Nations organs of the question of the establishment of a

For information inflow [to the United Nations], expanded staffing of the special procedures is essential; for outflow, advance information about planned visits and missions of the high commissioner as well as special mechanisms and envoys of the CHR and related bodies must be improved.

post of United Nations High Commissioner for Human Rights." U.N. Document E/CN.4/Sub.2/1982/26, July 30, 1982. This document concludes: "Those who opposed the draft resolution felt, inter alia, that, in accordance with the principles of the Charter, functions such as those proposed for the High Commissioner should not be entrusted to any individual, since they were the collective responsibility of member states ... It was feared that the institution would lead to undue interference in domestic affairs. Reliance should be placed rather on the existing organs of the United Nations," (paragraph 29). Others suggested emphasis instead should be placed on the secretary-general, the Covenants, or a new international instrument. These arguments resurfaced in the 1993 discussions of the high commissioner position. In the intervening years, the United States, under the Reagan and Bush administrations, opposed emphasizing a high commissioner, as other high-level U.N. posts already were too much of an administrative burden on the organization. To the extent that those governments backed any U.N. human rights activism, they emphasized the lower-level instrumentalities of CHR's SRs. See, e.g., discussions of U.S. human rights policy and the United

Nations in Guest, Iain. *BEYOND THE DISAPPEARANCES*. Philadelphia: University of Pennsylvania Press, 1990, and Shifter, Richard and Jerome J. Shestack. "U.S. Human Rights Policy and the Reagan Administration." *Harvard Human Rights Yearbook*, Vol. 2, Spring 1989, 1-54.

⁴ See Amnesty International (AI), "Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations." AI Index IOR: 41/16/92, and "A High Commissioner for Human Rights: A Time for Action," Oct. 1, 1993. Initially, AI called for a "special commissioner," noting that the term "high commissioner" carried with it baggage of colonial British nomenclature. Later, as other NGOs continued to call for a "high commissioner," AI dropped its proposed name change.

⁵ U.N. Document A/CONE.157/58, 7.

⁶ U.N. Document A/CONE.157/7, 4.

⁷ "World Conference on Human Rights." NGO Newsletter-4. Ludwig Boltzmann Institute of Human Rights, July 1993.

⁸ For example, consider the remarks of Indonesian Foreign Minister Ali Alatas: "We believe this proposal needs further careful study in the context of our overall effort to enhance the efficiency and effectiveness of the United Nations human rights mechanisms so as to avoid duplication of efforts as well as wastage of resources." U.N. Document, A/48/214, June 14, 1993, 18.

⁹ "Vienna Declaration and Program of Action." U.N. Document A/CONE.157/23, Section IIB, paragraph 18.

¹⁰ "Creating the High Commissioner for Human Rights: The Outside Story." *European Journal of International Law*, Vol. 5, No. 4, 1994, 556-568.

¹¹ "A High Commissioner for Human Rights." Joint Statement by AI, Human Rights Watch, International Federation for Human Rights, International Human Rights Law Group, International League for Human Rights, Jacob Blaustein Institute for the Advancement of Human Rights, and Lawyers Committee for Human Rights, October 1993. Reprinted as "In Brief. A High Commissioner for Human Rights: Answering Questions." *International League for Human Rights*. No. 55, October 1993.

¹² Ibid.

¹³ U.N. G.A. Resolution A/Res/48/141, adopted Dec. 20, 1993.

¹⁴ See U.S. Draft Action Plan in Human Rights, May 1993. For a less ambitious U.S. proposal, see U.N. Document A/C.3/48/L.59. Compare remarks by then U.N. Ambassador Madeleine Albright to the International Rescue Committee on Nov. 2, 1993: "A U.N. High Commissioner for Human Rights would not be able to wave any magic wands, but he or she would be able to elevate, legitimize, publicize and coordinate the response of the international community to crises affecting basic human rights. We strongly support ... a Commissioner with genuine authority over all U.N. human rights programs; a Commissioner empowered to provide needed assistance to states willing to help, and to call the world's attention to significant human rights violations wherever and whenever they occur." Press Release. U.S. Mission to the United Nations, 182-93.

¹⁵ For example, Malaysia offered the principal opposing draft to the G.A., pointing out that using human rights "as a condition" related to development cooperation is incompatible with human rights, limiting the commissioner to functioning under the secretary-general's direction, highlighting the right to development as one of the new post's major foci, stressing "non-selectivity" (a U.N. code word meaning no singling out of any nation for criticism), and raising language recalling VDPAs' stricture about the standard's cultural relativity. U.N. Document A/C.3/48/L.79.

¹⁶ A/Res/48/141, paragraph 4(f).

¹⁷ A/Res/48/141.

¹⁸ See, for example, "Ecuadorian is Nominated to Head U.N.'s New Human Rights Post." *The New York Times*, Feb. 2, 1994, which bears the sub-headline, "Critics say the U.N. nominee 'will need on-the-job training.'"

¹⁹ U.N. Document A/49/36. See, for example, paragraphs 11 and 115-116.

²⁰ E/CN.4/1995/98, Feb. 15, 1995, paragraph 23.

²¹ Ibid., paragraph 34.

²² The consultation, which took place in Atlanta, Ga., was co-sponsored by the Jacob Blaustein Institute for the Advancement of Human Rights and The Carter Center's Human Rights Program. For its concluding statement, "The Promise of the High Commissioner for Human Rights," see Appendix.

²³ E/1995/112, July 14, 1995, paragraph 12.

²⁴ Ibid., paragraph 39.

²⁵ Ibid., paragraph 47.

²⁶ U.N. Document A/50/36, Nov. 2, 1995, paragraphs 12, 25, 53, and 107.

²⁷ U.N. Document E/CN.4/1996/103, March 18, 1996, paragraphs 25 and 26.

²⁸ Ibid., paragraph 26.

²⁹ U.N. Document A/51/36, Oct. 18, 1996, paragraph 30.

³⁰ Ibid., emphasis added.

³¹ Ibid., paragraph 31, emphasis added.

³² Ibid.

³³ U.N. Document E/CN.4/1997/11, Feb. 24, 1997, paragraph 45.

³⁴ Ibid., paragraph 3.

³⁵ See, for example, in Ottawa (March 1995), High Commissioner Lasso told representatives of 20 Canadian NGOs, "I do not share the approach of NGOs to human rights issues, but I do respect the approach." In Logan, M. "U.N. Rights Commissioner Has Advice for NGOs." *Human Rights Tribune*, June-July 1995. See also HUMAN RIGHTS WATCH WORLD REPORT, 1995. "[H]is voice was not heard on the major human rights questions of the day," xviii.

³⁶ AI commented on the Cuba trip: "While Amnesty International regards the visit of the high commissioner for human rights at the invitation of Cuban authorities to be an important step, this is no substitute for the government reversing its policy of noncooperation with the Commission's recommendations in Resolution 1994/71, particularly their refusal to allow the special

rapporteur to visit." "AI's Concerns at the 51st Commission on Human Rights." AI Index: IOR 41/11/94, December 1994. Human Rights Watch has been more critical: "During his November visit to Cuba, for example, he [the high commissioner] offered no public comment on the government's repressive human rights record or even its refusal to allow a visit by the U.N.'s special rapporteur on Cuba, who would have reported his own findings publicly. By pointedly refraining from public criticism, the high commissioner squandered his unique capacity to stigmatize abusive conduct and abandoned his most powerful weapon to defend human rights." "Introduction." HUMAN RIGHTS WATCH WORLD REPORT, 1995, xviii.

³⁷ See Cook, Helena. "The Role of the High Commissioner for Human Rights: One Step Forward or Two Steps Back?" 3. Unpublished paper. In addition, major U.S.-based human rights NGOs signed a joint letter to the high commissioner raising these and other points of criticisms, Oct. 24, 1994.

³⁸ "Agenda for a New U.N. High Commissioner for Human Rights." AI Index: IOR 40/08/97. Amnesty International, April 1997, 2-3.

³⁹ *Ibid.*, 3.

⁴⁰ *Ibid.*, 4.

⁴¹ U.N. Document E/CN.4/1994/98, paragraph 32.

⁴² U.N. Document A/49/36, Nov. 11, 1994, paragraph 59.

⁴³ "Agenda for a New U.N. High Commissioner," 6.

APPENDIX

The Promise of the U.N. High Commissioner for Human Rights

Human rights practitioners from various parts of the world met at The Carter Center in Atlanta, Ga. with U.N. High Commissioner for Human Rights Jose Ayala Lasso for a review of his first year of experience in the post and to get a sense of the international human rights movement's perceptions of and hopes for the development of the office. The meeting was convened by The Carter Center's Human Rights Program and the Jacob Blaustein Institute for the Advancement of Human Rights on June 4-6, 1995. High Commissioner Lasso opened the meeting with a review of his first 14 months in office.

Participants considered the establishment of the office a great breakthrough for international human rights and noted that in his first year in office, High Commissioner Lasso had begun important innovations in the areas of emergency response to human violations, field monitoring, and preventive activities. Participants encouraged him to consolidate, enhance, and further develop such innovations.

Participants expressed that they have great hope in the office, and they expect the high commissioner to be the champion of human rights protection globally; to be the standard bearer of the universality, indivisibility, and irreducibility of international human rights norms; to launch bold new initiatives for the global protection and promotion of human rights; to marshal the efforts of the different parts of the human rights movement; and to push forward the emplacement and enhancement of human rights strategies of governance nationally and globally. They declared his/her mission as the triumph of international human rights norms and their urgent implementation.

Protecting and promoting the human rights of women drew special comments from participants. They urged the high commissioner to use his authority and influence to prevent any regression from the human rights provisions of the Vienna Declaration and Program of Action, particularly citing the problems posed by the Draft Platform for Action prepared for the Fourth World Conference on Women. Recognizing women's key role in civil society, participants stressed that protection of women's human rights, together with effective integration of gender-related concerns in all human rights activities, should be among the core strategies for entrenching a universal culture of human rights and for realizing human rights strategies of governance. Participants noted that following the office's establishment, the United Nations was being reformed and restructured. They welcomed this and urged that the restructuring be completed speedily so that the full energy and

talents within the program can be deployed to assist the high commissioner in his efforts to spearhead new initiatives on behalf of human rights protection.

Participants acutely believed the high commissioner needed to have the requisite resources for the functioning and development of the office of high commissioner. They identified needs and resource shortages in organizing field operations, human rights monitoring, and technical assistance. They emphasized that, as the office took root, the international community would expect the high commissioner to develop prompt, adequate, and effective protection in all parts of the world. This would require on a global basis information gathering and early warning; preventive action, assistance in peacemaking and peacekeeping processes; and providing advice and assistance to help countries establish, maintain, and enhance national human rights systems conceived in the image of the International Bill of Human Rights and inspired in their operation and development by international human rights treaties. Such an enterprise, participants fully recognized, would require deploying considerable resources, which they urged governments and the United Nations to provide to the high commissioner. They also emphasized the importance of engaging NGOs fully in the high commissioner's initiatives.

Participants looked to the high commissioner as the standard bearer of human rights, acting boldly to spread the human rights message globally, to defend the universality and irreducibility of the International Bill of Human Rights, to promote education and information on human rights in all countries so that the human rights ethic can pervade all societies, and so that everyone, young and old, can be taught the virtues of respect for all human beings' rights as part of their birthrights. Participants looked to the high commissioner for the global mobilization of human rights.

Participants strongly urged High Commissioner Lasso to take the lead in marshalling all the potential of the human rights movement to react vigorously against gross human rights violations. In this regard, it was noted that a broad range of working groups (WGs), special rapporteurs (SRs), and other instrumentalities coexisted with the high commissioner, and participants considered it crucial that High Commissioner Lasso coordinate and mesh his activities with those of the other fact-finding and protection instrumentalities. Participants expressed awareness of problems of coordination that had arisen in the initial stages of the office's functioning, and they urged that the high commissioner, WGs, and SRs harmonize their efforts in the future, properly and effectively coordinated by the high commissioner.

Participants recognized that situations might arise in which governments responsible for human rights violations might seek to play off the efforts or the high commissioner's initiatives against those of WGs or SRs. They discussed thoroughly previous country visits that had raised a number of questions. They urged High Commissioner Lasso to continue to be vigilant in such situations and to safeguard against such stratagems.

Participants urged High Commissioner Lasso to consult with the different parts of the human rights movement, particularly those with specialized knowledge or expertise in a country, when he is planning a visit to that country. This is important because a visit's objectives and pitfalls and his strategy for dealing with a country should be carefully thought through. Visits should always be substantive and meaningful. They should be part of a coordinated strategy, should have appropriate follow up, and should draw upon the full range of the human rights community's assets.

Participants looked to the high commissioner to spread his influence over the broad range of U.N. programs and activities, U.N. specialized agencies, and regional human rights organizations, coordinating and leading them in a determined and decisive effort to develop and maintain momentum for the vindication and triumph of the International Bill of Human Rights and human rights norms.

NGOs AND TREATY BODIES: A RELATION IN PROGRESS

by Michael Posner and Mireille Hector

"NGOs constitute the eyes and the ears of the Committee."

—Laurel B. Francis,
Human Rights Committee Member

Recently, the international community has witnessed a dramatic expanse in the role of nongovernmental organizations (NGOs) with respect to U.N. treaty bodies. Previously, NGOs often were seen as a controversial source of information, but today they increasingly are perceived as important actors in assessing implementation of human rights on the domestic level. This development reflects both a change in attitude by the treaty bodies themselves and the fact that more NGOs now are aware of treaty bodies' work and the potential they offer. Though they still lack formal status with most treaty bodies, NGOs continue to expand their role as a substantial resource of information and expertise, and many treaty bodies now rely quite heavily on them to carry out U.N. work.

Despite this progress, NGO involvement still could be greatly improved. This paper studies and compares three treaty bodies' practices: those of the Human Rights Committee (HRC), the Committee Against Torture (CAT), and the Committee on the Elimination of Racial Discrimination (CERD). It also discusses NGOs' role in areas common to all three bodies.

Reviewing Country Reports

State Parties to each of the three conventions¹ are required to report to the respective treaty body on their domestic implementation of the rights anchored in these instruments. After submitting their initial reports, States must give periodic reports every four or five years. Though these committees each have specific guidelines regarding the format of state compliance reports, in general, States are asked to describe the legal framework and means of implementation of relevant human rights. If a state report does not contain sufficient information, the committee may request an additional report. State reports then are discussed in a public session in the form of a 'constructive dialogue' between the committee and the State Party, after which the committee presents its conclusion.

Information from NGOs often helps the committees get a more complete picture of a country's human rights situation. Composed of a small number of members from around the world, the committees have neither expertise on every State Party's legal systems nor a comprehensive picture of each State's human rights practices.

NGOs can contribute to the reporting procedure in several ways:

■ As many treaty bodies have recommended, State Parties can involve NGOs in the writing of their own compliance reports. NGO consultation would allow States to receive critical reviews of their reports before submitting them. Also, involving NGOs gives States an opportunity to get specific data from NGOs, some of whom specialize in documenting human rights problems. NGO input can help States submit more substantial reports including challenges a State might face in implementing a convention. Treaty bodies often have expressed their appreciation to States that did invite national NGOs into the drafting process. In general, treaty bodies have encouraged States to disseminate reports broadly in their societies to allow a broad, national public debate, before the committee reviews it.

■ NGOs can contribute to treaty body deliberations by submitting information, as they often are in the best position to assess the means of implementing rights guarantees in a particular country. The most useful format, the "counter report" has NGOs comment, article by article, on a State's actual implementation of the rights enshrined in the relevant treaty. This report provides an easy comparison with the state report. Apart from such a detailed document, NGOs also can provide the committees with general information on observing a country's particular human rights.²

■ NGOs can attend committee sessions in Geneva or New York. Those that can afford to go to these

One of the treaty bodies' most serious challenges is their lack of capacity to follow up on the concluding comments. Unless the outcome of a dialogue between a government and a treaty body is carried back home, a state review will not be effective to change national law and practice.



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meetings usually provide committee members with formal and informal briefings on human rights situations in countries under review. Oral briefings have proven especially useful in preparing committee members for their discussions with a State, as they allow NGOs to present the most current information, answer members' questions, and challenge answers given by the State. Although the HRC now has an average of one formal NGO briefing per session, most NGO contacts still are more informal and ad hoc.

■ NGOs can assist treaty bodies by monitoring and assisting in the post-meeting compliance process. At the end of each state report review, all three treaty bodies adopt "concluding observations/comments" which identify positive factors and main obstacles and register particular concerns toward implementing treaty rights. The comments also include detailed recommendations for adopting or withdrawing specific laws for reviewing certain practices or giving greater attention to preventing certain violations. They are published in a separate, public document that usually gives a very good overview of what is needed to advance implementing human rights in a country.

One of the treaty bodies' most serious challenges is their lack of capacity to follow up on the concluding comments. Unless the outcome of a dialogue between a government and a treaty body is carried back home, a state review will not be effective to change national law and practice. Although some NGOs have worked to create public awareness of a state review's outcome, committee members often emphasize the need for NGOs to take a more prominent role in these recommendations' follow-up. NGOs can do this by disseminating and publishing the concluding comments; initiating national and local discussions; using the comments as a lobbying tool in their contacts with the government, members of parliament, the judiciary, and the media. By pointing out that an independent expert U.N. body has raised a certain human rights problem, NGOs often can strengthen domestic efforts to ensure implementation of rights.

Individual Complaint Procedure

While the International Covenant on Civil and Political Rights (ICCPR) has a separate protocol providing individuals with the chance to lodge a complaint against a State Party, similar procedures are incorporated in the Torture Convention and the Race Convention. State Parties to these instruments are only bound by such procedures if they become party to the above-mentioned protocol or if they are "opted in" to the relevant

articles. An important element in the individual complaint procedure is the requirement that domestic remedies be exhausted. The complaint is mainly a written one resulting in the adoption of "views" (HRC, CAT) or "opinions" (CERD) on the merits of the individual complaint, if the communication has been declared admissible. In 1990, the HRC set up a procedure allowing it to monitor the follow-up to its views adopted under the individual complaint procedure. The HRC established a special rapporteur for follow-up, who can request information from State Parties and who reports on the degree of States' implementation in the HRC's annual report to the General Assembly.

NGOs can play a more active role in assisting the submission of individual cases, most of which now come from the victim or his/her family. NGOs could intervene more often in cases where there is proof that a violation occurred and the victim cannot contact the Committee, such as in cases of incommunicado detention, where families are not available to submit complaints. In some instances, family members may mandate an NGO to present a case on behalf of a victim who has died. NGOs also should use the committees' views or opinions' to pressure a government to act in accordance with them or to obtain a political prisoner's release or a payment of compensation to a victim.

General Comments

Of the three treaty bodies, the CAT is the only one that does not adopt general comments. General comments (HRC) or general recommendations (CERD) originally were perceived as guidelines for States on reporting obligations. They since have developed into interpretations of the meaning and scope of a particular human right contained in the conventions. The HRC often uses general comments to assess the merits in cases that have come under the individual complaint procedure.

NGOs should have greater input in this process, which usually takes place over several of the committees' subsequent sessions. To do this, NGOs must familiarize themselves with general comments currently under discussion and submit to treaty bodies their own comments on their interpretation of the concerned human right. This input would help committees evaluate how different countries interpret certain human rights. NGOs also should make greater use of general comments in their own writing of "counter reports" and other information.

Urgent Procedure/Early Warning Mechanism

Since 1991, the HRC has requested urgent reports from State Parties if a situation in a country warrants immediate attention. So far, the HRC has examined almost a dozen countries, most of which complied with the HRC's request for information and dialogue. Inspired by the Fourth Meeting of Chairpersons of Treaty Bodies' recommendations, the CERD also has explored early warning mechanisms and urgent procedures. These procedures, one of the CERD's regular, principal agenda items since 1994, aim to address existing problems before they escalate into conflicts and respond to problems that require immediate attention to prevent large-scale human rights violations. Regarding other possible measures to prevent racial discrimination, the CERD has directly referred to the importance of contacts with human rights organizations to "more effectively sensitize the Committee members themselves regarding the actual human rights conditions prevailing in regions."³

Both committees have encouraged NGOs to play a more prominent role in submitting information on present or potential crisis situations to help them effectively respond to such situations. To register their specific concerns, NGOs should comment on the urgent reports submitted by States under these procedures.

Investigations

The CAT has a specific provision in its convention that mandates it to investigate a country's situation on its own initiative. Under this procedure, States that have not opted

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In its 1996 annual report, the CAT gave a detailed summary account of the results of the proceedings concerning the inquiry on Egypt. This account clearly shows NGOs' essential role in the procedure and suggests how NGOs may be involved in other situations.

out of this provision can be subjected to a confidential inquiry, where the CAT has received reliable information revealing a systematic pattern of torture. This inquiry may include a visit to the country under review. In such cases, States are asked to cooperate with the CAT in examining and commenting on the information received. The CAT may seek additional relevant information substantiating the situation's facts including statistics from a variety of sources.

NGOs play an important role in assisting the investigatory process. In its 1996 annual report, the CAT gave a detailed summary account of the results of the proceedings concerning the inquiry on Egypt. This account clearly shows NGOs' essential role in the procedure and suggests how NGOs may be involved in other situations. Not only did the CAT specifically ask one NGO to submit additional information, but also the report says that throughout its proceedings, NGO information played a very important role. In its conclusions on this case, the CAT repeatedly highlighted its direct reliance on NGO information to establish that the State practiced torture on a systematic basis: "The Committee takes note of the fact that most of the allegations of torture received from nongovernmental organizations are directed against members of State Security Intelligence and are consistent in describing the methods applied by them."⁴

Recommendations

Although NGO access to treaty bodies recently has expanded greatly, a few practical changes would help enhance their involvement and contribution:

- International NGOs could do more to reach out to national and local NGOs, informing them of treaty bodies' work and schedules and helping them submit information to the bodies. This task is of particular importance given the lack of resources for treaty bodies to do so on a systematic basis.

- NGOs should submit written reports that are as succinct as possible, focusing only on the rights enshrined in the relevant treaty and on the level of practical implementation of these rights in a particular country. These reports should be sent on a timely basis, about six weeks before committee meetings, so the U.N. Secretariat can process them.

- Treaty bodies still should update their working methods and rules of procedure to ensure that positive practice regarding NGOs' role are incorporated. They also should consider granting NGOs more formal status with treaty bodies.

Laurel Francis, a member of the Human Rights Committee from Jamaica, refers to information from an NGO report. This photo was taken from video footage provided by the Lawyers Committee for Human Rights.



Conclusion

This paper has compared some of the good practices that treaty bodies have established in relation to NGOs, focusing on the Human Rights Committee, the CAT, and the Committee on the Elimination of Racial Discrimination. Today, NGOs play a vital role in treaty bodies' work, especially the review of state reports, by submitting valuable written and oral briefings to body members. The bodies have encouraged NGOs to take a more prominent role in following up on concluding comments, drafting general comments, and working with more recently adopted urgent procedures and early warning mechanisms.

In a world where human rights debates are often politicized, NGOs should recognize the opportunities presented by treaty bodies, which have adopted a largely nonpolitical, constructive approach and have focused on technical compliance with international standards at the domestic level. Partly because of their approach, many State Parties are willing to cooperate with them. The fact that State Parties voluntarily committed themselves to uphold a minimum human rights standard in their own countries makes constructive dialogue with treaty bodies a crucial element in improving human rights obligations' implementation. Although the bodies lack adequate resources to respond effectively to all emerging needs, their long-term focus on improving domestic legislation and national institution-building is an essential cornerstone in furthering human rights compliance and the rule of law worldwide. NGOs should play an increasingly prominent role in this important process. ■

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In a world where human rights debates are often politicized, NGOs should recognize the opportunities presented by treaty bodies, which have adopted a largely nonpolitical, constructive approach and have focused on technical compliance with international standards at the domestic level.

ENDNOTES

¹ International Covenant on Civil and Political Rights; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment; and the International Convention on the Elimination of All Forms of Racial Discrimination.

² One of the three treaty bodies, the HRC, has established a special working group (WG) which draws up a list of questions to be posed to each State Party. Meeting one week prior to the HRC's session, this WG's members study and critically review all incoming information. Recently, all three committees have established the practice of appointing "country rapporteurs" who take the lead

in examining particular state reports and all other incoming material and direct discussions with that State. These rapporteurs often serve as NGOs' principal points of contact.

³ Report of the Committee on the Elimination of All Forms of Racial Discrimination. G.A., OR 49th Session Supplement, No. 18, A/48/18, annex III, paragraph 11.

⁴ Report of the CAT. G.A., OR 51st Session Supplement, No. 44, A/51/44, paragraph 207.

NGOs AND U.N. HUMAN RIGHTS TREATY BODIES: A CASE STUDY OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

by Anna Edman

Preface by Thomas Hammarberg

PREFACE:

Voluntary Groups Key for U.N. Child Rights Monitoring

The General Assembly (G.A.) adopted the U.N. Convention on the Rights of the Child (CRC) in November 1989 during a dramatic period in U.N. history. The end of the Cold War was understood as the beginning of a new era. There was hope that confrontation would be replaced by constructive cooperation between nations for the betterment of everyone's lives. The G.A. adopted the CRC unanimously.

This adoption was little publicized at the time but greatly appreciated among nongovernmental organizations (NGOs) in a number of countries. Some NGOs had followed the laborious drafting work in Geneva for years—the whole process took almost a full decade—and some even had taken part in the working group (WG) under the U.N. Commission on Human Rights. Indeed, the NGO community had been able to greatly influence the content of the draft that went to the G.A., increasing the CRC's relevance and making many NGOs feel it was "their" treaty.

The monitoring process itself, as outlined in the CRC, also allowed for NGO participation. One article said the Committee on the Rights of the Child—which was to supervise the CRC's implementation—may invite not only U.N. agencies but also other "competent bodies" to provide expert advice.¹ Clearly, the phrase "other competent bodies" was intended to include NGOs. The Committee on the Rights of the Child repeatedly has confirmed this, and no government has ever questioned it.

The text again refers to "other competent bodies," saying that the Committee can transmit to them and to U.N. bodies suggestions for technical advice or assistance to States Parties.² This implies recognition of the constructive role NGOs can play in development cooperation.

When the Committee's 10 newly elected members met for the first time in May and September-October 1991, they had to define in practical terms how they wanted to structure cooperation with the NGO community. Not all members were enthusiastic from the start, perhaps believing that NGOs might "take over" or governments might react negatively to the Committee "legitimizing" uncontrolled private voices. One member argued that the Committee was not authorized to consider anything other than documentation submitted by the government itself.

However, the majority of the Committee held another opinion, recognizing that the Committee not only had the right to seek information other than that from the government, but that it needed such input to assess each country's true situation in each country. It was a question of quality of work or professionalism. In this context, cooperation with the NGO community was seen as crucial.

One of the first decisions toward cooperation was to invite NGOs to closed meetings during which the Committee prepares its discussions with government delegations. These are held some three to four months before actual sessions (in fact, at the tail end of each previous session). These preparatory meetings elaborate a "List of Issues" to send to the government, indicating questions that will come up during the forthcoming hearing. (Later, the Committee asked that replies be forwarded in writing before the government delegation's arrival.) Obviously, these meetings are essential to the process, and UNICEF, International Labor Organization, the U.N. High Commissioner for Refugees (UNHCR), and the World Health Organization invited NGOs take part in them.

It is understood that key U.N. organizations automatically are invited—"shall be entitled to be represented," says the CRC—while NGOs may or may not be invited. The Committee wanted to avoid the notion that it "recognized" certain NGOs, as the invitation's purpose was to obtain information. The

Committee thus developed the procedure of inviting NGOs that had submitted written information and could be assumed to provide more information during oral discussion.

No NGO had an automatic right to participate in the preparatory meetings; each had to be invited. However, the Committee took an open approach welcoming NGOs' presence at the meetings. In fact, Committee members expressed deep disappointment in situations where no NGO representatives were present. With the Committee's informal support, a fund was established to finance NGO representatives' travels to Geneva, with the first installment provided by Swedish Sida, a Swedish international aid agency.

The high quality of the NGO presentations probably is one reason this travel experience worked well, as NGOs convinced the Committee through competence. It also was important that the Geneva-based NGO committee following the CRC employed a coordinator to facilitate contacts between the Committee and national child rights organizations, first with funds from Swedish Rädna Barnen (Save the Children). She also kept local NGOs informed, organized their visits in Geneva, and introduced them to the Committee.

The NGO coordinator has assisted in obtaining written input before the preparatory meeting. The International Save the Children Alliance also has used its own channels to support domestic groups and keep them informed about the process. Different models of written contributions have been used, from comprehensive "alternative reports" to more targeted comments on certain aspects. The Committee itself has sent informal signals that it preferred, if possible, one composite submission from each country's entire NGO community. Ideally, when producing the text, NGOs would hold discussions during which some "filtering" could be done.

Results have been most positive. The quality of NGO submissions has been high from several countries such as Peru, Honduras, Canada, Namibia, the United Kingdom, Belgium, Belarus, Lebanon, Pakistan, and the former Hong Kong, to name a few. In many cases, NGO information has been more complete than government reports. Also, NGO submissions have given the Committee greater possibility to assess controversial points in the national discussion, thereby helping it design the discussion's agenda. In other words, NGOs have helped make the process more relevant.

With this procedure, NGOs' main contributions have come before (written) and during (orally) the preparatory meeting. During the Committee's discussion with the government delegation itself, no one else is given the floor. However, many times, NGOs have also come to these public meetings, giving Committee members opportunity to seek from them complementary information—for instance, during coffee breaks.

This information is not regarded as official, nor is it registered as such. In general, the Committee has used it without sources being given under the principle that the

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Members of the Committee on the Rights of the Child have been invited to conferences to advise on the implementation of the CRC. Thomas Hammarberg (left), Hoda Badran, and Marata Santos Pais participate at the 1994 UNESCO regional conference in Beijing.

Courtesy of Thomas Hammarberg

Committee itself takes responsibility for any information it uses.

Only in one case has a government delegation reacted negatively—the case of Lebanon. There already had been discussion in Beirut at an early stage as to whether a local NGO coalition could communicate with the Committee. During discussions in Geneva, the delegation emotionally concluded that some of the questions asked must be based on Lebanese nongovernmental information. In Beirut, the delegation head initiated an “investigation” into NGO behavior in relation to the Committee in Geneva. The Lebanese government obviously had not understood the Committee’s right to seek expert advice from NGOs (as stated in the CRC) also means governments should respect such communication.

The CRC says State Parties shall make their reports to the Committee widely available to their countries’ publics.³ However, the Committee has asked more from governments, indicating the desirability of a consultative process when the report is produced. It emphasized the importance of using the reporting procedure for a thorough discussion on children’s status in the country. The Committee suggested relevant professional groups and child rights NGOs be invited to take part in the analysis.

On the whole, governments have not been very progressive in this respect. The consultations that have taken place, if any, have been more token than genuine. However, the Committee has asked about them, which may encourage a more open attitude for the reporting process’ coming rounds. In the few countries where they did develop, the dialogues seem to continue, and both sides see them as constructive.

NGOs in several countries have submitted their information to the ministry or committee responsible for drafting the report. Responses have varied, but in general, this seems to have had a deeper impact on the State Report than admitted. In such cases, this submission to the Committee has provided those NGOs a second opportunity to be heard.

The start of the cooperation between the Committee and the NGO community was unusually positive, and as a result, a constructive spirit developed. This may have been enhanced further as other U.N. structures have been much less open to volunteer groups. However, NGOs should avoid coming too close to the Committee, as they have distinct roles that should not be blurred. NGOs should be able to evaluate the Committee’s performance, as few others can do so with the same level of knowledge. The NGO community also is needed as an independent actor in discussions before Committee elections.

The Committee could, during its first years, play an important role in designing a strategic approach to the international development of children’s rights. However, for several reasons, this role is unlikely to continue. The Committee will not and should not do much more than discuss State Reports. This will change the character of the dialogue between it and NGOs. National NGOs no longer can expect to “get the queue” from the Committee. A new strategic core will develop with the hope that the NGO community will contribute to it. For this, it is important that children’s rights NGOs better coordinate themselves in the international arena.

Overall, NGOs’ experiences contributing to the reporting process are remarkably positive. They certainly have improved the quality of the discussions between the Committee and governments and have equipped the Committee to set more relevant priorities when asking questions.

The procedure itself—with NGO participation in the preparations—has on occasion served as valuable education for the members and as beneficial general knowledge for the Committee for future discussions. Who could be better teachers for a group of international experts—who run the risk of losing direct contact—than people who work with children and their rights daily in local contexts?

My impression is that NGOs also have benefited from the cooperation, apart from just the satisfaction of contributing. The Committee’s friendly and informal advice about

Overall, NGOs’ experiences contributing to the reporting process are remarkably positive. They certainly have improved the quality of the discussions between the Committee and governments and have equipped the Committee to set more relevant priorities when asking questions.

NGOs on the national level coming together in a coalition for cooperation on input has encouraged positive teamwork in many countries.

The most important NGO contribution to the CRC's implementation probably is not the direct participation in the reporting process, but rather it is using the CRC in ongoing programs and making people aware of the idea of child rights and what it means. The CRC will never be an effective instrument for children and their rights, even with 190 countries behind it, without public knowledge about its message.

In this realm, advances have been made. No other human rights treaty is so widely known as the CRC, and this mostly is due to NGOs. However, there is much more to do. The media has not responded much to the journalistic potential of issues the CRC raises. A major breakthrough has not yet come for the very idea of children's rights in school systems. In most countries, this generalized picture is relevant and is a tremendous challenge to volunteer movements.

—Thomas Hammarberg

Introduction

This paper will examine the role nongovernmental organizations (NGOs) play in U.N. human rights treaty bodies, focusing particularly on the Committee on the Rights of the Child. Although heavily dependent on information from NGOs, in most cases, interaction between NGOs and treaty bodies is inconsistent, thereby hindering effective NGO participation, particularly that of national NGOs.

Given that the Committee has welcomed NGO participation and that several creative means have been used to do so, the paper will try to distill the best practices so far and make recommendations on possible improvements, which also may apply to other areas of the U.N. human rights system.

The paper is based on interviews, a survey conducted through a questionnaire sent out to 260 NGOs and key persons active in children's rights, and relevant written materials.

Background to the Convention on the Rights of the Child (CRC)

The first international legal instrument devoted exclusively to children's rights was the 1959 U.N. Declaration on the Rights of the Child, which was more a moral than a legally binding framework.

This was followed by the U.N. General Assembly's (G.A.) adoption of the legally binding CRC (November 1989), which entered into force in 1990, after having obtained the 20 required ratifications.

The government of Poland initiated the CRC by submitting a Draft Convention by the Commission on Human Rights in 1978, just prior to the International Year of the Child (1979). After 10 years of work by governments, UNICEF, and NGOs, the first internationally binding treaty encompassing universal principles and norms for the status of children became fact and today is the most widely ratified international human rights instrument ever.⁴

Brief Overview of the Committee on the Rights of the Child (the Committee)

In this section, I briefly will describe the structure governing the relationship between the Committee and NGOs active on children's rights issues, simply referred to as NGOs. The latter can play an essential role in the Committee's work due to CRC Article 45, which calls for "other competent bodies" formal involvement to provide expert advice on the CRC's implementation.

The most important NGO contribution to the CRC's implementation probably is not the direct participation in the reporting process, but rather it is using the CRC in ongoing programs and making people aware of the idea of child rights and what it means.



Members of the Committee on the Rights of the Child make a field visit to Ecuador in 1993.

The Committee is a 10-person expert body that meets in Geneva at least three times a year. It was set up to oversee the CRC's implementation by monitoring governments and helping bring their national laws and practices into conformity with the treaty. This follows the standard U.N. human rights treaty practice⁵ of requiring State Parties to submit initial and periodic reports outlining progress made toward implementation.

As previously mentioned, apart from information submitted to the Committee from States Parties, the Committee seeks and welcomes written information and consultation from "other competent bodies" such as NGOs and individual experts. In particular, it welcomes submission of written information by national coalitions of NGOs, which may produce a "supplementary report" to the State Report or may submit information that complements or supplements the State Report, particularly in areas where the government's report lacks information.

At the end of each three-week plenary session, where formal examination of the State Report takes place, the Committee organizes a so-called private "Pre-Sessional Working Group" (WG).⁶ After advice from the NGO coordinator, the Committee will invite NGOs to these meetings. NGOs granted such access generally are those the Committee believes to have motivations and objectives with which it feels most in tune, based on written information submitted in advance.

During this preliminary review of the State Report, undertaken in the private Pre-Sessional WG, the Committee examines all available information. Then, it draws up a list of questions that is submitted to the State Party in question with a request for written responses from the State Party to be submitted to the Committee's Secretariat within two months. Responses may be translated into the Committee's working languages before its next plenary session.

During the plenaries, State Party representatives are invited to present their reports and answer Committee members' additional questions and comments, mainly based on information they received from NGOs during the Pre-Sessional WG. NGOs at the

plenary session may be part of the general audience but cannot make oral or written statements during public sessions.

Ultimately, individual Committee members' comments and recommendations are synthesized into the concluding observations, and according to the CRC, these conclusions, together with summary records and State Reports, should be made available to the public by State Parties in their respective countries.

During the plenaries, NGOs have the chance to, before or between the sessions with the government, meet informally with Committee members to provide updates, present other useful information, or comment on plenary proceedings. However, it should be understood that Committee members generally are very busy during public sessions and have limited time to meet with NGOs.

Once a year, the Committee holds a Day of General Discussion on a thematic issue,⁷ which is open to the public. During the Day, NGOs can contribute either by submitting written information or by presenting their views orally. The Day's purpose is to focus international attention on one specific aspect of the CRC and to give participants opportunities to share strategies on programs and policies to improve existing situations.

During the CRC's drafting (1983), some international NGOs set up an informal ad hoc group. This attracted many NGOs from the outset, and over time, the network has grown.

The NGO Group for the CRC brings together international NGOs directly involved in the CRC's implementation. Its principal task is to facilitate information flow between the Committee and the NGO community on both the international and national level.

The Group also tries to raise awareness about the CRC, promote its full implementation, and be an active source of information for the Committee, U.N. bodies, and other NGOs.

Several subgroups on thematic issues⁸ have been formed within the Group. In their respective fields of expertise and action, the subgroups promote international conventions; supplement national and international campaigns; draw up recommendations, policies, and strategies to raise awareness; and try to facilitate information flow among NGOs and between U.N. bodies and NGOs.

In September 1993, the Group appointed an NGO coordinator,⁹ now known as the "NGO Liaison Unit," to keep in regular contact with the Committee, secure relevant information from NGOs, and identify possible contributions from the NGO community relating to Committee agenda issues.

The coordinator can provide updated information on the Committee's work including documentation such as copies of State Reports. Much effort is put into widely broadcasting and disseminating the Committee's press releases, summary records, and concluding observations.

Through the coordinator, the Group may provide one representative of national NGOs or coalitions with limited financing¹⁰ for travel and subsistence expenses to attend the Pre-Sessional WG.

Results of the Survey

U.N. bodies are only as credible as the information and evidence that they use in their independent monitoring. The U.N. human rights system must be accessible to civil society through adequate flow of information and must provide links with nonstate actors.

Strengthening NGOs' role in the Committee's work has benefited the Committee's performance, as it has received more accurate information and has helped NGOs challenge governments to take strong political positions on issues of international concern. This section will present the outcome of the survey conducted and draw out the positive experiences of the Committee's collaboration with NGOs.

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The survey involved faxing a questionnaire (see Appendix II) to 260 out of 385 randomly selected NGOs and other organizations and individuals involved in children's rights issues. The questionnaire posed 10 questions concerning the respondent's identity, extent of interaction with and awareness of the Committee and the NGO coordinator, and recommendations for ameliorated U.N.-NGO interaction. The survey is based on the 57 (13 international, 4 regional, 35 national, 5 other) responses returned, a return rate of over 20 percent.

Results reveal that the Committee's structure, although a step in the right direction, is far from perfect. Therefore, I also will point out areas in need of improvement and suggest certain means to do so, which may be of interest and importance to the entire treaty body structure.

Although most agreed that children's rights NGOs play an important role in the work with and of the Committee, respondents' answers varied on the question about that role, depending on their philosophies and geographical locations.

Responses

The great majority¹¹ of respondents said interaction between the Committee and NGOs definitely could be a model for other treaty bodies.

In general, the interaction is considered good and fairly effective. The fact that the United Nations, governments, and NGOs all are involved and work together on various issues¹² is of great importance. All parties thought it useful that NGOs provide information on a formal basis, as NGOs play a crucial role in the CRC's implementation and give extensive and vital input to the Committee's work, more than to other treaty bodies.

Thus, this interaction could be held up as a positive precedent for future and ongoing treaty body work. NGOs have proven crucial to providing a full picture of a country's internal operation and of regional and international activity. They also provide invaluable expertise on specific issues.

However, any attempt to replicate these positive experiences of the Committee requires attention to tailoring mechanisms in accordance with each individual body's unique features.

Although most agreed that children's rights NGOs play an important role in the work with and of the Committee, respondents' answers varied on the question about that role, depending on their philosophies and geographical locations. Northern NGOs tend to play a more affirmative role than Southern ones. The latter seem to have more problems getting into contact with the Committee or, quite simply, are less aware of the the Committee's existence and mandate or of the possibility for NGOs to interact. The survey highlighted specific problems relating to Southern NGOs in questions asking how many NGOs had actual contact with the Committee, the NGO coordinator, or both.

A little less than half of the respondents had been in touch with one of the two in some fashion. The majority that had contacted the Committee had done so mostly by sharing written information, providing alternative reports, and attending the Pre-Sessional WG. Most of these NGOs perceived this interaction as considerably valuable.

Both NGOs and the Committee appreciate the chance to speak out and share information on both a formal and informal basis by submitting reports, meeting with Committee members, and participating in the Pre-Sessional WG.

NGO input generally is visible during State Reports to the Committee, and the possibility of comparing the State Party and alternative reports has created a clearer picture of children's rights actual situation. In many ways, this also has created a dialogue between the parties involved.

An NGO coordinator provides a focal point and reference source to help support and explain procedures to NGOs in preparing and submitting alternative reports. The coordinator traces NGOs capable of providing the Committee with information and ensures NGO information is taken into full account by providing advice on U.N. meeting times, structures, and any other matters of concern for NGOs when participating in U.N. meetings or dealing with the organization otherwise.

Most of those who had contacted the NGO coordinator did so to get information prior to contacting the Committee about arrangements for attending the Pre-Sessional WG.

Respondents' impressions of their contact with the coordinator were entirely positive. The coordinator seemed to provide information and played a valuable, important part in NGOs' further contact with the Committee and other U.N. bodies including regarding the acquisition of U.N. documentation.

Most of those who had not been in touch with either the Committee or the coordinator said they were not sure of the Committee's mandate, did not know with whom or how to get in contact, and had not heard about the coordinator.

About one-sixth of the respondents have attended the Committee's General Discussion Days, participating mostly through oral and written statements. In general, they believed that as these Days have become more structured and focused, their value as information-sharing fora has increased.

A surprisingly large number of those who had not participated in the Days did not know the Days actually took place. Other serious impediments include travel distance and lack of resources and time.

One-sixth¹³ of the respondents also have participated in the Pre-Sessional WG, mainly through written and oral statements. Of these, one half considered its participation free of problems, whereas the other half was not fully content.

Some difficulties that respondents pointed out regarding this interaction with the Committee include:

- NGOs' lack of familiarity with procedures established for their participation in the Committee's work and confusion regarding administrative duties.
- Inadequate time to fully address the range of issues they encountered.
- Not all members had been able to fully review submitted material.
- Not all members were present throughout each session.
- The Committee could be even more transparent in its working methods by indicating clearly what parts of its country SRs' reports could be made available.

As with the General Discussion Days, main impediments for effective participation in the Pre-Sessional WG include travel distance and lack of resources, time, and awareness that these meetings take place.

Respondents' impressions of their contact with the coordinator were entirely positive. The coordinator seemed to provide information and played a valuable, important part in NGOs' further contact with the Committee and other U.N. bodies including regarding the acquisition of U.N. documentation.



In 1993, the Vietnam National Committee on the Rights of the Child organized a national conference with provincial leaders on how the recommendations of that U.N. Committee should be implemented. Thomas Hammarberg, who participated on the panel pictured here, and Sandra Mason were among the conference participants.

Courtesy of Thomas Hammarberg

The main priority, based on the above observations, is to improve communication on all levels. Sharing information is vital; the only question is how. Developing databases and a computer network, for example through the Internet, seem to be obvious ways. The Internet would be ideal for disseminating information about treaty bodies and their mandates, U.N. documents, and newsletters. It also could be a forum for regular panel discussions. Since distance and lack of time and resources are the main impediments for participation, the Internet could be a place to exchange of information where these obstacles no longer would be the major concerns.

Another way to overcome the communication gap and strengthen U.N. links with various constituencies could be establishing national focal points for U.N. human rights information. As there is a feeling of superimposition and overrepresentation of Northern countries, these focal points could be a way to reach out to NGOs in remote regions, which feel somewhat neglected by the United Nations. Such focal points also may improve interaction, especially with grassroots organizations.

To raise human rights awareness, the focal points should provide summaries of treaty bodies' final conclusions in the national language of the State Party of concern. These then would be disseminated to the national NGOs.

Treaty body meetings could be held within State Parties outside U.N. headquarters in Geneva and New York, and liaison visits could be conducted in the various regions to further improve direct links.

National U.N. human rights information centers could be housed in the U.N. Development Program (UNDP) and in U.N. associations' and other U.N. offices. This housing plan could be the core of an important networking and information-sharing structure, which could help decentralize an international bureaucracy as huge as the United Nations.

NGOs are calling for increased access and participation, particularly in plenary sessions, but to make these things a reality, NGOs must increase coordination and interdependence among themselves. They need to make a unified proposal regarding access—including how to create a coordinated national networking system—to be truly effective and to make the best possible use of their interaction with the United Nations.

More or less, such national coalitions have successfully been created. The NGO Group and coordinator vastly support these coalitions to facilitate the entire communication and work procedure.

One-third of the respondents have been members of a national coalition or a similar structure. In general, the coalitions came together to prepare alternative State Reports, although many dissolved after the report was prepared and submitted.

Many of those in a coalition have found it difficult to work together, keep all members involved, and sort out authority levels within the group. There seems to be a problem with the organizers or group(s) in charge not keeping their promises to report back to those who contributed to the coalition's work. Hence, in many cases, the work has not lived up to earlier expectations. Some have said that sometimes the Committee invests too much trust in too few sources in each country.

Although few respondents were part of an actively functioning coalition, most saw a need for common action to gain a stronger voice and to enhance effective CRC implementation. Those who have overcome the primary organizational difficulties and internal problems of authority and division of labor have found this work method effective. The coalitions have raised awareness among participants through sharing information and creating valuable links, although they noted some difficulty maintaining such activities between the reporting stages.

NGOs might be helped and encouraged if the Committee could advise coalitions at pre-sessions to also continue to advocate and lobby as coalitions after the sessions.

International standards for monitoring and sharing of monitoring tools need to be developed. To improve the monitoring process, establishing such standards and employ-



Courtesy of Thomas Hammarberg

In 1996, the Committee on the Rights of the Child included (from left): Yuri Kolosov of Russia, Hoda Badran of Egypt, Flera Eufemio of The Philippines, Judith Karp of Israel, Akila Belembaogo of Burkina Faso, Committee Secretary Soussan Raadi, Marta Santos Pais of Portugal, Thomas Hammarberg of Sweden, Suithun Mombeshora of Zimbabwe, Paulo David of the U.N. Secretariat, and Marila Sardenberg of Brazil.

ing competent and appropriate specialists to train NGOs in implementing and monitoring standards probably are needed. Also, NGOs should know how to develop such training themselves on the national and local level.

NGOs need to be encouraged to be trained by the Committee and other treaty bodies, which need to be conduits for advice on which trainers and which training methods for various outcomes are most complimentary to their monitoring and reporting processes' needs.

For reporting procedures in general, it would help all participants if cross-referencing of the same State's Reports and consolidating reporting guidelines were encouraged. Also, the bureaucratic process should be simplified when dealing with the United Nations on meetings and reports, as these constantly confuse NGOs.

To raise human rights awareness, NGOs should ensure that reports and concluding observations are made public. They should set up meetings among NGOs to analyze those reports, which should be used in their lobby work and in monitoring implementation of the convention in question. Apart from that, NGOs should be able to make requests to governments, depending on what measures were taken to implement the conclusions, and to divide up the issues from the conclusions that are to be their areas of priority.

Several respondents and individual interviewees pointed out possibilities for U.N. human rights bodies to engage in and encourage input from research and university communities in the future, which should improve cooperation with the NGO sector. A large amount of knowledge and information is available from these communities, and it was expressed that treaty bodies have not sufficiently exploited them to the same level as individual academic researchers.

The research community seems to feel greatly shunned by NGOs. University academics tend to prefer short-term, very low-cost research that is often carried out by individual consultants whose work is not as thorough as those who have the support of a university or academic research institution. As a result, the Committee and other treaty bodies do not benefit from some of these academics' valuable work.

Increases in using the research community's work and collaborating with universities would not necessarily mean a heavier workload for the United Nations. Instead, these communities would broaden the organization's knowledge base, building a solid theoretical foundation for any concrete action. If treaty bodies embraced the research community as a serious partner, on par with NGOs, the academic world may help meet specific research needs relevant to their work, while giving treaty bodies a great return.

Creating "committee scholars" is one possible way to improve interaction. Although unpaid by the United Nations, these scholars could research questions of importance to

If treaty bodies embraced the research community as a serious partner, on par with NGOs, the academic world may help meet specific research needs relevant to their work, while giving treaty bodies a great return.

U.N. bodies and the NGO community through their respective academic institutions.

Another possibility is establishing travel funds, as was done for the CRC Pre-Sessional WG.¹⁴ Such funds allow many NGOs to physically participate in U.N. meetings, which, if time and money allow, probably is the best way to interact.

Seminars for funding agencies could be held, and a funding agency coalition to oversee allocating financial support could be established. It probably would help those involved in the implementation process to synchronize work agendas with other treaty bodies in terms of implementing recommendations and promoting interaction between treaty bodies.

Conclusion and Summary Recommendations

There is an overall recognition that NGOs and U.N. bodies are starting to work together more effectively in a mutually beneficial partnership. However, as outlined above, there is need to improve this interaction.

With potential changes in the U.N. human rights structure in mind, such as the proposed merger of the various treaty bodies into one, the following is a brief summary of the recommendations stated earlier in this paper. The following conclusions and summary recommendations are based on the survey's responses.

- NGO participation with U.N. treaty bodies should be formalized through a procedure allowing NGOs to retain a distinct, independent approach to the Committee and remain critical when necessary. This could be done by holding formal NGO meetings with treaty bodies, such as the Pre-Sessional WG with the CRC, at which NGOs should submit written and oral presentations for Committee members' consideration.

- Written information prepared by NGOs should have the same status as a State Report. The provision of NGOs so-called "alternative reports" to the CRC is useful, because they are equivalent to State Reports although from another source.

- To facilitate treaty bodies' work in general, reports should follow a certain format. Hence, the United Nations should consolidate clear reporting guidelines on how to submit written information and structure its content.

- To improve and facilitate NGO participation and interaction, U.N. bureaucratic processes need to be simplified by implementing reporting guidelines and clarifying meeting structures and procedures. Because NGOs travel great distances to provide members with additional information in person, it would help if NGOs were allowed to speak on a one-to-one basis with country

rapporteurs after the private meetings with the entire Committee in its Pre-Sessional WG.

- To further facilitate the U.N. bodies' work as well as that of the parties submitting reports, a State should encourage the cross-referencing of its reports. Also, treaty bodies' agendas should be synchronized.

- Reports submitted to treaty bodies, as well as the Committee's conclusions, should be made public and accessible to all in States in question.

- National focal points should be established to act as liaisons between U.N. human rights treaty bodies and national and regional NGOs. These should provide national NGOs with translated summaries of the treaty body's conclusions on the State Report of concern. Treaty body members should be the ones to make the liaison visits to the various regions.

- Consideration should be given to having treaty body meetings take place within State Parties rather than in Geneva or New York.

- NGO liaison officers, such as the NGO coordinator on the rights of the child or a similar office, should be established to help and support NGOs in their contact with U.N. treaty bodies and to keep regular contact with the United Nations.

- National and thematic NGO coalitions should be formed on a more permanent basis to increase coordination and interdependence by an NGO networking system. This would further and ameliorate NGOs' input and interaction with the United Nations. Treaty bodies should support establishing such coalitions by encouraging and advising NGOs.

- International monitoring standards and sharing of monitoring tools ought to be developed. Treaty bodies should encourage and advise NGOs on how to develop training locally.

- Communication should be improved by using data bases and a computer network, such as the Internet, for disseminating information and for regular panel discussions between human rights collaborators.

- The United Nations should arrange and organize regular meetings, similar to the CRC's General Discussion Days, as a way to share information on thematic issues.

- To further broaden the U.N. knowledge base, the research and university communities should be engaged and encouraged to work with U.N. human rights treaty bodies as sources of information complimentary to data provided by NGOs. Also, instituting committee scholars should be considered, as they could, through their academic institutions, research questions of importance to U.N. bodies and the NGO community.

■ Travel funds, similar to the one for attending the CRC Pre-Sessional WG, should be established to enable NGOs to physically participate in U.N. meetings, which the NGO community well desires.

■ A funding agency coalition should be created to oversee allocation of finances, and seminars for funding agencies should be held to raise their awareness of human rights.

Collaboration among the various actors involved in human rights has been and continues to evolve to a greater extent every day. As nonstate parties, NGOs play an important, vital role in this regard.

The need for improvements to facilitate the interaction process and for greater implementation of human rights standards is widely recognized.

NGOs should play an even more pertinent role in treaty bodies' work, but to do so, they must agree on methods to make this interaction efficient.

In this paper, I have sought to identify existing best practices and possible improvements which may be considered in facilitating and ameliorating the relationship between U.N. treaty bodies and nonstate collaborators such as NGOs. ■

Thomas Hammarberg was a member of the U.N. Committee on the Rights of the Child from 1991-97. In 1996, he was appointed U.N. special representative of the secretary-general for human rights in Cambodia. Mr. Hammarberg also is ambassador and special adviser on humanitarian issues to the Swedish Government.

Anna Edman was an intern for The Carter Center Human Rights Program in 1996. She earned a law degree at the University of Lund in Sweden, at which she studied human rights at the Raoul Wallenberg Institute for Human Rights and Humanitarian Law.

NGOs should play an even more pertinent role in treaty bodies' work, but to do so, they must agree on methods to make this interaction efficient.

ENDNOTES

¹ Article 45a.

² Article 45b.

³ Article 44.6.

⁴ By Oct. 31, 1996, 187 countries had ratified the CRC.

⁵ The CRC itself also regulates submission of periodic reports.

⁶ The Pre-Sessional WG takes place after a plenary session to prepare for the Committee's next session.

⁷ For example, children in armed conflict, economic exploitation of children, the family's role in promoting children's rights, juvenile justice, and children and the media.

⁸ For example, child labor, sexual exploitation, refugee children, children in armed conflict, children in conflict with the law, education in the media, adoption, family placement, and leisure and play.

⁹ In October 1995, the position's name was changed to "CRC/NGO Liaison Officer."

¹⁰ A special fund, partly financed by contributions from Swedish Sida, is created to cover travel expenses.

¹¹ Yes = 43, NO = 2, Do not know/No answer = 12

¹² Not only in the drafting of the CRC and the various reporting procedures but also in the evolving work of the Committee and child rights; e.g., in developing the Optional Protocol on Child Soldiers, the complementary model of the draft Hague Convention on the Protection of Children.

¹³ Most of these are the same as those that have participated in the General Discussion Days.

¹⁴ For participation in the CRC Pre-Sessional WG, a travel fund was established to enable NGOs to physically participate. The intention is to extend this fund in 1998 to also cover other types of meetings.

APPENDIX I

Fax Cover Sheet For Questionnaire

Date: Sept. 30, 1996

Number of pages (including cover sheet): 6

To:

Fax:

From: The International Human Rights Council
at The Carter Center

Fax: +1-404-420-5196

Phone: +1-404-420-5181

The International Human Rights Council at The Carter Center has undertaken an initiative to strengthen human rights NGOs' role at the United Nations. Council Member and Ambassador Thomas Hammarberg is requesting your assistance with the project. In this context, we are sending the attached questionnaire, the purpose of which is to conduct an inquiry specifically into NGOs and the U.N. Committee on the Rights of the Child. This may allow us to determine whether or not NGO interaction with the Committee could serve as a model for other treaty bodies and to

distill best practices of NGO-Committee relations.

The overall project's final result will be a compilation of best and worst practices of the U.N.-NGO partnership including recommendations for improvement in key areas. These findings and recommendations will be forwarded to high-level U.N. and government officials for their consideration in the context of current U.N. efforts to review the possible expansion of NGO access to global policy fora.

We would very much appreciate if you could take a few minutes to complete the questionnaire, at the latest by Oct. 11, 1996, and return by fax to:

Attn.: Anna Edman / Helena Nygren Krug, Human Rights Program, The Carter Center.

Fax: +1-404-420 5196

Phone: +1-404-420-5181

E-mail: hnygren@emory.edu

Thank you for your assistance.

APPENDIX II

Questionnaire:

NGOs and the U.N. Committee on the Rights of the Child

1) Nature of work for the organization

a) Name of organization:

b) Name of national affiliate:

c) Description of organization's status (i.e., national NGO, regional NGO, international NGO with regional affiliate, etc.):

d) Nature of work:

General questions: (Please feel free to use additional space on a separate sheet.)

2) How would you, in general terms, describe the role NGOs play in the work of the U.N. Committee on the Rights of the Child?

3) Has your group ever contacted the Committee or the NGO Group on the CRC (NGO Coordinator in Geneva—please specify which)?

a) If no, are there any specific reasons why? (Please continue with Q. 6.)

b) If yes, what was the nature of your contact?

c) Do you perceive this interaction/relationship to be of a positive nature? Why or why not?

d) What are the best practices of this interaction? (i.e., What specific gains can you cite as a result of your work at the United Nations? How has the Committee benefited from your work?)

4) Have you participated in the Committee's General Discussion Days?

a) If yes, please cite examples of effective work and type of participation (i.e., written statement, oral statement, or lobbying).

b) If no, what impediments prevent you from participating?

5) Have you participated in the pre-sessional meetings of the Committee?

a) If yes, please cite examples of effective work and type of participation (i.e., written statement, oral statement, or lobbying).

b) If no, what impediments prevent you from participating?

6) How could the effectiveness of your relationship/interaction with the Committee have been improved? What were the problems?

7) Are you or have you been a participant of a national coalition of NGOs that work together with the Committee?

a) If yes, how are/were you working? With what are/were you working?

b) Do you find the work and tasks effective? (Why or why not?)

8) Do you have any ideas of how NGOs—international, national, or regional—could work more effectively to implement or monitor the Committee's concluding observations on country reports?

9) Would increased access of regional, national, and local NGOs enhance the work of the Committee?

a) If yes, please explain how.

b) If no, please explain why not.

10) Do you think NGO interaction with the Committee could be a model for other U.N. treaty bodies?

a) If yes, how? (i.e., What necessary instructions/mechanisms would be needed, etc.?)

Please feel free to add any additional comments. Thank you for your consideration and time.

APPENDIX III

List of Questionnaire Respondents and Interviewees

- African Centre for Democracy and Human Rights Studies,
the Gambia
- Alfredsson, Gudmundur, Professor, Raoul Wallenberg Institute,
Sweden
- Appropriate Health Resources and Technologies Action Group
(AHRTAG), United Kingdom
- All Ukrainian Committee for Children's Rights, Ukraine
- Anti-Slavery International, United Kingdom
- Asia-Pacific Centre for Human Rights and the Prevention of
Ethnic Conflict, Australia
- Blythe-Kibota, Fiona, U.N. Centre for Human Rights, Switzerland
- CIET International, United States
- Central Union for Child Welfare, Finland
- Centre of Concern for Child Labour, India
- Centre for Social Research, India
- Centro de Desarrollo Juvenil y de Familia (CDJF), Honduras
- Child Accident Prevention Trust, United Kingdom
- Child Violence Identification and Prevention Project,
United States
- Childhope Foundation International, United States
- Children in Scotland, United Kingdom
- Children's Rights Office, United Kingdom
- Children's Rights Ministry, South Africa
- Childrights International Research Institute, USA
- Christian Children's Fund, Europe Office, Switzerland
- Community Development Library (CDL), Bangladesh
- Concern for Children and Environment, Nepal
- The Consultative Group on Early Childhood Care
and Development, United States
- Cumbernauld YMCA-YWCA, United Kingdom
- Dansk Ungdoms Fællesråd/The Danish Youth Council (DUF),
Denmark
- Defence for Children International, Bolivia
- Defence for Children International, Cameroon
- Defence for Children International, United Kingdom
- Deutscher Bundesjugendring, Germany
- Diakonisches Werk, der Evangelischen Kirche in Deutschland,
Germany
- EPOCH Worldwide, United Kingdom
- First Children's Embassy of the World "Medjashi,"
Republic of Macedonia
- Fundación PIDEA (Foundation for the Protection of Infancy
Damaged by States of Emergency), Chile
- Fundacao Carlos Chagas, Brazil
- Human Rights Watch, Children's Rights Project, United States
- ICI Geneva
- Institute of Child Health, Department of Family Relations
- International Federation of Social Workers, Switzerland
- International Centre of Films for Children and Young People
(CIFEJ), Canada
- International Federation of Social Workers, United States
- International Federation Terre des Hommes
- International Social Service, Switzerland
- Kind en Samenleving, Belgium
- Melander, Göran, Professor, Raoul Wallenberg Institute, Sweden
- Milne, Brian, Consultant Researcher and Advisor
for Children's Rights, United Kingdom
- NEERGAURAV Research and Development Foundation, India
- National Children's Rights Committee, South Africa
- NGO Group for the Convention on the Rights of the Child,
Switzerland
- OMEP-U.S. National Committee, United States
- OZ Child: Children Australia Inc., Australia
- RCT/IRCT, Denmark
- Redd Barna/Save the Children, Norway
- Red Barnet/Save the Children, Denmark
- Salaam Baalak Trust, India
- Save the Children Alliance
- Save the Children, Canada
- Save the Children, Denmark
- Save the Children, Norway
- Save the Children, Romania
- Save the Children, United States
- Scottish Child Law Centre, United Kingdom
- Secretariat National Aboriginal Islander Child Care (SNAICC),
Australia
- SocioLegal Aid Research and Training Centre, Greece
- Theytaz-Bergman, Laura, CRC/NGO Liaison Officer, Switzerland
- Tomasevski, Katarina, Raoul Wallenberg Institute, Sweden
- U.K. Committee for UNICEF, United Kingdom
- Unitarian Universalist Service Committee, United States
- United Church of Christ, Office for Church in Society,
United States
- Women's World Summit Foundation (WWSF), Switzerland
- World Federation of United Associations, Switzerland

NGOs AND SPECIAL PROCEDURES OF THE U.N. COMMISSION ON HUMAN RIGHTS

by Helena Nygren Krug

The Commission on Human Rights (the Commission) can undertake ad hoc or extraconventional activities consisting of the establishment of three different types of individual bodies—special rapporteurs (SRs), special representatives, and independent experts—as well as one collective mechanism—the working group (WG)—to investigate human rights situations or other specific questions in particular countries or areas. This paper will examine, mainly by analyzing a survey's results, the role nongovernmental organizations (NGOs) have played in carrying out the mandates of the Commission's various special procedures.

Background

The Economic and Social Council's (ECOSOC), Resolution 1235 (XLII) (June 6, 1967) authorized the now parent body of special procedures, the Commission, and its subsidiary, the Sub-Commission, to examine information relevant to gross human rights violations contained in communications. It said, "The Commission on Human Rights may, in appropriate cases, make a thorough study of situations which reveal a consistent pattern of violations of human rights ... and report with recommendations thereon, to the ECOSOC." An increasingly intricate special procedures structure has gradually been established to deal with different types of human rights violations.

In general, appointed SRs compile reports using all resources at their disposal. They examine communications sent by individuals or NGOs and can request a country visit if they believe it is appropriate. Such visits enable SRs to verify facts reported to them, meet the authorities' representatives, gather evidence, visit detention centers, and so forth. The compiled (or completed) reports are then submitted to the Commission, which examines, publishes, and circulates them without restriction. However, the Commission seriously lacks constructive debate on the reports.

Special procedures are playing an increasingly important role in initiating measures to prevent or remedy human rights violations in urgent cases.¹ They illustrate how NGOs are sometimes placed on equal footing with governments and are clearly integrated as

equal players. For example, an NGO exposes facts against a government that then responds to the group or SR. The latter sends this information to the source of the allegations, who may supply further observations or information. The WG on Arbitrary Detention is the only group that makes formal findings in individual cases. Other WGs refrain from this activity, although they have shifted from being nonjudgmental in all respects to making country-specific observations in situations with general problems.

At a June 1994 meeting, all SRs and experts serving on Commission WGs, made an appeal "to NGOs whose work and information is crucial to human rights protection and to the effective discharge of our own mandates to continue providing us with relevant information and ideas ... We invite NGOs to meet with us, particularly during our consultative meetings in Geneva and on mission."² The Commission has applauded the increasing number of NGOs establishing working relations with the thematic procedures without specifying which type of NGOs, thereby pointing to the erosion of any restricting criteria.³

The Commission is purely political and has no power to make binding decisions. The Commission's and its subsidiary bodies' nonjuridical nature means that the sources of information involved (NGOs) acquire legal status only by virtue of their crucial role in the mechanisms' procedures.

NGOs are confined to submitting formal written or oral statements to the Commission, although much of their most effective input comes from the informal lobbying that takes place. Numerous documents issued as part of the NGO series contain allegations of human rights violations in Member States in all parts of the world. These reports form a substantial part of the oral debate under various agenda items and play an important role in deciding which situations should be scrutinized, for example, by an SR. Even though NGOs are restricted to making brief statements per agenda item, the large number of groups wanting to speak has caused a serious clogging of the system. Since the 1996 Commission session, speaking time was reduced to five minutes for NGOs, although governments retained the original 10-

The procedure by which the Commission considers experts' work in preparing reports on individual countries or specific topics should be reviewed and improved. As the new system's main political body for human rights' global protection, the Commission could streamline its work by being more flexible and increasing transparency in its deliberations.

minute time limit. The impact of NGO oral statements is limited, especially since the statements often take place late in the session, after most governments have left. NGO written statements cannot be placed on government officials' desks. NGOs often are subject to governments' accusations that they are politically motivated or that information in their reports is inaccurate. NGOs have no recourse to respond publicly or seek redress. When NGOs do commit abuses during their participation in the Commission, neither the U.N. Centre for Human Rights (the Centre) nor the Commission are in a position to discipline them.⁴

The Commission has asked governments to refrain from acts of intimidation or reprisal against anyone who cooperates with U.N. human rights bodies and has requested the special procedures body to put in place mechanisms to guarantee the security of NGOs and individuals who give information. Since 1990, measures, such as the rapid intervention procedures of addressing an urgent communication with the government concerned to ensure the protecting NGOs or individuals, have been instituted,⁵ although they have had limited success.

The Commission has received much criticism regarding its efficacy. There is a strong tendency to hold NGOs responsible for the Commission's problems with organizing its work.⁶ former U.N. Secretary-General Boutros Boutros-Ghali, recognizing the need to streamline the Commission's work and consequently the work of SRs, special representatives, and WGs, proposed to reform its structures.⁷ This would involve several improvements, including giving substance and form to dialogues between NGOs and governments, that are more in consonance with the ideal underlying this fruitful partnership. The procedure by which the Commission considers experts' work in preparing reports on individual countries or specific topics should be reviewed and improved. As the new system's main political body for human rights' global protection, the Commission could streamline its work by being more flexible and increasing transparency in its deliberations. Ultimately, plenary sessions should be shorter, less cumbersome, and possibly more frequent. In between the plenaries, special sessions or meetings of an intersessional body with power to act in emergency situations would make it easier to keep in touch with current human rights violations throughout the world. NGOs have an important role to play in all of these proposals, and creative ways need to be devised to enhance their effective participation in them.

In this context, it is worth noting the numerous ideas in addition to those proposed by the secretary-general. Some of these include the idea for the sometimes highly politicized, arcane Commission debates to give way to more attractive meetings of sessional WGs; for plenaries to be reserved for official statements; and for formal adoption of the subsidiary bodies' deliberations. These subsidiary bodies might review the roles of SRs, special representatives, and NGOs.

Another respondent proposed establishing a formal public hearing procedure by which local and international NGOs and individual victims could be invited to present oral and written testimony on certain agenda items.⁸ The Commission could be divided into several panels which could receive information both from countries being considered (such as Cuba, Guatemala, Haiti, Iraq, or Sudan) and through various thematic procedures (such as those on torture; disappearances; and extrajudicial, summary, and arbitrary executions). The WG on Enforced or Involuntary Disappearances, which holds sessions in Geneva and New York and in which local NGOs and victims are invited to participate, could serve as a model for this panel division.

Ideas and Comments From the Survey

In September 1996, The Carter Center's Human Rights Program sent a survey to all U.N. SRs, WGs, independent experts, and special representatives regarding their relationships with NGOs.⁹ This section of the paper will analyze the responses received and will draw out some conclusions and recommendations.



Kathryn Kolb

Bacre Waly N'Diaye, U.N. special rapporteur on extrajudicial, summary, or arbitrary executions, attended the 1996 meeting of The Carter Center's International Human Rights Council. Gay McDougall is seated next to him.

Regarding the question about NGOs' role in carrying out the Commission's special procedures mandates, everyone responded that NGOs are essential. In fact, it seems that NGOs constitute the primary, sometimes even the sole, source of information for this. Thus, we can safely conclude that NGOs are indispensable to the Commission's work.

The SR on violence against women described NGOs' role as particularly important for providing substantive information (general background, specific country information, individual allegations), publicizing and disseminating SRs' reports and recommendations nationally and internationally, and lobbying specifically on violence against women. In general, recent SR mandates reveal a more open approach to NGO contact. For instance, the SR on contemporary forms of racism calls on all NGOs and the press to supply information.

The SR on Zaire explained in his 1995 report that NGOs can only play their fundamental role if they prove capable of voicing feelings of victims and aspirations of those who have devoted their lives to the struggle for freedom and human rights.¹⁰ This, the SR added, requires not only vocation, efficiency, and professional skill but also investigation and ongoing follow-up of each case. It also requires national coverage, essential technical elements, and scrupulous accuracy in setting out facts and presenting statistics. All legal remedies available under Zairian legislation, however limited, must be exhausted. The SR obligates international NGOs to provide maximum technical and other assistance to Zairian NGOs, which operate under trying conditions.

No respondent indicated any specific or set criteria for selecting which NGOs to meet with during country visits. All said they would talk with any NGO relevant to their mandate, although they had different methods of communicating the SR's presence to the country he/she was visiting. The independent expert on Guatemala, for instance, announces her visits in newspapers, so everyone has a chance to make an appointment. So far, she has not refused to meet with anyone. Indeed, most of her "private agenda" during missions is dedicated to meeting with NGOs.

Some SRs rely on the Centre, whose staff accompanies the SR to set up meetings. The Centre in turn often relies on the U.N. presence in the country concerned (most often the U.N. Development Program (UNDP) or other U.N. agencies) and on colleagues who have visited the country with other SRs. SRs also use contacts already

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Given U.N. human rights bodies' limited fact-finding capabilities, assessing reliability of information received from NGOs is of major importance.

formed with organizations that have supplied information relevant to the mandates in providing counterparts' addresses in the countries concerned. Human rights commissions of the country concerned sometimes are used to supply lists of relevant NGOs with which to meet. It seems that a wide spectrum of NGOs are approached, particularly by country-specific SRs, who admitted to meeting even with "extremist" groups pretending to be working on human rights in order to gain a clear picture of the country's overall human rights situation.

If country-specific SRs cannot visit the country concerned, meetings are held elsewhere, as in the case of the SR on Cuba, who has seen every NGO that requested a meeting in New York for the past five years.

The questionnaire's results also point to the tentative conclusion that there may be a relationship between NGOs' role in lobbying for and creation of a mandate and its evolving effectiveness and outreach. For instance, mandates tainted with political bias because they were created primarily out of States' political interests rather than by NGOs tend to be weaker in NGO input and cooperation. Similarly, mandates resulting from intense NGO lobbying often have greater credibility and operate more effectively.¹¹

NGOs indirectly proposed the SR on torture's mandate through the Secretariat, but in 1983, a conference convened by the Swiss Committee Against Torture (now the Association for the Prevention of Torture) mooted the idea. The following year, the assistant secretary-general for human rights repropose the mandate to the Commission, which, as a result of an extensive campaign by Amnesty International in 1984-85, finally established it in 1985.

The emergence of national NGOs as lobbyists also has contributed to the establishment of more recent mandates such as the SR on racism, which many national African-American NGOs actively pursued. The SR on violence against women was appointed largely due to effective lobbying at the U.N. World Conference on Human Rights (1993) by NGOs active in women's human rights. Diverse NGOs may join forces to lobby for SRs' appointments. For example, an unusual ecumenical alliance of Quakers, the World Council of Churches, and later, Caritas Internationalis, drew on their experiences as humanitarian organizations working with refugees and displaced persons in the field to lobby extensively for the mandate of the U.N. secretary-general's representative on internally displaced, who was appointed in 1995.

Given U.N. human rights bodies' limited fact-finding capabilities, assessing reliability of information received from NGOs is of major importance. Similarly, selecting NGOs with which to collaborate hinges on how to determine the credibility of their information. Some criteria have developed in this regard, which also may apply to information received from other sources. Most respondents highlighted the value of established international NGOs that have gained reputations for providing reliable, well-researched information.¹² For less familiar NGOs, experience was a factor contributing to distinguishing good from bad information. The SR on extrajudicial, summary, or arbitrary executions, for instance, noted his NGO experience enables him to form an opinion on each source's credibility. Other criteria that respondents cited include:

- Personal interviews during country visits.
- Political party affiliations and political bias in information (as evidenced by indicators such as excessive sloganeering or abusive language toward political opponents).
- International contacts' levels and quality.
- Seriousness of information, i.e., amount of information the source contains concerning the purported victim's or victims' particulars (full name, age, place of residence or origin, profession, marital status, etc.) and the precision level of the incident's circumstances (date, place, description of how the event occurred, etc.).
- Reliability of surrounding information based on the source's past experiences.

- Consistency of information internally.
- Consistency of information with data received on other cases from countries in question.

One respondent noted a "golden rule" of having a minimum of three sources, one of which may be the press. Another mentioned the usefulness of building a core network of NGOs and relevant grassroots groups as corroborative sources, because these groups have provided reliable information since the mandate's beginning. The network in particular could help find such sources. Some also mentioned diplomatic community and religious missions as corroborative possibilities.

The SR on extrajudicial, summary, or arbitrary executions outlined in his reports to the Commission several ways to assess the information sources' credibility. The main criterion applied in evaluating allegations was the degree of detail they contain about the victim and the incident's circumstances. Where doubt persists, the SR will continue to seek corroboration of allegations from other sources of undisputed credibility. The extent to which information received from governments on their replies is taken into account when evaluating credibility will increase as the latter are informed of the replies' contents and are invited to provide comments and/or additional clarifications in follow-up procedures. Government information that clarifies or sheds new light on NGO-reported facts does not adversely affect a source's credibility, nor do general accusations about the source's motives or reliability. Another basis for SRs' assessment of reliability is the way in which a source of allegations responds to the SR's request for comments on the contents of governments' replies and/or for additional details to clarify their cases.

Where an office is based in a country of concern, such as the Centre for Human Rights in Bujumbura for the SR on Burundi or the office in Phnom Penh for the special representative on Cambodia, questions of verification and reliability are less problematic.

For country-specific SRs, particularly those who are unable to visit countries or those having difficulties receiving direct information through NGOs in the country concerned, most of the data came from larger NGOs based in the Western Europe or North America. In those cases, information tended to be secondhand and often did not include data from rural and remote areas. In all cases, SRs said that most local NGOs do not have clear understandings of SRs' mandates. Sometimes, government officials of a country being monitored under a country-specific mandate also do not clearly comprehend the mandates. Often, NGOs do not sufficiently recognize human rights as an objective to prevail over political or ethnic allegiances. This lack of understanding what human rights are and how they can be used effectively to improve people's lives at the grassroots level seriously impedes U.N. human rights mechanisms' functioning.

Respondents said it was problematic when the mandate's substance did not cohere with States' national laws. Some mandates were mentioned as being problematic, as they may contradict national legislation. These include the mandates for the SR on the independence of judges and lawyers; the SR for extrajudicial, summary, or arbitrary executions in some countries (where the death penalty is implemented); and the WG on Arbitrary Detention. Most other mandates concerning rights and freedoms are reflected in each nation's legal system.

The United Nations' standing in the country concerned may influence the degree of interest in a relevant thematic or country-specific procedure. For instance, groups that visited Azerbaijan and Armenia (1995-96) expressed keen interest in those countries' independent experts, thanks to the United Nations' prestige and standing in these two new States, which had met in armed conflict and where a cease-fire had been translated into a peace settlement.

More recent mandates, such as those for violence against women and contemporary forms of racism, have increased interaction with national and grassroots NGOs, as many

Respondents suggested using the Internet to its maximum capacity as a way to increase NGOs' awareness of how to provide data relative to the Commission's special procedures. They said that information should be disseminated on the mandate/reports/reporting form for allegations through electronic NGO networks, both regional and national.

"mainstream" NGOs have not devoted extensive resources to tackling these issues.

Respondents suggested using the Internet to its maximum capacity as a way to increase NGOs' awareness of how to provide data relative to the Commission's special procedures. They said that information should be disseminated on the mandate/reports/reporting form for allegations through electronic NGO networks, both regional and national.

Another problem concerning mandates' substance was NGOs' need to submit information that falls within each mandate. For instance, the SR on violence against women requires all information to be gender-specific and therefore, cannot process information received that is not gender-specific. To overcome this, the SR devised a two-page document outlining the reporting format for allegations and attached it to her last report. It then was sent out to NGOs that regularly supply her with information and/or documentation. In this mandate's first year, a questionnaire was sent to governments, U.N. bodies, and NGOs questioning receipt of relevant and selected information from the wealth of existing materials. Some NGOs that have offered to prepare background papers for the SR on specific aspects of violence against women have sent out detailed questionnaires through regional and national networks, which have solicited numerous responses.

The WG on Forced and Involuntary Disappearances effectively increased access of local and national NGOs by publishing explanations in French, English, and Spanish on how information can be forwarded to it. Also, it held sessions away from Geneva and New York in Costa Rica and Argentina to facilitate contacts with Latin American NGOs. However, when reporting cases, some of its language has been restricted when identifying its primary role "as a channel of communication between families of the disappeared and the governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements."¹³

The SR on extrajudicial, summary, and arbitrary executions listed several activities to increase awareness of the mandate including holding press conferences; distributing questionnaires to NGOs; conducting conferences, seminars, workshops, and field missions; developing a fact sheet on the mandate and providing information on the Internet. Another way to heighten awareness would be to widely circulate a fact sheet summarizing how to set out the SR's or other mechanism's work methods, urgent appeals procedures (if applicable), procedures on receiving information on individual cases and practices of torture, country visits, and reporting procedures.

The SR on Burundi applauded the idea of having a suboffice of the Centre for Human Rights in Bujumbura as an effective way to disseminate human rights information. The SR, who may only visit the country two or three times, or even never, throughout his mandate, cannot, in his opinion, contribute to greater awareness.

Responses varied on whether and if so how NGOs could better ensure compliance with recommendations outlined in reports to the Commission.

One respondent suggested the Commission could pass a resolution outlining NGOs' role in following up recommendations. However, many respondents doubted NGOs could play a greater role in ensuring compliance with report recommendations, particularly country-specific ones. Civil war in Burundi, for instance, precluded any possibility of this role, as NGOs' simple survival already is miraculous. Otherwise, the lack of access to reports for local NGOs repeatedly was mentioned as a major problem hindering use of the information in a real sense. In any case, recommendations cannot be used effectively without NGOs being effective leaders in civil society.

Civil society's evolving maturity, the growing awareness of the role each NGO must play in that society, and some strong assertions in SRs' reports sometimes have pushed forward NGOs' importance and weight in human rights. Mayan organizations in Guatemala are good evidence of this, according to that country's independent expert.



Nigel Rodley, U.N. special rapporteur on torture, is a member of The Carter Center's International Human Rights Council.

Billy Howard

Recommendations cannot exist in a vacuum but can be used to further human rights by nationally active NGOs. Hence, respondents underlined the need to translate recommendations into local languages, which is particularly important for country-specific mandates, where reports should be made available in the major local languages of the country concerned. The SR on Zaire's report, for example, could be translated into some of that country's principal official languages such as Lingala, Kikongo, Swahili, and Tshiluba. At least a summary of the report or a list of the recommendations (five pages maximum) should target a wider population. Concerned governments, international funding agencies, or the UNDP should take responsibility for financing it.

The SR on violence against women considered it instrumental for NGOs to enter into regular dialogue (through discussion fora,

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etc.) with governments to "oversee" implementation of the recommendations. NGOs could, through constituencies and/or "partnerships," substantively assist governments in implementing recommendations (e.g., prepare training materials, etc.). At the Commission's following sessions, they should follow up with oral and written statements any real progress in implementing the SR's recommendations.

SRs could serve as champions of national NGOs when they are interacting with individual governments. The secretary-general's representative on internally displaced, for instance, having noted the Peruvian government's hostile attitude toward NGOs, strongly recommended that the government consult and cooperate with the NGO and human rights community. He urged government officials—including the president—to address the needs of the poor, marginalized communities, and in particular, the internally displaced.¹⁴

The SR on contemporary forms of racism noted a positive example of how national NGOs in France used copies of his report in their efforts to curb aggressive legislation restricting immigration. Creating NGO coalitions is an effective way for NGOs to monitor and ensure compliance with recommendations (e.g., two such coalitions were formed to monitor elections in Cambodia, and the special representative recommended the government constructively relate to such NGO initiatives).

One idea for a way to increase NGOs' efficacy was to train NGOs to influence and reach out to the media. Effectively conveying messages to the media and translating fact-finding into news for the general public could reform NGOs' role.

In short, it appears that national NGOs are in a better position to ensure and lobby for implementing recommendations made to improve a country's human rights situation. International NGOs play a greater role in lobbying at the Commission.

Most respondents indicated no direct relationship between NGOs participating at

In general, the lack of funds poses a serious impediment to NGO participation in U.N. human rights mechanisms. ... One way to promote a better understanding of the U.N. human rights machinery among national NGOs is to institutionalize funded internships at the Centre for Human Rights in Geneva for national NGO directors.

the Commission and NGOs interacting with their mandates, although some of the older, more established mandates dealing with gross civil and political rights violations believed otherwise. The tendency for mandates to interact with great regularity with NGOs participating in Commission and Sub-Commission meetings was less due to formal reasons and more because such NGOs, as a result of being in Geneva, are able to meet with SRs and staff at the Centre. These NGOs also tend to be more aware of U.N. human rights machinery's existence and operation methods.

Most respondents said they were in direct contact with NGOs based in developing countries, although there were several gaps, particularly regarding thematic mandates and local African NGOs. As to whether and how they should enhance access of grassroots NGOs by U.N. machinery, most respondents said the objective probably is not to enhance access in numerical terms but rather to increase NGOs' influence on proceedings. One way to do this might be to forge networks among NGOs similar to those created on children's rights by the NGO Coordinator. NGO activity organized by the NGO Coalition on the Committee of the Rights of the Child—a Geneva-based NGO office which organizes national coalitions of children's NGOs in the relevant country prior to the Committee's examination of the country's report—has proven very effective. Similar coalition-building could be useful to SRs' mandates.¹⁵ Another example is the Women's Caucus at the Commission and Sub-Commission, which is effectively tackling the problems of lack of interaction and information between international and national NGOs. One respondent suggested reorganizing the SR system, especially NGOs' and victim groups' input.

Francis Deng, the secretary-general's representative on internally displaced, identified a wide spectrum of NGOs active on this issue, although operating on very different premises. Due to NGOs' different specializations and lack of coordination, they are now fragmented and inefficiently coordinated. Efforts to bring them together, such as by the WG on Displaced Persons, seem to be extremely beneficial for networking and coordination purposes; exchange of ideas, experiences, and expertise; and rapid mobilization for providing assistance to the displaced and for when they themselves feel threatened.¹⁶

In general, the lack of funds poses a serious impediment to NGO participation in U.N. human rights mechanisms. Although some voluntary funds exist, such as those established for the Decade on Racism allowing NGOs actively combating racism to participate in relevant U.N. mechanisms, governments have not been keen on contributing to them. One way to promote a better understanding of U.N. human rights machinery among national NGOs is to institutionalize funded internships at the Centre for Human Rights in Geneva for national NGO directors.

According to some, grassroots organizations have never been efficient in politics. To maximize grassroots mechanisms' impact on access to U.N. mechanisms, participants should receive pre-session training. The International Service for Human Rights in Geneva regularly organizes training for NGOs and distributes handbooks on participating in U.N. human rights mechanisms. Some respondents said wider access should be determined in accordance with specific needs/subjects (e.g., very positive indigenous peoples' organizations experience in drafting the U.N. Declaration on the Rights of Indigenous Peoples). A temporary solution would be to "formalize" national NGO representatives' participation in international NGO delegations (an increasing practice which, however, runs contrary to the principles of U.N. rules and regulations). One respondent proposed instituting a structure similar to the International Labor Organization in which civil society organizations are presented, suggesting formal NGO representation. This, which should inspire changes at the Commission, was considered a necessity. Another interviewee suggested reinstating an experiment tried several years ago in which, during Commission meetings, SRs would engage in briefing sessions and collective dialogues with NGOs and national representatives on subjects relevant to particular mandates.

Most respondents saw value in establishing U.N. human rights information focal

points at regional and/or national levels to disseminate information about U.N. human rights mechanisms, particularly for local and national NGOs. One respondent wrote, "It is not realistic to pretend to disseminate or promote human rights just from an office based in Geneva." Most international NGOs, with which special procedures mostly deal, already have networks at the national and regional level. However, over time, national and regional NGOs are increasingly becoming major players.

Such a focal point could be housed in an agency devoted to coordination, such as the local U.N. association, which might welcome such an addition to its mandate. However, many respondents raised doubts about such associations' neutrality and effectiveness, preferring to use the national UNDP office or U.N. information centers. A human rights information focal point could transmit the parts of the thematic reports relevant to national NGOs and, for country-specific reports, it could transmit summaries translated into local languages.

Several respondents expressed skepticism about regional offices, as these may not bring about closer links in practice, despite increased geographical proximity. One SR warned about the risk of U.N. staff at the regional and national level getting entangled in local politics, as experienced by the World Health Organization's regional offices, particularly given human rights' sensitive nature. Their main skepticisms about national offices concerned the United Nations' financial crisis and the lack of funds for such a proposal.

Given that the major problem and concern seem to be lack of information, another respondent proposed launching an outreach campaign focusing on the widest possible dissemination of information on special procedures' operations and NGOs' role.

Conclusion

Due to the scarcity of resources available to the Commission's special procedures and the overwhelming evidence that NGOs are essential to human rights work, serious consideration should be given to adopting more effective ways to work with NGOs. To do so, both the United Nations and NGOs should develop methods to make their relationship more effective and worthwhile. The U.N. Centre for Human Rights recently underwent a major restructuring, now basing the Commission's special procedures in the Programs and Activities Branch. It is hoped that increased coordination within the Centre will serve to streamline its work and make more efficient the use of its limited resources. NGOs should consider a similar review of their activities to ensure maximization of existing resources, including through increased collaboration and coordination. NGOs have an opportunity to elevate their status in the U.N. human rights system, if they organize themselves according to this new structure and join forces with each branch's sections. For instance, more specialized NGOs could be harnessed to buttress the high commissioner's efforts in major activities such as treaty implementation (professional groups), ad hoc investigation (groups representing victims and relatives), technical cooperation projects (groups whose members may be relied upon to furnish people who can deliver technical assistance), and monitoring.¹⁷

Centre staff need to be alerted to the importance of NGOs' work. Some staff have no experience in field work or working with a human rights NGO, and some even have diplomatic affiliations with governments that have favored restricting NGO access to U.N. fora.

The special procedures themselves have wisely resisted any pressure to formalize their own working methods. It is precisely their flexibility that has enabled thematic procedures to respond effectively to changing government strategies aimed at covering up abuses.¹⁸ However, as the survey revealed, there are many adjustments that can be made to improve the work. Regular consultation with NGOs, especially local and national ones, with a view to improving their relationship, including effective communication and information dissemination, is important. Increasing circulation of reports' summaries translated into local languages also is crucial. Increasing national and regional NGOs'

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presence in U.N. human rights activities calls for a consideration of ways to reach out to NGOs and bring them on board in an effort to promote and protect human rights at all levels. Establishing national focal points for human rights information seems a natural step for a system seeking to become more democratic, transparent, and decentralized. The recent completion of the ECOSOC review of Resolution 1296 governing consultative arrangements with NGOs, the restructuring of the Centre, and the debates on reforming the Commission all are signs of the time. NGOs must seize this moment, ensuring it becomes an opportunity to enhance their important role as the eyes, ears, and conscience of the international community in the global promotion and protection of human rights. ■

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ENDNOTES

¹ Out of them, eight may react effectively—the WGs on Forced Disappearances and Arbitrary Detention; the SRs in summary executions, torture, religious intolerance, freedom of expression, contemporary forms of racism, and independence of the judiciary.

² E/CN. 4/1995/5.

³ The Commission's mandates, which the ECOSOC endorses, authorize thematic mechanisms "to seek and receive credible and reliable information from governments, the specialized agencies, and intergovernmental and nongovernmental organizations."

⁴ "Report of the Secretary-General." GENERAL REVIEW OF CURRENT ARRANGEMENTS FOR CONSULTATIONS WITH NGOs. E/AC. 70/1994

⁵ The meaning of a threat or intimidation, as seen in the special representative on Myanmar's country visit, is not clear, as the government denied being threatening or intimidating when it urged people not to meet with the special representative. See Guillet, Sara. "Nous, Peuples des Nations Unies—L'action des ONG au sein du système de protection international des droits de l'homme." Paris: Editions Montchrestien, E.J.A., 1995, 128.

⁶ In 1994, the Commission decided to create an intersessional WG to discuss rationalizing its work methods. Decision 1994/111, March 11, 1994.

⁷ Introduction by Boutros Boutros-Ghali to the United Nations and Human Rights 1945-1995. *The United Nations Blue Book Series*, Vol. VII. UNDPI. DPI/1676 ISBN 92-1-100560-4.

⁸ Recommendation by Michael Posner of the Lawyers Committee for Human Rights.

⁹ I wish to thank the following people for their valuable comments and insights provided through the questionnaire: Bacre Waly N'Diaye, SR on extrajudicial, summary, or arbitrary executions, and his assistant, Imma Guerras; Nigel Rodley, SR on torture and other cruel, inhuman, or degrading treatment, and his assistant, Ian Seiderman; Radhika Coomaraswamy, SR on violence against women, and her assistant, Maarit Kohonen; Maurice Glélé-Ahanhanzo, SR on contemporary forms of racism, racial discrimination and xenophobia, and his assistant, Daniel Atchebro; Carl J. Groth, SR on Cuba; Maurice Copithorne, SR on the Islamic Republic of Iran; Francis Deng, the secretary-general's representa-

tive on internally displaced persons; Roberto Garréon, SR on Zaire; Paolo Pinheiro, SR on Burundi; Thomas Hammarberg, the secretary-general's representative on Cambodia; Monica Pinto, independent expert on Guatemala; Hugh Templeton, former independent expert on Armenia/Azerbaijan; Mohamed Charfi, former independent expert on Somalia; Abid Hussain, SR on freedom of opinion and expression, and his assistant, Marc Moquette.

¹⁰ E/CN. 4/1995/67

¹¹ Ironically, the first established thematic procedure owes much to the skillful diplomacy of Argentina's military dictatorship in the late 1970s. Pressure on the United Nations to investigate the fate of the thousands of disappeared in Argentina led to a proposal to create a commission for this. Argentina effectively argued that such a mechanism would be discriminatory. Thus, the WG on Disappearances was established, with a mandate to investigate all over the world.

¹² For example, Amnesty International sends more than 500 such communications covering thousands of cases to U.N. special procedures every year. Statistics from 1995 on the WG on Arbitrary Detention showed 74 percent of the cases it took up in 1994 were brought by international NGOs, 23 percent by national NGOs, and 3 percent by families.

¹³ "Question of Enforced Disappearances." Commission on Human Rights Resolution 1995/38.

¹⁴ "Report of the Representative of the Secretary-General, Francis Deng." E/CN. 4/1996/52/Add. 1, paragraph 109.

¹⁵ A Columbia University human rights conference, scheduled for March 24-26, 1997, in Budapest, Hungary included a workshop of religious human rights NGOs, with a view to establishing a coalition of such NGOs. The coalition will establish a data base to help U.N. SR on Religious Intolerance Abdelfatah Amor of Tunisia address violations of principles embodied in the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

¹⁶ "Report of the Representative of the Secretary-General, Francis Deng." E/CN. 4/1995/50/Add. 1, paragraph 97.

¹⁷ Idea of John Pace, chief of the Research and Rights to Development Branch of the U.N. Centre for Human Rights.

¹⁸ Kamminga, M.T. "The Thematic Procedures of the U.N. Commission on Human Rights." *Netherlands International Law Review*, 1987, 299.

NGOs IN THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

by Ashley Kushner

The Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission) is one of the most direct links between the United Nations and human rights advocates. Nongovernmental organizations' (NGOs) work undergirds all its aspects. The Sub-Commission, dubbed a human rights "think tank," serves as a forum for exchanges between governments, NGOs, recognized movements of national liberation, and other U.N. bodies and intergovernmental structures. Because, in theory, the Sub-Commission is a body of experts, its mission and mandate are not guided by the same political points of departure as other U.N. organs. Hence, the Sub-Commission is the most hopeful body under the Economic and Social Council (ECOSOC) for factual, intellectual debate on human rights themes and violations.

Because of its potential for objectivity and depoliticization, the Sub-Commission is a source of promise for NGOs wishing to be heard and affect change, and its direct contact with delegates is unparalleled in the U.N. human rights system. Although the relationship between governments and NGOs is not always harmonious, the Sub-Commission's performance depends on their exchanges. Therefore, improving the Sub-Commission's structure and suitably defining its *raison d'être* can only enhance human rights NGOs' role. It is of paramount importance to focus on NGOs' access, successes, and impediments to efficiency at the Sub-Commission, because of the possibility for high NGO impact there.

Background

Before initiating a study of the Sub-Commission in its present form, it is important to look at it in the historical context of the United Nations. The adoption of the Universal Declaration of Human Rights (UDHR) in 1948 marked a watershed in the history of internationally recognized human rights. Following this, the United Nations began drafting the rest of the International Bill of Human Rights including the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; and the Optional Protocol to the Civil and Political Covenant. The two Covenants and the Optional Protocol were

adopted in 1966 and came into force in 1976. The United Nations promulgated several dozen other more specific human rights treaties relating to, for example, race discrimination, discrimination against women, torture, and children's rights. These treaties are principally implemented by expert groups such as the Human Rights Committee and the Committee on the Rights of the Child. Treaty bodies are distinguished from the Charter-based bodies of the United Nations including the Commission on Human Rights and its only Sub-Commission.

The ECOSOC

U.N. Charter Article 62 empowers the ECOSOC to prepare draft covenants for the U.N. General Assembly (G.A.) and call international conferences on human rights matters. Charter Article 68 further enumerates the ECOSOC's role by charging it to establish a commission in the economic and social fields to help the ECOSOC deal with human rights issues. The Commission on Human Rights (the Commission) and the Commission on the Status of Women (CSW) were subsequently established to deliberate and debate on human rights matters. The ECOSOC reviews all proposals with financial implications. Although largely a technicality, the ECOSOC must ratify Commission and CSW resolutions for G.A. consideration.

The Commission

Established by the ECOSOC in 1946, the Commission is the main U.N. body dealing with human rights issues. The ECOSOC elects 53 members to the Commission, each for a three-year term, who meet annually. The Commission is purely political and has no power to make binding declarations. It monitors existing international standards, recommends new international human rights standards, investigates violations, submits proposals for new human rights-related programs and policies, provides advisory and technical services to countries needing assistance in protecting human rights, and pursues other related objectives.¹ Also, it performs tasks and functions assigned to it by the G.A. or the ECOSOC.

At its first session, the Commission set up the Sub-Commission on Prevention of Discrimination and

Protection of Minorities to assist and enhance its mandate. The Sub-Commission's mandate has not been formally revised since 1949.

Part I: The Sub-Commission

Like the Commission, the Sub-Commission undertakes studies. It then forwards recommendations to the Commission—its parent body—and to the ECOSOC. Despite its subordinate status, the Sub-Commission functions with relative autonomy. In light of the UDHR, its studies spring from issues related to human rights and fundamental freedoms, and they concern preventing discrimination and protecting minorities. The studies cover a broad range of topics and functions including identifying specific human rights violations. Some are preparatory to setting standards, others seek to clarify more precise interpretations of standards already adopted, and some aim to promote or implement specified rights.² The Sub-Commission also performs tasks and functions assigned to it by the ECOSOC or the Commission.

Rules

The Sub-Commission operates under the ECOSOC's Rules of Procedure of Functional Commission, which also guide the Commission. As the expert body directly subordinate to the Commission, the Sub-Commission was established to provide "expert" analysis of human rights issues. Because Western States feared an overly activist human rights approach by the United Nations, neither the Commission nor its Sub-Commission named specific countries as violators (except South Africa and Israel) before 1975. Consequently, studies initially adopted by the Sub-Commission did not include country specifics, and they highly restricted the use of NGO information. Instead, the studies were global in nature, and it was agreed that they would concentrate on occurrences of discrimination that were "typical in nature of general tendencies." Special rapporteurs (SRs) wrote country monographs, but these were not published.

Methods of preparing such studies were laid down in 1954 in connection with a study of discrimination in education. By the mid-1950s to the mid-1960s, East-West confrontations that plagued the Sub-Commission in its early years lessened, due to an increased Third-World involvement and an intolerance for confrontations.³ The process of naming countries and specific human rights abuses gradually developed into the present open debate under Resolution 1235 (see the section below on Resolution 1235). Although studies' content is very different today than in the 1950s and 1960s, the same basic guidelines still govern their methods. Information sources for studies include governments, the U.N. secretary-general, specialized agencies, NGOs, and recognized scholars and scientists.⁴ Today's studies are far less comprehensive (country monographs were officially eliminated in 1974) and less focused on basic norms-setting, which has largely been accomplished. Studies are not staffed by the U.N. Centre for Human Rights (the Centre), and there is no substantive support for SRs and others who prepare the reports.

Composition

The Sub-Commission comprises 26 members who are elected regionally and serve four-year terms. Although nominated by governments and elected by the Commission, members act in individual capacities, not as representatives of their States. The requirement that members should be independent experts is vague, and no formal criteria has been established to evaluate nominees. The Sub-Commission holds one annual, four-week session, usually in August, and pre-session working groups (WGs) one to two weeks in length.

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Working Groups (WGs)

Sub-Commission WGs deal with particular agenda items or themes in greater detail. They are composed of at least one representative from each of the five regions into which the Sub-Commission is divided. Currently, the Sub-Commission has three permanent working groups:

- 1) Communications.
- 2) Slavery.
- 3) Indigenous populations.

Sessional WGs meet during the Sub-Commission's annual meeting to consider particular agenda items, including rights of the detained or imprisoned and encouragement of universal acceptance of human rights instruments, as well as the question of persons detained on grounds of mental ill-health. Each WG submits a report to the Sub-Commission for consideration, after which the Sub-Commission may choose to adopt its own resolution or formulate a draft for the Commission and/or the ECOSOC. This division of labor has helped streamline the Sub-Commission and has provided a key area in which NGOs can concentrate their limited resources.

Aside from the WG on Communications, WGs are open to participation by observers and provide effective fora in which NGOs can present their findings. It is in these fora that NGOs arguably have had their biggest impact on human rights standards and mechanisms. NGOs greatly have influenced draft resolutions, which are often thematic in nature. NGOs in consultative status with the ECOSOC have contributed greatly to the WGs' accomplishments, which are often more organized than the Sub-Commission's regular meetings, and offer a more permanent platform for key issues than the sessional agenda items. WGs enable specialized NGOs to participate in specific agenda items in much greater depth than the regular session. WGs' less confrontational nature provides a space in which NGOs can voice allegations to governments more subtly and in which States can respond with less publicity.⁵ WGs then forward the reports to the Sub-Commission for consideration of further action.

WG on Communications (1503 Procedure)

Because of this WG's importance and secret nature, a closer look at its functions is necessary. The WG on Communications' work is extremely important to NGOs but remains one on which official information is scarce. ECOSOC Resolution 1503 (1970) authorizes the Sub-Commission to establish a permanent WG to consider communications containing allegations of human rights abuses and bring to the Sub-Commission's attention violations that reveal consistent patterns of gross and reliably attested to violations. This WG consists of no more than five members and meets in private for no more than 10 days before the Sub-Commission commences. Aside from appropriate Secretariat officials, its sessions are completely closed. Three out of five members must vote in favor of forwarding a communication to the Sub-Commission for consideration.

Strict rules guide communications' admissibility. Allegations are examined based on written communication alone. Communications may come from a person or group of people who have direct and reliable knowledge of a violation and who are presumed to be victims of that alleged violation. They also may come from NGOs acting in "good faith." In other words, NGOs are required to not "resort to politically motivated stands contrary to the provisions of the Charter," nor exclusively rely on reports from the mass media. Anonymous communications are inadmissible, but an author may request that his/her name not be released to the government in question. Communications are inadmissible if the allegation's language is considered abusive, politically motivated, or directly insulting to the State in question.

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Dominic Lopez

NGOs participate in the 1997 session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Many argue that the Sub-Commission should follow the same standards as the Commission, but the Sub-Commission's WG on Communications continues to shroud itself in secrecy, albeit not as intensely.

Initially, communications are divided among the WG's five members. First, only one member views them. Then they are subjected to majority rule. Procedure 1503 has presented a recurring challenge to NGOs by governments and Sub-Commission members. The rules guiding both NGOs that file communications and WG members who examine the alleged violations are vague. Without explicit regulations, members may oppose communications at will. Communications emanating from NGOs' research or prepared by attorneys often prove the most successful, due in part to U.N. experience and exposure specifically to the Sub-Commission. Although more information is emerging, 1503's secrecy has in some ways been an obstacle to advocates in gaining adequate knowledge about the function and effect of confidential communications.

Information regarding the WG on Communications is much more forthcoming now than during its early years. In 1978, the Commission altered 1503's character when it announced the names of those governments that had been subjects of discussion (although they did not publicize the discussions' contents). This allowed accused governments the chance to respond during its closed meetings and granted the Sub-Commission access to confidential records of its meetings on 1503 matters. In 1984, the Commission revealed whether it had decided to pursue communications involving a particular country. This led to the new governments of Argentina, the Philippines, and Uruguay successfully acquiring records of past 1503 proceedings pertaining to their own human rights violations and releasing them to the public.⁶ Under the U.S. Freedom of Information Act, one now may obtain data on the United States' position on communications filed against it and its responses to those communications. Many argue that the Sub-Commission should follow the same standards as the Commission, but the Sub-Commission's WG on Communications continues to shroud itself in secrecy, albeit not as intensely.

Loosening 1503's proceedings has directly affected human rights NGOs. Because little formal guidance exists for human rights activists and victims on how to prepare effective communications, advocates need to know whether governments are responding to communications and what the Sub-Commission has decided to do with any received communications. The Procedure's increased openness has helped NGOs learn how to better prepare communications. Adversely, it has allowed governments more opportunity to influence Sub-Commission members, which has had the unwanted effect of politicizing

The Sub-Commission was charged with preparing studies that drew on information gathered from "all available sources." In other words, the Sub-Commission's mandate could not be fulfilled without NGOs' assistance.

the Sub-Commission's work. It also greatly tests WG members' independence; indeed, instances have occurred where members have alerted their respective States to discussions that have transpired in confidential meetings. Although the WG's final decisions are often known in advance, the mechanics on how and why decisions are reached are elusive. Thus, because they appear in print before sessions begin, countries cited in regular Sub-Commission sessions hardly come as surprises.

The secrecy of 1503 is counterproductive to protecting human rights advocates and to allowing governments to respond thoughtfully to violations and accurately analyze accusations. Although many question whether WG's clandestine nature benefits the promotion or protection of human rights, confidentiality is highly important. If NGOs were given more guidance on how to better author a 1503 communication, and if communications were not left to the sole discretion of the group member reading it, pressure could be alleviated from the WG's members. It is important that confidential information that may harm the same people the communication is attempting to protect is not covertly revealed. Confidentiality need not cause surreptitiousness. If procedures for evaluating communications were more transparent, NGOs could better evaluate the most effective and meaningful type of intervention for each instance. This way, NGOs would gain a clearer sense of whether to use the confidential 1503 Procedure or enter into public debate at the Sub-Commission. More formalized procedures for dealing with alleged violations contained in confidential communications would depoliticize the Sub-Commission, making it a more competent and impartial tribunal.⁷

Resolution 1235

ECOSOC Resolution 1235 (1967) provides the basis for public discussion of agenda items at Sub-Commission sessions and marks the most major expansion of the Sub-Commission's mandate and an overall strengthening of U.N. human rights mechanisms. In 1965, due to NGO demands for the United Nations to assume a more active role in responding to violations and under pressure exerted by African States and Sub-Commission experts, the U.N. "no-power doctrine" was broken. The Commission decided to examine petitions about human rights violations in South Africa's apartheid regime. On June 6, 1967, the United Nations passed Resolution 1235, authorizing the Commission and its Sub-Commission to establish an agenda item to examine communications relevant to "gross violations of Human Rights and Fundamental Freedoms," and to undertake "a thorough study of situations" that reveal a "consistent pattern" of human rights violations and then report their findings to the ECOSOC. Precedents were soon set indicating that human rights violations need not be on par with those of South Africa in order to indict certain countries.

The Sub-Commission was charged with preparing studies that drew on information gathered from "all available sources." In other words, the Sub-Commission's mandate could not be fulfilled without NGOs' assistance. To aid in studies, SRs, special representatives, and experts are appointed ad hoc to chart and monitor human rights themes and violations in particular countries. Because 1235 did not provide a mechanism for considering communications, 1503 was established. Now, 1235 is the basis for the Sub-Commission's open debates.

NGO Statements

During plenary debates, interventions, adoption of resolutions, and discussions of thematic items occur. At the open session, NGOs in consultative status may submit written statements pertaining to agenda items. Depending on an NGO's category of accreditation, study reports must not exceed 2,000 words (Category I) or 1,500 words (Category II or Roster). The Secretariat makes the final decision on whether to circulate statements. (Written statements concerning violations in a State not listed on 1235's

agenda may not be circulated.) No action is taken on statements considered to be "complaints."⁸

Rules concerning oral statements are not as clear, as there are no guidelines for NGOs to follow. NGOs may speak only at the Sub-Commission's invitation and cannot challenge the Sub-Commission's chair. NGO statements often are brief, due to time restrictions. As the sessions progress and the Sub-Commission gets pressed for time, the time afforded to NGOs decreases. No formal right of reply exists for NGOs, even if attacked by another participant. The ECOSOC reserves the right to withdraw an NGO's consultative status if States determine that the groups' activities are "politically motivated in a manner inconsistent with the U.N. Charter (see the article by Ryan and Wiseberg in this publication). An intervention's high visibility at the Sub-Commission allows NGOs to make impacting statements and hear direct and timely government responses. However, because politically sensitive issues are bound to create confrontational situations, NGOs should resist making statements that are purely political without being grounded in human rights principles, lest they take on an essentially statist character of governments and thereby politicize the proceedings. It is important to qualify this assertion by saying that States should not regulate this aspect, as such a role could be too easily abused, but that NGOs themselves should see that such an approach is in the best interest for their long-term effectiveness.

Ill-framed statements or inappropriate interventions can damage an NGO's particular cause as well as the credibility of the human rights NGO community, but inexperienced NGOs have difficulty crafting statements. If an NGO is not well-known, a brief self-description at the statement's beginning helps. NGOs benefit by giving texts of their oral statements to translators before the sessions and by notifying delegates from those countries to which the statements pertain (especially if the delegates are not Sub-Commission or Commission members). NGOs also may wish to contact the press if a statement is particularly newsworthy.⁹

International NGOs with Sub-Commission experience can gain skills in framing effective oral statements and then can offer guidance to Southern NGOs. Some organizations have instituted successful liaison programs with national and local NGOs, but more information-sharing and experience-exchanging is needed. Although established NGOs must not dictate national NGOs' actions, more coordination among the human rights community would be beneficial. Too often, the prestigious international NGOs have set the human rights agendas, particularly in the United Nations. Improving all NGOs' statements' quality at the Sub-Commission would raise the entire human rights NGO community's standards and credibility, making it more difficult for governments to turn a deaf ear. Because the majority of NGO activity surrounds violations, the caliber of interventions is extremely important and can lead to the appointment of an SR or special representative or to the establishment of a WG. WGs in particular serve not only to investigate specific allegations of abuse but also to find underlying causes that threaten fundamental human rights guaranteed by the UDHR.

In addition, when governments make allegations against other governments, the Sub-Commission becomes politicized. Governments that do so contradict both NGOs' and the Sub-Commission's work and turns the Sub-Commission, an expert body, into a political forum much like the Commission. This could be placated if the structure of governments' exchanges was more systematized. Statements should not be limited, and rules should not be more restrictive. Rather, procedures should be more standardized. NGOs should be the only participants able to make allegations, allowing ample time for governments to respond. It has been suggested that Sub-Commission members be given the chance to ask questions and clarify statements as well as time to draft proper reports on the basis of the collected information, including some type of evaluation. As a first step to a more normalized procedure for evaluating interventions, Commission-requested reports could remain unevaluated and factual.¹⁰ Governments wishing to make allegations

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against other governments in the Sub-Commission would have to work with NGOs. Intergovernmental allegations would go through bona fide NGOs with established records of fair, objective fact-finding missions. These NGOs therefore would act as depoliticized filters. As a result, the NGO-State relationship would be more professional and transparent.

1503 vs. 1235

It is vital to understand both protocol options 1503 and 1235 for interventions, as NGOs often must choose between these two courses of action at the Sub-Commission. Depending on an allegation's nature, 1503's confidential proceedings may be more suitable than 1235's public ones, or vice versa. If an NGO files a confidential communication, it may face objection from governments or Sub-Commission members if the communication is then discussed publicly in 1235's regular session. It also may be construed as a violation of 1503's confidential proceedings. Because the Sub-Commission's annual session is high-profile, with international press in attendance, exercising 1235 and publicly engaging a State may galvanize attention and support for a human rights violation claim. On the other hand, because so many statements are made during the session, allegations may not receive proper attention, and States may provide only cursory responses.

Because 1503 is incremental and more formal, States that take their human rights record (and public image) seriously are unlikely to ignore a 1503 communication that a WG forwards to the Sub-Commission, Commission, or the ECOSOC. A communication pending at the Sub-Commission may be more likely to induce a State to engage in a dialogue or begin altering the situation for fear of U.N. action. Threats of international scrutiny and condemnation may be taken more seriously than a public outcry by an NGO at the Sub-Commission. Confidential communications have preceded many country-oriented actions. However, 1503 is cumbersome, complex, vulnerable to political influences, and inappropriate for obtaining effective U.N. action on time-sensitive human rights violations.¹¹

The technology revolution has played a major role in exposing human rights violations. Situations are frequently brought to light on the global level before being formally recognized at the United Nations, which has contributed to the lack of shock when countries are named as violators at the Sub-Commission. As a result, a precedent has been set allowing a particular situation's confidential communications to be referred to in the open session as long as the confidential procedure's results are not mentioned. This precedent has made public debates more superficial. Thus, rather than serving as fora for substantive exchanges, the debates now serve as mere formalities. Because all Sub-Commission recommendations submitted to the Commission or the ECOSOC must be part of the Sub-Commission's plenary, NGOs sometimes make statements solely to get them on record.

Informal Activity

Much activity takes place outside the Sub-Commission's official proceeding. NGOs circulate information through both written and oral statements and directly address Sub-Commission members and delegates who are willing to listen. These exchanges benefit all parties' work. Many discussions' high caliber and openness often bring situations to light before the agenda is established. Informal interaction between Sub-Commission members and NGOs helps facilitate the drafting of resolutions, which are essential for NGOs, as only Sub-Commission members can introduce resolutions. The following section of this paper is based mainly on interviews and will explore both formal and informal NGO activity at the Sub-Commission to assess how structural changes in the Sub-Commission and reforms of the Sub-Commission's mandate affect NGO participation.

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Part II: Best Practices and Reforms

Interviews

The Sub-Commission holds a unique place in the United Nations. Its openness to and dependence on NGO information and dialogue creates a multidimensional space for examining human rights instruments and standard-setting mechanisms. General reform of the Sub-Commission is inextricably linked to NGOs' workings at the Sub-Commission, but some characteristics of the Sub-Commission are distinctive to NGOs' role and performance. Because the Sub-Commission relies on accurate information and reliable accounts by NGOs, NGOs have a responsibility to those whose voices cannot be heard directly at the United Nations. The Sub-Commission uses many channels of information including confidential communications, WGs, SRs, and special representatives. Due to a lack of funding and institutional inadequacies, each of these sources depends on NGOs for their own field work and academic research.

As stated previously, much of the Sub-Commission's substantive work results from informal procedures coupled with proactive interpretations of the elusive mandate and its guidelines. This has led to a host of differing views and opinions on the Sub-Commission's purpose and efficacy. In interviewing NGOs, delegates, and Sub-Commission members on the Sub-Commission's overall functioning and on NGOs' specific role, a vast array of experiences and ideas for potential reforms have emerged. Because interviews are based on personal feelings and Sub-Commission encounters and do not necessarily represent specific NGOs' or States' positions, names have been withheld.

These following suggestions reflect the brainstorming of people who are most directly involved with both the Sub-Commission and the NGO community and who hold a working knowledge of U.N. human rights organs. Admittedly, some NGOs have contributed to politicizing the Sub-Commission by using the Sub-Commission process to advance purely political causes, but these few exceptions do not represent the goals or practices of the human rights NGO community at large, for which the focus is promoting human rights principles. Silencing these voices would constitute an erosion of NGO rights and a rollback in the human rights field. While opinions on best practices differ, it is important that current best practices are maintained and expanded. The ideas generated from these various points of view represent an effort to streamline the Sub-Commission and increase NGO effectiveness.

Why the Sub-Commission?

Many view the Sub-Commission as the foremost U.N. standard-setting instrument. Unlike the Commission's formality and world conferences' single-event fervor, the Sub-Commission allows items to be discussed more openly and hold a greater permanence on the U.N. human rights agenda. Because of the Sub-Commission's ability to self-reform, there is hope that changes made by the Sub-Commission will actually be implemented and enforced. All interviewees stressed that the Sub-Commission should not duplicate the Commission's or other U.N. organs' work. However, there were several points of view regarding the type of work and projects that the Sub-Commission should take on. These opinions reflect the varying interpretations of the Sub-Commission's foggy mandate.

In 1980, the Sub-Commission requested its name be changed to "Committee of Experts on Human Rights" to reflect its broadened mandate. No action has been taken on this matter, due in part to a joint proposal that the Sub-Commission should report directly to the ECOSOC. Some believe this would overstep the Sub-Commission's mandate. Greater coordination between U.N. human rights organs, including the Sub-Commission and the Commissions, will only increase NGO effectiveness by cutting costs incurred by duplicated work such as fact-finding missions.

Because the Sub-Commission relies on accurate information and reliable accounts by NGOs, NGOs have a responsibility to those whose voices cannot be heard directly at the United Nations.

Direct NGO Benefits

The Sub-Commission offers a useful entry point and training ground for NGOs. An NGO can witness the political dynamic, the vernacular, and the division of labor within the U.N. human rights system and can experience the mechanics of international law. The Sub-Commission is one of the few places where collective statements about human rights themes and cases are made. Compared to the Commission's intergovernmental forum, the Sub-Commission provides a space for frank NGO statements and is open to experts. Also unlike the Commission, the Sub-Commission each assigns each seat and desk with a slot for its name which it keeps for the session's entire duration. Although the Commission allots more seats for NGOs, retaining seats at the Sub-Commission allows governments and other organizations to quickly identify by name each participating NGO, which is especially important for first-time participants.

On a less procedural side, the Sub-Commission is a useful liaison and contact for NGOs. National and local NGOs constantly try to increase meaningful participation, and the networking that occurs in sessions and WGs provides a sense of community and offers a place for NGOs—that may not have much direct contact with other human rights organizations—to be heard. Interviewees also experienced greater availability of documents than in other U.N. meetings. Many of these documents are left at the back of the room for NGOs to freely peruse and copy. Overall, the Sub-Commission accepts distribution of oral and written information.

NGO Statements

Certain NGOs and Sub-Commission members believe that too many statements are made during the open session, which decreases their impact. One solution for this, which is becoming increasingly popular, is using umbrella statements that pair local and national NGOs (that may or may not have consultative status) with international NGOs that have the resources and experience to appear at the Sub-Commission. Some regard umbrella statements as a boost to free speech, while others think they subvert the system. Several international NGOs are apprehensive about taking a lesser known NGO under their banner for fear of losing credibility. International NGOs have difficulty depending on national and local NGOs, as their credibility relies on the reliability of their information. NGOs in repressive situations are often suspected of being politicized. However, other members of the human rights community, including some international NGOs, regard this suspicious attitude as antithetical to NGOs' spirit and to the Sub-Commission itself. While some single-issue NGOs do appear at the Sub-Commission, they are not the norm. This study's sources represented both views.

Although there are potential problems with them, umbrella statements are economical and can provide NGOs that cannot appear at the Sub-Commission a voice of advocacy. Interviewed NGOs that were apprehensive about umbrella statements remarked on the need to share information within the NGO community. Scores of human rights NGOs exist that want to speak and be heard, but they have either limited resources or urgent and/or time-sensitive issues with which to deal. It is important and beneficial to the human rights community that NGOs from developing countries believe that they have a space in which and an avenue by which to present their findings. One source said international NGOs often do not represent people on the ground or grassroots level, out of both necessity and hegemony. However, this source also pointed out some international NGOs that have created successful partnering programs and that provide training representatives to smaller, less established NGOs or those without advocacy experience in the United Nations.

Group statements are similar to umbrella ones. If properly employed, they can foster coordination and cooperation in the human rights community and can increase NGO access to the U.N. system and NGOs' level of influence at the Sub-Commission. One interviewee pointed out the effectiveness of NGO group statements that have come out

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of NGO fora at world conferences. At those conferences, NGOs devised a common agenda, which augmented their influence. Another source suggested that NGOs could concentrate on a few thematic items to help pool resources, stop duplicating fact-finding missions and other efforts, and focus the Sub-Commission's attention on establishing a WG on their issues. All interviewees believed the WG offered much in both intellectual exchanges and substantive work.

However, an overabundance of NGO statements can be counterproductive to the efficiency of the Sub-Commission. Group statements would provide an avenue that would benefit inexperienced and international NGOs and Sub-Commission proceedings. Advocating "self-discipline" in the NGO community is dangerous if it results in limiting speech in a meaningful way, but formulating more group statements does not limit the pluralism that is so vital to the human rights community. Some suggested that problems of finance and short attention spans could be alleviated by limiting all participants speaking time in Sub-Commission sessions. Others said more discipline should be given to NGOs when they abuse the system. For example, some NGOs have delivered the same speech three times, each for a different agenda item. However, NGOs that do so are the exception. At any given session, such "abuses" are common but not pervasive. Still, such behavior does not bode well for the Sub-Commission's credibility, as some governments claim that the Sub-Commission exists only for NGOs and perceive NGOs as a waste of time.

Several changes could be made to the current procedures to improve NGOs' ability to impact the Sub-Commission. These would involve an exchange of rights and duties. One interviewee suggested increasing plausibility by limiting the number of speeches an NGO can give at any given meeting (perhaps to three) and restricting NGOs to not making the same speech more than once. In compensation for these limitations, NGOs would gain certain privileges such as the right to submit reports for placement on a meeting's official record. Short summaries of these reports would be given at the open session, with the complete information included in the official record.

Others disagreed with these suggestions, arguing that Sub-Commission members can decide to whom they listen and that wasting time is always preferable to limiting free speech. Those who advocate expanding such best practices firmly believe that once NGOs receive consultative status and are deemed bona fide by the ECOSOC, no forms of discipline should emerge from other NGOs, lest NGOs act as governments. Some interviewees were wary about formalizing NGOs' relationship with the United Nations, instead viewing informal procedures as the best way to set standards. Others believed that NGOs had to rely on informal contacts to prove their seriousness—those NGOs that had proven themselves as bona fide information sources were heard and respected. Some NGOs expressed the valid fear that any discussion of the NGO relationship to the U.N. system may result in the unintended consequence of curtailing NGO rights. Such forward-looking reforms would enrich NGOs' work and hard-won respect and would increase inclusiveness for NGOs that lack access to informal contacts or networking.

Right to Information

Interviewees commonly viewed lack of information as a constant problem for NGOs in the United Nations. Specifically in the Sub-Commission, NGOs should be able to receive information about what is to be discussed before Sub-Commission meetings and should have access to draft forms of considered and established resolutions. All research should be compiled in a notebook left in the NGO lounge for easy access. If this were done, NGOs would be more informed, and less time would be wasted during meetings.

Lack of information hinders NGOs' knowledge of studies. One interviewee noted that although NGOs can find out the authors and topics of studies in progress, they cannot always learn the studies' contents. One incident occurred where a study was not made available until half-way through the session, probably indicating the United

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Nations' general funding problem and SRs' and special representatives' lack of institutional support. Another source criticized that Sub-Commission members sometimes do not take reports of the studies and WGs into account during 1235 proceedings.

Alternate Fora

The idea of creating other types of fora (besides WGs) for exchange, was met with both trepidation and enthusiasm. Some believed an official forum for exchange between NGOs and delegates was unfeasible and undesirable, noting that governments already have hostile attitudes toward NGOs and that further institutionalizing them would not be welcomed. Others said that too many fruitless fora and meetings already take place.

Some sources responded similarly when asked about appointing an ombudsperson. Some thought an ombudsperson would not be effective because the Sub-Commission's greatest problems are due to politicization, and an ombudsperson would simply get trapped in the same paradigm. However, others thought the idea of such an appointment was worth exploring, noting U.N. sessions are incredibly dense and often unhelpful, so any new ideas on how to conduct fora are good. Setting aside time to meet, deliberate, and respond to particular agenda items would help streamline the Sub-Commission's process. Most interviewees thought that currently, there is no time during the regular session to discuss substantive issues. Ad hoc fora could increase interested parties' chance to benefit from NGO expertise by reserving discussion time. For example, after an NGO presents its research to the Sub-Commission, it, along with others working on the same issue, would remain available for a few hours for those interested in further discussion. This also would help NGO coordination.

For the most part, interviewees agreed that training sessions and orientations for NGOs on how to function effectively within the United Nations were better left to the NGO community to organize at will, rather than being U.N.-sponsored programs.

Timing

Some criticized the Sub-Commission's August session as being too close to the end of the Commission's April session. Some NGOs that had few support staff members with U.N. expertise feared advocates get "burned out" after the long, tedious Commission session. Because effectively accessing the U.N. system is a cumbersome process that takes years to become fully acclimated with, NGOs often must rely on extremely small staffs—sometimes only one or two people—to act as their representatives at the United Nations. For consistency, it is preferred that the representative who appears at the Commission also appears at the Sub-Commission. Costs in Geneva are high, and NGOs sometimes need more than three months to replenish funds spent during the Commission's session.

Some sources proposed to hold the Sub-Commission session in September, noting Europe's summer holiday. Others expressed the view that the Sub-Commission's meeting was well-placed, as its timing allows the Sub-Commission to deal with situations that arise and cannot be dealt with until the Commission's following annual session. Many responded very negatively to the September idea, noting that some of the most active and independent Sub-Commission members are academics who can attend in August but not in September. Furthermore, those opposed said that the G.A. begins in September and that overlapping it would diminish attention that the United Nations pays to the Sub-Commission.

Studies

Interviewees viewed reducing the number of studies to 13—mandated by the Sub-Commission—as a positive step, but a few believed the Sub-Commission should further limit the number. One suggested other experts be assigned to critique studies and ad hoc WGs be established to devote time to discussing each report, in which the author would defend his/her work. In this forum, resolutions on a report would reflect informed consen-

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sus rather than narrow interests.¹² Interviewees thought studies from the Sub-Commission and its WGs are highly valuable to other U.N. human rights bodies and the NGO community but are not used because of a lack of coordination and knowledge about studies' accessibility. The Internet could be very useful in solving this problem. Studies are lengthy, but the United Nations could summarize them online, and the international NGO community could help disseminate them to the human rights community and smaller NGOs. Directing studies to universities and other research-based bodies also would help remove studies from the U.N. bubble and would increase civil society's and academia's involvement.

The Mandate Debate

Interviewees were divided over the issue of the Sub-Commission's mandate. Basically, they agreed that the Sub-Commission is charged to be the U.N. human rights "think tank," but either it strayed from this position or never actually fulfilled it. Subjects agreed that the Sub-Commission is far too politicized, and some said it had become another version of the Commission. Ideas for reforms to make the Sub-Commission into an expert body splintered along mandate lines, with the major question being whether to continue country investigations or only pursue thematic issues.

Some said that because no solutions exist within the current mandate, the Sub-Commission should change its mandate to omit country-specific situations, thereby looking only at human rights issues to develop thematic mechanisms. They believed the Sub-Commission should not act as the world's human rights inspector but rather should aim to improve every country's human rights record. Several interviewees of this school of thought said that even "experts" cannot totally be impartial, nor can they be expected to have the political stamina to condemn countries and hold up under the pressure that governments subsequently exert. In this paradigm, the country-specific mandate is the root of the Sub-Commission's politicization. Even though the Sub-Commission has an impressive record of innovation, in that it created many of the original human rights mechanisms, times have changed, and the Sub-Commission no longer has a role in investigating region- or country-specific situations. When the Sub-Commission began investigating States, the Commission did not have the mandate to do so. Now, the Commission can and does investigate specific countries, so the Sub-Commission should stop, as country situations are very time-consuming and usually have poor outcomes, therefore limiting other Sub-Commission work.

Others said that viewing individual cases in the context of the Sub-Commission provides a basis for comparison not afforded anywhere else in the U.N. human rights system. This comparison illuminates common phenomenon and policies among human rights violations, which helps clarify the thematic agenda. If cases are viewed individually, situations appear to be exceptions rather than parts of larger human rights violation patterns. The mandate requires the Sub-Commission to view such patterns, which aids in developing certain dimensions of human rights international law.

In general, interviewees thought individual cases may serve to politicize the Sub-Commission, but they also can enhance the thematic agenda. Therefore, the country mandate should not be excluded from the Sub-Commission's overall mandate. The Sub-Commission's focus should be thematic, but the door should be left open for country considerations, especially if a matter is not sufficiently being dealt with elsewhere. Unless viewing a situation in the context of the Sub-Commission illuminates factors not discussed in any other U.N. body, the Sub-Commission should not deal with country-specific cases.

More than one interviewee was uncomfortable with the fact that the Sub-Commission admitted to being too politicized to fulfill the mandate of an expert body, therefore should not attempt to deal with specific situations, and instead simply resolved to remain politicized. Because States take this same stance to silence NGOs in the Sub-Commis-

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sion, it would be preferred if individual NGOs decided which country-specific situations should or should not be dealt with. Some subjects noted NGOs more often are called to order during country-oriented discussions than thematic ones. Some governments stress this fact to perpetuate the view that NGOs are the ones politicizing the Sub-Commission and cannot objectively debate country situations, thus concluding that the mandate should exclude the Sub-Commission's right to investigate such situations. As this certainly is not what preserving best practices advocates, politicization should be dealt with from a more constructive standpoint.

Politicization

Whether or not the Sub-Commission is "overstepping" its mandate, the body unarguably has taken on a much wider range of issues in recent years. Some interviewees said that the Sub-Commission should provide a forum for larger issues; others believed widening the range of questions would further politicize it. Some said the Sub-Commission's politicization extended to human rights in general and the need to concentrate on achieving existing standards instead of wielding human rights as a political club on non-Western and non-allied States. Some added that the Sub-Commission will never be another Human Rights Committee, as it is an organ of a political body. Overall, subjects saw issues viewed in the context of the Sub-Commission were by nature less politicized than in other U.N. fora. To maintain this, subjects highlighted the need to clearly define criteria for "expert" members.

Depoliticizing the Experts

There was consensus among interviewees on this issue of Sub-Commission "experts." On the whole, they said that intergovernmental politics rule experts' minds. As previously mentioned, no formal criteria has been established to evaluate Sub-Commission nominees. The experts come from a wide variety of professional backgrounds and training and have not necessarily been schooled in human rights. Interviewees agreed that no matter what the Sub-Commission's future mandate and role are, experts' independence needs to be enhanced. Although the level of independence depends on each member and each subject being discussed, certain criteria must be established. It is essential that Sub-Commission members are not government employees for the duration of their term in order to achieve a minimal degree of independence. However, speaking realistically, even if this formal criteria were adopted, some States would continue to nominate a functional equivalent of a government representative. Nonetheless, the Sub-Commission would be sending the clear message that, at the minimum, members should not actively engage in their own countries' policy-making.

Because Sub-Commission members receive little funding and do not have a State system or network to support them, experts rely on NGOs to provide information necessary for functioning. Therefore, Sub-Commission members tend to be more approachable than delegates, which further explains the informal activity that takes place outside the Sub-Commission's official parameters and its appeal for NGOs. Experts' independence is essential to the Sub-Commission's open sessions. Some interviewees proposed that members should not be allowed to vote on issues directly involving their home States. On the surface, this appears to help depoliticize Sub-Commission decisions, but in actuality, it is nothing more than a Band-Aid approach, covering deeper problems of politics among Sub-Commission members and not promoting experts' overall independence. The notion that human rights violations affect only individual countries runs counterproductive to the universal principles guiding all States' actions. The human rights community must push for members being "expert" enough to view issues in an unprejudiced, impartial manner. One might look to the Human Rights Committee as a model—a nonpartisan tribunal of human rights scholars and practitioners.

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The Chair

It is very important that Sub-Commission members are independent of their countries' policy priorities and objective when using NGO information. This is best displayed in the Sub-Commission's public deliberations, where NGOs have no formal right of reply. The chair has discretion over statements and time constraints, is rotated by region, and is selected by a nomination from that regional grouping. The agenda item to elect the chair at the beginning of each annual session generally is a formality. A future study may want to examine the advantages and disadvantages of this process.

The chair is largely responsible for the regular session's proceedings and must lead discussions and listen to volatile issues without bias. Some interviewees noted that the chair's attitude and skill varies immensely, depending on who's in the seat. Many said the chair could be more helpful by guiding participants to stay on themes and tasks at hand instead of letting discussions break down into political caucusing and antagonizing remarks. Indeed, limiting the right of reply constantly frustrates NGOs. Some interviewees cited incidents where the chair did not understand the issues and therefore cut off NGOs' and individual victims' testimonies, because he/she deemed them repetitive or unimportant.

Some sources said that past chairs have been good about limiting NGO "abuses," such as speaking out of turn, but have not done well to monitor attacks on NGOs. Others believed chairs sometimes do not want to stop abuses, because they are scared of NGOs regarding them as reprimanding. One subject suggested establishing more effective criteria for the chair on how to stop this asymmetry and assist him/her more constructively and fairly deal with rancorous NGOs and States. A set of unifying principles—not simply procedures drafted by governments and NGOs—might help professionalize Sub-Commission exchanges and protect NGO speaking rights, which usually disintegrate as a session progresses.

Conclusion

Dwindling resources are forcing NGOs to make tough choices about U.N. advocacy. If NGOs perceive the Sub-Commission as a fruitless endeavor, NGO participation decreases and the multidimensional dialogue that is so essential to the Sub-Commission suffers. NGO assistance in elaborating principles, setting standards, creating mechanisms, and bearing witness lies at the heart of the Sub-Commission's work. To maintain a high level of NGO and government participation, the Sub-Commission must depoliticize itself and function as a human rights think tank.

NGOs' greatest impact has been on thematic development, and the Sub-Commission's greatest success has been in nonbinding standards. Before embarking on country projects that other U.N. bodies are handling, the Sub-Commission should focus on WGs' themes and permanent agenda items. The range of issues that the Sub-Commission deals with are as diverse as the NGOs who participate in it and its WGs. This pluralism is beneficial and necessary to the human rights community.

To maximize its potential, the Sub-Commission needs fresh, innovative approaches. Hopefully, NGOs, delegates, and Sub-Commission members all will see the feasibility and constructiveness of the above suggestions and will work toward streamlining Sub-Commission proceedings. The Sub-Commission's capacity for substantive work relies on NGO-provided information. It is a marriage of moral commitment and practicality and is worthy of serious regard and respect. Expanding best practices and trying new approaches hopefully will strengthen this relationship and better all parties' understanding. ■

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ENDNOTES

- ¹ Parker and Weissbrodt, 1993, 2.
- ² Eide, 230.
- ³ Ibid., 216.
- ⁴ Ibid., 228.
- ⁵ Ibid., 232.
- ⁶ Newman and Weissbrodt, 120.
- ⁷ Eide, 254.
- ⁸ Kamminga and Rodley, 187.
- ⁹ Ibid., 187.
- ¹⁰ Eide, 251.
- ¹¹ Newman and Weissbrodt, 123.
- ¹² Brody, 313.

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NGOs in Recent U.N. World Conferences, with Emphasis on the International Conference on Population and Development (ICPD), Cairo (1994)

by Mona Zulficar

Globalization of the economy, movement toward integrating national markets into a single international market, and reappraisal of the role of the welfare state in addressing challenges of social development in favor of free market values all have contributed to enhancing democracy and human rights. But they also have resulted in increased poverty, unemployment, environmental degradation, exclusion, and marginalization. Emerging violence, ethnic cleansing, and fundamentalism pose eminent threats to economic and social stability, peace, and security.

According to the International Conference on Population and Development's (ICPD) Program of Action, "As a result, the contributions, real and potential, of nongovernmental organizations (NGOs) clearly have been gaining reconfirmation in many countries and at regional and international levels. NGOs act as important voices of the people, and their associations and networks provide effective and efficient means of better focusing local and national initiatives and of addressing pressing population, environmental, migration, economic, and social development concerns."¹

Recent U.N. conferences' Plans of Action have recognized NGOs' key role as the voice of the people and as partners in the development process at the national and international level. These conferences include the Earth Summit in Rio (UNCED) (June 1992), the World Conference on Human Rights in Vienna (WCHR) (June 1993), the ICPD in Cairo (September 1994), the World Summit on Social Development in Copenhagen (WSSD) (April 1995) the Women's Conference in Beijing (FWCW) (September 1995), and the Second World Conference on Human Settlements in Istanbul (Habitat II) (June 1996).

Still, NGO access to and participation in these conferences, as well as the rights, protection, and facilities provided to NGOs under U.N. Host Country Agreements, have been inadequate, inconsistent, and dependent to a great extent on policies and negotiation powers of the relevant conference's host country and

secretary-general. All NGO Forum matters, such as access, facilities, rights, and protection of NGO representatives, are not regulated by these Agreements. The NGO Forum remains subject to a separate agreement, usually a Memorandum of Understanding (MOU) between the International NGO Planning or the NGO Forum's Organizing Committees and the host government. Under the MOU, rights and guarantees of freedom and effective NGO participation in the Forum totally depend on the host country's policies and on the level of support granted by a conference's secretary-general to NGO Forum organizers.

On July 25, 1996, the Economic and Social Council (ECOSOC) adopted Resolution 1996/31, which revised principles governing NGO consultative status and provided for the first time standard rules for NGO accreditation to U.N. conferences.

This paper demonstrates the need for the U.N. General Assembly (G.A.) to adopt a resolution setting minimum standard principles for NGO participation in U.N. conferences. Host Country Agreements should guarantee accredited NGO representatives and NGO Forum participants access; freedom of expression; legal protection; and information, documentation, and facilities necessary for independently exercising their activities in the NGO Forum and effective participation in U.N. conferences.

Accredited NGOs

NGOs with ECOSOC consultative status or NGOs accredited by any U.N. conference PrepCom have observer status and may attend conferences as such.

Relevant G.A. resolutions and Host Country Agreements for such conferences govern NGO accreditation to U.N. conferences and their preparatory processes, which establish the rights and guarantees afforded to accredited NGO representatives.

On the other hand, Resolution 1296 (May 23, 1968), as revised by 1996/31, governs NGO accreditation based on their ECOSOC consultative status.

A review of [General Assembly] resolutions passed during recent U.N. conference PrepComs shows that the UNCED in Rio was a breakthrough for NGOs' role and participation in U.N. conferences.

G.A. Resolutions

A review of G.A. resolutions passed during recent U.N. conference PrepComs shows that the UNCED in Rio was a breakthrough for NGOs' role and participation in U.N. conferences.

Almost all resolutions inviting States and other parties to participate in PrepComs of conferences following Rio specifically referred to UNCED's procedures and processes and to experience gained since Rio regarding NGO participation in PrepComs and contribution to the relevant U.N. conference.

The ICPD said, "The General Assembly ... [recognizes] the importance of participation in U.N. conferences and of its preparatory process of all relevant NGOs from both developed and developing countries ... [and requests] the Economic and Social Council ... to formulate and adopt modalities to ensure participation in and contribution to a conference and its preparatory process of relevant NGOs, in particular those from developing countries, taking into account the procedures and processes followed in the U.N. Conference on Environment and Development and the experience gained in this regard during previous U.N. population conferences."²

This elaborate language and emphasis on the importance of NGO participation compares with similar language without such emphasis in the G.A. Resolution for Habitat II,³ a simple invitation to relevant NGOs with ECOSOC consultative status to contribute to a conference, where appropriate, in the Rio Resolution (1992).⁴ This resolution makes another separate invitation, referring to "established practice" in the WSSD, 1995.⁵ The resolution inviting States and other parties to participate in the WCHR used different language to request such parties and NGOs concerned with human rights to assist the PrepCom, undertake reviews, and submit recommendations concerning the conference and preparations to the secretary-general and to participate actively in the WCHR in Vienna (1993).⁶

Not only is the language inconsistent, but also, the implementation of the G.A. resolutions vary in accreditation processes and requirements and in support levels and information made available to national NGOs to enable accreditation to and participation in PrepComs and conferences.

Until Resolution 1996/31, no standard rules or modalities governing NGO accreditation to U.N. conferences existed. There was only an established practice, started at UNCED and developed through application with variations in each subsequent conference.

Host Country Agreements

Usually, a conference's secretary-general and the host country's government sign Agreements to implement the G.A. resolution convening the conference in that country. A review of all Agreements for all conferences, starting with UNCED and ending with Habitat II, reveals the following:

NGO Participation

Article II of each Agreement usually says that the conference is open for participation to observers from relevant and competent NGOs with ECOSOC consultative status and other NGOs accredited to the conference by the PrepCom. The Agreements of UNCED, the WSSD, FWCW, and Habitat II all used this language.

The Cairo Agreement reduced the limitations as follows: "the representatives or observers of NGOs, accredited to the Conference." In the Vienna Agreement, the conference also was opened to NGOs that participated in the PrepCom or in regional meetings, without specific reference to accreditation.



International Human Rights Council members Mohamed Sahnoun and Mona Zulficar speak with former U.S. President Jimmy Carter during a meeting at The Carter Center in Atlanta, Ga.

Billy Howard

Privileges and Immunities

■ In the Agreements of Rio, Beijing, and Istanbul, NGO participants were only “accorded appropriate facilities necessary for the independent exercise of their activities in connection with the Conference.” However, in the Agreements of Vienna, Cairo, and Copenhagen, NGO participants “enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.”

■ The Rio, Vienna, Cairo, Copenhagen, and Istanbul Agreements ensure that all participants have the right of entry and exit from the host country without impediment on their transit to and from the conference area. Visas and entry permits, where required, are free of charge. Entry permits are granted as speedily as possible, and visas are granted upon arrival in the airport, if necessary. In the Beijing Agreement, the Chinese government wanted to facilitate entry into and exit from China for all participants. No visas were granted at the airport.

■ In the Rio, Cairo, Copenhagen, Beijing, and Istanbul Agreements, all conference participants, including accredited NGO participants, had the right to take out of the host country at the time of departure, without any restriction, any unexpended funds brought in. They also had the right to convert such funds at the prevailing market rate. The Vienna Agreement does not include this provision.

■ All the above mentioned Agreements provide that the host government will allow temporary importation, tax and duty free, of all equipment necessary for conferences or accompanying media representatives. No reference is made to NGO participants. In applying for this waiver, NGO participants must prove that their equipment or supplies are necessary for the conference.

Premises and Transportation

■ Provisions on premises in the Agreements for Rio, Copenhagen, Beijing, and Istanbul include subclauses providing that “premises and facilities provided under the Agreement may be made available in an adequate or appropriate manner to the observer from NGOs participating in or accredited to the Conference for the conduct of their

activities in relation to the Conference.” No such subclause exists in the Vienna or Cairo Agreements.

■ In all of the above Agreements, host governments must provide and/or ensure availability of adequate transportation for all conference participants from and to the airport, principal hotels, and conference premises.

Consultative Status

■ In general, Resolution 1996/31 reviewed arrangements for consultation between the United Nations and NGOs and attempted to introduce coherence in the rules governing NGO participation in U.N. international conferences. Greater NGO participation, especially from developing countries in U.N. work and international U.N. conferences, was encouraged.

Rules for establishing consultative relationships have been developed and broadened for easier access by national NGOs to obtain special ECOSOC consultative status or to be included on the Roster. National NGOs' consultative status requires prior consultation with the Member State concerned. However, a national NGO is entitled to respond to any of the Member State's views through the NGO Committee on (Part I, Section 8, Resolution 1996/31).

■ Part VII of Resolution 1996/31 says that NGOs having general or special consultative status or NGOs included on the Roster will be accredited for participation in U.N. conferences and their PrepComs, if requested, exceptions being the Member States' prerogative. This resolution provides in sufficient detail accreditation requirements for application and procedures and recognizes the opportunity to address plenary meetings during PrepComs and conferences as well as the right to make written presentations during the preparatory process. The resolution unnecessarily distinguishes between NGO participation and contribution, which is welcomed, and the negotiating role, which is intergovernmental.

■ Resolution 1996/31 did not provide any rules concerning standardization of Agreements or of the rights and privileges of accredited NGO participants, such as immunity from legal process regarding words spoken or written or acts performed in connection with their conference or NGO Forum participation, and the rights of non-accredited NGO participants in the NGO Forum.

Nearly 30,000 women from all over the world attended the September 1995 NGO Forum in Huairou, China, pictured here during opening ceremonies.



The NGO Forum and Its Participants

Experience shows the majority of NGO participants are not accredited as observers in conferences but are registered as participants in the NGO Forum's parallel activities.

In the ICPD, for example, 4,200 representatives of over 1,500 NGOs from 133 countries participated in the NGO Forum. Of these, not more than 25 percent were accredited to the ICPD. In Beijing, the difference was much more dramatic.

Nevertheless, the NGO Forum and its thousands of participants, which exceeded 30,000 in Beijing, are not addressed at all in the Agreements.

Memorandum of Understanding (MOU)

The MOU, which is negotiated and signed between the host government and the NGO Organizing or Planning Committee, recognized by the ECOSOC as convener of the NGO Forum, is the only basis for the host government's obligations toward the NGO Forum and its participants.

The MOU follows a simple format, according to established practice, which varies from case to case, depending on the host government's policies and the conference secretary-general's level of support for the NGO Forum. The following Agreements, which established the NGO Forum in Cairo during the ICPD in 1994, can be used as a model for future NGO fora. The MOU generally covers the following:

1) Participation. The NGO Forum is open to all conference participants, all registered NGO participants, and all accredited press.

Registered NGO participants receive a letter from the NGO Planning Committee for entry visa application. The MOU recognizes the host government's right to apply its standard screening procedures prior to issuing visas. Advance lists of registered NGO participants may be required one month prior to a conference.

2) Premises and Facilities.

■ The host government normally must provide premises for the NGO Forum, on which rent and utilities are free of charge. These premises should be adequate for the conference's purpose and should contain necessary facilities such as telecommunications, a medical station, a tourist information desk, a bank, etc. However, this is neither guaranteed nor consistent. "Adequate premises," a blanket expression, may mean a tent, an old marine base, or a modern convention center.



During each of the recent world conferences, an independent forum for NGOs has been organized, similar to the one pictured here, held at Istanbul Technical University.

Laurie Wieberg

The MOU, which is negotiated and signed between the host government and the NGO Organizing or Planning Committee ... is the only basis for the host government's obligations toward the NGO Forum and its participants.

The MOU does not provide for any guarantees of freedom of expression or immunities from legal process for words said or written or actions taken in the Forum in connection with a conference. ... In Cairo, the Forum was not subject to any government intervention, security police harassment, or the like. In Beijing, however, certain Forum participants were harassed and searched, and their written publications were confiscated.

■ The host government normally agrees that equipment and supplies imported for the NGO Forum should be duty free. However, this also is neither guaranteed nor consistent.

■ The host government is responsible for security.

■ The premises' and the host government-provided facilities' locations are negotiated and depend to a great extent on the host government's policies, will, and readiness to support the NGO Forum.

■ At the ICPD, the Egyptian government provided the premises for the NGO Forum—a covered stadium—which was 10 minutes walking distance from the conference premises. At the FWCW in Beijing, the Forum's premises were about a one hour drive from the conference site. The Egyptian government supported applications for importing equipment and supplies duty free and provided 121 telephone lines (including 82 international lines) free of charge for public service areas. The Egyptian government provided transport from and to the airport, hotels, and the NGO Forum free of charge at the ICPD in Cairo.

■ The NGO Planning Committee for the Cairo NGO Forum, with assistance from the Egyptian NGO Committee, procured by contract with an Egyptian private conference organizer the NGO Forum's organizational and logistical support services including registration; erection of the meeting room; electrical wiring; and audio visual and other equipment such as computers, machines, and furniture. The NGO Planning Committee did so free of charge at an estimated L.E.1.5 million (as of January 1997, this amount of Egyptian currency equaled U.S. \$441,600), in exchange for an exclusive franchise to provide food and beverages to NGO Forum participants. It also procured simultaneous interpretation equipment and teams among other services. This division of charges and responsibilities varies from one MOU to another.

3) Human Rights Guarantees. The MOU does not provide for any guarantees of freedom of expression or immunities from legal process for words said or written or actions taken in the Forum in connection with a conference. Usually, no guarantee of exercising independent activities without the host government's intervention is provided. The Cairo MOU, however, said that the NGO Planning Committee would manage and organize the NGO Forum.

In Cairo, the Forum was not subject to any government intervention, security police harassment, or the like. In Beijing, however, certain Forum participants were harassed and searched, and their written publications were confiscated. This demonstrates that the NGO Forum and its participants should in principle enjoy basic human rights' guarantees on equal bases with accredited NGO and other conference participants. This principle should form part of the Host Country Agreement, in application of a set of principles determined by the G.A.

Conclusion and Recommendations

The above analysis demonstrates the following:

■ Resolution 1966/31 has made possible positive progress, regarding standard principles and rules of procedures governing NGO participation and accreditation to U.N. conferences. However, such principles and rules do not cover privileges, immunities, premises, and facilities afforded to such participants. As a rule, NGO participants are not granted immunity from legal processes for words spoken or written or actions taken in connection with a conference. This guarantee of freedom of expression is negotiated in Host Country Agreements, and in half of the cases reviewed in this paper, it was not granted to accredited participants under those Agreements.

■ Recent experience has shown established practices of NGO participation and accreditation, as well as the privileges, immunities, premises, and facilities afforded by the

host country under its Agreement were inadequate, inconsistent, and varied in terms of language of the G.A. resolution or the Host Country Agreement and in terms of implementation from one case to another. Such inadequacies relate to the absence of standard accreditation rules needed to guarantee transparency and rules for NGO participation in conference activities such as plenaries, committee meetings, and working groups (WGs). Other examples of inadequacy and inconsistency relate to facilities, premises, information, and documentation made available to accredited NGO participants. Hopefully, revisions introduced by Resolution 1996/31 will remedy these inadequacies.

■ Neither the relevant resolutions nor the Agreements reviewed provide for any host country obligations to the NGO Forum or its participants who may not be accredited to a conference. Hence, the host government guarantees no privileges or immunities of any kind to Forum participants. Forum premises' and facilities' proximity and adequacy are not legally binding obligations of the host government, unless the government accepts such commitments in the MOU with the NGO Planning or Organizing Committee. Resolution 1966/31 made no reference to the NGO Forum or to non-accredited NGO participants, which should be dealt with under Host Country Agreements.

Therefore, it is recommended that the ECOSOC and the G.A. pass a resolution adopting the following principles on NGO participation in U.N. conferences and Agreements:

■ There should be recognition of NGOs' important role as voices of the peoples and as partners in development at the national, regional, and international level.

■ The relevant U.N. Secretariat or U.N. bodies should support and facilitate broad and effective participation in any U.N. conference and parallel NGO Forum events by NGOs, particularly those from developing countries. For this:

1) Clear and transparent accreditation procedures and timetables should be developed and widely disseminated through U.N. offices around the world.

2) Visa application procedures and requirements should be facilitated and made widely available.

3) Access to resources to fund NGO participation, particularly those from developing countries, should be facilitated.

Forum premises' and facilities' proximity and adequacy are not legally binding obligations of the host government, unless the government accepts such commitments in the MOU with the NGO Planning or Organizing Committee. Resolution 1966/31 made no reference to the NGO Forum or to non-accredited NGO participants.



Unlike the 1994 NGO Forum in Cairo, a heavy police presence hung over the 1996 NGO Forum in Istanbul during the U.N. Second World Conference on Human Settlements (Habitat II) in 1996.

■ NGO observers should have access to conference documentation, information on a regular basis, and adequate facilities on conference premises including media access.

■ For effective NGO participation in a conference, access to meetings, including committee meetings and WGs, should be allowed. Transparent procedures should handle physical space limitations, which should not preclude NGO participation.

■ Host Country Agreements should provide that:

1) NGO observers accredited to the conference as well as NGO Forum participants should enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their performance in the conference. They should be accorded appropriate facilities for independently exercising their conference-connected activities.

2) All facilities, including visas, transportation, and temporary importation of equipment and supplies (duty free), also should apply to NGO participants or to participants registered to the NGO Forum.

3) Host governments should provide appropriate premises and facilities for the NGO Forum that satisfy the requirements of proximity to the conference premises and have adequate structures, facilities, equipment, telecommunications, and media access.

Resolution 1996/31 recognized NGOs' important role at the national, regional, subregional, and international level and provided for standard accreditation rules to U.N. conferences.

However, no reference to standard Agreement principles guaranteeing effective participation of accredited NGO participation was made. The resolution also did not recognize the NGO Forum.

At present, U.N. conferences place increasing demands on NGOs to participate as partners in making, implementing, and monitoring development policies and programs. However, they do provide adequate standard principles and mechanisms for NGOs to play this role effectively. Hopefully, adopting and implementing the principles or Resolution 1996/30 will be a starting point and the above recommendations will be considered so NGOs would be empowered by the United Nations to share this responsibility effectively. ■

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ENDNOTES

¹ ICPD Program of Action, Chapter XV, 15.1 and 15.3.

² ICPD, G.A. Resolution, A/RES/47/176, Dec. 22, 1992.

³ Habitat II, G.A. Resolution, A/RES/46/164, Dec. 19, 1991.

⁴ UNCED, G.A. Resolution, A/RES/45/211, Dec. 21, 1990.

⁵ WSSD, G.A. Resolution, A/RES/48/100, Dec. 20, 1993.

⁶ WCHR, G.A. Resolution, A/RES/45/155, Dec. 18, 1990.

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HUMAN RIGHTS NGOs AND HUMAN RIGHTS COMPONENTS OF PEACEKEEPING OPERATIONS

By Ozong Agborsangaya

"Making peace is far too important to be left up to governments."

—Mohamed Sahnoun,
Secretary-General Special Representative

This paper examines the possibilities for human rights nongovernmental organizations (NGOs) to play a more effective part in formulating and implementing U.N. policies governing peacekeeping and human rights field operations. In the last decade, a key issue in the international human rights community has been the push to make human rights integral in conflict prevention, peacemaking, and peacekeeping. Peace negotiations concerning Afghanistan, Southern Africa, and the former Yugoslavia have affirmed human rights' central place in shaping peacemaking blueprints.¹ Former U.N. Secretary-General Boutros Boutros-Ghali emphasized that peace cannot be accomplished by the U.N. system and governments alone; NGOs also must be involved.

This paper is the result of an analysis of the experiences in Haiti, Rwanda, Somalia, and Liberia. It demonstrates pre-established conclusions and develops recommendations for improved collaboration between human rights NGOs and U.N. human rights components of peacekeeping missions. It aims to:

- Assess, based on four field operations' experiences, problems encountered regarding the relationship between peacekeeping operations' human rights components and NGOs.

- Identify already existing precedents of best practices of human rights NGOs access to U.N. decision-making bodies concerning peacekeeping and human rights field operations.

- Propose reforms to help strengthen human rights NGOs' participation in U.N. peacekeeping and human rights field operations.

Now more than ever, human rights are essential to peacekeeping operations. Among the 22 operations deployed since 1988, seven hold particular concern for human rights: the U.N. Group in Namibia (UNTAG), the U.N. Observer Mission in El Salvador (ONUSAL),

the U.N. Transitional Authority in Cambodia (UNTAC), the U.N. Operation in Mozambique (ONUMOZ), the U.N. Protection Force (UNPROFOR), the U.N. Confidence Restoration Operation in Croatia (UNCRO) in the former Yugoslavia, and the U.N. Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreements on Human Rights in Guatemala (MINUGA). Deploying civilian observer missions without military staff is a new option for the United Nations. Three such missions include the Mission Civile Internationale en Haiti [U.N.-OAS International Civilian Mission in Haiti (MICIVIH)], the U.N. Observer Mission in South Africa (UNOMSA), and the U.N. Human Rights Field Operation in Rwanda (HRFOR).²

Most operations with essential human rights components encountered similar problems and difficulties in collaborating with human rights NGOs. U.N. Charter Article 71 created a formal relationship between the United Nations and NGOs. It empowered the Economic and Social Council (ECOSOC) to "make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence." Former Secretary-General Boutros-Ghali said the United Nations has not fully appreciated NGOs' important role in peacekeeping, and it is essential that NGO activities complement U.N. work. In "Agenda for Peace," former Secretary-General Boutros-Ghali argued that the vast peacebuilding enterprise presupposes that NGOs will be involved at every stage.³ Because they are familiar with the situation on the ground, human rights NGOs are well-placed to help fragile governments and destitute populations find confidence and resources to make peace last. Misunderstandings and differences have at times emerged with different NGOs in specific operations. Therefore, it is crucial for NGO activities to be coordinated with those of the peacekeeping operation.

Assessments of the experiences of Rwanda, Soma-

lia, Haiti, and Liberia reveal a compelling pattern of elements which obstruct as well as improve collaboration between U.N. missions and local human rights NGOs. Amnesty International (AI) concluded that it is difficult for human rights NGOs to impact U.N. peacekeeping missions because U.N. human rights bodies are largely excluded from the design, planning, and implementation of peacekeeping operations including those with a human rights component. AI's findings show that political negotiations regarding the establishment of peacekeeping missions proceed in the strictest secrecy and are formulated at the highest political levels. Consequently, there is no input at an early stage. Although human rights observer missions have increased in number, U.N. headquarters in New York still dominate planning. For many operations, such as MICIVIH, contact and coordination between New York and Geneva were minimal. Nonetheless, peacekeeping operations have succeeded in devising unique, innovative ways to improve NGO collaboration with U.N. missions. Many lessons have been learned from HRFOR's experience in Rwanda and MICIVIH's in Haiti, where missions attempted to reinforce local organizations' work and collaborate on various initiatives. Indeed, the U.N. Observer Mission in Liberia's (UNOMIL) recent mandate specifies a relationship with local human rights NGOs.

In principle, the relationship between a U.N. mission and local human rights groups is not simple. Analyses of such relationships in Haiti, Liberia, and Rwanda found NGOs' perceptions of missions differed from those of the missions. To avoid misperception and build confidence between both sides at an early stage, a mission should emanate a clear message: It is not replacing local human rights groups; rather, it is reinforcing their efforts. This paper proposes that although tensions may be inevitable, improved collaboration between NGOs and peacekeeping missions is in both groups' best interests, as it would provide the best atmosphere for sustainable peace and successful implementation of operations' mandates.

U.N. Operations in Somalia I and II (UNOSOM I and II)

Peacekeeping in Somalia, as in anywhere, was complex and difficult. Its failure in the face of humanitarian disaster exacerbated widespread international dissatisfaction in the human rights community with traditional peacekeeping. This tragedy resulted from two decades of misrule by a repressive dictator⁴—Siad Barre—followed by an internal

Marion Creekmore (left), Vincent Farley, Rosalynn Carter, Jimmy Carter, and Ozong Agborsangaya (right) meet with Burundi Army Chiefs of Staff Col. Bikomagu and Col. Simbanduku in November 1995 in Bujumbura to discuss the crisis in Burundi.



power struggle and two years of cruel warfare. President Barre's downfall (January 1991) resulted in clan clashes, widespread death, and destruction, forcing thousands of civilians to flee their homes. Almost 4.5 million people—over half the estimated population—were threatened by severe malnutrition. An estimated 300,000 people have died since November 1991, more than 600,000 refugees have emerged, and several hundred thousand people have been internally displaced.

Responding to the recommendation of the U.N. secretary-general, the ECOSOC adopted Resolution 751 (1992), to establish the U.N. Operation in Somalia (UNOSOM I) and provide for immediate dispatch of 50 unarmed U.N. observers to monitor a tenuous cease-fire. U.N. Resolution 814 (1993) subsequently established UNOSOM II, which took over the functions of the Unified Task Force (UNTAF)—otherwise known as Operation Restore Hope. UNOSOM II's mandate included:

- Providing relief and economic rehabilitation.
- Repatriating refugees and the internally displaced.
- Promoting and advancing political reconciliation through broad participation by all sectors of Somali society and re-establishing national and regional institutions and civil administrations throughout the country.
- Re-establishing the Somali police force.
- Helping create conditions for civil society to participate in the political reconciliation process.

Historically, U.N. agencies and local NGOs have had a difficult relationship, which has complicated prospects for collaboration from the outset. Within this context, the chief of mission's quality can go a long way to strengthen this relationship. Mohamed Sahnoun, chief of mission of UNOSOM I, won certain leaders' and local human rights activists' confidence. He maintained a dialogue at a time when the international community was not well-trusted and had little opening within Somali civil society.⁵ As the secretary-general's special representative, Ambassador Sahnoun was committed to the principle that local NGOs played an important role for any sustainable work. His attempts in this regard were frustrated, especially as UNOSOM I was not provided the necessary resources, including sufficient and adequately skilled civilian personnel, to fulfill its mandate. Ambassador Sahnoun made a point when meeting with clan elders, women's groups, and others of encouraging civic involvement in reconciliation efforts. While UNOSOM I struggled to set up its peacekeeping force on the ground, Ambassador Sahnoun attempted to close the communication gap among U.N. relief agencies, Somalis, and NGOs. He was keenly alert to the need for a process to legitimize Somali involvement, which marked a shift away from the previous paternalistic approach by the relief community, which unwittingly had fed Somalia's resentments and xenophobia. The key to long-term reconstruction was to involve Somalis more actively in determining priorities and taking responsibility for their own future.⁶

Furthermore, both UNOSOM I and II had a fundamental shortcoming; they lacked a human rights component. The absence of this important element marginalized human rights issues and consequently local NGOs. China objected to including a human rights component in UNOSOM's mission. Without a component as such, little framework existed for accountability for human rights abuses. UNOSOM I lacked an adequate process for verification, investigation, or documentation of human rights violations. The basis for sustainable peace was gutted from the outset. If the mission had collaborated with NGOs, a framework would have been established in which to continue its activities.

UNOSOM II never actively sought local NGOs' input because of its limited civilian emphasis. A military mindset guided the mission, as former officials of the U.S. military and the U.S. National Security Council led it.⁷ Local NGOs perceived UNOSOM II as paternalistic. Its culture of arrogance generated resentment among Somalis, which was

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The UNOSOMs
institution-building efforts, predominantly aimed at establishing an internal Somali justice sector and providing assistance to local governance structures, may have been enhanced if local human rights NGOs had been included.

exacerbated by a discrepancy between the standards of living of mission staff and locals, who sometimes were more qualified than U.N. staff and mostly were young, inexperienced, and had little prior knowledge of Somalia.

Successful implementation of key aspects of both UNOSOM I and II's mandates required meaningful collaboration with local human rights NGOs. During the reconciliation process, the UNOSOMs did not sufficiently seek to involve a wider segment of Somali society. NGOs may have been able to place greater pressure on faction leaders to reconcile had they participated in the process. Experiences at the Galkayo Conference (May 1993), which included local NGOs, demonstrated that NGO participation could enhance the potential to achieve lasting and grounded peace settlements. In Somalia, local human rights NGOs could have advised on subtleties of their culture in which conflict management is an ongoing process of consultation, assemblies, and negotiations rather than a set of formal peace conferences. A major critique of the UNOSOMs' reconciliation efforts is that they lacked adequate understanding of Somalia's political culture and hence worked against rather than with indigenous conflict management practices. The missions also looked to faction leaders rather than clan leaders to promote reconciliation and focused too much on Mogadishu, the capital of Somalia, rather than on the countryside.⁸

The UNOSOMs institution-building efforts, predominantly aimed at establishing an internal Somali justice sector and providing assistance to local governance structures, may have been enhanced if local human rights NGOs had been included. A partnership between NGOs and the local administration would have strengthened authorities' capacity and granted them greater legitimacy within communities. The justice and police systems all but disappeared since UNOSOM II's financial support evaporated.

Mission Civile Internationale en Haiti [U.N.-OAS International Civilian Mission in Haiti (MICIVIH)]

Many of MICIVIH's terms of reference were drawn from the San Jose Agreement, which provided the mandate for the human rights observer mission in El Salvador. However, MICIVIH's terms omitted the San Jose stipulation that the chief of mission "shall work in close cooperation with existing human rights organizations and bodies."⁹ Consequently, MICIVIH's mandate lacked clear, defined guidelines for a relationship with local human rights NGOs, thereby initially leading to misunderstandings and numerous problems between the mission and what should have been its most natural interlocutors.¹¹ Nevertheless, this failure to clarify the terms regarding collaboration with NGOs, together with the de facto government's effort to water down the terms, had little long-term impact on MICIVIH's actual work.¹¹ The relationship that ultimately developed between MICIVIH and the local NGO community resulted from the initiatives of mission staff, particularly the human rights director's appointment of a liaison with NGOs.¹²

One of MICIVIH's early failings was its delay in explaining its mandate and limitations to local Haitian NGOs. MICIVIH waited until four months after it began operations to hold its first formal meeting with a broad-based group of local NGO representatives. Meanwhile, rumors, mixed signals, and unrealistic expectations developed. Haitian NGOs feared this huge operation being plunked down in their country. What would it mean for them? Could MICIVIH guarantee security? Could it execute arrests? Would it replace them or make their work redundant or unnecessary? Or would it be a savior, ending violations and bringing peace and justice? Similar concerns emerged in Rwanda and, to a lesser extent, in other countries such as Guatemala and Cambodia. When MICIVIH eventually developed and explained a consistent policy toward NGOs, relations improved greatly. Separate meetings and working contacts with individual NGOs helped form a closer relationship and nurtured trust.¹³

In addition, MICIVIH did not adequately teach its observers about local NGOs'

experience and role in Haitian society. Indeed, the great majority of early observers had no human rights background.¹⁴ Hence, some observers were ill-informed and at times condescending in their initial relations with NGOs. Many have been in Haiti long enough now to have improved their understanding of the country. Recently, MICIVIH has encountered some resentment from the general population, due in large part to the Haitians' general disenchantment with their quality of life. Many Haitians proclaim the "intervention" or "occupation" has not fulfilled its promise, and they do not believe their day-to-day lives have improved. But they mostly are hostile toward MICIVIH because they fail to distinguish between MICIVIH and the military mission.

To a large extent, Haiti's security status may affect the relationship between human rights NGOs and MICIVIH. Although local human rights NGOs were quite experienced and organized, having been working since the early 1980s, they had endured severe repression. The military targeted them because they were perceived as a threat to military rule. Their leaders were forced into hiding; were exiled; and sometimes were killed, arrested, or tortured. Because their leaders and interlocutors were unavailable, MICIVIH had difficulty working with many NGOs.¹⁵ An inherent tension exists where an attempt to help foster NGOs may endanger them further. However, this tension has altered significantly due to the new regime and improved security in Haiti.¹⁶

Currently, local human rights NGOs' most pressing concern is not access to the mission but rather the complications they anticipate when MICIVIH ends, as they lack the resources to fill the vacuum MICIVIH will create when its mandate ends. NGO representatives who engaged in a project to train Haitian communal police said they are worried about the future of certain projects they are currently undertaking. Some representatives expressed frustration over their request for MICIVIH to transfer documents and data bases to local human rights groups. According to those involved, MICIVIH claimed they could not transfer such information without authorization from the victims of concern. Local human rights NGOs believe it is important to retain the information for continuity's sake.

Because of its experience, MICIVIH has learned important lessons about precedents of best practices. Since its effort to launch a human rights education campaign in 1993 failed, MICIVIH has partnered with local NGOs on such initiatives. Its staff concluded that a more appropriate role for human rights missions regarding such campaigns would be a background one providing facilitation, advice, and resources. Instead, national institutions, such as local human rights NGOs, the Ministry of Education, or religious groups, should take the lead.¹⁷ To further enhance education efforts, MICIVIH has, since 1995, been training Haitians—including a cross section of civil society—as trainers and has helped local NGOs conduct workshops and seminars on human rights issues in the countryside for women's groups, farmers, and other popular organizations.

Since 1995, a predominant part of MICIVIH's exit strategy has been the transformation of its attitude from being a "liaison" for information exchange with NGOs to being a strengthener and reinforcer of NGOs in preparation for when they will be the only human rights workers. MICIVIH recently conducted an intensive two-week training session on human rights theory and principles for human rights NGOs. Subsequently, the mission provided human rights activists opportunities for internships. It also conducted a seminar with local NGOs on prison verification to enhance NGOs' ability to monitor prisons when MICIVIH's mandate ends.¹⁸

MICIVIH also engages with individual NGOs on technical assistance needs and requests. It taught some NGOs how to investigate, write reports, and/or conduct interviews, and it now provides them access to documentation to which they ordinarily had limited access. Currently, MICIVIH engages in an initiative with local NGOs to create a documentation center. A joint project between MICIVIH and local lawyers and doctors provides legal and medical assistance to victims of human rights violations. The mission contracted with several NGOs that hired lawyers to visit prisons and appear in court to

Although local human rights NGOs were quite experienced and organized, having been working since the early 1980s, they had endured severe repression. ... Their leaders were forced into hiding; were exiled; and sometimes were killed, arrested, or tortured.

seek prisoners' releases in situations where arrests and detentions were arbitrary. Through human rights groups and doctors' organizations, MICIVIH paid for treatment of tortured or mistreated people. It also helped people who were in hiding through a local NGO that provided food, money, and shelter and transmitted news to and from their families.

On some occasions, MICIVIH has been able to grant local NGOs limited monetary assistance. But NGOs lament that the mission only has supported educational projects even though they need significant financial help for other activities.

U.N. Human Rights Field Operation in Rwanda (HRFOR)

In response to the 1994 genocide, the U.N. high commissioner for human rights proposed a human rights field operation in Rwanda in May of that year. For several years, U.N. human rights offices existed in many countries around the world (managed by the Centre for Human Rights in Geneva) to control technical assistance activities, and there were several field operations in which monitoring played a prominent role. HRFOR was unprecedented in this regard, as it was the first human rights field operation launched by first High Commissioner for Human Rights Jose Ayala Lasso.¹⁹ An operation in Rwanda could enhance efforts to establish the rule of law, order, and the confidence necessary to encourage refugee repatriation. In August 1994, High Commissioner Lasso reached agreement with the Rwandan government on the HRFOR's objectives and functions, including investigating human rights violations; monitoring the ongoing human rights situation; cooperating with other international organizations to restore confidence and facilitate repatriation and resettlement; implementing technical assistance programs, particularly for administration of justice; and providing human rights education to all levels of Rwandan society.

Four principal Rwandan human rights groups, which came into existence just before or during the 1990 civil war, organized into the Collectif des Ligues et Associations de Defense de Droits de l'Homme au Rwanda [the Rwandan Collective of Leagues and Associations for the Defense of Human Rights (CLADHO)] including the Association Rwandaise pour la Defense des Droits de l'Homme [Rwanda Association for the Defense of Human Rights (ARDHO)]; Associations des Volontaires de la Paix [Associations of Peace Volunteers (AVP)]; and Ligue Rwandaise pour la Promotion et la Defense des Droits de l'Homme [Rwanda League for Promotion and Defense of Human Rights (LIPRODHOR)]. Each group engages in a range of activities including monitoring, educating, and assisting victims.²⁰ HRFOR's Education and Promotion Unit's activities provide a useful model to identify existing best practices of local NGOs' access to peace-

HRFOR was unprecedented, ... as it was the first human rights field operation launched by first High Commissioner for Human Rights Jose Ayala Lasso.



In November 1995, former U.S. President Jimmy Carter and Ozong Agborsangaya (far left) met with members of the religious community in Bujumbura, Burundi, to discuss justice, refugees, insecurity, and reconciliation.

The Carter Center



Ozong Agborsangaya

In 1994, more than 800,000 people were killed in Rwanda, and approximately 2 million people (almost one-third of the population) fled the country as a result of genocide. Ozong Agborsangaya, human rights program coordinator at The Carter Center, took this photo of a mass grave on the outskirts of Kigali, Rwanda, in November 1995.

keeping operations' human rights components. This unit, a key component of HRFOR, collaborates with local NGOs primarily to promote human rights, in particular those of women and children, and human rights education. With ARDHO, it organized numerous workshops to train ARDHO representatives on the new genocide-related law and the Universal Declaration of Human Rights. The unit also tries to provide financial and technical assistance support to NGOs that organize human rights education for the general population. Its staff concluded that it is more credible and effective when information derives from local NGO representatives, because then, the population does not perceive protecting and promoting human rights as imported ideas.

The Education and Promotion Unit (also employed in Haiti) used theater, videos, and radio as some strategies to promote human rights. Also, together with local human rights NGOs, it encouraged the creation of three theater groups.²¹ HRFOR funds the groups, and it arranged for LIPRODHOR to supervise the unit, so its initiatives could become independent of the mission. The theater groups are composed of Rwandans who travel throughout the country performing plays about rights denied, protected, or enjoyed. Recent plays have used stories to illustrate issues surrounding women's property rights, health, and themes encouraging reconciliation.

Observers noted HRFOR's very nature presents the fundamental obstacle to increased collaboration between local NGOs and peacekeeping missions. Human rights components of such missions essentially aim to monitor and observe, as their mandates specify. They lack a serious inherent philosophy of institution-building, as proven by their poorly defined relationship with local NGOs and by the fact that human rights observers are not provided adequate guidance on how to work with them. Therefore, HRFOR develops strategies and plans in an ad hoc manner and makes its own decisions. It is difficult for HRFOR to undertake long-term initiatives because of the uncertainty usually surrounding peacekeeping operations or their human rights components. Thus, operations usually pursue only short-term or "punctual" projects, which lack continuity.

Local human rights NGO representatives wished to see increased collaboration between HRFOR and their organizations in the area of monitoring. Because they lacked the means and capacity to cover certain areas of the country, they believe it would help if HRFOR involved them more in monitoring efforts.²² They also stressed the importance of being able to speak holistically on the general status of the protection of human rights in

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the entire country. Ian Martin, former MICIVIH director of human rights and former HRFOR director, believes it may be useful for missions to retain autonomy in some areas of its human rights activities. Investigation and monitoring may be difficult for local NGOs, as they are areas in which NGOs may be least objective. Local NGOs are most effective at verifying abuses. William O'Neill, former director of MICIVIH's legal department and current HRFOR director, stressed that in situations where local NGOs are experienced and responsible, collaboration between NGOs and HRFOR could enhance HRFOR's work, although independent reports also should be issued.

Interviewed HRFOR staff pointed out the lack of adequate resources to support local human rights NGOs' work. One NGO proposed creating a commune-level observatory to serve as an early-warning mechanism for conflict prevention. This observatory also may require technical assistance support and a supervisory structure for an extended period. HRFOR lacks funds for important initiatives as such because they would require long-term involvement. CLADHO's president stressed the importance of HRFOR increasing its ability to financially support local NGOs.

The U.N. Observer Mission in Liberia (UNOMIL)

For over seven years, Liberia has been embroiled in a merciless internal conflict resulting in massive human rights abuses. About 200,000 Liberians have been killed, over 700,000 have become refugees, and an estimated 1.4 million people have been internally displaced.²³ The U.N. Observer Mission in Liberia (UNOMIL) was established in 1993 to support the work of the Economic Community of West African States (ECOWAS) and the Liberia-based Economic Community of West African States (ECOMOG), a regional peacekeeping operation. UNOMIL marked the first example of such cooperation. Liberian parties asked the United Nations to assume this responsibility under the Cotonou Agreement (July 25, 1993). ECOMOG's primary role was to implement the agreement, and UNOMIL was mandated to observe and monitor implementation procedures to verify their impartial application. Regarding its relationship with human rights NGOs, UNOMIL's mandate specified "to investigate and report to the secretary-general on violations of human rights and to assist local human rights groups, as appropriate, in raising voluntary contributions for training and logistical support."

By the end of 1996, Liberian human rights NGOs had gone underground, become incapacitated, or virtually ceased to exist. Human rights activists, considered Liberia's "enfants terribles" (terrible children), were hounded out of existence, and their offices were pillaged and burned. Their spirit was seriously damaged amid the multiplicity of violence, and they were discouraged that UNOMIL had no human rights capacity. One human rights officer arrived in Liberia in 1995. Currently, there are three officers—two deployed in the field, and one in Monrovia dealing with activities such as capacity-building for human rights NGOs. These circumstances inherently hindered a relationship between human rights NGOs and UNOMIL. Moreover, it was difficult for UNOMIL to foster relations in a political context where factional concerns seemed to outweigh national priorities. Because local NGOs were as polarized as Liberian society itself, were affiliated with the various political factions, and seriously competed among themselves, it was difficult to approach human rights problems from a national perspective. Initially, UNOMIL's human rights component tried to create a consortium of local NGOs for a unified front toward Liberia's human rights situation. This was largely unsuccessful because the underpinning document defining their interaction was so strict it did not allow for divergent views and became impractical.

Now, UNOMIL's human rights activities aim to:

- Reawaken the spirit of advocacy regarding human rights in Liberia.
- Establish a free flow of information and healthy working relationships within communities and between community members.

- Identify and prioritize community and individual organizations' needs.
- Facilitate links between NGOs, international agencies, and representatives of foreign governments operating in Liberia who are interested in human rights issues.
- Highlight and consolidate organizations' efforts to address Liberia's disturbing human rights situation.
- Address the urgent and various needs of Liberia's war-weary civil society, whose rights continue to be assaulted and violated daily.
- Focus community attention on the role it must play during the next 12 months.²⁴

UNOMIL's human rights component now seeks to fulfill its mandate by establishing a meaningful working relationship with Liberia's human rights community, which includes a cross section of national human rights and related organizations. The idea to establish the Centre of Human Rights emerged in an effort to achieve this goal. Eight local human rights NGOs²⁵ committed themselves to possibly working together under this umbrella framework to address human rights issues from a national perspective. The Centre aimed to replace the existing faction-based approach with an holistic one and to provide a focal point for planning and devising long-term strategies for developing human rights consciousness and programming in Liberia.

The Centre's activities provide a useful model for identifying existing best practices. The Centre has succeeded in issuing joint press statements, co-investigating human rights violations, and planning and developing seminars. Since its inception, local human rights NGOs have released numerous joint statements endorsed by all member executive directors on Liberia's human rights situation. One statement, issued in September 1996, in terms of contact with international NGOs, exposed massacres in western Liberia and received greater credibility because six NGOs signed it. UNOMIL's human rights component provided only editorial and material support such as photocopying, faxing, and facilitating long-distance telephone calls.

The Centre also has worked successfully with UNOMIL on investigating human rights violations. NGOs accompanied human rights officers to their regions when human rights abuses occurred. Local NGOs used their knowledge of the areas to facilitate the officers' understanding. Afterward, NGOs wrote independent reports, which were made available to the public. UNOMIL reported directly to the secretary-general. Both the NGOs and the mission agreed that they collaborated effectively on planning seminars and development. Recently, UNOMIL completed a series of training workshops for local NGOs on fact-finding, documentation, international instruments guiding human rights activities, advocacy, and elections. Human rights officers said that NGOs could benefit from additional training in advocacy, consensus-building, and organization.

Local NGOs expressed deep frustration over UNOMIL's limited financial capacity. Although UNOMIL's mandate specifies assisting NGOs, no line item exists in its budget for doing so. The mission knows that without its limited assistance, it would be impossible for NGOs to continue their activities, but it is frustrated by NGOs' expectations. UNOMIL concluded that NGOs seriously need ongoing support, but it knows that when its mandate ends, no facility will be available for these groups to achieve any meaningful outreach. So far, UNOMIL has had difficulty identifying funding sources, and those sources identified have not been forthcoming. It encouraged NGOs to focus on different themes to facilitate fund raising and avoid duplication. The human rights component resolved that if joint requests were made through the Centre of Human Rights, it would strengthen its appeal for funding and provide a unified domestic front for lobbying. This also may diminish competition among local NGOs.

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Conclusion

A true test of peacekeeping operations and their human rights components is the extent to which their presence has strengthened the capacity of local institutions, such as police, the judiciary, prisons, and civil society, in protecting human rights. Sadako Ogata, the U.N. high commissioner for refugees, recently called for early, rapid deployment capability to intervene in the worst crisis situations,²⁶ which implies that peacekeeping operations and their human rights components will increase in number. At the same time, the rapid growth and numerous achievements of human rights NGOs in developing countries, even in war-plagued areas, are inspiring. Reed Brody, director of the human rights division of the U.N. Observer Mission in El Salvador, said that sustainable development of democratic institutions requires a strong civil society to monitor and support them, and effective human rights organizations and other factors are essential to maintaining government accountability. Liberian human rights activist Koffi Woods stressed that if peacekeeping missions do not support local NGOs, no institutional framework will remain to continue their work. Many peacekeeping operations' experiences reveal that collaboration between NGOs and missions will enhance the missions' potential to succeed, particularly regarding re-establishing the rule of law, reconciliation, institution-building and refugee repatriation. This paper concludes that although some problems and tensions between local NGOs and peacekeeping operations may be inevitable, significant possibilities for improvement do exist.

In general, all U.N. peacekeeping operations should contain a human rights component, and U.N. human rights bodies should be included in their design, planning, and implementation.²⁷ This would give NGOs an opportunity to influence the process through normal channels, thereby guaranteeing that local groups' interests are served. Each mission's mandate should provide specific guidelines for interaction, relationship, and activities between it and local NGOs. Operational plans may specify further criteria for NGO collaboration with the mission and may outline an NGO code of conduct. Subsequent human rights components or peacekeeping operations should look to past missions' experiences for guidance. The San Jose Agreement, which determined ONUSAL's mandate, represents the best existing model for local NGOs' collaboration with missions and should provide a point of departure for future operations. Indeed, the fact that the high commissioner for human rights proposed HRFOR should encourage U.N. bodies to re-examine traditional methods by which civilian and human rights components of peacekeeping operations have been established. It is important that UNOMIL's human rights component increase contact with the Centre for Human Rights in Geneva.

Because it is temporary, a U.N. mission's mandate should foresee a sustainable transition. So that a vacuum is not created when a mission ends, institution-building should be promoted, and local NGOs' capacity to enable transfer of skills and other techniques should be strengthened. Missions and local NGOs could be more effective by taking advantage of their particular strengths. Joint projects could be initiated in areas considered difficult for local NGOs such as investigating and reporting violations. One of the better collaborations between U.N. missions and local NGOs is human rights education, due to NGOs' understanding of their society's culture and customs. Local NGOs could be a bridge between the population and the mission, as they know the country better and have more ties to the community. This would enhance missions' credibility among locals and, at the same time, would give NGOs a sense of ownership and empowerment. In this way, NGOs would feel as if they have been consulted in a meaningful way. Each mission also should try to facilitate a relationship between local human rights NGOs and national and local officials to further legitimize NGOs' role and credibility with the community.

A mission should institutionalize a system of effective communication between itself and local NGOs, so NGOs clearly understand the mission's mandate and thereby avoid

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misunderstandings, misperceptions, or too high expectations. Frequent (not ad hoc) formal and informal consultative meetings with local NGOs are useful to exchange information, share mutual concerns, and build trust. A mission should establish an office of a representative to act as a liaison between itself and NGOs. In some instances, it may be preferable to designate numerous liaisons (and possibly an overall coordinator) based on the various areas of activity (such as rule of law and human rights promotion or detention). It also may help to designate a representative of the local human rights NGO community to work closely with the liaisons. Meetings should be scheduled around specific issues to encourage effective dialogue among human rights officers and NGO representatives.

Peacekeeping operations and their human rights components should not replace local NGOs but rather should help them grow. This does not imply that peacekeeping missions should be grant-making agencies, as this may spur rivalries and tensions within communities. On the other hand, operations' capacities to assist local NGOs should at least be somewhat increased. The United Nations should consider increasing local missions' budgets to enhance their ability to provide logistical support to local NGOs including computers, faxes, paper, and books. Operations should aggressively seek ways to link local NGOs with donors and other contacts to better network on a global scale. They also should train human rights NGOs in advocacy, interviewing, prison monitoring, investigation, organization, management, and consensus-building.

It is important to recruit and train human rights officers so that they understand the local culture and various players' roles in the society before they are deployed. The Centre for Human Rights should consider developing a guidebook on cultural diversity to brief officers on sensitivity toward local NGOs and ways to establish effective collaboration. Special effort must be made to recruit people with not only human rights experience but also specialized skills and training in dealing with indigenous human rights groups. The choices for chief of mission and director for human rights are especially important.

Misperceptions between local NGOs and foreign apparatuses may be inevitable. Commentators noted that at times local NGOs do not adequately understand the political sensitivity surrounding a peacekeeping operation. Some NGOs complained that missions were being overly cautious to remain on good terms with governments, which in turn caused human rights promotion to suffer. Indeed, in Somalia and Liberia, some peacekeepers themselves were accused of committing human rights abuses. Particular attention should be given to cases where joint missions are established with subregional bodies to ensure human rights are integrated into their approaches. Ultimately, local NGOs can benefit meaningfully from peacekeeping operations and their human rights components and can assist missions in implementing their mandates. ■

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ENDNOTES

Editor's note: Much of the information in this document was obtained by interviews with mission staffs and human rights activists who do not wish to be identified.

- ¹ Anonymous, 249.
- ² Clapham and Henry, 137.
- ³ Boutros-Ghali, Boutros.
- ⁴ Human Rights Watch, 110.
- ⁵ *Ibid.*, 119.
- ⁶ Interview with Mohamed Sahnoun, November 1996.
- ⁷ Ameen.
- ⁸ Menhhaus, 42-67.
- ⁹ Martin, 115.
- ¹⁰ O'Neill.
- ¹¹ O'Neill, William G. Letter to the author, Jan. 2, 1997.
- ¹² Lawyers Committee for Human Rights. HAITI: LEARNING THE HARD WAY. THE U.N./OAS HUMAN RIGHTS MONITORING OPERATION IN HAITI 1993-1994, 24.
- ¹³ Martin, 115.
- ¹⁴ *Ibid.*, 90-92.
- ¹⁵ O'Neill.
- ¹⁶ Conversation with MICIVIH Chief of the Section on Human Rights Promotion Anne Fuller, May 8, 1997.
- ¹⁷ O'Neill.
- ¹⁸ Interview with Anne Fuller.
- ¹⁹ Clarence, 291-308.
- ²⁰ The International Human Rights Internship Program and The Swedish NGO Foundation for Human Rights, 24.
- ²¹ The groups are Rafiki, Inganzo, and Inganji.
- ²² Interview with CLADHO President Francois Birima.
- ²³ Amnesty International.
- ²⁴ Interview with UNOMIL Human Rights Officer and former MICIVIH Human Rights Officer Desmond Parker.
- ²⁵ These include the Movement for the Defense of Human Rights (human rights education), FOCUS (children's rights), National Human Rights Monitor (women and internally displaced), CALL (legal aid), Liberia Human Rights Watch (child fighters, former child soldiers, and reintegration issues), Justice and Peace Commission (human rights education, legal services, and prisons), Center for Law and Human Rights Education (legal aid), and Liberia Human Rights Chapter (prisons).
- ²⁶ Ogata.
- ²⁷ Brody, Reed. "U.N. Peace Building and Human Rights."

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Paul Diermann