REPORT TO INFORM THE RESOLUTION ON CIVIL SOCIETY
MAY 2020

The purpose of this report is to consolidate responses from civil society to use as an information base for the draft resolution on civil society.

The information has been gathered from a consultation with civil society based in Geneva (date) and a survey that was sent to a wide group of civil society participants. The questions used for the consultation and for the survey were drafted by Ireland and the core group of States sponsoring the resolution.

> 1) What do you see as the ongoing, new and emerging challenges preventing civil society actors from operating freely and carrying out their work (domestically and internationally)?

1. Enabling environment

There is an implementation gap between governments' commitments to civic space and their actions on the ground. Civil society groups face restrictions in their daily work imposed by a wide variety of stakeholders, including governments, aligned non-state actors (NSAs) and different parts of society.

This includes legal, policy and practical restrictions on citizens' rights to freedom of opinion and expression, peaceful assembly, association, and participation in public and political affairs, and other rights such as equality before the law, equal protection of the law, and non-discrimination. Overly broad or restrictive legislation hinders the formation and operation of independent CSOs. Patterns of intimidation, harassment (both online and offline), stigmatisation, vilification and smear campaigns, threats, physical assault, arbitrary arrest and detention, and other forms of judicial and extra-legal harassment contribute to restrictive environments, including through self-censorship. This is often exacerbated by systematic impunity.

Human rights defenders who speak up in support of civil society are often publicly criticised and their motives questioned based on perception of the people whose rights they defend. Populist and fundamentalist narratives attack and stigmatise civil society's efforts towards progressive change. Ongoing harassment, detention and killing of HRDs, including WHRDs, severely impacts the promotion and protection of human rights. Many of these attacks against civil society are made under false pretexts of anti-terrorism efforts, and cybercrime legislation and other policies. This restrictive environment leads to self-censorship amongst civil society, many of whom are pressured to publicly align with government positions for fear of reprisals.

Governments have increased the privatisation of their responsibilities to Non-State Actors, who are ultimately accountable to their stakeholders, not the citizens or communities. This can lead to impunity and lack of accountability for violations perpetrated by NSAs. A greater emphasis on the private sector in policy debates risks displacing civil society voices, and the distinctive perspective which civil society brings to such debates.

The under-funding of UN human rights mechanisms means that such mechanisms increasingly lack the capacity to fully investigate, control and track the current human rights situations in countries around the world. Civil society depends on the support of these mechanisms and their absence has severe consequences on the ground.

2. The COVID-19 context

The COVID-19 pandemic, and worldwide responses to it, have significantly exacerbated existing challenges for civil society, and there are serious concerns that measures taken may have mid- to long-term consequences well beyond the current crisis. Governments around the world have introduced and amended emergency measures to combat the COVID-19 pandemic, which often impose restrictions on freedom of movement, freedom of opinion and expression, and freedom of peaceful assembly and association. However, such laws and regulations in many instances fail to fulfil necessary conditions for human rights restrictions as elaborated by the ICCPR, namely the legality, proportionality, necessity and limited duration of such measures.

Such measures, particularly in states with weak institutions and rule of law, can be willfully misused to crack down on dissent by governments which appear to be using the pandemic as an opportunity and a justification to impose restrictions that serve political purposes. There are a number of examples of individuals attacked, arrested and even imprisoned by state authorities and NSAs for voicing criticism of government responses to COVID-19. Freedom of expression has been further curtailed under the guise of preventing the 'spread of fake information' about human rights and COVID-19. In some cases, this has led to useful information being prevented from circulation.

While civil society is adapting to the changing circumstances, the current crisis is overshadowing and, in some situations, preventing ongoing work. It has rendered humanitarian access more difficult, as travel and movement restrictions often also apply to life-saving aid. This is exacerbated in areas where counterterrorism measures are imposed, such as internet restrictions, which make it difficult to reach vulnerable groups and for civil society to share information amongst themselves and monitor the situation on the ground.

COVID-19 has also exacerbated the digital divide; with work increasingly moved online, digital literacy, internet access and internet security are vital. Internet restrictions in response to the pandemic, intrusive tracking systems and insecure online platforms in particular pose threats to carrying out critical work and maintaining the right to privacy.

3. Funding

Lack of adequate financial resourcing remains a perennial challenge for civil society. The limited size of most available grants, combined with burdensome administrative and reporting requirements, means CSOs must spend significant time and resources on administrative aspects of their work. This particularly impacts smaller, more grassroots groups. Reporting requirements can also provide an incentive to prioritise interventions that are easier to measure over what is the most impactful in human rights terms.

Some States have imposed regulatory restrictions on foreign funding, ostensibly aimed at countering money laundering and the financing of terrorism. This can take many guises - from the outright prohibition of funding from overseas, to mandatory routing of funding through government banks - and severely hinders civil society from carrying out their work.

4. Access and participation

Participation in policy-making at national levels varies significantly for civil society groups, often dependent on the openness or otherwise of their respective countries. This has implications for the policies which affect the work of civil society, and so too for the implementation of such work.

With regards to global policy-making, restrictions of movement, including travel restrictions to Geneva, prevent civil society from effectively on international platforms. New limitations on traditional ways of working - such as the cancellation of side events at the HRC's 43rd Session and CSW's 64th Session - have also made it increasingly

harder for civil society to be visible at the international level. Decisions to remove such crucial platforms for engagement in UN spaces must be taken transparently and with the meaningful participation of civil society. More broadly, Member States must be encouraged to consult with civil society in advance and meetings must happen with enough time to prepare and participate effectively.

Vulnerable groups face additional challenges due to intersectional discrimination and their unique situations, which can often exclude them from decision-making processes. Children face specific challenges. They must be recognised as actors of decision-making and there must be possibilities for them to engage in decision-making at regional and global level.

LGBTI people face specific barriers to meaningful participation. Legislation which discriminates based on sexual orientation, gender identity and expression and sex characteristics still imposes serious threats to civic space. At least 32 Member States have introduced or interpreted provisions to restrict the freedom of expression in relation to SOGI issues. Additionally, 41 Member States have laws that restrict the possibilities of registering or running NGOs that work on sexual orientation issues.

Indigenous people are increasingly at risk with some states using the pandemic to launch and continue megaprojects on indigenous lands without prior or ongoing consultation with the indigenous people affected.

Particular attention should be paid to the multiple and intersecting risks facing WHRDs, including discrimination and violence, including WHRDs working on sexual and reproductive health and rights. Worldwide, national statistics of NGOs working on women's human rights highlights a stark increase in sexual and gender-based violence (SGBV) during the pandemic. The stigmatisiation of WHRDs and women participants in civil society is increasing. Given the cumulative impact of such stigmatisation on women participating in the public sphere, this is of serious concern.

> 2) How can states better support civil society engagement at the local level to implement global initiatives such as the UN Secretary-General's Call to Action for Human Rights, the 2030 Agenda for Sustainable Development, and Beijing+25?

1. Open civic space
For individuals and civil society to participate freely at the international level, they need to be able to do so at the national level. Laws, policies and practices of States must create a clear and regulated system for individuals and civil society to engage both with the state and with global initiatives. Among other measures, this means that states must strengthen judiciary and prosecution bodies, including ombudsmen, that will act as interpreters of statues from the constitution to regulations at the local government levels. States play a crucial role in holding each other accountable and increased bilateral engagement on the opening of civic space are essential to achieve the fulfilment, respect and protection of human rights.

2. Active participation of civil society on all levels
Civil society and HRDs are central to the implementation and monitoring of global initiatives and human rights mechanisms, and such participation should be ensured through meaningful consultation. In restricted countries, this could take place through facilitation by the UN and embassies. This was also highlighted in the Secretary-General's recent Call to Action.

Consultation with and active participation from civil society should be the remit of all UN agencies and procedures. UN Mechanisms must work together and encourage to create spaces to consult with civil society

online and offline, guaranteeing safe spaces and meaningful and effective participation of vulnerable groups including, but not limited to, targeted HRDs, women, children, indigenous people, migrants, people with disabilities and LGBTI people. Such safe spaces can be facilitated by embassies, including by providing funding for such consultations. The UN needs to conduct a civil society impact assessment to ensure the participation of civil society.

3. Bilateral engagement
In order to support the above goals, States should engage strategically at bilateral and multilateral levels. For example, States should follow up on their UPR recommendations to other countries, through local embassies and other relevant channels. The HRC Sessions present an opportunity for states to protect civic space through delivering thematic statements which name States that are falling short of their civic space obligations. If such statements were to be delivered by the core group of the civic space resolution, they would have significant impact, not least as a demonstrable show of support for besieged local civil society groups.

4. Enhanced capacity-building
To guarantee the effective and meaningful participation of civil society, the UN and Member States should provide capacity building for CSOs and other civil society actors on engagement with UN mechanisms and their lobby processes. Capacity-building on digital literacy and security will become increasingly relevant if such processes and participation opportunities continue to move online, which would exacerbate a digital divide. Capacity-building should be adapted according to the needs of civil society and take into consideration vulnerable groups that often have additional needs.

5. Alleviate funding challenges
Civil society heavily depends on funding from different stakeholders in order to function, so governments should provide and facilitate access to funding that is predictable, increased, multi-year and flexible. Joint fundraising and donor support should be encouraged to promote strengthening of efforts rather than replication and competition. Restrictive foreign funding laws that hinder civil society to access grants that would facilitate their work should be alleviated by governments which impose them and publicly condemned by governments that support independent civil society.

> 3) Can you highlight some of the priority issues for civil society organisations in 2020 (and beyond) that could be included or addressed in the resolution?

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1. Civic space and civil society as early warning indicators of human rights crises
The report on the contribution of the HRC to the prevention of human rights violations, which was presented to the Council in its 43rd Session, highlighted that restriction of civic space frequently precedes the deterioration of human rights. It is thus essential for the resolution to include an early warning approach and to refer to the use of civic space elements as objective criteria. Where such a regression is happening, the UN, its Member States and other relevant stakeholders must take a strong, principled and public stance in defence of human rights. This can also be framed positively: an improvement in civic space can also help assess a general progress in the human rights situation in a country.

2. Online security and freedom of expression
With the outbreak of COVID-19, meetings and consultations have been moved online. This offers opportunities to open spaces to civil society that were before limited to civil society that had the possibilities to travel to participate in global policy-making fora such as the HRC or the Commission on the Status of Women. However,

the move to online spaces poses risks of online reprisals in numerous forms. It has a significant impact on election processes, expression issues, misinformation laws and governments' monitoring of online spaces.

To guarantee the meaningful and safe participation of civil society, states must prioritise the guarantee of safe, accessible and open online and offline spaces. These spaces must protect civil society's right to privacy and address concerns about government surveillance of civil society activity.

3. Civil society in situations of emergency and crises

As we have repeatedly seen, most recently in the COVID-19 pandemic, effective response to crises requires the representation, meaningful participation and leadership of civil society and human rights defenders. COVID-19 has also highlighted that the transparency and open communication of government responses to crises is crucial for the effective and meaningful participation of civil society. It must be a priority to ensure such participation, including by increasing civil society's resilience to shocks resulting from such emergencies.

Correspondingly, states must engage and reflect with civil society flexibly to minimise the impact of such shocks. The resolution must address the fact that the environment in which civil society operates has changed because of emergencies and crises. States must correspondingly acknowledge this shifted reality and adapt their approaches towards civil society to the specific context in which they operate. This is crucial to guarantee the effective participation and contribution of civil society. Crises present dangerous opportunities for governments to delegitimise the role of civil society and to violate human rights, including economic, social and cultural rights. The resolution should address this concerning trend.

4. The rise of protests and people's movements

Around the world, there has been a rise in mass protests and people's movements to call for change, notably in Chile, Hong Kong, Sudan and Lebanon. However, such movements remain outside the traditional civil society discourse. Including some language on this, in a manner complementary to the resolution on peaceful protests, would serve to affirm that mass protest movements are legitimate civil society actors. The current drafting of the Human Rights Committee's General Comment on Peaceful Assembly could provide a framework for the protection of civil society in the form of mass protest.

> 4) What do you consider to be the key "asks" and outcomes that the resolution could present to the Human Rights Council?

1. Civil society - including religious institutions, civil society in rural and humanitarian settings and vulnerable groups - and National Human Rights Institutions must be meaningfully involved in defining and structuring the post-COVID-19 environment. This requires States to comply with their human rights obligations and guarantee that measures taken during the pandemic are limited in time, proportionate, legitimate and necessary. This includes travel bans which would prevent HRDs and civil society from engaging with UN Mechanisms, and measures which curtail freedoms of peaceful assembly, association and expression, with a specific focus on online freedoms and protection.

2. Call on states to protect and promote space for civil society in the development and evaluation of policies related to states of emergency. Legislation, policies and emergency measures which affect civil society freedoms must be urgently reviewed to ensure compliance with civic space obligations.

3. Highlight the centrality of civil society restrictions to an early warning approach and encourage States to work closely with civil society to accelerate the reporting, evaluation and address of human rights issues, including within the UPR framework and other UN mechanisms.

4. Highlight the importance of the respect, protection and fulfilment of the rights of HRDs, specifically freedom from arbitrary detention, torture, and cruel, inhuman and degrading treatment, and support for CSOs involved in demonstration and who are exercising their right to peaceful assembly and to expression.

5. Call on governments and the UN to enable all civil society actors, including marginalised groups, to engage effectively and meaningfully in all human rights mechanisms, including UPRs and resolutions. This must include using the opportunity of digitalisation to involve civil society actors who would otherwise be unable to participate in these mechanisms.

6. Request UN agencies to conduct civic space impact assessments and mandate the inclusion of reporting on civic space in the UPR.

7. Name restrictive countries, and push for legislation against violations of civic space, with special attention, given the current context, to restrictions of online assembly and expression.

8. Call on states to monitor NSAs, including transnational corporations, and take meaningful action to hold them accountable for actions that hinder the effective and meaningful participation of civil society.

9. Request of the High Commissioner and Special Procedures to expand on what active support to civil society should look like in practical terms and how to build more resilience, including in online spaces.

10. Ensure diversity inclusive of vulnerable groups, including, but not limited to, women, migrants, LGBTI persons, children and indigenous people.

11. Support funding to build capacity for civil society on human rights issues, especially on the use of UN Mechanisms.