

# *Civil society and the UN human rights system*

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# Civil Society and the UN Human Rights System

Rosa Freedman\* and Samuel Gordon\*\*

## 1. Introduction

Civil Society has been a main actor in international diplomacy and policymaking since the mid 17<sup>th</sup> Century, contributing to the establishment and practices of both the League of Nations<sup>1</sup> and United Nations.<sup>2</sup> Article 71 of the UN Charter gives ECOSOC the authority to arrange for consultation with Non-Governmental Organisations (NGOs).<sup>3</sup> The term was used in 1945 to distinguish civil society actors (from intergovernmental organisations (IGOs), although today it has a somewhat different meaning as being one subset of civil society.<sup>4</sup> Article 71 was seen as a breakthrough both in terms of substance and language. The drafters truly meant that civil society would be consultants who would be part of exchanges and decision-making at the UN, but it soon became apparent that states had no intention of affording civil society that level of status or power.<sup>5</sup>

There currently exists far less knowledge and understanding of civil society's roles and functions within the UN<sup>6</sup> compared with the scholarship on states, the secretariat, and independent experts. Recent academic work on this subject largely focuses on specific types of CS actors.<sup>7</sup> There exists only a limited understanding of the role civil society plays in the UN human rights system, and much of that knowledge focuses on specific thematic case studies.<sup>8</sup> In order to understand the role CS

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<sup>1</sup> Bertram Pickard, *The Great United Nations* (New York: Carnegie Endowment for International Peace, 1956), 72

<sup>2</sup> Quoted in Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Cambridge, MA: Westview Press, 2003), 125; and in Robert A. Divine, *Second Chance: The Triumph of Internationalism in America during World War II* (New York: Atheneum, 1967), 292

<sup>3</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 71

<sup>4</sup> There are many ways of defining civil society, and we adopt the following one throughout this chapter: "the arena, outside the family, the government, and the market, where people associate to advance their interests" (Carmen Malena and Volkhart Finn Heinrich, "Can We Measure Civil Society? A Proposed Methodology for International Comparative Research" *Development in Practice* 17, no. 3 (Autumn 2007): 340) or take collective action. As such, when we discuss civil society we include all actors within that space rather than referring to specific types of actors.

<sup>5</sup> See, for example, Felice D. Gaer, "Reality check: human rights nongovernmental organisations confront governments at the United Nations." *Third World Quarterly* 16 (3) (1995), 389-404.

<sup>6</sup> Although there are some notable exceptions, often from decades ago, William Korey, *NGOs and the Universal Declaration of Human Rights* (New York: Palgrave Macmillan, 1998); Jane Connors, "NGOs and the Human Rights of Women at the UN" in *The Conscience of the World: The Influence of Non-Governmental Organizations in the UN System*, eds. Peter Willetts (London: Brookings Institution Press, 1996): 147-180; Paul C. Szasz, "The Role of NGOs in International Governance" *American Bar Association* (September, 1999): 2-4

<sup>7</sup> J. Wagona Makoba. "Non-Governmental Organisations (NGOs) and Third World Development: An Alternative Approach To Development". *Journal of Third World Studies* 19, no.1 (Spring 2002): 53-63; Jennifer N. Costanza, "Indigenous Peoples' Right to Prior Consultation: Transforming Human Rights from the Grass Roots in Guatemala", *Journal of Human Rights* 14, no. 2 (June 2015): 260-285; Karen Bennett *et al.*, "Critical perspectives on the security and protection of human rights defenders" *The International Journal of Human Rights* 19, no. 7 (2015): 883-895

<sup>8</sup> Thomas R. Davies, "The Transformation of International NGOs and Their Impact on Development Aid," *International Journal of Development Policy*, no. 3 (2012): 48-59; Shofiqur, Rahman, Chowhury, Haris Abd Wahab and M. Rezual Islam, "The role of faith-based NGOs in social development: Invisible empowerment",

undertakes in the UN's mandate to protect, promote and develop human rights,<sup>9</sup> we need greater knowledge of who civil society actors are, their aims in interacting with UN human rights mechanisms, methods of accessing those bodies, and the challenges and strengths of that system. This chapter provides an introduction to this area and an overview of the issues.

States and IGOs interact with civil society for several reasons. Firstly, it allows them to foster public support and quell more radical growing parts of society, as was particularly apparent through states' initial oppression of but later capitulation to global civil society movements for change such as for Women's Suffrage or anti-Slavery,<sup>10</sup> with civil society actions resulting in legal reform. Secondly, by including civil society and their international or domestic support base, states and IGOs policies and actions are afforded greater legitimacy in terms of representing the views of many individuals and groups.<sup>11</sup> In addition, civil society is seen to increase legitimacy through shrinking the democratic deficit.<sup>12</sup> IGOs often are perceived as undemocratic bodies,<sup>13</sup> which makes including civil society even more important for those organisations to claim legitimacy in terms of representing regional or global communities.<sup>14</sup> Thirdly, many civil society actors focus on underrepresented groups or societal issues,<sup>15</sup> resulting in them having expertise that states and IGOs require and rely upon to inform policymaking decisions.<sup>16</sup>

Academic scholarship has largely focused on the legitimacy and accountability of civil society.<sup>17</sup> This includes focusing on top-down and bottom-up approaches,<sup>18</sup> 'uncivil society',<sup>19</sup> and the emphasis placed on democracy within such organisations.<sup>20</sup> Much of this scholarship views legitimacy through

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*International Social work* 62, no.3 (April 2018): 1055-1074; Paul Jepson, "Governance and accountability of environmental NGOs", *Environmental Science & Policy* 8, no. 5 (October 2005): 515-524

<sup>9</sup> UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251

<sup>10</sup> Thomas Davies, *NGOs: A New History of Transnational Civil Society*. (Hurst & Company: London, 2013), 288

<sup>11</sup> Jennifer N. Brass, *Allies or Adversaries: NGOs and the State of Africa*. (New York: Cambridge University Press, 2016), 175-176

<sup>12</sup> Martine Beijerman, "Conceptual confusions in debating the role of NGOs for the democratic legitimacy of international law", *Transnational Legal Theory* 9, no. 2, (2016): 147-173; Anthony G. McGrew, "Democratising Global Governance: Democratic Theory and Democracy beyond Borders." *Theoria: A Journal of Social and Political Theory*, no. 94 (December, 1999): 1-29

<sup>13</sup> Dawisson Belém Lope and Guolherme Casarões, "Can International Organisations Be Democratic? A Reassessment" *Contexto Internacional* 41, no.3 (2019)

<sup>14</sup> UN Department for Economic & Social Affairs, "Leaving no one behind: the imperative of inclusive development" *Report on the World Social Situation 2016*, 6 & 85

<sup>15</sup> Clifford Bob, "The Market of Human Right", in *Advocacy Organisations and Collective Action*, eds. Aseem Prakash and Mary Ka Gugarty, (Cambridge: Cambridge University Press, 2010), 146

<sup>16</sup> James A. Paul, "NGOs and the United Nations: Comments for the Report of the Secretary General". *Global Policy Forum*, New York, 1999) Available: <https://archive.globalpolicy.org/component/content/article/176-general/31440-ngos-and-the-united-nations.html>

<sup>17</sup> Alison Van Rooy, *The Global Legitimacy Game: Civil Society, Globalisation and Protest* (New York: Palgrave Macmillan, 2004), 62-125

<sup>18</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Columbia University Press: New York, 1977)

<sup>19</sup> Susantha Goonatilake, "Cultural Imperialism: A Short History, Future, and a Postscript from the Present", in *Cultural Imperialism Essays on the Political Economy of Cultural Domination*, eds. Bernd Hamm and Russell Smandych, (Plymouth: Broadview Press, 2005), 47

<sup>20</sup> Finn Heinrich, "What Makes Civil Society Strong? An innovative approach to conceptualising analysing and explaining the strength of Civil Society in 43 countries" (*PhD diss., Fern Universität Hagen, 2010*), 35

a Global North perspective,<sup>21</sup> using democracy, non-violence, and liberal ideologies as key benchmarks of what good looks like. It also overlooks the limited role those factors play in providing legitimacy at the UN, which is only provided when states choose to interact or engage with a civil society actor. Research has also been undertaken on the more practical side of civil society participation at the UN,<sup>22</sup> although that work largely focuses on ECOSOC accreditation processes and how civil society accesses the Organisation. Other work touches upon civil society while discussing specific thematic case studies within UN human rights bodies, but without focusing on the nature, role, or access of those actors.<sup>23</sup> There remains a gap (some might even say gulf) in the literature about how civil society interacts with the UN human rights mechanisms, specifically the Human Rights Council, Universal Periodic Review (UPR), Special Procedures, and Treaty Bodies, as well as more broadly the Office of the High Commissioner for Human Rights. Yet without knowledge of how and why civil society engages with the UN it is not possible to understand the role and impact of civil society or how to harness the expertise of civil society within the UN human rights system.

## 2. Civil Society and the UN Human Rights System

Civil society seek to access the UN human rights mechanisms in a range of ways but ultimately with the aim of influencing states and independent experts in support of their mandates to protect, promote and develop human rights. Within those activities, some are those of consultants – as envisaged by Article 71 – while others are those of advocates. Preliminary research shows that there exists a wide range of reasons for civil society to undertake those roles, ranging from shoring up their own legitimacy to seeking to supporting the UN’s procedures, and from influencing human rights in one state to creating new global human rights mechanisms.

We must first understand how civil society accesses the UN human rights bodies before turning to the different ways in which they assist those bodies in fulfilling their mandates. It is crucial to underscore that formal access is not necessary to influence, consult or advocate. Indeed, civil society can influence, consult and advocate outside of the UN at states’ missions or through other avenues. Established or elite civil society actors use their influence through soft power, making connections with diplomats and politicians and arranging events that place them in key positions with governments.<sup>24</sup> Others ensure that their reports and lobbying land on the desks of key diplomats, meaning that they do not even have to appear in human rights bodies to influence the outcomes of those meetings. Civil society actors tend to share common aims of using their position to lobby

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<sup>21</sup> Rana Lehr-Lehnardt, "NGO Legitimacy: Reassessing Democracy, Accountability and Transparency". Cornell Law School Inter-University Graduate Student Conference Papers. Paper 6 (April, 2005) 1-5

<sup>22</sup> Felicity Vabulas, "What is a Seat on the ECOSOC NGO Committee Worth? Exploring the State Motivations and Benefits of Granting UN Access to NGOs?" *APSA Annual Meeting Paper* (2011); Gareth Sweeney and Yuri Saito, "An NGO Assessment of the New Mechanisms of the UN Human Rights Council" *Human Rights Law Review* 9, no. 2 (2009): 203-223; Russel Lawrence Barsh and Nadia Khtack, "Non-Governmental Organisations in Global Governance: Great Expectations, Inconclusive Results", in *Justice Pending: Indigenous Peoples and Other Good Causes*, eds. Gudmundur Alfredsson and Maria Stavropoulou (Brill, 2002), 15-31

<sup>23</sup> Cosette D. Creamer and Beth A. Simmons, "Ratification, Reporting, and Rights: Quality of Participation in the Convention against Torture" *Human Rights Quarterly* 37, (2015): 608;

<sup>24</sup> E.g. the Glion human rights dialogues organised by URG – The Glion Human Rights Dialogue is an annual high-level retreat, hosted by the Governments of Norway and Switzerland, which brings together around sixty senior policy-makers and other stakeholders in an informal, non-attributable setting designed to promote open, forward-looking and solutions-focused debate. Glion Reports available at <https://www.universal-rights.org/the-glion-human-rights-dialogue/>

states about specific human rights issues, awareness-raising of abuses, influencing resolutions and decisions of UN bodies, and feeding information into UN human rights reports. But most civil society actors do not have those levels of power and influence to help create and set agendas from outside of the rooms, and their attendance at and engagement within those mechanism is how they seek to consult and advocate with the UN, member states and other relevant actors.

Not all civil society actors have access to the UN human rights system, and of those that do there are hierarchies of access. The UN accreditation system only allows certain actors – who meet the specified criteria – to apply for accreditation, and even then, not all such actors will secure accreditation. The status they are afforded is in line with Article 71, that is on a consultative basis rather than on an equal footing with states or the secretariat. Other UN bodies such as the Department of Public Information have their own accreditation systems, but our focus is on ECOSOC as the mechanism for the UN human rights system, and also as the “flagship vehicle”<sup>25</sup> that provides accreditation to 5 times as many organizations as the others combined.<sup>26</sup>

ECOSOC Res1996/31<sup>27</sup> provides a 3-tiered level of accreditation for consultative access to the UN to 6,110 NGOs.<sup>28</sup> Those tiers are: General, Special, and Roster, with General being the most influential.<sup>29</sup> The vast majority of organisations are given Special status, with few than 150 holding General status.<sup>30</sup> Accreditation enables participation in the UN human rights system in a range of ways, including attending public meetings, submitting written statements to human rights bodies, and delivering oral presentations at human rights sessions. Crucially, ECOSOC accreditation is required for civil society to attend informal negotiations in Geneva, which has had a significant impact in terms of awareness-raising and ability to influence the work of the UN human rights system. It enables accredited civil society actors to be informed officially of state preferences and of the logic behind decision-making on key issues.

The Committee on NGOs, which is in charge of accreditation, is an intergovernmental body that – by its very nature – is political. It has also been criticised for being politicised,<sup>31</sup> with states accused of blocking accreditation of organisations that they fear will scrutinise their human rights record.<sup>32</sup> There are also politicised reasons why some civil society actors apply for accreditation, ranging from legitimacy for the purposes of funders or domestic audiences to being able to access human rights mechanisms as shills for states in which they are headquartered. Accreditation is only one form of access route to the UN human rights mechanism, as we shall demonstrate in the substantive sections that follow on the UN Human Rights Council and the UPR. When looking both at accredited NGOs and also alternative access points for civil society actors, several themes emerge that impact

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<sup>25</sup> Barry D. Mowell, “United Nations-NGO Accreditation Regimes: A Comparative Profile” *Journal of International Organisations Studies* 9, no. 2 (2018): 145

<sup>26</sup> UNDESA (2022)

<sup>27</sup> UN Economic and Social Council, *Consultative Relationship Between the United Nations and Non-Governmental Organisations*. 25 July 1996, E/RES/1996/31

<sup>28</sup> UN Department of Economic and Social Affairs, “Consultative Status with ECOSOC and other accreditations”, accessed March 1, 2022,

<https://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false>

<sup>29</sup> There are specific levels of access that are given to each of the three tiers, which can be found here: United Nations, *Working with ECOSOC: an NGOs Guide to Consultative Status* (New York: United Nations, 2011) 1-24

<sup>30</sup> ECOSOC, ‘List of non-governmental organizations in consultative status with the Economic and Social Council as at 1 September 2019: Note by the Secretary-General’, 2 March 2021, UN Doc. E/2019/INF/5

<sup>31</sup> Jurij Daniel Aston, “The United Nations Committee on Non-governmental Organisations: Guarding the Entrance to a Politically Divided House”, *EJIL* 12, no. 5 (2001): 943-962

<sup>32</sup> Human Right Watch, “The Cost of International Advocacy: Chinas interference in United Nations Human Rights mechanisms” (2022), 30-39

civil society engagement with the mechanisms and ability to be part of the UN fulfilling its human rights mandates. Those include politicisation, the North/South divide, the power imbalance compared with states, independent experts and the secretariat, and the effect of proliferation of civil society activities within those mechanisms. In drawing out these themes we aim not to provide solutions but rather to underscore the challenges and to demonstrate the importance of further knowledge-production in this area.

### 3. The UN Human Rights Council

It is important to understand some of the background to the HRC's creation, and in particular why key changes were made to enable civil society to better engage with and support the new body. The Council's predecessor, the Commission on Human Rights, largely was discredited in its latter years, with pernicious politicisation<sup>33</sup> rife throughout the body's work,<sup>34</sup> and with known abusers using their membership to block scrutiny of their allies.<sup>35</sup> It had become clear that "certain countries [were] singled out, for partisan purposes, to the exclusion of other, no less reprehensible regimes"<sup>36</sup> and the body began to "resemble a club where friendships easily overlooked wrongdoing".<sup>37</sup> In 2005-2006, during the negotiations on and creation of the HRC, one key area identified as needing to be addressed was the Commission's lack of transparency and lack of engagement with CS. Indeed, the Council's constituent instrument emphasised the need for it to work closely with civil society.<sup>38</sup> This was both for the body's credibility and also to ensure that it would have access to the expertise from civil society actors that could assist with fulfilling its mandates to protect, promote and develop human rights.

Unlike its predecessor, which was a subsidiary body of ECOSOC, the Council is a subsidiary body of the General Assembly. This posed some problems in terms of civil society participation, as there are no provision in the UN Charter for civil society participation in UNGA, and the main committees do not allow such participation. This problem was addressed in Resolution 60/251 which, under paragraph 5(b), requires the Council to work in cooperation with civil society, and also paragraph 11 which specifically modifies the General Assembly rules of procedure to carry over the Commission's working practices in relation to civil society participation.

The Council's structure enables civil society actors to engage in a number of ways. By far the most popular is watching the Council's webcast during or after sessions, and those who use the Council's webpages to access documents and press releases from the sessions. It allows civil society actors who cannot attend Geneva to follow the debate, and also provides a useful awareness-raising tool.<sup>39</sup> Civil society actors can use the OHCHR guide to the HRC for persons with disabilities to learn how to access the webcast and all documents.<sup>40</sup> Of course, the advent of technology played a part in these

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<sup>33</sup> the introduction of unrelated controversial issues by states seeking to further their own political objectives

<sup>34</sup> Gene M. Lyons, David A. Baldwin, and Donald W. McNemar, "The "Politicization" Issue in the UN Specialized Agencies", *Proceedings of the Academy of Political Science* 32, no. 4 (1977): 89

<sup>35</sup> Jean-Calude Buhner, 'UN Commission on Human Rights Loses all Credibility: Wheeling and Dealing, Incompetence and "non-action"' Reporters Without Borders (2003

<sup>36</sup> Cf. Howard Tolley, *The U.N. Commission on Human Rights* (1987), 199-203

<sup>37</sup> Ladan Rahmani-Ocora, "Giving the emperor real clothes: the UN Human Rights Council", *Global Governance* 12, no. 15 (2006): 16

<sup>38</sup> UNGA Res.60/251 para.5 h

<sup>39</sup> Patrizia Scannella and Peter Splinter, "The United Nations Human Rights Council: A Promise to be Fulfilled", *Human Rights Law Review* 7, no. 1 (2007): 68

<sup>40</sup> OHCHR, "Accessibility Guide to the Human Rights for Persons With Disabilities", November 2018

changes from Commission to Council, but the commitment to transparency and to engaging with civil society was the key factor. In particular, those changes were aimed at civil society who did not previously have access to the UN human rights machinery.

Those civil society actors able to engage in person most often do so by attending Regular Sessions. A broad range of civil society actors take up this opportunity, including researchers, media, and activists. During regular Council sessions the rooms, halls, and grounds of *Palais des Nations* host many civil society actors who are accessing the session in a variety of different ways. However, to attend a session as a participant a civil society actor or an affiliated organisation must have ECOSOC accreditation which provides passes<sup>41</sup> to be a panellist, attend side events and informal dialogues, or to access to the main Council chamber. With increasing numbers of civil society actors and individuals applying for grounds passes there are now very long queues – and therefore time delays – for people who need to collect their access passes for specific days or weeks of the session. This again goes to the hierarchies between civil society actors, with some able to have year-long passes for their staff members, who then do not have any delays in accessing the grounds.

As noted above, ECOSOC accreditation dictates an organisation's ability to speak at the Council or submit written statements. The most recent session, HRC 49, saw 15 written statements submitted.<sup>42</sup> Oral and written statements are essential for bringing an issue in front of all Council members as well as to global actors via the webcast. The speakers list works on a first-come first-serve basis, making it equitable and limiting bias towards specific organisations. Accredited civil society actors have less time to speak than states are given<sup>43</sup> and may only deliver oral statements when all States have spoken, which usually means that state representatives have left the room and thus limits the impact of the civil society statements. Owing to being the last to speak, if there is insufficient time left in the day, civil society statements are taken off the agenda. Written statements are published and disseminated by the Council, with online open access for anyone. They are significantly less impactful than oral statements but still act as a useful tool for lobbying and educating states on specific issues. Organisations make joint/group oral or written statements to create greater legitimacy and impact of their statements.

Civil society actors can hold parallel events and side events during the session, allowing them to bring their issues and perspectives in front of states and other stakeholders. The events typically focus on specific human rights thematic or country issues and provide a mechanism for state and civil society engagement in a public forum. They run at the same time as the regular sessions and need to be registered and approved in advance.<sup>44</sup> Organisations that do not have accreditation may co-sponsor a side event with states or any accredited civil society actor, improving inclusiveness and equity, although of course it requires the civil society actor to lobby a state or an accredited organisation to support the event. Anyone with a grounds pass may attend side events, making them a useful method for feeding into the Council's mandates. They are not recorded or webcast, so the impact is limited to those attending the specific event. Interactive dialogues allow for civil society to consult with states and advise on specific thematic or country specific situations, whilst high-level panel discussions provide a similar avenue for discussing policy and strategies.

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<sup>41</sup> ISHR, "Civil society engagement with the UN" accessed March 26, 2022,

<https://academy.ishr.ch/learn/accessing-the-un-1/accessing-the-human-rights-council>

<sup>42</sup> OHCHR, accessed March 24, 2022, [https://ap.ohchr.org/documents/sdpage\\_e.aspx?b=10&se=227&t=7](https://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=227&t=7)

<sup>43</sup> 1 min 30 seconds to speak during general debates; and 2 minutes during agenda item debates.

<sup>44</sup> OHCHR, "A Practical Guide for NGO participants: United Nations Human Rights Council", (2013), 10



Another activity frequently undertaken, or at least attempted, is civil society lobbying other stakeholders during breaks in the Council sessions and during the periods in-between decision-making meetings held by voting and regional blocs. This is known as informal lobbying, a commonly used tactic that can only take place outside of official session meetings and events.<sup>45</sup> Civil society actors need nothing more than a grounds pass to be able to attempt to lobby those stakeholders, either through setting up meetings in the margins of the sessions or walking through the corridors and the Serpentine Bar until they meet people with whom they seek to engage.

The change in civil society ability to access the Council compared with the Commission has enabled those stakeholders better to assist the Council to fulfil its mandates. However, there are significant limitations to civil society engagement and impact. These include issues of state power, politicisation, and a structural bias that leads to a North/South divide. The disparity in state and CS power is apparent throughout their interactions at the Council. No civil society actors are allowed to attend the regional group or political bloc meetings, where many of the important decisions are made. Moreover, states have no obligations to engage with civil society attempts to lobby them, meaning that any influence on substantive issues depends wholly on whether states choose to engage, which often itself depends on civil society networks and nepotism to arrange meetings. Far less attention is paid to civil society expertise than to that of other stakeholders, for example side events run by civil society actors have significantly lower turnouts than state-run events, often reluctant to engage.<sup>46</sup> When state representatives do attend, it is usually junior members of staff, and they often do not engage with the speakers.

The disparity of power makes it far easier for the states to deploy politicised tactics when CS engages with the Council. Although some research has been conducted on politicisation at the Council generally,<sup>47</sup> the impact of politicisation of civil society engagement has received little attention. Beyond the politicisation of ECOSOC accreditation, the Council's sessions are highly politicised, with states amplifying and focusing on a handful of topics raised by civil society whilst ignoring or preventing focus on others.<sup>48</sup> Although states do not possess the ability to prevent side events from taking place, they use their influence to inhibit their success, for example when China attempted to prevent other states attending the event on Xinjiang.<sup>49</sup> As well as silencing civil society, states deploy filibustering tactics to create insufficient time for NGOs to speak. For example, during civil society interventions states have used points of order to run down the clock and therefore prevent civil society from making oral statements that criticise their actions or policies.<sup>50</sup>

Finally, there are structural biases that create a North/South divide in terms of civil society engagement with the Council. As we shall see in the next section, similar issues exist within the UPR. Generally, civil society require permanent representation in Geneva or significant resources to attend and engage with every and all parts of the Council sessions. Currently 750 NGOs have

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<sup>45</sup> Nadia Bernaz and Irene Pietropaoli, "The Role of Non-Governmental Organisations in the Business and Human Rights Treaty Negotiations", *Journal of Human Rights Practices* 9, (2017): 291

<sup>46</sup> Theodor Rathgeber, "Universal Periodic Review: A preliminary Assessment", *Friedrich Ebert Stiftung*, Briefing Paper 6 (2008), 6

<sup>47</sup> Rosa Freedman and Ruth Houghton, "Two Steps Forward, One step Back: Politicisation of the Human Rights Council", *Human Rights Law Review* 17, no. 4 (Winter, 2017): 753-769

<sup>48</sup> Luisa Blanchfield and Michael A. Weber, "The United Nations Human Rights Council: Background and Policy Issues", *Congressional Research Service*, (2022), 2

<sup>49</sup> Michelle Nicholes, "Chiba urges U.N. states not to attend Xinjiang event next week", *Reuters*, accessed March 23, 2022

<sup>50</sup> ISHR, "your opportunities to engage", accessed March 26, 2022, <https://academy.ishr.ch/learn/un-human-rights-council/how-to-deliver-an-oral-statement>

permanent representation<sup>51</sup> out of 40,000 global NGOs<sup>52</sup> listed by the UN Development Programme, let alone the countless civil society actors in every country in the world. The need to be physically present in Geneva to participate in sessions limits the role of civil society actors at Council sessions. The divide grew even larger during covid-19 travel restrictions, with only the Geneva-based NGOs able to deliver statements and attend sessions.<sup>53</sup> Furthermore, organisations with representation in Geneva are able to create networks that facilitate access to states, OHCHR and independent experts, creating a greater divide in terms of ability to lobby those stakeholders. The divide is also seen in terms of funding and state sponsorship of or participation in events, with Global North countries having greater resources to support NGOs from their states.

Despite all of these challenges and weaknesses, it is crucial to underscore that the Council is leading the rest of the UN system as “the most open and accessible body in the entire UN structure”.<sup>54</sup> That being said, it is key to address the disparities of access and engagement in order that the Council may better fulfil its mandates and have greater legitimacy and credibility.

Before turning to the UPR, it should be noted that the Council’s constituent instrument enables it to “hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council”.<sup>55</sup> Civil society access to the mechanism relies solely on the same ECOSOC accreditation system for regular sessions and therefore bring to the fore the same issues as at regular sessions.

#### 4. The Universal Period Review (UPR)

UPR was created to ensure that all UN member states would have their human rights record scrutinised by their peers on a regular basis<sup>56</sup> and therefore none could avoid scrutiny of their domestic human rights issues.<sup>57</sup> This was a key change from Commission to Council, as it ensures “universality of coverage and equal treatment” insofar as no state can now avoid scrutiny.<sup>58</sup> UPR has been examined and explored by many scholars and commentators,<sup>59</sup> but little has been written

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<sup>51</sup> “Facts and figures about International Geneva”, *Eidgenössisches Departement für auswärtige Angelegenheiten*, accessed March 23, 2022, <https://www.eda.admin.ch/eda/de/home.html>

<sup>52</sup> Sally Leverty, “NGOs, the UN and APA”, *American Psychology Association*, accessed March 24, 2022, <https://www.apa.org/international/united-nations/publications#:~:text=Statistics%20about%20the%20number%20of,in%20the%20hundreds%20of%20tousands.>

<sup>53</sup> Michelle Lagrand, “NGOs worry Covid restrictions at Human Rights Council will leave a mark”, *Geneva Solutions*. March 2, 2021.

<sup>54</sup> Ted Piccone, “Assessing the United Nations Human Rights Council”, *Brookings* accessed March 24, 2022, <https://www.brookings.edu/testimonies/assessing-the-united-nations-human-rights-council/>

<sup>55</sup> UNGA Res.60/251 para.10

<sup>56</sup> Initial proposals were for annual reviews, but when it became clear that this was not possible logistically and in terms of resources it was changed to a cycle of every 4 years. In turn that changed to every 4 ½ years in the UPR’s second cycle.

<sup>57</sup> Rosa Freedman, “New Mechanisms of the UN Human Rights Council.” *Netherlands Quarterly of Human Rights* 29, no. 3 (2011): 289–323

<sup>58</sup> UNGA Res.60/251 para.5 e

<sup>59</sup> Roland Chauville, “The Universal Periodic Review’s first cycle, Successes and failures”. In *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, eds. H. Charlesworth & E. Larking (Cambridge: Cambridge University Press, 2015) 87-108; Elvira Domínguez Redondo, “The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session” *Chinese Journal of International Law* 7, no.3 (November 2008): 721-734; Edward McMahon, “Herding Cats and Sheep: Assessing State and Regional Behaviour in the

about the specific role civil society plays in the process. There are 6 main access points for civil society during the UPR process:<sup>60</sup> (i) Engaging in consultations with governments, (ii) submitting stakeholder reports, (iii) lobbying other states, (iv) attending the UPR Working Group Session, (v) participating in the HRC session, (vi) follow-up work to ensure implementation. The national segment of the UPR<sup>61</sup> which requires states to consult with civil society has significantly improved dialogue between states and civil society actors, particularly in Asia.<sup>62</sup> The follow-up process allows civil society to take a monitoring role, lobbying for state implementation and mid-term reports. We will set out civil society's access points into the UPR<sup>63</sup> to demonstrate the roles they may play in the UPR promoting and protecting human rights.

As the UPR is a new mechanism, it was not covered by Resolution 60/251 paragraph 11. Instead, when the modalities were being negotiated during the Council's first year, there needed to be developed working practices for civil society participation. As Moss has set out in detail, those negotiations resulted in a compromise between some states who wanted no participation and the civil society actors who wanted far more access – e.g. being able to submit questions and recommendations – than they ultimately received.<sup>64</sup> It is important to note that consultative status is not required for participation other than adoption of the UPR reports in the Council's plenary sessions.

Prior to the UPR review session, civil society can take part in the national consultations conducted by a state while writing the National Report that is submitted to the UPR Working Group. Consultations take place a year before the review in cities around the country and involve a broad range of civil society actors,<sup>65</sup> including NGOs, grass roots organisations, human rights defenders, local associations, indigenous peoples, and trade unions. This provides access to civil society actors who do not have UN accreditation or indeed do not have the necessary resources or freedom to access the UN human rights machinery outside of their own country. Civil society actors can run national campaigns drawing media and public attention to the UPR of a state, a method used by civil society coalitions in Indonesia<sup>66</sup>. Importantly, any civil society actor, regardless of ECOSOC accreditation, can submit information to the OHCHR report, with a single organisation able to make one 2816-word submission, and coalitions of organisations able to make 5630-word submissions.<sup>67</sup> A civil society actor may be a part of as many coalitions as they want. Owing to the high number of submissions, not all of them will be included in the review, which makes lobbying an important tool for civil

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Universal Periodic Review Mechanism of the United Nation Human Rights Council", *Working Paper* (University of Vermont, 2010)

<sup>60</sup> Urban Justice centre, "A Practical Guide to the United Nations' Universal Periodic Review (UPR)", *Human Rights Project at the Urban Justice Centre* (New York, January 2010)

<sup>61</sup> During their UPR each state is required to produce a national report on their human rights.

<sup>62</sup> Theodor Rathgeber, "Performance and Challenges of the UN Human Rights Council: AN NGO's View", *Friedrich Ebert Stiftung International Policy Analysis* (February 2013), accessed March 2, 2022, <https://library.fes.de/pdf-files/iez/global/09680.pdf>

<sup>63</sup> "Role of CSOs," UPR Info, Accessed March 2, 2022, <https://www.upr-info.org/en/how-to/role-ngos>

<sup>64</sup> Lawrence C. Moss, 'Opportunities for Nongovernmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council', *2 Journal of Human Rights Practice* 1, (2010), 122–150

<sup>65</sup> Human Rights Council Working Group in the Universal Periodic Review, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Denmark" (22 February 2021) A/HRC/WG.6/38/DNK/1, Para 2.

<sup>66</sup> Anne Lips *et al.* "Making the Universal Periodic Review work for people who use drugs: Learning from the Cycles completed between 2008 and 2017" *Harm Reduction International*, 7.

<sup>67</sup> "Universal Periodic Review (Fourth Cycle): Information and guidelines for relevant stakeholder' written submissions", OHCHR, accessed March 4, 2022, [https://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuidelines4thCycle\\_final.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuidelines4thCycle_final.pdf)

society actors to secure inclusion of their issues. Lobbying, which takes place in the state itself<sup>68</sup> and/or in Geneva,<sup>69</sup> is an effective tool for influencing the reviewed state's acceptance of, and other states support for recommendations. Organisations may help to facilitate such lobbying, for example UPR Info<sup>70</sup> organises a 'pre-session'<sup>71</sup> in Geneva in advance of UPR sessions.

During the review there are four main actions civil society can take. First, attending the review, although levels of access including entry to the Council's chamber are dependent on accreditation. Second, they can hold side events<sup>72</sup> during the Working Group session, which may be used either before the review to lobby states to support recommendations or afterwards to discuss state's responses to recommendations. Third, they may organise a screening of the UPR webcast in their state or on their websites to raise awareness of the review, as occurred in Uganda in 2016<sup>73</sup>. Finally, civil society actors can make statements or hold press conferences after the review to draw attention to negative aspects and limitations of the review, as was conducted by a coalition of civil society actors after China's 2018 review.<sup>74</sup>

Between the review and the HRC adopting the report, civil society actors may lobby the state to accept – rather than simply noting – recommendations, and to ensure submission of full HRC 'addendums' with detailed and clear responses. During the HRC adoption 20 minutes are allocated for civil society actors with ECOSOC accreditation to make oral statements at the plenary session, usually resulting in 10 organisations speaking.<sup>75</sup> Those statements may be delivered remotely to ensure equal access to participation, the speakers' list is drawn up on a first-come first-served basis.<sup>76</sup> Written statements may also be submitted under Agenda Item 6 on the UPR.<sup>77</sup> Between each review civil society can pressure states to implement the recommendations, as "part of their watchdog role"<sup>78</sup> and encourage states to make recommendations public. Utilising the media is another key avenue for civil society, for example in 2016 Sierra Leone's largest human rights civil society organisation trained over 25 journalists on sharing information and public awareness

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<sup>68</sup> Miloon Kothari, "Study on emerging Good Practices from the Universal Periodic Review (UPR)", *UPR Info*, June 9, 2021, accessed March 5, 2022,

[https://www.ohchr.org/Documents/HRBodies/UPR/Emerging\\_UPR\\_GoodPractices.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/Emerging_UPR_GoodPractices.pdf)

<sup>69</sup> Aurelie Placais, "Abolitionist NGOs lobby to educate UN member states in Geneva". *World Coalition Against the Death Penalty*, accessed April 17, 2015, <https://worldcoalition.org/2015/04/22/abolitionist-ngos-lobby-to-educate-un-member-states-in-geneva/>

<sup>70</sup> A centre of excellence for the UPR that seeks to share UPR expertise with all relevant stakeholder

<sup>71</sup> UPR Info, "Bringing States and Civil Society together before the 37<sup>th</sup> Working Group: 8-11 December 2020 (TBC)". *Pre-Session: Giving a voice to society*. December, 2020.

<sup>72</sup> Secretariat of the Pacific Community, "Pacific Island States & the Universal Periodic Review: A Toolkit for Pacific Island States to Measure Progress and Compliance against Universal Periodic Review Recommendations", (2012), 8-9

<sup>73</sup> UPR Info, "Outcome Report CSO UPR Strategy Workshop" 28 November – 2 December Silver Springs, Kampala, Uganda, (2016), 14

<sup>74</sup> Demonsisto, HRW, ISHR, SMHRIC, TCHRD, UNPO, UHRP, WUC, "Joint Press Statement: China UPR: Civil Society Deeply Concerned by Removal of Key Stakeholder Information by the UN Office of the High Commissioner for Human Rights for Upcoming Universal Periodic Review of China". *HRW*, November 5, 2018, accessed March 5, 2022, <https://www.hrw.org/news/2018/11/05/joint-press-statement-china-upr>

<sup>75</sup> UPR info, "The Civil Society Compendium: A comprehensive guide for Civil Society Organisation engaging in the Universal Period Review" (2017), 40-50

<sup>76</sup> *ibid*

<sup>77</sup> *ibid*

<sup>78</sup> National Association of Non-Governmental Organisations, "CSOs play critical role in UPR process" (June 2018)

raising<sup>79</sup>. They can praise or criticise state's responses and lobby for a mid-term report, as well as assisting in implementation of the recommendations.

As with the Human Rights Council sessions, civil society access to UPR sessions enables them to assist with fulfilment of the human rights mandates, but also is limited by issues of politicisation, state power, and a structural bias that leads to a North/South divide. Although 73% of recommendations are accepted by states,<sup>80</sup> the 27% that are noted – i.e. not accepted – include the most contentious human rights issues within states. The fact that states can simply not accept recommendations based on political or ideological reasons shows the prominence of politics within the process. Moreover, even if a state does accept a recommendation there is no guarantee that it will be implemented. We have also seen authoritarian states attempt to silence NGOs during the UPR process.<sup>81</sup> In 2014, during their UPR session, China silenced the ISHRs attempted to hold a minute's silence for Cao Shunli (a human rights activist), arguing it went beyond their remit.<sup>82</sup> Civil society actors may use UPR reports and recommendations to lobby for effective change, but ultimately the power of change remains wholly in states' hands. Although providing access to a greater number of civil society actors, states retain the power in terms of what impact, if any, civil society engagement has on the process. States have no obligation to attend side events, consult with specific civil society actors, or to consider their lobbying efforts; and during the review a state may choose not to respond to comments or questions.<sup>83</sup>

Despite national consultation or statements to OHCHR being open to any civil society actor, arguably the most impactful action civil society actors have is speaking at the HRC session, which is watched and engaged with far more widely than UPR sessions. Delivering such a statement remains dependent on ECOSOC accreditation and may only take place under specific parameters. This, ultimately, goes back to the issue of that system favouring certain types of civil society actors, often from the Global North. While attempts have been made to make civil society engagement with UPR accessible from beyond Geneva, many of the consultations and lobbying attempts are more successful when physically present at the UN, which again favours elite and Global North civil society actors who have the resources to be physically present during such sessions and events.<sup>84</sup>

## 5. Conclusion

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<sup>79</sup> Awoko, "Sierra Leone News: Sierra Leone News: Journalists train on Universal Periodic Review working tools train on Universal Periodic Review working tools" Awoko Publications August 04, 2016, accessed March 22, 2022, <https://awokonewspaper.sl/sierra-leone-news-sierra-leone-news-journalists-train-on-universal-periodic-review-working-tools-train-on-universal-periodic-review-working-tools/>

<sup>80</sup> Lauren McGregor, "Are States racing to the top in the third cycle of UPR? A view from the UK's Equality and Human Rights Commission". *Universal Rights Group*, (October 2017), accessed March 6, 2022 <https://www.universal-rights.org/by-invitation/states-racing-top-third-cycle-upr-view-uks-equality-human-rights-commission/>

<sup>81</sup> Laura K. Landolt and Byungwan Woo, "NGOs invite attention: From the UN Commission on Human Rights to the Human Rights Council", *Journal of Human Rights* 16, no. 4 (June 2016): 407-427

<sup>82</sup> R. Houghton, "A puzzle for international law: NGOs at the United Nations", *North East Law review* 2, no. 2 (2014): 1-24

<sup>83</sup> Mathew Davies, "Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations", *Alternatives: Global, Local, Political* 35, no.4 (October, 2010): 458-459

<sup>84</sup> Natalie Baird, "The Role of International Non-Governmental Organisations in the Universal Periodic Review of Pacific Island States: Can 'Doing Good' Be Done Better?" *Melbourne Journal of International Law* 16, no. 2 (December, 2015): 580-584

The UN human rights system has a symbiotic relationship with civil society, with reliance on the expertise that such organisations provide in order to protect, promote and develop human rights, whilst also impacting on the work of civil society work by the ways in which the system protects, promotes and develops rights at the international level. Our chapter has only looked at the Human Rights Council and UPR, but even in those two case studies it is clear that the bodies provide greater access for civil society actors than the traditional ECOSOC accreditation system envisages. There are, of course, other bodies and mechanisms that provide *ad hoc* access to civil society who do not have accreditation, and accredited civil society can of course engage with other UN bodies, but the breadth of activities that the range of civil society actors may undertake at the Council and UPR is greater than elsewhere. The mechanism's engagement with civil society is not, however, without problems; and the lack of research in this area results in a knowledge-gap that prevents system-wide recommendations from being proposed. There are several themes that emerge from our research, including on legitimacy, politicisation, power, elitism, and hierarchies. Those are themes that need to be researched further in order to understand the extent to which civil society can and does work with UN human rights bodies to protect, promote and develop human rights.