27 August 2004

Dear Secretary-General,

I write as President of the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO) on behalf of the Board of CONGO. We wish to thank you for your obvious commitment to the enhancement of interaction between the United Nations and civil society. Due in part to your leadership, the importance of this challenge for global governance in the 21st century is increasingly widely acknowledged.

I refer to the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations: "We the Peoples: Civil Society, the United Nations and Global Governance" (A/58/817), released on 21 June 2004, and wish to convey some general comments concerning the report and the proposals it contains. These comments emerge from several weeks of intensive discussion among NGOs and with United Nations partners; they have been affirmed and agreed by members of the Board of CONGO, meeting 27 to 28 August, 2004, but they do not purport to be a comprehensive response to what is a very wide-ranging Report.

Appreciation for the Report

CONGO welcomes the spirit of the Report and understands and supports the context in which it was written. We are grateful for the Panel's efforts to explore new directions for the enhancement of the relationship between the United Nations and civil society. We believe that many of the proposed measures have great potential for enhancing the interaction between them, and for making an important contribution to improved global governance.

We appreciate the suggestion to highlight and promote existing good practices such as participation of NGOs in ad hoc committees of the General Assembly, and in some briefings with the Security Council. We should not lose the hard fought “acquis” of participation, for example in the human rights mechanisms (Commission, Sub-Commission and Treaty Bodies). The current process of multi-stakeholder participation in the WSIS process is also of great interest.

We strongly support all proposals that could have the effect of increasing United Nations engagement with civil society at the country level, and in particular in countries of the South,
even if the Report seems to neglect the regional dimension of United Nations – Civil Society relations. The role of regional and global NGOs, including CONGO, is very important and also needs strengthening, not least as they can provide networks of communication and capacity-building and can help to redress imbalances of access and partnership, notably between NGOs in the North and South.

In particular, we wish to affirm the report's emphasis on measures to de-politicize the non-governmental organization (NGO) accreditation process. We believe that NGO accreditation is, or should be, an objective and professional rather than a political function. We strongly support the intent of all proposals that seek to emphasize attention to “expertise, competence and skills”, as the Report underlines, and to minimize political involvement therein, such as was sometimes the case in the ECOSOC Committee on NGOs.

However, our NGOs have some major concerns:

**Assimilation of Different Groups**

Our principal concern relates to the manner in which the Report's proposals assimilate fundamentally different groups. Indeed, the difficulty flows from the terms of reference themselves, which call for proposals "for enhancing interaction between the Organization and civil society, including parliamentarians and the private sector" (emphasis added). Though the term 'civil society' is notoriously vague, we would argue that it does not cover parliamentarians or members of local authorities in view of their direct participation in the structures of government. The issue of whether that description also covers business entities is also highly contested, not least because of their frequent lack of accountability to society at large.

Though the term "non-governmental organization" is not itself defined in the Charter, successive resolutions of the Economic and Social Council and longstanding practice have recognized certain fundamental characteristics of this type of entity. Those fundamental characteristics include:
- separation and independence from the structures and functions of government; and
- aims and purposes that are not primarily commercial, or 'for profit'.

This implies that much greater vigilance should be shown, as the Report itself suggests, over the accreditation of “Government-Organized Non-Governmental Organizations” (“GONGOs”), particularly where independence may have been sacrificed to political support or financial opportunism.

**Building on the Charter of the United Nations**

The surest foundation for an examination of the present and future shape of United Nations-Civil Society relations must be the relevant provisions of the United Nations Charter. The Report makes only a passing and non-specific reference to the Charter arrangements for consultation with non-governmental organizations. However, article 71 of the Charter gives a special and unique recognition to the United Nations' consultative relationship with NGOs. Within the wider penumbra of 'civil society' (wherever the outer limits of that term might be set), NGOs therefore have a standing with the United Nations that is privileged by its own founding instrument. Their current Charter based status could be eroded, unless a General Assembly Resolution would refer in the same way to Para 71 and ask for or make an
amendment referring to “the General Assembly” instead of “the Economic and Social Council”.

None of this is to say that the United Nations should be precluded from engaging, where appropriate, with a wide range of “non-governmental” constituencies, including parliamentarians and business entities. However, the relationship between the United Nations and NGOs has a special character, based on its foundation in the Charter. Accordingly, any proposal for a uniform accreditation procedure (such as that contained in Proposal 19 of the Report) that extends to constituencies beyond those properly described as 'non-governmental organizations' risks moving outside of the existing Charter framework. The proposal (Proposal 24) to combine them all under an Office of Constituency Engagement and Partnerships could, in practice, lead to increased confusion about NGOs and their Charter relationship to the United Nations.

NGO Accreditation

Many of the related proposals in the report lack a sufficient degree of precision to enable their practical implications to be clearly discerned. For example, the reference in Proposal 20 to an "advisory body" gives no guidance on this body's likely composition. While, as indicated above, we support efforts to bring an objective orientation back to the process of accreditation, more details on the proposed composition and mandate of this body would be required in order to form any meaningful view of its likely impact. In particular, we would anticipate that the composition of such an advisory body would include the expertise of the main stakeholders, including NGOs. Likewise, the reference to a "designated General Assembly committee", which would decide on accreditation, causes similar difficulties, in the absence of further information on the composition and mandate of such a committee; for example, governmental members might be restricted to countries which had ratified basic conventions.

Civil society stakeholders have different roles which need to be respected. They should all have clear and different entry/accreditation points and monitoring/accountability processes. For example, how are business sector participants in the Global Compact held accountable to member states? Attention to private sector accountability is weak throughout the report. The existing (and presumably any future arrangements) for NGO consultative status provide quite strict accountability requirements for NGOs. There needs to be some sort of accreditation and accountability process of some sort for business - not just their associations - when they seek to interact with the United Nations system.

The report gives no attention to the increasingly vexed issue of 'disciplinary' action concerning NGOs alleged to have breached the terms of the consultative relationship, and the application of the sanctions of suspension or withdrawal of status. Recent events in the Committee on NGOs and ECOSOC have underlined the importance of addressing this issue. It is regrettable that the opportunity was not taken in the Panel's Report. Furthermore, the Report does not speak about efforts by some governments, in North and South, to weaken, subordinate and control NGOs. Nor does the Report address the increasingly restrictive security environment that NGOs face at the United Nations.
The Legal and Financial Responsibility of Governments

Economic power has to be kept in check by political processes. The Report affirms the important role of governments in global norm-setting but considers multi-stakeholder partnerships as the most effective means to put norms and targets into practice. In its concept of a “cycle of global debates” the Report should not imply a transfer of ultimate responsibility for global decisions away from governments, substituting vague “coalitions” of civil society, business and governments. Under such arrangements, citizens could no longer hold governments accountable for meeting their targets and fulfilling their own commitments. Nor should governments obstruct the vital engagement and contribution of many civil society stakeholders in seeking to implement policies and treaty obligations.

The need for greater financial resources to obtain more balance and intentional inclusion of Southern NGO viewpoints in United Nations deliberations is not sufficiently addressed in the Report. There is a clear need for additional United Nations funds for NGO liaison and support, notably for NGLS services. As stated in Paragraph 170, the Panel estimates that the total annual budget for all measures proposed would be some $4 million in core funding of which 3 million could be met by savings through changes in accreditation etc. This core budget represents a fraction of 1% of the United Nations operating budget. We strongly endorse the following conclusion of the Report: “The Panel is of the view that unless resources of this magnitude are realized, it will be difficult for the United Nations to persuade civil society, the international community and others that it is serious about enhancing engagement.”

Conclusion

While the Panel has clearly articulated the ‘why’ case for enhancing civil society engagement today, its proposals for ‘how to’ require a lot more refinement. If the United Nations is to play its vital role in reshaping democracy for the 21st century, it must first seek to do it in a fair and just manner, involving all actors but discerning their sometimes different roles.

We hope that these comments will be of some assistance to you, as you formulate your plans and recommendations to the General Assembly, and continue to encourage the enhancement of the valuable relationship between the United Nations and civil society. The NGO community, in its response to this Report, will support implementation of the many good proposals of the Panel. It is hoped that the inclusive and participatory process which marked the work of the Panel will be continued, and that NGOs, including CONGO, will be encouraged and empowered to act on the recommendations which you are preparing.

Yours respectfully,

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(on behalf of the members of the Board of CONGO)

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