



ISHR

**INTERNATIONAL SERVICE
FOR HUMAN RIGHTS**

To Commission on the Status of Women

From The International Service for Human Rights (ISHR)¹

Date 1 August 2018

Re Communication to the Commission on the Status of Women Communication Procedure Regarding Denial of Visas to Participants

Introduction

This communication to the Commission on the Status of Women (the Commission) is intended to draw the Commission's attention to violations that are adversely affecting the right to access and communicate with international bodies. This communication concerns the denial of travel visas to women who were expressly invited to attend the Sixty-Second Session of the Commission from March 12 to 23 March 2018 (the Sixty-Second Session). These denials are contrary to the obligations of the United States as host country of the United Nations, violate the right to access and communicate with international bodies and limit the meaningful participation of women in the human rights system.

ISHR requests that the Commission's Working Group on Communications considers this communication with a view to its inclusion in the Commission's report to the United Nations Economic and Social Council (ECOSOC) and making recommendations to the authorities of the United States. This communication sets forth the factual circumstances surrounding the denial of travel visas, and addresses the obligations of the United States as a host country, as well as its duty to uphold the right of individuals to access and communicate with international bodies. The communication is motivated by the denial of visas to approximately fifty women to enter the United States to attend the Sixty Second session of the Commission.

Interest of ISHR

ISHR is an independent non-governmental organization (NGO) dedicated to promoting and protecting human rights. ISHR assists human rights defenders in accessing and communicating with international bodies and mechanisms, including the United Nations, and works to prevent reprisals and intimidation arising from such engagement. In support of these efforts, ISHR participates in strategic litigation at the international, regional and national levels to ensure that defenders have the freedom to effectively and safely protect and promote human rights.

¹ ISHR was provided with expert pro bono assistance in the preparation of this communication by international law firm Orrick.

ISHR believes these cases illustrate serious violations of the right to access and communicate with the United Nations.

Facts

The Commission held its Sixty-Second Session in New York, New York from 12 March 2018 to 23 March 2018. Per usual custom, advocates for women's rights were invited from around the world to attend the session, contribute to the work of the Commission, hear from others working towards the advancement of women's rights and speak about their experiences. NGOs have been influential in shaping the current global policy framework on women's empowerment and gender equality and continue to play an important role in holding international and national leaders accountable for the commitments they made in the Platform for Action.² As such, the active participation of NGOs is a critical element in the work of the Commission.

The Commission—the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women—plays a crucial role in strengthening governmental policy and developing recommendations and guidance on key issues to improve, sustain and accelerate efforts to empower women and girls. The Commission is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women. The Commission prepares reports and recommendations to ECOSOC on promoting women's rights in political, economic, social and educational fields and makes recommendations to ECOSOC on urgent problems requiring immediate attention in the field of women's rights.³ To achieve these goals, it is essential that women of diverse backgrounds and working in a range of contexts participate in each session.

The Sixty-Second Session focused on the challenges and opportunities in achieving gender equality for and the empowerment of rural women and girls.⁴ At the end of the session the Commission concluded that there is a need to, among other things, accelerate action to end all forms of violence against women, increase rural infrastructure and technology and eliminate discriminatory laws and norms that prevent women from having equal access to economic and productive resources.⁵ Given the Commission's focus on the status of rural women and girls, it was all the more critical that rural women and girls themselves be able to attend and participate in the Sixty-Second Session.

The exact number of visa denials, and hence the full scale of the problem, is unknown, but ISHR is aware of the United States government refusing to issue entry visas to approximately fifty of

² <http://www.unwomen.org/en/csw/ngo-participation>.

³ UN Economic and Social Council, Commission on the Status of Women, 21 June 1946, document E/38/ Rev.1. In 1996, ECOSOC in [resolution 1996/6](#) expanded the Commission's mandate and decided that it should take a leading role in monitoring and reviewing progress and problems in the implementation of the Beijing Declaration and Platform for Action, and in mainstreaming a gender perspective in UN activities. Following the adoption of the 2030 Agenda for Sustainable Development in 2015, the Commission now also contributes to the follow-up to the 2030 Agenda for Sustainable Development so as to accelerate the realization of gender equality and the empowerment of women (ECOSOC [resolution 2015/6](#)).

⁴ <http://www.unwomen.org/en/csw/csw62-2018>.

⁵ <http://undocs.org/E/CN.6/2018/20>; <http://undocs.org/en/E/CN.6/2018/L.8>.

the invitees to the Sixty-Second Session. ISHR obtained this information directly from the women denied visas, as well as through national, regional and international partner organisations. A report on the Highlights of the Sixty-Second Session noted with frustration that many of the panel members invited to speak and to represent rural women around the world were unable to attend due to these travel restrictions.⁶ Media reported on this issue as well, noting the lack of representation of rural women at the Sixty-Second Session due to the visa denials.⁷ Organisations attending the Commission left empty seats on their panels at events, unable to give visibility and a platform to advocates.⁸ Activists took to social media platforms to denounce the visa denials and underline that the lack of rural women representatives defeated the purpose of the Commission's work.⁹ There were similar reports of visa denials during the Sixty-First Session in 2017¹⁰, which speaks to the systemic nature of the problem.

The rationale for denying visas varied in each case, and frequently no explicit reason was given. However, the reasons for denial can be gleaned from an analysis of the rejected applications. Of the fifty cases of visa denials known to ISHR, forty-seven originated from countries considered to be 'developing economies', of which twelve are considered Least Developed Countries.¹¹ Twenty-nine of the women denied travel visas were from countries located in Sub-Saharan Africa. A large proportion of the women denied visas were questioned about their marital status and whether they had children. Discrimination against unmarried women is a well-studied phenomenon and impacts everything from employment prospects to access to housing.¹² Questions such as these, in addition to those concerning economic status, income and whether an applicant has children are often used to assess whether an individual is likely to return to their

⁶ <http://www.unanca.org/news-events/news/1105-report-on-the-highlights-of-the-62nd-csw>.

⁷ <https://medium.com/@Equal2030/csw62-ensuring-sdg-related-data-reflects-lived-realities-of-rural-women-14563666ddb>; <https://www.nation.co.ke/news/Campaigners-take-on-US-embassies/1056-4338598-m4xfd6z/index.html>; <https://www.jamhuri-news.com/african-campaigners-activists-rap-us-embassies-for-denying-women-visas/>; <http://www.atencionsanmiguel.org/2018/03/28/pen-san-miguel-delegates-encouraged-worried-by-un-meeting/>; <https://www.devex.com/news/us-regressive-stance-at-csw-dominates-un-s-largest-meeting-on-women-92410>.

⁸ <https://medium.com/@Equal2030/csw62-ensuring-sdg-related-data-reflects-lived-realities-of-rural-women-14563666ddb>; <https://www.nation.co.ke/news/Campaigners-take-on-US-embassies/1056-4338598-m4xfd6z/index.html>.

⁹ <https://twitter.com/DinahRwiza/status/970599494852194310>;
<https://twitter.com/bangirac/status/976163568369459200>;
<https://twitter.com/MiriamMonaMue/status/973597810363977728>.

¹⁰ https://www.huffingtonpost.com/entry/womens-meaningful-participation-the-missing-ingredient_us_58c28dd7e4b0a797c1d39b6f; <https://www.theguardian.com/global-development/2017/mar/27/nations-pledge-to-close-gender-pay-gap-commission-status-women-un>;
<http://www.ipsnews.net/2017/03/travel-restrictions-cast-shadow-on-un-womens-meeting-rights-groups/>;
<http://www.passblue.com/2017/03/13/equal-wages-and-unpaid-care-work-the-big-topics-at-the-annual-un-womens-meeting/>.

¹¹ Department of Economic and Social Affairs of the United Nations Secretariat, Development Policy and Analysis Division, *World Economic Situation and Prospects*, 2014,
http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf.

¹² Morris, Wendy L., et al. *No Shelter for Singles: The Perceived Legitimacy of Marital Status Discrimination*, Volume: 10 issue: 4, page(s): 457-470 Issue published: October 1, 2007.

country or to overstay their visas, and their use results in discrimination against poor and unmarried women.¹³

It appears, based on the line of questioning in the visa interviews, that the bases for refusal were the economic status, marital status, nationality and gender of the applicants. Overwhelmingly, the women to whom visas were denied were poor, unmarried, childless, living in rural areas, and from developing and Least Developed Countries. Included in the Annex are digests of four of these cases for illustrative purposes.

Headquarters Agreement

The Agreement regarding the Headquarters of the United Nations entered on June 26, 1947 between the United States and the United Nations (the HQ Agreement) established the United States as the seat and headquarters of the United Nations.¹⁴ Under the HQ Agreement, the United States undertook a variety of obligations as the host nation, among them the establishment of a headquarters district in New York City and the granting of a number of privileges and immunities to the United Nations.

These protections include those provided under Article IV: Communications and Transit, Section 11. Under this section the United States is prohibited from imposing upon enumerated individuals ‘any impediments to transit to or from the headquarters district.’¹⁵ The protection applies to, among others, representatives of NGOs in consultative status with ECOSOC, and other ‘persons invited to the headquarters district by the United Nations or by such specialized agency on official business.’ As such, the United States government has an obligation to permit access and issue all necessary travel documentation, to representatives of NGOs as well as to invitees of the Commission.¹⁶ One or both of these categories include NGO participants—those participants who are not representatives of NGOs in consultative status with ECOSOC are included as persons ‘invited’ by the United Nations. Thus, the visa denials amount to a violation of the HQ Agreement.

Right to Access and Communicate with International Bodies

In addition to the protections granted by the HQ Agreement, the right to access and communicate with international bodies is firmly grounded in international law.

¹³ Immigration and Nationality Act §§ 101(15)(B) and 214(b).

¹⁴ Agreement Regarding the Headquarters of the United Nations, U.N.-U.S., June 26, 1947, 11 U.N.T.S. 11.

¹⁵ HQ Agreement, art. 4 § 11, 11 U.N.T.S. 11.

¹⁶ HQ Agreement, art. 4 § 11(5), 11 U.N.T.S. 11. ECOSOC is one of the six principal organs of the United Nations. The Commission, in turn, is a functional commission of ECOSOC. Its invitees, therefore, are in fact invitees of the United Nations—a conclusion that is supported by a plethora of United States jurisprudence, *See Boimah v. United Nations Gen. Assembly*, 664 F. Supp. 69 (E.D.N.Y. 1987); *Bisson v. United Nations*, WL 2154181 (S.D.N.Y. 2007); *Sadikoglu v. United Nations Development Programme*, WL 4953994 (S.D.N.Y. 2011); *Lempert v. Rice*, 956 F. Supp. 2d 17 (2013); and *Georges v. United Nations*, 84 F. Supp. 3d 246 (2015).

The United Nations Declaration on Human Rights Defenders

In 1998, the General Assembly adopted the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (the Declaration). The Declaration ‘does not create new rights but articulates existing rights making it easier to apply them to the practical role and situation of human rights defenders.’¹⁷ It has been cited and relied on by the Inter-American Court to inform the interpretation of a regional human rights instrument¹⁸ and superior national courts to inform the interpretation of national laws.¹⁹

The Declaration reaffirms the right to access and communicate with international bodies:

Article 9(4): ‘everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies²⁰ with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.’

Article 5(c): ‘for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organisations.’

The broad formulation in the Declaration of the right to access and communicate with international bodies covers all interactions between individuals or organisations and international human rights bodies, including attending meetings. Violation of these rights occur when individuals are prevented from attending human rights meetings.²¹

¹⁷ OHCHR, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

¹⁸ Valle Jaramillo v Colombia (2008); Human Rights Defender et al. v Guatemala (2014); Luna Lopez v Honduras (2013); Castillo González v Venezuela (2012); Nogueira de Carvalho v Brazil (2006).

¹⁹ Colombia Decision T-234/12, March 21 2012, <http://www.corteconstitucional.gov.co/relatoria/2012/t-234-12.htm>; Kenya Constitutional Challenge 87/2015, Supreme Court of Justice of the Nation, June 30 2016, http://dof.gob.mx/nota_detalle.php?codigo=5456467&fecha=12/10/2016; Eric Gitari v Non- Governmental Organisations Co-ordination Board & 4 others (2015), <http://kenyalaw.org/caselaw/cases/view/108412/>.

²⁰ ‘International bodies’ and ‘intergovernmental organisations’ in this context include UN bodies such as the Human Rights Council, Special Procedures, Universal Periodic Review, treaty monitoring bodies, fact-finding missions, commissions of inquiry, and other UN mechanisms with a mandate to protect human rights such as UN peacekeeping missions, UN country teams, and other specialised agencies. As well as non-UN bodies, such as the African Commission on Human and Peoples Rights or relevant organs of the European Union. The Commission, as a functional commission of ECOSOC, is an international body that has the express and exclusive purpose of promoting gender equality and the empowerment of women. It is therefore an international body with general or special competence in matters of human rights and fundamental freedoms as contemplated by Article 9.

²¹ Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (July 2011), at page 52.

The International Covenant on Civil and Political Rights

Furthermore, the right to access and communicate with international bodies is protected under freedom of expression and freedom of movement.²² The International Covenant on Civil and Political Rights (the ICCPR)²³ adopted by the United Nations General Assembly in 1976, is binding upon the States that ratify it.²⁴ The United States ratified the ICCPR in 1992. Article 19(2) of the ICCPR provides that ‘everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, writing or in print, in the form of art, or through any other media of his choice.’²⁵

Conclusions and Recommendations

The views and experiences of civil society have been a crucial source of knowledge and expertise for the United Nations since its creation. Such views and experiences have been central to enhancing decision-making, increasing ownership of decisions, improving accountability and transparency, and enriching outcomes. The disproportionate denial of visas to women who are poor, unmarried, childless, living in rural areas, and from developing and Least Developed Countries, runs contrary to the purpose of the Commission—the promotion of gender equality and the empowerment of women. It is also particularly troubling given the theme of the Sixty-Second Session—challenges and opportunities in achieving gender equality and the empowerment of rural women and girls. It was precisely the voices of those that the Sixty-Second Session of the Commission was aimed at empowering that were silenced.

ISHR urges the Commission’s Working Group on Communications to consider the information contained in the present communication with a view to its inclusion in the Commission’s report to ECOSOC, along with the following recommendations:

As the host country of the United Nations in New York, the United States authorities should:

- Ensure that the laws, policies, and practices of the United States—including its embassies and consulates abroad—are in compliance with the obligations under the HQ Agreement and uphold the right of individuals to access and communicate with international bodies.
- Ensure that embassies and consulates abroad are familiar with Commission, including the UN’s practice of inviting women’s rights advocates to participate in the work of the Commission.

²² Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (July 2011), at page 48. *See* Human Rights Committee, Concluding Observations on Uzbekistan, 26 April 2005, § 19, CCPR/CO/83/UZB and Human Rights Committee, Concluding Observations on Morocco, 1 December 2004, § 18, CCPR/CO/82/MAR.

²³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

²⁴ *Id.*

²⁵ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

- Ensure that, in cases where individuals are denied visas and prevented from accessing international bodies, embassies or consulates or equivalent authorities provide detailed reasons for the denial and access to a timely appeal process.
- Investigate the situation of visa denials associated with the Sixty-Second Session of Commission promptly, independently and impartially, with a view to ensuring compliance with the HQ Agreement and the right of individuals to access and communicate with international bodies.
- Provide annual reports to the Commission on the United States government's efforts to implement these recommendations.

As a global policy-making body dedicated to gender equality and advancement of women's rights, the Commission should:

- Make recommendations to ECOSOC to take steps to address the denial of visas to attend sessions of the Commission.
- Make recommendations to ECOSOC to consider all possible ways to protect the right of individuals and organisations to access and participate in forthcoming sessions of the Commission.
- Ensure that invitations are sent in a timely manner that allows participants to apply for visas.

Annex: Case Studies

Case study 1	
Name	S.C
From	Lusoke village, Zambia
Job title	Volunteer
Questions asked when applying for visa	What is your name? What are going to do in America? Which organization are you coming from? What is the purpose of your travel? What do you do within your organization? Which countries have you visited? Asked to provide old passport for inspection
Cost	\$351 USD
Case study 2	
Initials	M.R.V.M
From	Homa Bay county, Nairobi, Kenya
Job title	Advocacy and communications officer
Questions asked when applying for visa	Do I have a child? Are you married? What do you do for a living? Where I work? How much is your Salary? Where are you going to go in the US? What are you going to do in the US? How long will you stay in the US? How will you sustain your stay in the US? Do you have a relative in the US?
Cost	Ksh.16,800 (approx. \$167USD) for the visa interview; Plus transportation costs.
Case study 3	
Initials	E.O
From	Kibera, Kenya
Job title	Facilitator, mentor, trainer and consultant on gender issues.
Questions asked when applying for visa	Are you married? Do you have children? Why are you flying to the USA? Have you been outside of Africa before? Where do you work? Do you have relatives in the USA
Cost	Registration fee was Ksh 16,800 (approx. \$167USD); Plus other costs

	including transport – approximately Ksh 20,000.
Case study 4	
Initials	S.Y
From	Maroua, Cameroon
Job title	NGO Staff
Questions asked when applying for visa	What age are you? Are you married? Do you have children? Do you have a job?
Cost	\$160USD for meeting; \$240USD for visa.