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Amazonas. ‘I’m here talking to you today, but a month from now I might have disappeared.’ He was wrong, but not by much. Six months after warning that he was in danger of being ‘disappeared,’ José Cláudio and his wife Maria were murdered by masked gunmen. José Cláudio’s ear was ripped out as proof of execution.

The da Silvas died because they placed themselves between the forest they inhabited and corporate interests. New research by [Global Witness](#) shows that they belong to a large but little known group of people - environmental and land defenders - whose rising death toll is escaping international attention. Our recent report exposing this reality, [Deadly Environment](#), found that on average two such defenders are killed every week. Between 2002 and 2012 the annual number of killings more than trebled, culminating in 147 deaths in 2012, the highest ever. This spiralling figure prompts two questions – if it is so big then why is no one talking about it? Given the lack of information, is this just the tip of the iceberg?

The UN Declaration on Human Rights Defenders recognises the importance and legitimacy of people who promote and defend human rights, as well as their need for better protection. What makes environmental defenders distinctive is how they link issues of health, life and freedom from oppression to the protection of the natural environment that sustains them.

Opinion

THE DEADLY ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS

By Alice Harrison, Global Witness

‘I live from the forest, I’ll protect it at any cost. And that’s why I live with the constant threat of a bullet to my head, because I denounce the loggers and charcoal producers,’ said rubber tapper José Cláudio Ribeiro da Silva at his TEDx talk in the Brazilian state of

The environment is emerging as a new battleground for human rights. As soaring demand for products like beef, timber and oil drive industrialisation into new territories, companies are striking deals with state officials without the consent of local communities. Increasingly those communities are finding themselves in the firing line of unaccountable corporate machinery, state forces and a thriving market for contract killers. As over-consumption by the world's wealthy rises, pushing us further toward and beyond key planetary boundaries, resource tensions are likely to intensify.

This is a global problem, but particularly acute in Latin America and Asia Pacific. Low levels of reporting in some parts of the world complicate country-by-country comparisons, but existing data suggests that Brazil is the deadliest place to be an environmental defender, accounting for 448 (nearly half) of total deaths between 2002 and 2013. Honduras figured second, with 109 killings, and the Philippines third with 67. Some, like José Cláudio and Maria da Silva, are targeted by assassins and henchmen, others die in fatal crackdowns on protest actions. One thing that 99 per cent of documented victims shared is that their deaths went unpunished – only ten perpetrators are known to have been convicted and punished between 2002 and 2013.

The meagre conviction rate in defender killings can be explained by a number of factors, including the geographic isolation of defenders, limited knowledge of their rights or how to exercise them, and the inadequacy of state judicial systems to process cases. Often, however, more sinister forces are at play, with defenders' deaths hushed up amid a powerful nexus of vested interests. State forces – the very people who should be protecting and seeking justice for environment defenders – are in many cases complicit in their deaths.

Impunity is at once a symptom and driver of this hidden crisis. A number of local NGOs are working courageously and doggedly to catalogue violence against environmental defenders and to mobilise counter action. Yet in the absence of a more joined-up approach at national, regional and international levels to track and monitor abuses systematically, the contours of this phenomenon remain nebulous and its violence unpunished. Paulo Adario of Greenpeace International, who we consulted for our research, stressed the grave implications of this blind spot. 'Violence is very much related to impunity. If you don't punish crimes, you give a strong signal for future ones. You create what Gabriel Garcia Marquez termed "a death foretold" - future events are announced in the present. The future is one of more conflict based on disputes over forest resources and land.'

Deadly Environment is the most comprehensive global analysis of this problem to date. All of the 908 killings included in the report were drawn from credible, published and publicly available sources of information, where the victim's name, location and manner of death were specified. This left a number of countries more or less blank on [our map](#), most notably in Africa. Nigeria, the Democratic Republic of Congo, Central African Republic and Zimbabwe suffer fresh scars of resource conflict yet environmental defender deaths are practically invisible in public records. There is also significant under-reporting in Myanmar, Central Asian countries and China, where human rights monitoring is prohibited or restricted. This signals that the problem could be far greater than we are currently in a position to comprehend.

The rising incidence of environmental defender killings needs to be addressed as a matter of urgency and in its own right – not as a sub-category of wider human rights abuses but as a specific problem with distinct causes. In *Deadly Environment* we call for the UN Human Rights Council to pass a resolution specifically addressing the heightened threat posed to environmental defenders and those working on issues of corporate accountability, and for regional human rights bodies to establish mechanisms that provide effective emergency protection for such activists. National governments

need to monitor abuses and ensure that perpetrators are brought to justice, and recognise that the short-term proceeds of natural resource exploitation do not outweigh the social and environmental costs that they exact. Companies meanwhile need to ensure that they gain the consent of communities living on land before developing it, and carry out checks on their supply chains to make sure they are not sponsoring violence or intimidation.

Speaking of the plundering of his forests on stage in November 2010, José Cláudio Ribeiro da Silva said, 'This happens due to people that only think of money, only of themselves, forgetting about the next generation. It is a shame that we can't find any courageous action to solve this problem.' Not even the limelight could save José Cláudio, whose own bravery ultimately cost him his life. His death was one of the rare cases that saw a conviction. Whilst his assassins now face 50 year jail terms, however, the landowner accused of contracting his killing was acquitted and went free.

Alice Harrison is Communications Adviser with Global Witness. Follow her on Twitter at @AHarrisonGW.

Human Rights Defender Profile

YUYUN WAHYUNINGRUM, INDONESIAN HUMAN RIGHTS DEFENDER

When human rights were included in the [ASEAN Charter](#), which was adopted in 2008, Yuyun Wahyuningrum saw an opportunity to promote human rights discourse in the region through advocacy at ASEAN. Yuyun currently works as senior advisor on ASEAN and human rights for the Human Rights Working Group, a coalition of over 50 organisations working on human rights in Indonesia.

'Principles and values in human rights are something that we cannot negotiate'

While the inclusion of human rights in the ASEAN Charter, and the creation of the Asian Intergovernmental Commission on Human Rights (AICHR) in 2009 were concrete steps forwards in terms of promoting a human rights discourse, they also threw up challenges. One challenge has been the attempt by ASEAN States to impose their own interpretations of human rights standards that depart from principles of universality. It is imperative, says Yuyun, that the AICHR should focus on complementing the global human rights system rather than breaking away from the principle of the universality of human rights.

'The role of civil society in influencing the debate is imperative'

In pushing to ensure that ASEAN does adopt the language and principles of universal human rights, dialogue and engagement by civil society in ASEAN are crucial. Yuyun says that national level dialogue has proved particularly useful in influencing the regional sphere – and as a result she has chosen to work on building the capacity of national level groups to influence the internal discussion in relation to human rights and ASEAN. This includes providing trainings and workshops for civil society, together with visits to ASEAN bodies to provide civil society with first-hand experience.

In another effort to deepen the capacity and ability of civil society to engage on human rights issues within ASEAN, Yuyun has also worked together with different stakeholders in the last six years to establish a series of dialogues. These include the annual ASEAN Community Dialogue with Committee Permanent Representatives, the Dialogue between civil society groups and ASEAN Secretary-General on human rights, and the Civil Society Forum to the ASEAN Foreign Ministers' Meeting on Human Rights.

Running through the benefits that these dialogues have had, Yuyun points to the increased space for debating human rights publicly in the region, increasing interest amongst civil society on ASEAN issues including human rights, and growing activism amongst civil society to contest some of ASEAN's more controversial positions on human rights.

'AICHR will only gain legitimacy and authority on human rights if it develops a stronger partnership with civil society'

As an intergovernmental body AICHR struggles to balance its roles as a political body and as a human rights commission. The representatives of States on AICHR are nominated by governments and can be removed by them at any time. This has led to a lack of independence and a lack of political will to engage with its stakeholders, including the victims of human rights violations. Furthermore, ASEAN member States have been reticent in providing financial and technical support for the body, which severely limits its capacity.

The lack of legitimacy and authority that the body struggles with is aggravated by the lack of an institutionalised dialogue with civil society. Over the course of the five years since it was created, AICHR has consulted civil society only twice, both while the ASEAN Human Rights Declaration was being drafted.

Currently, AICHR is developing its 'Guidelines on AICHR's relations with civil society organisations', which is to set out the modalities by which civil society can engage with the Commission. However the drafting process has been completely non-transparent to the extent that not only is it unclear when the document will be finalised, but it also remains to be seen whether the guidelines will promote or close down engagement by civil society.

'There is no ASEAN community without protection of human rights, especially the rights of those who defend the human rights of others'

AICHR is not making any effort to interpret its mandate creatively so as to give itself the tools it needs to promote and protect human rights, including the ability to receive and investigate individual petitions, conduct country visits, issue precautionary measures to States, establish an effective early-warning system and response to emergency situations, and appoint independent experts.

One interesting initiative was in fact proposed by a State. Indonesia invited AICHR to hear its report on the human rights situation in the country. This was inspired by the practice of the Universal Periodic Review. Thailand has agreed to be the next State to report to AICHR in August 2014. The regularisation of this initiative would be one way for AICHR to gain information on the situation of human rights in ASEAN States, as it is mandated to do.

'After the first cycle of UPR the improvement of human rights in ASEAN countries still needs to be assessed in detail'

As far as the international human rights system is concerned, and in particular the UPR and its impact on ASEAN States, the same resistance to international standards can be seen. For example, many of the recommendations accepted by ASEAN States are in those areas where they are most comfortable and confident that they have made progress such as the rights of persons with disabilities, human rights education, the right to housing, women's rights and children's rights, amongst others. The recommendations most commonly raised by the international community, however, include torture, the protection of human rights defenders, freedom of opinion and

expression, and cooperation with civil society at the national level, areas ASEAN States are frequently reluctant to tackle.

However, one improvement that has been seen in ASEAN countries through the UPR is a growing ratification rate of international instruments. While this may largely be because States see these as easy recommendations to satisfy, it does also provide tools for civil society in the struggle to ensure that universal human rights standards are not being diluted in the region.

For more information on the work of Yuyun and the Human Rights Working Group, see www.hrwg.org

Director's Update

EILEEN DONAHOE APPOINTED TO ISHR BOARD

(Geneva, 4 May 2014) – ISHR is delighted to announce the appointment of Eileen Donahoe to its [Board](#).

Dr Donahoe is currently Director of Global Affairs at [Human Rights Watch](#) and previously worked as US Ambassador to the UN Human Rights Council in Geneva.

'ISHR is delighted to have Eileen Donahoe join the organisation in a non-executive leadership role,' said ISHR Director Phil Lynch.

'Eileen brings substantial experience working in, negotiating with, and influencing governments and UN agencies at the very highest levels,' said Mr Lynch.

'In Geneva, she is renowned for her work at the UN Human Rights Council to promote issues such as freedom of expression and association, internet freedom, and accountability for gross human rights violations in Sri Lanka, Syria and North Korea.'

Dr Donahoe holds degrees from Stanford, Harvard, UC Berkeley and Dartmouth universities. She previously worked at the Center for International Security and Cooperation at Stanford University and as an IT and IP lawyer with Fenwick & West in Silicon Valley. Dr Donahoe was Chair of the National Women for Obama Finance Committee during Barack Obama's first presidential campaign and has also undertaken consultancy work for Human Rights First and Amnesty International.

Dr Donahoe's appointment further strengthens ISHR after [Michael H. Posner was appointed to the Board in March 2014](#) and leading international human rights advocates [Hina Jilani, Sir Nicolas Bratza, Egbert Myjer and Jean-Daniel Vigny joined the Board in 2013](#).

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Our Work to Support Human Rights Defenders

REPRISALS: STATES MUST REDUCE UNACCEPTABLE HUMAN COST OF COOPERATING WITH UN

(Geneva, 27 May 2014) – States should act through the General Assembly to reduce the unacceptable human cost of cooperating with the UN, the International Service for Human Rights and a [coalition of leading international and regional NGOs](#) said today.

'Regrettably, reprisals against persons cooperating with the United Nations, its mechanisms and representatives in the field of human rights continue. They take many forms, ranging from smear campaigns, threats, travel bans, harassment, fines, the closing of organisations, sexual violence, arbitrary arrests, prosecutions and lengthy prison sentences through to torture, ill treatment and even death,' said UN Secretary-General Ban Ki-moon in 2013.

In response, the UN Human Rights Council adopted a [landmark resolution in September 2013](#) calling on the Secretary-General to designate a UN-wide senior focal point to combat reprisals.

'It is incumbent on the UN to appoint a senior official to prevent and seek accountability for intimidation and reprisals against human rights defenders and others who cooperate with and contribute to the work of the UN,' said Eleanor Openshaw of ISHR.

Regrettably, Human Rights Council resolution 24/24 was blocked by the UN General Assembly in New York in December 2013, but NGOs are now calling on States to revisit the issue as a matter of priority.

'The disappearance, arbitrary detention, ill-treatment and death of human rights defender Cao Shunli in retaliation for her efforts to hold China to account for its human rights record at the UN is just [one example among many of the unacceptable human cost of cooperating with the UN](#),' said Ms Openshaw.

'The UN and Member States have a moral and legal responsibility to ensure that people are able to exercise their right to communicate with the UN without being harassed, intimidated, attacked and even killed. The passage of Human Rights Council resolution 24/24 is critical in this regard,' she said.

A number of positive recent developments point to the need for the UN and Member States to prioritise the appointment of a senior focal point on reprisals, including a May 2014 [decision by the African Commission on Human and Peoples' Rights](#) in Angola to appoint its own focal point, and a [joint statement delivered by Botswana](#) on behalf of 56 States in Geneva in March 2014 recognising that 'the current response by the UN and the member States in addressing reprisals is inadequate' and calling on them to 'address cases of reprisals through a more effective and coordinated approach.'

'With the opportunity for the General Assembly to revisit the issue in September, NGOs are urging States to transfer the political will shown on this issue in Angola and Geneva to New York, and achieve an outcome that challenges impunity for the perpetrators of reprisals and increases protection for human rights defenders and others who engage with the UN human rights system,' Ms Openshaw said

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AFRICAN COMMISSION ADOPTS LANDMARK RESOLUTION ON LGBT RIGHTS

(Luanda, Angola, 22 May 2014) – Africa's peak human rights body has adopted a [landmark resolution](#) condemning violence and discrimination against gay, lesbian, bisexual and transgender persons.

In a communiqué, the African Commission on Human and Peoples' Rights announced that it had adopted a 'Resolution on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity'.

'This resolution is historic, important and timely,' said Clement Voulé, head of ISHR's Africa programme.

'It is historic because it marks the first time that the African Commission has pronounced itself on the topic of LGBT rights,' Mr Voulé said.

'It is important because it responds to a worsening incidence of discrimination and attacks against LGBT persons and LGBT rights defenders in many parts of Africa, much of which has been licensed by the passage of draconian "anti-homosexuality laws" in places like Uganda and Nigeria. It is also important because it rejects the spurious notion that LGBT rights are somehow "un-African",' said Mr Voulé.

'And it is timely because it comes at time when it is anticipated and hoped that the UN Human Rights Council will adopt a follow up to its first ever resolution on LGBT rights in 2011,' Mr Voulé said.

'With the African Commission leading the way, we now call on African States to demonstrate their commitment to the universal right to equality by supporting a resolution condemning discrimination on the grounds of sexual orientation or gender identity at the Human Rights Council. The time has come for the UN's peak body to mandate an independent expert or establish a process or procedure to monitor and report on violations against LGBT persons and to advise States as to how best to respect and protect their rights.'

'ISHR warmly welcomes this resolution and congratulates the Commission, and those Commissioners who showed their personal commitment on this issue, on its adoption. We also acknowledge and thank the many committed and brave human rights defenders and organisations - including AMSHeR, the Coalition of African Lesbians, FIDH, HURISA, the East and Horn of Africa Human Rights Defenders Project, the West African Human Rights Defenders Network, the Human Rights Defenders Network in Central Africa (REDHAC), the African Centre for Democracy and Human Rights Studies, and the NGO Forum Steering Committee, among many others - who have worked towards this resolution over many years,' Mr Voulé said.

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BAHRAIN: HUMAN RIGHTS COUNCIL SHOULD ACT TO CONDEMN VIOLATIONS AND PROTECT DEFENDERS

(Geneva, 17 May 2014) – The UN's top human rights body should urgently condemn ongoing serious human rights violations in Bahrain and call on officials to respect and uphold the fundamental rights to freedom of expression, association and assembly, according to an [open letter sent to States](#) by a coalition of leading human rights organisations.

In the letter, the NGOs (which include ISHR, Human Rights Watch, the Cairo Institute for Human Rights Studies, and the East and Horn of Africa Human Rights Defenders Project) express 'deep concern at ongoing serious human rights violations in Bahrain.'

The letter says that such violations include 'the politically motivated imprisonment of high-profile opposition activists and human rights defenders after grossly unfair trials, continued reports of

torture, excessive use of force, regular denial of freedom of association and assembly, and a persistent failure to hold government actors to account for rights violations.’

In light of these violations, the letter calls on Member States of the UN to support the passage of a resolution on Bahrain at the next session of the UN Human Rights Council.

‘The time has come for States that are committed to democracy, human rights and the rule of law to hold Bahrain to account for its gross failings on those fronts at the Human Rights Council,’ said ISHR Director Phil Lynch.

‘ISHR is particularly concerned at the continued harassment and imprisonment of human rights defenders solely for exercising their fundamental rights to freedom of expression, association and peaceful assembly. We are also concerned at the continued incidence of intimidation and reprisals against human rights defenders who seek to raise their concerns about Bahrain with the UN,’ Mr Lynch said.

‘A Human Rights Council resolution would increase international pressure on Bahrain to repeal repressive laws and to investigate and ensure accountability for acts of torture and ill-treatment. It would also show solidarity and support for the many brave human rights defenders and activists in the country whose work is so essential to democratisation and development.’

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TIME FOR UN AND STATES TO TAKE A STAND AGAINST HOMOPHOBIA AND TRANSPHOBIA

(Geneva, 16 May 2014) – Gay, lesbian, bisexual, transgender and intersex people around the world are being targeted by repressive legislation on the basis of their sexual orientation or gender identity with increasing frequency and severity. Particularly stringent laws have been passed in [Nigeria](#), [Uganda](#), and [Russia](#), while bills are under consideration in several other countries including Tanzania, Liberia, and Kazakhstan. Late last-year, India’s Supreme Court recriminalised consensual same-sex relations while, in the United States, a series of attempts have been made to pass state laws that would allow business owners to refuse service to LGBTI people.

‘These regressive initiatives speak to the blatant discrimination still rife across the globe where LGBTI people in all countries still suffer stigmatisation and abuse, whether from work colleagues, schoolmates, in everyday interactions, or in the media’, said ISHR’s Dr Heather Collister.

17 May is International Day Against Homophobia and Transphobia (IDAHOT) and individuals, groups and organisations around the world will hold events to draw attention to the ongoing discrimination and human rights violations suffered by people solely on the basis of their sexual orientation or gender identity.

‘ISHR joins its voice to those calling for an end to criminalisation and stigmatisation and for respect, tolerance and freedom for all, regardless of people’s sexual orientation and gender identity,’ Dr Collister said.

‘In contexts where many people are afraid to speak out for the rights of LGBTI people for fear of the repercussions they may face as a result, this global day of support and solidarity gives voice to the millions of LGBTI people who cannot freely express themselves,’ said Dr Collister.

According to a [group of UN and regional human rights experts](#), the challenges faced by human rights defenders working on these issues include threats, attacks, criminalisation, and defamation, while peaceful assemblies, rallies, and parades that are pro-LGBTI are often prohibited or confined to venues out of public sight.

‘We condemn acts of retaliation, intimidation, or harassment in any sphere (whether public or private) based on a person’s manifestation or expression of their sexual orientation, gender identity or gender expression’, the experts said. ‘We call on States to renew their efforts to address this critical human rights issue at the Human Rights Council and in regional intergovernmental bodies.’

In just a few weeks the UN Human Rights Council will start its 26th session in Geneva. It is anticipated and hoped that the Council will adopt a follow up to its first ever resolution on LGBTI rights in 2011.

‘In a global context where the daily conditions for many LGBTI people are getting worse, and where human rights defenders are afraid to speak out on their behalf for fear of the repercussions they could face, the Council must ensure that it consistently monitors the situation of LGBTI people and that it holds States accountable for protection of their rights’, said Dr Collister.

‘The time has come for the UN’s peak body to mandate an independent expert or establish a process or procedure to monitor and report on violations against LGBTI persons and to advise States as to how best to respect and protect their rights.’

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CHINA: UN COMMITTEE SHOULD DEMAND THAT GOVERNMENT INVESTIGATE AND END REPRISALS

(Geneva, 5 May 2014) – The UN Committee on Economic, Social and Cultural Rights should interrogate China about the [death of Cao Shunli](#) and demand that the government investigate and ensure accountability for reprisals against human rights defenders, ISHR said today.

Briefing the committee of experts, which is reviewing China’s human rights record at a [meeting in Geneva this week](#), ISHR said that, while in detention, Ms Cao was denied access to adequate health care, in violation of article 12 of the International Covenant on Economic, Social and Cultural Rights.

‘Cao Shunli was arrested by Chinese authorities in September 2013 en route to Geneva where she was to participate in an ISHR training course and advocate at the UN in relation to China’s human rights record,’ ISHR’s Michael Ineichen told the UN committee.

‘Over a prolonged period in detention, much of which was incommunicado, Ms Cao was denied access to adequate health care, leading to her death on 14 March,’ Mr Ineichen said.

‘It is hard to conceive of a more flagrant case of reprisal against a human rights defender. Cao Shunli’s detention for seeking to hold China accountable at the UN violated the right to freedom of expression and association, thereby contravening both the International Covenant on Civil and Political Rights and the UN Declaration on Human Rights Defenders. Further, China’s denial of access to medical treatment, leading to Ms Cao’s death, breached not only the right to health under ICESCR, but also the prohibition on ill-treatment under the Convention against Torture,’ Mr Ineichen said.

In its briefing to the UN, ISHR urged the Committee to rigorously follow up on this case. ‘You should request that the Chinese government ensure the full and independent investigation of this case, and further demand that they provide an adequate remedy to the family of Ms Cao.’

In its briefing, ISHR also expressed concern at ongoing intimidation and reprisals against other human rights defenders.

‘The Chinese Government again restricted human rights defenders from travelling to Geneva to attend this session, a pattern which is widespread. We call on the Committee to recommend that the government immediately cease its harassment and intimidation of human rights defenders, and that it guarantee the right of everyone to safely access and communicate with international bodies, such as this Committee. Further, we request that the Committee remain vigilant about reprisals, and that it recommend that the Government investigate all cases of alleged reprisals, and hold perpetrators to account.’

‘ISHR also recommends that you request the Chinese Government to immediately release human rights defenders from detention and house arrest, and provide adequate physical and psychological health care to all persons deprived of liberty,’ Mr Ineichen said.

ISHR will again brief the experts later this week, while the Committee is expected to scrutinise China’s human rights record and hear from Chinese government officials when it reviews the State’s compliance with the International Covenant on Economic, Social and Cultural Rights on 8 May.

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Our Work to Strengthen Human Rights Systems

AFRICAN COMMISSION DESIGNATES HIGH-LEVEL FOCAL POINT TO COMBAT REPRISALS

(Luanda, Angola, 16 May 2014) – The African Commission on Human and Peoples’ Rights has designated a high-level focal point to document and follow up on cases of intimidation and reprisals against those that cooperate with the African human rights system.

In a resolution conferring responsibility on a Special Rapporteur to document and promote accountability for reprisals, the African Commission expressed ‘deep concern’ about ‘the hostile environment in which civil society stakeholders collaborating with the African human rights system operate, and the fact they are victims of various kind of human rights violations as reprisals for their activities in defence of human rights’.

The African Commission’s decision to designate a focal point was also underpinned by evidence of the widespread impunity that continues to be enjoyed by perpetrators of reprisals and [responds to calls made by civil society organisations including ISHR](#).

‘The African Commission has consistently denounced reprisals against those engaging with the human rights system, and has now backed these calls up by nominating one of its own Commissioners to ensure a better system-wide response’, said Clement Voulé, ISHR’s Advocacy Director at the African Commission.

The tasks of documenting, monitoring and encouraging effective Commission follow up on reprisals has been delegated to the Special Rapporteur on Human Rights Defenders. Due to their engagement with the African human rights bodies, such as in submitting information and engaging with Commissioners during country visits, human rights defenders are frequently at risk of intimidation and reprisals for their work.

‘The Commission recognises the importance of the work carried out by civil society stakeholders, in particular human rights defenders, to the promotion and protection of human rights, democracy and the rule of law in Africa. The African human rights system depends on the ability of civil society actors to engage without fear of attack to function effectively’, said Commissioner Reine Alapini-Gansou, Special Rapporteur on Human Rights Defenders.

‘By designating me as a focal point, the Commission has acted on the need to strengthen its response to reprisals by monitoring cases and working with States to prevent recurrence and promote accountability,’ Commissioner Alapini-Gansou said.

The African Commission’s initiative vindicates a [UN Human Rights Council decision in September 2013](#) to designate a UN-wide focal point on reprisals – a decision that has since been deferred by the UN General Assembly. The Council’s recommendation that the UN Secretary-General appoint a UN-wide focal point on reprisals will come up for reconsideration at the General Assembly in the coming months.

‘The UN and its Member States should take note of the African Commission’s initiative and approve the designation of a high-level UN focal point,’ Mr Voulé said.

‘Delegations in New York should also heed the [call led by Botswana and joined by 56 States in Geneva](#) in March to expedite this process and ensure a comprehensive, system-wide response to reprisals.’

‘Any other outcome will signal support for impunity for the perpetrators of reprisals and a betrayal of human rights defenders and others who engage with the human rights system’, Mr Voulé said.

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ISHR WELCOMES APPOINTMENT OF NEW UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

(Geneva, 8 May 2014) – The UN Human Rights Council has unanimously endorsed the appointment of Michel Forst as the new UN Special Rapporteur on Human Rights Defenders.

‘ISHR warmly welcomes the appointment of Michel Forst as the UN’s independent expert on the situation of human rights defenders,’ said ISHR Director Phil Lynch.

‘Michel is one of the world’s leading human rights lawyers and has extensive experience working with human rights defenders, non-governmental organisations and national human rights institutions,’ Mr Lynch said.

Forst is currently the Secretary General of the French national human rights commission and previously worked as the head of Amnesty International in France. He has also held a prior appointment as the UN’s independent expert on human rights in Haiti. He currently serves on the Board of FrontLine Defenders and was previously a Board member with ISHR.

‘Around the world human rights defenders are facing risks, restrictions and attacks for their work to challenge repression, expose human rights violations, and secure justice for victims. The position of Special Rapporteur plays a crucial role in supporting and protecting defenders and in engaging constructively with States to ensure a safe and enabling environment for their work,’ Mr Lynch said.

‘We look forward to working closely with Michel, as we did with his predecessors in Hina Jilani and Margaret Sekaggya, in pushing for States to enact specific laws and policies to support human rights defenders, and in pushing for the UN itself to be open and accessible to civil society activists. It is imperative that both States and the UN uphold their responsibilities to protect human rights defenders from intimidation, reprisals and attacks,’ said Mr Lynch.

ISHR will also work to ensure a continued focus on those defenders who are most at risk because of who they are and the work they undertake, including women human rights defenders, those who work on issues of sexual orientation and gender identity, and those who work on issues of corporate accountability for human rights violations.

‘We warmly congratulate Michel on his appointment to this crucial position and look forward to working with him towards making the international Declaration on Human Rights Defenders a national-level reality,’ Mr Lynch said.

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Key Developments in the Promotion and Protection of Human Rights

UN SPECIAL RAPPORTEURS CALL UPON AZERBAIJAN TO DROP CHARGES AGAINST THREE HUMAN RIGHTS DEFENDERS

Anar Mammadli, Bashir Suleymanli and Elnur Mammadov are being tried at the Grave Crime Court of Baku following their work to document alleged human rights violations and irregularities in the context of the presidential elections in October 2013. They risk a 12-year sentence... [more](#)

CHINESE HUMAN RIGHTS DEFENDERS DETAINED AHEAD OF TIANANMEN ANNIVERSARY

Five activists have been arrested and detained by the Chinese authorities, after they attended a seminar about the Tiananmen crackdown. Gao Yu, a journalist who covered the events in 1989, has been disappeared since 24 April... [more](#)

UGANDAN HOMOSEXUAL COUPLE TO BE TRIED

Kim Mukisa and Jackson Mukasa are charged for engaging in sexual acts ‘against the order of nature’, under the harsh anti-gay laws passed in Uganda in February. They are the first persons to be heard before a court in Uganda since the new legislation, which provides for life imprisonment... [more](#)

TWO VIETNAMESE BLOGGERS ARRESTED

Nguyen Huu and Nguyen Thi Minh Thuy were arrested on 5 May and charged for ‘abusing democratic freedoms that infringe on the interests of the state’. They published articles online about how to bypass government censorship to access world news... [more](#)

UN SPECIAL RAPPORTEURS OUTRAGED BY EXTREMELY SEVERE CONDEMNATION OF SAUDI BLOGGER

Raef Badawi was first convicted in July 2013, but at the beginning of May, following an appeal, the Criminal Court issued a more severe sentence. It convicted Badawi to 10 years in prison, 1,000 lashes and a one million Saudi riyal fine, for publishing dissenting articles on his blog and social media...[more](#)

ETHIOPIAN AUTHORITIES ARRESTED NINE JOURNALISTS AND BLOGGERS

Nine Ethiopians journalists and bloggers were arrested and charged with working with foreign human rights groups and inciting to violence through social media in order to destabilise the country. According to one of the arrested, they were denied access to a lawyer... [more](#)

Council Alert

A PREVIEW OF THE HUMAN RIGHTS COUNCIL'S 26TH SESSION

The 26th session of UN Human Rights Council will take place from 10 to 27 June in Geneva.

This session provides several key opportunities for the Council to focus on human rights defenders at particular risk. The report of the Special Rapporteur on the rights to freedom of assembly and association includes a focus on vulnerable groups, including women and lesbian, gay, bisexual, transgender and intersex persons (LGBTI), while panel discussions and thematic debates on women's rights will provide an opportunity to reinforce this focus. Likewise the focus on business and human rights, with the report and mandate renewal of the Working Group on this subject, provides an opportunity to highlight and respond to the risks faced by defenders working in this area.

The Council's programme of work for the session can be accessed [here](#) (please note that it is subject to change).

Business and human rights

The **report and renewal of the mandate of the UN Working Group on business and human rights** provides a key opportunity for the Council to strengthen recognition of the crucial role of human rights defenders in promoting corporate responsibility and accountability. ISHR, together with the Legal Resources Centre, is organising a side event on this topic, entitled '[From threats to opportunities: Business and human rights defenders](#)', on 13 June at the Palais des Nations. Panellists, including the new Special Rapporteur on human rights defenders, Michel Forst, will highlight the increasing threats faced by human rights defenders working on corporate accountability with the aim of informing the Council's response in its resolution to renew the mandate of the Working Group. 'We want to see a stronger focus on human rights defenders, and their role in preventing, mitigating and ensuring accountability for human rights violations linked to business enterprises', said Michael Ineichen, ISHR's Human Rights Council Advocacy Director.

The Working Group will present its latest report to the Council on its efforts to implement the 'Guiding Principles on Business and Human Rights', and the Council will also hear a report back from the 2013 Forum on Business and Human Rights.

Also at this session, Ecuador has announced its intention to introduce a resolution to create an open-ended working-group to analyse the process of creating a legally binding instrument on human rights and transnational corporations.

Reports by key special procedures mandates

Some key thematic reports for human rights defenders will be presented to the Council this session, including the report of the **Special Rapporteur on freedom of peaceful assembly and association**, Maina Kiai, and the **Special Rapporteur on freedom of expression**, Frank La Rue.

In its resolution ([A/HRC/RES/23/2](#)) on the role of freedom of opinion and expression in women's empowerment, the Council invited the Special Rapporteur on freedom of expression 'to include in his reports an analysis of the role of freedom of opinion and expression in improving women's participation (...) as well as an analysis of the challenges that women face in exercising their freedom of opinion and expression.'

Mr Kiai's [report](#) includes a focus on groups at special risk of violations of their right to freedom of peaceful assembly and association, including defenders working on issues of sexual orientation and gender identity, women human rights defenders, and environmental activists. The Special Rapporteur calls on States to ensure that human rights defenders are not criminalised.

The Council will negotiate resolutions to renew both these mandates. Furthermore the position of Special Rapporteur on freedom of expression will become vacant as Mr La Rue reaches the end of his term. The President will appoint his successor, along with those to [five other newly vacant positions](#), at the end of the session. ISHR, together with a coalition of NGOs, submitted a written statement to the last session of the Council containing a [checklist](#) of the requirements that prospective candidates should meet for the position of Special Rapporteur on freedom of opinion and expression.

Women human rights defenders

During the upcoming session the Council will consider the [report](#) of the **Working Group on the issue of discrimination against women in law and in practice** and the report of the **Special Rapporteur on violence against women**, Rashida Manjoo.

Colombia together with Mexico will lead a resolution on **elimination of discrimination against women**, while Canada will present a **resolution on accelerating efforts to end violence against women**. The focus of this resolution will be on violence against women as a barrier to women's political and economic empowerment.

The Council will also hold a **full-day meeting**, supported by Canada and Chile, to discuss the human rights of women, including the impact of stereotyping on the recognition, exercise and enjoyment of women's human rights, and the intersections between realising women's rights and achieving sustainable development.

Universality of human rights

It has been three years since the Council's first adoption of a text on sexual orientation, gender identity and human rights. The Council must not let this anniversary pass without taking concrete action to address violations against individuals on the basis of their actual or perceived sexual orientation or gender identity, including by ensuring monitoring and regular reporting to the Council

on violations against LGBTI persons and that States are advised on how best to respect and protect LGBTI people's rights.

Following on from the presentation of a joint statement on protection of the family at the last session in March, it is likely that a resolution will be presented on this issue at the upcoming Council session. Any such initiative must take into account the myriad forms that the family can take as well as clearly acknowledge the rights of individuals within the family. ISHR will be engaging closely to ensure that universal human rights standards are maintained.

Country-specific developments

The Council will consider the [report](#) of the Special Rapporteur on the situation of human rights in **Belarus**, Miklós Haraszti. Human rights defenders and journalists in the country are under particular scrutiny, intimidation and harassment, raising concerns for their protection, safety and ability to work in a safe and secure environment. The Special Rapporteur calls for Belarus to review legislation affecting the work of human rights defenders to bring it into lines with Council resolution 22/6 of March 2013, on protection of human rights defenders.

The Council will also consider the reports of the Special Rapporteur on the **Democratic People's Republic of Korea**, Marzuki Darusman, and the Special Rapporteur on the situation of human rights in **Eritrea**, Sheila B Keetharuth. The mandates on Belarus and Eritrea are due for renewal at this session.

The Council will also review the [recommendations](#) of the Independent Expert on the human rights situation in **Côte d'Ivoire** (this mandate is also due to be renewed) and a preliminary report of the Independent Expert on the situation of human rights in **Central African Republic**.

The commission of inquiry on the situation of human rights in the **Syrian Arab Republic** will also provide its latest oral update to the Council.

Resolutions to be presented to the Council's 26th session (as announced at the organisational meeting on 26 May):

- **Resolution on the death penalty - France** with Belgium, Benin, Costa Rica, Mexico, Moldova, Mongolia, Switzerland
- **Resolution on extreme poverty and human rights - France** with Albania, Belgium, Chile, Morocco, Peru, Romania, Senegal
- **Resolution on synergies between the Human Rights Council and parliaments - Ecuador** with cross regional group
- **Resolution on human rights and ownership and use of weapons by civilians - Ecuador** and Peru
- **Resolution on promotion of rights of peasants and other persons living in rural areas** and a renewal of the mandate of the Intergovernmental Working Group on the rights of peasants – **Ecuador** with Bolivia, Cuba, South Africa
- **Resolution on creation of an open-ended working-group to analyse the process of creating a legally binding instrument on human rights and transnational corporations -Ecuador**
- **Resolution on the renewal of the mandate of the Special Rapporteur of the independence of judges and lawyers - Hungary**, Austria, Botswana, Maldives, Thailand

- **Resolution on human rights and transnational corporations** and renewal of the mandate of the Working Group - **Norway**, Russia, India, Ghana, Argentina
- **Resolution on human rights and arbitrary deprivation of nationality - Russia**
- **Resolution on climate change and human rights – Philippines**
- **Resolution on trafficking in persons, especially women and children** and renewal of the mandate of the Special Rapporteur - **Germany**, Philippines
- **Resolution on extrajudicial, summary or arbitrary executions** and renewal of the mandate of the Special Rapporteur - **Sweden**
- **Resolution on human rights and the internet - Sweden** and core group
- **Resolution on the right to health for migrants - Mexico**
- **Resolution on the right to education - Portugal**
- **Resolution on the elimination of discrimination against women – Colombia** with Mexico
- **Resolution on violence against women – Canada**
- **Resolution to establish a Special Rapporteur on the rights of persons with disabilities - New Zealand** and Mexico

Focus on the Inter-American Commission

OPINION: HOW THE INTER-AMERICAN HUMAN RIGHTS SYSTEM WORKS TO PROTECT HUMAN RIGHTS DEFENDERS

Commissioner José de Jesús Orozco Henríquez, Rapporteur on Human Rights Defenders of the Inter-American Commission on Human Rights

Since its foundation 50 years ago, the Inter-American Commission on Human Rights (IAHCR) has monitored the situation of human rights defenders in the Americas and has employed protection mechanisms to protect the life and physical integrity of persons persecuted for their activities to defend human rights. Following the adoption of the UN Declaration on Human Rights Defenders, and at the initiative of the Executive Secretary of the Commission, a Unit for Human Rights Defenders was established in 2001. In 2011, responding to the need for the grave situation faced by defenders to be given greater visibility, and to enable follow up to specific cases, the IAHCR created the mandate of the Special Rapporteur on Human Rights Defenders. The Rapporteur is also charged with monitoring the situation of judges, prosecutors and public defenders in as far as their work relates to access to justice.

Amongst the most frequent violations defenders face in their work to promote and protect human rights are assassinations, threats, harassment, illegal, arbitrary or undue interference in their work, and violence meted out during social protests. These acts are designed to generate fear, discourage the human rights defender community, and silence and terrorise victims. In recent years, the Office of the Rapporteur has noted an additional obstacle – that of criminalisation, understood as being subjected to penal investigations and judicial complaints that are without foundation, aimed at intimidating defenders and paralysing their work.

There is a lack of effective State measures to protect defenders in situations of most risk, and a very low rate of effective investigation of threats and attacks. The majority of States in the Americas have not put specialised protection measures in place. Those measures that have been created fall short, either providing security to defenders without investigating the origin of the threats or vice versa.

This shows a lack of comprehensive State protection policies, which perpetuates the vulnerability of defenders and adversely affects their work.

The challenges the Office of the Rapporteur faces include ensuring a timely response to situations where the rights of defenders are compromised, and choosing the most effective amongst the mechanisms used by the Commission to urge States to take decisive action to protect defenders, such as by developing effective policies and practices for the protection of human rights. There are several such means and mechanisms available to the Commission, namely: requesting information from States; issuing press statements; holding public hearings and working meetings; adopting precautionary measures and requesting provisional measures from the Court for the protection of defenders; considering individual petitions; and elaborating thematic reports.

The Commission is clear that the most effective way to address the challenges faced by defenders is through the adoption by States of a comprehensive framework of protection, aimed at reducing the risks faced by individuals and enabling the continuation of their work. Such a framework should include: refraining from putting obstacles in the way of defenders' work; adopting laws, policies and practices that enable the work of defenders; protecting them from threats and risks to their lives and physical integrity; and guaranteeing investigations of violations committed against them. Furthermore, given that a third of precautionary measures issued by the Commission are aimed at protecting the life and integrity of human rights defenders, it is essential that the national protection policies include measures to establish systems for the swift and effective implementation of protection measures, including those coming from the Commission. A further critical component of these policies is the public acknowledgement of the legitimacy of the work of defenders and their contribution to the strengthening of the rule of law and protection of human rights.

There have been important advances through the work of the Unit and the Office of the Rapporteur. In the [first report on the situation of human rights defenders in the Americas, in 2006](#), the Rapporteur highlighted that the full and free exercise of the right to defend human rights entails that defenders are not victims of violations of their rights protected under the American Convention. The [second report of 2011](#) encouraged the creation of national protection mechanisms in several countries in the hemisphere. Recently the Rapporteur published a report '[Guarantees for the independence of justice operators](#)' ('justice operators' is the Commission's term for anyone working in judicial processes) which it is hoped will be a useful tool to promote the independence of justice operators as a means to ensure access to justice for victims of human rights violations of. It should also provide a basis for States and civil society organisations to work together to develop better public policies regarding the judicial process. Currently, the Office is working on a thematic report on criminalisation, aimed at making recommendations to States regarding legal, judicial and administrative steps they should take to eradicate this distorted use of penal law to target human rights defenders.

It is important to highlight, amongst the successes and advances of the Office of the Rapporteur, that standards and recommendations contained in these reports have been adopted and implemented by States and civil society. These standards and recommendations have contributed to the design and implementation of public policies and normative frameworks aimed at guaranteeing the exercise of the right to defend and promote human rights. In this way, many States have made important strides through good practices like the establishment of specialised protection mechanisms. For example, Colombia has its 'Programme for the Protection of Human Rights Defenders, trade unionists, journalists and social leaders', and Mexico its 'Mechanism for the Protection of Human Rights Defenders and Journalists.' However, whilst the Commission acknowledges the establishment of

these specialised protection programmes as an important advance in regard to the implementation of recommendations, it has noted that, in terms of design and effectiveness, they are still below the standards outlined by the Commission.

Finally, thanks to the system of petitions and cases, we have seen developments in Inter-American jurisprudence regarding the protection of defenders and the independence of justice operators. In a series of cases, the Inter-American Court has noted that States have specific obligations to protect activities to defend human rights. These include ‘the duty to provide necessary means to enable human rights defenders to carry out their activities freely; to protect them when they are threatened so as to avoid attempts on their life and physical integrity; to refrain from putting obstacles in the way of them carrying out their work; and to combat impunity’.¹ Equally, the Court has underlined that work for the defence of rights ‘not only relates to civil and political rights but (also) monitoring of and raising awareness about economic, social and cultural rights.’² The Court has also highlighted that ‘unlike other public employees, judges are subjects of additional guarantees due to the independence required of the judiciary, which the Court understands as “essential for the exercise of the role of the judiciary”’.³ These developments all contribute to setting out more clearly the obligations of States with respect to creating an enabling environment for human rights defenders and provide a useful framework for the Commission when issuing recommendations and protection measures to States.

INTERVIEW: BELEN PAEZ, DIRECTOR OF THE PACHAMAMA FOUNDATION (FUNDACIÓN PACHAMAMA, ECUADOR)

Over the past 16 years, the [Pachamama Foundation](#) has been working for the conservation of tropical forests and the respect of the rights of indigenous communities. We have supported more than 30 communities, working for the recognition and respect of their rights. As part of achieving this, we have advocated for legislative advances, most notably successfully lobbying in 2008 for the inclusion of the rights to nature in the Constitution. Ecuador is the first country in the world ever to do so.

However, in December 2013 the Foundation was shut down by a ministerial accord citing Decree N°16, which regulates NGO activity in Ecuador. There was no warning - the police arrived and closed the office down. We were accused of ‘interfering in public policy, threatening the internal security of the State and affecting the public peace’. This is the first time in Ecuador’s history that an NGO has been shut down in this way.

We believe we were targeted because we are an organisation of activists that is visible, vocal and effective. We had recently been protesting peacefully against the government’s policy of pushing the

¹ Inter-American Court of Human Rights, *Kawas Fernández Vs. Honduras*, 3 de abril de 2009. Serie C No. 196, paragraph. 145; available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_esp.pdf. Also see: IACtHR, *Caso Nogueira de Carvalho y otro Vs. Brasil*. 28 de noviembre de 2006. Serie C No. 161, paragraph. 77; and *Valle Jaramillo Vs. Colombia*. Fondo, 27 de noviembre de 2008. Serie C No. 192, paragraphs. 62 y 91.

² IACtHR, *Nogueira de Carvalho y other Vs. Brasil*. 28 de noviembre de 2006. Serie C No. 161, paragraph. 77, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_161_esp1.pdf. Also see: IACtHR, *Kawas Fernández Vs. Honduras*, 3 de abril de 2009. Serie C No. 196, paragraph. 147.

³ IACtHR, *Reverón Trujillo Vs. Venezuela*. 30 de junio de 2009. Serie C No. 197, paragraph 67, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf

'petrol frontier' further into the Amazon rainforest through further hydrocarbon exploitation. Pachamama has been effective in raising awareness about the destructive impact of this policy on local indigenous communities, such as the Kichwa community of Sarayaku. By closing us down, they hope to fracture the indigenous rights movement in the region.

With our requests to meet with officials from the Ministry of the Environment rejected, we have been forced to take the judicial route and request 'amparo' (remedy for the protection of constitutional rights). Our first request was rejected and we fear our second one - to a higher court- will be too. We are very conscious that credible and independent judicial processes no longer exist in the country. For this reason we are looking to regional and international human rights mechanisms, as we continue to pursue justice nationally.

At the most recent Inter-American Commission public session, we participated in a hearing on freedom of association in Ecuador. We wanted to raise awareness about the restrictions civil society is facing in Ecuador, and the arbitrary ways in which the State is operating. We asked the Commission President to request a visit to the region to see the situation for herself. However, we are not confident this will happen. Last year the Commission put in a request for a visit to the Ecuador government and got no response.

We also engage internationally because it's important that international human rights mechanisms hear from defenders directly. International human rights instruments support our work, and can influence State decision-making regionally and nationally. International human rights law goes beyond the term of any one government. It provides a road map for deepening democracy and upholding the respect of human rights in the medium and long-term.

In Ecuador we fear that the government is winning its campaign to discredit social movements, defenders and indigenous communities. They do this through use of the media, and through bribing indigenous communities with ad hoc benefits which create disinterest and apathy in parts of the movement. Those that work on the conservation of tropical forests have never faced worse risks. Global demand for the resources of Amazonian forests and others on the Equator – in the Congo and Indonesia, for example – is intense. We need to document the cases of these defenders and communities to show the pressures they face. There are powerful interests that want to ensure that defenders and those who live in these forests lose their voice and capacity to resist.

To take action for Pachamama, defenders and indigenous communities in Ecuador go to: Fundación Pachamama: <http://pachamama.org.ec/>, Amazon Watch 'Show Solidarity with Fundación Pachamama': <http://bit.ly/1oiClak>

KEY DEVELOPMENTS: DURING ITS 150TH SESSION OF PUBLIC HEARINGS THE INTER-AMERICAN COMMISSION IS TESTED AND STANDS STRONG

The Inter-American Commission on Human Rights (IACHR) has just published its [report on its 150th session of public hearings](#), recently held in Washington. For the span of a week, twice a year, the Commission provides States and civil society of the region with the opportunity of requesting a hearing to present and discuss human rights issues. For many, the Inter-American Commission is the place they come to for the recognition, protection and justice they are denied at national level. As

one defender noted, 'Where the Commission asks questions, lives are saved'.⁴ Nevertheless, the Commission faces financial and political challenges which test its resolve.

The Commission carries out its mandate to promote the observance and protection of human rights in a different way to its homologue in Africa, the African Commission for Human and Peoples' Rights. There is no system of periodic reporting by States regarding implementation of their human rights obligations, nor do all State parties attend the full period of public sessions. Hearings are generally held on thematic issues called for by the Commission itself, civil society actors or States. States are invited to respond where petitioners are civil society actors. These hearings, which usually last an hour, inform the Commission's ongoing engagement with member States and their production of thematic reports.

Protection of human rights defenders

During two hearings held on the protection of human rights defenders, impunity for violations against defenders was highlighted as key to their ongoing vulnerability. Defenders spoke to the range and gravity of threats and attacks they experience, and highlighted the phenomenon of criminalisation, including arrest on charges of 'sabotage' or 'terrorism' and detention of defenders during peaceful protests.

The cornerstone of the Commission's response to this vulnerability is the issuance of precautionary measures for those most at risk; that is, a request for the State concerned to take immediate action to protect the person at risk. These have had some success, but where States fail to put these measures into practice, attacks against defenders may be perpetuated.

The failure of law enforcement agents and members of the judiciary to connect violations with the fact that the victim is a defender was repeatedly mentioned as a contributing factor in impunity. Meanwhile, State representatives dismissed allegations of attacks by officials targeting defenders and journalists, suggesting the perpetrators were most likely gang members. Commissioners asked whether cases of violations against defenders could be better investigated if guidance was provided on how to identify and prosecute attacks against defenders. Meanwhile, the Commission's [Special Rapporteur on Human Rights Defenders](#) asked defenders to provide information on what is preventing identification of the source of the threats they face.

Where specific State protection mechanisms and measures for defenders exist, they were described as suffering from a lack of adequate resourcing, a failure to provide for the specific protection needs of women human rights defenders, and a failure to respond with the necessary speed to emergency cases.

The issues of criminalisation and of mechanisms for the protection of defenders will be the subjects of upcoming reports by the Special Rapporteur on Human Rights Defenders.

Women human rights defenders

The 20th anniversary of the adoption of the Inter-American women's rights protocol - the 'Convention of Belém do Pará' - saw the first ever hearing held at the IACHR on the situation of

⁴ Human rights defender during discussion with Rapporteur on the Rights of Indigenous Peoples.

women human rights defenders across the region. The Center for Justice and International Law (CEJIL) spoke of the importance of understanding how broader gender relations inform the vulnerability of women defenders to intimidation and attack. The President of the Commission agreed, noting that relevant national legislation has tended to focus on domestic violence - creating a view of women as victims - when the focus needs to be much wider: on women's participation, full citizenship and full equality.

Defenders working on corporate accountability

The situation of environmental defenders and indigenous communities in resistance was illustrated through the criminalisation of Ecuador's [Pachamama Foundation](#). Petitioners noted the vague framing of Ecuador's Executive Decree 16 which regulates NGOs and which is open to arbitrary interpretation and application. [Ecuador's targeting of defenders working to challenge abuses by transnational corporations](#) is inconsistent with its role in promoting the development of a legally binding treaty to regulate the work of transnational corporations and to provide appropriate protection, justice and remedy to the victims of abuses.⁵

Reprisals against those cooperating or seeking to cooperate with the Commission

On several occasions Commission President Tracey Robinson repeated that the mechanism would not stand for reprisals against defenders who cooperated or sought to cooperate with it. Several cases of reprisals were highlighted during the session.

1. The Commission expressed regret that the Dominican Republic had kept an activist from participating in hearings, and noted that the Commission was still awaiting information on why she had not been allowed to travel.
2. The Commission expressed grave concern at the reference by a Venezuelan delegate to 'terrorist acts of the opposition' when speaking of the deaths that occurred during protests since February 2014. The Commission criticised the State for increasing the risk faced by a sector of the population through stigmatising them in this way.
3. During a hearing on the judiciary in Chile, Chilean judges who hold State agents to account, or apply Inter-American jurisprudence locally, faced reprisals. Petitioners asked the Commission to hold a seminar to discuss the Commission's report on the independence of the judiciary. The State denied the allegations.

The Commission does not currently have a system for documenting reprisals of this type. A more concerted effort to document, and contribute to creating evidence of the problem of reprisals across the international human rights system, could provide for better protection for human rights defenders.

Five recommendations made to the Commission regarding the protection of defenders

During the session, NGOs made a range of recommendations to improve the situation and protection of human rights defenders, including:

⁵ Statement delivered by Ecuador on behalf of a Group of States, at the 24th Session of the Human Rights Council, September 2013: <http://bit.ly/1aVmcnQ>

1. Develop guidelines for States on how best to investigate threats against human rights defenders, mindful of the particular risks faced by particular groups.
2. Create a means to track the implementation of Commission recommendations to allow for more effective follow up. Precautionary measures granted, for example, could be better followed-up through: country visits; making corresponding recommendations to States; careful prioritization of cases passed to the Court; and the preparation of specific reports on implementation compiled with the input of national human rights institutions and civil society partners.
3. Remind States of their obligations under the Convention of Belém do Pará, and call for disaggregated information in order to understand the context in which women human rights defenders work and meet their specific protection needs.
4. Signal serious intent to work towards the prevention of reprisals and intimidation against those that cooperate or seek to cooperate with the IACHR, by designating a focal point to investigate cases of reprisals.
5. Revise Article 63 of the current Commission [Rules of Procedure](#) to extend guarantees of protection for those that cooperate with the Commission in all instances, not solely when attending hearings.

Other key developments at the Commission

Shortly after the session, the Commission announced its intention to establish a full-time Special Rapporteur on Economic, Social and Cultural Rights, building on the prior Unit working on this topic. It has put out a call to OAS States to contribute to a fund for the establishment of the rapporteurship. Defenders also called on the Commission to consider the [working group](#) model used by the African Commission that brings civil society and Commissioners together to work on the issue at stake.

The [Commissioner on the Rights of Indigenous Peoples](#) was urged to make country visits to bring visibility to international legal protections and, by showing solidarity with local defenders, contribute to increasing the focus on their struggles. The Commissioner asked whether a Commission manual on the right to free, prior and informed consent could assist in contesting the frequent violations of this right by States. Responding to civil society pressure, she also expressed an interest in looking at how the Commission could engage with international bodies – such as the IMF and World Bank – that play such a large part in defining economic policies that impact on indigenous communities.

The President of the Commission, and the mandate-holder of the new [Rapporteurship on the Rights of Lesbian, Gay, Trans, Bisexual and Intersex Persons](#), Tracey Robinson, chaired hearings on the situation of LGBTI people in several countries of the region, including Canada. Her office noted the relative lack of engagement by the Commission with LGBTI people from the Caribbean. As a Jamaican national Ms Robinson's nomination as President may help shift the perception of the Commission as a Latin American space and encourage more engagement by Caribbean civil society on all issues of human rights concern.

How States view the Commission

This session marked the end of the so-called 'strengthening process', in which the Commission's work has been under a formal review, and thus interaction in Washington could again open up to broader human rights concerns. However, the climate of questioning the Commission and its

authority – which characterised the recent review process – continues to be evident in the behaviour of some States.

Ecuador refused to attend either of the country-specific hearings – on freedom of association and environmental activists, and on freedom of expression – stating that the Commission was overreaching its powers and involving itself in internal State affairs. The Minister of Foreign Affairs and Human Mobility characterised the IACHR as a politicised body acting in the name of ‘Northern economic interests’. Much of this echoed Ecuador’s position during the review process. It was the second set of public hearings in a row which Ecuador has failed to attend.

Despite attending other country-specific sessions, **Colombian** State representatives walked out of a hearing on the ‘legal regime and institutional practices to impose restrictions on individual political rights in Colombia’. The State’s criticism was that the hearing would examine individual cases, which it claimed should be handled under the individual petitions procedure. The Commission noted in response that it was not extraordinary in the process of monitoring human rights situations, for hearings to touch on issues that are similar to those raised through petitions. The hearing went ahead without the State being present.

Following its denunciation of the American Convention on Human Rights, **Venezuela** no longer acknowledges the jurisdiction of the Inter-American Court of Human Rights, considering it a ‘politicised body’. Any human rights violations taking place in Venezuela after September 10, 2013 will therefore not be considered by the Court. Whilst the Commission does continue to have jurisdiction to consider matters related to Venezuela, including handling petitions, cases and precautionary measures, State representatives have been vocally critical of the body, recently calling the Commission and Court ‘protectors of the powerful’.⁶

Key UN figures have urged Venezuela to reconsider its decision, noting Human Rights Council resolutions aimed at enhancing cooperation and dialogue between international and regional human rights mechanisms, to no avail.⁷ Venezuela’s position undermines the drive toward strengthening and universalising the Inter-American system.

Despite these attempts by States to undermine the mechanism, the Commission cites the 12 requests from States to hold hearings during this recent session, as evidence of the credibility and legitimacy given to the system by the majority of its members.

Over the 150th session of public hearings, the Commission showed that, despite facing a serious lack of resources to fulfil its promotional and protective mandate, and regular failure by States to implement its recommendations, it is striving to deepen the impact of its work to safeguard and enable the work of human rights defenders.

(ISHR is currently considering ways in which we may contribute to civil society efforts for the promotion and protection of defenders through the Inter-American human rights system.)

Contact: Eleanor Openshaw, e.openshaw@ishr.ch

⁶ ‘OAS Human Rights Bodies ‘Protectors of the Powerful’, 11 Sept 2013: <http://venezuelanalysis.com/news/10014>

⁷ OHCHR newspiece, September 2012: <http://bit.ly/1qUQz50>

Opportunities for NGO Engagement

GENERAL ASSEMBLY HIGH LEVEL EVENT

The General Assembly will hold a High Level Event 'Contributions of Human Rights and the Rule of Law in the Post-2015 Development Agenda' from [9 to 10 June](#). Representatives of the UN agencies, civil society and other relevant stakeholders are invited to attend.

COMMITTEE ON THE RIGHTS OF CHILD

The Committee on the Rights of Child will meet for its 66th session in Geneva from [26 May to 13 June](#). The Committee will review the reports of: India, Indonesia, Jordan, Kyrgyzstan, and Saint Lucia. India, Jordan, and the United-Kingdom will be reviewed under the optional protocol on the sale of children, child prostitution and child pornography (CRC-OP-SC). India and Jordan will also be reviewed under the optional protocol on the involvement of children in armed conflict (CRC-OP-AC). The programme of work is available [here](#).

The 68th pre-sessional working group of the Committee will be held from [16 – 20 June](#). It will consider the following State reports: Colombia, Dominican Republic, Gambia, Jamaica, Mauritius, Sweden, Switzerland, Turkmenistan, United Republic of Tanzania, and Uruguay.

The 67th session of the Committee will take place on [1 – 19 September](#). The Committee will consider the State reports of Croatia, Fiji, Hungary, Morocco, and Venezuela. Hungary and Venezuela will be reviewed under the CRC-OP-SC. Also, the Committee will review Hungary, Venezuela and Morocco, Singapore under the CRC-OP-AC.

The 69th pre-sessional working group of the Committee will be held from [22 – 26 September](#). It will consider the State reports of Ethiopia, Ghana, Mexico, Nepal, and Netherlands. Cuba and Honduras will be reviewed under the CRC-OP-SC and Cuba, Honduras, Nepal and Netherlands will be reviewed under the CRC-OP-AC.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

The Committee on the Elimination of Discrimination Against Women will meet in Geneva from [30 June to 18 July](#) for its 58th session. The Committee will review the reports of the following countries: Central African Republic, Georgia, India, Lithuania, Mauritania, Peru, Swaziland, and Syrian Arab Republic.

The pre-sessional working group of the 60th session of the Committee on the Elimination of Discrimination Against Women will take place from [21 – 25 July](#). It will consider the following State reports: Azerbaijan, Denmark, Ecuador, Eritrea, Gabon, Kyrgyzstan, Maldives, and Tuvalu.

The deadline for the submissions of information for both sessions is [13 June](#).

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The Committee on the Elimination of Racial Discrimination will be in its 85th session from [11 – 29 August](#). The deadline for submitting information and register to attend the session is [25 July](#). The Committee will consider the reports of Cameroon, El Salvador, Estonia, Iraq, Japan, Peru and United States of America.

COMMITTEE ON ENFORCED DISAPPEARANCES

NGOs wishing to submit information on States parties to be examined at the upcoming 7th session of the Committee, to be held from [15 – 26 September](#), should do so by [22 August](#). The Committee will review the reports of Belgium and Paraguay and adopt the list of issues for Armenia, Mexico and Serbia. The registrations to attend the session will be open [until 5 September 2014](#).

COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Committee on the Rights of Persons with disabilities will meet in Geneva from [15 September to 3 October](#) for its 12th session. The Committee will consider the reports of Belgium, Denmark, Ecuador, Mexico, New Zealand and Republic of Korea and adopt the lists of issues for Croatia and Czech Republic. The deadline to submit information on the countries under review will be provided [as soon as available](#).

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

The deadline to submit information to the Committee's 21st session for any of the countries under review (Belize and Ghana) is [15 August](#). The Committee will meet in Geneva from [1– 5 September](#). The deadline for registration to attend the session is [25 August](#).

111TH SESSION OF THE HUMAN RIGHTS COMMITTEE

The Human Rights Council will hold its next session in Geneva from [7 – 25 July](#). The Committee will review the reports of Chile, Georgia, Ireland, Japan, Malawi, and Sudan. The Committee's Country Task Forces will also adopt a list of issues for Cambodia, Côte d'Ivoire, Cyprus, France, Russian Federation and a list of issues prior to reporting for Mexico and Poland.

The deadline for information electronically and in hardcopy, on States parties to be examined by the Committee, is 13 June 2014. The deadline for registration to attend the session is [27 June](#).

WEBCASTS OF THE TREATY BODY MEETINGS

If you are unable to attend relevant treaty body meetings, you can now watch them live online. A group of Geneva-based NGOs, including ISHR, has coordinated to make this possible. The webcasts can be viewed at www.treatybodywebcast.org.

EXTENSION OF DEADLINE FOR SUBMISSION TO 21ST AND 22ND UPR SESSIONS

The deadlines for OHCHR to receive written contributions from all stakeholders for the UPR documentation of countries to be reviewed during the 21st and 22nd sessions of the UPR Working Group have been extended.

For the 21st session the deadline is now [15 June 2014](#). List of States under review: Kyrgyzstan, Kiribati, Guinea, Lao People's Democratic Republic, Spain, Lesotho, Kenya, Armenia, Guinea-Bissau, Sweden, Grenada, Turkey, Guyana, Kuwait.

For the 22nd session the deadline is now [15 September 2014](#). List of States under review: Belarus, Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, United States of America, Marshall Islands, Croatia, Jamaica, Libya.

Stakeholders' submissions should be sent using the new '[On-line UPR submissions system](#)'.

HUMAN RIGHTS COUNCIL SESSIONS

The Council's [26th session](#) is scheduled for 10 – 27 June and the Council's [27th session](#) is scheduled for 8 – 26 September. ISHR will provide weekly updates through its [Human Rights Council Monitor](#).

HUMAN RIGHTS COUNCIL ORGANISATIONAL MEETING

An organisational meeting for [the Council's 27th session](#), where States will announce planned initiatives for the session, will take place on 25 August.

MEETING OF PERSONS CHAIRING HUMAN RIGHTS TREATY BODIES

The 26th session of Meeting of Chairpersons of the Human Rights Treaty Bodies will take place in Geneva from [23 – 27 June](#). It provides a forum for members of the ten human rights treaty bodies to discuss their work and consider ways to enhance the effectiveness of the treaty body system as a whole.

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The [Expert Mechanism on the Rights of Indigenous Peoples](#) will hold its 7th session from 7 – 11 July in Geneva. Information on accreditation will be available [here](#). Please note that the deadline for accreditation requests is 25 June 2014.

THE INDEPENDENT EXPERT ON HUMAN RIGHTS AND THE ENVIRONMENT CALLS FOR CONTRIBUTION

The Independent Expert on human rights and the environment, Mr. John Knox, is calling for civil society [contributions](#) in preparation for his upcoming Council report. The deadline for submission is 30 June.

INTERGOVERNMENTAL WORKING GROUP ON THE ACTIVITIES OF PRIVATE MILITARY AND SECURITY COMPANIES

The third session of the open-ended intergovernmental working group mandated to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, which had to be rescheduled on short notice, will now be held from 21 to 25 July 2014 in room XX, Palais des Nations, Geneva. The provisional agenda and other relevant documentation related to the third session will be made available [here](#).

FORTHCOMING COUNTRY VISITS BY SPECIAL PROCEDURES

Netherlands Working Group on people of African descent, 30 June – 4 July

To find out how you can support the visits, please contact respective mandate-holders via their email address, as listed in the [directory](#).

Conferences and Events

HUMAN RIGHTS COUNCIL SIDE EVENT: 'FROM THREATS TO OPPORTUNITIES': BUSINESS AND HUMAN RIGHTS DEFENDERS

13 June 2014, 12.15 - 13.45

Room IX, Palais des Nations, Geneva

Human rights defenders working on issues of corporate responsibility and accountability are under increasing threat around the world. The challenge for the Human Rights Council is to provide the right mix of incentives and pressure to ensure that States and businesses protect human rights defenders and their work, recognising that their participation represents an opportunity rather than a threat.

This panel will highlight the role of human rights defenders in promoting corporate responsibility and in exposing and remedying the adverse human rights impacts of business. The discussion will also spotlight the threats and attacks that human rights defenders face from both State and non-State actors because of this work. The event aims to inform the Human Rights Council's response to these issues through a resolution on business and human rights due be adopted during the 26th session.

Panelists

- Michel Forst, UN Special Rapporteur on Human Rights Defenders
- Maria Belen Paez, President, Fundación Pachamama, Ecuador
- Tess Peacock, Constitutional Litigation Unit, Legal Resources Centre, South Africa
- Alice Harrison, Communications Adviser, Global Witness

Moderator

- Phil Lynch, Director, International Service for Human Rights

For those unable to attend, a live webcast will be available at www.ishr.ch/webcast. You can also follow the event on Twitter [@ISHRGlobal](https://twitter.com/ISHRGlobal), using the hashtag [#HRDs](https://twitter.com/HRDs).

If you would like to attend but do not have UN accreditation, please email information@ishr.ch before 12 noon on Tuesday 10 June.

New Resources

IGLHRC ANNOUNCES NEW RESOURCES FOR DEFENDERS OF LGBT RIGHTS IN IRAN

The International Gay and Lesbian Human Rights Commission has launched a new series of Persian publications and a mobile-friendly [website on LGBT issues in Iran](#).

'LGBT human rights advocates continue to strive for social recognition, legal equality, and physical protection within Iran. We believe these publications will help with ongoing efforts of the Iranian LGBT community and their allies by providing educational resources that can benefit from them as

well as the society at-large', said Hossein Alizadeh, IGLHRC's Regional Program Coordinator for the Middle East and North Africa.

UNDERSTANDING RELIGIOUS FUNDAMENTALISMS FOR ACTIVISTS: NEW AWID RESOURCE MANUAL

AWID has prepared a new manual for rights activists facing religious fundamentalist opposition to their work. This resource includes the innovative research and analysis produced by AWID's Challenging Religious Fundamentalisms program through the past six years, and pulls together the experiences of hundreds of women's rights activists in diverse regions of the world. The publication is provided only on request cf@awid.org.

GENERAL PRINCIPLES ON CIVIL SOCIETY'S RIGHT TO FUNDING

UN Special Rapporteur Maina Kiai and the Community of Democracies have released a document titled '[Protecting civic space and the right to access resources](#)' which includes a set of 'general principles' summarizing key aspects of the right, along with their legal bases.

The publication summarizes three general principles under international human rights norms and standards regarding the ability of civil society to seek, receive and use resources. Also, it provides arguments and legal backing to support specific aspects of each principle.

ISHR 30th Anniversary

HASSAN SHIRE SHEIKH

ISHR trainee in 2006. Now: Chairperson of the East and Horn of Africa Human Rights Defenders Network

What does ISHR mean to you?

ISHR opened the door to international level advocacy for me. I visited Geneva in 2006, for the first time, to participate in ISHR's training and learn about the protection and work of the international human rights system.

Without ISHR's understanding of - and facilitation in - accessing the global human rights system, my organisation and I would never have been able to understand the complexities of the system, to engage with the Human Rights Council, to participate in the UPR together with our member organisations, to make use of the treaty body system, or to dialogue with the special mechanisms of the Council. All of these things were enabled by ISHR's training, which made it possible to have our African voices heard at the international level.

ISHR remains a strategic and important ally of the East and Horn of Africa Human Rights Defenders Project; and not only for us, but for a number of human rights defenders based in the Global South. ISHR keeps us informed about what's happening in the UN human rights system and facilitates our international level advocacy. The Service trains our members, both in Africa and in Geneva, equipping us with the knowledge and skills we need to have our voices heard by these important institutions.

Supporting human rights defenders is essential. By their very nature they are the forerunners of global protection for human rights. Equip or protect one and the multiplier effect is huge.

Case Notes on Decisions from International Human Rights Bodies

Merits Decisions

LIBYA: ENFORCED DISAPPEARANCES DURING GADDAFI REGIME NEED INVESTIGATION

Almegaryaf and Matar v Libya (2006/2010)

Summary

In March 2014, the Human Rights Committee was asked to consider whether the enforced disappearance of two individuals constituted a violation by Libya of its obligations under the International Covenant on Civil and Political Rights.

The communication was submitted by two Libyan nationals, Youcif Almegaryaf and Hisham Matar, on behalf of both themselves and the victims, their respective fathers, under the Optional Protocol to the Covenant.

Background

In the early 1970s, the authors' fathers, Jaballa Hamed Matar and Izzat Youcef Al-Maqrif, both Libyan army officers, were arrested by Libyan authorities and detained without conviction for six months and a year respectively, as part of Colonel Gaddafi's repressive policy against political opponents. Upon their release, Mr Al-Maqrif and Mr Matar escaped to Egypt with their families and became members of the Executive Committee of the National Front for the Salvation of Libya (NFSL).

In 1990, Mr Al-Maqrif and Mr Matar were arrested in Egypt and interrogated regarding their activities with the NFSL by agents of the Egyptian State Security Investigation Bureau (ESSIB). Mr Al-Maqrif and Mr Matar never returned home and their fates continue to be unknown. When their families started investigations into their disappearance the Egyptian authorities refused to provide them with information and warned that continuing such investigations could risk their personal safety.

Based on various letters sent by Mr Al-Maqrif and Mr Matar to their relatives and on the testimony of a former prisoner of Abu-Salim prison, the authors alleged that their fathers were transferred to Tripoli the day after their arrest in Cairo and held in Abu-Salim prison.

The authors alleged that their fathers were detained under unlawful conditions at Abu-Salim that were widely documented. Notably, a former prisoner indicated that all prisoners at Abu-Salim were detained incommunicado and subject to physical ill-treatment and torture.

The authors alleged that the Libyan authorities have never provided them with confirmation as to whether their fathers were dead or alive.

On 10 November 2010, the authors filed this communication with the Committee under the Optional Protocol to the Covenant. The authors claimed that Libya had breached their fathers' rights to life, freedom from inhuman or degrading treatment, liberty and security of the person, humanity and respect for the inherent dignity of the human person, and recognition as a person before the law (under articles 6(1), 7, 9, 10(1), and 16 of the Covenant respectively).

Because the disappearance of their fathers caused them ongoing feelings of uncertainty and anguish, the authors also claimed that Libya had violated their own rights to freedom from inhuman or

degrading treatment under article 7 of the Covenant. As a minor child at the time of his father's disappearance, Mr Almegaryaf also claimed that Libya had violated his rights under article 24(1) of the Covenant by failing to adopt special measures for his protection.

On five occasions from 2010 to 2013, Libya was requested to submit information on the admissibility and merits of the authors' communication to the Committee, but never did so.

The Committee's decision

Regarding the admissibility of the authors' complaint, the Committee noted that the authors had exhausted all available domestic remedies and had sufficiently substantiated their claims. Although the case had been submitted to the Working Group on Enforced or Involuntary Disappearances in Egypt, the Committee held that such procedure did not constitute an international procedure of investigation within the meaning of article 5(2) of the Optional Protocol. The Committee therefore declared the authors' communication to be admissible.

On the merits, the Committee recalled that the deprivation of an individual's liberty followed by a refusal to acknowledge such deprivation, places that person's life at a serious and constant risk for which the State is accountable. Regarding the authors' allegations of incommunicado detention, the Committee recognised the significant degree of suffering resulting from indefinite detention without contact with the outside world. The Committee observed that the Libyan authorities had arbitrarily arrested and detained the authors' fathers without any warrant, and without them being given the opportunity to challenge the lawfulness of their arrest. In the absence of information from Libya to the contrary, the Committee found that Libya had not treated the authors' fathers with humanity and respect during their detention. The Committee also observed that Libya had not provided the authors with any information regarding their fathers' fates and noted that their disappearance continued to cause the authors anguish and distress.

In light of the above, the Committee found Libya to have breached articles 6(1), 7, 9, 10(1) and 16 of the Covenant and article 2(3) read in conjunction with these articles with regard to the authors' fathers. The Committee also considered that Libya had also violated articles 7 and 24(1) and article 2(3) with regard to the authors.

The Committee therefore concluded that Libya was under an obligation, in accordance with article 2(3) of the Covenant, to provide the authors with an effective remedy, including by:

- (a) conducting a thorough and effective investigation into their fathers' disappearance;
- (b) providing the authors and their families with detailed information about the results of its investigations;
- (c) releasing the authors' fathers immediately if they are still being detained incommunicado;
- (d) in the event that they are deceased, handing over their remains to their families;
- (e) prosecuting, trying and punishing those responsible for the violations committed; and
- (f) providing adequate compensation to the authors for the violations suffered, and to the authors' fathers if they are still alive.

The Committee also observed that Libya was under an obligation to prevent similar violations in the future and, in particular, to ensure that it upholds the right to an effective remedy for crimes such as torture and enforced disappearance.

Libya must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

Anne-Lise Ménagé is an international lawyer, based in Paris.

SWITZERLAND: URGED TO REVIEW NON-CITIZENS' RIGHTS

A.M.M. v Switzerland (50/2012)

Summary

In February 2014, the Committee on the Elimination of Racial Discrimination was asked to consider whether Switzerland had violated its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination by limiting a temporarily admitted person's access to employment, education and healthcare.

The communication was submitted by a Somali national, Mr A.M.M., under article 14 of the Convention.

Background

In 1996, after having been sent to study in Libya by the former Somali government, the author took a flight back to Somalia transiting through Zurich. While in Switzerland, the author filed an application for asylum, for fear of being persecuted by majority clans if he returned to his home country. However, the Swiss migration authorities denied him refugee status on the grounds that he had not personally suffered persecution.

On 5 January 1999, the authorities suspended the author's repatriation and granted him provisional admission into Switzerland, also known as an 'F permit'. Subsequently the author lived mostly on social benefits amounting to 387.50 Swiss Francs per month. Despite his university education and efforts to receive further training, he was unable to secure employment, save for a job at a hotel between 2000 and 2002. Even then, his job was highly unstable, poorly paid and his F permit prevented him from taking a better position at the hotel.

In 2001, the author sought to increase his chances of finding a better job by undertaking practical and academic training in the hospitality sector. His request was denied by the Swiss authorities on the grounds that he already had a job and did not need such training. His F permit also prevented him from registering at several universities and from securing a translator's position in the Swiss administration. In addition, the author was obliged to stay in the same canton and was prohibited from seizing opportunities in other Swiss cantons.

In the same year, the author applied for a residency and work permit in Switzerland, also known as a 'B permit'. His application was denied, however, on the grounds that he needed to have resided in Switzerland for a minimum of five years. He therefore reapplied in 2003, but was again unsuccessful.

In December 2006, the author lodged a complaint with the Federal Commission Against Racism in relation to the discriminatory effects of the F permit and his inability to obtain a B permit. The Commission Against Racism found that it did not have jurisdiction over claims relating to an individual's residence status. The Federal Commission for Refugees, to whom the complaint was transferred, found that only cantonal authorities were competent to grant resident permits. The author made several other applications, including to the Federal Department of Justice and Police and the Federal Administrative Tribunal, but all of his requests were rejected.

In 2008, the author was unable to receive urgent dental treatment because the authorities in charge of migrants failed to issue the requisite documents. The author also claimed that immigration officials entered his home on several occasions and broke into his mailbox to read his correspondence. He was also denied permission to leave the country to visit his sick mother in Ethiopia.

In 2011, the author filed a criminal complaint with the Prosecutor of Lausanne, accusing agents of the immigration authorities of violating his privacy, damaging his property and denying him access to healthcare and job opportunities. These requests were rejected and the author lodged several appeals at the cantonal and federal level, without success.

On 8 January 2012, the author filed a communication with the Committee under article 14 of the Convention. The author claimed that Swiss authorities categorised asylum seekers based on their background, political and religious beliefs, intellectual level and potential prospects. He argued that the actions and behaviour of the authorities, controlling his access to employment, healthcare and training and interfering with his private life, were directly linked with his origins, ethnicity, background and personality. The author contended that Switzerland had breached its obligations:

- (a) to ensure the development and protection of certain racial groups or individuals;
- (b) to prohibit public authorities from promoting or inciting racial discrimination;
- (c) to guarantee, without distinction as to race, colour, or national or ethnic origin, the enjoyment of the rights to equal treatment before the judiciary, to security and protection against violence or bodily harm, to freedom of movement and residence, to nationality, to marriage and choice of spouse and to own property;
- (d) to assure effective protection and remedies against any acts of racial discrimination; and
- (e) to adopt effective measures to combat prejudices which lead to racial discrimination,

under articles 2(2), 4(c), 5(a), (b), (d)(i), (iii), (iv) and (v), 6 and 7 of the Convention respectively.

The Committee's decision

Regarding the admissibility of the claims, the Committee noted Switzerland's arguments that the author had not exhausted all available domestic remedies and that his claims were based on his immigration status rather than on his national or ethnic origin. Finding these issues to be closely connected to the merits of the communication, the Committee decided to examine the admissibility and the merits together.

On the merits, the Committee first sought to determine whether there had been an act of racial discrimination. It referred to article 1(1) of the Convention, which defines 'racial discrimination' as a distinction based 'on race, colour, descent, or national or ethnic origin', and article 1(2) and (3),

which provide that the Convention does not apply to distinctions between citizens and non-citizens and does not affect a State's legal provisions concerning nationality or citizenship.

The Committee noted the numerous factual examples submitted by the author, in particular the barriers he faced to access healthcare, employment and professional and academic training. It also recognised the complexity of this issue, highlighting the negative effects of the F permit on certain categories of foreigners distinguishable by their national or ethnic origin.

The Committee nevertheless concluded that the author had not shown that the discriminations were based on his Somali ethnic or national origin, rather than on his provisional admission status. Switzerland therefore had not breached any of its obligations under the Convention.

Notwithstanding this conclusion, the Committee recalled its General Comment No. 30 concerning discrimination against non-citizens and recommended that Switzerland review its legislation on provisional admission in order to limit the restrictions it puts on the enjoyment of fundamental rights.

Pauline Dépinay is an international lawyer, based in Paris.



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