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Opinion

MARGARET SEKAGGYA: WE NEED A RIGHT-BASED APPROACH TO LARGE-SCALE DEVELOPMENT

Since I took over the mandate on the situation of human rights defenders in 2008, I have strived towards making the work of defenders visible and contributing to their empowerment and protection. However, it is clear today that claiming and defending rights still remains a dangerous business, particularly when it comes to large-scale development projects.

Human rights defenders working in this context commonly face threats, harassment, intimidation, criminalisation and physical attacks. In many cases, defenders are labelled as ‘enemies of the state’, ‘anti-Government’ or

‘against development’ if they oppose development projects. I have also seen that women defenders and those working on women’s rights and gender issues, defenders working on access to land and environment and journalists and media workers are particularly vulnerable to retaliation.

Non-State actors are responsible for violations against defenders, often in collusion with State authorities. The affected communities and those defending their rights in this context are in dire need of protection and they also need access to appropriate remedy.

As a response to the deepening of this worrisome trend, my report to the General Assembly this year advocates for a rights-based approach to development policy making and programming. I argue that the rights-based approach offers tools and principles that can help to redress discriminatory practices and the unfair distribution of power and resources. The principles of equality and non-discrimination, participation, transparency and accountability can be an important guide to all stages of development policy-making, from assessment, project design and planning, to implementation, monitoring and evaluation. I believe that such an approach can contribute to establishing the mechanisms and conditions, which are necessary for people that are affected by development projects to safely and effectively claim their rights. It also ensures that States are held accountable and meet their international obligations.

State and non-State actors responsible for large-scale development should engage with stakeholders, including affected communities and those defending their rights, in good faith, not just as a mere formality. It is essential that communities and those defending their rights are able to participate actively, freely and meaningfully in all stages of development policy-making. Furthermore, those who are traditionally marginalised and excluded from decision-making should be allowed to voice their opinion.

And one crucial element is access to information and transparency about large-scale development projects. Information about such projects should be available and accessible for rights holders. I think that the principle of maximum disclosure corresponds most closely with international human rights standards and should apply to in connection to large-scale development projects that could have an impact on matters of public interest. Lack of transparency can lead to the disempowerment and vulnerability of defenders and seriously undermine the credibility and legitimacy of both State and non-State actors involved.

Access to information can allow defenders working on behalf of the affected communities to understand how their rights will be affected, how to claim rights that could be undermined by a large-scale development project and how to ensure the accountability of stakeholders and duty bearers.

States have a responsibility to provide protection to those claiming their legitimate right to participate in decision-making processes and voicing their opposition to large-scale development projects. I am deeply concerned about reports indicating harassment, persecution and retaliation against human rights defenders seeking judicial remedy for business-related violations. It is crucial that those who wish to report human rights concerns and violations are able to safely access accountability and grievance mechanisms.

I conclude my report by underlining that communities and those defending their rights play a crucial role in shaping development policies and projects that are people-centred, non-discriminatory and sustainable for all. Human rights defenders can play a key role in ensuring that dialogue is used to reinforce social cohesion and pre-empt conflict and the radicalisation of positions.

Rather than being against development, defenders play an important role in advancing development. This is particularly relevant in the context of the discussion on the post-2015 development agenda. Civil society is calling for meaningful participation, higher levels of accountability from governments and international institutions, and the protection of human rights under the rule of law.

Margaret Sekaggya is the UN Special Rapporteur on Human Rights Defenders.

Human Rights Defender Profile

DR JIANLI YANG, CHINESE HUMAN RIGHTS DEFENDER

Dr Jianli Yang is a Chinese human rights defender, and founder and president of Initiatives for China, also known as Citizen Power for China (CPFC). Jianli has been politically active for a better China since witnessing the horrors on Tiananmen Square in 1989. For this political activism, he was imprisoned in China in 2002, and released in 2007. He has been denied access to his home country and currently resides in the United States. He says he does not regret the personal ‘sacrifices’ he has made in pursuing his cause, since these are inevitably part of the path he chose to take, and therefore, are worth doing.

“Whether we have made any progress in our fight for a better Chinese society? The answer is yes.”

The China of today is completely different compared to the China of 25 years ago. According to Jianli, the most important change has taken place in the people themselves. The concept of democracy has gradually prevailed in the minds of the general public, thanks to the dozens of years of efforts by pro-democracy activists both in and outside China and their international supporters. As a result of their activism, the Chinese government faces a completely different domestic and international environment today, and can no longer ignore discussions on human rights issues. It has to engage in human rights dialogues with the international community. The biggest advance in human rights in China has been the activists themselves, Jianli says. They took the initiative and pushed the regime to make some reforms. Naturally, this was done without the Chinese Government giving any credit to the efforts of the activists.

“When the “tipping point” arrives, the Chinese people must be prepared to seize the opportunity to effect a secure, peaceful, and organized transition to a democratic government.”

Jianli is the founder of the CPFC and wants to construct a platform of intellectual leadership and grass root activities to inspire and enable democratic forces within and outside China. The strategy consists of combining the creation of international support on the one hand, and a strong domestic constituency on the other. One of the issues CPFC is focusing on currently is freedom of political prisoners.

The CPFC regrets that no State made mention of individual cases of political prisoners or human rights defenders during the Universal Periodic Review (UPR) of China on the 22nd of October 2013. However, Jianli expresses particular appreciation to Canada for raising the issue of political prisoners, and recommending China to release them. The overall process of the Chinese UPR was disappointing, but Jianli does acknowledge a few positive signs by China to reform the re-education through labour system, expedition of the process of ratifying the International Covenant on Civil and Political Rights, and realising what China calls ‘the dream of human rights’.

However, the CPFC continues to doubt China’s sincerity in this regard. The ‘dream’ is in direct contradiction to earlier statements by the delegation during the UPR. Jianli particularly finds the Chinese silence on the [detention of Cao Shunli](#), a Chinese defender detained when boarding a plane to attend a training at ISHR, very disappointing.

“China’s stubborn reactions against UPR scrutiny have once again proven that it is unfit to join the UN Human Rights Council.”

Another issue that the CPFC is working on is blocking China from becoming a member of the United Nations Human Rights Council. According to Jianli, the last UPR session shows that China is nowhere near ready to accept a leadership role in the Human Rights Council. The CPFC will continue to oppose Chinese membership until China has taken concrete steps to improve the human rights situation. The elections for the Human Rights Council will be held in mid-November, and China will most likely win a seat. Jianli acknowledges that the campaign to block Chinese membership will not succeed, but it is nevertheless worth doing in order to raise awareness and to bring more pressure to bear. This particular campaign is part of CPFC's broader goals: spotlight the true human rights situation in China to the international community, generate international pressure to ensure the release of political prisoners, and lastly, convince States to pressure China to ratify the ICCPR.

Nienke Boskma is an Intern with the International Service for Human Rights.

For more information on Dr Jianli Yang and the work of the CPFC see <http://www.initiativesforchina.org/>

Our Work to Support Human Rights Defenders

AFRICAN STATES SHOULD IMPLEMENT THE MAPUTO PROTOCOL AND PROTECT WOMEN HUMAN RIGHTS DEFENDERS

(Banjul, 28 October 2013) - In a [statement to the 54th session of the African Commission on Human and Peoples' Rights](#), ISHR has called on African States to strengthen the level of support and protection provided to women human rights defenders.

'Women human rights defenders across Africa have a critical role to play in advancing peace, security, democratic processes and development,' said ISHR's Eleanor Openshaw.

'Despite this, women human rights defenders across the continent continue to face attack, harassment and intimidation. Attacks against them are frequently justified in the name of tradition, culture or religion, as they challenge the subordinate role frequently ascribed to women in all our societies,' Ms Openshaw said.

Under the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), African States are obliged to 'ensure that the rights of women are promoted, realised and protected'.

'Where women defenders cannot do their work free from attack, human rights will continue to be violated and deep inequalities will persist in our societies. In accordance with the Maputo Protocol, African States should develop and implement gender specific protection measures for human rights defenders,' said Ms Openshaw.

ISHR's statement to the African Commission also calls on African States to show leadership at the [current session of the UN General Assembly](#) in New York by supporting the first ever resolution focused on the protection of women defenders.

In a [further statement to the African Commission](#), ISHR also called on the Commission itself to strengthen efforts to protect human rights defenders, including by endorsing a report by the Special Rapporteur on Human Rights Defenders and by establishing a mechanism or focal point within the Commission to receive, consider, respond to, and report on cases of intimidation and reprisals.

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ISHR MAKES A MAJOR SUBMISSION TO SPECIAL RAPPOREUR ON HUMAN RIGHTS DEFENDERS

(Geneva, 15 October 2013) – States should enact specific laws and policies to protect human rights defenders and to provide the basis for a safe and enabling environment for their work, according to a new report by the International Service for Human Rights.

In a [major submission to the UN Special Rapporteur on Human Rights Defenders](#), Margaret Sekaggya, ISHR says that States, corporations and the UN itself must all take steps to end restrictions and reprisals against human rights defenders and ensure an environment that supports and enables their work.

ISHR's submission is intended to inform the next report of the UN Special Rapporteur to the UN Human Rights Council.

'Creating and maintaining a safe and enabling environment is essential to ensuring that human rights defenders can effectively undertake their valuable work to promote human rights, democracy and the rule of law,' said ISHR Director Phil Lynch.

'The Special Rapporteur's next report is a timely response to continuing attacks and restrictions, including of a legislative nature, on the work of human rights defenders in all regions of the world,' he said.

ISHR's submission to the Special Rapporteur focuses on:

- the role of laws and policies which specifically recognise and protect the work of human rights defenders in creating and maintaining a safe and enabling environment for that work;
- the right of unhindered access to international bodies, and the obligations of both States and international bodies in that regard;
- the particular recognition and protection needs of vulnerable groups of defenders, specifically women human rights defenders and those working on issues of sexual orientation and gender identity;
- the importance of high-level political support for, and public education regarding, the work of human rights defenders; and
- the obligations of non-State actors, especially corporations.

The submission concludes with recommendations as to the steps and measures that States, the United Nations and other relevant actors should take to create and maintain a safe and enabling environment for the valuable work of human rights defenders.

ISHR EVENT ON HUMAN RIGHTS DEFENDERS ADVOCATING ON LARGE-SCALE DEVELOPMENT PROJECTS

(New York, 30 October 2013) – A panel of leading international human rights experts has called on governments and corporations to better respect and protect human rights defenders who work on issues related to large-scale development projects and corporate accountability.

'Large-scale development projects – including gas, oil and mining projects – can contribute positively to development but all too often have negative impacts on the most vulnerable, including indigenous peoples, women, and human rights defenders who sound the alarm on such impacts,' said Cristina Hardaga Fernandez of JASS Mesoamerica.

According to Pavel Sulyandziga, Chair of the UN Working Group on Business and Human Rights, around the world there appears to be 'a stepping up of pressure against human rights defenders who work on issues of corporate accountability', with attacks and violations becoming more frequent.

Human rights defenders are often the first to identify and expose adverse human rights impacts associated with business and development and are therefore the first to suffer attacks and violations as a result, he said.

Speaking at an event at UN headquarters organised jointly by Norway and the International Service for Human Rights, both the UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, and Ms Hardaga Fernandez expressed particular concern at the incidence of attacks against women human rights defenders, including rape and other forms of sexual violence.

According to a recent report by JASS Mesoamerica, women human rights defenders in rural communities who oppose large-scale development projects are at particular risk, accounting for over 40% of reported attacks against women human rights defenders across Latin America in 2012.

Norway's Deputy Permanent Representative to the UN, Tine Mørch Smith, said that such attacks not only violate human rights but also undermine sustainable development.

‘Creating and maintaining a safe and enabling environment for human rights defenders must be a fundamental objective of all governments’, with the work of defenders contributing to more transparent and accountable government, better decision-making and therefore more sustainable development, Ms Smith said.

‘Governments need not always agree with human rights defenders but must always allow them to speak and must respect and protect their rights to freedom of expression, association and peaceful assembly,’ she said.

The expert panelists proposed a range of recommendations to ensure that human rights defenders are protected and can participate in the context of large-scale development projects:

- Communities affected by development projects, together with human rights defenders who work with those communities, should be supported by both the government and corporations to participate actively, freely and meaningfully in project assessment and analysis, design and planning, implementation, and monitoring and evaluation;
- Relevant information about development projects should be made freely available and accessible;
- Governments and corporations should fully respect and protect those who claim their legitimate right to participate in decision-making processes or who voice their opposition to large-scale development projects;
- Both public and private financiers of large scale development projects should ensure that they engage and consult effectively with human rights defenders and affected communities as a precondition to supporting such projects;
- Both public and private security forces should be trained to respect and protect human rights defenders, including by respecting and protecting their rights to freedom of expression, association, assembly and peaceful protest; and
- Both the Declaration on Human Rights Defenders and the UN Guiding Principles on Business and Human Rights should be translated into a greater number of languages, including indigenous languages, and widely disseminated.

Closing the panel discussion, Human Rights Watch’s Director of Business and Human Rights, Arvind Ganesan, said that while civil society has an important role to play in maximising the benefits associated with development projects and minimising the detriments, this does not supplant the need for States to enact and corporations to abide by ‘rules, standards and principles of due diligence’.

Photographs from the event are available [here](#).

ISHR’s report on creating and maintaining an enabling environment for human rights defenders is [here](#).

A summary of the most recent report of the Special Rapporteur on Human Rights Defenders on the issue of large-scale development projects is [here](#).

Our Work to Strengthen Human Rights Systems

HUMAN RIGHTS ABUSERS MUST NOT BE ELECTED TO THE HUMAN RIGHTS COUNCIL

(New York, 5 November 2013) – The international community should ensure that States responsible for gross human rights violations and that fail to protect human rights defenders or cooperate with the UN are not elected to the UN's top human rights body, the International Service for Human Rights (ISHR) has said.

A coalition of over 40 leading non-governmental organisations has called for States that are candidates for membership to the UN Human Rights Council to do more to respect human rights at home and at the international level.

On 12 November, the United Nations General Assembly will elect 14 new members to the Human Rights Council; its top human rights body.

'Elections to the Human Rights Council are a critical moment for the international community to hold States to account for their human rights records, and to deny membership to the most flagrant abusers,' said Phil Lynch, Director of the International Service for Human Rights.

In a joint letter delivered by International Service for Human Rights on behalf of 40 signatories from all regions of the world, NGOs expressed concern about the clear failure of some candidates to fully comply with the criteria of upholding the highest human rights standards, and cooperating with the Human Rights Council.

'Failure by Council members to take effective measures to address violations of human rights for which they are responsible, particularly of a gross or systematic nature, or to fully cooperate with the Council and its mechanisms undermines the ability of the Council to promote and protect human rights and to demand full state cooperation with its mechanisms,' the letter says.

'The unwillingness of candidates such as Russia, China and Saudi Arabia to respect and support the important role played by civil society, non-governmental organisations and human rights defenders is deeply concerning,' said Mr Lynch.

'We are particularly outraged about a disturbing pattern of attacks, intimidation and violence against those who seek to cooperate with the UN human rights mechanisms, occurring in some candidate States as part of a worldwide trend,' said Mr Lynch.

In the joint letter, global civil society called on candidates to clearly commit to cooperate with the Human Rights Council's human rights experts – the 'special procedures' – and with the newly established senior and UN wide focal point to improve the safety of those cooperating with the United Nations.

'The UN depends heavily on the free and safe cooperation of human rights defenders for its effective functioning,' Mr Lynch said. 'It's therefore imperative that each candidate ensure that domestic legal provisions, promote and protect an independent, diverse and pluralistic civil society,' he added.

'The ability of the Council in protecting human rights is undermined if its members do not take effective measures to address violations of human rights for which they are responsible.'

The joint NGO letter was sent to all candidates to the Human Rights Council and copied to members of the UN General Assembly. It was initiated by ISHR and supported by leading NGOs.

List of signatory organisations: Action Canada for Population and Development, Amman Center for Human Rights Studies, Amnesty International, ARC International, Asian Forum for Human Rights and

Development (FORUM-ASIA), Cairo Institute for Human Rights Studies (CIHRS), Canadian HIV/AIDS Legal Network, Center for Reproductive Rights, CIVICUS: World Alliance for Citizen Participation, Commonwealth Human Rights Initiative, East and Horn of Africa Human Rights Defenders Project, Egyptian Initiative for Personal Rights (EIPR), Fondazione Marista per la Solidarietà Internazionale ONLUS, Franciscans International, Front Line Defenders, GAYa NUSANTARA, Global Initiative for Economic, Social and Cultural Rights, Human Rights House Foundation (HRHF), Human Rights Watch, International Association for Catholic Education, International Catholic Child Bureau, International Commission of Jurists, International Federation for Human Rights (FIDH), International Federation of University Women (IFUW), International Lesbian and Gay Association, International Movement Against All Forms of Discrimination and Racism (IMADR), International Service for Human Rights, KIFKIF LGBT GROUP, Lutheran World Federation, Matrix Support Group, Network of Chinese Human Rights Defenders, Pax Christi International, Public Information and Need of Knowledge NGO, Public Union of Democracy and Human Rights Resource Centre, Rainbow-Ethiopia HIV and Media Initiative (REHMI), Red Nacional de Promoción de la Mujer, RNPM-Perú, Russian Research Center for Human Rights, Vietnam Committee on Human Rights, World Federation of United Nations Associations, World Organisation Against Torture (OMCT)

Additional signatories (as of 5 November 2013): Article 19, Conectas Direitos Humanos, Al-Haq, Human Rights Law Centre (Australia), Access, Peace Brigades International.

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NGOS CALL ON PRESIDENT OF GENERAL ASSEMBLY TO RESTART NEGOTIATIONS ON TREATY BODY STRENGTHENING WITHOUT DELAY

(New York, 25 October 2013) - NGOs are concerned that the President of the General Assembly has not yet appointed co-facilitators to resume negotiations on strengthening the UN treaty body system.

In a joint letter, NGOs have called on the PGA to appoint co-facilitators without delay to ensure that negotiations can be resumed and the process can be brought to a conclusion by the mid-February 2014 deadline agreed to by States.

This in turn would ensure that initiatives that enjoy broad support can be implemented for the benefit of the treaty bodies and rights holders everywhere and those proposals with budgetary implications will be decided in time for inclusion in the general UN budget for 2014-15.

[Click here to read the joint NGO letter to the President of the General Assembly](#)

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AFRICAN STATES MUST PROTECT AND PROVIDE AN ENABLING ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS

(Banjul, 23 October 2013) – States have a critical role to play in preventing violations against human rights defenders in Africa and in providing for their physical and legal protection, the International Service for Human Rights said today.

In a [statement to the African Commission](#) on Human and Peoples' Rights, ISHR has urged States to investigate, prosecute and ensure accountability for violations against human rights defenders.

'We are deeply concerned about gross violations against human rights defenders, including torture and ill-treatment, arbitrary arrest and detention, enforced disappearances and even death,' said Clement Voule of ISHR.

Mr Voule called on the Commission to follow up on State obligations and recognised the critical work of the Commission's Special Rapporteur on Human Rights Defenders in doing so.

ISHR raised particular concerns regarding the misuse of laws, malicious prosecutions, unfair trials and judicial harassment to criminalise the work of human rights defenders. It called on States to ensure any legal or other restrictions on the work of defenders are legitimate and proportionate.

ISHR's statement drew attention to the obligation of States to create an enabling environment for human rights defenders, saying States must uphold the rights of freedom of expression, association and peaceful assembly, and put an end to the stigmatisation of defenders.

States should also proactively develop, enact and enforce national laws and policies that recognise and protect the work of defenders, in accordance with the *UN Declaration on Human Rights Defenders*.

While Botswana, Sierra Leone, Togo and Cote d'Ivoire were commended for supporting the recent UN Human Rights Council resolution on the prevention of reprisals against human rights defenders, ISHR called on the African Commission to improve its response to this issue.

Two years since the Commission passed a resolution condemning reprisals against those who cooperate with the African human rights system, ISHR said it is now vital for the Commission to take concrete action by designating a focal point to receive information, and to monitor and follow up on reprisals cases.

Read the [full statement here](#).

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Key Human Rights Developments

In Brief

RIGHTS DEFENDERS INCREASINGLY BRANDED 'ENEMIES OF THE STATE' OVER DEVELOPMENT PROJECTS, UN EXPERT WARNS

Human rights defenders working on behalf of communities affected by large-scale development projects are increasingly being branded 'anti-government', 'against development' or even 'enemies of the State', a UN independent expert has warned. Human rights defenders trying to help communities affected by projects such as the construction of hydroelectric power stations, dams, and roads or the operations of various extractive industries were being 'harassed, stigmatized and criminalized for doing their work', the Special Rapporteur for human rights defenders Margaret Sekaggya said on Monday in a report to the UN General Assembly. They also faced threats, including deaths threats, and physical attacks. 'But rather than being against development, defenders plan an important role in advancing it', she highlighted... [more](#)

UN AND EU CALL FOR RELEASE OF CAO SHUNLI

EU High Representative [Catherine Ashton has expressed her 'deep concern at the sudden disappearance of Cao Shunli](#) on the day she was due to travel to Geneva to participate in human rights promotion activities'. She called for clarification of Cao Shunli's whereabouts and urged China to ensure full participation of civil society in the Universal Periodic Review. Cao Shunli had been advocating for the inclusion of independent civil society organisations in China's Universal Periodic Review. The EU's intervention comes as a group of leading international human rights experts called for the immediate release of Chinese human rights defenders detained in connection with peaceful protests about civil society repression in China... [more](#)

'HARMFUL PRACTICES AGAINST WOMEN AND GIRLS CAN NEVER BE JUSTIFIED BY RELIGION'

'Countless women are exposed to complex forms of human rights violations based on both religion or belief and their sex', said Heiner Bielefeldt, the Special Rapporteur on freedom of religion or belief. The expert's latest report, which he presented to the Third Committee, focused on two human rights, namely freedom of religion or belief and gender equality. In his presentation, Mr Bielefeldt called on States to identify and close human rights protection gaps in personal status laws, including denominational family laws, which disproportionately affect women from religious or belief minorities. The expert's report offers recommendations to, among other things, integrate a gender perspective into programmes designed to protect and promote freedom of religion or belief... [more](#)

MOLDOVA OVERTURNS LAW BANNING PROMOTION OF 'NON-TRADITIONAL' RELATIONSHIPS

In Moldova, the Parliament has overturned a law banning the promotion of 'non-traditional relationships'. Similar legislation on propaganda ban is still in force in Russia and Lithuania and is currently under consideration in Ukraine. Anastasia Danilova, Executive Director of the GENDERDOC-M Information Centre, is 'hopeful that Moldova will continue to ensure equal rights for all of its citizens regardless of their sexual orientation or gender identity. Moldovan authorities are yet to ensure that the freedoms of assembly and expression for LGBT people are not at any risk'... [more](#)

UN EXPERT BODY URGES ACTION TO PREVENT VIOLATION OF INDIGENOUS RIGHTS DUE TO BUSINESS ACTIVITIES

'Indigenous peoples are among the groups most severely affected by the extractive, agro-industrial and energy sectors', said Pavel Sulyandziga, Chair of the UN Working Group on Business and Human Rights. Other challenges involved land use and ownership, as well as displacement through forced or economic resettlement Mr Sulyandziga said in his presentation of the Working Group's report to Third Committee. 'Such disruption often leads to serious abuses of civil and political rights, with human rights defenders in particular put at risk', he added. The report highlights how the UN Guiding Principles on Business and Human Rights can clarify the roles and responsibilities of States, business enterprises and indigenous peoples in addressing these problems... [more](#)

2013 ANNI REPORT ON PERFORMANCE OF NHRIS IN ASIA RELEASED

Forum Asia and the Asian NGO Network on National Human Rights Institutions (ANNI) recently presented their [2013 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia](#). This unique initiative, that brings together regional civil society organizations to address issues related to national human rights institutions (NHRIs), aims at regular reporting on NHRIs. It is a valuable means for civil society to hold NHRIs accountable. The report has three focus areas in this regard: the independence, effectiveness and accountability of NHRIs. It addresses two thematic issues, namely business and human rights (corporate accountability) and NHRIs as human rights defenders.

IRISH FOREIGN MINISTER UNDERLINES CRUCIAL ROLE OF DIVERSE AND PLURALISTIC CIVIL SOCIETY

On 9 October 2013, the Irish Minister for Foreign Affairs and Trade, Eamon Gilmore, reiterated the Irish Government's commitment to continue working for the security and protection of human rights defenders at risk: 'Ireland places immense value on the work of civil society in the promotion and protection of human rights and we recognize and applaud the enormous contribution which human rights defenders can make in this regard. Ireland will continue to play its part in defending and supporting human rights defenders, and in promoting and protecting human rights wherever we see injustice'... [more](#)

In Depth

CHINA'S HUMAN RIGHTS RECORD UNDER SCRUTINY AT THE UN

(Geneva, 22 October 2013) – China's human rights record was in the spotlight at the UN as it presented itself for its second assessment under the Universal Periodic Review (UPR).

'The UPR offers a unique opportunity to assess the human rights record of all UN member States every four and a half years', said Michael Ineichen, ISHR's Director of Human Rights Council Advocacy. 'This time, China had no control over the list of States who spoke, which meant we saw criticisms across the board and from all regions of the world.'

There were some hard-hitting interventions from the 140 States signed up to take part in the review, including calls on China to end arbitrary detention as a means of controlling human rights defenders, to investigate reprisals against those who cooperate with the UN system, and to ratify the International Covenant on Civil and Political Rights (ICCPR).

But friendly States were also out in force, with well-wishers such as Gabon, Cuba, Jamaica, and Iran congratulating China on its implementation of recommendations from its last UPR, its commitment to NGO participation in the review, its progress on poverty alleviation, and encouraging it to crack down on 'illegal' use of the Internet.

Commenting on this Mr Ineichen said, 'It was evident that China had rallied its friends to its cause, with even small States like Comoros, rare participants in the UPR, taking the floor to support the Chinese line.'

The continued detention of human rights defender Ms Cao Shunli in Beijing's First Prison overshadowed the review. Ms Shunli has not been seen since 14 September when she tried to board

a plane to attend a meeting of the UN's Human Rights Council in Geneva. She had been attempting to convince the Chinese Government to allow civil society to participate in the UPR process.

'Cao Shunli's case is emblematic of the lengths some States will go to to prevent civil society participation in the UN human rights system', Mr Ineichen said. 'In that sense it speaks to the power of the system in the eyes of these countries.'

For its part, China repeatedly stated how much it 'values the participation of NGOs' in the UPR. It claimed to have solicited the views of 'dozens' of organisations, as well as seeking broad public input via the Foreign Ministry's website. However, it noted, some individuals did not participate through these established channels, but 'instigated unlawful gatherings'. It expressed regret that 'criminals' were being labelled human rights defenders.

Despite the high profile of Cao Shunli's case, she was not mentioned by name during the review. Finland was one of the few States to attempt to pin China down on the issue of reprisals suffered for attempted cooperation with the UPR. However Hungary, despite leading on a ground-breaking resolution condemning reprisals, at the 24th session of the Human Rights Council, did not question China on this point during the UPR.

'While we are disappointed that some States did not show leadership on this issue, we were pleased to see others, such as Ireland, step up', said Mr Ineichen. Ireland spoke out strongly on civil society space, showing commitment to the principles in the resolution it led on this subject at the Human Rights Council. It called on China to ensure an environment 'free from fear'. And in another strong statement the US called for the end of legal measures such as enforced disappearance directed at human rights defenders, their families and friends.

'Unfortunately the few commitments we saw China make in response were very much on its own terms', said Mr Ineichen. Although China stated its readiness to cooperate with the UN, and issued four invitations to UN experts to visit the country, these invitations are to experts working on health, safe drinking water, the effects of foreign debt, and discrimination against women – a notable absence of those issues raised consistently throughout the review, such as freedom of association and assembly, torture, arbitrary detention, and human rights defenders.

Similarly, China repeated its invitation to the High Commissioner to visit, but made no commitments to giving her unhindered access to all parts of the country including Tibet.

And in response to repeated calls from States that China should ratify the ICCPR, China rolled out its standard response, that its policy is not to ratify international instruments until the domestic conditions are right, and that it is taking steps in this direction. It made the same comment at its last UPR and then as now failed to set out a clear timetable for ratification.

'What we also saw is China's attempt to hold itself accountable to lower standards than other countries', said Mr Ineichen, as China offered thanks to supportive countries for 'recognising the challenges' that a developing country faces in implementing human rights. 'There can be no excuse for violating human rights', Mr Ineichen said. 'China's record across the board must be viewed in the light of the same universal human rights standards that all States are expected to uphold.'

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THE POTENTIAL OF THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM

The African human rights system plays an important role to advance human rights on the continent because of the opportunities it offers as follows:

- Its proximity to the people on the continent;
- Its promotion of positive African values.
- The content of its seminal document, that is, the African Charter on Human and Peoples' Rights, which covers a vast spectrum of rights i.e., civil and political rights, as well as economic and social rights, and also collective rights; and
- The crucial two-pronged role of the African Commission on Human and Peoples' Rights (ACHPR). The first role is to promote human rights by conducting studies, collecting documents, disseminating information, making recommendations and adopting 'soft law' on a number of issues, such as the [ESCR Guidelines](#). The second key role is to protect individuals' human rights through the examination of state reports, and taking decisions on communications brought for its consideration in the context of violations of Charter-based rights.

However, there still remain lot to be done by the Commission, States and NGOs to ensure that the system, that is the foundational document as well as the monitoring and implementation bodies, get to be better known and used by all African citizens, from Asmara to Abidjan and from Cape Town to Cairo, and everywhere in between.

In the case of Eritrea, the ACHPR has done a commendable task in keeping the country under review and this despite the fact that Eritrea has not submitted any report to the ACHPR as is required by a State party to the African Charter. It has about seven overdue reports, and has not granted access to the ACHPR despite repeated requests for country visits.

Though the following two cases have been decided by the ACHPR, the authorities have not implemented the decisions:

- In 2003, the Commission, pronouncing itself on the case of the 11 former Eritrean government officials detained in 2001, stated that Eritrea violated articles 2, 6, 7(1) and 9(2) of the African Charter. The Commission urged the Government to immediately release and compensate the detainees (*250/02: Liesbeth Zegveld and Mussie Ephrem v Eritrea*).
- Also in 2003, the African Commission reviewed the case of 18 journalists detained without trial since 2001. It ruled that Eritrea was violating articles 1, 5, 6, 7(1), 9 and 18 of the African Charter. The Commission urged a fair trial for the detainees and called on the Government to lift the ban on free press (*Article 19 v Eritrea (Communication 275/2003) which was decided at the 41st ordinary session, May 2007, 22nd Activity Report Incommunicado detention of 18 journalists since 2001*).

These decisions have been ignored by the Eritrean authorities and the people concerned in the cases are still being held incommunicado, without access to family, lawyers or doctors. There are allegations that some may have died in custody.

In my own engagement with the ACHPR I have brought up the issue of these two unimplemented cases as well as updating the Commissioners of the current human rights situation in Eritrea.

The UN Human Rights Council encourages its special procedures mandate holders to establish and maintain contacts with regional human rights mechanisms working on issues related to their

mandate, with a view to ensure exchange of information, co-ordination and mutual support in common areas of work.

In January 2012, the special procedures of both the Human Rights Council and the ACHPR adopted a road map to enhance their collaboration following a meeting in Addis Ababa, Ethiopia. They agreed to regularly and systematically exchange information, consider joint actions including country visits, public statements, press releases, awareness-raising occasions and participate in each other's events and thematic research. Through attending the ACHPR my intention is to give effect to this agreement.

The best way that the different components of the African human rights system (and here I am including the Committee of Experts on the Rights and Welfare of the Child) could play their part in promoting and protecting human rights in Eritrea would be to ensure that:-

- Eritrea complies with its obligations to present periodic reports to them for examination;
- They ask for country visits to assess the situation of human rights in-country;
- They monitor the implementation of any decisions that they took in cases of human rights brought before them against Eritrea.

As for collaboration with the UN, the roadmap mentioned above is a good starting point in terms of collaboration on human rights issues.

Sheila B. Keetharuth took up the mandate as the first UN Special Rapporteur on the human rights situation in Eritrea on 1 November 2012. The mandate of the Special Rapporteur was created in July 2012, to monitor, analyse and report on a wide array of human rights issues in Eritrea. Ms Keetharuth is committed to giving a voice to Eritreans who have experienced human rights violations directly or indirectly. She considers the mandate as a space for all, including the Eritrean authorities, to engage constructively on human rights in Eritrea.

SPECIAL PROCEDURES UNDER ATTACK AT THE UN GENERAL ASSEMBLY

(New York, 1 November 2013) – Several Special Procedures have come under attack for allegedly exceeding their mandates or disregarding the Code of Conduct for Special Procedures Mandate Holders (the Code of Conduct).

Juan Mendez, the Special Rapporteur on Torture, was admonished by Russia for expanding his interpretation of the UN Convention Against Torture. Russia criticised the Special Rapporteur for not abiding by the Code of Conduct and also drew attention 'to the fact that the Special Rapporteur's recommendations and comments are not legally binding', asking Mr Mendez 'to be careful in his statements about commitments of States'.

The Special Rapporteur on the human rights situation in Iran faced threats from Iran, Russia and Belarus. Iran rejected the mandate, calling it 'counter-productive'. Iran criticised the Special Rapporteur for not dedicating enough space in his report to the responses provided by the Iranian government, which Iran said was contrary to the Code of Conduct. Russia and Belarus said the mandate was politically-driven, not objective, and operates on double-standards.

Eritrea attacked the Special Rapporteur on the human rights situation in Eritrea, claiming there is no human rights situation in Eritrea that calls for an interactive dialogue in the Third Committee. Eritrea also emphatically stated that the mandate was spearheaded by the same countries that are 'holding Eritrea hostage' in a state of 'no war, no peace', with sanctions. They categorically rejected the picture painted of Eritrea by the Special Rapporteur.

China stated its general opposition to country-specific mandates during the interactive dialogue with the Special Rapporteur on the situation of human rights in Myanmar.

During the interactive dialogue with the Special Rapporteur on the human rights situation in Belarus, the delegation of Belarus attacked the Special Rapporteur, saying it recognised neither the mandate nor the reports submitted to General Assembly. Belarus accused the Special Rapporteur of a clear political agenda to punish Belarus for implementing its own model of development. Belarus called the mandate 'pointless and useless'. Belarus reaffirmed its cooperation with impartial mechanisms such as the UPR. In that regard, Iran, speaking on behalf of the Non-Aligned Movement (NAM) and in its national capacity, Uzbekistan, Russia, Nicaragua, Laos, Turkmenistan, Cuba, and Azerbaijan all supported the UPR as the appropriate mechanism to address human rights situations on an 'even basis'. Zimbabwe and Syria said specific country mandates are tantamount to interfering with national sovereignty.

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK) also faced threats, from the DPRK, Laos, Cuba, Venezuela, and China. The DPRK stated its rejection of the Special Rapporteur's mandate as well as that of the Commission of Inquiry in the DPRK. China expressed its hope that the international community would be more practical with regards to the DPRK to ensure political stability and economic and social development.

TOP UN EXPERT DEFENDS WORK ON SOGI, HIGHLIGHTS NEW MANDATE TO FIGHT REPRISALS

(New York, 1 November 2013) – Inadequate funding for the Office of the High Commissioner for Human Rights (OHCHR), reprisals against human rights defenders, and discrimination on the basis of sexual orientation and gender identity (SOGI) were amongst the key issues presented in the High Commissioner for Human Rights' annual report to the Third Committee. The High Commissioner, Ms Navi Pillay, also raised concerns about a lack of State cooperation with the UN's human rights mechanisms and delays in the treaty body strengthening process. The report was presented to the Third Committee on 23 October.

Speaking on the issue of OHCHR's inadequate funding, the High Commissioner noted the Office had recently had to turn down 27 requests by States for human rights assistance due to budgetary constraints. The Office was also forced to rely ever more heavily on voluntary funding from States. Calling the Office 'a voice for the voiceless', Norway expressed dismay about further budget cuts to the Office's work. Norway said the Office already has a disproportionately small share (3 percent) of the UN regular budget, despite human rights being one of the three main pillars of the UN. Switzerland hoped the budgetary committee of the General Assembly, the Fifth Committee, which is considering the 2013-14 UN budget, would adequately fund OHCHR. Chile and the Netherlands also urged States to provide additional funding to the Office to enable it to fulfil its mandate.

The High Commissioner was also greatly concerned by an increase in reprisals and intimidation against human rights defenders, especially against those who cooperate with the Human Rights Council. She highlighted that the Council's recent decision to create a high-level focal point on reprisals sends a strong message to States that such actions will not be tolerated.

The High Commissioner also discussed the inter-governmental process of treaty body strengthening, expressing regret that the process had again been extended, this time to February 2014. Ethiopia, on behalf of the African Group, informed the High Commissioner that delays were necessary since States had not yet received key information on the cost of capacity building. El Salvador expressed hope that a solution could be found by the deadline.

In response to a question from the EU on how the international community could further support the Special Procedures, the High Commissioner noted the lack of cooperation by some States with the Special Procedures, particularly those that refuse to allow country visits. She said the number of responses from States to the communications of Special Procedures was also inadequate. The increasing number of verbal attacks against Special Procedure mandate holders during interactive dialogues with the Third Committee was another area of concern.

Some States used the interactive dialogue to question the independence of the Special Procedures, urging mandate holders to better abide by the Code of Conduct for Special Procedures Mandate Holders (Nigeria), and of OHCHR itself, by accusing the Office of going beyond its mandate and interfering in the affairs of the State through some of its work with human rights defenders (Russia). Russia also took aim at other parts of the human rights system, accusing the treaty bodies of an unbalanced and politically-charged implementation of their mandates.

Russia, Nigeria and Iran raised concerns over what they viewed as the Office's disproportionately high-level of attention to SOGI issues, while South Africa, El Salvador and Chile expressed support for OHCHR's work in this area. Ms Pillay was emphatic that the human rights of persons who are lesbian, gay, bisexual or transgender (LGBT) would remain firmly on her agenda. She said she would continue the fight against discrimination on grounds of SOGI as the rights of the international human rights treaties apply to everyone, including LGBT persons.

Countering some of the more negative comments, several States spoke up in support of the overall work conducted by the Office, including Romania, the Netherlands, South Africa, and Chile. Ms Pillay acknowledged the support extended by States and reiterated that the Office would continue to effectively and efficiently utilise resources to continue its work.

Opportunities for NGO Engagement

HUMAN RIGHTS COUNCIL ORGANISATIONAL MEETING

On 16 December the organisational meeting for the Human Rights Council's 25th session (to be held 3 – 28 March 2013) will take place in Geneva.

WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

From 25 – 29 November, the [Working Group on business and human rights](#) will hold its 6th session, in Geneva.

UN FORUM ON BUSINESS AND HUMAN RIGHTS

The [UN Forum on Business and Human Rights](#) will meet in Geneva from 2 – 4 December. All relevant stakeholders are invited to attend and discuss challenges and trends in implementation of the [Guiding Principles on Business and Human Rights](#). A provisional programme is available [here](#).

COMMITTEE AGAINST TORTURE

The [51st session](#) of the Committee Against Torture will be held in Geneva from 28 October – 22 November.

COMMITTEE ON ENFORCED DISAPPEARANCES

The Committee on Enforced Disappearances will hold its [5th session](#) from 4 – 15 November, in Geneva.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The [51st session](#) of CESCR takes place in Geneva from 4 – 29 November.

WEBCASTS OF THE TREATY BODY MEETINGS

If you are unable to attend relevant treaty body meetings, you can now watch these sessions 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.

MALDIVES DRAFT LAW ON ASSOCIATIONS

The Maldives is currently drafting a law to promote and protect a dynamic, diverse and independent civil society. To get involved in the debate see the [Facebook](#) page of the United Nations country team in the Maldives.

CALL FOR NOMINATIONS FOR THE 2014 MARTIN ENNALS AWARD FOR HUMAN RIGHTS DEFENDERS

Nominees for the 2014 Martin Ennals Award should be [submitted](#) by 9 December. Nominees should be currently involved in work for the promotion and protection of human rights with special account taken of those who are risk.

EXTENSION OF DEADLINE FOR UN SPECIAL PROCEDURE VACANCIES

The deadline to apply for positions as UN experts on a range of issues, including human rights defenders, has been [extended](#) to 14 November at midnight.

Forthcoming Country Visits by Special Procedures

Italy	Special Rapporteur on freedom of expression 11 – 18 November
Vietnam	Special Rapporteur on cultural rights 18 – 29 November
Ghana	Special Rapporteur on slavery 21 – 29 November
Brazil	Working Group on people of African descent 4 – 13 December
Peru	Special Rapporteur on indigenous peoples 6 – 13 December
Morocco	Working Group on arbitrary detention 9 – 18 December
Malaysia	Special Rapporteur on food 9 – 18 December
Brazil	Special Rapporteur on water and sanitation 9 – 19 December

To find out how you can support the visits, please contact the respective mandate-holder at their email, found in the [directory](#).

New Resources

A FRAMEWORK FOR PREVENTIVE MONITORING OF LGBTI PERSONS DEPRIVED OF THEIR LIBERTY

The Association for the Prevention of Torture (APT) and Penal Reform International have produced a [publication](#) setting out the main risk factors and situations to which LGBT persons are exposed when deprived of their liberty along with proposed possible avenues of action that could be taken by monitoring bodies.

NEW WEBSITE ON SEXUAL ORIENTATION AND GENDER IDENTITY

www.soginews.com is a new website intended to serve as a platform for the latest news on sexual orientation and gender identity. Activists and professionals can submit information to the site. The website is run by the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL).

REPORT ON VIOLENCE AGAINST LGBT PERSONS IN AFRICA

An October 2013 report launched jointly by the Coalition of African Lesbians (CAL) and African Men for Sexual Health and Rights (AMSHer), entitled '[Violence based on perceived or real sexual orientation and gender identity in Africa](#)', documents numerous cases of physical violence against LGBT human rights defenders, including arbitrary arrest and detention, sexual violence, extortion and even killings.

Case Notes on Decisions from International Human Rights Bodies

SWEDEN MUST RECONSIDER LESBIAN APPLICANT'S REQUEST FOR ASYLUM

M.I. v. Sweden (2149/2012)

Summary

In July 2013, the Human Rights Committee was asked to consider whether Sweden had violated its obligations under the International Covenant on Civil and Political Rights in refusing an individual's application for asylum on the basis of sexual orientation.

The communication was submitted by a Bangladesh national under the Optional Protocol to the Covenant. The Committee held that the deportation of a lesbian woman to Bangladesh, which stigmatises homosexuality in law and practice, would amount to unlawful ill-treatment.

Background

The author of the communication, Ms M.I., used to live in Dhaka, Bangladesh. The author alleges that subsequent to her parents learning that she was lesbian, they arranged a wedding against her will with a Bengali man who lived in Sweden. This marriage took place in Dhaka in January 2006. Shortly afterwards, the author's husband returned to Sweden.

In June 2006, the author arrived in Sweden with a Swedish temporary residence permit. A month later, the author's husband forced her to return to Bangladesh after discovering that the author was lesbian. On returning to Bangladesh, the author met her partner, Ms P.A., with whom she started to live.

In April 2008, the author was arrested by local police and detained for between four and five days. During her detention, the author was raped and beaten by police. The author's partner was also kidnapped by an Islamic organisation called *Shator Shivir* whilst the author was in police detention. The author alleges that she subsequently received threats from this organisation and the police. Shortly after her detention, the author returned to Sweden as her Swedish residence permit was due to expire.

On 16 May 2008, the author applied for asylum before the Swedish Migration Board (the Board), stating that she had left Bangladesh to escape from abuse by the police and the *Shator Shivir* organization. On 14 January 2009, the Board rejected the author's application for asylum and ordered her return to Bangladesh. The Board based its decision on the fact that the author had not provided sufficient evidence to support her claims. The author appealed this decision before the Migration Court. On 22 December 2009, the Migration Court dismissed the author's appeal. The Court held that the author had not provided adequate documentary evidence in support of her claim and that the general situation for homosexuals in Bangladesh was not sufficient grounds for granting the author a residence permit. The author's subsequent application for leave to appeal before the Migration Court of Appeal was also refused.

After receiving these decisions, the author's psychological state deteriorated. She was hospitalized six times due to depression and risk of suicide. On 24 February 2011, the author filed an application with the Board, requesting that her expulsion order be suspended on medical grounds. On 9 March 2011, the Board dismissed her application, considering that both it and the Migration Court had already adequately assessed the author's health.

In October 2011, the author submitted a second application to the Board, claiming new circumstances supported her allegations. In addition to new medical documents, the author also submitted independent reports detailing the widespread persecution of homosexuals in Bangladesh. However, both the Board and the Migration Court held that this new information did not merit a re-examination of the author's case.

On 7 May 2012, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Sweden had violated her right to freedom from torture or cruel and degrading treatment under article 7 of the Covenant by ordering her deportation to Bangladesh without adequately taking into account the risk of her being subject to persecution in that country.

The Committee's decision

In considering the complaint's admissibility, the Committee noted that the author had exhausted all available domestic remedies and had sufficiently substantiated her claims. As the same matter was not being examined under another procedure of international investigation or settlement, the Committee declared the author's communication to be admissible.

On the merits, the Committee recalled its General Comment No. 31 in which it refers to States parties' obligation not to extradite or otherwise remove a person from their territory where there are substantial grounds for believing that there is a risk of irreparable harm. The Committee also recalled that States parties are generally entitled to exercise their discretion in determining the existence of such risk.

In considering the facts of the complaint, the Committee observed that:

- a) Sweden had not challenged the author's allegations of rape while in police detention in Bangladesh;

- b) the author's sexual orientation was widely-known in Bangladesh society;
- c) the author suffered from severe depression and was at high risk of committing suicide;
- d) section 377 of the Bangladesh Criminal Code (Section 377) forbids homosexual acts; and
- e) homosexuals are stigmatised in Bangladesh society.

The Committee considered that the very existence of Section 377 contributed to the stigmatisation of homosexuals and prevented proper investigations into acts of persecution. In deciding her asylum request, the Swedish authorities had also focused unduly on inconsistencies in the author's account. The Committee therefore considered that Sweden had failed to take the author's allegations, and in particular those relating to her mistreatment by the police, into due consideration in assessing the risks that she would face if returned to Bangladesh.

In light of the above, the Committee concluded that Sweden had violated the author's right to freedom from cruel and inhuman treatment under article 7 of the Covenant. In accordance with article 2(3), Sweden was under an obligation to provide the author with an effective remedy, specifically by fully reconsidering the author's asylum claim taking into account the Committee's views. In the meantime, the Committee requested that Sweden refrain from expelling the author to Bangladesh while her request for asylum is under reconsideration. The Committee also held that Sweden was under an obligation to take steps to prevent similar violations in the future.

Sweden 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.

Sam Hunter Jones is an international lawyer, based in Paris.

US REQUIRED TO ACCOUNT FOR ACTIVITIES OF USCAPITAL ENERGY IN BELIZE

Summary

In April 2013, the Special Rapporteur on the right to food (the Special Rapporteur) [wrote](#) to the United States' Ambassador to the United Nations in relation to an oil concession granted by the Belize Government to USCapital Energy, a company headquartered in the United States. The letter was made public in September 2013 after the United States failed to respond. The Special Rapporteur raised concerns that the United States Government may have failed to meet its responsibility to support Belize in ensuring that USCapital's oil explorations in Belize respect human rights. The land affected by USCapital's project has been traditionally occupied by Mayan indigenous communities.

Observations

As a preliminary point, the Special Rapporteur observed that the State in which oil explorations occur has the principal obligation to respect, protect and fulfil human rights. However, it must also ensure that corporations operating in its territory respect human rights. International human rights standards, including the UN Guiding Principles on Business and Human Rights, also require the 'home' States where corporations are domiciled or have their main place of business (here the United States), to set out the expectation that corporations respect human rights throughout their operations. This includes operations in other countries as well as the activities of subsidiaries.

The Special Rapporteur noted that in the October 2004 case of *Maya Indigenous Communities of Toledo v Belize*, the Inter-American Commission on Human Rights had recommended that Belize

demarcate and title the Mayan indigenous communities' lands and, in the meantime, protect the existence, value, use and enjoyment of these lands.

In October 2007 and June 2010, the Belize Supreme Court also delivered two judgments recognising Mayan customary land tenure in villages in the Toledo region, on the basis of both collective and individual property rights under Belize's Constitution. The 2010 judgment directed the Belize Government not to register any land interests or concessions for resource exploitation in the area. The Government appealed this ruling, and at the time of the Special Rapporteur's letter, the Court of Appeals was yet to issue its decision.

The Special Rapporteur raised allegations that Belize had taken little action to implement these judgments. Mayan indigenous lands still face numerous threats, including USCapital's oil exploration activities, despite various challenges from indigenous communities. In particular, the Special Rapporteur noted that the company had cut over 200 miles of seismic paths into the lands that indigenous communities use for food and livelihood. Its activities were also alleged to be causing negative impacts for many Mayan farmers, as a result of illegal logging and soil and water contamination that could risk the certification of their only cash crop, organic cacao.

The Special Rapporteur also referred to USCapital's environmental impact assessment in relation to its activities, noting that it had inadequately addressed the potential human rights impact on Mayan communities. In particular, it was unclear how proposed education and occupational incentives would properly compensate for these impacts. Mayan communities had also been given insufficient time to understand and consider the assessment. Only one public consultation was reported to have taken place and a Government offer of dialogue did not include reference to property rights. Accordingly, the Special Rapporteur noted his concerns that USCapital's activities were continuing without the free, prior and informed consent of local indigenous communities.

The Special Rapporteur emphasised that the United States, as the home State jurisdiction, had a responsibility both to influence the corporation's conduct and to support Belize in discharging its primary human rights obligations. UN treaty bodies, such as the Committee on the Elimination of Racial Discrimination and the Committee for Civil and Political Rights, have reiterated that States should take steps to prevent human rights violations committed abroad by corporations incorporated under their laws or that have their main place of business in their jurisdiction.

Under the Guiding Principles, all corporations, regardless of their size or structure, also have a responsibility to respect human rights. This is the case even in circumstances where the State in which they operate does not fulfil its human rights obligations. Among other things, corporations should have adequate human rights due diligence policies and processes in place. These processes should include both consultation with those potentially affected and the effective identification and remediation of any human rights impacts.

The Special Rapporteur observed that a corporation would not have met its responsibilities if it failed to prevent, mitigate and remedy adverse impacts on the ability of local populations to access adequate food and water. Such impacts would include, for example, polluting land used for agricultural purposes or not adequately compensating any affected persons.

Request for clarification

Noting his mandate to clarify cases that have been brought to his attention, the Special Rapporteur requested that the United States Government respond within two months regarding whether it:

- a) possessed further information on the accuracy of the alleged facts;
- b) directly or indirectly supported USCapital's alleged activities;

- c) had taken measures to encourage or require corporations incorporated in the United States to respect human rights in their operations;
- d) provided guidance to corporations to promote respect for human rights, including in relation to human rights impact assessments; or
- e) had any mechanism to encourage corporations like USCapital to fulfil their responsibility to respect human rights, including consulting with indigenous communities to obtain their free, prior and informed consent, and avoiding and addressing any adverse human rights impacts.

The Special Rapporteur committed to including the United States Government's response in his final report on this issue to the Human Rights Council.

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