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**Opinion**  
**CHALLENGES FOR TREATY BODIES:  
 SUSTAINABILITY AND FULFILMENT  
 OF THEIR MANDATE**

***Patricia Schulz – Expert member of the  
 UN Committee on the Elimination of  
 Discrimination Against Women***

The UN treaty body system is being starved of resources. Increased investment in the system could yield valuable gains in the realisation of human rights at the national and international levels.

The UN system of human rights, comprising the treaty bodies, the Human Rights Council (along with its mechanisms of the Universal Periodic Review and the Special Procedures), and the Office of the High Commissioner for Human Rights (OHCHR) itself, is faced with challenges, including relationships with UN agencies and financial institutions active in development issues, the violation by many State parties of their reporting obligations, and lack of resources.

The first challenge is the threat of collapse of the system of the treaty bodies put in place by the Member States, due to insufficient funding of their work. Indeed, the success story expressed in the almost universal ratification of some of the instruments (such as the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women) and the development of new instruments, has not been matched by a corresponding increase in the resources needed by the treaty bodies to discharge their mandate in a timely and efficient fashion. The goodwill, dedication and commitment of OHCHR personnel and of the members of the treaty bodies, and the development of appropriate working methods, cannot compensate for the dire situation in which they are operating.

At present, the fulfilment of all the duties of treaty bodies is affected by the lack of human and financial resources. Indeed, the reporting

procedure is directly impacted. New reports submitted by a State party to the Committee on the Elimination of Discrimination Against Women (the Committee) in 2013 will be examined in 3 or 4 years at the earliest, which is inefficient for the State party itself, civil society, and the Committee. The lack of a regular, systematic dialogue prevents the benefits of the full potential of the reporting procedure being realised.

Other functions of the Committee are also weakened. Not all individual communications can be treated as rapidly as the Committee wishes. The same is true of the inquiry procedures. This is extremely regrettable because these two mechanisms enable the Committee to contribute to the development of the jurisprudence on human rights in a gender perspective. The comments by legal scholars, activists and NGOs on some of its recent views are proof of the role the Committee plays – and could reinforce - were it to receive additional resources. The development of General Recommendations (or Comments) is also affected, which means less guidance in the interpretation of the Convention. The situation is the same for other Committees, *mutatis mutandis*.

The treaty body strengthening process launched by the High Commissioner for Human Rights Navi Pillay addresses this challenge, and I'm thankful to her for her courage and vision, and for the proposals she has made to reach to a long-term solution enabling all treaty bodies to fulfil their mandate fully and contribute more systematically to the implementation of human rights by State parties, and to ensure that State parties respect the periodicity of reporting. However, I regret that the discussion conducted by Member States is incomplete. It does not include a cost estimate of the functioning of the whole human rights system, including the Human Rights Council, nor an evaluation of the resources going into human rights as compared with development issues. It does not examine the role of UN agencies and financial institutions in the implementation of human rights.

The second challenge is therefore to 'deliver as one' in the field of human rights, which should in my view be a main focus of improvement in the work of the UN agencies and financial institutions. The activities of these bodies should be linked to those of the treaty bodies in particular, since they are the organs dealing with the **legal** obligations of State parties. As a member of the Committee on the Elimination of Discrimination Against Women, I see too few links between development and human rights issues, especially regarding gender equality. For instance, the Concluding Observations of the Committee are not systematically considered –when they are known - by some UN agencies at headquarters and in the field, which means that the gender and the human rights perspectives may be lacking or insufficient in their work, and therefore find no place in poverty reduction strategies, and in the policies and programmes in rural and agricultural development, health and education, social protection, etc.

The limitation of resources directly threatens the work of the Committees, reducing the efficiency of the instruments agreed upon. Yet, without a systematic review process and timely treatment of communications and inquiries, the potential of the human rights instruments is drastically reduced. This potential is also neglected when UN agencies do not work with the Concluding Observations and the Views of the treaty bodies on individual communications and inquiries. If Member States refuse to increase the resources for the treaty bodies, and do not monitor the efficiency of the human rights system as a whole, the protection of human rights will remain stunted.

*Patricia Schulz is an expert member of the UN's Committee on the Elimination of Discrimination Against Women*

## Human Rights Defender Profile

### HASSAN SHIRE SHEIKH, SOMALI-CANADIAN PAN AFRICAN HUMAN RIGHTS DEFENDER

Hassan Shire Sheikh is a Somali-Canadian Pan-African human rights defender and the elected chairperson of the East and Horn of Africa Human Rights Defenders Network (EHAHRDN). Hassan's commitment and passion for human rights can be traced back to his early years growing up in Mogadishu, Somalia. In 2001, Hassan was forced to flee his home country and to seek asylum in Canada where he continued advocating for an end to the culture of impunity by demanding justice for victims of human rights violations.

The East and Horn of Africa Human Rights Defenders Network (EHAHRDN) brings together member organisations from eleven countries in the sub-region – Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (and Somaliland), South Sudan, Sudan, Tanzania and Uganda. The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) acts as the secretariat to the Network.

***“Upon arrival in Canada, I didn't rest, because other colleagues in Africa (...) weren't getting recognition and assistance to enable them to overcome the difficulties that they were facing and continue with their human rights work. Rather, they were languishing in refugee camps.”***

Hassan carried out three months fieldwork in 2004 which allowed for an assessment of the current working conditions and the most pressing unmet needs of human rights defenders. The research highlighted insufficient collaboration among human rights organisations, resource constraints, the need for knowledge development, skills training, and to supplement efforts of local and national human rights defenders by those of the wider international community. EHAHRDN was created in 2005 as a result of these findings, its aim being to protect and defend human rights defenders in the region, to build the capacity of human rights defenders in the region, and to advocate and raise public awareness and profiles of human rights defenders in the region.

***“One worrying trend is the enactment of many pieces of legislation placing undue restrictions on freedom of assembly, association and expression and their effects on human rights defenders' ability to do their work.”***

According to Hassan, in most parts of the region, the situation for human rights defenders is not improving and in many places is getting worse. However, the situation of human rights defenders varies from one country to another. Whilst in some countries the role of human rights defenders has been recognised and measures have been taken to protect human rights defenders, in other countries the situation has significantly worsened and attacks against activists are increasing. In Ethiopia, for instance, the Charities and Societies Proclamation 2009 has forced the vast majority of human rights NGOs to reduce or discontinue their work. Those attempting to continue their work are struggling to survive due to the severe funding restrictions contained in the law.

***“Despite the continuing threats, increased networking and solidarity among human rights defenders (...) has in many cases improved human rights defenders' security, as well as the support of committed partners in national institutions and the international community.”***

EHAHRDN has been bringing international attention to the situation of human rights defenders working in the East and Horn of Africa. The situation of human rights defenders is now a regular part of 'mainstream' human rights reporting in the region. This has also enabled EHAHRDN and partners to reach further in supporting human rights defenders at risk.

***“The UN has certainly stepped up its measures to protect human rights defenders that engage with it over the years.”***

Ever since completing his education, Hassan has been a member of the Global Civil Society Movement. For 15 years the movement campaigned for the recognition of the rights of human rights defenders and in 1998 the UN recognised the value and work of human rights defenders. Hassan took part in the international and regional HRD meetings that year which culminated in the adoption of the UN Declaration on Human Rights Defenders. Furthermore, Hassan took part in the panel discussion on reprisals at Council which took place in September last year and was an important step forward.

The sub-region benefits from a large number of UN country mandates. In these countries, UN mechanisms have not only contributed to maintaining attention to the human rights situations, but have also provided an important avenue for human rights defenders to voice their concerns. It should however be noted that these mechanisms are vulnerable to political maneuvering. Indeed political wrangling repeatedly prevented the Independent Expert on Burundi from presenting his report to the Human Rights Council as planned, before the mandate came to an end, and the resolution establishing the mandate of the Independent Expert on Sudan has for several years woefully misrepresented the grave human rights situation in the country.

EHAHRDN regularly engages with the UN especially the Human Rights Council, the UPR and the Special Procedures. It has been calling on the UN to take concrete actions to respond to reprisals and to work to prevent such reprisals from taking place. It is important for there to be a follow-up on cases that are reported to the UN and for unresolved cases not to be allowed to drop off the agenda. According to Hassan, this could be achieved by establishing a central OHCHR database of allegations received and any follow-up, as well as greater coordination and cooperation between different protection stakeholders, and by coordinating practical responses once reprisals have occurred.

***“The NGO Forum and African Commission sessions provide a unique opportunity for networking and to build solidarity between human rights defenders in Africa as well as greater knowledge of the overall human rights situation on the continent.”***

The African Commission on Human and Peoples’ Rights is important to the work of EHAHRDN not least because it provides a space to discuss regional solutions to regional problems. Although the special mechanisms of the Commission function in very similar ways to the UN Special Procedures, the quasi-judicial mechanism of the Commission is an added advantage as it allows human rights defenders to bring their complaints and receive a legally reasoned decision on their case.

***“Through National Coalitions, EHAHRDP ensures that support available to human rights defenders is accessible by all human rights defenders working in the capitals but most importantly those working at community levels.”***

At the sub regional level, EHAHRDP continues to work with human rights defenders to strengthen the work of human rights defenders at national level. This is carried out through National Coalitions of human rights defenders which were formed and are actively engaged to ensure the respect and upholding of the rights of human rights defenders.

In addition to functioning as the secretariat of EHAHRDN, EHAHRDP was in 2009 chosen to host the Pan Africa Human Rights Defenders Network. It brings together human rights defenders

networks from East and Horn of Africa, Central Africa, North Africa, Southern Africa and West Africa and is aimed at coordinating activities in the area of protection, advocacy and capacity building for human rights defenders across the continent.

*Jenna Logeais is an Intern with the International Service for Human Rights. Additional information regarding EHAHRDP's work including publications is available on the website. EHAHRDP submits bi-annual reports to the African Commission on Human and Peoples' Rights regarding the situation facing human rights defenders in the region. The full reports are also available on their website. [www.defenddefenders.org](http://www.defenddefenders.org).*

## **Our Work to Support Human Rights Defenders**

### **UN MUST ADDRESS BRUTAL ATTACKS ON HUMAN RIGHTS DEFENDERS WHO WORK ON ISSUES OF CORPORATE ACCOUNTABILITY**

(Geneva, 7 August 2013) – UN human rights officials must act to address a series of brutal attacks against human rights defenders who work on issues of corporate accountability, the International Service for Human Rights said.

On 1 August, at least three people were killed and many more seriously injured in Weliveriya, Sri Lanka, after security forces fired on residents protesting against water contamination by a latex factory. There are also reports that journalists seeking to document the events had their cameras confiscated and were themselves attacked. The factory is owned by Dipped Products Ltd, a subsidiary of Hayleys Group, which is a major Sri Lankan multinational with close ties to the country's Rajapaksa regime. The company's Deputy Chair, Dhammika Perera, is head of the Sri Lankan Ministry of Transport and reportedly Sri Lanka's richest person. Hayleys Group is a member of the UN's Global Compact, which requires participants to respect human rights and avoid complicity in human rights abuses.

The UN High Commissioner for Human Rights, Navi Pillay, visited Sri Lanka from 25 to 31 August and ISHR urged her to investigate and report on the situation of human rights defenders, including those working on issues of corporate accountability, as a priority for the mission.

According to ISHR Director Phil Lynch, while both the Sri Lankan Government and Hayley's Group have obligations under international human rights law to fully investigate the attacks on the Weliveriya protesters, ensure accountability for violations and provide remedies to victims, the UN also has a role to play.

'Human rights defenders are people who work – whether as journalists, lawyers, whistleblowers or activists – to protect human rights, expose violations, and obtain justice for victims,' said Mr Lynch.

'It is a consequence of this work that human rights defenders are subject to attacks, intimidation and reprisals; acts often perpetrated by powerful actors, including governments and corporations. In these circumstances the UN High Commissioner for Human Rights has a critical role to play in protection and accountability.'

The call for the UN High Commissioner to prioritise the situation of human rights defenders during her visit to Sri Lanka was made as another UN body, the Working Group on Business and Human Rights, prepares for its inaugural mission to Russia from 30 September to 9 October.



ISHR is similarly calling on that Working Group to ensure that it consults extensively with human rights defenders who work on issues of corporate accountability during its mission.

‘Human rights defenders and civil society organisations have an important and legitimate role in raising awareness of the human rights impacts and risks of business,’ said Mr Lynch.

‘Meaningful consultation and engagement between human rights defenders, corporations and States can play a critical role in identifying, preventing, mitigating and ensuring accountability for the adverse human rights impacts of business.’

ISHR particularly draws the Working Group’s attention to reports of harassment and attacks against residents protesting against construction of a power plant in Sochi, the site of the 2014 Winter Olympics, allegedly by private security forces engaged by a company involved in construction of the plant. ISHR also draws the Working Group’s attention to recent reports of harassment of Russian NGO Memorial, allegedly in retaliation for its work to expose and ensure accountability for migrant workers’ rights violations associated with Olympics works.

‘ISHR urges the Working Group to investigate allegations of harassment and reprisals against human rights defenders and NGOs in connection with their work on issues of corporate accountability,’ Mr Lynch said.

‘As part of their work to promote the UN Guiding Principles on Business and Human Rights we urge the Working Group to always consider the UN Declaration on Human Rights Defenders and, as part of this, to put the interests and concerns of human rights defenders at the core of the forthcoming mission to Russia.’

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## **ADVANCING WOMEN’S RIGHTS AND SEXUAL RIGHTS IN THE MANO RIVER REGION OF AFRICA**

(Freetown, Sierra Leone – 5 August 2013) – From 5 to 7 August, the International Service for Human Rights, together with the National Human Rights Commission of Sierra Leone and the National Human Rights Defenders Network of Sierra Leone, is holding a workshop on the implementation of recommendations made during the Universal Periodic Review (UPR) related to women’s and sexual rights.

Representatives from the Ministries of Justice of Guinea and Sierra Leone, the Ministry of Justice and Human Rights of Cote d’Ivoire, and the Ministry of Gender in Liberia, will come together with members of national human rights institutions and NGOs from the Mano River region to discuss successes and challenges in implementing recommendations made during the first cycle of the UPR. With second cycle reviews for countries of this region running from 2014 to 2016, the workshop will also encourage and equip stakeholders to work constructively together to advance women’s and sexual rights.

The workshop’s focus on using the UPR to advance women’s and sexual rights responds to the fact that these rights are frequently violated, and that UPR recommendations made to prevent or redress such violations are frequently rejected.

The UPR emphasises the importance of the role played by different stakeholders, and formalises their different but complementary engagement in the process. The need for dialogue and collaboration between States and civil society is frequently emphasised as key to the success of the UPR, and this workshop aims at strengthening these connections. Facilitating conversations between States and civil society on women's rights will allow stakeholders to define concrete steps to press for implementation of recommendations, and demand greater and more effective action on the part of States.

This workshop is part of a three year ISHR project in the Mano River region (which takes in Sierra Leone, Liberia and Cote d'Ivoire), which focuses on building effective relationships between key stakeholders in the UPR process, with the aim of effecting positive human rights change at national level. The project particularly seeks to engage women human rights defenders – who include women working on the full spectrum of human rights, and all people working on women's and sexual rights – in light of their historic lack of representation within the international human rights system.

ISHR is delighted to be collaborating with the Sierra Leone National Human Rights Commission and the National Human Rights Defenders Network for this workshop. ISHR also greatly appreciates the financial support provided by Irish Aid and Bread for the World for this project and other crucial activities.

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## **UN HUMAN RIGHTS EXPERTS SHOULD INVESTIGATE CORPORATE ABUSES AGAINST HUMAN RIGHTS DEFENDERS IN RUSSIA**

(Geneva, 21 August 2013) – The UN's expert group on business and human rights should investigate intimidation and reprisals against human rights defenders in Russia who work on issues of corporate accountability, the International Service for Human Rights said.

The UN Human Rights Council's Working Group on Business and Human Rights is scheduled to visit Russia from 30 September to 9 October 2013. In a [letter](#), ISHR called on the Working Group to ensure that it consults extensively with human rights defenders who work on corporate accountability issues during its mission.

'Human rights defenders and civil society organisations have an important and legitimate role to play in raising awareness of the human rights impacts and risks of business,' said ISHR Director Phil Lynch.

'Meaningful consultation and engagement between human rights defenders, corporations and States can play a critical role in identifying, preventing, mitigating and ensuring accountability for the adverse human rights impacts of business.'

ISHR's letter draws the Working Group's attention to reports of harassment and [attacks against residents protesting against construction of a power plant](#) in Sochi, the site of the 2014 Winter Olympics. The attacks were allegedly perpetrated by private security forces engaged by a company involved in construction of the plant.

The letter also draws the Working Group's attention to [reports of harassment of Russian NGO Memorial](#), allegedly in retaliation for its work to expose and ensure accountability for migrant workers' rights violations by a Russian company.

'ISHR urges the Working Group to investigate allegations of harassment and reprisals against human rights defenders and NGOs in connection with their work on issues of corporate accountability,' Mr Lynch said.

As set out in the letter, States have a legal obligation to support and enable human rights defenders to exercise their fundamental rights and freedoms, including the rights to freedom of expression and association, to form and join trade unions, and to peaceful protest. Corporations have a correlate obligation not to interfere with the exercise of such rights and freedoms.

'It is a consequence of their work to expose and ensure accountability for human rights violations perpetrated by powerful actors, including governments and corporations, that human rights defenders are often subject to attacks, intimidation and reprisals. In these circumstances, the UN's Working Group on Business and Human Rights has a critical role to play in protection and accountability,' Mr Lynch said.

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## **COUNTER-TERRORISM LAWS MUST NOT BE MISUSED TO SILENCE JOURNALISTS OR TARGET HUMAN RIGHTS DEFENDERS**

(Geneva, 21 August 2013) – The prolonged detention of David Miranda, the partner of Guardian journalist Glenn Greenwald, under the United Kingdom's Terrorism Act of 2000 amounts to an attack on human rights defenders and is contrary to international law, the International Service for Human Rights said.

Mr Miranda was detained for nine hours at London's Heathrow airport on 18 August 2013 under a law purportedly aimed at preventing terrorism. According to media reports, he was questioned about Greenwald's investigative work and writing on mass surveillance by the US and the UK. His electronic equipment, including computer, phone and memory sticks, were confiscated and have not been returned. In a statement Human Rights Watch said that the detention, questioning and confiscation appeared to be 'aimed at punishing or intimidating journalists'.

'Journalists such as Glenn Greenwald who work to expose human rights abuses are human rights defenders and are entitled to the protection of the UN Declaration on Human Rights Defenders,' said ISHR Director Phil Lynch.

Article 6 of the Declaration explicitly recognises and protects the right of all human rights defenders 'to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms' and 'freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms'.

Mr Lynch noted that as recently as March 2013, both the UK and US strongly supported a UN Human Rights Council resolution in Geneva which condemns acts of intimidation or reprisals against human rights defenders or their associates. The same resolution, Resolution 22/6, expresses 'grave concern' as to the misuse of 'national security and counter-terrorism legislation and other measures...to target human rights defenders or hinder their work...in a manner contrary to international law'.

'The disjunct between what many States say in Geneva and do on the ground is a matter of great concern,' Mr Lynch said.

'States like the US and UK, which purport to be leaders in the field of human rights, must act immediately to ensure that their laws cannot be used or abused to interfere with the important and legitimate work of journalists and human rights defenders'.

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## **Our Work to Strengthen Human Rights Systems**

### **ISHR ADVOCACY HELPS TO PROTECT NGO PARTICIPATION IN THE UN HUMAN RIGHTS COUNCIL**

(Geneva, 5 August 2013) – Proposals to restrict the important work of non-governmental organisations in the UN Human Rights Council have won the support of just thirteen states following advocacy efforts by NGOs in Geneva.

On 31 July, the Permanent Mission of Pakistan sent [letter on behalf of a group of 'like-minded States'](#) to the President of the Human Rights Council regarding the participation of NGOs. The letter makes a number of proposals which would have the purpose or effect of restricting NGOs' participation in the work of the Council, including by enabling the arbitrary or discriminatory exclusion of NGO representatives, exposing such representatives to increased risk of intimidation or reprisal, and facilitating the censorship of NGO side-events.

However, despite efforts to gather up to 60 signatories to the letter, the final letter was endorsed by just 13 States – Pakistan, China, Russia, Cuba, Sri Lanka, Bangladesh, Uganda, North Korea, Belarus, India, Nicaragua, Venezuela and Iran. This followed outreach and lobbying by NGOs to many States that were invited to sign on to the letter, including through the distribution of a [joint NGO letter](#) circulated to those States.

'International law recognises the important role played by non-governmental organisations in the promotion and protection of human rights, including through their advocacy at the UN,' said Phil Lynch, Director of the International Service for Human Rights.

'As the world's peak, multilateral human rights body, it is imperative that NGOs are able to participate in the work of the Human Rights Council and that the Council hears directly the voices of human rights defenders.'

'It is very pleasing that despite the best efforts of some States, only 13 of the UN's 193 Member States were prepared to endorse proposals that are incompatible with international law and which would undermine civil society contributions to the Council.'

The critical role of NGOs is enshrined in Article 38 of the Vienna Declaration and Programme of Action, General Assembly resolution 60/251 and the Human Rights Council's Institution Building Package. It is also reflected in Operative Paragraph 15 of Human Rights Council resolution 22/6 on human rights defenders, adopted by consensus by the Council in March 2013.

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### **STATES MUST NOT WEAKEN THE UN'S HUMAN RIGHTS BODIES**

(New York, 7 August 2013) – The UN General Assembly must not undermine the work of the UN's human rights treaty bodies, the [International Service for Human Rights \(ISHR\)](#) and [Amnesty International](#) have said.

Since April 2012, States in New York have been participating in an intergovernmental process established under the guise of strengthening the UN's human rights treaty bodies. The UN treaty bodies are independent, expert committees mandated to review and promote States' compliance

with international human rights treaties. The discussions in the General Assembly are now reaching a critical juncture as states must decide whether to extend the process, potentially into 2014, or accept a package of proposals now.

However, as ISHR's Madeleine Sinclair points out, the process is far from achieving its stated goal. 'Despite the fact that the treaty body system is facing very real and grave challenges, the process has been marked by the efforts of some States to attack and weaken these bodies.'

Those challenges include a failure by some States to prepare reports on how they are implementing their treaty obligations – in some cases these reports have been outstanding for decades; a failure to implement the recommendations of the treaty bodies; the election of treaty body members who are neither independent nor expert; and a chronic lack of funding.

In April 2012 NGOs identified seven issues for the General Assembly to address, including how to ensure good expert membership and adequate resources for the system, and how to implement more effectively the recommendations made by the treaty bodies.

Amnesty International's Jose-Luis Diaz expressed his disappointment with how these issues have been handled. 'On each of these issues, without exception, States have missed the opportunity to make improvements. Their lack of ambition and in some cases deliberate obstruction has resulted in a process that threatens to achieve very little if indeed it does not seriously undermine the treaty bodies.'

Amongst some of the damaging proposals made during the process, one has been a 'Code of Conduct' for treaty body members, which would seriously damage the ability of the experts to carry out their work in an objective and impartial way.

Mr Diaz stated, 'We strongly reject these initiatives. Not only do they threaten the independence of the treaty bodies but they also distract from the real issue at hand; namely improving the human rights situation on the ground.'

ISHR's Ms Sinclair also expressed disappointment that the process has not been the open, inclusive and transparent one that was promised at its creation. 'Far from being meaningful and effective, opportunities for NGO participation have been characterised throughout this process by unpredictability, disregard for our expertise, views and potential contributions, and above all a fundamental lack of commitment and initiative to include NGO stakeholders outside of New York and Geneva.'

'States must refocus their efforts on the core goals of this process', urged Mr Diaz, 'That is, how can they, through this process, increase the protection and promotion of human rights on the ground.'

## **Background**

Nearly four years have passed since a group of current and former Treaty Body experts adopted the 'Dublin Statement', catalysing the most recent attempt to strengthen the UN human rights treaty body system that would eventually become known as the [Dublin Process](#). But before that process—which involved some 20 consultations with different stakeholders—could run its course, a group of States led by Russia decided last year that the issues were properly left to States to address and initiated the '[Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system](#)' (the Intergovernmental process).

Armed with the wealth of ideas, views, suggestions and emerging consensus of the Dublin Process, a divided General Assembly initially spent much time debating its role in treaty body strengthening, given its lack of legal competence to decide matters properly left to States parties to the treaties and the treaty bodies themselves. The result was an agreement by States, implicit in some cases, that while the GA may not be able to *decide* certain matters, it could *recommend* that certain actions beyond its competence be taken by relevant stakeholders.

Download the full statement [here](#).

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## **UN SECRETARY-GENERAL CONDEMNS CONTINUING ATTACKS AND REPRISALS AGAINST HUMAN RIGHTS DEFENDERS**

(Geneva, 8 August 2013) – A new report by UN Secretary-General, Ban Ki-moon, has found that attacks and reprisals against people who cooperate with the UN to promote human rights, and to expose and ensure accountability for violations, remain widespread.

According to the report, such reprisals '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.'

The report documents cases of intimidation and reprisals in a wide range of countries including Bahrain, Iran, Morocco, Philippines, Russia, Saudi Arabia and Sri Lanka.

The report highlights that 'States have the responsibility to respect human rights and to protect those who advocate for fundamental rights' and that, when they fail to do so, 'the United Nations has to stand up and speak out.'

Welcoming the Secretary-General's report, the International Service for Human Rights called on both States and the United Nations to accept and implement its key recommendations, many of which have previously been made by ISHR.

'As recommended by the Secretary-General, States should adopt national laws and policies to protect human rights defenders, prevent reprisals and ensure accountability for attacks,' said ISHR Director Phil Lynch.

'Where attacks or reprisals occur, cases should be rigorously investigated and the perpetrators prosecuted and held to account.'

ISHR also welcomed the Secretary-General's acknowledgement that the UN itself should do more to address reprisals, including through the appointment of a high-level focal point to investigate and respond to allegations of intimidation and reprisal against those who cooperate with the UN.

The UN's Human Rights Council – the world's peak multilateral human rights body – is due to consider the issue of reprisals at its next session in Geneva.

'Come September, the Human Rights Council should not only condemn reprisals but take concrete action to address them. It should call on States to adopt specific laws and policies and resolve that the UN itself mandate and resource a high-level official to combat reprisals,' Mr Lynch said.

Mr Lynch also welcomed the Secretary-General's acknowledgement of the 'tireless and dedicated work' of non-governmental organisations in working to promote human rights and prevent reprisals.

'ISHR stands in solidarity with all those human rights defenders who work to promote and protect human rights worldwide, often at great personal risk. We are all beneficiaries of their courageous work,' he said.

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Further information:

- The Secretary-General's report is available [here](#).
- An opinion piece by ISHR Director Phil Lynch on preventing reprisals, published in the Global Post on 8 August 2013, is available [here](#).
- An ISHR handbook on reprisals, highlighted by the Secretary-General as an 'important new tool', is available [here](#).

## Key Developments in the Promotion and Protection of Human Rights

### In Brief

#### LEADERSHIP OF RWANDA'S LAST INDEPENDENT HUMAN RIGHTS GROUP OUSTED

'Blatant hijacking' of the Rwandan League for the Promotion and Defense of Human Rights (known as LIPRODHOR) saw a small group of members, in a violation of the organisation's rules, vote in a new board, ousting several independent and outspoken members. The new board was recognised by the Rwanda Governance Board, which has oversight of national NGOs. Once one of Rwanda's most dynamic groups LIPRODHOR has been singled out by the government in its crackdown on human rights groups... [more](#)

#### UN EXPERT ON BELARUS URGES GOVERNMENT TO STOP PERSECUTION OF HUMAN RIGHTS DEFENDERS

The Belarusian Government must 'immediately and unconditionally' release human rights defender Ales Bialiatski and protect all human rights defenders from harassment, intimidation, and violence as a result of their activities, the UN Special Rapporteur on the situation of human rights in Belarus has said. The call comes two years after Mr Bialiatski's arrest on charges of tax evasion... [more](#)

## **UN EXPERT CALLS FOR SPACE FOR ALL VOICES IN THE PROCESS OF PEACEBUILDING IN MYANMAR**

Local and rural communities must be involved in the process of peacebuilding and reconciliation, said the UN Special Rapporteur on the human rights situation in Myanmar at the end of his latest visit to the country. The expert called for ‘all voices to be heard, particularly the voices of women ... so that communities have the belief that this process will lead to a better future’... [more](#)

## **PUBLIC ASSEMBLY IN UGANDA MUST BE PROTECTED NOT ATTACKED, SAY UN EXPERTS**

The recent adoption in Uganda of the Public Order Management Bill will prohibit protests of more than three people without prior police authorisation and gives police the legal right to use guns when policing public events. The UN Special Rapporteurs on freedom of peaceful assembly and association, human rights defenders, and freedom of expression, have expressed serious concern at the impact this will have on the work of human rights defenders and have called for it to be amended or revoked... [more](#)

## **ECUADORIAN PRESIDENTIAL DECREE THREATENS NGOS**

NGOs in Ecuador will face more oversight and screening from government after the adoption of a presidential decree that gives the government a wide range of powers to interfere in NGOs’ operations. NGOs will now have to inform the government when they add or remove members, provide information about projects with international funding, and can be dissolved if they ‘compromise public peace’... [more](#)

## **Opportunities for NGO Engagement**

### ***In Brief***

#### **NEW DEADLINES FOR UNIVERSAL PERIODIC REVIEW**

NGO submissions to the UPR will now be required 9 months in advance of the relevant UPR session. For the [19th session](#) of the UPR, the deadline to submit information is 16 September.

The [17th session](#) of the UPR takes place in Geneva from 21 October – 1 November. A [pre-session](#) will be organised by UPR Info from 2 – 4 September giving NGOs the opportunity to lobby a range of States.

#### **HUMAN RIGHTS COUNCIL**

The 24th session of the Human Rights Council will be held in Geneva from 9 – 27 September. The [speakers’ list](#) to sign up for oral statements will open at 2pm on 6 September. Note that the online system has changed, as explained in the following [guidelines](#).

#### **AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS**

The [54th session](#) of the ACHPR will be held in Banjul, Gambia from 22 October – 4 November. A three day meeting of [NGOs](#) will take place prior to the session.

## **WORKING GROUP ON DISCRIMINATION AGAINST WOMEN IN LAW AND PRACTICE**

The Human Rights Council's [expert group](#) on discrimination against women in law and practice will hold its 8th session from 30 September – 4 October in Geneva. The working group is currently soliciting [inputs](#) to its 2014 report to the Council on good practices in the elimination of discrimination against women in economic and social life.

## **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.

## **COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES**

The CRPD will hold its [10th session](#) from 2 – 13 September, in Geneva.

## **COMMITTEE ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES**

CMW's [19th session](#) will take place in Geneva from 9 – 13 September.

## **COMMITTEE ON THE RIGHTS OF THE CHILD**

The [64th session](#) of the CRC will be held in Geneva from 16 September – 4 October. Organisations that wish to submit information on any of the countries under review may do so through [Child Rights Connect](#). The CRC's [pre-sessional working group](#) will be held from 7 – 11 October.

## **COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

CEDAW will hold its [56th session](#) from 30 September – 18 October, in Geneva. The pre-sessional working group, at which the Committee will identify issues to be raised with States during its [58th session](#), will be held from 21 – 25 October.

## **HUMAN RIGHTS COMMITTEE**

The [109th session](#) of the Human Rights Committee will take place in Geneva from 14 October – 1 November.

## **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. [NGO](#) information must be submitted by 20 September in electronic form and 23 October in hardcopy.

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The [51st session](#) of CESCR takes place in Geneva from 4 – 29 November. Information from NGOs should be [submitted](#) at the latest one and a half months before the session begins.

## 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](http://www.treatybodywebcast.org).

## SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

The Special Rapporteur on human rights defenders will visit Togo from 7 – 11 October. The Special Rapporteur has requested information about the main issues of concern for human rights defenders in Togo, as well as suggestions for relevant meetings, with authorities, institutions, NGOs or other defenders, that the Special Rapporteur should hold in Togo. Information should be provided to the Special Rapporteur by 23 September, by sending this [form](#) to [defenders@ohchr.org](mailto:defenders@ohchr.org).

## Forthcoming Country Visits by Special Procedures

United Kingdom	Special Rapporteur on housing 29 August -11 September
Jordan	Special Rapporteur on freedom of religion 2 – 12 September
Cameroon	Independent Expert on minorities 2 -12 September
Moldova	Special Rapporteur on extreme poverty 9- 13 September
Italy	Special Rapporteur on trafficking in persons 12 – 20 September
Spain	Working Group on disappearances 23 – 30 September
Uruguay	Special Rapporteur on truth 30 September – 4 October
Russian Federation	Working group on business and human rights 30 September – 9 October
Togo	Special Rapporteur on human rights defenders 7 – 11 October
Canada	Special Rapporteur on indigenous peoples 12 – 20 October
Chile	Working group on discrimination against women 21 – 31 October

Vietnam

Special Rapporteur on cultural rights 18 – 29 November

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

## **In Depth**

### **A LOOK AHEAD TO THE COUNCIL'S 24TH SESSION**

(Geneva, 3 September 2013) – At its September session the Human Rights Council (the Council) has an unprecedented opportunity to prove its resolve to end reprisals and intimidation against human rights defenders who leverage the international human rights system to achieve domestic human rights change. A draft resolution to be presented by Hungary would enable the Council to 'go beyond reporting', as the UN Secretary-General has demanded repeatedly, and take steps towards protection of human rights defenders, who enable the UN to deliver relevant solutions to the world's problems by providing it with first-hand information from the ground. The resolution is expected to be adopted at the end of September and will be negotiated among State representatives over the course of the three week session in Geneva.

Other key debates and opportunities for human rights defenders include a new initiative by Ireland, which intends to affirm the international communities' support for and protection to the crucial role of civil society in catalysing human rights change around the world, exposing human rights violations and demanding accountability. Alongside this Austria will present a draft decision on the safety of journalists, and plans to lead a joint statement on this issue, while the Czech Republic will lead negotiations on a text on political participation. In September the Council is also expected to renew the mandate of its expert on freedom of assembly and association, of its expert group on arbitrary detention and the expert on access to safe drinking water and sanitation among others. A full list of announced resolutions is found below.

The annual discussion on gender integration has a civil society focus this year, examining the contribution of civil society to the integration of a gender perspective throughout the work of the Council, the special procedures and the Universal Periodic Review.

Following on from South Africa's decision not to present a text on sexual orientation and gender identity at the June session of the Council, it remains to be seen whether a text will be presented at this session. Brazil, one of the cosponsors of the first resolution on sexual orientation and gender identity, will hold a side event (on 13 September from 1 – 3pm) on combatting violence against lesbian, gay, bisexual, and transgender people, with the purpose of identifying national initiatives against violence, good practices, and areas for international cooperation.

On country situations, the Council will hear the initial oral update of its Commission of Inquiry into the human rights situation in the Democratic People's Republic of Korea, which is mandated to investigate the systematic, widespread, and grave violations of human rights in the Democratic People's Republic of Korea. To counteract its lack of access to the country, the Commission has developed innovative working methods by holding public hearings in Seoul and Tokyo with witnesses who have managed to leave the country.

Another example of innovative working methods is the standalone high-level interactive dialogue that will be held on Somalia at this session. Those participating include the High Commissioner for Human Rights, a high-level representative from the Federal Government of Somalia, and the

Independent Expert on the situation of human rights in Somalia. This high level debate provides a novel way of ensuring attention to the situation in the country, and it is to be hoped that the Council will build on the Security Council's recent resolution on the country, which contained a significantly improved human rights component. At the same time a resolution renewing the mandate of the Independent Expert will be presented.

The mandate of the Special Rapporteur on Sudan is due for renewal at this session. Following from last year's resolution in which the Council failed to condemn the human rights violations in the country, there is a need for a strong text condemning ongoing restrictions to freedom of expression and assembly, the harassment of journalists, arbitrary detentions and the use of torture and ill-treatment.

Given the recently escalating situation in Egypt, the expectations by human rights defenders that the situation in the country will be addressed at this session are high. Similarly, although somewhat forgotten, human rights defenders from Bahrain still struggle to elicit a response from the Council that supports their pursuit of accountability. A follow-up resolution on Yemen will be negotiated at this session, led by the Netherlands, in close consultation with Yemen. It is hoped that this resolution will push for more tangible progress in investigating past abuses.

The Commission of Inquiry on Syria will also present its latest report to the session. In other country developments, the High Commissioner will update the Council on the findings from her just-concluded visit to Sri Lanka. This is an opportunity to ensure that attention continues to be given to the situation in the country.

*Further information:*

*Latest programme of work for the Council's 24<sup>th</sup> session (subject to change)*

*Webpage for the Council's 24<sup>th</sup> session*

*Reports to be presented to the 24<sup>th</sup> session*

*Contact: Michael Ineichen, ISHR Program Manager and Human Rights Council Advocacy Director, m.ineichen@ishr.ch, +41 22 919 7100*

**Resolutions to be presented to the Council's 24th session** (as announced at the organisational meeting on 29 August)

**Spain, Germany**

Human right to drinking water and sanitation – renewing the mandate of the Special Rapporteur

**RoK**

Local government and human rights

**Hungary**

Reprisals against those who cooperate with UN mechanisms

**Thailand**

Enhancement of technical cooperation and capacity building

Rights of persons with disabilities

**Sierra Leone**

Child, early and forced marriage

**Belgium**

Regional arrangements for the promotion and protection of human rights

**Ecuador**

Impact of transferring weapons on human rights of persons living in countries of armed conflict

**Austria**

Human rights in the administration of justice

Safety of journalists

**Iran (NAM)**

Right to development

Human rights and unilateral coercive measures

**USA**

Rights to freedom of peaceful assembly and association –renewing the mandate of the Special Rapporteur

**Russia**

Promotion of human rights through sports and Olympic ideals

**UK**

Contemporary forms of slavery – renewing the mandate of the Special Rapporteur

**France**

Arbitrary detention – renewing the mandate of the Working Group

**Cuba**

Use of mercenaries – renewing the mandate of the Working Group

Promotion of an international democratic equitable order

Social Forum – taking account of the holding of the pervious forum and requesting the holding of the next forum in 2014

**Slovenia**

World programme for human rights education

**Ireland**

Civil society space

Preventable mortality and morbidity of children under five

**Netherlands**

Yemen

**Brazil**

Extension of mandate of Special Rapporteur on right to health

**Ukraine**

Role of prevention in promotion and protection of human rights

**Guatemala**

Human rights and indigenous peoples (omnibus text)

Human rights and indigenous peoples – renewing the mandate of the Special Rapporteur

### **Costa Rica**

Conscientious objection to military service

### **Czech Republic**

Equal political participation

## **Upcoming Conferences or Events**

### **ISHR SIDE EVENT ON REPRISALS**

ISHR will hold a side event on 'Ending Reprisals: The Role of States and the Council in Protecting Human Rights Defenders', on 10 September, from 1:15 to 2:45pm in room 21, during the Human Rights Council's 24th session. The interactive panel will feature the Deputy High Commissioner, international human rights experts and frontline human rights defenders, and it will discuss concrete actions that States and the Council could take to protect those who cooperate with the UN human rights system. It will also feature the launch of a major ISHR report on the role of national laws and policies in combating reprisals.

## **Case Notes on Decisions from International Human Rights Bodies**

### **LIBYA MUST INVESTIGATE DISAPPEARANCE OF INDIVIDUAL HELD IN INCOMMUNICADO DETENTION**

*Abushaala v. Libya (1913/2009)*

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Libya had violated its obligations under the International Covenant on Civil and Political Rights in holding an individual under incommunicado detention, failing to acknowledge their detention and thereby concealing their fate.

The communication was submitted by a Libyan citizen on behalf of himself, his family and his missing brother under the Optional Protocol to the Covenant.

#### **Background**

On 17 September 1995, the author's brother, Abdelmotaleb Abushaala, was arrested under considerable duress by plain clothes officers of the Libyan internal security forces.

Following local rumours, the author's mother visited Abu Salim Prison but was unable to obtain confirmation that her son was being held there. In 2001, the author's parents submitted a written request to the prison management, at the latter's invitation, for information as to whether their son was being held there. The author's mother also visited Ain-Zara Prison several times on the basis of similar rumours. In 2002, the author's mother submitted a written request to the Ain-Zara prison management, again on the latter's invitation. The family did not receive a reply to either request.

Between 2002 and 2006, the author's parents tried to bring legal proceedings in relation to their son's disappearance, but all of the lawyers that they consulted advised them that there was no judicial procedure for dealing with such matters.

In 2008, the author's family asked the Saif Gaddafi human rights foundation to intervene, but to no avail. The author's relatives were in also unsuccessful in persuading local civic organisations in Tripoli to intervene.

On 11 August 2009, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Libya had violated its obligation to provide the author's brother with an effective remedy under article 2(3) of the Covenant, with respect to the violation of his rights to life, freedom from torture and cruel or degrading treatment, liberty and security of the person, treatment with 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).

In addition to claiming in respect of his brother's rights, the author also claimed the same violation of article 2(3) in relation to both his and his parent's right to freedom from torture and cruel or degrading treatment under article 7 of the Covenant.

### **The Committee's decision**

As a preliminary point, the Committee noted that it had not received any observations regarding either the admissibility or merits of the communication from Libya (despite numerous reminders from the Committee). Though it was not necessarily clear that the author had exhausted all available domestic remedies, the Committee found that, in the circumstances, it was not precluded from considering the communication under article 5(2)(b) of the Optional Protocol. The Committee therefore found the author's claims under the Covenant to be admissible.

On the merits, the Committee considered that due weight should be given to the author's allegations to the extent that they had been sufficiently substantiated, in the circumstances that Libya had not replied to the author's allegations.

The Committee recalled that, in cases of enforced disappearance, the act of deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or concealment of the fate of the disappeared person, denies the person the protection of the law and places the person's life at a serious and constant risk, for which the State is accountable. The Committee recognised the suffering caused by the author's brother's incommunicado detention and recalled its General Comment No. 20, in which it recommended that State parties make provision against incommunicado detention. The Committee observed that persons deprived of their liberty must not be subjected to any hardship other than that resulting from the deprivation of liberty and that they must be treated with respect for their dignity. The Committee also recalled its jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognise that person as a person before the law. The Committee concluded that the enforced disappearance of the author's brother had denied him his right to recognition as a person before the law.

The Committee referred to its General Comment No. 31 and noted the general legal obligation imposed on State parties to investigate allegations of violations. The Committee found that Libya had failed to conduct a thorough and effective investigation into the disappearance of the author's brother as required by article 2(3) of the Covenant.

On this basis, and in the absence of any satisfactory explanations from Libya, the Committee found Libya to have breached article 2(3) of the Covenant, read in conjunction with articles 6(1), 7, 9, 10(1) and 16, with regard to the author's brother. The Committee also considered that Libya had violated article 2(3) with regard to the rights of the author and his parents under article 7 of the Covenant.



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. Specifically, the Committee recommended that Libya take steps to:

- (a) conduct a thorough and effective investigation into the disappearance of the author's brother;
- (b) provide the author and his family with detailed information on the results of its investigation;
- (c) release the author's brother immediately, if he is still being detained incommunicado;
- (d) hand over the author's brother's remains to his parents in the event that he is deceased;
- (e) prosecute, try and punish those responsible for the violations committed; and
- (f) provide adequate compensation to the author and his parents for the violations suffered, as well as to the author's brother, if he is still alive.

The Committee also observed that Libya was under an obligation to prevent similar violations in the future.

Libya must now submit its written response within six months of the Committee's decision, including any 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*

## **BELARUSIAN DETAINEE HELD FOR OVER 48 HOURS IN VIOLATION OF HUMAN RIGHTS**

### ***Kovsh (Abramova) v. Belarus (1787/2008)***

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights by detaining a person for a period in excess of 48 hours without bringing them before a judge.

The communication was submitted by a Belarusian national under the Optional Protocol to the Covenant.

#### **Background**

On 29 September 2005 and 27 January 2006, the author of the communication, Zhanna Abramova (now Kovsh), was detained by police for periods of 61 hours and 72 hours respectively. The author was not brought before a judge during either of these periods of detention.

On 23 October 2007, the author filed a complaint with the District Prosecutor, alleging that on both occasions the relevant authorities had failed to bring her promptly before a judge as required by article 9(3) of the Covenant. On 12 November 2007, the District Prosecutor rejected the author's claim, confirming the lawfulness of such detention under Belarusian law but making no reference to article 9(3) of the Covenant.

On 18 November 2007, the author submitted her complaint under article 9(3) to the Regional Prosecutor. On 20 December 2007, the Regional Prosecutor rejected the author's complaint on the basis that her detention was in conformity with national law, again without making reference to article 9(3).

On 27 December 2007, the author brought her complaint before the District Court. On 14 January 2008, the author submitted a complaint to the Prosecutor General, challenging the decisions of the District and Regional Prosecutors. On 27 February 2008, the District Court decided to terminate the proceedings for lack of jurisdiction. On 3 March 2008, the author's complaint to the Prosecutor General was transmitted to the Regional Prosecutor's Office. On 4 April 2008, the Regional Prosecutor rejected the author's claim on the grounds that article 9(3) of the Covenant did not specify a time limit for pre-trial detention. The Regional Prosecutor also stated that the author was required to have registered a complaint during her detention for there to have been a potential violation of either national or international law.

On 4 April 2008, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Belarus had violated its obligations under article 9(3) of the Covenant in its failure to bring her before a judge during two separate periods of detention in excess of 48 hours. In relation to the District Court hearing of 27 February 2008, the author also claimed that Belarus had violated its obligation to uphold the right to a public hearing under article 14(1) of the Covenant as the public had been denied entry to the court room.

### **The Committee's decision**

In considering the complaint's admissibility, the Committee found that the author's claim under article 14(1) of the Covenant in respect of her right to a public hearing had not been sufficiently substantiated for the purposes of article 2 of the Optional Protocol. Accordingly, the Committee found this part of the author's claim to be inadmissible.

With respect to the author's claim under article 9(3) of the Covenant, the Committee observed that the author's failure to register a complaint under the applicable national law during her detention did not preclude the complaint's admissibility. As such, the right in question was that of a detained person to be brought before a judge under article 9(3) of the Covenant, and not the entitlement to bring judicial proceedings under article 9(4). As this part of the author's complaint had been sufficiently substantiated and all available domestic remedies had been exhausted, the Committee declared it to be admissible under the Optional Protocol.

Turning to the merits, the Committee noted that pre-trial detention should generally, in view of its exceptional character, be kept as short as possible. As prompt initiation of judicial oversight constituted an important safeguard against the ill-treatment of detained persons, the Committee concluded that such judicial control must be automatic and not dependant on any prior complaint or application by the detained person.

In the Committee's view, the term "promptly" in article 9(3) had to be construed on a case-by-case basis. However, as indicated in the Committee's jurisprudence and General Comment No. 8 on the right to liberty and security of the person, such delays should not exceed a few days. The Committee also noted its general recommendation in the context of State parties' reports that the period of police custody before which a detained person is brought before a judge should not exceed 48 hours.

The Committee therefore concluded that Belarus had violated its obligations under article 9(3) of the Covenant by detaining the author for periods of 61 hours and 72 hours without judicial oversight. In accordance with article 2(3) of the Covenant, Belarus was under an obligation to provide the author with an effective remedy, including reimbursement of any legal costs incurred and adequate compensation. The Committee further recommended that Belarus review its legislation, in particular the Criminal Procedure Code, to ensure that it conforms with the requirements of article 9(3).

Belarus 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.

*Kendra Daubner is an international lawyer, based in Paris.*

## **FINE FOR AUTHOR OF A PETITION PUTS BELARUS IN VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION**

### ***Olechkevitch v. Belarus (1785/2008)***

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights by fining a person for distributing leaflets concerning a public meeting with a politician.

The communication was submitted by a Belarusian national under the Optional Protocol to the Covenant.

#### **Background**

On 12 February 2008, the author of the communication, Andrei Olechkevitch, was arrested while distributing leaflets that concerned a meeting with Alexander Milinkevich, a representative of the political opposition and a former presidential candidate. On the same day, the author was brought before the Gomel District Court, which decided that the author had breached article 23.24(1) of the Code of Administrative Offences by distributing information relating to an unauthorised meeting and fined him 1,050,000 Belarusian roubles (approximately \$US500 at that time).

The author subsequently challenged the decision, contending that the Gomel District Court had failed to find the required circumstances of necessity for the purposes of article 19(3) of the Covenant that could justify a restriction on the author's right to freedom of expression. On 29 February 2008, the Gomel Regional Court, upheld the decision of the Gomel District Court without reference to the author's rights under the Covenant.

On 17 March 2008, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Belarus had violated his right to freedom of expression, and specifically his right to impart information, under article 19(2) of the Covenant by imposing restrictions that he alleged were unjustified. As such, the author claimed that the restrictions imposed by Belarus were not necessary for the protection of national security, public order, public health or morals, or the rights and freedoms of others, as required by article 19(3) of the Covenant.

#### **The Committee's decision**

In considering the complaint's admissibility, the Committee noted that the author had not sought a supervisory review by the Supreme Court of the District and Regional Court decisions because he had considered such remedy to be effective. The Committee also observed Belarus' contention that supervisory review had been effective in a number of instances. In the Committee's view, however, Belarus had failed to show that the review procedure had been successfully applied in cases concerning freedom of expression. The Committee also recalled its jurisprudence according to which a procedure for the review of court decisions that have already taken effect does not constitute a remedy which must be exhausted for the purposes of article 5(2)(b) of the Optional

Protocol. The Committee therefore concluded that it was not precluded from examining the author's communication on this basis and declared it to be admissible.

On the merits, the Committee referred to its General Comment No. 34, emphasising that the right to freedom of opinion and expression was indispensable for the full development of the person and essential for a free and democratic society. Accordingly, the Committee concluded that all restrictions imposed on that freedom must meet the strict tests of necessity and proportionality. The Committee also noted that such restrictions must only be applied for their prescribed purpose and be directly related to the specific need on which they are predicated.

In the Committee's view, it was up to Belarus to demonstrate the necessity of the restriction in question. Belarus also had a general obligation to provide a system that balanced the individual's right to freedom of expression with the general interest in preserving public order in conformity with article 19 of the Covenant. As the Gomel Regional Court had refused to address the issue of whether the restriction on the author's right to freedom of expression was necessary, and in default of Belarus demonstrating a pertinent justification under article 19(3), the Committee found that Belarus had failed to comply with its obligations under the Covenant.

In light of the above, the Committee concluded that Belarus had violated the author's right to freedom of expression under article 19(2) of the Covenant. In accordance with article 2(3), Belarus was under an obligation to provide the author with an effective remedy, specifically by reimbursing the fine and any legal costs incurred by the author, as well as providing the author with adequate compensation. The Committee also recommended that Belarus review its legislation, and in particular the Public Events Act, to ensure that it conforms with the requirements of article 19 of the Covenant.

Belarus 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.

*Kendra Daubner is an international lawyer, based in Paris.*

## **ALGERIA MUST INVESTIGATE DISAPPEARANCE OF DETAINEES**

### ***Mechani v Algeria (1807/2008)***

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Algeria had violated its obligations under the International Covenant on Civil and Political Rights in holding an individual under incommunicado detention, denying them a fair trial, and refusing to provide their family with information regarding their fate.

The communication was submitted by an Algerian national on behalf of both himself and his missing son under the Optional Protocol to the Covenant.

#### **Background**

On 16 May 1993, the author's son, Farid Mechani, was arrested by plain-clothed police officers who failed to produce a warrant or disclose the reason for the arrest. The author's son was then detained at Hussein Dey police station. On 11 June 1993, the author sent a letter to the Prefect of Algiers, denouncing his son's detention and requesting that the Prefect intervene. On 3 July 1993, he contacted the Chairperson of the National Observatory for Human Rights (NOHR).

On 6 September 1993, the author received his son's committal order which stated that his son had been arrested on the grounds that he had been the leader of an armed group that had committed an attempted attack on a youth centre.

Between 7 September and 26 September 1993, the author lodged several complaints regarding his son's treatment with, among others, the Chief Prosecutor at the Algiers Special Court, the Director of Judicial Affairs of the Ministry of Justice, the Minister of the Interior, the Prime Minister and the Chairman of the High Council of State. In response, the author was informed by phone that his son had been handed over to military police soon after his arrest but was not provided with any further information regarding his son's fate or whereabouts.

On 4 May 1994, the author's son was tried in absentia by Bab-el-Oued Special Court, a court presided over by anonymous judges, in a closed trial without members of his family or his lawyer being permitted to attend. He was sentenced to life imprisonment.

On 7 March 2003, the case was transmitted to the Working Group on Enforced or Involuntary Disappearances. On 8 March 2003, the author submitted an appeal to the National Commission for the Protection and Promotion of Human Rights, the successor to the NOHR, to no avail. On 22 September 2004, the author submitted a case file to the Algerian Government's ad hoc commission on disappearances. However, no inquiry was conducted into his son's fate.

On 30 June 2008, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Algeria had violated its obligation to provide the author with an effective remedy under article 2(3) of the Covenant, with respect to the violation of his right not to be subjected to torture or cruel or degrading treatment under article 7 of the Covenant.

In addition to claiming in respect of his own rights, the author also claimed the same violation of article 2(3) in relation to Algeria's violation of his son's rights to freedom from torture and cruel or degrading treatment, liberty and security of the person, humanity and respect for the inherent dignity of the human person, a fair trial, and recognition as a person before the law (under articles 7, 9, 10, 14, and 16 of the Covenant respectively).

### **The Committee's decision**

Regarding the admissibility of the author's claims, the Committee recalled that the examination of a complaint by the Working Group on Enforced or Involuntary Disappearances did not generally constitute a procedure of international investigation or settlement for the purposes of article 5(2)(a) of the Optional Protocol. Further, the Committee considered that the author had exhausted all domestic remedies as only those remedies available in respect of the alleged violation, namely enforced disappearance, need be exhausted for the purposes of article 5(2)(b). As the author had sufficiently substantiated his allegations, the Committee declared the author's claims to be admissible under the Optional Protocol.

On the merits, the Committee noted the incommunicado nature of the author's son's detention and recalled its General Comment No. 20 which recommended that State parties should make provision against such detention. It also noted that the author's son had not been brought before a judicial authority during his detention, and that, despite the author's multiple requests, no official information had been given to his family concerning his whereabouts or fate.

The Committee found the circumstances of the author's son's trial and sentencing to be inherently unfair. In this regard, the Committee recalled its General Comment No. 32 in which it observed that special court proceedings presided over by anonymous judges often suffer from procedural

irregularities. It also considered that the author's son's enforced disappearance had deprived him of his right to recognition as a person before the law.

In light of the above, the Committee found Algeria to have breached article 2(3) of the Convention, read alone and in conjunction with articles 7, 9, 10, 14 and 16, with regard to the author's son. The Committee noted the anguish and distress caused to the author by his son's disappearance and considered that Algeria had also violated article 2(3) with regard to the author's rights under article 7 of the Covenant.

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

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

The Committee also observed that Algeria 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.

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

*Jemma Queenborough is an international lawyer, based in Paris.*

### **Saadoun v. Algeria (1806/2008)**

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Algeria had violated its obligations under the International Covenant on Civil and Political Rights by placing an individual under incommunicado detention and failing to inform their family about their fate.

The communication was submitted by two Algerian nationals on behalf of both themselves and their missing son under the Optional Protocol to the Covenant.

#### **Background**

On 7 March 1996, Algerian police arrested the authors' son, Djamel Saadoun, and ordered him to join the military. Earlier, he had received permission as a student to defer his service. After a night in police detention, the authors' son was taken to a military camp in Blida and, between 14 and 18 March 1996, to a camp in Bechar and another camp in Abadla. A month later, the authors' lawyer lodged a complaint with the Bechar Court regarding their son's arrest, but no action was taken. In June 1996, the authors were told that their son was no longer at Abadla camp.

On 30 July 1996, the authors wrote to the President of Algeria, the Ombudsman, and the Chair of the National Human Rights Observatory (NHRO). On 9 March 1998, the NHRO replied stating that



the authors' son had been arrested in March 1996 and taken to the camp in Blida to perform military service.

On 20 July 2002, the National Advisory Commission for the Promotion and Protection of Human Rights (NACPPHR), the NHRO's successor, informed the authors that the security forces had apprehended their son for "involvement in subversive activities". On 1 September 2002, the authors sought clarification from the NACPPHR, without success. On the same day, the authors wrote to the Chief of Staff of the National People's Army, who never replied. On 28 July 2003, the authors wrote to SOS Disparu(e)s and the Collectif des Familles de Disparu(e)s en Algérie, which then submitted the case to the UN Working Group on Enforced or Involuntary Disappearances.

On 15 August 2007, one of the authors lodged a complaint with the Chercell Public Prosecutor. On 27 October 2007, the local police authority advised the author that the complaint should be directed to the Ministry of Defence. On 8 January 2008, the Chercell Public Prosecutor then advised the author to lodge a complaint with the Bechar Public Prosecutor.

On 30 June 2008, the authors filed this communication with the Committee under the Optional Protocol. The authors claimed that Algeria had violated its obligation to provide their son with an effective remedy, with respect to his rights to freedom from torture and cruel or degrading treatment, to liberty and security of the person, and to recognition as a person before the law (under articles 2(3), 7, 9, and 16 of the Covenant respectively).

In addition to claiming in respect of their son's rights, the authors also invoked violations of article 2(3) and article 7 in respect of themselves.

On 17 December 2012, the Committee was informed that the authors' daughter, Nouria Saadoun, would continue the proceedings as both authors had died.

### **The Committee's decision**

In considering the admissibility of the authors' claims, the Committee noted that the matter had been reported to the Working Group on Enforced or Involuntary Disappearances. It recalled, however, that such procedures did not generally constitute procedures of international investigation or settlement as per article 5(2)(a) of the Optional Protocol. In the Committee's view, none of the judicial remedies invoked by the authors resulted in effective investigation, prosecution and conviction of those responsible for their son's disappearance. Algeria had also failed to show that an effective remedy was available as its Charter for Peace and National Reconciliation (the *Charter*) had not been amended to comply with the Covenant, despite the Committee's previous recommendations. The Committee also considered that being able to sue for damages under Algeria's Code of Criminal Procedure for serious offences such as enforced disappearance was insufficient. Accordingly, as the authors' had exhausted domestic remedies for the purposes of article 5(2)(b), the Committee declared their claims to be admissible.

On the merits, the Committee emphasised the general nature of Algeria's comments and its failure to address the authors' allegations, several of which had been independently confirmed. It considered that the Covenant required Algeria to concern itself with each individual's fate. Article 4(2) of the Optional Protocol also implied a State duty to investigate alleged violations, and to provide the Committee with the information resulting from such investigations. Given the strength of evidence confirming the authors' son's detention, the Committee determined that due weight must be given to the authors' allegations to the extent that they have been sufficiently substantiated.

The Committee noted that the authors' son's fate had remained unknown since June 1996, and recalled its General Comment No. 20 which recommended that State parties prohibit

incommunicado detention. It noted that the authors had only become aware of their son's apprehension for "involvement in subversive activities" in July 2002, and that their son had also not been informed of these charges or allowed to challenge his detention. The Committee found that the Algerian authorities had failed to adequately explain to the authors their son's fate, despite multiple requests, and to thoroughly and effectively investigate his disappearance. In this regard, it recalled its General Comment No. 31 in relation to article 2(3) which provided that a State party's failure to investigate allegations of violations could constitute a separate breach of the Covenant. It also observed that the Charter's implementing legislation prevented the authors from initiating proceedings in relation to enforced disappearance, on penalty of imprisonment.

On this basis, the Committee found Algeria to have violated article 2(3) of the Covenant, read alone and in conjunction with articles 7, 9, and 16, with regard to the authors' son. Noting the anguish caused to the authors by their son's disappearance, the Committee found that Algeria had also violated article 2(3) with regard to the authors' rights, read alone and in conjunction with article 7.

The Committee, therefore, concluded that Algeria was under an obligation, in accordance with article 2(3), to provide the authors and their son with an effective remedy. Specifically, the Committee recommended that Algeria take steps to:

- (g) conduct a thorough and effective investigation into the disappearance of the authors' son;
- (h) provide the authors' family with detailed information on the results of its investigations;
- (i) release the authors' son immediately if he is still being detained incommunicado;
- (j) pass the authors' son's remains to his family if he is deceased;
- (k) prosecute, try and punish those responsible; and
- (l) provide adequate compensation to the authors' family and to their son, if still alive.

The Committee observed that Algeria must prevent similar violations in the future and uphold the right to an effective remedy for crimes such as torture and enforced disappearance.

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

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