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„Human rights defenders in danger: Identifying
the inadequacy of the UN mechanisms in
protecting them from reprisals“

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Acronyms

AI	Amnesty International
CAT	Committee against Torture
CCPR	Human Rights Committee
CED	Committee on Enforced Disappearances
CESCR	Committee on Economic, Social and Cultural Rights
CERD	Committee on the Elimination of Racial Discrimination
CEDAW	Committee on the Elimination of Discrimination against Women
CRPD	Committee on the Rights of Persons with Disabilities
CMW	Committee on Migrant Workers
CRC	Committee on the Rights of the Child
ECOSOC	Economic and Social Forum
FIDH	Fédération internationale des ligues des droits de l'Homme
GA	General Assembly of the United Nations
GRULAC	Latin American and Caribbean Group, a regional group in UN
HRC	United Nations Human Rights Council
HRDs	Human Rights Defenders
HRW	Human Rights Watch
INGO	International Non-governmental Organisation
ISHR	International Service for Human Rights
NGO	Non-governmental Organisations
OHCHR	Office of the High Commissioner of Human Rights
OSCE	Organization for Security and Co-operation in Europe

SG	Secretary-General of the United Nations
SPT	Subcommittee on Prevention of Torture
SR	Special Rapporteur
SRHRD	Special Rapporteur on Human Rights Defenders
UN	United Nations
WEOG	Western European and Others Group, a regional group in UN

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1 Introduction

“Reprisals against individuals who seek to cooperate with the United Nations, its representatives and the mechanisms in the field of human rights are not only a concern to the individuals directly affected, but also reflect a failure of States to allow free and open contacts with the United Nations human rights machinery.”¹

“Such a practice has very serious and deterrent consequences on the willingness and capacity of groups and individuals to provide information about what is happening in a given country and, in turns, on the capacity of the United Nations to report and react appropriately to human rights concerns. Free and unhindered contact and cooperation with individuals and civil society are indeed indispensable to enable the United Nations and its mechanisms to fulfil their mandate.”²

The above two paragraphs are derived from the first and the second reports of the *Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights*. Since 2010, the Secretary-General (SG) submits a report to the Human Rights Council (HRC) once a year to compile the cases regarding individual human rights defenders who want to cooperate with the United Nations (UN) institutions but face the challenges from state authorities or non-state actors. The SG has continuously stressed the importance of tackling reprisals; otherwise the UN’s work in the field of human rights would be undermined and compromised.

¹ A/HRC/14/19, 7 May 2010, para 53.

² A/HRC/18/19, 21 July 2011, para 94.

This paper is to explore how human rights defenders (HRDs) participate in the UN human rights mechanisms amid growing threats on their personal safety. To facilitate the discussion of reprisals in the following chapters, two categorical locations are designated, Geneva and outside Geneva.

Some HRDs may travel to Geneva, regularly or sporadically, to attend the HRC, the working groups of a session of the Universal Periodic Review (UPR), or the review sessions of the treaty bodies. The majority of the HRDs who are keen on participating in the UN mechanisms would however remain in their home country. They may be in contact with the Office of the High Commissioner of Human Rights (OHCHR) on a regular basis, or in merely ad hoc communications. The UN officers often receive information, evidence, reports, news updates, petitions, court cases, and witness accounts from HRDs on the ground. HRDs may also be invited to local meetings with the visiting UN Special Rapporteurs (SP) or other UN officials when those experts conduct country visits or fact-finding missions.

Very likely HRDs are aware of the possible consequences of their activities, such as risking their personal safety, job prospect, social benefits or freedom of assembly, association and travel, since they know their “informant’s activities” would upset the state authorities or other non-state actors. Those consequences are generally regarded as “reprisals” against them. But they insist and place trust in the UN mechanisms. Therefore, the UN should have a responsibility, perhaps a moral duty, to protect them against reprisals.

In recent years, state authorities and non-state actors who possess the financial and human resources realise how to exploit the information technology. The online and offline activities, the locations and the social circles of HRDs become more easily to be monitored by the sophisticated system of surveillance. Reprisals become more instant and efficient. One may claim that the same technology would also be used in more democratic

and open society. After all, it is the matter of whether those who are in power would refrain from performing reprisals when the information about the target HRDs has been beheld. Some countries, which are also member states of the HRC, tend to show little tolerance of their citizens exposing the undesirable images of the governments. Those seating members of the HRC do not show their full support for the work of the HRC to protect human rights defenders.

The protection would not be only about physical security, but also about discouraging the perpetrators and sending a message that “the international community is watching”. Until now there have been some strong messages against reprisals from the SG, the HRC and a number of UN resolutions. But state authorities that are used to their malpractices seem not deterred. There are no signs or statistics to show that the number of cases of reprisals will go down in near future.

In this paper, there is an attempt to prove that some states are indifferent or even hostile to the effort on furthering the development of international human rights mechanisms and they are the likely perpetrators of violations and reprisals. This paper also discusses the interaction among the OHCHR, the participating states at the HRC, the NGOs and the HRDs within the UN human rights mechanisms, in order to explore how the term “reprisals” has created considerable disturbances and confrontations among those four parties.

1.1 Context of research

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. “

- *Article 1, The UN Declaration on the Right and Responsibility of individuals , Groups, Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*

This Declaration is also known as the *Declaration on Human Rights Defenders*, which was adopted in the *General Assembly resolution 53/144* in December 1998.³ This is a landmark resolution because it signifies the progression of the concept of rights 50 years after the *Universal Declaration of Human Rights* in 1948. This declaration does not only reaffirm a human being as a subject of enjoying the rights, but also an agent to protect and promote rights for their fellow people. A human right defender is more than an ordinary person because she actively exercises her rights through actions. *The Commentary to the Declaration*⁴ states that there are ten “rights” to be understood and identified from the full text of the Declaration.

- a. *The right to be protected*
- b. *The right to freedom of assembly*
- c. *The right to freedom of association*
- d. *The right to access and communicate with international bodies*
- e. *The right to freedom of opinion and expression*
- f. *The right to protest*

³ A/RES/53/144, 8 March 1999, Article 1.

⁴ OHCHR, 2011, p.3-4.

- g. The right to develop and discuss new human rights ideas*
- h. The right to an effective remedy*
- i. The right to access funding*
- j. The right to defend human rights*

Those ten rights might be better viewed from an activist's perspective. A human rights defender is basically a person who, individually and in association with others, takes action to stop personal or collective rights being violated. When one becomes an active citizen, she would realise that those ten rights are not new concepts created by any written document but a reasonable setting to protect her from fear.

The Commentary to the Declaration on Human Rights Defenders also highlights several concepts that have still not been taken for granted. One of the important concepts is that states are responsible for the acts of non-state actors. States should not tolerate the failure to protect their citizens from fear even though they considered themselves innocent of any wrong-doings.

In reality, the civil society space in many countries are limited and the HRDs have to encounter a lot of challenges in order to carry out their works. The intimations and threats imposed by state authorities and non-state actors hamper their opportunities in participating in international and regional human rights mechanisms.

In recent years, OHCHR has repeatedly appeals to the member states of the HRC to act robustly on protecting HRDs against reprisals. If the "fear factor" is taken out or minimised, more people on the ground would be encouraged to cooperate with the UN human rights mechanisms. The recent human rights mechanisms are indeed designed to encourage civil society actors to take part. The growing numbers of NGOs written and oral statements at HRC sessions and stakeholders' reports to the UPR reflect the UN mechanisms' increasing engagement with the civil society actors on the ground.

1.2 State of Research

The main theme of this research is reprisals against HRDs who are cooperating with the UN human rights mechanisms. *The Declaration on Human Rights Defenders* recognises the right to access and to communicate with international bodies under:

Article 5(c)

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international level: [...]

(c) To communicate with non-governmental or intergovernmental organisations.

Article 9(4)

*To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.*⁵

Since the right to access and to communicate with international bodies are enshrined, it is the state's responsibility to create a safe and enabling environment for HRDs to participate in the UN human rights mechanisms. Many defenders may aspire to come to Geneva to speak to the international community, receive training, and meet other defenders of different nationalities who work on similar themes. They are however concerned about their safety during the time in Geneva and after the visit. Coming to Geneva is meanwhile a distant hope for many HRDs who do not have the resources to travel to Europe. Although the secretariat of the HRC would accept anyone

⁵ A/RES/53/144, 8 March 1999.

who is accredited by an organisation with an ECOSOC consultative status, it does not assist in application for travel visa to Switzerland. Many HRDs are from developing countries and obtaining a visa is a challenge. Therefore, the majority of HRDs who cooperate with the UN human rights mechanisms remain in their home countries and provide information, evidence, reports, news updates, petitions, court cases, and witness accounts to the UN offices.

In many circumstances the environment is not favourable for continuing their work under repressive governance. HRDs may pay a price if they do not refrain from informing the international community the continuous discrepancies in their countries.

In this context, international non-governmental organisations (INGOs), which have the resources of setting up their permanent offices in Geneva while remain in contact with their branches in other countries, appear to support the work of grassroots HRDs by bridging the people on the ground and the UN mechanisms. With their ECOSOC consultative status, INGOs are the active participants that have been the strong voices of criticising the practices of reprisals during the HRC sessions.

This paper focuses on the dynamics and interactions among different “actors” in the UN human rights mechanisms: OHCHR as a neutral host and coordinator of the UN mechanisms, the participating states at the HRC, the NGOs, and the human rights defenders. The term “reprisals” has created considerable “disturbances” and “confrontations” among those four parties. In 2013, three UN resolutions on human rights defenders and reprisals were adopted at the HRC and the UN General Assembly (GA).⁶ They lay the crucial foundations for future actions on tackling reprisals. They will be discussed in details in this paper.

⁶ A/HRC/RES/22/6; A/HRC/RES/24/24; A/RES/68/181.

1.3 Research questions and interests

This paper is guided by the following two questions:

What have been done to protect human rights defenders who cooperate with the United Nations, its representatives and mechanisms in the field of human rights against reprisals?

What more should be done to enhance the protection for human rights defenders?

The research also focuses on two analytical categories

How do those countries, which are less likely to take more effort to protect human rights defenders, behave in the UN human rights mechanisms?

Are human rights defenders over-dependent on NGOs to access the UN human rights mechanisms?

1.4 Methodology

Data and information are gathered by different research methods.

The existing literature in protecting HRDs are often practical guides or users' manuals for those who work in difficult environments and have to be concerned about their personal safety. Not many articles discuss the protection for HRDs in terms of policy advocacy and institutional reforms. Some NGOs, such as Front Line Defenders and World Organisation Against Torture, encourage activists to be familiar with the protection provided by regional and international mechanisms once they are in danger. These documents are taken into consideration for literature review.

The main source of written information is the website of OHCHR, UNGA and ECOSOC. They contain a great deal of information about the voting results for adopting resolutions, the statements made by state delegates, and the communications between OHCHR and the states in the UN human rights mechanism. OHCHR accepted the researcher to intern at the Civil Society Section from August 2013 to January 2014. The researcher had the opportunity to attend the 24th session of the HRC, the 18th session of the UPR and several sessions of the treaty bodies to conduct a wide range of observation from inside of OHCHR.

Other sources of information are experts' opinions. A qualitative research method is used. Semi-structured interviews were conducted to allow an open discussion surrounding three keywords, human rights defenders, reprisals, and protection, resolutions and politics. Further interesting points have been raised during the interviews and these are reserved for further discussion.

Some experts are chosen from their positions and departments from OHCHR. They are expected to have the insiders' knowledge of the merits and the weaknesses of the office. Beside staff members, some delegates from the

NGOs who have worked at the HRC are invited to be interviewed. They are expected to demonstrate some critical outsiders' perspectives about OHCHR.

The following individuals agree to discuss reprisals and human rights defenders in both formal and informal settings during the period of information gathering for this paper.

<i>Nicolas Agostini</i>	<i>FIDH Delegate to the UN</i>
<i>Renate Bloem</i>	<i>CIVICUS UN Representative</i>
<i>Philip Dem</i>	<i>HRC Advocate at Human Rights Watch</i>
<i>June Ray</i>	<i>Chief, Civil Society Section, OHCHR</i>
<i>Emma Reilly</i>	<i>Human Rights Officer, OHCHR</i>

The following are the standard questions for the interviewees.

Q1 What does your organisation do to protect human rights defenders?

Q2 Which countries allow a more favourable environment for reprisals than other countries?

Q3 How does/should the HRC function to protect human rights defenders?

Q4 What are the salient cases of reprisals in recent years and how are they perceived and dealt with?

Q5 What can be done to enhance the protection for human rights defenders in future?

1.5 Terminology

1.5.1 Human Rights Defenders

The definition of human rights defenders can be seen in the *OHCHR Fact Sheet No.29 – Human Rights Defenders: Protecting the Right to Defend Human Rights*. According to OHCHR, a human rights defender is a person who, individually or with others, acts to promote or protect human rights. Human rights defenders are identified by what they do. It is through a description of their actions and of some of the contexts in which they work that the term can best be explained.⁷ The following nine actions are the activities that are performed by most human rights defenders, although an individual is not expected to superiorly perform all of them coincidentally:

- a. *All human rights for all* – they act to address any right(s) on behalf of individuals or groups
- b. *Human Rights everywhere* – they are not geographically bounded as defenders do not necessarily work in adverse conditions
- c. *Local, national, regional and international action* – they choose the possible level that best suits their abilities and interests
- d. *Collecting and disseminating information on violations* – they see violations and then report to others and refuse to let it forgotten and ignored
- e. *Supporting victims of human rights violation* – they give relief and support to those who have suffered
- f. *Action to secure accountability and to end impunity* – they trace the origins of violation, launch investigations and demand justice

⁷ OHCHR, 2004, P.2-4.

- g. *Supporting better governance and government policy* – they maintain good practice to prevent the situation from worsening to unacceptable conditions
- h. *Contributing to the implementation of human rights treaties* – they work on projects to secure the protection of their local people from violation
- i. *Human rights education and training* – they inspire and recruit people to defend human rights together

Many professionals and non-professionals in society can be identified as human rights defenders if they are aware of the nature of the work in the context of human right. For instances, journalists, information technology specialists, community workers, teachers, social activists, artists, writers, bloggers, brave witnesses in court are HRDs when they are in a context of thinking about helping others to secure their rights.

1.5.2 Reprisals

Engaging in the UN human rights mechanisms takes a great deal of courage for those who work on the ground and know the possible consequences, often perceived as reprisals. The Organization for Security and Co-operation in Europe (OSCE) offers an understanding of the challenges and faced by HRDs as individual citizens and suggests the four categories of reprisals.⁸

- a. *Threats to, and attacks on, the physical integrity of defenders* (killing, abduction, ill-treatment in custody, deterioration of health due to detention conditions, attacks, threats, smear campaigns, harassment and intimidation, retaliation against family members)
- b. *Right to liberty and freedom of movement of defenders* (prison sentences, arbitrary detentions, arrests and fines, restrictions on travel)
- c. *Freedom of association of defenders* (denial of registration, deregistration, expulsion or threat of expulsion from premises, raids, attacks on officers, defamation campaigns, abuse of charges)
- d. *Freedom of assembly of defenders* (violent dispersal of assemblies against defenders, excessive interference with freedom of peaceful assembly, lack of sufficient police protection for demonstrators)

OHCHR Fact Sheet No.29 further suggests that some states do not only use above tactics to target individuals, but also restrict the environment at large in which all HRDs operate. “Organisations are closed down under the slightest of pretexts; sources of funding are cut off or inappropriately limited. “⁹Therefore, passing of a new restrictive legislation could instantly affect all HRDs and civil society organisations at once.

⁸ OSCE, 2008, p.11-23.

⁹ OHCHR, 2004, P.13.

2 Analysis: Actors in UN human rights mechanisms

2.1 OHCHR as a neutral host and coordinator of UN mechanisms

2.1.1 Human Rights Council (HRC)

The HRC is the principal UN intergovernmental body responsible for human rights. It takes place at Room XX at the Palais des Nations in Geneva three times a year, usually in March, June and September. The council is constantly growing in terms of the number of participants, the numbers of their oral statements and written statements, and the number of Special Rapporteur's reports to be presented in each session. The number of mandate holders in the Special Procedure who report to the HRC is also growing in response to emerging concerns on particular global issues. For instance, *The Independent Expert on Old Persons*, and *the Independent Expert on Central African Republic* were created in 2013. The HRC also sees more ad hoc political and security issues to be discussed since the Arab Spring when the member states have seized the chance to make political statements or draft resolutions in response to contemporary crisis, such as the conflicts in Libya, Syria, Sri Lanka and Ukraine.¹⁰

Attendees at the HRC have the opportunities to deliver their oral statements. The floor is open to human rights defenders from all over the world once their presence at the council is accredited by the secretariat in advance. Besides speaking at the council, attendees can go to the side events parallel to the regular programmes in Room XX. For some attendees, going to side events is the main purpose. HRDs speaking at the side event panels presenting complains is a regular scene outside of the main conference room. Those HRDs are likely to have travelled a long way from their communities. The

¹⁰ See the list of resolutions adopted by vote in Table 1 and 2 below.

opportunity to speak in front of an international audience is an incentive for those who want the world to listen to them.

Many NGOs that have the ECOSOC consultative status would send delegates to deliver oral statements. Occasionally some states would attempt to interrupt the NGOs' speeches by asking for order from the HRC President. For instance, Saudi Arabia attempted to stop the oral statement delivered by an NGO, Centre of Inquiry, in the 26th session of the HRC. When the speaker mentioned some cases of HRDs who were in jails because of their speech about religious freedom and women's rights, the Saudi delegate protested and asked the speaker to stop speaking. Subsequently, the delegates of the United States, Ireland, France and Canada took turns to rebut Saudi Arabia's request and affirmed that NGOs' should be allowed to express their opinions even though the state would not agree with the speech. The vice-president of HRC decided to allow the speaker to finish reading her statement, despite further interruptions from the Saudi's delegate.¹¹

This incident shows a typical and recurring confrontational scene at the HRC: an NGO delegate speaks on behalf of a human right defender and tries to raise the issue at the HRC. The alleged perpetrator of reprisal tries to halt the NGO's statement, while other states that are generally perceived as active participating members at the HRC¹² defend the NGO's right to speak. The President has to act neutrally to permit the protesting delegate to interrupt but allow the NGO to finish the statement.

There are more interactions and confrontations among states, NGOs and HRDs to be discussed in this paper in the following chapters.

¹¹ Centre for Inquiry, 23 June 2014.

¹² See Table 1 and Table 2 below for the meaning of "active members".

2.1.2 Universal Periodic Review (UPR)

Since the inception of the UPR in 2008, a UPR session usually takes place for two weeks in January, April and October at the Palais des Nations. Fourteen countries would present their state reports in each session. Year 2014 sees the middle of the second 4-year cycle of the review. If the first cycle served as the first round of experiment on how it could be implemented, the second cycle provides an opportunity for participating states to reflect what have been improved since the last review. Many countries see the growing number of stakeholders' submission as their citizens become aware of participating in revealing the reality of the human rights situation on the ground. Some states have become the centre of attention when they are under scrutiny. For example, there was a building-up of tense atmosphere before the review of China and Israel in October 2013. China was alleged to have banned its dissident citizens from travelling to Geneva (see "Cao Shunli's case" below), whilst Israel had been the only state that declined to participate in the first cycle. Therefore their entries to the second cycle raised some eyebrows.

OHCHR has published a new guide¹³ for civil society actors to disseminate information on how to follow up the recommendations given to their countries in a UPR working group. The purpose of this guide is to invite HRDs to take up the task of monitoring how their state governments implement the recommendations before the next cycle of review. Therefore, in the course of four years between two cycles of reviews, a state is spared for its civil society organisations to scrutinise. The Civil Society Section of OHCHR has been working on increasing the number of stakeholders' submissions since the beginning of the second cycle of UPR. UPR has become the single most important opportunity for civil society organisations' reports to be read by all

¹³ OHCHR, 2013 p.3.

the UN member states, especially when some themes, such as LGBTI and climate change, have not been specifically covered by any treaty bodies or mandate holders of the Special Procedure.

During a UPR session, tens of groups of delegates of the reviewed states are expected to be present in Geneva. Some of them would choose to hold parallel events to counter the state reports. And they indeed take a great courage to speak against their government at the UN amid high risk on their personal safety.

Perhaps the most tragic case of a HRD being punished after participating in the UN human rights mechanism is the murder of Eric Ohena Lembembe, a LGBTI activist in Cameroon. He was found tortured and murdered on 15 July 2013, several months after his active participation in the UPR of Cameroon since early 2013. He submitted a stakeholder's report on behalf of his organisation Cameroonian Foundation for AIDS (CAMFAIDS) and addressed recommendations during the review of Cameroon in front of the HRC in May 2013. He and his allies experienced a series of brutal attacks, such as assault, burglary, and arson in June.¹⁴ A climate of homophobia was intensified after the UPR and the authorities did not react to protect LGBTI activists from more violence.¹⁵ During the adoption of the UPR reports in September 2013, the delegate of Cameroon at the HRC, Anatole Nkou, was called to explain the murder. Ambassador Nkou insisted Lembembe's "personal life" caused his death¹⁶ and rejected a recommendation from Uruguay to tackle harassment and violence based on sexual orientation, and a recommendation from Germany to protect LGBTI people from violence.

¹⁴ Human Rights Watch, 1 July 2013.

¹⁵ ILGA, 22, July 2013.

¹⁶ Human Rights Watch, 25 September 2013.

2.1.3 UN Treaty-based Bodies

There are currently ten core international human rights treaties, in usual orders: CCPR, CESC, CERD, CEDAW, CAT, SPT, CRC, CMW, CRPD and CED. Each treaty is monitored by the respective committee. All 10 committees hold 2 or 3 sessions in a calendar year. Therefore, it is likely to see 2 or 3 sessions of different committees taking place at the same time.

In each session, a number of states would present their national reports on the implementation of the treaties in their territories. HRDs are encouraged to submit shadow reports, which often disagree with the state report. Many shadow reports writers would travel to Geneva to observe the review.

Throughout a year Palais Wilson, the headquarters of OHCHR, serves as a meeting point for NGOs and human rights activists from all over the world to attend different sessions of treaty bodies. During their visit at the Palais, they can take the rare chance to make an appointment with OHCHR staff members in Geneva to exchange opinions in campaigning and advocacy with reference to the peculiar situation in their countries. This is therefore a good incentive for civil society actors on the ground to come to Geneva once in several years to gain some tips from OHCHR staff members.

Some HRDs and victims of malpractices or violations would come to Geneva to stage a protest and gain media attention. For instance, there was an extraordinary occasion when the Holy See was reviewed by the CRC in January 2014. The Vatican policy in protecting child's rights was regarded to project a global influence. Some victims of paedophile priests in the past 50 years came to the session that also attracted a great deal of media coverage. Other protests against states on the day of their review sessions are commonly seen at the public square in front the Palais des Nations. Some

activists could even penetrate the tight security at the Palais to attach a giant banner of political message in October 2014.¹⁷

Currently the treaty bodies are undergoing a strengthening process.¹⁸ A capacity building programme is to be established to help those countries that struggle to write a quality report for committee members' review. The major problem has been that some countries attend the sessions without enough preparation. They often claim that relevant data are not available when requested by committee members. Then the answers from the states are hard to be followed and disappointing to the attending audience.

There is a high hope in this strengthening process. The HRDs on the ground who regularly submit to the committees often find the performances of their governments unsatisfactory as they are reluctant to admit their failure in respecting and implementing the treaties. Some states would regard HRDs as trouble-makers who are never satisfied, while the HRDs remain sceptical about the willingness of the states to present the facts. Some states are dismissive in acknowledging its citizens to participate in UN mechanisms to expose an undesirable image of the regimes. This thought might lead to intimidation or even serious reprisals.

Martin Ennals Awards winner Mutabar Tadjibayeva has been tortured by states authority of Uzbekistan because of her human rights campaigns. She was imprisoned in 2005-08. After her release she communicated with the UN experts at CAT. FIDH and REDRESS also filed a complaint on behalf of Tadjibayeva before the CCPR.¹⁹ Recently she has found herself no longer able to safely stay in her country. She has to be in exile in France and seeks asylum.

¹⁷ BBC, 22 October 2013.

¹⁸ OHCHR, 2014 p.3-6.

¹⁹ REDRESS, 2013.

2.1.4 UN Special Rapporteurs

When the HRC, UPR and the treaty-bodies attract civil society actors and human rights defenders to come to Geneva to attend the sessions, the Special Rapporteurs (SR) should be regarded as the outreach of OHCHR to meet the activists and victims on the ground. Before a country visit, a great deal of work has to be done for preparation. The Civil Society Section would compile a list of potential activists who are likely to have the knowledge to inform the SR. The respective country desk officers would contact the local NGOs and human rights defenders to arrange local meetings and site-visits, such as hospitals, detention centres, prisons, etc. In this scenario, OHCHR invites local experts to provide information and insights, or common people to tell their stories. These people, however, are likely to be under surveillance by state authorities when they are chose to be approached by the UN experts. Manfred Nowak, the SR on torture in 2004-2010, recalls his memory of meeting a local HRD during his mission to China in 2005,

"...The Special Rapporteur met with Gao Zhisheng on the evening of 20 November. Gao Zhisheng reported that on his way to the meeting he was followed by three cars that attempted to obstruct him from meeting the Special Rapporteur. Photographs provided by Gao Zhisheng indicate scratches on both sides of his car where the police cars collided with. His wife reported that during the visit of the Special Rapporteur there were five cars outside his house 24 hours a day and that three agents were following his child to school and back every day. During the meeting with the Special Rapporteur, he noted that he and his team were being heavily monitored by intelligence officers with portable listening devices and cameras from an adjacent table..."²⁰

²⁰ E/CN.4/2006/6/Add.6, 10 March 2006, p.52.

Gao was a then renowned lawyer who specialised in cases involving corruption, land seizures, police abuses and religious freedom. His legal practice was closed down by the government during the month of the SR's visit. The SR's report continues to state that Gao *"was beaten by plain-clothes officers after he tried to protest against aggressive surveillance and that, on the night of 17 January 2006, cars he believes belong to the security services attempted to run him down."*

While Gao's case is apparent to suggest that the reprisals happened on Gao after his contact with the SR, China has not been held accountable and responded to the SR's appeal since then. In fact, many of the cases of alleged reprisals are not dealt with and then gradually faded out from the UN documents.

Since 2010, the annual report of *Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights* records the alleged reprisals relating to individuals and organisations who have communicated with the UN mechanism in the past 12 months. The SG report presents the uppermost highlights of the seriousness of those cases because it is the SG's appeal to the involved states to investigate. Some cases mentioned in the report involve HRDs in contact with the visiting SRs and other UN experts in the human rights mechanisms. They were arrested, detained and tortured. Contacting the SR is deemed a punishable act in some countries.

2.1.5 The mandate of SRHRD

The mandate of the *Special Rapporteur on the situation of human rights defenders* (SRHRD) was created in 2000. The position was first held by the renowned judge Hina Jilani. Ms Margaret Sekaggya was elected in 2008. The SRHRD is to seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms. She should also establish cooperation and conduct dialogues with different parties on the promotion and effective implementation of the *Declaration on Human Rights*.²¹

Since 2009, the SRHRD can also conduct country visits and then a report would be presented at the HRC. Moreover, she has a mandate to receive individual communications concerning repression of HRDs from all over the world. After further fact-checking and confirmation, she would write to the states that are allegedly responsible for the violations and then expect a written reply. Her communications with states are recorded in her annual report. Since June 2006, the SRHRD have solely or jointly sent 2339 communications, more than any other mandate holders.²² Sekaggya is among the busiest SR in the Special Procedure. Since 2008, she has also requested to visit the following countries where HRDs are reported to be in precarious situation, but received no responses: Bahrain, Belarus, Burundi, Cambodia, China, Dominican Republic, Egypt, Fiji, Indonesia, Jamaica, Kyrgyzstan, Malawi, Malaysia, Mexico, Namibia, Nepal, Oman, Pakistan, Philippines, Russian Federation, Saudi Arabia, Senegal, Sri Lanka, Syrian, Thailand, UAE, Venezuela, Viet Nam and Zimbabwe.²³

²¹ OHCHR, 2008, p.121-122.

²² A/HRC/26/21, 2, June 2014, p.7.

²³ A/HRC/25/55, 23 December 2013, p.3.

2.2 States

2.2.1 Sectarianism in addressing the reprisals against human rights defenders in the voting process

While the safety of the human rights defenders has already been the subject of concern among the majority of the states attending in the HRC, some states remain indifferent in showing a stronger stance in addressing the issue. 2013 was a remarkable year when three separate UN resolutions concerning the work of human rights defenders were passed. They were A/HRC/RES/22/6 (*Protecting human rights defenders*), A/HRC/RES/24/24 (*Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*), and A/RES/68/181 (*Protecting women human rights defenders*). The first two resolutions were sponsored by more than 25 states (*as shown in their drafted versions*), which are mainly, but not exclusively, from two groups, GRULAC and WEOG. These two groups are generally regarded as active members in engaging in the UN human rights mechanisms, if compared with other states in other regions.²⁴

The voting result of the Resolution 24/24 should be noted as those who were against or abstaining cannot be considered to have strong commitment in tackling reprisals against human rights defenders. Resolution 24/24 was adopted at the HRC in Geneva in September 2013 by a recorded vote of 31 to 1, with 15 abstentions.²⁵ The only one rejection was from Gabon, which

²⁴ The higher activeness of WEOG and GRULAC states can be verified by an ongoing project called *Votes Count-Region*. For instance, as of July 2014, the abstention rates of voting at the HRC since its inception are 11.28% and 9.4% for WEOG and GRULAC states respectively, while the rates are 32.11% and 31.58% for African and Asian regions. Those who are more active in taking a stance and voting “Yes” would also be more active in giving support for key joint statements. See Human Rights Watch, *Votes Count-Region*.

²⁵ Against : Gabon, Abstaining: Angola, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Kuwait, Malaysia, Mauritania, Pakistan, Philippines, Qatar, Uganda, United Arab Emirates, Venezuela. As seen in A/HRC/24/2, 24 January 2014.

consequently attempted to overturn it by drafting a resolution (A/C.3/68/L.75) to be submitted to the UN General Assembly in New York in November. The paragraph 2 of the Gabonese-drafted resolution stated the General Assembly “decides to *defer consideration of and action on Human Rights Council resolution ... (Resolution 24/24) ..., in order to allow time for further consultations thereon*”.²⁶

The main purpose of that Gabonese draft was to delay or even halt the actualisation of one of the paragraphs in Resolution 24/24. This paragraph irritates some states because it requests the Secretary-General to designate “a *UN-wide senior focal point to engage with all stakeholders, in particular Member States, to promote the prevention of, protection against and accountability for reprisals and intimidation related to cooperation with the United Nations, its representatives and mechanisms*.”²⁷ Those states cannot envisage the establishment of such focal point.

Nevertheless, those states could not defer the consideration of a resolution simply because it was not desirable. There should be a legitimate challenge, such as its feasibility or administrative difficulty, in order to overturn it. Those states eventually chose an argument of budgetary constraint to challenge the HRC-adopted resolution: Creation of a UN-wide senior focal point may result in “*the unsolved funding shortages [that] would affect the implementation of the decisions and resolutions of the Council’s work*.”²⁸ Gabon’s argument was that limited UN budget may better be used to fund existing programmes instead of a new one.

²⁶ A/C.3/68/L.75, 13 November 2013.

²⁷ Para 7, A/HRC/RES/24/24, 9 October 2014.

²⁸ General Assembly, GA/11455, 13 November 2014.

To stop the Gabonese draft, Japan, Lithuania, FYR Macedonia and USA instantly submitted an amendment²⁹ to delete paragraph 2, i.e. to retain the original progress of designing the focal point. The amendment was rejected by vote 74-76-18, only defeated by 2 votes, with “No” votes from Bangladesh, China, Cuba, India, Pakistan, Russia, Uganda, and Venezuela. Subsequently the Gabonese draft was adopted by vote 87-66-22, with the “Yes” votes from those eight states.³⁰ They appear to be like-minded states that would, intentionally or unintentionally, show solidarity in some other occasions, which is to be discussed below in 2.2.4, 2.2.5 and 2.3.3.

The result of the vote at the GA effectively blocked the HRC-adopted resolution, although the technical term is “deferring consideration”. This is an extremely rare circumstance. Theoretically, since the HRC is a subsidiary organ of the GA, the latter possesses the power to revise and even overturn decisions by the former, but this has nearly never exercised. There was only one occasion when GA resolution A/RES/61/178 was adopted to render “deferred consideration”³¹ on HRC resolution A/HRC/RES1/2 in 2006. That deference lasted for nine months and several changes were made to adopt A/HRC/RES1/2 again.

Therefore, one can argue that some states are willing to break the norm of automatically adopting a HRC-adopted resolution at the GA if their national interests are at high stake. Designating a UN-wide focal point for reprisals are so undesirable that some states would rather refuse to show such commitment to protecting HRDs at the UN level. The majority of “Yes” voters for deferred consideration are Asian and African states, while the “No” voters are mainly WEOG and GRULAC states.

²⁹ A/C.3/68/L.77, 21 November 2013.

³⁰ United Nations, Final Status of Action on Draft Proposals, the Third Committee of UNGA of the 68th Session, 2014.

³¹ A/RES/61/178, paragraph 2, 6 March 2007.

2.2.2 Sectarianism in the negotiating process of drafting resolutions

Shortly after failing to secure the progress made by the HRC-adopted resolution 24/24, the European and pan-American states pushed forward another resolution A/RES/68/181 on protecting women human rights defenders. The negotiating was led by Norway. It was adopted without a vote in December because it had already watered down by conservative states in Asia and Africa, as well as the Holy See during the negotiation process. Any references to sexual and reproductive health, reproductive rights and matters related to sexuality were excluded in the final version. The defenders for those rights are not necessarily protected by this resolution if their work is not desired by those states. For instance, paragraphs 8 in the initial drafts reads,

*“Reiterates the right of anyone, individually and in association with others, to defend the human rights of women, and urges States to promote and protect the human rights of all women, including their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence, and to adopt and accelerate the implementation of laws, policies and programmes which protect and enable their enjoyment of all human rights and freedoms, including their reproductive rights, in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and their review outcomes;”*³²

The wordings “*right to have control over and decide freely and responsibly on matters related to their sexuality*” are deemed not acceptable by some states. They instead believed that “rights come with duties”. Therefore, that paragraph in the final version of the resolution reads,

³² A/C.3/68/L.64, Paras 8, 4 November 2013.

“Reiterates strongly the right of anyone, individually and in association with others, to defend the human rights of women in all their aspects, and stresses the important role of women human rights defenders in promoting and protecting human rights and fundamental freedoms, to which everyone is entitled without distinction of any kind, including in addressing all forms of human rights violations, combating impunity, fighting poverty and discrimination and promoting access to justice, democracy, the full participation of women in society, tolerance, human dignity and the right to development, while recalling that the exercise of these rights carries duties and responsibilities set out in the Declaration;”³³

This final version bears the concept of human rights and individual duties and responsibilities as ever promoted by a number of states. It seems that some states are not willing to accept that it is the state obligation to protect women rights defenders against risks of violence, so that should not appear in the written form in a resolution if it is avoidable. The following paragraph in the initial draft was completely excluded in the final version.

“Recalling that the primary responsibility for promoting and protecting human rights and fundamental freedoms rests with the State, and reaffirming that national legislation consistent with the Charter and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights defenders, including women human rights defenders, conduct their activities,”

³³ A/RES/68/181, 30 January 2014, Para 6.

2.2.3 Voting “Yes” on non-thematic resolutions as a sign of supporting the progress of HRC

During a HRC session, member states work on drafting resolutions, negotiating the content of the resolutions with other states, and then decide to adopt them with vote or without vote. Adoption without a vote means that the member states already have the consensus to agree on it. If a resolution is not unanimously agreed, it would be up for vote.

Up to June 2014, there have been 45 times of voting on adopting non-thematic resolutions at the HRC since 2012. 29 times of the ballot counting were in responses to human rights conditions of specific states. 16 times of voting were used to target the state of Israel. The results of the votes are shown in two separate tables below.

Table 1: Voting on non-thematic resolutions at the HRC since 2012 (Israel-unrelated)

Sessions and non-thematic resolutions since 2012	Yes	No	Abstention	Yes more than 50%
HRC 19/1 - Escalation of human rights violations in Syria	40	3	4	Y
HRC 19/12 - Human rights in Iran	22	5	20	N
HRC 19/2 - Reconciliation and accountability in Sri Lanka	24	15	8	Y
HRC 19/22 - Human rights in Syria	40	3	3	Y
HRC 19/39 - Libya amendment on arbitrary detention	11	16	19	N
HRC 19/39 - Libya amendment on migrants rights	15	17	14	N
HRC 19/39 - Libya amendment on UN reporting and monitoring	13	16	17	N
HRC 20/13 - Human rights in Belarus	22	5	20	N
HRC 20/22 - Human rights in Syria	41	3	3	Y
HRC 21/26 - Human rights in Syria	41	3	3	Y
HRC 22/1 - Reconciliation and accountability in Sri Lanka	25	13	8	Y
HRC 22/23 - Human rights in Iran	26	2	17	Y
HRC 22/24 - Human rights in Syria	41	1	5	Y

HRC 23/1 - The deterioration of human rights in Syria and killings in Al-Qusayr	36	1	8	Y
HRC 23/15 - Human rights in Belarus	26	3	18	Y
HRC 23/26 - Deterioration of human rights in Syria and access of the COI	37	1	9	Y
HRC 24/22 - Continuing deterioration of human rights in Syria	40	1	6	Y
HRC 25/1 - Reconciliation, accountability and human rights in Sri Lanka	23	12	12	Y
HRC 25/1 - Reconciliation, accountability and human rights in Sri Lanka - No action motion	16	25	6	N
HRC 25/1 - Reconciliation, accountability and human rights in Sri Lanka - Vote on para 10	23	14	10	Y
HRC 25/23 - Continuing deterioration of human rights in Syria	32	4	11	Y
HRC 25/24 - Human rights in Iran	21	9	16	N
HRC 25/25 - Human rights in the Democratic People's Republic of Korea	30	6	11	Y
HRC 26/23 - Continuing deterioration of human rights in Syria	32	5	9	Y
HRC 26/25 - Human rights in Belarus	24	7	16	Y
HRC 26/30 - Cooperation and assistance to Ukraine	23	4	19	Y
HRC Special Session 17 - Human rights in Syria	33	4	9	Y
HRC Special Session 18 - Human rights in Syria	37	4	6	Y
HRC Special Session 19 - Escalating human rights violations in Syria	41	3	2	Y

Table 2: 16 Voting on non-thematic resolutions at the HRC since 2012 (Israel related)

Voting on Palestine and other occupied Arab territories resolutions since 2012	Yes	No	Abstention	Yes more than 50%
HRC 19/15 - Right of Palestinians to self-determination	46	1	0	Y
HRC 19/16 - Human rights in the OPT	44	1	2	Y
HRC 19/17 - Human rights in occupied Syrian Golan	33	1	13	Y
HRC 19/17 - Israeli Settlements	36	1	10	Y
HRC 19/18 - Follow-up fact-finding mission Gaza Conflict	29	1	17	Y
HRC 22/17 - Human rights in occupied Syrian Golan	29	1	17	Y
HRC 22/25 - Follow-up fact-finding mission Gaza Conflict	43	1	3	Y
HRC 22/26 - Israeli Settlements	44	1	2	Y
HRC 22/27 - Right of Palestinians to self-determination	46	1	0	Y
HRC 22/28 - Human rights in the OPT	46	1	0	Y
HRC 22/29 - Follow-up fact-finding mission on Israeli settlements	45	1	0	Y
HRC 25/27 - Right of Palestinians to self-determination	46	1	0	Y
HRC 25/28 - Israeli Settlements	46	1	0	Y
HRC 25/29 - Human rights in the OPT	46	1	0	Y
HRC 25/30 - Follow-up fact-finding mission Gaza conflict	46	1	0	Y
HRC 25/31 - Human rights in occupied Syrian Golan	33	1	13	Y

Both Table 1 and Table 2 show that the majority of the resolutions were adopted by more than 50% of the “Yes” vote. This is reasonable because normally the drafting process of a non-thematic resolution is diplomatic and meticulous. It is drafted to be adopted and would be edited a lot of times to satisfy the expectations and demands from member states of different political stances and ideologies. This must be the major difference from the voting at the GA in New York where all the 193 member states are entitled to vote and narrow passes or rejections are more likely to happen. Before the voting at the HRC, there should already be a common ground accepted by

the majority of the 47 member states. Therefore, normally voting “Yes” for non-thematic resolutions can be interpreted as a friendly behaviour for the support of the progress of the HRC to address the occurrences of massive human rights violations in countries in conflicts.³⁴

It should be noted that there is only one state that always vote against any resolution targeting the state of Israel. That state is the United States of America. Apart from this political stance, the USA voted “Yes” in 25 out of 29 Israel-disregarding resolutions.

The voting on thematic resolutions is not to be analysed and used in this paper to argue that a “Yes” vote is a supportive gesture for the HRC, since the voting in thematic resolutions is politically motivated and ideologically divisive. Some thematic resolutions do not contribute to strengthening UN human rights mechanisms and should be identified as backward steps for protecting human rights at the HRC, such as A/HRC/RES/19/32 (Human rights and unilateral coercive measures) and A/HRC/RES/21/3 (Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind: best practices). In addition, some thematic resolutions attempt to demand a “democratic and equitable international order”, or “international solidarity” as willed by the African and Asian countries. The WEOG countries continuously reject all those resolutions. Therefore, a simple number of total “Yes” votes in thematic resolutions cannot be used to claim that it is friendly to the progress of the HRC.

³⁴ Certainly there are some rare occasions when voting YES would not make any progress, such as “HRC 25/1 - Reconciliation, accountability and human rights in Sri Lanka - No action motion”.

2.2.4 Frequent “No” voters and abstainers more likely to show less effort in protecting human rights defenders

It is assumed that the number of cases, which concerns the situation of HRDs in a state, received and reported by the UN experts would reveal how the HRDs in that particular state are treated. The higher the number, the more serious the situation of HRDs would be. There are two annual UN reports that summarise all the cases received in the UN human rights mechanisms: the SRHRD report to the HRC and the SG report to the HRC. The total number of cases from those two reports concerning a particular state can more or less reflect how serious the situation has been in the past 12 months.

Table 3 below shows the voting behaviours of HRC member states in 2012-2014 and the frequency of their names being mentioned in the reports by the SRHRD as well as the SG. Three other numbers are included in the table for comparison.

(a) The number of individual communications received by the SRHRD in 2012-2014³⁵

(b) The number of cases of reprisals for cooperation with the UN, its representatives and mechanisms in the field of human rights as summarised by the SG in 2012-2014³⁶

(a)+(b) The total number of cases targeting human rights defenders recorded by the UN in 2012-2014

³⁵ A/HRC/22/47/Add.4 and A/HRC/25/55/Add.3.

³⁶ A/HRC/21/18 and A/HRC/24/29.

Table 3: Comparing the voting behaviour of HRC member states concerning non-thematic resolutions and the cases of violation against HRDs in those states

HRC member states in 2012-2014	Yes	No	Abstention	Yes (%)	No (%)	Abstention (%)	(a)	(b)	(a)+(b)
Algeria	6	3	5	42.86	21.43	35.71	6	2	8
Angola	19	0	12	61.29	0	38.71	2	0	2
Argentina	25	1	1	92.59	3.704	3.7	1	0	1
Austria	37	1	7	82.22	2.222	15.56	0	0	0
Bangladesh	10	2	6	55.56	11.11	33.33	7	0	7
Belgium	13	0	5	72.22	0	27.78	0	0	0
Benin	39	2	2	90.7	4.651	4.65	0	0	0
Botswana	41	1	3	91.11	2.222	6.67	0	0	0
Brazil	25	1	1	92.59	3.704	3.7	10	0	10
Burkina Faso	32	0	13	71.11	0	28.89	0	0	0
Cameroon	7	0	11	38.89	0	61.11	4	0	4
Chile	44	1	0	97.78	2.222	0	4	0	4
China	14	18	0	43.75	56.25	0	16	1	17
Congo	32	4	9	71.11	8.889	20	0	0	0
Costa Rica	42	12	2	75	21.43	3.57	1	0	1
Cote d'Ivoire	20	1	6	74.07	3.704	22.22	0	0	0
Cuba	11	18	3	34.37	56.25	9.38	10	0	10
Czech Republic	36	4	5	80	8.889	11.11	0	0	0
Djibouti	11	3	4	61.11	16.67	22.22	4	0	4
Ecuador	16	5	10	51.61	16.13	32.26	6	0	6
Estonia	24	1	2	88.89	3.704	7.41	0	0	0
Ethiopia	10	0	16	38.46	0	61.54	6	0	6
France	12	1	1	85.71	7.143	7.14	1	0	1
Gabon	18	0	8	69.23	0	30.77	0	0	0
Germany	24	1	2	88.89	3.704	7.41	0	0	0
Guatemala	26	0	5	83.87	0	16.13	17	0	17
Hungary	12	3	3	66.67	16.67	16.67	0	0	0
India	20	5	20	44.44	11.11	44.44	17	0	17

Indonesia	29	5	11	64.44	11.11	24.44	1	0	1
Ireland	24	1	2	88.89	3.704	7.41	0	0	0
Italy	36	4	5	80	8.889	11.11	0	0	0
Japan	21	1	5	77.78	3.704	18.52	0	0	0
Jordan	13	3	2	72.22	16.67	11.11	0	0	0
Kazakhstan	12	3	10	48	12	40	4	2	6
Kenya	11	2	12	44	8	48	1	0	1
Kuwait	29	5	11	64.44	11.11	24.44	1	0	1
Kyrgyzstan	13	0	5	72.22	0	27.78	2	0	2
Libya	12	3	2	70.59	17.65	11.76	5	0	5
Malaysia	18	3	7	64.29	10.71	25	9	0	9
Maldives	37	7	0	84.09	15.91	0	1	1	2
Mauritania	22	5	4	70.97	16.13	12.9	2	0	2
Mauritius	15	0	3	83.33	0	16.67	0	0	0
Mexico	29	1	3	87.88	3.03	9.09	29	0	29
Moldova	22	0	9	70.97	0	29.03	0	0	0
Montenegro	24	1	2	88.89	3.704	7.41	0	0	0
Morocco	9	0	4	69.23	0	30.77	8	1	9
Namibia	6	0	8	42.86	0	57.14	0	0	0
Nigeria	13	0	5	72.22	0	27.78	1	0	1
Norway	13	0	5	72.22	0	27.78	0	0	0
Pakistan	15	6	6	55.56	22.22	22.22	11	0	11
Peru	43	1	1	95.56	2.222	2.22	3	0	3
Philippines	19	3	21	44.19	6.977	48.84	9	1	10
Poland	24	3	4	77.42	9.677	12.9	0	0	0
Qatar	22	6	2	73.33	20	6.67	0	0	0
Romania	36	4	5	80	8.889	11.11	0	0	0
Russia	14	18	0	43.75	56.25	0	15	3	18
Saudi Arabia	20	6	6	62.5	18.75	18.75	14	4	18
Senegal	13	0	5	72.22	0	27.78	2	0	2
Sierra Leone	24	1	2	88.89	3.704	7.41	1	0	1
South Africa	5	0	9	35.71	0	64.29	2	0	2

South Korea	24	1	2	88.89	3.704	7.41	2	0	2
Spain	12	0	6	66.67	0	33.33	1	0	1
Switzerland	13	0	5	72.22	0	27.78	1	0	1
Thailand	22	2	7	70.97	6.452	22.58	5	0	5
FYR Macedonia	12	1	1	85.71	7.143	7.14	2	0	2
UAE	19	3	5	70.37	11.11	18.52	3	1	4
Uganda	15	2	14	48.39	6.452	45.16	8	0	8
United Kingdom	12	1	1	85.71	7.143	7.14	0	0	0
United States	25	20	0	55.56	44.44*	0	1	0	1
Uruguay	15	0	3	83.33	0	16.67	0	0	0
Venezuela	12	0	15	44.44	0	55.56	8	0	8
Viet Nam	6	5	3	42.86	35.71	21.43	8	0	8

Those who vote against the majority agreement only once in a while can be understood as merely holding a strong stance in occasional issues. But the voting record of China, Cuba, Russia reflect their hostility towards the HRC's engagement in many situations. They appear to be frequent "No" voters with more than 50% of the total votes are "No".

And those who often abstain to vote would send a message to other states that they are more willing to be a bystander in many situations. The habit of abstaining can also be seen in almost all African countries and some Asian countries (Bangladesh, India and the Philippines). This is the sign of the legacy of the Non-Aligned Movement and strong regionalism. This result matches Freedman's observation when she reviews the performance of the HRC since its inception. She suggests that even 30 years after the Cold War, groups and alliances are still obstructing the UN's work.³⁷ She reckons the

³⁷ Freedman, 2013, p.122.

“Western regionalism” is significant in advancing the UN mechanisms. But the North-South divide is still unresolved when the developing countries are not willing to accept the standards and visions in human rights development shared by the developed countries.

Moreover, one can argue that there is a possible correlation between the low willingness to vote “Yes” and their poor efforts in protecting human rights defenders against reprisals in their territories. Algeria, Bangladesh, China, Cuba, Ecuador, Ethiopia, India, Kazakhstan, Pakistan, the Philippines, Russia, Uganda, Venezuela and Vietnam are those former or current HRC member states which have less than 60% of Yes in their voting record. Coincidentally, they have been involved in more than five cases regarding reprisals in the past two years, as mentioned by the reports of the SRHRD and the SG. Their tenures as members at the HRC have also been disappointing, since they did not fulfil the expectation of improving their own human rights record through their membership. .

Four African states, Cameroon, Kenya, Namibia and South Africa, also show less than 60% of yes-voting. Although they are not significantly mentioned by the SRHRD and the SG, they engage in the politics of non-involvement with abstentions in almost half of their total votes. This would not be an encouraging prospect for the HRC.

2.2.5 Poor performing states show solidarity against their active counterparts

As mentioned before in 2.2.1, there are some states that have relentlessly blocked the creating of a UN-wide senior focal point to protect human rights defender from reprisals. Unsurprisingly, eight of those “blocking” states, Bangladesh, China, Cuba, India, Pakistan, Russia, Uganda, and Venezuela, also consistently vote “No” or abstain at the HRC, as discussed in 2.2.4. Their like-mindedness ever extended to draft a letter to the president of the HRC to request for a change of the rules of allowing NGOs to participate in council sessions. The letter was further signed by five other states of similar aspiration of hampering human rights: Belarus, DPRK, Iran, Nicaragua, Sri Lanka.³⁸ The letter serves as a complain of the current practice of allowing accredited NGOs to bring in human rights defenders from indictable states to speak at the HRC.

The letter claims that “the periodicity of action by some NGOs in the Council as well as side events, is aimed at unduly influencing action against certain States through a politicised process”. The signatories blame the NGOs that “take advantage” of the ECOSOC consultative statues by bringing in people with “questionable credentials”. In order to “increase the transparency”, they demand a full list of accreditations of NGOs to make available prior to a Council session. In short, they want to know the identities of the “unwelcome guests” at the HRC if the secretariat would not interfere in the NGOs’ selections of their delegates. This letter is an attempt to request for a change of rules of NGO participation in order to identify the dissident HRDs if they are not discouraged to attend the HRC by other means.

³⁸ OHCHR, Letter to Ambassador Henczel, president of the HRC, dated 31 July 2013.

2.3 NGO

“At the international level, the credibility of the UN Treaty Bodies, Special Procedures, Universal Periodic Review and Human Rights Council is underpinned by the participation of civil society actors through their contributions of expertise, awareness-raising, monitoring and reporting, development of new standards and mobilization of public support. At the local level, civil society organizations and actors have advantages in being able to reach specific groups, engage diverse stakeholders, and promote broad consultation on human rights issues that most affect their communities.

Working with civil society – be it in Headquarters or in the field – is a priority for OHCHR. It is through such partnerships that OHCHR is able to more effectively work towards the promotion and protection of human rights for all, throughout the world.” - Navi Pillay³⁹

The above excerpt of a speech was delivered by the outgoing UN High Commissioner of Human Rights. It is a concise illustration of the symbiosis of the Geneva-based NGOs and the OHCHR. Both parties cannot prevail and sustain without the support from each other. The OHCHR relies on the outreach of the NGOs to bring human rights defenders to engage in the UN system, whilst the NGOs enjoy the priority of being consulted and informed by the UN bodies and experts to consolidate their status appealing enough to their donors.

³⁹ OHCHR, 6 Dec 2012.

2.3.1 NGOs making norms

OHCHR has a high degree of interaction and work partnership with a number of NGOs that are deemed friendly and trustworthy. This can be observed through identifying the consistent side event organisers in the past HRC sessions.⁴⁰ The regular organisers are Amnesty International (AI), Human Rights Watch (HRW), FIDH, ISHR, CIVICUS, ILGA, Friedrich Ebert Stiftung, Article 19, Plan International, Franciscans International, etc. These organisations have been participating in the UN mechanisms for years and the faces of the staff members are familiar to OHCHR. They are often the first to be notified and invited to have sneak preview if there is a new OHCHR guide or publication.

One of the highlights of the year in the circle of human rights advocacy is the presentation of the Martin Ennals Award. The award is organised by ten prominent NGOs, including AI, HRW, FIDH and ISHR. The winners are often brave unheralded individuals who are not well known internationally. OHCHR officials are regular presenters of the top prize to bestow an international recognition. The shortlisted candidates would be invited by the NGOs to Geneva to exchange ideas, and then a reception by OHCHR follows. In fact, the work relationship between the Geneva-based NGOs and OHCHR is more than bridging the human rights defenders on the ground and the UN.

NGOs form a group of stiff voices when there is a need to join forces. And some permanent missions in Geneva, usually from the WEOG group, would seek opinions from NGOs and work out possible collaborations. For example, after the blocking of designating a UN-wide senior focal point to address

⁴⁰ The time and the theme of the side events can be seen at the respective website of the session. The page of HRC23 shows the timetable of all the events during the 23th session.

reprisals according to the HRC-adopted resolution 24/24, twelve NGOs drafted a letter to the Permanent Representatives to the UN in Geneva to revamp the resolution passed in Geneva in September 2013 and then encounter the blockage passed in New York in December 2013.⁴¹ The letter directly calls the EU partners and supportive state to take the lead of asking the SG to designate the UN-wide focal point on reprisals again.

The concept of holding side events was originally created to cater for the NGOs' need of extra time for presenting information to the HRC participants outside of the official programmes. The side events gradually appear to be indispensable to a HRC session. In fact, Permanent Missions constantly sponsor the side events at the HRC. For example, the Permanent Mission of Austria supporting the Reporters Sans Frontieres for their side event on protecting the journalists⁴²; the Permanent Mission of Italy supporting the International Detention Coalition for its side event on ending child immigration detention.⁴³; the Permanent Mission of Poland and Ireland unusually organising a side event on human rights of another sovereign state, North Korea, in collaboration with HRW.⁴⁴

⁴¹ ISHR, 22 May 2014.

⁴² Reporters sans Frontieres, 6 June 2014.

⁴³ International Detention Coalition, 19 June 2014.

⁴⁴ The Permanent Mission of Poland to the UN in Geneva, 31 January 2014.

2.3.2 NGOs' challenges to the norms

Many NGOs become visible to the HRC attendees when they are active in organising side events addressing the latest concerns of international affairs during a HRC session. The established NGOs are able to secure famous speakers to sit on their panels. It is common for the NGOs to bring in human rights activists from all corners of the world to share their stories. Some of them may be listed as unwelcome persons by their respective governments. They are still accredited and able to sit in the conference room. Because of the rule of accreditation set out by the secretariat of the HRC, theoretically anyone in the world can attend a session if she has an accreditation letter signed by an organisation with an ECOSOC consultative status, provided that she is able to afford the cost of transport to Geneva.

Several NGOs are famous for supporting local activists to observe the international conferences. ISHR is the leading NGO that has provided short-term training programmes for those aspire to come to Geneva on behalf of their communities and speak to the global audience, while the Geneva office of CIVICUS has a global network of grassroots NGOs that would regularly send colleagues from obscure communities to the capital of human rights in the world.

Coming to Geneva can be a once-a-lifetime opportunity for activists from Asian or African countries, especially for those who would risk their freedom of travel. They may either be banned from travel abroad or forced into exile once leaving the homeland. A Chinese activist Cao Shunli was one of them. On 14 September 2013, she was detained at the Beijing airport when she planned to attend the training by ISHR and stayed in Geneva to observe the UPR of China in October. ISHR lost contact with her for a month until she

was confirmed being detained in October. Five months after the detention, Cao was hospitalised and found dead because of rapid deterioration of her health.⁴⁵ Her death caused an outrageous reaction in the NGOs community against the Chinese government.

Cao was a graduate of the law school of Peking University. She had requested to participate in drafting the first UPR national report since 2009. She was denied again to participate in drafting the second UPR national report so that she determined to go to Geneva to attend the working group. In July 2013, a letter signed by 6 UN Special Rapporteurs was sent to China to request for explanations for detaining Cao because of her social activism.⁴⁶ The Chinese government clearly knew that Cao's intention in participating in UN human rights mechanisms had already been acknowledged by OHCHR.

As Michael Ineichen, the programme manager of IHSR said at the HRC on 20 March 2014, *"She died for her attempt to cooperate with the UPR, for her unwavering dedication to the human rights struggle in her country. She paid with her life for her conviction that the United Nations' top human rights body would offer civil society some of the space that human rights defenders are denied at home in China."* After the speech, Ineichen used the remaining 30 seconds for his oral statement to observe a moment of silence which was joined by the whole community of NGOs at the back of the conference room. A Chinese diplomat instantly interrupted the staged silence by constantly speaking to the president of the HRC. That was a rare dramatic moment at

⁴⁵ Human Rights Watch, 14 March 2014.

⁴⁶ OHCHR, Communication with China, 17 July 2013.

the Council when a permanent mission confronted a group of delegates of NGOs.⁴⁷

Some NGOs fear no rebuttal or blacklisting from states delegates by inviting famous dissidents to speak at side events. During the 24th session of HRC, Rabiya Kadeer was invited by the *World Association for the School as an Instrument of Peace* to speak at a side event. Kadeer is described as a separatist from the Xinjiang region in China and has created some controversies in the past few years. Kadeer attended the event in a style of a human rights defender and spoke of her campaigns for ethnic equality in China. A Chinese delegate did not waste his opportunity to challenge her speech. Because of that drama the side event attracted more than 150 people to attend.

In the same period, some GONGO from Sudan (Government-operated or Government-owned NGO) with ECOSOC consultative status displayed tens of big photographs at the side event room to promote the positive image of the country. The side event room was never heard of being used in this pattern. And there are also some side events organised by GONGO that aim to criticising American foreign policies, unfair sanctions, or Western hypocrisy, etc. After all, the opportunity of organising side events by NGOs is equal. There are always some organisations that do not work with HRDs but persuade other participants to discuss political issues at the HRC.

⁴⁷ ISHR, 21 March 2014.

2.3.3 The legitimacy of NGOs

The environment in Geneva for NGOs to operate renders an enjoyment of a great deal of freedom and flexibility in participating in the UN human rights mechanisms. Some NGOs have been rooted deeply in the habitat, such as the Geneva-based ISHR that celebrates its 30th anniversary in 2014. Besides making norms and becoming part of the norms, these NGOs also set agenda and develop policies. Some of them would claim to have led certain campaigns, or start a debate, as an opinion leader of the theme. There are nonetheless some critical views about the self-fulfilling prophecy of the existence of NGOs, when nobody challenges the legitimacy of their so-called “representation”. Oberleitner expresses his doubts by stating that the claim to represent “the victims”, “the universal values”, “the conscience”, etc. is what gives NGOs appeal, strength and authority.⁴⁸ The NGOs have appeared to be the only reliable agent for some people who wish to engage in international human rights mechanisms. The fact is that those NGOs with ECOSOC consultative status are given such institutional privilege. Other new and independent NGOs have to work hard to fulfil the criteria to achieve such status.

Now it is more difficult for new organisations to achieve that status than ever. On 23 April 2014, a new group of 19 states were elected in the Committee on Non-governmental Organizations at the ECOSOC.⁴⁹ This committee is responsible for regulating civil society access to UN mechanisms with a power to control the awarding of the consultative status. The new combination of the member states in the committee looks worrying to human

⁴⁸ Oberleitner, 2007, p.173

⁴⁹ ECOSOC/6610, 23 April 2014

rights experts. The majority of the elected members have been hostile to the civil society organisations in recent years. And eight of them jointly drafted the letter to the President of the HRC as mentioned before. They appear to continue their solidarity to control the functioning of this NGO committee at the ECOSOC.

The composition of the ECOSOC NGO committee (2015-2018)

Africa: Burundi, Sudan, Mauritania, South Africa and Guinea

Asia: China, India, Iran, Pakistan

Eastern Europe: Russia, Azerbaijan

Latin America and Caribbean: Cuba, Nicaragua, Uruguay, Venezuela

Western Europe and Others: Greece, Israel, Turkey, United States

New NGOs have to accept the fact that they have to rely on the existing network in Geneva to get their messages across. For instance, there is an organisation called VOICE formed by overseas Vietnamese expatriates to campaign for improving the human rights situation in their home country. A big group of delegates arrived in Geneva in January before the UPR of Vietnam.⁵⁰ They announced to meet with the regular NGOs AI, HRW, ISHR. Later in January VOICE organised a parallel event jointly-sponsored by AI, HRW, ISHR and Civicus. It shows that a new arrival in Geneva would find

⁵⁰ Vietnam Right Now, 14 Jan 2014.

advocacy much easier with the help of those four organisations after all. These four organisations then co-sponsored a parallel event before the second UPR of Vietnam and used their networks to attract audience from the diplomatic circle and the NGO community in Geneva.

Nowak's discussion in the role of NGOs can justify why those Geneva-based NGOs have the aura of campaigning on behalf of those HRDs who are unable to come to Geneva. He suggests that human rights NGOs have seven main activities with an aim of "mobilising the shame"⁵¹ – a. Shaming whoever have committed the violations through fact-finding; b. distribution of reliable information; c. lobbying with different parties; d. promotion of human rights through conferences and publications to raise the awareness; e. participating in drafting new international instruments; f. assistance to victims of human rights violation; and g. active contribution to the activities with Inter-governmental organisations (CoE, EU, OSCE, OAS, AU, etc.).

Because of those international NGOs' power in mobilising their members from all over the world to shame human rights violation, they are hardly friends to those states that would attempt by all means to undermine the work of NGOs. Marcinkutė argues that human rights NGOs are posing as a threat to state sovereignty, especially when they working in the states with weak infrastructure of civil society. In order to improve human rights protection of a place, the NGOs set standards to ask underperforming local governments to follow. And they play the watchdog to criticise the malpractices and violations. They may provide assistances and welfare to the victims and act as a parallel fact-finding agent alongside the state authorities. The state would hardly be

⁵¹ Nowak (2003) p.258.

satisfied in allowing the NGOs revealing the state's failure to local citizens and international community.⁵²

NGOs often enter in the state with the international standards and tools such as indexes and indicators. They would report to the UN mechanisms. Experts in those mechanisms, such as the committee members of the treaty bodies, often deem the findings by the established NGOs reliable. Merry reckons that there are opposing goals of states and UN treaties bodies and this often leads to distrust. She illustrates the scenario as follows,

*“In order to hold countries accountable, the treaty body needs reliable and extensive information. To avoid scrutiny and criticism, a country needs to withhold damaging information. Thus, acquiring accurate and relevant information is at the heart of the struggle over human rights monitoring. The treaty body cannot compel countries to provide this information, but it can undermine a country's reputation as a human rights-respecting nation.”*⁵³

Very often human rights defenders demand to know the truth. But in reality the state has lots of information to withhold. Therefore, a common ending of a hearing at a treaty-based body session would be requests for further information. And the respondent state would probably claim that the requested information is not available. Merry believes that a space for NGOs should be provided to challenge their governments and exert pressure in the setting of hearing at a review session of a treaty body, if it is to be enhanced.

Enhancing the treaty bodies by introducing the critical voice of NGOs during reviews may not happen soon. But some states already realise the

⁵² Marcinkuté (2011), p.63.

⁵³ Merry p.146.

importance of creating pro-government allies in the civil society, once they understand the challenging power of a strong civil society. When they have the financial and technological resources and advantages, they would know how to allocate them to those who are in favour of their governance. Under this circumstance, there are many other NGOs that exist with a complex agenda, such as the GONGO. The GONGOs are funded by their respective governments to promote a positive image of the states. An example is that 579 civil society organisations in Venezuela submitted their reports to overwhelmingly support the government's policies before the UPR working group in October 2011.⁵⁴ While in the same period, the number of submissions from the civil society organisations in the neighbouring Brazil and Colombia are 47 and 22 respectively.

It would be difficult to see the progress of human rights improvement if the state and the NGOs are in strain relations. A state with strong tradition of civil society would appreciate the criticism from the watchdog. For instance, the organisation "Liberty" is regarded as a leader of campaigning for civil liberty in the UK. The director and the staff members are highly respected experts while they are among the most critical yet legitimate voices against the foreign and home polices in the country. But HRDs in many developing countries can not enjoy the same degree of freedom in speaking the truths as their European counterparts. It is the fear of consequences that hesitates people to speak. If they still choose to cooperate in the UN human rights mechanisms in spite of reprisals, the situation must already be appalling enough for them to accept. So risking their personal safety no longer matters.

⁵⁴ A/HRC/WG.6/12/VEN/3, 22 July 2011.

2.3.4 NGOs taking up the duties of protection

FIDH and CIVICUS are two INGOs that bring in HRDs to participate in every session of the HRC. The Geneva offices of both organisations support their respective networks of NGO members in all over the world by accrediting their delegates to come to Geneva to attend the HRC, the UPR or a treaty body session. OHCHR would not be involved in the safety concern, but the individual participants have to evaluate their own risks.

Bloem reckons that some HRDs are keen on coming to Geneva amid an uncertain risk ahead. CIVICUS would evaluate the risk and choose a suitable strategy to present them. She thinks that once the HRDs arrive in Geneva, their presence would be known by their government easily. They can choose to have more or less meetings with the permanent missions, the Geneva-based NGOs and other activists, according to their plans and courage. And CIVICUS would mobilise the resources to support and protect their itinerary.

Agostini states that FIDH has to perform an internal evaluation before deciding to accredit delegates. The delegates who intend to go to Geneva would be asked if they feel safe to travel abroad. An additional evaluation would be conducted to confirm if the local organisations of the delegates reckon that those individuals can be safe in Geneva. He knows about some occasions when the FIDH-accredited people are subject to be spied on. If they are already targeted in their home countries, their activities in Geneva would inevitably be tracked by their governments. FIDH would constantly speak to OHCHR and the HRC President if surveillance is detected. FIDH staff would also contact with HRDs in encrypted communications if the message receivers have the capacity to use technology. But many HRDs do not have the Information literacy to enhance online security. The states remain better equipped; therefore, HRDs have to work on upgrading their knowledge and skills in self protection.

2.4 Human Rights Defenders at risk in homeland and abroad

As mentioned above, OSCE suggests that the major forms of reprisals can fall into one of the four categories:

- a. Threats to, and attacks on, the physical integrity of defenders
- b. Right to liberty and freedom of movement of defenders
- c. Freedom of association of defenders
- d. Freedom of assembly of defenders

The above challenges are mostly actions of reprisals perpetrated by the authorities, its subordinates or non-state actors. Some states have the overwhelming administrative power to manipulate the policing system, the judicial system and the media. The previous mentioned deceased Chinese activist Cao Shunli could easily fall into all four categories. She was an ex-civil servant before being sacked because of her activism. She campaigned for participating in the UPR national report writing since 2009. Her protests were dispersed violently and she was ever sent to re-education through labour. Then she was arrested and detained arbitrary, and not allowed to leave for Geneva to attend the HRC and UPR sessions in autumn 2014. Her health deteriorated and eventually she died in detention. No report in the Chinese media was allowed afterwards. Ms Cao died for wanting to participate in the UN human rights mechanisms.

The Cao Shuli's case is expected to be listed in the 2014 SG report to the HRC on reprisals. There are other notable cases of reprisals that happened in Geneva as listed in the previous SG reports. The Bahraini's case in 2012 is a salient example.

During the 21st session of the HRC, a group of Bahraini human rights activists travelled to Geneva to prepare to attend the following UPR working group meeting for Bahrain. Their presence in Geneva and at the council was recorded and their pictures and names appeared in the press back in their home country. A smear campaign started as they were accused of “discrediting Bahrain in Geneva”. Shortly after one of the men arrived back to home town he was arrested, detained and charged with “rioting and participating in an illegal assembly”.⁵⁵

Soon after his arrest, the SRHRD wrote a letter to the PM of Bahrain to request for explanation. From the description in the written communication, it is understood that the man received a death threat through phone calls when he was in Geneva. He was warned not to smear his country at the council. Later his presence at the council was photographed by Bahraini delegation in the conference room. He gave an oral intervention about intimidation and reprisals against human rights defenders. Later his photographs were circulated in the social media and then in the press.⁵⁶

Bloem has a vivid memory about how the Bahraini group of activists was treated. She remembers a nervous tension in Room XX. It reached a point that the then President of the HRC Laura Dupuy Lasserre had to read the seven name of all the Bahraini activists one by one to announce that she knew these individuals were in the council meeting. The words spoken by the HRC President instantly formed a shield for those Bahraini from being subject of attacks in Geneva.

⁵⁵ A/HRC/24/29, 31 July 2013.

⁵⁶ OHRHC, 18 October 2012.

During the 24th session of the HRC, the researcher attended a side event on human rights in Bahrain organised by *Khiam Rehabilitation Center for Victims of Torture*. A woman and a man sat near the panel beside me and took out their notebooks. Once the discussion began the man used his smartphone to record the speeches of the panellists. Shortly after, the woman used her smartphone to take several photographs of all the speakers. The host was alerted and called the security guards to intervene. The security guards had no power to take them out of the room and the woman who was clearly more high-ranked claimed to have the right to take pictures in the UN building. The host warned her that if there was another attempt to take pictures he would force them to leave.

After about 10 minutes a speaker displayed a PowerPoint presentation and the women again took out her smartphone. An OHCHR staff member was instantly called in to intervene. She requested the two people deleted all the recorded sound and photos in front of her immediately. Both of them refused and quarrelled with the staff. The panellists all looked angry but remain patient to allow the staff to intervene. After another 5 minutes they both deleted all the recorded sound and pictures. They remained seated and stayed for another half an hour to wait for the Q&A session. She challenged the speakers by showing her own pictures of development programme in Bahrain that was said to be conducted by her organisation.

The tough stance demonstrated by the OHCHR staff effectively prevented a potential smear campaign against the event speakers because the pictures taken were likely to be sent back to Bahrain. After the side event, the staff was briefly asked about the safety measure taken to protect participants at the HRC. She commented that OHCHR could only guarantee their safety when they were in the UN buildings. Participants should have had their own

safety measures in the City of Geneva. But the office could provide a list of emergency contacts and be the contact point if they did not feel safe. It was the responsibility of the individuals to promptly report their concerns to the office. She thought the current practice in dealing with safety in Geneva was rather ad hoc. She would personally like to see a task force to follow-up after an allegation of safety concern was received, but no such task force ever existed, although staff members at the secretariat knew whom to contact if an allegation was heard. She ended the conversation by saying that nobody should have lost their lives because of their activities in Geneva and OHCHR as the secretariat of the HRC should consider strengthening the protection for attendees.

3 Discussion

3.1 Strengthening the existing international human rights institutions

3.1.1 Calling for improving the response rates of communications sent through the Special Procedure

The SRHRD Margaret Sekaggya steps down from the position after 6 years in mid-2014. In her final report to the HRC, she sounds frustrated when she speaks of her visit requests being ignored by many states. Some states do not respect her mandates by unilaterally changing her meeting time with local human right defenders during her visit, or arresting her interviewees after her visit. She has sent more than 1500 communications in the course of 5 years and received replies to half of her letters. Only 40 per cent of the replies have substantively addressed the issues raised in her letters. She feels regrets for the low response rate.

The recent *Communication report of Special Procedure*⁵⁷ shows that the response rates for other mandate holders are also disappointing. The top five numbers of communications sent by SRs and their response rates since June 2006 are Human Rights Defenders (2339/55%), Expression (2080/51%), Torture (1682/53%), Arbitrary Detention (1068/54%), Summary Executions (969/47%). This can imply that some states might actually be habitually unresponsive if a large number of communications are constantly sent to particular regions or countries. Calling for states to respect the Special Procedures must be essential to encourage the states to find the truths, at least their version of truths. A higher response rate should restore some confidence of the individuals who have a hope in getting an explanation through OHCHR.

⁵⁷ A/HRC/26/21, 2 June 2014.

3.1.2 Enhancing the duties of committee members of treaty bodies to tackle reprisals

There has been a long discussion on reforming the treaty bodies for some years. The focuses have been streamlining the reporting procedures and strengthening the capacity of states to implement the treaties. But the “fear factor” of reprisals remains and victims of violation are not encouraged to report to the committees.

Lynch and Collister recommend that all the treaty bodies can establish a rapporteur, a focal point or a working group on reprisals. Committee members are then assigned to assume the duties.⁵⁸ This is an innovative idea because a committee is a group of experts who can share their duties. If a reprisal is reported, the committee can launch its own fact-checking or investigation to tackle the alleged reprisal efficiently. Up to July 2014, many treaty bodies have designed their own rapporteur on reprisals, except CPRD, CED and OPCAT. All treaty bodies should also specify some common procedures to tackle reprisals if an allegation is received. The information of the procedures should be publicised to enhance the confidence of HRDs to cooperate with the treaty bodies. While the role of the rapporteur within a committee is not entirely clear, this person can even be mandated to receive and follow up individual communications with the complainants. Further clarification can be made to distinguish the difference between the rapporteur in a treaty body and a similar expert in the Special Procedure. But a state presumably has a duty to reply to a communication from a committee of a treaty body because it has signed and ratified the treaty, if the state is possibly used to ignoring the letters sent through the Special Procedure.

⁵⁸ Lynn and Collister, 2014.

3.1.3 Re-visiting all existing UN documents concerning protection of HRDs

The UN resolutions are not a protection for human right defenders by themselves. It is the matter of how far the subsequent follow-up and implementation can be achieved according the resolutions. Dem points out that a resolution defines the standards and frames. The wordings and sentences give legitimacy to further actions. Once it is adopted in a setting of a UN session, they become the standards. Those states that still do not agree with the resolution should not refuse to lend effort to achieve the standards. It is eventually the member states to make the resolution strong.

Dem reckons that one of the most noticeable weaknesses of the UN human rights mechanisms is that there is no actual mechanism that would hold the states into account. Very often people at the HRC just witness natural deaths of cases. The cases might remain in the memories of those who have spent long years at the Council. Attendees at the HRC may not be keen on discussing old cases, such as the Bahraini case in 2012. In fact, the SRHRD has many communications unanswered and they accumulate thereafter.

There is a chance to redress if some diligent states would re-mention some forgotten cases in the archive of OHCHR during the next UPR of the target state. The NGOs should also have an insistence of not allowing the infamous cases to be forgotten. It is difficult to predict if the deaths of Eric Ohena Lembembe and Cao Shunli would be mentioned again during a HRC session. But theoretically Cameroon and China can evade from pressure ever after if no participants in the HRC bother to bring the cases up again. Re-visiting the cases and re-mentioning them would keep the shame attached to those states. Most of the state governments do care about their reputation. They might actually take more actions to prevent authorities and non-state actors to further harass HRDs in their territories if having been shamed for too long.

3.1.4 The president of HRC to take bolder stances and decisions

Dem hopes that future presidents of the HRC are tough and courageous enough to create a mechanism within the HRC to investigate into the allegation of reprisals during a session. For instance, the President can perform an extensive reading the current resolutions on protecting HRDs. And then he/she can pick up some cases to deal with to set up a standard of following up allegations of reprisals. Cao Shunli's death would be the clear-cut case to be used to commence such mechanism. All the evidence shows that she was meant to be in Geneva to attend the 24th session of HRC but she died for her decision of planning that trip. To be intolerant of reprisals related to the HRC is to safeguard the integrity of the HRC.

In recent years, some states have passed legislations that severely restrict the civil society space. The laws are passed to affect a wide community of activists. For instance, providing information to foreign organisations can constitute a crime of terrorism, or risk being categorised as a “foreign agent”. In Saudi Arabia, a new terrorism law was created in early 2014 to turn almost any critical expression or independent association into crimes of terrorism. *“Inside the kingdom, “terrorism” can be non-violent – consisting of “any act” intended to, among other things, “insult the reputation of the state,” “harm public order,” or “shake the security of society,”*⁵⁹ Submitting reports to the UN mechanisms is very likely to be regarded as “insulting”. Meanwhile in Russia, an introduction of the law on ‘foreign agent’ in 2013 resulted in hundreds of NGOs having been inspected by prosecutors. ADC “Memorial” became the first NGO to be labelled as a “foreign agent” primarily because their report *“Roma, migrants, activists: victims of police abuse”* was submitted to the UN treaty body CAT in November 2012.⁶⁰

⁵⁹ Human Rights Watch, 20 March 2014.

⁶⁰ FIDH, 12 December 2013.

The HRC president has a potential to pick up a case when some individuals are proved to be restricted from participating in UN human rights mechanisms by their countries because of the restrictive national laws. The President should take a chance to criticise such restrictive laws and suggest the states to widen the civil society space for their citizens. If the President knows of the happening of states preventing their citizens from attending the HRC, he/she should voice out their discontents to preserve the integrity of the Council. Some previous presidents of the HRC, such as Laura Dupuy Lasserre and Martin I. Uhomoibhi, have demonstrated strong stances on preserving the integrity of the HRC and demanding respect of the functions of the HRC from the attending states.

Future presidents of the HRC should take a bolder stance to criticise the reprisals outside of Geneva and reprehend those repressive legislations that deter individuals from participating in the HRC or sending reports for UPR.

3.2 Scrutinising the voting behaviours of some HRC member states

As discussed above, it can be argued that the voting behaviours of member states relates to the degree of interest of the state government to tackle reprisals. Those constantly vote “No” or abstain seem to be more likely to show little interest in tackling reprisals in their territories. While it is nearly impossible to change the hostility of China, Cuba and Russia, it may be productive in convincing the African states to show supports for more resolutions in future. Kenya hosts one of the UN headquarters in the world. South Africa is even regarded as a bright example of paving a long way to improve its human rights situation in recent decades. If the delegates from those countries change their mind, they can be the leading change of voting “Yes” more often and then influence other states. It has previously mentioned that only 6 out of 45 non-thematic resolutions were rejected. At HRC resolutions are easier to be accepted and adopted by 47 member states. Kenya and South Africa alike should play less politics of non-involvement. Their disappointing voting decision includes the 25/25 resolution on condemning the human rights violation in DPRK.⁶¹ Kenya and South Africa maintained the abstention on DPRK. Perhaps there should be a campaign or a pressure group in their homeland to monitor the voting behaviour of their delegates in Geneva. The political will of addressing the situation of HRDs in the countries such as Syria, Belarus, Sri Lanka should be stronger with the support from the abstaining states.

⁶¹ A/HRC/RES/25/25, 9 April 2014.

3.3. Magnifying the profiles of HRDs

Bloem suggests that HRDs should connect to a wider community as much as possible. She reckons that being well known by the key players in the field is an effective self-protection. When Vietnam was reviewed at the UPR in January 2014, a big group of civil society actors went to Geneva to meet the major NGOs and ambassadors of major states of the WEOG. While their activities would certainly be monitored by their state, it would probably be better to create an impression that their identities are now known by the international community. Future attempts of reprisals against them would elicit a wider international attention and the image of government would be more damaged. She concedes that there are too many imprisoned or tortured HRDs who are totally unknown by the outside world. It is a pity when they are constantly overshadowed by other high profile cases of HRDs.

The Frontline Defenders also agrees that the best strategy for HRDs is to build a wider support from the international community. They should prepare an exit plan if the condition is too adverse for survival,⁶² for example, keeping contact with human rights specialists at embassies of EU member states who are perceived as the most active in quickly granting Visas to HRDs.

Agostini is cautious about getting the visiting HRDs widely known in the NGO scene in Geneva. He prompts that FIDH would evaluate the risk on case-by-case basis. Being famous as a tactic of self-protection may be feasible if the individual is not involved in hate crime. Eric Lembembe was a prominent activist in his lifetime and he was targeted because of his leadership in the LGBTI campaign in his country. So fame might not be the “magic cloak” to protect oneself from reprisals. But admittedly this is the strategy of many INGOs to gather global attentions on obscure individuals and their cases.

⁶² Collier 2014, p.40.

3.4 Looking beyond the UN human rights mechanism

OHCHR has been dominating the discussion of international human rights mechanisms. In fact, the regional mechanisms have been strengthened significantly in the past few years. OHCHR should seek cooperation and experience sharing with other mechanisms as they are becoming more mature and effective in addressing regional problems.

3.4.1 Special Rapporteur on Human Rights Defenders in Africa

In the 55th session of the African Commission on Human and Peoples' Rights in April 2014, *Resolution 273: Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa* was adopted. The African commission is deeply concerned about the hostile environment in which civil society stakeholders collaborating with the African human rights system operate. Therefore, its Special Rapporteur is given more mandates to progress the work. The Special Rapporteur is now able to

“Gathering information on and effectively addressing cases of reprisals against civil society stakeholders;

Documenting and maintaining a database on cases of reprisals brought to its attention;

Providing guidance to the Commission for the adoption of urgent measures to deal with specific cases of reprisals;

Presenting reports on cases of reprisals at each Ordinary Session of the Commission in the Special Rapporteur's activity report;

Ensuring a follow-up of registered cases.”⁶³

It is encouraging to see that the African countries have the political will to address the seriousness of reprisals in the region. The resolution also states that the African Commission is concerned “by the total impunity that continues to be enjoyed by the perpetrators of these acts of reprisals against those who collaborate with the African system of human rights.” This is another encouraging sign when the continent determines to tackle impunity. HRDs in Africa now have an alternative mechanism to prompt their complaints. A regional database of reprisals would be an instrumental in studying the patterns of reprisals and their remedies in order to design feasible safety measures for HRDs in Africa in future.

⁶³ The African Commission Resolution 273

3.4.2 New resolution on sexual orientation and gender identity in Africa

Also in the 55th session of the African Commission, a new Resolution 275: *Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity* was adopted. This is the first ever resolution condemning violence against persons on the basis of their sexual orientation or sexual identity in Africa.

The resolution comes in a time when LGBT movements are in stark danger in African countries. It does only “specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity,” but also urges states to enact and apply appropriate laws “prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities.”⁶⁴ The adoption of this resolution shows that the HRDs and campaigners on the ground should retain some positive thought about the intergovernmental platform. In the same 55th session of the commission, it was remarkable to see the adoption of further 3 resolutions: 268 Resolution on Environment and Human Rights, 271 Resolution on Climate Change in Africa, 281 Resolution on the Right to Peaceful Demonstrations. One would start to have the impression that the Africans have started to be more proactive in passing resolutions beneficial to HRDs. If the delegates of the permanent missions of African countries in Geneva have the same degree of enthusiastic in supporting resolutions for human rights, the UN would function as a better vanguard of human rights.

⁶⁴ The African Commission Resolution 273.

3.4.3 New Resolution on human rights defenders in American states

In June 2014, the Organization of American States adopted the new resolution on human rights defenders. The most progressive part of the resolution is to “consider the preparation and implementation of national plans to apply the principles contained in the United Nations declaration mentioned in the preceding paragraph and the recommendations contained in the reports on the situation of human rights defenders in the Americas prepared by the Inter-American Commission on Human Rights (IACHR), for which purpose they may also request its advisory services and should include a gender perspective “

The new resolution urges American States to adopt or harmonise national laws in line with international law, such as the incorporation of UN Declaration on Human Rights Defenders. It also recognises the needs of gender-specific protection for women human rights defenders.⁶⁵ It can effectively be seen as an American response to the GA resolution A/RES/68/181 on women human rights defenders. The resolution also requests the IACHR to strengthen the office of the Rapporteur for Human Rights Defenders. Such office was created in 2011 and the Rapportuer has been active in holding hearing sessions to evaluate the situations of HRDs with civil society organisations in American countries.

Both the African commission and the Organization of American States are keeping abreast of the latest development at OHCHR. The regional mechanisms are now the platforms for regional HRDs to cooperate with to find better solutions for their adversities.

⁶⁵ Organization of American States, 2014 para 2.

4 Conclusion

The adoption of three UN resolutions on protecting HRDs in 2013 is the most exciting development in tackling reprisals to date. One has to acknowledge the amount of diplomatic effort to gain the support from indifferent country to join the drafting process. The next step should be continuously revitalising the resolution A/HRC/RES/24/24, which contains the suggestion of establishing a UN-wide focal point for reprisals alert. The implementation of the resolution is the key to progress in tackling reprisals in future.

The protection for HRDs who cooperate with the UN human rights mechanisms is currently self-initiating, incidental, and ad hoc. The HRDs are expected to be responsible and considerate for their own safety in the first place wherever they are travelling in Geneva or their own country. Geneva is a meeting point of HRDs from all over the world and the office sees a constant flow of NGOs delegates who come to attend the sessions of HRC, UPR and treaty bodies. With such a high number of participants throughout a year, OHCHR can provide security for individuals at risks only when they are physically in the UN facilities. The president of the HRC can vocally acknowledge the participation of individuals if they are proved to be at risk at the Councils. Such acknowledgment serves as a shield for the individuals from serious harassment. NGOs in Geneva are more experienced in assisting HRDs to come to the city. The individuals are only accepted and accredited if they can pass the internal risk evaluation.

The majority of the HRDs who are in contact with the UN mechanisms are outside of Geneva and never set foot on the city. Police and court in their home country may not be dependable for protection and justice in many circumstances. The SRHRD should be contacted and updated about their situations by HRDs themselves or their allies. The civil society organisations should consistently preserve the evidence of reprisals and violation, whether

it is the restriction on freedom of express, association, assembly, or a torture, a physical assault or other treatments. They can report to the UPR and the relevant treaty bodies. In the UN human rights mechanisms, the remedies of reprisals are the SRHRD's written communication to the state, and the mentioning of the case in the Annual SG report to the HRC. The state is given the opportunity to provide written response. But currently there is no mechanism to hold the state accountable for alleged reprisals.

One of the analytical categories of this paper is to statistically identify the countries which are most indifferent with the UN human rights mechanism. Through analysing the voting behaviours of the HRC member states in 2012-2014, it can be claimed that those states that are less concerned about the work and progress of HRC also have worse records in protecting HRDs in their territories. Those states would seize the opportunities to delay the process of enhancing the protection for human rights defenders, such as overturning a HRC-adopted resolution, or diluting the progressive language in the initial drafts of resolutions. NGOs activities are not well received by some states as their delegates might give oral statements that are deemed offensive or insulting to states. The similar grouping of states, namely Bangladesh, China, Cuba, India, Pakistan, Russia, Uganda, and Venezuela, which have disappointing voting patterns at the HRC and delay the designation of a UN-wide focal point on reprisals, also propose constraining the participation of civil society actors at the HRC by directly request the president of the HRC to take actions to restrict NGOs delegates.

Another analytical category is to examine the reliance of HRDs on the NGOs to engage in the UN mechanisms in Geneva. Partnering with big NGOs results in easier passage to the international stage, e.g. to reach more audience in Geneva. Local HRDs have to decide whether they will get a better protection from associating themselves with INGOs. The INGOs have the resources to mobilise the shame to target authoritative states. In those

states where civil society space is limited, new legislation is passed to criminalise HRDs' activities. HRDs have to be careful about their funding and financial resources because foreign donations can be seen as rewards for being foreign agents or evidence of treason. Communicating with international organisations can be regarded as a terrorist act.

This paper suggests some piecemeal changes in current mechanisms to tackle reprisals, such as appointing a dedicated Special Rapporteur in every treaty body. HRDs should also consider raising their profiles by connecting to more NGOs in the wider international community. Moreover, the participating states at the HRC and other NGOs should encourage the current and future president of the HRC to make bolder decisions to address reprisals and uphold the integrity of the Council.

This paper also suggests some grant ideas that are not at all simple to achieve, such as monitoring the voting behaviour of African countries and persuades them to be more active at the HRC. On the other hand, there should also be an urge for the Permanent Missions in Geneva to respect the written communications from the Special Rapporteurs by replying to their unanswered letters. Those states should realise that there is an expectation for those who are sitting in the conference rooms in Geneva to lead the progress of the UN human rights mechanisms.

In the third chapter, the latest development of Human Rights mechanisms in Africa and America is discussed. Both African Commission and the Organization of American States have taken bold steps to establish focal points for addressing the challenges and threats to HRDs, such as LGBTI activists being targeted in recent years. Thus, HRDs in those regions have an alternative mechanism to participate and have the opportunity to gain extra attentions on their situation. The problem is that these mechanisms are also non-binding. And it would also take long time to achieve the goals as

envisaged by their respective resolutions, such as creating a database of cases of reprisals, or incorporating the *UN Declaration on Human Rights Defenders* into national law. Most importantly, no regional mechanism for human rights protection has ever been established in East Asia and South Asia and the people can only rely on cooperating with the UN human rights mechanisms. Some states in those regions have been recorded to contain the most serious and the largest scale of human rights violation in modern time, especially the freedom of expression, association and assembly. The HRDs in those states remain vulnerable while the UN mechanisms are not functioning in tackling reprisals.

After all, the term “defender” has a strong connotation. Defenders are courageous to continue their work despite the risk of reprisals. Their states constantly show indifference to their hope for a safe and enable environment on the international stage however. An already adopted resolution on tackling reprisals could be contested and overruled just after three months. This can be a signal sent by those states implying that reprisals are still tolerated and safety of HRDs can be compromised. The situation of tackling reprisals can perhaps be described by the title of the autobiography of Nelson Mandela. It is “a long walk to freedom”. Franklin D. Roosevelt calls this “the freedom from fear”.

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Abstract

Since 2010, the Secretary-General of the United Nations submits his report on the cases of reprisals against individuals, who cooperate with the United Nations, its representatives and mechanisms in the field of human rights, to the Human Rights Council once a year. This annual report signals that the reprisals perpetrated by state authorities or non-state actors are recurring problems. Although three new UN resolutions on protecting human rights defenders were adopted in 2013, the path to diminution and eventual elimination of reprisals from UN human rights mechanisms is still not promising because of the voting behaviours of some indifferent countries. This paper attempts to explore how human rights defenders who participate in the UN mechanisms become vulnerable. It also discusses the possible ways to enhance the protection for human rights defenders within the current mechanisms.

Abstrakt

Seit dem Jahr 2010 legt der Generalsekretär der Vereinten Nationen jährlich seinen Bericht zu Fällen von Repressalien gegen Personen, die mit den Vereinten Nationen, ihren Vertretern und Mechanismen im Bereich der Menschenrechte zusammenarbeiten, dem UN-Menschenrechtsrat vor. Dieser jährliche Bericht signalisiert, dass die Repressalien durch staatliche Behörden oder nicht-staatliche Akteure ein wiederkehrendes Problem darstellen. Obwohl im Jahr 2013 drei neue UN-Resolutionen zum Schutz von MenschenrechtsverteidigerInnen verabschiedet wurden, ist der Weg zur Verringerung und Beseitigung von Repressalien aufgrund der UN-Menschenrechtsmechanismen, wegen des Abstimmungsverhalten einiger gleichgültiger Staaten, noch immer nicht vielversprechend. Diese Arbeit bestrebt zu erforschen, wie MenschenrechtsverteidigerInnen die an UN-Mechanismen teilhaben, gefährdet werden. Ebenfalls werden Möglichkeiten zur Verbesserung des Schutzes von MenschenrechtsverteidigerInnen im Rahmen der aktuellen Mechanismen erörtert.