

HUMAN RIGHTS INTEREST GROUP NEWSLETTER

See Open Human Rights Positions on page 8

Dear colleagues:

We are delighted to present the latest Human Rights Interest Group (HRIG) newsletter edition. We believe that, on this occasion, it is necessary to begin this brief editorial by recalling the words of Desmond Tutu: “*Never let anyone tell you that what you are doing is insignificant*”. This is the commitment of our Group, which is to tell those stories that often do not have the space they deserve in the communications media. This commitment is shared by all those who write this newsletter and extends, albeit maybe unconsciously, among all members of HRIG. For this reason, each new issue of our quarterly newsletter demonstrates that our publications are pillars for the promotion and dissemination of international human rights law in a world that is going through a critical situation in terms of human rights.

In this regard, this issue includes a guest editorial containing a commentary by Claire Crites on temporary protection status for refugees. We invite you to read her valuable insights and get involved in the next issue by sharing your thoughts on human rights developments that you consider relevant.

In addition, in our traditional sections, you will find the most relevant events and debates that took place over the last few months, such as the first decision of the Committee on Enforced Disappearances on an individual complaint process against Mexico for the enforced disappearance of a minor at the hands of security forces; and the adoption by the African Commission on Human and Peoples’ Rights of the *Guidelines on adhering to human and peoples’ rights under the African Charter in the context of states of emergency or disaster*. Other decisions included are the publishing of the European Court of Human Rights’ latest advisory opinion concerning the procedural status and rights of a biological parent in proceedings for the adoption of an adult; and the release of the Inter-American Commission on Human Rights’ new *Report on the Situation of Environmental Human Rights Defenders in the Northern Central American Countries*, concerning the situation of defenders of land, territory, and the environment in Guatemala, Honduras, and El Salvador. Furthermore, this issue also contains at the end a section on employment opportunities in the United Nations in the human rights field.

We hope you enjoy reading this newsletter as much as we enjoyed writing it. We trust in the importance of keeping up these contributions that stimulate the dissemination of current human rights problems and concerns, and that reinforce the relevance of international human rights law in the life of each one of us.

If you have ideas or suggestions for the HRIG or would like to share any information that may be relevant for the group, such as new publications, upcoming events, career opportunities, professional accomplishments, and more, please send them to ecurcio@alvarezmartinezlaw.com to include them in our next newsletter.

Best regards,

Ezequiel Curcio
Newsletter editor

INSIDE THIS ISSUE

New developments concerning the universal system and regional systems for the promotion and protection of human rights

Guest Editorial

2

Universal Human Rights System

3

African Human Rights System

5

European Human Rights System

6

Inter-American Human Rights System

7

Information on Employment Opportunities

8

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



I. GUEST EDITORIAL

1. Utilizing Temporary Protection Status to Assist Refugees Fleeing Armed Conflict

Commentary by *Claire Crites*

Refugees fleeing armed conflict are severely vulnerable groups that face a hellish existence of not only fleeing their state of nationality but also fleeing violent hostilities and the accompanying disorder.¹ A refugee fleeing armed conflict is defined as a person who has fled “war, violence, [or] conflict” and “has crossed an international border to find safety in another country.”² In the first months of 2022, the number of forcibly displaced people surpassed 100 million for the first time since the establishment of the United Nations (UN) and reached 103 million as the war in Ukraine progressed.³

Both regional bodies such as the European Union (EU) and individual States have developed legislative and administrative measures such as “temporary protection” status to extend protection to refugees fleeing armed conflict.⁴ The massive increase in refugees fleeing armed conflict has made it necessary for States to utilize frameworks such as temporary protection to provide “refuge to those fleeing conflict and violence.”⁵ However, despite its existence for decades, its “content, boundaries, and legal foundation” remain largely undefined, and there is no international legal instrument that provides a definition of temporary protection.⁶ Because there is not an “authoritative international instrument” governing temporary protection, States have broad discretion in imple-

menting temporary protection policies if they choose to have them at all.⁷ Despite the lack of international consensus, temporary protection is typically “implemented [by States] as emergency responses to mass-influx situations.”⁸ Refugees fleeing armed conflict are often granted temporary protection status by States as it provides a “practical and pragmatic way to deal with mass-influx situations”, because it lightens the burden of States and “enables them to keep their borders to those fleeing conflict and violence.”⁹

While the legal rights provided by temporary protection vary according to each State, the “basic minimum treatment” typically includes shelter, food, emergency medical care, means of subsistence, and protection from refoulement.¹⁰ Temporary protection has emerged as a tool to expand group-based protection for those who do not satisfy the individual persecution requirement of the 1951 Convention on the Status of Refugees and has been successful in supporting war refugees.¹¹ This is seen as the EU implemented the Temporary Protection Directive (TPD) to respond to the millions fleeing Ukraine following Russia’s 2022 invasion, which enabled all EU States to “offer asylum on a group basis to people fleeing the war in Ukraine.”¹² The TPD was adopted following the conflict in former Yugoslavia and “triggered for the first time” in February of 2022 to mobilize assistance to Ukrainian refugees.¹³

This is a positive advancement of temporary protection status and demonstrates how temporary protection can be a “magic gift” to those fleeing armed conflict when it is successfully implement-

1 ICRC, “The Three Pillars: Humanitarian Law, Human Rights and Refugee Law”. Available at <https://www.icrc.org/en/doc/resources/documents/statement/> (last visited: 05/07/2023).

2 UNHCR, “What is a Refugee?”. Available at <https://www.unhcr.org/what-refugee> (last visited: 05/07/2023).

3 UNHCR, “2023: A Moment of Truth for Global Displacement”, Available at <https://www.unhcr.org/spotlight/2023/> (last visited: 05/08/2023).

4 SIMEON, J., “A New Protection Orientation and Framework for Refugees and Other Forced Migrants”, in *Laws*, Vol. 6, Issue 1, 2017.

5 INELI-CIGER, M., “Temporary protection of forced migrants”, in SING JUSS, S., *Research Handbook on International Refugee Law*, Elgar, 2019, p. 57.

6 *Id.*, p. 57.

7 *Id.*, p. 58.

8 *Id.*, p. 60.

9 *Id.*, p. 67.

10 *Id.*, p. 63.

11 *Id.*, p. 67.

12 SCHULTZ, J., “Collective Protection as a short-term solution: European responses to the protection needs of refugees from the war in Ukraine”, 03/08/2022. Available at <https://eumigrationlawblog.eu/> (last visited: 05/08/2023).

13 European Commission, “Temporary Protection”, <https://home-affairs.ec.europa.eu/> (last visited: 05/23/2023).



Guest Editorial —continued from page 2

ed.¹⁴ The drawback to temporary protection is that it is as the name implies temporary, and States can decide when to terminate the status.¹⁵ Additionally, a State can choose not to offer temporary protection and can define its protection status however it wills, which can be challenging for war refugees as they are at the mercy of a State's domestic law.¹⁶ While temporary protection has emerged as another tool to provide legal protections to war refugees and was successfully implemented by the EU to respond to the Ukrainian crisis, its implementation or lack thereof demonstrates the ineffectiveness of traditional refugee law in protecting the rights of war refugees as both States and regional bodies have developed their own domestic law through temporary protection to rectify the inadequacies of traditional international refugee law.

II. UNIVERSAL HUMAN RIGHTS SYSTEM

1. Office of the United Nations High Commissioner for Human Rights (OHCHR)

- **On May 30, 2023, the OHCHR released its new report on human rights impacts of new technologies on civic space in South-East Asia.**

The OHCHR initially noted that while the expansion of digital technologies has brought benefits to humanity, such as new opportunities, it has also brought online harm. This harm includes the possibility that States and non-state actors could obstruct democratic governance and limit public discourse in ways that are consequential, among other issues. The report is based on information gathered from the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam, all of which are part of the South-East Asia region. To do this, the OHCHR analyzed

six topics that refer to the challenges faced by civil society participating in the online space, namely: a) hateful and discriminatory speech; b) organized online attacks and harassment; c) abuse of digital surveillance technologies; d) restrictive legal and regulatory frameworks; e) arrests and prosecutions related to online expression, and f) internet shutdowns and network interference.

Regarding the abuse of surveillance through digital technologies, the OHCHR found that these technologies were clandestinely exported to South-East Asia with minimal transparency. Several countries have installed security cameras and introduced facial recognition technologies in urban areas. As a result, studies have shown that a number of cities in South-East Asia have the highest number of security cameras per square meter in the world. Furthermore, the OHCHR highlighted several problems affecting these countries. These include the lack of laws protecting personal data and the sharing among government officials of biometric data obtained by security agencies throughout the pandemic. In addition, the report addresses various topics, including criminal prosecution for online content, shutdowns that affected access to health information during the pandemic, cybercrime, terrorism, hate speech, and the spread of misinformation and disinformation concerning the COVID-19 pandemic. The OHCHR also made several recommendations to the States, including the adoption of strong privacy legislation and ensuring due process, transparency, and accountability. The report can be found [here](#) and the press release [here](#).

2. Committee on Enforced Disappearances (CED)

- **On May 4, 2023, the CED issued its first decision on an individual communication process against Mexico, regarding the enforced disappearance of Yonathan Isaac Mendoza Berrospe.** On December 11, 2013, a group of approximately six dressed as policemen entered the home of Mr. Mendoza Berrospe, a 17-year-old boy who lived with his family in the city of Veracruz, Mexico, and drove him away. The victim's family looked for him in several places, including the detention cen-

¹⁴ FITZPATRICK, J., "Temporary Protection of Refugees: Elements of a Formalized Regime", in *American Journal of International Law*, Vol. 94, Issue 2, 2000, p. 280.

¹⁵ INELI-CIGER, *supra* note 5, at 64.

¹⁶ Human Rights Watch, "What's wrong with temporary protection status and how to fix it", 2020, <https://www.hrw.org/news/> (last visited: 05/08/2023).



Universal Human Rights System —continued from page 3

ter of the Naval Police in Playa Linda, commonly known as “El Penalito”. The victim’s family reported the disappearance on several occasions, and even lodged an *amparo action* before the national courts. Both the complaints and the judicial action were unsuccessful and revealed no information about the victim’s whereabouts. Mr. Mendoza Berrospe’s mother filed a complaint with the Committee in July 2021, shortly after Mexico recognized the Committee’s competence to examine individual communications on October 2, 2020.

The Committee declared itself competent to examine the case given that enforced disappearances are violations of a continuous nature, and what happened to Mr. Mendoza Berrospe and his whereabouts were yet unknown when the Committee issued its decision.

Regarding the merits, the CED determined that there were strong indications of the direct participation of State agents in the victim’s disappearance, followed by the refusal of State authorities to acknowledge the deprivation of his liberty or the concealment of his fate or whereabouts, thus removing him from the protection of the law, pursuant to Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. Furthermore, the CED recalled that, when confronting a disappearance, Articles 12 and 24 of the Convention ascertain that States must immediately establish a comprehensive strategy that includes an action plan and schedule for the exhaustive search for the missing person, and that takes into account all possible information, including the context in which the alleged disappearance occurred. Contrary to the above, the Committee noted that most investigative measures and search actions carried out by Mexican authorities were unreasonably delay and lacked due diligence. Consequently, the Committee found that Mexico has violated Articles 12 and 24 of the Convention. Given that the victim’s whereabouts are still unknown, and that his family has not received any reparation, the CED also found the violation of their right to know the truth. The decision (in Spanish) can be found [here](#) and the press release [here](#).

3. Committee on the Rights of the Child (CRC)

- **On June 13, 2023, the CRC published a decision that held Peru internationally responsible for violating the rights to health and life of an indigenous and rural girl victim of rape by failing to provide her with information about safe and legal abortion.** The individual complaint was filed by Camila, who was born on May 13, 2004. She lived in an indigenous community located in Huainipaca, in a rural area of Peru. Since she was nine years old, Camila was raped by her father until she got pregnant at the age of 13. After realizing she was pregnant, Camila went to a hospital in Abancay, where she was informed that she was more than 13 weeks pregnant. At that moment, she expressed to the hospital staff that she did not want to be pregnant or have a child with her father, and she repeated this statement every medical visit she attended. Nevertheless, she was not informed of her right to undergo a therapeutic abortion, which is permitted when the mother’s life is at stake or there is a severe and permanent threat to the mother’s health. On December 13, 2017, Camila and her mother requested the legal termination of her pregnancy, but they never received a final response to their request. On December 19, 2017, Camila suffered a miscarriage and, as it was an “incomplete abortion”, she subsequently experienced health problems due to retained fetal remains. As a consequence, she was investigated and charged with the crime of self-abortion, based solely on her “statements about not wanting the pregnancy”. Although she was initially convicted, the court decision was overturned and the case was definitively dismissed.

In its decision, the CRC found that there was a violation of Articles 6, 12.1 and 24 of the Convention on the Rights of the Child, since the pregnancy led to a risk to her life and health because of her age. In this regard, it considered that both the failure to provide the author with information about voluntary termination services and the failure to provide her with effective access to such services exposed her to a real, personal, and fore-

—continued on page 5



Universal Human Rights System —continued from page 4

seeable risk of mortality, in addition to the consequences caused of the sexual violence perpetrated by her father, which aggravated the consequences on her mental health. Furthermore, the CRC established that the State violated the following provisions of the Convention: a) Article 37.a), since there were acts and omissions attributable to the State, including revictimization at different levels; b) Article 16.1, as there was harassment of the victim by health and police personnel; c) Article 13.1, as the victim did not receive any information about the possibility of having an abortion; d) Article 2, because there was discrimination against the plaintiff on the basis of age, gender, ethnic origin and social situation; and e) Articles 19 and 39, because the State should have promoted the plaintiff's physical and psychological recovery as a victim of abuse, which it failed to do. The decision (in Spanish) can be found [here](#) and the press release [here](#).

III. AFRICAN HUMAN RIGHTS SYSTEM

1. African Commission on Human and Peoples' Rights (ACHPR)

- **On May 15, 2023, the "ACHPR's Guidelines on adhering to human and peoples' rights under the African Charter in the context of states of emergency or disaster" entered into force.** As the ACHPR has noted, the Guidelines aim to fill "the lacunae arising from the lack of clear provisions for governing states of emergencies or disaster in the African Charter, including the absence of a derogation clause". The document is divided into six parts. The first one is dedicated to the general principles regarding emergency and disaster measures. In this part, the ACHPR addresses the issue of exceptionality, the conditions for human rights limitations, and public participation in relation to the design and implementation of emergency and disaster measures. The second part deals with declarations of states of emergency and disaster, including their legal frameworks, their implementation plans, and their temporal character, as well as the obligation to review the declaration after their adoption. Moreover, the third part concerns the protection of rights in the context of emergency or

disaster measures, which calls for the observance of regional and international human rights standards in order to use the least punitive and restrictive measures, and not to increase the disadvantages suffered by vulnerable groups. Part four focuses on monitoring and accountability, while part five develops possible remedies for human rights violations during states of emergency and disasters. Finally, the last topic refers to the implementation of the Guidelines, for which States must adopt legislative, administrative, judicial, and other measures not only to give effect to the Charter, but also to take into account the Guidelines to ensure that the rights and obligations contained therein are guaranteed by law and practice. The Guidelines and the press release can be found [here](#).

2. African Court on Human and Peoples' Rights (ACtHPR)

- **On June 13, 2023, the ACtHPR declared the Republic of Benin internationally responsible by enacting legislation that prohibited the issuance of official documents to persons wanted by judicial authorities.** Mr. Conaïde Togla Latondji Akouedenoudje lodged an application to the ACtHPR challenging an Inter-Ministerial Order issued in 2019, which prohibited the issuance of official documents to persons wanted by Benin's courts. The ACtHPR stated that the Ministers who enacted the order acted on the basis of competencies that are not theirs, but that of the Judiciary, since the measures of coercion to which suspects or accused persons may be subjected must be decided or taken by the judicial authority or before its effective control. In addition, the ACtHPR emphasized that the contested measure, as approved, was likely to deny the legal personality of the requested persons and lead to situations similar to statelessness. In this regard, the ACtHPR found the violation of Articles 7.1.b (presumption of innocence) and Article 5 (right to nationality) of the African Charter, and Article 15 (right to a nationality) of the Universal Declaration of Human Rights. Consequently, the ACtHPR ordered the State to take the necessary measures to revoke the Inter-Ministerial Order. The decision can be found [here](#).



IV. EUROPEAN HUMAN RIGHTS SYSTEM

1. European Court of Human Rights (ECtHR)

- **On June 6, 2023, the ECtHR decided that Russia violated the right to life in its procedural aspect by the poisoning of the lawyer and activist Aleksey Navalny.** Aleksey Anatolyevich Navalny is a Russian activist who founded the Russia of the Future Party. He is currently being held in a high-security correctional facility, IK-6, which is located in Melekhovo, Russia. The facts of the case took place on August 20, 2020, when the victim felt ill and lost consciousness during a flight to Moscow. It was necessary to make an emergency landing in Omsk, where he was taken to a hospital while already in a coma. His work associate and his representative immediately reported the incident, calling for a criminal investigation as they believed this to be an attempted murder by poisoning. However, forensic examinations carried out in Russia concluded that no potent, poisonous, narcotic or psychotropic substances had been found on samples taken from him or on other items submitted for analysis. After that, Mr. Navalny was flown to Germany for medical treatment. Once there, he underwent further toxicological tests that showed there was undeniable proof that a chemical nerve agent of the Novichok group was present in Mr. Navalny's body. The results were later confirmed by three independent laboratories in France and Sweden, and also by the Organization for the Prohibition of Chemical Weapons (OPCW). Despite all this, the Russian authorities refused to open criminal proceedings into Aleksey Navalny's alleged poisoning on the grounds that there was allegedly no objective information to suggest that it was an intentional crime.

The ECtHR found that there was a violation of the right to life in its procedural dimension. It noted that there was a serious and imminent risk to the victim's life under suspicious circumstances, which triggered the State's obligation to carry out an effective investigation under Article 2 of the European Convention. In this regard, the ECtHR concluded that the inquiry conducted by the Russian authorities had not been open to scrutiny and had made no allowance for the victim's right

to participate in the proceedings. Additionally, the ECtHR failed to explore the allegations of a possible political motive behind the attempted murder, as well as a possible involvement or collusion by State agents. Finally, the ECtHR ordered Russia to pay 40,000 euros for non-pecuniary damage to the victim. The decision can be found [here](#) and the press release [here](#).

- **On April 13, 2023, the ECtHR published its latest advisory opinion concerning the procedural status and rights of a biological parent in proceedings for the adoption of an adult.** The advisory opinion was requested by the Supreme Court of Finland, on the occasion of a judicial proceeding under Finland's Adoption Act. The domestic case concerned the adoption of an adult and the request of a woman ("B") to adopt ("C") in 2018, who was her nephew and born in 1993. In the case, "C"'s mother opposed the adoption claiming that her consent was required. However, Section 11 of the Adoption Act established that biological parent's consent was a requirement for adoption only when it comes to the adoption of a minor. On the contrary, the Adoption Act did not stipulate any similar requirement for an adult. Therefore, the Supreme Court held that it was not certain what weight should be given in these cases to the protection of the private life and family of the biological parents.

In its advisory opinion, the ECtHR stated that legal proceedings concerning the adoption of an adult can affect the private and family life of a biological parent under Article 8 (right to respect for private and family life) of the European Convention. In this regard, it determined that Article 8 does not require that a biological parent be granted the status of a party or the right to appeal the granting of an adoption, because of the State's wide margin of appreciation in regulating adult adoption proceedings. Nevertheless, the ECtHR established biological parents should have the opportunity to be heard and have his or her arguments considered in the proceedings. The advisory opinion can be found [here](#).



V. INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. Inter-American Commission on Human Rights (IACHR)

- **On April 25, 2023, the IACHR released its new “Report on the Situation of Environmental Human Rights Defenders in the Northern Central American Countries”, analyzing the human rights situation of defenders of land, territory, and the environment in Guatemala, Honduras, and El Salvador.** The IACHR noted that Northern Central America is considered one of the most dangerous regions in the Americas for those defending human rights associated with land, territory, and the environment. In particular, the IACHR found that certain groups of human rights defenders face more obstacles and differentiated risks due to the causes they defend or the content of their claims, especially when they are peasant, indigenous or Afro-descendant leaders. In this regard, the IACHR identified many acts of violence against those defenders that include stigmatizing discourse, harassment, threats, physical attacks, murders, and forced disappearances. Additionally, the report noted with concern the increasing number of murders committed against environmental defenders in Honduras and Guatemala over the last five years, likewise, the criminalization of this defense work through the inappropriate use of criminal law in Northern Central America in recent years. Given this situation, the report expands on the obligations of States in relation to human rights defenders in Northern Central America, and it also analyzes the institutional response to the violence against these groups in El Salvador, Guatemala, and Honduras. Finally, it expands on a series of recommendations for States regarding the protection and guarantee of the rights of the defenders of land, territory, and environment. The report (in Spanish) can be found [here](#) and the press release [here](#).

2. Inter-American Court of Human Rights (IACtHR)

- **On April 18, 2023, the IACtHR held Ecuador internationally responsible for the violation of the rights to due process, judicial independence, and political rights, right to work and right to judicial protection in the case of “Aguinaga**

Aillón v. Ecuador”. The victim, Carlos J. Aguinaga Aillón, was a member of the Judicial Board of Elections with a term of office until 2007. On November 24, 2004, the National Congress issued the Order No. 25-160, whereby it removed Mr. Aguinaga Aillón from his position on the Board of Elections and on the Constitutional Court. Immediately after, the National Congress appointed new members to the Judicial Board of Elections. In this context, the Constitutional Court issued a decision prohibiting trial judges from hearing motions of relief against Order No. 25-160, leaving the constitutional action before the Constitutional Court as the only remedy available to challenge the effects of the congressional order.

The State acknowledged its responsibility with respect to the facts contained in the IACHR’s report on the merits, and to the rights enshrined in Articles 8.1, 8.2(b), 8.2(c), 8.2(h) and 25 of the American Convention. Nevertheless, the IACtHR determined that the controversy remained regarding the alleged violations of the guarantee of judicial independence (Article 8.1), the principle of legality (Article 9) and political rights (Article 23) of the American Convention.

In its decision, the IACtHR therefore concluded that the State violated Mr. Aguinaga Aillón’s right to have his rights determined by a competent authority, in connection with the guarantee of judicial independence, which includes the guarantee of stability and irremovability in office. It also determined that the arbitrary removal of the victim unduly affected his right to remain in office under conditions of equality. Furthermore, the IACtHR decided that there was a violation of Mr. Aguinaga Aillón’s right to defense and to know previously and in detail the accusation against him were violated. In addition, it concluded that the State violated the right to judicial protection and the right to appeal, since the victim was prevented from filing any kind of action against his removal, and there was no effective remedy to protect his violated rights. Finally, by virtue of the *iuria novit curia* principle, the IACtHR concluded that the State was responsible for the violation of the right to work, in accordance with Article 26 of the American Convention, due to the violation of labor stability. The decision (in Spanish) can be found [here](#) and the press release [here](#).



INFORMATION ON EMPLOYMENT OPPORTUNITIES

This section of the newsletter presents a list of some open human rights positions at the United Nations that may be of interest to you. It should be noted that neither

the HRIG nor ASIL are part of the election processes for these positions, and therefore their listing is for informational purposes only.



1. High-level positions requiring nomination by a State

This category lists the upcoming elections for members of treaty bodies within the United Nations System. These are honorary and part-time positions. When the term of office of one or more of the members of these bodies is about to expire, the Secretary-General sends a note verbale to the States Parties to the respective treaty, inviting them to

submit their nominations by note verbale by a specified deadline. Thus, to apply for one of these positions, it is necessary to be nominated by a State party to the respective treaty. After States submit their nominations, their representatives meet in a scheduled session to vote and elect the new members.

Position available	Positions available	Elections	Nomination	Website with more information
Member of the Committee on the Economic, Social & Cultural Rights	9	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .
Member of the Committee on the Rights of the Child	9	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .
Member of the Human Rights Committee	9	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .
Member of the Committee on the Rights of Persons with Disabilities	9	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .
Member of the Committee on the Elimination of Discrimination Against Women	11	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .
Member of the Subcommittee on Prevention of Torture	13	It will be held in 2024. The exact date is not yet available.	Not yet available.	When available it will be published here .