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## Thirty-first meeting of Chairs of the human rights treaty bodies

New York, 24–28 June 2019

Item 5 of the provisional agenda

### Implementation of the Guidelines against Intimidation or Reprisals (the San José Guidelines), with a particular focus on the role of focal points and rapporteurs

## Role of treaty body focal points and rapporteurs with respect to reprisals against persons and groups engaging with United Nations human rights treaty bodies

### Note by the Secretariat

#### *Summary*

At their thirtieth meeting, the Chairs requested the Secretariat to prepare a paper on the role of focal points and rapporteurs with respect to reprisals against those who were cooperating, had cooperated or sought to cooperate with the treaty bodies, for discussion at the thirty-first meeting of the Chairs (A/73/140, para. 78). Pursuant to that decision, the present note also contains an overview of good practices in preventing and responding to intimidation and reprisals against individuals and groups who have sought to cooperate or have cooperated with human rights treaty bodies.

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## I. Introduction

1. At their thirtieth annual meeting in 2018, the Chairs requested the Secretariat to prepare a document on the role of focal points and rapporteurs with respect to reprisals against those who were cooperating, had cooperated or sought to cooperate with the treaty bodies (A/73/140, para. 78). At the same meeting, the Chairs expressed concern at the reported increase of acts of intimidation and reprisals against those who were cooperating, had cooperated, or sought to cooperate with the treaty bodies, in particular human rights defenders, and they underlined the importance of enhancing the effective implementation of the Guidelines against Intimidation or Reprisals (the San José Guidelines) (A/73/140, paras. 74 and 75).

2. Currently, there are variations in practice with regard to the role of rapporteurs and focal points on reprisals. The present note contains an overview of such roles and provides examples of good practices in preventing and responding to intimidation and reprisals against individuals and groups who are seeking to cooperate or have cooperated with human rights treaty bodies. The Secretariat has prepared the present note based on previous decisions and actions that the Chairs and the treaty bodies have already taken on the issue, and building on the workshop on reprisals that was held in December 2018.

## II. Background

3. Several human rights treaties contain an explicit recognition of the risk of intimidation or reprisals that human rights defenders face and explicit provisions that spell out the State party's responsibility to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee concerned (see annex I).<sup>1</sup>

4. Several treaty bodies envision the non-disclosure of the identity of authors of individual communications as a preventive measure against reprisals. In a situation where disclosing the identity of an applicant may put him or her at risk, the Committee may withhold information from the respondent (State party) that might reveal the identity of the complainant.

5. In her report on strengthening the United Nations human rights treaty body system (A/66/860), the United Nations High Commissioner for Human Rights proposed that each treaty body appoint a focal point among its membership to draw attention to cases of reprisals, ensure mechanisms for action and facilitate access for civil society organizations and national human rights institutions with knowledge on such cases (sect. 4.2.8).

6. In 2014, the Chairs of the treaty bodies decided to make reprisals a standing item on the agenda of their annual meeting (A/69/285, para. 71). Since then, they have consistently recommended that all treaty bodies establish a focal point on reprisals and have stressed the importance of a system-wide approach across all human rights mechanisms to address reprisals. In order to translate the condemnation of reprisals into practice, at their twenty-seventh meeting, in 2015, the Chairs endorsed the San José Guidelines as their joint policy (A/70/302, para. 35).<sup>2</sup>

7. Since then, the Chairs have encouraged each treaty body to adopt the San José Guidelines (A/70/302, para. 41). In 2017, the Chairs reiterated their recommendation for each treaty body's rapporteur(s) or focal point(s) on reprisals to work together to align the approaches taken to prevent intimidation and protect individuals and groups against reprisals in order to enhance consistency across the treaty body system (A/72/177, para. 42).

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<sup>1</sup> See, for instance, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 8, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 16.

<sup>2</sup> For information on the adoption of the San José Guidelines by the treaty bodies, see A/71/270.

8. At their thirtieth meeting, the Chairs noted that the roles of focal points and rapporteurs diverged from one Committee to another (A/73/140, para. 28).

9. In response to the call by the Chairs of the treaty bodies to identify good practices and the roles of focal points and rapporteurs with respect to addressing reprisals, OHCHR and the International Service for Human Rights, a non-governmental organization (NGO), jointly organized a workshop, in Geneva on 12 and 13 December 2018, together with Amnesty International and the NGO Network on UN Treaty Bodies.<sup>3</sup> The objective of the workshop was to facilitate a discussion between focal points and rapporteurs on reprisals and other members of treaty bodies to help develop a common understanding of the scope and impact of the issue and to identify good practices and proposals to align the roles and approaches of the treaty body rapporteurs and focal points on reprisals.

### **III. Role of the rapporteurs or focal points on intimidation or reprisals**

10. The San José Guidelines, which at the time of writing had been adopted or endorsed by 9 out of 10 treaty bodies, contain a recommendation that each treaty body consider appointing at least one member as rapporteur or focal point on intimidation or reprisals (with the term to be determined by the treaty body concerned). All treaty bodies have now appointed dedicated rapporteurs and focal points on intimidation or reprisals. However, many treaty bodies have not set a clear term limit for their respective rapporteur or focal point or defined criteria and processes for appointing rapporteurs or focal points. The Committee on Economic, Social and Cultural Rights, which is the only treaty body that has not yet adopted the San José Guidelines, has created a focal point on reprisals. In 2016, the Committee adopted a statement on human rights defenders and economic, social and cultural rights, which addresses the question of reprisals (E/C.12/2016/2).

11. Aside from the divergence of roles mentioned in paragraph 8 above, the procedures of the treaty bodies also differ in how explicitly they specify the functions given to their focal points or rapporteurs and how they handle allegations of reprisals. For instance, the Committee on the Rights of the Child and the Committee on Enforced Disappearances provide some information in their working methods on courses of action to counter reprisals. In its information note on reprisal procedure, the Committee on the Rights of Persons with Disabilities sets out that the focal point, in coordination with the Secretariat, reviews and verifies the information received pertaining to allegations of intimidation and reprisals.<sup>4</sup> The focal point is also tasked with making suggestions on the appropriate course of action on a case-by-case basis, always with the consent and agreement of the persons concerned and in line with the principle of “do no harm”. The note then refers to paragraphs 18 to 31 of the San José Guidelines for examples of a possible course of action.

12. Many rapporteurs and focal points on reprisals function without the benefit of a description of their roles and functions, as many treaty bodies have not formulated or widely communicated any guidelines or terms of reference for them. For instance, in a welcome development, the Committee on the Elimination of Discrimination against Women, through its decision 70/3, appointed a rapporteur and alternate rapporteur on intimidation or reprisals in July 2018; however, the Committee has not communicated publicly on how it handles reprisal allegations or what the role of the rapporteurs is.

13. The Committee against Torture was the first treaty body to adopt comprehensive guidelines and procedures on the role of the rapporteur on reprisals, and it is considered to have established a good practice among the treaty bodies on addressing reprisals. In 2012, the Committee adopted a mechanism to prevent, monitor and follow up on cases of reprisal. In 2015, in light of the decision taken by the Chairs to develop and adopt a joint treaty body policy against reprisals at their twenty-seventh meeting, it adopted guidelines on the receipt

<sup>3</sup> A summary of the workshop can be found on the Office of the United Nations High Commissioner for Human Rights (OHCHR) website, on the annual meeting of Chairs web page, at [www.ohchr.org/EN/HRBODIES/ANNUALMEETING/Pages/MeetingChairpersons.aspx](http://www.ohchr.org/EN/HRBODIES/ANNUALMEETING/Pages/MeetingChairpersons.aspx).

<sup>4</sup> Available from [www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx](http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx).

and handling of allegations of reprisals against individuals and organizations cooperating with the Committee (CAT/C/55/2). In the guidelines, the Committee:

- (a) Provides that the secretariat is to designate focal points from among its staff members;
- (b) Describes the roles and responsibilities of the rapporteur on reprisals and the secretariat focal point;
- (c) Sets out how allegations of reprisals should be handled and the possible and appropriate course of action.

14. In line with the same Committee's policy, the rapporteur on reprisals, with the help of the Secretariat, receives information on reprisals, liaises in a timely manner with the source or victim, collects additional information, makes a preliminary assessment of the reported incident and prepares a recommendation for action. The focal point maintains contact with the source or victim and is responsible for communicating with permanent representatives of the States concerned. At every session, the rapporteur briefs the plenary on allegations of reprisals received, action taken and responses from the States parties.

15. Given its long experience with field visits, including to places of deprivation of liberty, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has well-established policies and practices to reduce the risk of intimidation, reprisal or sanction against any person or organization for having communicated any information to visiting bodies. In 2015, the Subcommittee adopted a public policy on reprisals, in which it provided for the appointment of a rapporteur on reprisals to coordinate proactive implementation of the policy and envisioned actions to prevent and address reprisals (CAT/OP/6/Rev.1).<sup>5</sup>

16. The Subcommittee has developed clear operational steps for the preparation, conduct and follow-up of its country visits and missions. Each visit has a focal point in charge of the implementation of the Subcommittee's policy. In cases where there are risks or allegations of reprisals or where reprisals occur, the Subcommittee directly engages with the respective State party to ensure that it prevents and refrains from engaging in such acts of intimidation or reprisal against individuals or groups seeking to cooperate or cooperating with the Subcommittee and that it adopts adequate remedies.

17. If, during a visit, the Subcommittee is made aware of reprisals carried out by the State party, it takes all appropriate measures. Such measures might include communicating its concerns with the appropriate government authorities, communicating with the diplomatic missions of other States parties, conducting follow-up visits to monitor the situation or asking local national preventive mechanisms or specialized NGOs to conduct such visits, adapting interview techniques, requesting the intervention of other United Nations bodies, speaking to the local or international media and, in extreme cases, withdrawing the Subcommittee's delegation from the country.

18. When the risk of reprisals for victims and detainees is high and the State party does not guarantee protection against acts of reprisal, the Subcommittee, as a preventive measure, suspends its visit and withdraws its delegation from the country. For instance, in 2017, due to a series of obstructions imposed by the authorities and allegations that some interviewees could face reprisals, the Subcommittee suspended its visit to a State.<sup>6</sup> In view of the increasing risk of intimidation and reprisals against individuals who seek to cooperate or cooperate in the confidential inquiries of treaty bodies, the practices established by the Subcommittee provide important practical guidance that can be adapted and further developed by each treaty body that is mandated to carry out a confidential inquiry. The Subcommittee's approach to reprisals is considered as good practice among the treaty bodies with a visiting mandate.

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<sup>5</sup> See also the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15.

<sup>6</sup> OHCHR/United Nations Office in Rwanda, "Prevention of torture: UN human rights body suspends Rwanda visit citing obstructions", press release, 20 October 2017.

19. The Committee on Enforced Disappearances has taken steps to tackle reprisals, creating a rapporteur on reprisals in 2014. The Committee's rules of procedure describe how it should handle allegations, indicating that the Committee will transmit cases of intimidation, persecution or reprisal to the relevant authorities, with a request that they take steps to protect the persons affected (rule 63). In addition, the Committee may request the State party concerned to urgently adopt measures to ensure protection of the concerned individuals and submit written explanations or clarifications thereon to the Committee (CED/C/1, rule 99).

20. The San José Guidelines were most recently endorsed by the Committee on the Elimination of Discrimination against Women, in 2018. The Committee appointed a rapporteur and an alternative rapporteur on reprisals in July of that year. The rapporteurs cannot take decisions on their own, but they can assess the available information, conduct research and make a recommendation on the next course of action to the Committee's Bureau. The Bureau then decides intersessionally on the recommendation of the rapporteurs and presents recommendations to the plenary at the regular sessions to determine the appropriate course of action to be taken in response to substantiated allegations of intimidation or reprisal.

21. The table below provides an overview of the existing policies and practices of the treaty bodies with regard to addressing reprisals.

#### Existing policies and practices with regard to addressing reprisals

<i>Treaty body</i>	<i>Specific policy or guidelines on reprisals</i>	<i>Rapporteur or focal point on reprisals appointed</i>	<i>Functions of the focal point on reprisals defined in a specific document</i>	<i>Letters of allegation, and the responses from States, publicly posted on the Committee's web page</i>
Committee on the Elimination of Racial Discrimination	Currently being formulated	Yes	No	Yes
Human Rights Committee	No	Yes	No	No
Committee on Economic, Social and Cultural Rights	No	Yes	No	No
Committee on the Elimination of Discrimination against Women	No	Yes	No	No
Committee against Torture	Yes Guidelines on handling allegations of reprisals (CAT/C/55/2) (2015)	Yes	Yes Guidelines (CAT/C/55/2)	Yes
Committee on the Rights of the Child	No	Yes	No	No (None yet reported)
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	No	Yes	Yes (see <a href="http://www.ohchr.org/EN/HRBodies/CMW/Pages/Reprisals.aspx">www.ohchr.org/EN/HRBodies/CMW/Pages/Reprisals.aspx</a> )	Yes

<i>Treaty body</i>	<i>Specific policy or guidelines on reprisals</i>	<i>Rapporteur or focal point on reprisals appointed</i>	<i>Functions of the focal point on reprisals defined in a specific document</i>	<i>Letters of allegation, and the responses from States, publicly posted on the Committee's web page</i>
Committee on the Rights of Persons with Disabilities	No	Yes	Yes (see "Reprisals" link, <a href="http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx">www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx</a> )	No
Committee on Enforced Disappearances	No	Yes	No	No (but disclosed in annual reports)
Subcommittee on Prevention of Torture	Yes Policy on reprisals in relation to its visiting mandate (CAT/OP/6/Rev.1) (2016)	Yes	Yes (CAT/OP/6/Rev.1)	Allegations of reprisals disclosed when visit reports are made public

#### IV. Compilation of good practices in handling reprisals

22. The present section provides some examples of good practices and of both protective and preventive approaches that treaty bodies have taken to assist individuals and groups that have alleged that they are at risk of or are facing intimidation or reprisals for seeking to cooperate or for having cooperated with treaty bodies. The cases referred to below are just a few examples of the large number of cases that have been reported to and addressed by the treaty bodies. All the cases mentioned below are available on the web pages of the treaty bodies or have been publicly reported in annual reports submitted by the Secretary-General to the Human Rights Council.<sup>7</sup> At the workshop on reprisals held in Geneva in December 2018, participants made a number of concrete recommendations, including on the basis of good practices by various treaty bodies in different thematic areas. The recommendations are listed in annex II.

##### A. Protective approaches and actions

###### 1. Raising concerns with State party authorities through written communications and follow-up

23. As a notable example of the effective role and authority of rapporteurs, the Committee against Torture has a long-standing and systematic practice for receiving allegations of reprisals from individuals and groups and sending communications to the relevant authorities. When allegations of intimidation or reprisals are received – and if consent is granted by the individual or group concerned – the rapporteur sends communications (letters of allegation or "reprisal letters") to the permanent representative of the State concerned, requests information, expresses his or her concern and requests an investigation into and the immediate end of any such acts. The rapporteur on reprisals and the Chair of the Committee against Torture (or, in the case of individual communications, the rapporteur on new communications and interim measures) co-sign the letters to the State party. All communications are publicly available on the web page of the Committee against Torture.<sup>8</sup>

<sup>7</sup> See [www.ohchr.org/EN/Issues/Reprisals/Pages/Reporting.aspx](http://www.ohchr.org/EN/Issues/Reprisals/Pages/Reporting.aspx).

<sup>8</sup> See [www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx](http://www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx).

24. The Committee on Migrant Workers, through its focal point for reprisals and its Chair, has publicly taken action regarding an allegation of reprisals against two civil society organizations that submitted reports to the Committee. All communications to the State party concerned are publicly available on the Committee's web page.<sup>9</sup> In January 2017, a district court in the State party categorized both organizations as terrorist and extremist groups. The alternative report submitted by one of the organizations was deemed by the court to be extremist material, and its distribution was banned. In June 2018, the Committee sent a letter to the Government of the State party expressing concern over the court's decision, which, according to the Committee, appeared to be the direct consequence of the engagement of those civil society organizations with the work of the Committee.<sup>10</sup> In August 2018, the Committee sent a follow-up letter, signed by the focal point for reprisals. The focal point and the Vice-Chair of the Committee met with the State party's permanent representative in Geneva. The focal point wrote a further letter on 10 September 2018, asking for clarification on a number of points, including the necessity of taking action against the organizations, the aim of such action and the proportionality between that aim and the measures taken.<sup>11</sup>

## **2. Use of early warning and urgent action procedures**

25. In May 2018, during its ninety-fifth session, the Committee on the Elimination of Racial Discrimination used its early warning and urgent action procedures in response to allegations of reprisals against several indigenous peoples' representatives and human rights defenders in a State party. As a reprisal for their engagement with the Committee and other United Nations human rights mechanisms, the Government had placed a number of individuals on a "terrorist" list. The Committee urged the Government to remove the individuals, including incumbent and former special procedure mandate holders, from the petition list. It also requested the State party to provide information no later than 16 July 2018 (A/73/18, p. 8).

## **3. Raising concerns during constructive dialogues and in concluding observations, lists of issues, lists of issues prior to reporting and general comments**

26. Most treaty bodies raise the issue of reprisals during their dialogues with States parties and explicitly refer to it in a number of their concluding observations, lists of issues, lists of issues prior to reporting and general comments. Specifically, they urge States parties to ensure that individuals and NGOs that provide information are not subjected to intimidation and reprisals. When treaty bodies have received timely information about retaliation against specific individuals for cooperating with treaty bodies, they have raised concerns during their constructive dialogue and have included their concerns in the respective concluding observations.

27. In a recent example, during the consideration of a periodic report of a State party in July 2018, the Committee against Torture received allegations that the authorities in the State party had detained five human rights defenders on the pretext of checking their visas and prevented them from travelling to Geneva. They had intended to cooperate with the Committee. As the secretariat liaised with the source in a timely manner, the Committee was able to raise the allegations with the State delegation during its constructive dialogue. It included a specific concern about reprisals in its concluding observations and recommended that the State party protect from any possible reprisals members of civil society who cooperated with the Committee during the consideration of the second periodic report.<sup>12</sup> In another example, in July 2017, the Human Rights Committee expressed its concern about reports that senior government officials had made disparaging statements in the media about individuals and civil society organizations who had submitted information for the second

<sup>9</sup> See [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&CountryID=93&TreatyID=7&DocTypeID=130](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&CountryID=93&TreatyID=7&DocTypeID=130).

<sup>10</sup> See [tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/KGZ/INT\\_CMW\\_RLE\\_KGZ\\_8704\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/KGZ/INT_CMW_RLE_KGZ_8704_E.pdf).

<sup>11</sup> See [tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/KGZ/INT\\_CMW\\_RLE\\_KGZ\\_8747\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/KGZ/INT_CMW_RLE_KGZ_8747_E.pdf).

<sup>12</sup> CAT/C/MRT/CO/2, para. 27.

periodic report of the State party concerned.<sup>13</sup> In July 2017, human rights defenders from a well-known NGO had travelled to Geneva to take part in the review of the report by the Human Rights Committee. The defenders provided information to the Committee on the murder of a well-known environmental and human rights defender in March 2016. In response, the head of the State party delegation discredited the information and later made public statements, including to national media outlets, that the information provided by civil society to the Human Rights Committee on the death of the human rights defender was false and misleading (A/HRC/39/41, annex I, para. 48).

#### **4. Coordination with other procedures**

28. In some instances, treaty bodies have raised concerns about reprisals relating to cooperation with other procedures, and vice versa. Such cooperation and coordination could be strengthened. For instance, in its concluding observations on the fourth periodic report of one State party, the Human Rights Committee expressed particular concern over the situation of a prominent judge, who was arrested in 2009 as a reprisal after she ordered the conditional release of an individual whose detention was deemed arbitrary by the Working Group on Arbitrary Detention (A/HRC/27/48, para. 26) and, later, by the Committee itself (CCPR/C/106/D/1940/2010). The Committee was concerned at claims that the judge had been subjected to ill-treatment and sexual assault during her detention and that those claims were not promptly investigated in accordance with articles 7 and 14 of the International Covenant on Civil and Political Rights.<sup>14</sup>

29. In some instances, treaty bodies have referred allegations to special procedure mandate holders, who have taken action. For example, in October 2017, special procedure mandate holders expressed concern about the increasingly threatening nature of the physical attacks on and intimidation and harassment of human rights defenders and of members of an association for the rights of lesbian, gay, bisexual, transgender and intersex persons, following their participation in the review of a State party by the Human Rights Committee in Geneva.<sup>15</sup> The Government responded to the allegations on 17 July 2018 (A/HRC/39/41, para. 31).

#### **5. Reporting to the General Assembly and the Economic and Social Council**

30. Some treaty bodies include information on cases of intimidation or reprisals in their annual or biennial reports, although such inclusion is not systematic. The Committee on Enforced Disappearances is unique in the sense that it has a dedicated chapter on reprisals in its annual report, in which it publishes a summary of cases received and actions taken following allegations of reprisals, naming the States concerned. Cases have been included annually in the Secretary-General's reports on reprisals issued between 2011 and 2018. The Secretariat is working towards maintaining a centralized system for documenting and following up on cases of reprisals for engagement with treaty bodies.

## **B. Preventive measures**

### **1. Protection measures**

31. In the context of individual complaints, treaty bodies are increasingly requesting States to adopt protection measures for victims and their family members, who can face a range of reprisals and intimidation for filing complaints to treaty bodies or after the treaty body concerned publishes its decision or views on their case. The practice of the Human Rights Committee is noteworthy, as its Special Rapporteur on new communications and interim measures closely monitors cases for risks of reprisals. The Committee against Torture requests States parties to provide, within a specific deadline, information on the measures

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<sup>13</sup> CCPR/C/HND/CO/2, para. 42.

<sup>14</sup> CCPR/C/VEN/CO/4, para. 15.

<sup>15</sup> Letter of allegation CMR 5/2017. Available at [spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23417](http://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23417).

taken by their authorities to comply with the request to refrain from intimidation or reprisals, and the Committee publicly posts such correspondence on its web page.<sup>16</sup>

## **2. Interim measures of the Committee on Enforced Disappearances**

32. In rule 99 of its rules of procedure, the Committee on Enforced Disappearances sets out that, if it receives reliable information about allegations of reprisals against individuals as a consequence of providing information or participating in any hearings or meetings in connection with a visit by the Committee, it may request the State party concerned to urgently adopt measures to ensure protection of the concerned individuals and submit written explanations or clarifications thereon to the Committee. The Committee uses interim measures as protection measures in serious and urgent cases to protect witnesses, relatives and defence counsel who are at risk of or face intimidation and threats and who request interim measures.

## **3. Awareness-raising**

33. As a preventive and awareness-raising measure, some treaty bodies, including the Committee on Enforced Disappearances, jointly adopt public statements with other human rights mechanisms to affirm the responsibility of States parties to protect members of civil society and victims of human rights violations against intimidation or reprisals. For example, on the International Day of the Victims of Enforced Disappearances in 2016, the Committee issued a press release jointly with the Working Group on Enforced or Involuntary Disappearances, expressing concern at allegations of intimidation or reprisals against victims of enforced disappearance and those who reported their cases.<sup>17</sup>

34. On the occasion of the twentieth anniversary of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders), a group of Chairs, Vice-Chairs and other members of the treaty bodies and the Special Rapporteur on the situation of human rights defenders issued a joint public statement, reiterating the importance of human rights defenders being able to act freely and without facing any form of intimidation or reprisals. The joint statement reminded States of their responsibility to ensure that human rights defenders are protected against all forms of intimidation or reprisals for seeking to cooperate or cooperating with the treaty bodies.<sup>18</sup>

## **4. Reminding States parties of their primary obligation to prevent or refrain from acts of reprisal**

35. In the context of State party reviews, treaty bodies frequently remind States parties, including during the dialogue, about the obligation to protect individuals and to ensure that they do not face reprisals or intimidation for cooperating with United Nations human rights mechanisms. In doing so, treaty bodies use standard language in introductory oral statements during their dialogue with States parties.

## **C. Other measures**

### **1. Making information on reprisals available to the public**

36. The San José Guidelines recommend that treaty bodies may, as appropriate, make information regarding allegations of reprisals, including relevant communication with States parties, public by posting it on the treaty body web page of the OHCHR website (HRI/MC/2015/6, para. 26). The web pages of both the Committee against Torture and the Committee on Migrant Workers have dedicated sections on reprisals, where it is easy to find all of their communications with States concerning allegations of reprisals. The Committee against Torture has posted all of its past letters of reprisal on its web page.<sup>19</sup>

<sup>16</sup> See [www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx](http://www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx).

<sup>17</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20416&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20416&LangID=E).

<sup>18</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E).

<sup>19</sup> See [www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx](http://www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx).

The Subcommittee on Prevention of Torture has implemented the Guidelines by adopting policies on reprisals and having them posted on the web pages of the relevant Committees (CAT/OP/6/Rev.1).

37. In April 2019, in order to help centralize all relevant information on reprisals, the Secretariat developed a shared (internal) repository of information and a common web page on reprisals against those cooperating with treaty bodies. The common web page sets out information on the role of the rapporteurs and focal points and on how to submit information on reprisals.<sup>20</sup>

## **2. Use of media to highlight specific cases or generalized practices of reprisal**

38. The San José Guidelines recommend using the media, when appropriate, to raise concerns about specific incidents of reprisals. The Committee against Torture issues public statements on specific incidents to voice concerns about allegations of reprisals against individuals who sought to cooperate or cooperated with the Committee. For instance, in August 2016, the Committee issued a press release voicing concern about reported reprisals against four lawyers who had provided information for a special review of the State party where they lived, and provided detailed information about the actions it took on the case.<sup>21</sup> The Committee on Enforced Disappearances jointly issued public statements with the Working Group on Enforced or Involuntary Disappearances on the generalized practices of intimidation or reprisals against victims of enforced disappearance and those who have reported their cases.<sup>22</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> OHCHR, “Burundi torture review: UN experts concerned at reported reprisals”, press release, 8 August 2016, available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E).

<sup>22</sup> Ibid.

## Annex I

### Provisions on reprisals in human rights treaties and their optional protocols

<i>Treaty</i>	<i>Relevant article</i>
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Article 13. Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.
Optional Protocol to the Convention against Torture	Article 15. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
International Convention for the Protection of All Persons from Enforced Disappearance	<p>Article 12 (1). Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.</p> <p>Article 12 (4). Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.</p>
Optional Protocol to the Convention on the Rights of the Child on a communications procedure	<p>Article 4 (1). A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.</p> <p>Article 4 (2). The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.</p>

<i>Treaty</i>	<i>Relevant article</i>
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	Article 13. A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Article 11. A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.	Article 16 (2). Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

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## Annex II

### Recommendations by participants in the workshop on reprisals held in Geneva on 12 and 13 December 2018

1. On the basis of the Guidelines against Intimidation or Reprisals (the San José Guidelines), existing policies and practices, and with a view to ensuring a victim-oriented approach and enhancing the role of each Committee's rapporteur or focal point on reprisals, the following key elements were identified by workshop participants in several thematic areas, drawing on good practices of various Committees.

#### A. Role of the rapporteurs or focal points on reprisals

2. Rapporteurs or focal points should play an active role in implementing the Guidelines, including by:

- (a) Being the main entry point or contact for victims or sources, and being visible in that regard;
- (b) Assessing and verifying allegations;
- (c) Respecting issues of confidentiality;
- (d) Liaising with country rapporteurs, Chairs and the country desks of the Office of the United Nations High Commissioner for Human Rights (OHCHR);
- (e) Determining the most appropriate courses of action;
- (f) Maintaining a list or compilation of cases acted upon and follow-up actions;
- (g) Ensuring consistency across the treaty body system and compiling lists of good practices;
- (h) Updating the respective Committees on an annual basis through a standing agenda item.

3. Rapporteurs or focal points of different bodies should exchange information intersessionally, including through remote interaction, to develop common procedures and tools such as checklists and intake forms in order to handle allegations of reprisals;

4. A list with the names of rapporteurs or focal points should be made public, and each Committee should include information on reprisals and on how to contact the focal point and submit an allegation, on its web page;

5. The appointment of rapporteurs or focal points should follow a transparent and consultative process within each Committee, and a clear term limit, with start and end dates, should be set.

#### B. Preventive measures

##### 1. State party reviews

6. In the context of State party reviews, treaty bodies should remind States parties of their primary obligation to prevent or refrain from acts of reprisals by, inter alia:

- (a) Reminding States of the relevant treaty provisions;
- (b) Systematically inserting a standard paragraph with general language on intimidation and reprisals in lists of issues and lists of issues prior to reporting;
- (c) Asking the country rapporteur to send a letter to the State prior to the dialogue, as required;

(d) Making reference to the obligations of States by using standard language in introductory oral statements during the dialogue with States;

(e) Including an observation or recommendation spelling out concerns, with specific questions or concrete recommendations, as appropriate, in concluding observations;

(f) Raising relevant issues at the press conference at the end of the session, as appropriate, and in consultation with the source or victims;

(g) Including reprisal-related recommendations in the follow-up procedure, as appropriate.

7. Also in the context of State party reviews, treaty bodies should:

(a) Engage more actively with United Nations country teams and OHCHR desk officers in order to be better informed of the context and issues;

(b) Accept confidential submissions and testimonies by victims or civil society, and should always act in consultation with them;

(c) Ensure safe spaces for civil society and national human rights institutions, accommodating requests, when possible, for private or confidential briefings. If necessary, they should use alternative or encrypted means of communication;

(d) Inform civil society representatives of the possibility of bringing information about acts of intimidation or reprisals to the relevant Committee's attention, and explain how that may be done.

## **2. Monitoring visits and inquiries**

8. In the context of monitoring visits and inquiries, treaty bodies should:

(a) Inform States of the right to cooperate with the treaty bodies, both in writing and during preparatory meetings;

(b) Share the San José Guidelines and the respective Committee's policy on reprisals with States;

(c) Appoint a member as a focal point for reprisals for each visit or inquiry;

(d) Bring the issue to the attention of national authorities during the visit, repeatedly if so required.

## **2. Individual complaints**

9. In the context of individual complaints, treaty bodies should:

(a) Remind States of the right to unhindered access and communication with United Nations bodies, and warn them not to pressure authors of complaints;

(b) Include the abovementioned reminder and warning upon registration of the complaint;

(c) Inform the victim and his or her representatives and relatives of the possibility of bringing information about acts of intimidation or reprisals to the Committee;

(d) Use protective measures under individual communications procedures (i.e., interim measures) as appropriate.

## **3. Awareness-raising**

10. For the purpose of awareness-raising, treaty bodies should:

(a) Compile, regularly update and publicize, subject to any issues of confidentiality, a list of cases and relevant correspondence or action. The Secretariat may consider developing a common methodology for the process by creating a common

repository folder electronically, and may consider whether to include a section on reprisals in the treaty bodies weekly update;

(b) Use press statements and social media to provide visibility when appropriate, ensuring respect for the “do no harm” principle;

(c) Include a section on reprisals in their annual reports, with details on action taken or links to observations or recommendations made, letters sent to States, or any other relevant information arising during the reporting period;

(d) Make use of concluding observations and general comments to spell out the elements or scope of what treaty bodies consider as acts of intimidation or reprisals;

(e) Make reprisals a regular item on the agenda of informal meetings with States parties to raise awareness of their obligations, and disseminate the Guidelines.

## **C. Further measures**

### **1. State party reviews**

11. In the context of State party reviews, treaty bodies should:

(a) Bring allegations to the attention of the State party, asking for specific protection measures to be taken and requesting a response, preferably within a given deadline;

(b) Use all tools available in a strategic manner, including lists of issues, lists of issues prior to reporting, dialogues with States, meetings with States parties, concluding observations or recommendations, follow-up procedures, annual reports and decisions or views;

(c) Send letters on reprisals to States parties and, after applying protection measures, publish those letters and any replies received online, as appropriate;

(d) Use quiet diplomacy and private meetings with State authorities, as appropriate.

### **2. Follow-up**

12. Treaty bodies should:

(a) Include observations or recommendations on reprisals in their follow-up procedure, request information about specific measures taken and assess those measures;

(b) Maintain regular contact with the State party and with victims, including with regard to action taken;

(c) Liaise with national partners and actors, including OHCHR field presences, United Nations country teams, the diplomatic corps, national human rights institutions, national preventive mechanisms and civil society.

### **3. Monitoring visits and inquiries**

13. In the context of monitoring visits and inquiries, treaty bodies should:

(a) Consider using the confidential inquiry procedure when reprisals are reported as systematic or a pattern is identified;

(b) Bring the concern to the attention of relevant authorities;

(c) Meet with those affected and the relevant authorities as required;

(d) Raise the concern with the diplomatic corps;

(e) Request support from the United Nations country team, OHCHR field presences, national human rights institutions, national preventive mechanisms and civil society, as required;

(f) Suspend the visit if compromised by risks of reprisals and make a public statement to that effect.

#### **4. Individual complaints**

14. In the context of individual complaints, treaty bodies should:

(a) Bring the concern to the attention of the State party or the relevant authorities through meetings or letters, requesting that the State respond to the allegations and take certain measures, including protection for the victim, as appropriate;

(b) Consider reprisals as an element so as to request interim measures as appropriate;

(c) Request observations from the State party on specific measures taken by asking concrete questions;

(d) Where appropriate, and applying the necessary protection measures, make letters and replies public after the established deadline for a response has expired.

#### **D. Further measures: coordination with other mandates, mechanisms or procedures**

15. Treaty bodies should share information on action taken with other human rights mechanisms and bodies, in particular thematic but also country-specific special procedures, and with the Assistant Secretary-General for Human Rights for consideration regarding a possible common strategy and, if appropriate, for inclusion in the annual report by the Secretary-General.

16. Treaty bodies should share information with actors at the national level, as appropriate, and agree on follow-up action, including with United Nations resident coordinators, OHCHR field presences, United Nations peacekeeping missions, national human rights institutions and national preventive mechanisms.

17. If urgent protection is needed, treaty bodies should engage with civil society and connect cases to existing protection networks.

18. Treaty bodies should:

(a) Engage with the diplomatic corps at the national level as required;

(b) Make information public, as appropriate, to facilitate follow-up by national actors;

(c) Request follow-up visits subject to mandate and resources;

(d) Meet annually with other mechanisms and bodies to share information, practices and experiences, subject to resources;

(e) Share information with actors at the regional level, as appropriate, and coordinate follow-up action.

#### **E. Monitoring the implementation of the Guidelines**

19. Treaty bodies should, as appropriate, include information on cases of intimidation or reprisals in their annual or biennial reports.

**F. Dissemination of the Guidelines**

20. Treaty bodies should disseminate information on reprisals on the web page dedicated to the annual meetings of the Chairs of the human rights treaty bodies on the OHCHR website, on the general web page for the treaty bodies and on the web pages of each Committee, in accessible formats, indicating the names of the rapporteurs or focal points and explaining how to report incidents, what information to include and what to expect.

21. Treaty bodies should design a short video, factsheet or one-page document on how to submit allegations of intimidation or reprisals to treaty bodies.

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