


Ending reprisals against those who cooperate with the United Nations in the field of human rights

Submission to the UN Secretary-General on recent developments, cases and recommendations

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Table of Contents

TABLE OF CONTENTS	3
I. INTRODUCTION	4
II. THE LEGAL OBLIGATIONS OF STATES AND THE UNITED NATIONS TO ADDRESS REPRISALS.....	5
III. DEVELOPMENTS WITHIN HUMAN RIGHTS SYSTEMS IN RELATION TO REPRISALS	6
Human Rights Council developments.....	6
Treaty body developments	6
Regional mechanisms developments	7
IV. CASES OF INTIMIDATION AND REPRISALS.....	9
China	9
Honduras	10
Kuwait.....	10
The Maldives	10
Sri Lanka	11
Thailand.....	12
Venezuela.....	12
UN Committee on NGOs	13
V. THE NEED TO COMBAT IMPUNITY	15
VI. CONCLUSIONS AND RECOMMENDATIONS	16
Conclusions	16
Recommendations.....	16

I. INTRODUCTION

ISHR is pleased to make the following submission to the Secretary General to inform his upcoming report on cooperation with the United Nations, its Mechanisms and Representatives in the field of human rights.

This submission addresses developments in UN human rights bodies regarding the prevention of and response to reprisals during the reporting period (June 2014 to the present day). It also provides details of cases of reprisals that ISHR was made aware of during the period and our understanding of how these cases have been addressed both by the mechanisms and relevant States.

ISHR works to bring cases of alleged intimidation and reprisals to the attention of relevant UN officials, including the President of the Human Rights Council and President of the General Assembly, as well as UN independent experts, in a bid to press for effective preventative measures and responses to alleged cases of reprisals.

Several of the individual cases of intimidation and reprisals described below have taken place in a context of a systematic harassment of, threats and attacks against human rights defenders. These come in many forms, including through the use and abuse of laws to criminalise the work of human rights defenders, together with the initiation of arbitrary legal proceedings intended to hinder such work. Preventing and addressing cases of intimidation and reprisals cannot be seen as separate from the States' obligations to ensure a safe and enabling environment for human rights defenders and other civil society actors to carry out all aspects of their work.

II. THE LEGAL OBLIGATIONS OF STATES AND THE UNITED NATIONS TO ADDRESS REPRISALS

International law provides for a right to unhindered access to and communication with international bodies on matters of human rights and fundamental freedoms. This right is derived from the human rights to freedom of expression, association, assembly and movement contained in international human rights instruments and in customary international law.¹

The right to unhindered access to and communication with international bodies is also explicitly recognised in the Declaration on Human Rights Defenders² and is codified in specific provisions applying to certain UN human rights treaty bodies.³

Enjoyment of this right implies that those accessing or attempting to access or communicate with these bodies should not face any form of intimidation or reprisal for doing so. The Declaration on Human Rights Defenders recognises the right of human rights defenders to protection from reprisals for their communication or cooperation, or attempted communication or cooperation, with the United Nations' human rights bodies.⁴

The right to be free from reprisals that threaten an individual's life or physical liberty is also an aspect of the protection afforded by other international human rights, such as freedom from arbitrary arrest, detention or deprivation of liberty; torture; cruel, inhuman and degrading treatment; and arbitrary deprivation of life. ISHR further notes that international human rights jurisprudence establishes that States which confiscate passports, issue travel bans or prevent human rights defenders or representatives of NGOs from attending international meetings may contravene the right to freedom of movement under Article 12 of the ICCPR.⁵

States have the primary duty to uphold the correlate rights to unhindered access to the United Nations and to be protected from intimidation and reprisals in connection with any cooperation or attempted cooperation.⁶ As subjects of international law, UN bodies may also be bound by these obligations.⁷

¹ In 2012, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association called on States to ensure that these rights 'are enjoyed by everyone and any registered or unregistered entities' and that no one is subject to 'harassment, persecution, intimidation or reprisals' for exercising them.

² *United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, Annex to UN Doc A/RES/53/144, 8 March 1999, Articles 5(c) and 9(4).

³ See, eg, *Optional Protocol to the Convention on the Prevention of Torture*, Article 15; *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women*, Article 11; *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Article 13; and *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, Article 4.

⁴ Declaration on Human Rights Defenders, Articles 2(1), 9(1) and 12(2).

⁵ Human Rights Committee, 'Concluding Observations: Morocco', UN Doc CCPR/CO/82/MAR, 1 December 2004, §18.

⁶ See further ISHR's paper on the primary obligations of States to protect those who cooperate with the UN: *Ending Reprisals: The role of national laws and policies in protecting those who cooperate with the United Nations* (2013), available at http://www.ishr.ch/sites/default/files/article/files/ishr_reprisals_report-09_13_updated.pdf.

⁷ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73, pp 89–90. See also *Reparations for injuries suffered in the service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, p 179.

III. DEVELOPMENTS WITHIN HUMAN RIGHTS SYSTEMS IN RELATION TO REPRISALS

HUMAN RIGHTS COUNCIL DEVELOPMENTS

The Human Rights Council is legally obliged to take action if it possesses information about a credible risk or allegation of reprisals and to protect individuals who communicate, cooperate or seek to engage with the Council, its independent experts or the Universal Periodic Review process.⁸ The Council's President and Bureau have the responsibility to protect the Council's processes and defend its integrity, particularly as it relates to the right of civil society to participate fully and safely in its work. It is clear that attacks against those that cooperate with the Human Rights Council, or its mechanisms, constitute not solely an attack on those individuals but on the institution itself.

Over the last months, the President and Bureau of the Human Rights Council have made increasing efforts to meet that obligation. They appear to have been increasingly willing to take preventative action, including by reminding States of their obligations to protect the right to communicate with international mechanisms. Compared with previous years, they also appear to have been more swift and robust in reaction to allegations of intimidation or reprisals, including by raising concerns about one case publicly in the Council plenary.

Despite these actions, the 28th Session of the Human Rights Council saw numerous reported cases of intimidation and reprisals, including against South Sudanese defenders.⁹

TREATY BODY DEVELOPMENTS

During their 2014 annual meeting, Treaty Body Chairpersons agreed on a series of measures to be taken to enhance the response by treaty bodies to the issue of reprisals.¹⁰ The measures agreed by the Chairpersons include the establishment or appointment of rapporteurs or focal points on reprisals, improved coordination amongst treaty bodies, and the definition of a joint policy on reprisals to be approved at the Chairpersons' next annual meeting. Several of the recommendations responded to calls made to the Chairs in a joint submission by NGOs, including ISHR, ahead of the meeting.¹¹ ISHR had also provided the Committee with a detailed submission on Reprisals to the Treaty Bodies.¹² In the submission, ISHR called on each treaty body to create a public webpage on reprisals to give visibility to the Rapporteur and provide information on cases, including responses from States to inquiries from the treaty body.

UN Human Rights Committee

In the August 2014, the UN Human Rights Committee announced the appointment of one of its members

⁸ See further Memorandum of Advice from Freshfields Bruckhaus Deringer, Sir Nicolas Bratza and Professor Egbert Myjer of October 2014: available at <http://www.ishr.ch/news/human-rights-council-time-act-legal-obligation-end-reprisals>.

⁹ <http://www.defenddefenders.org/2015/03/un-hrc-statement-clustered-interactive-dialogue-special-rapporteur-torture-special-rapporteur-human-rights-defenders/>.

¹⁰ <http://www.ishr.ch/news/human-rights-committee-responds-ngo-calls-strengthen-response-reprisals>.

¹¹ www.ishr.ch/sites/default/files/article/files/joint_ngo_submission_to_meeting_of_treaty_body_chairpersons.pdf.

¹² http://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_CHAIRPERSONS_NGO_26_22100_E.pdf.

as Rapporteur on reprisals.¹³ This is in line with the increasing number of treaty bodies to have appointed rapporteurs, including the Human Rights Committee, the Committee against Torture, the Committee on Enforced Disappearances and the Committee on the Rights of Persons with Disabilities.

UN Sub-Committee on the Prevention of Torture

In February 2015 the UN Sub-Committee on the Prevention of Torture adopted a significant policy to combat intimidation and reprisals against those who provide information or contribute to its work to expose and prevent instances of torture and ill-treatment.¹⁴

The policy emphasises that the State has the 'primary duty to ensure that all alleged acts of reprisals and intimidation are promptly, impartially and effectively investigated, those responsible brought to justice, and victims provided with appropriate remedies'. It also recognises, however, that UN human rights bodies have a duty of care to those people who cooperate with them and provide them with the vital information necessary for their work.

The Chair of the Sub-Committee on the Prevention of Torture, Professor Malcolm Evans, noted that 'We are concerned that, when we undertake visits, people we come into contact with do not suffer reprisals as a result. If not, the SPT's preventative mandate, which includes the basic imperative to "do no harm", is put at risk. That is why we have adopted a clear public policy on this.'¹⁵

The policy provides for the appointment within the SPT of a 'Focal Point on Reprisals' to coordinate proactive implementation of the policy, which includes both investigating individual cases of reprisals and examining and addressing 'systemic causes of reprisals'. The actions envisaged by the policy in this regard include examining alleged cases of reprisals, raising concerns as to such cases with State officials and relevant UN mechanisms, and exposing instances of reprisals through both local and international media.

REGIONAL MECHANISMS DEVELOPMENTS

Inter-American Commission on Human Rights

In their statement concluding their March 2015 session of public hearings, the Inter American Commission on Human Rights concluded that it was 'absolutely unacceptable' for a State to take steps to intimidate those that engage with the Inter-American human rights system. The Commission reminded States of their responsibilities to grant the necessary guarantees to those cooperating with the mechanisms and refrain from carrying out reprisals against them or their families.¹⁶

African Commission on Human and Peoples' Rights

In February 2015 consultations were held on the implementation of the mandate of the new African Commission on Human and Peoples' Rights (ACHPR) focal point on reprisals.¹⁷ The resolution reflected the 'deep concern' of the Commission about the frequency and severity of reprisals against civil society actors, particularly human rights defenders, as well as the 'total impunity' enjoyed by the perpetrators. The new ACHPR focal point on reprisals, Commissioner Alapini-Gansou, held a consultation with human rights defenders from more than 10 countries across Africa.¹⁸ During the consultations participants identified the

¹³ www.ishr.ch/news/human-rights-committee-responds-ngo-calls-strengthen-response-reprisals.

¹⁴ www.ishr.ch/news/un-detention-monitoring-body-adopts-policy-combat-reprisals.

¹⁵ www.ishr.ch/news/un-detention-monitoring-body-adopts-policy-combat-reprisals.

¹⁶ <http://www.ishr.ch/news/iachr-session-concludes-denunciation-reprisals-and-call-combat-impunity>.

¹⁷ 273 Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa. <http://www.achpr.org/sessions/55th/resolutions/273/>.

¹⁸ The event was co-organised by the office of the African Commission Special Rapporteur on human rights defenders, ISHR, the Côte d'Ivoire Human Rights Defenders Network and the East and Horn of Africa Human Rights

need for clear processes on how to submit information on intimidation and reprisals against those cooperating with the African human rights system, as well as how best to interact with the Commissioner in regard to the prevention of reprisals. Commissioner Alapini- Gansou noted that the consultations ‘culminated in the adoption of a road map, which will shortly be implemented’ and that ‘it was decided that the Special Rapporteur will prepare a detailed report on cases of reprisals at each session pursuant to the aforementioned resolution.’¹⁹

Defender Project. See more at: <http://www.ishr.ch/news/human-rights-defenders-urge-african-commission-strengthen-its-response-reprisals>.

¹⁹ Inter Session Report May 2014 – April 2015, Honorable Commissioner Reine Alapini-Gansou: http://www.achpr.org/files/sessions/56th/inter-act-reps/220/56os_intersession_report_comm_gansou_en.pdf.

IV. CASES OF INTIMIDATION AND REPRISALS

During the reporting period, ISHR has received information regarding allegations of intimidation and reprisals against human rights defenders and others cooperating with the United Nations and its human rights mechanisms.

CHINA

In October, authorities in Henan Province prevented Wang Qiuyun (王秋云) – an activist working on HIV/AIDS issues in China – from traveling to Geneva to participate in the review of China by the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁰

Wang's passport was confiscated and she was forcibly taken to a local hospital, where officials allegedly registered her as a patient in order to prevent her from leaving the premises. Several other women working in the field of anti-discrimination planned to attend the CEDAW review, but decided against traveling either because they received police threats or they assessed their own situation as too risky for attending such an event. The CEDAW Committee in its Concluding Observations called particular attention to the need for the Chinese government to ensure that travel restrictions are not used to prevent individuals from observing future CEDAW reviews.

Ye Haiyan (叶海燕), a well-known feminist activist who has fought for rights of sex workers and accountability for sexual violence, was detained in Wuhan in November for posting a photo to the microblog site Weibo drawing public attention to the CEDAW review. According to media reports, Ye had already been prevented from traveling to Melbourne, Australia to participate in the 20th annual international AIDS conference in July 2014.²¹

In March 2015, three women's rights activists who had participated in preparing civil society reports to CEDAW were detained for 37 days, the maximum allowable under Chinese law. In large part as a result of international pressure, the 'Feminist Five' were released but are still under close police monitoring and subjected to intimidation.²²

In March 2015, at least a dozen or so human rights defenders were prevented from attending or forced to abandon their plan to attend a training on UN human rights mechanism in an Asian location. Among them, four women's rights activists were intimidated and feared for their own safety when their colleagues were put under criminal detention; a half dozen were denied passports; two were stopped at the border; and one of the two watched as police cut his passport to pieces in front of him.

Finally, defenders are not the only ones who face challenges in exercising their rights. In some instances, while some defenders were participating in training or treaty bodies' reviews, police visited their families or workplaces during the trips to ask about their whereabouts and deliver warnings that their activities abroad should not 'harm national security' or 'defame the country,' lest they face serious consequences. Over the reporting period, a number of activists or lawyers who had in the past attended UN human rights trainings or participated in the preparation of communiqués to Special Procedures or civil society reports to treaty bodies' reviews were placed in criminal detention, faced trial, or were imprisoned for their human rights

²⁰ www.washingtonpost.com/world/asia_pacific/china-bars-aids-activist-from-traveling-despite-talk-of-ending-discrimination/2014/10/23/5effbdc1-dd63-4da3-bdcc-7ff7746d6985_story.html.

²¹ NY Times 4/11/14; South China Morning Post 16/07/14 <http://m.scmp.com/news/china-insider/article/1555316/womens-rights-activist-ye-haiyan-barred-leaving-china>.

²² <http://www.amnesty.org.au/iar/comments/37020/>.

activities, though authorities used pretexts and ambiguous charges (such as 'disturbing public order').²³ Security concerns prevent their names or details of their cases from being made public.

HONDURAS

Human rights defenders travelling to Geneva in April 2015 to participate in pre-sessions of the Universal Periodic Review faced a wave of defamatory statements by public officials and journalists, suggesting that the defenders sought to denigrate the country, undermine the government, and make money through their actions.²⁴

ISHR understands that some of these defenders were able to secure a meeting with the President of the Human Rights Council to raise their cases and security concerns.

KUWAIT

Nawaf Al-Henal, founder of Kuwait Watch and a well-known human rights defender, along with at least 17 other protesters, was detained in connection with a peaceful protest in Al-Erada Square in Kuwait City on 23 March 2015. Al-Henal was reportedly beaten on the night of 23 March while monitoring and documenting a peaceful demonstration calling for respect for the rights to freedom of expression and assembly, the release of prisoners of conscience, and judicial reform to uphold the rule of law.

There are concerns that Al-Henal's arrest, arbitrary detention and alleged ill-treatment was connected with his advocacy at the UN Human Rights Council in Geneva, where he delivered a statement on 20 March 2015 condemning the arrest and imprisonment of human rights defenders and other civil society activists for 'undermining the emir'.

Earlier, in January 2015, an arrest warrant was issued against Al-Henal while he was in Geneva to lobby in connection with the Universal Periodic Review of Kuwait, charging him with damaging foreign relations and using Twitter to insult late Saudi King Abdullah. The arrest warrant was subsequently withdrawn following representations by the President of the UN Human Rights Council and others.

At that time Nawaf told ISHR, 'I love my country and I love its people. It is for that reason that I am in Geneva to stand up for our fundamental rights and freedoms. We deserve and have a right to free speech, to gather peacefully, and to advocate for the human rights of others. Rather than seeking to prosecute me for my advocacy at the UPR, Kuwait should use the opportunity of the UPR to commit to substantially reforming the Public Gatherings Law, the Penal Code, national security legislation, press regulations, and lese-majeste and blasphemy laws, all of which are used and abused to criminalise free speech in my country.'

On 31 March Nawaf Al-Henal was released but a travel ban imposed against him. It was reported that charges had been laid against him of 'participating in an illegal protest'.²⁵

THE MALDIVES

In September 2014, five members of the Maldives Human Rights Commission were charged with serious

²³ <http://chrinet.com/2015/03/silencing-the-messenger-2014-annual-report-on-the-situation-of-human-rights-defenders-in-china/>.

²⁴ <http://www.ishr.ch/news/honduras-end-defamation-human-rights-defenders-guarantee-their-security-and-legislate-their>.

²⁵ <http://www.ishr.ch/news/kuwait-release-nawaf-al-henal-and-respect-right-freedom-expression-and-assembly>.

offences by the country's Supreme Court in connection with a report the Commission submitted to the UN in advance of the Universal Periodic Review of the country.²⁶

The five Commissioners were summoned to the Supreme Court on 22 September 2014 and charged with allegedly undermining the Maldives' constitution, sovereignty and independence through the UPR report, which raised concerns regarding the rule of law and the independence of the judiciary. It is understood that the case would move to trial.

It is understood that the Maldives government has yet to make a public statement regarding the Supreme Court charges against the Commissioners or to respond to an approach by the Commission to intervene on their behalf.

In this regard, ISHR recalls Human Rights Council resolution 27/18, which calls on States to 'promptly and thoroughly investigate' all 'cases of alleged reprisal or intimidation against national human rights institutions and their respective members and staff or against individuals who cooperate or seek to cooperate with national human rights institutions', ensuring that 'perpetrators are brought to justice'.

SRI LANKA

Human Rights Defenders cooperating with the UN Commission of Inquiry into alleged serious violations and abuses of human rights and related crimes by both the Sri Lankan government as well as the Liberation Tigers of Tamil Elam²⁷ were the targets of intimidation and attacks in relation to that cooperation.²⁸ On 7 November 2014, the UN High Commissioner Zeid Ra'ad Al Hussein made a significant statement denouncing systematic intimidation of human rights defenders and other individuals in Sri Lanka in connection with their cooperation with and testimony to UN investigators.²⁹ He noted that Sri Lankan civil society and human rights defenders have been subject to surveillance, harassment and other forms of intimidation., and spoke of '(a) wall of fear has been created that has undoubtedly served to deter people from submitting evidence'.

In August 2014, a group of human rights NGOs voiced their deep concern over disturbing instances of attacks and intimidation against groups believed by the Sri Lankan government to be providing information to this investigation process.³⁰ A subsequent NGO report to the Human Rights Committee further demonstrated that such reprisals are not limited to those who had engaged with the investigation, but have also been perpetrated against civil society actors engaging with the UN treaty bodies, Special Rapporteurs, Universal Periodic Review and even the Human Rights Council itself.³¹

In its Concluding Observations on Sri Lanka issued in October 2014, the Human Rights Committee was clear when it came to reprisals against any individual providing information, reports or testimony to the UN, reiterating that the Sri Lankan government has an obligation under the International Covenant on Civil and Political Rights to 'protect them against any reprisals for providing such information'.³²

²⁶ <http://www.ishr.ch/news/maldives-withdraw-charges-and-end-reprisals-against-national-human-rights-commission>.

²⁷ As requested UN Human Rights Council in March 2014, A/HRC/25/1.

²⁸ <http://www.ishr.ch/news/sri-lanka-high-commissioner-condemns-attacks-against-human-rights-defenders>.

²⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15263&LangID=E>.

³⁰ <http://www.ishr.ch/news/sri-lanka-end-reprisals-against-those-who-cooperate-un>.

³¹ <http://www.ishr.ch/news/human-rights-committee-call-sri-lanka-end-attacks-and-reprisals-against-human-rights-defenders>.

³² <http://www.ishr.ch/news/sri-lanka-investigate-and-remedy-violations-against-human-rights-defenders-say-un-experts>.

THAILAND

In August 2014, human rights defender Ms Pornpen Khongkachonkiet, Director of the organization Cross-Cultural Foundation (CrCF) faced a spurious legal action instituted The Royal Thai Army. The case appeared to relate to CrCF's denunciation in an open letter of an alleged case of torture of a man at the hands of an Army Commander, the month previously.³³

As a result of the legal action, Ms Pornpen faced criminal charges of libel and defamation filed by the Army's Task Force 41. Ms Pornpen and CrCF are accused of causing damage to the reputation of the Army Ms Pornpen received a warrant on 24 August 2014 summoning her to report to the Yala police station in the deep south of Thailand by 25 August 2014, which was then postponed by some weeks.

Human rights groups, including ISHR, called for the action to be dropped against Ms Pornpen.³⁴

CrCF have worked diligently for years to document and pursue accountability for cases of torture, enforced disappearances and extrajudicial executions in Thailand's southern-most provinces, which have operated under martial law since 2004. This work has involved routine information dissemination, including through the media and other public spaces.

On 10 September 2014, the Thai government responded to a request from the Committee Against Torture (sent on 15 July 2014)³⁵ for information regarding the case of the alleged intimidation of Pornpen Khongkachonkiet.³⁶

VENEZUELA

Over the reporting period, Venezuelan human rights defenders cooperating with the United Nations and regional human rights mechanisms have been the target of a wave of harassment and intimidation, and victim of unsubstantiated allegations from government officials with the clear intention of discrediting and intimidating groups that document human rights violations.³⁷

On 17 December 2014, Diosdado Cabello, President of the National Assembly and member of the governing party criticized Venezuelan human rights defenders who participated in the country's review by the UN Committee Against Torture in Geneva, or traveled abroad to conduct advocacy meetings.³⁸ The stigmatisation of human rights defenders cooperating with human rights mechanisms continued in regard to activists participating in hearings during the of the Inter-American Commission on Human Rights (IACHR) in March 2015.

Mr Cabello used the website of his weekly TV show, Con el Mazo Dando, aired on the state-run Venezolana de Televisión, on 11 February to speak of 'NGO representatives from the Venezuelan extreme right' who would participate in the IACHR sessions. The intimidation continued on 18 March when Mr Cabello read out a list of individuals who had travelled to Washington DC for the hearings. He accused them of receiving instructions from the US Embassy in Caracas before traveling. Cabello contended that the information presented on the show had been provided by anonymous 'patriotic informants' (patriotas cooperantes).

³³ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT_CAT_RLE_THA_18048_E.pdf

³⁴ http://www.ishr.ch/sites/default/files/article/files/statement_on_judicial_harrassment_of_ms_pornpen_final.pdf

³⁵ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT_CAT_RLE_THA_18048_E.pdf

³⁶ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT_CAT_RLE_THA_7513_E.pdf

³⁷ <http://www.ishr.ch/news/honduras-end-defamation-human-rights-defenders-guarantee-their-security-and-legislate-their>

³⁸ <http://www.civilisac.org/defensores/ataque-a-defensores-de-ddhh>

Furthermore, twelve human rights defenders who arrived in Caracas on various flights between 20 and 22 March 2015 have said that they were followed by unidentified men from when they landed until they left the airport, were filmed or photographed, and/or that officials irregularly searched their bags.

Then on 23 March, María Alejandra Díaz, a lawyer who represented the government at the IACHR hearings, said on *Venezolana de Televisión* that, 'The issue of human rights is just a façade' and that non-governmental groups that participated in the hearings 'say they are Venezuelan' but 'play the imperialist game' and 'lie in front of the IACHR to make Venezuela look like the devil.'

An article published on 3 April 2015 in the official newspaper *Correo del Orinoco* accused two well-respected human rights defenders of being part of the US Central Intelligence Agency's 'Venezuelan delegation' at the Summit of the Americas. Their objective is to 'legitimise destabilisation actions' in Venezuela, the article said.

These State orchestrated attacks were denounced by 28 international and Latin American human rights organizations, including ISHR on 8 April 2015.³⁹

UN COMMITTEE ON NGOS

The UN's Committee on Non-Governmental Organizations, which recommends NGOs to the Economic and Social Council (ECOSOC) for consultative status, has come under criticism for failing in its core task of giving civil society a voice at the UN and deviating from the guiding principles in ECOSOC resolution 1996/31 in its handling of applications for consultative status.⁴⁰

Some Member States on the Committee use various strategies to control the review process and defer applications, such as asking (often repetitive) questions that go beyond the scope of what NGOs are required to submit with their applications. These tactics are used to wrongly delay, deny, and close the applications of credible NGOs whose work addresses significant human rights concerns of relevance to the UN. Targeted NGOs include those dealing with sexual orientation and gender identity (SOGI), women's rights, reproductive rights, minority issues, caste, and freedom of expression and association. They also include national NGOs working on human rights in States that are not supportive of civil society.

ISHR considers such action by the Committee is a form of reprisals against those seeking to cooperate with the UN.

Member States have expressed similar concern, as in the case of the statement made on 14 July 2014 by Uruguay, Mexico and Chile. These States noted that, '(t)he independent character, diversity and pluralism of those that form and act in conformity with the principles and aims of the Charter, should be the only criteria considered by the NGO Committee in an objective manner, to decide on according consultative status before ECOSOC'. Furthermore they warned the Committee that it should not in any circumstance operate as a 'forum for undue questioning, sanctions or reprisals' against NGOs for their opinions or the work they carry out. This is the second year in a row that these States have expressed such a concern regarding the practice of the NGO Committee. Furthermore, The Special Rapporteur on the rights to freedom of peaceful assembly and of association has accused the Committee on NGOs of acting contrary to its purpose by deferring the applications of dozens of human rights NGOs, several for many years.⁴¹

One particularly troubling example is the case of International Dalit Solidarity Network (IDSN); despite applying in 2008 and having answered more than 65 questions from India, the IDSN has not yet received accreditation. The Child Rights International Network (CRIN) has received 15 questions – most of them coming from one Committee member: China, since its initial application in September 2010 until

³⁹ <http://www.ishr.ch/news/venezuela-stop-harassing-human-rights-defenders>.

⁴⁰ ECOSOC Resolution 1996/31: <http://esango.un.org/paperless/Web?page=static&content=resolution>.

⁴¹ A/69/365. See at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/523/22/PDF/N1452322.pdf?OpenElement>.

December 2014. CRIN has submitted its case to the Secretary General this year.

Member States working within multilateral institutions are legally obliged to ensure the full and effective participation of civil society in UN fora, including by guaranteeing a fair accreditation process for non-governmental organisations seeking to participate fully at the Human Rights Council.

V. THE NEED TO COMBAT IMPUNITY

ISHR is deeply concerned about the ongoing impunity in regard to the vast majority of cases of intimidation and reprisals, including those detailed in the section above, and has continued to press for justice in these cases. The prevalence of impunity is both a human rights violation in and of itself and serves to licence further instances of intimidation and reprisal.

The ongoing impunity regarding the death of Chinese human rights defender Cao Shunli (曹顺利) is one of the most egregious cases. There continues to have been no independent investigations into the death of Cao Shunli in March 2014, following her detention by Chinese authorities during which proper medical care was withheld. Ms Shunli was travelling to Geneva to participate in a training regarding the UPR. About two dozen of Cao's supporters in Beijing, including Liu Xiaofang (刘晓芳) and Wang Ling (王玲), remain in legal limbo, on bail and awaiting trial, since their detention in March-April 2014.

Other activists detained September 2013 in conjunction with Cao Shunli and as a result of their travel to attend a training on UN human rights mechanisms, continue to face harassment and intimidation. Zhou Weilin (周位林) was detained one week before he was to travel to attend a training on UN human rights mechanism in September 2013. Zhou was released in March 2015, in poor health, after serving 18 months in jail. Although ostensibly free, he is now heavily monitored by police in Hefei, Anhui Province. Chen Jianfang (陈建芳) has since been continuously harassed and repeatedly detained by police in Shanghai.

During the 28th Session of the Human Rights Council, NGOs came together to state that if Chinese authorities are unable or unwilling to conduct such an investigation in accordance with international standards, the Human Rights Council must take appropriate action.⁴² The statement was delivered by the International Service for Human Rights and supported by Human Rights Watch, CIHRS, CIVICUS, Conectas, EHARDP, Article 19, HRHF and ALRC.

⁴² <http://www.ishr.ch/news/china-ensure-independent-investigation-death-cao-shunli>.

VI. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

A lack of a credible, effective response in the case of intimidation and reprisals against human rights defenders sends a message to human rights abusers that those that cooperate with the UN can be attacked with impunity.

In spite of some recent positive developments in UN bodies, reprisals and intimidation against those seeking to cooperate and those who have cooperated with the UN, and regional human rights mechanisms, continue. Individual human rights bodies and mechanisms cannot effectively challenge reprisals alone.

In adopting their policy on reprisals, Treaty Body Chairs identified better coordination and systematisation as a vital component to challenging reprisals.⁴³ They emphasised that a more effective approach to reprisals amongst treaty bodies is only a piece of the required response within the UN. They specified that the joint treaty body policy should be part of a more general approach to reprisals by the relevant UN human rights mechanisms.

The legal and moral obligations of States to protect those who cooperate with the UN are clear, and if a State fails to conduct stop reprisals or to properly investigate allegations, the UN has a responsibility to act. There is a clear obligation – in law – that the United Nations as a whole address this system-wide problem.⁴⁴

The continued cases of intimidation and reprisals against those that seek to cooperate with, and cooperate with the UN make evident the need for a more coordinated, systematic and effective response across the UN.

RECOMMENDATIONS

Recommendations to States

States must refrain from intimidation and reprisals against those who seek to cooperate or submit information to the UN or regional or national human rights authorities.

States must investigate and ensure that any allegations of such acts, whether perpetrated by State or non-State actors, are subject to a full, independent and impartial investigation, with perpetrators held accountable and victims provided with effective remedy

States should develop and implement a comprehensive suite of measures to ensure that all persons are able to exercise, individually or in association with others, the right of unhindered access to, and communication with, international human rights bodies and to ensure protection from any form of intimidation or reprisal associated with such cooperation, including by: (a) adopting legislative provisions that specifically enshrine this right and specifically prohibit intimidation or reprisals; and (b) reviewing and repealing legislative provisions that may hinder, restrict or impair the enjoyment of this right.

States should consistently publicly acknowledge the vital role played by human rights defenders in

⁴³ <http://www.ishr.ch/news/human-rights-committee-responds-ngo-calls-strengthen-response-reprisals>

⁴⁴ <http://www.ishr.ch/news/human-rights-council-time-act-legal-obligation-end-reprisals>

establishing and safeguarding democratic institutions and processes, as well as the rule of law, and in the promotion and protection of human rights.

States should cooperate fully, substantively and promptly with the UN's human rights mechanisms and bodies in cases of alleged intimidation or reprisals, including by providing good faith undertakings to prevent and investigate cases and to report back to the relevant body – including the Council, its Special Procedures and the General Assembly – as to investigative, protective and remedial steps taken.

Recommendations to UN Bodies and Mechanisms

UN bodies and mechanisms must recognise and act in conformity with their legal obligation to respect and protect the right of all persons to communicate with the body or mechanism in all aspects of its work and should take all necessary steps to prevent, protect against and promote accountability for any alleged acts of intimidation or reprisals

UN bodies and mechanisms should be explicit regarding their condemnation of intimidation and reprisals against those that seek to, and cooperate with them.

Where relevant these bodies and mechanisms should follow the developing practice of designating a reprisals focal point or rapporteur, to address the prevention of reprisals as well as effective follow up in the case of intimidation and reprisals.

The President of the Human Rights Council and the Bureau should continue the encouraging practice following up on cases of alleged reprisals brought to their attention, and these should be strengthened and complemented by more public action where appropriate. In general terms, the practice of the President and Bureau should include:

- investigating the allegation;
- where the allegation is verified and the safety of the defender will not be put at risk, sending a communication to the State concerned which (a) strongly condemns the allegations; (b) sets out what steps are required to prevent recurrence and provide an effective remedy; and (c) requests the State to report back urgently on the steps and measures taken in this regard; and
- following up on all communications with States in this context

The President of the Human Rights Council and the Bureau should also automatically submit cases brought to their attention to the Office of the Secretary General for consideration for his annual report.

Where States fail to adequately investigate and ensure accountability in relation to credible allegations of intimidation and reprisals, the United Nations should ensure an international, independent investigation into the case, including through pressure by the Secretary-General, the High Commissioner for Human Rights, the Special Procedures of the Human Rights Council and the Human Rights Council itself.

Members of the General Assembly must redouble energies to find a solution to the current impasse in regard to ensuring a more coordinated, systematic and effective response across the UN to the phenomenon of intimidation and reprisals against those that cooperate or seek to cooperate with the UN.