

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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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 United Nations (UN) human rights bodies regarding the prevention of and response to reprisals during the reporting period (June 2016 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 UN Assistant Secretary General, the President of the Human Rights Council and President of the General Assembly, as well as UN independent experts, in an effort 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 systematic harassment, 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 is closely associated with 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. LEGAL OBLIGATION OF STATES AND THE UN 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

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).

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 UN and to be protected from intimidation and reprisals in connection with any cooperation or attempted cooperation. As subjects of international law, UN bodies such as the Human Rights Council and the ECOSOC Committee on NGOs may also be bound by these obligations.⁶

III. DEVELOPMENT WITHIN HUMAN RIGHTS SYSTEMS

APPOINTMENT OF SENIOR OFFICIAL ON REPRISALS

The appointment of Andrew Gilmour, Assistant Secretary-General for Human Rights, as Senior Official on the issue of reprisals in October 2016 was warmly welcomed by civil society as well as by a core group of countries.⁷ As the Senior Official, Gilmour leads the UN's efforts to put a stop to all intimidation and reprisals against those cooperating with the UN on human rights, a much-needed initiative to help combat the growing number of reprisals against human rights defenders and other civil society actors.

ISHR looks forward to receiving clarity on the functioning of this mandate and how best to

³ See: 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 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.

⁷ <https://www.ishr.ch/news/reprisals-high-level-un-official-should-ensure-access-victims-and-accountability-perpetrators>.

engage. ISHR acknowledges that this position is complementary to existing UN mechanisms to address reprisals, and encourages coordination and collaboration amongst mechanisms. We emphasize however that the establishment of this position does not in any way obviate the obligation of other bodies and mechanisms to develop and implement policies and take necessary actions to prevent, investigate and remedy cases of reprisals. We understand that the Senior Official proposes to primarily fulfil his mandate through private representations, addressing cases of reprisals bilaterally with the relevant State, although he may also make public statements and representations. In relevant circumstances, public statements can play a key role in deterrence, denunciation, prevention and protection.

HUMAN RIGHTS COUNCIL

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 Human Rights Council, its independent experts or the Universal Periodic Review process.⁸ The Human Rights Council's President and Bureau have the responsibility to protect the Human Rights 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.⁹ 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.

At the 34th session of the Human Rights Council, a record number of 67 States delivered a statement on reprisals, highly appreciating the appointment of Andrew Gilmour as the position of Senior Official on the issue of reprisals, and urging Member States to cooperate with and assist him to fulfil his mandate. The cross-regional group of States further affirmed that the Human Rights Council has a duty to prevent and respond to cases of intimidation and reprisals against those who provide information or seek to engage with it, including by investigating and ensuring accountability.¹⁰

While the President and Bureau of the Human Rights Council maintain their rhetorical commitment to ensuring no reprisals occur, visible action to prevent and if necessary respond and ensure accountability for cases of reprisals remains weak.

TREATY BODIES

With the endorsement of the Guidelines against Intimidation or Reprisals (the 'San José Guidelines') in July 2015, the Treaty Bodies Chairpersons sent a strong signal that the intimidation of individuals and groups cooperating with the treaty bodies is unacceptable. During

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 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>.

¹⁰ <http://www.files.ishr.ch/public/hrc34/17-03-16-HRC34-Hungary-joint-statement-reprisals-67-states-signed.pdf>.

their annual meeting in July 2016, the Chairs further recommended the implementation of the Guidelines by all treaty bodies and reaffirmed their decision to include reprisals as a standing item on the agenda of the annual meeting of the Chairs.¹¹

To date, eight treaty bodies out of ten have adopted the San José Guidelines or a policy on reprisals. Only the Committee on Economic Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have not adopted the guidelines or a policy on reprisals.

The San José Guidelines emphasise the responsibility of States 'to avoid acts constituting intimidation or reprisals and to prevent, protect against, investigate and ensure accountability and to provide effective remedies to victims of such acts or omissions'. They further acknowledge that the treaty bodies have to take action, including reactive measures when allegations of intimidation or reprisals are received as well as preventative measures to protect individuals or groups at risk.

The San José Guidelines envisage the appointment within each treaty body of a rapporteur or focal point on intimidation or reprisals, to coordinate proactive implementation of the policy, which includes receiving and assessing allegations, and determining the appropriate course of action.

Committee on the Elimination of All Forms of Discrimination against Women

During its 61st session in July 2015, the Committee on the Elimination of Discrimination against Women took note of the San José Guidelines and decided to consider them further with a view to adapting and developing them to best reflect the treaty body's particular context, mandate and experience.¹² Since then, no further discussion on the implementation of the San José Guidelines has taken place. The Bureau of the Committee continues to act as focal point on reprisals and intimidation.

Human Rights Committee

The Human Rights Committee adopted the San José Guidelines at its Methods of Work meeting on 27 June 2016.¹³ At its 119th session (6 March to 29 March 2017), the Committee appointed Duncan Muhumuza as the Rapporteur on Reprisals.¹⁴

Committee on Economic, Social and Cultural Rights

During its 58th session in October 2016, the Committee on Economic, Social and Cultural Rights adopted a statement on human rights defenders and economic, social and cultural rights noting that defenders often face risks and threats as consequences of their work.¹⁵ The

¹¹ A/71/270.

¹² A/71/38, Decision 61/II.

¹³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20186&LangID=E>.

¹⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21459&LangID=E>.

¹⁵ E/C.12/2016/2.

statement highlights that States have the legal obligation under the Covenant to protect defenders from any form of reprisal, threat or violence. The Committee has raised the issue regularly in the course of its dialogue with States parties and has referred to it expressly in a number of its concluding observations and general comments.

Further in its statement, the Committee emphasised that States should adopt specific measures that safeguard the work of human rights defenders including legislative measures as well as the adoption of protection programmes.

Finally, as stated above, the Committee on Economic, Social and Cultural Rights has not adopted a policy on reprisals; it has however appointed one of its members, Mr Abdel Moneim, as the focal point on reprisals.

Committee against Torture

In 2016, one case of reprisal has been brought to the attention of the Committee against Torture that took place during the drafting of the special report of Burundi; this case is discussed further below. The Committee reacted by urging the alleged State to protect members of civil society who have cooperated with the Committee in the consideration of the special report and to put an end to all reprisals,¹⁶ and further sent a communication to the Permanent Representative of Burundi in Geneva in February 2017. At the date of this submission, no reply or additional explanation had been received.¹⁷

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment:

At its 28th session (15 February to 19 February 2017), the Subcommittee revised its policy on reprisals in light of the San José Guidelines by making them an integral part of its policy.¹⁸ With the revision, the Subcommittee adopted a general operational practice that includes the appointment of a rapporteur on reprisals, as well as specific measure to be put into practice when allegations of reprisals or intimidation are received.

SPECIAL PROCEDURES

In line with the commitment made by Special Procedures mandate holders, the annual report on their 23rd meeting included a section on acts of intimidation and reprisals.¹⁹ The section highlights that acts that aim to prevent or stop anyone from cooperating with Special Procedures remain undoubtedly one of the most serious concerns to mandate holders, and that they constitute an attack against the Special Procedure system itself.

¹⁶ CAT/C/BDI/CO/2/Add.1.

¹⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21600&LangID=E>.

¹⁸ CAT/OP/6/Rev.1 http://www.un.org/en/ga/search/view_doc.asp?symbol=CAT/OP/6/Rev.1.

¹⁹ A/HRC/34/34.

Special Procedures mandate holders expressed their will to work with Assistant Secretary-General for Human Rights, Andrew Gilmour, in his role as Senior Official on reprisals to ensure a unified UN-wide response to acts of intimidation and reprisal.

At the 23rd annual meeting of the Special Procedures, the **Coordination Committee** appointed Catalina Devandas-Aguilar as focal point on reprisals as of 1 July 2016. In addition, the Coordination Committee will keep a comprehensive record of all cases of intimidation and reprisals against individuals and groups cooperating with Special Procedures. Further, the Committee, in consultation with the mandate holders concerned, raised several cases of reprisals with various stakeholders, including the Secretary-General, the High Commissioner for Human Rights, the President of the Human Rights Council and civil society.²⁰

Individual mandate holders continue to receive allegations of acts of intimidation and reprisals, most following cooperation with mandate holders during country visits or through the relevant communications procedures.²¹ Individual mandate holders will take appropriate action in line with the principle of do no harm, including by systematically informing the Coordination Committee focal point on reprisals and by consulting various relevant stakeholders as necessary. In addition, depending on the specificities of the case, appropriate action could also include contacting relevant authorities, sending communications, issuing press releases, referring to the case in their reports, and informing the UN High Commissioner for Human Rights and/or the President of the Human Rights Council.

During the 23rd annual meeting, the mandate holders reiterated that all acts of intimidation and reprisal are unacceptable, and stressed the need to address this issue in a consistent manner.²²

UN COMMITTEE ON NGOS

The UN's Committee on NGOs, which recommends NGOs to the Economic and Social Council (ECOSOC) for consultative status, has continued to come under fierce criticism for failing in its core task of giving civil society a voice at the UN and for deviating from the guiding principles in ECOSOC resolution 1996/31 in its handling of applications for consultative status.²³

Some Member States on the Committee have continued to defer applications by posing questions on issues that applicants are not required to provide information on, or through repetitive questioning. Targeted NGOs include those working on the rights of LGBTI people, women's rights, sexual and reproductive rights, the rights of minorities, freedom of expression and association, and caste-based discrimination.

Since applying for accreditation in 2008 the International Dalit Solidarity Network (IDSN) has received 79 questions from the Committee – all posed by India. Furthermore, at the most recent session of the NGO Committee a separate organisation seeking accreditation was asked

²⁰ A/HRC/34/34.

²¹ A/HRC/34/34.

²² A/HRC/34/34.

²³ <http://www.ishr.ch/news/230-ngos-call-defence-freedom-association-un>.

whether it received funds from IDSN.

As in previous years observer States took the opportunity to make statements during sessions of ECOSOC expressing concern about Committee's practice. At the most recent session statements were made by the European Union and Estonia, amongst others.

At its 2017 regular session this February, the NGO Committee made decisions to recommend the withdrawal of ECOSOC accreditation from, or close new applications of, Turkish NGOs that were until recently based in Turkey, two of those organisations being the Journalists and Writers Foundation and Turkish Confederation of Businessmen and Industrialists. A letter signed by 10 NGOs expressed concern that the NGO Committee made the decisions to withdraw these organisations' accreditation on the grounds that they had been closed and deregistered in 2016 by Turkey, the State in which they were registered at the time they applied for or obtained ECOSOC accreditation.

Beyond the fact that registration is not a criterion upon which ECOSOC accreditation relies, it is of deep concern that the NGO Committee recommended withdrawal or rejection of accreditation based on a decision taken at the national level that has been criticised as itself being in violation of international human rights standards. In addition, at least two of the NGOs with accreditation were registered in other jurisdictions.

Further, and in violation of its own procedures, the NGO Committee then decided not to inform these NGOs of the intention to reject their applications or withdraw their accreditation; nor did they provide them with the right to reply.

ISHR considers the above actions by the NGO Committee are forms of reprisal against those seeking to cooperate with the UN. ISHR highlights concern that the NGO Committee is at risk of being instrumentalised by States seeking to commit reprisals against NGOs that call attention to their human rights records at the UN.

In his 2014 report to the General Assembly, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and association noted that the practice of harassment by some Committee members 'profoundly undermined the ability of the United Nations to constructively engage with civil society'.²⁴ In June 2016, the Special Rapporteur concluded that 'not much has changed'.²⁵

ISHR, along with other representatives of civil society, welcomed the recent ECOSOC resolution to webcast open sessions of the NGO Committee. Civil society had long advocated for greater transparency and accountability around the processes of the NGO Committee. ISHR hopes that webcasting will be but a first step taken by States to ensure the NGO Committee operates in line with the spirit and purposes of ECOSOC resolution 1996/31.

²⁴ <http://freeassembly.net/reports/multilaterals/>.

²⁵ <http://freeassembly.net/news/commentary-ngo-committee/>.

Member States working within multilateral institutions are legally obligated to ensure the full and effective participation of civil society. The Declaration on Human Rights Defenders, GA resolution 53/144 (1998) affirms 'the right, individually and in association with others, to unhindered access and communication with international bodies'. The NGO Committee must ensure apolitical, fair and transparent consideration of all NGO applications for consultative status.

ECOSOC and the NGO Committee are legally obliged to exercise their functions consistent with international human rights standards that include the rights to due process, non-discrimination, and the fundamental freedoms of expression, association and assembly. These standards apply in the interpretation and application of ECOSOC Resolution 1996/31, and in the NGO Committee developing and applying its own procedures and practices and making recommendations in relation to NGO consultative status.

ECOSOC is similarly bound to consider and act compatibly with international human rights standards. This includes a legal obligation to reject recommendations made in manner inconsistent with, or that do not comply with, international human rights standards.

Practices of the NGO Committee and decisions of ECOSOC that fail to comply with international human rights standards do not have any precedential force.

REGIONAL MECHANISMS

Inter-American Commission on Human Rights

While the Inter-American Commission on Human Rights (IACHR) has several mechanisms that can be used to respond to allegations of human rights violations, there is no dedicated mechanism or procedure to handle cases of reprisals. The practice has been to issue a press release at the end of each period of sessions that highlights allegations of reprisals, among other things. These press releases contribute to exposing allegations and making it harder for perpetrators to act with impunity. The IACHR has taken allegations of reprisals into consideration to grant precautionary measures.²⁶ It has also issued press releases and requests for information on specific situations of concern in accordance with Article 41 of the American Convention/Article 18 of its Statute.²⁷

Nonetheless, this mechanism has not been consistently used to address allegations of reprisals. The IACHR should implement a consistent and coherent response to allegations of reprisals and intimidation and clearly communicate to human rights defenders what avenues they can pursue when they are exposed to these risks.

²⁶ See for instance, the precautionary measure adopted in favour of a Venezuelan human rights defender <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC71-15-es.pdf>.

²⁷ See for instance requests for information made at the conclusion of the 143rd period of session http://www.oas.org/en/iachr/media_center/preleases/2011/116.asp. See also the list of Article 41 letters issued in 2014 and 2015: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-Introduction-EN.pdf>; <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap4A.pdf>.

Highlighting the seriousness of reprisals and the role of States in a press release in February 2017, the Inter-American Commission reiterated the obligation of States to guarantee in all circumstances that rights defenders can carry out their legitimate human rights activities without fear of reprisals.²⁸

African Commission on Human and Peoples' Rights

The African Commission on Human and People's rights is working to combine a Draft Communication Procedure between the ACHPR Focal Point on Reprisals, alleged victims and State Parties and an Information and Guidance Note on Communication with the ACHPR Focal Point on Reprisals.

During the last session the Special Rapporteur and Focal Point on Reprisals called on the African Commission to pay attention to reprisals faced, or may be faced by staff of the African Commission as a result of their work.²⁹

IV. CASES OF INTIMIDATION AND REPRISALS

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

Cases that have not been documented in an official UN document

BAHRAIN

In April 2017, two situations occurred that prevented civil society from participating in human rights discussions in the context of the Universal Periodic Review (UPR) of Bahrain scheduled for May 2017 in Geneva. The first incident took place ahead of the UPR Pre-session of Bahrain organised by UPR Info on 6 April 2016. A human rights and civil rights defender from Bahrain, Sayed Hadi Hasan Mohamed Al Musawi, was prevented from speaking at the Pre-session in Geneva. When he attempted to board a plane to Geneva at Manama airport on the morning of 5 April, he was informed that he would not be permitted to travel.

The other incident arose prior to the UPR of Bahrain, where 27 Bahraini individuals, including Nedal Al-Salma, Head of Women and Children Rights at the Bahrain Centre for Human Rights, were summoned for questioning by the Bahraini Office for Public Prosecution and, while investigations were ongoing, were placed under a travel ban.³⁰

²⁸ http://www.oas.org/en/iachr/media_center/preleases/2017/011.asp.

²⁹ http://www.achpr.org/files/sessions/60th/inter-act-reps/284/60os_inter_session_srhrd_comm_gansou_eng.pdf.

³⁰ <http://www.ishr.ch/news/upr-states-should-make-recommendations-defender-protection-during-27th-universal-periodic>.

CHINA

On 26 April Dolkun Isa, Secretary General of the World Uyghur Congress, was asked to leave the UN premises. Isa was a registered representative of the Society for Threatened Peoples (STP) at the UN Permanent Forum on Indigenous Issues in New York. The following day, Isa's request for a new badge was denied, and according to STP he was asked by UN security 'not to come [there] again'. Based on past incidents and NGO and media reporting, there is reason to believe this act was the result of pressure from the Chinese delegation. For indigenous organisations, the Forum provides an important space to engage with the international community around human rights and other issues.

A letter was sent on 27 April to the ECOSOC president which the organisation involved understood was to be forwarded to the Chairperson of the Forum (Mariam Waleet Aboubakrine), but neither the organisation nor Mr Isa have received a response thus far.

EGYPT

The Civic Associations and Foundations Bill, approved by the Egyptian Parliament in November 2016, will have devastating effects on the engagement of NGOs in Egypt with the UN. 'It aims to destroy Egypt's foundation for peaceful, civic engagement at its very roots. If it becomes law, it would devastate civil society not only in the short term, but possibly for generations to come', said the former Special Rapporteur on the right to freedom of assembly and association, Maina Kiai.³¹ A particular effect of the Bill will be to severely curtail the ability of Egyptian NGOs to engage with the United Nations, which is considered as a reprisal for their engagement in the country's UPR in 2014.

Already ahead of the UPR in November 2014, NGOs were given an ultimatum to register with the Ministry of Social Solidarity under the deeply restrictive Law 84/2002. The Ministry had further proposed a new draft bill on associations. After receiving threats as well as a general worsening climate of intimidation, many members of Egyptian NGOs decided to not attend the UPR working group's session fearing their participation might result in reprisal or possible persecution.

Under Article 19 of the Civil Associations and Foundations Bill, civil society will be effectively prohibited from cooperating with the UN without prior approval.³² Further, Article 87 provides that anyone found to have breached any article, including Article 19, shall be punished by imprisonment of 1-5 years and a fine between 50,000 Egyptian pounds (approximately USD 2,800) and 1 million Egyptian pounds (approximately USD 55,650).

³¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20920>.

³² Unofficial translation: '*It is permissible for an association to cooperate, join, associate, or participate in a civil activity, with another association or entity, domestic or foreign, that does not contradict its mandate, on the condition that it submits a request for and receives a permit from the administrative body.*' Complementary bylaws set out regulations for cooperating, joining, associating, or participating with the domestic or foreign entity, as well as the data and information necessary for the permit request. Associations may appeal the decisions pertaining to this issue before the relevant court.

ERITREA

On 21 June 2016, Eritrean human rights defender, Daniel Mekonnen, delivered a statement during the interactive dialogue of the Commission of Inquiry on Human Rights in Eritrea at the 33rd session of the Human Rights Council. Later that same day, he was chased in the Streets of Geneva by a group of around ten supporters of the Eritrean government. The groups yelled verbal abuse at Mekonnen, such as 'traitor', and Mekonnen sought protection from UN security personnel.

Before and after the incident, he was attacked on social media for his advocacy at the Human Rights Council. Further, he has received multiple death threats during the past years, which are considered to be in relation to his human rights work.

HONDURAS

Human rights defender in Honduras Karen Mejía and her colleague Gabriela Díaz were detained on 25 August 2016 following a meeting with an independent expert of the UN. Mejía, who works on women's rights issues, and Gabriela Díaz, had met with the UN's expert on the situation of human rights defenders, Michel Forst, to discuss the dangers and restrictions faced by defenders in Central America. Following the meeting, Mejía and one of her colleagues were seized by an estimated 20 police officers. The officers threatened to shoot the human rights defenders if they got out of the police car. They were then questioned for three hours at a police station before being released. They were not permitted to speak with their lawyers, and two other defenders, Edy Tabora and Sandra Maribel Sánchez, were not allowed to visit them where they were being held.

On 2 March 2017, Hedme Castro, General Coordinator of a Honduran NGO called ACI-Participa, was arbitrarily detained by three security guards, one from their criminal investigation department, at the airport in Tegucigalpa. This happened as she was about to board a plane to Geneva to take part in a side-event of the UN Human Rights Council. Claiming a random inspection of her luggage, airport security proceeded by interrogating her on the purpose of her visit to Geneva, as well as to why she was carrying information regarding the situation of human rights in the country. During her 30-minute detention in the security office, Castro was not allowed to make any phone calls, and she was not shown any detention order by the guards. Five days later, on March 7, as she was driving to her office in Tegucigalpa, she found that her car had been sabotaged during the night. She proceeded to denounce the event to the Public Ministry, but due to logistical problems, her charge was never processed.

In November 2016, unidentified individuals attempted to break into a Centre owned by COPINH, a Honduran NGO working to protect indigenous land from the activities of extractive industries. The attempt was particularly significant as it happened while Laura Zúniga Cáceres, daughter of murdered activist Berta Cáceres, was representing COPINH at the 5th UN Forum on Business and Human Rights in Geneva. Leaders and members of COPINH were sleeping in the Centre while the attempt occurred, having returned from a summit against extractives in Tegucigalpa. The police was called by COPINH while the attempted attack was taking place, but no

protection force ever arrived on the scene.

INDIA

On 14 September 2016 Khurram Parvez, a Kashmiri human rights defender – the Chairperson of Asian Federation Against Involuntary Disappearances (AFAD) and Program Coordinator of Jammu Kashmir Coalition of Civil Society (JKCCS) – was prevented from travelling from the Indira Gandhi International airport in Delhi to Geneva Switzerland to attend the UN Human Rights Council.

Parvez was detained for one and a half hours, and subsequently told that due to orders from the Intelligence Bureau, he could not travel to Geneva. In his capacity as the Chairperson of AFAD and Program Coordinator of JKCCS, Parvez had highlighted violations of human rights.

During his visit to Geneva, Parvez intended to brief UN bodies, including the UN High Commissioner for Human Rights, on the situation in Jammu and Kashmir, particularly over the two months prior, and participate in India's UPR. JKCCS has already submitted a report on the role of the Indian State in Jammu and Kashmir as a part of the UPR process.

Following this Parvez was detained for a period of 76 days. He was released on 30 November, following the orders of the Jammu and Kashmir High Court that held that he had been imprisoned arbitrarily and that the authorities had abused their power in ordering his detention.

JAPAN

The UN Special Rapporteur on Freedom of Expression, David Kaye, conducted an official visit to Japan from 12 to 19 April 2016. During and following the mission allegations have been made that the mission, and those assisting it, were subject to surveillance.

After hearing from many journalists, the Rapporteur warned that there is a threat to the independence of the media.³³ 'Numerous journalists, many agreeing to meet with me only on condition of anonymity to protect their livelihoods, highlighted the pressure to avoid sensitive areas of public interest. Many claimed to have been side-lined or silenced following indirect pressure from leading politicians.' The Rapporteur highlighted problems with Article 4 of the broadcasting law and said 'The Government should repeal [it] and get itself out of the media-regulation business'.³⁴

Further after the mission, harassment against those who were supporting the Special Rapporteur during his visit continued. In January 2017, a nationalist group with a close relationship to the government posted a statement criticising the Special Rapporteur's mission and targeting those who provided support during his visit. In addition, they were called 'users of external pressure' on social media.

³³ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19843&LangID=E>.

³⁴ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19843&LangID=E>.

VENEZUELA

Over the reporting period, Venezuelan human rights defenders continued to be the targets of smear campaigns that intend to defame and intimidate defenders cooperating with the international human rights mechanisms.

On 5 October 2016, the website of 'Con el Mazo Dando', published an article stating that a group of defenders were providing 'fake reports, manipulated figures and false facts' to the pre-UPR session of Venezuela to be held in Geneva on 6 October 2016. 'Con el Mazo Dando' is a weekly television programme of the former President of the Venezuelan National Assembly, Mr Diosado Cabello, which airs on the State-controlled television platform 'Venezolana de Television'. The article named five defenders: Rafael Uzcátegui, Director of the Venezuelan Education-Action Program on Human Rights (Provea); Inti Amarú, Media Coordinator at Provea; Feliciano Reyna, of Acción Solidaria; Carlos Correa, of Public Space (Espacio Publico); and Mercedes de Freitas, of Transparencia Venezuela.³⁵

Similarly, on 20 October 2016, the website of 'Con el Mazo Dando' published another article naming a group of defenders that were to attend the UPR in Geneva on 1 November 2016, stating that they 'already have their fake reports, with manipulated figures in order to get an increase of their budget provided by the empire [a colloquial reference to the United States]'. The article named: Marco Ponce of the Venezuelan Observatory of Social Conflict (OVCs); Humberto Prado and Marino Alvarado of the Venezuelan Prison Observatory (OVP); Carlos Correa of Espacio Publico (Public Space); and Rafael Uzcátegui, Director of the NGO Provea.³⁶ Those listed did not attend the UPR session in Geneva. However, other members of their organisations participated in the UPR, either by submitting reports and/or in Geneva.

Cases that have been documented in an official UN document

BURUNDI

In July 2016, the Public Prosecutor at the Court of Appeal of Bujumbura requested the President of the Bar Association to disbar lawyers Armel Niyongere, Lambert Nigarura, Dieudonné Bashirahishize and Vital Nshimirimana. The four lawyers had contributed to a joint shadow report submitted to the Committee against Torture for the consideration of the special report of Burundi, and three of them had attended the interactive dialogue between Burundi and the Committee against Torture on behalf of the Burundian civil society organisations they represented.

The Committee against Torture sent a letter to the State Party on 5 August 2016 asking for information on the measures taken to stop all reprisals against members of civil society working with the Committee. On 11 August 2016, the State replied by stating that the request for

³⁵ www.conelmazodando.com.ve/mire-quienes-patrocinan-a-los-cizaneros-dela-derecha-en-el-examen-periodico-universal/, accessed: 11/7/16.

³⁶ <http://www.conelmazodando.com.ve/ong-venezolanas-viajaran-a-pedirmas-dolares-al-imperio-informes-chimbos/>, accessed: 11/7/16.

disbarment had been made within the framework of ongoing criminal investigations of these lawyers.

On 16 January 2017, the Court of Appeal of Bujumbura disbarred Armel Niyongere, Dieudonné Bashirahishize and Vital Nshimirimana, and suspended Lambert Nigarura for a period of one year and denied him participation in the Conseil du l'Ordre des Avocats for a period of five years.

The Committee against Torture considers the verdict of the court as an act of reprisal for their engagement with the Committee and the UN human rights system.³⁷ Communications were sent by the President of the Committee and the Rapporteur on reprisals in February 2017 to the Representative of the Permanent Mission of Burundi in Geneva but, to date, no reply has been received.

CHINA

During and after the visits of Special Rapporteur on extreme Poverty, Philip Alston, to China in August 2016, certain individuals he met or was supposed to meet 'were subjected to what appear to be acts of intimidation and reprisal'.³⁸ Jiang Tianyong, a prominent legal rights activist who met Alston on his trip disappeared on 21 November 2016. A press release from UN experts indicates that his disappearance is considered to be in the context with his human rights work, and in part due to his efforts to cooperate with the UN human rights mechanisms, including the Special Procedures.³⁹

Jiang Tianyong has since been accused of inciting subversion of State power, and a State-run newspaper published a purported interview with him in March in which he allegedly confessed to peddling 'fake news' to overseas media.

In October 2016, Alston told the Chinese government that he had received information that the wives of two detained lawyers had allegedly been intimidated and harassed, with one of them allegedly arrested, partly in retaliation for their 'cooperation' with him. The Chinese government responded by saying that neither Wang Qiaoling's nor Li Wenzu's movements were restricted, nor were they illegally monitored or harassed, according to a document on the website of the Office of the UN High Commissioner for Human Rights.

There continues to have been no independent investigation into the death of human rights defender Cao Shunli in March 2014. In 2013, Cao Shunli was arrested as a result of her campaigning for transparency and greater participation of civil society in international human rights mechanisms. She was stopped by state authorities at Beijing Capital International Airport as she was about to board a flight to Geneva to participate in a UN human rights training course and attend a session of the Human Rights Council. For the first five weeks following her

³⁷ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT_CAT_RLE_BDI_26799_F.pdf.

³⁸ A/HRC/35/26/Add.2.

³⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20987#sthash.dH7MxnQP.puf>.

disappearance, her family was given no information about her whereabouts. During the five months she was detained, Cao was repeatedly denied access to medical treatment. Requests by her lawyer and family to release her on medical grounds were denied. Cao's health deteriorated and she died on 14 March 2014, nominally of organ failure caused by tuberculosis.

Despite Cao's death being included in previous reports of the Secretary General,⁴⁰ there has been no independent investigation or adequate response. The Committee against Torture in its 2015 Concluding Observations also expressed concern over deaths in custody, including Cao's, and specifically cited the lack of investigation.⁴¹

The 2016 report of the Secretary General also includes Cao's case; however, the text simply repeats the Chinese government's claim that Cao was 'by no means a human rights defender', that she received good medical care, and that she was afforded a fair trial for criminal activities.⁴² In light of the Chinese government's ongoing harassment of defenders for their human rights work, including for efforts to promote universal human rights and engage with the UN, this statement should not be seen as fulfilling any of the State's obligations to respond to these serious allegations.

MEXICO

In September 2016, the UN Committee against Torture took the unprecedented step of requesting protective measures as a consequence of ongoing reprisals and intimidations faced by the complainants and their advocates in a case of arbitrary detention and torture of four individuals by Mexican soldiers.⁴³ The victims had submitted an individual complaint to the Committee against Torture in March 2012, with the Committee finding violations of several provisions of the Convention Against Torture in August 2015.⁴⁴ The Committee had already requested Mexico to adopt interim measures in October 2013 to provide the appropriate specialised medical care and support required by one of the victims for injuries he sustained to his ears, with which Mexico did not comply. According to the latest available information from the Committee, Mexico has failed to comply with the former's views on this case, notably to immediately release the complainants from prison.⁴⁵

MYANMAR

The Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, expressed serious concerns about potential acts of retaliation and reprisals in association with her country visit to Myanmar in January 2017.⁴⁶ 'There is one word that has hung heavily on my mind during this visit – reprisals', the Rapporteur said, stating that she is deeply concerned about those that engaged with her during the mission, and defend and advocate for the rights of others. She was

⁴⁰ A/HRC/27/38 and A/HRC/30/29.

⁴¹ CAT/C/CHN/CO/5.

⁴² A/HRC/33/19.

⁴³ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/INT_CAT_JUR_MEX_59_25952_S.pdf.

⁴⁴ CAT/C/55/D/500/2012.

⁴⁵ CAT/C/57/3.

⁴⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21109&LangID=E>.

alarmed by raids of villages in the Rakhine State during her visit, as well as allegations of arbitrary arrest and detention.

V. CONCLUSIONS AND RECOMMENDATIONS

Recommendations to States

- States must refrain from intimidation and reprisals against those who cooperate or seek to cooperate with the UN or regional human rights bodies and mechanisms.
- 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, and ensure that perpetrators are held accountable and victims are provided with effective remedies.
- 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 mechanisms and 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 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 and publicly acknowledge the vital role played by human rights defenders in 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 or mechanism — including the Human Rights Council, its Special Procedures, the General Assembly and the Assistant Secretary-General — as to investigative, protective, prosecutorial and remedial steps taken.
- Candidate States for membership of the Human Rights Council should include in their pledges a commitment to ensuring that civil society organisations can conduct their work — including expressing views critical of State authorities — without undue restriction or fear of reprisal, harassment or intimidation.
- Members of the General Assembly, as States electing the members of the Human Rights Council, should not support any candidate State for membership that has engaged in systematic or widespread reprisals or that has failed to investigate and pursue accountability for cases of reprisals.
- States should consider making voluntary contributions, support and enable the fulfilment of the mandate of the Assistant Secretary-General.

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 who seek to cooperate, and cooperate with them.
- Where relevant, bodies and mechanisms should follow the developing practice of designating a reprisals focal point or rapporteur to coordinate and strengthen the prevention of reprisals as well as ensure effective follow up to allegations.
- Where States fail to adequately investigate and ensure accountability in relation to credible allegations of intimidation and reprisals, the UN should ensure an international, independent investigation into the case, including through pressure or mandates by the Secretary-General, the High Commissioner for Human Rights, the Special Procedures of the Human Rights Council and the Human Rights Council itself.

Recommendations to the Assistant Secretary General in relation to operationalisation of his mandate as the Senior Official on reprisals:

- Ensure that the position is visible and accessible to rights holders.
- Develop a public facing policy or working method so that rights holders and victims know where and how to submit information and what they can and cannot expect as a response.
- Ensure that rights holders and victims are kept regularly apprised of the status of their case – lack of transparency, information, and updates is a common feature of the various human rights communications mechanisms and procedures that needs to be addressed.
- Actively seek inputs and information on allegations of reprisals from the various UN bodies and agencies.
- Compile and maintain a publicly accessible database of cases and correspondence (with the consent of rights holders and victims), bringing greater visibility to cases and enabling follow-up by NGOs and States, including under the Item 5 General Debate at each Human Rights Council session.
- Ensure that the Secretary General's annual report on reprisals is presented at the HRC by the Secretary General or the Assistant Secretary General, followed by an interactive dialogue or dedicated debate on that report (similar in format to that of the annual report of Special Procedures).
- Ensure that the Secretary General's report, and the presentation thereof, includes all open or unresolved cases, including those in which the State has not responded or provided any follow up information – this would help address the current situation where some States do not respond in the knowledge that if they remain silent long enough the case will slip out of the report and off the radar.

- Consider presenting the Secretary General's report on reprisals at the Third Committee of the General Assembly as well.

Recommendations to the Human Rights Council

- To more effectively prevent reprisals, the Human Rights Council as a whole and/or its President and Bureau should provide guidance that clearly outlines the steps that the Human Rights Council will take upon receipt of information about credible risks of reprisals to ensure consistency of action across different terms of the presidency and memberships of the bureau.
- When acts of intimidation, harassment and reprisals occur during or in connection with Human Rights Council sessions against individuals who are seeking to participate, or participating, in Human Rights Council sessions or events, the Human Rights Council, acting through the President, has a responsibility to investigate and publicly denounce such acts, in order to preserve the integrity of its processes.
- The President, in consultation with the Bureau, should continue to follow up on cases of alleged reprisals brought to their attention. This 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;
 - Following up on all communications with States in this context; and
 - In accordance with the Human Rights Council's mandate to perform its work in a transparent manner, keeping and making publicly available the minutes of any relevant meetings, together with letters of allegation and correspondence on cases where requested by the victim or their representatives.
- When appropriate, the President of the Human Rights Council and the Bureau should publicly identify and denounce specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned, and publicly releasing such correspondence with and from victims and States where requested by the victim or their representatives.
- 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 the annual report.
- The Human Rights Council should adopt resolutions that publicly and unambiguously identify and condemn reprisals, calling on States to uphold their human rights obligations by investigating, ensuring accountability, providing appropriate remedies and reporting back to the Human Rights Council on measures taken.

- To better ensure effective investigation and accountability, the Human Rights Council should seek information concerning actions taken by States to prevent and ensure accountability for reprisals, assess States' compliance with international human rights obligations, and call on States to take further action where they fall short of meeting those obligations.
- The Human Rights Council should require a State concerned to report back by including the discussion of its response to the risk or allegation of reprisals in Item 5 statements and in its next Universal Periodic Review report.
- The Human Rights Council should heed the Secretary-General's recommendation that it 'devote sufficient time to the discussion of' his annual report on reprisals by scheduling a stand-alone interactive dialogue under Item 5.

Recommendations to the Special Procedures

- Special Procedures should ensure full and prompt investigations of allegations of intimidation and reprisals that take into account the victim's protection needs and the respective roles of different parts of the UN. This should include private and/or public discussion with the State concerned to ensure they uphold their obligations to protect against violations.
- Special Procedures should also undertake specific efforts to work with all involved stakeholders, including the State concerned, to ensure non-recurrence and remedy for reprisals. In some cases this might require extensive engagement and follow-up in order for meaningful action to occur.
- Special Procedures should continue to use public communications as a critical tool in raising the political costs of reprisal for States who would otherwise not be exposed.
- Special Procedures should work with Assistant Secretary-General for Human Rights, Andrew Gilmour, in his role as Senior Official on reprisals, to ensure a unified UN-wide response to acts of intimidation and reprisal.
- Special Procedures should create and maintain a comprehensive record of all cases of intimidation and reprisals against individuals and groups cooperating with Special Procedures, update the record regularly, and ensure that relevant cases are publically accessible.
- Special Procedures should communicate cases to the President of the Human Rights Council under Items 3 or 5, so that unresolved or outstanding cases can be discussed in the context of the General Debate under those Items.

Recommendation to the Treaty Bodies

- All treaty bodies should adopt the San Jose Guidelines on reprisals without further delay.
- Those Treaty Bodies that have adopted the San José Guidelines should work to ensure they are fully and effectively implemented.
- Treaty bodies should each establish a rapporteur or focal point on reprisals, mandated to

promote the right to communicate with the body, to investigate allegations of intimidation or reprisals against those cooperating with the treaty body and — to the extent that the allegation is verified and the safety of the defender will not be put at risk — communicate with the State in question regarding the steps required to provide an effective remedy and prevent recurrence.

- Treaty bodies should each create an accessible public webpage on reprisals that includes the contact details of the individual member of the body responsible (rapporteur or focal point), as well as information regarding cases received, communications sent to States concerned, responses received and follow-up communications, while seeking to protect the confidentiality of victims when required.
- The annual meeting of Chairpersons should create a common database of cases of reprisals. This would, inter alia, enable better coordination between the treaty body system and the wider UN system.
- The annual meeting of Chairpersons should review all cases of reprisals across all treaty bodies, assess actions taken by States and the treaty body concerned and coordinate on follow up to cases.
- Treaty bodies should consider taking consistent action on cases of intimidation and reprisals through other relevant mechanisms such as relevant Special Procedure mandate holders and OHCHR.
- Treaty Bodies should share the information they receive on reprisals with the Secretary General to feed into his reports on reprisals.

Recommendation to the Inter-American Commission on Human Rights

- Extend the guarantees of protection in Article 63 of the IACHR Rules of Procedure for those that cooperate with the Commission in all instances, i.e. not solely when attending hearings, but also to those that engage with the IACHR through country visits and other related activities.
- Adopt a clear, public policy on how the IACHR will address allegations of reprisals so that rights holders and victims know where and how to submit information and what they can and cannot expect as a response. Any procedure or mechanism that is adopted should not preclude the adoption of a precautionary measure when the requirements have been met.
- Actively seek inputs and information on allegations of reprisals from all parts of the IACHR.
- Compile and maintain a publicly accessible database of cases and correspondence (with the consent of rights holders and victims), bringing greater visibility to cases and enabling better follow up.
- Ensure that rights holders and victims are kept regularly apprised of the status of their case.

Recommendation to the African Commission on Human and Peoples' Rights

- Provide resources to the Focal Point on reprisals to effectively implement Africa Commission on Human and People's Rights resolution 273.
- Effectively implement resolution 273, in particular document and maintain a database on cases of reprisal in Africa.
- Encourage the Focal Point to present a separate report on documented cases of reprisals at each Ordinary Session of the African Commission on Human and People's Rights to ensure the visibility of those cases, and follow up those cases as called for in resolution 273.
- Interact with civil society, in particular by providing civil society with guidance in how to best engage with the Focal Point on reprisals and submit cases of reprisal to the mandate.