

Ending Reprisals:

The role of national laws and policies in protecting those who cooperate with the United Nations

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Table of Contents

EXECUTIVE SUMMARY	4
I. INTRODUCTION	5
II. METHODOLOGY AND STRUCTURE	6
Methodology.....	6
Structure.....	6
III. RELEVANT INTERNATIONAL STANDARDS AND PRINCIPLES	7
Overview.....	7
Relevant standards and principles.....	7
IV. THE NATURE AND EXTENT OF REPRISALS FOR COOPERATING WITH UN HUMAN RIGHTS BODIES	10
V. STATE RESPONSIBILITY TO ADDRESS REPRISALS AND INTIMIDATION	12
A. Increasing calls at the international level for States to better address reprisals.....	12
Former Commission on Human Rights.....	13
Human Rights Council.....	14
Secretary-General's report.....	15
Special Procedures.....	15
Special Rapporteur on Human Rights Defenders.....	15
Treaty Bodies.....	16
Joint initiatives.....	16
President of the Human Rights Council.....	16
B. The enabling environment and the case for specific laws.....	17
C. Protections against reprisals for cooperating with national human rights mechanisms: a useful analogy.....	21
VI. REVIEW OF PROTECTION AGAINST REPRISALS IN NATIONAL LEGISLATIVE AND POLICY MEASURES ON HUMAN RIGHTS DEFENDERS	22
VII. OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS	30
Observations.....	30
Conclusions and Recommendations.....	31
ANNEX: THE INTERNATIONAL RESPONSE	33

Executive Summary

The views and experiences of civil society are a crucial source of knowledge and expertise for the UN human rights system, and are central to enhancing decision-making, increasing ownership of decisions, improving accountability and transparency, and enriching outcomes. However, as individuals and organisations increasingly avail themselves of the UN system to pressure and subject their governments to greater scrutiny, their efforts are met in some cases with resistance and backlash.

The right of unhindered access to and communication with international bodies, and to be protected in doing so, is codified in both specific provisions applying to certain human rights bodies and more broadly in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly referred to as the Declaration on Human Rights Defenders). These provisions provide essential recognition that fear of intimidation or reprisal can deter individuals and organisations from interacting with international human rights bodies and place a positive obligation on States to protect against reprisals and intimidation and ensure effective access.

The international community has long been concerned about reprisals and intimidation, and the UN has itself struggled with how to respond as an institution. However, beyond contributing to a nascent institutional response, various parts of the UN human rights machinery have for several decades also called repeatedly on States to better address this issue.

This paper puts forward arguments for a legislative response by individual States by which the right of unhindered access to and communication with international bodies is clearly protected in national law. A 2012 panel discussion of the Human Rights Council recommended, inter alia, that a study be carried out on good practices in addressing reprisals, including through national legislation. While not a comprehensive study, the examination in Section VI of the extent to which States have tried to address this issue in emerging national laws and policies on human rights defenders, and the conclusions and recommendations drawn from their consideration, are presented as a contribution to that aim.

“ **The United Nations could not do its invaluable work for human rights without those who cooperate with us. When people who cooperate with the United Nations are targeted for reprisals, we are all less secure. When their voices are stifled, our work for human rights is also a victim.**”

UN Secretary-General Ban Ki-moon, 2011 remarks to a high-level panel discussion on ‘Stopping reprisals for cooperating with the UN in the field of human rights – a priority for all’.

I. INTRODUCTION

The views and experiences of civil society¹ have been a crucial source of knowledge and expertise for the UN since its creation. In the case of the UN human rights system, such views and experiences have been central to enhancing decision-making, increasing ownership of decisions, improving accountability and transparency, and enriching outcomes. As international law has evolved from a system of rules merely governing States to one that also recognises the importance of individuals and their rights within that framework, new mechanisms and procedures have been created within the UN system through which individuals and organisations can claim those rights, ensure accountability for violations, and contribute to concrete human rights change. Significant developments in that regard include the creation of the Office of the High Commissioner for Human Rights (OHCHR), the proliferation of human rights treaties and complaint mechanisms, a dramatic increase in the number of Special Rapporteurs, and the creation of new mechanisms such as the Universal Periodic Review (UPR).

These international mechanisms have enormous potential as complementary protection tools for victims of human rights violations, particularly in situations where States are unable or unwilling to provide effective domestic remedies. However, that potential is severely limited if the ability of individuals or organisations to raise concerns with UN human rights mechanisms, and thereby access their protection, is hindered by intimidation or reprisal.

Unfortunately, as individuals and organisations increasingly avail themselves of the international system to pressure and subject their governments to greater scrutiny, their efforts are met in some cases with resistance and backlash.² Some States have gone as far as explicitly criminalising contact with UN representatives.³ Many more use less direct but pernicious ways of inhibiting access to, or retaliating for the use of, international mechanisms. As the High Commissioner for Human Rights (HCHR) stated at the recent Vienna+20 expert conference, civil society and human rights defenders ‘face unprecedented challenges, including restrictive laws and reprisals—even reprisals for taking part in UN proceedings on UN premises.’⁴

A 2012 panel of the Human Rights Council (the Council) recommended, inter alia, that a study be carried out on good practices in addressing reprisals, including through national legislation. While this paper is not a comprehensive study, the examination in Section VI of the extent to which States have tried to address this issue in national laws and policies on human rights defenders is presented as a contribution to that aim.

¹ The term ‘civil society’ is used in this paper to broadly refer to individuals and organisations in a society that are independent of government.

² Cairo Institute for Human Rights Studies, “Cut Off From the World: Systematic Reprisals Against Human Rights Defenders in the Gulf Region for Engaging with the United Nations,” (March 2013).

³ “Kurdish Lawyer Charged with Support of Kurdish Parties and Contacting UN,” Protectionline by Protection International (15 July 2013), Accessed last 6 August 2013. See also Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para 9.

⁴ “Keynote Speech,” 2013 Vienna +20 Conference. Vienna, 27 June 2013 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13488&LangID=E>.

II. METHODOLOGY AND STRUCTURE

METHODOLOGY

This paper aims to shed more light on the problem of reprisals and intimidation against individuals and organisations who cooperate with the international human rights system and to make proposals regarding one aspect of the solution—national policies and legislation.

After presenting arguments for why States ought to address this issue in their national legislation, the paper provides a brief review of the evolving landscape of national human rights defender laws and policies to assess progress made thus far in that context.

In reviewing existing laws and policies, the goal is not to produce any kind of ranking but rather to highlight whether and how this issue is being addressed by different States. It is hoped that by highlighting some variations and similarities, as well as pointing to gaps and showcasing some good practices, that the conclusions and recommendations might apply beyond the countries concerned and constitute a useful resource for those working to strengthen the legislative and policy foundations of protection from reprisals in other country contexts.

The research on relevant legislative provisions in the countries concerned was largely conducted through online searches but resource persons were also consulted in several countries via email.⁵ In some cases, owing to the lack of readily available public documents, reliable information was very difficult to locate.

STRUCTURE

Section I of this paper introduces the issue of intimidation and reprisals while Section II, this section, provides an overview of the paper's methodology and structure.

Section III of the paper then sets out the relevant international standards and principles.

Section IV briefly outlines the nature and extent of the problem, and provides some specific cases of reprisals and intimidation for illustrative purposes.

Section V considers State responsibility for addressing reprisals, beginning with a short overview of the calls by the international system on States to better address reprisals. It then draws on concepts of the “enabling environment” and expressive functions of law to justify why State responsibility for addressing reprisals should include explicit recognition in domestic laws or policies of the right of unhindered access to and communication with international bodies, and to be protected in doing so. Finally, Section V presents examples of domestic laws that provide protection from reprisals for recourse to national human rights mechanisms to demonstrate that many States have already recognised the value and importance of specific protection in that analogous situation.

⁵ The research was carried out with the extensive pro bono support of Allens, <http://www.allens.com.au/>, a leading international law firm with offices in Australia and Asia.

Section VI contains a review of the extent to which existing or emerging national laws and policies on human rights defenders address reprisals for engaging with the international human rights system, highlighting variations and similarities, progress made and remaining gaps.⁶

Observations, conclusions and recommendations are presented in Section VII.

III. RELEVANT INTERNATIONAL STANDARDS AND PRINCIPLES

OVERVIEW

The right of unhindered access to and communication with international bodies, and to be protected in doing so, is codified in both specific treaties applying to certain human rights bodies and more broadly in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly referred to as the Declaration on Human Rights Defenders and hereinafter, the Declaration).⁷

These provisions provide essential recognition that fear of intimidation or reprisal can deter individuals and organisations from interacting with international human rights bodies and place a positive obligation on States to ensure effective access to such bodies and to protect against reprisals and intimidation in connection with doing so.⁸

RELEVANT STANDARDS AND PRINCIPLES

The **Declaration** recognises the right of unhindered access to and communication with international bodies:

1. **Article 9(4) of the Declaration** provides that ‘everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies⁹ with general or

⁶ It should be acknowledged that developments around the world are continuously prompting change in the legislative landscape relevant to the promotion and protection of human rights. Given this constant evolution it is possible that there may be new developments between the time of completion of the paper and its publication and dissemination.

⁷ General Assembly Resolution on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (8 March 1999) UN Doc [A/RES/53/144](#).

⁸ Committee Against Torture, Third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (25 March 2010) UN Doc [CAT/C/44/2](#), para 35-36

⁹ The reference to ‘international bodies’ and ‘intergovernmental organisations’ in this context must be understood to include UN bodies such as the Human Rights Council, its special procedures, the Universal Periodic Review, the treaty monitoring bodies, fact-finding missions, commissions of inquiry, and other UN mechanisms with a mandate to protect human rights such as UN peacekeeping missions, UN country teams, and other specialised agencies. This would also include non-UN bodies, for example the African Commission on Human and Peoples Rights or relevant organs of the European Union.

special competence to receive and consider communications on matters of human rights and fundamental freedoms’;¹⁰ and

2. **Article 5(c) of the Declaration** provides that ‘for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organisations.’

The broad formulation in the Declaration covers the full range of interaction that may take place between individuals or organisations and international human rights bodies. Such interaction encompasses all procedures that international human rights bodies may have at their disposal, ranging from a mere request for information, to the submission of a report or individual complaint, to participating in trainings and attending meetings, to being interviewed by a fact finding mission.

In addition, several of the **Optional Protocols to the human rights treaties** also contain references to the right to access and communicate with international bodies as it relates to the respective treaty bodies:

1. **Article 15 of the Optional Protocol to the Convention against Torture (OPCAT)**, stipulates that ‘[n]o authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way’;
2. **Article 11 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OPCEDAW)**, ‘[r]equires a State Party to ensure the protection of those submitting communications’;
3. **Article 13 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OPICESCR)**, commits States parties to taking ‘all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol’; and
4. **Article 4 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3CRC)**, says that a ‘State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee.’

The right of unhindered access to and communication with international bodies is also more broadly protected under the rights to **freedom of expression** and **freedom of movement**.¹¹ In the case of individual

¹⁰ This right was explicitly reaffirmed recently by the Human Rights Council resolution on Protecting human rights defenders, UN Doc [A/HRC/Res/22/6](#), para 13.

¹¹ UN Special Rapporteur on the Situation of Human Rights Defenders, “[Commentary to the Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (July 2011).

complaints or cases, it would also seem to be more broadly protected under rights to **access justice** and to an **effective remedy**.¹²

In addition, several principles specify the obligation of States to take necessary measures to protect individuals and organisations in the exercise of the right to unhindered access to and communication with international bodies:

1. **Article 12 (2) of the Declaration** provides that '[t]he State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration'; and
2. **Article 15 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions**¹³ states that '[c]omplainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation.'

Finally, the right to be protected from intimidation and reprisals is also derived from each State's primary responsibility and duty to protect all human rights, as established in the **Universal Declaration of Human Rights** (Article 2), the **International Covenant on Civil and Political Rights** (Article 2), and the **Convention on the Elimination of All Forms of Discrimination against Women** (Article 3).¹⁴

- ▶ **United Nations Mission in South Sudan (UNMIS)** - In June 2011, 16 activists were arrested outside UNMIS headquarters in Khartoum while attempting to deliver a petition to the UNMIS Special Representative of the Secretary-General and to the Deputy High Commissioner for Human Rights regarding violence in Southern Kordofan. The activists were reportedly arrested by plain-clothed national security service personnel, detained and eventually released on bail following intervention by lawyers. Some were reportedly beaten as well. All were criminally charged with disturbing the peace and public nuisance.¹⁵

¹² The Human Rights Committee has stated that by recognising the competence of the Committee to receive communications under the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), a State party is under an 'obligation not to hinder access to the Committee and to prevent any retaliatory measures against any person who has addressed a communication to the Committee': see General Comment No 33: The Obligations of States Parties under the Optional Protocol to the Covenant on Civil and Political Rights, UN Doc [CCPR/C/GC/33](#), para 4.

¹³ Commission on Human Rights Resolution on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Annex (24 May 1989) UN Doc [E/1989/89](#), para 15.

¹⁴ UN Special Rapporteur on the Situation of Human Rights Defenders, "[Commentary to the Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," (July 2011), pg 8.

¹⁵ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (13 August 2012) UN Doc [A/HRC/21/18](#), para 47.

IV. THE NATURE AND EXTENT OF REPRISALS FOR COOPERATING WITH UN HUMAN RIGHTS BODIES

“ Regrettably, reprisals against persons cooperating with the United Nations, its mechanisms and representatives in the field of human rights continue. They take many forms, ranging from smear campaigns, threats, travel bans, harassment, fines, the closing of organizations, sexual violence, arbitrary arrests, prosecutions and lengthy prison sentences through to torture, ill treatment and even death. Many of the cases remain unresolved for lengthy periods”

UN Secretary-General Ban Ki-moon, 2013 report to the Human Rights Council on ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’.

In spite of being clearly proscribed in international law, reprisals and intimidation remain persistent and widespread.¹⁶ They are one of the means by which perpetrators of human rights violations and those who tolerate them seek to avoid accountability,¹⁷ and can have a very serious deterrent effect on people willing to cooperate with the UN.¹⁸

Though the Secretary-General has been tasked with reporting on cases of reprisals and intimidation against those cooperating with the UN human rights system for 23 years, no comprehensive study has yet been undertaken on their nature, nor on the extent to which they take place. However, it is known from examining reports by the Secretary-General and other UN bodies that reprisals are often carried out by powerful State agents, such as the police, military or security forces, and by the judiciary, who may act to protect the State

¹⁶ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#).

¹⁷ Human Rights Council Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (27 May 2009) UN Doc [A/HRC/11/2](#), para 16.

¹⁸ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (7 May 2010) UN Doc [A/HRC/14/19](#), para 54.

from criticism. They are also often carried out by non-State agents, including corporations, private security companies, organised crime, or armed groups, whose links to the State are more or less direct, indirect, or totally absent.¹⁹

Reprisals and intimidation can take many forms, including but not limited to harassment, threats, warnings, surveillance, defamation and smear campaigns, interrogation, deportation, confiscation of travel documents, refusal to grant exit visas, denial of permits, withdrawal of privileges, disciplinary measures, fines, arrests, civil or criminal prosecutions or sanctions, physical assault, disappearances, torture or even death.²⁰ Legal representatives, family members, colleagues and close relations are also targeted in some instances.

Reprisals often take place in the home country, but can also occur at the very moment an individual or organisation is engaging with a UN mechanism. For example, organisations participating in sessions of the Council in Geneva have faced threats and harassment from members of their country's delegation. These incidents have also been combined in some cases with press campaigns at home in which they are publicly denounced and threatened. Threats have come from as high up as government ministers.²¹

- ▶ **The Council's Universal Periodic Review (UPR)** - Following the UPR of Bahrain in May 2012, multiple Bahraini newspapers, including El Watan and the Gulf Daily News published articles labelling human rights defenders who participated in the UPR in Geneva as 'traitors' and a 'disloyal bunch' whose mission it was to 'tarnish Bahrain's reputation'.²² Following the September 2012 session of the Council, the names and photographs of participants in the Universal Periodic Review of Bahrain were again published in the newspaper Al-Watan in September 2012, accusing them of 'discrediting Bahrain in Geneva'.²³ In October 2012, one of those named and photographed in the media was also reportedly summoned for interrogation, detained overnight and charged the next day with 'rioting and participating in an illegal assembly'.²⁴

¹⁹ International Service for Human Rights, "Reprisals Handbook" (2013), pg.4.

²⁰ See e.g. Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para. 49.

²¹ Charles Haviland, "Sri Lanka minister Mervyn Silva threatens journalists," BBC News (23 March 2012), Accessed last 6 August 2013.

²² Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (13 August 2012) UN Doc [A/HRC/21/18](#), para 18.

²³ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para 19.

²⁴ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (13 August 2012) UN Doc [A/HRC/21/18](#), paras. 18-21 and 51-54

V. STATE RESPONSIBILITY TO ADDRESS REPRISALS AND INTIMIDATION

“ Reprisals against people who cooperate with the United Nations mechanisms in protecting and advancing human rights are absolutely unacceptable and are in violation of international law and States’ legal obligations. There must be an effective means of ensuring that reprisals do not occur, and if they do, the individuals involved and the State must be held accountable.”

Joint statement by the United Nations Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture.²⁵

A. Increasing calls at the international level for States to better address reprisals

The UN has been concerned with reprisals and intimidation for cooperating with its human rights mechanisms and bodies for over 30 years, both in terms of State responsibility and its own responsibility as an institution.

Though not the subject of this paper, it is important to highlight that calls are mounting for the UN itself to respond more coherently and consistently to cases of reprisal or intimidation, particularly where States fail to respond adequately. However, the UN human rights machinery has yet to create an effective mechanism to address attacks against those who cooperate with it. Proponents of a more robust response argue that the efficacy, institutional integrity and credibility of the UN is at stake and that it is abdicating a responsibility to ensure that those on which it relies to do its work can engage without fear of reprisal.²⁶ That being said, in the absence of a comprehensive response, the UN human rights system has developed a set of ad hoc measures over the years, while continuing to stress the primary responsibility of States. An overview of these responses and calls for action by different aspects of the system over the last several decades is included in the Annex.

²⁵ **Joint statement** issued by the UN Committee against Torture, Subcommittee on Prevention of Torture, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Board of Trustees of the UN Voluntary Fund for Victims of Torture (26 June 2012) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12287&LangID=E>.

²⁶ Summary of the Human Rights Council Panel Discussion on the Issue of Intimidation or Reprisal Against Individuals and Groups Who Cooperate or Have Cooperated with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (17 December 2012) UN Doc [A/HRC/22/34](#).

In order to underline the emerging consensus around the responsibility of States to address reprisals, the present sub-section provides an overview of the increasing calls at the international level for States to guarantee the security of those cooperating with the international human rights system.

FORMER COMMISSION ON HUMAN RIGHTS

Reacting to a number of reports to the former Commission on Human Rights that raised concerns about reprisals,²⁷ Hungary began leading an annual resolution in 1990 on **'Co-operation with representatives of United Nations human rights bodies.'**²⁸ The so-called 'reprisals resolution', which the Commission adopted annually from 1990 until its last session in 2005, contained a modest call for States to 'refrain' from acts of intimidation and reprisal. The Commission referred more forcefully to the role of States in addressing reprisals and intimidation in its resolution on **Human rights and special procedures**, which called on States to 'protect' individuals and organisations that cooperate with the special procedures from intimidation or reprisal.²⁹

- ▶ **The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions** - Between 2004 and 2006 John Fredy Ortiz Jiménez reportedly witnessed several extrajudicial executions of civilians while completing his military service in Colombia. Since meeting with the Special Rapporteur in 2009, Mr Ortiz Jiménez has allegedly been the victim of death threats, monitoring and two attempts of enforced disappearance. In March 2012, it was reported that several persons beat Mr Ortiz Jiménez and injured his arm.³⁰ In December 2012 several people attempted to abduct him. In May 2013 two people approached him and threatened his daughter and nephew. At the end of 2012, the Colombian National Protection Unit found his risk level to be 'extraordinary' and has since provided protection.³¹

²⁷ Commission on Human Rights Summary Record of the First Part (Public) of the 54th Meeting Considering Draft Resolution E/CN.4/1990/L.87 (10 May 1990) UN Doc [E/CN.4/1990/SR.54](#).

²⁸ Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies (7 March 1990), UN Doc [E/CN.4/1990/76](#).

²⁹ Commission on Human Rights Resolution Human rights and special procedures (21 April 2004), UN Doc [E/CN.4/RES/2004/76](#), para 4.

³⁰ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (13 August 2012) UN Doc [A/HRC/21/18](#), para 25-27.

³¹ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (31 July 2013) UN Doc [A/HRC/24/29](#), para 40.

HUMAN RIGHTS COUNCIL

In 2009 the Council picked up where the Commission left off, adopting a resolution on ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’. The Council’s reprisals resolution is stronger than that of the former Commission in terms of State responsibility to address reprisals. It calls not just on Governments to refrain from acts of reprisal and intimidation but also to prevent them, ensure adequate protection, and end impunity by bringing perpetrators to justice and providing effective remedies to victims.³²

Several other Council resolutions also call on States to better address reprisals and intimidation. A 2010 resolution on **Arbitrary detention** calls on States to take appropriate measures to prevent intimidation and reprisals against individuals who engage with the Council’s Working Group on Arbitrary Detention, and to combat impunity by promptly and effectively investigating all allegations in order to bring perpetrators to justice and to provide victims with appropriate remedies.³³ Similarly, a 2011 resolution **renewing the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** urges States to ensure that no authority or official orders, applies, permits or tolerates any sanction or other prejudice against any person or organization for having been in contact with the Special Rapporteur or any other international or national monitoring or preventive body active in the prevention and combat of torture and other cruel, inhuman or degrading treatment or punishment.³⁴ The 2011 **outcome document of the Council’s five year review** urges States to prevent and ensure adequate protection against reprisals and intimidation.³⁵

The Council also decided in 2011 to convene a **panel discussion** on the issue of intimidation and reprisals,³⁶ which took place in 2012. The panel included different stakeholder representatives – from civil society, the Special Procedures, the Treaty Bodies, National Human Rights Institutions and States. The HCHR and the Secretary-General also participated. Many participants stressed the primary responsibility of States, which should take measures necessary to create conditions, including legal guarantees, required for persons under their jurisdiction to be free of intimidation and reprisals.³⁷

Most recently, a March 2013 resolution on **Protecting Human Rights Defenders** reaffirmed the right of unhindered access to and communication with international and regional bodies and calls on States to avoid legislation that has the effect of undermining that right. It also calls on States to refrain and ensure adequate effective remedies for victims.³⁸

³² Human Rights Council Resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (12 October 2009), UN Doc [A/HRC/RES/12/2](#), paras 1 and 3.

³³ Human Rights Council Resolution on Arbitrary Detention (6 October 2010) UN Doc [A/HRC/RES/15/18](#).

³⁴ Human Rights Council Resolution on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Mandate of the Special Rapporteur (12 April 2011) UN Doc [A/HRC/RES/16/23](#), para 6(c).

³⁵ Human Rights Council Resolution on the Review of the Work and Functioning of the Human Rights Council (12 April 2011) UN Doc [A/HRC/RES/16/21](#), para 30 and UNGA Resolution on the Review of the Human Rights Council (20 July 2011) UN Doc [A/RES/65/281](#).

³⁶ Human Rights Council Decision on the Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (17 October 2011) UN Doc [A/HRC/DEC/18/118](#).

³⁷ Summary of the Human Rights Council Panel Discussion on the Issue of Intimidation or Reprisal Against Individuals and Groups Who Cooperate or Have Cooperated with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (17 December 2012) UN Doc [A/HRC/22/34](#).

³⁸ Human Rights Council Resolution on Protecting Human Rights Defenders (12 April 2013) UN Doc [A/HRC/RES/22/6](#), para 14(a)(b).

SECRETARY-GENERAL'S REPORT

In accordance with the Commission on Human Rights and Human Rights Council resolutions referred to above, the Secretary-General has produced a report on reprisals for 23 years. Notably, the 2013 report includes a recommendation that States adopt 'appropriate legislation' to prevent and ensure accountability for reprisals and intimidation.³⁹

SPECIAL PROCEDURES

The issue of reprisals and intimidation is one that has preoccupied the Special Procedures since the very early days of their existence. Ahead of a visit to Chile in 1978, the second special procedure in the Commission's history, the **Ad Hoc Working Group on the Situation of Human Rights in Chile**, sought assurances through a **memorandum of understanding** with the Government that no person in contact with the Group would for that reason be subjected to 'coercion, sanctions, punishment or judicial proceedings'.⁴⁰

Twenty years later, the Special Procedures adopted the **Terms of Reference for Fact Finding missions by UN Special Procedures**, which similarly stipulate that Governments should give Special Procedures assurances that 'no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings'.⁴¹

SPECIAL RAPPOREUR ON HUMAN RIGHTS DEFENDERS

Given the nature of the mandate, it is no surprise that the Special Rapporteur on Human Rights Defenders has been particularly concerned with the issue of reprisals and intimidation, for engagement at both the national and international level. In that respect the Special Rapporteur makes use of the communications procedures to address specific cases with governments⁴² and has repeatedly stressed the need to guarantee that domestic legislation reflects the obligations in the Declaration.⁴³ The Special Rapporteur has also elaborated on the right to access and communicate with international bodies in the Commentary to the Declaration and in her 2011 annual report to the General Assembly.⁴⁴

³⁹ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para. 52.

⁴⁰ Commission on Human Rights Report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (25 October 1978) UN Doc [A/33/331](#), para 18.

⁴¹ Report of the meeting of Special Rapporteurs/Representatives, Independent Experts and Chairs of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme, (20 November 1997) UN Doc [E/CN.4/1998/45](#), Appendix V(c).

⁴² See for e.g. Addendum to the Human Rights Council Report of the Special Rapporteur on the situation of human rights defenders (28 February 2011) UN Doc [A/HRC/16/44/Add.1](#) para 1272, Human Rights Council Report of the Special Rapporteur on the situation of human rights defenders (16 January 2013) UN Doc [A/HRC/22/47](#) para 36, Addendum to the Human Rights Council Report of the Special Rapporteur on the situation of human rights defenders (4 March 2009) UN Doc [A/HRC/10/12/Add.1](#) para 2497.

⁴³ UN Special Rapporteur on the Situation of Human Rights Defenders, "[Commentary to the Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," (July 2011), chapter 4.

⁴⁴ UNGA Report of the Special Rapporteur on the Situation of Human Rights Defenders (28 July 2011) UN Doc [A/66/203](#) pg. 9-11.

TREATY BODIES

Treaty bodies have also been outspoken about States' responsibilities in relation to reprisals, addressing them in concluding observations on State party reviews,⁴⁵ reports following visits in the case of the Subcommittee on Prevention of Torture,⁴⁶ or directly with the State party,⁴⁷ and calling for States to take effective measures to ensure protection from intimidation and reprisals.

JOINT INITIATIVES

In 2012, the **Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture** issued a joint statement on reprisals against victims of torture seeking redress through the United Nations.⁴⁸ The statement reminded States of their obligation to protect those seeking redress, to ensure that reprisals do not occur and to hold those responsible accountable when they do.

In 2012 the **three rapporteurs on human rights defenders** of the international and regional human rights systems, issued a **joint statement** on reprisals at the Council, calling for reprisals to cease immediately and for credible investigations into pending cases of reprisals to be carried out.⁴⁹

PRESIDENT OF THE HUMAN RIGHTS COUNCIL

Allegations of intimidation and reprisals have also been addressed through the good offices of the President of the Council, both privately and in public. In 2012, the then Uruguayan President publically took up cases of reprisals and intimidation against human rights defenders from Bahrain and Sri Lanka, directly addressing the concerned governments in the Council, and calling on them to ensure that no one is persecuted for having participated in meetings of the Council. In the case of Sri Lanka the HCHR also spoke out against the 'unprecedented and totally unacceptable level of threats, harassment and intimidation directed at

⁴⁵ See for e.g. Committee Against Torture Concluding Observations Considering reports Submitted by States Parties Under Article 19 of the Convention, Republic of Moldova (29 March 2010) UN Doc [CAT/C/MDA/CO/2](#) para 19, and Committee Against Torture Concluding observations on the second periodic report of Tajikistan, adopted by the Committee at its forty-ninth session (21 January 2013) UN Doc [CAT/C/TJK/CO/2](#) para 15.

⁴⁶ See for e.g. Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil (5 July 2012) UN Doc [CAT/OP/BRA/1](#) para 59, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay (7 June 2010) UN Doc [CAT/OP/PRY/1](#) para 225, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (31 May 2010) UN Doc [CAT/OP/MEX/1](#) para 276.

⁴⁷ **Statement** issued by the Committee Against Torture (6 June 2013), and Human Rights Committee Summary Record on the Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant (18 July 2012) UN Doc [CCPR/C/SR.2902](#).

⁴⁸ **Joint statement** issued by the United Nations Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture (26 June 2012).

⁴⁹ **Joint statement** of the Special Rapporteurs on Human Rights Defenders of the United Nations, of the African Commission on Human and Peoples Rights and of the Inter-American Commission on Human Rights (14 March 2012).

Sri Lankan activists who had travelled to Geneva to engage in the debate, including by members of the 71-member official Sri Lankan government delegation'.⁵⁰

B. The enabling environment and the case for specific laws

“ It is primarily the obligation of States to protect those who cooperate with the United Nations in the field of human rights and to ensure that they may do so safely and without hindrance.”

UN Secretary-General Ban Ki-moon, 2013 report to the Human Rights Council on ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’.

Despite the fact that 15 years have passed since the General Assembly adopted the Declaration by consensus, relatively few States have moved to fully incorporate its provisions into domestic law. As answers to a 2010 questionnaire by the Special Rapporteur on Human Rights Defenders reveal, a number of States maintain that defenders’ rights are adequately protected under more general measures, constitutional or otherwise, ensuring the security and equality of everyone.⁵¹ In that regard, one might reasonably expect similar pushback against the notion of legislating a specific right to unhindered access to and communication with international bodies, given the analysis in Section III that it is in fact protected under broader rights such as freedom of expression and freedom of movement.

The difficulty with these arguments, however, is that they ignore strong evidence that where human rights are specifically recognised and protected in national law they are more likely to be respected and realised in practice. Put another way, while the specific recognition and protection of human rights in law is not sufficient to ensure the realisation of rights, the absence of specific laws makes the realisation of specific rights much less likely.⁵²

The arguments against specificity also ignore important normative and educative benefits of specific laws and policies in this context — including that specificity has functions beyond proscribing and prescribing behaviour and is a key aspect of building an ‘enabling environment’.

⁵⁰ UN Daily News, “[Senior UN official warns against harassing Sri Lankan human rights defenders](#)” (23 March 2012).

⁵¹ Human Rights Council Report of the Special Rapporteur on the Situation of Human Rights Defenders on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development (30 December 2009) UN Doc [A/HRC/13/22](#).

⁵² See e.g. Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc [CCPR/C/21/Rev.1/Add.13](#) (26 May 2004), para 13. See also Emilie Hafner-Burton, “Making Human Rights a Reality” (Princeton University Press, 2013); and Australian Public Service Commission, *Changing Behaviour: A Public Policy Perspective* (2007) 29.

A State's responsibility to promote and protect the rights of defenders includes creating and sustaining an 'enabling environment'⁵³ for their work. In that regard, the Special Rapporteur has noted that the primary element of an 'enabling environment' is the enjoyment of the rights and freedoms set out in the Declaration. Other relevant elements include the legislative context, policies related specifically to human rights defenders, perceptions of human rights defenders, and open support for defenders on the part of public authorities and the political establishment.⁵⁴ All of these elements are more likely to be present where defenders' rights are specifically recognised and protected in national law. This is recognised in the most recent Secretary-General's report on reprisals which calls on States to take comprehensive 'action at the national level', starting with 'the adoption of appropriate legislation'.⁵⁵

Specific laws on the right to access and communicate with international bodies contribute to an enabling environment by providing a strong legal basis for those activities

The enabling environment concept provides direct support in two ways for an explicit guarantee in domestic law of the right of unhindered access to and communication with international bodies, and to be protected in the exercise of that right: (1) the legislative context is central to creating an enabling environment; and (2) an environment is more enabling if there are policies related specifically to human rights defenders. Taking these factors together, specifically guaranteeing the right of unhindered access to and communication with international bodies contributes to an enabling environment by bringing legislation in line with the Declaration, thereby enhancing the implementation of the rights and obligations therein, and contributing to defenders' protection by providing a strong legal basis for their activities. In addition, specifically protecting rights to access and communicate with international bodies contributes to an enabling environment by more precisely articulating how broader standards (e.g. freedom of expression) apply in this particular situation. This leaves less of a margin of discretion or uncertainty about these rights, making them more accessible and more likely to be understood and known by defenders and others, and enabling greater scrutiny of a government's recourse to other national laws as justification for alleged violations.

⁵³ On the concept of the 'enabling environment' see also CIVICUS, "[State of Civil Society 2013: Creating an Enabling Environment](#)" (2013), pg 18. The Council has also urged States to promote a safe and enabling environment in its resolutions on Protection of Human Rights Defenders [A/HRC/RES/13/13](#) (9 April 2010) and [A/HRC/RES/22/6](#) (15 March 2013), Human Rights, Democracy and the Rule of Law [A/HRC/RES/19/36](#) (19 April 2012).

⁵⁴ General Assembly Report of the Special Rapporteur on the Situation of Human Rights Defenders (14 August 2008) UN Doc [A/63/288](#) Annex para 3. See also Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para 52.

⁵⁵ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para 52.

Specific laws contribute to an enabling environment by demonstrating public support for, and contributing positively to perceptions of, defenders

The enabling environment concept also provides indirect support for an explicit guarantee in domestic law of the right of unhindered access to and communication with international bodies and to be protected in the exercise of that right. This argument draws on two related aspects of the enabling environment: (1) the enabling role of positive perceptions of human rights defenders; and (2) the enabling role of open support for defenders on the part of public authorities and the political establishment. The contention is that a specific articulation of the right to access and communicate with international bodies and to be protected in doing so is not only useful for the legal guarantees provided, but also contributes to the enabling environment by underlining the importance and legitimacy of that work and signalling the State's support for it.⁵⁶

The Special Rapporteur has emphasised that, while legislation, policies and institutions are indispensable in creating an enabling environment for defenders, the attitude of the political establishment can make a fundamental difference in the effectiveness of those frameworks⁵⁷ and has stressed that popular support has in many situations provided a barrier against repression.⁵⁸ Very often, firm public stands in support of human rights defenders can transform a situation of vulnerability for defenders into one of empowerment.⁵⁹ The Secretary-General has also said that States should take measures to prevent intimidation and reprisals by 'publicly supporting activities in defence of human rights and cooperation with the UN, and by taking measures to inform the population about the different ways and means available to cooperate with the UN'.⁶⁰

Underlying this argument are theories of the 'expressive' functions of laws, i.e. those that go beyond prescribing and proscribing behaviour. Though a full discussion is beyond the scope of this work, such theories incorporate analyses of social norms to argue that laws shape individual preferences and behaviours by communicating what a government values or what it believes the social norm should be.⁶¹ Human rights laws in particular have expressive, normative and educational roles, for by their nature they signal the values a particular society stands for.⁶² On that basis, adopting laws explicitly guaranteeing the right to access and communicate with international bodies and to be protected in doing so contributes to building an enabling environment by giving those rights specific and authoritative legitimacy, and building

⁵⁶ For a further discussion on the role and importance of notions of legitimacy and value in persuading compliance with and respect for law, see Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no. 2 (1999): 379–408; Tom R Tyler and Yuen J Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (New York: Russell Sage, 2002).

⁵⁷ General Assembly Report of the Special Rapporteur on the Situation of Human Rights Defenders on Human Rights Defenders (14 August 2008) UN Doc [A/63/288](#), Annex para 7.

⁵⁸ General Assembly Report of the Special Rapporteur on the Situation of Human Rights Defenders on Human Rights Defenders (1 October 2004) UN Doc [A/59/401](#), para 33.

⁵⁹ General Assembly Report of the Special Rapporteur on the Situation of Human Rights Defenders on Human Rights Defenders (14 August 2008) UN Doc [A/63/288](#) Annex para 7.

⁶⁰ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (7 May 2010) UN Doc [A/HRC/14/19](#), para 55.

⁶¹ See for example Cass R. Sunstein, *On the Expressive Function of Law*, 144 *U. Pa. L. Rev.* 2021, 2024-2025 (1996) and Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford, Oxford University Press, 2008) 32.

⁶² Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, (Oxford: Oxford University Press, 2008) 32. Wibren Van Der Burg, *The Expressive and Communicative Functions of Law, Especially with Regard to Moral Issues, Law and Philosophy*: 20 (2001)

wider societal support to demands for their fulfilment. Such laws, and the process of enacting them, may also serve indirectly to build awareness of the UN's work in the field of human rights and the protection it might offer.

Consider this, for example, against recent cases of reprisals carried out against defenders from the United Arab Emirates (UAE) 'accused' of cooperating with international entities and sending them false information liable to harm the image of the State.⁶³ Of course, it is clear that laws on paper will not necessarily serve to guarantee the respect and implementation of rights, particularly in contexts where the authorities responsible for their enforcement are the same responsible for reprisals and intimidation in the first place. Nonetheless one can imagine that defenders might still benefit from explicit acknowledgment of the legality of these activities, particularly in cases in which the government engages in smear campaigns, as the UAE has done, which have the effect of inciting hatred and violence against defenders for their work.⁶⁴

- ▶ **The Human Rights Council** - After human rights defenders presented a statement at the sixteenth session of the Council, the President of Malawi allegedly declared, 'There is a group of 15 people roaming in Europe saying that there is a violation of human rights because we don't allow university professors to teach revolution... We are waiting for them to come back and to tell us what their agenda is'. A local newspaper reportedly published an article alluding to the possibility that United Nations aid to Malawi could be cut if human rights defenders continued their 'irresponsible reporting' to the Council.⁶⁵
- ▶ **Committee Against Torture** - In June 2013, the Committee Against Torture (CAT) addressed allegations of reprisals against two Russian non-governmental organisations (NGOs) that provided information to the Committee in November 2012. The Anti-Discrimination Centre Memorial in St Petersburg and the Public Verdict Foundation in Moscow were recently charged with violating controversial new legislation that requires NGOs involved in advocacy activities to register as 'foreign agents' if they receive foreign funding. The cases cited information submitted to CAT as the basis for the charges.⁶⁶

⁶³ **Statement** by The Attorney General of the UAE, Salem Saeed Kubaish on 27 January 2013.

⁶⁴ Cairo Institute for Human Rights Studies, "**Cut Off From the World: Systematic Reprisals Against Human Rights Defenders in the Gulf Region for Engaging with the United Nations**" (March 2013), pg 4.

⁶⁵ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (21 July 2011) UN Doc **A/HRC/18/19**, para 51.

⁶⁶ **Statement** issued by the UN Committee Against Torture (6 June 2013) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13417&LangID=E>
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13417&LangID=E>.

C. Protections against reprisals for cooperating with national human rights mechanisms: a useful analogy

The gap in specific protection of the right to unhindered access and communication with international human rights mechanisms is all the more obvious when one considers that many States have seen it necessary to provide protection in the analogous situation of recourse to national human rights mechanisms. Indeed, whether in human rights or equal opportunities laws, or labour and employment laws prohibiting discrimination, many States have recognised the value and importance of specific protection against reprisals and intimidation. For example:

1. **France** provides in its Labour Code that no employee may be sanctioned, dismissed or subjected to discrimination for reporting or testifying in relation to wrongdoing under the Code's non-discrimination provision.⁶⁷
2. **Finland** provides in its Non-Discrimination Act that no one may be placed in an unfavourable position or suffer adverse consequences because of having complained or taken action to safeguard equality.⁶⁸
3. **Mauritius** provides in its Equal Opportunities Act for protection against victimisation by defining 'Discrimination by Victimization' as subjecting or threatening an aggrieved person to any detriment on the ground that the aggrieved person: (1) has made, or proposed to make, a complaint; (2) has brought, or proposed to bring proceedings under this Act; (3) has furnished or proposed to furnish any information to a person exercising or performing any power or function under the Act; or (4) has attended or proposes to attend an inquiry under the Act or to provide evidence or testimony as a witness.⁶⁹
4. The **United Kingdom's** Equality Act provides for protection from victimisation, defining it as person A subjecting person B to a detriment because B does a protected act or A believes that B has done or may do a protected act. Protected acts are defined as: (a) bringing proceedings under the Act; (b) giving evidence or information in connection with proceedings under the Act; (c) doing any other thing for the purposes of or in connection with the Act; (d) making an allegation (whether or not express) that A or another person has contravened the Act.⁷⁰
5. **Guyana's** Prevention of Discrimination Act provides for protection against victimisation, and creating an offence and providing punishment for committing or threatening to commit a detrimental act against another individual on the grounds that the second individual has (a) made, or proposes to make, a complaint under the Act; (b) has brought, or proposes to bring proceedings under the Act against any person; (c) has furnished or proposes to furnish, any information, or has produced or

⁶⁷ France, [Labour Code](#) (Last Modified August 8, 2013), Title III, Chapter II- The Principles of Non-Discrimination, Art. L1132-3 and Art. L1132-1.

⁶⁸ Finland, Ministry of Employment and the Economy (2004), [Non-Discrimination Act](#) (21/2004), Section 8.

⁶⁹ Mauritius, [Equal Opportunities Act](#) 2008, Section 7(1)(a).

⁷⁰ United Kingdom, [Equality Act 2010](#), Part II, Chapter II- Prohibited Conduct, Section 27 Victimisation.

proposes to produce, any documents to a person exercising or performing any power or function under the Act; (d) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness; or (e) has made a good faith allegation that a person has committed an act or discrimination in contravention of the Act.⁷¹

The recognition by States that domestic human rights mechanisms are only effective if those accessing them are protected from intimidation and reprisal lends strong support to the call for analogous protection for engaging with international human rights bodies.

VI. REVIEW OF PROTECTION AGAINST REPRISALS IN NATIONAL LEGISLATIVE AND POLICY MEASURES ON HUMAN RIGHTS DEFENDERS⁷²

Reprisals and intimidation reflect ‘a failure of States to allow free and open contacts with the United Nations human rights machinery’⁷³ and States have primary responsibility for ensuring that persons who cooperate with the UN are protected.⁷⁴ In that regard, States have been called upon countless times to prevent, refrain and ensure adequate protection from, and end impunity for, intimidation and reprisals against those cooperating with UN human rights bodies. They have been called on not only to avoid legislation that has the effect of undermining the right to protection and unhindered access to UN mechanisms and bodies but also to create safe and enabling environments in which human rights defenders can operate free from hindrance and insecurity.

Despite the fact that some States argue that defenders’ rights are adequately protected under more general measures, others have moved to specifically guarantee these rights through law or policy. Some States have **constitutional provisions** addressing the right to access and communicate with international bodies. For example, **Montenegro’s** constitution provides that ‘[e]veryone shall have the right of recourse to international institutions for the protection of rights and freedoms guaranteed by the Constitution’.⁷⁵ Others have provided for the protection of this right in **human rights legislation**. For example, **Indonesia** provides in its Act Concerning Human Rights that everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law, and under

⁷¹ Guyana, **Prevention of Discrimination Act 1997**, Part VIII(22).

⁷² NB: where original sources are not in English, translations are not official.

⁷³ Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (7 May 2010) UN Doc **A/HRC/14/19**, para 53.

⁷⁴ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (13 August 2012) UN Doc **A/HRC/21/18**, para 72.

⁷⁵ **Constitution of Montenegro** (Adopted 19 October 2007), Article 56. Note that this provision has come under criticism as the international institutions referred to would be concerned with rights and freedoms guaranteed by international law binding on the State, not only those guaranteed by the Constitution.

international law concerning human rights ratified by Indonesia.⁷⁶ Others still have provided protection for unhindered access in **legislation regarding specific human rights bodies**. For example, laws in **Austria** and **Australia** providing for independent monitoring of places of detention in accordance with the OPCAT provide specifically for protection from reprisals for cooperating with the UN Subcommittee on the Prevention of Torture.⁷⁷

Beyond protections in constitutions, human rights laws and laws regarding specific human rights mechanisms, some States have specifically provided for the right of unhindered access to and communication with international human rights bodies and to be protected in doing so, through **specific legislation or policies on human rights defenders**. While the vast majority of States do not have specific laws or policies on human rights defenders, several States have adopted such law in recent years, notably Guatemala, Brazil, Colombia, and Mexico. Other States are developing or have proposed such laws, notably Honduras, Philippines, Nepal, the Democratic Republic of the Congo (DRC), and Cote D'Ivoire.

This paper does not make any claim about whether rights to unhindered access and communication with international human rights bodies are better protected in specific human rights defenders laws and policies versus other types of legislation. Rather, the emphasis on these particular laws and policies is due to the emerging trend of States enacting them, presumably catalysed by the adoption of the Declaration and increased calls by the international community for States to implement the rights and obligations contained therein.

While much valuable work is being done to evaluate how well defenders are protected by these laws and policies,⁷⁸ very little has been said on the need for them to provide specifically for the right of unhindered access to and communication with international bodies, nor on the State's duty to protect against intimidation or reprisals in those specific circumstances. This section of the report examines the extent to which States that have devised protection policies for defenders have provided in those policies for those specific rights and that protection. In that process the aim is to point to some of the characteristics of this evolving legislative landscape, some good practices, as well as gaps remaining to ensure full realisation of these rights.

A caveat: While the starting assumption is that good laws are a necessary but not sufficient part of the solution, it must be acknowledged that laws, whether specific or not, are at most only one aspect of ensuring that rights are promoted, fulfilled, respected and protected. Several factors in any given context will contribute to whether those laws lead to meaningful guarantees, including but not limited to: an independent

⁷⁶ Indonesia, Legislation No 39, **Act Concerning Human Rights No. 39 of 1999**, Article 7(1). Note, however that despite this overarching principle, the legislation is accompanied by a set of "**Notes on the Act Concerning Human Rights No 39 of 1999**" that specify that "it is intended that those who wish to uphold human rights and freedoms are basically obliged to exhaust all local remedies before using regional or international forums, unless the matter cannot be considered by a local forum." The Notes do not seem to recognise the range of situations in which using an international forum does not require the exhaustion of domestic remedies under international law, i.e. to any of the international bodies other than the relevant complaint procedures under the human rights treaties that specifically stipulate that domestic remedies must be exhausted.

⁷⁷ Austria Ombudsman Board Act of 1982, **as amended**, paras 18-20; Northern Territory of Australia, "**Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013**", sections 13-14; Australian Capital Territory, **Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013**, section 17.

⁷⁸ In this regard we are particularly indebted to Protection International for their extensive research and analysis of these policies through "**Focus 2013-Public Policies for the Protection of HRDs: The State of the Art**"(2012) and Protection International, "**Protection of Human Rights Defenders: Best Practices and Lessons Learnt**" (2012).

and qualified judiciary, political will to enforce the laws, respect for rule of law generally, cultural attitudes, rules relating to implementation, corruption within the legal system, dissemination and awareness building among judges, lawyers and the general public, and whether additional legislation, institutions or procedures are needed to make the rights actionable.⁷⁹ In that regard, while good practices are pointed to in terms of the content of the laws and policies, a fuller assessment of their worth would require them to be examined in light of their implementation. Any such assessment would need to investigate first-hand what defenders think constitutes good practice and what measures have truly led to their greater protection.

Brazil

Brazil launched a **National Program for Protection of Human Rights Defenders** in 2004, followed by a **National Human Rights Protection Policy** in 2007⁸⁰ and a **Program for the Protection of Human Rights Defenders (PPDDH) in 2009**.⁸¹ While the PPDDH addresses intimidation and reprisals by creating specific protection measures, no mention is made in the constitutive documents of the right to access and communicate with international human rights bodies, nor that protective measures may be needed to address reprisals and intimidation in violation of that right.

Philippines

The Congress in the Philippines is currently considering a bill that will become the **Human Rights Defenders' Protection Act** if signed into law. The Bill provides comprehensively for a right to access and communicate with international bodies in line with the Declaration.⁸²

1. Sec. 10. Right to unhindered access to and communication with human rights bodies.

He/she, individually and in association with others, has the right to unhindered access to and communication with local, regional, national and international bodies with general or specific competence to receive and consider communications on matters of human rights and fundamental freedoms.

2. Sec. 5. Right to promote and protect human rights. A human rights defender, individually or in association with others, shall have the right to [...] communicate with non-governmental or intergovernmental organizations.

The Bill also addresses protection against intimidation or reprisals, including through precautionary measures (art 17), temporary protection orders (section 19) and protection of witnesses in proceedings related to violations of the law (Title 5).

⁷⁹ See further Emilie Hafner-Burton, "Making Human Rights a Reality" (Princeton University Press, 2013).

⁸⁰ Brazil Decree 6.044, "**National Human Rights Protection Policy**," (February 2007).

⁸¹ Brazil Bill for the Protection of Defenders, "**Protection Programme for Human Rights Defenders (PPHRD) under the Special Secretariat for Human Rights of the Presidency of the Republic**" (2009).

⁸² Republic of the Philippines House of Representatives **Bill No. 5379**, "Human Rights Defenders' Protection Act of 2011," (5 October 2011).

However, the Bill provides for a very narrow definition of the term ‘human rights defender’ and consequently to whom the rights and protection measures would apply. ‘Human rights defenders’ are limited in section 3 to individuals who are ‘bona fide connected to any human rights organization whose main or substantial work and advocacy is to promote the respect for, foster knowledge of, and protect any forms of human rights and fundamental freedoms’.⁸³

Mexico

Mexico has had a **Program on Attention to Human Rights Advocates**⁸⁴ since 2007 and a **Law for the Protection of Human Rights Defenders and Journalists** since June 2012.⁸⁵

The law mandates the establishment of a protection mechanism that will assess risk levels in individual cases, determine whether investigation is warranted and provide protection measures deemed appropriate to each case. Though the law includes a broad definition of ‘human rights defender’ in line with the Declaration, no mention is made of the right to unhindered access to and communication with international bodies, nor to be protected against intimidation or reprisal in the exercise of that right.

Nepal

Though nothing appears to have come of it as of yet, an NGO-drafted proposal for a **Human Rights Defenders Bill**⁸⁶ recalls ‘the national obligations following the adoption of the Declaration’ and includes a definition of a human rights defender and a listing of rights and responsibilities that complies with the Declaration. The NGO Bill provides for the establishment of a **Commission on Human Rights Defenders** that would provide for protection, develop protection policies, and assist the National Human Rights Commission and the government to enforce the Declaration. There are also provisions designed to safeguard defenders from being criminalised, namely that they cannot be arrested, prosecuted, nor made to testify or make statements based on information gained in their capacity as defenders (article 9). The Bill does not, however, include a specific reference to the right to unhindered access to and communication with international bodies, nor to be protected in the exercise of that right.

⁸³ Contrast this to the broad definition in the Declaration that refers to “everyone”: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Though this paper does not generally set out to evaluate all aspects of each initiative, the definition of a human rights defender is so intrinsically connected to any of the guarantees contained in these laws and policies, including the ones examined closely here, that it bears scrutinizing in particular.

⁸⁴ **Programa de Atención** a Defensores de los Derechos Humanos de Mexico (2007).

⁸⁵ Mexico, “**Ley** para la Protección de Personas Defensoras de Derechos Humanos y Periodistas,” (25 June 2012).

⁸⁶ Nepal Human Rights Defenders Bill 2066 [Draft proposal introduced by Nepalese NGO Informal Sector Service Center], (September 2009).

Democratic Republic of the Congo (DRC)

A 2008 draft bill on the **Protection of Human Rights Defenders**⁸⁷ in the DRC was debated but never passed. A new draft bill was reportedly submitted to parliament in June 2011 but has since been stalled.⁸⁸

While the 2008 draft bill does not create a specific protection mechanism it does provide for complaints of violations of the rights of defenders to be heard, for redress to be provided (article 14) and for investigations and inquiries (article 25). It also compels the State to take all necessary measures to ensure that competent authorities protect human rights defenders (article 26). The Bill includes a comprehensive definition of defenders in accordance with the Declaration and full recognition of the right to unhindered access to and communication with international bodies:

1. **Article 10:** ‘For the purpose of promoting and protecting human rights and fundamental freedoms, human rights defenders have the right, individually or in association with others, both nationally and internationally [...] To communicate with non-governmental or intergovernmental organisations’;
2. **Article 16:** ‘In accordance with applicable international instruments and procedures, human rights defenders have the right, individually and in association with others, to communicate freely and benefit from unhindered access to international bodies with general or special competence to receive and consider information on matters of human rights and fundamental freedoms.’

The 2011 draft bill⁸⁹ notes in its preamble that it is imperative to establish a domestic legal framework for the implementation of the Declaration. The bill includes some limited protection measures in Chapter 2 including protecting the confidentiality of sources and providing transport to defenders at risk as well as their family members. The bill also contains full recognition of the right to unhindered access to and communication with international bodies in line with the Declaration:

1. **Article 3:** Human Rights Defenders, as all others, have the right to, individually and collectively, promote, defend and protect human rights and fundamental freedoms nationally and internationally.
2. **Article 4:** For the purposes of promotion and protection of human rights and fundamental freedoms, human rights defenders have the right, individually or collectively [...] to communicate with non-governmental governmental or intergovernmental organisations.
3. **Article 12:** In accordance with applicable procedures and instruments, human rights defenders have the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights.

⁸⁷ Democratic Republic of the Congo: Draft Bill on the Protection of Human Rights Defenders (2008) available in Protection International, “**Protection of Human Rights Defenders: Best Practices and Lessons Learnt**” (2012) pg 221.

⁸⁸ Protection International, “**Focus 2013**-Public Policies for the Protection of HRDs: The State of the Art” (2012), pg 11.

⁸⁹ Final report of the round table between human rights defenders and Congolese public authorities, “Le projet de loi portant promotion et protection des défenseurs de droits de l’homme, des dénonciateurs d’actes de corruption, de détournement des deniers publics et de grande criminalité économique en République Démocratique du Congo,” 25-27 May 2011, Annex 3 http://www.fidh.org/IMG/pdf/rapport_final_table_ronde_autorites-defenseurs_des_droits_humains_en_rdc-kinshasa_mai_2011.pdf

4. **Article 30:** The State shall take all necessary measures to ensure that the competent authorities shall protect human rights defenders, acting individually or in association with others, against violence, threats, retaliation, de jure or de facto, pressure or any other arbitrary action as a consequence of the legitimate exercise of rights and freedoms guaranteed by international instruments and national law relating to the protection of human rights.

In addition to these legislative projects, the Minister of Justice and Human Rights also created by decree a Protection Mechanism, which is mandated to receive and handle complaints from defenders at risk. However, to date the mechanism reportedly has only limited impact in Kinshasa.⁹⁰

Guatemala

The 1994 **Comprehensive Agreement on Human Rights** acknowledged the importance of the work done by human rights activists and the need to protect them and their work.⁹¹ In 2004 the Presidential Coordinating Commission of Executive Branch Policies on Human Rights (COPREDEH) created the **Protection Coordination Unit (PCU)**, a specialised body that coordinates, adopts and monitors protection measures.

Deficiencies in the PCU prompted an initiative to enact a **Public Policy of Protection and Prevention for Human Rights Defenders, Parties in Judicial Proceedings, Journalists and Social Communicators**,⁹² along with a **Catalogue of measures for the prevention of human rights abuses and protection of human rights defenders and other particularly vulnerable groups**,⁹³ but this has not been successful.⁹⁴ The Public Policy would have provided a Committee for risk assessment and protection measures.

In 2008, a ministerial agreement created the **Institution for the Analysis of Attacks against Human Rights Defenders in Guatemala** which has a mandate to ‘analyse patterns of attack, where they occur, using a scientific methodology defined, approved and agreed on by the committee members,’⁹⁵ in order to develop prevention policies and support investigation efforts undertaken by the relevant institutions.

Other than the fact that the Public Policy mentions in its guiding principles that protection measures should comply in good faith with international obligations, none of these measures seem to include explicit incorporation of the right to unhindered access to and communication with international bodies, nor to be protected in the exercise of that right.

⁹⁰ Protection International, “**Focus 2013**-Public Policies for the Protection of HRDs: The State of the Art” (2012), pg 11.

⁹¹ Commitment VII-Guarantees and protection for persons and entities working in the field of the protection of human rights: 1. The Parties agree that all such acts as are likely to affect guarantees to those individuals and entities working in the promotion and protection of human rights are to be condemned. 2. To this end the government of the Republic of Guatemala shall adopt special protection measures for the benefit of those persons or entities working in the field of human rights. Similarly, it shall thoroughly investigate any complaint concerning acts or threats to them. 3. The government of the Republic of Guatemala reiterates its commitment to effectively guarantee and protect the work of those individuals and entities defending human rights. The Comprehensive Agreement can be found in its entirety through the United States Institute of Peace [here](#).

⁹² Guatemala “**Política nacional** de prevención y protección para defensor@s de derechos humanos y otros grupos vulnerables” (2009).

⁹³ Guatemala: “Catálogo de medidas para la prevención y protección de defensoras de derechos humanos y otros grupos vulnerables” (February 2008).

⁹⁴ Protection International, “**Focus 2013**-Public Policies for the Protection of HRDs: The State of the Art” (2012), pg 8.

⁹⁵ Guatemala, Ministerio de Gobernación, Acuérdase crear la instancia de Análisis de Ataques contra Defensores de Derechos Humanos en Guatemala, **Acuerdo Ministerial No. 103-2008**, (10 January 2008).

Colombia

Colombia first created a **General Program for Protection of at-risk persons** in 1997, ‘to protect people at risk for reasons related to political or ideological violence, or armed internal conflict gripping the country, and who belong to the following categories: Leaders and activists of political groups and especially opposition groups; Leaders and activists of social, civic and community unions, labour, farmers, and ethnic groups; Leaders and activists of human rights organizations; Witnesses in cases of violation of human rights and international humanitarian law violation, regardless of whether criminal, disciplinary or administrative proceedings have been commenced’.⁹⁶

A **National Protection Unit (NPU)** was created in 2011, which coordinates and implements protection services for individuals and organisations who ‘as a result of their activities, condition or situation, be these political, public, social, humanitarian, cultural, ethnic, gender-related, or due to their status as victims of violence, displacement, or as human rights activists or those who, because of public office or other activities that may generate risk, such as leadership of a trade union, NGO or the displaced population, face extraordinary or extreme risk to life, integrity, liberty and personal security’.⁹⁷

A **Program for Protection and Prevention of rights to life, freedom, integrity and security for people, groups, and communities** was also created in 2011,⁹⁸ providing protection to a wide range of at-risk individuals and organisations including activists, victims, and witnesses.

Though each of these measures would seem to include human rights defenders as defined in the Declaration, none appear to include explicit incorporation of the right to unhindered access to and communication with international bodies, nor to be protected in the exercise of that right.

Honduras

A first **draft bill for a Law on Protection Mechanisms for Human Rights Defenders, Justice System Officials, and Social Communicators**⁹⁹ was never sent to Congress due to a lack of support from civil society.¹⁰⁰ However, a new NGO-led **draft bill on a Human Rights Defenders Protection System Law** may be in the works.¹⁰¹ This bill provides for explicit incorporation of the Declaration into national law and for full protection of the right to access and communicate with international bodies in line with the Declaration:¹⁰²

⁹⁶ Republic of Colombia National Legislative Branch **Act 418 of 1997**, “General Program for Protection of At-Risk Persons” (26 December 1997).

⁹⁷ Departamento Administrativo de la Función Pública, **Decreto Número 4065** “Por el cual se crea la Unidad Nacional de Protección (UNP), se establecen su objetivo y estructura.” (31 October 2011).

⁹⁸ Republic of Colombia **Decree No. 4912**, “Por el cual se reglamenta el Decreto-Ley 4065 de 2011 y se organiza el Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades, del Ministerio del Interior y la Unidad Nacional de Protección,” (26 December 2011).

⁹⁹ Honduras, anteproyecto de la “**Ley** de Protección par las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia” (2011).

¹⁰⁰ Protection International, “**FOCUS 2013- Public Policies for the Protection of HRDs: The State of the Art**” (2012).

¹⁰¹ The proposal is being led by E-Defenders <http://defensoresenlinea.com/> a ‘space’ driven by three human rights organizations and supported by the Royal Embassy of the Netherlands.

¹⁰² Honduras, **Draft Bill**, “Ley Del Sistema de Proteccion de Personas Defensoras de Derechos Humanos”.

1. **Article 21. - ADOPTION OF THE DECLARATION.** The State adopts the ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights and the universally recognized fundamental freedoms’ as a national legally binding instrument, which serves as a support for human rights and of human rights defenders. Its inclusion as internal law is to facilitate its application by the court and respect by other State authorities.

2. **Article 23. – PROVISIONS TO PROTECT HUMAN RIGHTS DEFENDERS.**

I. Rights of human rights defenders, individually or collectively: (a) To seek the protection and realization of human rights at the national and international levels; [...] (k) To unhindered access to and communication with national and international non-governmental and intergovernmental agencies, having general or special competence to receive and consider communications on matters of human rights and fundamental freedoms; [...]; (n) To effective protection of national law in reacting against or opposing, through peaceful means, activities, acts, including omissions, attributable to the State that cause human rights violations.

II. Duties of the State: (a) The responsibility to implement and comply with all provisions of the ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect the Rights Human and universally recognized fundamental freedoms’, in particular the responsibility and duty to: (6) Take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action resulting from the legitimate exercise of the rights mentioned in the Declaration.

Cote D’Ivoire

Though it has not yet been submitted to the national assembly, the Minister of Justice, Human Rights and Public Liberties in Cote D’Ivoire has proposed a **draft bill on the protection of human rights defenders**.¹⁰³ The draft bill contains a provision stipulating that defenders have the right to promote, defend and protect human rights at both the national and international levels (art 3). It also contains a provision specifying that defenders have the right to communicate with persons or organisations pursuing similar goals, whether governmental, non-governmental or inter-governmental (art 4). Finally, the draft bill also provides for the right to unhindered access and communication with international human rights bodies (art 9). Though the draft bill does not seem to create particular protection mechanisms, it does specify that the State must protect defenders and their families (art 19).

¹⁰³ See “Compte Rendu de la Séance de Travail,” Lasted updated 16 July 2013, CI-DDH, <http://ci-ddh.org/2013/07/compte-rendu-de-la-seance-de-travail/> and “Un projet de loi verra bientôt le jour pour protéger des défenseurs des droits humains ,” Last updated 14 December 2012, News Ivoire, <http://newsivoire.com/societe/item/2192-un-projet-de-loi-verra-bient%C3%B4t-le-jour-pour-prot%C3%A9ger-des-d%C3%A9fenseurs-des-droits-humains>.

VII. OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

“ Reprisals and intimidation against individuals cooperating with the United Nations in the field of human rights are unacceptable not only because they target individuals who help us do our work as mandated under the Charter of the United Nations, but also because they ultimately aim to discourage others from advocating for respect for human rights, and put them at risk.”

UN Secretary-General Ban Ki-moon, 2013 report to the Human Rights Council on ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’.

OBSERVATIONS

While perversely they can be seen as a testament to the relevance of the UN system, intimidation and reprisals threaten the very foundations of the UN’s work in promoting and protecting human rights and undermine States’ obligations and commitments to cooperate in that work.

Fifteen years after its adoption, it is apparent that the Declaration has catalysed some positive shifts and opportunities at the national level for greater protection of defenders’ rights. While it is encouraging to see States taking steps towards incorporating the rights contained in the Declaration through the enactment of laws and policies on defenders, the review above indicates that the right of unhindered access to and communication with international bodies has not been consistently or fully incorporated in many cases and not incorporated at all in some.

There are many variations internationally of legislative and policy dispensations to achieve protection of defenders’ rights and there is no clearly right or wrong approach. Here it should be acknowledged that though this paper examines efforts to guarantee access to and communication with international bodies through specific laws and policies on human rights defenders, there is no conclusion drawn that those laws and policies are the ones best suited to ensure protection. For example, such rights could also be set out in human rights legislation of more general application or constitutionally enshrined. In all cases, measures should be evaluated in terms of their practical impact.

While some aspects of the measures examined are troubling, and it is particularly troubling to see that many worthwhile initiatives have yet to obtain the political support required for adoption, these efforts in general

can still be viewed as important steps towards greater recognition and realisation of defenders' rights. It is particularly encouraging that several draft bills—in Nepal, Honduras, Cote D'Ivoire and the DRC—provide fully for the right to access and communicate with international bodies, in line with the Declaration. In other cases, such as the Philippines, progress made on this front is hampered by other aspects of the bill, such as an overly limited definition of who is considered a human rights defender.

CONCLUSIONS AND RECOMMENDATIONS

Clearly established measures that guarantee the right to access and communicate with international human rights bodies recognise the role of individuals and organisations cooperating with the UN as an essential aspect of democracy and the promotion and protection of human rights. Those measures are also a key aspect of States' commitment to the promotion and protection of human rights, and to cooperate with the UN.

1. **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:
 - adopting legislative provisions that specifically enshrine this right and specifically prohibit intimidation or reprisals; and
 - reviewing and repealing legislative provisions that may hinder, restrict or impair the enjoyment of this right.
2. Any measures should be taken in close cooperation with defenders so as to ensure these optimally address problems they aim to solve and respond properly to defenders' realities and needs.
3. All measures should be in conformity with the Declaration; specifically enacting the Declaration as an enforceable and justiciable national legal instrument would seem to be an effective way of doing this. In particular, States should ensure that measures employ inclusive definitions of the term 'human rights defender', in line with the Declaration.
4. In amending existing measures or drawing up new ones, States should ensure that defenders' rights under domestic laws do not suffer from ambiguities that could hamper the interpretive task of lawyers and judges or of defenders in knowing their rights.
5. While not addressed in detail in this paper, the UN has struggled to effectively address reprisals and intimidation against those who cooperate with it and a coherent, coordinated, and effective response is needed from its side, including through the appointment of a high-level, UN-wide focal point.¹⁰⁴ Additionally, the UN must also continue to press States to better prevent and address reprisals and intimidation.

¹⁰⁴ See Annex for more details.

6. The Human Rights Council should:

- urge States to adequately fulfil the right to unhindered access to and communication with international bodies, including through protection and enabling measures in law and policy;
- solicit reports from States on their fulfilment of the duty to protect and respect the right to free and unhindered access, including through legislative and policy measures; and
- gather and disseminate best practices in domestic legislative and policy measures to prevent and address reprisals.

▶ **United Nations Supervision Mission in Syria (UNSMIS)** - Local civilians were explicitly threatened by government security forces and ordered not to speak to UNSMIS observers. Some individuals were allegedly detained days after having interacted with UNSMIS. On several occasions UNSMIS personnel were requested not to visit specific towns or villages because of perceived security risks and the implications for the civilian population. Some communities located in opposition-controlled areas reported fearing that they would be shelled after UNSMIS observers concluded patrols in a nearby area.¹⁰⁵

▶ **Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** - During a September 2012 visit to a Moroccan prison, a forensic doctor accompanying the Special Rapporteur concluded that marks on a prisoner's body were clearly compatible with allegations of ill-treatment. Following that meeting, the prisoner was transferred to another prison, where a guard reportedly harassed him to make him relate the details of his discussions with the Special Rapporteur. After filing a complaint with the prison authorities, the prisoner was reportedly threatened and pressured to withdraw his complaint, which he eventually did. The harassment and threats, including of rape and making his life in prison impossible, reportedly continued.¹⁰⁶

¹⁰⁵ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (31 July 2013) UN Doc [A/HRC/24/29](#), para. 35.

¹⁰⁶ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (31 July 2013) UN Doc [A/HRC/24/29](#), para. 27.

ANNEX: THE INTERNATIONAL RESPONSE

While this paper focuses primarily on the role of national laws and policies in protecting those who cooperate with the UN from reprisals and intimidation, comprehensively addressing the situation requires an institutional response from the UN as well. The UN human rights machinery has yet to create an effective mechanism to address attacks against those who cooperate with it but calls are mounting for the UN itself to respond more coherently and consistently to cases of reprisal or intimidation, particularly where States themselves fail to respond adequately. This annex provides an overview of the ad hoc measures taken to date, and highlights possibilities for their further consolidation.

FORMER COMMISSION ON HUMAN RIGHTS

Reacting to a number of reports to the Commission on Human Rights that raised concerns about reprisals, Hungary began leading a resolution in 1990 on ‘**Co-operation with representatives of United Nations human rights bodies**’.¹⁰⁷ Recognising from the start that the UN itself had a role in addressing the issue, the resolution requested the Secretary-General to submit a report including ‘any available information, from all appropriate sources, on reprisals against witnesses or victims of human rights violations’¹⁰⁸ and called on all representatives of the UN human rights bodies to take urgent steps to help prevent intimidation or reprisals and to devote special attention to the question in their respective reports.¹⁰⁹ The resolution was expanded the following year to request an account of action taken in regard to allegations of intimidation or reprisals and to include information also from treaty bodies.¹¹⁰ This so-called ‘reprisals resolution’ continued to be adopted annually for the remainder of the Commission’s existence.¹¹¹

¹⁰⁷ Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies (7 March 1990), UN Doc [E/CN.4/1990/76](#).

¹⁰⁸ Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies (7 March 1990), UN Doc [E/CN.4/1990/76](#) Para 4.

¹⁰⁹ Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies (7 March 1990), UN Doc [E/CN.4/1990/76](#) Para 3b.

¹¹⁰ Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies (6 March 1991), UN Doc [E/CN.4/RES/1991/70](#) Para 3.

¹¹¹ Commission on Human Rights Resolution on Cooperation with Representatives of United Nations Human Rights Bodies: [Resolution 1992/59](#) UN Doc E/CN.4/1992/59 (3 March 1992), [Resolution 1993/64](#) UN Doc E/CN.4/1993/122 (10 March 1993), [Resolution 1994/70](#) UN Doc E/CN.4/1994/132 (9 March 1994), [Resolution 1995/75](#) UN Doc E/CN.4/1995/176 (8 March 1995), [Resolution 1996/70](#) UN Doc E/CN.4/1996/177 (23 April 1996), [Resolution 1997/56](#) UN Doc E/CN.4/1997/150 (15 April 1997), [Resolution 1998/66](#) UN Doc E/CN.4/1998/177 (21 April 1998), [Resolution 1999/16](#) UN Doc E/CN.4/1999/167 (23 April 1999), [Resolution 2000/22](#) UN Doc E/CN.4/2000/167 (18 April 2000), [Resolution 2001/11](#) UN Doc E/CN.4/2001/167 (18 April 2001), [Resolution 2002/17](#) UN Doc E/CN.4/2002/200 (19 April 2002), [Resolution 2003/9](#) UN Doc E/CN.4/2003/135 (16 April 2003), [Resolution 2004/15](#) UN Doc E/CN.4/2004/127 (15 April 2004), [Resolution 2005/9](#) UN Doc E/CN.4/2005/135 (14 April 2005).

HUMAN RIGHTS COUNCIL

In 2009 the Council picked up where the Commission left off, adopting a resolution on **‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.’**¹¹² The Council resolution went beyond simply asking the Secretary-General to compile a list of cases and also asked for ‘recommendations on how to address the issue of intimidation and reprisals’.¹¹³

The Council also adopted a decision in 2011 to convene a **panel discussion** on the issue of intimidation and reprisals,¹¹⁴ which took place in 2012. The panel included different stakeholder representatives – from civil society, the Special Procedures, the Treaty Bodies, National Human Rights Institutions, and States. The HCHR and the Secretary-General also participated. The panel was supposed to, inter alia, discuss concrete steps that could be taken by States and the UN to address reprisals. Several ideas for responses at the international level were proposed, including: dedicated discussion and follow up by the Council on cases of reprisals, and an HCHR or Secretary-General appointed focal point who would follow up on all allegations directly with relevant Governments.

Most recently, a 2013 resolution on **Protecting Human Rights Defenders** reaffirms the right of access to and communication with international bodies and calls on States to avoid legislation that has the effect of undermining that right.¹¹⁵

SECRETARY-GENERAL’S REPORT

The annual Secretary-General’s report has evolved over the last 23 years. For example, between 1991 and 1995, the report included a section on information received of a general nature, including NGO reports touching on the issue of reprisals and intimidation. In addition, the reports between 1991 and 1996 seemed to include references to cases of reprisals not necessarily linked to engagement with UN mechanisms or bodies. Those connections are made much more explicitly from 1996 onwards. In fact the 1996 report includes a justification in a set of concluding observations for the non-inclusion of cases in which reprisals were suffered as a result of using domestic remedies.¹¹⁶ Other than the 1996 report, the Secretary-General only began including ‘conclusions’ in his report in 2005. These were largely formulaic though and very similar from year to year until 2010¹¹⁷ when these became more recommendatory in nature. Responding to the call in the Council’s reprisals resolution for ‘recommendations on how to address the issue of intima-

¹¹² Human Rights Council Resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (12 October 2009), UN Doc [A/HRC/RES/12/2](#).

¹¹³ Human Rights Council Resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (12 October 2009), UN Doc [A/HRC/RES/12/2](#). Para 8.

¹¹⁴ Human Rights Council Decision on the Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (17 October 2011) UN Doc [A/HRC/DEC/18/118](#).

¹¹⁵ Human Rights Council Resolution on Protecting Human Rights Defenders (12 April 2013) UN Doc [A/HRC/RES/22/6](#), para. 14a and 14b.

¹¹⁶ Commission on Human Rights Report on Cooperation with representatives of United Nations Human Rights Bodies (22 February 1996) UN Doc [E/CN.4/1996/57](#).

¹¹⁷ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (7 May 2010) UN Doc [A/HRC/14/19](#).

tion and reprisals', the 2011¹¹⁸, 2012¹¹⁹ and 2013¹²⁰ reports are significantly stronger. They include follow up information on cases referred to in past reports as well as recommendations directed at States and the Council. Notably, the last three reports contain strong recommendations calling for a coherent and unified institutional response.¹²¹

SPECIAL PROCEDURES

The issue of reprisals and intimidation is one that has preoccupied the Special Procedures since the very early days of their existence. Ahead of a visit to Chile in 1978, the second special procedure in the Commission's history, the **Ad Hoc Working Group on the Situation of Human Rights in Chile**, sought assurances through a **memorandum of understanding** with the Government that no person in contact with the Group would for that reason be subjected to 'coercion, sanctions, punishment or judicial proceedings'.¹²²

Twenty years later, the Special Procedures adopted the **Terms of Reference for Fact Finding missions by UN Special Procedures**, which stipulates essentially the same thing: that Special Procedures should be given assurances by Governments that 'no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings'.¹²³

The **Working Group on Enforced Disappearances** has, since 1991, had a specific reprisals mechanism within its working methods, the '**prompt interventions**' procedure whereby cases of reprisals or intimidation are transmitted directly to Ministers of Foreign Affairs and cases are followed up between sessions by the Chair-Rapporteur.¹²⁴ There is also a reference to the Special Rapporteur on Torture in 1992 adopting a 'Prompt Intervention' procedure and between 1993 and 2002, the annual report of the Secretary-General on reprisals refers to urgent communications sent by Special Procedures regarding intimidation and reprisals

¹¹⁸ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (21 July 2011) UN Doc [A/HRC/18/19](#).

¹¹⁹ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (13 August 2012) UN Doc [A/HRC/21/18](#).

¹²⁰ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#).

¹²¹ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field (13 August 2012) UN Doc [A/HRC/21/18](#), para. 75; (21 July 2011) UN Doc [A/HRC/18/19](#) para. 96(e); (31 July 2013) UN Doc [A/HRC/24/29](#) para 53.

¹²² Commission on Human Rights Report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (25 October 1978) UN Doc [A/33/331](#), para 18.

¹²³ Report of the meeting of Special Rapporteurs/Representatives, Independent Experts and Chairs of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme, (20 November 1997) UN Doc [E/CN.4/1998/45](#), Appendix 5(c).

¹²⁴ Human Rights Council Report of the Working Group on Enforced or Involuntary Disappearances (6 February 2012) UN Doc [A/HRC/19/58](#), Annex 1 section C, para 26 and also available at http://www.ohchr.org/Documents/Issues/Disappearances/Methods_of_work2011.pdf.

as the 'prompt intervention procedure'.¹²⁵ However, in 2003, the Secretary-General clarifies in his report that while Special Procedures employ urgent communications, only the Working Group on Enforced or Involuntary Disappearances deals specifically with the issue of reprisals through the 'prompt intervention' procedure.¹²⁶

A 2009 report of the **Special Rapporteur on extrajudicial, summary or arbitrary executions** addressed the response to reprisals against individuals assisting the Special Rapporteur in his work.¹²⁷ This report highlighted in particular the 'gap in the arrangements the Council has put in place' by establishing a system that depends heavily on the good faith cooperation of civil society and private actors in providing information but fails to act when they are victimized by Governments as a result. The Special Rapporteur recommended, inter alia, that the Council define appropriate mechanisms to make representations to the Government concerned in a timely and effective manner and to monitor situations.

Beginning in 2010, the **Working Group on Arbitrary Detention** decided to include in its annual report any case of reprisals brought to its attention.

SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

Given the nature of the mandate, it is no surprise that the Special Rapporteur on Human Rights Defenders has been particularly concerned with the issue of reprisals and intimidation, for engagement at both the national and international level. The Special Rapporteur makes regular use of the urgent appeal and letters of allegation procedures to take up individual cases of human rights violations committed against human rights defenders with concerned States. The Special Rapporteur has also addressed the right of access to and communication with international bodies in the Commentary to the Declaration¹²⁸ and in her 2011 annual report to the General Assembly.¹²⁹

¹²⁵ Report of the Secretary-General on Cooperation with Representatives of United Nations Human Rights Bodies (13 February 1992) UN Doc [E/CN.4/1992/29](#), para 16.

¹²⁶ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (27 February 2003) UN Doc [E/CN.4/2003/34](#), para 4.

¹²⁷ Human Rights Council Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development (27 May 2009) UN Doc [A/HRC/11/2](#), para 12-26.

¹²⁸ Special Rapporteur on the Situation of Human Rights Defenders, "[Commentary to the Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," (July 2011), chapter 4.

¹²⁹ General Assembly Report of the Special Rapporteur on the Situation of Human Rights Defenders (28 July 2011) UN Doc [A/66/203](#), pg 9-11.

TREATY BODIES

Treaty bodies have also been outspoken about reprisals, addressing them in concluding observations on State party reviews,¹³⁰ reports following visits in the case of the Subcommittee on Prevention of Torture,¹³¹ or directly with the State party.¹³² Some treaty bodies have also established specific mechanisms to address the issue. In late 2012 the CAT decided to designate one of its members as a rapporteur on reprisals.¹³³ This followed the establishment by the Subcommittee on Prevention of Torture in February 2012 of a working group to formulate a strategy to prevent and combat reprisals,¹³⁴ and an earlier designation by the Human Rights Committee of one of its members to act as a focal point on reprisals.

In the context of the treaty body strengthening process, the HCHR has called for all treaty bodies to take urgent and consistent measures on reprisals, including through ensuring 'mechanisms for action' and appointing focal points to draw attention to such cases. She also proposed that treaty bodies act to address cases of reprisal or intimidation through other relevant mechanisms such as Special Procedures and OHCHR.¹³⁵

JOINT INITIATIVES

In 2012, the **Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture** issued a **joint statement** on reprisals against victims of torture seeking redress through the United Nations.¹³⁶ The statement reminded States of their obligation to protect those seeking redress, to ensure that reprisals do not occur and to hold those responsible accountable when they do.

In 2012 a **joint statement** on reprisals was made at the Council by the **three rapporteurs on human rights defenders** of the international and regional human rights systems, calling for reprisals to cease immediately and for credible investigations into pending cases of reprisals to be carried out.¹³⁷

¹³⁰ See for e.g. Committee Against Torture Concluding Observations Considering reports Submitted by States Parties Under Article 19 of the Convention- Republic of Moldova (29 March 2010) UN Doc [CAT/C/MDA/CO/2](#) and Committee Against Torture Concluding observations on the second periodic report of Tajikistan, adopted by the Committee at its forty-ninth session(21 January 2013) UN Doc [CAT/C/TJK/CO/2](#).

¹³¹ For e.g., following a [2011 visit to Brazil](#), the Subcommittee on Prevention of Torture strongly condemned reprisals that took place immediately following its visit, CAT/OP/PRY/1, CAT/OP/MEX/1 para 276, CAT/OP/MEX/1 para 277.

¹³² [Statement](#) issued by the Committee Against Torture (6 June 2013) and Human Rights Committee Summary Record on the Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant (18 July 2012) UN Doc [CCPR/C/SR.2902](#).

¹³³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12830&LangID=E>

¹³⁴ http://www.ishr.ch/document-stuff/browse-documents/doc_download/1571-committee-against-torture

¹³⁵ Report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (26 June 2012) UN Doc [A/66/860 section 4.2.8](#).

¹³⁶ [Joint statement](#) issued by the United Nations Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture (26 June 2012).

¹³⁷ [Joint statement](#) of the Special Rapporteur on Human Rights Defenders of the United Nations, of the African Commission on Human and Peoples Rights and of the Inter-American Commission on Human Rights (14 March 2012).

PRESIDENT OF THE HUMAN RIGHTS COUNCIL

Allegations of reprisals have also been addressed through the good offices of the President of the Council. In 2012, the then Uruguayan President publically took up cases of reprisals and intimidation against human rights defenders from Bahrain and Sri Lanka, directly addressing the concerned governments in the Council. In the case of Sri Lanka the HCHR also spoke out against the ‘unprecedented and totally unacceptable level of threats, harassment and intimidation directed at Sri Lankan activists who had travelled to Geneva to engage in the debate, including by members of the 71-member official Sri Lankan government delegation’.¹³⁸

APPOINTMENT OF A UN-WIDE FOCAL POINT

While recognising the importance and value of reprisals being addressed through a range of international mechanisms, in recent years there has been increased recognition of the need for a UN-wide mechanism to ensure a comprehensive and coordinated response to cases of reprisal or intimidation. Thus, for example, the September 2012 panel discussion in the Human Rights Council included a proposal for ‘the appointment of a mediator or ombudsman to act as a focal point of the United Nations system for cases of intimidation or reprisal’.¹³⁹ Most recently, the International Expert Conference on Advancing the Protection of Human Rights: Achievements, Challenges and Perspectives, held in Vienna on 27 and 28 June 2013, endorsed an ISHR proposal that the UN ‘establish a UN-wide focal point in order to respond to reprisals against human rights defenders’ and called on ‘the Human Rights Council to follow up on cases of reprisals and to develop a model national law on the protection of human rights defenders’.¹⁴⁰ In order to be effective, any UN-wide focal point would need to be high-level, appropriately mandated and adequately resourced.

¹³⁸ UN Daily News, “Senior UN official warns against harassing Sri Lankan human rights defenders” (23 March 2012).

¹³⁹ Report of the Secretary-General on Cooperation with the United Nations, its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc A/HRC/24/29, Para 53.

¹⁴⁰ See http://www.ohchr.org/Documents/Events/OHCHR20/Vienna20_conf_report.pdf.

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