



# INTIMIDATION AND ITS IMPACT ON ENGAGEMENT WITH THE UN HUMAN RIGHTS SYSTEM

## METHODOLOGICAL CHALLENGES AND OPPORTUNITIES

**Cover photo**

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## About ISHR

The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

ISHR seeks to ensure that national, international and regional human rights systems have the tools and mechanisms in place to prevent reprisals and ensure accountability where they occur. In addition, ISHR provides protective publicity to human rights defenders at risk and works to bring cases of alleged intimidation and reprisals to the attention of relevant officials in an effort to press for effective preventative measures and responses.



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# Executive Summary

The right to unhindered access to and cooperation with United Nations (UN) human rights mechanisms is undermined systematically by many States. Their tactics include a) **reprisals**: retaliatory actions taken against those who have cooperated; b) **intimidation**: threatening actions aimed at inhibiting cooperation before it occurs or during efforts to engage; and c) **other obstacles**, which may not threaten individuals yet nonetheless inhibit or block cooperation. The challenge of reprisals has been addressed annually by the UN Secretary-General (UNSG) in his report “Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.” Based on documentary research and interviews with UN, non-governmental organisations (NGOs) and human rights defenders, the current study focuses on **intimidation**, and proposes methodological approaches to strengthen the future capacity to measure and understand how intimidation tactics – both blunt and subtle – effectively inhibit human rights reporting and action, thus reinforcing impunity for States’ abuses.

The structure of the report addresses the topic at three levels: psychology, data and politics. Part one discusses the *psychological* dynamics that influence how intimidation affects those who might need to use UN mechanisms, and how people make decisions to take risks or not. Part two addresses the challenges of developing a *data-driven analysis* of the impact of intimidation on cooperation in different countries, calling attention to substantial gaps in available data, and suggesting methodological steps forward. Part three looks at some of the *political* dynamics of States, the UN and NGOs and considers what recommendations might feasibly improve their approaches to measuring and confronting intimidation.

## Part I Intimidation, inhibition and action – psychological factors

Human rights defenders and victims who cooperate or seek to cooperate with the UN human rights system may face a range of State tactics: direct violence, detention, harassment, economic attacks, destruction of reputation, threats to themselves or family, among others. People are intimidated by severe reprisals or violence against others, but also by much more subtle threats and messages, some of which are even ‘legal’. Each person has a different constitution and reacts differently. Some may avoid UN contact for many other reasons besides fear: lack of awareness, lack of resources, isolation, or perceptions of the UN as bureaucratic, distant, ineffective or untrustworthy.

Human rights defenders use many tactics. A choice not to engage with the UN may represent a strategic or intuitive balancing of relative risks among this wider range of available tactics. A person may assess that refraining from using UN mechanisms will reduce their risk enough to open up space for other kinds of human rights action, thereby balancing risks in such a manner as to maximize their overall human rights impact.

On the other hand, for some defenders the UN is a preferred approach for leveraging international clout to pressure their government and open up space for domestic human rights advances. Depending on the context, many also consider any attention paid to their plight by the UN to be potentially protective in its impact.

Drawing from the fields of cognitive psychology, sociology and political science, the analysis goes into the complex motivational factors affecting decisions to take risks under uncertainty. Activists are influenced by emotions of repugnance to injustice, pride, honour, shame, loyalty, desire for impact, isolation, survival needs, and fear for self or family. Individuals and organizations are assessing costs and benefits under uncertainty, applying common heuristics and biases that increase risk aversion. These dynamics affect each person differently, at local, national and international levels. Organizations that effectively mobilize pride, solidarity and a belief in positive impact are likely to be more successful at confronting intimidation.

Heuristic thinking – mental shortcuts in situations of uncertainty – is a key process in this decision-making. People often make choices based on past experiences of those around them (the *availability heuristic*) or the apparent similarity of a situation to other well-known cases (the *representativeness heuristic*). The *affect heuristic* leads people to distort their risk assessments depending on their emotional assessment

of the positive benefit or impact of a choice. This discussion concludes that the UN and international NGOs (INGOs) need to give people a much more coherent and informed *impact analysis* of why engaging with these mechanisms might be worth the trouble and risks. Understanding positive impacts is as important to people's decision making as understanding the dangers.

## **Part 2** Data Challenges – measuring cooperation and intimidation

If adequate data were available about levels of human rights abuses in each country, levels of intimidation, and levels of cooperation with the UN system, it would be possible to identify in which countries the inhibiting impacts of intimidation are most serious as well as track changes over time. The second section of the paper discusses some of the weaknesses and gaps in currently available data, but also lays out some methodologies for addressing these weaknesses.

The first problem is that cooperation itself is not being quantified by the UN. Cooperation levels could be improving or deteriorating for different reasons in different places, but without systematic data-gathering we cannot accurately assess what is happening. At a minimum, we know which countries are overtly and publicly undermining cooperation, by refusing entry to UN visits, interfering with the internet, or passing legislation against international collaboration. But to go further the UN needs to systematically keep track of individual and civil society engagement, including with the Human Rights Council, Universal Periodic Review, Special Procedures, treaty bodies, field presence, country visits and other contact. This data should form the basis of regular quantitative reports on cooperation, which could also track deterioration or improvements from year to year. Member States need to ensure Office of the High Commissioner for Human Rights (OHCHR) has adequate financial and human resources to do this, and in the meantime the Assistant Secretary-General for Human Rights and OHCHR could begin by creating a partial database for the mechanisms for which gathering the data is most feasible.

The second data challenge is bigger: quantifying human rights abuse itself. The human rights movement as a whole, including NGOs and the UN, focuses more on cases and stories than statistics. This study discusses some of the data-based initiatives by NGOs and academics to quantify abuse and rank countries. The methodological proposal for the future is to combine quantitative data on abuse levels with improved data on cooperation, to identify countries where there is high abuse and low cooperation as well as those with high abuse and high cooperation. Best practice research can then attempt to extract lessons learned from countries with high levels of abuse and high levels of cooperation that may assist countries where intimidation has been more successful in sustaining inhibition.

The toughest challenge is to measure intimidation inside a country, which is usually unreported. Examples of careful academic methodologies for surveying the inhibiting impact of fear in repressive situations are discussed. A great deal more of this is needed. Investigations at country levels going beyond high-level severe abuses need to assess the more subtle and pernicious forms of intimidation which are more prevalent and have a constant inhibiting effect on the broader population. More survey-based studies are needed to document the prevalence and patterns of incidents of State intimidation, as well as the resulting levels of inhibition of human rights action, resulting in a much more quantified understanding of the scale of the problem.

Human rights analysts should also take advantage as much as possible of existing statistical databases that measure political space, civil liberties, and freedom. These broader patterns of 'closed space' are linked to the dynamics of intimidation faced by local human rights actors and can serve as proxy measurements to compare countries and identify those demanding deeper study.

## **Part 3** The Politics of intimidation, and member State and United Nations responses

Repressive States who seek to control their population while sustaining international engagement are engaged in a constant cost/benefit analysis when choosing repressive actions and targets. They seek to reduce political costs, so they sometimes minimize overt violence and use subtler, and even 'legal' tactics to deter human rights activism. The human rights movements needs to carefully study and develop defensive strategies for each of these softer 'cost-reducing' State tactics.

State decision-makers are not omniscient. Biases, habits and heuristic shortcuts skew their decisions. They do not accurately predict consequences to their actions; and sometimes they suffer setbacks and scandals, which can be exacerbated by effective human rights mobilization. State actors learn from each setback and its resulting costs. This dynamic of pressure and adaptation is the engine behind many human rights advances over time.

Each State is different in its use of intimidation, so human rights actors need to carry out more detailed context-based perpetrator analysis which disentangles who is responsible for different kinds of threats, what their motivations and favoured tactics are, what forces lie behind them, where their pressure points are and how they might be influenced. This analysis can help HRDs to confront intimidation and to develop strategies that are both lower in risk and higher in impact.

Given how invisible and unreported intimidation is, States, the UN and NGOs need to recognize the importance of measuring it, even in countries that are extremely difficult to work in. The UN system suffers a two-fold weakness when it comes to monitoring and addressing intimidation tactics:

- a) its human rights mechanisms are mostly remote and its best tool for the challenge – a field-based monitoring presence of OHCHR or Department of Peacekeeping Operations – is rarely deployed, or refused by host States;
- b) its UN Country Teams' other agencies which are deployed in repressive situations often lack the political will and flexibility to fulfil the UN's human rights principles. Member States, NGOs and the UN need to continually encourage (and fund) OHCHR to expand its field presences and they must apply greater political pressure to rights-abusing States who refuse to allow such monitoring or who seek to cut resources to support it. Meanwhile, when adequate monitoring is prevented, UN Country Teams on the ground need to be flexible enough to take on greater human rights responsibilities, even at the risk of political retaliation by the host State.

OHCHR's annual report on Special Procedures provides some analysis of the States blocking cooperation, and this could be further strengthened, by documenting and quantifying more precisely all incidents in which citizens were deterred in any way from cooperating during UN experts' country visits. Some level of public outcry happens when something high-profile occurs, such as denying a visa to a Special Rapporteur. Similar accountability pressure is needed for lower-level obstacles, always taking care not to put citizens/sources of information at greater risk.

To further promote contact and cooperation, the UN and NGOs need to continue to encourage all member States to issue standing invitations, allow country visits from UN mechanisms, and call them out publicly whenever they prevent access to such visits. In the meantime, the UN, member States and NGOs need to make non-cooperation more costly, for instance, by opposing the election of uncooperative States to the Human Rights Council or other human rights-related committees.

States will continue to deny strategies and incidents of intimidation, but these denials do not imply a lack of impact resulting from human rights efforts. Denials and other dismissive discourse are elements of a repressive State's long-term international strategy to disempower and wear down its critics. Human rights change happens slowly, resulting from an incremental accumulation of different pressures. The UN and NGOs must keep up these incremental pressures, and the UNSG, ASG, OHCHR and other UN actors need to resist member State demands to censor or expunge critique from UN documents or statements.

Member States that use intimidating tactics to deter cooperation with UN mechanisms need to be more thoroughly investigated and held accountable. This accountability needs to look beyond the high-profile severe attacks and reprisals, and the visible actions States take in New York or Geneva-based forums. States also need to be called to account for quieter approaches they are using inside their country every day to sustain an atmosphere of fear and inhibition.



## Introduction

The vital human rights objective of unhindered cooperation with United Nations (UN) human rights mechanisms is undermined systematically by many States, whose strategies include reprisals, intimidation and other obstacles aimed at creating fear or blocking access. This study aims to assist that objective by addressing the challenge of **intimidation**, providing analysis and proposing methodological approaches to strengthen the future capacity to measure and understand how intimidation strategies – both blunt and subtle – effectively inhibit human rights action, thus allowing States to more effectively hide information about abuses.

The International Service for Human Rights (ISHR) works to support and protect human rights defenders (HRDs) globally, in particular helping them to take advantage of the diverse mechanisms available through the UN system for pursuing their objectives. Simultaneously, ISHR works to ensure that the UN human rights system is more accessible, effective and protective for HRDs and the victims they represent.

The problem of reprisals against those who use these systems has been acknowledged by the UN for decades. Former UN Secretary General (UNSG) Ban Ki Moon created a special mandate at the Assistant Secretary General (ASG) level to lead the UN's response to the issue and assist the UNSG. The UNSG's annual report is entitled '*Cooperation with the UN, its representatives, and mechanisms in the field of human rights*,' appropriately calling attention to the important broader issue: that reprisals

and intimidation may be preventing adequate cooperation by rights-holders, and thereby undermining the ability of the UN human rights mechanisms to fulfil their role of protecting human rights.

Reprisals are only one of several factors that limit, constrain or inhibit such cooperation. We can consider three levels of constraints: a) **reprisals**: retaliatory actions taken against those who have cooperated; b) **intimidation**: threatening actions aimed at inhibiting cooperation before it occurs or during efforts to engage; and c) **other obstacles**, which may not threaten individuals yet nonetheless inhibit or block cooperation. At country level, obstacles include restrictive legislation limiting non-governmental organisation (NGO) registration and funding, travel and passport restrictions, or restrictive criteria for securing visas, among many others. This study aims to unpack the complex relationship between reprisals, intimidation and cooperation.

While the study focuses mostly on **intimidation**, all three levels are closely interrelated. A reprisal against one individual intimidates others, but there are many other forms of intimidation. Sometimes **obstacles** are deliberately placed in the way of organisations that have cooperated in the past – and in such cases they are both obstacles and reprisals. And when an obstacle like a travel restriction targets an individual it can be felt as a direct threat. **The content of the SG's report is mostly limited to documented cases of reprisals. This creates a distorted picture, because reprisals tend to be**



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**reported from countries where civil society is able to engage adequately enough to be cooperating with the UN in the first place, but not from those countries where intimidation is so effective *a priori* that people are not cooperating with the UN (and therefore not attracting retaliatory action for it).**

Intimidation that effectively inhibits action is difficult to measure, especially if the approach is limited to the standard legalistic case-based methods of documenting human rights abuses. Successful intimidation usually goes unreported, and the available tactics of intimidation include many which are very subtle and often quasi-legal.

This study will address this challenge at three levels: psychology, data and politics:

- a) at the *psychological* level, the first section examines how intimidation affects the activists who might need or wish to use UN mechanisms, and how they make decisions to take risks or not;
- b) the section on *data* calls attention to substantial gaps in available data, and suggests methodological steps to more effectively measure how intimidation (and reprisals) are affecting levels of cooperation with the UN; and
- c) section three looks at the *political* strategies of States, the UN and NGOs with respect to this issue and considers what recommendations might feasibly improve their approaches to confronting and measuring intimidation.

### Methodology

The research was comprised of documentary research through academic journals, UN and NGO reports, skype, telephone and in-person interviews with 30 interlocutors, including UN staff (including the ASG for Human Rights and other members of his OHCHR team); selected Special Rapporteurs and members of Treaty Bodies and other UN human rights investigative bodies; and staff of several international human rights NGOs. Interviews included 10 human rights defenders operating in repressive situations either in-country or in exile, from Asia, Africa, Latin America and the Middle East and North Africa (MENA) region. The author studied data made available from CIVICUS, Reporters Without Borders, Freedom House, the Political Terror Scale, the Human Rights Measurement Initiative (HRMI), and the V-Dem (Variations in Democracy) project, and conferred with several of their data experts. All interviews were carried out on a confidential basis. In some cases, human rights defenders could face risks for their collaboration, therefore a decision was made to leave most sources unidentified.



# Intimidation, inhibition and activism – psychological factors

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To maximize or optimize the cooperation of citizens with the UN's human rights mechanisms and address intimidation, we need to understand who uses these mechanisms, why they use them, and how they react to the wide range of obstacles they face in the course of doing so.

## Who cooperates with the UN, why they do it, and what risks and obstacles do they face?

### Who is cooperating with UN human rights mechanisms?

By and large there are three types of actors engaged: individual or collective victims of abuse (and their families and personal networks), local or national NGOs, and international NGOs. More often than not, an interaction with a UN mechanism involves collaboration between affected individuals and informed NGOs that serve as advisors and bridges between them and the distant UN.

### Why might victims or human rights defenders use a UN human rights mechanism?

Using UN mechanisms is only one of many tactics available to human rights defenders. Each organization or activist has her/his own preferences and biases for their chosen approach. Some prefer grassroots mobilization.<sup>1</sup> Others focus on litigation in domestic courts, getting media coverage, or seeking international support bilaterally through

individual embassies. Human rights defenders combine multiple tactics, but they frequently exhibit a kind of *path dependency*, in that they tend to continue to approach new human rights challenges using tactics they have used in the past.

Intimidation and reprisals cannot be viewed in a vacuum: people may have other reasons to shy away from using UN mechanisms. For some, the UN is a distant and bureaucratic process. Others decide that UN mechanisms are not worth the trouble relative to other available options, because they have not seen visible results. One activist consulted stated that in her country, activists perceive the UN to be too closely linked to their own government to be trusted for help. When they consider risks, they are balancing a wider range of pros and cons.

There are strong arguments for trying to take advantage of UN mechanisms, especially in situations where domestic processes have failed to generate results. Kathryn Sikkink and other scholars have documented the 'boomerang' effect in which local activists turn to international mechanisms and leverage them to reflect messages of pressure back to their own country, effectively opening up space for domestic human rights advances.<sup>2</sup> Such experiences

<sup>1</sup> See, for instance, Nic Dawes (Deputy Director of Human Rights Watch), 'As the decade closes, the power of protest endures,' in *Foreign Policy in Focus*, Dec. 10, 2019. <https://fpif.org/as-the-decade-closes-the-power-of-protest-endures/>.

<sup>2</sup> Keck, Margaret and Sikkink, Kathryn, *Activists beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, 1998.

have led a significant number of human rights NGOs to consistently turn to UN mechanisms as a vital weapon in their arsenal of human rights pressure and influence. In countries that have a well-developed civil society human rights movement, there will usually be some NGOs with this expertise. When political space is more repressed and rights groups cannot function openly, there are often organizations in the diaspora who learn to use these tools.

Human rights defenders consulted pointed out that the first challenge is not intimidation but rather awareness. The more repressive the political space, the less awareness there is of available response tactics. Sometimes awareness is deliberately blocked, such as when a country blocks access of its citizens to UN web-pages. Even in countries with more active civil societies, organizations or individuals working in rural areas or those representing the most marginalized groups may have less awareness of their options.

People's access to international tools of protection or pressure can also be limited by uneven dynamics within civil society. Decisions about investing political capital and labour into specific cases are often made at the level of a national NGO which tends to mediate and filter cases according to their chosen strategy and limited resources. Since these tend to be the more mainstream legally-skilled human rights NGOs in the capital cities, certain regions in a country or certain types of human rights issues may be underserved. Individuals from specific ethnic groups, language groups, or religious affiliations may find it more difficult to have their cases taken up at the international level even by their own human rights colleagues in the country. According to one MENA regional activist, *'Look at the Gulf States: the human rights actors are barely even aware of the plight of migrant workers. They are off the radar of the movement.'*



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### What risks do those cooperating with the UN face?

The range of tactics of intimidation and repression used by governments (or in some cases non-State actors) to inhibit or punish UN cooperation are in most cases not different than those used against human rights defenders for other non-UN activities. These include:<sup>3</sup>

- Direct violence and privations, such as: violence against victims, witnesses or activists; direct violence against family members, friends or colleagues; detention or arrest, usually based on false charges. Each act of violence both punishes the person concerned and sends a message of intimidation to others.
- Tactics to denigrate an individual or organization's reputation and legitimacy, such as: smear campaigns in regular media, on social media, or through grassroots rumour-spreading; trumped up 'official investigations' (of corruption, terrorism or other infractions); and false arrest for propaganda purposes.
- Tactics aimed to hurt people or organizations economically, such as: threatening unemployment; disbarring lawyers from practicing; destroying or confiscating property; and blocking access to funding.
- Other harassments and obstacles, such as travel bans or passport confiscation.

These actions may be linked to or preceded by various *threat tactics*, such as: anonymous threats; open threats by influential leaders; surveillance by security forces or private forces; and police harassment.

More often than not, threats are not reported or documented. Some victims feel they have little left to lose. Sometimes human rights activists develop a denial approach to threats, dismissing threats as something that *'comes with the territory'*, but this complacency makes it all the more difficult to measure and identify patterns.

*'You always feel someone is watching you. Many people can't bear this pressure and they give up. So in [our country] we do not have a very visible civil society.'*

*Human rights defender, Africa*

*'The Sri Lankan Government has a highly developed local network for getting messages to any household in the Tamil areas. Police visits were common – the area is massively militarized, with incorporation of former militants into the security services. Every house can be monitored. Police come by asking innocent questions – but the inference is threatening. Many people get these house visits.'*

*former OHCHR Sri Lanka researcher*

<sup>3</sup> This range of tactics of intimidation and repression emerges from the ASG reports themselves, from the author's interviews for this study and from consultations with other INGOs who specialize in the protection of human rights defenders. Much more detailed reviews of the kinds of attacks and harassments suffered by human rights defenders can be found in the reports of the Special Rapporteurs on Human Rights Defenders, and on the web-sites of some of the other organizations consulted, including ISHR, Front Line Defenders, Amnesty International, Protection International, Peace Brigades International and others.

Some governments project their threats outside their borders. Activists have been threatened in the halls of UN buildings in New York and Geneva. Organizations working in exile have sometimes been threatened directly, or their families and friends still living in the home country have been threatened or attacked.

The human rights defenders consulted especially emphasized the debilitating power of threats levelled against family members. Many people who are willing to take personal risks cannot as easily accept the responsibility for putting their loved ones at risk. The prevalence and effectiveness of this particular strategy of intimidation is so remarkable that it deserves more study and responsive strategy development.

*'Sometimes all the security forces need to do is obliquely mention the name of a son or daughter in a communication. The threatening implication is very clear to the recipient. And in most cases they do not dare to complain – and to whom could they complain?'*

UN Special Rapporteur

*'In [country] some journalists in exile were forbidden to return, but their family was still there. When we submitted a report to the Special Rapporteur on Freedom of Expression, some of them wanted their names omitted to protect their families.'*

MENA regional human rights activist

## How do individuals make decisions in the face of risks?

In order to confront the inhibiting impact of intimidation we need to understand the complexity of the human reaction to injustice, to risk and to uncertainty. Some would argue that there is a near-universal human repugnance to injustice and to human suffering, creating a natural motivation to do something about it. Many human rights defenders are more motivated to take risks as a result of their emotional anger and disgust at the damage done to others. Such action has costs, ranging from the inconvenience of investing time and resources in helping others, to more serious risks such as those listed above.

One of the most common human motivations is *reputation*: concern for honour, pride and recognition of one's basic humanity.<sup>4</sup> *Pride*, and its opposite, *shame*, force an individual to ponder whether they will be proud if they do not take the risk they are considering. Another factor in human motivation is *connection*: a feeling of belonging and loyalty to a group. A third important human motivation category is *impact*: the desire to have an effect on the world. Social movements and activist organizations that effectively

mobilize pride, a sense of solidarity or unity and a certain confidence in (at least eventual) impact, are likely to be more effective at encouraging individual risk-taking.<sup>5</sup>

Each individual has a unique emotional constitution, with different reactions to the influences of repugnance to injustice and suffering, personal reputation, group solidarity and desire for impact. Each has lived a different experience: for some the decision faced is brand new, while others have survived past risky decisions and have a higher risk tolerance (see box 1: Diverse routes to activism). In addition, each is trying to assess costs and benefits, estimating how effective their action might be, and estimating just how much risk is involved.



4 See Jasper, James M, *Emotions and Social movements: Twenty years of theory and research. Annual review of Sociology, Vol. 37 (2011), pp. 285-303.*

5 *Ibid.* Interestingly, one aspect of connection or sense of belonging is the sense of patriotism or pride in one's country. Jasper notes, 'Indignation at one's own government can be especially moving, as it involves a sense of betrayal. At the extreme, violent repression of peaceful protest is a frequent source of moral shock... outrage over State repression, far from curtailing protest, can sometimes ignite it.' (Jasper, p. 292).

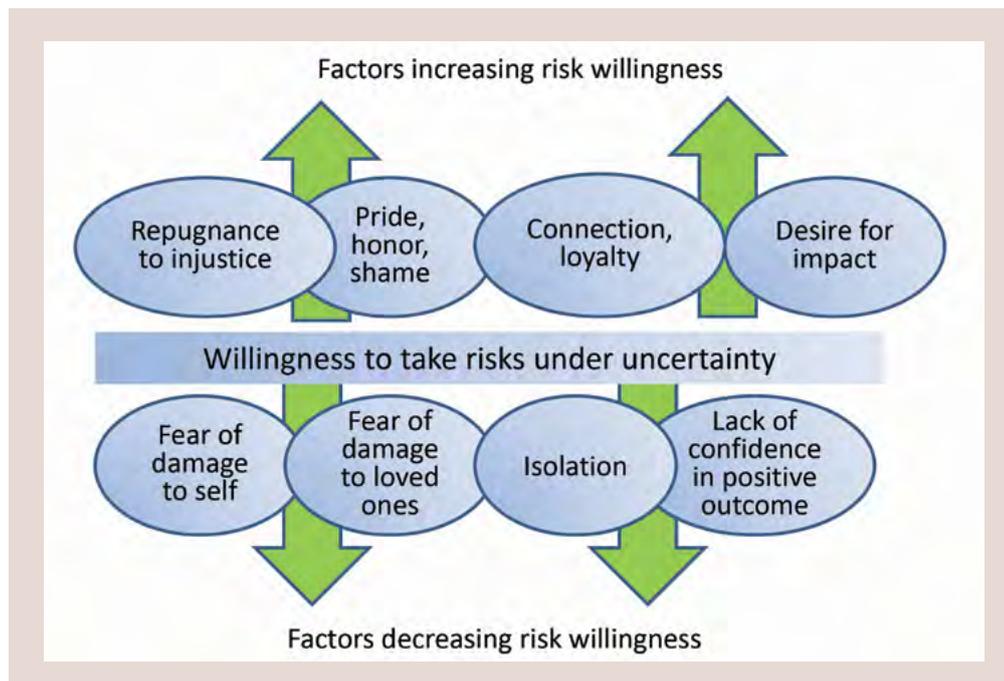
## Diverse routes to activism

Kristina E. Thalhammer researched motivations and decision-making among Argentine human rights activists who challenged State repression in the late 1970s.<sup>6</sup> Her study, based on interviews with 78 activists, 'revealed two distinct and inverse routes to high-risk other-centered political activism. Activists directly affected by regime violence tended to be relatively inexperienced politically, to have little experience with fear. ... An inverse pattern characterized activists not directly affected by regime violence: Their activism was preceded by experience in politics and survival of previous fear-evoking episodes.' These previous episodes seemed to inoculate them to some extent against repression-inspired paralysis.



6 I'll Take the High Road: Two Pathways to Altruistic Political Mobilization Against Regime Repression in Argentina, (*Political Psychology*, Vol. 22, No. 3, 2001).

Applying these reflections to cooperation with the UN: an individual would be more likely to engage with the UN if they saw the action not only as not too dangerous, but also as something that strengthens their own self-image and reputation, and makes them feel solidarity or support within a group, and as something that is likely to have a real impact.



The strategists behind campaigns of intimidation manipulate these same psychological factors of pride, connection and impact. While *threat tactics* aim to increase activists' calculation of the inherent danger, they are often accompanied by other political statements dismissing human rights action as pointless or ridiculous (implying lack of impact), while smear campaigns and personal attacks aim to belittle and reduce an activist's sense of pride in themselves as well as their support and solidarity within the community.

Attacks on family members are so devastatingly effective in part because they turn the tables on the emotional motivation of *pride*. An activist can be proud of taking a personal risk to do the right thing, but not of putting their family at risk. This creates a potentially debilitating moral uncertainty about whether one is doing the right thing.

## BOX 2

### Relational repression in China

Kevin J. O'Brien and Yanhua Deng describe the exhaustive yet subtle approaches to social control in China in which *'repression rests on psychological rather than physical coercion and is aimed at individuals, often in their homes or nearby.'* This type of repression may be carried out by people with only a loose connection to the state's coercive apparatus, such as relatives, friends, or neighbours of the target who work for the government or receive benefits from it. *'Relational repression' ... can, at times, be effective in demobilizing resistance or preventing a person from taking part in protest...Relational repression hinges on persuasion, pressure, and the impact of influential people.'*

Many tactics are applied: *'...judges and court staff may be sent to the streets to buy off demonstrators, housing officials may be empowered to give rural evictees the right to move to cities, and retrievers may be paid bounties to surveil and intercept persistent petitioners to ensure that they do not make it to Beijing.'*

These tactics are not only effective at demobilizing resistance; they also reduce the political costs and attention that result from harsher violent tactics. O'Brien and Deng document how top leadership have put local security forces under pressure to use less force in order not to generate notoriety.

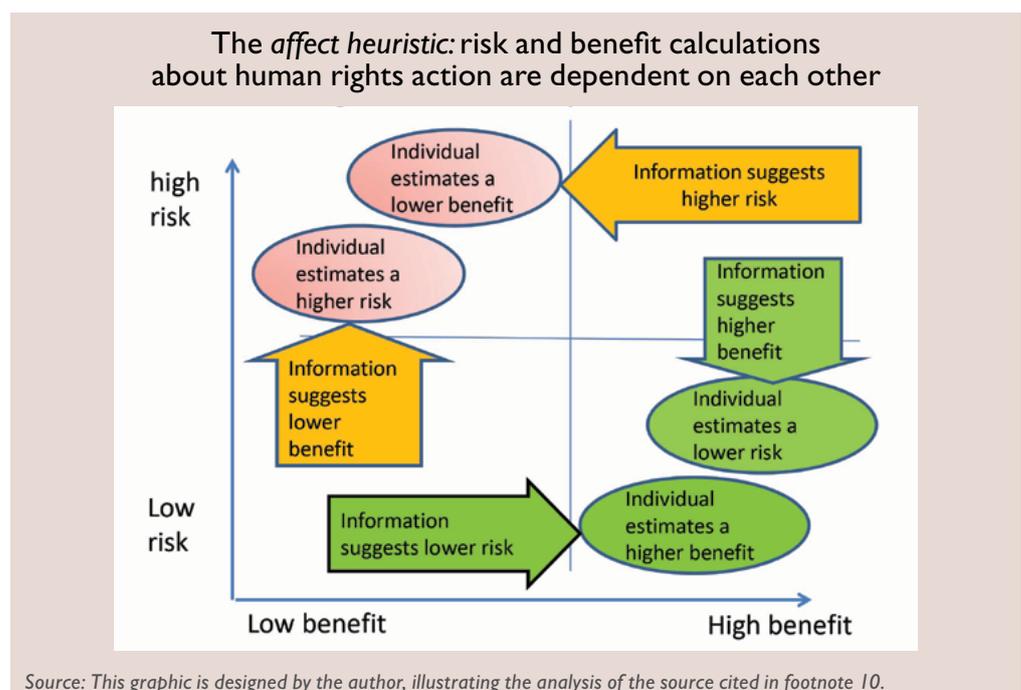
7 Preventing Protest One Person at a Time: Psychological Coercion and Relational Repression in China, *The China Review*, Vol. 17, No. 2 (June 2017), 179-201.

## Dealing with the uncertainties of risk and impact: heuristics and biases

Human rights activists may be doing a cost/benefit analysis as suggested above, but they cannot accurately quantify either the risks they face or their chances of success. Nobel prize-winning economist Daniel Kahneman's work has described how humans use a common set of *heuristics* to navigate such uncertainties.<sup>8</sup> Heuristics are mental shortcuts for making decisions quickly and efficiently.

The *availability heuristic* is a tendency to gravitate towards the option that is most available and visible. This helps to explain organizational path dependency, as people's choices are biased according to their most frequent past experiences and the skills they have already developed. Similarly, the *representativeness heuristic* is where a decision draws on a comparison to another example. If an organization has seen similar cases in the past successfully dealt with through UN mechanisms, it will bias them to apply the same tactic to a new case that seems to fit the pattern. This type of heuristic thinking can also have an inhibiting impact: if the State has arrested a lawyer or activist engaged in a certain case in the past, this can lead others to exaggerate the risk associated with similar cases.

Risk assessments engage both emotions and analysis, and studies have shown that people's feelings about a given course of action affect their analytical assessment of its associated risks. This is one element of the *affect heuristic*. People's assessments of costs and benefits are not independent of one another. Studies have shown that when people are given information suggesting a higher benefit to a certain decision, they tend to adjust their assessment of the consequent risks downward. Likewise, if they get information that risk is lower, they adjust their assessment of benefits upwards. In contrast, if they get information of higher risks, they lower their assessment of benefit. And with information of lower benefit they will raise their assessment of the risk.<sup>9</sup> The graphic below illustrates a human tendency to avoid ambiguity and seek certainty: our calculations are biased toward either the high-benefit/low-risk outcome of the lower-right quadrant (justifying action) or low-benefit/high-risk outcome of the upper-left quadrant (justifying restraint). Therefore, although assessments of potential danger and potential impact will always be uncertain, individuals and organizations making these choices need to have the clearest possible analysis not only of the risks but also of the potential benefits and impacts if they are to make well-informed decisions.<sup>10</sup>



- 8 See Kahneman, Daniel, et al. *Judgment under Uncertainty: Heuristics and Biases*. Cambridge University Press, 1999. Also, Tversky, Amos and Daniel Kahneman. 1974.
- 9 Finucane, ML, A. Alhakanmi, P. Slovic, and S.M. Johnson, 'The Affect Heuristic in Judgment of Risk and Benefit'. *Journal of Behavioral Decision Making*, 2000. (as cited in Slovic, P. and Vastjall, D. 'Affect, Moral Intuition and Risk', *Psychological Inquiry*, 21:387-398, 2010).
- 10 See, for instance, Spannagel, Janika. 'Chasing Shadows: A quantitative analysis of the scope and impact of UN communications on Human Rights Defenders (2000-2016)'. GPPI (Global Public Policy Institute), January 2018. <https://www.gppi.net/2018/01/24/chasing-shadows>.



In practice, the UN and international NGOs (INGOs) often emphasize the importance of ‘doing no harm’, giving individuals an opportunity to consider possible risks before consenting to engage, (although some criticize this commitment as being superficial or incomplete at times, especially if it does not comprise a thorough contextual risk analysis). However, there is inadequate emphasis and investment in analysing and communicating the benefits, successes, or potential positive impact of UN engagement. Within the context of a broader initiative to promote positive human rights stories,<sup>11</sup> the OHCHR webpage on Special Procedures has begun to share examples of positive impact, which is a good start, but there are not enough stories to inspire much confidence.<sup>12</sup> This initiative should continue to be expanded. In practice, the emphasis on ‘do no harm’ can often push the UN and NGOs towards deliberate understatement of possible benefits or impact for fear of raising unreasonable hopes or expectations. Considering the *affect heuristic* and high levels of uncertainty, the combined approach of understating potential impact while emphasizing potential risks likely skews decisions about engagement in a negative direction.<sup>13</sup>

This links to a broader tendency towards pessimistic assessments, a common weakness within the human rights movement. Situations and trends are nearly always presented as getting worse, while human rights successes are quickly forgotten in the face of new challenges. There are very few studies of successes. The UN, for instance, does not even rigorously analyse how many people have been assisted by its human rights mechanisms – perhaps even had their lives saved or their imprisonment curtailed,<sup>14</sup> whereas Special Rapporteurs consulted cited several instances where they were convinced their interventions had helped to protect people.

**Looking at countries where repression and intimidation is high, the UN and INGOs/NGOs who want to promote more effective use of UN mechanisms need to do more than document the misdeeds of governments. They need to present a much more coherent and informed analysis of why engaging with these mechanisms might be worth the trouble and risks. An understanding of the potential positive impacts of this engagement is as important to people’s decision making as understanding the dangers.**

11 See for instance: <http://webtv.un.org/watch/good-human-rights-stories-building-quality-lives-through-economic-social-and-cultural-rights/6089748800001>.

12 See ‘Special Procedures of the Human Rights Council and their impact’, at <https://www.ohchr.org/EN/HRBodies/SP/Pages/SPGoodStories.aspx>. Under the sub-topic of ‘Prevention of cessation of human rights violations’ for instance, only three examples are shared.

13 The opposite risk also exists. Some HRDs expressed concerns that some UN visitors do not carry out adequate risk assessment and therefore their process of seeking consent from sources may be underestimating risks. Some international human rights actors expressed concerns that there are human rights activists in national organisations and in diaspora organisations that may be so focused on getting data to confront a repressive host. State publicly that they understate the risks and overstate the benefits.

14 For counter-arguments to the prevalent pessimism in the human rights movement, see Sikkink, Kathryn. *Evidence for Hope: Making Human Rights Work in the 21st Century*. Princeton University Press, 2017.

## Using the UN and other international linkages as protection

Even though reprisals can occur, human rights defenders consulted felt that in many contexts people who face threats think that a connection to a UN mechanism has a net benefit, increasing their protection more than their risk.<sup>15</sup> These activists believe that the State would pay a higher political cost for attacking someone the more that person (or organization) is perceived to be linked to influential international actors like the UN. This potential protective feature can be a motivation for increased UN engagement.

However, in reality this protection varies according to context. Every documented reprisal represents a case where UN contact, or attempted contact, did not result in protection. In some of the most closed and repressed countries, we tend to see engagement with the UN mostly by activists in exile or from the diaspora, while collaboration by those still living in the country may be happening only in a clandestine manner. Evidently in such countries a visible connection to the UN is seen as more of a risk than a protection. Without more rigorous study, we cannot say for sure how frequently engagement with the UN is an added protection as compared to an added danger.

Even within a country, the degree of protection resulting from cooperating with the UN will vary. It may be most evident in the high-profile cases of activists whose death or arrest would be considered a political scandal. Often these activists have already engaged in multiple 'risky' human rights behaviours and their UN engagement only adds incrementally to their overall risk level. But when a more isolated and less experienced individual engages in human rights activism for the first time, the high-risk level is new to them, while the chances of international or UN protection is unknown, and probably lower. As one activist pointed out, *'The more access you have to the outside world, the more it can protect you. Those who lack that access are less protected.'*<sup>16</sup>

### Part one concluding summary

- The inhibiting influence of intimidation on human rights activism in general (and UN cooperation in particular) is very complex. Individual decisions are influenced by repugnance to injustice, pride, honour, shame, loyalty, and desire for impact, but also by isolation, inconvenience, survival needs, and fear for self or family.
- The cost/benefit analyses in these situations with high uncertainty are subject to heuristics and biases, which tend to increase risk aversion. These dynamics affect individuals and organizations differently, at local, national and international levels.
- People are affected and intimidated by severe reprisals against others, but also by much more subtle threats and messages, some of which are not directly threatening to specific individuals and some of which are even 'legal'.
- People's decisions are also affected by positive feedback – in particular their belief in the positive impact of their action.
- Even in the face of intimidation and threats, many activists consider any attention paid to their plight by the UN to be potentially protective in its impact – even, paradoxically, when states are carrying out reprisals for this very contact.
- **The UN and other human rights organizations need to provide clearer impact analysis of both the positive and negative impacts of engagement with UN human rights mechanisms.**
- Regardless of these biases and heuristics, it is essential to respect the agency and decision of the activists on the ground who are most directly affected by State action. An individual decision to self-censor or refrain from using the UN system is not necessarily risk-averse. It may instead represent a strategic or intuitive balancing of the relative risks among a wider range of available tactics. A person may assess that refraining from using UN mechanisms will reduce their risk enough to open up space for other kinds of human rights action, thereby balancing risks in such a manner as to maximise their overall human rights impact.<sup>17</sup>

15 This conclusion from recent interviews confirm that of prior studies carried out by the author, including *Unarmed Bodyguards: International Accompaniment for the Protection of Human Rights* (Mahony and Eguren, Kumarian Press, 1997) and *Proactive Presence: Field Strategies for Civilian Protection*, (Mahony, Centre for Humanitarian Dialogue, 2006).

16 Author interview, human rights activist in the MENA region.

17 This dynamic of strategic balancing of risks is similar for journalists. A study by Jinrong Tong on self-censorship in Chinese newsrooms suggests that careful practices of self-censorship 'helps newsrooms to bypass political 'minefields', and at the same time increase the possibilities of the publication of reports on highly politically sensitive topics. In this sense, in the Chinese authoritarian media system, self-censorship has potentially become a force that increases media freedom. ... 'Tong, Jinrong. 'Press Self-Censorship in China: a Case Study in the Transformation of Discourse.' *Discourse & Society*, vol. 20, no. 5, 2009, pp. 593–612. JSTOR, [www.jstor.org/stable/42889285](http://www.jstor.org/stable/42889285).

# Data Challenges - measuring cooperation and intimidation

Expanding our lens of analysis from individual decision-making to the bigger picture, this section will examine the broader quantitative impact of intimidation on cooperation, and how it can be measured. The impetus for the current study was a recognition that there were countries where the situation for human rights actors was even worse than those from where reprisal reports were being received, ostensibly because intimidation was successfully preventing human rights action.

Assessing the extent to which this is true poses several different measurement challenges:

- a) measuring how much cooperation there is on a country-by-country basis with the various UN mechanisms;
- b) measuring how much intimidation there is on a country basis; and
- c) assessing whether there is a causal relationship between the intimidation and the levels of cooperation.

Quantitative measurement and data analysis have consistently been a weakness in the human rights movement as a whole, and especially so for the UN human rights system. Human rights information gathering is often limited to collecting case-based evidence about incidents. Human rights analysis usually applies a legal analysis to that case-based evidence. Finally, human rights reporting often lists case after case of abuses in a range of categories with detailed treatment of certain 'emblematic cases'. Despite the fact that human rights organizations gather data on thousands

of incidents, one seldom sees an adequate level of quantification or statistical analysis in human rights reports.

The problem explored in this section cannot be effectively addressed through documenting emblematic cases and selected incidents, nor through legal analysis. It requires some rigorous data-driven approaches. Unfortunately, it will also require some data that does not exist yet. The objective here is to lay out some methodological approaches that can be developed further in the future. If the methodology is valid, it demands the prioritisation of new approaches to gathering data.

## Measuring cooperation

Measuring cooperation should be far easier than measuring intimidation. The UN has a finite number of human rights bodies and mechanisms (Special Procedures, Treaty Bodies, Human Rights Council, Universal Periodic Review, Commissions of Inquiry, OHCHR, etc.). It also has various modes of projecting itself out into the field (OHCHR field presences, DPKO or Department of Political Affairs (DPA) Peace Operations' human rights components, field visits of Special Procedures, Fact-finding missions or others). Each of these bodies, mechanisms and field contacts interacts with a finite and measurable number of citizens of diverse countries – sometimes by receiving petitions for help, sometimes by hearing testimony or receiving reports/input, and sometimes by going out in search of information. If each mechanism kept rigorous records about

these contacts with citizens, civil society organizations, government authorities, etc. such records would form the basis of a system-wide database that could track levels of cooperation from year to year across any number of different variables (by mechanisms, by country, by issue or theme, by gender, ethnicity, etc.).

**It does not appear that cooperation is being adequately measured, and this is a problem. There may be isolated islands within the UN system that are keeping such records, but most are not, and data is not consolidated in a cross-cutting way. Cooperation levels could be improving or deteriorating for different reasons in different places, but without this data we cannot accurately assess what is happening.**

It is striking that an annual report issued by the UNSG entitled '*Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*' fails to summarize cooperation in a quantitative manner. The reports focus on incidents of reprisals. There is a presumption that such incidents reduce cooperation, but no quantitative evidence of this link is articulated, because the ASG's team does not have access to the necessary data.

**If the UN values this cooperation enough to name an ASG-level mandate to lead efforts to address it, then it should consider investing in systematically gathering and collating data in such a way that cooperation could be tracked and analysed, obstacles identified and prioritized, and solutions sought.**

This is not a small task, and some will argue it is not feasible. For instance, for Special Procedures alone, there are over 50 mandates, which receive over 10,000 incoming communications each year, in many different languages. OHCHR has an online portal for submitting petitions, but also receives thousands of letters and e-mails, and many additional communications go directly to the mandate-holders themselves. Treaty bodies and the Human Rights Council also receive thousands of inputs yearly. Gathering, coordinating and analysing such data would require substantial human resources, when the mandate-holders themselves are unpaid and under-supported, and OHCHR is understaffed. Nevertheless, it would be a step forward to start such a process, as even a partial database tracking cooperation with a subset of selected mechanisms would help. It may seem ambitious, but some of the proposals in this section assume that such data will at some point be available, and suggest how it could be taken advantage of once it is.

## Data on human rights abuses

In principle, if people were all equally aware of the UN mechanisms, and there were no obstacles to access them, we might expect some relation between the overall level of human rights abuses in a country and the level of cooperation with UN human rights mechanisms. In other words, although these statistics are the complex result of many factors, with more abuses we might expect more attempts to make contact. If abuses in a country are increasing, but contact with the UN is decreasing, this could be a signal that something is getting in the way. Similarly, if two countries have similarly high levels of abuse, but substantially different levels of cooperation, this too could be a signal of obstacles requiring a closer look.<sup>18</sup>

To measure this relationship, one first needs a quantified global comparative measurement of levels of human rights abuse. The leading sources on human rights abuses that provide global coverage, such as OHCHR, Amnesty International, Human Rights Watch, or the U.S. State Department do not transform their substantial data into a quantified measurement scale through which countries can be easily compared or ranked. However, some academic initiatives have tried to fill this gap. The PTS (Political Terror Scale)<sup>19</sup> and the CIRI (Cingranelli-Richards) Human Rights Data Set<sup>20</sup> have both used data from Amnesty International's annual reports and the annual human rights country reports of the U.S. State Department. Each used a different methodology to create a scale. More recently, the Human Rights Measurement Initiative (HRMI)<sup>21</sup> began to build a database using surveys of national human rights experts inside each country, arguing that these experts are closer to the human rights reality and facts and in a better position to assess the situation than international institutions. HRMI is still relatively new and has only partial country coverage in its database.

With a steadily growing human rights movement, modern technology and the ever-expanding use of social media platforms, the amount of available data is expanding. Global human rights databases should therefore improve over time, both in precision and in the level of detail they will provide. With such improvement, the kind of comparison proposed here will become more dependable and useful. It should become possible to apply the same correlation analysis to specific human rights problems. For instance, if global data were available about a particular type of abuse, (for instance torture, or detention), and if data were available from the UN about how much cooperation there is with the mechanisms that address those problems, topic-specific gaps in cooperation could be identified.

18 Important contextual and qualitative dimensions will complicate this relationship. For example, it may vary depending on the type of issue (economic, political, social/moral).

19 See [PoliticalTerrorScale.org](http://PoliticalTerrorScale.org) for description, methodology and data download options. The PTS scale ranks most countries since the early 1980s, drawing data from U.S. State Department and Amnesty International annual reports.

20 See [www.humanrightsdata.com](http://www.humanrightsdata.com) for description, methodology and options for data download. CIRI ranked most countries' performance from 1981-2011, disaggregating its data for multiple types of human rights abuses.

21 See [www.humanrightsmmeasurement.org](http://www.humanrightsmmeasurement.org) for description, methodology and data download.

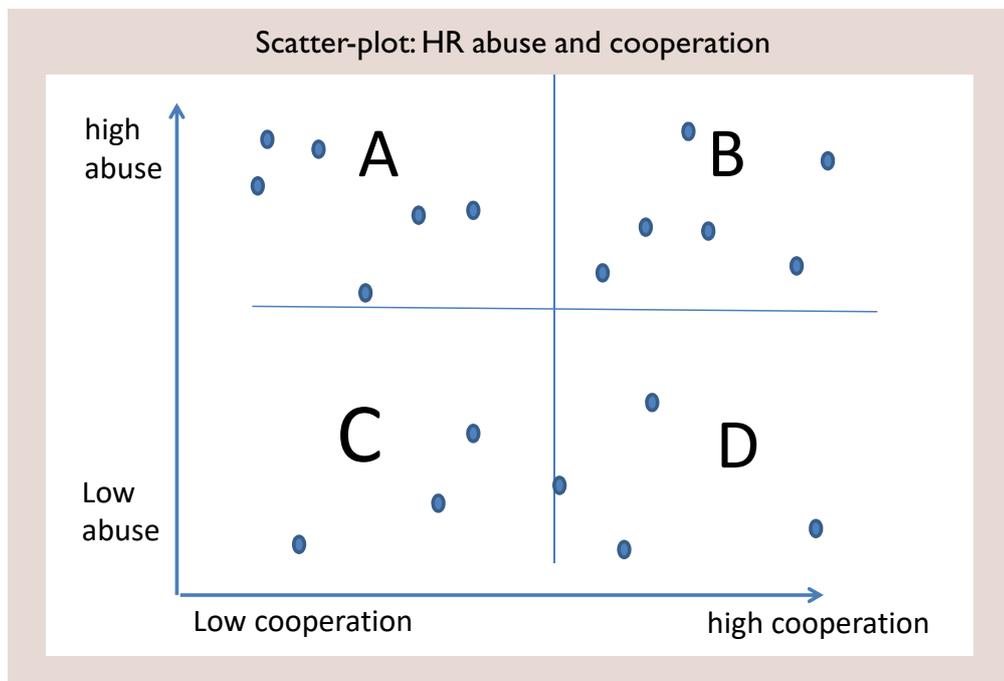
## Putting it together – data on human rights abuses and cooperation

Combining data on overall levels of human rights abuse by country, and quantitative data by country about the usage of UN mechanisms, a simple scatter-plot could map abuse levels against cooperation levels (see graphic below).

Each dot on the scatter-plot would represent a country. The result could be divided into four quadrants: A - High abuse and low cooperation, B - High abuse and high cooperation, C - Low abuse and low cooperation, D - Low abuse and high cooperation. The countries appearing in quadrant A require a much deeper context-based research effort to diagnose the problem and to determine if there are possible strategies to encourage greater cooperation while at the same time protecting those who cooperate.

The countries appearing in quadrant B also require close study, because when abuse levels are high, there are usually also high levels of intimidation to deter the sharing of human rights information. In these countries civil society may be finding effective strategies for confronting and overcoming that intimidation and continuing to report abuses to the UN. Case studies on such strategies could potentially help improve approaches for the countries in quadrant D, where there is low cooperation.

This data relationship does not in itself provide irrefutable evidence of intimidation, since other dynamics may be reducing cooperation. But this initial data mapping can identify potential signals of countries requiring further investigation.



## Overt and public signs of obstruction and potential intimidation

Even though data on cooperation is not collated, the UN does have some explicit data on obstacles and on certain countries' unwillingness to facilitate cooperation. This alone can help to narrow down which countries may require deeper analysis regarding intimidation, because intimidation is more likely in countries that are overtly resisting engagement with these mechanisms. These actions may not all be directly intimidating, but when a State publicly undermines or delegitimizes UN mechanisms it is also sending a message to its own citizens to stay away. For example:

- I. The UN has consistently urged all states to issue a 'Standing Invitation' to all Special Procedures<sup>22</sup> to encourage and facilitate the mandate-holders' investigatory field visits. Nearly two-thirds of UN member states have issued such standing invitations, but all the states listed in Box 3 have refused to do so.<sup>23</sup>

22. *Special Procedures are individual independent human rights experts, or groups of such experts, who report and advise on human rights issues. They are called by many names, including Special Rapporteurs, Special Representatives, Working Groups, and Independent Experts.*

23. *Data for Boxes 3 and 4 taken from 'Facts and Figures with regard to the Special Procedures in 2018', UN document: A/HRC/40/38/Add.1, <https://undocs.org/A/HRC/40/38/Add.1> (Standing invitations, pp. 5-7, States never visited, p. 17, pending requests pp. 19-25).*



2. Whether or not there is a standing invitation, the UN mechanisms need to request permission to visit a State at any given time, and in many instances, states have not granted permission or repeatedly delayed visits (see Box 4 – List of states with five or more pending requests for SP country visits since 2014). Notably, 28 states that have issued standing invitations have consistently failed to facilitate country visits when requested.<sup>24</sup>
3. China has blocked internet access within its borders to many international human rights web-pages and hinders access to OHCHR's, thereby not only obstructing online cooperation but also projecting a message to deter other contact. Freedom House's report 'Freedom on the Net 2018' ranks China as the worst abuser of internet freedom overall. Box 5 [following page] lists the worst 20 countries in that study with respect to internet content limits and obstacles to access.<sup>25</sup>

*'Over the last two decades, [China's] 'Great Firewall' has grown into an alarmingly effective apparatus of censorship and surveillance. This year, Beijing took steps to propagate its model abroad by conducting large-scale trainings of foreign officials, providing technology to authoritarian governments....'*

*(Freedom House, Freedom on the Net 2018: The Rise of Digital Authoritarianism)*

4. Iran has legislation that criminalizes the passing of information to international bodies, and in Egypt anyone who wants to cooperate/attend/participate with international organisations needs the permission of the minister.<sup>26</sup>
5. Some states have passed more nuanced legislation in the language of 'national security' which allows for any actions considered damaging to the reputation of the country to be classified as criminally damaging to national security. In Sri Lanka, draconian anti-terrorism legislation remains in force a decade after the defeat of the LTTE, enabling intimidation by security forces. Russian law and regulation labels NGOs that receive foreign funding as 'foreign agents,' making them vulnerable to charges of spying. These are but two examples. In the debates prior to the passage of such legislation the risk of silencing civil society is sometimes discussed publicly, and the eventual passage of the legislation is understood as an overt threat. In addition, such legislation has then been used to prosecute HRDs. The intimidating message is therefore clear and public.<sup>27</sup>
6. Sometimes state-run media or State spokespersons release public statements undermining the UN's human rights mechanisms, implicitly or explicitly dissuading people from making contact.

<sup>24</sup> Ibid.

<sup>25</sup> <https://freedomhouse.org/report/freedom-net/freedom-net-2018/rise-digital-authoritarianism>. Freedom House' (downloadable) data on internet freedom combines three measures: 'obstacles to access,' 'limits to content' and 'Violations of users' rights.' The list in box 5 was generated by combining the first two measurements. This study did not assess all countries in the world, therefore there may be others with similar levels of constraints.

<sup>26</sup> Egypt's NGO law no. 149/2019, passed in July 2019, requires ministerial permission to 'join, affiliate, participate, cooperate and engage with foreign organisations in activities' (art.19).

<sup>27</sup> According to the International Center for Non-Profit Law, 'since 2013, 94 countries have proposed more than 269 legislative initiatives that impact civil society. Of these initiatives, more than 180 have been restrictive'. (See <https://www.icnl.org/our-work/defending-civil-society>) For more detail on the wide range of legal tactics used against human rights activists, see *Criminalisation of Human Rights Defenders: Categorization of the Problem and Measures in Response*, by Maria Martin, Protection International, Dec. 2015. <https://www.protectioninternational.org/en/policy-maker-tools/criminalisation-human-rights-defenders-categorisation-problem-and-measures>. See also *Criminalization of the work of human rights defenders*, Inter-American Commission for Human Rights (IAHCR), 2015. <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

**BOX 3****These states have NOT issued standing invitations for country visits of UN Special Procedures**

Algeria	Dominican Republic	Mali	St. Vincent & Grenadines
Angola	Egypt	Mauritania	Sudan
Antigua and Barbuda	Equatorial Guinea	Mauritius	Suriname
Bahrain	Eritrea	Micronesia	Syria
Bangladesh	Eswatini	Moldova	Tajikistan
Barbados	Ethiopia	Morocco	Tanzania
Belarus	Gambia, The	Myanmar	Timor-Leste
Belize	Grenada	Namibia	Togo
Bhutan	Guinea	Nepal	Trinidad and Tobago
Brunei	Guyana	North Korea	Uganda
Burkina Faso	Haiti	Oman	United Arab Emirates
Cambodia	Indonesia	Pakistan	United States
China	Israel	Philippines	Venezuela
Comoros	Jamaica	Russia	Vietnam
Congo, DRC	Kiribati	Saudi Arabia	Yemen
Rep. of Congo	Kosovo	Senegal	Zimbabwe
Côte d'Ivoire	Kyrgyzstan	Singapore	
Cuba	Laos	South Sudan	
Djibouti	Malaysia	St. Kitts and Nevis	

Source cited in footnote 24

**BOX 4****These states have five or more pending Special Procedure visit requests since 2014**

Angola	Fiji	Mali	Syria
Bahrain	Ghana	Mexico	Tanzania
Bangladesh	Guatemala	Mozambique	Thailand
Botswana	Haiti	Nepal	Turkey
Brazil	India	New Zealand	Turkmenistan
Cameroon	Indonesia	Nicaragua	Uganda
Chile	Iran	Nigeria	United Arab Emirates
China	Israel	Pakistan	United States
Colombia	Jamaica	Peru	Uzbekistan
Congo, DRC	Japan	Philippines	Venezuela
Côte d'Ivoire	Jordan	Russia	Vietnam
Cuba	Kenya	Rwanda	Yemen
Dominican Republic	Lebanon	Saudi Arabia	Zambia
Ecuador	Libya	Senegal	Zimbabwe
Egypt	Malaysia	Singapore	
Ethiopia	Maldives	South Africa	

Source cited in footnote 24

**BOX 5****Countries with severe internet restrictions.**

Ethiopia	Vietnam	Sudan	Myanmar
Uzbekistan	Bahrain	Belarus	Syria
Egypt	Turkey	Cuba	Saudi Arabia
Russia	China	Venezuela	Kazakhstan
Iran	Pakistan	United Arab Emirates	Azerbaijan

Source cited in footnote 26



For some states the UN Human Rights Council has established specific country mandates (i.e. there is a Special Rapporteur whose sole mandate is to observe that country's human rights situation). According to OHCHR's Annual report from the Special procedures:<sup>28</sup>

*44. In relation to country mandates, some countries like Cambodia, Central African Republic, Mali, Somalia and Sudan give access to the country mandate while **Belarus, the Democratic People's Republic of Korea, Eritrea, the Islamic Republic of Iran, Myanmar or Israel** do not accept their visits... (Emphasis added).*

Other kinds of missions are also openly blocked: Sri Lanka never allowed investigators from the OHCHR Investigation of Sri Lanka (OISL) to enter the country; Myanmar refused entry to the UN Fact-Finding Mission in 2017-18. Burundi expelled a UN Commission of Inquiry in 2018.<sup>29</sup>

Regarding cooperation in general with Special Procedures, OHCHR's annual report also points out:

*45. While some States have devoted considerable efforts in developing constructive cooperation with mandate holders, others continue to refuse their visits or accept only a selected few. 24 States have not yet received a visit, despite requests received for 14 of them. Of particular concern are some public announcement made by States that they will not cooperate with some mandate holders or attempts to replace mandate holders...*

*46. There are also more subtle forms of non-cooperation. For example, some States only cooperate with a selected few, or they respond to communications but do not accept visits, even if they have extended standing invitations. The Council should find ways to make non-cooperation more costly. The Council should also provide a space where good stories and examples of cooperation could be shared.<sup>30</sup>*

When a State is being overtly non-cooperative with UN mechanisms, it may be taking more subtle actions towards its own citizens to further discourage contact with the UN. The aforementioned OHCHR report mentions that sometime states allow country visits, but then use intimidating tactics and other obstacles to prevent adequate contact in-country. Although this practice is not explicitly quantified by OHCHR, nor are specific countries named, the Special Rapporteurs consulted for this study confirmed this practice. States should be called out for any acts of intimidation, harassment, travel limitations and others obstacles put in the way of country visits, not only in the Special Procedures' individual reports but also in OHCHR's annual Special Procedures' reports.

<sup>28</sup> UN Human Rights Council Annual Report of Special Procedures for 2018, UN document: A/HRC/40/38.

<sup>29</sup> 'Burundi under fire at U.N. for expelling U.N. human rights team,' World News, September 11, 2018. <https://www.reuters.com/article/us-burundi-rights-un/burundi-under-fire-at-u-n-for-expelling-u-n-human-rights-team-idUSKCN1LR23R>.

<sup>30</sup> UN Human Rights Council Annual Report of Special Procedures for 2018, UN document: A/HRC/40/38. The Council's role is particularly relevant as it is the Council that creates the Special Procedures mandates. In fact, there already exists an underutilised 'space' at the Council as intimidation and reprisals are discussed under Item 5 of the Council's agenda, and a specific dialogue occurs when the ASG presents the SG's report every September. States should avail themselves of this opportunity to share any good stories or examples of cooperation.

In the meantime, the UN, member states and NGOs should take firm steps to implement the proposal OHCHR makes above to the the Human Rights Council (HRC) to 'make non-cooperation more costly,' for instance, by opposing the election of uncooperative states to the Human Rights Council or other human rights-related UN bodies. According to General Assembly resolution 60/251 the HRC should be composed of states that uphold the highest human rights standards and cooperate fully with the Council.<sup>31</sup>

### The challenges of measuring intimidation, inhibition and self-censorship

When a state's actions are not official or public, documenting and measuring intimidation and the inhibiting effect of fear is a more painstaking challenge. Dr. Lauren Young carried out a study in Zimbabwe involving 700 survey interviews with urban and rural opposition supporters about their decisions to participate or not in opposition activity.<sup>32</sup> Her results confirm that emotions of fear cause pessimism, exaggerated assessments of danger, and exaggerated assessments of government repressive capacity, all resulting in inhibition of action.<sup>33</sup>

Beyond the study's conclusions, it is helpful to reflect on the methodology such a study demands. First, it required a team of researchers who could access and build trust with an adequately-sized and unbiased survey sample – in this case it was assisted by a well-connected Zimbabwean NGO. Second, it needed to be carried out under conditions and with confidentiality protocols that would ensure that neither the survey participants nor the researchers would face any risk of retaliation for their engagement with the study.

*To minimize this risk, interviews were carried out in private homes. No identifying information was collected, and consent was obtained verbally so that a written consent document would not link participants to their data. Data was collected on password-protected tablets, and immediately after each interview the data was sent to a server and deleted from the tablet. To prevent participation from being tracked, interviewees were recruited by [the local NGO]'s community-based mobilizers and ... [who] spent no more than a few non-consecutive days at each site. ... [The NGO] also used its network to monitor whether there was any retribution after their team left. ... We received no reports of breaches of confidentiality, retribution, or attempts to track participation.<sup>34</sup>*

Any research that deals with fearful decisions and incidents also needs to take precautions to minimize the risk of re-traumatization of the participants that can result from recalling intense prior experiences. This requires careful survey design, sensitivity training of surveyors, and the provision of counselling support if needed.

A survey-based study under repressive conditions must also be designed in such a manner that it will objectively measure the correct indicators.<sup>35</sup> The objective is to assess not only what sorts of intimidations people face, but also what sorts of emotions result from the intimidation and how those emotions in turn affect decisions about engagement. At the intersection of the fields of cognitive psychology and political science, various survey design and interview methodologies have been developed to parse out such complex dynamics. Dr. Young's Zimbabwe study is one such example.

This kind of study shows that with careful methodological planning and procedures for protecting survey participants or other sources and witnesses, it is possible to study fear and its impact on decisions about participation. Although such studies are labour intensive and infrequent, the UN and NGOs committed to monitoring intimidation would do well to keep abreast of similar initiatives among researchers and academia. Partnerships among the UN, NGOs and academic institutions should encourage more such study.<sup>36</sup>

31 ISHR has produced scorecards on candidates for the Human Rights Council in recent years. <https://www.ishr.ch/news/hrc-elections-how-do-candidates-2020-rate>.

32 Young Lauren E, 'The psychology of State repression: fear and dissent decisions in Zimbabwe.' 2019. *American Political Science Review* 113(1), pp. 140-155.

33 As evidence of this impact of exaggerating danger and government repression, Young also reports that 'although at the peak of Zimbabwe's violence in 2008, 200 people were actually known to have been killed, almost one in four subjects in the control group (23%) believe that it is sure that they would be killed if they attend an opposition rally during an election period.' (Young, Lauren E. *The Psychology of Risk: The effect of fear on participation in collective dissent*. Columbia University (dissertation), December 24, 2015.).

34 Young, *ibid.* (section 4.3 p. 16).

35 A survey approach might be preceded by a more qualitative approach to inform this design, by means of semi-structured interviews and focus groups to map out the dimensions and factors to include in a survey.

36 One potential qualitative approach would be to identify, survey and interview human rights activists who have engaged in the past with the UN but have since ceased to, possibly due to intimidation.

## Identifying proxy measurements for intimidation

Given the dearth of such survey-based studies, we can look for markers or proxy measurements in other existing data. Several organizations have created global scales to measure 'freedom' or 'democracy.' Although cooperation with UN human rights mechanisms, and human rights activism in general, are very specific subsets of democratic activity by citizens, it is reasonable to suppose that the same general dynamics of control of civic or democratic space affect this kind of activism. Four such scales are discussed in this section: the CIVICUS monitor; Freedom House's 'Freedom in the World' scale, RSF's Press Freedom Index, and the V-Dem (Variations of Democracy) database.

- The CIVICUS monitor<sup>37</sup> measures civil society space, and places countries into one of five categories: Closed, Repressed, Obstructed, Narrowed or Open. CIVICUS puts out additional alerts regarding deterioration or closure of civil society space. CIVICUS draws its data from a range of other institutions' reports, including the Political Terror Scale and Freedom House, but it emphasizes the data and analysis it collects directly from civil society organizations at the national level.
- Freedom House produces an annual 'Freedom in the World' (FITW) report<sup>38</sup> which ranks every country in the world on a level-of-freedom scale of 0 to 100 based on a broad range of political and civil liberty indicators. Freedom House uses its own network of professionals who have developed expertise on every region and country in the world.
- Reporters Without Borders (RSF) produces an annual 'Press Freedom Index'<sup>39</sup> using teams of experts, assessing media reports on abuses against journalists, and carrying out an annual survey among a network of over 2000 practicing journalists from all over the world.
- The V-dem (Variations of Democracy)<sup>40</sup> database hosted by the University of Gothenburg, Sweden aims to provide academics and other researchers with a quantified historic record of changing patterns of democracy over the last 200 years. The project assesses over 350 different indicators, and has used historical data to track many of these indicators back over 200 years for many countries. V-Dem recruits experts not only for each country but has different experts assessing different kinds of indicators.

Each of these databases works from a different set of sources and methodologies. Each methodological approach has potential strengths and weaknesses.<sup>41</sup>

These initiatives are measuring many factors that are not directly related to intimidation per se. Measuring freedom considers such factors as the efficient function of State institutions and electoral processes. In the case of press freedom, RSF considers the education and certification of journalists, as well as media outlet ownership. Even so, if these diverse measures all pointed to the same subset of countries as suffering from such limitations of freedom, it would be reasonable to expect that intimidation inhibiting UN cooperation would also be of concern in those countries.

This can be taken a step further: some of the specific indicators within these databases can be disaggregated to more closely approximate intimidation and inhibition. Freedom House's broader analysis includes specific indicators of freedom of expression and NGO space. The V-dem database has specific indicators on civil society repression and repression of freedom of speech and other civil liberties. More recently it has added several indicators about digital freedoms and internet controls.

37 The latest data is available at <https://monitor.civicus.org/>.

38 The latest report can be viewed at <https://freedomhouse.org/report/freedom-world/freedom-world-2019>.

39 See [https://rsf.org/en/ranking\\_table](https://rsf.org/en/ranking_table) for the details of the overall press freedom ranking as well as analytical articles assessing regional and thematic dynamics.

40 See <https://www.v-dem.net/en/>.

41 For instance, the quality of the quantitative ratings that rely on selected experts (such as Freedom House and V-Dem) depends entirely on the quality and objectivity of the individual experts they have selected for each country and indicator. Similarly, CIVICUS uses its global civil society network of organizations as its experts, and the results depend on which civil society groups participate. Event-based data, for instance drawn from media reports, may not adequately compensate for or attempt to measure under-reporting and media bias. Survey-based approaches have to find careful techniques for overcoming cultural biases that might be skewing an overall population's assessment of certain sensitive questions or issues. A detailed discussion of the strengths and weaknesses of various data-gathering and assessment approaches can be found in the OHCHR manual, *Human Rights Indicators: A Guide to Measurement and Implementation*, (pp. 65-67, OHCHR, 2012, available at [https://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf)).

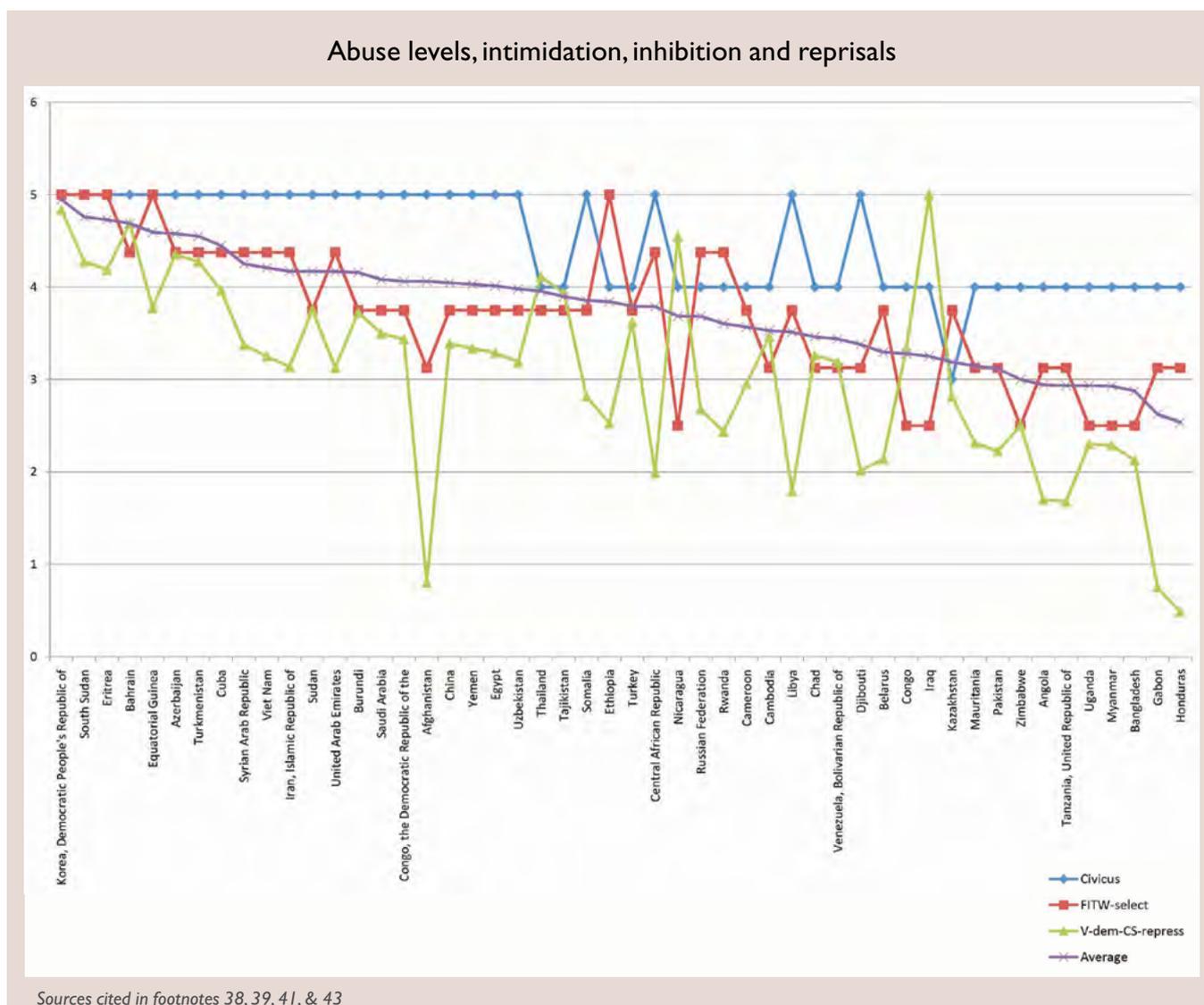
Chart 1 shows an example of combining several of these indicators that might be most closely linked to intimidation:

- The CIVICUS monitor measures civic space with a discrete scale in which '5' identifies 'closed' countries while '4' identifies 'repressed' countries (those with less negative ratings of 1, 2 and 3 are not graphed).
- Two indicators of the 'Freedom in the World' scale were selected and combined: *Indicator E2: Is there freedom for non-governmental organizations, particularly those that are engaged in human rights- and governance-related work?;* and *Indicator D4: Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?*
- The V-Dem indicator on 'Civil Society Repression.'

The chart also shows the average of this combination of measures, and charts 50 relatively 'intimidating' countries from left to right, in order of this average.<sup>42</sup>

This is not a strictly ordered ranking – the data is too rough for that, and the specific order would be different depending on how the different scales were weighted in the averaging process. The approach of combining different available indicators from multiple and independent databases in this manner could be developed further to help identify the countries of greatest concern. The countries that such a process identifies should be considered priorities for further research into whether an overarching atmosphere of intimidation is having a measurable impact on cooperation with the UN.

RSF experts document specific abuses against journalists, while its Press Freedom survey questionnaire to practicing journalists includes questions on self-censorship. These indicators relate specifically to a state's concern about controlling how information is disseminated, and states with these concerns about journalists might logically have similar concerns about the flow of human rights information. The indicators on self-censorship are measures of internalized inhibition possibly resulting from intimidation.



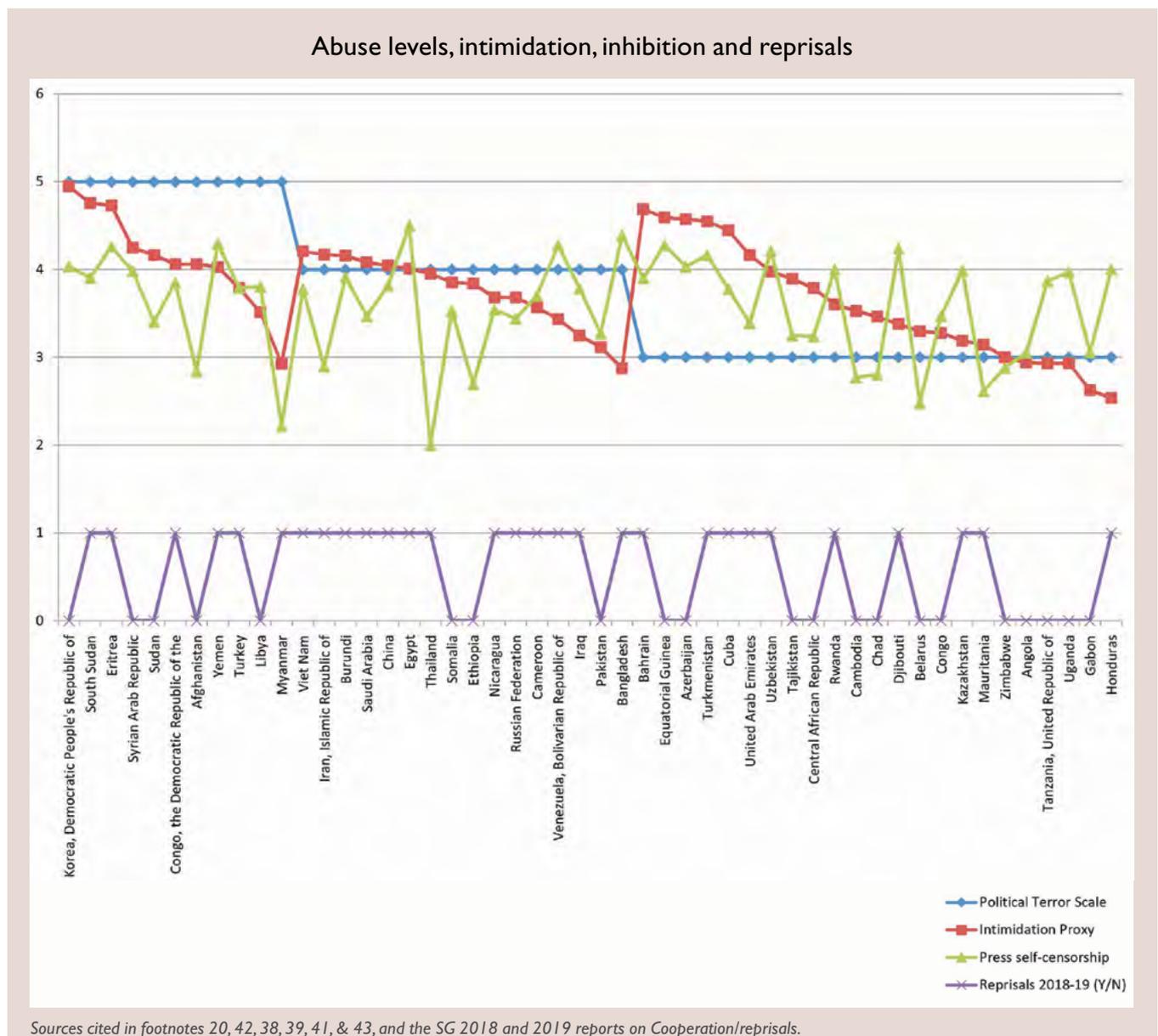
42 In chart 1 the Freedom House scale of 1 to 7 has been proportionally scaled to match the 1 to 5 scales of the other measures. One extreme outlying data point for Afghanistan (V-Dem) was not considered in this averaging process. In addition, it should be noted that although Ethiopia appears on this chart, this is only because some of the data spans the pre-reform period. Given the recent reforms and political change, it would probably not be there in future years.

**Chart 2** uses this to further illuminate the uneven relationship between levels of abuse, levels of intimidation and inhibition. The same 50 countries are charted, this time grouped according to the worst three levels of the political terror scale. The second line is the average intimidation proxy – taken from the data for chart 1. The third set of points chart the responses of journalists in these countries quantifying their own levels of self-censorship, serving as a proxy measurement for inhibition.<sup>43</sup> Finally, for comparison in the lower part of the chart, the results of the 2018 and 2019 UNSG Reports on cooperation/reprisals are included, simply using '1' if the country is cited in either report and '0' if it appears in neither.

Taking the data in Chart 2 at face value, what is immediately visible is that there are similarly diverse levels of intimidation at each of the three levels of 'political terror.' And secondly,

the levels of self-reported self-censorship (inhibition proxy) show no strong correlation to either of the other dynamics. Reprisals have been reported from 29 of these 50 countries, while 21 have not appeared in the reports during the timeframe covered. 'Reprisal' or 'no reprisal' cases each occur at varying levels of the Political Terror Scale and the intimidation proxy scale.

This data has weaknesses, of course, in particular because some of the measurements are drawn from a relatively small number of experts or individuals. But this uneven result would most likely be sustained even as available data improves, and what it suggests is that every country is unique, and these complex dynamics are very contextual. The data may point us towards which countries we need to study – but deeper context-based studies are essential to move forward further.

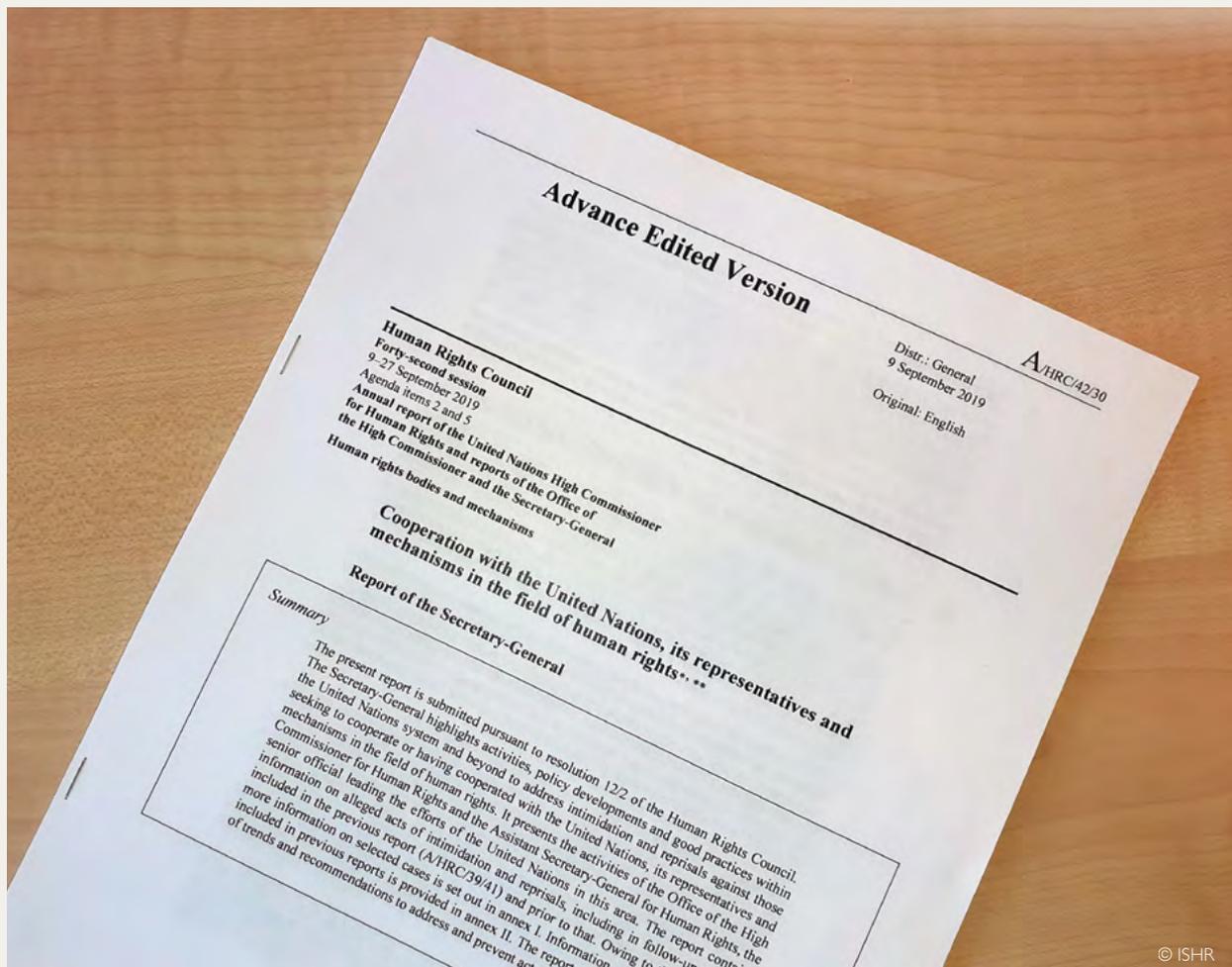


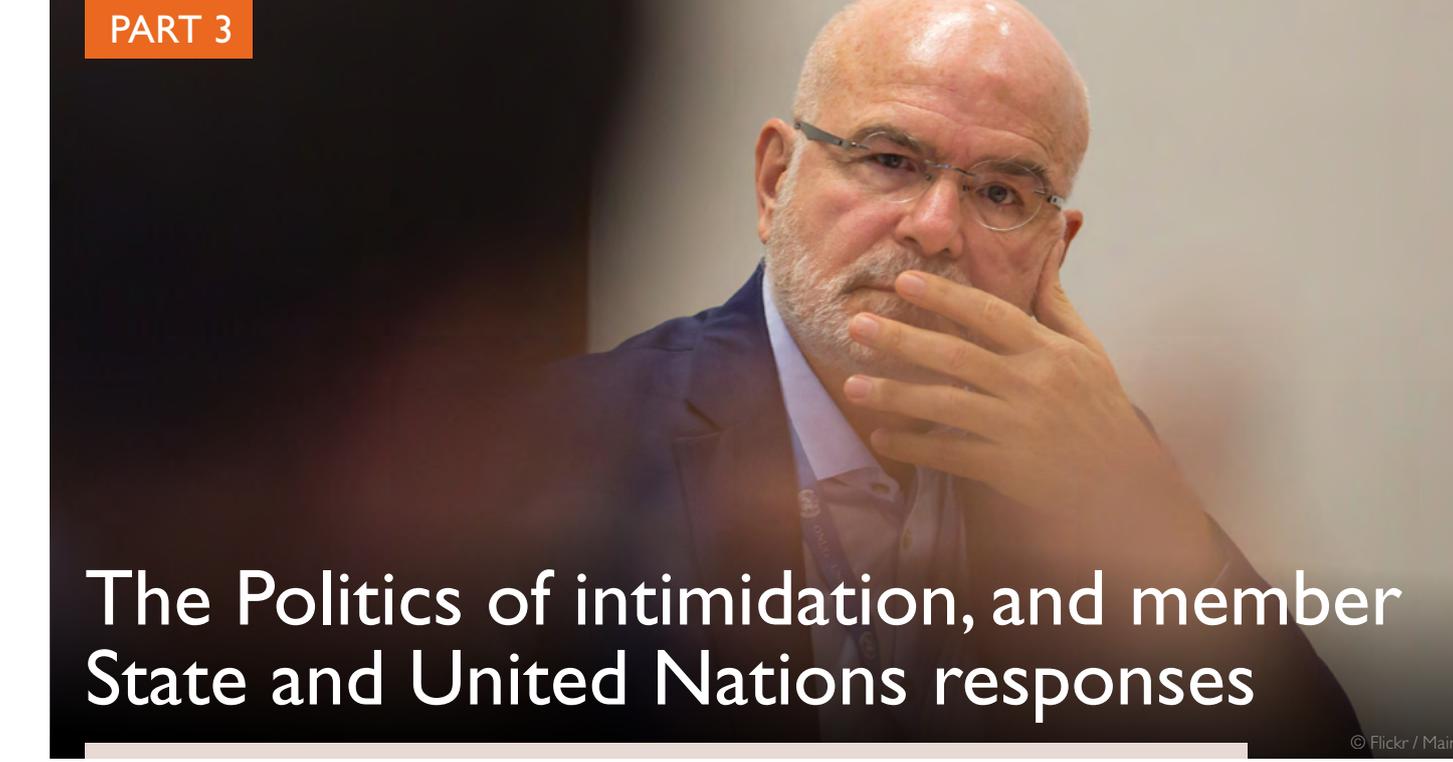
43 Data on journalists' self-censorship provided to the author by RSF.

## Part 2 conclusion

These reflections on data-based approaches and limitations point to several initial steps that could strengthen our ability to assess intimidation and its impact on UN cooperation.

- The UN system should systematically track cooperation with its diverse human rights mechanisms, creating a database on cooperation coded by country, year, theme, mechanism approached, type of citizen or organization cooperating, and other relevant parameters. This data should form the basis of regular quantitative reports on cooperation, which could also track deterioration or improvements from year to year.
- Major human rights data-collecting institutions (including OHCHR) should continue to improve the level of collection and management of data on all human rights abuses, collaborating with NGO and academic data-based efforts that enable quantification and comparative ranking of abuse levels.
- These two data sources will enable the identification of countries where there is high abuse and low cooperation as well as those with high abuse and high cooperation. Best practice research can then extract lessons learned from countries with high levels of abuse and high levels of cooperation that may assist countries where intimidation has been more successful in sustaining inhibition.
- OHCHR and human rights NGOs should encourage deeper survey-based research into intimidation and inhibition and how it is experienced by citizens and activists in targeted countries of concern. Partnerships with academic institutions should be established to promote research. All such research should follow careful context-based protocols for protecting researchers and participants.
- OHCHR and human rights NGOs should take advantage of existing data and measurement tools on freedom, civil liberties and civic space as proxy measurements of levels of intimidation. This data can also help to identify countries where deeper study is needed.





# The Politics of intimidation, and member State and United Nations responses

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Intimidation is a quintessential example of what Malcolm Sparrow calls an ‘invisible harm’,<sup>44</sup> moreover, a harm that is ‘invisible by design’. State tactics of intimidation deliberately inhibit people from reporting. According to Sparrow, for invisible harms:

*‘Perpetrators take steps to understand and then deliberately circumnavigate detection systems...’ what you see is what you detect, and what gets detected or reported might represent a thin sliver of the total underlying volume...’*

*‘...the real challenge is grappling with the invisible mass. That task requires systems and methods for determining the true nature and extent of the problem, and careful attention to overcoming and correcting the existing biases in detection methods. Without some deliberate effort to gauge the prevalence of such problems, everyone can remain blissfully unaware of the overall extent of the harm done, and control operations can miss important concentrations altogether.’<sup>45</sup>*

If the intimidation and resulting inhibition that we are considering here follow the developing understanding of other invisible harms in Sparrow’s study, a rigorous attempt at measurement is likely to reveal that the problem is much more prevalent and serious than might have been expected at the outset.

But who is going to measure it? The perpetrator of intimidation that inhibits human rights reporting is the State itself in most cases, which has great power to impede

any attempt to monitor or analyse its behaviour within its borders. Systems that might have a reason to measure the problem exist at different levels:

- State entities mandated to protect human rights, ensure justice or monitor government accountability;
- international organizations such as the UN or INGOs; and
- civil society organizations or networks monitoring abuses and promoting accountability.

## The role of State entities in confronting intimidation

Some states have National Human Rights Institutions (NHRIs) or other bodies with a mandate to assess the actions of other State bodies. It might be an ombudsman office, a human rights commission or other national human rights institution, a parliamentary committee, a subsection of the justice system, or a national preventive mechanism on torture. Important and promising advances are sometimes made by committed civil servants in such bodies who have the courage to confront misdeeds of other government authorities, and even some of them face intimidation, harassment or attack for their efforts.

These State entities are often weak or deliberately undermined, or biased and politically manipulated. Civil society activists facing State intimidation may distrust State institutions with reason. But they also see the importance of insisting that the State fulfil its role of protecting its citizens – even if this may seem a very distant hope in some countries. One example of this hope – and demand – is

<sup>44</sup> Sparrow, Malcolm, *The Character of Harms: Operational Challenges in Control*. Cambridge University Press, 2008. (P.181). Sparrow’s book, while not concerned directly with human rights abuse, provides a cross-cutting strategic analysis of a wide range of law enforcement and regulatory approaches to confronting diverse ‘harms,’ and contains a great many useful lessons for those seeking to understand intimidation and systematic abuse.

<sup>45</sup> Sparrow, p. 182.

a new initiative known as the Esperanza Protocol, being developed by civil society organizations. It aims to bring greater attention to the issue of threats and intimidation against human rights defenders and develop stronger and more enforceable public policies and guidelines to promote investigation and prevention of threats, as well as better analysis of the underlying structural dynamics that promote or allow systematic intimidation.<sup>46</sup>

## International organizations confronting and measuring intimidation

In a few countries, the UN has peacekeeping operations with substantial human rights components, or medium-sized OHCHR field offices, but by and large the UN human rights machinery works remotely, with minimal presence on the ground in repressive situations. Its monitoring and measurement often depends on sporadic country field visits (of Special Procedures or other entities) and information from civil society.

This remoteness, which makes it nearly impossible to gather good data on intimidation or other abuses, is a symptom of a deep failure of political will on the part of member states and UN agencies. A UN Country Team is usually very present on the ground, often with multi-million-dollar operations and hundreds of staff in the very same countries where the UN fails to gather human rights information or respond to abuses. Massive agencies like the United Nations Development Programme (UNDP) or the United Nations Children's Fund (UNICEF), among others, have a substantial capacity to gather information and some of them are quite respected for their capacities of statistical analysis. This capacity is rarely applied to human rights challenges, in part due to the fear that political retaliation from the host State could impede other operations.

In principle the overall and coordinated UN system in a country is supposed to take responsibility for fulfilling the UN's human rights obligations regardless of whether formal UN human rights monitoring is present. A decade ago, the scandalous failure to adequately address human rights abuse and war crimes at the end of the Sri Lanka civil war prompted the development of the UN's 'Human Rights Up Front' doctrine, which insists that all UN leadership (and not just OHCHR) must be willing to take political risks to address human rights abuses. The more recent failure to

do this again in Myanmar suggests that this doctrine has not been absorbed or implemented.<sup>47</sup> In countries that put any level of political pressure on those who speak out for human rights, UN agencies rarely engage on human rights issues at all – much less would they mount a serious data-collection operation.

Some human rights defenders and Special Rapporteurs consulted for this study pointed out that more often than not they could not count on a UN Country Team inside a country to take any steps to support or protect human right defenders facing intimidation or reprisal, unless there was a significant OHCHR field presence. According to one UN expert, '*Human Rights Up Front has no teeth, so UN Country Teams are under no pressure to help.*'<sup>48</sup> For this to change, UN Resident Coordinators and agency representatives would need to receive explicit instructions from their headquarters to engage actively in the protection of human rights defenders, and get political support from the UN and other member states if this engagement resulted in harassment or other political backlash from the host state.<sup>49</sup>

Insisting on a more proactive role from UN Country Teams is especially crucial in more closed countries, because such countries often deny access to an OHCHR field presence or other human rights monitoring possibilities, but they still host UN offices for development and other functions.

In this respect, several INGOs and the Special Rapporteur on Human Rights Defenders have recently called for the UNSG to develop a UN-wide policy on supporting and protecting human rights defenders.<sup>50</sup> Such policy proposals should encourage a stronger role for UN Country Teams where there is no formal UN human rights presence.

International human rights NGOs are also primarily working remotely without a presence on the ground, getting information from local and national NGOs.<sup>51</sup> They may in some cases have a representative or small office in-country, or a regional office covering multiple countries, but none of them have developed serious field-based monitoring operations.<sup>52</sup> Like the UN, the broader international NGO community has huge operations on the ground in development and humanitarian work. They often have mandates and principles declaring concern about human rights abuse and protection, and have faced similar critiques for failing to engage with defence of human rights

46 <https://www.cejil.org/en/hope-defenders-addressing-investigation-threats-international-level-promote-local-change>. See also: <https://hope4defenders.org/>.

47 See Mahony, L. *Time to Break Old Habits: Shifting from Complicity to Protection of the Rohingya in Myanmar*, Fieldview Solutions, 2017 ([www.fieldviewsolutions.org/publications](http://www.fieldviewsolutions.org/publications)). See also Rosenthal, G. *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar, 2010-2018*, (An Independent expert report commissioned by and submitted to the UN Secretary General on 29 May 2019) available at <https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf>.

48 Author interview, UN Special rapporteur.

49 To their credit, sometimes operational UN agencies in the field submit confidential information to UN human rights mechanisms, alerting them to areas of concern or specific cases needing attention.

50 See [https://www.ishr.ch/sites/default/files/documents/hrc40-os-id-hrd-whrds-final\\_for\\_online.pdf](https://www.ishr.ch/sites/default/files/documents/hrc40-os-id-hrd-whrds-final_for_online.pdf); <https://www.ishr.ch/news/hrc40-protect-defenders-address-inequalities-and-secure-sustainable-development>, and <https://www.ishr.ch/news/ga73-first-ever-high-level-event-human-rights-defenders>.

51 Two unique exceptions are a) Peace Brigades International, which deploys modest field presences in repressed countries with the aim of protecting human rights defenders (but not monitoring) (see [www.peacebrigades.org](http://www.peacebrigades.org) for more info); and the Nonviolent Peace Force, which deploys field teams engaged in protection and peacebuilding, and in one case mounted a substantial monitoring operation in the Philippines ([www.nonviolentpeaceforce.org](http://www.nonviolentpeaceforce.org)).

52 A serious field monitoring effort by an INGO would be a massive resource challenge for most of them, though it might be surmountable in some cases. The political challenge might be harder: an INGO would in many states have difficulty securing the necessary State permission to operate such a program.

when host states wish them not to. These humanitarian and development NGOs with a field presence in restrictive situations where human rights NGOs cannot operate as easily need to be encouraged to engage and collaborate more flexibly on human rights protection and monitoring, and embassies and the UN must support NGOs who take political risks to do this.



### Civil society confronting and measuring intimidation

Civil society organizations and networks are the primary sources of information for NHRIs, remote UN mechanisms, and INGOs. Perversely, most of the burden of monitoring and measurement therefore falls on the very individuals and organizations targeted by the intimidation that needs to be monitored.

In repressive situations, these organizations and activists are under-resourced and highly stressed. They tend to concentrate their efforts on the most severe and high-profile violations, and often lack the time and resources to keep track of lower-profile intimidation patterns. Activists are often aware through word-of-mouth networking of a range of phone threats, internet threats, police visits, and other low-level intimidations going on around them, and they are intuitively conscious of how others are inhibited by a threatening atmosphere, but they do not have the time or resources to rigorously measure or keep track of these dynamics.

### Political and institutional obstacles to measurement

There are other obstacles to measuring invisible harms like intimidation. Within institutions there may be people opposed to such measurement, either because it might adversely affect them or their work, or because they don't believe in its value. Institutions also confront internal arguments about the validity of statistical or sampling approaches given the high levels of uncertainty.<sup>53</sup>

The UN human rights community also faces political pressures reinforcing this reticence to using statistics. For instance, some UN member states attack the validity of data as part of their strategy to delegitimize human rights entities and their reporting. Fear of political backlash contributes to a hesitance to use statistics or surveys, or to do trend analysis. States also vehemently lobby the UN to keep accusations against them silent or unpublished, and UN decision-makers know that they might face harassment when criticism goes public. Member states' defensiveness prompts UN human rights actors to limit their reporting to the most indisputable case information that they can safely verify.

<sup>53</sup> Sparrow found that these types of internal obstacles exist in a wide range of governmental, law enforcement and regulatory institutions that have developed habits of confronting serious patterns of harm without measuring or quantifying them. (Sparrow, *ibid*).

Some of those consulted criticized the manner in which the UNSG's report on cooperation did not include some allegations of reprisal against certain states, presumably in response to some actual or anticipated pressure. Presenting evidence of broader patterns of intimidation against a larger subset of a country's population would also be perceived as a serious allegation. UN leaders might be loath to provoke the anticipated or actual defensive political reaction of the accused states, but they must resist the urge to self-censor their reporting.

**When OHCHR and UN leaders overcome this hesitance and report hard-hitting data on powerful countries, they deserve commendation and political support to face any backlash. They need to prove more quantitative analysis to UN bodies about intimidation, among other issues. There will of course be backlash and denials, just as we now see denials of verified case information, but good analysis can be defended.**

Those who try to document intimidation are legitimately concerned about putting victims or local activists at greater peril through the process of measurement and investigation. When dealing with some of the most extremely authoritarian and closed situations (such as North Korea, Turkmenistan, China, or Ethiopia before the recent reform, etc.), INGOs working on the protection of human rights defenders often decide that they can only offer quiet or clandestine support. They are afraid that any level of public action or advocacy will create too high a risk for activists or their families.

States are aware of the dampening effect of the 'do no harm' approach on the collection of data, and perversely can use this to their advantage. Given how some states are closely watching and deliberately undermining the activities of UN human rights institutions, some acts of reprisal may have a two-fold objective: to intimidate national human rights activism as well as to paralyze the UN mechanism itself by making it harder to collect information.

### State intimidation: strategies and heuristics

A 'state' is not a monolithic entity with a brain, not even in the case of an autocracy or dictatorship, and in some cases State decision making can be chaotic and full of internal contradictions. Nevertheless, states do have strategies and tactics. Sometimes these strategies are secret; sometimes they are coherently articulated; and sometimes they are unacknowledged and result from a more ambiguous confluence of multiple perspectives. The modalities of states in the use of fear, violence, human rights abuse and intimidation in their strategies of social control have been well-documented and analysed for decades.<sup>54</sup>

State-sponsored intimidation often enjoys complete impunity in a legal sense. But there can sometimes be serious reputational and political consequences for the State if reports of such incidents are widely disseminated internationally or domestically. States are trying to predict and avoid such costs, and are more likely to engage in abuse and intimidation when they think the costs are lower – such as when the target is more isolated and has less capacity to generate a scandal.

States *do* attack both the high-profile and the isolated activist. As one human rights defender explained, '*states are doing careful calculations. They are willing to take big risks and suffer some notoriety if they think the impact is worth it for them.*'<sup>55</sup> A high-profile attack has a double intention – to punish the victim and to send an intimidating message to the broader human rights community and consequently deter future activism. Egyptian police arrested an award-winning lawyer defending people detained during protests right



<sup>54</sup> See for instance, *The State as Terrorist: The Dynamics of Governmental Violence and Repression*, Greenwood Press, 1984, Eds Michael Stohl and George Lopez. States and military institutions also share their strategies and communicate lessons learned, and there is considerable repetition of tactics and strategy among them. For instance, US military and intelligence services helped to train their Latin American counterparts in counter-insurgency tactics starting at least as early as the 1960s. Transnational replication of legislative strategies such as laws controlling civil society registration and funding, provide further evidence of strategic learning among states. China has also given training to other authoritarian states on controlling the internet.

<sup>55</sup> Author interview, name withheld for security reasons.

outside a courtroom instead of grabbing her more quietly from her home,<sup>56</sup> and picked up human rights lawyer Ibrahim Metwally from the Cairo airport on his way to Geneva.<sup>57</sup> The point of such shameless attacks is to send a public message to other lawyers and activists to avoid such activism.

The cost/benefit analysis that states make when choosing repressive actions are important for the human rights movement to carefully analyse and take advantage of. Increasing those political costs is one of the few human rights strategies available to reduce abuses.

Guatemala's former Defence Minister Gen. Hector Gramajo once described the challenge of international pressure faced during the 1980s counter-insurgency campaigns that he supervised:

*Really there were literally volcanoes of letters of protest. But if you look into it you find they're really just chain letters... So you have to figure out how to measure the difference between an unimportant chain letter and a real clamor that's going to affect the international conscience. And that's very difficult to distinguish...*

*...If Amnesty International puts out a report, well that's just Amnesty International. But if the Organization of American States, informed by Amnesty International, puts out a report against us, then we're f\*\*\*ed!<sup>58</sup>*

State authorities engaged in mass abuses or systematic intimidation are trying to choose the most efficient course of action to achieve their own complex objectives. And those objectives always require a combination of domestic social control and international engagement. State decision-makers are not omniscient. They have their own biases and heuristics and habits skewing their decisions. They make mistakes; they do not accurately predict consequences to their actions; and sometimes they suffer setbacks and scandals, which can be exacerbated by effective human rights mobilization. State actors learn from each setback. They may learn to seek better ways to avoid detection. But at best they also learn that some kinds of repressive actions are not worth the political costs. This dynamic of pressure and adaptation is the engine behind many human rights advances over time.

General Gramajo's reflection also reinforces the understanding of most human rights activists that their impact does not result from any one tactic, but rather from the accumulated and escalating impact of multiple pressures. Intimidation is aimed at reducing the overall combination of efforts at multiple levels, and not just focused on UN contact. Acts of reprisal might in some cases be apparently or temporally linked to a specific UN engagement, but in many cases the targeted activist had also engaged in many other activities the State would want to inhibit. It is difficult and arguably unhelpful to try to separate 'intimidation constraining UN engagement' from the broader and more important dynamic of intimidation constraining all human rights activism and reporting.

*'It's often difficult to know WHY you are threatened. We usually assume it to be more of a cumulative effect. Working with the UN is part of a larger effort or strategy, and it is this bigger picture that gets you in trouble.'*

*Latin American HRD*

Different states may approach their calculations and responses to pressure in different ways. When a small State has been a pariah on the receiving end of intense human rights criticism for many years, it may develop a thick skin and not respond a great deal. Some more highly resourced states like China, Russia, or Iran are intensely vigilant and responsive to every paragraph about them that surfaces in any UN document or meeting, and take preventive action before such paragraphs can get into print. Other states that have kept themselves off the human rights radar may be less vigilant and caught by surprise when they see themselves named as a violator by a UN mechanism.

56 'Mahienour el-Massry was arrested as soon as she left the State security prosecutor's headquarters in the capital, Cairo, where she acted as the lawyer for several people detained during the demonstrations, her lawyer Tarek al-Awadi said.' <https://www.aljazeera.com/news/2019/09/egyptian-authorities-detain-award-winning-human-rights-lawyer-190922194805122.html>.

57 <https://www.fidh.org/en/issues/human-rights-defenders/egypt-ongoing-arbitrary-detention-of-ibrahim-metwally-hegazy>.

58 General Hector Gramajo, Guatemalan Defense Minister in the late 1980s. Author interview, cited in Mahony and Eguren, *Unnamed Bodyguards: International Accompaniment for the Protection of Human Rights*, Kumarian Press, 1997. P.78. (asterisks substituted).

These calculations in part explain why states seek subtle ways to reduce political costs, such as the 'relational repression' tactics used by China (described in Box 2, page 12). Subtle threats to family members or smearing and destroying reputations are also low-cost. Legislation to limit the activities of civil society and to 'legalize' intimidation are effective because *legal* action (even under bad laws) tends to have lower political costs than extra-legal abuse.

The human rights community needs to develop or strengthen its own strategies to combat each of these low-cost State strategies. Sometimes this can be done by mobilizing either a domestic or international campaign or reaction that creates a new political cost that the State had not initially considered in its calculation. A 2019 report by the Peace Research Institute of Frankfurt, for instance, includes four case studies analysing how attempts by governments to increase legal restrictions on civil society organizations were frustrated, aborted or, at least, significantly mitigated as a consequence of domestic resistance, supported (to varying degrees) by external actors.<sup>59</sup> In Kenya, Azerbaijan, Zambia and Kyrgyzstan,

*'A strong domestic campaign was a crucial element of successful resistance to restrictive NGO laws... [each campaign] was driven by organized civil society groups, coordinated and led by the NGOs that would potentially be affected. Still, broad and relatively united alliances of NGOs in all cases went beyond the specific subset of human rights and advocacy organizations and also included the usually far larger group of NGOs engaged in social service delivery as well as, in part, other non-governmental actors (such as trade unions, business associations and/or private media). In terms of strategy, these alliances combined a general advocacy and awareness-raising campaign with targeted lobbying efforts.'*<sup>60</sup>

States also may have different estimations of which kinds of UN engagement or other human rights pressure is most important to inhibit. Some activists consulted felt that their State was mostly alert to public appearances (such as testimonies or presentations in Geneva or New York) or substantial media coverage.<sup>61</sup> Some suggested that submitting information and cases to Special Rapporteurs was a 'quieter' approach, less likely to upset the State since the Rapporteurs often communicated privately or quietly, and only released information in a report after a substantial delay. On the other hand – Rapporteurs point out that states have heightened anxiety about their country visits, often going out of their way to prevent or threaten people to avoid speaking to them: because these country visits tend to attract national and sometimes international media attention.



Some UN human rights actors consulted expressed frustration with the constant negative reactions and denials from states in response to their reports and communications<sup>62</sup> – not because it was unexpected but because it suggested to them they were having no impact. Recalling the importance of accumulating and escalating pressure, this sense of futility should be guarded against: the eventual impact does not result from a particular action but from the combined impact of many actions over time. It is vital for UN human rights actors to understand that denials do not imply a lack of impact, and that part of a repressive state's long-term international strategy is to use denials and other dismissive discourse to disempower and wear down its critics.

59 Baldus, Jana, Nora Berger-Kern, Fabian Hetz, Annika Elena Poppe and Jonas Wolff: 'Preventing Civic Space Restrictions: An exploratory study of successful resistance against NGO laws.' Peace Research Institute of Frankfurt, 2019. [https://www.hsfrk.de/fileadmin/HsFK/HsFK\\_publikationen/prif0119.pdf](https://www.hsfrk.de/fileadmin/HsFK/HsFK_publikationen/prif0119.pdf).

60 *Ibid.*

61 No statistical conclusion can be drawn from the few defenders consulted, since it is entirely possible that in other situations a State may be more sensitive to local activities that confront powerful economic actors inside the country, or corruption or other sensitive topics, even if they are not doing so in highly public ways.

62 As example of such denials, see Chinese Mission spokesperson Liu Yuyin rejects accusations by HRC Special Procedure Mandate Holders, 2019/11/2/27, at <http://www.china-un.ch/eng/hom/t/1728414.htm> 'Regrettably, the relevant Special Procedure mandate holders were not serious about the authoritative information provided by the Chinese government and instead chose to adopt unverified information and even apparently fake news to make groundless accusations against China. While proclaiming themselves as advocates for 'rule of law', they made irresponsible comments on the judicial cases of the States. This is a typical 'double standards'.

# Conclusions and recommendations



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## I Psychology: intimidation and activist responses

The first section of this paper detailed how complex psychological factors determine the inhibiting influence of intimidation, including emotions of repugnance to injustice, pride, honour, shame, loyalty, desire for impact, isolation, survival needs, and fear for self or family. Individuals and organizations are assessing costs and benefits under uncertainty, and applying common heuristics and biases which increase risk aversion. These dynamics affect different individuals and organizations differently, at local national and international levels, and organizations that effectively mobilize pride, solidarity and a belief in positive impact are more successful at confronting intimidation. In that regard, several recommendations are made:

### To all human rights actors (United Nations, NGOs, academics, states):

- Study and understand the psychological dynamics that underlie individual decisions about risk-taking.
- Encourage much more impact analysis that assesses the positive outcomes resulting from the use of UN human rights mechanisms, and disseminate and popularize any impact analysis that exists. The system needs to give people on the ground a basis for making judgments about whether to go to the trouble of engaging.
- Develop and strengthen new tactics for raising awareness about UN mechanisms in more closed and repressed countries. The more repressive the situation, the less information is available to people about the potential of UN mechanisms.
- Acknowledge the structural inequities that make it more difficult for some victims and activists to access UN mechanisms and make an extra effort to compensate for them, by encouraging engagement and offering protection to those who are more isolated or marginalized.

### To OHCHR and UN human rights mechanisms in particular:

- Strengthen the feedback mechanisms so that those who use UN mechanisms receive prompt and adequate feedback about the progress of their case or information. Sometimes people make a substantial effort (and take risks) to provide information to the UN, but can then feel like it has disappeared into a black hole. The UN mechanisms that are more systematic and rigorous about feedback are more likely to build trust and encourage further engagement.

- Recognizing that many victims and defenders consider any attention paid to their plight by the UN to be potentially protective in its impact, the UN mechanisms that rely on cooperation should implement more rigorous follow-up advocacy for those at risk to ensure that this protection is real and not just imagined, at both the case level and the policy level.

## 2. Data: measuring abuse, intimidation and cooperation

The methodology ideas outlined in the second section call for a more systematic and quantitative management of human rights data. This section yields the following recommendations:

### To all human rights actors (United Nations, NGOs, academics, states):

- Improve the collection and management of data on all human rights abuses. This demands more collaboration among UN, NGO and academic data-based efforts that enable quantification and comparative ranking of abuse levels.
- Use data on abuses together with data on cooperation with the UN to identify countries where there is high abuse and low cooperation as well as those with high abuse and high cooperation. Best practice research should then extract lessons learned from countries with high levels of abuse and high levels of cooperation that may assist countries where intimidation has been more successful in sustaining inhibition.
- Recognise and prioritise intimidation as an invisible harm needing more careful measurement. Investigations going beyond high-level severe abuses should assess the more subtle and pernicious forms of intimidation that are more prevalent and have a constant inhibiting effect on the broader population.<sup>63</sup>
- Implement careful survey-based studies to document the prevalence and patterns of incidents of State intimidation, as well as the consequent levels of inhibition of human rights action, resulting in a more quantified understanding of the scale of the problem. Where possible this could be a joint initiative involving the UN, NGOs and relevant and qualified academic institutions.
- Take advantage as much as possible of existing measurements of political space, civil liberties, and freedom, acknowledging some of the limitations of this existing data. These broader patterns of 'closed space' are linked to the dynamics of intimidation faced by local human rights actors and can serve as proxy measurements.

### To OHCHR and UN human rights mechanisms:

- Systematically track individual and civil society engagement with the Human Rights Council, Universal Periodic Review, Special Procedures, treaty bodies, field presences, country visits and other UN modalities of contact. This data should include tracking attempts to cooperate with the UN, and not limit itself to the subset of cases that UN mechanisms acted on.
- If adequate financial and human resources for an exhaustive data-gathering initiative on cooperation are not forthcoming, the ASG and OHCHR could begin by creating a partial database for the mechanisms for which gathering the data is most feasible.

63 Kinzelbach, Katrin and Janika Spannagel, 'New Ways to Address and Old Problem: Political Repression,' in *Rising to the Populist Challenge: A New Playbook for Human Rights Actors*, (Cesar Rodriguez-Garavito and Krisna Gomez, eds., Dejusticia, Bogota, Colombia). The article describes many of the statistical biases in the data that the human rights movement uses to reach sometimes dubious conclusions about trends and patterns. The authors argue for the importance of acknowledging the weaknesses in the data and avoiding broad and global generalizations about trends, and to focus on research that will generate new approaches and strategies, especially: a) focusing on analyzing and identifying perpetrators within the State machinery (rather than only detailing the suffering of the victims), and b) doing more rigorous study of 'softer' forms of repression which so often goes unreported.

- Once this data on cooperation is collated, produce a summary report each year analysing how many citizens of different countries are trying to make use of the UN system and enabling comparisons to assess whether that engagement is increasing or decreasing.

To UN member states:

- Provide OHCHR with adequate resourcing to strengthen its capacity for data collection and analysis on cooperation.

### 3. Political factors

Subtle intimidation is widespread because it tends to attract lesser political costs for repressive states than overt violent abuse. This section outlined some of the political factors explaining these State approaches as well as the limitations of UN and NGO responses to confront the problem, yielding several important recommendations:

To all UN member states and UN institutions:

- Member states that use intimidating tactics to deter cooperation with UN mechanisms need to be more thoroughly investigated and held accountable. This accountability needs to look beyond the high-profile severe attacks and reprisals, and the visible actions states take in New York or Geneva-based forums. States also need to be called to account for quieter approaches they are using inside their country every day to sustain an atmosphere of fear and inhibition.
- Encourage all states to develop and implement stronger domestic policies and practices for the protection of human rights defenders and the investigation of threats and intimidation.
- Encourage and fund OHCHR to expand its field presences; and apply greater political pressure to rights-abusing states who refuse to allow such monitoring or seek to cut resources to support it. OHCHR (or DPKO) human rights monitoring presences help to overcome the remoteness of the UN's human rights system and can provide a more accessible and trustworthy way to bring a local human rights problem to the UN's attention.
- Demand the implementation of the UN's Human Rights Up Front (HRUF) doctrine by UN Country Teams witnessing human rights abuse and intimidation.
- Where there is no substantial UN human rights presence, other UN agencies should develop relationships with human rights defenders, help them to use UN human rights mechanisms, and offer follow-up and protection (through advocacy or other support) to those who do.
- When human rights monitoring is needed, the UN Country Team has an obligation to seek to fill this need, even when a country is blocking access to OHCHR.
- All member states should issue standing invitations to Special Procedures and facilitate country visits, and they should encourage other states to do so as well. States should be held accountable whenever they prevent access to such visits, or impede contacts with the experts on the ground.
- Make non-cooperation more politically costly, for instance, by opposing the election of uncooperative states to the Human Rights Council or other human rights-related bodies.
- The UN human rights bodies and mechanisms should systematically gather evidence of incidents in which citizens were deterred in any way from cooperating during country visits, including violent as well as more subtle intimidations, and should publicize these obstacles and hold states accountable.

- The UNSG, ASG, OHCHR and other UN actors must resist member State pressures to censor or expunge any critique from UN documents or statements. UN actors who make unacceptable compromises in order to avoid friction with powerful member states need to be held accountable for not upholding UN principles.

#### To international NGOs:

- Invest in overcoming remoteness, by establishing permanent presences where possible in repressive countries, and persistently trying to secure field visits even in the face of highly resistant governments. In situations of high intimidation, an international presence often faces lower risks and can complement national civil society in monitoring and confronting intimidation, as long as INGOs take special precautions to strengthen national NGOs without usurping their resources or space.
- International humanitarian and development NGOs that partner with the UN also need to take the Human Rights Up Front doctrine seriously, exert greater political will and apply resources to confronting human rights abuses and intimidation in countries that try to prevent such action.

#### Conclusion

Each State is different in its use of intimidation, so all human rights actors need to carry out more detailed context-based perpetrator analysis that disentangles who is responsible for different kinds of threats, what their motivations and favoured tactics are, what forces lie behind them, where their pressure points are and how they might be influenced. This analysis can assist HRDs to confront intimidation, developing strategies that are both lower in risk and higher in impact. Collaborative approaches are needed to develop responses to specific State tactics such as smear campaigns, threats against family members, internet controls, and others.

States will continue to deny strategies and incidents of intimidation, but these denials do not imply a lack of impact resulting from human rights efforts. Denials and other dismissive discourse are elements of a repressive state's long-term international strategy to disempower and wear down its critics. Human rights change happens slowly, resulting from an incremental accumulation of different pressures that eventually reach a threshold that provokes State adaptation. All actors promoting human rights must continue to seek out every possible opportunity and avenue for adding to these pressures in strategic ways. Intimidation cannot be allowed to dampen these vital efforts.



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