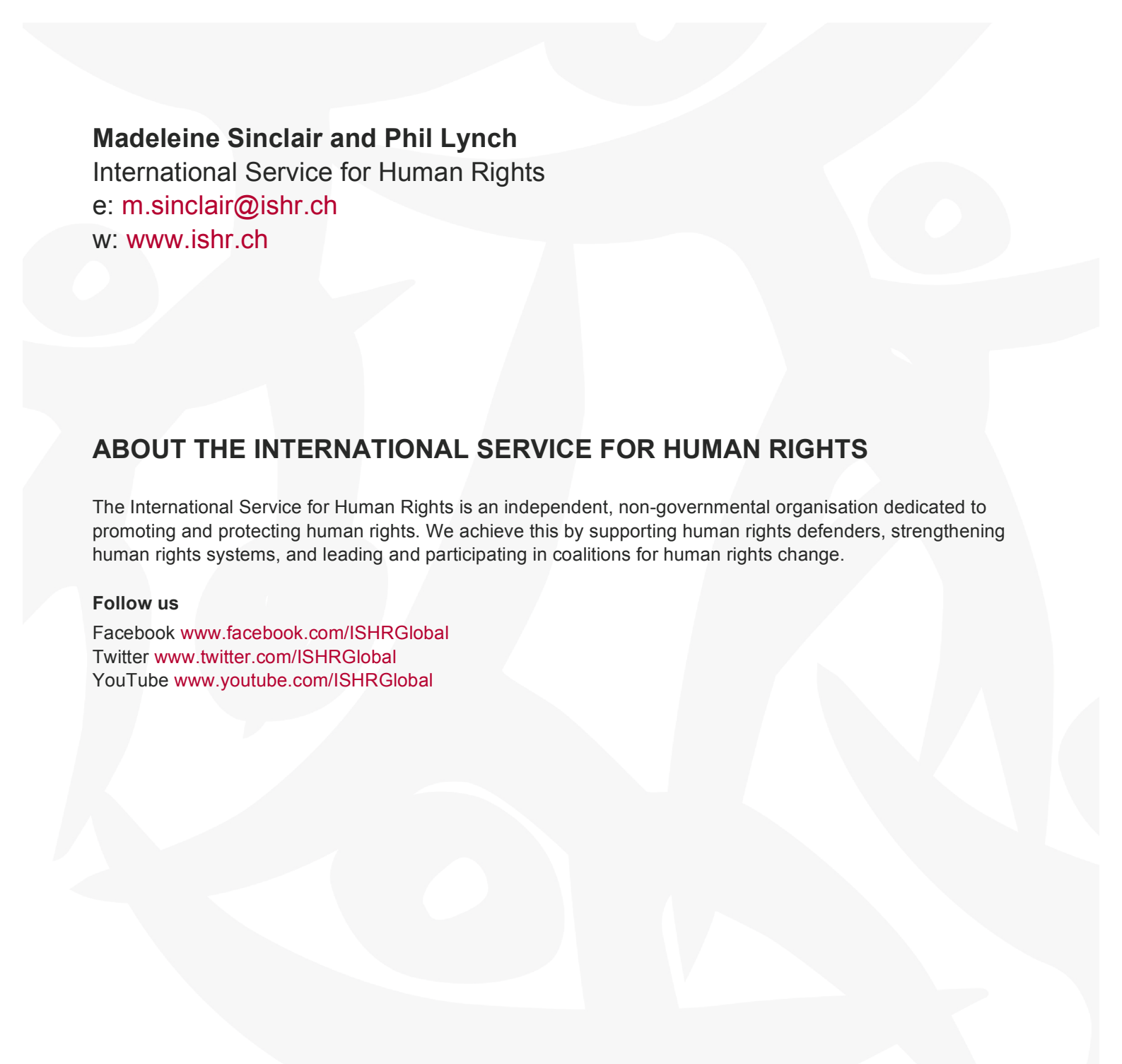


Ending reprisals against those who cooperate with the United Nations in the field of human rights

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

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I. INTRODUCTION

“ The targeting of individuals or groups seeking to cooperate, cooperating or having cooperated with the United Nations in the field of human rights, their families, legal representatives and affiliated non-governmental organizations runs contrary to the principle of human dignity and violates numerous human rights, showing complete contempt and disregard for the United Nations system as a whole.”

United Nations Secretary-General Ban Ki-Moon

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

This submission addresses developments in international and regional human rights bodies and mechanisms regarding the prevention of and response to reprisals during the reporting period (1 June 2015 to 30 May 2016 inclusive). It also provides details of cases of reprisals that ISHR was made aware of during the reporting period and our understanding of how these cases have been addressed both by the mechanisms and relevant States.

ISHR works to bring cases of alleged intimidation and reprisals to the attention of relevant UN officials, including the President of the Human Rights Council and President of the General Assembly, as well as UN independent experts, in a bid to press for effective preventative measures and responses. Several of the individual cases of intimidation and reprisals described below have taken place in the context of systematic harassment of, as well as threats and attacks against, human rights defenders. Preventing and addressing intimidation and reprisals cannot be seen as separate from the States' obligations to ensure a safe and enabling environment for human rights defenders and other civil society actors to carry out all aspects of their work.

II. DEVELOPMENTS WITHIN HUMAN RIGHTS SYSTEMS

HUMAN RIGHTS COUNCIL

The Human Rights Council is legally obliged to take action if it possesses information about a credible risk or allegation of reprisals and to protect individuals who communicate, cooperate or seek to engage with the Human Rights Council, its independent experts or the Universal Periodic Review process.¹ The Human Rights Council's President and Bureau have the responsibility to protect the Human Rights Council's processes and defend its integrity, particularly as it relates to the right of civil society to participate fully and safely in its work. It is clear that attacks against those that cooperate with the Human Rights Council, or its mechanisms, constitute not solely an attack on those individuals but on the

¹ See further Memorandum of Advice from Freshfields Bruckhaus Deringer, Sir Nicolas Bratza and Professor Egbert Myjer of October 2014: available at <http://www.ishr.ch/news/human-rights-council-time-act-legal-obligation-endreprisals>.

institution itself.

While the President and Bureau of the Human Rights Council have made strides towards meeting that obligation, the efforts to prevent and address reprisals and follow up on past cases are lacking, both in terms of transparency and consistency.

The failure of States to respond to and investigate cases of reprisals documented in the Secretary-General's annual report on reprisals, in particular sitting members, must be understood as failing to cooperate with the Council and should be addressed through a range of measures. This includes the Special Procedures mandate holders (e.g. through the annual report of the Special Procedures), the treaty bodies (e.g. through a statement of the Meeting of Chairs), and the High Commissioner for Human Rights.

In the case of persistent patterns of non-cooperation, the President of the Council and the Bureau should reach out to the State concerned to express concern and to identify ways to improve the situation. If this fails, the President of the Council should publicly raise the case before the full Council (e.g. under agenda item 5).

At the 30th session of the Human Rights Council, 64 States delivered a statement on reprisals under item 5 of the agenda, reaffirming that the Human Rights Council has a moral and legal duty to address reprisals, and stating it was "high time" for the Secretary-General to appoint a focal point on the issue of reprisals.²

TREATY BODIES

During their 2015 annual meeting, the Treaty Body Chairpersons unanimously endorsed a set of Guidelines against Intimidation or Reprisals (the "San José Guidelines")³, and recommended their adoption by all treaty bodies. Several of aspects of the San José Guidelines responded to calls made to the Chairs in a joint submission by NGOs, including ISHR, ahead of the meeting.⁴ The Chairpersons also reaffirmed their previous decision to maintain a standing item on the agenda of their annual meeting on intimidation and reprisals.

Seven treaty bodies out of ten have either adopted the San José Guidelines or have a policy on reprisals. The Committee on Economic Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Human Rights Committee (HRC) have neither adopted the San José Guidelines nor a dedicated policy on reprisals.

The San José Guidelines emphasise the responsibility of States 'to avoid acts constituting intimidation or reprisals and to prevent, protect against, investigate and ensure accountability and to provide effective remedies to victims of such acts or omissions'. However, the Guidelines also acknowledge that the treaty bodies 'possess a range of means to assist and protect individuals and groups alleging that they have been the object of intimidation or reprisals for seeking to cooperate or cooperating with them.'

The San José Guidelines provide for the appointment within each treaty body of a rapporteur or focal point on intimidation or reprisals, to coordinate proactive implementation of the policy, which includes receiving and assessing allegations, and determining the appropriate course of action. All treaty bodies have now appointed a focal point or rapporteur on reprisals that can be reached through the Secretariat.

²https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/30thSession/OralStatements/5_Ghana_group%20states_GD-5.pdf

³undocs.org/HRI/MC/2015/6

⁴http://tbinternet.ohchr.org/Treaties/CHAIRPERSONS/Shared%20Documents/1_Global/INT_CHAIRPERSONS_NGO_27_23555_E.pdf

Actions to be taken include reactive measures when allegations of intimidation or reprisals are received but also preventative measures to protect individuals or groups at risk. A range of reactive measures are envisioned by the San José Guidelines, including raising concerns with State officials and relevant UN and regional human rights mechanisms, security measures in case of imminent threats on UN grounds, and exposing instances of reprisals through the media.

The engagement of non-independent NGOs, or so-called GONGOs (Government Organised NGOs) in the work of the Treaty Bodies continues. In some instances efforts have been made by Treaty Bodies to avoid or mitigate the potential threats posed by the presence and participation of GONGOs, however in other instances no preventative or precautionary measures have been taken. When Treaty Bodies fail to differentiate between GONGOs (in some cases de facto government agents) and independent NGOs, their well-meaning efforts to engage in informal dialogue with civil society run the risk of exposing and endangering legitimate defenders who may suffer government retaliation for their engagement with the Treaty Bodies.

Committee Against Torture (CAT)

The Committee Against Torture (CAT) at its 55th session (28 July to 14 August 2015) adopted guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the CAT under articles 13, 19, 20 and 22 of the Convention.⁵

Committee on the Elimination of Discrimination Against Women (CEDAW)

During its 61st session in July 2015, the CEDAW took note of the San José Guidelines and decided that: a) the Bureau of CEDAW shall continue to act as focal point on intimidation or reprisals, including inter-sessionally; b) the Bureau shall determine, by consensus and in consultation with the plenary, the appropriate course of action to be taken in response to substantiated allegations; and c) CEDAW will consider the San José Guidelines further with a view to adapting and developing these to best reflect its particular context, mandate and experience.⁶

Committee on Migrant Workers (CMW)

During its 24th session in April 2016, the CMW adopted the San José Guidelines and appointed Ms. Dzumhur as Rapporteur on reprisals.

Committee on the Rights of the Child (CRC)

During its 71st session in January 2016, the CRC held an informal discussion with States parties in which the CRC's focal point on reprisals, Renate Winter, Vice-Chairperson of the Committee, said she would get in contact with focal points from the other treaty bodies to share perspectives on the San José Guidelines and develop a common structure for their implementation.⁷ The CRC adopted the San José Guidelines during its 72nd session in May 2016.

Committee on Enforced Disappearances (CED)

During its 9th session in September 2015, the CED adopted a roadmap in order to implement the San

⁵ undocs.org/CAT/C/55/2

⁶ http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_SED_61_23673_E.pdf

⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16992&LangID=E>

SPECIAL PROCEDURES

In their 2015 annual report to the Human Rights Council, the Special Procedures expressed “extreme concern” for the safety and well-being of those individuals with whom they engage in the execution of their mandates, in light of the number of reports of acts of intimidation and reprisals. They noted that these must not only be seen as aimed at preventing cooperation with mandate holders but as attacking the Special Procedures mechanism as a whole.⁹

The report urged the Secretary-General to appoint the focal point on reprisals called for in Human Rights Council resolution 24/24 as soon as possible in order to develop a much needed system-wide coordinated response.

Recognising also their own responsibility in developing a coordinated response to any act of intimidation and reprisals, the Special Procedures adopted a standard operating procedure developed by the Coordination Committee outlining steps to be taken to enhance the response when faced with cases of intimidation and reprisals.¹⁰

The Coordination Committee appointed a focal point on reprisals among its members (François Crépeau for the 2015-2016 cycle). In addition, the Coordination Committee will keep a comprehensive record of all cases of intimidation and reprisals against individuals and groups cooperating with special procedures. The Coordination Committee will also continue to raise the issue of reprisals systematically within the UN system, inter alia with the President of the Human Rights Council, the High Commissioner for Human Rights and the Secretary-General. Finally, when necessary and in consultation with the mandate holder(s) concerned, the Coordination Committee may take additional action including contacting the State or stakeholder concerned, and issuing a press statement.

When faced with alleged cases of intimidation or reprisals, **individual mandate holders** will take appropriate action in line with the principle of do no harm, including by systematically informing the Coordination Committee focal point on reprisals and by consulting various relevant stakeholders as necessary. In addition, depending on the specificities of the case, appropriate action could also include contacting relevant authorities, sending communications, issuing press releases, referring to the case in their reports, and informing the UN High Commissioner for Human Rights and/or the President of the Human Rights Council. When necessary, cooperation with other human rights mechanisms at the international or regional level will be sought.

As a whole, **Special Procedures** will include a section on reprisals in their Annual Report, which will reflect the main concerns of and actions taken by Special Procedures over the past year. In addition, Special Procedures will continue to use all opportunities to reaffirm the crucial importance of cooperation with all stakeholders concerned in the discharge of their mandate and of ensuring that such cooperation can take place freely and safely. Special Procedures will also continue to call for the designation by the Secretary-General of a UN senior focal point on reprisals. Once established, Special Procedures will cooperate closely with him or her to ensure a unified UN-wide response to acts of intimidation and reprisal. Finally, Special Procedures will regularly review their response to acts of intimidation and reprisal against those who cooperate with the UN, its representatives and mechanisms in the field of human rights, in particular the Special Procedures, and will revise the established framework as necessary.

⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16455&LangID=E>

⁹ A/HRC/31/39

¹⁰ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>

REGIONAL MECHANISMS

Inter-American Commission on Human Rights

In the statement concluding the March 2016 session of public hearings, the Inter-American Commission on Human Rights (the IACHR) noted that human rights defenders and others who participated in hearings, working meetings, and other activities in the context of the session were subjected to reprisals and threats upon returning to their countries.¹¹

The IACHR stated that this situation had arisen in the past and that it was disturbing that it is happening again. The IACHR reiterated¹² that it is ‘absolutely unacceptable’ for a State to take any type of action motivated by the participation or activities of individuals or organizations that engage the bodies of the Inter-American human rights system. The IACHR recalled Article 63 of the Rules of Procedure of the IACHR, which establishes that States “shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission,” and they “may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.”

African Commission on Human and Peoples’ Rights

In April 2016, the African Commission on Human and Peoples’ Rights (ACHPR) considered and made observations on a Draft Communication Procedure between the ACHPR Focal Point on Reprisals, Alleged Victims and State Parties and an Information and Guidance Note on Communication with the ACHPR Focal Point on Reprisals.¹³

INTERNATIONAL FINANCIAL INSTITUTIONS

World Bank Inspection Panel

The Inspection Panel is an independent complaint mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project. The Inspection Panel process aims to promote accountability at the World Bank, give affected people a greater voice in activities supported by the World Bank that affect their rights and interests, and foster redress when warranted.

The safe access of affected people to the Inspection Panel is a fundamental premise of its accountability function. With this in mind, the Inspection Panel released guidelines in March 2016 to reduce the risks of retaliation against those who request investigations and their representatives, with the aim of fostering a safe environment for affected people seeking to work with the Panel.¹⁴

The guidelines are designed to help (i) identify and monitor potential risks both to those who request the Panel to investigate World Bank-funded projects and to their representatives; (ii) plan and adopt

¹¹ http://www.oas.org/en/iachr/media_center/PReleases/2016/049.asp

¹² The IACHR issued a similar statement at the conclusion of their March 2015 session, <http://www.ishr.ch/news/iachr-session-concludes-denunciation-reprisals-and-call-combat-impunity>

¹³ http://www.achpr.org/files/sessions/58th/info/communique58/final_communique_58os_eng.pdf; See also Resolution 273 on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa. <http://www.achpr.org/sessions/55th/resolutions/273/>

¹⁴ <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20Guidelines.pdf>

preventive measures to address and reduce these risks; and (iii) identify appropriate responses if retaliation occurs.

Office of the Compliance Advisor/Ombudsman

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for projects supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)—the private sector lending arms of the World Bank Group. The CAO works to: address the concerns of individuals or communities affected by IFC/MIGA projects; enhance the social and environmental outcomes of IFC/MIGA projects; and foster greater public accountability of IFC and MIGA.

The CAO has recognised that its work with complainants is sensitive by nature, that in some circumstances complainants may experience threats or reprisals as a result of having lodged a complaint, and that CAO consultants (mediators, interpreters, investigators etc.) may also be at risk. Therefore, the CAO has prepared the “CAO’s Approach to Complainant Protection”, which sets out how the CAO will approach these challenges and its applicability to work done by all CAO functions – Dispute Resolution, Compliance and Advisory.¹⁵ The draft document is open for inputs and comment until 31 May 2016.

III. CASES OF INTIMIDATION AND REPRISALS

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

AUSTRALIA

In September 2015 the Special Rapporteur on the human rights of migrants, Francois Crépeau, announced the postponement of his planned official visit to Australia due to the lack of full cooperation from the Government regarding protection concerns and access to detention centres.¹⁶

The Special Rapporteur was scheduled to visit Australia from 27 September to 9 October 2015 but postponed the visit, stressing that the “threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable”. The Special Rapporteur was concerned that the 2015 Border Force Act, which sanctions detention centre service-providers who disclose ‘protected information’ with a two-year court sentence, would have an impact on the visit, as it serves to discourage people from fully disclosing relevant information.

The Special Rapporteur postponed his visit after the Australian Government refused to provide a written guarantee that no one meeting with him during his visit would be at risk of any intimidation or sanctions under the Border Force Act.

¹⁵ <http://www.cao-ombudsman.org/documents/ConsultationDraft-CAOApproachtocomplainantsunderthreatApril2016.pdf>

¹⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>

CHINA

There continues to have been no independent investigations into the death of human rights defender Cao Shunli in March 2014,¹⁷ following her detention by Chinese authorities during which proper medical care was withheld. Ms Shunli was travelling to Geneva to participate in a training regarding the UPR. On the second anniversary of Cao Shunli's death,¹⁸ groups of human rights defenders across China celebrated her memory and reiterated calls for the UN to ensure a transparent investigation into her death. The Committee against Torture raised concerns about deaths in custody,¹⁹ including Cao Shunli's case, in its Concluding Observations (9 December 2015),²⁰ and invited the government of China to include responses alongside requested follow-up, due by 9 December 2016.

During the September 2015 session of the Human Rights Council, the Chinese delegation requested time for a 'right of reply' in which they stated that they had previously provided elaboration concerning the death of Cao Shunli. They added that 'Cao Shunli is by no means a human rights defender' and that the case is 'by no means an issue of human rights, but rather an issue concerning rule of law and China's judicial sovereignty and independence'. The refusal to acknowledge Cao Shunli's important work defending human rights, and indeed to insist that the Council need not consider the case, is a worrying sign that the government will continue to stonewall the Council's efforts to ensure accountability for reprisals, in line with its obligations.²¹

'Four or five men', including the local police head, attacked human rights defender Deng Chuanbin on 30 May 2015 in his childhood home in Peishi Township, Sichuan. His wife and two children, aged ten and eight, as well as his mother, witnessed the scene. Deng was taken to a local police station where he was interrogated and held for approximately 12 hours. The police seized personal items, including cell phones, computers, external hard drives, and Deng's travel documents. According to Deng, his interrogation focused on his efforts to seek training on international human rights, in particular seeking to know the identities of other individuals involved.²² He asserts that the summons by the police and subsequent confiscation of his passport was intended to prevent him from attending a training hosted by the International Service for Human Rights (ISHR) in Geneva in June 2015.

According to media reports and other lawyers, human rights lawyer Zhang Keke - known in particular for his work to defender Falun Gong practitioners - was stopped from boarding a plane to Geneva to participate in the review of China by the UN Committee against Torture. His passport was confiscated at Beijing Capital Airport and was not returned. As many as six other lawyers and human rights defenders were harassed or intimidated from participating in the review.²³

HONDURAS

During the reporting period, Honduran defenders seeking to interact with international human rights mechanisms have been targeted in public campaigns in an attempt to discredit them and deter other activists from raising the situation of human rights facing the country in international fora. This includes the stigmatization and reprisals against defenders who have engaged with the Inter-American Commission on Human Rights and the Universal Periodic Review (UPR) of the Human Rights Council.

¹⁷ <http://www.ishr.ch/news/un-human-rights-council-must-demand-accountability-death-cao-shunli>

¹⁸ <http://www.ishr.ch/news/chinas-upr-mid-term-concrete-progress-accountability-reprisals-essential>

¹⁹ <http://www.ishr.ch/news/china-urgently-implement-un-recommendations-end-torture-protect-defenders-and-address-reprisals>

²⁰ http://www.ishr.ch/sites/default/files/article/files/cat_c_chn_co_5_22477_e.docx

²¹ <http://www.ishr.ch/news/china-increased-engagement-human-rights-council-calls-increased-responsibility-scrutiny>

²² <https://chinachange.org/2015/06/11/activist-interrogated-and-prevented-from-attending-human-rights-training-in-geneva/>

²³ <http://www.rfa.org/english/news/china/china-torture-11182015101925.html>

In August 2015 the President made public statements saying the goal of these defenders was to harm the country.²⁴ These statements were broadcast in the official media of the State weeks before a delegation of human rights NGOs participated in the September 2015 session of the Human Rights Council. Since then, some of the defenders who engaged in the UPR process have been victims of threats related to their work, including one member of Movimiento Amplio por la Dignidad y la Justicia (MADJ).

RUSSIA

On 24 March 2016, during the Human Rights Council's adoption of the resolution on human rights defenders, a user operating under the name "@ZloyRRR" sent a tweet directed at Florian Irminger, Head of Advocacy and Geneva Office at the Human Rights House Foundation (HRHF), stating "our blades are sharp", together with a graphic of a flayed human body. Based on investigations by HRHF, the evidence strongly suggests that the Twitter account from which the threat originated belongs to an accredited representative of the Russian Federation, working at the Permanent Mission of the Russian Federation to the UN Office in Geneva. This incident took place in the context of an increasingly threatening tone used in social media against human rights defenders tweeting about the activities of the Human Rights Council. The allegation was transmitted to the President and Bureau of the Human Rights Council on 26 May 2016 with a request that it be fully and promptly investigated and effectively remedied.

SUDAN

In March 2016, four representatives of Sudanese civil society were intercepted by security officials at Khartoum International Airport on their way to a meeting in Geneva organised by UPR Info, in preparation for the Universal Periodic Review (UPR) of Sudan that took place in May 2016.²⁵ The four civil society representatives were travelling via different routes to Geneva between 23 and 28 March. In each case, plain-clothed officers from Sudan's National Intelligence and Security Service (NISS) approached them after they had checked in, and before they proceeded through passport control, and confiscated their passports. The four representatives—prominent human rights lawyer Mr. Salih Mahmoud Osman, Director of Asmaa Society for Development Ms. Sawsan Hassan Elshowaya, President of the Human Rights and Legal Aid Network (HRLAN) Dr. Muawia Shaddad, and President of the Sudanese Solidarity Committee Mr. Siddig Yousif—have not been informed of any reasons for the travel bans.

THE MALDIVES

In September 2014, five members of the Maldives Human Rights Commission were charged with serious offences by the country's Supreme Court in connection with a report the Commission submitted to the UN in advance of the Universal Periodic Review (UPR) of the country.²⁶ The five Commissioners were

²⁴ *Presidente Hernández lamenta que hondureños vayan a EEUU y Europa a querer poner en mal al país.* en <http://www.presidencia.gob.hn/?p=7126>

La Tribuna, *Presidente Hernández lamenta que hondureños vayan a EEUU y Europa a poner en mal al país*, 22 de agosto de 2015. En: <http://www.latribuna.hn/2015/08/22/presidente-hernandez-lamenta-que-hondurenos-vayan-a-eeuu-y-europa-a-poner-en-mal-al-pais/>

El Herald, *Presidente de Honduras: FF AA seguirá en tareas de seguridad*, 22 agosto de 2015 En: <http://www.elheraldo.hn/pais/871640-214/presidente-de-honduras-ff-aa-seguir%C3%A1-en-tareas-de-seguridad>

²⁵ <http://www.acjps.org/sudanese-human-rights-defenders-prevented-from-travel-to-geneva-upr-meeting/> and <http://www.acjps.org/sudan-blocks-civil-society-participation-in-un-led-human-rights-review/>

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

summoned to the Supreme Court on 22 September 2014 and charged with allegedly undermining the Maldives' constitution, sovereignty and independence through the UPR report, which raised concerns regarding the rule of law and the independence of the judiciary.

In June 2015, the Supreme Court handed down its verdict declaring the Commission's submission to the UN unlawful. The Court ruled that the Commission must abide by a set of 11 very broad and ill-defined guidelines in carrying out its activities. These guidelines require that any communication with international bodies take place through relevant Government institutions, and that the Commission work in a manner that 'does not create divisions in society' and 'will not affect the discipline, culture and traditions of the Maldivian people and will not affect peace and harmony'. The Commission was also warned against causing damage to the reputation of the Maldives.

Following the decision in June 2015, the UN Special Rapporteurs on Human Rights Defenders and the Independence of Judges and Lawyers urged the Supreme Court to reconsider its decision.²⁷

VENEZUELA

Over the reporting period, Venezuelan human rights defenders cooperating with the UN and regional human rights mechanisms continued to be the target of a wave of harassment and intimidation, and victims of unsubstantiated allegations from government officials with the clear intention of discrediting and intimidating them.²⁸

On 22 July 2015 a group of experts from the UN and the Inter-American Human Rights System issued a statement condemning the attempts to discredit and intimidate human rights defenders on State-owned television as a reprisal for their cooperation with the UN and regional human rights organisations. The experts called upon the Venezuelan authorities to stop the attacks against the defenders immediately and ensure that they can cooperate freely and safely with international and regional mechanisms without fear of intimidation or reprisals. The experts drew attention to the 'shameful and televised harassment of rights activists in Venezuela', which they called 'a clear pattern to intimidate and defame human rights defenders for merely promoting human rights in their country and for engaging with international and regional human rights bodies.'

The harassment took place on the weekly television show 'Con el Mazo Dando' on the channel 'Venezolana de Televisión' from February 2015 through July 2015. The television show is fronted by the President of the Venezuelan National Assembly, Mr. Diosado Cabello. The experts noted the programme named human rights defenders who had participated in the June 2015 session of the Committee on Economic, Social and Cultural Rights in Geneva. In addition, some organisations were falsely accused on Twitter by the Director of the National Commission of Telecommunications, William Castillo, of receiving foreign funds for spreading false information regarding Venezuela. Various high-ranking civil servants in the Venezuelan government later repeated these accusations.

In July 2015, the programme further stigmatized human rights defenders who had cooperated with the UN Human Rights Committee in Geneva during the consideration of the periodic report of Venezuela. The programme also questioned the role of the International Service for Human Rights (ISHR) in training the activists last year²⁹, accusing ISHR staff Ben Leather and Eleanor Openshaw of working to undermine the Venezuelan State, and seeking to imply that ISHR Board member and head of the Colombian Commission of Jurists, Gustavo Gallon, was somehow unduly influenced by the US. Cabello showed a photo of a training carried out by ISHR staff on his programme. The photo was later posted on the

²⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16101&LangID=E>

²⁸ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16259&LangID=E>

²⁹ <http://www.ishr.ch/news/venezuela-end-stigmatisation-and-reprisals-against-human-rights-defenders#sthash.wOjeA5Y6.dpuf>

programme's website to accompany their synopsis of the show.³⁰

On 4th May 2016 the human rights defender Humberto Prado Sifontes and his colleagues were discredited on the television show. Mr. Cabello claimed that their NGO—the Venezuelan Prison Observatory (Observatorio Venezolano de Prisiones)—received money every time they contacted international organisations, or used an international mechanism, to advance their work for the respect of human rights.³¹

UN COMMITTEE ON NGOS

The UN's Committee on Non-Governmental Organizations (the Committee), which recommends NGOs to the Economic and Social Council (ECOSOC) for consultative status, has continued to come under fierce criticism for failing in its core task of giving civil society a voice at the UN and for deviating from the guiding principles in ECOSOC resolution 1996/31 in its handling of applications for consultative status. Some Member States on the Committee have continued to defer applications by posing questions on issues that applicants are not required to provide information on, or through repetitive questioning. Targeted NGOs include those working on the rights of LGBTI people, women's rights, sexual and reproductive rights, the rights of minorities, freedom of expression and association and caste-based discrimination.

Since applying for accreditation in 2008, the International Dalit Solidarity Network (IDSN) has received 70 questions from the Committee – all posed by India.

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

During the July 2015 session of ECOSOC during the consideration of the report of the Committee on NGOs, and for the third year running, Chile, Mexico and Uruguay made a joint statement expressing concern about the practice of the Committee. They noted that the Committee should in no circumstance be used as 'a forum for politically-motivated questioning, sanction or reprisals against an NGOs for the opinions they state in line with their work'. The States recommended greater transparency in the work of the Committee, in particular through the webcasting of Committee sessions.³²

During the May 2016 session of the Committee on NGOs, a statement was made addressing the content of an open letter to Members of ECOSOC, signed by over 230 NGOs from 45 countries around the world, expressing concern about the practice of the Committee.³³ In their joint letter the NGOs echoed the recommendation made by Chile, Mexico and Uruguay to institute webcasting of the sessions of Committee on NGOs, with the aim of encouraging transparency in its operations. The joint letter was copied to the Chair of the Committee on NGOs, the President of the Human Rights Council, the President of the General Assembly and the UN Secretary General.

During the same session of the Committee on NGOs, the Special Rapporteur on the rights to freedom of

³⁰ Spanish version: http://www.ishr.ch/sites/default/files/article/files/synopsis_venezuelan_broadcast_-_spanish.pdf; and English translation: http://www.ishr.ch/sites/default/files/article/files/synopsis_venezuelan_broadcast_-_english.pdf

³¹ <http://www.amnestyusa.org/get-involved/take-action-now/venezuela-protect-humberto-prado-sifontes-ua-10416-0>

³² <https://papersmart.unmeetings.org/media2/7650811/mexico-chile-uruguay-statement-item-17-ngos-1-.pdf>

³³ https://www.ishr.ch/sites/default/files/documents/final_ecosoc_ngo_committee_english.pdf

peaceful assembly and of association issued a commentary condemning the practice of the Committee.³⁴ He references his 2014 report to the General Assembly, where he noted that the practice of harassment by some Committee members, “profoundly undermine[d] the ability of the United Nations to constructively engage with civil society.”³⁵ In May 2016, he concludes, ‘Unfortunately, not much has changed.’

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

IV. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The legal and moral obligations of States to protect those who cooperate with international and regional human rights bodies and mechanisms are clear. When a State fails to prevent reprisals or to properly investigate allegations, the UN has a clear legal obligation to act.³⁶

In spite of some recent positive institutional developments, reprisals and intimidation against those seeking to cooperate and who have cooperated with the UN and regional human rights mechanisms continue. The continued cases of intimidation and reprisals make evident the need for a more coordinated, systematic and effective response across the UN.

The connection between a strong and consistent response to reprisals and the effectiveness of human rights regimes is well established. The lack of a credible, effective response to intimidation and reprisals against human rights defenders sends a message to human rights abusers that those who cooperate with international human rights bodies and mechanisms can be attacked with impunity. It is time for the UN to seriously consider the threat that reprisals pose to its legitimacy and integrity and take the necessary steps to ensure the continued effectiveness of its processes.

RECOMMENDATIONS

Recommendations to States

- States must refrain from intimidation and reprisals against those who seek to cooperate or cooperate with the UN or regional human rights bodies and mechanisms.
- States must investigate and ensure that any allegations of such acts, whether perpetrated by State or non-State actors, are subject to a full, independent and impartial investigation, and ensure that perpetrators are held accountable and victims are provided with effective remedies.

³⁴ <http://freeassembly.net/news/commentary-ngo-committee/>

³⁵ <http://freeassembly.net/reports/multilaterals/>

³⁶ <http://www.ishr.ch/news/human-rights-council-time-act-legal-obligation-end-reprisals>

- States should develop and implement a comprehensive suite of measures to ensure that all persons are able to exercise, individually or in association with others, the right of unhindered access to, and communication with, international human rights bodies and mechanisms and ensure protection from any form of intimidation or reprisal associated with such cooperation, including by: (a) adopting legislative provisions that specifically enshrine this right and prohibit intimidation or reprisals; and (b) reviewing and repealing legislative provisions that may hinder, restrict or impair the enjoyment of this right.
- States should consistently publicly acknowledge the vital role played by human rights defenders in establishing and safeguarding democratic institutions and processes, as well as the rule of law, and in the promotion and protection of human rights.
- States should cooperate fully, substantively and promptly with the UN's human rights mechanisms and bodies in cases of alleged intimidation or reprisals, including by providing good faith undertakings to prevent and investigate cases and to report back to the relevant body or mechanism—including the Human Rights Council, its Special Procedures and the General Assembly—as to investigative, protective and remedial steps taken.
- Candidate States for membership of the Human Rights Council should include in their pledges a commitment to ensuring that civil society organisations can conduct their work—including expressing views critical of State authorities—without undue restriction or fear of reprisal, harassment or intimidation.
- Members of the General Assembly, as States electing the members of the Human Rights Council, should not support any candidate State for membership that has engaged in systematic or widespread reprisals or that has failed to investigate and pursue accountability for cases of reprisals.

Recommendations to UN Bodies and Mechanisms

- UN bodies and mechanisms must recognise and act in conformity with their legal obligation to respect and protect the right of all persons to communicate with the body or mechanism in all aspects of its work and should take all necessary steps to prevent, protect against and promote accountability for any alleged acts of intimidation or reprisals
- UN bodies and mechanisms should be explicit regarding their condemnation of intimidation and reprisals against those that seek to cooperate, and cooperate with them.
- Where relevant, bodies and mechanisms should follow the developing practice of designating a reprisals focal point or rapporteur to address the prevention of reprisals as well as effective follow up to allegations.
- Where States fail to adequately investigate and ensure accountability in relation to credible allegations of intimidation and reprisals, the UN should ensure an international, independent investigation into the case, including through pressure by the Secretary-General, the High Commissioner for Human Rights, the Special Procedures of the Human Rights Council and the Human Rights Council itself.
- The Secretary-General should implement Human Rights Council resolution 24/24 without further delay by appointing a UN-wide senior focal point to engage with all stakeholders to promote the prevention of, protection against, and accountability for reprisals and intimidation related to cooperation with the UN in the field of human rights.

Recommendations to the Human Rights Council

- To more effectively prevent reprisals, the Human Rights Council as a whole and/or its President and Bureau should provide guidance that clearly outlines the steps that the Human Rights Council will take upon receipt of information about credible risks of reprisals to ensure consistency of action across different terms of the presidency and memberships of the bureau.
- When acts of intimidation, harassment and reprisals occur during or in connection with Human Rights Council sessions against individuals who are seeking to participate, or participating, in Human Rights Council sessions or events, the Human Rights Council, acting through the President, has a responsibility to investigate and publicly denounce such acts, in order to preserve the integrity of its processes.
- The President, in consultation with the Bureau, should continue to follow up on cases of alleged reprisals brought to their attention. This should include:
 - investigating the allegation;
 - where the allegation is verified and the safety of the defender will not be put at risk, sending a communication to the State concerned which (a) strongly condemns the allegations; (b) sets out what steps are required to prevent recurrence and provide an effective remedy; and (c) requests the State to report back urgently on the steps and measures taken in this regard; and
 - following up on all communications with States in this context; and
 - in accordance with the Human Rights Council's mandate to perform its work in a transparent manner, keeping and making publicly available the minutes of any relevant meetings.
- When appropriate, the President of the Human Rights Council and the Bureau should publicly identify and denounce specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned, and publicly releasing such correspondence with and from States.
- The President of the Human Rights Council and the Bureau should also automatically submit cases brought to their attention to the Office of the Secretary-General for consideration for his annual report.
- The Human Rights Council should request that the Office of the High Commissioner for Human Rights (OHCHR) prepare a study, in consultation with relevant Special Procedures mandate holders, to review the ways in which individuals engage with the Human Rights Council and its subsidiary mechanisms, and make recommendations for the improvement of these processes to better protect those who communicate or cooperate with the Human Rights Council.
- The Human Rights Council should adopt resolutions that publicly and unambiguously identify and condemn reprisals every time they occur, calling on States to uphold their human rights obligations by investigating, ensuring accountability, providing appropriate remedies and reporting back to the Human Rights Council on measures taken.
- To better ensure effective investigation and accountability, the Human Rights Council should seek information concerning actions taken by States to prevent and ensure accountability for reprisals, assess States' compliance with international human rights obligations, and call on States to take further action where they fall short of meeting those obligations.
- The Human Rights Council should require a State concerned to report back by including the discussion of its response to the risk or allegation of reprisals in Item 5 statements and in its next Universal Periodic Review report. The Human Rights Council should also consider recommending that the Special Rapporteur on the situation of human rights defenders or the President correspond with and visit the State concerned.
- The Human Rights Council could also designate a specific individual or body, such as a working group on reprisals, to receive and investigate all such information. This could be carried out by the system-wide focal point on reprisals envisaged by Human Rights Council Resolution 24/24.

- The Human Rights Council should heed the Secretary-General's recommendation that it "devote sufficient time to the discussion of" his annual report on reprisals by scheduling a stand-alone interactive dialogue.
- The Human Rights Council should ensure that States mentioned in the Secretary-General's report inform the Human Rights Council regularly and in a timely manner of steps taken to investigate cases of reprisals, prosecute perpetrators, and provide remedies to victims.
- The Human Rights Council should seek information concerning action taken by States cited in the Secretary-General's annual report on reprisals to prevent and ensure accountability for reprisals and call on States to take further action where they fall short of meeting international human rights obligations in this regard.

Recommendations to the Special Procedures

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

Recommendation to the Treaty Bodies

- All treaty bodies should adopt the San Jose Guidelines on reprisals without further delay.
- Those Treaty Bodies that have adopted the San José Guidelines should work to ensure they are implemented.
- Treaty bodies should each establish a rapporteur or focal point on reprisals, mandated to promote the right to communicate with the body, to investigate allegations of intimidation or reprisals against those cooperating with the treaty body and—to the extent that the allegation is verified and the safety of the defender will not be put at risk—communicate with the State in question regarding the steps required to provide an effective remedy and prevent recurrence.
- Treaty bodies should each create an accessible public webpage on reprisals that includes the contact details of the individual member of the body responsible (rapporteur or focal point), as well as information regarding cases received, communications sent to States concerned, responses received

and follow-up communications, while seeking to protect the confidentiality of victims when required.

- The annual meeting of Chairpersons should create a common database of cases of reprisals. This would, inter alia, enable better coordination between the treaty body system and the wider UN system.
- The annual meeting of Chairpersons should review all cases of reprisals across all treaty bodies, assess actions taken by States and the treaty body concerned and coordinate on follow up to cases.
- Treaty bodies should consider taking consistent action on cases of intimidation and reprisals through other relevant mechanisms such as relevant Special Procedure mandate holders and OHCHR.
- Treaty Bodies should share the information they receive on reprisals with the Secretary General to feed into his reports on reprisals
- Treaty Bodies should take steps to avoid or mitigate the potential threats posed by the presence and participation of Government Organised NGOs (GONGOs) in the work of the Treaty Bodies.

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