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**Guidelines against intimidation or reprisals (“San José Guidelines”)**

## **Guidelines against intimidation or reprisals (“San José Guidelines”)**

*The Chairs of the human rights treaty bodies,*

*Reaffirming* that the universal human rights treaties are a central pillar of the international system for the promotion and protection of human rights and that the free engagement of individuals and groups with the treaty bodies is critical to its efficiency and effectiveness,

*Expressing concern* over allegations received by the treaty bodies of intimidation and reprisals against individuals and groups who seek to cooperate, are cooperating or have cooperated with the treaty bodies,

*Recalling* relevant provisions in international human rights treaties, optional protocols<sup>1</sup> and rules of procedure,<sup>2</sup>

*Recalling also* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>3</sup>

*Welcoming* the annual report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights,<sup>4</sup> which includes information on cases of intimidation and reprisals against individuals or groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights,

*Recalling* their decision to develop a policy on reprisals at their twenty-seventh meeting,<sup>5</sup>

*Stressing* their common will, expressed at their twenty-seventh meeting, convened in San José, Costa Rica, from 22 to 26 June 2015, to reinforce procedures related to intimidation or reprisals,

*Noting with appreciation* that the General Assembly, in its resolution 68/268 of 9 April 2014, strongly condemned all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies and urged States to take all appropriate action to prevent and eliminate such human rights violations,

*Welcoming* the encouragement given by the General Assembly to the treaty bodies to continue to enhance the role of their Chairs, including with respect to formulating conclusions on issues related to working methods and procedural matters, promptly generalizing good practices and methodologies among all treaty bodies, ensuring coherence across the treaty bodies and standardizing working methods,<sup>6</sup>

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<sup>1</sup> See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13, and its Optional Protocol, art. 15; the International Convention for the Protection of All Persons from Enforced Disappearance, arts. 12 (1) and (4); Optional Protocol to the Convention on the Rights of the Child on a communications procedure, art. 4; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 13; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, art. 11.

<sup>2</sup> Of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination and the Committee on Enforced Disappearances.

<sup>3</sup> General Assembly resolution 53/144, annex.

<sup>4</sup> A/HRC/27/38.

<sup>5</sup> A/69/285, para. 111.

<sup>6</sup> See Assembly resolution 68/268, para. 38, and A/69/285, para. 76.

*Recalling* their decision to include reprisals as a standing item on the agenda of their annual meetings and to engage with other bodies working to protect individuals and groups from reprisals,<sup>7</sup>

*Welcoming* the appointment by some treaty bodies of one or more rapporteurs or a focal point on reprisals,<sup>8</sup>

*Underlining* the need to enhance protection and bring coherence to treaty body responses to individuals and groups at risk of or targeted by intimidation reprisals,

*Recalling* the competence of each treaty body to adopt its own rules of procedure,

*Endorse* the following guidelines against intimidation or reprisals:

## **I. Purpose and scope**

1. The present guidelines are aimed at providing practical guidance to enhance the efficiency and effectiveness of the protection provided by treaty bodies to individuals and groups at risk of or facing intimidation or reprisals for seeking to cooperate or cooperating with United Nations human rights treaty bodies.

2. The treaty bodies strongly condemn such acts of intimidation or reprisal. By becoming a party to an international human rights treaty, a State undertakes to cooperate with the treaty body in good faith and to exercise due diligence in doing so.

3. States have a duty to protect individuals and groups and to exercise due diligence in doing so. Intimidation or reprisals may be the result of acts or omission by both State and non-state actors and all such acts fall within the scope of these Guidelines. Acts or omissions are attributable to the State when they are carried out with the consent or acquiescence of an official or other person acting in an official capacity against any individuals or groups who are seeking to cooperate, who are cooperating, or who have cooperated with a treaty body.

4. The Guidelines are formulated as a common basic approach which may be adapted and developed further by each treaty body in order to best reflect its particular context, mandate and experience in order to fully realise the purposes of these Guidelines.

## **II. General principles**

5. The principles underlying the present guidelines are the following:

(a) The right for everyone to have unhindered access to and to communicate with the treaty bodies and their member for the effective implementation of the treaty body mandates;

(b) The freedom for everyone from any form of intimidation or reprisal, or fear of intimidation or reprisal, when seeking to cooperate or cooperating with the treaty bodies;

(c) 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;

(d) Equality and non-discrimination;

(e) The need to respect the ‘do-no-harm’ principle, participation, confidentiality, safety, security, and free and informed consent;

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<sup>7</sup> See A/69/285, para. 110.

<sup>8</sup> *Ibid.*, paras. 70 and 109.

- (f) The mainstreaming of a gender perspective in the work of the treaty bodies.

### **III. Operational Practice**

6. 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. Such responses may be taken by the treaty bodies concerned, or in cooperation with others, including States, the Secretary-General, the United Nations High Commissioner for Human Rights, the special procedures mandate holders of the Human Rights Council, international and regional organizations, resident coordinators and United Nations country teams, the diplomatic community, national human rights institutions and civil society.

7. The approaches and actions set out below, not all of which are applicable in all contexts, may be applied separately or cumulatively.

#### **A. Role of the rapporteurs or focal points on intimidation or reprisals**

8. Each treaty body should consider appointing at least one member as rapporteur or focal point on intimidation or reprisals, for a term to be determined by the treaty body concerned.

##### **Consistency across the treaty bodies**

9. The rapporteurs or focal points should make proposals, if appropriate, to their respective Committees which reflect these Guidelines and which assist align approaches taken to prevent and protect against intimidation or reprisals in order to enhance consistency across the treaty body system.

##### **Receiving allegations of intimidation or reprisals**

10. The rapporteurs or focal points should be notified as soon as possible of all allegations of intimidation or reprisals against individuals or groups seeking to cooperate or cooperating with the treaty bodies which are submitted to the Committee. They should be provided with all relevant information relating to those allegations. The Chair of the relevant committee should be notified of the allegation by the rapporteur or focal point through the Secretariat as soon as possible.

11. Such information may be submitted orally or in writing and may be submitted in confidence. A detailed record of all allegations of intimidation or reprisals which have been submitted should be maintained.

##### **Assessment of the allegation**

12. The rapporteurs or focal points should make an assessment of the as soon as possible and making use of a wide variety of sources of information. These sources might include, but are not limited to, the State party, concerned individuals, the Secretariat, the Office of the United Nations High Commissioner for Human Rights (OHCHR), including its field presences, other United Nations entities, National Human Rights Institutions, National Preventive Mechanisms, civil society. Pending this initial assessment, all incidents should be referred to as allegations of intimidation or reprisals. The rapporteurs or focal points should consult and liaise with any relevant Committee country rapporteur(s) during the process of initial assessment. Any issues of confidentiality must be reflected and respected throughout the assessment and subsequent processes.

### **Determining the appropriate course of action**

13. The rapporteurs or focal points on intimidation or reprisals should maintain contact with the individuals or groups alleging intimidation or reprisals, or their representatives, and determine the most appropriate course of action in each case. When doing so, they should consider the possible consequences for the individuals or the groups alleging intimidation or reprisals for seeking to cooperate or cooperating with the treaty bodies, or for others who may be affected by that action.

14. The Rapporteur or Focal Point should inform the Chair of their conclusions. If it appears that intimidation or reprisals have or might have taken place, the rapporteurs or focal points should, inform the Chair of the committee concerned and advise them of a course of action which might be taken. The Country Rapporteur, if any, should also be notified and their views sought. A decision should then be taken in accordance with the Rules of Procedure of the Committee concerned.

### **Standing agenda item to be considered by each treaty body on an annual basis**

15. Treaty bodies should have as a standing agenda item, to be considered on an annual basis, an update by the rapporteurs or focal points on intimidation or reprisals.

### **Network of rapporteurs and focal points on intimidation or reprisals**

16. Collectively, the rapporteurs and focal points on intimidation or reprisals serve as a network for sharing information, facilitating supportive action by other treaty bodies when appropriate, and aligning approaches towards the most effective means of addressing intimidation or reprisals across the treaty body system. The advice of this network may be sought by the treaty body Chairs. In addition, this network might be consulted in order to develop additional strategies to further strengthen the protection of individuals and groups against intimidation or reprisals for seeking to cooperate or cooperating with the treaty bodies.

### **Compiling good practices**

17. The rapporteurs or focal points on intimidation or reprisals should compile information on good practices relating to protective approaches that they may become aware of through the work of the committees or of others.

## **B. Preventive measures**

### **Specific measures**

18. Where possible, Treaty bodies should take steps to prevent intimidation or reprisals. Preventive measures could include permitting requests from individuals or groups to provide information to the relevant treaty body in a confidential manner and reminding States parties of their primary obligation to prevent and refrain from all acts of intimidation or reprisals against individuals and groups seeking to cooperate or cooperating with the treaty bodies.

### **Protection measures**

19. When it is alleged that an individual or group is at risk of intimidation or reprisals for seeking to, or for having communicated with, a treaty body, including as a result of filing, or as a result of considering or attempting to file, a formal complaint to a treaty body in the framework of the individual communications procedure, the committee concerned can request the relevant State party to adopt protection measures for the individual or group concerned. Such measures can include requests to refrain from any acts of intimidation or

reprisals and to adopt all necessary measures to protect those at risk. The State party may be requested to provide the committee, within a specific deadline, with information on measures taken to comply with the request.

#### **Awareness-raising**

20. Treaty bodies should take initiatives that affirm the crucial importance of cooperation with all stakeholders in addressing intimidation or reprisals. Such initiatives may include making the protection of members of civil society and others a regular item on the agenda of informal meetings with States parties, broadly disseminating the present guidelines and adopting public statements, possibly jointly with other human rights mechanisms.

### **C. Further measures**

#### **Raising concerns confidentially with State party authorities**

21. When allegations of intimidation or reprisals are received, and with the consent of the individual or group concerned when appropriate, the relevant treaty body should, as appropriate, contact the State party to request information, express its concern and request an investigation and the immediate cessation of any such acts. Treaty bodies may also intervene with State authorities in a discrete manner, through confidential correspondence or a meeting with a representative of the permanent mission of the State party, or any other appropriate means.

#### **Security measures during treaty body sessions**

22. In a case of an imminent threat or danger of violence in connection with a treaty body session, the UN Department of Safety and Security should be approached to take appropriate security measures.

#### **Contacting regional and national mechanisms**

23. In addressing allegations of intimidation or reprisals, treaty bodies may, when appropriate, seek the cooperation of regional and national mechanisms which may be able to be of assistance.

#### **Concluding observations, decisions, views, reports and follow-up requests**

24. When appropriate, the treaty bodies should require States parties, in their concluding observations, decisions, views, reports and follow-up requests, to take the measures necessary to protect individuals and groups from intimidation or reprisal.

#### **Reporting by treaty bodies to the General Assembly or the Economic and Social Council**

25. The treaty bodies should, as appropriate, include information on cases of intimidation or reprisals in their annual or biennial reports.

#### **Posting on the Internet**

26. The treaty bodies may, as appropriate, make information regarding allegations of reprisals, including exchanges with States parties, public by posting such information on the treaty body web page of the OHCHR website.

### **Use of the media**

27. The treaty bodies may, when appropriate, issue a public statement on specific incidents or generalised practices of intimidation or reprisal and circulate it to international and national media outlets, or make comments to the media and on social media.

### **Requesting assistance from the United Nations High Commissioner for Human Rights**

28. The treaty bodies may request the assistance of the United Nations High Commissioner for Human Rights with a view to obtaining the cessation of alleged acts of intimidation or reprisal, and which may include an investigation in accordance with international human rights standards.

### **Coordination with other procedures**

29. When allegations of intimidation or reprisal are received, in addition to the action taken by the treaty body itself, the Secretariat also may inform individuals or groups making such allegations that they may submit an urgent communication to the special procedures mandate holders of the Human Rights Council, including the Special Rapporteur on the situation of human rights defenders. The Treaty Bodies can also themselves refer such allegations to other mechanisms and procedures, when appropriate, in order to encourage an efficient, effective and coordinated response.

### **Follow-up**

30. The treaty bodies may, as appropriate, request the United Nations Resident Coordinator, the United Nations country team, United Nations agencies, peacekeeping operations or any other appropriate agency or representation to take steps in support of individuals or groups who have been intimidated or are at risk of reprisal for seeking to cooperate or cooperating with the treaty bodies.

### **Reference to political organs of the United Nations**

31. When appropriate, Treaty Bodies may seek to raise issues relating to intimidation or reprisals before the Human Rights Council and other political organs of the United Nations.

## **IV. Monitoring of the Guidelines**

32. Rapporteurs or focal points on intimidation or reprisals should be responsible for reporting to committees on action taken in relation to fear or allegations of intimidation or reprisal.

33. The annual meeting of treaty body Chairs should have a standing agenda item on reprisals, under which each Chair should inform the meeting of recent developments and practice relating to intimidation or reprisals within their respective committees and exchange views. Chairs may also establish links and consult between themselves inter-sessionally, when appropriate, in cases of necessity.

## **V. Dissemination of the Guidelines**

34. The present guidelines against intimidation or reprisals should be posted on the web pages of all treaty bodies and on the web page dedicated to the annual meetings of the treaty body Chairs on the OHCHR website in accessible formats.

35. The Chairs call for the widest possible dissemination of these Guidelines by the UN and other actors among the executive, judicial and legislative authorities of States, National

Human Rights Institutions, National Preventive Mechanisms, civil society and non-governmental organizations operating in their country and among the general public in accessible formats.

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