



REPRISALS HANDBOOK



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



The International Service for Human Rights (ISHR) is an independent, international NGO which promotes and protects human rights by supporting human rights defenders and strengthening human rights standards and systems. We achieve this through a strategic combination of research, advocacy, monitoring, coordination and capacity building.

Founded in 1984, and with offices in Geneva and New York, ISHR has a proven track record in achieving human rights change, such as facilitating global civil society input into the Vienna Declaration and Program of Action (1993), leading the development of the UN Declaration on Human Rights Defenders (1999), contributing to the establishment of the UN Human Rights Council (2006), and catalyzing and coordinating the adoption of the Yogyakarta Principles on human rights and sexual orientation and gender identity (2007).

In recent years, ISHR has also played a leading role in putting the issue of reprisals against human rights defenders on the international agenda and contributing to the development of national, regional and international mechanisms to better protect human rights defenders from intimidation and attacks.

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This handbook is aimed first and foremost at human rights defenders who interact with regional and international human rights systems. The focus is in particular on the United Nations (UN) human rights system, the African Commission on Human and People's Rights, the Inter-American Commission of Human Rights, and the Council of Europe. The right of human rights defenders to collaborate with these mechanisms is set out in articles 5(c) and 9.4 the UN Declaration on Human Rights Defenders.

The handbook highlights the risks that you as defenders can face from interacting with those systems, and suggests ways in which you can leverage the weight of the UN and regional human rights mechanisms to provide some degree of protection against these risks. In doing so it does not aim to provide a fully comprehensive protection solution, but rather to complement measures that you should also take at the national level.

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WHEN PEOPLE WHO
COOPERATE WITH
THE UNITED NATIONS
ARE TARGETED FOR
REPRISALS, WE ARE
ALL LESS SECURE.
WHEN THEIR VOICES
ARE STIFLED, OUR
WORK FOR HUMAN
RIGHTS IS ALSO
A VICTIM.

Secretary-General, 2011 remarks to high-level panel discussion on 'stopping reprisals for cooperating with the UN in the field of human rights - a priority for all'.

REPRISALS AGAINST HUMAN RIGHTS DEFENDERS

In recent years there has been increased concern at the threats, intimidation and reprisals experienced by human rights activists and defenders, whether at the local, regional, or international levels.

Whether it be by speaking to local media, taking part in a protest march, publishing a research paper, or submitting information to the UN or regional human rights systems, raising one's voice in any context against the State or other powerful bodies can bring with it risks. This handbook focuses on reprisals suffered as a consequence of an individual's cooperation or attempted cooperation with the UN or a regional human rights body.

Reprisals are often carried out by powerful State agents, such as the police, military or security forces, or the judiciary, who act to protect the State from criticism. They are also often carried out by non-State agents, such as businesses, organised crime, or armed groups, whose links to the State are more or less direct, indirect, or totally absent. These abuses range from defenders having their activities unreasonably restricted and their organisations unfairly scrutinised, to being spied on or defamed, denied access to funding, or being subject to arbitrary arrest, physical violence, and death. In addition to being used punitively, reprisals often take place as a deterrent measure. These cases are harder to measure but the UN,ⁱ the Inter-American Commissionⁱⁱ and the European Court of Human Rightsⁱⁱⁱ have recognised the deterrent effect of reprisals and the obligation of States to ensure that human rights defenders can access and fully engage with these mechanisms.^{iv}

WHEN IS THE RISK OF REPRISALS HEIGHTENED?

There are specific moments when this level of risk is increased. These are situations when the authorities have more at stake in having a poor human rights record exposed. For example, the African Commission on Human and People's Rights has recognised that the repression of human rights defenders increases during election periods.^v This may be tied to the fact that a government pursuing re-election wishes to present as clean a human rights record as possible to the country's citizens. In this context human rights defenders exposing violations may be seen as threatening.

There may also be an increased risk when a defender brings a domestic issue before a regional or UN human rights body, shining a light on the government's human rights record. Governments have no desire to be portrayed as human rights violators on a regional or international stage. Backlash against human rights defenders

Examples of reprisals carried out against defenders cooperating with the UN or regional human rights systems

- A human rights defender who travelled to Geneva to brief the UN expert group that works against torture (the Committee Against Torture) about the situation in his home country, found that he was subsequently restricted from travelling outside his home country.
- A human rights defender who met with a UN expert on extrajudicial, summary and arbitrary executions, who was on a country visit, faced death threats and attempts at enforced disappearance. In an even more serious and separate case, two defenders who met with the UN expert were killed some days later.^{vi}
- Human rights defenders who appeared at hearings of the Inter-American Commission of Human Rights found themselves discredited by a State announcement broadcast on radio and television. Other human rights defenders chose not to travel to attend hearings at the IACHR after receiving threats.^{vii}
- Human rights defenders who have applied to the European Court of Human Rights, or have represented applicants, have faced threats from State authorities, leading them to withdraw applications in some cases. Pressure has included falsified criminal charges, discriminatory tax inspections, and threats of prosecution for 'abuse of office'. A human rights defender working on a case involving security forces was abducted and shot dead, and her co-worker, fearing for her safety, had to move to another part of the country following threats she received after the case was submitted to the Court.^{viii}

who expose the government can be harsh, particularly in cases in which the State enjoys impunity.

WHERE DO REPRISALS TAKE PLACE?

While these incidents of reprisal often take place in the defenders' home country, they can also take place at the very moment that the defender is participating in

meetings of the regional or UN mechanism. For example, human rights defenders participating in sessions of the Human Rights Council in Geneva sometimes face threats and harassment from members of their country's delegation. These incidents are sometimes combined with press campaigns at home in which the defenders are publicly denounced and threatened. Threats against human rights defenders can come from as high up as government ministers.^x

RESPONSE OF INTERNATIONAL AND REGIONAL BODIES TO REPRISALS

The UN and regional human rights systems are increasingly recognising the challenges and dangers that defenders face from interacting with these systems.

For example, the UN's Human Rights Council adopted a resolution in 2011 that 'strongly rejects any act of intimidation or reprisals against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, and urges States to prevent and ensure adequate protection against such acts'.^x

In September 2012 the Human Rights Council held a panel discussion regarding reprisals faced by defenders engaging with the UN human rights system. States who participated in the discussion were unanimous in condemning the practice of reprisals on the basis of a defender's engagement with the UN human rights system, and many noted that it is the State's responsibility to protect defenders in these cases. Several recommendations were made also for the consideration of the Council. The panel raised the profile of the threat of reprisals and hopefully marks a gear change in the UN's response to the problem.^{xi}

Similarly, the Inter-American Commission on Human Rights sets out 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 'States may not prosecute witnesses or experts, or

carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission'.^{xii}

The African Commission on Human and People's Rights adopted resolution 196 in 2011 on human rights defenders in Africa. This resolution condemns reprisals against groups or individuals who participate in the African Commission. It calls on States to release those who are arbitrarily detained, and end judicial harassment and other acts of intimidation. It also calls for all necessary measures to investigate cases of violations and to bring perpetrators to justice, and urges States to both prevent and refrain from all acts of reprisals against individuals or groups who engage with the African Commission on Human and People's Rights.

A 2008 Declaration of the Committee of Ministers of the Council of Europe Action to Improve the Protection of Human Rights Defenders calls on member States to 'ensure the effective access of human rights defenders to the European Court of Human Rights' and other human rights protection mechanisms. This declaration was endorsed by the Parliamentary Assembly Committee on Legal Affairs and Human Rights in 2009 in its resolution 1660.^{xiii}

There is therefore recognition at the regional level and within the UN that human rights defenders are at risk when they engage with regional and UN mechanisms, and that States have an obligation to protect human rights defenders in all cases.

THE ROLE OF UN AND REGIONAL SYSTEMS IN PREVENTING AND REDRESSING REPRISALS

There are unfortunately cases where State institutions are simply unable to do this, are wilfully neglectful, or deliberately obstructive when it comes to ensuring that defenders can cooperate safely with UN and regional human rights mechanisms. In such a situation defenders who dare to speak out in any context face heightened risks.

You should be fully aware that as important as it is to pursue international and regional human rights work, doing so increases your exposure to, in some cases, significant danger. Because the UN system in particular can seem remote there is perhaps a tendency to underestimate the risks that can be faced from engaging with it. For many States or experts who make up those bodies it can be difficult to understand or realise that the defenders they listen to in meetings could face real dangers as a result of their presence at that meeting when they return home. Similarly, however, the defenders themselves may not have a full understanding of the importance some States place on being able to control what information is heard in international and regional forums, and may as a result remain unaware of the dangers they could put themselves in by cooperating or attempting to cooperate with such bodies.

It would be extremely detrimental to the effective functioning of both regional and UN human rights systems if, as a result of the risks faced, human rights defenders were to avoid interacting with them. The actors or government representatives that work in these systems, in particular at the international level, would have limited knowledge about human rights violations on the ground were it not for the valuable input of human rights defenders. Without that knowledge they are unable to take informed decisions. The Human Rights Council, the UN's highest human rights body which sits in Geneva, is made up of State representatives. Those States often rely upon human rights defenders to supply them with information before they will act. So it is important that you send information either directly to the States or experts that make up these bodies, or to the reporting mechanisms that have been set up at both UN and regional levels.

There is a real need for facts about on-the-ground situations and for non-government opinions on reports submitted by governments. There is for this very reason

a clear obligation on regional and UN systems to ensure that the crucial information that they receive from human rights defenders does not place them at risk. These mechanisms have a responsibility to ensure that defenders can cooperate with them safely. The Parliamentary Assembly of the Council of Europe, for example, has recognised the 'key responsibility of parliamentarians to create an enabling environment for human rights defenders'.^{xv}

The United Nations could not do its invaluable work for human rights without those who cooperate with us. When they are intimidated and targeted for reprisals, they are victims, but we are all less secure. When their cooperation is stifled, our work in the field of human rights is compromised.

UN Secretary-General Ban ki-Moon, Statement of the Secretary-General during a high-level panel discussion on reprisals held in New York in 2011

You should be aware, however, that no fully developed systematic protection mechanism to specifically handle cases of reprisals exists either regionally or within the UN. The most developed dedicated reprisals mechanism exists at the UN level and consists in an annual compilation of cases of reprisals suffered by defenders when they try to participate in some way in the work of the UN human rights system. The report is not intended as a protection mechanism, but having a basis and a space to give publicity to cases and call for accountability could serve a deterrent function. This aspect of the report could be strengthened were the compiling of information for the report, its discussion and follow-up procedures to be further systematised.

The African Commission has responded positively in principle to the call for a monitoring mechanism, which would provide the basis for a systematised response, but

has yet to decide on the format of this mechanism. Neither the Inter-American Commission nor the European Court of Human Rights have a dedicated mechanism for monitoring and responding to reprisals, but both systems have the capacity to request States to adopt 'precautionary' or 'interim' measures to prevent irreparable harm to someone, as indeed does the African Commission, where they are known as 'provisional measures'.^{xv}

Within the European system the specific potential of interim measures to protect applicants to the Court has been recognised and it has been suggested that 'the Court could require respondent States to take positive action to protect applicants, as the Inter-American Commission and Court have done'.^{xvi} The Inter-American Commission can also write to any member State and request information on an alleged act of reprisal.

Both it and the African Commission have frequently issued press releases expressing concern in relation to cases of reprisals, amongst others.

The steps taken by the bodies in response to reprisals, either through establishing mechanisms or making use of existing mechanisms to address reprisals, illustrates that both regional and UN systems are attempting to meet their obligations to ensure that defenders who engage or attempt to engage with them have some form of protection. However accessing these mechanisms may not alone be sufficient protection. As a human rights defender there are other sources of protection, including at the national level that you can access in an effort to protect yourself against reprisals when engaging at the regional and UN levels.

SOURCES OF PROTECTION

These possible sources of protection are outlined from the perspective of assisting you to identify ways in which you can elicit protection from the UN and regional systems. The protection available is by no means comprehensive, and in many cases it relies upon the personal commitment and energy of particular individuals. It is important to note that these avenues cannot ultimately provide physical protection. In many cases the concrete result of using one of these avenues is an increase in the visibility and publicity given to a case, which may serve to provide protection in particular contexts. They should of course be used in conjunction with your standard security plan.

Beginning with the UN, and moving through the regional levels and on to the national level, this section outlines some avenues that you can consider accessing. Defenders should consider which avenue might be the best to use based on the context of a particular case. Defenders should also bear in mind that there is no unique response to reprisals but rather a combination of action that could be taken at the national, regional, and international levels, depending on the case.

UN LEVEL

THE UN SECRETARY-GENERAL'S REPORT

At the UN level there is a reporting mechanism to which you can submit cases of reprisal that you suffer as a result of engaging or attempting to engage with the UN human rights system.

This mechanism consists of an annual report that lists the alleged cases of reprisals suffered by those cooperating with the UN system that have come to the attention of the UN over the past year.^{xvii} This report is presented each year to the Human Rights Council and is the Council's main source of information on reprisals faced by human rights defenders who cooperate or attempt to cooperate with the UN system.

The Secretary General has stated in regard to this report that: 'By making cases of reprisals public as requested by the Human Rights Council, the [...] report contributes to the fight against impunity with regard to reprisals and intimidation for cooperation with the United Nations, its representatives and mechanisms in the field of human rights, with the aim of curbing these unacceptable practices'

A/HRC/14/19.

In practice, the Council's discussion of cases in this report and follow-up to those cases has not been very systematic. Even though follow-up on previous cases is now included as standard in the report, States have not used this information effectively to hold other States accountable, when the report is discussed in the Council.

The report is compiled by the UN's human rights office (the Office of the High Commissioner for Human Rights - OHCHR). All cases must be submitted to OHCHR (see below for more details). OHCHR operates on the principle of 'do no harm' when compiling the information for the report. This means that the consent of the person is a fundamental condition for a case to be included in the report. As the report is submitted annually for discussion by the Human Rights Council there is scope for lobbying States that are responsive to the concerns about reprisals to raise a specific case in the Council. The discussion of the case by the Human Rights Council can again spotlight the case in such a

'Denouncing such acts [of reprisal] publicly and reporting them to the appropriate human rights mechanisms will also contribute to combating related impunity'.

*Secretary-General Ban ki-Moon, 2010 report
AIHRC/14/19*

way that the government cannot avoid its responsibility to ensure the safety of the human rights defenders involved in the case. This publicity can be leveraged by ensuring that relevant media report on the Human Rights Council's debate and the particular discussion of your case.

Further, having your case included in the report is a good basis for being in contact with and meeting with officials in Geneva, such as the President of the Human Rights Council (see section below), staff of the Office of the High Commissioner for Human Rights, other NGOs or States. When approaching State representatives in the UN context it is important to exercise caution, keeping in mind the role of some governments in perpetrating or condoning reprisals. Make sure you are aware of which States are likely to be sympathetic to your cause.

At present the UN's report contains around 15 cases per year. The low number of cases reflects the fact that not all cases are reported to OHCHR, either due to lack of awareness of the report's existence, or fear of further reprisals. It also reflects the fact that OHCHR will not include cases where the defender's situation will be made worse if their case is publicly reported. The report also clearly does not include cases where defenders have chosen not to engage at all with the UN system through their fear of being attacked. From the point of view of developing a more systematic response by the UN it is important that cases of reprisal suffered by those who cooperate with it or its mechanisms are reported to OHCHR. Unless the UN and member States are confronted with the real extent of the problem, it is difficult to elicit an urgent response. The States which make up the Human Rights Council, for example, see and hear the participation of NGOs in the Council chamber; but they may not see the difficulties that these human rights defenders and their relatives, colleagues or friends, can face on their return home. The apparent distance between cause and effect can make it hard for relevant decision makers at the UN to see the direct link and the real dangers attached to engagement with the UN system. One way to confront that lack of awareness would be to present a more comprehensive report on the dangers that defenders suffer. Making it a point to report all cases of which you have first-hand information would be a step on the way to generating more attention for the report, and a more systematic consideration of and follow-up to cases by States. In addition, as outlined below, any information on further developments in a case previously submitted should also be sent to OHCHR.

HOW TO SUBMIT A CASE TO THE SECRETARY-GENERAL'S REPORT

Information submitted should follow the guidelines prepared by OHCHR. These indicate, most importantly, that the case should fall within the scope of Human Rights Council resolution 12/2^{xviii} (see box for more details). The submission should also indicate if the alleged reprisal has been referred to in any UN documents (provide citations). It is important to ensure that the security of the persons concerned is preserved. Note that unless the case is accompanied with a specific indication that those affected, or the family of the person(s) affected, have agreed to have the case included in the report, and have been informed accordingly, it will not be published based on OHCHR's principle of 'do no harm'.

ISHR has prepared a questionnaire based on those guidelines to assist defenders in formulating their response.^{xx} You can also contact ISHR for advice on how to formulate a submission to meet OHCHR's requirements.

You can also report a case to relevant UN experts or rapporteurs (these experts are officially known as the 'Special Procedures of the UN Human Rights Council'). This avenue is particularly relevant if the reprisal happened during a country visit by the expert or through any other form of engagement with the expert. Reporting a case to several different bodies will increase the visibility of the case and thereby also increase the attention given to the failings of the State.

'Guaranteeing the safety and security of those who cooperate with human rights mechanisms is imperative. My Office will do its utmost to ensure that States respect their obligations to protect and that there is accountability for any suspected acts of intimidation or reprisals.'

High Commissioner for Human Rights, Ms Navanetham Pillay, addressing the Human Rights Council's 20th session

HOW TO SUBMIT FURTHER INFORMATION ON PREVIOUSLY REPORTED CASES

OHCHR also requests follow-up information including whether additional reprisals took place, and whether measures were taken by the State to investigate, in relation to the cases included in previous reports.

If you are familiar with a reported case and have additional information to share with OHCHR either on the case itself, or on steps taken or not taken by the government and other bodies, please submit this to OHCHR at reprisals@ohchr.org. You should reference the case you are referring to, by report number and paragraph number.

Given the limited follow-up by both OHCHR and the Council to previously reported cases, supplying this information directly to OHCHR is the most effective way of improving the quality of the information OHCHR provides to States. OHCHR does not have the capacity

WHICH CASES CAN BE SUBMITTED?

Please ensure that the victim matches one or more of the following descriptions. The persons referred to in Human Rights Council Resolution 12/2 (paragraph 1) are those who:

- Seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them;
- Avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose;
- Submit or have submitted communications under procedures established by human rights instruments, and all those who have provided legal or other assistance to them for this purpose;
- Are relatives of victims of human rights violations or of those who have provided legal or other assistance to victims.

Information can be submitted to OHCHR at reprisals@ohchr.org

to seek out this information in a systematic way itself. More detailed information on follow-up is likely to increase the extent to which States use that information in the debate in the Council on the report.

SPECIAL PROCEDURES

Other relevant officials at the UN level are the human rights experts, who are formally called 'special procedure mandate holders'. These are individuals appointed to examine a particular theme or the human rights situation in a specific country. There is a whole range of such experts, for example the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders. Each of these experts has the responsibility to monitor and report to the Human

Rights Council on their theme or country. By consulting the full list of individual experts you can find those most relevant to your case.^{xx}

These experts have a number of tools by means of which they can publicise cases of reprisal that occur; in hopes of pressuring a State into pursuing accountability for the violations.

Urgent appeals involve the expert sending a letter to the State, requiring it to intervene urgently in a case and to submit information to the mandate holder on the steps taken in response to the case. Submitting a communication to one of these experts requires first identifying which would be the most relevant (keeping in mind that there may be more than one, and that submitting to several can elicit a joint response which can have a greater impact on your case).

Country visits allow the experts to build a picture of an on-the-ground situation and generally include meetings with local civil society. The visit concludes with the publication of a report and possibly a press release, both of which can reference particular cases that were brought to the attention of the expert. You can find a schedule of upcoming visits by the experts on OHCHR's website.^{xxi} To maximise your chances of having your case included it would be advisable to submit information to the expert in advance of his or her visit, giving details of your case. This enables you and the expert to follow-up by scheduling a meeting once he or she is in the country.

Another tool available to special procedures is to issue **press releases** on an ad hoc basis as a means of drawing greater attention to particular cases. Some experts have in the past used press releases as a basis for making a public call on States to ensure the safety of particular defenders. In the case of both press releases, mention in a country report, and urgent appeals, the call on the State to ensure the safety of particular defenders, detailing the steps that the State should take, makes the responsibility that the State has to protect the defender explicit, and is a means of exerting pressure on the State to meet this responsibility. This makes it difficult for the State to deny that it knew that the defender was in need of protection should the human rights defender after all be attacked. You should keep in mind, however; that although all individual experts have access to the same tools, some use them more effectively and pro-actively than others.

TREATY BODIES

The UN also has a system of expert bodies, known as 'treaty bodies', which monitor the implementation of the nine key human rights conventions. For many of these treaty bodies you can submit an individual communication regarding the violation of a right under the convention that the body monitors. However you are only eligible to make such a complaint if your country has ratified the relevant convention, and if your country has also recognised the competence of the treaty body that monitors that convention to receive individual communications.

There are other criteria that must be satisfied if your communication is to be considered by a treaty body, including that you must have exhausted domestic remedies in your own country, before approaching a treaty body. When considering whether domestic remedies have been exhausted, consideration is given to the ef-

From the perspective of protection against reprisals, submitting a communication to a treaty body opens up the possibility of the treaty body issuing a request to a State to take 'interim measures' where this is required to prevent irreparable harm to the victim.

The State would be required to report back to the Committee on the steps it has taken to implement those interim measures and protect the victim. The system can therefore be a means of placing the burden of care for the safety of a human rights defender clearly on the State.

This can serve as a protective measure as should any harm subsequently befall the defender, it is the State that first and foremost needs to explain why it did not protect the defender, as was requested. This could be sufficient to motivate the State to ensure the defender's safety.

fectiveness of those remedies (for example if the law in your country is very clear on the point at issue), their accessibility (including lack of availability of legal aid), and whether pursuing them would take an unreasonable amount of time. Thus even if you have not formally exhausted domestic remedies, you may still be eligible to submit a communication to a treaty body. The Committee on the Elimination of Racial Discrimination also has an urgent procedure through which it can respond to problems requiring immediate attention to limit the number of serious violations of the convention. This would be particularly relevant when reprisals take a racist tone, or when a group attempts to engage at UN or regional levels to address an issue of racial or ethnic issue and faces reprisals as a result.

A working group of Committee members considers information received on situations that may require urgent action, and the Committee may then make recommendations for action to the State party. Triggering this procedure does not require that domestic measures be exhausted. As with interim measures, the procedure clearly brings a situation to the State's attention in the sense that it cannot claim to have been unaware that an individual was facing reprisals and it therefore cannot disavow responsibility for the safety of the individual.

For more information on how to use the treaty bodies' individual communications procedures, and the urgent procedure of the Committee on the Elimination of Racial Discrimination, see ISHR's 'Simple Guide to the UN Treaty Bodies'.^{xxii}

USING THE GOOD OFFICES OF THE PRESIDENT OF THE HUMAN RIGHTS COUNCIL

Aside from formal mechanisms, you can also informally approach key officials within the UN system. If these individuals have some authority within the system, granted by their particular role or mandate, then their voice can carry weight. The President of the Human Rights Council in Geneva is one such figure.

If you are worried about the risks you face on returning home after attending a session of the Human Rights

Council you could seek a meeting with the President. The effectiveness of such a meeting depends upon the personal commitment of the particular holder of the post, but there have been good outcomes from such interactions in the past. The President giving high profile visibility to particular defenders turns the spotlight on them and makes explicit the responsibility of the government to ensure that those defenders are safe, or face being held accountable for what it did or did not do to assure their safety. This can be a source of protection.

The Uruguayan President of the Council, Ms Laura Dupuy Lasserre, whose term ended at the end of 2012, took up the case of a group of Bahraini defenders who were participating in the country's Universal Periodic Review (UPR). These defenders had come to Geneva to observe delegates from their country face questioning from other States about its human rights record. However they faced threats from their own government as a result. The threats were passed on to the President, who made a statement listing the names of all the defenders who had faced threats, and calling on the government to ensure their safety once they returned to their country. Defenders from Bahrain felt that this intervention provided them with a useful degree of protection.

REGIONALLY

UTILISING 'INTERIM MEASURES' WITHIN THE REGIONAL HUMAN RIGHTS SYSTEMS

As with the treaty bodies, the regional human rights systems have procedures through which defenders can apply for their State to be required to take steps to protect them when their lives are in danger.

The Inter-American Commission's rules of procedure^{xxiii} set out that 'precautionary measures' can be requested in serious or urgent cases, at the initiative of the Commission, or at the request of another party. It requires that the person affected have approached the pertinent national authorities first, but only if this is possible. In the case of human rights defenders facing threats from the State or its authorities for their work, attempts to pursue the case domestically are likely to invite further harassment. In such cases this condition would be waived. The measures called for from the States concerned include

As with the treaty bodies' system of 'interim measures', the regional mechanisms' use of precautionary and similar tools, exposes the responsibility that the State has to protect human rights defenders. The State cannot avoid the burden of care by claiming it had no knowledge of the danger the defender was under. It makes it clear that if harm comes to that person, it will be the State, and specifically how far the State attempted to implement the precautionary measures, that will be under scrutiny.

This could be sufficient to motivate the State to either halt its own harassment or persecution of the defender, or to intervene in cases where the threats or harassment are coming from non-State actors.

taking steps to 'guarantee the life and physical integrity' of the human rights defender; and 'to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures'.

These precautionary measures have been requested in many cases where human rights defenders are facing reprisals, including threats in contexts other than their engagement with the Inter-American Commission.^{xxxv} For those defenders facing reprisal in the specific context of cooperation with the Inter-American human rights system, this mechanism is worth pursuing.

'Interim measures' in the European Court of Human Rights work in a similar way to those in the Inter-American Commission. Again, individuals concerned are able to make the request to the Court to require interim measures of a State. The Court's rules of procedure state that interim measures may be required 'in the interest of the parties or of the proper conduct of the

proceedings before [the Court]'. The test in considering whether an application for interim measures should be granted is that there should be a threat of irreparable harm of a 'very serious nature', and the harm must be 'imminent and irremediable'.^{xxxv} The Court's case law has established that interim measures are binding on States, and they are therefore a useful potential resource for human rights defenders, either applicants to the court or lawyers, who engage with the European system, and face threats from State authorities as a result. The Court has been commended for taking an assertive stand in counteracting pressure on lawyers working on the exhaustion of domestic remedies prior to their application to the Court.^{xxxvi}

Similarly, the African Commission on Human and People's Rights has a system of 'provisional measures' which it can request of a State 'to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands'.^{xxxvii} The State party is expected to report back on its implementation of those measures within 15 days.

RELEVANT EXPERTS

The Inter-American Commission has a Rapporteur on human rights defenders who would be the first point of contact for you to report any reprisals you suffer as a result of your engagement or attempted engagement with the Inter-American Commission.^{xxxviii} Submitting a case to the Rapporteur opens up the possibility for the Inter-American Commission to take action. The Commission has a track record of responding to cases reported to it in this way by issuing press releases.

In 2012 it noted how much it 'values the participation of members States of the Organization of American States (OAS), victims, petitioners, and representatives of civil society in hearings and working meetings'. It added however that it 'condemns the threats, reprisals, and actions to discredit against some of the persons that have come to the hearings and working meetings of the IACHR in recent periods of sessions, on the part of both private individuals and, in some cases, high-level State officials'. It urges States to 'adopt all necessary actions to prevent this from happening again'.^{xxxix} In 2011 it gave details of several cases that had come to its attention.^{xxxix} These press releases contribute to shining a light on the State's activities and making it harder for authorities to act with impunity against human rights defenders.

The African Commission on Human and People's Rights also has a Special Rapporteur on human rights defenders, who has been quite active in issuing press releases including to reject acts of reprisal against human rights defenders who attempt to work with the Commission.^{xxxii} The Special Rapporteur is likely to take a lead on shaping the African Commission's response to reprisals, and so it is important that she is fully informed as to the extent of the risks defenders face in engaging with the African Commission.

Within the European system the Commissioner for Human Rights has been charged to monitor States in their observance of their duty to cooperate with the European Court of Human Rights.^{xxxiii} In addition, there is a Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, which has held discussions on the difficulties faced by those who attempt to engage with the Court. The Committee has included in its report of those discussions a listing of cases in which defenders faced threats or harassment as a result of their engagement. The rapporteur of this Committee is therefore also someone to whom defenders could report cases with the intention of having them included in this report.^{xxxiii}

The profiling of your case by a regional body not only serves as a potential source of protection for you but also ensures that the body in question is as fully informed as possible of the extent of the risks defenders face when they attempt to engage with it. The body may then be prompted to ensure that it develops more effective mechanisms for the protection of those who attempt to engage with it.

NATIONALLY

MAKE USE OF THE DIPLOMATIC COMMUNITY IN A COUNTRY

At a national level, which is the level at which defenders in most cases face reprisals as a result of their regional or UN human rights work, the diplomatic community is an important source of protection.

The obligations that States have as members of multilateral human rights fora to ensure safe engagement apply also to their missions abroad. This would apply to any State that operates a mission in your country. However some States have developed specific guidelines for their missions on protection of human rights defenders, and these missions would therefore be particularly responsive to human rights defenders who have faced or are facing reprisals as a result of their engagement with regional or UN human rights systems.

At present the European Union (EU),^{xxxiv} Ireland,^{xxxv} Norway,^{xxxvi} and Switzerland^{xxxvii} have developed guidelines for their diplomats on how to protect human rights defenders in the countries in which their missions operate. The EU guidelines are aimed at the general protection of human rights defenders, but they also specifically aim to support the Human Rights Council and its mechanisms as well as appropriate regional mechanisms. Ireland's guidance reiterates that of the EU and gives information on the specific measures available to protect human rights defenders in Ireland, including the humanitarian visa scheme. Norway frames its own obligations in terms of the international framework for the protection of human rights defenders and suggests too that missions should be a conduit for raising cases in international fora, including the UN, where appropriate.

There is therefore a clear recognition of the importance of the UN system and the need for human rights defenders to be able to engage with it safely and the responsibility States bear in that regard. Switzerland's guidelines include explicit advice for the protection of human rights defenders who are engaging with the UN.

The kind of steps recommended are often tied to attempting to use the profile of diplomatic missions as a source of protection.

- **The EU guidelines on human rights defenders** recommend that missions issue public statements where defenders are at immediate or serious risk. Diplomats should also coordinate closely with defenders and share information with them – such close working relationships can be a source of pro-

tection. To highlight the close connection between a human rights defender and the mission, diplomats are encouraged to receive defenders in the mission, and provide appropriate visibility through for example visiting the defenders' organisation or participating in conferences.

- **Norway's guide** sets out similar measures that its diplomats could take to maintain the visibility of human rights defenders and promote the legitimacy of their work, again, with the warning that the particular circumstances of a case need to be taken into account at all times so as not to place a defender in worse danger. The guide includes advice to diplomats on providing financial and practical assistance to enable a person to access a safe house, to move to another part of the

country, or even another country in the region; as well as, in extremely serious cases, information about assisting a defender to obtain the right to reside in Norway.

If you approach EU, Norwegian, or Swiss missions you should therefore find that you can speak to people who are prepared to take your concerns seriously and respond to them. It would be useful to establish contact with relevant diplomats before reprisals arise so that if it is necessary to ask for help, they will already be familiar with you and your work.

HOW CAN I PROTECT MYSELF OR OTHERS FROM FURTHER REPRISAL?

If you suffer reprisals as a result of cooperating or attempting to cooperate with the UN and regional human rights systems you are unlikely to want to risk further reprisals through continuing that engagement. If you are planning to pursue a case of reprisal through any of the avenues outlined above you should always consider the risks involved through having a case of reprisal made public. While the publicity can serve a protective function, it can also further expose you and make you more vulnerable.

Many of the avenues suggested above already take the safety of the victim into account. For example, OHCHR

will not publish a case in the Secretary-General's report without the explicit permission of the affected persons. However, all cases published do reveal the identity of the individual(s) and organisation(s) involved. OHCHR does not publish anonymous cases. You should however still submit your case even if you prefer that it not be published. This assists the UN in building a true picture of the extent of reprisals, which helps in the development of an appropriate response.

In all cases you can consider submitting your case via a trusted NGO. This will enable you to further protect your identity.

¹United Nations General Assembly, 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights', A/HRC/18/19, 21 July 2011, para.69, available at <http://bit.ly/oA14o1>

²Inter-American Commission for Human Rights, 'IACHR Deplores Reprisals Against Individuals who Come Before the Inter-American Commission', 4 November 2011, available at <http://bit.ly/XTAt6l>

³Parliamentary Assembly of the Council of Europe, resolution 1571, Member States' duty to cooperate with the European Court of Human Rights, para. 7, 2007, available at <http://bit.ly/TEXNOj>

⁴Parliamentary Assembly of the Council of Europe, resolution 1571, Member States' duty to cooperate with the European Court of Human Rights, para. 7, 2007, available at <http://bit.ly/TEXNOj>

⁵African Commission on Human and People's Rights, 104 : Resolution on the Situation of Human Rights Defenders in Africa, available at <http://bit.ly/TEvG0> <http://bit.ly/NunaqR>

⁶These and other cases are contained in: UN Human Rights Council, 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights', report of the Secretary-General, A/HRC/21/18, 2012, para. 56, available at <http://www.bit.ly/NunaqR>

⁷Inter-American Commission for Human Rights, 'IACHR Deplores Reprisals Against Individuals who Come Before the Inter-American Commission', 4 November 2011,

available at <http://bit.ly/XTAt6l>

⁸European Center for Constitutional and Human Rights, Risks for Applicants to the European Court of Human Rights in Chechnya, available at <http://bit.ly/WY6Gxx>

⁹Charles Haviland, 'Sri Lanka minister Mervyn Silva threatens journalists', BBC News, 23 March 2012, available at <http://bbc.in/GHFXvi>

¹⁰UN Human Rights Council, Resolution 16/21, Review of the Work and Functioning of the Human Rights Council, 2011, para. 30, available at <http://bit.ly/12zjF4l> This resolution built on a series of resolutions on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, that have been adopted by the Council since 2009, for example UN Human Rights Council Resolution 12/2 adopted in 2009.

¹¹UN Human Rights Council, 'Summary of the Human Rights Council panel discussion on the issue of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights', A/HRC/22/34, 2012, available at <http://bit.ly/Y0IDMg>

¹²Inter-American Commission on Human Rights, Rules of Procedure, Article 61 on Guarantees, available at <http://bit.ly/XevL5p>

¹³Parliamentary Assembly of the Council of Europe, resolution 1660, The situation of human rights defenders in Council of Europe member states, 2009, available at <http://bit.ly/VPEANd>

¹⁴Parliamentary Assembly of the Council of Europe, resolution 1660, The situation of

INDICATIVE CHECKLIST OF MECHANISMS AND OPTIONS AVAILABLE

SECRETARY GENERAL'S REPORT	 submit cases for inclusion in report and potential discussion in Human Rights Council
UN SPECIAL PROCEDURES	 submit cases to relevant special procedure(s) to trigger the sending of an urgent appeal or issuance of a press release
	 communicate with special procedures prior to or during country visits to have your case included in the mission report or in a press release
TREATY BODIES	 access individual communications procedures to trigger the 'interim measures' procedure
	 access CERD's urgent procedures
PRESIDENT OF THE HUMAN RIGHTS COUNCIL	 approach for an informal meeting to raise a particular case and press for a public statement
EXPERTS WITHIN THE REGIONAL SYSTEMS	 communicate with relevant officials to trigger statements, press releases or inclusion of cases in reports
DIPLOMATS	 build good relationships with diplomats from supportive countries, in particular Norway, Switzerland, and EU countries

human rights defenders in Council of Europe member states, 2009, para. 9, available at <http://bit.ly/VPEaNd>

¹⁰⁴African Commission, Rules of Procedure, Rule 98 Provisional Measures, available at <http://bit.ly/VFKTJ3>

¹⁰⁵Parliamentary Assembly of the Council of Europe, Report of the Committee on Legal Affairs and Human Rights, Doc. 11183, para. 53, 9 February 2007

¹⁰⁶The report's full title is 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights'.

¹⁰⁷UN Human Rights Council, resolution 12/2, available at <http://bit.ly/WM3bu9>

¹⁰⁸ISHR questionnaire for submissions to the Secretary-General's report on reprisals, available from www.ishr.ch

¹⁰⁹A list of the UN experts working on particular countries is available here, <http://bit.ly/WvHR1z> while a list of those working on particular themes can be accessed here <http://bit.ly/KalJPK>

¹¹⁰Forthcoming country visits, available at <http://bit.ly/OlejI>

¹¹¹ISHR, Simple Guide to the Treaty Bodies, available at <http://bit.ly/TEyRlk>

¹¹²Inter-American Commission on Human Rights, Rules of Procedure, Article 25 on Precautionary Measures, available at <http://bit.ly/XevL5p>

¹¹³Organization of American States, Precautionary Measures, available at <http://bit.ly/vZSYKl>

¹¹⁴European Court of Human Rights, Rules of the Court, Rule 39, available at <http://bit.ly/PBCXem>

¹¹⁵Parliamentary Assembly of the Council of European, resolution 1571, Member States' duty to cooperate with the European Court of Human Rights, para. 10, 2007, available at <http://bit.ly/TExN0J>

¹¹⁶African Commission on Human Rights, Rules of Procedure, Rule 98, available at <http://bit.ly/VFKTJ3>

¹¹⁷The current Rapporteur is Mr José de Jesús Orozco Henríquez.

¹¹⁸Inter-American Commission for Human Rights, IACHR Urges the States to Guarantee the Security and Integrity of Persons that Participated in the IACHR Sessions, 8 November 2012, available at <http://bit.ly/WvHfZl>

¹¹⁹Inter-American Commission for Human Rights, IACHR Deplores Reprisals Against Individuals who Come Before the Inter-American Commission', 4 November 2011, available at <http://bit.ly/X7ATeI>

¹²⁰The current Special Rapporteur is Ms Reine Alapini Gansou. <http://bit.ly/12pJqM>

¹²¹Parliamentary Assembly of the Council of Europe, resolution 1571, Member States' duty to cooperate with the European Court of Human Rights, para. 19, 2007, available at <http://bit.ly/TExN0J>

¹²²Parliamentary Assembly of the Council of Europe, Report of the Committee on Legal Affairs and Human Rights, Doc. 11183, Appendix I, 9 February 2007. Mr Christopher Chope is the current Chairperson of the Committee, while Mr Kimmimo Sasi is the current Chairperson of the Sub-Committee on Human Rights.

¹²³EU Guidelines on Human Rights Defenders, available at <http://bit.ly/1Inlx6P>

¹²⁴Guidelines for Irish Embassies and Missions on Human Rights Defenders', available at <http://bit.ly/XColeK>

¹²⁵Norway's efforts to support human rights defenders: guide for the foreign service, available at <http://bit.ly/1InlxDP>

¹²⁶Switzerland's policy on human rights defenders, available at <http://bit.ly/YA7RSI>

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