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ACADEMY IN-BRIEF No. 3

Reprisals against Human Rights Defenders who cooperate with the United Nations System

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Key findings and recommendations

Findings

The protection of human rights defenders when they cooperate with the United Nations (UN) system is essential for the effectiveness and credibility of the human rights mechanisms. This In-Brief reviews the standards and mechanisms that protect human rights defenders against reprisals. This section summarizes the key findings and recommendations of the analysis.

- Human rights defenders are persons who, individually or in association with others, promote and strive for the protection and realization of human rights and fundamental freedoms. This definition is provided by the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Two conditions are imposed on human rights defenders: they must conduct their activities peacefully, and they must accept the universality of human rights. It is not relevant whether the opinions they express are correct or valid.
- The contribution that non-governmental organizations and civil society organizations make to advance, protect and promote human rights is widely recognized. Their contributions to UN processes are based on arrangements made in the 1945 UN Charter and subsequent human rights texts. These arrangements affirm the right to communicate with UN human rights mechanisms.
- As a consequence of this right, individuals (and groups of individuals) who communicate with UN human rights mechanisms are entitled to protection from reprisals.

- ‘Reprisals’ are acts of retaliation for injury or attack. Given that human rights defenders are often accused by states or third parties of ‘injuring’ or ‘attacking’ public institutions or interests, it is important to determine when human rights activities are legitimate, and when it is not permitted to interfere with defenders’ work.
- Acts of reprisals violate a range of human rights. In addition they violate the right to communicate with UN mechanisms. Three binding optional protocols to human rights treaties expressly condemn all acts of intimidation or ill-treatment as a consequence of having communicated with the respective human rights mechanisms.
- Standards for the protection of human rights defenders against reprisals derive from three sources. First, they are affirmed in three optional protocols to human rights treaties: the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the 2002 Optional Protocol to the Convention against Torture, and the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Second, the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms gathers together all agreed UN standards with respect to human rights defenders. Third, political commitments made in the context of the UN Human Rights Council have reaffirmed norms protecting human rights defenders and their activities. Within the UN, two processes are particularly relevant. The treaty body reform process led by the UN General Assembly and the debates taking place at the Human Rights Council seek to propose responses to reprisals. These proposals seek both to protect defenders from acts of reprisal, and punish those who commit such acts.

Recommendations

- *States may introduce additional procedures to identify reprisals precisely, sanction them effectively, and protect human rights defenders (and their families and associates) when they cooperate with the UN system. In this regard, it will be necessary to further clarify the notion of reprisals, the scope of protection against them, and the burden of proof required. Human rights treaty provisions that explicitly address reprisals could be a starting point for such efforts.*
- *Action to address reprisals should focus on two aspects. It should establish the principle that every person is entitled to communicate with UN mechanisms, including human rights mechanisms. Second, norms and mechanisms that protect individuals from violence, threats of violence, harassment, and constraints on freedoms of opinion, expression and association should specifically address reprisals against individuals who cooperate with the UN system.*
- *Several procedural and institutional responses to reprisals have been proposed.*
 - *To strengthen judicial efforts to investigate reprisals, develop procedures that make it possible to respond immediately when reprisals are alleged.*
 - *Create programmes to protect victims of reprisals following the model of national witness programmes. Establish national and international focal points, authorized to collect information on alleged reprisals, investigate their occurrence, and take action when they occur.*
 - *To support such initiatives, draft and disseminate guidelines that indicate how cases of reprisal should be identified and addressed.*
 - *Elaborate guarantees to ensure that reprisal allegations are managed quickly and appropriately.*

Introduction

Non-governmental organizations (NGOs) participated in the drafting process of the 1945 United Nations (UN) Charter. They influenced the inclusion in the UN Charter of provisions which recognized that the promotion of human rights was one of the purposes of the UN (Article 1(3) and Articles 55 and 56) and set conditions for NGO participation (Article 71).¹ As human rights defenders, NGOs have helped set the agenda, and formulate and implement human rights policies in numerous UN processes.² For instance, campaigns against torture led by Amnesty International significantly influenced not only the adoption of international norms prohibiting torture, but also institutional developments such as the establishment of the special procedure on torture in 1985 under the auspices of the UN Commission on Human Rights.³ More recently, the Optional Protocol on Economic, Social and Cultural Rights benefited substantively from the drafting contributions of the International NGO Coalition for an Optional Protocol.

The role assumed by NGOs in protecting and promoting human rights was recognized in the outcome document of the World Conference on Human Rights held in Vienna in 1993.⁴ The Vienna Declaration and Programme of Action encouraged States and international organizations to cooperate with NGOs 'to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights'.⁵ It also stated that NGOs should enjoy all the rights and freedoms stipulated in the 1948 Universal Declaration of Human Rights (UDHR) as well as protection under domestic law. It affirmed that NGOs should be free to carry out their human rights activities without interference, provided they respect national law and the UDHR and pursue the objectives of the UN.⁶

1 P. Willetts, 'Consultative Status for NGOs at the United Nations', in P. Willetts (ed.), *The Conscience of the World. The Influence of Non-Governmental Organisations in the UN System*, The Brookings Institution, Washington DC, 1996, pp. 31–62.

2 N. S. Rodley, 'Human Rights NGOs: Rights and Obligations (Present Status and Perspectives)', in T. van Boven, C. Flinterman, F. Grünfeld, and R. Hut (eds.), *The Legitimacy of the United Nations: Towards an Enhanced Legal Status of Non-State Actors*, SIM Special No. 19, Utrecht, 1997, pp. 41–60; C. Price Cohen, 'The United Nations Convention on the Rights of the Child: Involvement of NGOs', SIM Special No. 19, 1997, pp. 169–84.

3 N. S. Rodley, "Human Rights NGOs", pp. 41, 43.

4 'Vienna Declaration and Programme of Action', UN General Assembly, UN doc. A/CONF.157/23, 12 July 1993 (hereafter, Vienna Declaration and Programme of Action), §§ 1.38, II.52.

5 Vienna Declaration and Programme of Action, §I.13.

6 *Ibid.*, §I.38.

In the 2000 Millennium Declaration states resolved 'to give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the [UN's] goals and programmes'.⁷ Building on this momentum, in 2004 the UN Secretary-General set up a panel of experts⁸ who made recommendations on how to strengthen UN interaction with NGOs and civil society.⁹ The 2005 World Summit Outcome also recognized the contribution of NGOs and civil society organizations.¹⁰

This In-Brief reviews the standards and mechanisms that protect human rights defenders against reprisals that occur because they cooperate with UN human rights mechanisms. The report is divided into four main sections. Section 1 explains the term 'human rights defender'. Section 2 analyzes the right to communicate with UN human rights mechanisms, including those established under the UN Charter and those established by human rights treaty bodies. Section 3 discusses the notion of reprisals and their status as a violation of human rights in international law. Section 4 assesses the framework of protection of human rights defenders, as articulated in human rights treaties, the Human Rights Council, and the 1998 Declaration on the Right and Responsibility of Individuals to Protect and Promote Human Rights and Fundamental Freedoms. A set of conclusions and recommendations completes the document.

⁷ UN General Assembly Resolution 55/2, 'United Nations Millennium Declaration', 8 September 2000, §30.

⁸ 'Report of the Panel of Eminent Persons on United Nations-Civil Society Relations', UN General Assembly, UN doc. A/58/817, 11 June 2004.

⁹ 'Report of the Secretary-General in Response to the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations', UN General Assembly, UN doc. A/59/354, 13 September 2004.

¹⁰ General Assembly Resolution 60/1, 2005 World Summit Outcome, 24 October 2005, §§172-5.

Human rights defenders

The UN human rights treaties do not contain criteria for identifying individuals or groups as human rights defenders. The only instrument that provides guidance in this regard is 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, adopted by the UN General Assembly in 1998 (hereafter, 1998 Declaration on the Right and Responsibility of Individuals).¹¹

The Declaration states that human rights defenders are persons who, individually or in association with others, promote and strive for the protection and realization of human rights and fundamental freedoms at national and international level.¹² They are identified by their activities and by the context in which these activities are conducted.¹³ These activities can be related to specific human rights (to life, to food, to housing, to health, or to education, for example), to human rights concerns (forced evictions, discrimination, or unemployment), or to categories of persons (women, children, minorities, or indigenous people). The activities may be undertaken locally, nationally, regionally or internationally.

Defenders may be of any gender, age, or background, and hold any occupation (including public office). Whenever individuals act to protect or promote human rights, they can be categorized as human rights defenders. In this sense, it is irrelevant whether: (a) the activity is remunerated or not; (b) the name of the organization or the title of the person refers to human rights; (c) the person acts in a professional or non-professional context; (d) the person possesses a specific qualification to work on human rights issues; (e) the activity is permanent or occasional.¹⁴

11 General Assembly, Resolution 53/144, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', 8 March 1999.

12 1998 Declaration on the Right and Responsibility of Individuals, Art. 1.

13 Office of the High Commissioner for Human Rights, Fact Sheet No. 29, *Human Rights Defenders: Protecting the Right to Defend Human Rights*, (hereafter, OHCHR Fact Sheet No. 29), April 2004, p. 2.

14 OHCHR Fact Sheet No. 29, pp. 6–8.

How human rights defenders conduct their activities is decisive. The 1998 Declaration on the Right and Responsibility of Individuals specifies, first, that human rights defenders must conduct their activities peacefully and, second, that human rights defenders must accept the universality of human rights, even if their work focuses only on certain rights.

The spectrum of activities that human rights defenders may undertake includes the right 'to form, join, participate in non-governmental organizations, associations, or groups', as well as the right 'to communicate with non-governmental or intergovernmental organizations'.¹⁵

The opinions or arguments held or advanced by individuals need not be correct or valid in order for them to qualify as human rights defenders. The essential question is whether a person seeks to act to protect or promote human rights.¹⁶

¹⁵ 1998 Declaration on the Right and Responsibility of Individuals, Art. 5.

¹⁶ OHCHR Fact Sheet No. 29, p. 9.

The right to communicate with UN human rights mechanisms

The UN is an intergovernmental organization. Member states have agreed specific arrangements for the participation of actors other than states in UN activities, including human rights. If they fulfil certain formal requirements, NGOs are therefore entitled to participate in the meetings and activities of UN human rights processes and mechanisms, or at least to submit information to them. Individuals may submit information to UN human rights mechanisms provided their mandates make provision for doing so.

The right to participate in UN human rights mechanisms

NGOs may conduct human rights activities anywhere - domestically, regionally, or internationally. Whatever the scope of their activities, however, their legal status is defined by domestic law.¹⁷ At the same time, NGOs are entitled to participate in international mechanisms under conditions defined by the UN Charter or human rights treaties.

The key provision that permits NGOs to cooperate with UN human rights mechanisms is Article 71 of the Charter. This stipulates that:

[T]he Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with the international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.¹⁸

¹⁷ B. Simma, D.E. Khan, G. Nolte, and A. Paulus (eds.), *The Charter of the United Nations*, Oxford University Press, Oxford, (hereafter, B. Simma, *The Charter of the United Nations*), 2012, p. 1794.

¹⁸ UN Charter, Art. 71.

This provision provides the legal basis for the consultative relationship between the Economic and Social Council (ECOSOC) and NGOs, which is regulated in further detail by ECOSOC Resolution 1296 (XLIV) of 1968,¹⁹ subsequently amended by Resolution 1996/31.²⁰

According to Article 71 of the UN Charter, arrangements for consultative status are primarily designed for international NGOs. Domestic organizations may seek consultative status but the UN member states in which they are located must be consulted in advance. In line with Article 71, ECOSOC Resolution 1296 also emphasized the international character and structure of NGOs with consultative status. Amendments introduced in 1996 created more opportunities for domestic and regional NGOs to acquire consultative status.²¹

Only ECOSOC is mandated to attribute consultative status,²² for the purpose of assisting ECOSOC and its subsidiary organs to do their work.²³ Depending on their nature, the scope of their activities, and the contribution they expect to bring to ECOSOC's work, NGOs can apply either for general or special consultative status, or for listing on the Roster (see below). General consultative status is granted to organizations that demonstrate they can make a substantive and sustained contribution to ECOSOC's work and represent significant numbers of people in many societies. This status entitles organizations, *inter alia*: to propose items for ECOSOC's agenda; sit as observers in its public meetings, committees, and sessional bodies; and submit written contributions. The status does not confer the right to intervene in discussions.

Organizations that have particular competence in fields of activity (among those included in the mandate of ECOSOC and its subsidiary bodies) may request special consultative status. Human rights organizations fall in this category. Special consultative status gives rise to fewer entitlements than general consultative status.

The Roster is a list of organizations that do not have general or special consultative status but can make occasional useful contributions to the work of ECOSOC or its subsidiary bodies, or other UN bodies. Listing does not qualify an organization for consultative status with ECOSOC.

¹⁹ Economic and Social Council (ECOSOC) Resolution 1296 (XLIV), 'Consultative Arrangements', 23 May 1968.

²⁰ ECOSOC Resolution 1996/31: 'Consultative Relationship between the United Nations and Non-governmental Organizations', 25 July 1996.

²¹ ECOSOC Resolution 1996/31.

²² B. Simma, *The Charter of the United Nations*, p. 1791.

²³ ECOSOC Resolution 1996/31, §18.

Consultative status must be requested and may be refused. NGOs which obtain it undertake to conform at all times to the principles and nature of their consultative relations with ECOSOC.²⁴ The Council periodically evaluates their compliance,²⁵ and may suspend or withdraw an NGO's consultative status.²⁶

Several pathways, in addition to the ones offered by ECOSOC, permit NGOs to cooperate with the UN or participate in UN intergovernmental processes.

ECOSOC Resolution 1996/31 states that accreditation for participation in international conferences is a prerogative of UN member states, but that NGOs which have consultative status (or are listed on the ECOSOC Roster) will be accredited 'as a rule'. In a similar manner, the General Assembly accords consultative status at its meetings to NGOs that have consultative status with ECOSOC or are on ECOSOC's Roster.²⁷ However, other organizations that have relevant expertise may apply to the Secretariat of the Conference for accreditation.²⁸ To be accredited, they must meet a number of conditions, and their application may be refused.

An NGO that is accredited to attend a UN conference is entitled to attend preparatory committees, including meetings of regional commissions, all sessions, and the conference itself.²⁹ NGOs may address preparatory committees and the conference in plenary meeting, as well as subsidiary bodies, with the consent of those bodies or their chairpersons.³⁰ Accredited NGOs are not entitled to participate in negotiation.³¹ Unlike consultative status with ECOSOC, accreditation to UN conferences and similar events does not give rise to a continuing relationship with the UN, though it generates opportunities to participate and lobby informally.

Another pathway to cooperation is provided by the General Assembly resolution that established the Human Rights Council.³² This states that national human rights institutions and NGOs may participate in regular and special sessions of the Council, based on the arrangements established by ECOSOC and the practice

²⁴ *Ibid.*, §55.

²⁵ *Ibid.*, §61(c).

²⁶ *Ibid.*, §57.

²⁷ General Assembly Resolution 606 (VI), 'Application of the Headquarters Agreement to Representatives of Non-Governmental Organizations', 1 February 1952.

²⁸ *Ibid.*, §§41, 42.

²⁹ ECOSOC Resolution 1996/31, §49.

³⁰ *Ibid.*, §51.

³¹ *Ibid.*, §50.

³² General Assembly, Resolution 60/251, On the *Human Rights Council*, A/RES/60/251, 15 March 2006.

of the former UN Commission on Human Rights.³³ NGOs that meet accreditation requirements may participate in the Council's sessions as observers. This status entitles them to: submit written statements to the Council; make oral interventions on substantive agenda items; participate in debates, interactive dialogues, and panel discussions; and organize 'parallel events' on issues relevant to the Council.³⁴ Every subsidiary mechanism of the Human Rights Council echoes its procedure and rules.

Accordingly, the Universal Periodic Review is required to ensure that all relevant stakeholders are in a position to participate, including national human rights institutions and NGOs that are entitled to accreditation by virtue of General Assembly Resolution 60/251, ECOSOC consultative status, or relevant decisions of the Council.³⁵ On the same principle, national human rights institutions, NGOs, and civil society bodies are entitled to participate in the work of the Advisory Committee of the Human Rights Council;³⁶ while the Expert Mechanisms on the Rights of Indigenous Peoples,³⁷ the Forum on Minority Issues,³⁸ the Social Forum,³⁹ and the Forum on Business and Human Rights⁴⁰ permit NGOs to participate if they have ECOSOC consultative status. NGOs must meet the same requirements if they wish to participate in Working Groups of the Human Rights Council, or take part in interactive dialogues between special procedures mandate-holders and states.

33 General Assembly, Resolution 60/251, §11. See also: Human Rights Council Resolution 5/1, 'Institution-building of the United Nations Human Rights Council', 18 June 2007, §§123, 125.

34 OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, 2008, p. 102.

35 Human Rights Council Resolution 5/1, Annex, 'United Nations Human Rights Council: Institution-building, Universal Periodic Review Mechanism', Art. 3(m).

36 *Ibid.*, Arts. 82 and 83.

37 Human Rights Council Resolution 6/36, 'Expert Mechanisms on the Rights of Indigenous Peoples', 14 December 2007, §9.

38 Human Rights Council Resolution 6/15, 'Forum on Minority Issues', 28 September 2007, §2.

39 Human Rights Council Resolution 6/13, 'The Social Forum', 28 September 2007, §10.

40 Human Rights Council Resolution 17/4, 'Human Rights and Transnational Corporations and Other Business Enterprises', 6 July 2011.

The human rights treaties do not specify that NGOs are entitled to participate in the sessions of treaty bodies. Under their rules of procedure, however, some treaty bodies invite NGOs with ECOSOC consultative status to make written statements during pre-sessional working groups.⁴¹

NGOs without consultative status may submit written statements only if these are endorsed by an NGO having such status. Only NGOs in consultative status and NGOs with accreditation may attend the sessions of the treaty bodies and do so as observers. They may intervene during sessions that debate the elaboration of general comments and during Days of General Discussion; and may organize parallel events.

The right to submit information to UN human rights mechanisms

The arrangements of UN mechanisms vary, and the right to submit information may be subject to certain formal requirements. NGOs may cooperate with the UN Security Council or UN Secretary-General on the basis of specific regulations governing their participation, and do not necessarily require ECOSOC consultative status or accreditation.

The Provisional Rules of Procedure of the Security Council permit NGOs to submit written contributions, at the Council's request, on matters within its competence.⁴² Although permanent members of the Security Council have consistently opposed proposals to allow NGOs to contribute directly, the NGO Working Group on the Security Council (composed of high-level representatives of NGOs working on subjects the Council addresses) collaborates closely with individual Council members.⁴³ Security Council members have also developed 'Arria-formula

⁴¹ Committee on Economic, Social and Cultural Rights, *Rules of Procedure of the Committee*, UN doc. E/C.12/1990/4/Rev.1, 1 September 1993, Rule 69; Committee on the Elimination of Discrimination against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination against Women*, UN doc. A/56/38 (SUPP) as amended by UN doc. A/62/3 (SUPP), Rule 47. See also: Economic and Social Council, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights. NGO Participation in the Activities of the Committee on Economic, Social and Cultural Rights*, UN doc. E/C.12/2000/6, 7 July 2000.

⁴² *Provisional Rules of Procedure of the Security Council*, UN Security Council, UN doc. S/96/Rev.7, Appendix, 1983.

⁴³ B. Simma, *The Charter of the United Nations*, p. 1808.

meetings⁷, informal and confidential discussions that are not an official activity but to which NGO representatives may be invited by the Security Council member who convenes the event.⁴⁴

The Secretary-General is authorized to offer NGOs certain facilities (to distribute documents, for example, and make press materials, UN libraries and conference facilities available). The Vienna Declaration and Programme of Action also invited NGOs to submit information to the Secretary-General on implementation of the outcome document.⁴⁵ Responding to the Human Rights Council's invitation, many NGOs submitted information to the UN Secretary-General for his reports on cooperation with UN mechanisms.⁴⁶

With respect to human rights mechanisms, several provisions entitle NGOs to submit information even if they lack ECOSOC consultative status or formal standing.

In the context of the Human Rights Council, all NGOs may: submit information under the complaints procedure; nominate candidates to special procedures mandates;⁴⁷ and cooperate broadly with special procedures mandate-holders. Under the complaint procedure, the Human Rights Council may receive communications on human rights violations submitted either by individuals or groups of persons claiming to be victims of the violations in question, or by any person or group of persons (including NGOs) that claims to have direct, reliable knowledge of such violations.⁴⁸ The right of NGOs to submit communications to the Human Rights Council must be exercised in good faith, on the basis of direct and reliable knowledge of the violations concerned, not for politically motivated purposes that are contrary to the provisions of the UN Charter.⁴⁹

The Human Rights Council also appoints human rights experts to implement its thematic and country procedures. The mandates of special procedures stipulate how NGOs, civil society organizations, national human rights institutions, and individuals and their representatives, may participate in their work.⁵⁰ The above

⁴⁴ Note by the President of the Security Council, UN doc. A/2006/507, §54.

⁴⁵ Vienna Declaration and Programme of Action, §100.

⁴⁶ Human Rights Council Resolution 12/2, 'Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights', 12 October 2009.

⁴⁷ Human Rights Council Resolution 5/1, §42.

⁴⁸ *Ibid.*, §87(d).

⁴⁹ *Ibid.*, §87(d).

⁵⁰ For the mandates of each special procedure, see: www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx. See also: Human Rights Council Resolution 5/2, 'Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council', 18 June 2007.

actors may submit individual cases or provide information and analysis on human rights issues at any time, whether or not they have ECOSOC consultative status or formal standing. They can make these contributions in the context of the mandate holders' annual reports to the Human Rights Council and General Assembly; in the form of individual communications on alleged violations of human rights; in the context of country visits or NGO consultations; or in the course of inviting mandate-holders to take part in their own activities.

Human rights treaties do not explicitly state that human rights defenders may communicate with treaty monitoring bodies. However, they authorize the monitoring bodies to adopt their own rules of procedure, and in certain cases these indicate that Committees may invite relevant organs to submit information.⁵¹ Information may be submitted to the reporting procedures of treaty bodies and their optional protocols; to their individual communications procedures; to their inquiry procedures; and, in the case of the Committee on the Elimination of Racial Discrimination, to its early warning and urgent action procedure.

Under their rules of procedure, some treaty bodies can invite NGOs and other civil society organizations to submit information, documentation or written statements relevant to the Committees' activities.⁵² The Rules of Procedure of the Committee on Economic, Social and Cultural Rights state that NGOs may submit oral information during pre-sessional working groups even if they lack consultative status.⁵³ As a result, a wide range of NGOs can present parallel reports or other information to that Committee when it considers periodic reports.

In some cases, the rules of procedure do not specifically refer to cooperation with NGOs or other actors. This is true of both the Human Rights Committee and the Committee on the Rights of the Child. To address this omission, the Human Rights Committee issued a statement recognizing the role of NGOs in its work.

51 2006 International Convention on the Protection of All Persons from Enforced Disappearance, (hereafter, 2006 Convention on Enforced Disappearance), in UN doc. A/61/488, C.N.737/2008, Art. 28; 1979 Convention on the Elimination of All Forms of Discrimination against Women, Art. 22; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 74(4); and the 2002 Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereafter, OPCAT), Art. 11(c).

52 Committee against Torture, 'Rules of Procedure', UN doc. CAT/C/3/Rev.5, 21 February 2011, Rule 63(1).

53 Committee on Economic, Social and Cultural Rights, 'Rules of Procedure', Rule 69(2); Committee on Migrant Workers, 'Rules of Procedure', UN doc. HRI/GEN/3/Rev.1/Add.1, 7 May 2004, Rule 28; Committee on Enforced Disappearance, 'Provisional Rules of Procedure', UN doc. CED/C/1/R.1/Rev.1, Rules 44(2) and (3); Committee on the Rights of Persons with Disabilities, 'Rules of Procedure', UN doc. CRPD/C/4/2, 13 August 2010, Rules 52 and 83(3)(e); Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Rules of Procedure', UN doc. CAT/OP/12/3, 5 January 2011, Rule 29.

It acknowledged the value of NGO alternative reports and NGO comments on state party reports, and the usefulness of their oral information, written replies to the list of issues, and contributions to the elaboration of general comments. The statement encouraged NGOs to engage in follow-up activities.⁵⁴

Several UN agencies create opportunities for NGOs to cooperate on matters that fall under their mandates.⁵⁵ The constitutive instruments of some specialized agencies, including the Food and Agriculture Organization (FAO)⁵⁶ and the International Labour Organization (ILO),⁵⁷ set out the terms on which they will consult NGOs. Cooperation may be formal or informal, operational or field-orientated, or focused on policy-formation.⁵⁸

54 Human Rights Committee, *The Relationship of the Human Rights Committee with Non-governmental Organizations*, CCPR/C/104/3, 4 June 2012.

55 Constitution of the UN Educational, Scientific and Cultural Organization (UNESCO), New York, 16 November 1945, in *UN Treaty Series*, Vol. 4, p. 275, Art. IX(4); Constitution of the UN Industrial Development Organization (UNIDO), New York, 8 April 1979, in *UN Treaty Series*, Vol. 1401, p. 3, Art. 19(1) (b); Constitution of the World Health Organization (WHO), New York, 22 July 1946, in *UN Treaty Series*, Vol. 14, p. 185, Art. 71; Constitution Establishing the World Intellectual Property Organization (WIPO), New York, 14 July 1967, in *UN Treaty Series*, Vol. 828, p. 3, Art. 13(2); Constitution of the World Meteorological Organization (WMO), New York, 11 October 1947, in *UN Treaty Series*, Vol. 77, p. 143, Art. 26(b).

56 Constitution of the FAO, New York, 16 October 1945, in *UN Treaty Series*, Vol. 559, p. 348, Art. XIII(4).

57 Constitution of the ILO, New York, 10 May 1944, in *UN Treaty Series*, Vol. 35, p. 106, Art. 12(3). 'The International Labour Organization may make suitable arrangements for such consultation as it may think desirable with recognized non-governmental international organizations, including international organizations of employers, workers, agriculturalists and cooperators.'

58 'Report of the Secretary-General', Open-Ended Working Group on the Review of Arrangements for Consultations with Non-Governmental Organizations, UN Doc. E/AC.70/1994/5, 26 May 1994.

Reprisals against human rights defenders

The definition of measures of reprisal

The ordinary meaning of ‘reprisal’ is ‘an act of retaliation for some injury or attack’.⁵⁹ In international law, the term normally designates measures (that would ordinarily be unlawful), which are adopted in response to unlawful behaviour that generates injury.⁶⁰ In international human rights law, the term ‘reprisals’ designates measures that are taken with the intention to deter or punish individuals who have opposed legislative or policy frameworks adopted by public authorities. This last use of the term can create confusion because it may be assumed that retaliation is a response to unlawful behaviour, legitimizing measures of punitive retaliation which public authorities take without respect for judicial guarantees.

For these reasons, some prefer to speak of ‘sanction’⁶¹ or ‘reprimand’. The Optional Protocol to the Convention against Torture (OPCAT) has used the former term,⁶² while the Committee on Migrant Workers the latter.⁶³ However, these formulations do not escape criticism either.

‘Sanction’ implies the commission of a prior offence. Both sanctions and reprisals may be taken on the basis of a formal procedure endorsed by public authorities, which may be arbitrary. Unlike a sanction, a reprisal may be inflicted by both public and private actors. In terms of law, in addition, sanctions are grounded

⁵⁹ *Oxford English Dictionary*, Third Edition, 1964.

⁶⁰ The term ‘reprisal’ is usually associated with a state mechanism, also known as ‘countermeasures’, in which an injured state seeks to re-establish the legal relationship disrupted by the commission of an internationally wrongful act by another State. The regime of countermeasures is set out in Article 22 and Articles 49–54 of the International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001. For a commentary, see J. Crawford, *The International Law Commission’s Articles on State Responsibility. Introduction, Text and Commentaries*, CUP, Cambridge, 2005.

⁶¹ Association pour la prevention de la torture, ‘Mitigating the Risks of Sanctions Related to Detention Monitoring’, Briefing No. 4, January 2012.

⁶² OPCAT, Art. 15.

⁶³ Committee on Migrant Workers, General Comment No. 1 on Migrant Domestic Workers, UN doc. CMW/C/GC/1, 23 February 2011, §13(c).

in domestic criminal or administrative law, whereas reprisals engage a broader range of domestic norms and regulatory legislation, on freedom of association, the status of NGOs and civil society organizations, and the financing of private organizations.

Reprisals against human rights defenders as human rights violations

In many states, victims of human rights violations do not receive effective remedies and perpetrators are not prosecuted or punished. When individuals or civil society organizations denounce such violations, domestically or internationally, their actions are often met with threats, intimidation, or attacks on the individuals concerned, members of their families, witnesses, lawyers, judges, or other persons involved.⁶⁴ States have an obligation to ensure that all individuals can freely communicate with UN mechanisms. This obligation is breached when a state does not create an environment that is conducive to human rights activities, as set out in human rights treaties and the 1998 Declaration on the Right and Responsibility of Individuals.

Acts of reprisal may breach this obligation. Additionally, acts of reprisal may violate a wide variety of human rights norms, including the rights to life and due process, the rights to freedom of association and expression, reproductive and health rights, and the prohibition of sexual harassment, rape, extrajudicial killings or enforced disappearances, and torture and degrading treatment.⁶⁵

Detailed illustrations of violations that have been associated with forms of reprisal are listed below. They are drawn from UN reports issued by treaty bodies and special procedures, notably the Special Representative of the Secretary-General on human rights defenders (now titled the Special Rapporteur on the situation of human rights defenders).

⁶⁴ 'Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission Resolution 2000/61', UN Commission on Human Rights, UN doc. E/CB.4/2001/94, 26 January 2001, §§65-84.

⁶⁵ See 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §§56-7; and 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §§80-94.

The key point is that a state violates international law norms if it commits an act of violence against, or intimidates, or curtails the rights of, a human rights defender, a member of his or her family, or other individuals, because of the defender's human rights work.

The rights of human rights defenders are also breached if a state fails to investigate threats and acts of intimidation; fails to provide or ensure reparation and effective remedy; or fails to prosecute third party reprisals, thereby encouraging a climate of impunity and arbitrariness.⁶⁶

Reprisals as violations of the right to communicate with UN human rights mechanisms

The right to communicate with the UN system is not protected as such in the human rights treaties and related optional protocols. Instead, these emphasise that states must protect individuals who exercise their right to communicate alleged violations from acts of intimidation, ill-treatment, violence or coercion. This language is complemented by the approach taken in the 1998 Declaration on the Right and Responsibility of Individuals.

Treaty-based guarantees of the right to communicate with the UN system

Some human rights treaties state that states parties must protect individuals who have denounced human rights violations. Article 13 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) declares that, when allegations of torture are made, the complainant and related witnesses must be protected against ill-treatment or intimidation that is motivated by a complaint or evidence given in support of a complaint. Article 16 of CAT sets out a corresponding obligation to ensure petitioners and witnesses are protected in cases of alleged cruel, inhuman, or degrading treatment or punishment. In addition, the Committee against Torture has signalled that the right to communicate must be respected and protected when individuals (including victims, their families, witnesses, journalists, lawyers, medical experts, and human

⁶⁶ 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/56/341, 10 September 2001, §§11-5; 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2003/104, 3 January 2003, §18.

rights defenders) provide information to the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment during country visits.⁶⁷ All forms of harassment and intimidation, including the closure of NGOs who had engaged with the Special Rapporteur, breach obligations associated with the right to communicate.⁶⁸

The Committee against Torture argued in 2012 that public authorities fail to respect the right of petition when they intimidate, or seek to intimidate, complainants or their families or representatives.

In the Communication *Gerasimov v. Kazakhstan*, the Committee found that the applicant had withdrawn a complaint alleging torture in detention because pressure had been brought on his family. Judging that the withdrawal letter may not have been prepared voluntarily, it concluded that the state had unlawfully interfered with the complainant's right of petition.⁶⁹ In another case, *Hanafi v. Algeria*, the same Committee held that states parties must guarantee the right of petition to everyone. States must also ensure, not just that every individual is able to exercise the right, but that access to it is not restricted or withdrawn.⁷⁰ The Committee found that a state party would violate the right of petition if it put pressure on other individuals to withdraw their testimony in support of a complainant's communication.⁷¹

In its Concluding Observations on the periodic report of Tajikistan, the Committee requested Tajikistan to protect complainants and civil society organizations from ill-treatment, intimidation or reprisals that they might suffer as a consequence of their complaint, and to take appropriate disciplinary or criminal measures against law enforcement officials responsible for such acts.⁷² In its Concluding Observations to the periodic report of the Russian Federation, the Committee requested the Russian Federation to ensure that no individual or group was subject to prosecution for communicating with, or providing information to, the Committee

67 Committee Against Torture, 'Concluding Observations: Tajikistan', UN doc. CAT/C/TJK/CO/2, 21 January 2013, §15.

68 Committee Against Torture, 'Concluding Observations: Turkmenistan', UN doc. CAT/C/TKM/CO/1, 15 June 2011, §13; 'Concluding Observations: Russian Federation', UN doc. CAT/C/RUS/CO/5, 11 December 2012, §12(c). The Committee expected the states in question "to ensure the prompt, impartial and thorough investigation of such acts and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts".

69 Committee against Torture, *Gerasimov v. Kazakhstan*, Decision (Comm. No. 433/2010), 24 May 2012, §11.3, 12.10.

70 Committee against Torture, *Hanafi v. Algeria*, Decision (Comm. No. 341/2008), 3 June 2011, §9.8.

71 *Ibid.*

72 *Ibid.*, §15.

against Torture, the Sub-Committee on Prevention of Torture, the United Nations Voluntary Fund for Victims of Torture, or other UN human rights organs.⁷³

Three of the human rights treaties, through their optional protocols, explicitly state that individuals who collaborate with the relevant treaty bodies should be protected from reprisal.⁷⁴ These optional protocols stem from the 1993 Vienna Declaration and Programme of Action, which sought to strengthen responses to human rights violations and consolidate the institutional framework for protecting human rights.⁷⁵

The 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women states that ‘a State Party must take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol’.⁷⁶ The 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights mirrors the wording of the Optional Protocol to CEDAW.⁷⁷ Article 15 of the 2002 Optional Protocol to the Convention against Torture (OPCAT) provides that:

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 21 of OPCAT replicates the prohibition of sanctions against individuals who cooperate with national preventive mechanisms brought into being under OPCAT.⁷⁸

Article 15 of OPCAT prohibits any authority or official to order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether

⁷³ Committee Against Torture, ‘Concluding Observations: Russian Federation’, UN doc. CAT/C/RUS/CO/5, 11 December 2012, §12(b).

⁷⁴ 1993 Vienna Declaration and Programme of Action, §§40, 61, 75.

⁷⁵ This observation does not include the 2011 Optional Protocol to the Convention on the Rights of the Child on a communication procedure, because it is not yet in force. However, this instrument contains a provision which requires states to take “all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol” (Article 4).

⁷⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, New York, 6 October 1999 (hereafter, Optional Protocol to CEDAW), Art. 11.

⁷⁷ 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Art. 13.

⁷⁸ OPCAT, Article 21 (full reference for OPCAT at footnote 53).

true or false; no such person or organization must suffer prejudice. The prohibition does not focus on the content or accuracy of information provided, but on the act of communicating to the Subcommittee or its delegates.

Additionally, all states parties must investigate whether reprisals occur following a visit, and take urgent action to protect persons who are harmed as a result.⁷⁹ The Subcommittee has emphasized this obligation after several country visits.⁸⁰ It has also invoked Article 15 of OPCAT to request states parties to take measures to protect from reprisal detainees who have collaborated with the Subcommittee.⁸¹

Article 15 of OPCAT prohibits states from imposing *any* sanction on individuals for having communicated with the Subcommittee on Prevention of Torture.⁸² The scope of this prohibition may be clarified if it is set against Article 1 of CAT, which states that the imposition of *lawful* sanctions does not amount to torture, or other cruel, inhuman or degrading treatment or punishment.⁸³ The Committee's analyses of state party reports show nevertheless that it has been difficult to establish what constitutes 'lawful sanction' within the meaning of Article 1 of CAT. The Committee has been unwilling to produce a broad interpretation of its scope.⁸⁴ In some instances it has avoided making explicit reference to 'lawful sanctions'; at the same time it has asserted that certain forms of punishment are incompatible with CAT, even if they have been authorized in domestic laws and applied using legally-authorized procedures. Flogging, amputation of limbs, and

⁷⁹ Committee Against Torture, 'Second Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', UN doc. CAT/C/42/2, 7 April 2009, §32.

⁸⁰ Subcommittee on Prevention of Torture, 'Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay', UN doc. CAT/OP/PRY/1, 7 June 2010, §§99-102, 141-4, 217-8; 'Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives', UN doc. CAT/OP/MDV/1, 26 February 2009, §122; 'Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras', CAT/OP/HND/1, 10 February 2010, §258.

⁸¹ See, for example: Subcommittee on Prevention of Torture, 'Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay', UN doc. CAT/OP/PRY/1, 7 June 2010, §§225-6.

⁸² Emphasis added.

⁸³ Art. 1 of CAT excludes from the prohibition of torture 'pain or suffering arising only from, inherent in or incidental to lawful sanctions'. The drafting history of this provision, subsequent interpretations by the Committee against Torture, and academic analyses, disagree on the purpose and usefulness of the article's reference to lawful sanctions. See: A. Boulesbaa, *The U.N. Convention on Torture and the Prospects for Enforcement*, Martinus Nijhoff, The Hague, 1999; H. J. Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Martinus Nijhoff, Dordrecht, 1998; and Sir Nigel Rodley, *The Treatment of Prisoners under International Law*, Second Edition, Oxford University Press, Oxford, 1999.

⁸⁴ C. E. Faria Coracini, 'The Lawful Sanctions Clause in the State Reporting Procedure before the Committee against Torture', 24 (2006) *Netherlands Quarterly of Human Rights*, No. 2, pp. 305-18.

other forms of corporal punishment are examples of punishments that it considers are incompatible with the Convention.⁸⁵

The 1955 Standard Minimum Rules on the Treatment of Prisoners also sheds light on sanctions that cannot be applied to detainees.⁸⁶ Article 31 of the Rules prescribes that ‘corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.’ Article 32(2) states that ‘the same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner’.

At least to a degree, therefore, a comparative reading of Article 15 of OPCAT and Article 1 of CAT supports the restrictive approach that OPCAT has adopted, and its categorical prohibition of any sanction imposed on individuals for having cooperated with the Subcommittee on Prevention. The right to communicate with the Subcommittee is protected *per se*. It does not depend on procedural rights related to arbitrariness or fair trial guarantees. This is clearly recognized in that states parties must give the Subcommittee complete freedom to choose which places of detention it visits and who it interviews.⁸⁷ The Subcommittee’s commitment to ensuring that detainees are able to communicate freely with it would evidently be frustrated if detainees who spoke to the Subcommittee subsequently faced reprisals.

When officials abuse their authority or act *ultra vires*, a state has responsibility with respect to actions they have taken or failed to take (omissions and forms of complicity). With regard to proof, victims of reprisals need to show they have suffered harm or prejudice. In accordance with the jurisprudence of the Human Rights Committee,⁸⁸ the Subcommittee must ensure that the burden of proof does not fall on the complainant alone, but is shouldered by the state party, which is in a stronger position to conduct investigations, gather evidence, and provide information. In addition, the threshold for determining a breach of Article 15 of OPCAT is very low, because the imposition of *any* sanction or the causing of

85 Committee Against Torture, ‘Concluding Observations: Saudi Arabia’, UN doc. CAT/C/CR/28/5, 12 June 2002, §4(b).

86 The Standard Minimum Rules on the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 E/3048, 31 July 1957.

87 OPCAT, Art. 14(1)(e).

88 Human Rights Committee, *Aleksander Butovenko v. Ukraine*, Decision (Comm. No. 1412/2005), 19 July 2011; *Nallaratnam Singarasa v. Sri Lanka*, Decision (Comm. No. 1033/2001), 23 August 2004; *Vladislav Kovalev et al. v. Belarus*, Decision (Comm. No. 2120/2011), 27 November 2012; *Berry v. Jamaica*, Decision (Comm. No. 330/1988), 4 July 1994; *Estrella v. Uruguay*, Decision (Comm. No. 74/1980), 29 March 1983.

any prejudice engages the responsibility of the state party concerned. The strict wording of OPCAT means that the Subcommittee has little scope to apply a proportionality test when it determines whether acts or omissions by state officials or authorities are reprisals.

Article 11 of the Optional Protocol to CEDAW and Article 13 of the Optional Protocol to the ICESCR adopt a similar formulation. Drafts of the Optional Protocol to CEDAW stated that any person cooperating with the Committee for the Elimination of Discrimination against Women must be protected against interference or reprisals inflicted by any party. The *travaux préparatoires* of the Optional Protocol to CEDAW did not explicate the meaning of ‘interference’ or ‘reprisal’; they focused on the obligation of states parties.⁸⁹ The final text of the Optional Protocol omitted the word ‘reprisals’.⁹⁰ It is replaced by ‘ill-treatment or intimidation’.

Article 11 of the Optional Protocol to CEDAW and Article 13 of the Optional Protocol to the ICESCR establish a new obligation on states parties. To the negative obligation that states should not interfere with an individual’s right to communicate with each treaty body, the Articles maintain that states must also take all appropriate measures to protect those who exercise this right. Failure to respect and protect the right of individuals and organizations who submit information to the two Committees contravenes the essence of the two instruments.

The Committee on Economic, Social and Cultural Rights has stressed that human rights defenders need to be protected against ‘any form of intimidation, threat and, especially, disproportionate use of force perpetrated by security forces and agents, both public and private’.⁹¹ It has underlined the obligation of states parties to promptly and thoroughly investigate all allegations of reprisals and abuse, and bring perpetrators to justice.⁹²

In a commentary on OPCAT, the Inter-American Institute of Human Rights and the International Commission of Jurists have pointed out that references to ‘ill-

⁸⁹ Commission on the Status of Women, Report on the forty-second session, 2-13 March 1998, in Economic and Social Council Official Records, 1998, Supplement No. 7, E/CN.6/1998/12-E/1998/27, Chapter IV, Appendix I, §§35–8.

⁹⁰ Commission on the Status of Women, Report on the forty-second session, 2-13 March 1998, in Economic and Social Council Official Records, 1998, Supplement No. 7, E/CN.6/1998/12-E/1998/27, Chapter IV, Appendix I, Art. 12.

⁹¹ Committee on Economic, Social and Cultural Rights, ‘Concluding Observations: Argentina’, UN doc. E/C.12/ARG/CO/3, 14 December 2011, §13.

⁹² *Ibid.*

treatment or intimidation’ should be interpreted broadly to include any form of attack, illegitimate interference or pressure directed at an individual’s physical, moral, or psychological integrity for the purpose of preventing, hindering, or undermining a submission or causing it to be withdrawn.⁹³

The obligation covers individuals and organizations who submit information or communications, and also individuals who are associated with those individuals or organizations or with the content of the communication.

The Committee on the Elimination of Discrimination against Women has not explicitly addressed reprisals against individuals who communicate with it. It has focused on ensuring that women are protected against reprisals with respect to: their participation in public life,⁹⁴ claims with respect to employment and social benefits,⁹⁵ and complaints against violence.⁹⁶

Additional guarantees may contribute to the protection of individuals and organizations who submit communications. The non-disclosure of the identity of the authors of communications is a preventive measure envisaged by several treaties. When submitting communications under the Optional Protocol to the ICESCR, applicants may request the Committee on Economic, Social and Cultural Rights not to disclose their identity. The applicants’ identity may be concealed in reports or publications related to the case, including recommendations adopted by the treaty body. Where disclosure may expose the applicant to risk, the treaty body may also withhold from the respondent state party information that might reveal the petitioner’s identity.⁹⁷

The obligation to investigate should not be confined to allegations of reprisals. The Committee on the Elimination of Racial Discrimination pointed out (in its General Recommendation No. 31) that, where few or no complaints, prosecutions, or convictions for acts of racial discrimination are recorded, this might indicate that victims lack resources of knowledge of their rights, or are afraid of social censure

93 Inter-American Institute of Human Rights and International Commission of Jurists, *Commentary on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 2010, pp. 100–1.

94 Committee on the Elimination of Discrimination against Women, ‘Concluding Observations: Bolivia’, UN doc. CEDAW/C/BOL/CO/4, 8 April 2008, §31.

95 Committee on the Elimination of Discrimination against Women, ‘Concluding Comments to the Follow-up Report to the Fifth Periodic Report: Argentina’, General Assembly Official Records, Fifty-ninth Session Supplement No. 38, A/59/38, §375.

96 Committee on the Elimination of Discrimination against Women, ‘Concluding Observations: Paraguay’, UN doc. CEDAW/C/PRY/CO/6, 8 November 2011, §21(b).

97 Optional Protocol to the ICESCR, Art. 4. For further comments on this Optional Protocol, see: I. Biglino and C. Golay, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Geneva Academy In-Brief No. 2, June 2013.

or reprisals.⁹⁸ The Committee has subsequently reiterated this concern on several occasions.⁹⁹

Both OPCAT and the Optional Protocol to CEDAW also prohibit reservations.¹⁰⁰ This not only protects the integrity of the instruments but ensures that petitioners (and people associated with their petitions) retain all the protections that each protocol provides.

The Optional Protocol to the ICESCR does not include a provision on reservations. According to the 1969 Vienna Convention on the Law of the Treaties, reservations can be made in the absence of an express prohibition, provided that they are not incompatible with the object and purpose of the treaty in question.¹⁰¹ The Committee on Economic, Social and Cultural Rights has not discussed the question of reservations in its general comments. However, some guidance may be found in General Comment No. 24 of the Human Rights Committee,¹⁰² which stated that ‘reservations relating to the required procedures under the first Optional Protocol [of the International Covenant on Civil and Political Rights] would not be compatible with its object and purpose. The Committee must control its own procedures as specified by the Optional Protocol and its rules of procedure.’¹⁰³ Moreover, the human rights treaties (and their optional protocols) do not make provision for reservations regarding the cooperation of NGOs with their respective treaty bodies.

98 Committee on the Elimination of Racial Discrimination, ‘General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System’, UN doc. A/60/18, pp. 98-108, §1(b). This finding is supported by the 2003 report of the Special Representative to the Secretary-General on the Situation of Human Rights Defenders. See: ‘Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders’, UN Commission on Human Rights, UN doc. E/CN.4/2003/104, 3 January 2003, §§35-7.

99 See, for example: Committee on the Elimination of Racial Discrimination, ‘Concluding Observations: Kazakhstan’, UN doc. CERD/C/KAZ/CO/4-5, 6 April 2010, §18; ‘Concluding Observations: Viet Nam’, UN doc. CERD/C/VNM/10-14, 16 April 2012, §9.

100 OPCAT, Art. 30; Optional Protocol to CEDAW, Art. 17.

101 1969 Vienna Convention on the Law of the Treaties, Art. 19(c). For a discussion on Art. 19 of the Vienna Convention, see: O. Corten and P. Klein (eds.), *The Vienna Conventions on the Law of Treaties. A Commentary*, OUP, Oxford, 2011, pp. 405-82; O. Dörr and K. Schmalenbach (eds.), *Vienna Convention on the Law of Treaties. A Commentary*, Heidelberg: Springer, 2012, pp. 239-87; M. E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff, Leiden, 2009, pp. 262-75.

102 Human Rights Committee, General Comment No. 24, ‘Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant’, UN doc. CCPR/C/21/Rev.1/Add.6, 4 November 1994. See also: E. A. Baylis, ‘General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties’, 17 (1999) *Berkeley Journal of International Law*, No. 2, pp. 277-329; R. Goodman, ‘Human Rights Treaties, Invalid Reservations, and State Consent’, 96 (2002) *American Journal of International Law*, pp. 531-60.

103 Human Rights Committee, General Comment No. 24, §14.

Additionally, the rules of procedure of several treaty bodies contain provisions that protect persons who have cooperated with members of their committees. The Rules of Procedure of the Committee on the Elimination of Discrimination against Women request the state party to take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation because they have participated in inquiries conducted by the Committee, or met members of the Committee during inquiries,¹⁰⁴ or communicated with the Committee under the Optional Protocol to CEDAW.¹⁰⁵ The Committee on the Rights of Persons with Disabilities also requests states parties to the Convention to take all appropriate steps to protect individuals who participate in inquiries it conducts.¹⁰⁶ The Committee on Enforced Disappearances undertakes to transmit to state parties information on intimidation, persecution or reprisals that occur in their jurisdiction against relatives of disappeared persons, witnesses to disappearances or their families, members of organizations of relatives or NGOs, human rights defenders, and other individuals concerned with disappearances.¹⁰⁷

The right to communicate with UN mechanisms under the 1998 Declaration on the Right and Responsibility of Individuals

Article 1 of the Declaration affirms that every person has the right to promote and strive for the protection and realization of human rights and fundamental freedoms, individually or in association with others, nationally and internationally. This provision recognizes that everyone is entitled to cooperate with UN human rights mechanisms. It is reinforced by Article 5 which describes the activities in which human rights defenders may engage at national and international level, namely: (a) to meet and assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; and (c) to communicate with non-governmental or intergovernmental organizations.

The Declaration recognizes the paramount importance of the rights: to freedom of assembly (Article 5), freedom of association and freedom of expression (Article 6); to develop and discuss new human rights ideas (Article 7); to participate in public life (Article 8); to an effective remedy (Article 9); to protest (Article 12); and to access funding (Article 13).

¹⁰⁴ Committee on the Elimination of Discrimination against Women, *Rules of Procedure*, UN doc. A/56/38 (SUPP) and amended by A/62/38 (SUPP), Rule 87(4).

¹⁰⁵ Committee on the Elimination of Discrimination against Women, *Rules of Procedure*, Rule 91.

¹⁰⁶ Committee on the Rights of Persons with Disabilities, *Rules of Procedure*, UN doc. CRPD/C/4/2, 13 August 2010, Rule 87(4).

¹⁰⁷ Committee on Enforced Disappearances, *Provisional Rules of Procedure*, UN doc. CED/C/1/R.1/Rev.1, 27 February 2012, Rule 60(2).

The right to access and communicate with international bodies is recognized in Articles 5(c) and 9 (4) of the Declaration, in association with the right to freedom of assembly and the right to an effective remedy. The Declaration acknowledges in these articles that the work of NGOs and the work of treaty bodies are mutually relevant. UN treaty bodies and other mechanisms of the Human Rights Council depend heavily on information provided by NGOs, especially in situations of emergency when human rights defenders enable the UN to continue its monitoring activities.¹⁰⁸

Article 9(4) of the Declaration affirms that everyone has the right ‘individually and in association with others, to unhindered access and communication with international bodies with general or specialized competence to receive and consider communications on matters of human rights and fundamental freedoms’. This provision covers numerous forms of collaboration between NGOs and the UN mechanisms, including treaty bodies, special procedures of the Human Rights Council, the Universal Periodic Review, and the field presences of the Office of the High Commissioner for Human Rights.¹⁰⁹

At the heart of the Declaration is the principle that:

all members of the international community shall fulfil, jointly or separately, the solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind.¹¹⁰

Article 2 of the Declaration holds that States have the ‘duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other field, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice’.

The Declaration focuses on the obligation of states to enable all people to work to protect and promote human rights for everyone. Its general approach is justified on two grounds. First, any individual may find that he or she is in a position to defend or promote human rights, without necessarily being formally qualified to

108 UN Special Rapporteur on the situation of human rights defenders, ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, July 2011, p. 51; ‘Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya’, UN General Assembly, UN doc. A/66/203, 28 July 2011, §36.

109 *Ibid.*, §37.

110 1998 Declaration on the Right and Responsibility of Individuals, Preamble.

do so. Second, states are required to create a safe environment conducive to the work of human rights defenders by tackling impunity and refraining from actions that obstruct their work.

The scope of the state's obligation to protect human rights defenders is specified in Articles 2, 14 and 15, and in paragraph 2 of Article 12 of the Declaration. Article 2 starts by stating that a 'prime responsibility' of states is to protect, promote, and implement all human rights and fundamental freedoms', alongside the affirmation (expressed in the Declaration's title and spelled out in Article 18) that it is 'the responsibility of individuals, groups, and organs of society to promote and protect universally recognized human rights and fundamental freedoms'.

From a *ratione personae* point of view, the state's obligation is to protect individuals, but also associations, including those who peacefully oppose state acts.¹¹¹

Article 2 of the Declaration establishes that the state's obligation is to protect all persons under its jurisdiction (not only territorial jurisdiction). This reiterates a provision in the Preamble which asserts that 'all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction....' This has the effect of making clear that human rights defenders may denounce human rights violations and concerns that affect individuals in other states, and advocate on behalf of people who defend human rights in other countries.

The obligation to protect presumes the adoption of legislative guarantees that protect human rights defenders, acting individually or in association with others; and the creation of 'all conditions necessary in the social, economic, political and other fields' for them to conduct their activities.

The Declaration also makes clear that individuals may legitimately refuse to participate in acts that violate human rights or lead to their violation. Article 10 states that 'no one shall be subjected to punishment or adverse action of any kind' for refusing to participate in such acts.

¹¹¹ The drafting history of the Declaration indicates that there was debate about whether the Declaration should provide entitlements for groups. The phrase 'individually and in association with others' reflects an understanding that the Declaration provides individual rights, while recalling the International Covenant on Civil and Political Rights, which affirms the right to freedom of association with others. See: Commission on Human Rights, 'Report of the Working Group on its eighth session, Drafting of a Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', UN doc. E/CN.4/1993/64, 1 March 1993.

Under Article 12(3), human rights defenders are entitled to effective protection under national law. The reference to national law echoes Article 3 of the Declaration which establishes that domestic law is the ‘juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities’ connected to the Declaration are carried out. During the drafting of the Declaration, the International Commission of Jurists and Amnesty International stressed that some activities of human rights defenders, especially those conducted at international level, may not be regulated by domestic law. For this reason, the two organizations expressed concern that setting domestic law as the framework for the activities of the defenders, together with the limitations set out in Article 17 of the Declaration, might excessively narrow the scope of protection of human rights defenders.¹¹²

Within the scope of domestic law, Article 12(2) imposes on states the obligation to ‘take all necessary measures to ensure the protection by the competent authorities of everyone, individually or in association with others’ if there occur ‘any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights’ recognized in the Declaration.¹¹³

Article 12 imposes two conditions on individuals who claim the protection of the Declaration as human rights defenders. The first is that they should carry out their activities by peaceful means (Article 12(1)). This element reiterates Article 5.

The second is that individuals should be able to show that the acts (or omissions) they criticise prevent or impede the legitimate exercise of rights which the Declaration affirms (Article 12(2)). This formulation is ambiguous because the term ‘legitimate exercise’ is subject to interpretation. A reference to ‘legitimate’ was introduced in 1988 during the drafting phase, in a sentence that recognized the right of every person to strive for the protection of human rights and fundamental freedoms by means of legitimate measures at national level.¹¹⁴ This subsequently became the first article of the Declaration, but it no longer refers to legitimate measures. The alternatives proposed to replace ‘legitimate’ were ‘appropriate’ and ‘in accordance with international obligations of States at international level’.¹¹⁵ The word ‘legitimate’ was also introduced during discussion of the right

¹¹² Commission on Human Rights, Report of the Working Group at its ninth session, 1994, §§281-2.

¹¹³ Declaration on the Right and Responsibility of Individuals, Art. 12(2).

¹¹⁴ Commission on Human Rights, Report of the Working Group on a Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally-Recognized Human Rights and Fundamental Freedoms, E/CN.4/1988/26, 8 March 1988, §87.

¹¹⁵ *Ibid.*, §§88, 90.

to advocate: the draft spoke of drawing public attention to the observance or non-observance of human rights by ‘legitimate means, such as the encouragement of public discussion, the use of the media, peaceful demonstrations, and other forms of free and peaceful expression in a spirit of tolerance and fraternity’.¹¹⁶

Article 17 of the Declaration discusses the circumstances in which states may limit the exercise of rights the Declaration affirms. It stipulates that, to be compatible with the Declaration, restrictions must meet the just requirements of morality, public order, and the general welfare in a democratic society. The Declaration does not list national security or emergencies as grounds for limitation.¹¹⁷

According to the Special Representative to the Secretary-General (in 2001), Article 17 must be read together with Article 18, which sets out the responsibility of human rights defenders (and all individuals in society) in ‘safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the advancement of democratic societies, institutions and processes’. Restrictions on the work of human rights defenders should therefore not contradict their rights or responsibilities under the Declaration. For this reason, the Special Representative considered that derogations and exceptions applicable to human rights norms should meet a higher standard when applied to human rights defenders.¹¹⁸ Limitations should have as their sole object the restriction of activities that are incompatible with the status of a human rights defender.¹¹⁹

Reprisals and the violation of other human rights

Acts of violence or threats against human rights defenders when they communicate with the UN system, or their intimidation or coercion, violate both their right to communicate with UN mechanisms, and other human rights. Drawing on reports by different UN mechanisms, this section illustrates the range of human rights obligations that are in fact breached by acts of reprisal.

Legislation has been misused to intimidate human rights defenders. The Special Representative to the Secretary-General on the situation of human rights defenders indicated that the main areas of concern were laws and regulations on public order, morality, national security, and emergencies, and laws to register

116 *Ibid.*, §§64, 73-6.

117 ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani’, UN General Assembly, UN doc. A/56/341, 10 September 2001, §51.

118 ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani’, UN General Assembly, UN doc. A/58/380, 18 September 2003, §66.

119 *Ibid.*, §67.

associations and organizations and regulate their management. She noted that, when laws to regulate NGOs and their financing hinder their activity, states interfere with individual rights to freedom of association, expression, and assembly.¹²⁰ The use of legislation to obstruct the work of human rights defenders, rendering them liable to prosecution under domestic law, has the same effect.¹²¹

Arbitrary measures taken against human rights defenders may also deprive them of fair trial guarantees or effective remedies. For example, the use of specialized courts and procedures may deprive defenders of due process rights.¹²² Representatives of NGOs have been charged with spreading false information, defamation, or disturbance of public order.¹²³ As a result, defenders may: be kept under constant surveillance; have their telephones lines cut or tapped; have their documents confiscated (including travel documents, identity cards, and electronic files); have their offices and homes searched, broken into, burgled, and raided; and have their bank accounts seized.¹²⁴ A report of the UN Secretary-General noted that NGOs in Bangladesh had been monitored and kept under surveillance by public authorities after they submitted information to the Office of the High Commissioner for Human Rights for the Universal Periodic Review of that country.¹²⁵ A recent report expressed concern that documents and computers had been burgled from the private office in Guatemala of the UN Special Rapporteur on freedom of expression, Frank La Rue.¹²⁶

120 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/56/341, 10 September 2001, §21; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/57/182, 2 July 2002, §§71-2.

121 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/58/380, 18 September 2003, §12; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §28; 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', UN General Assembly, UN doc. A/67/292, 10 August 2012.

122 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/58/380, 18 September 2003, §§34-5.

123 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/56/341, 10 September 2001, §23.

124 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §§54-56; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/58/380, 18 September 2003, §27.

125 'Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights', Human Rights Council, UN doc. A/HRC/18/19, 21 July 2011, §26.

126 OHCHR, 'Guatemala: UN expert alarmed by break-in of Special Rapporteur on freedom of expression's office', Press release, 2 August 2013. At: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13605&LangID=E.

Human rights defenders may also face arrest, prosecution, detention, and conviction¹²⁷ on charges that accuse them of serious crimes. Defenders have faced allegations of attempted murder of police officers; arson; conspiracy to commit unnatural acts; affiliation and contact with foreign organizations; contempt of court; illegal exercise of their profession; propagation of false information likely to threaten public order by distribution of posters and leaflets, and the release of reports on the human rights situation in their countries; aiding and abetting terrorism; advocacy of hatred; and accepting foreign funds.¹²⁸ In the absence of further investigation, these charges may breach provisions of the 1998 Declaration on the Right and Responsibility of Individuals, and treaty provisions, that affirm the right to freedom of expression and the right to private life. Treaty provisions also affirm the non-derogability of certain rights, including *habeas corpus* and non-discrimination.¹²⁹

In many cases, legal proceedings end in acquittal. In other cases, defenders have been sentenced to terms of imprisonment, including life terms, after trials that failed to meet standards of due process. In some situations, defenders were judged by military or security courts in closed trials where the accused was not able to present evidence in his or her defence.¹³⁰ In 2008, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression jointly sent an urgent appeal to the Islamic Republic of Iran on the case of a journalist who had been sentenced to 10 years' imprisonment on charges that included 'sending untrue reports on the situation of human rights to international organizations, e.g. the Secretary-General of the United Nations'.¹³¹

Human rights defenders may also be harassed by means of excessive or arbitrary administrative procedures. Individuals have been obliged to pay heavy fines for alleged violations of legislation governing the funding of NGOs. Others have been induced to pay heavy fines to secure the release of detained family members,

127 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §§59-61; 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §§50-1.

128 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §62.

129 Human Rights Committee, General Comment No. 29, 'States of Emergency', UN doc. CCPR/C/21/Rev.1/Add.11, 2011.

130 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §53.

131 'Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and of the Secretary-General', Human Rights Council, UN doc. A/HRC/10/36, 6 February 2009, §10.

colleagues, or relatives.¹³² Burdensome authorization requirements have been imposed on both domestic and international NGOs in some countries, preventing them from conducting activities or holding meetings or demonstrations.¹³³ Regulations often contain vague criteria that give broad discretion to the authorities.¹³⁴ Many NGOs have also been closed by order of domestic courts for purely administrative irregularities, such as occupying an address that differs from the address at which they are formally registered. In response, NGOs may continue their work without authorization, which may render their activities subject to criminal prosecution.¹³⁵

States may also violate human rights and their obligations by failing to protect defenders against harmful actions by non-state actors. In some cases, such conduct amounts to a reprisal, or complicity with reprisals by third parties. A report by the Special Representative noted that human rights defenders were being targeted increasingly frequently by non-state actors who could be linked directly or indirectly with public authorities.¹³⁶ In a later document, she specified the categories of officials who were most often responsible: the police, military, and other security forces; prosecutors; judicial officers; revenue officials; and authorities responsible for the registration of NGOs.¹³⁷ Among these actors, the Special Representative pointed out that police officers committed an extremely high number of human rights violations against human rights defenders.¹³⁸ In many instances, police officers used force indiscriminately, made arbitrary arrests, raided homes and offices, confiscated materials and documents, used verbal and physical violence, or refused to register and investigate complaints.¹³⁹

132 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §57.

133 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §62.

134 *Ibid.*, §57.

135 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §70; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §51-5.

136 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/56/341, 10 September 2001, §16; 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §§50-2.

137 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §39.

138 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2002/106, 27 February 2002, §§73-7.

139 *Ibid.*, §§74-5; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §36.

Transnational and national corporations figure in a number of such cases. In many situations, their activities pose threats to the rights and livelihoods of local populations; where human rights defenders have spoken up about labour rights, land rights of indigenous and local communities, or other violations of economic, social, and cultural rights, state authorities have frequently used threats or force to suppress criticism.¹⁴⁰

Journalists are sometimes defenders themselves. However, the media perpetrate human rights violations when they run denigration campaigns against defenders, or reinforce crude stereotypes. Women defenders working on issues of rape, domestic violence and female genital mutilation often face such harassment,¹⁴¹ as do men and women who work on lesbian, gay, bisexual, transsexual and intersex (LGBTI) rights. According to information received by the UN Secretary-General, several defenders from Bahrain received death threats via social networking websites after they provided information to the Human Rights Council and the Committee against Torture.¹⁴²

Reprisals may also undermine the rights to liberty and security of the person and the right to fair trial guarantees. Human rights defenders may be held in poor conditions of detention without food, water, or medical care. Incommunicado detention or solitary confinement may also be imposed.¹⁴³

Human rights defenders' right to freedom of movement and labour rights have been disrespected.¹⁴⁴ The Special Representative examined cases where defenders were prevented from travelling abroad, had their documents seized, were refused access to planes, or detained at airports to prevent them from taking part in workshops, international forums, and procedures of the Commission on Human Rights. Defenders also suffered detention, searches, and interrogations on their

140 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2003/104, 3 January 2003, §§32-3.

141 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', UN General Assembly, UN doc. A/65/223, 4 August 2010, §§17-20.

142 Human Rights Council Resolution 18/19, 21 July 2011, §20.

143 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §56; 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §11.

144 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/58/380, 18 September 2003, §27. See also: 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', Human Rights Council, UN doc. A/HRC/4/37, 24 January 2007.

return.¹⁴⁵ The Human Rights Committee ruled that states which confiscate passports or prevent representatives of NGOs from attending international meetings may contravene the right to freedom of movement.¹⁴⁶

In some cases, states persistently postpone or refuse to register NGOs. This form of reprisal may violate the right to freedom of association. Organizations have been prevented from registering on the grounds that they are extremist, violate public and moral codes, threaten national unity, or endanger the integrity and security of the state by engaging in racial or religious hatred. Like her predecessor, the Special Rapporteur on the situation of human rights defenders has agreed that, although mandatory registration does not in itself violate the right to freedom of association, registration status should not obstruct NGOs from doing their work.¹⁴⁷ Certain states have called NGOs that work on minority rights or that promote democratic rights and domestic reform unlawful or terrorist organizations,¹⁴⁸ and have portrayed them as 'traitors'.¹⁴⁹

Certain categories of defenders are particularly likely to be victims of reprisals because of their human rights work. Reporting in 2004, the Special Representative on human rights defenders found that NGO professionals and staff were the largest category of defenders targeted, followed by lawyers, journalists, and doctors. Judges, ombudspersons, prosecutors, along with civil servants, parliamentarians, and the staff and members of national human rights institutions, were also increasingly subject to reprisals.¹⁵⁰ She reported that UN humanitarian workers and peace activists regularly faced intimidation, threats, killings, and attacks both from regular armed forces and rebel forces when conducting their activities in armed conflict situations.¹⁵¹

145 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §69.

146 Human Rights Committee, 'Concluding Observations: Morocco', UN doc. CCPR/CO/82/MAR, 1 December 2004, §18. The defenders in question had been impeded from attending the fifty-ninth session of the Commission on Human Rights in Geneva.

147 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', UN doc. General Assembly, UN doc. A/64/226, 4 August 2009, §59.

148 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN General Assembly, UN doc. A/59/401, 1 October 2004, §66.

149 'Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights', Human Rights Council, UN doc. A/HRC/21/18, 13 August 2012, §18.

150 'Report submitted by Ms. Hina Jilani, Special Representative to the Secretary-General on Human Rights Defenders', UN Commission on Human Rights, UN doc. E/CN.4/2004/94, 15 January 2004, §30.

151 *Ibid.*, §59.

Reporting six years later,¹⁵² the Special Representative on the situation of human rights defenders found that journalists and media workers, defenders working on land and environmental issues, defenders working for the rights of indigenous peoples and minority groups, and youth and student defenders were particularly exposed to human rights violations. A report of the UN Secretary-General noted that an NGO staff member, working for the rights of Mongolian people in China, was arrested before boarding a flight to New York to attend the ninth session of the UN Permanent Forum on Indigenous Issues in 2010. At the time of the communication, the whereabouts of this defender were unknown. Separate reports suggested that the defender's house had been raided, and personal computers, telephones, and documents confiscated.¹⁵³

Both men and women frequently suffer reprisals when they work on women's rights or gender issues, including LGBTI rights.¹⁵⁴ Human rights defenders working on sexual and reproductive rights have been harassed, stigmatized, criminalized, and suffered discrimination and physical violence. Women practising as lawyers, judges, or paralegals are at particular risk of reprisals, together with women working in the media.¹⁵⁵ Women human rights defenders are particularly exposed to stigmatization, especially when they work on women's rights and gender issues, because they are perceived to challenge received attitudes.¹⁵⁶ According to reports of the UN Secretary-General, several women defenders from Iran were arrested and prosecuted for national security offences after they participated in the fifty-fifth session of the Commission on the Status of Women in New York in 2011.¹⁵⁷

152 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', Human Rights Council, UN doc. A/HRC/19/55, 21 December 2011.

153 Human Rights Council Resolution 18/19, 21 July 2011, §§31–6.

154 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', Human Rights Council, UN doc. A/HRC/16/44, 20 December 2010, §37. See also: Women Human Rights Defenders International Coalition, *Global Report on the Situation of Women Human Rights Defenders*, January 2012.

155 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', Human Rights Council, UN doc. A/HRC/16/44, 20 December 2010, §§46-7.

156 *Ibid.*, §85(c).

157 Human Rights Council, Resolution 21/18, 13 August 2012, §28.

Women human rights defenders may also face higher risks of gender violence.¹⁵⁸ The Special Rapporteur on the situation of human rights defenders reported in 2010 that some women human rights defenders had been interned in psychiatric institutions in the Russian Federation, Uzbekistan, and Viet Nam. The report indicated that during their confinement, women defenders were likely to be medicated against their will and subjected to mistreatment, beatings, and assaults which in certain cases had led to miscarriages.¹⁵⁹

158 'Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya', Human Rights Council, UN doc. A/HRC/16/44, 20 December 2010, §§86-8.

159 *Ibid.*, §§ 82-83.

Current initiatives

Current initiatives in the UN human rights treaty bodies and the Human Rights Council focus on: substantive measures to protect human rights defenders; condemnation of acts of reprisal or intimidation against them; and application of measures to enhance their protection.

First of all, discussions on strengthening the treaty bodies led by the High Commissioner for Human Rights from 2009-2012 indicate that there would be considerable support for creating a focal point in each treaty body to collect information on allegations of reprisals and take action when necessary.¹⁶⁰ Negotiations in the General Assembly on strengthening the treaty bodies have also considered the issue of reprisals and measures to protect human rights defenders against them, including the appointment of a focal point.¹⁶¹ Agreement there has not yet been reached.

In 2012, during its 21st session, the Human Rights Council held a panel discussion on reprisals against individuals and groups who cooperate with the UN and its human rights mechanisms. Participants drew attention to the range of human rights violations suffered by defenders and proposed several measures to address them. They included the appointment of national and UN focal points to investigate allegations of reprisals.¹⁶²

The Human Rights Council has focused on strengthening substantive measures, procedural safeguards, and institutional frameworks, nationally and internationally. Substantively, it has recognized the paramount importance of guaranteeing freedom of expression, freedom of assembly, non-discrimination, and cooperation with domestic and international human rights bodies. Regarding freedom of expression, it has encouraged states to facilitate and promote access to and use of information technologies and media, which are vital tools for human rights defenders.¹⁶³

160 UN High Commissioner for Human Rights, 'Strengthening the United Nations Human Rights Treaty Body System', June 2012, p. 67; 'Strengthening the United Nations Human Rights Treaty Body System', Dublin II Meeting, Outcome Document, 10–11 November 2011, §§50-2; 'Civil Society Consultation on Treaty Body Strengthening', Seoul Statement on Strengthening the UN Human Rights Treaty Body System, 19-20 April 2011, §3(b).

161 UN Treaty Body Strengthening Process, *The Way Forward*, Document issued by the Co-facilitators appointed for this process, p. 7.

162 Human Rights Council, 'Report of the Human Rights Council on its twenty-first session', UN doc. A/HRC/21/2, 20 December 2012, §§219-25.

163 Human Rights Council, Resolution 22/6, 'Protection of Human Rights Defenders', 12 April 2013, §7.

It has equally emphasized that procedures for registering civil society organizations should respect the right to freedom of association. Procedures must: be transparent, accessible, non-discriminatory, expeditious, and inexpensive; allow for the possibility of appeal; avoid obligatory re-registration; and comply with domestic legislation and international human rights law.¹⁶⁴

The Council has affirmed that human rights defenders should not be subject to discrimination on any grounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Specifically, it has emphasised that states should not use discriminatory measures (such as intimidation, profiling, confiscation of assets, suspension of activities, or exclusion from national consultative processes) when human rights defenders discharge their activities or when they seek funding.¹⁶⁵

Building on Resolution 22/6, at its 23rd session the Council adopted seven resolutions, without a vote, that make reference to enhanced protection and recognition for human rights defenders. Three refer to the protection of defenders who address women's rights and violence against women. A resolution on the elimination of discrimination against women recognized the work of women human rights defenders and women's civil society organizations.¹⁶⁶ A resolution on violence against women recognized that rape and other forms of sexual violence contribute to an environment of harassment, intimidation, deterrence, and reprisals against women and girls, including women human rights defenders; it encouraged states to take measures to enable women and girls to participate as members of civil society without fear of reprisal, coercion, intimidation, or attack.¹⁶⁷ A resolution on freedom of opinion and expression highlighted the work of women journalists and women human rights defenders.¹⁶⁸

A resolution on migrants emphasized the need to protect the rights of defenders working to promote the rights of migrants. It asked states to facilitate this work and avoid measures that would criminalize, stigmatize, impede, obstruct, or restrict it, contrary to international human rights law.¹⁶⁹

¹⁶⁴ *Ibid.*, §8.

¹⁶⁵ *Ibid.*, §8(b); Human Rights Council, Resolution 13/13, 'Protection of Human Rights Defenders', 15 April 2010, §7.

¹⁶⁶ Human Rights Council, Resolution 23/7, 'Elimination of Discrimination against Women', 20 June 2013, §14.

¹⁶⁷ Human Rights Council, Resolution 23/25, 'Accelerating Efforts to Eliminate All Forms of Violence against Women: Preventing and Responding to Rape and Other Forms of Sexual Violence', 25 June 2013, §3.

¹⁶⁸ Human Rights Council, Resolution 23/2, 'The Role of Freedom of Opinion and Expression in Women's Empowerment', 24 June 2013, Preamble.

¹⁶⁹ Human Rights Council, Resolution 23/20, 'Human Rights of Migrants', A/HRC/RES/23/20, §4(f).

The Council also invited states to adapt their domestic law and administrative provisions to facilitate the activities of human rights defenders. This resolution recommended that states should remove or redraft domestic laws (including laws on national security or counterterrorism) that stigmatize, impede or restrict defenders' activities, and should decriminalize defamation. It stated that such measures should be accompanied by procedural guarantees and independent, impartial, and competent judicial systems.¹⁷⁰

The Council further recognized that every person, individually and in association with others, is entitled to unhindered access to and communication with international bodies mandated to protect human rights. It listed several obligations attached to this right, including negative obligations to refrain from acts of intimidation or reprisal, and avoid legislation that undermines recognized rights, and positive obligations to provide adequate protection, bring perpetrators to justice, and provide victims with effective remedies.¹⁷¹

Institutionally, the Council emphasised that the creation of an environment conducive to the activities of human rights defenders depends on the presence of a robust, independent justice system that upholds the integrity of judges, prosecutors, and lawyers, and protects human rights defenders (as well as members of their families and professional associates) from all forms of violence, threat, retaliation, intimidation, and harassment.¹⁷²

Two resolutions (addressing the human rights situations in Eritrea and Belarus) explicitly condemned violations committed against human rights defenders. They particularly noted violations of the rights to freedom of assembly and association, freedom of expression, and arbitrary detention.¹⁷³

In 2012, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Special Rapporteur on the situation of human rights defenders, with the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights,

¹⁷⁰ Human Rights Council, Resolution 22/6, §11.

¹⁷¹ *Ibid.*, §§13-4.

¹⁷² Human Rights Council, Resolution 23/6, 'Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers', 19 June 2013, §5.

¹⁷³ Human Rights Council, Resolution 23/21, 'Situation of human Rights in Eritrea', 25 June 2013, §2(b); Resolution 23/15: 'Situation of Human Rights in Belarus', 24 June 2013, §6.

agreed further guidance (known as the Oslo Principles) on the protection of human rights defenders.¹⁷⁴

Numerous recommendations made during the Universal Periodic Review (UPR) process address reprisals and intimidation against human rights defenders. For example, states have accepted recommendations calling on them: to protect human rights defenders; recognize the legitimacy of their work;¹⁷⁵ protect victims and witnesses and their families as well as human rights defenders when they are involved in human rights-related trials;¹⁷⁶ and respect due process during the investigation of alleged human rights violations by defenders.¹⁷⁷

At the same time, a number of states have rejected UPR recommendations that called on them to: reform legislation that undermines the activities of defenders,¹⁷⁸ release unlawfully imprisoned human rights defenders, journalists and other individuals affected by such legislation;¹⁷⁹ and end unjustified criminalization, harassment and intimidation of defenders who cooperated with UN mechanisms.¹⁸⁰

174 Statement by the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights and the Special Rapporteurs of the United Nations at the seminar 'Human Rights Defenders and Peaceful Protests', Oslo, 6–8 June 2012. The Oslo principles have not been endorsed by the Human Rights Council; but the three international mandate holders are all appointed by the Council. The Oslo Principles are available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12524&LangID=E>.

175 See, for example, Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Angola', UN doc. A/HRC/14/11, 24 March 2010, §106, read together with Report of the Human Rights Council on its Fourteenth Session, UN doc. A/HRC/14/L.10, 18 June 2010, §473.

176 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Argentina', UN doc. A/HRC/8/34, 13 May 2008 §64(4).

177 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Honduras', UN doc. A/HRC/16/10, 4 January 2011, §§82.30, 82.31, 82.33; 'Report of the Working Group on the Universal Periodic Review: Kenya', UN doc. A/HRC/15/8, 17 June 2010, §101.43, 101.68, 101.80; 'Report of the Working Group on the Universal Periodic Review: Kyrgyzstan', UN doc. A/HRC/15/2, 16 June 2010, §76.52, 76.57; 'Report of the Working Group on the Universal Periodic Review: Mexico', UN doc. A/HRC/11/27, 29 May 2009, §§23, 58; 'Report of the Working Group on the Universal Periodic Review: Nicaragua', UN doc. A/HRC/14/3, 17 March 2010, §§90(10), 90(30); 'Report of the Working Group on the Universal Periodic Review: Pakistan', UN doc. A/HRC/22/12, 26 December 2012, §§122.56, 122.101.

178 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: China', UN doc. A/HRC/11/25, 5 October 2009, §117; 'Report of the Working Group on the Universal Periodic Review: Indonesia', UN doc. A/HRC/21/7, 5 July 2012, §§109.33, 109.34; 'Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran', UN doc. A/HRC/14/12, 15 March 2010, §92.43.

179 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Cuba', UN doc. A/HRC/11/22, 5 October 2009, §9; UN doc. A/HRC/24/16, 8 July 2013, §170.190.

180 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Sri Lanka', UN doc. A/HRC/22/16, 18 December 2012, §128.89.

Additionally, the Human Rights Council has proposed two mechanisms to encourage consultation and dialogue with human rights defenders: the creation of a system of national focal points, and the adoption of mechanisms to prevent attacks or threats and protect defenders against them. The first proposal would help to identify the specific protection needs of defenders, including women defenders, and enable defenders to participate in efforts to design and implement protection measures.¹⁸¹ The second might include the development of early warning systems, in consultation with defenders, to identify imminent risks and devise effective responses to them.¹⁸²

Additionally, in June 2013, a conference of civil society organisations, convened to celebrate the twentieth anniversary of the adoption of the Vienna Declaration, highlighted the need to protect human rights defenders against reprisals. The participants to this conference adopted the Vienna+20 Civil Society Organisations Declaration which underscored that ‘the continuous use of reprisals to human rights defenders, including lawyers or journalists who take up human rights violations domestically or internationally, remains a burning concern’.¹⁸³ It emphasized that particular attention should be paid to women human rights defenders who face persecution ‘not only for defending human rights, but also for transgressing gender norms’.¹⁸⁴

181 Human Rights Council, Resolution 13/13, §5.

182 *Ibid.*, §6.

183 Vienna+20 CSO (Civil Society Organizations) Declaration, Strengthening the Human Rights Movement Globally, 25-26 June 2013, §48.

184 *Ibid.*

Conclusions

The UN has developed several mechanisms to protect human rights. However, more needs to be done to protect individuals who make use of or cooperate with them. The communications that UN mechanisms receive show that reprisals occur frequently against human rights defenders who use the UN system.

Reprisals that impede or prevent individuals from communicating with UN mechanisms violate numerous rights, including the right to communicate with UN mechanisms. They also undermine the authority and integrity of UN mechanisms and the UN system. Action to prevent and sanction reprisals, and protect human rights defenders against them, is justified on both grounds.

UN organs are becoming more aware of this problem and the threat that reprisals pose both to protection of human rights and to the authority and purpose of UN protection mechanisms. As a result, there is an opportunity to introduce additional procedures to identify reprisals more precisely, sanction them more effectively, and provide protection to human rights defenders (and their families and associates) who cooperate with the UN system. In this regard, it will be necessary to clarify the notion of reprisals, the scope of protection against them, and the burden of proof. The human rights treaty provisions that explicitly address reprisals could be a starting point for such work.

Action to address reprisals should focus on two aspects. It should establish the principle that every person is entitled to communicate with UN mechanisms, including human rights mechanisms. Secondly, norms and mechanisms that protect individuals from violence, threats of violence, harassment, and constraints on freedoms of opinion, expression and association should specifically address reprisals against individuals who cooperate with the UN system.

The right to communicate with UN mechanisms is a vital component of the human rights framework. It provides an essential recourse, both in bringing human rights violations to light, and assisting victims to obtain an effective remedy.

Effective action requires the development of specific mechanisms for dealing with individual cases; and a continued broader effort to strengthen respect for human rights and the human rights system. Recommendations include: reinforcing action at domestic level;¹⁸⁵ strengthening judicial efforts to investigate allegations of reprisals; introducing immediate response procedures to protect victims of reprisals; the establishment of programmes to protect victims following the model of national witness programmes.¹⁸⁶ The proposed creation of national and international focal points mandated to collect and investigate information on, and act against, alleged reprisals could lay the foundation for a more comprehensive approach. These mechanisms could benefit from the adoption of guidelines on how to identify and address cases of reprisals as well as from guarantees ensuring response effectiveness.

Current discussions in the treaty body system and in the Human Rights Council offer an opportunity to devise an integrated approach, that will sanction violations associated with reprisals, and give human rights defenders who cooperate with the UN protection from such human rights violations.

185 'Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights', Human Rights Council, UN doc. A/HRC/24/29, 31 July 2013, §52.

186 'Report of the Secretary-General', UN doc. A/HRC/21/18, §72.

Annex. The 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly adopted the text of the Declaration by Resolution 53/144 on 8 March 1999.

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998, 1 in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption, Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights,

1. *Adopts* 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, annexed to the present resolution;

2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with

regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

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