

**ADVANCE UNEDITED VERSION**

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**Committee on Enforced Disappearances****Guidelines to prevent and address intimidation and reprisals against individuals and groups cooperating with the Committee\*****Draft prepared by the Rapporteur on reprisals**

*The Committee on Enforced Disappearances,*

*Stressing* the crucial role of individuals, including victims, and groups cooperating with the Committee in the effective discharge of its mandate,<sup>1</sup>

*Considering* the relevant provisions of the International Convention for the Protection of All Persons from Enforced Disappearance, relating to the prevention of and protection against acts of intimidation or reprisal (arts. 12 (4) and 18 (2)) and the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance (art. 24 (7)),

*Emphasizing* that States parties are primarily responsible for preventing and refraining from all acts of intimidation or reprisal whatever their means or form, including online, against individuals and groups who seek to cooperate, cooperate or have cooperated with the Committee,

*Emphasizing* that States parties are also primarily responsible for ensuring that, if such acts of intimidation or reprisal occur, they are promptly, impartially and effectively investigated, that those responsible are brought to justice and that victims are afforded full reparation,<sup>2</sup>

*Recalling* that the Committee has adopted specific provisions and taken specific action under its mandate to prevent and address acts of intimidation or reprisal against individuals or organizations who seek to cooperate, cooperate or have cooperated with it,<sup>3</sup>

*Recalling also* that, at its fifth session, the Committee appointed its first Rapporteur on reprisals and that, at its ninth session, it adopted the Guidelines against Intimidation or Reprisals (San José Guidelines), which the Chairs of the human rights treaty bodies had endorsed at their twenty-seventh meeting (22–26 June 2015),<sup>4</sup>

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\* Adopted by the Committee at its twentieth session (12 April – 7 May 2021).

<sup>1</sup> See, for instance, the Committee's relationship with civil society actors (CED/C/3, paras. 1–2) and with national human rights institutions (CED/C/6, para. 1).

<sup>2</sup> See Human Rights Council resolution 42/28.

<sup>3</sup> See, for instance, rules 46, 63, 95 and 99 of the Committee's rules of procedure (CED/C/1); working methods, para. 48; CED/C/3, paras. 25–26; CED/C/6, paras. 39–40; measures taken by the Committee's Rapporteur on reprisals; and measures taken in the context of the urgent action procedure, under art. 30 of the Convention.

<sup>4</sup> Committee's decision 5/VI (A/69/56, annex IV) and decision 9/I (A/71/56, annex II); and A/70/302, para. 41.

*Strongly condemning* all acts of intimidation or reprisal, whatever their means or form, against individuals and groups who seek to cooperate, cooperate or have cooperated with the treaty bodies, and bearing in mind the San José Guidelines,

*Recalling* that, at its nineteenth session, it requested its Rapporteur on reprisals to prepare draft guidelines to address such allegations,

*Adopts* the present guidelines to prevent and address intimidation and reprisals against individuals and groups cooperating with the Committee.

### **Rapporteur on reprisals**

1. The Rapporteur on reprisals is appointed by the Committee during the election of its officers (rule 15 of the rules of procedure).
2. Rule 16 of the rules of procedure, regarding the two-year renewable term of office of officers of the Committee, applies *mutatis mutandis* to the Rapporteur on reprisals.
3. The Rapporteur on reprisals is mandated to review, assess and verify in a timely manner the information received concerning acts of intimidation or reprisal against individuals and groups who seek to cooperate, cooperate or have cooperated with the Committee, and to determine, with the support of the secretariat and if possible in consultation with the Chair of the Committee, the best course of action, including the adoption of protection measures. The Rapporteur, with the support of the secretariat, will maintain a detailed record of all allegations of intimidation or reprisals received and action taken.
4. The Rapporteur on reprisals is responsible for coordinating the Committee's activities against intimidation or reprisals, representing the Committee in any external activities against intimidation or reprisals, and liaising with other treaty bodies' rapporteurs or focal points on reprisals and with other relevant stakeholders.
5. The Rapporteur on reprisals will oversee the implementation of the present guidelines. The Rapporteur may at any time submit for the Committee's consideration draft revisions of the present guidelines or of other relevant instruments of the Committee related to the prevention of intimidation or reprisals and the management of cases and allegations.
6. The Rapporteur on reprisals will carry out the activities under the mandate with due consideration of the San José Guidelines, and with a victim-oriented approach, guided by the "do no harm" principle, and ensuring participation, confidentiality, safety, security, free and informed consent, and the mainstreaming of a gender perspective.
7. Whenever there are grounds to believe that the Committee or a particular member may be able to contribute to the assessment of a situation, the Rapporteur on reprisals may, in consultation with the Chair of the Committee, request their contribution.
8. The Rapporteur on reprisals will keep the Committee regularly informed of the activities undertaken under the mandate. To this end, the Rapporteur will update the Committee at least once a year, under a standing item on the Committee's agenda.

### **Preventive measures**

9. The Committee will continue to proactively take all measures at its disposal to prevent intimidation and reprisals in accordance with its rules of procedure, working methods and standard practice, including by allowing civil society actors and other stakeholders to provide information in a confidential and safe manner and accommodating requests for private or confidential briefings.

### **Allegations of intimidation or reprisals**

10. Any individuals alleging that they have been victims or are at risk of acts of intimidation or reprisal for seeking to cooperate, cooperating or having cooperated with the

Committee may confidentially submit information to the Rapporteur on reprisals through the Committee's secretariat. Such information may be submitted in writing or orally; in the latter case, a note on the conversation will be prepared. In all cases, such submissions will remain confidential.

11. The information should be detailed and include the following elements: (a) a description of the act of intimidation or reprisal, covering when, where, how and by whom the act was carried out; (b) a description of any action that may have been taken to report the alleged act to the national authorities, and their reply; and (d) an explanation as to why it is believed that the reported incident occurred as a consequence of cooperation with the Committee.

12. Information in writing should be sent for the attention of the Rapporteur on reprisals to the Committee secretariat ([ced@ohchr.org](mailto:ced@ohchr.org)), and to the reprisals team of the Office of the United Nations High Commissioner for Human Rights (OHCHR) ([reprisals@ohchr.org](mailto:reprisals@ohchr.org)). Other safe channels of communication are available upon request.

### **Procedure, coordination and protection measures**

13. The Rapporteur on reprisals will endeavour to promptly obtain as much information as possible concerning alleged acts of intimidation or reprisal and take the necessary steps to verify and assess the information received, making use of a wide variety of reliable sources. In this respect, the Rapporteur, with the support of the secretariat, may liaise with any other stakeholders as appropriate, with due consideration for any protection concerns.

14. The Rapporteur on reprisals will assess whether the submitted information is reliable and whether it appears that the individuals concerned may have been victims or may be at risk of acts of intimidation or reprisal for cooperation with the Committee. If so, the Rapporteur on reprisals, if possible in consultation with the Chair of the Committee, will adopt protection measures in favour of the alleged victims, ensuring a differential approach that takes into account their specific needs. These measures will be determined on a case-by-case basis, duly adhering to the "do no harm" principle, and in close consultation with and with the informed consent of the individuals concerned, their relatives and/or their representatives whenever possible.

15. Protection measures may include:

(a) In a written communication, bringing the allegations received to the attention of the State party concerned, requesting its competent authorities to adopt measures of protection adapted to each case, investigate the allegations received and provide remedy to the alleged victims, and requesting information by a given deadline on the measures taken with respect to each of the Committee's requests;

(b) Raising the case with the Permanent Representative of the State party concerned to the United Nations Office and other international organizations in Geneva and/or State officials in a private meeting with the Chair of the Committee and the Rapporteur on reprisals;

(c) Engaging with United Nations actors, civil society partners and other relevant stakeholders to connect individuals in need of urgent protection with existing protection networks or national protection mechanisms, in liaison with OHCHR desk officers, OHCHR or other United Nations field presences and the OHCHR reprisals team;

(d) As appropriate, addressing the allegations of reprisals in the context of the Committee's consideration of States parties' reports submitted under article 29 (1) of the Convention and additional information submitted under article 29 (4); in the Committee's decisions or Views on individual communications; and in the framework of the procedures under articles 33 and 34 of the Convention (see rule 99 of the rules of procedure);

(e) In the context of the urgent action procedure (article 30 of the Convention) and individual communications procedure (article 31 of the Convention), adopting interim measures to protect the persons who are at risk (see rule 63 of the rules of procedure);

(f) Approaching the United Nations Department of Safety and Security to take appropriate measures under the Department's mandate in the case of an imminent threat or danger of violence that arises during a Committee session or during a visit under article 33 of the Convention;

(g) After having informed the State party concerned, issuing public statements or press releases;

(h) Informing the individuals making the allegations of the option of submitting urgent communications to the special procedure mandate holders of the Human Rights Council, including the Special Rapporteur on the situation of human rights defenders;

(i) Raising the case for action, as appropriate, with other human rights treaty bodies; the United Nations High Commissioner for Human Rights; the Assistant Secretary-General for Human Rights,<sup>5</sup> in particular for consideration for inclusion in the annual report of the Secretary-General to the Human Rights Council on reprisals; relevant special procedure mandate holders of the Human Rights Council; and OHCHR or other United Nations field presences, regional human rights mechanisms, national human rights institutions and civil society organizations.

16. The Rapporteur on reprisals, if possible in consultation with the Chair of the Committee and with the consent of the individuals concerned, their relatives and/or their representatives, may request the assistance of the relevant OHCHR or other United Nations field presences, national or international civil society organizations and, where appropriate, the national human rights institution or national preventive mechanism to monitor the protection measures and to take steps in support of the individuals who have been victims or are at risk of intimidation or reprisals.

17. Throughout the procedure, the Rapporteur on reprisals will assess the information submitted by the State party concerned, the authors of the allegations and other relevant stakeholders. Based on the assessment, the Rapporteur will decide whether to keep the procedure open, and may adopt new protection measures in accordance with paragraphs 13 and 14 above.

18. The Rapporteur on reprisals will write to the individuals making the allegations to inform them of the action taken and share with them the content of letters sent to the State party.

19. If on the basis of the analysis of the information available the Rapporteur on reprisals considers that the submitted allegations are not reliable, or that there are no reasonable grounds to believe that the reported situation constitutes an act of intimidation or reprisal for cooperation with the Committee, the alleged victims, their relatives and/or their representatives will be promptly informed that no further action will be taken at that stage.

20. In consultation with interested parties, the Rapporteur on reprisals reserves the right to share information on allegations, and any response received from States parties, with other United Nations bodies or representatives addressing intimidation and reprisals for cooperation with the United Nations in the field of human rights, in particular the Assistant Secretary-General for Human Rights.

## **Dissemination**

21. All allegations of intimidation or reprisals will be treated confidentially. Nonetheless, the Committee may decide, with the consent of the victims, their relatives and/or their representatives whenever possible, to make available on its web page correspondence with the State party or any other information related to the case. Similarly, the annual report of the Committee to the General Assembly will continue to include a chapter on reprisals.

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<sup>5</sup> In the Assistant Secretary-General's capacity as the official designated by the Secretary-General to lead the efforts within the United Nations system to address intimidation and reprisals against those cooperating with the United Nations on human rights.

Identifying details of victims will not be made public, unless the victims requests the contrary and there are no protection concerns. Identifying details of minors will never be made public.

22. The Committee will maintain a dedicated section on reprisals on its web page. The section will include the present guidelines, the San José Guidelines, contact details for submitting allegations of intimidation or reprisals, and any other relevant information. The Rapporteur on reprisals and all members of the Committee will also disseminate information on the Committee's mandate and procedures regarding intimidation and reprisals through documentation, training and any other means available.

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