

WHEN THE DEFENDERS ARE SILENCED¹

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- *Addressing the impact of intimidation on engagement with the UN human rights system* •

ABSTRACT

If the UN is to effectively monitor compliance with human rights obligations and protect victims from abuse, it is crucial that human rights defenders and victims of human rights violations can access and communicate with the UN freely and safely. A number of States systematically undermine the right to unhindered access to and cooperation with UN human rights mechanisms through intimidation or reprisals. In recent years, the UN has taken some welcome steps to address the issue. However, documenting overt, reported incidents of intimidation and reprisals using standard legalistic case-based methods has been privileged over addressing the kind of intimidation that inhibits defenders from engaging with the UN at all. Perversely, this means very repressive States can escape scrutiny. To begin to tackle this issue, ISHR commissioned a study² that considers the methodological challenges and opportunities inherent in measuring the impact of intimidation in particular on engagement with the UN human rights system.³

KEYWORDS

Human rights | United Nations | Reprisals | Intimidation | Human rights defenders

1 • Introduction

If the United Nations (UN) is to effectively monitor State compliance with human rights obligations and protect victims from abuse globally, it is crucial that human rights defenders and victims of human rights violations can access and communicate with the UN freely and safely. Unfortunately, 'free' and 'safe' are not hallmarks of the experience for many defenders and victims who seek to engage with the UN. A number of States systematically undermine the right to unhindered access to and cooperation with UN human rights mechanisms through intimidation: threatening actions aimed at inhibiting cooperation before it occurs or during efforts to engage; or reprisals: retaliatory actions against those who have cooperated.

Cognizant of the fact that intimidation and reprisals undermine its ability to fulfil its mandate to protect human rights, in recent years, the UN has taken some welcome steps to address the issue. The centerpiece of these efforts has for a long time been the annual report of the UN Secretary-General (SG) on 'Cooperation with the UN, its representatives, and mechanisms in the field of human rights' (also known as the 'Reprisals Report').⁴ The Reprisals Report, which has been published annually since 1991, is limited to a static annual compilation of specific cases, with some follow up information included in recent years. In response to long term sustained advocacy by civil society, in 2016, the UN's response was bolstered by the appointment of a 'senior official on reprisals' by the SG. This mandate was held initially by Andrew Gilmour, the then Assistant Secretary-General for Human Rights (ASG).⁵ The baton has since been handed to Ilze Brands Kehris, the current ASG.

Governments that have no desire to be portrayed as human rights violators on an international stage resort to a wide range of tactics to prevent or punish cooperation with UN human rights mechanisms, including direct violence, detention, harassment, economic attacks, attacks on reputation and threats to those seeking to engage, or their families. While some of the tactics States and non-State actors use can be direct, others can be more subtle and are often quasi-legal.

While the Reprisals Report is an important means for drawing attention to and publicly condemning violations of the right to unhindered access to and cooperation with UN human rights mechanisms, it only tells part of the story. Many cases of intimidation and reprisals are unreported. Others are reported but remain undocumented, for fear of further reprisals. Another critical issue that is even harder to measure and further masks the true reach of intimidation and reprisals: the fact that efforts to intimidate are often successful at deterring defenders and victims of human rights violations from engaging with the UN at all. Perversely, this can lead to a situation in which very repressive States can escape being listed in the Reprisals Report. This issue comes into focus for example, when one considers that the majority of the 10 countries receiving the lowest scores in Freedom House's Global Freedom index do not appear in the 2019 Reprisals Report (Syria, North Korea, Equatorial Guinea, Somalia, Tajikistan, Libya)⁶ or that one third of the countries rated 'closed' in the CIVICUS Monitor are similarly not cited (Azerbaijan, Central African Republic, Equatorial Guinea, Libya, Laos,

North Korea, Sudan, Syria).⁷ Furthermore, even in States where some specific instances of intimidation and reprisals are reported, these may only be telling part of the story, as many more defenders may be intimidated from ever engaging and that story isn't being told.

It is positive that recent Reprisals Reports and statements by the senior official have signalled increased concern about such severe intimidation and related 'self-censorship'.⁸ In October 2018, the then senior official, Andrew Gilmour, acknowledged gaps in information, because of the serious risk that defenders face for sharing information, in addition to incidents that are not included in the Reprisals Report because consent has not been obtained from the victims or their families. Gilmour further acknowledged that he likely receives information from countries with a relatively vibrant civil society that has been able to engage with the UN, and that in this way the Reprisals Report presents a slightly distorted picture with more coverage of those countries than of others which are even more closed and repressive and where it is impossible for civil society to engage with the UN at all.⁹ In 2019, the SG reported that he is particularly concerned at the body of evidence pointing to growing self-censorship by victims and civil society actors who decide not to engage with the UN, both in the field and at Headquarters, out of fear for their safety or in contexts where human rights work is criminalised or publicly vilified.¹⁰ Finally, in his dialogue with the Human Rights Council at the 42nd session in September 2019, Gilmour acknowledged that self-censorship is the aim of States and others who carry out reprisals and intimidation and that it is only when defenders refuse to self-censor that reprisals are taken.

Gilmour noted that it is very difficult to tackle self-censorship because it is hard to prove if human rights defenders and organisations are so intimidated that they do not even want to engage with the UN. Some recent Reprisals Reports have cited a handful of specific countries in this regard,¹¹ but only insofar as such self-censorship has actually been reported. In this way, the Reprisals Report privileges reported incidents, and fails to systematically consider the issue of self-censorship and document country situations where the State has been 'successful' at intimidating civil society from engaging with the UN.

To begin to address this issue, ISHR commissioned a study, which was launched at the Human Rights Council in March 2020,¹² that considers the methodological challenges and opportunities inherent in measuring the impact of intimidation on engagement with the UN human rights system.¹³ The current lack of understanding of how intimidation tactics effectively inhibit human rights reporting and action, reinforces impunity for States' abuses. Until the UN and civil society take concerted steps towards better understanding the barriers to engagement faced by defenders and victims of human rights abuses, including intimidation, solutions will remain elusive and human rights abusers enabled. Clearly, the kind of intimidation that inhibits action is more difficult to measure than overt, reported incidents of intimidation and reprisals using standard legalistic case-based methods of documentation. Notwithstanding these challenges, ISHR has concluded that there are key steps and methodological approaches that the UN and other stakeholders can take to address these gaps, and begin to hold perpetrators accountable. These are examined below.

2 • Considering the psychology of intimidation and activists responses

As a starting point, ISHR's study found that in order to maximise or optimise cooperation with the UN's human rights mechanisms and address intimidation, we need to understand who uses these mechanisms, why they use them, and how they react to the wide range of obstacles they face in doing so. In that regard, ISHR's study recommends that all human rights actors (including the UN, NGOs, academics, and States) develop more impact analyses that assess the positive outcomes resulting from the use of UN human rights mechanisms, and disseminate and popularise any existing analyses. Simply put, the system needs to give defenders a basis for making informed judgments about whether to go to the effort and trouble of engaging. The current tendency to emphasise the importance of 'doing no harm' to those who engage, or might engage with the UN, must be balanced with sufficient information on potential positive benefits and past successes. Of course, the decisions and agency of defenders must be respected, regardless of the biases that may inform their decisions – activists on the ground are most directly affected by State action and are in the best position to determine the dangers they are comfortable with, but also whether engaging with the UN system is in their best strategic interests. However, understanding the potential positive impacts of the UN is as critical for an individual's decision-making as understanding the risks involved. This means that the UN and international NGOs must provide significantly more coherent and informed impact analyses of how engaging with these mechanisms could be worth the risks involved.

In this regard, the UN must also seek to strengthen feedback so that those who use UN mechanisms receive prompt and adequate information about the progress of their case. Unfortunately, it is not uncommon for defenders to feel the information they've provided to the UN has disappeared into a black hole, despite having made a substantial effort and taken risks to provide it. The lack of feedback can erode trust in the system and discourage further engagement. In a similar vein, recognising that many victims and defenders consider any attention paid to their plight by the UN to be potentially protective, the UN mechanisms that rely on cooperation should implement more rigorous follow-up advocacy for those at risk to ensure that this protection is real and not just imagined.

ISHR's study also found there is a need to develop and strengthen new tactics for raising awareness about UN mechanisms especially in more closed and repressed countries where civil society and dissenting voices are effectively stifled. The more repressive the situation, the less information is available to people about the potential of UN mechanisms. Finally, human rights actors must acknowledge the structural inequities that make it more difficult for some victims and defenders to access UN mechanisms and make additional efforts to address them, by encouraging engagement and offering support to those who are more isolated or marginalised.

3 • Considering the data challenges: how to measure cooperation and intimidation

In order to be able to identify the countries in which the inhibiting impacts of intimidation are significant, we need data about the levels of human rights abuses, intimidation, and cooperation with the UN system, and we need to be able to track changes over time. It is incredibly problematic that cooperation is not being adequately measured – cooperation levels could be improving or deteriorating in different places, but without this data we cannot accurately assess what is happening. It is only by investing in systematically gathering and collating data in such a way that cooperation could be tracked and analysed, that obstacles can be identified and prioritised, and solutions sought.

While these are complex and challenging issues to address, the study's reflections on data-based approaches and limitations point to several initial steps that could strengthen the UN's ability to assess intimidation and its impact on cooperation. To address these challenges, the UN should track the engagement of individuals, and civil society more broadly, across all of its mechanisms, and regularly produce quantitative reports on cooperation with the UN.¹⁴ To do so comprehensively, such an effort may require additional resources. Until such resources are available, the OHCHR and senior official could create a partial database on engagement with the mechanisms for which gathering data with fewer resources is feasible. At the same time, major human rights data-collecting institutions (including OHCHR) should continue to improve the level of collection and management of data on all human rights abuses, collaborating with NGO and academic data-based efforts that enable quantification and comparative ranking of abuse levels. With those two data sources, the UN would be in a position to identify States where there is high abuse and low cooperation as well as those with high abuse and high cooperation. Research on best practices could then assist States where intimidation has sustained inhibition more significantly. Lastly, in order to determine which countries need further studying, there is no reason to 'reinvent the wheel' – OHCHR and human rights NGOs should take advantage of existing data and measurement tools on freedoms, civil liberties and civic space as proxy measurements for levels of intimidation. This data can also help to identify countries where deeper study is needed.

4 • Considering the politics of intimidation: State and UN responses

States seeking to sustain their international engagement while controlling their population are most likely to use subtle, quasi-legal, intimidation tactics to deter the defence of human rights at a lower political cost than open abuse. Therefore, human rights actors must ensure such subtle abuse comes at a higher political cost. In order for this to happen, it is important for the UN, States, and NGOs to acknowledge the importance of documenting intimidation and take action, even in restrictive environments. The UN is currently failing to adequately

monitor and address this problem. The UN's human rights mechanisms remain remote for many and though its field-based monitoring presences (OHCHR or Peace Operations) would be good tools in this case, they are few and far between. In addition, other UN agencies deployed to repressive States in UN Country Teams often lack the flexibility and political will to take on human rights responsibilities for fear of political retaliation by host States. The OHCHR currently creates some accountability pressure for States through analysis in its annual report on Special Procedures of instances where States have blocked cooperation¹⁵ but this could be expanded and strengthened, by documenting and quantifying more precisely all incidents in which anyone was deterred in any way from cooperating during country visits. Finally, strategies to promote further cooperation should be strengthened, including encouraging standing invitations and country visits and calling out the refusal of such visits publicly. Non-cooperation has and should continue to be referenced in discussions around candidacies of States to human rights bodies, such as the Human Rights Council.

5 • Conclusion

Several States and the UN have shown that they consider intimidation and reprisals to be a critical issue. The annual Reprisals Report and the senior official mandate are crucial tools for addressing reprisals and intimidation against those seeking to cooperate or cooperating with the UN. However, accountability needs to go beyond specific incidents and attacks. States must be called out for deterrence approaches they are using every day to sustain an atmosphere of fear and inhibition. The SG and senior official on reprisals have correctly identified intimidation resulting in self-censorship as a pressing concern and it is time to move beyond naming the problem to finding real solutions. While intimidation that results in inhibition is indeed hard to measure, it's far from impossible and ISHR's study offers several manageable starting points. With a better understanding of how intimidation affects defenders and how to confront States' strategies, together with more effective means of measuring how intimidation and reprisals affect cooperation with the UN, this important work can begin. The UN, together with civil society, must add to existing efforts to tackle reprisals, and hold States to account for intimidation in *all* of its forms.

NOTES

- 1 • With thanks to Marina Wilbraham for her assistance. The content of this article relies on a study commissioned by the International Service for Human Rights (ISHR): Liam Mahony, "Intimidation and its Impact on Engagement with the UN Human Rights System...", March 2020.
- 2 • "Reprisals: ISHR Launches New Study on Intimidation And Its Impact on Engaging With the UN," International Service for Human Rights, March 16, 2020, accessed July 13, 2020, <https://www.ishr.ch/news/reprisals-ishr-launches-new-study-intimidation-and-its-impact-engaging-un>.
- 3 • Liam Mahony, "Intimidation and its Impact on Engagement with the UN Human Rights System: Methodological Challenges and Opportunities." International Service for Human Rights, March 2020, accessed July 13, 2020, https://www.ishr.ch/sites/default/files/documents/final_ishr_intimidation_reportweb.pdf.
- 4 • "Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights: Report of the Secretary General," A/HRC/42/30, United Nations, September 9, 2019, accessed June 10, 2020, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Documents/A_HRC_42_30.docx.
- 5 • "Ban Ki-moon Appoints High-ranking Official to Combat Reprisals Against Human Rights Defenders," International Service for Human Rights, October 4, 2016, accessed June 10, 2020, <https://www.ishr.ch/news/ban-ki-moon-appoints-high-ranking-official-combat-reprisals-against-human-rights-defenders>.
- 6 • Sarah Repucci, "Freedom in the World (2020): A Leaderless Struggle for Democracy." Freedom House, June 2020, accessed June 20, 2020, <https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy>.
- 7 • "National Civic Space Ratings," CIVICUS Monitor, 2020, accessed June 10, 2020, <https://monitor.civicus.org/>.
- 8 • A/HRC/42/30, United Nations, September 9, 2019.
- 9 • "Comments by Assistant Secretary-General for Human Rights, Andrew Gilmour, at OHCHR Side Event," OHCHR, October 24, 2018, accessed June 10, 2020, <https://www.ohchr.org/Documents/Issues/Reprisals/CommentsReprisalsEvent24Oct2018.docx>.
- 10 • A/HRC/42/30, United Nations, September 9, 2019.
- 11 • Hungary, Egypt and South Sudan were cited in the 2019 Reprisals Report, A/HRC/42/30, United Nations, September 9, 2019.
- 12 • "Reprisals...", ISHR, March 16, 2020.
- 13 • Liam Mahony, "Intimidation and its Impact on Engagement with the UN Human Rights System...", March 2020.
- 14 • This should include the Human Rights Council, the Universal Periodic Review, Treaty Bodies, field presence, country visits, and other contact.
- 15 • "UN Human Rights Council Annual Report Special Procedures for 2018," A/HRC/40/38, United Nations, March 12, 2019, accessed June 10, 2020, https://www.ohchr.org/Documents/HRBodies/SP/A_HRC_40_38.docx.



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Received in May 2020.

Original in English.



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