CHAPTER 17

Ending Reprisals: The Role and Responsibilities of the Special Procedures of the UN Human Rights Council

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Abstract

International human rights law recognises that all persons have the right to safe and unhindered access to the UN human rights system, including Special Procedures, and to be protected from intimidation and reprisals in connection with the exercise or attempted exercise of this right. Despite this, cases of alleged intimidation and reprisals are increasing in incidence and severity, with recent examples of human rights defenders and others engaging with the Special Procedures being subject to defamation, detention, disappearances and even death. This short chapter considers the nature of the obligation to protect people from intimidation and reprisals, together with the steps and measures that the system of Special Procedures, and the UN human rights system as a whole, should take to prevent reprisals and pursue accountability where they occur.

Keywords


International human rights law recognises that all persons have the right to safe and unhindered access to and communication with the UN human rights system, including Special Procedures, and to be protected from intimidation and reprisals in connection with the exercise or attempted exercise of this right. This right is derived from the rights to freedom of expression, association, assembly and movement, together with the rights to access to justice and to an effective remedy,¹ and is explicitly recognised in the Declaration on

¹ The Human Rights Committee has stated that by recognising the competence of the Committee to receive communications under the first Optional Protocol to the International
Human Rights Defenders.\textsuperscript{2} The prohibition against intimidation and reprisals is also codified in specific provisions applying to communications with certain UN human rights treaty bodies.\textsuperscript{3} While States have the primary duty to respect and protect these rights and to investigate and remedy violations,\textsuperscript{4} as subjects of international law, UN bodies may also be bound by these obligations.\textsuperscript{5}

Despite these clear principles of international law, cases of alleged intimidation and reprisals appear to be increasing in incidence and severity. The 2014 and 2015 UN Secretary-General’s Reports on Cooperation with the United Nations, for example, document cases of human rights defenders and others who engage with the Special Procedures and other Human Rights Council-mandated mechanisms being subjected to defamation, judicial harassment, detention, disappearances and even death.\textsuperscript{6}

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\textsuperscript{2} 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 General Assembly (UNGA) Res 53/144 (9 December 1998) UN Doc A/RES/53/144, in which arts 5(c) and 9(4) protect the right to access and communication, while arts 2(1), 9(1) and 12(2) operate to prohibit intimidation and reprisals in connection with the exercise of this right.


\textsuperscript{6} See e.g. UN Human Rights Council (UNHRC) ‘Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights: Report of the Secretary-General’ (27 August 2014) UN Doc A/HRC/27/38; UNHRC ‘Cooperation with the United Nations,