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Thirty-second meeting of Chairs of the human rights treaty bodies

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Item 5 of the provisional agenda

**Implementation by the treaty bodies of the Guidelines
against Intimidation or Reprisals (the San José Guidelines),
with a particular focus on trends and cases of reprisals in the treaty bodies**

Mapping the practices of treaty bodies on intimidation and reprisals and identifying issues that need further action by the Chairs

Note by the Secretariat

Summary

The present note is submitted pursuant to the request made by the Chairs of the human rights treaty bodies at their thirty-first meeting, held at Headquarters from 24 to 28 June 2019. The Chairs requested the Secretariat to compile the cases and analyse the trends with regard to reprisals that had been brought to the attention of the treaty bodies by mapping the practices of the treaty bodies with regard to addressing reprisals, and the roles of the Committee rapporteurs and focal points on reprisals, based on the recommendations arising from the workshop on reprisals held at Geneva in 2018 (A/74/256, para. 50). The Secretariat was also asked to identify issues for further action by the Chairs.



I. Introduction

1. At their thirty-first meeting, held at Headquarters from 24 to 28 June 2019, the Chairs requested the Secretariat to compile the cases and analyse the trends with regard to acts of intimidation and reprisals that had been brought to the attention of the treaty bodies by mapping the practices of the treaty bodies on reprisals and the role of the rapporteur or focal point of each Committee, based on the recommendations made at the workshop on reprisals held at Geneva in 2018. The Secretariat was also charged with identifying issues for further action by the Chairs.

2. The present note contains an overview of trends and cases of reprisals for the three-year period between 2017 and 2019, recent developments and a compilation of good practices in preventing and responding to intimidation and reprisals against individuals who have cooperated with the treaty bodies. Issues for further action by the Chairs are also included.

3. The Secretariat prepared the present note on the basis of selected publicly available information, information that has become available on the Internet during the reporting period, newly adopted guidelines that had been adopted by the treaty bodies on reprisals and information on reprisals and intimidation contained in the annual reports of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights. The present report should be read together with those reports, and it is focused only on acts of intimidation and reprisals against those cooperating with the treaty bodies.

II. Background

4. The previous note on the practices of treaty bodies on intimidation and reprisals,¹ prepared for the thirty-first meeting of Chairs of the human rights treaty bodies, was focused on the role of the focal points and rapporteurs and contained a comprehensive overview of good practices in preventing and responding to reprisals against those who intended to or who had cooperated with the human rights treaty bodies.

5. In the tenth annual report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, the Secretary-General referred to a record number of 48 States with alleged cases of intimidation and reprisals against persons cooperating or seeking to cooperate with the United Nations on human rights. The reported cases range from acts of violence to disproportionate legal and policy restrictions to hostile public discourse. The report contains information on several cases pertaining to cooperation with the treaty bodies and how the treaty bodies and the Secretariat raised and addressed such cases. The Secretary-General noted that the United Nations continued to strengthen its system-wide response, including through improved reporting on allegations and more thorough analysis of existing policy responses. More than ever, that issue should be a priority and a core responsibility of the Organization. He reiterated that such incidents of reprisals were absolutely unacceptable and noted that our partners were indispensable and that we must all do more to protect and promote their fundamental right to engage with the United Nations.

6. In the context of the twentieth anniversary of 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, in a joint statement, a group of Chairs, Vice-Chairs and members of the United Nations human rights treaty bodies and the Special Rapporteur on the situation of human rights defenders noted the following:

The treaty bodies reiterate the importance of human rights defenders being able to act freely and without any interference, intimidation, abuse, threat, violence, reprisal or undue restriction. Creating a safe and enabling environment, including by promoting respect and support for the activities of human rights defenders, is essential for the promotion, protection and defence of human rights. The treaty bodies consider any

¹ HRI/MC/2019/2.

interference, intimidation, abuse, threat, violence, reprisal or undue restriction against human rights defenders as constituting violations of the obligations of States parties towards the realization of the rights set out in the treaties. In view of the obligations to respect, protect and fulfil the rights enshrined in the treaties, the treaty bodies remind States parties of their responsibility to ensure that human rights defenders are effectively protected against any and all interference, intimidation, abuse, threat, violence, reprisal or undue restriction and any other negative consequence that they might experience in association with their actions to promote the realization of rights, including by cooperating and engaging with the human rights treaty bodies. As noted in the Guidelines against Intimidation or Reprisals (the San José Guidelines) the treaty bodies strongly condemn acts of intimidation or reprisal, including against those who seek to cooperate, who cooperate or who have cooperated with the treaty bodies.²

7. Member States have highlighted reprisals in various forums, for example, at the seventy-fourth session of the General Assembly, at which Belgium and Costa Rica made a joint statement on behalf of a group of 56 countries³ on the process of strengthening the treaty bodies, in which they highlighted their deep concern about reprisals against individuals cooperating with the treaty bodies, encouraging the treaty bodies and the Office of the Assistant Secretary-General in their efforts to respond to such reprisals, while also encouraging the harmonized implementation of the San José Guidelines⁴ as essential.

III. Overview of cases and trends with regard to intimidation and reprisals

8. After the Human Rights Council and the special procedures mechanism, the treaty bodies receive the third highest number of publicly reported allegations of acts of intimidation and reprisals against those who cooperate or seek to cooperate with the United Nations. The total number of reported cases and the number of cases that the treaty bodies have taken action on each year have increased significantly. In 2017, the report of the Secretary-General included 11 cases of reprisals related to the treaty bodies, and, in 2018, there were 20 such cases. In the most recent report of the Secretary-General (A/HRC/42/30), which covers 1 June 2018 to 31 May 2019, 42 allegations of reprisals related to the treaty bodies were communicated to the Secretariat and the Office of the Assistant Secretary-General for Human Rights.⁵ The cases concerned 24 countries. The persons affected, or the victims of reprisals, numbered 52, in addition to several non-governmental organizations. The cases were addressed by the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Elimination of Discrimination against Women, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a number of special procedures mandate holders, in coordination and/or in parallel. The increase in reported allegations is partly due to the increase in the use of the mechanisms to report allegations on intimidation and reprisals to the focal points or rapporteurs and the Office of the Assistant Secretary-General.

Analysis of the nature of cases of intimidation and reprisals

9. For the record number of 48 States with alleged cases of intimidation and reprisals against persons cooperating or seeking to cooperate with the United Nations on human rights and/or with the treaty bodies, allegations have included threats, acts of intimidation, harassment, online threats and other disparaging comments, travel bans, monitoring and surveillance, disbarment, budgetary restrictions, asset confiscation or freezes,

² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E.

³ See www.dfat.gov.au/sites/default/files/unga-74-3c-js-un-treaty-bodies-strengthening-process-21-october-2019.pdf.

⁴ HRI/MC/2015/6.

⁵ A/HRC/42/30.

the confiscation of passports, the non-renewal of business or legal licenses, deportation orders, the revocation of work permits, restrictions on foreign funding, the filing of lawsuits, the ill-treatment of family or relatives, ill-treatment in detention, public denunciation, police raids, arbitrary arrest and detention, and the interrogation of individuals and representatives of non-governmental organizations and national human rights institutions.

10. The alleged reprisals reported, based on cooperation with the committee concerned, have most frequently occurred due to the travel to Geneva of the individuals or groups to participate at the session of the committee. Intimidation and reprisals typically occur after cooperation with the treaty bodies has taken place, after return to the home country, including cases of being denied return to the country of origin. Committees have also been apprised of individuals subjected to reprisals prior to departure for the session or meeting of the committee concerned or who are prevented from participation at the meeting by means of arrest, travel ban or passport confiscation.

IV. Recent developments

11. All the treaty bodies have appointed focal points or rapporteurs on reprisals, and the issue of reprisals is a standing item on the agenda of the annual meeting of Chairs. Currently, however, there are variations in practice with regard to the role of those focal points and rapporteurs. The San José Guidelines have been adopted or officially endorsed by all treaty bodies, except the Committee on Economic, Social and Cultural Rights, which has instead adopted a statement on human rights defenders and economic, social and cultural rights⁶ and set up a procedure for dealing with allegations of reprisals on a case by case basis.

12. There were several positive developments since the previous meeting of Chairs, with regard to the response of the treaty bodies to reports of reprisals and intimidation due to cooperation with them. In April 2019, the treaty bodies launched a web page on reprisals, containing a list of the focal points and rapporteurs of the committees, in line with a United Nations system-wide approach on dealing with reprisals (see annex III). At the previous meeting of Chairs, the Chairs held a dialogue with the Assistant Secretary-General at which they took stock of good practices.

13. At its 100th session, the Committee on the Elimination of Racial Discrimination adopted guidelines on reprisals, which are available on the web page of the Committee.⁷ At previous sessions, the Committee had endorsed the San José Guidelines and appointed a rapporteur on reprisals. The Committee noted that the number of allegations of reprisals and intimidation against human rights defenders, representatives of civil society organizations and national human rights institutions for their cooperation with the treaty bodies had increased and therefore considered it necessary to outline practical guidelines to address and respond to such allegations. Taking into account the recommendations and discussions of the two-day workshop⁸ on reprisals that took place in December 2018, the Committee considered it important to define the role of the rapporteur on reprisals and the actions and protection measures that the Committee could adopt in such cases.

14. Since December 2018, the focal points and rapporteurs on reprisals have been in contact more regularly, exchanging information on the latest trends. The Secretariat has been more systematically monitoring and analysing the allegations of intimidation and reprisals received. The stocktaking has been two-pronged: in the context of the report of the Secretary-General on the subject and in the annual report of the meeting of Chairs of the human rights treaty bodies.

⁶ E/C.12/2016/2.

⁷ See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fRLE%2f9029&Lang=en.

⁸ See www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/31Meeting/HRI_MC_2019_CRP_2.docx.

V. Good practices

A. Preventive measures, awareness-raising and dissemination of information

15. Information-sharing with regard to cases of reprisals on the public web page of the Office of the United Nations High Commissioner for Human Rights (OHCHR) is encouraged, for awareness-raising and for preventive measures, according to recommendations made at the aforementioned workshop on reprisals. It is recommended in the San José Guidelines that the treaty bodies make information regarding allegations of reprisals public, as appropriate, including the relevant communication with States parties, by posting it on the relevant treaty body web page of the OHCHR website.⁹ The main OHCHR web page on intimidation and reprisals is continually updated with information, most recently with the addition of the guidelines of the Committee on the Elimination of Racial Discrimination and the list of current treaty body focal points and rapporteurs on reprisals.

16. The Committee against Torture, the Subcommittee on Prevention of Torture, the Committee on the Rights of Persons with Disabilities and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have guidelines or specific information on how to report reprisals posted on their web pages. The Subcommittee on Prevention of Torture has adopted a revised policy on reprisals¹⁰ and posted it on its web page. The Committee on the Elimination of Racial Discrimination has posted its recently adopted guidelines on cases of reprisals on its web page.

17. The San José Guidelines set out preventive measures, including specific steps to be taken, such as allowing confidential submissions from individuals and groups, having closed meetings with stakeholders and reminding States parties of their obligation to prevent and refrain from all acts of intimidation or reprisals against those who cooperate with the treaty bodies.

18. The Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Elimination of Racial Discrimination have several examples of good practices for preventive action that the treaty bodies have taken to assist individuals, groups of individuals and organizations that have allegedly faced intimidation or reprisals for seeking to cooperate or for having cooperated with the treaty bodies. They include raising concerns verbally with the permanent mission of the country concerned, in reports, in written communications, as well as protective approaches, such as requesting that States parties provide information on the measures taken to prevent reprisals at the opening of sessions, in concluding observations and formulating specific recommendations contained therein. The Committee against Torture and the Committee on the Rights of the Child have held confidential briefings with non-governmental organizations and accept confidential submissions, whereas other committees have held remote briefings to avoid the risk or exposure that may be caused by travelling. As noted in the report of the Secretary General,¹¹ the Human Rights Committee, the Committee against Torture and the Subcommittee on Prevention of Torture have developed several good practices in terms of reacting swiftly to allegations of intimidation or reprisals. The Committee on the Elimination of Discrimination against Women also reacts swiftly, although the communications and action taken are confidential.

19. The web pages of the Committee against Torture, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Elimination of Racial Discrimination have dedicated sections on reprisals, on which both general information about cases of reprisals arising from cooperation with the Committees

⁹ HRI/MC/2015/6, para. 26.

¹⁰ CAT/OP/6/Rev.1.

¹¹ A/HRC/42/30.

and communications with States concerning specific allegations of reprisals may be found. The Committee against Torture and the Committee on the Elimination of Racial Discrimination make their letters publicly available on their web pages, when letters of allegation are sent,¹² an approach that promotes transparency and accountability to the extent that those affected consent to it. The Committee against Torture has posted all letters it has sent concerning cases of reprisals and the replies received from States parties on its web page. The Committee on the Elimination of Racial Discrimination posts the letters from the Committee, but not the response. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Assistant Secretary-General have met with permanent missions to follow up on letters concerning cases of reprisals. The Human Rights Committee and the Committee on the Elimination of Discrimination against Women send letters and receive replies but do not post anything publicly; both Committees have referred cases formally to the Assistant Secretary-General. In addition, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee have also met with permanent missions to follow up on letters concerning cases of reprisals.

20. The use of the media by the treaty bodies, when appropriate, is envisaged in the San José Guidelines, through the issuance of public statements or press releases on specific incidents or on generalized patterns of intimidation or reprisals or by making comments on social media (see annex IV). Using the media to highlight cases is considered a good practice, given that it ensures transparency and gives visibility to the issue of reprisals. In a press release issued at the close of its sixty-eighth session, the rapporteur on reprisals for the Committee against Torture referred to four cases and the follow-up actions that the Committee had focused on in that regard.¹³ In a public statement issued on 28 February 2020, the Committee on the Elimination of Discrimination against Women urged a State party to release a human rights defender from prolonged pretrial detention and to ensure without further delay her right to a fair trial.¹⁴

B. State party reviews, including preventive measures during opening sessions

21. Preventive measures that the treaty bodies have taken during State party reviews include systematically reminding States parties of their primary obligation to prevent or refrain from acts of intimidation or reprisals, including by making reference to those obligations in the introductory oral statements during the dialogues with States. That is considered good practice, and some Chairs, rapporteurs and focal points have announced at the beginning of State party reviews that all reprisals, should they occur, would be handled promptly and in line with confidentiality measures.

22. The Committee against Torture, the Human Rights Committee and other committees, in the opening remarks at their sessions, have mentioned the need to prevent reprisals. At the opening of the 127th session of the Human Rights Committee, the following statement was made by the secretariat: “It is also relevant to note that the Human Rights Council reaffirmed the right of everyone to unhindered access to international bodies, including treaty bodies, and condemned acts of intimidation and reprisals, giving important political support to your work in responding to and preventing acts of intimidation or reprisals in accordance with the San José Guidelines.”

23. In the following statement made at the opening of the sixty-fifth session, the secretariat of the Committee against Torture highlighted the Assistant Secretary-General’s statement made at the first-ever interactive dialogue on the report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, at the Human Rights Council, addressing both recent trends and calling for

¹² See, for example, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CUB/INT_CERD_RLE_CUB_8965_S.pdf; and https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=130.

¹³ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25388&LangID=E.

¹⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25635&LangID=E.

action: “Three particularly disturbing trends were emphasized: reprisals being invoked in the context of counter-terrorism, with human rights defenders being labelled as ‘terrorists’, reprisals often disguised in legal, political and administrative obstacles and the use of accreditation and security procedures to hinder people from speaking out at United Nations headquarters and elsewhere.”¹⁵ Such statements also have a strong preventive function.

24. In other situations, preventive measures can be taken directly by the committees in the context of the review of, and concluding observations on, the periodic reports of States parties, such as when the Human Rights Committee expressed concern about reprisals against human rights defenders who had been cooperating with the United Nations treaty bodies¹⁶ and included a specific recommendation in the concluding observations of the State party concerned:

The Committee is concerned at reports of increased security crackdowns on human rights defenders and civil society actors, who face threats, intimidation and physical attacks to discourage them from carrying out their legitimate activities. It is equally concerned about cases of reprisals against human rights defenders, including for engaging with the United Nations. Such practices, combined with concerns already expressed, prevent the development of a civic space where individuals can meaningfully exercise and promote human rights in a safe environment. The State party should ensure that human rights defenders and other civil society actors are protected against threats, intimidation and physical attacks and investigate, prosecute and convict perpetrators of such acts. It should also allow them the necessary latitude to carry out their activities, including engaging with the United Nations, without fear of restrictions or reprisal.¹⁷

C. Systematically including language on the prevention of reprisals in lists of issues prior to reporting and recommendations in concluding observations on specific cases of reprisals

25. At its sixty-eighth session, the Committee against Torture made direct reference to a specific case in the concluding observations on the report of a State party,¹⁸ including in the section on human rights defenders. It recommended that the State party ensure that human rights defenders and journalists, including those sharing information with United Nations human rights mechanisms, were able to work safely and effectively in the State party, review and revise laws and procedures governing the registration and the operation of non-governmental organizations in the State party, ensuring they did not face reprisals, and ensure that lawyers were able to carry out their professional activities without any intimidation, harassment, improper interference or reprisals.¹⁹

26. At the same session, the Committee against Torture raised the issue of reprisals in the context of its dialogues with States parties, explicitly referring to the issue in more of its concluding observations than at previous sessions²⁰, as well as in some of the lists of issues²¹ and lists of issues prior to reporting.²² In 2019, the Committee against Torture adopted concluding observations for 14 States parties that included the following standard language: “The Committee urges the State party to ensure that individuals are not subjected to reprisals as a result of their complaints” or “...they do not face reprisals”.²³ Concluding observations

¹⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23868&LangID=E.

¹⁶ CCPR/C/VNM/CO/3, paras. 51–52.

¹⁷ Ibid.

¹⁸ CAT/C/UZB/CO/5.

¹⁹ Ibid., para. 36.

²⁰ CAT/C/CYP/CO/5, para. 34; CAT/C/LVA/CO/6, paras. 21 and 25 (b); and CAT/C/NER/CO/1, para. 20 (d).

²¹ CAT/C/BFA/Q/2, paras. 4 and 6(a).

²² CAT/C/ARM/QPR/5, para. 10 (a).

²³ CAT/C/MEX/CO/7, para. 25 (c); CAT/C/BEN/Q/3/Add.1, para. 19 (b); and CAT/C/UZB/CO/5, para. 16 (c).

and lists of issues prior to reporting included requests such as “Please provide an update on measures taken to ensure safety and protection against reprisals”²⁴ or more specific references to cases.

27. At its 123rd session, the Human Rights Committee, in its concluding observations on the report of a State party, noted with concern the large number of reports of reprisals against human rights defenders and journalists because of their work, particularly when such individuals collaborated with United Nations treaty bodies and the Human Rights Council. Notwithstanding the information provided by the State party’s delegation, the Committee had received a number of reports of reprisals against journalists and human rights defenders, including continuing reports of the imposition of travel bans, harassments or intimidation, death threats, violence, arrests and arbitrary detentions, which appeared to have escalated in recent years.²⁵

D. Monitoring visits and inquiries

1. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

28. Given its experience with field visits, including to places of deprivation of liberty, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has well-established policies and practices to reduce the risk of intimidation, reprisal or sanction against any person or organization for having communicated any information to a visiting body. The Subcommittee has developed clear operational steps for the preparation and conduct of and follow-up to its country visits and missions. A focal point is charged with the implementation of the Subcommittee’s policy, for each visit. In cases in which there is a risk or allegation of reprisals or in which reprisals occur, the Subcommittee directly engages with the State party to ensure that it prevents and refrains from engaging in such acts of intimidation or reprisal against individuals or groups seeking to cooperate or cooperating with the Subcommittee and that it adopts adequate remedies. If, during a visit, the Subcommittee is made aware of reprisals carried out by a State party, it takes all appropriate measures.

29. Information on measures aimed at safeguarding against reprisals and incidents, concerns and recommendations with regard to reprisals are included in the country visit reports of the Subcommittee on Prevention of Torture, but they are made public only if the authorities concerned approve of their public issuance. The Subcommittee has also raised concerns specifically about reprisals against those engaging with the Committee, during two country visits. It routinely asks for assurances from the authorities, at start of the visit, that no reprisals will be committed and includes standard language on reprisals in its visit reports. The Subcommittee has suspended a visit, publicly raising concerns regarding the confidentiality of interviews and reprisals, in one country.²⁶

30. In four States parties to the Optional Protocol to the Convention against Torture, the Subcommittee on Prevention of Torture was confronted with several cases of reprisals against the national preventive mechanism while undertaking its preventive mandate under the Optional Protocol. Such reprisals are a violation of a State’s obligations under the Optional Protocol. In one case, the Subcommittee was informed that a national preventive mechanism had experienced attacks from high-level representatives of State authorities and segments of the media, including in the form of hate speech, accusations that it supported criminals and murderers and demands for the resignation of members of the mechanism. In another State party to the Optional Protocol, cases of reprisals and obstruction concerning a national preventive mechanism were received by the Subcommittee and included the fact that State authorities recorded and disclosed videos displaying a meeting of representatives of the mechanism within a place of detention with a detainee. In another case in the same State party, the name of a detainee interviewed by the national preventive mechanism was

²⁴ CAT/C/MNG/QPR/3, para. 2; and CAT/C/ARM/QPR/5, para. 10 (a).

²⁵ CCPR/C/BHR/CO/1, para. 59.

²⁶ A/HRC/39/41, para. 64.

disclosed publicly, thereby exposing that person to a serious risk of reprisals. In addition, the authorities refused to investigate the case, which is a clear violation of the provisions of the Optional Protocol.

31. The national human rights institution of a State party to the Optional Protocol to the Convention against Torture, which is also the designated national preventive mechanism of that country, had its budget substantially cut after issuing a report on serious human rights violations in places of detention. The head of the institution received messages of intimidation and death threats, which were also made against his family, and distortions of facts about the work of the mechanism were spread in social media, endangering its mandate. The Government of another State party to the Optional Protocol substantially distorted the nature of its national preventive mechanism through changes in its financing and the adoption of new legislation that de facto impeded it in the discharge of its functions under the Optional Protocol. In addition, the members of the mechanism have been harassed and, as a consequence, were unable to carry out their work.

2. Inquiries and official visits in conjunction with inquiries

32. The Secretariat is not aware of allegations of reprisals in conjunction with a mission undertaken for an official inquiry during the reporting period. The most recent case of reprisals reported during a confidential inquiry of the Committee against Torture occurred in 2011, although the letter was made public in November 2014, once the summary account of the results of the inquiry were issued.²⁷ The Committee on the Rights of Persons with Disabilities has developed a mechanism by which precautionary steps are taken, including the regular exchange of information with the focal points on reprisals and the development of a protocol before a visit about the role of the visiting Committee members, along with clear instructions on how to proceed, should they be asked to act on an allegation or a case of reprisal or intimidation.

3. Follow-up procedure used by the Committee against Torture for cases and allegations of reprisals

33. In 2019, the Committee against Torture addressed cases of reprisals and intimidation in three countries. Notably, the Committee used the concluding observations of one State party to follow up on such a case. It is not the first time that the recommendations selected for follow-up by the Committee have included measures against reprisals. In its concluding observations on a report of a State party, adopted at its sixty-fourth session, the Committee selected for follow-up recommendations that included ensuring that human rights defenders, journalists and lawyers were not subjected to reprisals for their communication with or provision of information to the United Nations treaty bodies.²⁸

34. Similarly, at its fifty-eighth session, in view of the extraordinary nature and urgency of the special reporting procedure initiated by the Committee against Torture pursuant to article 19 (1) of the Convention against Torture, the State party concerned was asked to provide information on follow-up with regard to all the recommendations contained in the concluding observations, including those aimed at protecting members of civil society who had cooperated with the Committee during the consideration of the special report and to put an end to all reprisals.²⁹

35. In a letter dated 15 July 2014, the rapporteur on reprisals for the Committee against Torture, pursuant to article 19 of the Convention against Torture, requested information from the permanent mission of a State party regarding a case of reprisals that had occurred immediately after its review conducted in April and May 2014, making reference to the areas

²⁷ A/69/44, para. 113; see also https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fRLE%2fLBN%2f7536&Lang=en.

²⁸ CAT/C/RUS/CO/6, para. 29.

²⁹ CAT/C/BDI/CO/2/Add.1, paras. 33–35.

that had been identified for follow-up in the concluding observations of the Committee on the report of the State party.³⁰

4. Protection measures and decisions on individual communications

36. In the context of individual communications, the treaty bodies regularly request States parties to adopt interim measures while the communication is being considered to protect the alleged victims, their family members and counsel, who can face intimidation and reprisals for filing complaints with the treaty bodies, or after the treaty body concerned publishes its decision or Views on the communication.

37. Of the eight treaty bodies with individual complaints procedures, allegations of reprisals are most frequently addressed to the Human Rights Committee and the Committee against Torture. Following the requests for interim measures, or denunciations of and requests to refrain from intimidation or reprisals in the final decisions or Views, it is either the rapporteur on communications and interim measures or the rapporteur on reprisals or follow-up that monitor whether the alleged risks of reprisals persist and what the trends are in that regard. The rapporteurs generally request States parties to provide, within a specific time frame, information on the measures taken by authorities to comply with the request to refrain from intimidation or reprisals, and the Committees publicly post the correspondence on their web pages or take stock of allegations received in their public reports on follow-up to decisions or Views on individual complaints. Regarding long-standing cases, the Committees seek meetings with representatives of the permanent missions to ensure that effective protection is extended. The Committees also regularly hear updates by their focal points or rapporteurs on reprisals in the context of pending complaints or follow-up to final decisions or Views.

38. In some recent jurisprudence, committees considered the reprisals in the form of a particular regime of detention, including solitary confinement, as a violation of a State party's treaty obligations.³¹

5. Increased focus on reprisals relating to the humanitarian funds and the impact on the work of the treaty bodies

39. The United Nations Voluntary Fund for Victims of Torture receives voluntary contributions for distribution, through established channels of assistance, to individuals whose human rights have been severely violated as a result of torture, and to their relatives.³² Increasingly, civil society organizations supported by the Fund face deliberate obstructions to the conduct of their work assisting victims of torture,³³ including restrictions to access to the funds disbursed by the Fund, threats and intimidations, criminal convictions, physical attacks or raids, searches or seizures in office premises. Some organizations reported reprisals as a result of their collaboration with the United Nations.³⁴ This context has a direct impact on the Fund's ability to fulfil its mandate and to provide assistance to individuals whose human rights have been severely violated as a result of torture.

40. The Fund convenes a thematic workshop each year, offering a platform for knowledge-sharing and allowing practitioners and beneficiaries from organizations it supports around the world to contribute to a greater understanding of the most pressing gaps and issues currently confronted by victims of torture and to devise effective responses. The Fund plans to focus its workshop in 2020 on supporting victims of torture in a context of shrinking civic space, including the prevention of intimidation and reprisals for engaging with the United Nations human rights mechanisms.

³⁰ CAT/C/THA/CO/1, paras. 18 and 31; see https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fRLE%2fTHA%2f18048&Lang=en.

³¹ *Aarrass v. Morocco* (CAT/C/68/D/817/2017).

³² See General Assembly resolution 36/151.

³³ See A/73/233.

³⁴ Including Mwatana Organization for Human Rights (Yemen); COFAVIC (Bolivarian Republic of Venezuela) and Bir Duino Kyrgyzstan (Kyrgyzstan); see A/HRC/42/30.

E. Examples of engagement with States parties

41. The Committee on the Elimination of Discrimination against Women, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on Enforced Disappearances achieved positive outcomes, to at least a certain degree, in cases of intimidation or reprisals, including State authorities expressing concern and the desire to support and protect human rights in the country. In one case, the Supreme Court of a State party lifted the designation of “extremist material” from an alternative report, and the human rights organization concerned was reported to be functioning legally in the country.³⁵

42. The Committee against Torture has decided to leave the dialogue open with some States parties, due to the absence of meaningful progress, in the hope of improving the situation in the future. Regrettably, a large number of States denied allegations of intimidation or reprisals, maintaining that allegations were false and untrue or were made to cover up other legal proceedings. In some cases, information provided by States contained results such as long delays in court proceedings, the violation of the right to appeal, a lack of concrete steps taken towards an investigation or a lack of updates provided on the conditions of detention.

43. An example of a positive reaction in a case of reprisals was the way one State party constructively handled allegations transmitted by the Committee on the Elimination of Discrimination against Women, with the protection of the alleged victim in mind. In October 2018, a non-governmental organization working on women’s rights and gender-based violence engaged with the Committee in the context of the review of the report of a State party. The non-governmental organization had submitted to the Committee a public alternative report, and its representative delivered an oral statement at the seventy-fourth session of the Committee. In the days following her participation at the meeting, her statement was circulated in newspapers and on a radio show in the State party, whose host made disparaging comments about the Committee, the non-governmental organization and the advocacy of its representative, including related to the engagement with the United Nations. The incident reportedly worsened an already hostile environment for the representative, who had received death threats on social media in 2014 in connection with her work on violence against women. On 30 May 2019, the Committee on the Elimination of Discrimination against Women sent a letter to the State party concerned addressing those allegations. On 22 June 2019, the Government responded and noted that, upon receipt of the allegations, the relevant authorities had opened an investigation, contacted the representative to obtain more information about her situation and offered her assistance through the gender-based violence specialist of the department of gender and family affairs. The Government expressed concern about the allegations and indicated that it would seek to protect the rights and safety of women human rights defenders in the country.

VI. Issues for further action by the Chairs

A. Increased awareness-raising

44. Improvements in awareness-raising and public information may include posting the relevant correspondence from each Committee on a web page dedicated to cases of reprisals, when they exist, emphasizing a the zero-tolerance approach taken with regard to reprisals and intimidation in the opening of each session or at meetings with States parties. It can also include making reference in a more systematic way to the zero-tolerance approach taken with regard to reprisals in annual or biennial reports (see annex II) or issuing dedicated press releases in cases of recurrence, lack of an official response or lack of cooperation by State parties in addressing cases.

³⁵ A/HRC/42/30, paras. 66–67.

B. Increased coordination among the Chairs and focal points and rapporteurs on reprisals

45. Coordination among the treaty body focal points and rapporteurs should become more robust, including when reaching out to the Office of the Assistant Secretary-General for a coordinated and strategic response to individual allegations and cases.

1. Increased coordination with other mandate holders, mechanisms or procedures

46. It is clear that coordination and communication should increase with other human rights mechanisms, in particular between the rapporteurs and focal points of the treaty bodies and the special procedures mechanism of the Human Rights Council, such as the Special Rapporteur on the situation of human rights defenders. Other improvements in coordination could include liaising more regularly with the special procedures, increasing internal coordination, officially endorsing and publicizing the San José Guidelines, using press releases more strategically and consistently addressing individual cases through formal communications or meetings with the permanent representatives of the States parties concerned, in Geneva or New York.

47. Other measures could include increased coordination with field presences and on prevention, when countries whose periodic reports are reviewed have publicly recorded cases and a history of reprisals and intimidation. The treaty bodies could further efforts to prevent acts of intimidation and reprisals by coordinating with the field presence or the desk officer for countries of concern, including by communicating with the field operations division before the review of a State party's periodic report, when acts of intimidation or reprisals have occurred in the past. Protective measures could be strengthened, including holding confidential meetings with non-governmental organizations and human rights defenders away from United Nations premises to protect victims, human rights defenders and members of civil society who face a greater risk of reprisals.

48. The Chairs could introduce more regular exchanges on reprisals and intimidation, including intersessionally, with the focal points and rapporteurs on reprisals, in the form of a monthly virtual coordination meeting or through use of an email list server. The Chairs should be regularly informed of any developments regarding reprisals. More regular communications with the focal points on reprisals at the Secretariat level could also be envisaged.

2. Individual complaints

49. Although requests for protection have become a more regular, and visible, feature in individual complaints to the treaty bodies, the responses of and protection provided by States parties are not always sufficient to address those cases or the need for protection of the individuals concerned. Another challenge is ensuring consistency among the treaty bodies when responding to reprisals and achieving transparency with regard to the protection requests made.

3. Annual reports

50. Treaty bodies should, as appropriate, include information on cases of intimidation or reprisals, the action taken and the outcome thereof in their annual or biennial reports, a good practice outlined in the recommendations contained in previous reports.³⁶ Many treaty bodies report on their actions regarding reprisals and intimidation in such reports, however, several treaty bodies do not (see annex II).

³⁶ See HRI/MC/2019/2.

Annex I

Existing policies and practices for addressing cases of reprisals

<i>Treaty body</i>	<i>Specific policy or guidelines on reprisals</i>	<i>Rapporteur or focal point on reprisals appointed</i>	<i>Functions of the focal point/rapporteur on reprisals defined in a specific document</i>	<i>Letters of allegation, and the responses from States publicly posted on the Committee's web page</i>
Committee on the Elimination of Racial Discrimination	Yes	Yes	Yes ^a	Yes ^b
Human Rights Committee	No	Yes	No	No
Committee on Economic, Social and Cultural Rights	No	Yes ^c	No	No
Committee on the Elimination of Discrimination against Women	No	Yes	No	No
Committee against Torture	Yes	Yes	Yes ^d	Yes
Committee on the Rights of the Child	No ^e	Yes	No	No
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	Yes	Yes	Yes ^f	Yes
Committee on the Rights of Persons with Disabilities	No	Yes	Yes ^g	None yet reported
Committee on Enforced Disappearances	No	Yes	No	No (disclosed in annual reports)

<i>Treaty body</i>	<i>Specific policy or guidelines on reprisals</i>	<i>Rapporteur or focal point on reprisals appointed</i>	<i>Functions of the focal point/rapporteur on reprisals defined in a specific document</i>	<i>Letters of allegation, and the responses from States publicly posted on the Committee's web page</i>
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Yes Policy on reprisals in relation to its visiting mandate ^h	Yes	Yes	Allegations of reprisals disclosed when visit reports are made public

^a Committee on the Elimination of Racial Discrimination, Guidelines to address allegations of reprisals and acts of intimidation against individuals and organizations cooperating with the Committee. Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fRLE%2f9029&Lang=en.

^b Not systematically, but on a case-by-case basis, keeping the “do no harm” principle in mind.

^c The Bureau acts as the Committee focal point.

^d CAT/C/55/2.

^e Endorsed the Guidelines against Intimidation or Reprisals.

^f See www.ohchr.org/EN/HRBodies/CMW/Pages/Reprisals.aspx.

^g See www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.

^h See CAT/OP/6/Rev.1.

Annex II

Selected information on reprisals and intimidation in the reports of the treaty bodies

Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its twenty-ninth and thirtieth sessions (A/74/48)

The Committee was briefed on its first allegation of a reprisal with respect to civil society organizations that had cooperated with the Committee by submitting an alternative report in relation to a review of a report of a State party by the Committee. On 25 June 2018, the Committee addressed the Government regarding the designation as “extremist material” of the alternative report submitted by civil society organizations Anti-Discrimination Centre Memorial and Bir Duino Kyrgyzstan to the Committee ahead of its review of Kyrgyzstan in April 2015. In May 2018, during a visit to Kyrgyzstan, the Assistant-Secretary General raised the allegations with the Government.

Report of the Committee on Enforced Disappearances on its fifteenth and sixteenth sessions (A/74/56)

The Committee should increase coordination with focal points and rapporteurs on reprisals from other treaty bodies, other human rights mechanisms and the Office of the Assistant Secretary-General for Human Rights. The Committee noted with satisfaction that, during the reporting period, it had not received any allegations from individuals of acts of intimidation or reprisal for seeking to cooperate or cooperating with the Committee.

The Committee remains concerned by allegations that authors of requests for urgent action have been subjected to threats, pressure and reprisals, particularly in connection with events occurring in Mexico and Colombia. In those urgent action cases, the Committee requests the State party to adopt interim measures to protect the persons who are in danger.

Report of the Committee on the Elimination of Racial Discrimination on its ninety-sixth, ninety-seventh and ninety-eighth sessions (A/74/18)

At its ninety-sixth session, the Committee received allegations of reprisals against two human rights defenders who had been prepared to cooperate with the Committee in the context of its consideration, in August 2018, of the nineteenth to twenty-first periodic reports submitted by Cuba (CERD/C/CUB/19-21). The Committee’s focal point on reprisals, Calí Tzay, together with the Chair of the Committee, sent a letter to the State party seeking information on the allegations. On 8 October 2018, the Committee received a reply from the State party, which it will consider at its ninety-ninth session.

Report of the Committee against Torture on its sixty-fourth to sixty-sixth sessions (A/74/44)

At its forty-ninth session, the Committee adopted a mechanism to prevent, monitor and follow up on cases of reprisal against civil society organizations, human rights defenders, victims and witnesses after their engagement with the treaty body system. It subsequently appointed a rapporteur on reprisals under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a rapporteur on reprisals under articles 20 and 22. At its fifty-fifth session, the Committee adopted guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee under articles 13, 19, 20 and 22 of the Convention (CAT/C/55/2). The guidelines include a clear recognition of the value of the Guidelines against Intimidation or Reprisals (San José Guidelines).

At its sixty-third session, the Committee designated Ana Racu as the rapporteur on reprisals under articles 19, 20 and 22. Information on action taken by rapporteurs during the reporting period was made available on the Committee web page. Ms. Racu and Claude Heller Rouassant attended a workshop on reprisals, held in Geneva on 12 and 13 December

2018, and jointly organized by the Office of the United Nations High Commissioner for Human Rights and the International Service for Human Rights.

Report of the Committee on the Rights of the Child on its seventy-second to seventy-seventh sessions (A/73/41)¹

At its seventy-second session, the Committee adopted decision No. 12 of 18 May 2016, in which it unanimously adopted the San José Guidelines, endorsed at the twenty-seventh meeting of Chairs of the human rights treaty bodies (see A/73/41, annex II). It will implement them in line with the Convention on the Rights of the Child, the three Optional Protocols to the Convention on the Rights of the Child and the Committee's rules of procedure.

Report of the Committee on the Rights of Persons with Disabilities on its seventeenth to twentieth sessions (A/74/55)

The Committee has condemned all acts of intimidation and reprisals towards individuals and organizations for their contribution to the work of the Committee. It has appointed, from among its members, a focal point on reprisals with the mandate to follow up and provide advice on situations involving such cases (A/74/55, para. 34). To ensure the safety of human rights defenders, organizations may request that their written submissions or participation in briefings be kept confidential.

Reports of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

No references to reprisals or intimidation in cooperation with the treaty bodies have appeared in the recent reports of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women or the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ Biennial report.

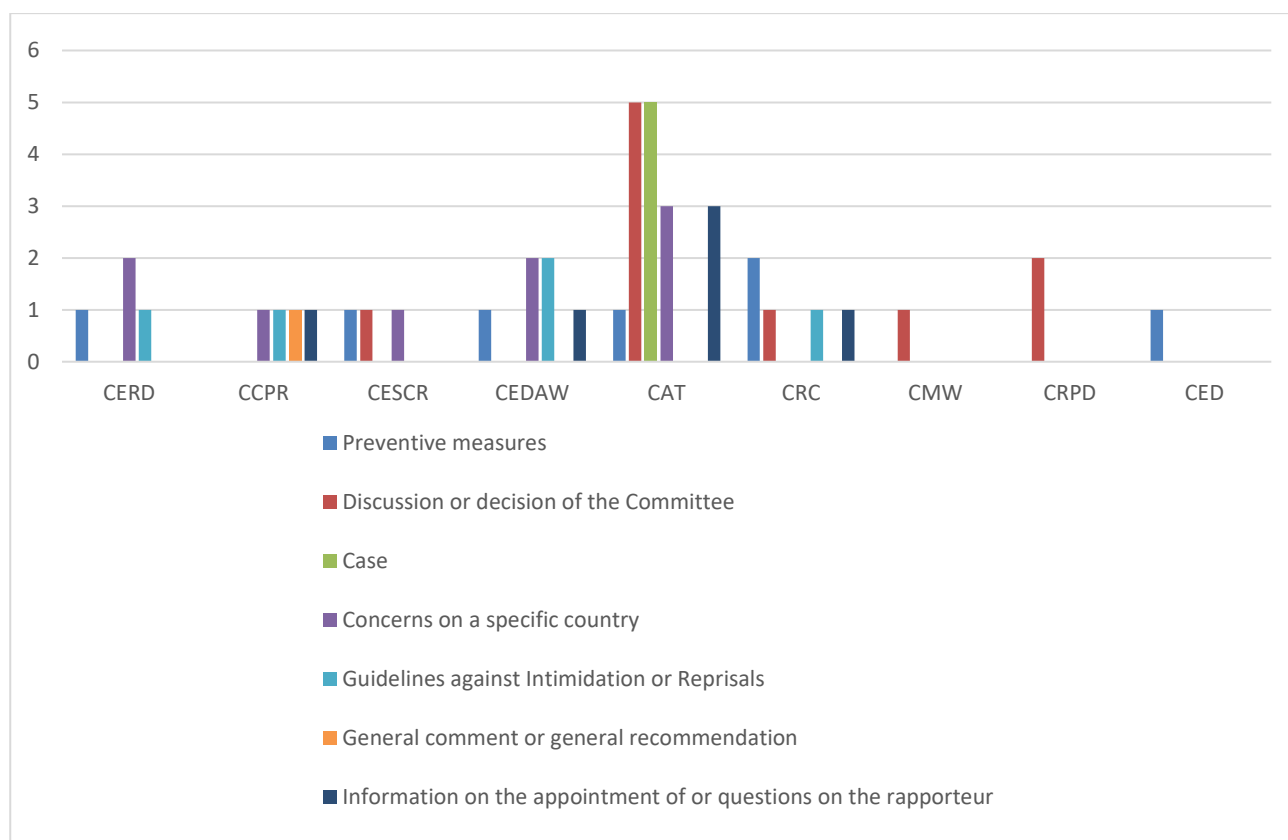
Annex III

<i>Treaty body</i>	<i>Rapporteur</i>	<i>Email address</i>
Human Rights Committee	Bamariam Koita	ccpr@ohchr.org
Committee on Economic, Social and Cultural Rights	Bureau of the Committee	cescr@ohchr.org
Committee against Torture	Ana Racu	cat@ohchr.org
Committee on the Elimination of Racial Discrimination	To be appointed at the 101st session of the Committee	cerd@ohchr.org
Committee on Elimination of Discrimination against Women	Nahla Haidar Gladys Acosta Vargas (alternate)	cedaw@ohchr.org
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Satyabhooshun Domah	opcat@ohchr.org
Committee on the Rights of the Child	Renate Winter	crc@ohchr.org
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	To be appointed at the thirty-second session of the Committee	cmw@ohchr.org
Committee on the Rights of Persons with Disabilities	Robert Martin Rosemary Kayess	crpd@ohchr.org
Committee on Enforced Disappearances	Milica Kolakovic-Bojovic	ced@ohchr.org

Source: www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx.

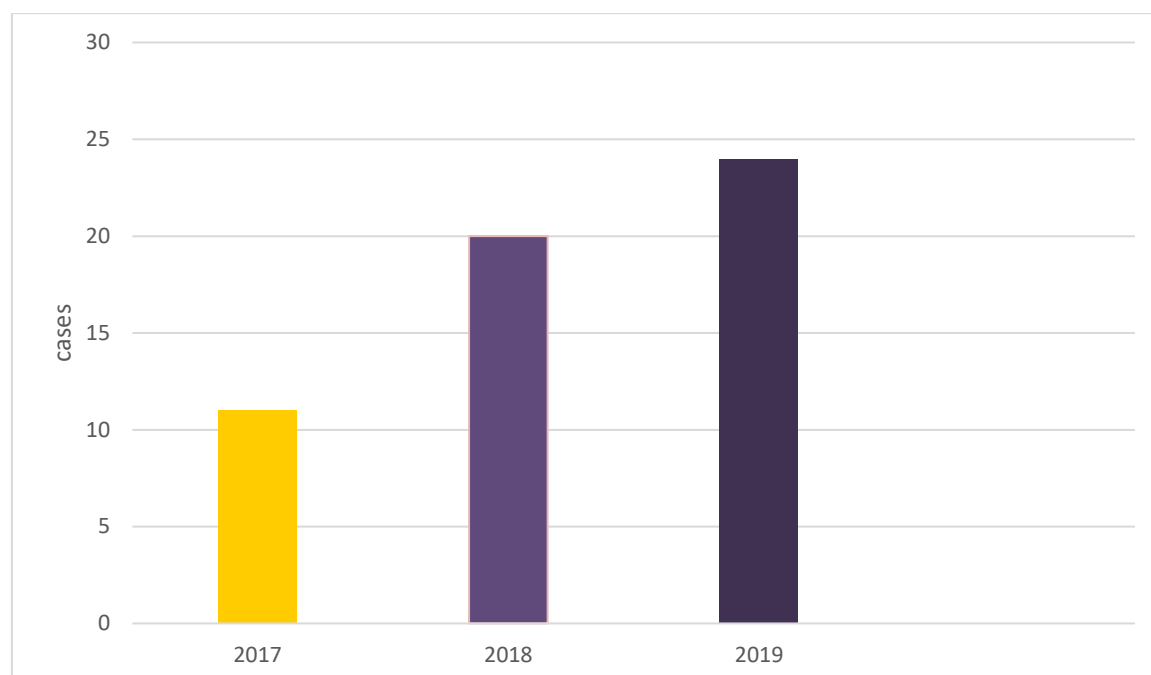
Annex IV

Figure I
Treaty body press releases that mention reprisals, 2019



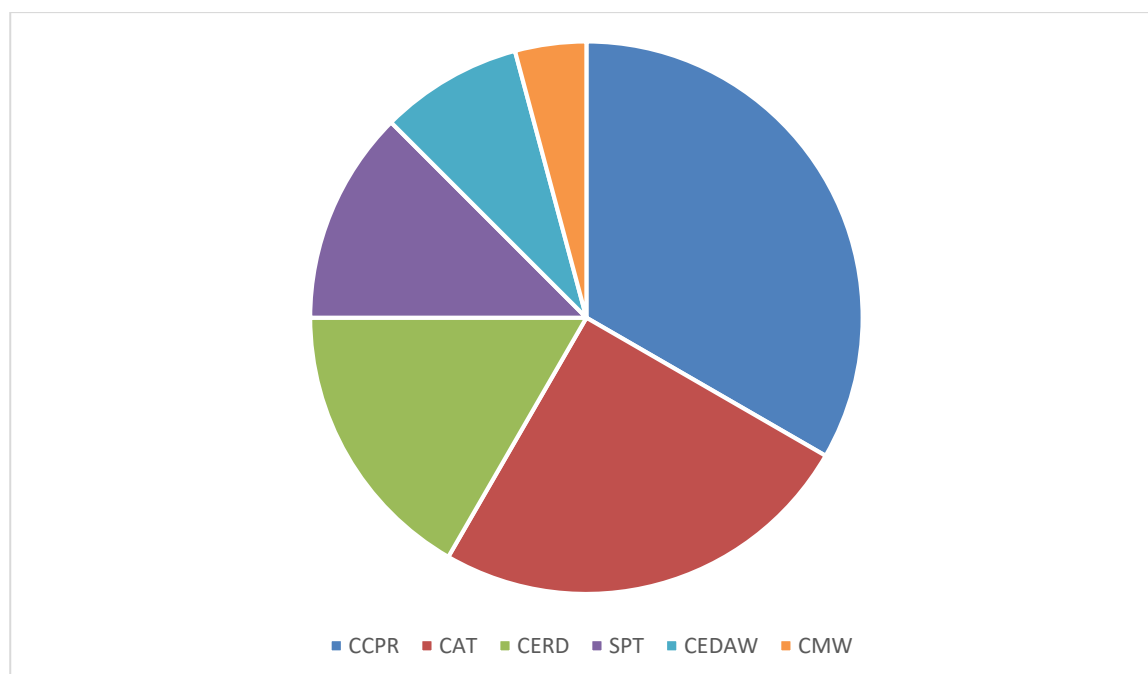
Abbreviations: CAT, Committee against Torture; CCPR, Human Rights Committee; CED, Committee on Enforced Disappearances; CEDAW, Committee on the Elimination of Discrimination against Women; CERD, Committee on the Elimination of Racial Discrimination; CMW, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; CRC, Committee on the Rights of the Child; CRPD, Committee on the Rights of Persons with Disabilities.

Figure II
Number of reported cases of intimidation or reprisals related to cooperation with the treaty bodies, 2017–2019



Source: A/HRC/42/30.

Figure III
Cases of intimidation or reprisals by Committee, 2019



Abbreviations: CAT, Committee against Torture; CCPR, Human Rights Committee; CEDAW, Committee on the Elimination of Discrimination against Women; CERD, Committee on the Elimination of Racial Discrimination; CMW, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; CRC, Committee on the Rights of the Child.

Figure IV
Violations related to cases of intimidation or reprisals, 2019

