



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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

**Policy of the Subcommittee on Prevention of Torture and
Other Cruel, Inhuman or Degrading Treatment or
Punishment on reprisals in relation to its visiting mandate***

* Revised and adopted by the Subcommittee at its twenty-eighth session (15-19 February 2016).

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I. General principles

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is frequently confronted with the issue of reprisals in the course of its work. For the purpose of the present policy, the term “reprisals” includes acts or omissions attributable to authorities or officials of a State party who carry out, permit or tolerate “any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false” (Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15).
2. The Subcommittee recalls that article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 15 of the Optional Protocol provide for the protection of victims, complainants and witnesses of acts of torture against all ill-treatment or intimidation as a consequence of seeking to cooperate or cooperating with the Subcommittee.
3. The Subcommittee is concerned with ensuring that the situation of persons with whom it comes into contact while carrying out its functions under the Optional Protocol is not prejudiced. Where this is not the case, the preventative mandate of the Subcommittee, including the basic imperative to “do no harm”, is put at risk. As the Secretary-General said in his statement at the high-level panel discussion on reprisals, held in New York in 2011, “the United Nations could not do its invaluable work for human rights without those who cooperate with us”.
4. The Subcommittee recalls that States parties have a primary responsibility to ensure that article 15 of the Optional Protocol is upheld. States need to ensure that all alleged acts of reprisals and intimidation are promptly, impartially and effectively investigated, that those responsible are brought to justice and that victims are provided with appropriate remedies.
5. Through its proactive policy, the Subcommittee asserts its uncompromising stance against reprisals and its unwavering commitment to prevent them. This includes an examination of the systemic causes of reprisals. The policy is taken into account during all Subcommittee activities and, in particular, while preparing for, during the course of and after a visit.
6. All Subcommittee working practices, in particular its interviews, reflect the necessity of preventing reprisals, in accordance with the present policy.
7. When implementing the present policy, the Subcommittee will take into account the principle of confidentiality provided for in the Optional Protocol and reflected in the Guidelines against Intimidation or Reprisals (San José Guidelines) (HRI/MC/2015/6).
8. The Subcommittee will:
 - (a) Appoint one of its members to be a rapporteur on reprisals, to oversee the implementation of the present policy in accordance with the San José Guidelines, coordinate the activities of the Subcommittee relating to reprisals, and liaise with the relevant national, regional and international bodies, as appropriate;
 - (b) Discuss issues concerning reprisals with States parties to the Optional Protocol collectively and at bilateral meetings, when appropriate;
 - (c) Agree upon procedures to be followed by national preventive mechanisms concerning responses to reprisals, taking into account the particular country needs;
 - (d) Keep the present policy constantly under review.

9. The San José Guidelines are an integral part of this policy.

II. General operational practice

10. The Subcommittee rapporteur on reprisals should be notified as soon as possible of all allegations of intimidation or reprisals against individuals, groups or national preventive mechanisms seeking to cooperate or cooperating with the Subcommittee or the national preventive mechanisms themselves. The Subcommittee and national preventive mechanisms should take steps to ensure that they are provided with all relevant information relating to those allegations. The Chair of the Subcommittee should be notified of the allegations by the rapporteur or the country visit focal point on reprisals through the secretariat as soon as possible.

11. Information concerning allegations of intimidation or reprisals may be submitted orally or in writing and may be submitted in confidence. A detailed record of all allegations of intimidation or reprisals that have been submitted will be maintained.

12. The rapporteur will make an assessment of the allegation as soon as possible and, in so doing, will make use of a wide variety of sources of information. These sources will include the State party, concerned individuals, the secretariat, the Office of the United Nations High Commissioner for Human Rights (OHCHR), including its field presences, other United Nations entities, national human rights institutions, national preventive mechanisms and civil society. Pending the initial assessment, all incidents will be referred to as allegations of intimidation or reprisals. The rapporteur may consult and liaise with the relevant country rapporteurs during the process of initial assessment, keeping in mind the principles of confidentiality.

13. The rapporteur will maintain contact with the individuals or groups alleging intimidation or reprisals, or their representatives, and determine the most appropriate course of action in each case. When doing so, the rapporteur will consider the possible consequences that seeking to cooperate or cooperating with the treaty bodies could have for the individuals or groups alleging intimidation or reprisals or for others who may be affected by that action.

14. The rapporteur will inform the Chair of the conclusions that have been reached. If it appears that intimidation or reprisals have or might have taken place, the rapporteur will inform the Chair and advise him or her of a potential course of action. If there is a country rapporteur, he or she should also be notified and his or her views sought. A decision should then be taken in accordance with the practices and processes of the Subcommittee.

15. The Subcommittee will have as a standing agenda item, to be considered on an annual basis, an update on intimidation or reprisals from the rapporteur on reprisals and country rapporteurs.

Specific measures

16. Where possible, the Subcommittee will take steps to prevent intimidation and reprisals. Preventive measures could include requesting individuals or groups to provide information in a confidential manner and reminding States parties of their primary obligation to prevent and refrain from all acts of intimidation or reprisals against individuals and groups seeking to cooperate or cooperating with the Subcommittee.

Protective measures

17. When it is alleged that an individual or group is at risk of intimidation or reprisals for seeking to communicate or for having communicated with the Subcommittee, including

as a result of filing or of considering or attempting to file a formal complaint to the Subcommittee in the framework of the individual communications procedures of the human rights treaty bodies, the committee concerned can request the relevant State party to adopt protection measures for the individual or group concerned. Such measures can include requests to refrain from any acts of intimidation or reprisals and to adopt all measures necessary to protect those at risk. The State party may be requested to provide the Subcommittee, within a specific deadline, with information on measures taken to comply with the request.

Awareness-raising

18. The Subcommittee will take initiatives that affirm the crucial importance of cooperation with all stakeholders in addressing intimidation or reprisals. Such initiatives may include making the protection of members of civil society and others a regular item on the agenda of informal meetings with States parties, broadly disseminating the present policy and adopting public statements, possibly jointly with other human rights mechanisms.

III. Specific measures to be put into practice

Raising concerns confidentially with State party authorities

19. When allegations of intimidation or reprisals are received, and with the consent of the individual or group concerned when appropriate, the Subcommittee will, as appropriate, contact the State party to request information, express its concern and request an investigation and the immediate cessation of the intimidation or reprisals. The Subcommittee may also interact with State authorities in a discreet manner, through confidential correspondence or a meeting with a representative of the Permanent Mission of the State party, or any other appropriate means.

20. In the case of an imminent threat or danger of violence during a treaty body session, the United Nations Department of Safety and Security should be approached to take appropriate security measures.

21. When engaging with States parties, the Subcommittee will take the measures necessary to protect individuals and groups from intimidation or reprisals.

22. The Subcommittee may, when appropriate, issue statements on specific incidents or generalized practices of intimidation or reprisals and circulate them to international and national media outlets, or make comments to the media and on social media.

23. The Subcommittee may request the assistance of the United Nations High Commissioner for Human Rights with a view to obtaining the cessation of alleged acts of intimidation or reprisals.

24. When allegations of intimidation or reprisals are received, in addition to the action taken by the Subcommittee itself, the secretariat may inform individuals or groups making such allegations that they may submit an urgent communication to the special procedure mandate holders of the Human Rights Council, including the Special Rapporteur on the situation of human rights defenders. The Subcommittee can also refer such allegations to other mechanisms and procedures, including national preventive mechanisms, when appropriate, in order to encourage an efficient, effective and coordinated response.

Follow-up

25. The Subcommittee may, if appropriate, request the United Nations resident coordinator, the United Nations country team, United Nations agencies, peacekeeping operations or any other appropriate agency or representation, to raise issues relating to intimidation or reprisals before the Human Rights Council and other political bodies of the United Nations, requesting them to take steps in support of individuals or groups who have been intimidated or are at risk of reprisal for seeking to cooperate or cooperating with the Subcommittee.

IV. Operational practice relating to visits**Communications, reports and follow-up requests**

26. When appropriate, the Subcommittee, in its communications, reports and follow-up requests, will require States parties to take the measures necessary to protect individuals and groups from intimidation or reprisals.

27. Prior to conducting a visit, in pursuance of the present policy, the Subcommittee implements the following measures:

(a) At the same time as the Subcommittee notifies States parties of its programme (see art. 13 (2) of the Optional Protocol), it will also communicate to them the present policy document. States parties are requested to bring the policy to the attention of all those with whom the Subcommittee may come into contact during the course of or after its visit;

(b) During the preparations for its visit or mission, the Subcommittee will examine all available information from relevant sources in relation to the occurrence of reprisals in the country to be visited;

(c) The Subcommittee delegation will appoint one of its members to be its focal point on reprisals;

(d) If the issue of potential reprisals becomes a matter of concern, the Subcommittee may write to the State party, request a meeting with the State party's Permanent Mission to the United Nations Office and other international organizations in Geneva, or contact the State party in any other appropriate manner, in order to alert it to the Subcommittee's concern;

(e) The Subcommittee will prepare a short information sheet on reprisals for distribution during the visit.

28. During a visit, if the Subcommittee becomes aware that an individual or group fears intimidation or reprisals, that there is a risk of intimidation or reprisals, or that there has been an occurrence of intimidation or reprisals, it will take the measures it considers to be appropriate and effective in the circumstances, which may include:

(a) Bringing the concern to the immediate attention of the appropriate government authorities;

(b) Raising the issue with the officials in charge of facilities that hold persons who are deprived of their liberty;

(c) Returning to facilities previously visited;

(d) At the conclusion of the visit, reiterating its concerns in the final debriefing with the authorities;

(e) Requesting that the national preventive mechanism conduct follow-up visits to the places visited by the Subcommittee;

(f) Requesting that the relevant institutions, including civil society organizations, governmental bodies and specialized non-governmental organizations, conduct follow-up visits to the places visited by the Subcommittee;

(g) Raising concerns through diplomatic channels with States parties to the Optional Protocol;

(h) Requesting the support of all the relevant bodies of the United Nations and other international, regional and national organizations in addressing reprisals in situations in which they can be of assistance, including by examining the relevant information they may have concerning reprisals;

(i) Highlighting the risk of reprisals or sanctions through appropriate channels, including the local and international media;

(j) In the event that a State party does not cooperate fully to the extent that the Subcommittee considers the success of its mission to be in jeopardy, potentially suspending its visit or taking other measures, in accordance with its statement on the obligations of States parties to facilitate the visits of the Subcommittee (CAT/OP/24/1).

29. Following the visit:

(a) The focal point on reprisals will ensure that any additional information that is discovered concerning reprisals is reflected in the visit report;

(b) The focal point will make recommendations to the Head of Delegation and the Bureau of the Subcommittee on any further measures that may need to be taken;

(c) The Subcommittee may choose to take other measures, as provided for in article 16 (4) of the Optional Protocol, concerning the lack of cooperation of the State party.
