

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

FACT SHEET No. 1 ON REPRISALS IN AFRICA



2019

CONTENTS

FOREWORD.....	3
PART I - INFORMATION AND GUIDANCE NOTE	5
PART II - COMMUNICATION POLICY BETWEEN THE FOCAL POINT ON REPRISALS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, POTENTIAL VICTIMS AND STATES PARTIES.....	9
I. General principles	9
II. Operational practice	9
A. Receiving and assessing allegations.....	9
B. Investigations	10
C. Preventive measures	10
III. Complementary measures.....	13
IV. Confidentiality.....	13
V. Report of the Focal Point to the Commission	13
A. Annual Report.....	13
B. Compendium of good practices	13
VI. Monitoring of the communication procedure.....	13
VII. Dissemination of the communication procedure	14
PART III - REFERRAL TO THE FOCAL POINT	15

FOREWORD

The African Commission on Human and Peoples' Rights (the Commission), in its Resolution ACHPR Res. 273 (LV) 2014, extended the scope of the mandate of the Special Rapporteur on Human Rights Defenders in Africa to include reprisals against persons cooperating with the African human rights system and appointed the Special Rapporteur as Focal Point on Reprisals with the following key responsibilities:

- i. Gathering information on and effectively addressing cases of reprisals against civil society stakeholders;
- ii. Documenting and maintaining a database on cases of reprisals brought to the attention of the mechanism;
- iii. Providing guidance to the Commission on urgent measures to deal with specific cases of reprisals;
- iv. Presenting reports on cases of reprisals at each Ordinary Session of the Commission in the Special Rapporteur's Activity Report;
- v. Ensuring a follow-up of registered cases.

It is worth recalling that this Resolution was adopted following multiple reports of continued restrictions on civic space in Africa and the hostile environment in which those cooperating with the African human rights system were working.

Reports had thus revealed the multiple violations of their fundamental rights, such as arbitrary arrests and detentions, acts of torture, cruel, inhuman and degrading treatment, summary and extrajudicial killings, acts of harassment of all kinds, including judicial harassment, threats and other forms of intimidation, miscarriage of justice and denial of access to medical attention during detention.

The purpose of this document is therefore to fill an existing gap in this area. Its main objective is to provide the various stakeholders with a reference framework for interacting with and assisting the mechanism in the successful performance of its mission.

Indeed, since the extension of the scope of its mandate, there has not been much focus on the reprisal aspect of the mechanism in spite of the significant efforts deployed by our predecessors in this area.

One of the reasons for this shortcoming was the lack of adequate documentation on how to effectively approach and develop a full understanding of this new thematic area, which is still relatively unknown to African human rights defenders and to other actors working with the African human rights system.

Following our appointment as mandate holder, our aim was not to rebuild from the ground up, but on the contrary, to pursue the efforts already made by our predecessors by reviewing documents previously prepared with the assistance of our various partners,

in particular the International Service for Human Rights, and which have been validated by the Commission so as to make the necessary amendments for their publication, in accordance with the recommendations of the Commission.

This work has now been completed and we are pleased to present *Fact Sheet No. 1 on Reprisals in Africa*.

We hope that this document will be useful to anyone who wishes to cooperate with the mandate in this area, so that reprisals will no longer be an obstacle to the promotion and effective protection of human rights on the continent.

Prof. Rémy Ngoy Lumbu
Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa

PART I - INFORMATION AND GUIDANCE NOTE

I. Introduction

1. In recent years, the African Commission on Human and Peoples' Rights (the Commission) has been receiving an increasing number of reports about intimidation and reprisals against individuals and groups who seek to cooperate, are cooperating or have cooperated with the Commission. The Special Rapporteur on Human Rights Defenders, in particular, has to frequently address issues relating to intimidation and reprisals in the course of his work.

II. What is the mandate of the Focal Point on Reprisals?

2. In 2014, recognizing the importance of the work carried out by civil society stakeholders collaborating with the African human rights system and concerned about the hostile environment in which they operate, and the fact they are victims of various kinds of human rights violations including reprisals for their activities in defence of human rights, the Commission decided to extend the mandate of the Special Rapporteur on Human Rights Defenders to include the issue of reprisals against any person working with the African human rights system. In doing so, the Commission assigned the Special Mechanism with the additional responsibility of:
 - Gathering information on and effectively addressing cases of reprisals against civil society stakeholders;
 - Documenting and maintaining a database on cases of reprisals brought to the attention of the mechanism;
 - Providing guidance to the Commission on urgent measures to deal with specific cases of reprisals;
 - Presenting reports on cases of reprisals at each Ordinary Session of the Commission in the Special Rapporteur's Activity Report; and
 - Ensuring a follow-up of registered cases.

III. Purpose and Scope

3. The Focal Point recalls that States parties have the primary responsibility of ensuring that everyone has the right to unfettered access and communication with the Commission. States parties must ensure that all alleged acts of reprisal and intimidation are promptly, impartially and effectively investigated, that those responsible are brought to justice and that victims are provided with appropriate remedies.

4. The goal of the communication policy (see Part 2 of this document) is to provide practical pieces of advice so as to improve the effectiveness of the Focal Point in preventing and addressing acts of intimidation or reprisal against individuals and groups.
5. It is designed as a basic approach that can be further adapted and developed to reflect the specific context and circumstances in order to fully achieve the policy objectives.

IV. What situations are deemed to be acts of intimidation or reprisal?

6. Intimidation or reprisals include attacks, threats, harassment, victimization, discrimination and harmful acts. These guidelines focus on acts of intimidation or reprisal against those who seek to cooperate, are cooperating or have cooperated with the African human rights system. Abuses against individuals or groups range from their activities being unreasonably restricted and their organizations unfairly investigated, to being spied on or smear campaigns conducted against them, denied access to funding, to being victims of arbitrary arrest, physical violence and murder. In addition to being used in a punitive manner, reprisals are also often used as a deterrent.

V. Who can submit information to the Focal Point on Reprisals?

7. Anyone can submit information including victims, human rights defenders, individuals, national, regional and international human rights NGOs, as well as UN or ACHPR mechanisms.

VI. What happens when the Focal Point on Reprisals receives the information?

- When the Focal Point on reprisals receives information about an alleged violation, s/he verifies whether the case falls within his/her mandate.
- The Focal Point assesses the validity of the alleged violation and the credibility of the source of information.
- If key details are missing from the information initially received, the Focal Point may contact sources to gather additional information.
- The Focal Point then contacts the Government of the State where the violation is alleged to have occurred, generally in writing. The letter provides details about the victim, the human rights involved and the alleged events.
- The Focal Point may take preventive or protective action.
- Preventive action is taken if there is a risk of intimidation or reprisal. The Focal Point may request the State Party to take urgent measures if circumstances so warrant. Measures may include requests to refrain from any act of intimidation or reprisal and to take all necessary measures to

protect those at risk. The Focal Point may request the State Party to provide information, within a limited period of time, on measures taken to comply with the request.

- Protective action is taken when an alleged violation is ongoing or has occurred. The Focal Point shall contact the State Party to obtain information, express his/her concern, and request an investigation and an immediate end to any intimidation or reprisal.
- In response to the information received from individuals, organizations and the State Party, the Focal Point may take any other appropriate action, including seeking additional information, publishing recommendations or observations, issuing joint statements, conducting a country visit, and calling on stakeholders in the country concerned or other human rights mechanisms.
- The Focal Point shall inform the individuals or groups who brought the allegations to his/her attention, of the actions taken, the State Party's responses and the results obtained in accordance with the principle of confidentiality.

VII. How long does the process take?

8. The Focal Point makes every effort to act as quickly as possible in response to allegations, and pays particular attention to the most serious and urgent cases.

VIII. How is follow-up ensured?

- Individuals or groups may contact the Focal Point on reprisals at each stage to keep him/her regularly informed.
- The Focal Point may request the State Party to provide the necessary and/or additional information on measures taken to implement the recommendations.
- The Focal Point may work and closely coordinate with other international human rights mechanisms, including Special Procedures mandate holders when necessary.
- The Focal Point may, where appropriate, seek the assistance of the UN through its various agencies and representations, to take action in favour of individuals or groups who have been subjected to acts of intimidation or reprisal, or who are at risk of intimidation or reprisal.
- The Focal Point may also request local institutions, civil society, and national human rights institutions to follow up with interviews and/or visits to the places of residence of the individuals or groups concerned.

IX. The Principle of Confidentiality

9. The identity of the victim shall be provided in all correspondences between the Focal Point and the State Party. The Focal Point cannot intervene without mentioning the identity of the victim to the State Party. However, the Focal Point shall, in its public actions, refrain from divulging any information that may be detrimental to the victim. If the victim is a minor (under 18 years of age), the report to the Focal Point shall include the name of the victim but the name shall not be included in any subsequent public report. The identity of individuals or groups providing information is kept confidential and is never mentioned in correspondences with State authorities or in public reports.

PART II - COMMUNICATION POLICY BETWEEN THE FOCAL POINT ON REPRISALS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, POTENTIAL VICTIMS AND STATES PARTIES

I. General principles

10. The underlying principles are as follows:

- a) The right to unhindered access and communication with the Commission and its special mechanisms;
- b) The right not to be subjected to any form of intimidation or reprisal, nor fear of intimidation or reprisal;
- c) The responsibility of States Parties to prevent and protect against any act or omission constituting intimidation or reprisal; to investigate and hold the perpetrators accountable and to provide an effective remedy to the victims of such acts or omissions;
- d) Equality and non-discrimination in the implementation of this policy;
- e) The need to respect the principle of "doing no harm", participation, confidentiality, security, preventive action and free and informed consent;
- f) The integration of a gender perspective into the work of the Commission and the implementation of this policy.

II. Operational practice

A. Receiving and assessing allegations

a) Receiving information about reprisals or intimidation

11. Allegations of intimidation, reprisals, or risks of intimidation or reprisal, may be directly submitted to the Focal Point by victims, their representatives or the Commission, its Bureau and Secretariat. If they are not received from the victims, the Focal Point should ensure that information relating to allegations of reprisal or intimidation is obtained from other relevant sources.
12. This information may be submitted verbally or in writing and in a confidential manner.
13. The Focal Point will keep a detailed record of allegations that are brought to his/her attention.

b) Verifying and assessing allegations of reprisals or intimidation

14. The Focal Point will conduct an initial assessment of the allegations as soon as possible. S/he will consult and liaise with all stakeholders and sources of information during the initial assessment phase. These may include, without limitation, the State Party concerned, the individuals concerned, the Commission, its Bureau and Secretariat, the Office of the United Nations High Commissioner for Human Rights (OHCHR) including its members on the ground, other UN agencies, National Human Rights Institutions, and civil society.
15. Pending the initial assessment, all incidents will be considered as allegations of intimidation or reprisal, or risk of intimidation or reprisal.

c) Determining the appropriate action

16. The Focal Point will maintain contact with the individuals or groups who submitted the allegations, or their representatives, and will determine the appropriate action to be taken in each case. The Focal Point will consider the possible consequences for the individuals or groups concerned, or for those who may be affected by this action. The Focal Point will keep the individuals or groups who submitted the allegations informed of any progress or developments with regard to actions undertaken with the State Party.

B. Investigations

17. Upon receiving information on cases of systematic intimidation or reprisals by a State Party, the Focal Point may, on his/her own initiative, open an investigation into the allegations.

C. Preventive measures

a) Specific measures

18. Whenever possible, the Focal Point will take measures to prevent acts of intimidation or reprisal. Such preventive measures may include reminding States Parties of their primary obligation of preventing and refraining from any act of intimidation or reprisal against individuals or groups who seek to cooperate, are cooperating, or have already cooperated with the Commission.

b) Protective measures for persons and groups at risk

19. When it is alleged that an individual or group who seeks to cooperate, is cooperating or has already cooperated with the Commission is at risk of intimidation or reprisal, the Focal Point may request the State Party concerned to adopt protective measures in favour of the individual or group concerned as quickly as the situation requires. These measures must meet the specific protection

needs of the individual or group concerned. They may include requests to prevent any act of intimidation or reprisal, and adoption of the necessary measures to protect those at risk. The State Party may be asked to provide the Focal Point with information, within a specified period of time, on the measures taken to comply with this request.

c) Additional measures

i. Awareness-raising

20. The Focal Point will develop initiatives aimed at emphasizing the crucial importance of cooperating with all stakeholders for the prevention and handling of cases of intimidation or reprisal. These initiatives may include considering the issue of protection against intimidation and reprisals as a regular agenda item at meetings with States Parties and encouraging other Commissioners to do the same, widely disseminating the communication policy in this area, and making public statements, including with other human rights mechanisms.

ii. Raising concerns with State Party authorities

21. When allegations of intimidation or reprisals are received, and with the consent of the individual or group concerned where necessary, the Focal Point shall request information from the State Party concerned, express his/her concern to the State, request that an investigation is opened and that an immediate stop is put to such acts within a specified time frame.
22. The Focal Point may also contact the authorities of the State Party through confidential correspondence or a meeting with a representative of the State Party, or any other appropriate means.
23. In the light of information received from the State Party concerned, or additional information from other sources, the Focal Point will determine the best course of action; this may include further investigation, the preparation and publication of recommendations or observations, joint statements, country visits or cooperation with other human rights mechanisms.

iii. Joint statement

24. The Focal Point may issue joint statements with other Commissioners or national, regional or international human rights mechanisms whenever necessary.

iv. Publication on the Internet

25. The Focal Point may make the information concerning allegations of reprisals publicly available, including its exchanges with States Parties, by posting this information on the Commission's website if necessary.

v. Use of the media

26. The Focal Point may, if appropriate, make a public statement on specific incidents or widespread practices of intimidation or reprisals and distribute this information to national and international media, or make comments in the media and on social media.

vi. Cooperation with national, regional and international mechanisms

27. In dealing with allegations of intimidation or reprisals, the Focal Point may, where necessary, seek the cooperation of national, regional and international mechanisms to ensure an effective and coordinated response.

vii. Country visits

28. The Focal Point may request to visit the State Party concerned and the places where the intimidation or reprisals took place.

viii. Follow-up

- Individuals and organizations are encouraged to provide up-to-date information.
- The Focal Point may request the State Party to provide additional information on the measures taken to implement recommendations.
- Upon receiving information from the State Party, the Focal Point may request additional measures to be taken.
- The Focal Point may request the cooperation of the UN, or any other competent body or representation, to take measures in favour of individuals or groups of individuals who have been subjected to intimidation or reprisals or who are at risk of intimidation or reprisal.
- The Focal Point may also request local institutions, civil society and national human rights institutions to conduct follow-up visits to the places of residence of the individuals or groups concerned.

ix. Request for assistance from the Commission

29. The Focal Point may request the assistance of the Commission with a view to obtaining the cessation of alleged acts of intimidation or reprisal, which may include an investigation in accordance with regional and international human rights standards and the Commission's Rules of Procedure.

x. Referral to the African Union

30. When deemed necessary, the Focal Point may discuss matters relating to intimidation or reprisals with the relevant organs of the African Union.

III. Complementary measures

31. The Focal Point may seek the cooperation of all relevant organs of the African Union, in particular the Commission, as well as other national, regional and international organizations, to ensure that reprisals are prevented and eradicated.
32. To this end, the Focal Point will also discuss matters relating to reprisals with States Parties.

IV. Confidentiality

33. The principle of confidentiality must be respected throughout these communication procedures.
34. The names of alleged victims will generally be included in correspondences to States Parties so as to allow the relevant authorities to investigate the alleged violation or take appropriate measures to prevent further reprisals.
35. These names will also be published in the Focal Point's reports and public statements, unless privacy or protection requires keeping the identity of the victim(s) concerned confidential.
36. Sources of information are customarily kept confidential and are not included in correspondences sent to governments, in the report of the Focal Point or in public statements. A source of information may, however, request that its identity be revealed.

V. Report of the Focal Point to the Commission

A. Annual Report

37. In addition to the Activity Report of the Special Rapporteur, the Focal Point will submit a report and updated information to the Commission each year.

B. Compendium of good practices

38. The Focal Point will compile information on good practices in human rights protection strategies developed by the Commission or other regional or international human rights systems.

VI. Monitoring of the communication procedure

39. The procedure will be constantly reassessed and may be updated periodically by the Focal Point.

VII. Dissemination of the communication procedure

40. The communication procedure should be posted in accessible formats on the Commission's website and on the websites of the Commission's special mechanisms.

	<p>Number of perpetrators:.....</p> <p>Title:.....</p> <p>Other identification criteria:.....</p> <p>The perpetrator is acting on behalf of:</p> <table data-bbox="798 487 1785 812"> <thead> <tr> <th></th> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td>The government</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>An organization</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>An institution</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>An independent actor</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		YES	NO	The government	<input type="checkbox"/>	<input type="checkbox"/>	An organization	<input type="checkbox"/>	<input type="checkbox"/>	An institution	<input type="checkbox"/>	<input type="checkbox"/>	An independent actor	<input type="checkbox"/>	<input type="checkbox"/>
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<p>Indicate the date, time and place(s) where the violations/incidents occurred.</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>															

<p>Detailed description of the incident and circumstances:</p> <ul style="list-style-type: none"> - Indicate what happened providing as much detail as possible (chronology of events). 	<p>Description of the incident: </p> <p>Were there any witnesses? If so: Witness statement: </p>
<p>Answer the following questions.</p>	<p>Indicate if a third party was involved during the incident, if yes: <i>What is the relationship between this group or individual and the victim?</i></p> <p>Family member Colleague Other?</p> <p>What was his/her role?..... Presence of family members?..... Colleagues?..... Others?</p> <p><i>Has the victim been arrested? If yes, provide details about:</i> The charges:.....</p>

	<p>The status of the investigation:</p> <p><i>Is the victim in custody? If yes, please provide the following information:</i></p> <p>Place of detention:.....</p> <p>Conditions of detention :.....</p> <p>Charges:.....</p> <p>Access to a lawyer:.....</p>																					
<p>Link between reprisals and the victim's cooperation with the African human rights system:</p> <ul style="list-style-type: none"> - Indicate why it is considered that the reprisals or intimidation were as a result of the victim's cooperation with the African human rights system. 	<p>Indicate whether the victim was in contact with an entity or representative. If yes:</p> <p>Name of entity:.....</p> <p>Representative:.....</p> <p>What is the nature of the contact between the victim and the entity?</p> <table data-bbox="808 812 1795 1282"> <thead> <tr> <th></th> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td>Meeting</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Interviews</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Oral statements</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Written statements</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Participation in joint events</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Participation in training programmes</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>Other:.....</p>		YES	NO	Meeting	<input type="checkbox"/>	<input type="checkbox"/>	Interviews	<input type="checkbox"/>	<input type="checkbox"/>	Oral statements	<input type="checkbox"/>	<input type="checkbox"/>	Written statements	<input type="checkbox"/>	<input type="checkbox"/>	Participation in joint events	<input type="checkbox"/>	<input type="checkbox"/>	Participation in training programmes	<input type="checkbox"/>	<input type="checkbox"/>
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<p>Indicate what you believe to be the reason for the alleged reprisals or intimidation.</p>										
<p>Indicate the actions, if any, taken by the victims or others in response to alleged reprisals or intimidation.</p>	<p>Police report?.....</p> <p>Legal proceedings?.....</p> <p>Complaint lodged with an NHRI?.....</p>									
<p>Indicate the actions, if any, taken by the competent authorities in response to the complaints.</p>	<p>Investigation?.....</p> <p>Arrest?.....</p> <p>Prosecution?.....</p> <p>Dismissal?.....</p> <p>Reparations?.....</p> <p>Protective measures?.....</p>									
<p>What was the outcome of these actions?</p>										
<p>Specific actions requested by the victim</p>										
<p>Indicate whether the alleged reprisals or intimidation were reported in a document of the ACHPR or mentioned by the ACHPR, its Secretariat or its Bureau, in any way.</p>										
<p>Communication with other relevant international institutions</p>	<p>Were the accusations also reported by:</p> <table data-bbox="1549 1214 1791 1401"> <thead> <tr> <th></th> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td>The UN</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Another relevant international institution</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		YES	NO	The UN	<input type="checkbox"/>	<input type="checkbox"/>	Another relevant international institution	<input type="checkbox"/>	<input type="checkbox"/>
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	<p>If yes, please provide details of these communications and any action taken in response</p> <p>.....</p> <p>.....</p> <p>.....</p>
Additional information	

Notes

1. Start by indicating the type of reprisal
2. Dedicate a separate page for the witness statement
3. Description of the incident
4. Additional information
5. Action requested by the victim