



Norad



LAW
Legal Action
Worldwide

***"THEY TOLD ME THAT IF I TOLD ANYONE AND IF THEY
SEE ME AGAIN, THEY WOULD KILL ME"***

Protecting Identities, Protecting Lives

Advancing UN treaty body practice to protect complainants' identities as a measure against reprisals



POLICY PAPER #11

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LAW dedicates this brief to the 35 South Sudanese women, survivors of conflict related sexual violence, that bravely sought justice and to all survivors of human rights violations who cannot access justice, because of fear of reprisals.

About Legal Action Worldwide (LAW)

LAW is an independent, non-profit organisation comprised of human rights lawyers and jurists who specialise in providing legal information, assistance, and representation in fragile and conflict-affected areas. LAW has represented thousands of victims globally and currently support survivors in South Sudan, Somalia, Ethiopia, Uganda, Bangladesh/Myanmar, Sri Lanka, Lebanon, Syria, Ukraine and occupied Palestine. LAW's team works on the ground in conflict contexts combining national and international expertise with a deep understanding of victim and survivor needs and wishes. LAW's work throughout the world is overseen by Executive Director Antonia Mulvey, a British lawyer with more than 20 years' experience in international, human rights, refugee and criminal law. She is a former UN investigator and Sexual and Gender-Based Violence expert for the UK Foreign and Commonwealth Office Preventing Sexual Violence Initiative and UN Women and former Visiting Fellow at Columbia University and London School of Economics.

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I. GLOSSARY OF KEY TERMS

“Core international human rights treaties”: The nine main international treaties that set out basic human rights are the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of Persons with Disabilities; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearances.

“(UN) treaty bodies”: Ten committees of experts that monitor the implementation of the nine core human rights treaties and the Optional Protocol to the Convention against Torture.

“(individual) communication procedure” or “(individual) complaints procedure”: The procedure under which an individual or a group of individuals can bring a complaint to a treaty body against a state member, alleging that the latter has violated their rights as provided for in the respective core human rights treaty.

“San Jose Guidelines”: The Guidelines Against Intimidation or Reprisals, adopted by the treaty bodies in 2015 in order to enhance protection by treaty bodies to individuals at risk of or facing intimidation or reprisals for cooperating or seeking to cooperate with the treaty bodies.

“Victim”, “survivor”, “complainant”: The individual who has suffered a violation of their human rights as protected in one of the core treaties. The term “victim of human rights violations” is widely used by the treaty bodies. The term “survivor” is used in the present brief specifically for survivors of conflict-related sexual violence and it is, for the purpose of this brief, interchangeable with the term “victim”. The term “complainant” is used for any victim, or an individual acting on their name, submitting an individual communication to a treaty body.

II. INTRODUCTION

On 5 June 2024, the Committee on the Elimination of Discrimination against Women (CEDAW) acceded to LAW’s request to protect victims’ identities, and not to share the names of the alleged victims with the state party. This decision was groundbreaking, for a number of reasons described in more detail below. This policy brief has been prepared by LAW with the aim to present the grounds for the protection of the identities of complainants in the communication procedures of the UN treaty bodies, as a preventive measure in cases where a well-founded fear of reprisals is established. The brief is the result of LAW’s in-depth experience working with survivors of human rights violations, the substantive legal research conducted, and a series of bilateral meetings with individuals working in or with the system of UN treaty bodies. Victims of serious human rights violations and abuses around the world are frequently unable to seek justice and legal redress for the harm they have suffered from due to fear of retaliation and reprisals by state or non-state actors. For specific categories of victims,

including victims of sexual violence and children, the fear of stigma within the family and community also prevents them from coming forward to demand justice and redress.

The concern around intimidation and reprisals against individuals and groups for cooperating with the UN, its representatives and mechanisms in the field of human rights, is not new. In 2009, the Human Rights Council (HRC) issued its first resolution on the issue, calling for states to refrain from, and prevent reprisals.¹ In 2023, the HRC issued its sixth resolution on the issue noting, inter alia, “*that the number of reported acts of intimidation and reprisals by States and non-State actors remains high and across regions.*”²

In the UN Secretary General’s 2023 report on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, the UN Secretary General confirmed this trend, finding that “[...] *self-censorship, or the choice not to cooperate with the United Nations or to do so under conditions of anonymity due to fear of reprisals, including against relatives or co-workers, has increased.*”³

The above findings and concerns apply to all UN mechanisms. UN treaty bodies have affirmed that free engagement of individuals and groups seeking to cooperate with them without fear of intimidation and reprisals is crucial for the efficiency of their work.⁴ They have also shared their concerns regarding intimidation and reprisals for individuals cooperating with them through the communication procedures.⁵

There are currently ten treaty bodies⁶ and eight of these can receive individual communications.⁷ A treaty body can accept individual communications by individuals or groups of individuals if the state concerned has accepted the relevant procedure. Through the individual communications procedure, the treaty bodies examine state responsibility and, if a violation is established, the treaty body specifies general and individual recommendations and appropriate remedies and reparation measures. The treaty bodies recommend various types of remedies and reparation to redress human rights violations.⁸ They also request the state to provide information on the implementation of these recommendations and the remedy

¹ HRC Resolution 12/2, 12 October 2009, available at [Resolutions | OHCHR](#)

² HRC Resolution 54/24, 16 October 2023, available at [Resolutions | OHCHR](#)

³ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/54/61, 21 August 2023, para 128

⁴ What have treaty bodies done to address acts of intimidation and reprisals?, available at [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#)

⁵ See for reference all documents on Mapping the practices of treaty bodies on intimidation and reprisals and identifying issues that need further action by the Chairs, since 2020, available here [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#)

⁶ The Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (CCPR or HRC), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee of the Rights of the Child (CRC), the Committee on Migrant Workers (CMW) and the Subcommittee of prevention of torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on Enforced Disappearances (CED)

⁷ [Individual Communications | OHCHR](#). The ones who cannot receive are the CMW, for which the communications procedure has not yet entered into force and the SPT for which there is no provision for such procedure

⁸ According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, full and effective reparation includes five forms of remedies: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition

provided. To monitor states parties' implementation of their views, six out of the eight treaty bodies⁹ competent to review individual communications have developed formal follow-up procedures. All committees analyse the follow-up information they receive from states parties and/or complainants and adopt follow-up decisions and progress reports.¹⁰ The responsibility of the implementation of the recommendations of a treaty body lies with the state concerned.¹¹

To efficiently address the issue of intimidation and reprisals in the communication procedure, this brief will present how the rules and guidelines of treaty bodies, along with the lessons learned from the international, regional and domestic experience of other justice mechanisms, allow for protection of the identities of complainants.

III. BACKGROUND

CEDAW's landmark decision

On 5 June 2024, CEDAW made a crucial step forward regarding the protection of victims against reprisals in the treaty bodies' communication procedures. CEDAW, acting through its Working Group on communications, acceded to LAW's request to protect the victims' identities from the state party. The communication, submitted by LAW on behalf of 35 South Sudanese women, will only contain a reference to the initials of the complainants. This is the first time, to LAW's knowledge, that a UN treaty body decides to transmit a communication to the state without disclosing the identities of the complainants. This is an important progress in the practice of the treaty bodies in terms of protection against intimidation and reprisals.

It is a significant precedent which will hopefully pave the way for other survivors of sexual violence and human rights violations to seek accountability before CEDAW and other UN treaty bodies.

LAW has been advocating for better protection of complainants against reprisals in the communications procedure of the UN treaty bodies since 2018. LAW represents thousands of survivors of human rights violations and international crimes and provides legal information and advice to tens of thousands more. Survivors, particularly survivors of sexual violence, where allegations are against entities of the State have informed LAW that they cannot pursue justice unless their identity is protected from the State concerned. The need to protect victims from reprisals from state and non-state actors is not new nor is it unique to one context.

In July 2018, LAW filed a communication to the CEDAW, in the name of 35 South Sudanese women and girls, all survivors of conflict related sexual violence. Fourteen of them were

⁹ CCPR, CEDAW, CRPD, CED, CAT and CERD

¹⁰ For more detail on the remedies and follow up procedure, see Geneva Academy, Treaty Bodies' Individual Communication Procedure, May 2019, pages 18-20, available at [UN Treaty Bodies Individual Communications.pdf \(geneva-academy.ch\)](https://www.geneva-academy.ch/UN-Treaty-Bodies-Individual-Communications.pdf)

¹¹ Frequently asked questions about treaty body complaints' procedure, "What remedy can I get if a decision is taken in my favour?" pg. 5 [1 \(ohchr.org\)](https://www.ohchr.org/)

children at the time, one of them as young as 12 years old. Due to a well-founded fear of reprisals by the state, the complainants requested permission to disclose only their initials to CEDAW. LAW did not receive an official response to this communication and the communication was not registered. LAW understands that the CEDAW Secretariat decided not to register the communication, characterising it as anonymous. In November 2020, LAW submitted a new communication on behalf of the same survivors, accompanied by an application for identity protection. The complainants offered to disclose their identities to CEDAW, but not to the state concerned, because of fear of reprisals. In December 2020, the Secretariat rejected the second application, this time characterising it as anonymous in writing. In October 2022, LAW filed a new communication to CEDAW, alleging the same violations and representing the same survivors, accompanied by a detailed application for identity protection that demonstrates that protecting identities in communication procedures is feasible and, in some cases, necessary. In June 2024, the communication was registered for consideration, without transmitting the names of the complainants to the state concerned.

On 30 April 2021, LAW submitted a request to issue a general recommendation on the protection of the identities of survivors of conflict-related sexual violence to CEDAW. A general recommendation could clarify the difference between protecting victims' identities and anonymity. It could, furthermore, provide the criteria under which an individual complaint could be considered without disclosing the names of the complainants to the state concerned. To this day, LAW has not received a response on this request.

IV. THE LEGAL BASIS FOR IDENTITY PROTECTION IN THE TREATY BODIES' COMMUNICATION PROCEDURE

This section sets out a series of legal arguments that demonstrate that it is already possible under the rules and practice of the UN treaty bodies to use identity protection in communication procedures and showcases jurisprudence and practice from other justice mechanisms on the issue.

- i) The rules and practice of the treaty bodies allow them to protect complainants' identities in communication procedures

Anonymity v. Protection of identity

The rules governing the communications procedure for each treaty body are provided in each body's rules of procedure, and/or respective protocols, and/or treaties. For a communication to be considered for registration and accepted as admissible, all treaty bodies require that communications shall not be anonymous.¹² However, under the existing regulatory framework, it is still feasible to protect the identities of complainants from the state concerned.

¹² See for each treaty body relevant provision: CAT, OP art. 22 para 2 "*The Committee shall consider inadmissible any communication under this article which is anonymous*"; CRC, OP art. 7 "*The Committee shall consider a*

It is crucial to make a distinction between an anonymous complainant and protection of identity. The term anonymous is not clearly defined in the Optional Protocols and Conventions cited above. However, if the victims and the organisation submitting the communication on their behalf share their identities with the treaty body, even when the victims do not consent to share them with the state concerned, the communication must not be considered systematically anonymous. When the author of the communication is different from the victims, and its name is disclosed, its credibility can be assessed by the treaty body and the state party, even when the victims' names are not disclosed to the state party. A well-known NGO, working on human rights and with experience in the relevant context who brings a communication on behalf of a large number of individuals could be considered sufficiently credible to allow for less information to be shared with the state party on the victims themselves. Finally, a communication is not anonymous if the names of the victims are communicated to the treaty bodies, who can assess the credibility of the allegations, while enough information is provided to the state party to allow for sufficient investigations of the allegations without putting the victims at risk of retaliation. In some cases of human rights violations, the state will have enough information to defend itself if it knows the location and time of the alleged violations, without knowing the names of each of the victims.

San Jose Guidelines and further practices to address intimidation and reprisals

In 2015, due to increasing instances of intimidation and reprisals and to respond to protection needs, the Chairs of the treaty bodies adopted the “San Jose Guidelines against intimidation and reprisals”.¹³ The Guidelines include guidance on how to prevent and address reprisals and indicate the types of functions that focal points/rapporteurs against intimidation and reprisals should undertake. Currently, all ten treaty bodies have a designated rapporteur on the issue of combatting intimidation and reprisals and can take specific action.¹⁴ They can undertake public reaction or private discussions, potentially engaging the special procedures or other entities of the UN, sending communications to the state concerned or undertaking any other action to

communication inadmissible when (a) The communication is anonymous;”; CERD, rule 91 of RoP “*With a view of reaching a decision on the admissibility of a communication, the Committee or its working group shall ascertain: a) That the communication is not anonymous [...].”*; CRPD, OP art. 2 “*The Committee shall consider a communication inadmissible when: (a) The communication is anonymous;”*; CCPR, OP art. 3 “*The Committee shall consider inadmissible any communication under the present Protocol which is anonymous”* and rule 99 of RoP “*With a view to reaching a decision on the admissibility of a communication, the Committee, [...] shall ascertain: (a) That the communication is not anonymous [...].”*; CESC, OP art. 3 para 2 “*The Committee shall declare a communication inadmissible when g. It is anonymous [...].”*; CED, Convention art. 31 para 2 “*The Committee shall consider a communication inadmissible where: (a) The communication is anonymous;”*

The only treaty body that does not directly put the non-anonymity as an admissibility condition is CEDAW. Nevertheless, according to rule 67 of RoP “*With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group, shall apply the criteria set forth in articles 2, 3 and 4 of the Optional Protocol*”, read jointly with art. 3 of the OP “*Communications shall be in writing and shall not be anonymous*”, even CEDAW considers non-anonymity a factor for admissibility.

¹³ For the full text of the San Jose Guidelines, see here tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI/MC/2015/6&Lang=en

¹⁴ List available here [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#).

It should be noted that the CESC is the only treaty body that has not endorsed the San Jose guidelines so far. Nevertheless, the Bureau of the Committee acts as the focal points for reprisals. See Practices of the human rights treaty bodies on intimidation and reprisals and issues for further action by the Chairs, 9 April 2024, pages 14-15, [HRI/MC/2024/2](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI/MC/2024/2)

advance protection of the individuals while respecting the do-no-harm principle.¹⁵ Victims of reprisals and/or organisations submitting information on their behalf have the possibility to denounce reprisals and risk of reprisals through contacting the treaty body, to the attention of the rapporteur on intimidation and reprisals, showing the link of the risk to the cooperation with the treaty body. Victims can also submit this information to the team supporting the Assistant Secretary General on Human Rights.¹⁶

According to the San Jose Guidelines, “[...] *Preventive measures could include permitting requests from individuals or groups to provide information to the relevant treaty body in a confidential manner [...]*”.¹⁷ According to information available to LAW, as of today, this provision has never been used for the communication procedure. This provision is used mostly to ensure confidentiality in information sharing and bilateral briefings between the treaty bodies and individuals or groups.¹⁸ Another protection measure, applicable also to individuals who want to file an individual complaint, is that “[...] *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. [...]*”.¹⁹

Following the San Jose Guidelines, five treaty bodies that accept individual communications adopted specific policies on reprisals, relevant protection measures and interaction with the state concerned.²⁰ The annual meeting of the Chairpersons of the treaty bodies offers any opportunity to discuss the implementation of the Guidelines and identify issues for further action. In April 2024, the Chairpersons identified as a point for further action that “*The treaty bodies should continue to align their working methods to prevent and address intimidation and reprisals, including with regard to the role of focal points and rapporteurs, specific policies or guidelines on reprisals [...]*”.²¹

- ii) Developments confirm that the rules of procedure should be construed to authorise the treaty bodies to protect complainants’ identities

Human rights mechanisms and national and international courts and tribunals have made significant progress on the issue of protecting victims and witnesses over the last two decades.

For example, the Inter American Commission of Human Rights (IACHR) allows for protection of identity from the state in individual petitions for alleged human rights violations. Under Article 28 of its’ rules of procedure: “*Petitions addressed to the Commission shall contain the*

¹⁵ See [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#)

¹⁶ Idem

¹⁷ See San Jose Guidelines, para 18.

¹⁸ E.g. Practices of the human rights treaty bodies on intimidation and reprisals and issues for further action by the Chairs, Thirty-fifth meeting of Chairs of the human rights treaty bodies, 29 May–2 June 2023, paras 10 and 29

¹⁹ See San Jose Guidelines, para 19

²⁰ Practices of the human rights treaty bodies on intimidation and reprisals and issues for further action by the Chairs, thirty-sixth meeting of Chairs of the human rights treaty bodies New York, 24–28 June 2024, page 15 and example of guidelines for CAT [*g1520017.pdf \(un.org\)](#) and CED [*g2109088.pdf \(un.org\)](#)

²¹ Practices of the human rights treaty bodies on intimidation and reprisals and issues for further action by the Chairs, 9 April 2024, para 64, available at [g2405275.pdf \(un.org\)](#)

following information: [...] 2. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons.”²²

The European Court of Human Rights (ECtHR), deciding whether the rights of the accused under article 6 of the Convention had been respected, held in *Ellis and Simms and Martin v the United Kingdom*²³ that the applicants had not been convicted in an unfair criminal trial as a result of the trial judge’s decision to permit evidence from anonymous witnesses. The ECtHR observed that Article 6§3(d) of the ECtHR imposed three requirements: (1) there had to be a good reason to keep secret the identity of the witness; (2) the court had to consider whether the evidence of the anonymous witness was the sole or decisive basis of the conviction; and (3) where a conviction was based solely or decisively on the evidence of anonymous witnesses, the court had to satisfy itself that there were sufficient counterbalancing factors, including strong procedural safeguards, to permit a fair and proper assessment of the reliability of that evidence to take place. This decision illustrates how, in a case involving state responsibility for human rights violations, a regional human rights court found there was no fair trial violation where a domestic court balanced the fair trial rights of the accused with the need to protect a witness from well-founded fear of reprisal from organised crime.

Likewise, the Inter American Court of Human Rights (IACtHR), in *Catrimán v Chile* considered whether withholding the identity of witnesses in a domestic criminal court violated the rights of the defence to examine witnesses, and in particular whether the measure was “*subject to judicial control, based on the principles of necessity and proportionality, taking into account that this is an exceptional measure and verifying the existence of a situation of risk for the witness*”.²⁴

The IACtHR stated that it would consider whether “*the effects on the right of defense of the accused that results from the use of the measure of preserving the anonymity of witnesses was sufficiently offset by counterbalancing measures*.”²⁵ Further, the court held that “[e]ven when counterbalancing procedures have been adopted that appear to be sufficient, a conviction should not be based either solely or to a decisive extent on anonymous statements... The decision as to whether this type of evidence has weighed decisively in the judgment convicting the accused will depend on the existence of other types of supportive evidence, so that, the stronger the corroborative evidence, the less likely that the testimony of the anonymous witness will be treated as decisive evidence”.²⁶

With regard to international criminal tribunals, the *Tadic* case at the International Criminal Tribunal for the former Yugoslavia (ICTY) held that the identities of several victims of sexual violence and witnesses could be withheld indefinitely from the accused and his counsel once it was satisfied that: (1) there was a real fear for the safety of the witness; (2) the testimony of the witness was important to proving the prosecutor’s case; (3) there was no evidence to suggest the witness was untrustworthy; (4) no witness protection programme was in a position

²² [IACHR :: Rules of Procedure of the Inter-American Commission on Human Rights \(oas.org\)](https://www.oas.org/en/iachr/rules/)

²³ *Ellis and Simms and Martin v United Kingdom*, App. Nos. 46099/06 and 46699/06 (ECtHR, 10 April 2012), paras 76-79 and 89

²⁴ *Case of Norín Catrimán et al. Leaders, Members and Activist of the Mapuche Indigenous People v Chile* (IACtHR 29 May 2014), para. 245

²⁵ *Idem* para. 246

²⁶ *Idem* para. 247

to offer protection to the witness; and (5) any such measures must be strictly necessary.²⁷ The *Tadic* case is a good example of how a court interpreted its rules through its jurisprudence, setting forward a set of clear criteria. The court set guidelines for ensuring a fair trial when granting anonymity and added that these guidelines should be understood “*within the context of the unique object and purpose of the International Tribunal, particularly recognizing its mandate to protect victims and witnesses*”.²⁸

The International Criminal Court Rules of Evidence of Procedure also allow for withholding identities of victims or witnesses from the accused until the eve of trial. They also offer protective measures to prevent disclosure of the identity of the victim or witness the public or third parties, including *in camera* proceedings, redactions from public transcripts, face and/or voice-distortion, the use of pseudonyms, and the issuance of protective orders.²⁹ The Court also allows, special measures for victims or witnesses, particularly traumatized survivors of sexual violence, including the presence of a counsel or support person or psychologist during testimony, and controlled questioning to avoid harassment or intimidation.³⁰

In *Prosecutor v Taylor*, the Special Court for Sierra Leone granted a series of protective measures to keep secret the identities of several defense and prosecution witnesses. Based on evidence of potential threats, the prosecution decided to withhold identifying information of witnesses until 42 days before the witness was scheduled to testify at trial.³¹

The above cases, including the ones before criminal tribunals, serve as examples of good practices regarding protection of victims and witnesses in other justice and accountability processes that the UN treaty bodies could use as a basis to be creative within its own applicable legal framework. If judges in criminal trials can protect witnesses by withholding their names from the accused while upholding the fair trial rights of the accused, UN treaty bodies can do the same. The defendant in a criminal trial has more enhanced disclosure procedures and more due process rights precisely because their liberty is at stake. In contrast, a human rights treaty body communication procedure against a state entails fewer procedural and due process rights, i.e. there are fewer disclosure requirements, there is no trial, no cross-examination of complainants and/or witnesses and no sentence.

In a nutshell, UN treaty bodies’ rules and practices should be interpreted to serve the needs of the time and context. As the European Court of Human Rights stated in *Deumeland v Germany*, with respect to the European Convention on Human Rights, those rights should be construed “*in the light of the modern-day conditions [...] in the democratic societies of the Contracting States and not solely according to what might be presumed to have been in the minds of the drafters of the Convention*”.³² Treaty bodies should do the same to adjust their rules and methods of work to the growing issue of the use of intimidation and reprisals against complainants of human rights violations. CEDAW’s recent decision to register a communication without disclosing the identities of the complainants to the state concerned

²⁷ *Prosecutor v Dusko Tadic*, Case No. IT-94-1-T, Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995), paras. 62-66

²⁸ *Idem*, paras. 70-71.

²⁹ ICC Rules of Procedure and Evidence, Rule 87.

³⁰ ICC Rules of Evidence and Procedure, Rule 88.

³¹ *Prosecutor v Charles Ghankay Taylor*, Case No. SCSL-03-01-T-1283, Trial Chamber II, Judgement (May 18, 2012), available at [Prosecutor v. Charles Ghankay Taylor | Refworld](#)

³² *Deumeland v Germany*, App No. 9384/81 (ECtHR, 29 May 1986), page 31

paves the way for other treaty bodies to inquire more on this possibility and potentially consider similar submissions.

V. THE NEED FOR IDENTITY PROTECTION IN TREATY BODIES' COMMUNICATION PROCEDURE

There are multiple reasons that underline the need for protection of identity in individual communications. First and foremost, the fear of reprisals by state or non-state actors hinders victims from seeking justice. Nevertheless, it is not the only reason. In certain occasions, the heightened vulnerability of complainants requires stronger protection. This is the case of survivors of sexual violence that face the fear of stigma among their families and communities. The vulnerability is also more acute in cases related to children. Last, the need to provide protection of identity comes as a result of balancing the right of the complainant to justice and safety with the right of a state party to investigate allegations of human rights violations against it.

i) Fear of reprisals

Through six resolutions on addressing intimidation and reprisals against those who cooperate with the UN, its representatives and mechanisms in the field of human rights the UN Human Rights Council has shown its growing concern about the trend of increasing reprisals for victims of human rights violations.³³ In its sixth resolution in 2023 the HRC notes, inter alia, that *“the number of reported acts of intimidation and reprisals by States and non-State actors remains high and across regions, “human rights defenders [...] as well as victims of human rights violations, witnesses and their relatives, [...] are at heightened risk of being victims of intimidation or reprisals”* and that *“everyone, individually and in association with others, [has the right] to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, [...] bearing in mind that this is indispensable to enable the United Nations and its mechanisms to fulfil their mandates;”*.³⁴

In the UN Secretary General's 2023 report on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, the Secretary General confirmed this trend, finding that *“[...] self-censorship, or the choice not to cooperate with the United Nations or to do so under conditions of anonymity due to fear of reprisals, including against relatives or co-workers, has increased. Alleged victims of reprisals requested anonymous reporting in almost two thirds of the Member States with new cases in the present report compared to one third in the previous year.”*³⁵ The Secretary General also highlighted that victims of human rights violations are at heightened risk of reprisals.³⁶ In this report and the

³³ HRC Resolution 12/2, 12 October 2009, available at [Resolutions | OHCHR](#)

³⁴ HRC Resolution 54/24, 16 October 2023, available at [Resolutions | OHCHR](#)

³⁵ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/54/61, 21 August 2023, para 128

³⁶ Idem, para 132

same report of 2022, the Secretary General further draws attention to the gender dimension of reprisals, stating that women are more at risk.³⁷

The ongoing challenge to successfully address intimidation and reprisals has been identified by the Chairpersons in their annual meetings under this topic.³⁸ The treaty bodies have made significant progress regarding their practices in preventing and responding to allegations or risk of reprisals, nevertheless the issue of creating an enabling environment where victims of human rights violations would feel safe to denounce these violations through an individual communication, still remains unsolved.

ii) Protecting vulnerable groups while advancing treaty body practice

Allowing victims to request identity protection in communication procedures would be beneficial both to them and the treaty bodies.

When victims of human rights violations feel protected, they are more inclined to come forward and denounce violations, including to UN treaty bodies. Specific categories of victims that are in extremely vulnerable conditions, including survivors of sexual violence, child victims of violations and atrocities, people from minority groups, people with disabilities, are the ones that are most frequently deprived of the opportunity to seek justice. Withholding victims' names from the state can be crucial in combating self-censorship and advancing justice for the ones who need it the most. A change in the practice of treaty bodies, through protection of identity, will give individuals more confidence in the system and a practical tool to come forward.

Enhanced protection of specific categories of victims and witnesses that face acute vulnerability is not new to justice mechanisms. The ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime urge State Parties to recognise that “*justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders*”.³⁹ Regarding the right to safety, the UN Child Victim Guidelines state that “[w]here child victims and witnesses may be the subject of intimidation, threats of harm, appropriate conditions should be put in place to ensure the safety of the child”.⁴⁰ Another example is the policy on Gender-Based Crimes of the Office of the Prosecutor of the ICC that states that “*intersectionality describes how multiple aspects of a person's identity (for example, gender, sex characteristics, sexual orientation, religion, age, ethnicity or indigenous status) can render them particularly vulnerable to specific or overlapping systems of discrimination, oppression or violence*”, demonstrating the need for enhanced protection of victims and witnesses in vulnerable situations.⁴¹ Referring to the risk witnesses of gender-based crimes might face for cooperating with the ICC, the policy states “*In addition to being targeted*

³⁷ Idem para 133 and Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/51/47, 14 September 2022, para 123

³⁸ See for reference all documents on Mapping the practices of treaty bodies on intimidation and reprisals and identifying issues that need further action by the Chairs, since 2020, available here [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#)

³⁹ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20 [Microsoft Word - Document7 \(un.org\)](#)

⁴⁰ Idem, para. 34

⁴¹ ICC, OTP, Policy on Gender-Based Crimes, December 2023, page 16 [2023-policy-gender-en-web.pdf \(icc-cpi.int\)](#)

for intimidation or retaliation for their engagement with the OTP, they may also suffer severe social consequences related to the violence they have, or are assumed to have, experienced” and that in conducting its risk assessment the Office “will develop tailored protection strategies and will identify specific mitigation measures so that GBC witnesses, victims and their dependents are protected”.

Advancing treaty body practice by permitting confidential communications, in cases of vulnerable complainants, would allow treaty bodies to implement their commitments under the San Jose Guidelines and tangibly address a key challenge that has been identified by the Chairpersons.⁴² Better still, as discussed above, UN treaty bodies can engage in this practice within existing rules of procedure, without the need to amend the existing legal framework. It would also allow UN treaty bodies to fight against impunity and demonstrate how to be inclusive towards the most vulnerable individuals in UN mechanisms procedures.

iii) Balancing the rights and needs of the parties

The nature of the communication procedure before the treaty bodies allows for protecting the identity of the complainants from the state concerned, if certain safeguards are put in place to ensure the respect of the rights of said state. Ensuring the state party concerned is able to meaningfully investigate the allegations is of utmost importance and should be, along with protecting the complainant and addressing the complaint, a priority for the treaty body.

The following factors are among the ones considered by international courts, when assessing whether to permit complainants and witnesses to keep their identities confidential:

- Existence of a real fear for the safety of the accuser.⁴³
- Absence of evidence to suggest the accuser is untrustworthy or not credible.⁴⁴
- Specific features of a particular accuser or circumstances of the case, such as if the complainants are particularly vulnerable or if there is an ongoing conflict that would make it difficult to protect them.⁴⁵

Courts have also taken into account the availability of counterbalancing measures to offset possible prejudice to a defendant. These can include:

- The deciding authority being aware of the identity of the witness.
- The deciding authority being able to observe their demeanour under questioning.⁴⁶

Although the above considerations apply to criminal proceedings, their analogous implementation to cases examining state responsibility might be useful for the treaty bodies.

LAW proposes the following standard to be used across treaty bodies:

⁴² See for reference all documents on Mapping the practices of treaty bodies on intimidation and reprisals and identifying issues that need further action by the Chairs, since 2020, available here [Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies | OHCHR](#)

⁴³ See the criteria of the *Tadic*, page 9.

⁴⁴ *Idem*

⁴⁵ See, *Prosecutor v Thomas Lubanga Dyilo*, Decision on Victim’s Participation, ICC-01/04-01/06-1119 (18 January 2008), paras. 130 and 131

⁴⁶ See, the *Tadic* case, the *Case of Norín Catrimán et al. Leaders, Members and Activist of the Mapuche Indigenous People*, page 9.

Upon a demonstration of a well-founded fear of a risk of serious harm to the complainant or third party, because of bringing a communication to the treaty body, the treaty body shall permit the redacting of the complainant's personal identifying information to the respondent state, while ensuring that the state has sufficient information to investigate, such as an approximate time frame and location of the alleged violation and a description of the underlying facts.

To maintain this balance and avoid any prejudice to the state, the communication should include enough information to allow the state concerned to identify and confirm whether the alleged violations have taken place. This information could include approximate time period(s) and location(s) of the alleged violation(s), a description of the facts that allegedly amount to violation(s) of the treaty, and any available accounts of victims and/or open-source information.

VI. KEY FREQUENTLY ASKED QUESTIONS

1) Is protection of identity of a complainant towards the state concerned the same as anonymity?

No, it is not. A communication in which complainants disclose their identity to the treaty body but not the State concerned is, by definition, not anonymous. Under application of protection of identity, the state concerned should have sufficient information to investigate alleged violations. Furthermore, when the communication is submitted by an organisation identifying itself, in the names of victims, this cannot be considered as an anonymous submission.

2) Is it necessary for treaty bodies to amend their provisions on admissibility for individual communications, in order to accept protection of identity?

No, it is not. Since such submissions should not be considered as anonymous in the first place, the rule of anonymity should not be an issue for registration and admissibility. Treaty bodies can adjust their policy and practice to allow themselves to protect complainants' identities in certain circumstances and under specific criteria tailored to their methods and work.

3) How can the state concerned investigate the alleged violations, if the name of the complainant is not disclosed?

Treaty bodies can allow protection of identity in individual communications and respect the rights of the state concerned, by undertaking a balancing exercise of the rights and needs of both parties. In order to conduct this balancing exercise, treaty bodies should take into consideration first, the details of each case, including the assessment of whether the fear of reprisals is well-founded, and the vulnerability of the complainants. Second, they should ascertain that the state has enough information that would allow it to investigate and respond to the allegations. This information can include, for example, a description of the facts and how they amount to a violation, an approximate time or location (if possible to identify) of the violation and alleged perpetrators.

4) Is it possible for complainants to obtain reparations if their identities are not disclosed?

Victims are entitled to reparation regardless of whether their identity is disclosed to the state in question. Refraining from examining a complaint against a state on the basis that it may not

be possible to tailor reparations to the complainants at the end of the procedure because the complainants' names are withheld from the state, violates the treaty body's mandate.

Further, recommendations for reparations for complainants come only after state responsibility has been established, i.e. after the process of admissibility and merits has been concluded and both parties have expressed their arguments to the treaty body. Practice has shown this can take years. During this time, adequate protection measures may be put in place, or a complainant's security situation may change, which could allow for the complainant's identity to be shared for the purposes of tailoring reparations at the end of a UN treaty body proceeding.

Providing reparations for human rights violations does not require knowledge of the specific identity of the complainants. Once a complainant's credibility has been established by the treaty body and the right of the state to defend itself against the allegations has been adequately respected, reparations can be provided in various ways without disclosing the identity to the state, including, for example, through collective reparations, a practice not unknown to international justice⁴⁷. Additionally, with the victim's consent, a common fund could be created, managed by the complainants' representative or lawyer. Reparations based on compensation for expenses (e.g. medical and psychological support expenses) can also be confirmed by experts that have provided their services without disclosing the identity of the complainant(s). In summary, treaty bodies can withhold the identity of complainants from the state concerned without amending the existing regulatory framework.

5) What is the added value of protection of identity in communication procedure vis-a-vis the inquiry procedure?

Although it may be argued that human rights violations can still be asserted under the inquiry procedure (where there is no need for specifically identified complainants) this does not circumvent the need for protection of identities in the communications procedure. The communications procedure provides an opportunity for victims to assert a claim and possibly access compensation and reparation. These remedies are not available under the inquiry procedure.

6) Has the protection of identity in treaty bodies' communication procedure been applied?

Yes. For the first time, on 5 June 2024, CEDAW registered and communicated to the state concerned an individual communication, by protecting the identity of the complainants towards the state, due to fear of reprisals. The communication was transmitted to the state -in this case South Sudan- for its comments on admissibility and it is still at the preliminary stages of consideration. Nevertheless, the fact that a complaint was registered and transmitted to the state without the names of the complainants is already a crucial step towards protection of victims in UN treaty bodies' procedures.

⁴⁷ See for example, Extraordinary Chambers in the Courts of Cambodia, Meaningful Reparations for Victims of Khmer Rouge Regime, 25 February 2014, pages 1 and 3 [Microsoft Word - Press Release - EN \(2\) \(eccc.gov.kh\)](#); IRRIC 2022, Reparation for victims of serious violations of international humanitarian law: New developments, including examples of collective reparations in the cases of Colombia, Peru, Guatemala, El Salvador and cases from the ICC [Reparation for victims of serious violations of international humanitarian law: New developments \(icrc.org\)](#).

VII. RECOMMENDATIONS

- ❖ **Interpret the existing rules of procedure to allow for protection of identity in certain cases:** There is no need to amend the treaty bodies' existing regulatory framework to permit protection of complainants' identities from the state concerned. Treaty bodies' rules should be interpreted to address the needs of victims, including the clear threat of reprisals and intimidation that have been identified by the UN and other international actors.
- ❖ **Consult with civil society and other key actors on appropriate criteria for determining applications for protection of identity:** Treaty bodies should engage in consultations with key stakeholders that have experience in documenting and asserting human rights violations. These consultations would provide essential information to treaty bodies on how to identify appropriate criteria that should apply when evaluating requests to protect the identity of complainants in communications procedures.
- ❖ **Define specific criteria under which the identities of complainants could be withheld from the state:** To allow victims to come forward and at the same time respecting the rights of the state concerned and without overburdening the treaty bodies by encouraging unfounded submissions, treaty bodies should define specific criteria and conditions under which protection of identity would be feasible. Criteria can be common for all treaty bodies, while allowing for different considerations depending on the treaty body's mandate, as appropriate.
- ❖ **Adopt a general recommendation on permitting protection of complainants' identities:** Although not required in order to apply the protection of identity, treaty bodies should issue a general recommendation where they present the issue of intimidation and reprisals in the communications procedures and the possibility for complainants to request identity protection from the state. This could be a general recommendation/comment for each treaty body separately or a joint general recommendation/comment by all treaty bodies that have the communication procedures.
- ❖ **Include protecting complainants' identities when discussing the harmonisation of the treaty bodies' rules of procedure:** Treaty bodies are currently in the process of harmonising their rules of procedure. The issue of protection of identity should be included in this discussion, to determine how it can be better addressed through the harmonisation procedure.

VIII. CONCLUSION

Fighting impunity for grave human rights violations will not be possible unless an enabling environment for victims of these violations is in place. The UN treaty bodies' communication procedure is key to advance justice for victims, but it will not reach its true potential unless treaty bodies effectively address intimidation and reprisals towards those denouncing human rights violations.

UN treaty bodies, along with other UN mechanisms and experts, have demonstrated concern about reprisals and have taken concrete and significant steps to protect individuals and groups that cooperate with them, including adopting the San Jose Guidelines. Nevertheless, due to shrinking civic space that persists around the world, and the limited ability to denounce states for violating their obligations under core UN treaties, more needs to be done. Treaty bodies can lead the way in advancing justice and implementing their respective mandates at their fullest, by being creative within the limits of their existing capacity and rules.

For the most vulnerable victims, who face threats and reprisals, effective protection against intimidation and reprisals is vital if they are going to access justice through the treaty bodies. Protecting a complainant's identity from a state party for clearly specified reasons, and after undertaking a balancing exercise of the rights of the state, is also common in international, regional and domestic legal orders.

CEDAW has led the way - more treaty bodies should follow.

Legal Action Worldwide
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1202 Geneva
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IX. ANNEX I

30 April 2021

Dear Ms. Acosta Vargas

Re: Request for a General Recommendation on the protection of the identities of survivors of conflict-related sexual violence

We are writing to kindly request that the Committee on the Elimination of all forms of Discrimination against Women examine the issue of the protection of complainants' identities who have suffered from conflict related sexual violence, as a topic for a General Recommendation during its 79th session between 21 June and 9 July 2021.

The letter and spirit of the Convention and its Optional Protocol is to ensure all necessary measures required for the elimination of all forms and manifestations of discrimination against women and girls are undertaken by State Parties and enforced. However, several significant challenges continue to affect the ability of women and girls to access redress before the Committee, and the Committee needs to urgently give them serious consideration. Indeed, women and girls who speak out against their perpetrators often face threats of retaliation including further violations and abuses; this is particularly evident when the perpetrator is the state or an agent of the state. Those remarkable women and girls who have the courage to speak out must be protected against retaliation, otherwise survivors will not be able to come forward and seek justice from the very Committee appointed to protect them.

It is thus imperative that the Committee allows women and girls who wish to file a communication to protect their full identities from the state or state agents whilst the communication is being considered. We would like to suggest this topic for a General Recommendation, to allow the Committee to protect the identities of Complainants under the Optional Protocol in these exceptional circumstances. This will ensure that in cases where they are facing a threat, women and girl still have access to redress and empowerment.

Attached to this letter are the complaint submitted on 25 November 2020 on behalf of 30 South Sudanese women and girls and the report on protection of identity and the Complaints Procedure submitted by Legal Action Worldwide on 25 January 2021 to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antonia Mulvey', written in a cursive style.

Antonia Mulvey
Executive Director
Legal Action Worldwide



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