Unofficial Transcript

**Concluding comments by the Assistant Secretary-General for Human Rights of the report of the Secretary-General on cooperation with the UN, its representatives and mechanisms in the field of human rights**

**39th Session Human Rights Council
Agenda Item 5**

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Thank you very much indeed, Mr. President, I might say at the outset that your role in the issue of reprisals is a very important one and a number of people have come to you, as they have done to your predecessors, particularly when they have suffered reprisals or intimidation in events in the connection of the Human Rights Council. I have to say that you sir, since you took over in January, have been especially supportive of those victims, but also of my mandate and I appreciate that very much.

I am also grateful for the fact that we have just had a very large of number of substantive and thoughtful comments and questions, and we appreciate that. There were 47 speakers, and most of them put questions. I am not going to be able to answer all of them but will try to group them together.

Listening to the questions, they seemed to come in three categories:

1. There were those, a large number, who were unequivocally supportive of the mandate and asked questions as to what more could be done.
2. The second category was composed of States who said that they were supportive of the mandate, but complained about the fact that they appeared in the report, and protested in varying degrees of anger about that; and
3. There was a third and small category that was opposed to the mandate and everything about it.

So, to deal with the first category (without specifying all the questions, because a lot of the questions were fairly similar), related to the trends by States to tackle what’s going on in international meetings of the UN, and also to address matters diplomatically. A number of States have been doing that, and we are really grateful that they do, including raising issues bilaterally or during sessions of the UPR. This is something that we very much hope will continue.

The African Group, and I particularly welcomed Togo’s statement on behalf of the African Group which was supportive but very constructive in terms of how to improve the mandate. There was an idea that Togo gave that I think we will definitely follow up, which was how could future reports feature best practices in how we deal with this issue. In that connection, we would appreciate from the African Group who proposed it, but also from other supportive entities, how we should go about that.

We were also asked how to address accountability at the national level. Accountability for reprisals will only really be improved if States take the issue seriously by stating unequivocally a no tolerance policy, not just in general terms here (that is fairly easy), but doing it at home as well. They must take prompt measures to investigate all allegations; engage directly with victims to ensure their protection (I am not sure that happens that often); ensure judicial independence so that the perpetrators of reprisals, whether they are state or non-state, are brought to justice; and then provide remedy for the victims. All of these are very important measures.

When States respond, we would welcome them to describe their national-level practices, such as which measures they have put in place to address intimidation and reprisals, and what have they done to prevent the reoccurrence of such acts in the first place.

The second category of States were those who said they were supportive, but then complained about the fact that their countries were included in the report and in many cases this led to complaints about the methodology we use. And we need to talk a little about that I think.

Government responses are included in this report if they are received on time (we got one just after the report had been totally finalized by the Secretary-General and was at the printers, that one was not included). Every other one that we received, is included. However, that only accounts for about half the cases mentioned in this report. For the other half, States did not send us any inputs for inclusion.

Given that this report, perhaps more than any other in the entire UN system, is about protecting victims, named victims, it does imply that victims’ protection is our priority and that actually does mean that when we have to err, we err on the side of victims. This is not the case for all UN reports and it might account for why this report gets such flack from various people, but that is what we have done. We believe that victims who have been targeted for having cooperated with the UN are particularly worthy of protection. We always check to see that there was a link with the UN, otherwise the allegation does not get included. That brings me to the fact that we do not treat all information as fact, whether we got it from governments or whether we got it from civil society or victims, it is our duty to respond to allegations and they are presented as such in the report. We then present the government’s case.

We take into account the reprisal in full, but we summarize. Some countries have complained that we did not publish the entire reply. But we received some responses from governments that were 10 pages long, that concluded with a rather threatening message insisting every word be included in the report, which clearly was not possible or the report would be 500 pages. But we have done a very good faith effort, we believe, in summarizing the key points that present the government’s case in the fairest way.

What was interesting was that the large majority of the 38 countries mentioned in the report spoke today. Not one of them, you will have noticed, said, ‘yes that was a reprisal.’ So that is one of the common features of how States respond, with a blanket denial, often with the accusation ‘he’s a terrorist’, ‘she’s a criminal.’ It appears that there is an expectation on us that we should just take that, and accept it, regardless of whether there is really any serious evidence whatsoever, and regardless of whether the country concerned has a pattern of doing such things.

So as I said, we don’t take the original complaint by the victim or the NGO as the absolute unquestioned truth, but nor do we take the government’s invariable denial of the event as an unquestioned truth. We present them both.

In that connection of how we presented cases, I would like to flag Rwanda for taking this in a very constructive way and we have responded in kind. I know Rwanda is not very happy with the cases in the report, but I do regard it as particularly useful and serious way in which a government dealt with accusations, which in this case came from the Sub-Committee on the Prevention of Torture (SPT).

We also don’t remove an allegation just because a government says it does not consider it a reprisal, or that the person is a terrorist. I go back to the fact that we do listen to victims’ concerns and we don’t necessarily put one higher than the other, although we do err on the side of the victim.

We also do not decide, because a couple of people have mentioned this, who should be considered a human rights defender or not. Nor do we exclude victims’ concerns because, in addition to being a human rights defender, they may have have political or personal agendas. When Member States carefully negotiated the UN Declaration on Human Rights Defenders, they deliberately did not define who is a human rights defender, because no one is a human rights defender because of what s/he is, but of what s/he does. And everyone has the right to participate and this is very important. Everyone has the right individually and in association with others to promote and to strive for the protection and realization of human rights and fundamental freedoms.

As regards the UN systemwide response, we received questions on that. We are increasing and we increased our coordination with several UN actors and are trying to get them to take the issue as seriously as we do. I would say it is not always plain sailing, some UN entities are less enthused about getting involved in this issue as we are, but nevertheless this is ongoing work and we are continuing to do that.

Moreover, a question about New York and Geneva, how can we do better? I have colleagues in Geneva and New York who are consulting every day on this issue. What we have seen, if we are talking about not just UN Secretariat or OHCHR staff but Member States, that there is sometimes a difference in the position in diplomats in New York and in Geneva, where those in Geneva are often readier to take a human rights approach than their colleagues in New York. We certainly see that in the activities of the NGO Committee, where there is not exactly a great openness to consider civil society space being enlarged at the UN, nor the role of human rights defenders.

The last category of countries were those who didn’t even pretend to like the mandate, but criticized both the mandate as well as the way I do it. I would say probably the most vocal elements of that were China and Cuba.

China’s case is clear: it’s a very principled position that even dealing with the issue of reprisals against a civil society defender in a country is an infringement of sovereignty. That is China’s position on many issues, it is not the Secretariat’s and nor is it most Member States’.

Cuba accused us of having a very selective approach against countries of “the south” and moreover it characterized human rights defenders as “mercenaries of foreign powers” (at least if I heard correctly through the translation). I respectfully would say that this might say more about Cuba than it says either about human rights defenders or than it says about our mandate.

But if I could take the point raised by Cuba that we only take cases from the south, you would have heard the strong statement by Hungary. Hungary not only is not a member of the global south, but Hungary has been consistently one of the two or three most supportive countries anywhere in the world supporting this mandate. But we take it seriously and no country gets devoid of examination in this context just because it has been very supportive.

Hungary made a point that needs considering (at least in its written statement, I am not sure if it was read out), that if a country like Hungary is upset about this, other countries might follow the example of the United States and presumably leave the Human Rights Council if we carried on behaving this way.

This obviously brings us to a conundrum in dealing with this issue, because the more assiduous I am, the more seriously I and my colleagues take this mandate (which is presumably why we took it on in the first place, otherwise there is no point doing it), well then the more likely we are going to get criticized by Member States. And the more countries that we find information about where intimidation or reprisals may have taken place, then as we saw today, the more likely they are to speak in the Human Rights Council and complain, either about the mandate in principle or more often the way we do it. Frankly, it is a conundrum that I haven’t really managed to resolve. All I know is that we are going to carry on referring to all incidents where we believe there is a credible case.

I was asked by one Member State what are the biggest risks to human rights defenders and civil society. I would say it is the closing of civil society space; it is the electronic surveillance; it is the laws that are being passed to make life difficult, also to prevent their funding; and the systematic denigration of people, the denunciation of them as terrorists or criminals to somehow weaken their credibility; and in some cases to punish them with the full force of the law, not because they have broken any law in reality, but because they have stood up for human rights that has drawn the bad attention from members of the government. So, all that I would regard as the biggest threats.

My last point to conclude is related to the closing of space. During the two years I have been doing this, I have noted quite a close correlation on three things: one, the countries that are most involved in passing legislation and other ways of creating obstacles for human rights defenders and civil society are those that are those most likely to be cited in this report as having carried out intimidation or reprisals against individuals and groups, and thirdly, they are also the ones who are most likely to criticize this report. There is a close correlation on these three points, and I suppose it didn’t take rocket science to notice that there would be such correlation in that regard, but just to say that is my final observation having done this for two years.

Once again, thank you, Mr. President for your personal support and the Bureau and everyone else who has contributed to this.