

## **Respect and Protect? Exploring the need for the United Nations Human Rights Council to strengthen its response to reprisals**

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## Introduction

*“As respect for human rights is a pillar of the United Nations, everyone should have the opportunity to interact with the Organisation, its representatives and mechanisms in the field of human rights without fear.”*

*Report by the UN Secretary-General, 2010<sup>i</sup>*

Human rights defenders are a large, varied and often vulnerable group, as recognised in the many international instruments and documents created to help protect them. Recently, growing attention is being given to the particular responsibility of the United Nations to protect those with whom it works and on whom it relies to function. Each UN communication, country report or high-level international inquiry carries risks for those involved. There have been many reported cases of human rights defenders being assaulted, abducted, arbitrarily detained, threatened, defamed or otherwise harmed as a result of such engagement,<sup>ii</sup> and there have been confirmed cases of human rights defenders being killed because they cooperated with the Human Rights Council (the Council) or its mechanisms. Even when these harms have not been visibly sponsored by a state, it is rare to see governments investigate and prosecute those responsible.

This paper explores ways in which the Council and its stakeholders can better address and prevent reprisals. It is one of many concerned voices, outside the Council and within it.<sup>iii</sup> In 2010, following a wave of focused NGO campaigns, an annual resolution on reprisals, much broader than those previously adopted, was passed by the Council. As a result, the office of the UN Secretary-General has delivered increasingly detailed reports on reprisals in recent years. Since then, the subject of reprisals has been raised in Council proceedings through various reports, comments from a growing number of state delegates, as well as by the High Commissioner for Human Rights (HCHR), and some special procedure mandate holders, a number of whom have been personally and professionally affected by reprisals during their terms.<sup>iv</sup> Many have asserted there is a protection gap when it comes to the safety of those who seek to cooperate with the international human rights system, and that more needs to be done to address it; however proposals on how best to do so remain scarce. The Civil Society Unit of the Office of the High Commissioner for Human Rights (OHCHR) developed an internal policy document on civil society protection, which is now in use, but which is not a public document.<sup>v</sup>

This paper analyses recent practice regarding reprisals in the UN human rights system. It will also explore approaches taken by other international and regional human rights mechanisms, and ideas developed by other stakeholders.<sup>vi</sup> By highlighting key areas of limitation and opportunity, and making concrete proposals for improvement, the aim is to show there is still plenty of room for the Council to develop more sustainable relationships with civil society, and therefore better fulfil its role as a promoter and protector of human rights.

## **Part One – Respect and protect? The relationship between the Human Rights Council and those who cooperate with its mechanisms**

*“The cooperation of individuals and groups with the United Nations in the field of human rights in a free and safe manner is key to ensuring an efficient and results-oriented approach to the promotion and protection of human rights.”*

*Report by the UN Secretary-General, 2010<sup>vii</sup>*

The UN Human Rights Council is responsible for strengthening the international promotion and protection of human rights. This requires monitoring and reviewing states' human rights records. It is important that these records are assessed and verified through a diverse range of independent sources and stakeholders. This is seen in the operation of the Universal Periodic Review (UPR), for example, where NGO parallel reports allow the Council to better assess state submissions.<sup>viii</sup> However, it extends to any Council procedure that requires data on human rights violations, gains legitimacy from victims' voices and participation, or needs to draw a reliable picture of systematic violations.

To discharge its responsibility, the Council therefore relies on a wide range of external 'cooperators'. These cooperators could be staff of NGOs and national human rights institutions (NHRIs), victims of human rights violations, or other civil society actors and intermediaries. Yet it is these external cooperators who make up the majority of reported reprisal victims. In recent years, states such as Norway, Switzerland, and Spain on behalf of the EU have highlighted the Council's reliance on cooperators when arguing for their better protection.<sup>ix</sup>

The Council has itself acknowledged this reliance and the risks involved since at least 1984,<sup>x</sup> when the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (known as the Declaration on Human Rights Defenders) began to be drafted.<sup>xi</sup> This first formally defined the defence of human rights as a right in itself. Article 5 explicitly protects a right to access and communicate with international bodies about human rights issues; meanwhile, Article 12 (2) frames the "violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action" from which they may need protection while doing so. The declaration also paved the way for the mandate of the Special Representative of the Secretary-General on the situation of human rights defenders – now a Special Rapporteur – to be established in 2000.<sup>xii</sup> Mandate-holders have helped to expand the definition of a human rights defender and the range of dangers they face, while developing a methodology to help respond to individual situations, and recommendations to correct the structural gaps in the protection of human rights defenders by states.<sup>xiii</sup> However, they have no particular mandate to provide protection to those that come under threats or attack because of their interaction with the UN.

Council doctrine has more specifically acknowledged reprisal-related harms against those it works with. This was done recently and briefly, for example, in the *2011 Outcome Document of the Review of the Work and Functioning of the United Nations Human Rights Council*.<sup>xiv</sup> However, the issue has been most consistently and comprehensively addressed in an annual resolution, entitled *Cooperation with representatives of United Nations human rights bodies*. This resolution has enjoyed significant cross-regional support every year since it first passed in 1990 without a vote.<sup>xv</sup> Its key aspects include the request that all representatives and treaty bodies of the UN report on allegations of intimidation or reprisal, and that the Office of the Secretary-General compile recent cases in an annual report under the same title.

Over time, the resolution has been redrafted to widen the range of cooperators identified and the forms of reprisals they could face.<sup>xvi</sup> In 2010, Council *Resolution 12/2* provided the most comprehensive treatment of the issue to date. The title was amended to *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*. This provided a broader scope to consider reprisals linked to cooperation with all components of the UN human rights system, such as the fairly new universal periodic review (UPR) and human rights components of peace-keeping operations. Meanwhile, the resolution took a

sterner approach to state responsibility by injecting the word ‘prevent’ alongside ‘refrain’, and including new paragraphs (55-57) that emphasise the need for states to be more involved in fighting impunity for reprisals.

The 2011 Council decision on the matter (18/118) then gave significant new attention to the issue by deciding that a dedicated high-level panel discussion should be convened during the Council’s 21<sup>st</sup> session (September 2012). In October 2011, OHCHR convened an interim panel discussion in New York, with the participation of the UN Secretary-General, the High Commissioner for Human Rights, Philip Alston, speaking in his capacity as former UN Special Rapporteur on extrajudicial executions, and the International Service for Human Rights.<sup>xvii</sup> Nevertheless, as this study aims to show, these steps have not been translated into protective action, and alone, do not come close to a sufficient institutional response.

## **Part Two – Gaps and limitations: The distance between promise and procedure**

### **I. THE CURRENT REACH OF THE SPECIAL PROCEDURES BRANCH**

*“I am fully aware that my possibilities to provide protection are extremely limited”.*

*Manfred Nowak, during his service as UN Special Rapporteur on torture<sup>xviii</sup>*

Of the protection mechanisms that are currently available for cooperators at the Council, most operate through the special procedures branch of OHCHR. The system of special procedures is one of the strongest and most flexible Council mechanisms, thanks largely to its ability to address individual cases. If a cooperator is thought to be in imminent danger, special procedures’ urgent appeal system can be triggered to encourage a state’s swift intervention. In contrast, allegation letters respond to repeated or ongoing violations, and can better highlight a state’s general culture of impunity or protection. Both can be issued jointly by multiple special procedures for greater impact. Mandate holders need no proof that domestic remedies have been exhausted, or that their mandate has been accepted by the state in question (which are conditions that often prevent treaty bodies from responding quickly to cases of reprisals). After issuing an appeal or letter, mandate-holders must wait for a response from the state.

The special procedures branch also aims to serve cooperators who feel endangered during and because of country visits by special procedures representatives. A special procedure mandate holder can insist on a state accepting terms of reference before a visit. These terms require assurance from governments that no “threats, harassment, or punishment” will befall those the mandate holder speaks with.<sup>xix</sup> Information on reprisals can then be included in the mission report to the Council, which may be publicised up to a year after the visit. Press statements can also be used by the special procedures, and many mandate holders to issue these on general themes or findings at the end of a mission. Although the toolkit is similar for all special procedures, their mandates leave some leeway for innovation, and some experts have been more proactive in trying to protect cooperators than others. As some special rapporteurs have openly lamented, this has led to a lack of consistency.

### **II. CLOSER ENGAGEMENT WITH HUMAN RIGHTS DEFENDERS**

There are various major shortcomings found in this framework where reprisals are concerned. One is the lack of proactive contact and follow-up between special procedures branch staff and their civil society sources and complainants.<sup>xx</sup> Cooperators often give

information about human rights cases remotely, and most are not informed whether or when their cases are taken up. Many find out weeks or months later using state contacts, by reading through an expert's annual report, or by gauging a change in their situation. It is not standard practice for special procedures to request more detailed information, or to ask about the status of a victim's situation after a UN communication has been sent.<sup>xxi</sup>

However, follow-up methodology has been strongly advocated by the then Special Representative of the Secretary-General on human rights defenders.<sup>xxii</sup> The *Manual of Operations of the Special Procedures of the Human Rights Council* (the Manual)<sup>xxiii</sup> and other such documents rate follow-up measures highly in the performance of mandate holders, noting that the effectiveness of each "will often call for going beyond a straightforward exchange of correspondence."<sup>xxiv</sup> The Working Group on Enforced or Involuntary Disappearance (WGEID) is better known for this. It is more systematic about reporting back to the source with new information – often an NGO or relative of a victim – and has devised a "prompt intervention" procedure that allows cases of reprisal to be transmitted between sessions.<sup>xxv</sup> This allows the group to better monitor and respond to individuals under threat. It also instils some confidence in those whom it works with, by indicating that safety is being considered.

The high profile nature and impact of country visits can heighten risks for cooperators, and such visits have been directly linked to a number of deaths in recent years.<sup>xxvi</sup> Some UN mandate holders have spoken of their personal efforts to follow up with cooperators during missions. For example, the former Special Rapporteur on torture, Manfred Nowak, would often return to an area to speak with a cooperator a few hours or days after his first visit, or would ensure the national human rights institution (NHRI) or UN country office staff did so, when he felt a person was at particular risk.<sup>xxvii</sup> Nowak has also collaborated with the International Committee of the Red Cross, independent ombudspersons, and other national preventive mechanisms for this purpose. Yet return visits are not always possible, and they are not consistently practised by all the special procedures. The mechanism can struggle with limited staffing, budgets and general reach (this practical limitation affects the entire engagement methodology). A side event on reprisals during the Council's 16<sup>th</sup> session covered these issues. During the panel, the chief of the civil and political rights section of the special procedures branch of OHCHR, Orest Nowosad, recognised that a greater role could be played by OHCHR's field offices. Those who have faced reprisals agree this remains a poorly developed area.<sup>xxviii</sup>

The conduct of mandate-holders while on missions is also an important factor to consider, particularly their responsibility to outline risks to cooperators and offer different options for cooperation that could reduce risks. Procedures for in-person communication between mandate-holders and cooperators seem less established compared to those for written communications, the latter of which provide the means to keep the identity of those involved confidential. Some experts have described their own low-risk threshold for the safety of others,<sup>xxix</sup> yet have still faced strong criticism for their handling of risky situations for cooperators, some with fatal consequences.<sup>xxx</sup> During the high-level panel on reprisals in October 2011, Philip Alston strongly recommended that UN staff be trained to improve this, and that confidential contingency plans be developed for contexts where reprisals are likely.<sup>xxxi</sup> The Special Rapporteur on human rights defenders, Margaret Sekaggya has also recommended caution by experts in the field, and has suggested more 'innovative' communicative measures may sometimes be required.<sup>xxxii</sup>

Strong, open and systematic follow-up is also needed in the Council's monitoring of member states that tolerate or facilitate reprisals. Acts of non-cooperation by states have varied.

Some have denied such incidents, failed to respond adequately, or claimed an investigation is underway without providing further details. These kinds of state behavior have sometimes even taken place whilst smear campaigns against the cooperators concerned have been conducted, or further intimidation and harm have continued.<sup>xxxiii</sup> As has often been argued by ISHR and other NGOs, these acts are a challenge to the authority of the Council and the UN.<sup>xxxiv</sup> During Philip Alston's tenure as Special Rapporteur on extrajudicial killings, he repeatedly recommended the development of a "mechanism for seeking explanation from the governments concerned and, where appropriate, expressing public concern when a government's response is inadequate".<sup>xxxv</sup> This is explored further in the next section.

Finally, since early 2010 an email address – [reprisals@ohchr.org](mailto:reprisals@ohchr.org) – has provided a method for reprisals cases to be directly communicated to OHCHR.

### III. GIVING VISIBILITY TO CASES OF REPRISAL

In 2010 the Secretary-General reported that "Denouncing such acts [of reprisal] publicly and reporting them to the appropriate human rights mechanisms will also contribute to combating related impunity."<sup>xxxvi</sup> Thanks to the growing sensitivity of states to international opinion, publicity is one of the strongest protections for human rights defenders in general, and cooperators in particular.<sup>xxxvii</sup> Yet, because communications between the special procedures and states are confidential, cases currently only become public during a mandate holder's reports to the Council. This could take place months after an incident, and each case must compete with numerous other issues during the session. The focus given to reprisal cases in the Secretary-General's report each year also comes too late for those at immediate risk.

However, NGOs can strategically highlight threats against a cooperator, or a state's inaction in protecting them, to lobby the state concerned more effectively and gain useful leverage.<sup>xxxviii</sup> Special Rapporteur press releases could facilitate this (the Manual recommends press releases be issued alongside individual urgent appeals where appropriate), yet they do not seem to play a strategic role in the mechanism's response to reprisals.<sup>xxxix</sup>

Finally, there appears to be scope for special procedures mandate holders to systematically raise the issue of cooperator protection with state officials, both before and throughout missions. This could be done by emphasising their terms of reference wherever possible, or by personally alerting the relevant state's high level officials (or even officials of other diplomatic missions) about situations of risk, to encourage their involvement.<sup>xl</sup> During the October 2011 high-level panel on reprisals, Philip Alston described a case in which various states' diplomatic missions had helped and protected a group of gravely endangered human rights defenders in a disaster zone. A stronger institutional response could also involve developing best practices for special procedures mandate holders, so that they always make the most of their leverage to protect. A coherent approach could be included in the Manual, which guides new mandate holders in the discharge of their functions.

### IV. PRIORITISING REPRISALS

To encourage the help of cooperators in the face of personal risk, the Human Rights Council must both strengthen its protective framework and give reassurance that it will keep doing so. The Council has sent such positive signals, for example, through its more broad definition of cooperators at risk in *Resolution 12/2*, as noted above, by requesting greater follow-up of cases by OHCHR, in the Secretary General's report, as is starting to happen, and by

convening a panel discussion on the issue under *Decision 18/119*. More importantly, the President of the Council has started to systematically take action to prevent and protect from reprisals by reminding states concerned of their obligations. However, strengthened protection and reassurance for cooperators will only be practically applied through dedicated attention.

Former UN expert Philip Alston commented in 2010 that “although the Council, and the Commission that preceded it, have regularly acknowledged the unacceptable nature of such reprisals, it almost never takes any action in response to such cases.”<sup>xlii</sup> While there have been signs of improvement –, follow-up efforts described in the Secretary-General’s 2012 report unfortunately reveal a pattern of impunity.<sup>xliii</sup>

The Secretary-General’s 2011 report shows a continued improvement over recent reports on the recommendation, annually reiterated since 1990, that representatives of UN human rights bodies should “continue to take urgent steps to help prevent” reprisals. It emphasises the role of the state in ensuring that persons who cooperate with the UN are protected. It also notes that in cases where states do not protect civil society, “it is essential that the international community devises strong protection measures”. It calls for organisational coherence and a systematic approach, encouraging a review of protection measures across the entire UN system.<sup>xliii</sup>

A number of states and NGOs have argued for more priority and profile for reprisals in the Council’s proceedings. Many of these voices have been heard during the 2010-2011 review of the operation of the Council. For example, Sweden and Canada supported the holding of a regular panel on reprisals, with Canada stressing “that human rights defenders would continue to face reprisals, arrests, and killings if the Council fails to take the need for timely protection against reprisals seriously”.<sup>xliiv</sup> Norway had also addressed these issues in 2010 by suggesting that such a panel could be convened under Item 5: Human Rights Bodies and Mechanisms, which would frame the issue more as an institutional responsibility of the human rights bodies, the Council in particular.<sup>xliiv</sup> The Secretary-General’s 2011 report also notes that the Council should “devote sufficient time and attention to the present report”. The panel discussion on reprisals that will take place at the 21<sup>st</sup> session of the Council will add to the profile of the issue; however it is a one-off event, and not the regular panel that some States have called for. Nevertheless, it promises to raise the visibility of the report and promote its usefulness as a tool for NGOs to raise awareness of cases.

A greater outreach role for the Council has also been recommended by victims of reprisals. The High Commissioner for Human Rights continues to draw attention to the obligations of states to protect and ensure accountability for suspected acts of reprisal,<sup>xlivi</sup> yet significant resistance remains from some of those states at risk of being held to account for such offences. This was most recently displayed by the lack of innovation in the outcome document of the Working Group on the Council’s review, which simply “condemns” any such acts but fails to introduce any significant consequences if they occur,<sup>xliiii</sup> as well as in *Decision 18/118* convening the panel which, while an important and positive development, nevertheless only “encourages” States to investigate alleged reprisals and to inform the Council “on a voluntary basis” of all measures taken to address acts of reprisal.<sup>xliiii</sup>

Various states in the Council have regularly defined the problem of reprisals as one of implementation, often linking it to the mandate of the Special Rapporteur on human rights defenders.<sup>xlix</sup> Yet, as already noted, certain special procedure mandate holders have advocated for stronger, more systematic mechanisms for the monitoring of reprisals, including in a report submitted by its Coordination Committee during the review of the

Council.<sup>i</sup> Many of the recommendations made by the Coordination Committee in this submission, if adopted in the review outcome, would have empowered the Special Rapporteur on human rights defenders and other special procedures to respond more effectively to reprisals – through the General Assembly allocating more resources to allow for greater action,<sup>ii</sup> or through the Council making systematic use of the recommendations from special procedures to trigger attention to gross and chronic violations.

Yet response to the special procedures proposals, according to many NGOs, was inadequate.<sup>iii</sup> Many have commented on the potential for stronger action by the High Commissioner for Human Rights, both in support of the special procedures and in raising the profile of the reprisals issue at the highest levels.<sup>iiii</sup> Therefore while willingness has been shown by Council members, its President, observers and other stakeholders to engage with the issue, the steps being taken appear slow and small, and a more encouraging display of commitment is needed.

### **Part Three – Other institutional responses to reprisals: Opportunities for expansion**

Many of the concerns covered above have been addressed by human rights-related bodies outside of the UN. While this paper does not aim to give a full comparative analysis of strategies, a brief look at a range of good practices shows there is no shortage of avenues to explore, and will help push for a stronger institutional response. Although there are innumerable kinds of national protection schemes globally, it will be most useful to look at some key procedural forms of protection offered by international, regional or intergovernmental bodies. Many of the approaches below have been critiqued or proposed by Philip Alston, academic and UN consultant Laurie S Wiseburg, and legal specialists Carla Ferstman and Paulina Vega Gonzalez.

The theme of closer engagement features strongly in recommended protection methodology. In a 1991 paper, Wiseburg reflects on the need for monitoring organisations with strong “partnerships, alliances and solidarities” with human rights defenders, which can be activated in critical periods.<sup>liv</sup> She describes a range of approaches, from the “accompaniment” method,<sup>lv</sup> to the setting up of 24-hour hotlines for persons at risk. The Inter-American Commission on Human Rights (Inter-American Commission) is well regarded in this area. Its Human Rights Defenders Unit, including its Rapporteur on Human Rights Defenders, coordinates the work of the Executive Secretariat with states, human rights organisations and other agencies, and is credited for its analysis and monitoring of precautionary measures in the region,<sup>lvi</sup> as well as an active press department. It has the power to issue interim protection directives to states itself, or via the Inter-American Court of Human Rights (whether or not a case has been submitted to its jurisdiction).<sup>lvii</sup> The most successful of these have often been those that the beneficiary has helped to design, as instructed by the Inter-American Commission.<sup>lviii</sup>

Closer engagement with affected individuals has also been achieved by the African Commission on Human and Peoples’ Rights (the African Commission). This has been helped in part by the NGO Forum for the participation of NGOs in the sessions of the African Commission. However, it is also due to the closer relationship of its Special Rapporteur on Human Rights Defenders with those in the region, for example, through more frequent (biannual) reports and a biannual bulletin that encourages contributions from civil society.<sup>lix</sup>



The International Criminal Tribunals (ICTs) use methodology that, according to Alston, could be considered by OHCHR.<sup>lx</sup> A number of the tribunals have established victims and witness units to develop and help to implement risk-mitigation strategies, often in consultation with victims.<sup>lxi</sup> Outlined by Ferstman and Vega Gonzalez in a report on reprisals relating to ICTs, these include:

*[...] response systems to ensure witnesses know whom to contact and what to do should their security be threatened. Mechanisms and policies have been put into place to ensure 24-hour protection and psychological assistance for victims and witnesses.’ In accordance with the [International Criminal Court (ICC)] Regulations of the Registry, victims who require it are entitled to round-the-clock telephone access to Court officers for the purpose of initiating applications for protection and to be in contact about safety concerns. The ICC has an Initial Response System, which enables the Court to provisionally remove witnesses who are afraid of being immediately targeted, or who have already been targeted, to a safe location in the field.*<sup>lxii</sup>

The authors also note that there has been some recognition by the ICC that intermediaries, such as human rights defenders and lawyers, are eligible for protective measures.<sup>lxiii</sup>

The use of protective publicity can be a fairly straightforward issue and need not be laboured here. However one good example would be the methodology of the NGO Frontline Defenders, which has developed a strong system of human rights awards, local media networking and press releases to protect human rights defenders; it also makes the most of photo opportunities for individual human rights defenders with experts at the UN, to enhance their credibility. Alternatively, Wiseberg notes that quiet diplomacy may be more appropriate in some contexts, and gives the example of an Uruguayan defender who was protected from torture by low-key interventions from the Government of Canada. This is something that could be explored by OHCHR in relation to individual cooperators.<sup>lxiv</sup>

Another approach has been termed by Wiseberg as ‘technical and infrastructural support and solidarity’. This ranges from providing a self-help allowance to cooperators at grave risk, for the purpose of legal support or to relocate to a safer environment. Temporary relocation has been used by a number of bodies, including the ICC, both in-country and internationally. Although witness and victims’ groups are divided on the practice, and many see it as a last resort,<sup>lxv</sup> it does have merit as a temporary measure and has been innovatively used by scholars, initially by Harvard Law School’s Human Rights programme.<sup>lxvi</sup> Alston has praised the similar Scholars at Risk programme at New York University, which finds positions for threatened academics in American universities, as staff or students. Some NGOs also deliberately bring persons at risk to their out of country offices, to work with them temporarily or attend international conferences or workshops. Embassies too have been discretely involved in issuing temporary emergency visas in high-risk situations.<sup>lxvii</sup> Supporters of these strategies note that they can allow a person to recuperate during periods of greatest threat, while making contacts and raising their profile overseas to help thicken their ‘mantle of foreign protection’ for when they return.<sup>lxviii</sup>

## **Recommendations**

Since the Human Rights Council has built a system driven largely by moral authority, with the good-faith cooperation of civil society,<sup>lxix</sup> its weak response to reprisals is self-defeating and profoundly disrespectful to those who risk their lives in its service. Some protective steps

have been taken, yet there remains much room for improvement and plenty of options left unexplored, as this paper has shown.

Many practitioners are divided on the best modality for further action. Can the Human Rights Council and its member states, with the support of the Secretary-General and OHCHR, put sufficient peer pressure on states that allegedly commit reprisals to end this deplorable practice? This issue must be given significant attention. In the meantime there is also a broad range of stakeholders who can and must improve their responses.

The recommendations below are intended as a contribution to the ongoing debate within international and regional human rights bodies on how to best prevent and respond to reprisals. They constitute options that can be implemented en-route to a more holistic response.

## I. OHCHR

OHCHR should further develop a comprehensive policy to combat reprisals. This should:

- Involve all OHCHR field presences, since their staff members often have a clearer understanding of the local situation and of where threats might be coming from. This could entail accompaniment strategies – supporting human rights defenders at risk on their return from trips to Geneva, New York or other UN meetings – and other active protection activities by the field presences.
- Be strategically built into the interactions between all OHCHR field presences and governments. There should be a clear message that any UN involvement in a country is tied to the safety of those who provide information to the UN and its human rights mechanisms.
- Involve the specialised training of OHCHR staff on minimising risks for cooperators, and the development of confidential contingency arrangements for field activities in vulnerable contexts, as recommended by Alston during the 2011 high-level panel.
- Involve emergency responses by OHCHR field presences, the special procedures, relevant treaty bodies and other relevant UN mechanisms.

## II. HUMAN RIGHTS COUNCIL

The Council should:

- Consider keeping an open record where persons can register themselves as ‘at risk’, should they feel threatened after interacting with its mechanisms. This record should function as a watch list for the Council and its stakeholders, but shall not imply any fault on behalf of the states concerned.
- Develop its urgent responses to cases. This could include the holding of emergency/special sessions, the issuing of statements by the Council President, and encouraging interventions by the High Commissioner for Human Rights whenever there are credible reports of persons targeted for providing information to the Council.
- Use the range of platforms available for raising the issue of reprisal cases with states, such as the presentation of the Secretary-General’s report under Item 2 (and 5), the

discussion of human rights bodies under item 5, including by seeking responses from concerned governments.

- Make all cases of reprisals public in a structured format and in consultation with the victims, including information on any follow-up measures taken by states. The updated status of these cases should be the subject of an annual discussion during a Council session.

### III. UN MEMBER STATES

Member States are not only alleged perpetrators of reprisals, but are also one of the main 'consumers' of the information provided by external cooperators and thus have an obligation to take their share of the responsibility for protecting these individuals.

Member States should:

- Investigate and report publically on all cases of alleged reprisals.
- Protect and provide reparations to the victims.
- Actively protect human rights defenders on the ground, in countries in which it has a representation. This may include using embassies as safe houses for those at immediate risk, while slower working protection mechanisms are activated. States should also consider using their political leverage or diplomatic channels to pressure relevant government actors to refrain from targeting persons who interact with the UN.
- Tie protection against reprisals into foreign aid and asylum strategies. This could involve establishing relevant conditions for the delivery of foreign aid, allocating emergency funds for immediate relocation or evacuation where necessary, developing systems of temporary emergency visas for persons at risk and taking into account the risk of reprisal when developing asylum policies.

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<sup>i</sup> "Report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights", A/HRC/14/19, p9

<sup>ii</sup> AI 2009: "Joint Statement on Reprisals... Item 5, General Debate"

<sup>iii</sup> Refer to the bibliography for a selection of statements, joint statements and panel discussions from 2009 to 2011 by organisations concerned with the protection of human rights defenders.

<sup>iv</sup> See the Journal of Human Rights Practice (JHRP) 2010: "Philip Alston" and 2009: "Manfred Nowak"; and Special Rapporteur on extrajudicial executions 2009, A/HRC/11/2.

<sup>v</sup> Thanks to communications with the Civil Society Unit, OHCHR

<sup>vi</sup> While the paper will focus on the mechanisms of the Council it will refer, where relevant, to other actors such as the treaty bodies or relevant sections of OHCHR.

<sup>vii</sup> UN Secretary-General 2010: A/HRC/14/19, p3

<sup>viii</sup> OHCHR 2008: "Working with the United Nations", p148.

<sup>ix</sup> According to the **UN monitoring group**, International Service for Human Rights (ISHR) in "Council Discusses Reprisals"

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<sup>x</sup> Analysis of the decisions and conditions that led to this decision, including the significant placement of reprisals, and prior protective measures taken by the UN, can be found in the Secretary General's first report: E/CN.4/1991/24, 1991

<sup>xi</sup> GA Res. 53/144

<sup>xii</sup> HRC Res. 2000/61

<sup>xiii</sup> For example see reports of the Representative of the Secretary-General on human rights defenders, to the Human Rights Council, 2008 (A/HRC/7/28) and the GA, 2001 (A/56/341)

<sup>xiv</sup> A/HRC/WG.8/2/1, 2011, p3; also see for example, Principle 32 of the Updated set of principles for the protection and promotion of human rights through action to combat impunity, 2005

<sup>xv</sup> CHR Res. 1990/76

<sup>xvi</sup> See for example, Secretary-General 2008, A/HRC/7/45, C

<sup>xvii</sup> The panel was called 'Stopping reprisals for cooperating with the UN in the field of human rights - a priority for all'

<sup>xviii</sup> JHRP 2009: "Nowak", p112

<sup>xix</sup> See the report of 1998 meeting of Special Rapporteurs, E/CN.4/1998/45, appendix Vc; Rodley 2011. *The Manual of Operations of the Special Procedures of the Human Rights Council, adopted by the Sixth Annual Meeting of Special Procedures, 1999 (revised 18 June 2008)* meanwhile, simply advises mandate-holders to "take all feasible precautions to ensure that sources of information are not subjected to retaliation", and that for those who are, to report it to the mandate-holders for "appropriate follow-up action", p2.

<sup>xx</sup> See OHCHR Special Paper: "Strengthening Special Procedures". Thanks also to discussion with Prof. Manfred Nowak.

<sup>xxi</sup> During a full year of managing urgent cases sent to the special procedures branch (approximately 300 cases) in 2009-2010 by the Asian Human Rights Commission, Hong Kong, the author did not receive a single request for follow-up information on cases that had been taken up, and received fewer than ten requests for further information on new cases.

<sup>xxii</sup> For example: A/HRC/7/28, 2008

<sup>xxiii</sup> Adopted by the Sixth Annual Meeting of Special Procedures, 1999 (revised 18 June 2008)

<sup>xxiv</sup> Manual, p88 and 90

<sup>xxv</sup> Report of the Inter-sessional Working Group, E/CN.4/1991/24 2003 p20

<sup>xxvi</sup> OHCHR 2009: "UN Expert on extrajudicial executions calls upon Kenyan Government"; Secretary-General 2010: A/HRC/14/19; A/HRC/17/28/Add.2, para 64

<sup>xxvii</sup> JHRP 2009: "Nowak", p112.

<sup>xxviii</sup> The ISHR hosted a side event, *Reprisals against Persons Cooperating with the UN: Towards a Strengthened Institutional Response*, in March 2011.

<sup>xxix</sup> JHRP 2009: "Nowak", p111-118; Special Rapporteur on extrajudicial killings 2009: A/HRC/11/2, p18-20

<sup>xxx</sup> See Mahony 2010, p120 on Philip Alston's mission to Kenya in 2009.

<sup>xxxi</sup> **The video for 'Stopping reprisals for cooperating with the UN in the field of human rights', 21 October 2011, is available at <http://www.unmultimedia.org/tv/webcast/2011/10/meeting-on-reprisals.html>**

<sup>xxxii</sup> FORUM-Asia 2010: "Preventative and protective measures".

<sup>xxxiii</sup> See the case of reprisals killings that followed Special Rapporteur on extrajudicial killing, Philip Alston's visit to Kenya in 2009 (see "UN Expert on extrajudicial executions calls upon Kenyan Government")

<sup>xxxiv</sup> ISHR: *ISHR participates in panel discussion on reprisals with the UN Secretary-General*, October 2011, Web: <http://www.ishr.ch/general-assembly/1182-ishr-to-participate-in-panel-discussion-on-reprisals-with-the-un-secretary-general-21-october-2011>

<sup>xxxv</sup> Special Rapporteur on extrajudicial killings 2009: A/HRC/11/2, P23

<sup>xxxvi</sup> Secretary-General 2010: A/HRC/14/19, p 2

<sup>xxxvii</sup> As seen in its use as part of programmes concerned with their safety; for example, in the Protection Handbook for human rights defenders published by NGO Frontline, five out of six recommended ways to reduce threats involve raising the profile of their situation, whether to increase the political cost of carrying out a threat, or strengthening the perception that an attacker might be caught and punished.

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<sup>xxxviii</sup> AI 2009 “The UN Special Rapporteur on Human Rights Defenders: A Guide”

<sup>xxxix</sup> See Manual p45; A partial example would be the press release issued by Special Rapporteur on extrajudicial executions following the reprisal killings of two prominent Kenyan human rights defenders during a mission in 2009, though it was not employed as a protective mechanism. “UN Expert on extrajudicial executions calls upon Kenyan Government”

<sup>xl</sup> As evident in the methodology of Manfred Nowak: JHRP 2009: “Nowak”

<sup>xli</sup> P14

<sup>xlii</sup> ISHR written submission to the 18th session of the Human Rights Council, 15 September 2011, Item 3 – General Debate on Reprisals against those who cooperate with UN Human Rights Mechanisms.

<sup>xliii</sup> A/HRC/21/18,

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-18\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-18_en.pdf)

<sup>xlvi</sup> “High Commissioner's update to the 20th session” 2012

<sup>xlvii</sup> HRC Res. 16/21, 2011, p30

<sup>xlviii</sup>

A/HRC/DEC/18/118

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<sup>xlix</sup> For example Secretary-General 2003: E/CN.4/2003/34; ISHR 2010: “High Commissioner's update to the 15th session”.

<sup>l</sup> “Review of the Human Rights Council: Contribution of the Special Procedures” 2010, proposal 3

<sup>li</sup> Special Rapporteur on extrajudicial executions 2009, A/HRC/11/2, p19

<sup>lii</sup> Amnesty International, Canadian HIV/AIDS Legal Network, International Commission of Jurists, and International Service for Human Rights Joint statement 2011, “Adoption of the outcome of the Working Group”

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Swissinfo.ch 2010: “Torture expert blasts Human Rights Council”

<sup>liii</sup> Amnesty International “Human Rights Council review – Joint statement on Special Procedures” 2011

<sup>liv</sup> P541

<sup>lv</sup> The chaperoning of persons at risk by foreign or otherwise high profile individuals, perhaps most notably developed by Peace Brigades International.

<sup>lvi</sup> The methodology was recently referred to by the Parliamentary Assembly of the Council of Europe as an avenue of potential protection. Ferstman and Vega Gonzalez, 2009, p192

<sup>lvii</sup> See Redress 2009, p47

<sup>lviii</sup> P48

<sup>lix</sup> FIDH 2010

<sup>lx</sup> JHRP 2010: “Alston”, p365

<sup>lxi</sup> In 2009 the ICC organized an expert meeting to explore this issue. See “ICC, Summary Report” 2009.

<sup>lxii</sup> 2009, p58

<sup>lxiii</sup> See ICC: “Prosecutor v. Katanga”, cited in Ferstman and Vega Gonzalez 2009, p55. Although this relies on a broad interpretation of its protection mandate and critics have contended that this needs to be established as practice. See Pena, 2008, p 4

<sup>lxiv</sup> P538

<sup>lxv</sup> See for example ICC 2008: “Victims and Witnesses Unit’s consideration” p27

<sup>lxvi</sup> Wiseberg 1991, p539

<sup>lxvii</sup> JHRP 2010: “Alston”, p365

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lxviii P539

lxix As has been well articulated by Philip Alston: Special Rapporteur on extrajudicial executions 2009: A/HRC/11/2, p14