

## [An obligation to act now to end reprisals](#)

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**By Sir Nicolas Bratza, former President of the European Court of Human Rights**

As the Human Rights Council (the Council) enters its second decade, the issue of reprisals against individuals who have recourse to or engage with the Council and its subsidiary mechanisms remains one of the central challenges facing it and the United Nations more generally.

As is emphasised in the [submission to the Council lodged on behalf of ISHR](#), such reprisals violate human rights and fundamental freedoms that the UN and the Council are obliged to promote and protect. They also seriously impede the Council's ability to discharge its mandate effectively, threaten the integrity of the Council as the primary human rights organ of the UN, and undermine the credibility of the UN's work in the field of human rights.

While the primary obligation to secure the right of unhindered access to the Council rests on States themselves, the Council itself has a crucial role to play in taking effective action to prevent and protect individuals against the risk of reprisals and, where there is credible evidence that reprisals have occurred, to bring about a prompt and effective investigation with a view to holding accountable those responsible.

Despite a decade of resolutions and public statements regarding the importance of ensuring unhindered access to UN human rights mechanisms, the Council has yet to adopt in practice the robust, consistent and unified approach that it has publicly endorsed for the prevention of, protection against, investigation into and accountability for reprisals.

As the primary human rights organ of the UN, the Council, its President and its bureau should take additional practical steps to ensure they comply with their obligations under international law and with the Council's mandate to promote universal respect for the protection of human rights and fundamental freedoms for all.

### **Prevention**

To more effectively prevent reprisals, the Council as a whole or its president and bureau should provide guidance that clearly outlines the steps that the Council will take upon receipt of information about credible risks of reprisals to ensure consistency of action across different terms of the presidency and memberships of the bureau.

The Council should also request that the Office of the High Commissioner for Human Rights (OHCHR) prepare a study, in consultation with relevant Special Procedures mandate holders, to review the ways in which individuals engage with the Council and its subsidiary mechanisms, and make recommendations for the improvement of these processes to better protect persons who communicate or cooperate with the Council.

### **Protection**

To better protect individuals who cooperate with the Council, the president in consultation with the bureau, should publicly identify and denounce specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned and publicly releasing such correspondence with and from States.

The President in consultation with the bureau should also meet with delegations of Member States to discuss information the Council possesses about credible risks of reprisals occurring or allegations of reprisals having occurred, and express serious concern about such acts, as some previous Council presidents have done. In such instances, the president should also seek clarification of the facts and insist on undertakings from the State concerned to investigate, hold the perpetrators accountable and report back to the Council concerning measures taken. In accordance with the Council's mandate to perform its work in a transparent manner, minutes should be kept and made publicly available for all such meetings.

In addition, the Council should adopt resolutions that publicly and unambiguously identify and condemn reprisals every time they occur, calling on States to uphold their human rights obligations by investigating, ensuring accountability of the perpetrator, providing appropriate remedies and reporting back to the Council on the measures it has taken.

Lastly, the Council should require States concerned to report back to the Council by including the discussion of its response to the risk or allegation of reprisals in Item 5 statements and in its next Universal Periodic Review report. The Council should also consider recommending that the Special Rapporteur on the situation of human rights defenders or the President correspond with and visit the State concerned.

### **Investigation and accountability**

To better ensure effective investigation and accountability, the Council should seek information concerning actions taken by States to prevent and ensure accountability for reprisals, assess States' compliance with international human rights obligations, and call on States to take further action where they fall short of meeting those obligations.

The Council could also designate a specific individual or body, such as a working group on reprisals, to receive and investigate all such information. This could be carried out by the system-wide focal point on reprisals envisaged by Human Rights Council Resolution 24/24.

Finally, where acts of intimidation, harassment and reprisals occur during or in connection with Council sessions against individuals who are seeking to participate in Council sessions or events, the Council, acting through the President, has a responsibility to investigate and publicly denounce such acts, in order to preserve the integrity of its processes.

### **Time to act**

The connection between a strong and consistent response to reprisals and the effectiveness of human rights regimes is well established. It is time for the Council to consider seriously the threat that reprisals pose to its legitimacy and integrity, and take the necessary steps to ensure the continued effectiveness of its processes.

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