



GLION
HUMAN RIGHTS
DIALOGUE
2016

HUMAN RIGHTS IMPLEMENTATION,
COMPLIANCE AND THE PREVENTION OF
VIOLATIONS: TURNING INTERNATIONAL
NORMS INTO LOCAL REALITY



Permanent Mission of Norway
to the United Nations



UNIVERSAL RIGHTS GROUP



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Mission permanente de la Suisse auprès de l'Office des Nations
Unies et des autres organisations internationales à Genève

Glion III

TABLE OF CONTENTS

Turning international norms into local reality	p.2
The experience of States with implementation, coordination and reporting: identifying and replicating good practice	p.6
How can the international community better support States to strengthen implementation on the ground?	p.10
Effective prevention by the Human Rights Council: What is it? Does the Council possess the tools to do the job? How to make it work in practice?	p.14
End notes and credits	p.20

TURNING INTERNATIONAL NORMS INTO LOCAL REALITY



The development of international human rights norms is seen as one of the great success stories of the UN. Since the adoption of the Universal Declaration of Human Rights by the General Assembly on 10th December 1948, the international community has moved to create a comprehensive global code of human rights norms governing practically every area of the relationship between the individual and the State.

But what are the real world, practical, tangible implications of this global code? The primary responsibility for promoting and protecting human rights lies with States, but do States comply with the standards and obligations that they themselves have set down and ratified? What do States do with the recommendations generated by the main human rights mechanisms? How do States seek to transform international norms into local reality and do they succeed? How do the Human Rights Council (Council) and the wider international human rights system support States (e.g. through capacity-building) to strengthen implementation and compliance?

In 2006, the then UN Secretary-General, Kofi Annan, called on the Council to lead the international community from “the era of declaration” to “the era of implementation.”¹ As the Council marks its 10th and the two human rights Covenants their 50th anniversaries, there are important signs that UN Member States are increasingly turning their attention to the question of **implementation**, and how best to support it. 2016 therefore offers an important opportunity for a process of inclusive and collective reflection on remaining gaps, lessons learned, and best practices and how to replicate them.

There are also signs that the international community is moving to strengthen its ability to use evidence of serious non-

compliance with obligations under international human rights law – i.e. evidence of emerging patterns of gross violations of human rights – as an ‘early warning’ sign of potential crises, and as a signal that the UN should act to **prevent** further violations and any further escalation of the crisis. Yet while there appears to be broad agreement about the value of a preventative (rather than reactive) approach, and while there also appears to be agreement that the Council should be central to any UN prevention strategy, there is little agreement (or, seemingly, understanding) about what ‘prevention’ actually is – what it means in practice, what tools or mechanisms are needed to do the job, and how the role of the Council fits within the wider UN prevention architecture.

The third Glion Human Rights Dialogue (Glion III), organised by Norway and Switzerland, with the support of the Universal Rights Group (URG), held from 3rd to 4th May 2016, aimed to provide an informal space for considering such questions.

Glion III adopted a **bottom-up approach** to the issues of implementation and prevention. Regarding the former, it addressed a number of questions. How do States implement UN human rights recommendations? How does the international community seek to support them in that regard? How does the international human rights system seek to promote cooperation and address persistent non-cooperation? And, how can implementation be strengthened in the future? Regarding the latter: what is ‘prevention’? What is the role of the Council as the UN’s primary human rights protection body, and as part of the wider UN system? What tools does the Council need/have in order to play an effective prevention role?

POLICY DIALOGUES AHEAD OF GLION III

Ahead of Glion III during February and April 2016, URG co-convoked, together with a number of supportive State delegations in Geneva, a series of informal policy dialogues (under the Chatham House rule). These policy dialogues were designed to allow early consideration and exchange of views on certain key questions related to 'on-the-ground implementation' and 'prevention.' Key conclusions, ideas and proposals were fed into Glion III itself.

The four policy dialogues addressed the following issues:

- How can the international community better support States to strengthen implementation on the ground? Hosted by the Permanent Mission of Thailand, Wednesday 17th February.
- UPR third cycle: strengthening implementation, follow-up, reporting and measurement. Hosted by the Permanent Mission of Turkey, Thursday 25th February.
- Effective prevention by the Human Rights Council: what is it, does the Council possess the tools to do the job, and how to make it work in practice? Hosted by the Permanent Mission of Mexico, Tuesday 12th April.
- The experience of States with implementation: identifying and replicating domestic good practice on implementation, coordination and reporting. Hosted by the Permanent Mission of Morocco, Friday 15th April.

REPORT OF THE THIRD GLION HUMAN RIGHTS DIALOGUE

This report is divided into three parts.

The first part of the report presents key ideas generated during the first breakout group at Glion III and further considered during the closing plenary, which sought to learn from the **experiences of States with implementation**, including in order to identify and replicate good practice at national-level. These discussions in turn benefited from reflections and analysis during the 15th April

and 25th February policy dialogues hosted, respectively, by the Permanent Missions of Morocco and Turkey.

The second part of the report presents key ideas generated during the second breakout group at Glion III and further considered during the closing plenary, on the question of **how the international community might better support States to strengthen implementation on the ground**. These discussions in turn benefited from reflections and analysis during the 17th February policy dialogue hosted by the Permanent Mission of Thailand.

The third part presents ideas generated during the opening plenary of Glion III, and further considered during the last of the three breakout groups and the closing plenary, on the issue of **effective prevention by the Council**. These discussions benefited from reflections and analysis during the 12th April policy dialogue hosted by the Permanent Mission of Mexico.

Each section includes a brief situation analysis, followed by a summary of the main issues discussed and ideas put forward during Glion III.

The report is an informal document summarising (in a non-attributable manner?) some of the key ideas developed during the Glion retreat and based on the four policy dialogues. The document does not represent the position of Norway or Switzerland, nor any of the participants, but rather is a non-exhaustive collection of ideas generated during those meetings. It is the hope of the organisers that these ideas and proposals will encourage and contribute to wider consideration by all stakeholders from all regions, thus making the Glion Dialogue a starting point for a fruitful and inclusive process. It is also the hope of the organisers that, where appropriate, States and other stakeholders will take forward useful ideas generated in Glion and thus contribute to an improvement in the Council's relevance and impact in the field of human rights.





**THE EXPERIENCE
OF STATES WITH
IMPLEMENTATION,
COORDINATION
AND REPORTING:
IDENTIFYING AND
REPLICATING GOOD
PRACTICE**

WHERE ARE WE TODAY?

The international human rights (implementation) mechanisms, especially the UPR, Special Procedures and Treaty Bodies, regularly assess the degree to which States are fulfilling their human rights obligations and commitments, and generate a range of recommendations to help move States towards improved compliance. Many of those recommendations have the support of the State concerned.

But what happens to those recommendations once they have been produced by the relevant mechanism and transmitted to the concerned State's delegation in Geneva? How do States seek to analyse and process them, and feed recommendations into relevant domestic policymaking processes?

There is growing interest, among States, NGOs, UN experts and OHCHR, about the evolution of so-called 'national mechanisms for reporting and follow-up' (NMRF) or 'standing national implementation, coordination and reporting structures' (SNICRS).

As those names suggest, these structures are mandated to take recommendations from the UN human rights mechanisms (together, in some cases, with recommendations from regional human rights bodies), and coordinate the actions of different organs of the State to pursue their realisation. The same structures often then receive feedback from and monitor implementation by different parts of government, and prepare the subsequent national report, thereby completing the international 'reporting cycle.'

In 2016, OHCHR published the results of a global study, 'National Mechanisms for Reporting and Follow-up (NMRF): a practical guide for effective engagement with the international human rights mechanisms.'³ This important report represents a first concerted effort to map evolving State practices with the establishment and development of NMRFs (or SNICRS).

As part of this growing interest in SNICRS, in 2015 Brazil and Paraguay tabled a Council resolution on 'promoting international cooperation to support national human rights follow-up systems and processes.'⁴ Through resolution 30/25,⁵ the Council encouraged more States to establish such systems, and decided to convene an inter-sessional half-day panel discussion during the 26th session of the UPR Working Group in November 2016, to exchange national experiences and good practices with national implementing and reporting structures.

The role of parliaments in implementing UN recommendations

The legislative branch of government must necessarily play an important role in implementing UN human rights recommendations. Many of these recommendations require new or amended legislation. Indeed, by some estimates, as many as 50-70% of accepted UPR recommendations require legislative action in order to be implemented.

Parliaments can also play an important role in overseeing government implementation and compliance. It is also important to note that the implementation of international human rights recommendations often requires national budget appropriations – again requiring parliamentary engagement.

The crucial role of parliaments has been recognised by the Council. For example, resolution 26/29⁶ inviting States 'to promote the involvement of parliaments in all stages' of the work of UN human rights mechanisms.

And yet parliamentary involvement and engagement with the implementation of international human rights recommendations remains the exception rather than the rule. Addressing this situation must necessarily be a key aspect of bridging the human rights 'implementation gap.'

Mobilising domestic civil society to press for, and independently monitor/report on, implementation

Long after a Treaty Body has turned its attention to the next reporting State, or a Special Procedures mandate has presented his/her country mission report to the Council, domestic civil society plays a crucial role in encouraging or pressing governments to implement the recommendations generated by those UN mechanisms. Domestic NGOs are also ideally placed, due to their on-the-ground presence and local expertise, to independently monitor and report on implementation (to both domestic partners like parliaments, and to international partners like the UN).

As part of this overall picture, NHRIs can play a unique role as a bridge between NGOs and the State, helping mobilise and coordinate the monitoring and reporting efforts of domestic civil society. The Council has recognised (e.g. in resolution 27/18⁷) this role, encouraging NHRIs to 'work [...] together with [...] Governments to ensure full respect for human rights at the national level, including by contributing to follow-up

actions, as appropriate, to the recommendations resulting from international human rights mechanisms.’

Any serious international push to close the long-standing ‘implementation gap’ must leverage the unique role of NGOs and NHRIs if it is to succeed. This means, on the one hand, protecting civil society space domestically and at the Council; and, on the other hand, building the capacity of local NGOs so that they can better press for, monitor and report on the implementation of UN human rights recommendations.

Human rights indicators

Even where a State takes documented steps to implement a certain recommendation that does not necessarily mean that the UN human rights system has had a measurable impact on the on-the-ground enjoyment of human rights. This in turn raises an important question: what is ‘implementation’ and how can it be measured?

In recent years, the UN, led by OHCHR, has done considerable work in developing a system of human rights indicators to measure compliance and implementation and to monitor domestic human rights trends. This work draws a distinction between ‘output indicators’ and ‘impact indicators.’ The former refers to evidence of a State having taken steps, in line with a UPR recommendations to, for example, amend a certain piece of legislation linked to the right to safe drinking water, or to conduct torture prevention training within the police force. The latter then takes the analysis one step further and seeks to measure the degree to which these policy steps have resulted in improvements in the enjoyment of the right to water (e.g. more people linked to the mains water supply), or in reductions in incidences of torture.

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE⁸

- There was broad recognition, at Glion III, of the importance and benefits of establishing/developing streamlined domestic implementation and reporting mechanisms. **All States should therefore assess their current implementation systems and should seek to establish, where appropriate, single national implementation and reporting mechanisms.**

- Participants repeatedly emphasised that there is **no ‘one size fits all’** formula for domestic implementation and reporting mechanisms.

- One participant explained that her government had moved to establish a single streamlined structure for implementation because, quite simply, they had become **overwhelmed by the number of recommendations** and by the number of periodic reports they were expected to submit.

- Some State representatives insisted that the implementation of international recommendations is a **national prerogative** and need not, therefore, be the subject of international debate or consideration.

- Others disagreed: “The responsibility to implement Council decisions and recommendations must be State-owned. However, **the international community, and specifically the Council, can and should support States in their implementation efforts** by reminding them of their obligations, providing them with recommendations and guidance and monitoring the status of implementation.” In this regard, it was proposed that States **create a regular space on the Council’s agenda to share information and experiences on SNICRS**, with the aim of promoting and replicating good practice.

- Linked with this point, some participants pointed out that effective NMRFs or SNICRS appear to share certain common characteristics. For example, they tend to be: standing (permanent) in nature; established with high-level political backing; comprehensive in approach – covering all UN and regional mechanisms; inclusive – open to the engagement of parliamentarians, judges, NGOs, NHRIs, etc.; have the capacity to track progress with implementation; and be transparent.

- **States should consider developing a set of international standards or principles for NMRFs or SNICRS.**

- In the context of discussions on international support for national implementation, participants discussed the examples of a number of States that have developed **IT-based coordination and reporting systems** centred on a single database “which automatically incorporates and clusters recommendations from the UPR, Treaty Bodies and Special Procedures; collates information on progress with implementation and allows for streamlined national reports to international bodies.”

- It was noted that OHCHR is already building a prototype **‘off the shelf’ version of these IT/database systems** – that can

be taken and adapted by any State. Participants encouraged OHCHR to continue and scale up this work, and its related technical assistance programmes to support the development of efficient single national mechanisms.

- **Item 10 of the Council’s agenda** should also be more effectively leveraged to support States, at their request, to put in place efficient implementation and reporting mechanisms.

- It was also proposed that the Council should establish a **dedicated implementation fund**, to which States could apply for support for the implementation of recommendations.

- States should explore the integration of **nationally defined human rights indicators** into domestic implementation and reporting strategies (including SNICRS and national databases), in order to allow for the measurement of impact. OHCHR should continue to provide technical assistance in that regard, upon the request of States.

- States and OHCHR should cooperate to ensure that national human rights indicators are also compatible with, and can therefore contribute to reporting under, the **2030 Sustainable Development Agenda** (and perhaps also under the Paris Climate Change Agreement.)

- States and OHCHR should also work together to ensure that national implementation databases are automatically linked with the **Universal Human Rights Index**, to facilitate international reporting on progress.

- When establishing or developing SNICRS, States should ensure that all relevant national stakeholders are included and involved, including **parliaments, NHRIs, NGOs, the judiciary and national statistical offices.**

- Relevant international organisations, such as the Inter-Parliamentary Union and OHCHR, should work with parliaments to promote the establishment and development of **parliamentary human rights committees**. Once established, “these act as a natural focal point for parliamentary involvement in implementation, and, crucially, for parliamentary oversight of progress.”

- Likewise, the Global Alliance for NHRIs (GANHRI) was encouraged to **strengthen the role of NHRIs** (both on their own, and working in concert with domestic civil society) in promoting the implementation of recommendations, and conducting independent monitoring and reporting of progress.

- To promote the role of domestic civil society in promoting, monitoring and independently reporting on implementation, States were urged “to create/maintain a **safe and enabling environment for independent civil society**, including through the legislative or constitutional protection of the rights to freedom of expression, association, assembly, access to information, non-discrimination, and participation in public affairs.”

- In order to have adequate space on the Council’s agenda for independent reporting on implementation, it was suggested that **more time be allotted to interventions by NHRIs and NGOs**. For example, NHRIs could be accorded a formalised space on the Council’s agenda (perhaps each March session), where they might provide an independent assessment of State implementation. It was also suggested that NHRIs and NGOs be allowed to speak during UPR Working Group meetings.





**HOW CAN THE
INTERNATIONAL
COMMUNITY BETTER
SUPPORT STATES
TO STRENGTHEN
IMPLEMENTATION ON
THE GROUND?**

WHERE ARE WE TODAY?

During the pre-Glion III policy dialogue hosted by the Permanent Mission of Thailand, it was suggested that despite many achievements, one area where the Council may have underperformed is in the delivery of capacity-building and technical support to help States implement recommendations.

GA resolution 60/251 makes clear that a core competence of the Council is to 'promote...technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned.'⁹ With the adoption of the institution-building package (IBP), Member States of the Council decided to dedicate a single agenda item (item 10) to fulfilling this mandate.

In line with the Council's expected methods of work (as outlined in GA resolution 60/251), item 10 should provide an inclusive platform for all countries to engage in a 'genuine...results orientated' dialogue on challenges faced, a space where they can request relevant technical and capacity-building support, and a space where relevant parts of the UN and the wider international community can extend offers of support in order to 'promote the full implementation of human rights obligations undertaken by States.'

But is this happening in practice?

According to participants at the above-mentioned policy dialogue, there are certainly "item 10 success stories," including the Council's work with Mali, Guinea and Côte d'Ivoire. Overall, however, speakers concluded that, when compared with the scale of the challenge, the Council has not done enough to fulfil its capacity-building and technical support mandate. Others expressed concern that item 10 is being increasingly "misused" to address situations of violations of human rights (i.e. item 4 issues).

In order to improve this situation, participants suggested four main areas of focus.

First, it was suggested that States and other stakeholders should look at the suitability and effectiveness of the processes and mechanisms established by the Council (under item 10) to deliver capacity-building support. To-date, the main tools that have been put in place are: annual panel debates, trust funds, resolutions requesting OHCHR assistance, and Independent Expert mandates.

Notwithstanding the important work of some Independent Experts and of OHCHR field presences, it was suggested that relatively little thought has been given to the suitability or utility of the Council's current "item 10 toolbox." For example, are item 10 panel debates really the best way of hearing about, and understanding, the capacity building needs of developing countries? Are Special Procedures (which were originally created for a very different purpose) the best means of mobilising and delivering support to all developing countries, especially to help them implement recommendations?

This leads to the follow-up question: should the Council consider the creation of new types of item 10 mechanisms or tools, explicitly designed to enable the international community to respond to developing country requests for capacity-building support, especially in the context of implementing UN human rights recommendations?

Second, it was pointed out that OHCHR delivers technical assistance and capacity-building support both directly, via its 60 field presences, and indirectly, by driving UN-wide responses via the UNDG Human Rights Working Group. According to the High Commissioner, "much of [this] technical cooperation to States is closely linked to the implementation of recommendations." However, the significant mismatch between requests made to OHCHR and UN regular budgetary allocations for human rights, seriously restricts the Office's ability to support States.

The need to deliver human rights improvements on-the-ground by increasing OHCHR's field 'footprint' is, according to the High Commissioner in his opening remarks at Glion III, "the main objective of [his] 'Change' initiative. We want to take the staff of my Office out of Geneva and into the field, with an equitable geographical spread that can promote human rights in every region. The vital importance of that goal is the reason why – despite a temporary setback in the Fifth Committee last year – I will continue to work towards implementation."

Third, delivering effective capacity-building support to all States that so request it requires the whole UN system, not only the Council and OHCHR, to be engaged. This is especially true in the context of the implementation of UN human rights recommendations, and also in the context of the realisation of the Sustainable Development Goals (SDGs). This explains the importance of mainstreaming and the UNDG Human Rights Working Group. As the High Commissioner also noted in his opening remarks: "the aim is to promote human rights approaches throughout every UN Country Team, and to make sure that every Resident Coordinator understands why human

rights concerns, and long-term investments in rule of law institutions, the eradication of discrimination, and the rights of the marginalised and deprived, must be prioritised over apparently conflicting short-term political or economic factors.” The importance of mainstreaming can also be seen in the evolving good practice, on the part of Resident Coordinators, of integrating (accepted) human rights recommendations into UN Development Assistance Frameworks (UNDAFs).

Finally, bilateral donors can also play an important role in “linking the normative processes of the Council with the process of promoting human rights on the ground,” by adopting a rights-based approach to the delivery of overseas development assistance. “That does not mean setting conditions. It means understanding the human rights needs of the country concerned (e.g. by looking at accepted UPR recommendations) and tailoring bilateral development support to help the State overcome its most pressing human rights challenges. It also means ensuring that all relevant parts of society, including the weakest and most marginalised, are involved.”

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE¹⁰

- According to some participants at Glion III, “**although item 10 comes last on the Council’s agenda, it is a crucial agenda item**, as it represents the embodiment of the *raison d’être* of the Council: to provide a platform for constructive cooperation and genuine dialogue on human rights.” Another participant called item 10 “the flagship of the Council.”

- Unfortunately, **the reality of item 10 has not always lived up to this ideal**. It was remarked that “Item 10 has come to be seen as a place to discuss and provide technical support to post-conflict States, countries in transition, and other countries facing serious human rights challenges.” Item 10 is also, according to some, increasingly seen as a “soft” alternative to item 4. There was wide agreement that this contemporary reality “is not what was expected when GA resolution 60/251 was adopted.”

- States in the Council should therefore **rethink and reset item 10**. In so doing, they should prioritise efforts to provide technical support to those developing countries that want to implement

UN recommendations but lack the capacity to do so (i.e. the majority of developing countries).

- Along similar lines, a number of State and NGO representatives argued that the Council cannot “create political will for implementation.” But “where political will exists, where a State wants to improve its human rights performance and wants to implement recommendations, where there is, in other words, a window of opportunity; then **the Council must seize that opportunity**.”

- Support under item 10 should be extended at the request of, and in consultation with, the State concerned. “It should be the **State asking the UN for support**, and not the other way round.”

- Participants put forward a number of concrete ideas for ‘resetting’ and strengthening the Council’s work under item 10. States could consider, for example: adopting **thematic resolutions under item 10**, designed to help States implement UN recommendations in certain areas such as judicial reform, protecting the rights of migrants, or corruption; adopting resolutions requesting OHCHR to provide **technical support to States that wish to establish or strengthen national implementing and reporting structures**; and creating **space for interactive dialogue under item 10**, where developing countries can request support, where international partners can pledge assistance, and where both can report back on progress.

- States could also make better use of the **UPR process** to request and to pledge international development assistance for implementation. Subsequent cycles could then be used to report back on the delivery and effectiveness of that support.

- “OHCHR is considered as a junior partner in the UN system. This has implications both for the amount of funding it receives to provide in-country technical and capacity support, and for its ability to ensure that UN development support more broadly adopts a rights-based approach.” Several State representatives noted that the need for OHCHR to provide capacity-building support to States to help them with implementation provides a particularly strong argument in favour of increasing **funding for the human rights pillar** beyond the current 3%.

- As argued during the first Glion retreat (Glion I), States should ensure that OHCHR has sufficient funds so that **“no country that requests support will be turned away.”** “States that want OHCHR to do more in Geneva and on-the-ground, should agree to more funds for human rights in New York.”

- As part of efforts to secure greater levels of funding for human rights, States, the Council’s mechanisms and OHCHR should develop ways to collate and showcase Council **‘success stories’ – examples of impact**. “This is especially important at a time of zero growth in the UN budget, when convincing donors of the importance of financing human rights is such a challenge, especially compared to other fields (e.g. humanitarian action) which tend to be more visible and deliver faster results.”

- It was pointed out that changing the mind-set of the Council from one premised on recognising ‘bad practice’ (i.e. violations) to one premised on recognising and celebrating ‘good practice’ will help promote positive competition between States and a **“race to the top.”** States should therefore develop new platforms, mechanisms or systems designed to showcase, understand and learn lessons from good practice case studies.

- Bearing in mind the important role of **Resident Coordinators** in helping States implement human rights recommendations, it was suggested that the prioritisation of human rights be integrated into the incentive structures for Resident Coordinator posts, and that Resident Coordinators should be given the political backing of the UN system “as not all host States want the UN to promote human rights.”

- OHCHR and UNDP should further strengthen “on-the-ground **collaboration between Resident Coordinators and OHCHR field presences**.” It was pointed out that these two organisations are “natural allies on implementation.”

- Member States and the UN secretariat should work towards the goal of ensuring that every UN Country Team includes an OHCHR human rights advisor. As a step towards this goal, participants welcomed the decision of UNDP and OHCHR to **jointly fund human rights advisors** to be deployed to support Resident Coordinators. “These advisors help strengthen the UNCT’s focus on implementation and ensure that human rights are integrated across everything we do.”

- With regard to **integrating accepted human rights recommendations into UNDAFs**, a UN official warmly welcomed moves to establish standing national implementation and reporting structures, with single national databases of recommendations. “This makes it much easier for international development partners to work with the State to prioritise action and to monitor progress.”

- Donor States should collaborate more closely to share experience and good practice in terms of adopting a **‘rights-**



based approach’ to ODA (e.g. integrating accepted UPR recommendations into bilateral development policies).

- It was pointed out that technical assistance does not need to come from the UN or from bilateral donors; it can also come from a State’s neighbours and regional partners. In this regard, it was proposed that States should establish regional **“communities of practice”** to “share advice and best practice with other practitioners on how to implement recommendations and improve human rights.”

- UN human rights mechanisms and institutions should share information on recommendations, and coordinate follow-up, with relevant **regional bodies**.

- Although it was beyond the scope of discussions at Glion III, a number of participants highlighted the importance of **international follow-up** on implementation. For example, it was proposed that all thematic Special Procedures mandate-holders should request, in the context of agreeing the basic terms of reference for country missions, concerned States to report back to them (annually) on progress.

**EFFECTIVE
PREVENTION BY
THE HUMAN RIGHTS
COUNCIL: WHAT IS IT?
DOES THE COUNCIL
POSSESS THE TOOLS
TO DO THE JOB? HOW
TO MAKE IT WORK IN
PRACTICE?**



WHERE ARE WE TODAY?

The Council's mandate (as set down in operative paragraph 3 of GA resolution 60/251)¹¹ to respond to human rights violations, including gross and systematic violations, is well known. Less well known, but equally important, is the Council's mandate to work to prevent such violations from happening in the first place. According to paragraph 5f of GA resolution 60/251,¹² the Council shall 'contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies.'

Since its establishment, the Council has regularly reaffirmed the importance of effective preventative measures as a key component of efforts to avoid the escalation of situations of violations of human rights, and has, on a number of occasions, taken action to prevent violations. For example, according to the High Commissioner for Human Rights at Glion III: "We need look no further than events in Burundi to see a crisis where the Council's continued, high-level advocacy and pressure helped slow the escalation of events and contributed to saving lives."¹³

Notwithstanding such examples, there is a clear sense, among stakeholders, that the Council's response to situations of violations is, more often than not, reactive rather than preventative in nature. For example, during a pre-Glion III policy dialogue hosted by the Permanent Mission of Mexico, one participant argued that the Council's default response to emerging situations of concern is, at first, to do nothing (because the situation is not considered serious enough to warrant action under item 4) and then, when the situation is sufficiently grave, to "establish country-specific monitoring or accountability mechanisms, or to hold Special Sessions where the concerned State is roundly condemned."¹⁴ Another participant agreed, saying: "existing mechanisms or forums, like Special Sessions, are seen as punitive procedures, rather than tools that leverage dialogue and cooperation to flag and address early warning signs of potential crises."

During Glion III, a number of participants drew attention to Syria as a good example of the Council's (and the wider UN's) failure to prevent further violations and a deepening crisis. According to a civil society participant: for a long time the Council ignored Syria and failed to hold the State accountable against its international human rights obligations. Then, when reports of emerging patterns of violations began to reach the outside

world, the Council failed to take preventative action, "before the chain broke, before the country slid into civil war." According to a senior UN official: "if the UN had taken strong, principled action at that time, it could have helped create momentum behind prevention...Instead Syria represented a triumph of a narrow agenda, eclipsing the common good."

It was suggested that this shortfall in the fulfilment of the Council's mandate under paragraph 5f is partly due to "a lack of conceptual clarity" around what prevention is and what it means, in practical terms, for the UN human rights system; partly (by extension) due to the Council's failure to put in place an effective prevention strategy or framework (including relevant tools) to guide its response to emerging situations of concern; and partly due to a lack of clarity about how the work of the Council fits into the UN's wider prevention framework (especially vis-à-vis the Security Council). As one diplomat summarised: "the real questions are: when should the Council act and does it have access to the information it needs to take a decision, and what should be the nature of its action in circumstances where the human rights situation is deteriorating and where urgent steps are needed to prevent escalation?"

According to some participants at Glion III, the implementation of paragraph 5f is also held back by "a concern, especially among developing countries, that Council decision-making in the context of human rights violations is often selective and politicised." For that reason, any efforts to develop a prevention strategy or framework "must be consensus-based and inclusive."

Notwithstanding these challenges, there are signs of change. Over the past year, far greater attention has been paid to the question of how to leverage the international human rights system to prevent serious violations and the emergence of crises. For example, a number of participants at Glion III recognised that the Secretary-General's "Human Rights Up



Front (HRUF) action plan is an important step forward” in terms of the capacity of the UN system to collect, process and disseminate information on “emerging patterns of instability.”

Another noted that, over the past year, “the Council has taken some innovative steps to tailor its existing mechanisms towards a more preventative approach (e.g. new uses for item 2, new types of Commissions of Inquiry using existing (thematic) Special Procedures mandates, and the High Commissioner’s participation in informal inter-sessional briefings).” Finally, it was pointed out that “prevention connectivity” between the human rights pillar and other parts of the UN also appears to be improving. “Lines of communication are better, and there appears to be a growing interest in, and willingness to cooperate with, the human rights system.”

Participants agreed that now is an opportune moment to build on these positive developments: “at the moment everyone is talking about prevention. It is the hot topic in New York, including in the Security Council, and it is the hot topic in Geneva. This represents an important opportunity for the Human Rights Council to find its place and its role in the overall UN prevention agenda.” In this regard, Glion III offered a first opportunity to assess the Council’s work, to-date, in the area of prevention; to discuss the concept or definition of ‘prevention’ and what it means in practice; and, in that context, to begin to develop a broad ‘roadmap’ delineating the different aspects of potential Council work.

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE¹⁵

What is prevention?

- It was remarked during Glion III that: “human rights violations are markers of potential instability.” By extension, **the Council must be a central player in any effective UN-wide effort to prevent emerging crises.** Indeed, one participant suggested that the Council should be seen as the UN’s *de facto* “prevention Council,” while another called it the “smoke alarm” of the UN system. One UN official said: “In theory, the Council is perfectly placed to deal with different stages of prevention; we just need to be creative in order to leverage its full potential.”

- A number of State representatives agreed that prevention appears to be high on the contemporary political agenda, but stated that nobody seems to know what it means in practice. There has been insufficient thought and discussion about the various component parts of paragraph 5f – about **“the parameters of prevention.”** It was argued that without definitional clarity over prevention and how the Council should go about implementing paragraph 5f, a lack of trust between States would hold back the UN’s capacity to effectively prevent violations.

- States should therefore launch an inclusive process of informal discussion on “how to put in place **an effective prevention framework or strategy.**” In order to be true to paragraph 5f, such a framework should prioritise, as a first step, engagement and dialogue with the country concerned. Only when it becomes clear that the State concerned is unwilling to cooperate, should more critical steps be considered.

- Any initiative to develop a coherent and holistic ‘prevention strategy,’ which might be taken forward through **cross-regional statements, Council resolutions and/or OHCHR proposals,** should cover each ‘stage’ of prevention, (early warning, early consideration, early response, and appropriate response).

Early warning

- According to an NGO representative: “early warning is the key to prevention.” Human rights provide a particularly useful **“early warning framework”** covering a wide-range of factors that can lead to instability, including socio-economic inequalities, a lack of employment opportunities for young people, corruption, a lack of respect for the rule of law, a closed political system, etc. A number of State representatives agreed with this analysis, saying that early warning should focus on the full-range of the “root causes of conflict.”

- There was wide agreement at Glion III that policymakers now enjoy far greater access to early warning information than was the case previously (e.g. at the time of the **crises in Rwanda or Cambodia**).

- This improvement, which has been partly driven by information technology and social media, has been given a further boost by the Secretary-General’s **‘Human Rights Up Front’ (HRUF) action plan.** “HRUF is beginning to make a difference. It has strengthened the collection and flow of human rights information from the field to relevant parts of the UN system. The leadership of the Secretary-General has also meant that



this information and wider human rights considerations are now more frequently prioritised.”

- There was wide agreement that **the next Secretary-General should maintain strong support for, and leadership on, HRUF.**

- While there was broad support for the HRUF action plan, a number of States suggested that it would benefit from **greater consultation with States in Geneva,** both in its own right and in terms of how it fits within the wider prevention agenda of the Council. The new Secretary-General, in cooperation with OHCHR, should take the lead in organising such discussions on HRUF in Geneva and New York.

- “Domestic NGOs, human rights defenders and NHRIs are the **on-the-ground ‘early-warners’ of prevention.** They are usually the first to recognise the signs of an escalating crisis and the first to raise the alarm.” It is therefore vital that the Council empowers civil society and NHRIs to play this role fully, and safeguards civil society space at UN-level so that the international community is able to receive and act on information from the field.

Early consideration

- According to a UN official: “With HRUF in place, the main problem facing the UN system is no longer a lack of information, but rather when and how that information is processed and understood.” **The UN system remains fragmented:** “each part of the system still reads ‘early warning’ information solely with

their own eyes. This can – and often does – lead to inaction.”

- It was noted at Glion III that while there may be more ‘early warning’ signals available today, the Council remains extremely reliant on the High Commissioner to have access to such information. Therefore, in order for the Council to receive and consider early warning information in a timely manner, the High Commissioner should have the possibility of **briefing Member States on emerging situations of concern on an ‘as needs’ and ‘real-time’ basis.**

- As a starting point, the President of the Council, in cooperation with OHCHR, should increase the frequency of the **‘informal conversations’** (informal briefings) between the High Commissioner and the Council, initiated in 2015.

- In the medium-term, **the Council should consider (e.g. through a resolution) inviting the High Commissioner to brief Members** (inter-sessionally) on urgent situations that may benefit from preventative action.

- As the Council’s ‘eyes and ears’ on-the-ground, Special Procedures are also well placed to identify emerging patterns of concern. Unfortunately, while groups of relevant mandate-holders do regularly issue statements drawing attention to such patterns, at present the Council too often fails to consider that information. States should therefore consider putting in place a regularised process through which **Special Procedures can provide early warning information to the Council.**

- In order to create space on the Council's agenda for more interaction between the High Commissioner, Special Procedures and Council members, on situations of emerging concern, the Council should also make greater use of **Urgent Debates**.

- It was suggested that Special Sessions can play an important and useful role in prevention. They can help draw attention to a situation and begin a process of cooperation and dialogue designed to prevent further violations. During Glion III, a number of speakers referred to the December 2015 Special Session on prevention further human rights abuses in Burundi as an important precedent in that regard. Civil society should therefore push for, and Council Members should convene, **'prevention' Special Sessions** as an important tool in allowing for an early consideration of situations of emerging concern.

Early response

- A number of participants pointed out that even where early warning information is successfully collected, processed and disseminated by the UN system, and even when that information is brought to the early attention of Members States, **the Council still regularly fails to act**. "There are those who have eyes but refuse to see; there are those that have ears but refuse to hear," noted one UN official.

- The reason for this is clear: a **lack of trust between delegations**; a belief, on the part of some, that decisions to place a situation on the Council's agenda are driven more by geopolitical considerations and bilateral relationships than by any objective assessment of the situation; and a conviction, on the part of others, that only they possess the political will to bring situations of obvious concern to the attention of the Council - "if we don't, no-one else will; and when we do, we are accused of politicisation."

- According to some participants at Glion III, including some State and NGO representatives, the only way to overcome such mistrust, and move beyond arguments around politicisation and selectivity, would be to **"develop objective and predefined criteria** that would guide Council decisions on whether or not to act to prevent further human rights violations." Such criteria might include, for example: has the High Commissioner expressed concern; have a group of Special Procedures expressed concern; have domestic NGOs and/or the NHRI raised the alarm; are journalists and/or humanitarian actors allowed access; is the State concerned cooperating with the UN human rights mechanisms?

- States should consider developing such a set of criteria, through **cross-regional statements or, eventually, through a Council resolution**, as part of efforts to establish a clearer prevention strategy or framework. In so doing, they might build on existing work in this area by NGOs and States (e.g. previous cross-regional statements on this subject.¹⁶)

- Members of the Council might also consider establishing some kind of mechanism or process (e.g. a "group of wise men and women" or a "cross-regional working group,") **to independently analyse situations against the above-mentioned criteria**, and to advise members of the Council (e.g. 2-3 weeks before a session) on situations that might require/benefit from preventative action.

Tailored / appropriate response

- A number of State representatives drew attention to the central importance, for any effective prevention framework, of working through **dialogue and cooperation with both the concerned State, and with its neighbours and regional partners**. "Only then can we create the political momentum to act, and only then can our action have a chance of success." In that regard, a Special Procedures mandate-holder drew attention to the Council's response to the situation in Burundi, where the UN's mechanisms were able to work in close cooperation with those of the African Union.

- Another participant pointed out that all the Council's existing mechanisms for addressing violations (e.g. country Special Rapporteurs, Commissions of Inquiry) were designed with a monitoring or accountability function in mind – not a prevention function. It was therefore suggested that Council members should consider developing **new tools or mechanisms specifically designed to prevent human rights violations**.

- It was argued that any such tool or mechanism should have a **'Good Offices'** character. In that regard, it was proposed that Member States should support "missions by the President and his Bureau to areas where a fast-moving human rights emergency appears to be developing, in order to meet the authorities and concerned stakeholders and report back to the Council at the next opportunity."

- Such 'Good Offices' missions might also have the added advantage of being more acceptable to the State concerned – which would then be less inclined to try to block the relevant Council resolution and more inclined to **facilitate access**.

- Other participants, however, disagreed with the suggestion that the Council needs any new 'prevention' mechanisms, arguing **"the tools are all there, we just need to sharpen them."** The Special Procedures-based mission to Burundi was held out an example of how existing mechanism can be used in innovative ways.

- Others pointed out that some States would still refuse to cooperate, even if the Council establishes more 'benign' mechanisms. In instances of non-cooperation, the Council must maintain the possibility of recourse to **item 4**.

Link with Security Council

- The point was repeatedly made that the Council cannot work alone to prevent the emergence of crises, but rather must be seen as one part of a **wider UN system of prevention**. In particular, it should be clear when and under what conditions the Human Rights Council should act, and, conversely, when the Security Council is better placed to prevent the further deterioration of a situation.

- Some participants said that the **relevant roles of the Human Rights Council and Security Council** are already clear and set by the Charter. Others argued that debate is still needed over the threshold for moving a situation from one to the other (although it was acknowledged that "there will always be contestation on this point.") According to one NGO: "when it comes to receiving and considering 'early warning' information about emerging patterns of human rights violations, and taking initial action to prevent further violations, "clearly the Human Rights Council

should take the lead. At that stage, we are well short of the Security Council needing to become involved."

- It was suggested that as part of any discussion on a coherent prevention strategy for the Human Rights Council, States should consider the **ideal parameters of the body's relationship with the Security Council**.

- Such a discussion should also engage Members of the Security Council, which "is now getting much better at using **human rights violations as a key indicator of impending threats to peace and security**."

- Members of the Security Council should make **better use of the expertise and knowledge of existing human rights mechanisms, especially Special Procedures**. For example, relevant country or thematic mandates could provide important input into Security Council deliberations on preventative action. As a starting point, it was proposed that country-specific Special Procedures reports should be automatically shared with the Security Council, as used to happen in the past.

- It was pointed out that the need to improve coordination, interaction and communication between the Human Rights Council and the Security Council is the subject of a new high-level political initiative launched by Switzerland and other interested States in mid-2016: **the 13th June Appeal to put human rights at the heart of conflict prevention**.¹⁷



NOTES

1. Secretary-General's Address to the UN Commission on Human Rights, Geneva, 7th April, 2005. See <https://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights> for details.

2. The only exception to this observance of the Chatham House rule is attribution of quotes from the opening addresses at Glion III by the High Commissioner for Human Rights and the President of the Human Rights Council, as both those addresses were subsequently published.

3. National Mechanisms for Reporting and Follow-Up [OHCHR: 2016], Policy Report.

4. UN Human Rights Council resolution 30/25, UN Doc. A/HRC/RES/30/25, 2nd October 2015.

5. Ibid.

6. UN Human Rights Council resolution 26/29, UN Doc. A/HRC/RES/26/29, 27th June, 2014.

7. UN Human Rights Council resolution 27/18, UN Doc. A/HRC/RES/27/18, 25th September, 2014.

8. Aspirations and possible goals suggested during the 2016 Glion Human Rights Dialogue and/or during the four policy dialogues that preceded it.

9. United Nations General Assembly resolution 60/251, UN Doc. A/RES/60/251, 3rd April 2006, para 5(a).

10. Aspirations and possible goals suggested during the 2016 Glion Human Rights Dialogue and/or during the four policy dialogues that preceded it.

11. United Nations General Assembly resolution 60/251, UN Doc A/RES/60/251, 3rd April 2006.

12. Ibid.

13. High-level opening remarks by the UN High Commissioner for Human Rights, Glion III.

14. Unless stated otherwise, all quotations are non-attributed quotations from participants at Glion III or at one of the four pre-Glion policy dialogues.

15. Aspirations and possible goals suggested during the 2016 Glion Human Rights Dialogue and/or during the four policy dialogues that preceded it.

16. For example: cross regional statement delivered by Maldives, 20th session of the Council, July 2012; and joint statement delivered by Ireland on behalf of a cross-regional group of 17 states, 32nd session of the Council, July 2016.

17. 13th June appeal available at: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-62152.html>.

© Universal Rights Group 2016

Image Credits

'The Security Council,' by United Nations Photo, licensed under CC BY-NC-ND 2.0. All other photos taken at the Glion Human Rights Dialogue 2016 © Universal Rights Group 2016.



working together to protect universal human rights



Universal Rights Group
Ch. du Grand-Montfleury 48
CH-1290 Versoix
Switzerland

T +41 22 755 14 56

info@universal-rights.org
www.universal-rights.org