

Third Glion Human Rights Dialogue (Glion III, May 2016):
human rights implementation and compliance: turning international norms into local reality

Policy Dialogue ahead of Glion III:

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?

Concept Note

Background

The development of international human rights norms is considered 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 the global code of norms set down in international human rights law? 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 are the principal UN mechanisms that seek to move States towards deeper compliance? What do States do with the recommendations generated by the main human rights mechanisms (e.g. Treaty Bodies, Special Procedures, Universal Periodic Review – UPR)? How do States seek to transform international norms into local reality? Do they succeed? How do the Human Rights Council and the wider international human rights system support States (e.g. through capacity-building) to strengthen implementation?

In 2006, the then Secretary-General of the UN, Kofi Annan, called on the Human Rights Council to lead the international community “from the era of declaration to the era of implementation.” As the Human Rights 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 the best ways to support it.

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 ‘early warning’ signs of potential crises, and as signals that the UN should act to **prevent** further violations and thereby a further escalation of the crisis. Yet while there appears to be broad agreement about the value of a prevention (rather than reaction) approach, and while there also appears to be agreement that the Human Rights Council should be central to any UN prevention strategy, there is little agreement (or, seemingly, understanding) about what ‘prevention’ actual is – what does it mean in practice and what

are the tools or mechanisms needed to do the job.

The third Glion Human Rights Dialogue (Glion III), organised by Norway and Switzerland, with the support of the Universal Rights Group, and to be held in May 2016, will look to provide an informal space for considering such questions. Glion III will take a **bottom-up approach** to the issues of implementation and prevention. Regarding the former, how do States implement UN human rights recommendations? How does the international community seek to support them in that regard? And, how can implementation be strengthened in the future? Regarding the latter, what is 'prevention'? What is the role of the Human Rights Council? And what tools does the Council need/have in order to play an effective prevention role?)

Third policy dialogue ahead of Glion III

Ahead of Glion III, the Universal Rights Group (URG), with a number of supportive State delegations in Geneva, is organising a series of informal policy dialogues, designed to allow early consideration and exchange on different aspects of 'human rights implementation and compliance.'

The third policy dialogue will take place on Tuesday 12th April with the support of the Permanent Mission of Mexico, and will focus on the issue of prevention.

Key questions that might be addressed by participants include:

What is 'prevention'?

Building on the General Assembly's call, in paragraph 5f of GA resolution 60/251, for the Council to 'contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies,' 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. The Council has noted that such 'effective preventative measures' include actions on the part of all branches of the State (the State having the primary responsibility to prevent human rights violations), actions by NHRIs, and actions by the international community, including the Human Rights Council.

Notwithstanding, the Council's work on this issue to-date, which has included the convening of a workshop, a panel discussion and the adoption of three resolutions, reveals a level of conceptual and practical confusion as to what prevention means and – even more importantly – how the Council should take the concept and turn it into improved policy and practice.

For example, in its resolution 24/16, the Council stressed the need 'to develop further the concept of prevention of human rights violations and to step up efforts to raise awareness of prevention.' As part of that effort, the resolution called for 'further research...to understand and mainstream the role of prevention,' and asked OHCHR to provide input to Council members on 'the practical applications of prevention.'

As part of that effort to better understand what prevention is in practical terms, and what the Council should do to turn the concept into reality, resolution 24/16 called on OHCHR 'to draft a study on the prevention of human rights violations and its practical implementation, and to present the study to the Human Rights Council at its thirtieth session.' The study, which was published in July 2015, explores the concept of prevention, and then offers views on domestic, regional and international actions to turn the concept into practice. However, while the report includes some useful guidance, it also showed, once again, that 'prevention' means different things to different people and groups. Under the

broad rubric of 'prevention' the report highlights: the prevention of the violation of individual rights (e.g. the prevention of torture, or the prevention of religious intolerance); the building of resilience within society to prevent, for example, genocide; the proactive prevention of a certain result or outcome (e.g. taking action to stop war crimes); prevention/mitigation through sustained positive conduct; and prevention through guarantees of non-recurrence. This lack of conceptual clarity is also evident in the practical measures recommended by the report.

This raises the question: what is prevention? Or, perhaps more correctly, which aspect of 'prevention' do we wish to address in order to contribute to making the Human Rights Council more effective? Is it purely preventing gross and systematic violations, and the emergence of crises? Or is it also the wider meaning of prevention – i.e. the on-going promotion of human rights, the implementation of international obligations and recommendations, and the building of national human rights capacity?

A further important question, from an international policy perspective, is: how is 'prevention' different from the 'responsibility to protect'?

What does prevention mean, in a practical sense, for the Human Rights Council?

Clearly the Human Rights Council has an important role to play in all the various areas of 'prevention' identified in OHCHR's 2015 study. However, perhaps the greatest area of need, in terms of where the performance and effectiveness of the Council requires strengthening, is the sphere of preventing gross and systematic violations and the emergence of crises/emergencies.

Here, as resolution 24/16 helpfully sets down, there are practical steps to be taken, and obstacles to be overcome, at both domestic and UN levels.

What can the Human Rights Council usefully do to build national capacity to prevent emerging patterns of human rights violations becoming full-blown human rights and/or security crises/emergencies? Is resolution 24/16 right to focus so squarely on the mandate and capacity of NHRIs? And where the State is unable or unwilling to prevent violations (or is unable or unwilling to fulfil its responsibility to protect its people), when and how should the international community step in to prevent further and escalating violations?

Is the Human Rights Council the UN's 'prevention Council,' and the Security Council its 'crisis Council'? From a Human Rights Council policy perspective, what are the different stages of prevention? Is it purely 'early warning,' or is it also 'early consideration,' and 'early response'?

What is the role of national-level actors, especially NHRIs, in preventing gross and systematic human rights violations? How can the international community support them in this work?

The Council has recognised the vital 'on-the-ground' role of NHRIs in preventing human rights violations, and has called on States to strengthen the mandate and capacity of NHRIs to allow them to play this role more effectively.

But what precisely is that role? Beyond its work to promote human rights and prevent the violation of specific rights (e.g. through work as National Preventative Mechanisms under the OPCAT), is the 'prevention' role of NHRIs (in the context of preventing gross and systematic violations) limited to raising the alarm about emerging patterns of violations, or do they undertake a wider range of prevention actions? And what role for NHRIs in building the capacity of domestic NGOs to contribute to prevention?

Resolution 24/16 called on OHCHR to prepare 'a practical toolkit to support States and other

stakeholders in the practical application of prevention,' but what would be in such a toolkit and which domestic actors would use it?

Early warning

Has the UN system effectively learnt its lessons from past failures in places like Rwanda and Sri Lanka? With the Secretary-General's Human Rights Up Front (HRUF) action plan now in place, is the UN able to effectively monitor for, identify and draw attention to emerging patterns of human rights violations via its permanent presences on the ground (i.e. UN Resident Coordinators and Country Teams)? Do UN Resident Coordinators have the mandate, the political backing and the political will to monitor emerging patterns of human rights violations and to pass the information on? Should Resident Coordinators also make public comment on situations of emerging concern? Where does information from UN Resident Coordinators go? Are OHCHR and the Human Rights Council 'in the loop'?

What is the actual and potential early warning role of OHCHR field presences, and of the High Commissioner himself?

What is the actual and potential role of the international human rights mechanisms in early warning? Special Procedures? The UN human rights communications procedures?

Are relevant regional organisations 'joined up' with the UN human rights protection system?

What is the role of NHRIs and domestic civil society in early warning? What happens to information/warnings generated by domestic actors?

Early consideration

Through what means or channels does the Human Rights Council receive information on emerging patterns of violations?

The Council has convened 22 country-specific Special Sessions. But have those Sessions been effective in a preventative sense? Are there good practice examples? Or have the Special Sessions mainly generated Geneva-level debate and established (reactive) monitoring/reporting mechanisms?

What are the obstacles that might prevent the Council from receiving early warning information, and how can those obstacles be overcome? Are the new informal Council briefings by the High Commissioner providing a useful platform for OHCHR to provide early information on situations of concern? Are they enough?

Early response

Some commentators believe that following UN reforms, the emergence of new information technology, and global trends towards 24 hour news coverage, the main issue is no longer the availability of 'early warning' information but rather the willingness of UN Member States to act upon that information.

That is despite the fact that Member States have agreed, by consensus (resolution 24/16) 'that the Human Rights Council shall, *inter alia*, contribute, through dialogue and cooperation, to the prevention of human rights violations and **respond promptly to human rights emergencies.**'

The main obstacle to early action by the Council is the perception, among many developing countries, of selectivity and politicisation; the idea that country-specific action by the Council is a tool used by the West to 'name and shame' certain States (chosen arbitrarily based on geopolitical considerations) rather than to help the State concerned.

If progress is to be made with prevention it will be necessary to allay such concerns and to build a response framework driven by independent and objective analyses of human rights situations (the situation on the ground and the degree to which the State concerned is cooperating with the UN human rights system). But who or what should make such an objective and impartial assessment, and what should be the criteria that would determine whether the Council should act or not?

Relevant/tailored response

A major cause of divisions in the Council over questions of 'selectivity,' 'naming and shaming' and 'condemnatory approaches,' is that all of the Council's country-specific tools and mechanisms (e.g. COIs, fact-finding missions, OHCHR investigations, country-specific Special Procedures, Independent Experts) are premised on *reacting* to violations – either by monitoring and reporting on violations, or by building capacity in post-crisis situations. There appear to be no Council mechanisms designed and mandated to engage with States in a constructive, diplomatic and cooperative manner in order to *prevent* violations (or further violations).

A good example of this is, perhaps, the Council's response to the situation in Burundi. During the latter part of 2015, Members of the Council spoke repeatedly of the need to play a preventative role in Burundi. Yet when it came to taking action and shaping a response, the Council oscillated between a capacity-building response under item 10 (resolution 30/27) and – later - a more condemnatory/monitoring/reporting approach (resolution S-24). By comparison, the Security Council dispatched political missions, made up of Council members and representatives, focused on dialogue and inclusive engagement with all national actors.

UN Member States have acknowledged (e.g. resolution 24/16) 'that the Human Rights Council shall, *inter alia*, contribute, through dialogue and cooperation, to the prevention of human rights violations and respond promptly to human rights emergencies.' But is there actually any Council mechanism or platform that can fulfil this mandate – i.e. that can travel to and engage with States, in a spirit of dialogue and cooperation, and in a manner premised on working with governments and other domestic stakeholders to prevent further violations in line with the concerned State's international human rights obligations?

Country missions by the High Commissioner can play such a role, but the High Commissioner is not a representative of the Human Rights Council, nor of the intergovernmental system.

Is there agreement that the Council is not possessed of the tools/mechanisms to realise its 'prevention' ambitions? If yes, what kinds of tools/mechanisms does the Council need? Country cooperation missions by the Council President/Bureau? Joint cooperation missions by the President and the High Commissioner? Council cooperation missions by cross-regional members of the Council?