

Human Rights Council strengthening

Breakout group 2: Implementation, capacity building and prevention

Issues paper

There is a growing recognition that as the Human Rights Council approaches its twelfth anniversary there is a need to undertake an inclusive, cross regional and structured dialogue to review how States might strengthen the fulfilment of the Council's mandate and purpose, as set down in GA resolution 60/251. This includes discussions around how the work and effectiveness of the Council might be further enhanced in the future.

That does not mean root and branch reform based on a premise that the Council is fundamentally failing. It is not. Rather, it means pursuing evidence-based improvements in a number of specific areas where the experience of the past twelve years suggests the Council could do better. Examples of such areas include: 1) working methods; 2) the agenda and the programme of work; 3) the effective delivery of capacity-building and technical support; 4) membership – in particular supporting inclusivity and accessibility for a more diverse membership, and improved compliance with the principles and criteria set down in GA resolution 60/251; 5) support for domestic implementation; 6) strengthening coordination and communication between 'Geneva' and 'New York'; and 7) securing a shift in how the Council considers and deals with situations of human rights violations – from reaction to prevention.

Calls for, and debates around, Council reforms have steadily increased over the past two years. There now appears to be broad agreement on the need for a process of reflection and review, with a view to strengthening the efficiency and effectiveness of the body. Today, the key difference between States does not appear to be over *whether* there is a need to bring improvements to the work of the Council, but rather *how and when* to proceed with that effort and *what* improvements are needed.



Implementation, capacity building and prevention

The ultimate goal of any Human Rights Council strengthening process must necessarily be improve the body's effectiveness and it's on the ground impact on the enjoyment of human rights. With that in mind, to be credible, any strengthening process must secure progress in three interlinked areas:

1. Promoting 'the full implementation of human rights obligations undertaken by States,' as per paragraph 5d of GA resolution 60/251.
2. Promoting 'advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned,' as per paragraph 5a of GA resolution 60/251.
3. Contributing 'through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies,' as per paragraph 5f of GA resolution 60/251.

These three issues are mutually inter-linked and mutually reinforcing – forming, potentially, a virtuous triangle that could drive major improvements in the promotion and protection of human rights around the world. According to those present during the negotiation of GA resolution 60/251, State representatives at the time understood this fact, which is why the Council's mandates on implementation, capacity-building and prevention were all grouped together in a single paragraph – operative paragraph 5.

Building a 'human rights implementation agenda'

In 2006, the then UN Secretary-General, Kofi Annan, called on the new Human Rights Council to lead the international community 'from the era of declaration to the era of implementation.'

Following this call, when the GA moved to establish the Council through resolution 60/251, the theme of implementation ran like a vein throughout the new body's mandate, objectives and methods of work. For example, paragraph 5d says: '[the Council shall] promote the full implementation of human rights obligations undertaken by States;' while paragraph 12 says that 'the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent



follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.'

Unfortunately, since its establishment in 2006, the Council has dedicated very little time or resources to following up on the implementation of human rights obligations undertaken by States or (linked to this point) the implementation of recommendations made by Special Procedures, reviewing States in the Universal Periodic Review, or Treaty Bodies. Nor does it, generally speaking, follow-up on the implementation of its resolutions.

Partly this is because the Council (through the institution-building package) never established a space on its agenda for follow-up on implementation. The closest it came was to create agenda item 5 on 'human rights mechanisms' – however, this space is rarely used by States to provide progress reports on implementation (achievements, shortfalls, lessons learnt, capacity-building needs) and even on the few occasions it has been used for this purpose, the reporting State is usually ignored. The lack of space for dialogue and follow-up on implementation also undermines the work of Special Procedures and OHCHR.

Perhaps because of this lack of follow-up, and continued preference of States (from the time of the Commission) to debate, clarify and set new human rights norms, and negotiate new resolutions, rather than focus on the implementation of already-agreed norms and recommendations; there was – over the first decade of the Council's existence – remarkably little interest in the on-the-ground reality – the mechanics - of States implementation. How do States seek to translate international norms into local realities (better policies, laws and practices)? Do they succeed in this regard?

That finally began to change around two years ago, when a number of States (mainly driven by the capacity-constrained challenges involved in managing the hundreds of UN human rights recommendations they were receiving each year) began to establish, develop and share experiences about, so-called 'national mechanisms for implementation, reporting and follow-up' (NMIRFs). These inclusive governmental mechanisms or processes are designed to coordinate the integration of UN human rights recommendations into domestic policy-making and practice, to monitor progress and impact (by applying human rights indicators), and then to



report back to relevant UN mechanisms. In best practice cases, these NMIRFs also systematically engage other branches of the State (i.e. parliaments and the judiciary) as well as NHRIs and NGOs.

Strengthening the delivery of capacity building and technical support (item 10)

GA resolution 60/251 recognises the primary responsibility of States to promote and protect human rights. However, the GA also recognised that the Council and the wider UN have an important role to play in ‘strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings.’

The GA therefore decided that the Council should promote ‘advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned,’ (paragraph 5a).

The importance of this mandate is clear. Where countries, especially developing countries, have ratified international human rights treaties, possess the necessary political will to implement recommendations, but lack the capacity to make progress, it is vital for the international community to be able to intervene and provide necessary support. This is especially true for developing countries, and in particular for LDCs and SIDS.

At HRC35, the Council convened a panel debate on the delivery of international human rights capacity-building and technical support. During the debate it was noted that for many developing countries, especially LDCs and SIDS, the task of engaging, in a meaningful way, with the Council and its mechanisms, and of implementing and reporting on hundreds of recommendations each year, is extremely challenging – if not impossible – in the absence of international support. That in turn places question marks over the ability of States to realise the 2030 Agenda for Sustainable Development and implement the SDGs ‘leaving no one behind.’

And yet, eleven years after this body’s establishment, and notwithstanding some important advances and achievements, the debate heard that there are question marks over the degree to which the Council and the wider UN



human rights pillar are delivering on its vital 'item 10' mandate.

It was suggested that there are a number of reasons for this, including a growing propensity, on the part of some States to use agenda item 10 to address situations that should be more correctly dealt with under item 4; and a persistent belief, on the part of some States, as well as many NGOs, that item 10 is little more than a fig leaf used to hide the real problem: namely the lack of political will to comply with international human rights obligations.

However, perhaps the main reason why the realisation of the Council's capacity-building and technical assistance mandate has too often fallen short is that States have given insufficient thought to the actual mechanics of delivery under item 10.

To-date, the main tools/mechanisms set up to deliver on the Council's mandate under paragraph 5a are country-specific resolutions (which may ask, for example, OHCHR to provide capacity-building or technical assistance to a given State – with the consent of and in cooperation with that State) and/or country specific Independent Experts. However, these Independent Experts tend to be created in response to pressing human rights situations (e.g. in post conflict countries) rather than being seen as a universally accessible mechanism for delivering technical assistance to all States that so-need or so-request it. The Council has also established a Trust Fund to help developing countries implement UPR recommendations, and a Trust Fund to help LDCs and SIDS engage with the Council.

Yet despite these developments, it remains the case that today, in 2017, there is no simple one-stop-shop channel – a 'on-demand mechanism' - through which all developing countries can request and access international support to help them implement their international human rights obligations and commitments, and nor is there a space, on the Council's agenda, for States to follow-up on and consider the effectiveness of such support.

It is vital, as part of any Human Rights Council strengthening process, that States address this situation, reconceptualise and rethink 'item 10,' and consider how the Council can best mobilise and coordinate international capacity-building and technical assistance for implementation – for all States that so-require and so-request it.



During the HRC35 panel debate, it was suggested that the Council might consider constructing a space wherein States, including but not limited to developing States, would have the confidence to meaningfully engage and cooperate with the Council in order to:

- Provide information to their peers on domestic efforts to implement international human rights recommendations: to present, and engage in a dialogue on, its achievements, challenges faced, and obstacles to further progress.
- Provide information on important implementation gaps or domestic institutional weaknesses that should be addressed in order to prevent human rights violations.
- Exchange good practices and lessons learnt.
- Voluntarily request international capacity building and technical support and have a realistic chance of receiving a response from OHCHR, UNDP, bilateral donors, or other development partners.
- Report back, after a given period of time, on progress – was the State concerned, with international support, able to strengthen the implementation of its international obligations?

Prevention

The Human Rights Council has a clear and explicit mandate, provided by paragraph 5f of GA resolution 60/251, to ‘contribute, through dialogue and cooperation, towards the prevention of human rights violations’ and to ‘respond promptly to human rights emergencies.’

This is, potentially, a crucial pillar of the Council’s prerogatives and *raison d’être*. The mandate plays to all the Council’s strengths – as a body premised on dialogue and cooperation, on mobilising human rights capacity-building support, on considering human rights violations and identifying emerging situations of concern.

Unfortunately, for most of the past 12 years (with some exceptions – for example, there were many good proposals on prevention during the Council’s 2011 review) member States have neglected this prevention mandate. As with implementation, this has begun to change over the past two years, and there now appears to be a determination, on the part of States from all regions, to reflect on how to best operationalize the Council’s



mandate under paragraph 5f, and to do so in an inclusive, consultative and consensual manner, thereby building 'trust between member States and in their relations with the United Nations' – as called for by the Secretary-General.

That new drive is built on an understanding that paragraph 5f comprises two parts.

First, the prevention of violations at 'root-cause' level. In the medical world, this is known as 'primary prevention,' (i.e. the prevention of human rights violations before they ever occur). This means supporting States, through international dialogue and cooperation, to build domestic human rights resilience, including by delivering human rights advisory services, technical assistance and capacity-building to support States implement their human rights obligations and commitments. This will in turn help States strengthen rule of law and good governance, secure civil society space, support the free press, promote human rights education and training, and build domestic human rights protection institutions including independent judiciaries and NHRIs.

As part of this effort, and as recognised by the Secretary-General, relevant bodies of the UN must address a situation in which they spend 'far more time and resources [...] responding to crises than to preventing them.' According to a recent analysis by the Universal Rights Group, this Council has, since 2006, invested roughly five times as many financial resources on mechanisms primarily designed to react to violations and secure future accountability, as it has on mechanisms or platforms to build domestic resilience.

It also means taking concrete steps to reform and strengthen the Council's delivery of technical assistance and capacity-building support under item 10 of its agenda, in consultation with and with the consent of member States concerned.

Second, under the latter part of paragraph 5f, the Council is mandated to 'respond promptly to human rights emergencies.' To again borrow medical parlance, this is secondary prevention.

This means, at first instance, that the High Commissioner must have the tools and resources necessarily to gather, process and synthesise 'early warning' information about patterns of violations in a timely and effective manner.



Where he concludes that patterns of violations may provide 'early warning' of a potential 'human rights emergency,' he should be mandated to urgently brief the Council, either during or outside its regular sessions, and either in private or public setting. The Council should then appraise that information in an objective and non-selective manner, and decide whether the situation merits and/or may benefit from early preventive action. As part of that process, civil society space at the Council must be fully safeguarded.

In order to do so, it is clear that some of the Council's existing mechanisms can be leveraged to play a stronger prevention role; indeed some of them are already doing so. Notwithstanding, if this Council is to truly and effectively fulfil its mandate under paragraph 5f, it should also consider developing a new mind-set, new ways of doing things, and new tools. Such innovations must be based on establishing and maintaining trust, on creating space on the Council's agenda, on building platforms for dialogue and cooperation between Council members and the concerned State and region, and on the mobilisation of preventative diplomacy or 'Good Offices' diplomacy.



Questions

1. How can the Council better promote 'the full implementation of human rights obligations undertaken by States,' in line with paragraph 5d of GA resolution 60/251? What is already being done and what more could be done in the future?
2. How to create more space on the Council's agenda (or inter-sessionally) for follow-up on the implementation of international obligations, commitments, recommendations and resolutions – to assess progress, identify success stories, and measure impact?
3. Is the Human Rights Council fulfilling its mandate under paragraph 5a of GA resolution 60/251, to promote capacity-building and technical assistance?
4. Are the existing mechanisms set up under item 10 (e.g. Independent Experts) able to deliver on the Council's capacity-building and technical assistance mandates for all countries? Are they 'fit for purpose'? If not, what reforms or strengthening should be considered?
5. What needs to happen in order for the Council to play its rightful role, within the UN system, of leading on both parts of paragraph 5f (GA resolution 60/251): i.e. primary and secondary prevention?
6. How can the Council change its approach – away from reacting to violations of human rights where a crisis or conflict has already taken hold, and towards a policy of early engagement and cooperation with all States, through a programme of resilience- and capacity-building? How to deliver adequate investment for such a programme? Regarding the second part of paragraph 5f (responding promptly to human rights emergencies) how might the Council reform its current procedures and mechanisms, and create new procedures and mechanisms designed to promote cooperation, dialogue, trust and early engagement?



