Glion Human Rights Dialogue 2019 (Glion VI)

'Towards 2026: Perspectives on the future of the Human Rights Council'

Background paper for break-out group II:
'Implementation support and follow-up by the international human rights system'

The Human Rights Council has secured a number of significant achievements since its establishment in 2006. It has continued much of the important work of the former Commission on Human Rights by, for example, providing a forum for debate, maintaining a system of Special Procedures, and widening the global framework of human rights norms and standards. At the same time, it has taken further steps to strengthen the relevance and delivery of the UN's human rights pillar, including by: building a powerful new peer-to-peer review mechanism (the Universal Periodic Review - UPR); focusing to a greater degree on supporting, and following-up on, the domestic implementation of States' human rights obligations and commitments; contributing to the effective prevention of human rights violations and crises; promoting accountability for serious violations through the creation of commissions of inquiry (COIs), fact finding missions and an independent investigative mechanism (IIM); and forging strengthened links with the UN's other two pillars – the development pillar and the peace and security pillar.

Yet the Council has also faced important challenges to the effective delivery of its mandate as set by the General Assembly (GA) in resolution 60/251.

The GA's upcoming review of the Council's status (due to take place between 2021 and 2026) offers a possible opportunity for State delegations and other stakeholders in Geneva to reflect on these achievements and challenges, and consider how the body and its mechanisms might strengthen their effectiveness and impact, both in their own regard and in combination with the other two pillars of the UN. Moreover, the '2021-2026 review' also offers a chance for the international human rights community to look ahead and reflect not only on how the international community might better respond to *today's* human rights challenges, but also on how to respond to the new and emerging issues of *tomorrow*.

Implementation support and follow-up by the international human rights system

As has been widely noted by States and NGOs in the context of recent debates around the 2021-2026 review as well as Council efficiency and strengthening, the Human Rights Council does not require wholesale reform (e.g. of its institution-building package – IBP) in order to be more effective. Ultimately, the Council's effectiveness is and will largely be determined by the degree to which it is able to translate international-level decisions and recommendations into national-level change, progress and impact (*vis-à-vis* the enjoyment of human rights). That means the Council and its mechanisms, and the wider UN human rights pillar, must effectively and diligently follow-up on the implementation of UN human rights recommendations and decisions, in order to track and measure progress and, as appropriate, facilitate the delivery of technical assistance and capacity building support.

The importance of implementation support and follow-up is fully recognised in GA resolution 60/251 establishing the Council. Through this resolution, the GA mandated the Council to 'promote the full implementation of human rights obligations undertaken by States.'[1] In pursuit of this objective, the GA recognised that 'the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations,'[2] and called upon the Council to 'promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned.'[3] In order to fulfil this mandate, the GA instructed the Council to develop methods of work that 'enable genuine dialogue, [are] results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation, and also allow for substantive interaction with special procedures and mechanisms.'[4]

Over recent years, the Council and its mechanisms have taken important steps to fulfil their mandate to follow-up on and support the implementation of its recommendations and decisions:

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[1] GA resolution 60/251, paragraph 5d

[2] ibid, preambular paragraph 10

[3] Ibid, paragraph 5a

[4] Ibid, paragraph 12

- In the context of certain country-specific resolutions (e.g. on the situation in Sri Lanka), the Council has set-down a number of benchmarks against which progress might be measured. This in turn opens up the possibility that the Council may request the High Commissioner to report on progress towards those benchmarks.

- In the context of the UPR, at the end of each session of the Working Group the High Commissioner now routinely sends letters to States that have been reviewed, highlighting priority clusters of recommendations for implementation. Moreover, reviewing States are increasingly combining their recommendations to States under review with offers of technical assistance to support implementation, and/or are increasingly using subsequent review cycles to follow-up on progress. In another positive example, the Group of Friends on national implementation now asks advanced questions and extends recommendations about national implementation and follow-up during each States' UPR. Notwithstanding, there is considerable evidence that the three UPR reports (national, UN and 'other stakeholders' - e.g. NGOs - reports) have not been systematically used as follow-up mechanisms. A URG analysis of the UPR mechanism in 2016[5] found that these reports rarely provide analyses of the degree to which States have implemented previous UPR recommendations. This represents an important missed opportunity.

- Special Procedures mandate-holders have always, to some degree, followed-up on the implementation of their recommendations to States (after country missions), either via letter or – where resources allow – via follow-up visits. Efforts are now underway to make this more systematic - across the mechanism, and also to collate and publicise 'implementation/impact success stories.'

- Regarding the promotion of capacity-building and technical assistance for national implementation, there is a growing interest among States to review the Council's work under item 10 of its agenda. This would aim to create a space for voluntary follow-up and for matching capacity and technical assistance needs with available international support. Such reforms have also been discussed in the context of the operationalization of the Council's prevention mandate.[6] Furthermore, trustees of the UN's Voluntary Fund for technical cooperation in

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[5] https://www.universal-rights.org/urg-policy-reports/towards-third-cycle-upr-stick-twist/
[6] Under GA resolution 60/251, paragraph 5f

the field of human rights are currently considering ways to strengthen the Fund's focus on supporting the implementation of UN human rights recommendations (including UPR recommendations).

• Finally, UN Resident Coordinators and Country Teams are increasingly integrating UN human rights recommendations (especially – but not limited to – UPR recommendations) into national UN Development Assistance Frameworks (UNDAFs). The mobilisation of UN Country Teams to support the implementation of human rights recommendations in this manner holds out enormous potential for the domestic enjoyment of human rights and for the achievement of the SDGs 'leaving no one behind.'

Notwithstanding these positive changes and signals of political intent, it remains the case that there is significant room for international follow-up on the domestic implementation of UN human rights recommendations and decisions. As the Council considers ways of improving its work to address the human rights challenges of today and tomorrow, a focus on strengthening follow-up and support for implementation must be a top priority. Such improvements do not require any changes to the Council's status or institutional framework. Rather, they can be achieved by strengthening the mechanisms and systems that are already at the body's disposal.

From the foregoing, a number of questions might be considered by participants, including:

1. Has the approach of including benchmarks in Council resolutions and requesting the High Commissioner to submit progress updates against those benchmarks, most often associated with Council's resolutions on the situation in Sri Lanka, also been used in other Council texts? Could this approach be extended to other thematic and country-specific resolutions? Are there other ways of following up on the implementation of Council resolutions?

2. UPR national, UN and 'other stakeholder' reports are, in principle, powerful tools allowing the Council to follow-up on State progress with the implementation of earlier recommendations. With this in mind, how can relevant stakeholders, including OHCHR, the Resident Coordinator system, human rights experts, international NGOs and NHRIs, work together to ensure that UN system and

'other stakeholder' reports include a detailed assessment of levels of implementation of previous UPR recommendations?

3. How do the 56 current Special Procedures mandates follow-up on the implementation of their earlier recommendations to States, and how do they seek to play a role in mobilising international development support to help (developing) States in that regard? How can follow-up, and the related process of collating good practice examples of impact and progress, be systematised across the Special Procedures mechanism?

4. How to strengthen follow-up to the many recommendations included in thematic and country-specific resolutions? What role for the HRC, Special Procedures and OHCHR in this regard?

5. How can the Council create a space, either during sessions or inter-sessionally, wherein States would be willing to voluntarily provide updates on progress with the domestic implementation of UN human rights recommendations, and, where appropriate, request international capacity building and technical assistance to drive further progress? How to ensure that relevant providers of such assistance/international development partners are also present?

6. How do OHCHR and the Voluntary Fund for technical cooperation follow-up with developing States, especially LDCs and SIDS, to offer support for the implementation of UN human rights recommendations? What steps can be taken to improve such follow-up in the future?

7. Will on-going reforms of the UN development system and the Resident Coordinator system strengthen the ability of the UN to provide support to States, especially developing States, to help them implement UN human rights recommendations?   Are UPR, Special Procedures and Treaty Body recommendations being systematically integrated into UNDAFs?[7]

8. How can bilateral development partners, in cooperation with recipient countries, better mobilise ODA in support of the implementation of UN human rights obligations, decisions and recommendations?

9. How can individual States, and the international community as a whole, promote the application of human rights indicators as a means of measuring, in an objective and empirical manner, the on the ground impact of the Council and its mechanisms, and overall human rights trends around the world?

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[7] See https://www.universal-rights.org/blog/un-development-system-reforms-an-update/ for more information.