Glion Human Rights Dialogue 2019 (Glion VI)

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

Background paper for break-out group III:
'Emerging issues and developing effective Council responses'

The Human Rights Council (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; taking steps towards 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*.

'Emerging issues and effective Council responses'

In addition to offering a chance for States and other stakeholders to reflect on how the Council and the wider human rights pillar might respond to *today's* human rights challenges, the upcoming 2021-2026 review also provides an opportunity to consider new and emerging human rights issues that may well occupy the Council's attention – and demand effective responses – by 2026.

Regarding the relationship between human rights and climate change, and other forms of environmental harm, the Council has in fact been 'ahead of the curve' in terms of considering and debating this relationship, understanding the nature of the impacts of global warming/environmental harm on individual rights, and defining a credible and useful 'human rights' response.

The Council first considered the impacts of **climate change** in 2008-2009 with resolutions 7/23[1] and 10/4.[2] The two resolutions recognised that 'climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights,' that 'while these implications affect individuals and communities around the world, the effects […] will be felt most acutely by those segments of the population who are already in vulnerable situations,' and that 'human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change.' These resolutions, together with an OHCHR report and the outcome of a panel debate on the subject, were then shared with States Parties to the UNFCCC ahead of COP15 in Copenhagen and COP16 in Cancun. This in-turn led to human rights principles being included in the Cancun Agreements on climate change and, ultimately in the 2015 Paris Agreement. That same year, Costa Rica and 17 other States (the number has since increased) adopted the 'Geneva Pledge' – through which they agreed to strengthen links between the global human rights and climate change communities, and use human rights obligations and commitments to improve national climate change policies (mitigation and adaptation).

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[1] http://ap.ohchr.org/documents/sdpage_e.aspx?si=A/HRC/RES/7/23
[2] http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf

Around the same time, the Council adopted its first resolutions on human rights and the **environment** (resolutions 16/11[3] and 19/10[4]). With the latter, States decided to establish a new Special Procedures mandate on human rights and environment. Since its establishment, the mandate has sought to clarify the normative framework for human rights and the environment, and provide guidance to States on how they should use human rights principles such as non-discrimination, access to information and access to decision-making, to improve environmental policy. The current mandate-holder has announced his intention to work with States to declare a new internationally recognised human right: the right to a clean and healthy environment.

The Council has also regularly considered the human rights implications of **new technology** (e.g. resolution 20/08 on the promotion, protection and enjoyment of human rights on the Internet,[5] and resolution 28/16 on the right to privacy in the digital age[6]). At HRC40, Korea, Singapore, Austria and Denmark (on behalf of 68 States) delivered a new joint statement on new/emerging technologies and human rights. This statement may signal the Council's determination to adopt a more holistic approach to considering the human rights implications of new technologies (covering, for example, big data, artificial intelligence, social media and the Internet), covering both challenges *and* opportunities.

In January 2019, Oxfam published its latest analysis of global **inequality**.[7] Oxfam showed that while hundreds of millions of people continue to live in extreme poverty, the wealth of the world's billionaires increased by $900 billion in the last year, with the result that today the world's richest 26 people own the same as the 3.8 billion people who make up the poorest half of humanity. A primary cause of this inequality is tax avoidance, and the under-taxing of the richest individuals and corporations. Consequences include: 262 million children cannot go to school, and every day 10,000 people die because they lack access to affordable healthcare.

These striking inequalities, both between and within States, are further exacerbated by **corruption and transnational crime**. Regarding the former, a 2018 report by URG

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[3] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/11
[4] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/10
[5] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8
[6] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/16
[7] https://www.oxfam.org/en/even-it/5-shocking-facts-about-extreme-global-inequality-and-how-even-it-davos

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shows that corruption has a significant negative impact on the enjoyment of economic, social and cultural rights, and civil and political rights.[8] Recognising these links, in 2018 an increasing number of governments have begun formulating so-called 'Magnitsky acts,' to strengthen worldwide accountability for those who involved in grand corruption and serious human rights violations.

The growing concentration of wealth in the hands of a few rich individuals and/or corporations, and the related increase in the power they hold over people's lives and rights, also raise important questions about their responsibilities to respect and promote human rights. In 2008, the Council adopted the 'protect, respect and remedy framework and guiding principles' for **business and human rights** (the 'Ruggie Principles'), which seek to define those responsibilities. Furthermore, in 2014 the Council established a working group charged with elaborating a new legal instrument on transnational corporations and human rights.

Other emerging human rights issues include population growth and increased competition for natural resources; mass population movements; and resurgent authoritarianism and nationalism.

Addressing these emerging issues will require the international human rights community to effectively use existing instruments and mechanisms, including in respect to support for and follow-up to the domestic implementation of universal norms; *and* to 'think outside the box' by confronting questions about the very nature of international human rights law, and the current multilateral system. For example, the fact that the human rights impacts of climate change or transnational crime do not respect national borders and may be caused by private as well as public action/inaction, raises questions about the extraterritorial application of human rights law and the role of business in upholding universal norms. In another example, the recent reports of the UN Commission on Human Rights in South Sudan and the Fact-Finding Mission on Myanmar have both taken important strides towards establishing individual criminal accountability for serious human rights violations, thus moving beyond the traditional State-centric understanding of human rights duty-bearers.

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[8] https://www.universal-rights.org/urg-policy-reports/corruption-human-rights-impact-assessment/

Key questions to be considered during the break-out group session include, *inter alia*:

1. What are the key human rights trends, and emerging issues and challenges likely to occupy the Council's attention by 2026?

2. Has the Council already considered [some or all of] these issues, what responses has it designed to address them, and how effective have those responses been?

3. What should be the nature and scope of the Council's future role in contributing to international efforts to address these issues and challenges? What can the Council usefully do?

4. Is there a need to think 'outside the box' with regard to the human rights dimensions of these issues, and develop new mind-sets and approaches?

5. What is the impact of new trends, such as the further development and spread of digital technologies and fora (e.g. big data, artificial intelligence), on the Council's agenda and functioning?

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