



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

Advocacy paper¹:

Operationalising the UN Human Rights Council's prevention mandate, strengthening action on country situations

As momentum is growing around the UN Human Rights Council's ("the Council" or "the HRC") ability to respond effectively to human rights situations that require attention, how to ensure that the Council fulfils its responsibility to "contribute, through dialogue and cooperation, towards the prevention of human rights violations and [to] respond promptly to human rights emergencies"² has become one of the hot topics of discussion. Operationalising the prevention part of the Council's mandate was the central theme of the 2017 Glion Human Rights Dialogue ([Glion IV](#)).

DefendDefenders believes that the time is ripe for like-minded states to make a decisive contribution to the operationalisation of the Council's prevention mandate. At its upcoming 38th session (18 June-6 July 2018), states should adopt a resolution paving way for enhanced preventative action and the identification of criteria for effective, early and objective action on country situations of concern.

1. The Council's prevention mandate

In June 2016, on the occasion of the Council's 10th anniversary, a cross-regional group of states delivered a [statement](#) that put forth objective criteria (the "Irish Principles") that should guide states when considering country situations requiring the Council's attention. At its 35th session (June 2017), a Dutch-led joint [statement](#) built on that initiative by pledging to apply "objective and human rights-based criteria" in determining whether and how to respond to a situation of concern, and to "take leadership and responsibility in initiating action when such criteria are met." At the following session (HRC 36, September 2017), the Norwegian delegation delivered a joint [statement](#) on behalf of 69 states on the operationalisation of the Council's prevention mandate. Finally, during the last regular session (HRC 37, March 2018), incoming HRC members [pledged](#), *inter alia*, to "address human rights concerns on their merits, applying objective and human rights-based criteria in determining whether and how the Council should respond to a situation of concern, and take leadership and responsibility in initiating action when such criteria are met." These statements are important contributions to more robust and consistent preventative action by the Council.

2. Addressing mounting human rights crises: early warning signs

The Council's ability to receive early reports about, discuss, and respond to human rights emergencies is one of its key strengths. In the last few years, the Council has addressed emergency situations, some of which evolved into full-fledged human rights crises. Within the UN system, it often raises the alarm

¹ This paper builds upon prior work on the prevention of human rights crises, including an article published on the Universal Rights Group's blog in April 2018, "[NGO advocacy and the Council's prevention mandate](#)": www.universal-rights.org/blog/ngo-advocacy-councils-prevention-mandate

² UN General Assembly (UNGA) resolution 60/251, paragraph 5(f).

by holding urgent debates, informal briefings, or special sessions. In recent years, this has been the case for the Central African Republic, the situation of Rohingya Muslims and other minorities in Myanmar, and Burundi. It addressed the latter in June 2015 (through a joint statement) before adopting a resolution (in September 2015) and holding a special session on the country (on 17 December 2015).

The space civil society occupies at the HRC is unique within the UN system. This allows human rights defenders (HRDs) and NGOs to provide member and observer states of the Council with first-hand, up-to-date information about human rights situations on the ground and to make the case that the situations they raise deserve multilateral attention.

A rapidly shrinking civil society space and increasing attacks against freedoms of expression, peaceful assembly, and association, and HRDs, as emerging patterns of human rights violations, are often early warning signs of a deteriorating human rights situation, which may lead to a crisis. A government that closes dialogue and reduces its level of cooperation with human rights stakeholders, including UN human rights bodies and mechanisms, also indicates a situation of concern. These, and other elements, some of which are outlined below, should cross-fertilise and serve as criteria to objectively identify country situations that require attention, triggering Council action.

3. Elements for a resolution on the operationalisation of the Council's prevention mandate and for further reflection on objective criteria triggering action

In line with the proposals set out by a group of NGOs for the HRC's 10th anniversary, including on criteria to identify situations that meet a certain threshold or are referred to the Council by independent actors,³ the following "triggers" should be used, and referred to in resolutions on the Council's prevention mandate:

- the UN High Commissioner for Human Rights suggesting Council action;
- a group of four or more Special Procedure mandate holders suggesting Council action;
- relevant regional mechanisms flagging a situation as requiring the Council's attention;
- the UN General Assembly (UNGA) or the UN Security Council (UNSC) flagging a situation as requiring the Council's attention;
- a group comprising a State's A-status NHRI, together with three or more ECOSOC-accredited NGOs, suggesting Council action.

Other criteria could be developed, including the Special Advisers of the UN Secretary-General on the Prevention of Genocide and on the Responsibility to Protect flagging a situation as requiring urgent attention. OHCHR reporting, which is based on its universal mandate, should also be considered an important criterion, irrespective of the concerned country's presence on the HRC's agenda (which requires a formal Council resolution or decision). Tools, such as a publicly accessible and regularly updated database of HRDs in detention and others detained for exercising their freedom of expression, which was called for in a joint statement delivered at the Council's 29th session, should also be developed with a view to helping the HRC identify situations of concern.

Outlining such elements in a resolution on prevention, with a view to guiding the Council in its endeavour to identify human rights emergencies and mounting crises, would go a long way towards helping it operationalise its mandate to "respond promptly to human rights emergencies" and addressing criticism over "double standards," selectivity, and the Council's failure to address some of the gravest country-specific situations.

DefendDefenders believes that other elements should be included in a resolution on prevention. They include, *inter alia*:

- An invitation to the High Commissioner and his/her Office to hold pre-sessional, informal briefings on country situations that require attention;

³ See the joint "HRC at 10" paper: www.ishr.ch/HRCat10

- The importance of consultations with independent sources of information, in particular HRDs and human rights organisations who work at the local, grassroots, national and regional levels. These stakeholders have the expertise, access, and ability to monitor situations on a daily basis, which puts them in a position to assess the human rights situation and detect improvements in, or deterioration of, that situation;
- As highlighted by the joint statement delivered at the Council's 36th session, as part of the process of appraising information regarding situations of human rights that require attention, civil society space at the Council must be fully safeguarded;
- Options for collective action at the Council, when objective criteria are met, which allow the Council to determine that a response is needed. The Council's response ought not systematically be a resolution. Collective action includes joint statements, offers of dialogue and cooperation, and other forms of multilateral engagement;⁴
- Further reflection on practical options to operationalise the Council's prevention mandate by guiding it in fulfilling its responsibility to identify mounting crises. Such options include the establishment of a group of independent experts on country situations, whose selection would be in line with the selection process of Special Procedure mandate holders.⁵ This group would be tasked with helping the Council deliver on the mandate conferred to it by paragraph 5(f) of UNGA resolution 60/251. As a first step, a group of experts could be established to elaborate on paragraph 5(f) of UNGA resolution 60/251 and outline options for HRC action, including objective criteria that could trigger action on country situations; and
- The recognition that, while dialogue and cooperation are important (and under-used) tools to de-escalate tensions, prevent human rights violations and build resilience, technical assistance and capacity-building are intimately linked to other aspects of the mandate of the Office of the UN High Commissioner for Human Rights (OHCHR) and other human rights bodies and mechanisms, namely, monitoring of the human rights situation, investigation into human rights violations and abuses, and reporting—both internal and public.

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4. Conclusion: more expertise, less politics needed

The Council is well-equipped to respond to human rights emergencies. It is mandated to do so. However, it could be **better equipped to address human rights emergencies at an early stage**, i.e., promptly, objectively, and effectively and prevent them from escalating into human rights crises. The elements outlined in this paper are contributions to helping it fulfil the prevention mandate conferred to it by its founding resolution.

These elements include:

- **Early warning signs of a deteriorating human rights situation;**
- **A government that closes dialogue and reduces its level of cooperation;**
- **The UN High Commissioner for Human Rights suggesting Council action;**
- **A group of four or more Special Procedure mandate holders suggesting action;**
- **Relevant regional mechanisms flagging a situation as requiring attention;**
- **The UNGA or the UNSC flagging a situation as requiring attention;**

⁴ If coordinated in terms of substance and timing, a range of individual statements may have an effect (i.e., send a message) that is similar to a joint statement.

⁵ In the selection process, due consideration should be given to gender balance and equitable geographic representation. Eligible candidates should be highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights. They should be appointed through a competitive and transparent process based on the following criteria: (a) expertise; (b) experience in the field of human rights; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity. Qualified candidates from the widest possible range of countries and backgrounds should be invited to apply, and, in the selection process, due attention should be given to expertise and experience in conflict prevention, protection of vulnerable groups, persons at risk, human rights defenders and journalists, and the creation and maintenance of a safe and enabling environment for civil society.

- **A group comprising a State's A-status NHRI, together with three or more ECOSOC-accredited NGOs, suggesting Council action;**
- **Special Advisers of the UN Secretary-General on the Prevention of Genocide and on the Responsibility to Protect flagging a situation as requiring urgent attention;**
- **OHCHR reporting, which is based on its universal mandate, should also be considered an important criterion, irrespective of the concerned country's presence on the HRC's agenda; and**
- **Tools such as a publicly accessible database of HRDs and others detained for exercising their human rights, should be developed with a view to helping the HRC identify situations of concern.**

A resolution on the operationalisation of the HRC's prevention mandate should include:

- **An invitation to the High Commissioner and his/her Office to hold pre-sessional, informal briefings on country situations that require attention;**
- **The importance of consultations with independent sources of information, in particular HRDs and human rights NGOs who work at various levels;**
- **The importance for civil society space at the Council to be fully safeguarded;**
- **Options for collective action at the Council, when objective criteria are met;**
- **Further reflection towards practical options to operationalise the Council's prevention mandate, including through the establishment of a group of independent experts on country situations. As a first step, a group of experts could be set up to elaborate on paragraph 5(f) of UNGA resolution 60/251 and outline options for HRC action, including objective criteria that could trigger action; and**
- **The recognition that technical assistance and capacity-building are intimately linked to human rights monitoring, investigation into violations and abuses, and reporting, including public reporting.**

DefendDefenders believes that these elements would help the Council operationalise its prevention mandate and address situations of concern early, objectively, and effectively. The time is ripe for member and observer states to pave way for enhanced preventative action on human rights situations of concern.