Mainstreaming civic space in State interventions at the UN Human Rights Council

Paper presented ahead of the Council's 44th session

Around the UN Human Rights Council's tenth anniversary, in 2016, a range of stakeholders, including NGOs engaging in advocacy at the Council, led reflections on issues pertaining to its effectiveness, institutional integrity, and impact on the ground. A number of panel discussions, policy dialogues and reports address-ed issues pertaining to enhancing respect for Council membership standards, elections to the Council, the Council's effectiveness, strengthening action on country situations on the basis of objective criteria, and ways of operationalising the Council's prevention mandate.[1] Since then, strategic reflections have focused on the use of early warning signs as objective criteria to address mounting human rights crises and other situations of concern.[2]

However, despite progress regarding States' commitment to consider early action on situations of concern (including through the use of tools such as special sessions, urgent debates and inter-sessional briefings by the UN High Commissioner for Human Rights) as well as expert knowledge, in particular the special procedure system), more action is needed to enhance the Council's ability to protect the space for civil society actors in specific country situations. The global "Call to Action" the UN Secretary-General launched in February 2020 made clear that threats against human rights defenders (HRDs), especially women HRDs (WHRDs), and journalists, are increasing, and that governments restricting civic space "is frequently a pre-lude to a more general deterioration in human rights."[3]

This paper outlines how member and observer States of the Council can help safeguard and strengthen civic space at the national level by using civic space restrictions as key early warning signs and objective criteria for action, and by more systematically examining civic space indicators when they assess country situations, including progress. After an overview of what is needed to further operationalise the Council's prevention mandate (section 1), the paper makes the case for using dimensions and indicators of civic space as criteria for individual and collective action (section 2). Section 3 proposes paths forward for the mainstreaming of civic space in State interventions.

1. States' sub-optimal contribution to the Council's prevention mandate

The Council has a responsibility to "contribute, through dialogue and cooperation, towards the prevention of human rights violations" and to "respond promptly to human rights emergencies."[4] In June 2016, on the

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[1] See for instance International Service for Human Rights *et al.*, "Human Rights Council at 10: Civil society outlines plan for HRC to become more protective, effective and accessible," 28 April 2016, https://www.ishr.ch/HRCat10 (accessed 10 April 2020).

[2] Amnesty International, Human Rights Watch and International Service for Human Rights, "Strengthening the UN Human Rights Council From the Ground Up: Report of a one-day dialogue held on 22 February 2018," https://www.ishr.ch/sites/default/files/documents/from_the_ground_up_report_final_web.pdf (accessed 10 April 2020).

[3] See UN Secretary-General, "The Highest Aspiration: A Call to Action for Human Rights," available at: https://news.un.org/en/story/2020/02/1057961 (accessed 13 April 2020).

[4] UN General Assembly (UNGA) resolution 60/251, paragraph 5(f).

occasion of the Council's tenth anniversary, a cross-regional group of States delivered a [statement](#)[5] that put forth objective human rights criteria (which became known as the "Irish Principles") that should guide action on country situations that require attention. In June 2017, a Dutch-led joint [statement](#)[6] 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." In September 2017, Norway delivered a joint [statement](#)[7] on behalf of 69 States on the operationalisation of the Council's prevention mandate. In March 2018, incoming HRC members [pledged](#),[8] *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." Since then, "incoming members' pledges" have been delivered at every March session, including most recently by the delegation of the Marshall Islands on behalf of several new members (March 2020). These statements are important contributions to more robust and consistent preventative action by the Council.

However, as shown in the [report](#) prepared by three Rapporteurs pursuant to resolution 38/18 on the contribution of the Council to the prevention of human rights violations,[9] the Council's prevention mandate remains under-utilised. Human rights advocates often face difficulties in persuading States to take meaningful action (either individually (in national-capacity statements) or collectively, in the form of joint statements or resolutions) on country situations, in particular at the "preventative engagement" stage, i.e., before a human rights crisis has erupted.

Too often, the concerned countries continue to regard "prevention" and preventative engagement as intrusive and unwarranted interventions. This places the international community in front of a dilemma: to either take early action on a situation (which may or may not escalate into a crisis) and risk being accused of "crying wolf," or to wait until early warning signs are confirmed as such and grave violations occur. The cost of failing to heed early warning indicators and engage the country concerned may then become exorbitant.

As highlighted by the UN Secretary-General in his "Call to Action," and the Council's report: early warning signs of a deteriorating human rights situation often include attacks against HRDs, civil society actors and independent voices, including journalists, media professionals, and bloggers, and an overall shrinking space for civil society. Unfortunately, in practice, restrictions to civic space are often insufficient to bring about preventative engagement, including public expressions of concern in multilateral arenas such as the Council.

Indeed, these restrictions tend to be overlooked by States in their interventions in relevant Council debates. Often, States start raising concerns over a specific country situation only when that country's political opposition is attacked – not before, when HRDs and civil society actors, including social movements, are targeted. This not only risks entrenching a false narrative of partisan multilateral engagement, but is also a missed opportunity insofar as direct attacks against opponents often occur at a later stage, after civil society has been stifled and civic space and the rule of law have been eroded as a result of legal, policy and practical restrictions. Furthermore, reprisals and attacks against those reporting human rights violations could often be treated as early warning signs of an escalating human rights crisis, as they may indicate governments' unwillingness to see information on human rights (including risk factors of violations) reach the UN human rights system.

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[5] Available at https://www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelands-statements-hrc-32nd-session/preventingrespondingtoandaddressinghumanrightsviolations-jointconcludingstatement/ (accessed on 10 April 2020).

[6] Available at: https://www.universal-rights.org/wp-content/uploads/2017/06/Dutch-CRS-HRC35.pdf (accessed on 10 April 2020).

[7] Available at: https://www.norway.no/en/missions/wto-un/nig/statements/hr/hrc/hrc36/joint-statement-on-councils-prevention-mandate/ (accessed on 10 April 2020).

[8] Available at: https://www.dfat.gov.au/sites/default/files/joint-statement-to-interactive-dialogue-with-hc-for-hr-incoming-members-pledge-8-march-2018.pdf (accessed on 10 April 2020).

[9] Human Rights Council, "Overview of consultations on the contribution of the Human Rights Council to the prevention of human rights violations," UN Doc. A/HRC/43/37, 14 January 2020.

2. Civic space restrictions as objective criteria for State action at the Council

Nevertheless, tools are available to States that are willing to deliver on their commitment to prevent human rights violations and "respond promptly to human rights emergencies." Focusing on restrictions on the work of HRDs, civil society, journalists and other independent actors as indicators to assess human rights situations objectively, these tools include reports by the Office of the High Commissioner for Human Rights (OHCHR), assessments by special procedure mandate-holders, pronouncements by regional mechanisms, UN bodies, and national human rights institutions (NHRIs), HRD testimonies, and NGO reports.[10] OHCHR has recognised the importance to prevention of the work of HRDs, independent NGOs, Paris Principle compliant NHRIs and a free press to monitor, report and advise on human rights issues and identify early warning signs of gross and systematic violations.[11]

In the last OHCHR report on the contribution of the Council to the prevention of human rights violations, Rapporteurs stressed that "[t]he targeting by State or non-State actors of human rights defenders, journalists or civil society organizations, who are often the main transmitters of information about human rights emergencies, is [...] of particular concern as this may also lead to information about any deterioration in the situation not reaching the international community."[12]

Civic space is a multi-dimensional concept. It includes the situation of HRDs, the rights to freedom of opinion and expression, peaceful assembly, association, participation in public and political affairs, and other rights, including the cross-cutting right to equality before the law, equal protection of the law, and non-discrimination. Various global indices are available to track progress in, or deterioration of, civic space. They include CIVICUS' Civic Space Monitor, Freedom House's Freedom in the World report, Reporters Without Borders' (RSF) World Press Freedom Index, as well as information and analyses by HRDs and national and regional NGOs. Civic space analysis, monitoring, and support have also been increasingly central to the work of OHCHR, which has a Civic Space Unit.[13] Restrictions include, *inter alia*, curtailment of fundamental freedoms, attacks against the media, attacks against HRDs and civil society organisations, and the introduction of restrictive laws and policies.

In the Council's plenary debates, however, references to such information remain sub-optimal. This is a missed opportunity for member and observer States. By using evidence-based information on civic space patterns, States could further strengthen and fine-tune their interventions on specific country situations. By taking into account key civic space developments at an early stage, States could engage in more meaningful action and preventative engagement with the countries concerned, in particular where civic space restrictions may be a prelude to a full-fledged human rights crisis. By using civic space restrictions as early warning signs of deteriorating human rights situations, States would equip themselves with key objective criteria for action at the Council, both in their national capacity and collectively, and members of the Council would make further progress towards fulfilling their responsibilities to take action to respond to situations of concern.

At a later stage – for instance when a country has overcome a crisis and taken action to improve its human rights situation – civic space indicators could provide the Council with invaluable tools to assess progress, adapt its engagement (including the contents of resolutions and agenda item used), and outline a path forward (including through the use of benchmarks) for the country concerned.

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[10] See International Service for Human Rights *et al.*, "Human Rights Council at 10," *op. cit.*, and DefendDefenders, "Operationalising the UN Human Rights Council's prevention mandate, strengthening action on country situations," 18 June 2018, https://defenddefenders.org/hrc38-operationalising-the-human-rights-councils-prevention-mandate/ (accessed on 10 April 2020).

[11] International Service for Human Rights, "Early warning, effective response: The role of the Human Rights Council in preventing gross and systematic violations," 2 May 2016, https://www.ishr.ch/news/early-warning-effective-response-role-human-rights-council-preventing-gross-and-systematic (accessed on 10 April 2020). In addition, "[w]hen WHRDs' knowledge and voices are ignored or disregarded, [...] early warning signs for conflict or violence might be dismissed" (ISHR, "Are Peace and Security Possible without Women Human Rights Defenders? And why this question matters to the United Nations Security Council," 27 November 2019, https://www.ishr.ch/news/security-council-are-peace-and-security-possible-without-women-human-rights-defenders (accessed on 13 April 2020)).

[12] Human Rights Council, "Overview of consultations on the contribution of the Human Rights Council to the prevention of human rights violations," *op. cit.*, para. 62. See also paras. 63-64.

[13] OHCHR, "Management Plan: Enhancing participation and protecting civic space," https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/participation.aspx (accessed 10 April 2020).

This would go a long way towards (i) operationalising the Council's prevention mandate; (ii) providing diplomatic support and protection to HRDs and other independent actors in the countries concerned; (iii) ensuring policy coherence by integrating civic space in States' human rights policy, including at the multilateral level; and (iv) enhancing the Council's impact, which can be invisible (avoiding a crisis). In addition, using civic space restrictions as objective criteria for action would cross-fertilise efforts to address human rights situations in a holistic manner, allowing States, OHCHR, other human rights bodies and mechanisms, and national and regional stakeholders to work towards the same goal: preventing violations and building the resilience of national systems and institutions.

3. Mainstreaming civic space in State interventions at the Council

A large number of States already integrate civic space issues and dimensions (including restrictions on the rights to freedom of expression, peaceful assembly and association and the environment for HRDs, civil society, and the media) in their interventions, and use these when considering action on country situations. However, more is needed to implement civic space-related commitments set out above. The Council's capacity to effectively address human rights emergencies at an early stage and to prevent emergencies from escalating into human rights crises could be augmented if States and regional/political groups integrated civic space issues in their interventions more systematically. Equally, the Council's capacity to support States recovering from human rights crises and to help them build resilience would be enhanced by a more systematic use of civic space indicators, including in the form of benchmarks for assessing progress. The elements below are additional tools to determine what the "civic space restrictions" objective criteria could entail.

Civic space elements that may be included in statements include undue restrictions on, attacks against, and other challenges facing, HRDs, civil society actors and other independent voices, including journalists, media professionals, bloggers, community leaders, artists, and trade unionists, and members and supporters of social movements. These restrictions and attacks may include restrictive laws and regulations, institutional practices targeting these actors, and patterns of intimidation, harassment (both online and offline), stigmatisation, vilification and smear campaigns, threats, physical assault, arbitrary arrest and detention, and other forms of judicial and extra-legal harassment, as well as systematic impunity for these acts. Particular attention should be paid to the multiple and intersecting risks facing WHRDs, including discrimination and violence.

Patterns of civic space restrictions also include broader legal, institutional, policy and practical restrictions on citizens' rights to freedom of opinion and expression, peaceful assembly, association, and participation in public and political affairs, as well as other rights such as equality before the law, equal protection of the law, and non-discrimination.

Such information can be collected through States' own channels (e.g., diplomatic networks) and the abovementioned indices and tools, reports by national actors, NHRIs, OHCHR reports, and assessments by special procedure mandate-holders, among others.

A coherent, objective, and strategic approach to using civic space in relation to country situations in interventions at the Council should include the following elements. Ahead of each debate or session, States should give due consideration to the possibility of using one or several of these options. This does not preclude, but rather complements and strengthens, bilateral engagement with the country concerned, at the Embassy level, in capital, and in international fora.

(i) Individual and joint statements on situations already on the Council's agenda
In such situations, action has already taken to address a country situation. However, further or more robust action may be needed to reflect developments on the ground or risk factors of further violations, including against HRDs and civil society. Without corrective action being taken, a human rights emergency may evolve into a human rights crisis, with possible regional implications. In relevant interactive dialogues (IDs) and general debates (GDs), recommendations may include moving consideration of the country concerned to another agenda item, establishing or extending a country-specific mechanism, holding an urgent debate, enhancing public debates on the country concerned, requesting additional reporting on the country, or transmitting Council-mandated reports to other UN bodies and mechanisms, including the UN Security Council and the UN General Assembly. States delivering statements should

always raise civic space issues and the situation of HRDs and civil society when reflecting on developments in the country and considering appropriate action. Upon consultation with civil society, it may also be useful to raise individual cases of concern, including of detained HRDs or HRDs at risk and victims of reprisals.

In other cases, the Council may be helping a State recover from a human rights crisis and build resilience. The country concerned may be on its way out of the Council's agenda. Again, Council action would benefit from a more systematic use of civic space indicators, including in the form of benchmarks for assessing progress and the next steps.

(ii) Individual and joint statements on situations that are not on the Council's agenda
In such situations, the Council should take action on a country situation that fulfils objective criteria, including civic space restrictions as early warning signs. Statements delivered during GDs or the ID with the High Commissioner may include a range of elements, including urging more engagement between the country concerned and regional and international mechanisms, other forms of preventative engagement, establishing a country-specific mechanism, holding an urgent debate or a special session, or requesting reporting on the country concerned. States delivering statements should always raise civic space issues and the situation of HRDs and civil society when reflecting on developments in the country and considering appropriate action. Best practice could include providing benchmarks for the country concerned, indicating that if these benchmarks re not met, more formal Council action may follow.

(iii) Thematic debates
States delivering statements during IDs and panel discussions, as well as GDs under "thematic" agenda items such as item 3, item 5, item 6, item 8, or item 9 should raise country-specific situations to exemplify civic space restrictions. IDs with special procedure mandate-holders and OHCHR officials, panel discussions, and GDs are opportunities for preventative engagement, including on early warning. As was highlighted elsewhere, a single or a group of special procedure mandate-holders suggesting Council action could also constitute such an early warning.[14]

Raising specific instances of restrictions to, or attacks against, HRDs and civil society can play a protective and deterring role and signal willingness to engage on the basis of on-the-ground developments.

In particular, the IDs with the UN Assistant Secretary-General on acts of intimidation and reprisals related to engagement with the UN provide an opportunity for States to effectively prevent and redress reprisals, by raising individual cases of reprisals from the Secretary-General's annual "reprisals" reports. This would contribute to increasing the political cost for States committing reprisals and thus contribute to deterrence.

Best practices and positive stories may also be raised in such debates. A country opening up its civic space, lifting restrictions on civil society events or the media, adopting a law on the protection of HRDs, or taking other positive steps regarding civic space could be used as an example of how progress in terms of civic space can translate into broader human rights progress, with a multiplier effect. Such best practices and positive stories deserve more attention at the Council.

(iv) Resolutions
Relevant dimensions of civic space, including restrictions to specific rights and freedoms and attacks against specific actors, are already frequently included in resolutions.[15] However, this is not systematic. Civic space indicators are major dimensions in the assessment of a country's situation, including patterns and evolutions (positive or negative), and should be mainstreamed as such in all country-specific resolutions.

(v) The UPR process: reviews and adoptions
A number of NGOs have mainstreamed, or entirely focused on, civic space in their UPR submissions. Recommendations formulated by States frequently cover freedom of expression, freedom of the media,

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14 International Service for Human Rights *et al.*, "Human Rights Council at 10," p. 8.
15 Including under agenda item 10. See DefendDefenders, "No Advice without Knowledge: Scrutiny elements in the UN Human Rights Council's item 10 resolutions," 21 June 2019, https://defenddefenders.org/no-advice-without-knowledge/ (accessed on 13 April 2020).

HRDs and civil society; however, there is room for progress.[16] When acting as recommending States, States should consider dedicating at least one recommendation per review to civic space issues and endeavour to formulate specific, measurable, action-oriented, and time-bound recommendations. These can include, among others, amending or repealing legislation adversely affecting civic space, adopting a law or setting up a mechanism for the protection of HRDs, civil society organisations or media professionals, and thoroughly investigating attacks against civil society actors including reprisals for engaging with the UN. Recommending States should also prioritise discussing civic space-related recommendations and developments during statements delivered for Working Group report adoptions.

When acting as States under review, States should commit to accepting recommendations on civic space, including freedoms of opinion and expression, peaceful assembly and association, the right to participation in public affairs, and recommendations on protecting HRDs, civil society organisations, media professionals, and other independent actors.

(vi) Special sessions or urgent debates
States should give paramount importance to civic space restrictions when considering supporting the convening of a special session or urgent debate on a specific situation. When such session or debate occurs, States should include civic space in their interventions.

Conclusion: strengthening the civic space agenda

As a topic, civic space is already institutionalised at the Council. A number of resolutions on civil society space[17] have been adopted. The initiative upcoming at the Council's 44th session (15 June-3 July 2020) is an opportunity to strengthen the civic space agenda.

This paper provides a number of insights and tools to mainstream civic space in State interventions at the Council; however, nothing meaningful can happen without political will to address country situations. Individually and jointly, States should step up their action and apply objective criteria to country-specific contexts. In this process, they should treat civic space issues, developments and indicators as paramount.

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[16] See UPR Info, "Statistics of Recommendations," available at: https://www.upr-info.org/database/statistics/ (accessed on 13 April 2020).

[17] Resolutions 24/21, 27/31, 32/31, and 38/12. Conceptually, "civic space" may be broader than "civil society space," which refers to the space civil society enjoys for its activities and the legal and operational environment it operates in. Civic space includes all elements relating to the environment individual citizens and civil society organisations operate in for both formal and informal activities.